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NON-EXEMPT

# EAST HAMPSHIRE DISTRICT COUNCIL

COUNCIL

25 February 2021

## PUBLIC SPACE PROTECTION ORDER (DOGS) UNDER ANTI SOCIAL BEHAVIOUR AND POLICE ACT 2014

### FOR DECISION

Portfolio Holder: Ingrid Thomas, Portfolio Holder for Neighbourhood Quality

Key Decision: Yes

Report Number: EHCL/062/2021

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#### 1. Purpose

- 1.1. This paper is submitted to Council:
- 1.2. To make a Public Space Protection Order (PSPO) – in relation to dogs for the District of East Hampshire under the Anti-Social Behaviour and Policing Act 2014.
- 1.3. To adopt a dog friendly approach providing consistent messages around dog control and to promote the responsibilities of dog ownership.

#### 2. Recommendation

- 2.1. At its meeting held on 4 February 2021, Cabinet recommended to Council that it makes a Public Space Protection Order (PSPO) in relation to the control of dogs under the Anti-Social Behaviour and Police Act 2014. To include the following offences:
  - a. Person in charge of a dog must remove faeces deposited by that dog.
  - b. Failure to put the dog on a lead when requested to do so by an authorised officer.
  - c. Exclusion of dogs from fenced and gated play areas.

*d.* Dogs must be on a lead in East Hampshire District Council owned cemeteries.

2.2. That £100 fixed penalty notices are adopted to tackle offences disclosed.

2.3. Delegate authority to the Head of Service for Neighbourhood Support in consultation with the portfolio holder to carry out all necessary publicity required by virtue of the Anti-Social Behaviour, Crime and Policing Act 2014 (Public Space Protection Orders) regulations.

### **3. Executive Summary**

3.1. On 4<sup>th</sup> July 2019 Cabinet approved consultation to be undertaken regarding the making of a Public Space Protection Order (PSPO) – dogs in East Hampshire. (See section 13: Background Papers).

3.2. The Crime, Anti-Social Behaviour and Policing Act 2014 created new powers to replace previous and existing legislation for the control of dogs in public areas.

3.3. One such power is the Public Space Protection Order (PSPO). The legislation also places a requirement on the council to publicise the nature and extent of the orders.

3.4. These powers provide a clearer and more consistent approach to dog control and make it easier for everyone to understand what a dog owner's responsibilities are. They also provide an opportunity for the council to reinforce its message of zero tolerance in relation to littering.

3.5. Between 22<sup>nd</sup> July to Monday 23<sup>rd</sup> September 2019 a consultation process was undertaken to include the public, parish/town councils and other key stakeholders.

3.6. The council received over 600 responses.

3.7. The following restrictions have been identified for inclusion within the order:

*a.* Person in charge of a dog must remove faeces deposited by that dog.

*b.* Failure to put the dog on a lead when requested to do so by an authorised officer.

*c.* Exclusion of dogs from fenced and gated play areas.

*d.* Dogs must be on a lead in East Hampshire District Council owned cemeteries.

- 3.8. The legislation provides for a maximum penalty of £100.
- 3.9. The enforcement, legal and financial implications of the recommendation are to be met within existing budgets and already established enforcement processes, which are designed to be cost neutral.

#### **4. Additional Budgetary Implications**

- 4.1. None.

#### **5. Background and relationship to Corporate Strategy**

- 5.1. The Corporate Strategy promotes “an environmentally aware and cleaner East Hampshire” and “a safer, healthier, more active East Hampshire.” The PSPO will support these themes and the values for responding to the needs of our communities through evidence and respecting and supporting each other and our residents.

#### **6. Options considered**

- 6.1. Option 1: do nothing
- 6.2. This option is not viable. The current, old legislation is not enforceable, unclear and does not reflect the concerns of the public in relation to issues associated with dogs.
- 6.3. Option 2: That the Council makes a Public Space Protection Order (PSPO) in relation to the control of dogs under the Anti-Social Behaviour and Policing Act 2014.
- 6.4. This is the preferred option. It is a balanced response to the findings of the consultation exercise requested by EHDC Cabinet in July 2019 and will help to promote the “environmentally aware and cleaner East Hampshire” and “a safer, healthier, more active East Hampshire objectives of the Corporate Strategy.
- 6.5. The option will be implemented through existing mechanisms of patrol and enforcement.

- 6.6. There are no additional resource implications anticipated with this option. The cost of implementation will be met through existing budgets.
- 6.7. This option carries with it the potential to increase public expectation around patrol and enforcement and so this could be considered a risk. However, the PSPO carries with it the requirement to inform the public and through communication this risk will be mitigated.
- 6.8. We do not expect any adverse impact on customer care or experience. In contrast we expect to see a positive impact in public relations in addressing issues around dogs as frequently reported by residents and the public.

## **7. Resource Implications**

- 7.1. Financial Implications - Signage to be provided by existing Neighbourhood Quality budget in council owned fenced and gated play areas and cemeteries. For land not owned by EHDC, costs to be met and signage erected by the land owner.

Specifically -

- a. Signage – estimated cost of £1500.00. Included within budget. Specifically, the income generated by litter enforcement budget that sits within Neighbourhood Quality.
- b. Any signage costs for parish and town councils would need to be paid for by the land owner.
- c. Enforcement and prosecution costs – estimated cost is neutral. Work to be undertaken by East Hampshire Commercial Services (EHCS) under pre-existing arrangements.

### **Section 151 Officer comments**

Date: 02/11/2020

Any financial implications are contained within current budgets.

- 7.2. Human Resources Implications – None anticipated.
- 7.3. Information Governance Implications – The issuing of Fixed Penalty Notices will result in the retention of personal information including the name and address of an individual. East Hampshire District Council has an existing mechanism for the processing of this data through EHCS, in the same way information would be handled for a littering offence. Therefore, further implications are not expected.
- 7.4. Other resource implications – None anticipated.

## **8. Legal Implications**

- 8.1. The provisions of the 2014 Act will replace the existing Dog Control Orders (Prescribed Offences and Penalties, etc.) Regulations 2006 and the Dog Control Orders (Procedures) Regulations 2006, which implement sections 55 and 56 of the Clean Neighbourhoods and Environment Act 2005 (prescribing offences and penalties to be contained in, and procedures and forms for making, dog control orders), together with the other sections of the Act relating to dog control orders. Dog Control Orders replace the previous system of byelaws for the control of dogs, and also the Dogs (Fouling of Land) Act 1996, which has been repealed.
- 8.2. The Crime, ASB and Policing Act 2014 has replaced previous legislation and amongst other things places a requirement on the council to publicise the nature and extent of the order.
- 8.3. A local authority may make public spaces protection order if satisfied on reasonable grounds that two conditions are met. These conditions are justified to the council through the consultation carried out in 2019.
- 8.4. Under the Anti-social Behaviour, Crime and Policing Act (Publication of Public Spaces Protection Orders) Regulations 2014 the Order must be published on the Council's website and the Council must cause to be erected on or adjacent to the public Space to which the order relates such notices considered sufficient to draw the attention of the public the fact that the order has been made.

The first condition is that—

- (a) activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or
- (b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.

The second condition is that the effect, or likely effect, of the activities—

- (a) is, or is likely to be, of a persistent or continuing nature,
- (b) is, or is likely to be, such as to make the activities unreasonable, and
- (c) justifies the restrictions imposed by the notice.

- 8.5. Under the PSPO, prosecutions for failure to pay any fixed penalty notice for the above offences will be pursued under The Crime, Anti-Social Behaviour and Policing Act 2014.
- 8.6. The enforcement of the legislation is open to East Hampshire council officers or those authorised by the council.
- 8.7. East Hampshire District Council has a pre-existing contract with East Hampshire Commercial Services (EHCS) to provide a service (patrol, issue fixed penalty notices and prosecute if a fixed penalty notice is not paid) on behalf of the Council.
- 8.8. Legal support would be required for the drafting of the PSPO based upon the recommendations within section 2 of this report.
- 8.9. legal services have been consulted in the preparation of this report.

**Monitoring Officer comments**

Date: 27.01.21

No further comments to the legal implications comments set out above.

## **9. Risks**

- 9.1. The updating of existing legislation and resulting publicity carries with it the potential to increase public expectation around enforcement in much the same way as the public expect to see action taken with regards to litter.
- 9.2. A communication strategy is in place to mitigate this, specifically addressing the legislation and what this means for key partners, residents and visitors to East Hampshire.

## **10. Consultation**

- 10.1. A consultation process was carried out between 22<sup>nd</sup> July to Monday 23<sup>rd</sup> September 2019 using a survey provided through East Hampshire District Council's website. This was accompanied by posters and social media posts. Paper based surveys were also available upon request.
- 10.2. The council received over 600 responses to the survey including several submissions from councillors and interested organisations. Of those that answered, 71% of individual respondents regularly walk one or more dogs. Specific findings showed strong support in the following areas:
  - a. People out with a dog must remove dog faeces and have with them the means to do so [usually bags].
  - b. People out with a dog must put the dog on a lead if asked to do so by an authorised officer.
  - c. Dogs must be on a lead in EHDC-owned cemeteries.
  - d. Dogs to be banned from fenced and gated children's play areas, skate parks, tennis courts and multi-use games areas.
  - e. Control of dogs in Queen Elizabeth Country Park. Respondents are less certain about extending current arrangements regarding control of dogs in Queen Elizabeth Country Park.

- 10.3. With regards to item *a*. People out with a dog must remove dog faeces and have with them the means to do so [usually bags], concerns were raised by a key consultee (Kennel Club) over the proposal that people out with a dog must remove dog faeces and have with them the means to do so [usually bags]. In addition, some respondents raised concerns over people being unfairly penalised who had used and disposed of the bags they took with them or had given their spare to another dog owner in need. The practicalities of a council officer being able to enforce this option was also questioned. Therefore, the requirement for people to have the means [usually bags] with them has been removed.
- 10.4. Item *b*. People out with a dog must put the dog on a lead if asked to do so by an authorised officer. Item *c*. dogs must be on a lead in EHDC-owned cemeteries and item *d*. to be banned from fenced and gated children's play areas, skate parks, tennis courts and multi-use games areas were all strongly supported.
- 10.5. With reference to Queen Elizabeth Country Park, item *e*. respondents were less certain. There are already specific seasonal measures to cover visitor access. The park will benefit from the making of the district wide restrictions in relation to picking up after a dog, putting a dog on a lead when asked to do so and dogs not being allowed in fenced and gated play areas.
- 10.6. During the consultation process, a concern was raised by Hampshire Constabulary that the risk of introducing the PSPO would be an increase in demand for police officers/PCSOs to enforce the rules. EHDC does not expect Hampshire Constabulary to carry out this role.

## **11. Communication**

- 11.1. A communications lead has been identified and a communications strategy is in place, internal and external. Town and Parish Councils have been briefed. Councillors newsletters have been used and media updated with action up to date.

## **12. Appendices**

- 12.1. None,

### **13. Background papers**

- 13.1. Cabinet report 4<sup>th</sup> July 2019 - Public Space Protection Orders (Dogs) under The Anti Social Behaviour, Crime and Policing Act 2014 to replace existing byelaws and Orders

<https://easthants.moderngov.co.uk/ieListDocuments.aspx?CId=126&MID=2462#A110542>

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Agreed and signed off by:

Portfolio Holder: 21.01.21

Director: 12.01.21

Monitoring Officer:

Section 151 Officer: 12.01.21

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