

Policy and Finance Committee

2 July 2015

Anti-Social Behaviour, Crime & Policing Act 2014 - Public Spaces Protection Order and Fixed Penalty Notice Arrangements

Report by the Director of Place and the Director of Finance

Purpose

To report the outcome of the Public Spaces Protection Order (dog fouling) consultation and recommend the order is made, and to agree a consistent fixed penalty level, and reduced penalty for early payment, for all Fixed Penalty Notices (FPNs) issued under provisions of the Anti-Social Behaviour, Crime and Policing Act 2014 in those cases where the offender is given the opportunity of avoiding liability to prosecution by paying a fixed penalty under a FPN.

Recommendations of the Lead Member for Policy

To **RESOLVE** that -

1. the Director of Place be authorised to make a Public Spaces Protection Order (dog fouling) under in the form shown in Annex 1 (the Order) under Section 59 Anti-Social Behaviour, Crime and Policing Act 2014 and the Corporate Solicitor be instructed to execute the Order.
2. the amount of the fixed penalty payable under any Fixed Penalty Notice issued in respect of breaches of the Order be set at £100, reduced to £60 if paid within 10 days of the Notice;
3. the Director of Place be authorised to take the steps to revoke the Royal Borough of Kingston upon Thames Dogs (Fouling of Land) Designation Order 1997 and the Corporate Solicitor be instructed to execute the Revocation Order,
4. Fixed Penalty Notices issued for breaches of any further Public Space Protection Orders made and Community Protection Notices (CPNs) issued, under the Anti-social Behaviour, Crime and Policing Act 2014 (the 2014 Act), be set at the level proposed in 2. above, reduced to £60 if paid within 10 days of the Notice, in those cases where breaches are dealt with by way of FPNs, as opposed to by prosecution.

Key Points

- A. At the full Council meeting on 15 January 2015, it was resolved to consider introducing appropriate a Public Spaces Protection Orders (PSPO) to help deal with dog fouling in public places. Officers were instructed to report on the matter to the Infrastructure, Projects and Contracts Committee on 25th March 2015, and subsequently report back to the Policy and Finance Committee on the following: outcome of the consultation on the proposed PSPO dealing with dog fouling, the final text of a draft order; proposals for its enforcement including confirmation of the amount of the fixed penalty and any reduced amount for early payment; proposals for the authorisation or persons, including officers of the Council and contractors, to issue Fixed Penalty Notices in relation to offences contrary to the requirements of

the PSPO; and a proposal to revoke of the Royal Borough of Kingston upon Thames Dogs (Fouling of Land) Designation Order 1997.

- B. PSPOs can be used to deal with a wide range of anti-social activities. This means that over time it is likely that there will be some localities where there are several PSPOs addressing different types of anti-social behaviour which will be in force concurrently.
- C. There is one other power contained in the 2014 Act where FPNs can be issued for breaches, instead of prosecuting the offender - the Community Protection Notice (CPN). CPNs are intended to deal with unreasonable, ongoing problems or nuisances which negatively affect the community's quality of life by targeting the person responsible. CPNs also replace some very specific Notices under earlier statutory powers.
- D. Under the 2014 Act issuing a FPN is an alternative to prosecution for breaches of both PSPOs and CPNs.
- E. This report recommends consistent arrangements for dealing with breaches of PSPOs and CPNs, in those cases where the offender is given the opportunity of avoiding liability to prosecution by paying a fixed penalty under a FPN.

Context

1. There is a two-part test for making a PSPO. The Council must be satisfied on reasonable grounds that the activities carried on, or likely to be carried on, in a public place are detrimental to the local community's quality of life, and that the impact justifies the restrictions being put in place in a particular area. The behaviour must also be persistent and unreasonable.
2. Once made, Council officers, Police officers, and PCSOs would enforce the PSPO as would other personnel that the Council may designate. As agreed by the IPC Committee the Director of Place was delegated to authorise officers and other personnel to issue FPNs in relation to contraventions of the requirements of the PSPO.
3. Following a standard procurement exercise NSL Services Group were procured to act on the Council's behalf to issue FPNs for dog fouling and littering.
4. A six month environmental enforcement pilot was launched on 8th June 2015 covering FPNs for littering using Section 87 of the Environmental Protection Act 1990. Assuming the Committee resolve to make a PSPO in respect of dog fouling the Order will be enforced as part of the pilot.
5. The text of a draft PSPO is set out in **Annex 1** and the Schedule to the Order details the public places designated as 'restricted areas' for the purposes of controlling dog fouling. The Order also contains exemptions from the requirement to remove dog faeces. Before a PSPO can be made the Council must give publicity to the proposed order and consult with certain bodies and representatives. Public consultation is not required since the procedure is deliberately intended to require a lighter touch consultation to save costs.
6. Other localities may well be designated under PSPOs in due course. By way of example, the transitional provisions in the 2014 Act allow existing Designated Public Places Orders (DPPOs) to remain in force until 20 October 2017, unless revoked before then. DPPOs have been used by the Council to place restrictions on public drinking in areas that have experienced alcohol-related disorder or nuisance. Any DPPOs still in force on the above date effectively convert to PSPOs and, under Section 75 of the 2014 Act, the provisions of the DPPO have effect as if they were the provisions of a PSPO.

7. Breaches of DPPOs are enforced by the Police by prosecuting the offender and this will remain an option for any DPPOs which they are converted to PSPOs.
8. In view of the likelihood that there will be a number of PSPOs in the Borough, in some cases covering the same localities, it would provide consistency for residents and visitors, and for enforcement staff from all agencies, if a common approach were adopted for all PSPOs. It is therefore suggested that where breaches are dealt with by way of issuing FPNs, the fixed penalty and payment arrangements for any future PSPOs should mirror those agreed for this PSPO.
9. Whilst a FPN can be issued in respect of breaches of a CPN in an appropriate case, as an alternative to prosecution, the offender may be prosecuted in which case s/he is liable on summary conviction to a fine not exceeding Level 4 of the Standard Scale, currently £2500, in the case of an individual, or an unlimited fine in the case of a body, under Section 48 of the 2014 Act.
10. It is recommended that the same arrangements should be applied to any FPNs issued for breaches of CPNs under the 2014 Act.

Revocation of Dogs (fouling of land) Designation Order 1997

11. In 1997 the Council made the Royal Borough of Kingston upon Thames Dogs (Fouling of Land) Designation Order 1997 ('the Designation Order') requiring dog owners in most parts of the Borough to remove faeces left by their dog on public land. The Designation Order has not been enforced in recent years, and there is now uncertainty over its scope. It is now intended to revoke the Designation Order as the proposed PSPO will deal with dog fouling in a consistent manner across the Borough.

Consultation

12. Before the PSPO is made, the Council has to publish the proposed order under Section 72 of the 2014 Act. The Council must also publish the PSPO on its website once made under Anti-Social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014 (the 2014 Regulations).
13. Under Section 72 of the 2014 Act before making a PSPO, the Council must consult with a number of public bodies and local representatives. The Borough Commander and Transport for London along with the Kennel Club were therefore consulted on the proposed PSPO.
14. While there is no duty to advertise in the local newspapers, the DEFRA guidance states that it is good practice to publish a notice in a local newspaper about a proposed PSPO in appropriate cases. The Committee directed that officers publish notices of the Council's intention to make a PSPO and notice was duly published in the Local Guardian newspaper on 21 May 2015 and ran for 14 days.
15. At the same time, the proposed PSPO and notice was published on the Council's website, posted on notice boards in all the RBK libraries, parks notice boards (within the pilot area) and Housing Estates.
16. There have been no representations or remarks received regarding the public places listed in the draft order as a result of the consultation.

Timescale

17. If the Committee resolve to make the PSPO in the form annexed to this report it will come into force once executed by the Council. It is intended that FPNs will be issued as part of the enforcement pilot for any breach of the PSPO once it has been made subject to satisfying the requirement in the 2014 Regulations to

publish the Order as made on the website and to erect on, or adjacent to, the public place to which the order relates such notices as considered sufficient to draw the attention of any members of the public using that place to the PSPO; and its effect.

Penalties for breaching the PSPO

18. It is an offence under Section 67 of the 2014 Act without reasonable excuse to fail to comply with any requirement imposed by a PSPO. A person convicted of such offence may be fined up to Level 3 of the Standard Scale (currently £1,000) and ordered to pay costs. A police constable, or an authorised person may enforce an offence by initially issuing an FPN giving the recipient the opportunity to pay the fixed penalty to discharge his/her liability to conviction of the offence.
19. Under Section 68 of the 2014 Act it is for the Council to determine the amount of the fixed penalty payable under the FPN up to a maximum of £100. This report recommends that the Fixed Penalty is set at the maximum of £100 but is reduced to £60 if it paid in 10 days of the FPN.
20. If agreed at this meeting the arrangements in Paragraph 19 above would also apply to any other PSPOs made by the Borough (including any DPPO “converted” to a PSPO after 20 October 2017) and to any breaches of CPNs in those cases where the offender is given the opportunity of avoiding liability to prosecution for breaching of the PSPO or CPN by paying a fixed penalty under FPN.

Resource Implications

21. Modest expenditure on consultation to date, including the notice published in the Local Guardian and the required signage, will be met from within existing budgets.

Legal Implications

22. The power to make a PSPO is contained in Section 59 of the 2014 Act and is supplemented by guidance issued by the Secretary of State and Regulations. The requirements for the making of a PSPO are set out in the body of the report.
23. Under Section 66 of the 2014 Act any challenge to the validity of a PSPO must be made in the High Court by an interested person within six weeks of it being made. An interested person is an individual who lives in, or 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 validity of a PSPO can be challenged on two grounds only: -
 1. that the Council did not have power to make the order, or to include particular prohibitions or requirements imposed
 2. that the procedural requirements for making the PSPO (for instance, consultation) were not complied with.
24. On any application to the High Court challenging the validity of a PSPO the Court may suspend the operation of the Order or any of the prohibitions or requirements imposed by it until the final determination of the proceedings. If the Court is satisfied the Council did not have the power to make the PSPO, or it did but the Council failed to comply with the procedural requirements and, the applicant has been substantially prejudiced by that failure, it may quash the Order or any of the prohibitions or requirements imposed by it.

25. The 2014 Act enables the Council to determine the amount of an FPN up to a maximum of £100 and to fix the amount of any reduced penalty for early payment (in “less than 14 days”).
26. In deciding whether to make a PSPO and, if so, what should be included in it, under Section 72 of the 2014 Act the Council must have particular regard to the rights of freedom of expression and freedom of assembly set out in Articles 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”). The restrictions which will be made if the proposed PSPO is made do not engage these Articles and are considered compatible with rights under the Convention.

Risk Assessment

27. The risk of challenge to the PSPO is considered low and acceptable given the Council’s express powers under Section 59 of the 2014 Act, provided the procedural requirements are followed.

Equalities Impact Assessment

28. In preparing this report officers have had regard to the Council’s public sector equality duty under the Equalities Act 2010. The specific needs of people with disabilities are catered for in the text of the draft Order.

Environmental Implications

29. The impact on the local environment will be positive.

Background papers - None

Authors of report -

Marie-Claire Edwards, Service Manager Green Spaces, Carbon Reduction and Sustainability, marie-claire.edwards@kingston.gov.uk
Extn 5372

Marion Todd, Relationship Manager, Safer Kingston Partnership,
Marion.Todd@Kingston.gov.uk