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| Subject: | PUBLIC SPACES PROTECTION ORDER |
| Meeting and Date: | Cabinet – 3 June 2019 |
| Report of: | Diane Croucher, Head of Regulatory Services |
| Portfolio Holder: | Councillor Nicholas Kenton, Portfolio Holder for Planning and Regulatory Services |
| Decision Type: | Key |
| Classification: | Unrestricted |
| Purpose of the report: | To seek Cabinet approval to vary the dog control Public Spaces Protection Order, made in July 2018, in accordance with the Anti-Social Behaviour, Crime and Policing Act 2014. |
| Recommendation: | <p>That, having regard to the conditions within s.59 of the Anti-Social Behaviour, Crime and Policing Act 2014, Cabinet:</p> <ol style="list-style-type: none"> 1. Approves the variation of the Public Spaces Protection Order (Dover District Council) 2018; 2. Delegates authority to the Head of Regulatory Services to carry out all necessary publicity required by virtue of the Anti-Social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations; 3. Sets the amount of any fixed penalty notice issued under s.68 of the Act at £75. |

1. Summary

On 2 July 2018 Cabinet approved the variation and extension of a dog control Public Spaces Protection Order (PSPO), which initially came into force on 27 July 2015, for another three years. This was further to consultation carried out in accordance with Section 72 of the Anti-Social Behaviour Crime and Policing Act 2014.

Cabinet also authorised further public consultation on seven areas not included in the initial exercise.

2. Introduction and Background

2.1 Prior to 27 July 2015 the exclusion and restriction of dogs from certain areas was dealt with under a number of byelaws. Fouling was addressed through use of the Dogs (Fouling of Land) Act 1996. The Anti-social Behaviour Crime and Policing Act 2014 enabled local authorities to update these controls through the creation of Public Spaces Protection Orders.

2.2 Dover District Council's first PSPO came into force on 27 July 2015 and created 4 offences

- Failing to remove dog faeces (covering the whole district).
- Failing to put a dog on a lead after a request by an authorised officer (covering the whole district)
- Failing to keep a dog on a lead in specified places.

- Allowing a dog into specified areas where dog exclusion applies.
- 2.3 Following extensive consultation, the PSPO was renewed for another three years from 27th July 2018.

Unless specified, this covers

'any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.

This definition is detailed under section 74(1) of the Act.

- 2.4 During the renewal process consultees identified 7 areas, outlined below, which were not included in the initial consultation.
- Parish Council request for St. Augustine's Church in East Langdon to be dogs on leads only
 - Staff at Gazen Salts Nature Reserve in Sandwich requested the current requirement for dogs on leads be changed to exclusion.
 - Churchwarden of St Clements in Sandwich requested dogs on leads only.
 - Kent Wildlife Trust requested a dogs on lead and dogs exclusion area is added in the area around Sandwich/Pegwell Bay & Princes Golf Course dunes.
 - Extend the area of dog exclusion to include the now enclosed children's play area by Whitfield Recreation Ground.
 - Extend the dogs on lead area in Hamilton Road Cemetery to cover additional area used for burials.
 - Extend the dogs on lead area in Kearsney Abbey to cover the area known as Mill Ruins. This is a result of a dog off lead attack leading to the death of a swan and 5 cygnets.

These are detailed, including maps, in Appendix 1.

- 2.5 Further necessary consultation relating to these areas was carried out resulting in 150 responses. Some commented on more than one area giving 275 comments overall. A breakdown of the comments is given in Appendix 2.
- 2.6 Of the 275 comments:
- 43% were in favour
 - 15% partly in favour
 - 41% against
 - 1% not specifying for or against.
- 2.7 The main areas of objection were in relation to:

- Dog exclusion from Gazen Salts Nature Reserve
- Dog exclusion from Sandwich mudflats and salt marshes
- Dogs on leads on dunes by Princes Golf Course.

Kent Wildlife Trust requested dogs be excluded from the mudflats and salt marshes as the area is a critical feeding, roosting and breeding area for birds. This is supported by the Sandwich Bay Birds Observatory Trust.

They advise canine intrusion has had a significant impact in reducing both numbers and diversity of species in recent years with the complete loss of the breeding little

tern colony at Shellness Point. The impact of dogs in these areas is not only detrimental to the quality of life of various bird species but also to the local community which includes those working there to protect the animals and those who visit to enjoy the wildlife.

This community includes the 600 people who are members of the Sandwich Bay Bird Observatory Trust. The trust also has one full-time employee and around 25 volunteers. They run many wildlife groups as outlined below:

- monthly Wildlife Explorers group for children between 8 and 12 years old.
- the Phoenix group, is run monthly for 13 to 18 year olds.
- Guided walks on Thursdays, Fridays and Sundays throughout the year
- Classes on Tuesday & Wednesday evenings in the autumn

Accommodation is also available for wildlife lovers who wish to maximise their time there.

Kent Wildlife Trust employs 4 people full time at Sandwich Bay. They are supported by an Estates Manager who is also a direct employee of the Trust. This is in addition to the 34 people who do voluntary work there. The Trust has 32,000 members, many of whom will visit Sandwich Bay. There are no detailed numbers on the amount of visitors but staff at the site estimate it to be a minimum of 20 a day although this will fluctuate with seasons and weather.

The area at the mudflats and salt marshes is considered a world class wetlands and has several designations protecting it from harm e.g. it is a

- SSSI (site of special scientific interest)
- NNR (national nature reserve)
- A wetland of international importance under the Ramsar Convention 1971
- SAC (special area of conservation)
- SPA (special protection area)

The mudflats at Pegwell Bay on the other side of the River Stour from the Sandwich Flats falls under Thanet District Council who have already made it a dog exclusion area under their PSPO.

Gazen Salts is used by ground nesting birds, water voles and other wildlife which have been disturbed by dogs in the past.

- 2.8 Cemetery and churchyards. The approach to dogs on lead in these areas is taken to allow dog owners to visit the last resting place of loved ones with their pet. It also aims to respect others who may be bothered by dogs off lead whilst visiting graves of friends or family.
- 2.9 Children's play park at Whitfield. The current PSPO excludes all dogs from enclosed children's play areas. There is sufficient space in the adjacent recreation ground for dogs to be exercised.
- 2.10 The RSPCA made a general comment on the importance of having areas to be exercised off leads to a dog's welfare.
- 2.11 When deciding whether to make requirements or restrictions on dogs and their owners, the Council needs to consider whether there are suitable alternatives for dogs to be exercised without restrictions. It is felt there are numerous areas

throughout the district where owners can take their dogs for exercise. Some of these areas are immediately adjacent to areas where exclusions are proposed e.g.

- Gazen Salts Nature Reserve is bordered by a recreation ground.
- There are large areas leading to the dunes, mudflats and saltmarshes at Sandwich Bay where dogs can be exercised.
- Kearsney Parks has several areas with no dog restrictions.

The proposals therefore offer a balanced approach recognising the needs of the dog owning community as well as the general public.

- 2.12 The measures do not apply to assistance dogs.
- 2.13 Further to comments received and research carried out the current PSPO shall also be altered to update the definition of 'assistance dogs' to reflect wording in the Equality Act 2010.
- 2.14 Section 72 of the Anti-Social Behaviour Crime & Policing Act 2014 requires that, when deciding in whether to vary a Public Spaces Protection Order, local authorities must have particular regard to Articles 10 and 11 of the European Convention on Human Rights. These are concerned with the right to freedom of expression and the right to freedom of assembly & association respectively.
- 2.15 It is not considered the proposed variation impacts on the right to freedom of expression. Neither is it considered that the Public Spaces Protection Order restricts the right to freedom of assembly and association. People may still visit the Sandwich mudflats and salt marshes dog exclusion area, they just would not be able to take their dogs. It is not considered this right carries with it a right to freedom of assembly and association with a dog. Even if this analysis were incorrect the right to freedom of assembly and association is not an absolute right, restrictions may be placed upon this right as provided for by law and as are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This introduction of the dog exclusion area is regarded as a proportionate and legitimate means of protecting the rights and freedoms of society to enjoy e.g. wildlife in the area.
- 2.16 The current PSPO is available at this [link](#).
- 2.17 If Cabinet are minded to authorise the variation of the PSPO, there is a further requirement for publicity within the Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations. These require that where a local authority has made a PSPO, they must publish it on their website and erect such notices as it considers sufficient to advise members of the public that the PSPO has been made and the effect of such an order. The majority of sites already have signs and these will only need minor amendments.

3. Identification of Options

- 3.1 Option 1 - Authorise the variations as detailed in Appendix 1 to come into force on 24th June 2019
Option 2 - Reject the variations and maintain the PSPO which came into force on 27th July 2018.

4. Evaluation of Options

- 4.1 Option 1 – The recommended option. The overall aim of the variations is to

- maintain a comprehensive and consistent approach to the control of dogs in the district,
- balance the needs of dog owners and other members of the community,
- address concerns raised by the Kent Wildlife Trust

4.2 Option 2 – Make no changes to the PSPO which came into force on 27 July 2018.

- Kent Wildlife Trust advise dogs have a major impact on wildlife on their reserves. Failure to approve these changes could lead to further detriment to these important areas.
- Kearsney Park – approving the proposed change helps protect birds using the river in the park.
- Playpark, cemetery and churchyard. The proposed changes bring these areas into line with similar sites throughout the district and thus maintain consistency.

5. **Resource Implications**

Signs shall be erected /altered advising of the new restrictions. This will cost in the region of £500 and can be met from existing budgets.

6. **Corporate Implications**

6.1 Comment from the Section 151 Officer: Finance has been consulted and has nothing further to add (SB).

6.2 Comment from the Solicitor to the Council: The Solicitor to the Council has been consulted in the preparation of this report and has no further comments to make.

6.3 Comment from the Equalities Officer: This report does include provision for amending the PSPO to update the definition of ‘assistance dogs’ within the Equality Act 2010. There are no other equality implications specifically highlighted however, in discharging their duties, members are required to comply with the public sector equality duty as set out in Section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15>

7. **Appendices**

Appendix 1 - list and maps of proposed variations to 2018 PSPO

Appendix 2 – breakdown of comments received to proposed variation of PSPO 2018

8. **Background Papers**

Public Spaces Protection Orders - Extract from Anti-Social Behaviour, Crime and Policing Act 2014 statutory guidance.

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