

Subject:	PUBLIC SPACES PROTECTION ORDER
Meeting and Date:	Cabinet – 6 June 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 consolidate all Public Spaces Protection Orders for the Dover District into one renewed order in accordance with the Anti-Social Behaviour, Crime and Policing Act 2014.
Recommendation:	That, having regard to the conditions within Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014, Cabinet: <ul style="list-style-type: none"> 1. Authorises the making of the proposed Public Spaces Protection Order (Dover District Council) 2022; 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.

1. **Summary**

On 7 February 2022 Cabinet authorised the commencement of necessary consultation on a Public Spaces Protection Order (PSPO) relating to street drinking, dog control and unauthorised camping. This was carried out in accordance with Section 72 of the Anti-Social Behaviour Crime and Policing Act 2014 (the Act). The consultation ran from 21 February 2022 until 14 March 2022. Comments received have been taken into consideration and authority is now sought for the consolidation of the existing two PSPOs by the making of a new PSPO (with amendments) and to bring it into force with effect from 26 July 2022.

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. As per legislation contained within the Anti-Social Behaviour, Crime and Policing Act 2014 enforcement of breaches of a PSPO can be carried out by either authorised officers of the local authority or police constables and/or designated officers at the discretion of the chief constable. This approach to enforcement continues with the approach adopted since the introduction of the Act in Kent 2014.
- 2.5 There are currently two PSPOs in place in the district. One relating to dogs and the other relating to alcohol consumption in public places.
- 2.6 The public were consulted on merging the two current PSPOs with the introduction of additional elements of control for anti-social behaviour. The proposals covered the following:
- (a) Failing to remove dog faeces forthwith.
 - (b) Not keeping a dog on a lead in a designated area;
 - (c) Not putting, and keeping, a dog on a lead when directed to do so by an authorised officer.
 - (d) Permitting a dog to enter land from which dogs are excluded.
 - (e) Street drinking
 - (f) Unauthorised camping in public spaces
- 2.7 Unless specified within the order the PSPO will cover:
- '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.
- 2.8 In coming to the proposals set out in this report, it is considered that the conditions (as set out at 2.1 above) within s.59 of the Act are met.

3. **Consultation**

- 3.1 As part of the consultation a number of landowners, partnership agencies, charities and relevant bodies were invited to provide comments together with the general public.

The consultation resulted in 973 comments from the public. The following paragraphs summarise the results of the consultation for each part of the proposed order. (Please see appendices 1, 2 and 3 for further information on the comments received and our recommendations.)

3.2 **Part 1 - Dog fouling**

- (a) 85 consultation forms were received.
- (b) 92.94% of submissions were in support of the Council's proposals.

Of those that were not in support, the primary reasons were that most dog owners are respectful and clear up after their pets and that there are insufficient levels of enforcement to justify the proposal.

After consideration, no amendments to the draft PSPO are recommended in relation to this area.

3.3 **Part 2 - Dogs on lead by direction**

No submissions received and therefore no amendments to the draft PSPO are recommended.

3.4 **Part 3 - Dogs on lead in designated areas**

- (a) 31 locations were consulted on for which 389 submissions were received.
- (b) At 5 of the proposed locations no submissions or comments were received.
- (c) 17 of the proposed locations were supported by the public.
- (d) At 4 of the proposed locations there was equal levels of support and opposition.
- (e) The public were opposed to proposed dogs on lead restrictions at the following 5 locations:
 - (i) St Peters' Churchyard, Church Whitfield
 - (ii) St Mary's Churchyard, Church Street, Eastry
 - (iii) Princes Golf Course Dunes and Beach, Sandwich Bay
 - (iv) St Margaret's Bay Promenade, car park and amenity area
 - (v) Whitfield Recreation Ground

As a result of the comments received it is proposed that the order is amended to:

- Retain the dogs on lead restrictions of the 2018 order at Princes Golf Course Dune and not include the beach area detailed in our original proposals
- To not include Whitfield recreation ground in the new order
- To reduce the seasonal dogs on lead restriction at Walmer Green to 9am to 6pm between the 1st of May to the 30th of September to be in keeping with the revised seasonal dog beach bans.

3.5 **Part 4 - Dog exclusion**

- (a) 62 locations were consulted on for which 382 submissions were received.
- (b) At 7 of the proposed locations no submissions or comments were received.
- (c) 52 of the proposed locations were supported by the public.
- (d) The public were opposed to proposed dog exclusion at the following 3 locations:
 - (i) Aylesham & Snowdown Sporting and welfare club sporting pitches and Multi Use Games Area
 - (ii) Seasonal beach ban at Deal Beach
 - (iii) Seasonal beach ban at St Margaret's Bay beach

As a result of comments received it is proposed that the order is amended to reduce the seasonal dog exclusion hours to be effective from 9am to 6pm between the 1st of May and the 30th of September at all seasonal exclusion locations included in the order.

3.6 **Part 5 - Street Drinking**

- (a) 63 consultation forms were received.
- (b) 85.71% of submissions were in support of the Council's proposals.
- (c) Of those that were not in support the primary reasons were that there is insufficient enforcement to justify the order and comments relating to litter left by those participating in street drinking.

After consideration, no amendments to the draft PSPO are recommended in relation to this area

3.7 **Part 6 - Unauthorised Camping**

- (a) 54 consultation forms were received.
- (b) 70.37% were in support of the Council's proposals.
- (c) Of those that were not in support the primary reasons were that provisions and amenities should be made available by the local authority for camping and parking of motorhomes overnight. In addition, comments were received stating that the homeless should not be targeted unfairly.

After consideration, no amendments to the draft PSPO are recommended in relation to this area

4. **Proposed Amendments/Recommendations**

- 4.1 The proposed new PSPO following consultation, including detailed maps, is attached as Appendix 4.
- 4.2 As a result of the consultation the following amendments to the draft PSPO are proposed:
 - (a) Retain the dogs on lead restrictions of the 2018 order at Princes Golf Course Dune and not include the beach area detailed in our original proposal.
 - (b) To not include Whitfield recreation ground in the new order.
 - (c) To reduce the seasonal dogs on lead restriction at Walmer Green to 9am to 6pm between the 1st of May to the 30th of September to be in keeping with the revised seasonal dog beach bans.
 - (d) The order is amended to reduce the seasonal beach dog exclusion hours to be effective from 9am to 6pm between the 1st of May and the 30th of September.
- 4.3 Suggestions of additional locations where dog restrictions should apply were received as part of the consultation. A summary of these suggested locations can also be seen in Appendix 3.
- 4.4 Should the Cabinet be minded for any of these suggestions to be explored further, it is recommended that approval be given to the amended Order as shown in Appendix 4 (due to the expiration of the current controls in July 2022) whilst further public consultation is undertaken with regards to these additional areas. These can then be subsequently added to the Order by way of a variation if appropriate.

4.5 In accordance with the Anti-Social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations, where a local authority has made a PSPO, they should 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.

5. **Identification of Options**

5.1 Option 1 - Authorise the making of the PSPO with the proposed amendments as detailed in Appendix 4.

5.2 Option 2 - Authorise the making of the PSPO without the proposed amendments.

5.3 Option 3 - Reject the making of a new PSPO and return to dog control in place prior to 27th of July 2015 and review street drinking PSPO upon expiry in 2023.

6. **Evaluation of Options**

6.1 Option 1 – The recommended option.

The overall aim of continuing with a PSPO is to

1. Combine both current PSPOs for the Dover District into one order.
2. Introduce powers to deal with new emerging issues of anti-social behaviour such as unauthorised camping.
3. Maintain a comprehensive and consistent approach to the control of dogs in the district.
4. Balance the needs of dog owners and other members of the community, having consulted with the public a number of amendments to the initial draft have been included.

6.2 Option 2 - Authorise the making of the PSPO without proposed amendments

Effective consultation allows the local authorities to tap into the widest source of information possible which improves the quality of the decision reached. It alerts decision makers to any concerns and issues not picked up through existing evidence or research.

The consultation results evidence clear objections to certain elements of our proposals, particular in relation to dog on lead restrictions proposed at Whitfield Recreation Ground and Sandwich Bay Beach. Failure to make amendments in response to the comments received can create public mistrust in future consultations held by Dover District Council and make enforcement of unpopular restrictions difficult for our officers. Therefore, this option is not recommended.

6.3 Option 3 – Reject the making of the PSPO

Returning to the dog controls in place prior to 27th July 2015 would leave large areas of the district not covered by any dog control restrictions. There would be inconsistencies in the level of FPN issued, i.e., someone throwing litter may be issued with an FPN of £100 whilst failing to pick up dog faeces may result in the issue of an FPN of £50. Many enclosed children's parks would no longer be covered. Breach of byelaws can only be dealt with through prosecution. This is a timely and costly process.

In addition, the issue of unauthorised camping would not be able to be tackled through a PSPO.

7. Resource Implications

Signs shall be erected advising of the new restrictions. This will cost in the region of £10k-£12k and can be met from existing budgets and EnviroCrime Reserve.

8. Corporate Implications

8.1 Comment from the Section 151 Officer: Finance has been consulted and has no further comments. (MR)

8.2 Comment from the Solicitor to the Council: The Head of Governance and HR has been consulted during the preparation of this report and has no further comments to make.

8.3 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>”

8.0 Appendices

Appendix 1 - Letter from Police Crime Commissioner’s Office

Appendix 2 – Letter from Kennel Club

Appendix 3 - Summary of PSPO public consultation results

Appendix 4 – Proposed Public Spaces Protection Order (Dover District Council) 2022

10. Background Papers

Report to Cabinet - “The Public Spaces Protection Order Consultation” dated 7th of February 2022

Contact Officers:

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