

OVERVIEW AND SCRUTINY COMMITTEE

DATE OF MEETING: 21 JANUARY 2020

TITLE OF REPORT: DOG FOULING PUBLIC SPACE PROTECTION ORDER

Report of: Head of Place

Cabinet Member: Councillor Sara Kinnell, Regulatory Services

I PURPOSE OF REPORT

- 1.1 The purpose of this report is for the Committee to consider the responses to public consultation on a proposed District-wide Dog Fouling Public Spaces Protection Order (PSPO) and the proposed recommendation to Cabinet that the new Order be adopted.
- 1.2 This report deals solely with the proposed Dog Fouling PSPO. The issues regarding further dog control measures may be subject to a separate report in the future.

2 OFFICER DRAFT RECOMMENDATION TO CABINET

- 2.1 That a new Dog Fouling Public Spaces Protection Order as set out in Appendix C be adopted in accordance with the Anti-Social Behaviour, Crime and Policing Act 2014 to include the following restrictions:

District-wide (any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission):

- a) Persons in charge of a dog must have with them appropriate means to pick up dog faeces deposited by that dog; and
- b) Persons in charge of a dog must remove the faeces and for it to be disposed of in an appropriate receptacle.

- 2.2 That the Dog Fouling PSPO comes into force on 1 June 2020.

3 BACKGROUND

- 3.1 A Public Spaces Protection Order (PSPO) is not the same as a byelaw. PSPO's are intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community's quality of life. To justify a PSPO there has firstly to be evidence of a nuisance, and secondly that the effect (or the likely effect) of the activities is of a persistent nature making the behaviour unreasonable and rendering the notice justified.
- 3.2 It does this by imposing conditions on the use of that area, which apply to everyone.

- 3.3 Orders are designed to ensure the law-abiding majority can use and enjoy public spaces, safe from antisocial behaviour.
- 3.4 There is a current Dog Fouling Order in place across the District (which automatically converted to a PSPO in October 2017). However, the Order only covers very limited parts of the District as there are a range of exclusions (including carriageways with a speed limit of more than 40mph, land used for agriculture or for woodlands, land which is predominantly marshland, moor or heath, and rural common land). Moreover, the current PSPO will expire in September 2020 and therefore there is a need to review it.
- 3.5 At its meeting on 4 July 2019, Cabinet resolved to undertake public consultation on a draft Dog Fouling PSPO, and to use the consultation as an opportunity to gather evidence about other dog control issues.

4 PROPOSED DOG FOULING PSPO AND PUBLIC CONSULTATION

Consultation

- 4.1 Consultation on the draft PSPO ran for a 6-week period closing on 11 November 2019. There was a wide notification procedure including all Parish and Town Councils, the Ministry of Defence, SANG (Suitable Alternative Natural Greenspace) owners and managers, the Kennel Club and Dogs Trust, Hampshire Police, Hampshire County Council, Natural England, RSPB, Fleet Pond Society and Basingstoke Canal Society. In addition, all Hart-registered dog walking businesses, local vets and pet shops were notified. A press release was issued and posters were displayed at many open spaces across the district, and people were encouraged to reply through an on-line response form. The Council's website also contained a set of frequently-asked questions to help inform the public, and there was extensive coverage on local social media groups.

Consultation results

- 4.2 13 separate responses to specific notification of the proposed PSPO (Appendix A) were received, and 212 additional responses were made on-line (Appendix B). All comments are available on the Councils website at <https://www.hart.gov.uk/consultation-dog-fouling-controls>. The Appendices only include comments relating to questions on the Dog Control PSPO. Other responses on dog control issues will be considered if any decision is made in the future to add further controls.

5 KEY ISSUES RAISED IN CONSULTATION RESPONSES

- 5.1 The majority of responses made by those who commented upon the proposed PSPO were in support of the new Order, recognising that it is the responsibility of owners to clear up after their dogs. However, several concerns were raised including some who felt that there was no need for any dog fouling controls. Notwithstanding these comments, it is considered that there is sufficient justification for the implementation of the PSPO as attached in Appendix C.

Key issues raised

Enforcement

- A significant number of comments related to enforcement of the PSPO. Currently, officers from East Hampshire DC assist with the enforcement role for dog fouling as well as littering. Further commentary on enforcement is made under Section 6 Implementation and Enforcement below.
- Many respondents mentioned the undesirable practice of dog walkers using plastic bags to clear up dog fouling but then leaving the bag on the ground or in trees and bushes, and wanted this to be covered by the order. The wording of the order would require bags to be placed in a suitable receptacle or to be taken home for disposal. Furthermore, leaving waste in bags in open spaces would constitute littering which itself could result in the issuing of a Fixed Penalty Notice if witnessed.

Provision of bins

- Consultation responses suggested that one of the key issues in relation to limiting dog fouling is having sufficient waste bins in appropriate locations. Clearly there would be an additional cost to the Council if further bin provision was made, although this is regularly reviewed on countryside sites that the Council owns and manages. The absence of bins in some public areas cannot excuse dog fouling to take place.

Different approach in rural & urban areas

- A number of respondents suggested that a different approach should be taken in urban and rural areas with greater control in urban areas and a more relaxed approach elsewhere. Whilst this might have some merit, there would need to be careful definition of any 'urban' and 'rural' areas, and some of the most well used recreational sites may then fall outside of 'urban controls'. It is considered that a consistent approach across the district is both easier for residents and stakeholders to understand and for enforcement of the PSPO.

Other issues

- There were also comments about how the PSPO would work in practice, including who could report an offence and comments on appropriate fines (which are set by legislation). A series of FAQ's were included on the website during the PSPO consultation and it is proposed that these be expanded to cover other clarification issues alongside the PSPO if adopted.

6 IMPLEMENTATION AND ENFORCEMENT

- 6.1 The proposal is that enforcement of the PSPO will be undertaken by both the Councils' Dog Warden and by East Hampshire enforcement officers as at present. The enforcement contract with East Hampshire is currently being renewed. Under the new contract the Council will retain any Fixed Penalty Notice income and will have greater flexibility as to where officers are located on any particular day, meaning that targeted patrolling can take place.

7 FINANCIAL IMPLICATIONS

- 7.1 It is inevitable there will be some budgetary impact following the implementation of the proposed dog fouling PSPO. The principal costs will involve the provision of adequate signage and raising public awareness and education. This is estimated to be in the region of £5,000 and will be addressed in a bid at the 2020/2021 budget setting stage. Recent A4 CCTV signs (non reflective vinyl with graffiti resistant film) cost about £12 each.
- 7.2 Signage will be focused on the most heavily used public open spaces and as much as possible will make use of existing facilities such as noticeboards. There are about 190 identified publicly accessible open spaces in the District (Hart Open Space Strategy 2016) although some of these may require more than one sign, and not all are in the Council's control. Other areas of signage such as heavily used routes to school will also need to be identified. Any signage will need the consent of the landowner, including Parish or Town Councils where they are landowners, and Hampshire County Council as land owner as well as highway authority where relevant.
- 7.3 Any revenue generated through Fixed Penalty Notices issued by Hart will be retained by the Council. Some legal costs are likely to be incurred in pursuing an individual if they fail to pay a Fixed Penalty Notice fine, although these may be able to be recovered. General awareness of dog fouling issues will continue to be raised through the Dog Warden.

8 ACTION AND NEXT STEPS

- 8.1 It is requested that the Overview and Scrutiny Committee endorses the recommendation to adopt the Dog Fouling PSPO and recommends it to Cabinet. If Cabinet agrees to the adoption of the Dog Fouling PSPO officers will progress implementation of this ready for 1 June 2020.

Contact Details:

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APPENDIX A – Summary of Consultation Responses (other than received on-line)

TOTAL NUMBER OF RESPONSES (other than on-line) over 6 week period = 13

Consultee	Area	Summary of response
Taylor Wimpey	Naishes Wood SANG	<p>This is a private SANG, not managed by Hart. Do not consider it reasonable nor within the original aim of a SANG to impose such a PSPO which may discourage its use. The primary aim of a SANG is to encourage its use to exercise dogs "off lead". At Naishes Wood, will operate a "clean up within 1m of the path" rule.</p> <p>Also concerned that the Order has been broadened in definition taking away the right of owner to control its own land.</p>
Dog's Trust	Whole District	<p>Clearing up after your dog is an integral element of responsible dog ownership and the Trust would fully support a well-implemented order on fouling. The Council is urged to enforce the Order rigorously and to consider whether it has an adequate number of disposal points, consider providing free bags, and whether there is sufficient signage in place.</p> <p>Consider that the welfare of dogs will suffer if owners are banned from walking dogs in public spaces such as parks, or if dogs are required to be kept on leads in these spaces.</p> <p>Wish to be informed of the outcome and decisions made on the PSPO.</p>
Landmarc Support Services Limited (maintenance contractor for MoD Training Estate)	Whole District	<p>Support a PSPO as dog fouling and the cost of managing bins is constantly increasing. Forwarded consultation to DIO at Longmoor for a formal response.</p> <p>(NB: The Defence Infrastructure Organisation has been separately consulted)</p>
Hook Pet Supplies	Whole District	<p>Considers it a good move forward. A small minority of dog owners give all a bad reputation.</p>
Hampshire Constabulary -	Whole District	<p>Whilst police officers would be authorised to take action under the order, it is highly unlikely that sufficient police officers will be on duty to undertake these</p>

<p>Designing out Crime unit</p>		<p>duties. Therefore, other “authorised officers” will need to be accredited with the powers to do so. The order will raise public expectations that complaints will be deal with in a timely manner. The Police would be concerned if the public use either the 999 or 101 system to report incidents.</p> <p>Raises questions:</p> <ul style="list-style-type: none"> • Are sufficient resources to be provided to match public expectations? • How are the public to report incidents? • Is a dedicated phone number to be provided and how will it work outside office hours? <p>The Police would be concerned if the order placed an additional burden on resources or created a perception that the police can be called to deal with incidents of dog fouling.</p>
<p>Hampshire Police – Hart Neighbourhood Policing Team</p>	<p>Whole District</p>	<p>Hampshire Police support the introduction of the new order. However, officers will not be routinely or proactivity carrying out enforcement of the order.</p>
<p>Fleet Pond Society</p>	<p>Fleet Pond Nature Reserve</p>	<p>The Fleet Pond Society supports the making of this order, and believe the issue should be tackled more strongly by adding a supplementary clause to deal with bags being left behind:</p> <p><i>A person who leaves a bag that any dog faeces have been placed in, within the bounds of the public space and not in a receptacle which is provided for that purpose, or for the disposal of waste, shall be taken to have not removed the dog faeces from that public space for the purposes of this order.</i></p>
<p>Basingstoke Canal Society</p>	<p>Basingstoke Canal</p>	<p>The Committee of the Basingstoke Canal Society fully support the proposed PSPO, and are interested to know how the Order can be enforced in a practical way. The Committee also consider the Order should apply to dog owners who hang used plastic bags on trees in the vicinity of the towpath. Additional signage would be helpful.</p>
<p>PARISH COUNCILS</p>		
<p>Blackwater and Hawley Town Council</p>	<p>Whole District</p>	<p>Fully support the strengthened dog fouling controls</p>

Crookham Village Parish Council	Whole District	The Parish Council support the making of such an order.
Ewshot Parish Council	Whole District	Support for PSPO
Greywell Parish Council	Whole District	No comment on the proposed controls
Odiham Parish Council	Whole District	Broadly in agreement. Request that “Hounds for Heroes” be added to the exception list (https://houndsforheroes.com)

Appendix B: Summary of Key Response Issues to On-line Consultation questions (Relating to Dog Fouling only)

TOTAL NUMBER OF ON-LINE RESPONSES over 6 week period = 212

Do you wish to be informed regarding the PSPO? Confirmed: 171

Section 1 About You

1	Do you:				
	Live	111	Work	9	Both 92
					within Hart District (tick all that apply)
2	Are you a dog owner?				Yes 146 No 67
3	Are you a commercial dog walker?				Yes 9 No 203

Section 2 Draft Dog Fouling PSPO

4 Please tell us if you have any comments on the proposed dog fouling measures in the Draft Dog Fouling PSPO?

Comments in support of the PSPO:

- The majority of comments give a considerable level of support for these measures.
- More attention needs to be focused on professional dog walkers who allow fouling
- Support more being done to restrict dog fouling as responsible owners always clear their dog's waste.
- Support the PSPO on school run routes and public parks.
- Dog fouling should always be cleared up but do not restrict where dogs can be walked.

Comments from those who oppose the PSPO:

- Believed to be an over-reach of powers
- Pointless and unenforceable. Sometimes better to leave the waste rather than bag it for landfill. A blanket PSPO is not appropriate in a rural area like Hart.
- Use the "stick and flick" approach instead. The waste degrades significantly faster than plastic bags.
- The order is a misuse and not in the spirit of the legislation. A single PSPO cannot be applied to the whole district and is unenforceable. Displaying sufficient signage to adequately publicise the PSPO would be impossible across the whole district.
- Ensuring dog walkers have appropriate means to pick up dog faeces sounds like a "right of search". Stop and search is quite ridiculous.
- Dog walkers may not be aware of fouling if their dog is off the lead.
- Dog walkers may accidentally run out of bags.
- Dangerous dogs are a more serious problem that the Council is not addressing.
- Dog fouling is not considered to be a real problem.
- Banning dogs and dog owners from sports areas is not supported.
- Seen no evidence that this PSPO is required or proportionate.
- Preferable for dog owners to clear mess off a track or path, but not necessary to bag it and take it home.
- Not needed as current laws cover dog fouling.
- The entire district is in danger of becoming a dog unfriendly zone, and will reduce the appeal of the area to potential homeowners.
- Suggest there should be a differentiation between urban and rural areas. More environmentally friendly to "flick" in rural areas, whereas needs to be bagged in towns and villages.

Comment on Enforcement:

- Needs to be supported with greater and more robust enforcement – need more staff and / or volunteers. No value in additional measures when current measures are not enforced.
- Cannot afford to employ more wardens to enforce – just give existing staff additional enforcement powers.
- How will this be monitored and enforced?
- No need for new rules, just enforce existing.
- Why is time and money being spent on this consultation when existing legislation should simply be enforced.
- Obtaining proof and evidence will be difficult.
- Can a member of the public who has witnessed dog fouling report it to the Council?
- Certain public open spaces should be dedicated to dogs only and banned for children, and vice-versa.
- Exemptions for disability should only apply if that disability prevents complying with the PSPO.
- You have no means to enforce this PSPO.
- Leniency should be shown for the young and the elderly.

Comment on Facilities (Bins, Signage and Bags):

- All public spaces should have sufficient, conveniently located waste bins that are regularly emptied. Not enough bins at present.
- Encourage responsibility by supplying dog waste bags
- Needs to cover those who leave dog waste bags hanging on fences and trees. Bagged waste hung from fences is entirely unsatisfactory
- Issues with dog fouling occurs where there is a shortage of bins

Comment on Fines:

- The fines should be on the spot.
- The fine is too low and should be greater at £1,000
- The fines should be high enough to fund full time patrols.
- Penalties should be harsher such as list offenders on the website. Harsher penalties for commercial dog walkers and ban repeat offenders.

Other Comments:

- Dog licensing should be re-introduced too.
- Queries on interpretation of the wording of the PSPO.
- There should be no exceptions to the policy.
- Disabled people who have assistance dogs are excluded but what about those disabled people who have a dog as a pet but are physically unable to pick up the dog's waste?
- There are no additional controls in sensitive areas such as SPA or play parks.
- The draft PSPO (para.4.5) refers to “a person whohas a dog in **his** possession”. Does this mean females are exempt?

5 Please tell us if you have any other comments about dog fouling?

Comment in support:

- *Dog owners must be responsible for their dogs.*
- *Leaving behind filled waste bags should be an offence.*
- *Fouling on pavements and sports pitches is not acceptable but the “stick and flick” approach is more reasonable off paths in wilder areas.*

Comments from those who oppose:

- *Excluding dogs from certain public areas would discriminate against responsible dog owners.*
- *Cat fouling is equally an issue.*
- *Fouling by horses also needs to be addressed.*
- *Urban foxes, cats and other animals also foul public areas. How will you legislate for that?*
- *Ironic that you are concerned about dog fouling when you place cattle in nature reserves that produce far more waste.*
- *There is no evidence to suggest that commercial dog walkers are causing problems of dog control.*
- *If dogs are to be excluded from some sports pitches, an equal and equivalent space needs to be created for dog walking.*
- *Concentrate on education not legislation to correct behaviour*
- *Just enforce the current laws on dog fouling.*
- *Dog fouling is far less of a problem than it was 20-30 years ago. It is a perceived problem on social media.*

Comment on Enforcement:

- *Certain areas would benefit from greater “policing”, particularly Fleet Pond.*
- *There needs to be a system put in place to report offenders.*
- *The authority should be held accountable for making reasonable attempts to trace owners and enforce the order.*
- *Policies on exemption need to be able to recognise “hidden disabilities” such as mental health and autism.*

Comment on Facilities (Bins, Signage and Bags):

- *Biodegradable bags should be used, and provide bags alongside bins for those who forget.*
- *More dedicated bins and signage in busy dog walking areas would help.*
- *Bins are often full and need emptying more regularly.*
- *More signs warning of the dangers of dog fouling need to be in place.*
- *Many bags are just discarded in the countryside, even when close to bins.*
- *Providing free waste bags near bins may help.*

Comment on Fines:

- *Please implement fines as soon as possible, especially on pavements and paths.*

Other Comments:

- *There should be a ban on dogs off the lead.*
- *Dog fouling is a problem of irresponsible owners, not the dog. Do not ban dogs.*

APPENDIX C – PROPOSED DOG FOULING PUBLIC SPACE PROTECTION ORDER

DRAFT ANTI SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014 PART 4, SECTION 59 PUBLIC SPACES PROTECTION ORDER (DOG FOULING) 2020

This Order comes into force on the [] and will remain in force for a period of three years from that date unless extended by further order under the Council’s statutory powers.

This Order may be cited as the Hart District Council Public Spaces Protection Order 1/20xx.

PRELIMINARY

1. Hart District Council (“the Council”) make the following order in exercise of its powers under section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 (“the Act”) being satisfied on reasonable grounds that:
2. The activities identified below have been carried out in public places within the Council’s area and have had a detrimental effect on the quality of life of those in the locality and that the effect, or likely effect of the activities:
Is, or is likely to be of a persistent or continuing nature,
Is or is likely to be, such as to make the activities unreasonable, and
Justifies the restrictions imposed by the notice.
3. The Council is satisfied that the prohibitions imposed by this Order are reasonable to impose in order to prevent the detrimental effect of these activities from continuing, occurring or recurring, or to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.

4. GENERAL PROVISIONS

Definitions

- 4.1 “Authorised person” means a police officer, an employee of the Council or other person who is authorised in writing by the Council.
- 4.2 “Interested party” means an individual who lives in the administrative area of Hart District or who regularly works within or visits that area.
- 4.3 “Prescribed charity” shall include:
 - (i) Dogs for the Disabled (Registered Charity Number 700454)
 - (ii) Support Dogs (Registered Charity Number 1088281)
 - (iii) Canine Partners for Independence (Registered Charity Number 803680)
 - (iv) Dog A.I.D. (Registered Charity Number 1 098619)
 - (v) Medical Detection Dogs (Registered Charity Number 1124533)
- 4.4 “Public place” means any place in the administrative area of the Authority to which the public or a section of the public has access, on payment or otherwise, as of right by virtue of express or implied permission. The administrative area of the Authority is the land shown in Schedule 1.
- 4.5 “Person in Charge” - a person who habitually has a dog in his possession shall be taken to be in charge of the dog at any time unless at that time some other person is in charge of the dog.

THE ACTIVITIES

5. The Activities prohibited by this order are:
- (l) Failing to remove the dog faeces from land to which the public or any section of the public has access (on payment of otherwise, as a right or by virtue of express or implied consent).

THE PROHIBITION

6. The activities are prohibited within the area illustrated in Schedule I.

PERIOD FOR WHICH THIS ORDER HAS EFFECT

7. This Order will come into force on 00:00 hrs on [_____] and will expire at 23:59 on [_____]
8. At any point before the expiry of this three year period the council can extend the Order by up to three years if they are satisfied on reasonable grounds that this is necessary to prevent the activities identified in the Order from recurring or to prevent an increase in the frequency of those activities after that time.

9. WHAT HAPPENS IF YOU FAIL TO COMPLY WITH THIS ORDER?

If a dog defecates at any time on any Public Place in the area illustrated in Schedule I of this Order and the person in charge of the dog at the time fails to remove the faeces from the land forthwith, that person shall be guilty of an offence unless:

- a) they have a reasonable excuse for failing to do so; or
- b) the owner, occupier or other person or authority having control of the Public Place has consented (generally or specifically) to them failing to do so; or
- c) that person is subject to the exemptions listed in Article 12.

9.1 Placing the faeces in a receptacle which is provided for that purpose, or for the disposal of waste, shall be sufficient removal from the Public Place.

9.2 Not being aware of the defecation or not having a device or suitable means of removing the faeces shall not be a reasonable excuse for failing to remove it.

10. MEANS TO PICK UP DOG FAECES

10.1 A person in charge of a dog on any Public Space must have with them appropriate means to pick up dog faeces deposited by that dog unless:

- a) they have a reasonable excuse for failing to do so; or
- b) the owner, occupier or other person or authority having control of the Public Place has consented (generally or specifically) to them failing to do so; or
- c) that person is subject to the exemptions listed in Article 12.

10.2 The obligation is complied with if, after a request from an Authorised Officer, the person in charge of the dog produces an appropriate means to pick up the dog faeces.

OFFENCE AND PENALTY

11 An authorised person may issue a fixed penalty notice to anyone he or she believes has committed an offence. The level of the fixed penalty shall be £100, save that if the fixed penalty is paid within 14 days following the date of the notice, the amount payable is reduced to £75. A person committing an offence and failing to pay the fixed penalty may be prosecuted.

12 EXEMPTIONS

12.1 Nothing in this Order shall apply to a person who:-

- a) is registered as a blind person in a register compiled under S29 of the National Assistance Act 1948; or
- b) has a disability as defined by the Equality Act 2010 or its successor and who relies upon an accredited assistance dog trained by an accredited member of Assistance dogs International (ADI) or the International Guide Dog Federation (IGDF) or other Prescribed Charity.

13 APPEALS

13.1 Any challenge to this Order must be made at the High Court by an interested person within 6 weeks of it being made. An interested person is someone who lives in, regularly works in or visits the restricted area. This means that only those who are directly affected by the restrictions have the power to challenge. The right to challenge also exists where an order is varied by the Council.

Interested persons can challenge the validity of the Order on two grounds;

- a) that the Council did not have the power to make the Order or to include particular prohibitions or requirements imposed by the Order; or
- b) that one of the requirements under Chapter 2 Part 4 of the Anti-Social behaviour, Crime and Policing Act 2014 was not complied with in relation to the Order.

Where an application is made, the High Court can decide to suspend the operation of the Order pending the Court's decision, in part or in totality. The High Court has the ability to uphold the Order, quash it, or vary it.

Dated this day of..... 2020

EXECUTED AS A DEED BY AFFIXING THE COMMON SEAL OF HART DISTRICT COUNCIL IN THE PRESENCE OF:

Schedule I: Administrative Area of Hart District

