

Report to: **Executive**
Date: **11 March 2021**
Title: **Public Space Protection Order – Dog Controls**
Portfolio Area: **Health and Wellbeing, Cllr Jonathan Hawkins**
Wards Affected: **All**
Urgent Decision: **N** Approval and clearance obtained: **Y**
Date next steps can be taken: Full Council to be held on 25 March 2021

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RECOMMENDATIONS

That the Executive RECOMMEND to Council that the Council adopt the Public Space Protection Order 2021 (as attached at Appendix 1 to this report) with effect from 25 March 2021 for three (3) years to 24 March 2024. The 2021 Order will apply the following district wide provisions requiring dog walkers to:

- (a) carry the means to pick up and to pick up;**
- (b) keep dogs on leads on land designated as a Dogs on Lead Area;**
- (c) comply to put and keep dogs on leads if so directed (by an authorised officer);**
- (d) prevent dogs from accessing a dog exclusion zone (which is not a beach); and**
- (e) prevent dogs from accessing specified beaches designated, at times, as dog exclusion zones.**

1. Executive summary

1.1 The Report asks that the Executive recommends to the Council to adopt a Public Space Protection Order 2021 in relation to the Control of Dogs for three (3) years from 25 March 2021 as set out in the attached Appendix 1. The order will apply to all of the land which is in the administrative area of the Council and which is open to the air

(which includes land that is covered but open to the air on at least one side) and to which the public are entitled to or are permitted to have access (with or without payment).

1.2 It is important to note that the 2021 proposal will maintain national standards across the District with enhanced restrictions at four specified sites, named in 1.3 below.

1.3 Broadly, the national standards require:

- Dog walkers to carry the means to pick up dog faeces and to pick up dog faeces;
- Keep dogs on leads in some areas such as on roads, in shopping areas, car parks, cemeteries and churchyards, nature reserves, formal gardens, where organised sport is being played (and specifically in Courtenay Park, Salcombe which is now primarily a children's play area);
- To put dogs on leads when asked to by an authorised officer in response to certain situations;
- Dogs to be excluded from enclosed children's play areas, bowling greens, tennis courts, skateboard or BMX parks, putting greens and sporting or recreational facility pitches when sport is in play, and;
- Dogs to be excluded from specified beaches at certain times of the year (during specified hours) including Mouthwell Sands at Hope Cove, part of Bigbury Beach and South Sands, Salcombe except for access to and from the ferry.

1.4 Public Space Protection Orders are made by the Council under the Anti-social Behaviour, Crime and Policing Act 2014 (the Act) in order to meet its obligations to ensure residents' quality of life is not compromised by activities that are likely to have a detrimental effect on local amenity (such as dog fouling or dogs out of control). The District Council is obliged to review Public Space Protection Orders on a tri annual basis and to consult with the public and other stakeholders if changes are proposed to the Orders.

1.5 A District wide Public Consultation ran from 1st June to 31st July 2020 and responses are attached in Appendix 2.

1.6 We asked specific questions about restrictions on dogs accessing specified beaches; about restrictions on specified playing fields; about carrying poo bags to pick up; and, about limiting the number of dogs that should be walked at any one time in one place by one person.

1.7 We received a total of 310 responses 295 of which were relevant to this Consultation with the majority in favour of:

- public access to dog free beaches during peak seasonal times
- allowing dogs free access to playing fields except when organised sport is in play when they must be on a lead;
- carrying a means to pick up; and,
- applying a 4 dog walking limit.

2. Background

- 2.1 The 2017 Order has been in place for three (3) years and expired at the end of last year and the Council now needs to consider whether to make a further Order based on evidence of need, as demonstrated by the responses to the Consultation and the number and type of complaints that the Council receives – see paragraphs 2.7 and 2.8 below.
- 2.2 There are statutory exemptions on Forestry Commission land and also on Dartmoor National Park Common lands.
- 2.3 There are exemptions for those who need the help of assistance dogs.
- 2.4 The Council can make a Public Space Protection Order in respect of any public space within its District boundary if it is satisfied on reasonable grounds that there are activities being carried out in the District which have a detrimental effect on the quality of life of those in the locality. The full criteria are set out in the legal implications in paragraph 6 below. The definition of public space is wide and includes any place which is open to the air and to which the public (or any section of the public) has access (by right of express or implied permission).
- 2.5 The Council can make an Order for the Control of Dogs following consultation with the Police and other relevant bodies.
- 2.6 The application of Public Space Protection Orders provides South Hams communities with reassurance that there is a properly resourced mechanism in place to address dog related anti-social behaviour on lands within the District accessible to the public.
- 2.7 A summary of the consultation responses can be found in Appendix 2. The table below summarises the responses and the following paragraphs provide a brief summary explanation:

Proposals	For	Against	Total	For %	Against %
30 MPH Leads	25	2	27	93%	7%
Poo Bags	43	5	48	90%	10%
Reduced Beach timings	46	81	127	36%	64%
4 Dog limit	34	15	49	69%	31%
Total respondents	178				

- 2.7.1 The public and stakeholders were asked for comment on the proposal to introduce 2 additional general articles (which were not included in the 2017 Order) which would be applicable across the whole District:

- Dog walkers must carry dog bags or other container to collect dog waste, and
- The number of dogs walked by one person at any one time in one area should be limited to 4 dogs.

2.7.2 There was a limited response from across the District but from those who participated, the majority are in favour of both these additional recommendations.

2.7.3 The limited response, particularly with regard to limiting the number of dogs walked (total of 50 with no documented incidents in the past 3 years) brings into question the extent of the problem balanced against the additional work that would be required to issue exemption licences to professional dog walkers who may be affected by the Article. On balance the restriction is not recommended.

2.7.4 The public and stakeholders were also asked for comment on reducing the time limited restriction on access for dogs on some beaches between 10:00 and 19:00 from 1st May and 30th September inclusive in any year to between 10:00 and 17:00 from 1st July to 31st August in any one year. The proposal was rejected with respondents opting to keep exclusion times between 10:00 and 19:00 from 1st May and 30th September in any year which the Council will apply to a limited number of beaches either in the Council's ownership or under its control. The exception is part of Bigbury Beach which is under the Council's control and where a 24 hour ban is to be reintroduced from 1st May to 30th September.

2.7.5 On South Sands, Salcombe there is an issue with providing access for dogs embarking on or disembarking from the ferry during restricted hours. To do so would cause a breach of the Public Space Protection Order unless the handler carries the dog across the beach. For this reason the proposed restriction specifically allows dogs to cross the Sands on a lead to embark and disembark to and from the Ferry from 1st May to 30th September during Ferry operating times.

2.7.6 Feedback from South Huis Parish Council indicates a preference to keep the current restriction on Mouthwell Sands at Hope Cove in place.

2.7.7 Feedback from Bigbury was diverse with opposing views at each end of the spectrum (no dogs v. no controls). The recommendation is to draw a line from the lifeguard hut steps to the beach allowing dogs to the west and no dogs to the east of the line. This will afford approximately a half and half split whilst allowing both groups to position themselves within the lifeguard patrolled area on the beach.

2.7.8 The recommendations with respect to privately owned beaches are as follows: At Hope Cove and Bigbury, South Hams District Council operate car park facilities that are attended by Council staff. For this reason the Council has the resources in these locations to deploy cost effective monitoring and enforcement activities. Signage

to inform the public will be updated. At Bantham, Bovisand, Challaborough, and Wembury the Council has no such land interests or responsibilities. Further, at Bantham, Challaborough and Wembury landowners operate commercial businesses associated with beach access – there is nothing to prevent landowners applying local restrictions over and above the general provision to pick up. The general provision to pick up dog faeces which is included in the recommended Order 2021 will still apply.

2.7.9 Otherwise across the District responses focussed on access to playing fields for dog exercise, including some that are independently owned or managed under lease by third parties. The general consensus reflects the national standard which allows dogs free access on open (not enclosed) playing fields except when organised sport is in play when they must be kept on leads.

2.7.10 Further feedback focussed on specific sites albeit in very low numbers as follows:

- Courtenay Park – South Hams owned and managed open space dogs under control (national standard currently in place) 5
- dogs on leads 8

The recommendation with respect to Courtenay Park is that a higher restriction is supported and it is recommended that Courtenay Park is specified in the Dogs on Leads Schedule (see Appendix 1).

- Butts Park, Newton Ferrers – owned and managed by Newton & Noss Parish Council
- dogs on leads at all times (currently in place) 1
- dogs on leads during organised sport (national standard) 10

The recommendation with respect to Butts Park is that no specific provision is included in the Order. This is because the proposed 2021 Order already supports the national standard which the Local Authority would continue to enforce leaving the Parish Council to work with the community to adopt the greater restriction as it sees fit.

- Malborough playing fields – owned and managed by Malborough Village Hall and Playing Fields Association which is a Registered Charity
- Dogs on leads during organised sport (national standard currently in place) 4
- Public Space Protection Order is withdrawn allowing the Association to ban dogs from the site 19

The recommendation with respect to lands owned by the Malborough Village Hall and Playing Fields Association is that no specific provision is included in the Order. This is because the proposed 2021 Order already supports the national standard which the Local Authority would continue to enforce leaving the Association to work with the community to adopt a greater restriction as it sees fit.

- The Council also received individual responses on:

Duncombe Park	SHDC ownership
Riverside Walk, Yealmpton	SHDC ownership
Erme Playing Fields	leased and managed by Ivybridge Football Club
Dartmouth Rugby Club	leased and managed by Dartmouth Rugby Club
Totnes Rugby Club	leased and managed by Totnes Rugby Club

The Recommendation with respect to the cited locations above is that it is not proposed to include specific provisions in the new Order for these areas. The general provisions in the draft Order (see Appendix 1) reflect the national standard that the majority of dog walkers respect and observe. We do not have the resource to introduce further controls on private land in particular where the site managers require restrictions over and above the national standard. The general provision to pick up dog faeces which is included in the recommended Order 2021 will still apply.

2.8 Data (which provides information and evidence on the extent of any issues) held on complaint levels is as follows:

2016	185	
2017	246	
2018	210	
2019	141	22 of which were referred for enforcement action
2020	105	7 of which were referred for enforcement action.

2.8.1 In the 2016/17/18 and 2019 data, we have not been able to separate dog complaints from litter complaints which makes the data about complaint levels inconclusive. Nevertheless, a consistent community view that the Order is a preventative measure that impacts on community expectation and is likely to improve community behaviour, appears widespread.

2.9 This report therefore recommends the introduction of the 2021 Public Space Protection Order at Appendix 1 which reflects national standards that provide a framework within which whole communities can enjoy facilities whilst being mindful of other users with different goals with specific restrictions on Courtenay Park, Salcombe; South Sands, Salcombe; Mouthwell Sands at Hope Cove; and, part of Bigbury Beach.

3 Outcomes/output

3.1 Council Enforcement Officers provide a reactive monitoring and enforcement service.

3.2 The Public Space Protection Order will provide the Localities Team with a uniform set of standards across the District that will make enforcement straightforward.

- 3.3 The Localities Team have received enforcement training that allows them to issue Fixed Penalty Notices for offences under the Anti-social Behaviour, Crime and Policing Act 2014. Some refresher training has been scheduled (postponed due to COVID19) to bring the team up to date with current procedures and giving officers authorisation to ask for offenders names and addresses.
- 3.4 Fines for Fixed Penalty Notices for dog offences are set at £100.00 per offence. Effectiveness of the Public Space Protection Order can be measured through community satisfaction surveys on neighbourhood cleanliness (fewer complaints about dog fouling and out of control dogs) and income from fines.
- 3.5 Consultation with the Police – response from local policing body and the office of the Chief of Police respectively indicate support for a District wide standard with specific local requirements taken into account.

4 Options available and consideration of risk

- 4.1 To apply a Public Space Protection Order the Council must be satisfied on reasonable grounds that doing so is necessary to prevent:
- Occurrence or recurrence of the activities identified in the order, or
 - An increase in the frequency or seriousness of those activities after that time.
- 4.2 The nature of the anti-social behaviour with regard to dog controls covers activities that have taken place or are likely to take place that have had or will have a detrimental effect on the quality of life of those in the locality.
- 4.3 S.18 of the Clean Neighbourhoods and Environment Act 2005 remains in force. It relates to litter offences and states: *A person is guilty of an offence if he throws down drops or otherwise deposits any litter in any place in the area of a principal litter authority which is open to the air to which the public has access with or without payment.*
- If we chose not to apply a Public Space Protection Order, we would be able to use this 2005 Act to address dog poo not picked up and dropped poo bags.
 - There is no other relevant legislation in place to address dogs on leads, or on leads by direction or dog exclusions from specific areas of land.
- 4.4 The following options were considered:
- Withdraw the Public Space Protection Order from sites where there are relevant Town and Parish byelaws in place.
- Town and parish Councils have limited jurisdiction to tackle environmental crime and are permitted only to pursue

enforcement action for littering, graffiti and fly posting. Towns and Parishes rely on the District Council for enforcement action to tackle dog related offences.

- Withdraw the Public Space Protection Order from all privately owned sites in favour of allowing landowners to manage dog related issues themselves.

This is a possible option on sites where landowners actively manage sites and wish to impose a restriction that is above the recognised standard for the site. Not applying a Public Space Protection Order in these circumstances makes the landowner directly responsible to the local community for a potentially controversial decision on levels of restriction.

Leaving a generic PSPO in place does not prevent a landowner imposing a higher local restriction on privately managed sites.

- Withdraw the Public Space Protection Order on the basis that the majority of dog owners act responsibly and there is no need for controls.

This may lead to the very small percentage of irresponsible dog owners allowing their dogs to run out of control and not picking up after them. There may also be a danger, as a consequence of such behaviour in one area, problems may escalate more generally. The level and nature of consultation feedback indicates that communities would find this unacceptable.

- Applying the recommendations as stated will reflect the majority view and reduce risk to a minimum.

5 Proposed Way Forward

- 5.1 To apply the Public Space Protection Order, attached at Appendix 1 as recommended based on evidence of need, following a data analysis of the consultation feedback and consideration of related complaints received (please see Appendix 2: South Hams feedback).
- 5.2 This will have a positive impact as described above, giving South Hams' communities assurance that there is a robust mechanism in place to address dog related anti-social behaviour on lands within the District accessible to the public.
- 5.3 There will be a negative impact on communities and on the District Council's reputation if the orders are not adequately enforced.
- 5.4 Mitigation lies in maintaining the enforcement team at full strength with competent Mobile Locality Officers and Environmental Protection Officers actively engaged in dog enforcement in the District.

6 Implications

Implications	Relevant to proposals Y	Details and proposed measures to address
Legal/Governance	Y	<p>Under the Anti-social Behaviour, Crime and Policing Act 2014 chapter 2 Public spaces protection orders the District Council may make a Public Space Protection Order if satisfied on reasonable grounds that:</p> <ul style="list-style-type: none"> • activities carried on 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 it is likely that activities will be carried on in a public place within that area and that they will have such an effect. Further, • the effect, or likely effect, of the activities is, or is likely to be of a persistent or continuing nature • the effect, or likely effect, of the activities is, or is likely to be, such as to make the activities unreasonable, and • the effect, or likely effect, of the activities justifies the restrictions imposed by the notice. <p>Any restrictions or prohibitions that are to be imposed must be both reasonable and aimed at preventing or reducing the risk of the detrimental effect continuing. As indicated above, the decision to apply a Public Space Protection Order is discretionary but the consequence of not extending the current Public Space Protection Order may lead to the very small percentage of irresponsible dog owners allowing their dogs to run out of control and not picking up after them.</p>
Financial implications to include reference to value for money	N	<p>Public Space Protection Order enforcement is provided by the Localities team and is cost neutral with no additional revenue or capital expenditure, in as much as the cost of the service is met by the existing revenue budget and there is no budget pressure for implementation.</p> <p>There are no costs associated with advertising the Order.</p>
Risk	Y	<p>Applying the Public Space Protection Order requires the District Council to support them through enforcement.</p>

		<p>Poor enforcement performance will lead to customer dissatisfaction which will impact on the District Council's reputation.</p> <p>The Council will need to have due regard to its existing enforcement policy in terms of dealing with complaints of non-compliance with the Public Space Protection Order. The Council will have to monitor the resources required to ensure compliance with the Public Space Protection Order and consider this in any future review.</p>
Supporting Corporate Strategy	Y	Environment and Wellbeing
Climate Change - Carbon / Biodiversity Impact	N	No direct carbon/biodiversity impact arising from the recommendations
Comprehensive Impact Assessment Implications		
Equality and Diversity	N	Registered blind and other relevant disabilities are exempt from the Orders.
Safeguarding	N	There are no Safeguarding implications
Community Safety, Crime and Disorder	Y	There is potentially a positive impact on levels of environmental crime.
Health, Safety and Wellbeing	Y	A clean environment promotes wellbeing
Other implications	Y	<p>Human Rights - In deciding whether to make a public space protection order and if so, what it should include, the Council must have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the European Convention on Human Rights.</p> <p>Environmental Impact Assessment - An extension of the generic Public Space Protection Orders – Dog Control Articles will continue to be a positive effect on local environmental quality through continued enforcement against dog fouling.</p>

Supporting Information

Appendices:

Appendix 1: South Hams District Council Public Space Protection Order 2021

Appendix 2: South Hams feedback