



ADUR & WORTHING
COUNCILS

Committee JOSC Date
26 July 2018
Agenda Item 9

Key Decision N/A

Wards Affected: All

What is the Future for Littering and Dog Fouling Control?

Report by the Director for Communities

Executive Summary

Purpose

1.1 To provide detail to assist the committee in deciding whether to further explore the option of using a private/alternative enforcement agency to dispense fixed penalty notices for breaches under the Public Spaces Protection Order (PSPO) for Dog Control and for littering offences under the Clean Neighbourhood and Environment Act 2005.

Recommendations

2.1 Recommendation 1: Note the contents of this report and the current review that is underway

2.2 Recommendation 2: Determine what next steps the committee would like to take to further understand

- The level of fouling (and littering) within the PSPOs areas across Adur & Worthing

- The costs and benefits of employing a private/alternate enforcement company against the targeted use of in house resources

Context

- 3.1 The in-house Dog Warden Service was transferred to the Public Health & Regulation Service on 1 May 2018. Previously it had been managed by the Parks Section of the Environment Dept.
- 3.2 Two full time Dog Wardens are employed in the dog warden service which covers Adur & Worthing Council areas. Duties include:
- dealing with stray dogs,
 - noise complaints relating to barking dogs,
 - dog attacks on other dogs and livestock,
 - animal welfare complaints and
 - enforcing the Public Spaces Protection Orders in relation to Dog Control.
- 3.3 Enforcement of the PSPOs includes the issuing of fixed penalty notices (FPNs) where offences are observed. Such notices currently incur a fine of £50. Offences are:
- failing to remove dog faeces from land,
 - failure to put a dog on a lead when directed by an authorised officer,
 - failure to have a dog on a lead in a 'dogs on leads' location,
 - failure to keep a dog out of a dog exclusion zone, and
 - a person having more than 6 dogs under their control on specified land.
- 3.4 Adur & Worthing Councils' employees who are currently authorised to issue FPNs total eight individuals and work as dog wardens, community park rangers, environment maintenance officers and foreshore inspectors. This provides significant potential coverage across the councils to observe and issue fines as appropriate, although it is recognised that these powers can only be exercised if an offence is observed, which is the main reason for non issue of FPNs.
- 3.5 The extent and severity of dog fouling throughout the Council areas is not fully understood and it is suggested that this requires further investigation to better understand and evidence.
- 3.6 Additionally, the new operational line manager responsible for the dog warden

service is currently reviewing the service which will include how patrols are carried out. Consideration may be given to improving how focused patrols of 'hot spot' areas, where dog fouling levels are found to be problematic, are carried out.

- 3.7 The Council legal department have confirmed that Parish Councils do not have the power to issue fixed penalty notices, however this could be overcome if the principal authority, Adur & Worthing Councils delegated this to a Parish Council. If this were to occur, any fines derived from fixed penalty notices would be payable to the principal authority, who would also be required to undertake follow up court action for non-payment of fines.
- 3.8 An assessment of Adur & Worthing Councils' decision making process with regard to proceeding to prosecution on non payment of a fine following the issue of a fixed penalty notice has also been initiated. This entails considering a graduated enforcement model which is in line with the Public Health & Regulation Service enforcement policy, and perhaps issuing a fixed penalty notice on repeat offenders who may have previously received a warning in relation to the same breach. This should have the same effect on addressing breaches of the Public Space Protection Order, but saving time and resource on prosecuting only habitual offenders.
- 3.9 There is currently no PSPO in either Adur or Worthing covering the activity of Littering. Instead littering is covered by powers contained in section 87 of the Environmental Protection Act 1990 and the Clean Neighbourhoods and Environment Act 2005.
- 3.10 Adur District Council are able to issue fixed penalty notices for £75 under CNEA powers, but the offence itself is committed under s87 powers. If the FPN is not paid, the Council has the power to prosecute for the original offence. If the prosecution is successful in a magistrates court the maximum penalty is a fine of £2500.
- 3.11 In order to have a successful case, littering complaints need to be accompanied by an eyewitness account. Circumstantial evidence such as finding an address in a bag is not sufficient on its own to mount a successful prosecution.
- 3.12 In the last 12 months 3 FPNs issued for littering in Lancing. All 3 were successfully paid and no court action was necessary.

Issues for consideration

- 4.1 The committee has asked for basic information in order to assess whether further exploration of the suggestion to employ a private/alternate enforcement agency is warranted. Given the timescales around the preparation of this report, the information provided is at a high level. In order to make better informed recommendations the committee will need to explore all options, as well as undertake a full assessment of the costs of procurement, costs of legal enforcement of non payment of fines against the potential benefits to the Councils.
- 4.2 Officers are aware that other Councils in Sussex use a variety of different methods, from in house delivery, to fully contracted out services, to working with other local authorities to discharge these duties. Attached as Appendix 1 is a brief round up of what is happening in other East & West Sussex Authorities currently. Further time would be needed to review the options in more detail.
- 4.3 The committee may therefore wish to consider convening a small working group or request a more detailed report highlighting these costs and benefits which reviews and explores the options used by other authorities, and crucially fully understands the potential costs and benefits to the councils of using a private company or partnering with other authorities. The internal review of the current service offer will continue in any event.

Potential Options to be considered

- Option 1: The current method of service delivery which provides reasonable coverage as there are a number of front line staff across the Councils able to issue FPNs as described above. However there is a need to better understand and target the use of these resources which are the subjects of the current review and refresh by the team.
- Option 2: Further detailed work to be undertaken to review the possibility of employing a private/alternate enforcement company to be employed by the principal authority to enforce the provisions of the Public Space Protection Order for Dog Control and litter enforcement.
- Option 3: Further detailed work be undertaken to review the possibility of employing a private/alternate enforcement company to be employed by the principal authority to provide the full suite of dog control functions and littering functions.

Engagement and Communication

- 5.1 These PSPOs last for 3 years, prior to implementing a full process of public consultation was completed
- 5.2 In 2016/17 49 Fixed Penalty Notices (FPN's) were issued in relation to dog control, 2017/18 16 FPN's were issued and to date in financial year 2018/19, 2 FPN's have been issued.
- 5.3 Currently following the redesign of the Environmental Services section and the move of Dog Wardens to the Public Health and Regulation Team a review is underway involving all relevant staff to understand need, resourcing and targeting in order to ensure that we use our people as effectively as possible.
- 5.4 Any future change in how the service is delivered, i.e the use of a private contractor would require detailed engagement with internal teams such as procurement, finance and legal to understand the costs and benefits to the Councils as well as executive, ward members and the public to agree and communicate this change.

Financial Implications

- Consult with Finance as early as possible on any proposed changes to the service provision in order to identify any financial or procurement implications.

Finance Officer: Donna Lock

Date:13/07/18

Legal Implications

- 6.1 Public Space protection orders (PSPO) were introduced by Section 59 of the Anti-Social behaviour crime and Policing Act 2014. PSPO's require or prohibit certain activities from taking place in certain places (restricted areas) in order to prevent or reduce any detrimental effect caused by those activities to local people. PSPOs are intended to:
 - (a) Tackle a wide range of behaviour similar to the "good rule and government" byelaws under the Local Government Act 1972 but with the option of a fixed penalty notice on breach and more flexibility.
 - (b) Reduce bureaucracy by no longer requiring local authorities to produce

- information for reports for central government.
- (c) Cut down on existing consultation requirements by only requiring local authorities to comply with "light-touch" consultation requirements in order to save costs.
 - (d) Allow local authorities to deal with both existing and future problems by using a single order to combat a variety of different issues.
 - (e) Replace designated public place orders, gating orders and dog control orders.
- 6.2 Local authorities that can make PSPO's include, a district council, a county council for an area for which there is no district council, a London borough council, the Common Council of the City of London (in its capacity as a local authority) or the Council of the Isles of Scilly.
- 6.3 Section 1 of the Localism Act 2011 grants Local Authorities the general power of competence, which in simple terms means that Local Authorities now have the power to do anything that an individual may do. This could include instructing external bodies to undertake legal duties on their behalf or in a different parlance; "outsourcing". Section 135 of the Local Government Act 1972 also empowers local authorities to outsource provision of services to third sector or private organisations.
- 6.4 Before the Council can outsource this function, procurement rules must be complied with. Local Government Act 1998 requires competitive tendering and Local Government Act 1999 requires that any provider chosen must provide best value. A local consultation may be required before the contract is entered into. However, if the external body only exists to provide services to the local authority (ies) that control it, it will be exempt from a competitive tendering process.
- 6.5 Once the above rules are complied with, the Council may engage a private enforcement company to enforce the provision of the PSPO for dog control, litter and fly posting and the issuing of FPN's. However, in accordance with law, all payments received for the FPN's must be made directly to the Council. The law also specified that monies collected from FPN's for dog fouling can only be used for specific functions which are dog fouling, littering and fly-posting.
- 6.6 There are some legal implications that may arise from entering into contract with a third party. As the external body will be performing duties on our behalf (as our agents), we could potentially be brought into any claim issued against them. If the claim is won by the other side, the Councils would potentially be liable for costs and suffer reputational damage. However, this can be

prevented with a watertight contract that requires that the third party company meet certain/specified/ codes of conduct in addition to indemnifying the Councils for any losses that occur as a result of their conduct.

- 6.7 FPN's are issued to the offender to discharge any liability to prosecution, i.e, as an alternative to prosecution. When an FPN is issued, the Council should only prosecute if the offender refuses to pay. In limited/exceptional circumstances , the Council may bring prosecution without offering an PFN, when dealing with a repeat offender.
- 6.8 In order to reduce costs, the Single Justice Procedure (SJP) should be considered for instituting prosecution. The SJP does not require physical attendance at court unless the Defendant request for it e.g, by pleading not guilty. Usually, the matter is dealt with administratively, thereby saving costs for the Council. However, there will be associated costs, which would include costs of preparing the relevant legal documents for issuing at court.
- 6.9 If the Council wishes to deal with littering under PSPO's as opposed to S 87 of the EPA 1990, it must be aware that the fine level that can be imposed by the magistrate's court will be reduced. S 87 fines can go up to level 4, while PSPO's can only go up to level 3.

Legal Officer:Edwina Adefehinti

Date: 12.7.18

Background Papers

None

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Sustainability & Risk Assessment

The current PSPO duration is until December 2019 and the Council can extend the PSPO at any point before expiry if it considers it necessary to prevent the original behaviour from occurring or recurring. It is the intention of this Council to do so.

1. Economic

The use of a private enforcement agency to dispense fixed penalty notices for breaches under the Public Spaces Protection Order for Dog Control and for littering offences under the Clean Neighbourhood and Environment Act 2005 is unlikely to generate sufficient income to attain cost recovery and would not be self-financing.

2. Social

2.1 Social Value

The current dog control service covers every aspect of dog control and provides a familiar and balanced service to our communities and also links up with other departments within the Council such as Environmental Health and Adur Homes in dealing with noise nuisance and problem dog owners.

2.2 Equality Issues

Matter considered and no issues identified.

2.3 Community Safety Issues (Section 17)

Matter considered and no issues identified.

2.4 Human Rights Issues

Matter considered and no issues identified.

3. Environmental

A key part of the dog control service in protecting public health in publicly accessed open spaces by tackling issues of dog fouling through education and enforcement.

4. Governance

Consideration for the Council's reputation in the provision of an effective dog control service and continued adequate staff resource.