

Subject:	PUBLIC SPACES PROTECTION ORDER CONSULTATION
Meeting and Date:	Cabinet – 7 February 2022
Joint Report of:	Mike Davis, Strategic Director (Corporate Resources) Nadeem Aziz, Chief Executive
Portfolio Holder:	Councillor Martin Bates, Portfolio Holder for Transport, Licensing and Regulatory Services Councillor Oliver Richardson, Portfolio Holder for Community and Corporate Property
Decision Type:	Executive Key Decision
Classification:	Unrestricted
Purpose of the report:	To seek Cabinet authorisation to commence a period of statutory and public consultation on the renewal and amendment of the Public Spaces Protection Order (Dover District Council) 2021 and the Dover District Council Public Spaces Protection Order (Alcohol) 2020-2023.
Recommendation:	That Cabinet authorises the commencement of statutory and public consultation in accordance with section 72 of the Anti-Social Behaviour, Crime and Policing Act 2014 on the draft Public Spaces Protection Order, with consultation to run for a period of three weeks.

1. Summary

- 1.1 The Anti-Social Behaviour Crime and Policing Act 2014 (the Act) provides local authorities with a power to make Public Spaces Protection Orders (PSPOs). These orders are intended to address activities carried out in public spaces which have a detrimental effect on the quality of life of those in the locality. Under the Act a PSPO is in force for 3 years unless extended and/or varied. Variations to the order can increase or reduce the restricted area and add new requirements.
- 1.2 There are currently two PSPOs in place in the district. One relating to dogs and the other relating to alcohol consumption in public places.
- 1.3 The proposal is to merge the current PSPOs, whilst retaining the existing controls and, pending consultation, to consider additional elements covering other forms of anti-social behaviour in the District. Having one overall PSPO improves efficiency, enables holistic enforcement and makes it easier for the public to understand the restrictions

2. Introduction and Background

- 2.1 In accordance with Section 59 of the Act, a local authority can make a PSPO if they are satisfied on reasonable grounds that two conditions are met:
 - (a) that activities carried out 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 that it is likely that activities carried out will have such an effect.
 - and

- (b) the effect or likely effect of the activities is, or is likely to be of a persistent or continuing nature; is or is likely to be such as to make the activities unreasonable and justifies the restrictions imposed by the order
- 2.2 If the Council is satisfied on reasonable grounds that these conditions are met, they can make an PSPO Order which identifies a restricted area and either prohibits specified things being done whilst in that area; or requires specified things to be done by persons carrying on specified activities in that area; or does both. It is an offence, without reasonable excuse, to fail to comply with requirement of a PSPO or to do anything prohibited by a PSPO.
- 2.3 In considering the making of a PSPO, the Council is also required to consider the rights and freedoms provided for in the Human Rights Act. These are qualified rights which means they can lawfully be restricted providing it is a proportionate and necessary means of achieving a legitimate aim. In considering the Human Rights Act the council must balance the rights and freedoms of individuals, in relation to the proposed restrictions imposed, against the needs of the wider community.
- 2.4 Breach of the PSPO can be dealt with through the issue of a fixed penalty notice or prosecution. An FPN discharges the offender's liability to prosecution and is intended for low level offences so court time can focus on for more serious matters. The level of FPN is currently £100 however the penalty is discounted to £75 if paid within 10 days.

Provisions relating to Dogs

- 2.5 In the last five years Dover District Council's Environmental Crime Team has received the following complaints relating to dog control:

Calendar Year	No. Dog Fouling Complaints	No. Stray Dog Complaints	No. Dangerous Dog/Dog Attack Reports
2017	201	206	54
2018	232	210	74
2019	237	142	72
2020	234	124	57
2021	208	84	72

- 2.6 Dog fouling continues to be a major concern for our residents not only due to the mess it causes, but also it can be a health risk. Dogs may deposit roundworm eggs (*toxocara canis*) in their faeces, if the eggs are swallowed, infection can cause a wide range of symptoms from aches and pains to bronchial conditions. In rare cases eyesight can be damaged. Dog fouling affects all of our public spaces and raises particular concerns areas regularly used by children or sporting facilities.
- 2.7 Dogs not under appropriate controls in certain public areas can present a hazard to traffic and may cause nuisance to other persons and wildlife and foul. In practical terms, this is a risk in more sensitive areas across our district such as cemeteries, wildlife reserves and areas of memorial.

2.8 A PSPO in relation to dogs was implemented in July 2015, renewed in July 2018, and extended in July 2021. It lists 4 offences

- (a) Failing to remove dog faeces (covering the whole District)
- (b) Not keeping a dog on a lead in specified places
- (c) Not putting and keeping a dog on a lead when directed to do so by an authorised officer (covering the whole District)
- (d) Permitting a dog to enter specified land from which dogs are excluded

Detail of the current areas covered can be viewed at:

<https://www.dover.gov.uk/Environment/Environmental-Crime/Public-Spaces-Protection-Order/Public-Spaces-Protection-Order.aspx>

2.9 In summary the existing order has the following restrictions across the district:

- (a) Dogs excluded from specific enclosed children’s play areas
- (b) Dogs excluded from specific beaches at certain times of year
- (c) Dogs excluded from specific skate parks
- (d) Dogs excluded from specific sporting fields or facilities
- (e) Dogs excluded from specific wildlife or nature reserves
- (f) Dogs required on leads at specific seafront promenades, seafront gardens and seafront piers
- (g) Dogs required on leads in specific cemeteries or churchyards where burials are ongoing
- (h) Dogs required on leads at specific memorial sites

2.10 It is proposed to maintain all dog related offences and to make changes to some areas of land covered by the dogs on lead and dog exclusion parts of the order. This is subject to the outcome of the public consultation exercise.

2.11 Appendix 5 summarises the proposed changes to restrictions across the district. The below table outlines the additional areas the proposals would include:

Location	Restriction	Reasoning
Cowdray Square Playing Field, Deal (excluding new dog exercise area)	Dogs on Lead	The park is due to be redeveloped by our Parks team. As part of the plans an enclosed dog exercise area is being built. This enables both dog owners to utilise new facilities to exercise their dog off the lead and other users of the park to be use the park without the possible or perceived fear, alarm, distress or nuisance which may be caused by dogs under no controls
Nonington Village Pond and Recreation Ground, Holt Street, Nonington	Dogs on Lead	Nonington village pond is an enclosed small piece of woodland frequented by ducks and enjoyed by local members of the community. Dogs can cause alarm or distress to wildlife if off the lead in this area. Adjacent Nonington have their village

		recreation ground which is fenced. The recreation ground is small and has children's play equipment and football posts. There are other areas locally dogs can be exercised off the lead. The proposal upon the parish councils request would reduce the risk of possible or perceived fear, alarm, distress or nuisance which may be caused by dogs under no controls in this area.
St Margaret's Civic Cemetery and the Dare Garden of Remembrance, Dover Road, St Margaret's	Dogs on Lead	In keeping with previous orders restrictions in cemeteries where burials are ongoing
Whitfield Recreation Ground, Cranleigh Drive (excluding new dog exercise area)	Dogs on Lead	See Appendix 6 provided by Whitfield Parish Council
Enclosed children's play area, Hobnail Path, Aylesham	Dog Exclusion	In keeping with previous orders restrictions within enclosed children's play areas
Skate Park, Green Space Rear of Burgess Road and Bell Grove	Dog Exclusion	In keeping with previous orders restrictions within skate parks
Enclosed Children's Play Area, Hyton Drive, Deal	Dog Exclusion	In keeping with previous orders restrictions within enclosed children's play areas
Monks Wall Nature Reserve, Sandwich	Dog Exclusion	In keeping with previous orders restrictions within nature reserves

Provisions relating to Alcohol Consumption

- 2.12 An order relating to alcohol consumption has been in place since February 2007. The order was originally a Designated Public Place Order (DPPO) under the Criminal Justice & Police Act 2001. The ASBCPA contained transitional provisions and the DPPO automatically became a PSPO in October 2017. The period of this PSPO was extended in October 2020.

Full details including maps are at

<https://www.dover.gov.uk/Community/Community-Safety/Public-Spaces-Protection-Order.aspx>

- 2.13 The PSPO does not make it illegal to carry alcohol or to drink alcohol in a public place so long as drinking is done responsibly. A PSPO will only be used to tackle potential alcohol related anti-social behaviour. Under these circumstances Police and Council Officers (where designated) will have the power to stop people drinking alcohol and seize or confiscate alcohol within the restricted area. If a member of the public fails to comply with an officer's request to stop drinking and/or dispose of alcohol, they could

face a Fixed Penalty Notice (FPN) or being taken to court and receiving a fine on conviction of up to level 2 on the standard scale (currently £500). Enforcement will be primarily carried out by Kent Police and they will arrest on breach should it be required.

- 2.14 A PSPO cannot be used to restrict the consumption of alcohol where the premises or its curtilage (a beer garden or pavement seating area) is licensed for the supply of alcohol. There are also limitations where either Part 5 of the Licensing Act 2003 or section 115E of the Highways Act 1980 applies. This is because the licensing system already includes safeguards against premises becoming centres for anti-social behaviour.
- 2.15 The current restricted areas lie within the boundaries as detailed on the map in Appendix 2. However, it is proposed to extend it to cover the whole district to ensure a more robust and comprehensive enforcement option is available to prevent any displacement of the nuisance behaviour from a restricted area to a non-restricted area.
- 2.16 The mission of the Community Safety Partnership is to build Safer and Stronger Communities. A key part of this work will require the continued extension of Public Space Protection Orders to help make Dover District a lasting safe place.
- 2.17 In 2019 the Police and Crime Commissioner used an increase in the Council Tax precept to fund additional town centre PCs in Kent. The work of these officers has been fundamental in reducing crime and anti-social behaviour whilst improving the general amenity of the area. Feedback from the Town Centre PCs and the Police and Community Support Officers who regularly patrol Dover District is that the PSPOs are an invaluable tool that allow them to keep on top of problems relating to street drinking. The reductions witnessed across various crime types and ASB over the last few years are tantamount to this work.
- 2.18 Kent Police are in full support of an extension of the area to the PSPOs as described and will enter a formal supportive response as part of the consultation process.
- 2.19 Various areas in the Dover district have at times seen an increase in street drinking type behaviour by individual's intent on causing public nuisance, these subjects coupled with their alcohol consumption is often a pre-cursor to more significant criminal activity if left unchecked. Experience shows that early preventative intervention can often mitigate and even prevent other more serious offences from occurring later; so, helping to break the linkage between drunken conduct and criminal activity.
- 2.20 For many of the persistent street drinkers within the district, congregating in public spaces and consuming alcohol together is routine. It is their "normal". They openly discuss they are not going to stop just because there is a PSPO in place and this is evidenced by the fact that despite years of enforcement and disruption, mainly by Kent police, the problem remains. The PSPO may not solve the issue in its entirety but it provides a means by which to control it and in so doing significantly reduces the impact of the activities of these people on the wider communities, visitors, and residents alike.
- 2.21 Having the ability to require the surrender of their alcohol is a powerful disruption tactic. Having the ability to seize unopened containers also adds to this as it stops the individuals stocking up in advance. By seizing and disposing of their alcohol in full view, the public can be assured that the Council and the police are acting appropriately, which builds greater public confidence. It is also hugely impactful on the drinkers who see their money being poured away. They tend not to challenge officers because they know it may result in their arrest. The feedback we receive from the community itself is positive and complimentary. Together we are building a stronger, more resilient community spirit and this is vital to the continued commercial viability, success, and regeneration of the district.

- 2.22 Experience shows that PSPOs are the most utilised and effective tool available in our district to combat anti-social behaviour and criminality linked to street drinking. This legislation provides us with more than just the power to require the surrender of alcohol; it provides a pre-emptive preventative tool to enhance the safety of our district. The continuation of the restrictions on street drinking are necessary and proportionate based on our experiences and the anecdotal feedback we often receive from Kent Police, partners, and our local communities.
- 2.23 In conversations with Kent Police although some areas may be more prevalent than others in the district for 'street type drinking' they are keen for a district wide approach to prevent displacement, have a consistent delivery message of what will and will not be tolerated within the district and to have the tools and powers available to officers to act in a dynamic way to prevent anti-social activity that may occur in the future.

Proposed provisions relating to Unauthorised Camping

- 2.24 It is further proposed to add in an additional restriction within the Order. This relates to prevention of unauthorised overnight 'camping' in public spaces. During the last 2 years with an increase in visitors and 'stay-cations' the district has witnessed a notable increase in individuals and groups 'camping' in public spaces without prior permission of the landowner. These individuals/groups whether in a vehicle, caravan, tent, or other temporary structures that are designed or intended to provide shelter or accommodation for the purpose of an overnight stay or stays, often create an additional burden of anti-social behaviour for residents and communities. This can include excess noise from either amplified music or simple screaming, shouting and other type behaviours, increased light pollution late into the night from lamps and other items, excess litter and detritus left behind, bonfires and associated burnt residue in public realm areas. There has been urination and human excrement left as no appropriate amenities are located in the locations used. In addition, there is a cross link with alcohol consumption and negative behaviour.
- 2.25 Such behaviour has a financial impact on the district with the associated post repair and cleansing costs. The locations that have witnessed such behaviour are randomised and change frequently. Evidence from the last two years includes for example Sandwich Cricket pitch, Walmer Greens, Undercliff Road/Beach area Kingsdown, St. Margaret's Cliffs, Market Square Dover, Elms Vale Recreation Ground Dover, Spinney Woods Aylesham. Due to the unpredictability in identifying specific locations, as arrival on sites is relatively randomised in occurrence it is proposed for a district wide order as a pre-emptive preventative tool to enhance the safety and cleanliness of our district.

Consultation By virtue of section 72 of the Act, before making a PSPO the Council is required to carry out consultation with the Chief Officer of police, the local policing body, community representatives and owners/occupiers of land covered within the order.

- 2.26 Local conversations with senior Kent Police officers have confirmed they will support these proposals.
- 2.27 The consultation will be publicised widely through the Council's website, Twitter, Facebook, via press releases to local media, e-mailing Parish, Town Councils and community groups and leaving copies for public perusal at the Council offices. Notices will also be put up in areas the order relates to.
- 2.28 In addition, the Council plan to publish a notice of its intention to make a revised PSPO in a local newspaper which covers the whole district. Although this is not required by

the legislation, guidance issued by the Department for Environment, Food & Rural Affairs suggests that it is best practice to do so.

- 2.29 All consultation responses will be considered and collated and it is proposed that the responses, together with the proposed final PSPO would go before Cabinet in May 2022 for approval.

3. Identification of Options

- 3.1 Option 1 – agree to merge the existing PSPOs, to make the amendments detailed in (a) and (b) below and to approve a period of consultation on the draft PSPO.

- (a) **Consumption of alcohol in public places-** To extend the controls on alcohol consumption in public places to cover the whole District
- (b) **Unauthorised Camping-** No overnight sleeping in public places across the whole district without the prior permission of the landowner

- 3.2 Option 2 – approve a period of consultation and merge the existing PSPOs with no additional controls as listed in 3.1(a) – (b).

- 3.3 Option 3– refuse the request to go out to consultation and allow the PSPO on dog control to expire after 26 July 2022 and the PSPO on alcohol consumption to expire on 21 October 2023. This would also mean there would be no control over emerging issues as described above such as areas being affected by either nuisance street drinking or unauthorised camping arising within the District as outlined in 3.1(a)-(b) above.

4. Evaluation of Options

- 4.1 Option 1 – The recommended option. The aim of consulting is to extend and amend the PSPO. A period of public consultation ensures the views of those affected are considered. It also aids in

- (a) balancing the needs of dog owners and other members of the community
- (b) maintaining the current powers related to dog control ensuring there are deterrents and penalties in place for those who fail to behave responsibly.
- (c) maintaining the current controls to prevent excessive drinking in public places
- (d) dealing with anti-social behaviour
- (e) tackling new and emerging trends effecting the quality of lives of residents
- (f) increased efficiency and saving officer time by bringing alcohol control, dog related issues and other anti-social behaviour under one order.

- 4.2 Option 2 – as for Option 1 but without the proposed additional controls as detailed in 3.1(a)-(b) above. This will maintain the current controls with increased efficiency as in 4.1 (f) above

- 4.3 Option 3 – do not consult and allow the dog control PSPO to expire on 26 July 2022.

The controls regarding alcohol consumption in a public space would remain in place until 21 October 2023 unless extended by creation of a new PSPO before then.

It would also mean there would be no control over the emerging issues as described above such as the areas being affected by either nuisance street drinking or the increase in unauthorised camping arising within the District

Dog fouling could only be addressed through old byelaws and the Dover District Council (Fouling of Land by Dogs) Order 1999. This does not cover

- (a) Land comprised in or running alongside a highway which comprises a carriageway unless the driving of motor vehicles on the carriageway is subject, otherwise than temporarily, to a speed limit of 40 miles per hour or less
- (b) Land used for agriculture or woodlands
- (c) Common land to which the public are entitled or permitted to have access otherwise than by virtue of S193(1) of the Law of Property Act 1925 (right of access to urban common land)

Requirements to keep dogs on leads or out of specified areas would revert to byelaws. The byelaws are dated and inconsistent in terms of penalties for breaching them. This ranges from £2 to £500 on conviction. There is no scope for issuing FPNs for breach of byelaws. Many enclosed children's parks are not covered by these byelaws. Breach of byelaws can only be dealt with through prosecution. This is a timely and costly process.

5 Resource Implications

There are minimal costs associated with going out to consultation, i.e., placing notices in the newspapers. This can be met from existing budgets

6 Climate Change and Environmental Implications

The continuation of current controls and implementation of new ones contributes to the Council's corporate priority of a '*cleaner sustainable environment*' and '*protection of our environment and open spaces*'.

7 Corporate Implications

- 7.2 Comment from Accountancy: Accountancy has been consulted and has no further comment.
- 7.3 Comment from the Solicitor to the Council: The Head of Governance & HR has been consulted during the preparation of this report and has no further comment to make.
- 7.4 Comment from the Equalities Officer: "This report does not specifically highlight any equality implications, 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/section/149>"
- 7.5 Comment from Climate Change and Sustainability Officer: "No further comment to make."

8 Appendices

Appendix 1: Existing PSPO on dog control

Appendix 2: Existing PSPO on alcohol consumption

Appendix 3: Draft PSPO Order

Appendix 4: Consultation notification.

Appendix 5: Summary of proposed changes to land covered by dog control restrictions

Appendix 6: Request from Whitfield Parish Council

9 Background Papers

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

Contact Officers:

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