

Communities, Housing and Environment Committee

18 April 2017

Is this the final decision on the recommendations?

Yes

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

Final Decision-Maker	Communities, Housing and Environment Committee
Lead Head of Service	Head of Environment and Public Realm
Lead Officer and Report Author	Martyn Jeynes, Environmental Enforcement Manager
Classification	Non-exempt
Wards affected	All

This report makes the following recommendations to this Committee:

1. That approval is given to undertake formal consultation, for a 1 month period, on the introduction of 3 Public Space Protection Orders (PSPOs) to update and improve the enforcement tools available to officers when dealing with irresponsible dog owners.
2. That the Committee agree for the Fixed Penalty Notice available for each PSPO to be set at £100 in line with other PSPOs.
3. That the Committee agree that representations made in the public consultation will be considered by the Head of Environment and Public Realm as detailed in Section 6 before the Head of Housing and Community Services makes the PSPOs unless there are significant relevant objections when there would be a report back to Committee.

This report relates to the following corporate priorities:

- Keeping Maidstone Borough an attractive place for all - reducing fouling and other incidents of dog related Anti-Social Behaviour (ASB) within the Borough through active enforcement.

Timetable

Meeting	Date
Corporate Leadership Team	Tuesday 4 April 2017
Communities, Housing and Environment Committee	Tuesday 18 April 2017

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

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 The purpose of the report is to seek approval for officers to undertake the formal process of replacing the existing Dog Control Orders (Appendix A & B) with updated enforcement measures. The proposal is to introduce 3 Public Space Protection Orders (PSPOs) which will provide greater protection to areas considered at risk of dog related anti-social behaviour and will bring the Fixed Penalty level in line with other offences.
 - 1.2 The PSPOs will be implemented after the consultation period without returning to Committee unless there is significant relevant objection to the orders.
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2. INTRODUCTION AND BACKGROUND

Dog Related Anti-social Behaviour - the current picture in Maidstone

- 2.1 Maidstone Borough is home to many thousands of responsible dog owners who exercise their pets across the Borough. Our parks and open spaces also attract responsible dog owners from further afield. Unfortunately not everyone that owns a dog is responsible though. It had long been felt that irresponsible dog ownership is not limited to whether an owner cleans up after their dog. Irresponsible dog owners allow their dogs to stray, allow them to intimidate other people and even harm other animals. The ultimate consequence of irresponsible dog ownership can be life changing or fatal.
- 2.2 The Environmental Enforcement team promote responsible dog ownership through their RK9 Campaign but unfortunately a small number of irresponsible dog owners continue to pose a risk to other users of the parks and open spaces across the borough.
- 2.3 Albeit a declining problem there is still a perceived issue with dog fouling and some hot spots caused by irresponsible dog owners. The Cleansing Team receive reports in relation to dog mess and respond as quickly as possible to remove the waste. In 2015 and 2016 the cleansing team received 491 and 332 requests for cleansing respectively.
- 2.4 There is still a small minority who think it is acceptable to not clean up or to even place their bagged dog waste in trees etc. Although catching those responsible is often difficult, our enforcement officers, supported by the supplementary litter enforcement service, use the information provided by residents to target hot spots in order to catch those responsible and issue them with fixed penalty notices.

- 2.5 Officers currently use powers provided by The Fouling of Land by Dogs (Maidstone) Order 2013 (Appendix A). This Dog Control Order was introduced in 2013 to increase the penalty notice and to extend the offence to all public areas, some of which were not previously covered by the Fouling of Land Act 1996. A second Dog Control Order was also introduced (The Dog Exclusion (Maidstone) Order 2013 (Appendix B)) which afforded additional protection to enclosed children's play areas and the crematorium where dogs are excluded to significantly reduce the risk of an incident or annoyance being caused by their presence.
- 2.6 The fixed penalty notice available for each Dog Control Order is £75. The maximum fine through prosecution is £1000.
- 2.7 Although it has not been necessary to issue a fixed penalty notice under the current Exclusion Order, there have been incidents where dog owners have been asked not to exercise their dog(s) in the crematorium grounds and to remove their dog(s) from children's play areas.

Improving the Enforcement tools available

- 2.8 The Anti-social Behaviour Crime and Policing Act 2014 repealed provisions to make or amend Dog Control Orders, replacing them with a more efficient process to create Public Space Protection Orders (PSPOs) for dog offences.
- 2.9 The current Dog Control Orders remain in place and if left to run as currently set out, will convert to Public Space Protection Orders in October 2017 on the same terms. These PSPOs then stay in place for a maximum of 3 years before needing to be reviewed.
- 2.10 Whilst the current Dog Control Orders do provide officers with the tools to tackle aspects of irresponsible dog ownership, it is felt that the opportunity should be taken to review them and to make changes that will set a fixed penalty level that is more in line with other offences and extends the provisions of the current orders to areas which should be protected too.
- 2.11 The fixed penalty notices created by the current Dog Control Orders are both set at £75. This is less than the current fixed penalty notice for littering something like a cigarette end (£80). The fixed penalty levels cannot be increased without replacing them with a PSPO where new levels can be agreed. To ensure consistency across the authority we would look to impose a £100 fixed penalty for all offences created by a PSPO. The maximum fine through prosecution would remain £1000.
- 2.12 The existing exclusion orders provide protection to fenced children's play areas. But the same protection is not currently afforded to Children's play areas that are not enclosed, such as the castle in Cobtree Manor Park or some Parish Play Areas which are open plan.

2.13 There are currently no restrictions on dogs in Maidstone Council’s Cemetery where recent incidents have included dogs running loose amongst the graves, urinating on headstones and defecating amongst the graves. This is considered anti-social and detrimental to the quality of life of those using the area. It is not felt proportionate to exclude dogs from the cemetery, but a requirement to keep dogs on a lead would provide better protection.

2.14 When creating or reviewing a PSPO the local authority needs to make sure that the activities that the PSPO seeks to control:

- are being carried out, or are likely to be carried out,
- are or are likely to have a detrimental effect on the quality of life of those in the locality;
- are or are likely to be persistent and unreasonable behaviour and that they justify the restrictions imposed.

2.15 The behaviour of a small minority of irresponsible dog owners is such that it remains necessary and proportionate to keep enforcement measures in place to tackle dog fouling and to exclude dogs from children’s play areas and the Crematorium.

2.16 It is also felt that the opportunity should be taken to introduce new measures to safeguard children’s play areas which are not enclosed but indicated on a local map and to require dogs to be kept on a lead when visiting the Cemetery.

2.17 The following table summarises the benefits from moving from the existing Dog Control Orders to the proposed PSPOs:

	Dog Control Order	PSPO
Fouling	The current fixed penalty notice is £75, less than the fine for littering.	The PSPO would increase the fixed penalty notice to £100 which is more suitable. The maximum fine through prosecution would remain £1000.
Exclusion from Children’s play areas	The current order applies to enclosed children’s play areas only.	The PSPO would enable more open plan play areas to be included and protected from irresponsible dog owners.
Dogs on leads at the cemetery	Currently the requirement to keep dogs on leads is voluntary and relies on people being responsible without fear of consequence.	The PSPO would create an offence for allowing a dog to be in the cemetery grounds without being on a lead. This creates both the threat of consequence but will enable officers to actively respond to persistent offenders.

Proposed measures for the PSPOs

2.18 It is proposed that the following measures are introduced:

1. PSPO for improved controls on dog fouling
 - Retains the existing offence
 - Increases FPN to £100 which is more in line with other offences
 - Creates a further offence of failing to provide a name and address when asked by an authorised officer to do so in relation to an incident of fouling
2. PSPO to exclude dogs from certain areas
 - Retains the existing protection afforded to exclusion areas
 - Expands on the existing dog control order to include children's play areas which are not currently protected
 - Increases FPN to £100 which is in line with other offences
 - Creates a further offence of failing to provide a name and address when asked by an authorised officer to do so in relation to an incident of not keeping a dog out of an excluded area.
3. PSPO to require dogs to be kept on a lead whilst in the grounds of Maidstone Cemetery.
 - Offers a degree of protection to a sensitive environment where loose running dogs is considered anti-social and detrimental to the quality of life of those using the area.
 - Creates a further offence of failing to provide a name and address when asked by an authorised officer to do so in relation to an incident of not keeping a dog on a lead.
 - Introduces an FPN of £100 which is in line with the other dog PSPOs

2.19 A more detailed summary of the proposed orders and the justification for their creation is provided in Appendix C. This will be used as part of the public consultation detailed in section 6.

2.20 In order to successfully enforce the measures created by these orders it is necessary for enforcement officers to be able to obtain the details of the person responsible. Without this a person can simply ignore the enforcement officer or provide false details.

2.21 In the legislation for littering (Environmental Protection Act 1990 Section 88(8B)) there is an offence of failing to provide or providing inaccurate details. It is felt that a similar measure should be introduced to these orders to support the officers when deemed appropriate and necessary. This does not guarantee compliance but creates an additional offence should it be necessary to take an offender to court.

2.22 The following exemptions will apply to the orders:

- i) The following persons are exempt from being required to remove their dog faeces from the land forthwith:
 - a person who is registered as a blind person
 - a person who has a disability and relies on a dog trained from the following prescribed charities i.e. from the "Dogs for the Disabled", "Support Dogs" or "Canine Partners for Independence".

- ii) The following are exempt from the dog exclusion order, i.e. they are able to take their dogs into the dog exclusion zones:
 - a person who is registered as a blind person
 - a person who has a disability and relies on a dog trained by the following prescribed charities i.e. from either "Dogs for the Disabled", "Support Dogs" or "Canine Partners for Independence".
 - a person who is deaf and relies on a dog trained by the Hearing Dogs for Deaf People.

Understanding what would be welcomed in Maidstone

2.23 Dog Controls can be very emotive issues and therefore it was felt appropriate to survey local dog walkers prior to preparing this report to understand whether the public themselves considered the proposed changes necessary and proportionate.

2.24 The RK9 campaign has enabled us to develop an audience of "responsible dog owners" from the dog owning community who we can use as a sounding board. This includes a well-established Facebook page with over 360 followers.

2.25 A survey undertaken in 2016 (Appendix D) shows that the proposed measures were positively received by an audience of predominantly dog owners.

3. AVAILABLE OPTIONS

3.1 Do nothing and rely upon existing Orders being converted in October. This is not a recommended option as this will restrict the exclusion areas to play areas that are fenced and enclosed. It also means the current fixed penalty level for fouling and exclusion will stay at £75, rather than the proposed £100, for the life of the PSPOs (max 3 years). This is less than littering (£80) for what are considered more serious offences. Local authorities should also demonstrate good practice and consider all available powers, including its discretionary responsibility to respond to the Anti-Social Behaviour, Crime & Policing Act 2014.

- 3.2 Consideration could be given to also introducing further PSPOs for both dogs on lead areas and dogs on leads by direction. This is not recommended as it is currently felt there is insufficient evidence to suggest a PSPO could be justified. These PSPOs would raise awareness but it is felt that the use of existing powers could be used to tackle the small number of issues that occur. Should the problem escalate we would then have the documented evidence necessary to support the need for a PSPO in the future.
- 3.3 The recommendation is to support the proposal to consult and implement as appropriate the 3 PSPOs, with the aim of updating our enforcement tools against irresponsible dog owners and the detrimental effects they have on the environment and the quality of life of those in the locality.

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 The recommendation is option 3.3, to introduce 3 new PSPOs to improve upon the existing Dog Control Orders. Each order will support officers in dealing with irresponsible dog owners, particularly in high risk and sensitive locations.
- 4.2 The existing Dog Control Orders set a fixed penalty notice fee of £75. This is less than the current fine for littering. Introducing the new PSPOs will enable officers to use the higher penalty notice of £100 to tackle irresponsible dog owners in regard to fouling and dog related anti-social behaviour.

5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 5.1 The consultation on the proposed PSPOs is planned to run in Spring 2017 as detailed in section 6.

6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

Consultation

- 6.1 In order to make a PSPO it is a requirement to undertake a consultation. Prior to consultation, officers will liaise with our Parks and Open Spaces team, Parish Councils and Registered Social Landlords in the area to confirm if they have any non-fenced play areas they would like included as explained in Appendix D.
- 6.2 With regard to PSPO 2 (the exclusion order) the Head of Environment and Public Realm will ensure appropriately identified "non-fenced" play areas are included and that the signage and demarcation is clear to users of those areas prior to inclusion in the consultation.

6.3 The following groups will be consulted using the methods outlined:

- All residents – Borough Update, website and social media.
- All Parish Councils – in writing.
- Kennel Club – in writing.
- Borough Councillors – in writing

Consultation review

6.4 At the end of the consultation the Head of Environment and Public Realm will carry out a review of consultation responses made on the proposed terms of PSPO as follows:

- If no significant relevant objections are received then the Order can be made by the Head of Housing and Community Services as delegated by the constitution.
- If there is a need for minor alterations: the Head of Environment and Public Realm will redraft as appropriate and provide a report to Head of Housing and Community Services to make the Order incorporating the changes as per the constitution.
- If there are significant relevant objections then a further report will be written for a decision at Communities, Housing and Environment Committee where Members can resolve to amend the PSPO proposed. Alternatively, Committee could decide not to proceed with the PSPOs.

6.5 Following the consultation period, consideration of responses and any amendments, the Orders will be made as authorised 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.

6.6 Once the order is made there is a statutory right of appeal to the High Court within 6 weeks if a PSPO is considered to be unreasonable. If agreed, suitable signage will need to be erected prior to implementation of a PSPO. A PSPO can be made for a maximum of three years. Following the initial period, the PSPO must be reviewed to ensure that it is still necessary.

7. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	Keeping Maidstone Borough an attractive place for all: 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	Head of Environment and Public Realm

Risk Management	The management of PSPOs will be subject to the current performance management arrangements within the service, with performance benchmarking as part of the process.	Head of Environment and Public Realm
Financial	<p>It is anticipated that implementation will be resourced from within existing budgets. There may also be additional legal costs and costs associated with the introduction of the individual PUBLIC SPACE PROTECTION ORDERS. These will be looked at on a case by case basis as they occur. The payment of fixed penalty notices within the new regime will generate a small income for the Council. This will be pooled with the existing FPN income from other enforcement activities and used to fund awareness campaigns and legal action as appropriate in the delivery of a cleaner, safer Maidstone.</p> <p>Initial costs of consultation of this type would be in the region of £500. Additionally, there is a cost of signage and promotion which could reach £2,000 and require on-going maintenance budgets if the order is approved. These costs will need to be met from within the Environmental Enforcement Budget.</p>	Director of Finance and Business Improvement and Finance Team
Staffing	Authorised officers will need to have completed appropriate training in order to be able to issue fixed penalties and deal with prosecutions.	Head of Environment and Public Realm
Legal	Legal implications for the process of consulting upon and implementing a PUBLIC SPACE PROTECTION ORDER are covered in the body of the report.	[Legal Team]

	Should the Orders be implemented MKLS will need to be instructed to act in respect of any unpaid FPN and/or prosecution matters arising and resourced according to the volume of matters likely to arise. It is not anticipated that this will create a significant amount of work beyond the current workload.	
Equality Impact Needs Assessment	Incidents of dog related ASB will continue to be dealt with in line with the emerging strategy and in line with our equalities framework. These legislative changes are designed to have a significant community impact in preventing and limiting anti-social behaviour through irresponsible dog owners.	[Policy & Information Manager]
Environmental/Sustainable Development	None.	Head of Environment and Public Realm
Community Safety	The introduction of PSPOs will contribute to making Maidstone a safer place by promoting the message and enforcement of appropriate standard of conduct and behaviour.	Head of Environment and Public Realm
Human Rights Act	<p>The council must ensure that all statutory conditions are satisfied before a PUBLIC SPACE PROTECTION ORDER can be adopted and ensure it complies with its duties under the Equality Act 2010.</p> <p>The council must consider if the proposed PUBLIC SPACE PROTECTION ORDER will breach the Council's code of conduct – including disproportionate interference with a number of fundamental rights protected by the Human Rights Act.</p>	Head of Environment and Public Realm

	The Council must ensure it balanced the problems of anti-social behaviour in its town centre with the rights of individuals	
Procurement	None.	Head of Environment and Public Realm & Section 151 Officer]
Asset Management	Signage will be deployed and maintained as appropriate through the Environment and Public Realm service	Head of Environment and Public Realm

8. REPORT APPENDICES

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

- Appendix A: The Fouling of Land by Dogs (Maidstone) Order 2013
- Appendix B: The Dog Exclusion (Maidstone) Order 2013
- Appendix C: Details of proposed PSPOs and justification
- Appendix D: Detailed report of Dog Control Survey results

9. BACKGROUND PAPERS

None.