



Formal Response to Maidstone Borough Council's Public Spaces Protection Order Dog Control Measures Consultation

Submitted on 4th August 2023 by: The Kennel Club, Clarges Street, Piccadilly, London W1J 8AB, email: kcdog@thekennelclub.org.uk

The Kennel Club is the largest organisation in the UK devoted to dog health, welfare, and training. Our objective is to ensure that dogs live healthy, happy lives with responsible owners. We campaign for and advocate on behalf of dogs and their owners and, as part of our external affairs activities, engage with local authorities on issues such as Public Spaces Protection Orders (PSPOs).

The Kennel Club is the only national organisation named by the UK Government as a body that local authorities should consult prior to introducing restrictions on dog walkers and is considered the leading canine authority on dog access. As such, we would like to highlight the importance of ensuring that PSPOs are necessary and proportionate responses to problems caused by dogs and irresponsible owners. We also believe that it is essential for authorities to balance the interests of dog owners with the interests of other access users.

Response to proposed measures

Multiple dog walking

For reasons set out later, we have general reservations on arbitrary numerical limits on multiple dog walking. With regard to Maidstone's proposals, we have specific concerns in relation to the proposals to restrict private dog walkers from walking multiple dogs.

While we would expect the majority of dog owners to have four or fewer dogs, and therefore be permitted to exercise their dogs under the proposed limit in the draft Order. If this limit was set to a lower figure than four, for which the possibility is alluded to within the online survey "It can be possible to walk more than two dogs at any one time, whether that is socially or as part of a business", then we would expect a number of dog owners to be significantly impacted by the Order.

The walking of multiple dogs from the same household, by their owner, is a different proposition to someone walking multiple 'unknown' dogs from separate households. A private individual who owns multiple dogs will typically have a very good understanding of how their dogs interact with each other, and other dogs. They will also have a good understanding of how easily their dogs can be recalled and how they react to different situations. It would be highly unusual for a private dog owner, to suddenly acquire multiple dogs overnight, in the overwhelming majority of cases we would expect an individual who owns multiple dogs, to have increased their number of dogs incrementally. As such they are likely to have a number of years of experience in walking multiple dogs.



We would be interested to understand what evidence the council has of incidents of private individuals of multiple dogs being responsible for genuine anti-social behaviour. Has the Council used Community Protection Notices to place specific requirements and prohibitions on these individuals?

If a limit on multiple dog walking is introduced for private individuals, we would urge the Council to consider how to support any affected individuals in becoming eligible to obtain a similar permit, as is available to professional dog walkers in Maidstone, to walk over the general number of dogs limit. Subject to satisfying the Council that they are able to comply with the relevant, equivalent requirements that are placed on registered professional dog walkers.

General reservations on arbitrary limits on maximum number of dogs being walked

An arbitrary maximum number of dogs that a person can walk is an inappropriate approach to dog control that will often displace and intensify problems in other areas. The maximum number of dogs a person can walk in a controlled manner depends on a number of factors relating to the dog walker, the dogs being walked, whether leads are used, time of day and the location where the walking is taking place.

As such we advise against the use of arbitrary numerical limits. Instead we suggest that the behaviour of individual commercial dog walkers is considered on a case by case basis, with Community Protection Notices used to tackle those behaving in anti-social manner.

Keeping dogs under control

The Kennel Club believes that is the responsibility of every dog owner to keep their dog under control. To this end we run The Kennel Club Good Citizen Dog Training scheme and also established The Kennel Club Accredited Instructor membership scheme, to ensure dog owners are able to find the appropriate training opportunities for their dogs. We also regularly communicate and seek to educate dog owners on the need to keep their dogs under control. We have always supported the use of “dogs on lead by direction” Orders.

However, with regards to the provision of ‘keeping dogs under control’ we have some questions in relation to legality of how it is proposed to be used. The consultation survey refers to the measure as follows - “Under the current PSPO it is an offence to fail to keep a dog under proper control. We use this power to challenge those who allow their dogs to cause harm or to stray, which can have a significant impact on an individual, animal or a community. Under the Dangerous Dogs Act 1989 it is only an offence if the incident involves a person or an assistance dog; this measure provides a level of protection to all other animals e.g. cats, birds and other dogs.”



We do not seek to question the negative impact of dogs straying or harming other animals. However, the Anti-social Behaviour, Crime and Policing Act 2014 provides the ability to introduce Public Spaces Protection Orders where activity in question meets two conditions -

- (2) 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.
- (3) 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.

The impact of the activity must be detrimental to the local community's quality of life. Which we understand to relate to the human population specifically.

This interpretation is shared by East Devon District Council, when they considered the use of a PSPO to protect a SSSI site. "With regard to the possible introduction of a PSPO in respect of the slipway access and parking issues at Imperial Recreation Ground, it has been noted that the issues are predominately around the impact of cars on the SSSI and Special Protection area for wildlife (damage to substrate, leaching oil). The Home Office Guidance relating to PSPOs emphasises that this tool should be used to reduce impact of anti-social behaviour on communities and individuals, rather than wildlife as appears to be currently the case. In order to proceed with a PSPO the Council would have to be satisfied that it met the test that the behaviour is unreasonable, persistent, and justifies the restrictions. Further consideration will also need to be given to which council officers would be responsible for the enforcement of such a PSPO."ⁱ

It is our interpretation that in some instances of dog control, that the impact of a dog being out of control would have a detrimental impact on the quality of life of those in the community and thereby meet the legal test. However, the PSPO survey specifically refers to the PSPO providing protection to all other animals. We would question whether the quality of life of the local community would be impacted by a dog catching a rat, for instance.

We would request Council details what guidance it provides to enforcers around the implementation of this measure, and ask whether the council has made a full legal assessment of the applicability of a PSPO to cover the full scope of what is set out within the PSPO survey.



Dog fouling

The Kennel Club strongly promotes responsible dog ownership, and believes that dog owners should always pick up after their dogs wherever they are, including fields and woods in the wider countryside, and especially where farm animals graze to reduce the risk of passing Neospora and Sarcocystosis to cattle and sheep respectively.

We would like to take this opportunity to encourage the local authority to employ further proactive measures to help promote responsible dog ownership throughout the local area in addition to introducing Orders in this respect. These proactive measures can include: increasing the number of bins available for dog owners to use; communicating to local dog owners that bagged dog faeces can be disposed of in normal litter bins; running responsible ownership and training events; or using poster campaigns to encourage dog owners to pick up after their dog.

Means to pick up

Whilst we support proactive efforts on behalf of local authorities to encourage responsible dog ownership, measures to require owners to pick up after their dogs must be fair and proportionate. We would not like to see responsible dog owners penalised unfairly. The Kennel Club has concerns regarding the proposal to introduce an offence of not having the means to pick up. Responsible owners will usually have dog waste bags or other means to clear up after their pets. However, if dog owners are approached at the end of a walk they may have already used the bags that they have taken out or given a spare bag to someone who has run out, for example. Such behaviour is encouraged by Green Dog Walker schemes.

It is also plausible that such proposals could, in certain circumstances, perversely incentivise dog walkers to not pick up after their dog. Dog walkers could be made to decide between using their final waste bag and risk being caught without means to pick up, or risk not picking up in order to have a means to pick up should they be stopped later on their walk. It is reasonable to assume a proportion of dog walkers would choose the second option if they believed this was the least likely route to being caught, especially if the penalty for not picking up was the same as not being in possession of a means to pick up.

Local authorities may wish to consider introducing a clause which provides an exemption for those who have run out of bags but are able to prove that they were in possession of and made use of these during their walk. It is essential that an effective communication campaign is launched in the local area to ensure that people are aware of the plans and have an excess supply of dog waste bags with them.



On lead

We can support reasonable 'dogs on lead' Orders which can, when used in a proportionate and evidence-based way, include areas such as cemeteries, picnic areas, or on pavements in proximity to cars and other road traffic.

On lead by direction

The Kennel Club strongly welcomes 'On lead by direction' Orders. These allow responsible dog owners to exercise their dogs off lead without restriction providing their dogs are under control, whilst simultaneously giving the local authority powers to restrict dogs not under control.

We recommend that the authorised officer enforcing the Order is familiar with dog behaviour in order to determine whether restraint is necessary. There exists the possibility that a dog, through no fault of its own, could be considered a 'nuisance' or 'annoyance' to someone who simply does not like dogs.

We encourage local authorities to make use of more flexible and targeted measures at their disposal, including Acceptable Behavioural Contracts and Community Protection Notices. Kennel Club Good Citizen Training Clubs and our accredited trainers can assist owners whose dogs run out of control due to them not having the ability to train a reliable recall.

Exclusions

We do not normally oppose Orders to exclude dogs from playgrounds or enclosed recreational facilities such as tennis courts or skate parks. It is important that alternative provisions are made for dog walkers in the vicinity to avoid displacement or the intensification of problems in nearby areas. However, we will oppose PSPOs which introduce blanket restrictions on dog walkers accessing public open spaces without specific and reasonable justification. Dog owners are required to provide their dogs with appropriate daily exercise, including "regular opportunities to walk and run" – in most cases, this will be off the lead while still under control.

Seasonal/time restrictions

Where a seasonal restriction is proposed, we suggest that local authorities consider whether a time restriction would be an appropriate addition. For example, many playing fields are empty in the early mornings and late evenings, making this a key time for many dog owners to exercise their dogs. These are important local resources for owners to make sure their dogs get the required daily off-lead exercise and we see little reason why it should be restricted during times of the day when it is little used, even in the busy season.



Displacement

A common unintended consequence of restrictions is displacement onto other pieces of land, resulting in new conflicts being created. It can be difficult to predict the effects of displacement, and so the council should consider whether alternative sites for dog walkers are suitable and can support an increase in the number of dog walkers using them.

Appropriate signage

It is important to note that in relation to PSPOs, The Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014 makes it a legal requirement for local authorities to –

“cause to be erected on or adjacent to the public place to which the order relates such notice (or notices) as it considers sufficient to draw the attention of any member of the public using that place to -

- (i) the fact that the order has been made, extended or varied (as the case may be); and
- (ii) the effect of that order being made, extended or varied (as the case may be).”

Regarding dog access restrictions, such as a ‘Dogs on Lead’ Order, on-site signage should clearly state where such restrictions begin and end. This can be achieved with signs that say on one side, for example, ‘You are entering [type of area]’ and ‘You are leaving [type of area]’ on the reverse.

While all dog walkers should be aware of their requirement to pick up after their dog, signage must be erected for the PSPO to be compliant with the legislation.

Assistance dogs

We urge the Council to review the Equality and Human Rights Commission’s guidance for businesses and service providers when providing any exemptions for those who rely on assistance dogs. The guidance can be viewed here:

<https://www.equalityhumanrights.com/sites/default/files/assistance-dogs-a-guide-for-all-businesses.pdf>

We would therefore encourage the Council to allow for some flexibility when considering whether a disabled person’s dog is acting as an assistance dog. The Council could consider adopting the definitions of assistance dogs used by Mole Valley District Council, which can be found below from their 2020 PSPO which included the following exemption provisions on dog control:

Nothing in this Order shall apply to a person who –



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a) is registered as a blind person on a register compiled under section 29 of the National Assistance Act 1948; or

b) is deaf, in respect of a dog trained by Hearing Dogs for Deaf People (registered charity number 293358) and upon which he relies for assistance; or

c) has a physical or mental impairment which has a substantial and long term adverse effect on the ability to carry out normal day-to-day activities, in respect of a dog trained by any current or future members of Assistance Dogs UK or any other charity registered in the UK with a purpose of training assistance dogs and upon which he relies for assistance

d) has a physical or mental impairment which has a substantial and long term adverse effect on the ability to carry out normal day-to-day activities and in the reasonable opinion of the Council that person relies upon the assistance of the dog in connection with their disability. or that of Northumberland County Council:

“(4) The term “Assistance Dog” shall mean a dog which has been trained to assist a person with a disability.

(5) The expression “disability” shall have the meaning prescribed in section 6 of the Equality Act 2010 or as may be defined in any subsequent amendment or re-enactment of that legislation”.

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<https://democracy.eastdevon.gov.uk/documents/s18848/Proposals%20to%20vary%20and%20discharge%20the%20Public%20Spaces%20Protection%20Orders%202023.pdf>