# CABINET MEMBER FOR HOUSING AND HEALTH

**29 SEPTEMBER 2023**

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

| **Timetable** | |
|---|---|
| ***Meeting*** | ***Date*** |
| Housing, Health and Environment Policy Advisory Committee | 7th September 2023 |
| Cabinet Member for Housing and Health | 29th September 2023 |
| **Will this be a Key Decision?** | No |
| **Urgency** | Not Applicable |
| **Final Decision-Maker** | Cabinet Member for Housing and Health |
| **Lead Head of Service** | Head of Housing and Regulatory Services |
| **Lead Officer and Report Author** | Martyn Jeynes, Community Protection Team Manager |
| **Classification** | Public |
| **Wards affected** | All |

**Executive Summary**

This report provides an update in relation to the measures available to tackle irresponsible dog ownership and seeks to make a new Public Space Protection Order (PSPO) with new measures that build upon existing dog control measures.

**Purpose of Report**

Cabinet Member Decision

**This report asks the Committee to consider the following recommendation to the Cabinet Member:**

The Head of Housing and Regulatory Services be asked to make a new dog control PSPO as set out in appendix 4 of the Head of Housing and Regulatory Services' Report.

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

## 1. CROSS-CUTTING ISSUES AND IMPLICATIONS

| Issue | Implications | Sign-off |
|---|---|---|
| **Impact on Corporate Priorities** | Keeping Maidstone Borough an attractive place for all.<br>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. | John Littlemore, Head of Housing and Regulatory Services |
| **Cross Cutting Objectives** | 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. | John Littlemore, Head of Housing and Regulatory Services |
| **Risk Management** | 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. | John Littlemore, Head of Housing and Regulatory Services |
| **Financial** | It is anticipated that the continued delivery of the PSPO will be resourced from within existing budgets. | Head of Finance |
| **Staffing** | Delivery of the PSPO will continue to be overseen by the Community Protection Team in partnership with Kent Police and the Waste Crime Team. | John Littlemore, Head of Housing and Regulatory Services |
| **Legal** | The power to make, extend and vary PSPOs is contained within the Anti-Social Behaviour, Crime and Policing Act 2014. 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. | Helen Ward, Mid Kent Legal Services |

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|---|---|---|
| **Information Governance** | 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 Data Protection and Freedom of Information processes. | Information Governance Team |
| **Equalities** | The recommendations do not propose a change in service therefore will not require an equalities impact assessment | Equalities & Communities Officer |
| **Public Health** | The Community Protection team is under the reporting line of the Head Housing and Regulatory Services. The focus is strongly on preventative work that is intelligence driven so as to maximise the opportunities to reduces health inequalities in partnership with the police and other community safety related partners. | Community and Strategic Partnerships 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 Housing and Regulatory Services |
| **Procurement** | Appropriate procurement methods will used for publicity and signage as necessary | John Littlemore, Head of Housing and Regulatory Services |
| **Biodiversity and Climate Change** | There are no implications on biodiversity and climate change. | Biodiversity and Climate Change Manager |

## 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 2020 has five main prohibitions:

- Dog fouling
- Exclusion of dogs from fenced play areas and Tennis Courts
- Keep Dogs on Leads in the Vinters Park Crematorium and Associated Grounds and the Sutton Road Cemetery
- Dogs on Leads by Direction
- Keeping Dogs Under Proper Control

2.4 The PSPO also sets out an offence of failing to provide details of identity when asked to do so, as this was not included the provision itself and it also sets out that the Fixed Penalty Notice level at £100.

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 dogs on leads areas.

2.7 The delegated authority to make PSPOs sits with the Head of Housing and Regulatory Services once approved by the Cabinet Member for Housing and Health.

2.8 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. A PSPO can also be challenged by judicial review on public law grounds within three months of the decision or action subject to challenge.

## REVIEW OF EXISITING PSPO, IT'S USE AND PROPOSED MEASURES

2.9 Prior to undertaking a public consultation, the Community Protection Team, including its animal welfare specialist, reviewed the current PSPO provision in line with national and local trends, the relevant information provided in the annual Community Safety Strategic Assessment and feedback from relevant agencies, including Kent Police and other stakeholders.

2.10 The proposed measures put forward for the consultation where to renew the existing measures, as described in 2.3, with the following additions:

- To add to the fouling measure a requirement to ensure that bags or similar equivalent are carried.
- To extend the dogs on leads provision to also include the Town Centre.
- To introduce a new measure limiting the number of dogs walked by an individual to 4, or 6 if part of a licensed dog related business or registered as a professional dog walker.

2.11 As part of the renewal process the local authority has to demonstrate that the PSPO is effective. For matters, such as dog control, it is important to understand the PSPO acts as part of a suite of tools and powers that the team utilise for tackling dog related ASB. As previously demonstrated with the renewal of the Town Centre PSPO, the Dog Control PSPO equips officers with tools that can be used alongside other powers, depending on the seriousness of the incident or the need to challenge behaviour in the moment. Each incident is assessed, using our enforcement policies, the officer's training and operational guidance in order to determine the most suitable outcome. The following are working examples to help with understanding how the PSPO works in practice.

| **Worked examples:** |
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| **Dog Fouling and the need to carry suitable bags**- if an authorised officer witnesses an irresponsible dog owner failing to not clean up after their dog a Fixed Penalty Notice is likely to be issued. This is because of the seriousness of the offence and the cumulative benefit of ensuring everyone knows that it is wrong to not clean up after their dog. If, in the same incident, the dog owner also has no bags and can offer no reasonable excuse for not having any, a further Fixed Penalty Notice could be issued. If they refuse the Fixed Penalty Notice or do not cooperate then the matter would be referred for prosecution for two offences. If the same person is walking their dog, has forgotten their bags, but no fouling occurs, then advice would be given. |

**Not under proper control**- if an incident occurs where a dog is alleged to have not been under proper control, consideration can be given as to whether the PSPO Measure can be used. It is highly unlikely that an officer will witness the incident and therefore the officer will use their investigative skills to gather as much evidence as possible. This could include taking witness statements and interviewing the accused owner under caution. If they are satisfied that there is a case to answer the officer can issue a Fixed Penalty Notice or if deemed too serious, can escalate straight to prosecution. If it is unclear, such as in a dog-on-dog attack, where it is not possible to prove beyond all reasonable doubt that one party was to blame, the officer might choose to issue a formal warning, commonly referred to as a Community Protection Warning requiring steps to be taken to minimise the risk of recurrence. Failure to take steps or further incidents could then result in either a Fixed Penalty Notice for the PSPO or an escalation to Community Protection Notice. Breaches of Community Protection Notices have additional orders available to the Magistrates' Court, including orders to seize and rehome the dog responsible if appropriate to do so.

2.12 In 2021, 9 Fixed Penalty Notice were issued for breaches of the PSPO. In 2022 51 were issued and in 2023, up to July, 45 were issued. The majority of these were in relation to dogs not being under proper control and were found straying in the borough.

2.13 Details of the assessment and the proposed measures, justification and consultation response/feedback can be found in appendix 1.

**Public Consultation response summary**

2.14 A public consultation was undertaken from 9th June 2023 to the 6th August. A total of 1128 survey responses were received, of which 929 of these were weighted responses, which makes it more representative of the population. The survey found that the vast majority of the public are in favour of all the measures proposed. An in-depth analysis of the consultation survey responses is available in Appendix 2. In summary the responses were as follows.

| | Dog Fouling | Requirement to carry bags etc | Exclusion from play areas | Dogs on leads in Crem/Cem | Dogs on leads in the Town Centre | Dog on lead by direction | Dog under proper control | Limit the number of dogs walked | Provide ID when required | Fixed Penalty Notice (£100) |
|---|---|---|---|---|---|---|---|---|---|---|
| **% Public in favour of measure** | 98 | 83 | 92 | 97 | 89 | 97 | 97 | 78 | 93 | 82 |

2.15 A response to the consultation was also sought from a number of canine specialist groups including the Kennel Club. Their response is provided in appendix 3.

2.16 Following a review of feedback, adjustments were made to ensure the proposed measures are proportionate and necessary. This is included in section 5 of appendix 1. Further detail on this is provided in Section 4 as the preferred option.

**Enforcement of the proposed measures and exemptions**

2.15 In 2.11, worked examples are given that set out the way in which the PSPO is used alongside other enforcement tools to reduce dog related ASB. Given the extensive work of the Community Protection Team, including priorities determined by both the Community Safety Partnership Plan and their Statutory Duties for nuisance and licensing, dog control is a relatively small area of work. 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, which can be very emotive.

2.16 Evidence led enforcement and reactive enforcement will continue to be the main focus for the team when enforcing the measures as outlined in 4.1. Officers from the Community Protection Team can challenge anyone they witness committing an offence whilst going about their duties, such as failing to clean up after their dog. Officers from the Waste Crime Team are also authorised in relation to fouling.

2.17 It is proposed to retain the fixed penalty level at £100 for all offences created by the PSPO. This will be consistent with the recently renewed Town Centre PSPO and is the maximum currently available for PSPOs. The maximum fine for prosecution is set out in the legislation at £1000. A reduced payment will also be made available for the measure relating to dogs not under proper control for early repayment.

2.18 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.

2.19 There are no prescribed exemptions under PSPOs. However, the current PSPO sets out a series of exemptions that will be included in the proposed PSPO. The exemptions are where a person:

a. is registered as a blind person in a register complied 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.

2.20 The Housing, Health and Environment Policy Advisory Committee considered the matter on 7 September 2023 and recommended that the recommendation be approved subject to clarification of the exclusion of certain parks in the order and any additional wording on professional dog walkers for paragraph 7c of the PSPO.

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## 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 out 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 irresponsible dog ownership.

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 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 limit officers' ability to challenge inappropriate behaviour. In addition, any new measures would need to be consulted on prior to implementation alongside all the measures already proposed and would prevent the order being made before the current order expires.

3.4 **That the Cabinet Member for Housing and Health ask the Head of Housing and Regulatory Services to make a new Public Space**

**Protection Order as set out in Appendix 4.** 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 3.4, that Cabinet Member for Housing and Health ask the Head of Housing and Regulatory Services to make a new Public Space Protection Order as set out in Appendix 4 incorporating the following measures:

1. **Remove dog faeces from land forthwith**- Continuation of the offence of dog fouling.

2. **Failure to prove, when challenged, the means to remove faeces forthwith** - introduction of a requirement for those in charge of a dog to demonstrate means of removing faeces (a bag or equivalent).

3. **Exclusion of Dogs from Play Areas and Tennis Courts -** Continuation of existing dog control powers to include exclusion of dogs from all children's play areas, whether they are fenced or open, play areas, and tennis courts.

4. **Keep Dogs on Leads in the Town Centre, Vinters Park Crematorium and the Sutton Road Cemetery-** Continuation of the current requirement to keep dogs on leads at both the Sutton Road Cemetery and at the Vinters Park Crematorium and extending the requirement to the Town Centre with the exception of Whatman Park and Trinity Gardens.

5. **Dogs on Leads by Direction-**Continuation of the requirement for a person in charge of a dog to comply with a request from an authorised officer to put a dog on a lead when the dog is causing danger or concern.

6. **Keep Dogs Under Proper Control-**Continuation of the offence of failing to keep a dog under proper control.

7. **Maximum number of dogs to be walked at any time-** Introduces a limit of four dogs for private individuals, extending to six for professional dog walkers and licensed dog boarders.

4.2 The justification for each measure is outlined in section 5 of appendix 1.

4.3 Doing anything prohibited by / failure to comply of measures 1 to 7 could result in a Fixed Penalty Notice of £100. Doing anything prohibited by/ failure to comply with measure 6 could result in a £100 Fixed Penalty Notice, reduced to £80 if paid within 10 days, to maintain the current control measures used for strays.

4.4 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.

4.5 The exemptions outlined in 2.19 will also be applied.

4.6 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."

4.7 The Anti-Social Behaviour, Crime and Policing Act 2014 sets out under Section 60 a legal test in that the local authority that made the order may make an order if satisfied on reasonable grounds that doing so is necessary to prevent—

(a) occurrence or recurrence after that time of the activities identified in the order, or
(b) an increase in the frequency or seriousness of those activities after that time

4.8 We are satisfied, given the occurrence and recurrence of the issues locally and nationally and growing concerns around irresponsible dog ownership, that the making of the order and the new measures remains necessary and proportionate.

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

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## 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 and the potential for judicial review in certain circumstances. We are confident that the measures proposed are proportionate and justified, minimising the likelihood of a legal challenge significantly.

## 6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

6.1 As detailed in section 2

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## 7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

7.1 If authorised by the Cabinet Member, the proposed order will be made by the Head of Housing and Regulatory and sealed by Legal Services. They will be published on the website and appropriate signage erected in the areas covered by the orders. We will also use a communication plan to maximise awareness of the new measures prior to enforcement activity. An educative approach will be adopted for all new measures.

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 advice 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, justification and consultation response/feedback
- Appendix 2: Public Consultation response report
- Appendix 3: Kennel Club Response
- Appendix 4: Proposed Dog Control PSPO

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