

**Tackling Anti-Social Behaviour relating to dogs: Updating
our enforcement tools**

Final Decision-Maker	Communities, Housing & Environment Committee
Lead Head of Service	John Littlemore, Head of Housing and Community Services
Lead Officer and Report Author	Martyn Jeynes, Community Protection Team
Classification	Public
Wards affected	All

Executive Summary

This report requests the Committee to authorise the Head of Housing and Community Services the authority to make a new Public Space Protection Order (PSPO) in relation to dog control that builds upon existing dog control measures.

Purpose of Report

Decision

This report makes the following recommendations to this Committee:

1. That the Committee give authority to the Head of Housing and Community Services to make a new Public Space Protection Order as set out in Appendix 4

Timetable

Meeting	Date
Communities, Housing & Environment	25 August 2020

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1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<p>Keeping Maidstone Borough an attractive place for all.</p> <p>PSPOs provide Councils with a flexible power to implement local restrictions to address the effect on quality of life caused by a range of anti-social behaviour issues in public places in order to prevent future problems and ensure safe and attractive environment.</p>	John Littlemore, Head of Communities and Housing
Cross Cutting Objectives	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> • Heritage is Respected • Health Inequalities are Addressed and Reduced • Deprivation and Social Mobility is Improved • Biodiversity and Environmental Sustainability is respected <p>The report recommendation supports the achievement of the Health Inequalities and Environmental Sustainability cross cutting objectives by protecting communities from irresponsible dog owners and protecting public spaces for everyone to enjoy.</p>	John Littlemore, Head of Communities and Housing
Risk Management	<p>There is a statutory requirement to review PSPOs every three years. The management of PSPOs will be subject to the current performance management arrangements within the service, with performance benchmarking as part of the process.</p>	John Littlemore, Head of Communities and Housing
Financial	<p>It is anticipated that the continued delivery of the PSPO will be resourced from within existing budgets.</p>	Section 151 Officer & Finance Team
Staffing	<p>Delivery of the PSPO will continue to be overseen by the Community Protection Team in partnership with Kent Police and the Waste Crime Team.</p>	John Littlemore, Head of Communities and Housing

Legal	As contained within the body of the report, any enforcement by way of prosecution, or non-payment of FPN and any other legal process will have resource implications for MKLS. These are not anticipated to be any different than the current PSPO.	Sarah Beasley, Mid Kent Legal Services
Privacy and Data Protection	Private information obtained within the process of delivering the PSPO will be managed in accordance with Environmental Health, Waste Crime & Community Protection Enforcement Policy and the Council's and the Council's Data Protection Policy.	Policy and Information Team
Equalities	The recommendations do not propose a change in service therefore will not require an equalities impact assessment	Policy & Information Manager
Public Health	The Community Protection team is under the reporting line of the Head Housing and Community Services. The focus is strongly on preventative work that is intelligence driven so as to maximise the opportunities to reduce health inequalities in partnership with the police and other community safety related partners.	Community Protection Manager
Crime and Disorder	The continued delivery of the PSPO will contribute to make Maidstone a safer place by promoting the message and enforcement of the appropriate standard of conduct and behaviour.	John Littlemore, Head of Communities and Housing
Procurement	Appropriate procurement methods will be used for publicity and signage as necessary	John Littlemore, Head of Communities and Housing

2. INTRODUCTION AND BACKGROUND

Public Space Protection Orders and their role in Dog Control

- 2.1 Public Spaces Protection Orders (PSPOs) are intended to provide a means of preventing individuals or groups committing anti-social behaviour in a public space where the behaviour is having, or likely to have, a detrimental effect on the quality of life of those in the locality; be persistent or continuing in nature; and be unreasonable.
- 2.2 Powers introduced by the Anti-Social Behaviour, Crime and Policing Act 2014, which introduced PSPOs, included transition arrangements whereby any existing Dog Control Orders (DCOs) converted into PSPOs in October 2017. Unlike DCOs, there is a requirement for PSPOs to be reviewed every three years to ensure they remain appropriate.
- 2.3 The existing Dog Control PSPO which transitioned in 2017 has three main prohibitions which were prohibited by the previous DCOs. These are:
 - Dog fouling
 - Exclusion of dogs from fenced play areas
 - Exclusion of dogs from Maidstone Crematorium
- 2.4 Members should note that Dog Control Orders repealed the previous legislation in relation to Dog Fouling, therefore a PSPO is required to ensure this remains an offence in Maidstone.
- 2.5 Home office guidance states that when making PSPOs, Local Authorities should ensure proposed restrictions are focused on specific behaviours and are proportionate to the detrimental effect that the behaviour is causing or can cause, and are necessary to prevent it from continuing, occurring or recurring. PSPOs create criminal offences, which carry the same burden of proof as any other criminal offence and must be proved beyond all reasonable doubt.
- 2.6 Consideration must also be given to the Local Authorities ability to enforce the prohibitions and the public expectation creating such orders might create. This is of particular importance when considering controlling behaviour associated with Dogs. Experience and feedback from institutions such as the Kennel Club and the Dog's Trust have taught us that dog owners are very responsive to measures that are introduced when they are considered justified and proportionate. Where this is not the case the opposite is often prevalent, with deliberate acts of defiance commonplace. This was demonstrated when some areas have tried to introduce large dog's on leads areas.
- 2.7 PSPO can be appealed in the High Court if the council did not have the power to make the order or include particular prohibitions/requirements within them or statutory processes are not followed. Appeals can be made up to six weeks after the date on which the order is made/varied by anyone who lives in, or regularly works or visits the area.

Review and Consultation on proposed measures

- 2.8 Prior to undertaking a public consultation, the council's animal welfare specialist and colleagues from the Community Protection Team reviewed the current transitioned PSPO provision in line with the concerns raised to the team by the public in relation to dog nuisance. Summarised as follows:
- Whilst less reports of dog fouling have been received by the team, it remains an area of public concern.
 - Dogs in play areas are not commonly reported and tend to be addressed relatively easily.
 - 75 complaints about dangerous and nuisance dogs, excluding barking dogs which is dealt with using noise nuisance legislation. The issues relating to dogs vary but often involve owners who have failed to keep their dog under control where they attack other dogs, animals.
 - In addition, the council's appointed specialist contractor deals with around 200 strays or loose dogs a year.
- 2.9 Previous requests for areas to be considered for specific dog control measures were also considered. These generally relate to making specific areas "dog on lead". Two areas of note are the Woodland Trust area in Bearsted and the Mallards Way Pond, Downswood.
- 2.10 The Woodland Trust requested a dog on lead PSPO in 2016 to support their Code of Conduct. Advice was provided in relation to reviewing the large area covered by the dog on lead restriction and the negative response it had received from some dog walkers in the area. It was not deemed necessary or proportionate to introduce a PSPO and the resources necessary to protect the Trust's land.
- 2.11 Mallards Way Pond has been brought to the team's attention by Cllr Newton in relation to a series of dog attacks on wildfowl, in particular around the pond. Whilst there is evidence that attacks have taken place, not all the wild fowl losses can be attributed to irresponsible dog owners. In some cases fisherman, foxes and cats have been linked to the losses. Alternative measures have been recommended including specific enforcement against individuals where identified, a Parish Code of Conduct for dog walkers and/or a fenced area around the pond itself. These should be considered before creating a criminal offence specific to this recreation area. Whilst clearly distressing, it would likely be argued that a PSPO to protect wildfowl is not a proportionate response to protect "quality of life", of human users of the area, particularly given the incidents, whilst unpleasant, are infrequent.
- 2.12 Based on the information collated, officers felt that the most appropriate measures to consider for public consultation were as follows:
1. Dog Fouling
 2. Exclusion from play areas, including Tennis Courts
 3. Exclusion from Vinter's Park Crematorium without permission
 4. Dogs on a lead by direction
 5. Dogs on leads at Sutton Road Cemetery
 6. Allowing a dog to stray
- 2.13 Details on the range of proposals can be found in appendix 1.

2.14 Ahead of the public consultation, Ward Councillors and Parishes were invited to consider the measures proposed by the Community Protection Team. We received 18 responses that indicated support for the measures as follows:

	Measure 1		Measure 2		Measure 3		Measure 4		Measure 5		Measure 6	
Ward Councillors	9	0	7	1	4	4	8	0	7	1	6	2
Parish Councils	9	0	7	2	7	2	8	1	7	2	7	2
	Yes	No										

2.15 Appendix 2 provides details of some of the questions asked by Ward Councillors and Parishes and the response provided by the team. No further evidence or requests were received in relation to the need to amend or add measures ahead of the public consultation.

2.16 A public consultation was undertaken from 12th May 2020 to the 12 July. A total of 1624 survey responses were received, of which 1480 of these were weighted responses, which makes it more representative of the population. The survey found that the majority of the public are in favour of all six measures proposed. An in-depth analysis of the consultation survey responses is available in Appendix 3. In summary the responses were as follows.

	Measure 1	Measure 2	Measure 3	Measure 4	Measure 5	Measure 6
% Public in Favour of measure	90.4%	79.8%	73%	88.4%	88.7%	76.2%

2.17 The consultation and feedback from parishes indicated concerns over how “unfenced play areas” will be made clear to users. This will be developed further with communications, the parks and open spaces and the parishes to ensure suitable signage is agreed and installed at agreed locations.

2.18 Whilst researching the proposed measures it was determined that a measure to require that dogs are kept under control could be utilised to tackle irresponsible dog owners whose dog(s) are found to not be under proper control. This is less prescriptive than a measure just to control strays and would support officers in dealing with broader incidents, such as worrying livestock, causing traffic accidents or attacking other animals, including other dogs, the latter of which often results in significant vet bills for the victim animal’s owner but no action against the individual who allowed their dog to be out of proper control.

2.19 It was also determined that the exclusion of dogs from the crematorium was included in a DCO due to a historical issue involving a particular individual whose behaviour was inappropriate. This issue has since been resolved and with a different emphasis on the use of the crematorium for visitors to visit the memorial gardens means that it would be more appropriate to combine measures 3 and 5 so that dogs are required to be kept on a lead in both our places of rest. This was also raised by those who responded to the consultation.

Enforcement of the proposed measures and exemptions

- 2.20 Whilst the Community Protection Team does not have the capacity to routinely “patrol” the borough, the team remains responsive to the issues raised in relation to dog control. It is felt that a combination of evidence led enforcement and reactive enforcement from the team would support the delivery of the measures 1 through 4, as outlined in 4.1. Officers from the Community Protection Team can already challenge anyone they see failing to clean up after their dog whilst undertaking their wider role. Officers from the Waste Crime Team are also authorised in relation to fouling, in particular as it compliments their litter work.
- 2.21 Enforcement of measure 5 will largely be used retrospectively as it will likely be determined by the evidence provided in relation to how the dog was deemed to not be under control. Consideration will also be given on how to use this to challenge behaviour where a dog has been collected whilst not under its owners control so as to avoid “double jeopardy” in relation to the dog(s) also being collected as a stray. It would not be expected that an owner would pay for both, therefore an “either/or” process will be developed with the appointed pound. An early payment option for the Fixed Penalty Notice in relation to this measure would ensure the sanctions are relatively consistent in that regard.
- 2.22 It is proposed to set the fixed penalty level at £100 for all offences created by the PSPOs. This will be consistent with the existing Town Centre PSPO and is similar to the fine for littering. The maximum fine for prosecution is set out in the legislation at £1000. A lesser amount payment will also be made available for the measure relating to dogs not under proper control.
- 2.23 As with similar offences, any income generated by the use of fixed penalty notices would be reinvested into the service to encourage responsible dog ownership and cover some of the costs associated in delivering dog control in the borough.
- 2.24 For the purpose of enforcing the order, a person who habitually has a dog in their 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.
- 2.25 Unlike DCOs, there are no prescribed exemptions under PSPOs. However, it is necessary to recognise that there will be some dog owners who need to be exempt from some of the controls that we are proposing to implement. Having undertaken an equality assessment and considered the consultation responses it is proposed that nothing in the proposed Public Space Protection Order will apply to a person who:
- a. is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948, or “severely sight impaired”, or “sight impaired” under the Care Act 2014; or
 - b. has a disability which affects his mobility, manual dexterity, physical coordination, or ability to lift, carry, or otherwise move everyday objects, in respect of a dog trained by a “prescribed charity” and upon which he relies for assistance;

- c. each of the following is a "prescribed charity"
- 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) Hearing dogs for deaf people (registered charity number 293358)
 - v) Any charity created subsequent to this Order, which covers the issues detailed in point b. above.

3. AVAILABLE OPTIONS

- 3.1 **Do Nothing-** If the existing or proposed measures are not renewed they will no longer create any offences in relation to dog control. This would remove a useful tool used to tackle irresponsible dog ownership and supervision, risk considerable reputational damage as it would not be aligned with our strategic plan and may be considered a failure of our duty under the Crime and Disorder Act 1998 to take steps to reduce crime and anti-social behaviour within our borough.
- 3.2 **Renew existing measures from current PSPO-** whilst this will allow for a useful tool to continue to be used its effectiveness will be slightly diminished due to the limitations of those measures to allow officers to challenge offences. It will also mean the FPN levels remain £75, which would be significantly lower than the current fine for littering or the provisions in the Town Centre PSPO.
- 3.3 **Implement some of the proposed measures identified in section 4 or additional measures-** Committee may wish to choose to only implement certain aspects of the PSPO or additional measures. This is not recommended as the thorough and detailed process, research and consultation undertaken to date have been considered in bringing the recommendation as set out in section 4. Choosing to implement only some of the recommendations may suggest that the committee are not willing to listen to the public opinion gathered and previous experience of the officers themselves. In addition, new measures would need to be consulted on prior to implementation which would have significant impacts on the proposed measures, which would have to be delayed.
- 3.4 **Authority given to Head of Housing and Community Services to vary and implement the proposed measures.** This is the preferred option as detailed in section 4.
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4. **PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS**

4.1 The preferred and recommended option is 3.5, to authorised Head of Housing and Community Services the make a new PSPO which amalgamates the previous PSPOs/DCOs into one order with the following requirements / prohibitions :

Measure 1- Remove dog faeces from land forthwith

Measure 2- Exclusion of Dogs from Play Areas and Tennis Courts

Measure 3- Keep Dogs on Leads in the Vinters Park Crematorium and Associated Grounds and the Sutton Road Cemetery

Measure 4- Dogs on Leads by Direction.

Measure 5 - Keep Dogs Under Proper Control

4.2 Doing anything prohibited by / Failure to comply of measures 1 to 4 could result in a Fixed Penalty Notice of £100. Doing anything prohibited by/ failure to comply with measure 5 could result in a £100 Fixed Penalty Notice, reduced to £80 if paid within 10 days, to bring it into line with the control measures used for strays.

4.3 This order will support officers in dealing with irresponsible dog owners, particularly in high risk and sensitive locations using a range of tools to engage, explain, encourage and enforce the legislation in accordance with their Enforcement Policy.

4.4 The exemptions outlined in 2.24 will also be applied.

4.5 Unlike similar legislation, such as littering, failure to provide details is not a specific PSPO offence. Therefore, for each of the proposed control measures the following additional measure will be made to enable officers to require identification:

A person in charge of the dog at the time of the offence shall provide, when asked by an authorised officer, a name and address

4.6 The measures outlined in 4.1 are proposed as based on the following conclusions found from the review process:

Measure 1- Remove dog faeces from land forthwith

This maintains the offence of dog fouling but increases the FPN amount to £100 so that it is closer to the FPN for littering. Not having this measure would effectively legitimise not picking up dog faeces.

Measure 2- Exclusion of Dogs from Play Areas and Tennis Courts

This measure would extend the existing exclusion of dogs from specified areas where slides, swings and/or other climbing/ play equipment is located whether or not they are enclosed. This measure would also extend to include Council owned tennis courts on request from the Parks and Open Spaces manager to protect them due to ongoing issues with dogs. The designated areas will be clearly mapped and appropriate signage displayed. A definitive list of those areas to be included as "restricted areas" will be agreed with Parish Councils prior to the order being made. This is an expansion on the existing prohibition so that children and users of Maidstone Borough Council's tennis courts can enjoy the facilities without the risk of dog fouling, intimidation of the presence of dogs or nuisance dog behaviour.

Measure 3- Keep Dogs on Leads in the Vinters Park Crematorium and Associated Grounds and the Sutton Road Cemetery

In the existing PSPO there was a full exclusion of dogs from the Crematorium, however, despite the public support for a full exclusion, as detailed in 2.17, an exclusion area is no longer proportionate and dogs on leads at this site would be sufficient and bring it in line with the new proposal for Maidstone Cemetery, whilst still offering support to challenge behaviour in a sensitive location. Introducing this measure to the cemetery provides consistency across the two sites and has been agreed by the Bereavement Services Manager.

Measure 4- Failing to place a dog on a lead when directed to do so by an authorised officer.

This measure seeks to make it an offence to fail to put a dog on a lead when specifically directed to do so by an authorised officer. There is no current provision that officers can use to require this action, but if a dog is off lead and posing a risk of creating nuisance or harm then this equips officers with the means to halt the behaviour on the spot before it escalates to becoming a dangerous dog. This can also be applied retrospectively. This measure received significant public support in the consultation and provides a useful and flexible tool to the officers enforcement toolkit when dealing with the most irresponsible dog owners.

Measure 5 - Failing to keep a dog under proper control

This measure makes it an offence to not properly control a dog, for example it may constitute an offence to allow a dog to wander/roam loose/exercise without a responsible dog owner present or where dogs may create a nuisance off lead as a result of poor training. This provides officers with another tool to tackle dog owners who put the public or livestock at risk and who allow their dogs to behave in an anti-social manner. The measure is amended from that contained in the consultation, as detailed in 2.16. The amendment seeks to encompass a greater variety of situations in which this prohibition could be used to tackle irresponsible dog ownership and supports those affected by the behaviour of their dogs.

4.7 A draft of the proposed order is provided in appendix 4.

5. RISK

- 5.1 The risks associated with this proposal, including the risks if the Council does not act as recommended, have been considered in line with the Council's Risk Management Framework. That consideration is shown throughout this report. We are satisfied that the risks associated are within the Council's risk appetite and will be managed as per the Policy.
 - 5.2 Once the order is made there is a statutory right of appeal to the High Court within 6 weeks if the council did not have the power to make the order or include particular prohibitions/requirements or statutory processes not followed. We are confident that the measures proposed are proportionate and justified, minimising the likelihood of an appeal significantly.
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6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 6.1 As detailed within the report Ward Councillors and Parish Councils were consulted prior to the full public consultation.
 - 6.2 In addition, both the Kent Police and Crime Commissioner and Chief Superintendent of Kent were consulted and expressed support for the proposed measures
 - 6.3 To ensure a full and explorative consultation we also approach charities and public bodies such as The Kennel Club and their responses have been incorporated into the proposals in section 4.
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7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 7.1 If authorised by the committee, the proposed order will be made by the Head of Housing and Communities and sealed by Legal Services. They will be published on the website and appropriate signage erected in the areas covered by the orders prior to commencement of the Orders. We will also use a communication plan to maximise awareness of the new orders.
 - 7.2 Work will be undertaken with Parks and Open Spaces and Parish Councils to identify play areas that need to be designated for exclusion. The appropriate signage will then be developed and installed to clearly advise customers of any changes, as appropriate.
 - 7.3 A PSPO can be made for a maximum of three years. Following the initial period, the PSPO must be reviewed continually to ensure that it is still necessary and proportionate.
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8. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- Appendix 1: Proposed measures put forward for consultation only.
 - Appendix 2: Responses to Councillors and Parishes for DCPSP0 Proposals
 - Appendix 3: Public Consultation response report
 - Appendix 4: Proposed Dog Control PSPO
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9. BACKGROUND PAPERS

None