

EAST HERTS COUNCIL

COUNCIL – 2 MARCH 2016

REPORT BY EXECUTIVE MEMBER FOR ENVIRONMENT & THE  
PUBLIC SPACE

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REVISED ENVIRONMENTAL CRIME POLICY & PUBLIC SPACE  
PROTECTION ORDER

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WARD(S) AFFECTED: ALL

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**Purpose/Summary of Report**

- To approve the revised Environmental Crime Enforcement Policy.
- To replace the existing dog control powers and alcohol restriction areas with a Public Spaces Protection Order. This will provide officers with new and enhanced powers to tackle dog fouling and other forms of anti-social behaviour.
- This report has been submitted to this Council meeting as a matter of urgency, in order to allow implementation by 1<sup>st</sup> May 2016.

**RECOMMENDATIONS FOR COUNCIL: that:**

<b>(A)</b>	<b>the Environmental Crime Enforcement Policy, as set out in Essential Reference Paper ‘B’, be approved; and</b>
<b>(B)</b>	<b>having regard to the conditions within s.59 of the Antisocial Behaviour, Crime and Policing Act 2014, the Public Spaces Protection Order (Essential Reference Paper ‘C’) be made, to provide new and enhanced powers to tackle dog fouling and other forms of anti-social behaviour.</b>

1 Background

1.1 The Council’s original Environmental Crime Policy was adopted in 2006. The policy covers the enforcement of activities that affect the streetscene and visual amenity of the environment. New powers given to Councils and the Police under The Anti-social Behaviour, Crime and Policing Act 2014 resulted in the Environmental Crime Policy requiring updating as some powers had been repealed and were replaced by new ones with a wider

remit.

- 1.2 On 6<sup>th</sup> October 2015 the Executive approved the commencement of the consultation process on a proposed Public Spaces Protection Order (PSPO) and the draft Environmental Crime Policy. The proposed PSPO consolidates powers contained in existing Dog Control Orders (DCO's), The Dog (Fouling of Land) Act 1996, Designated Public Place Orders (DPPO) and provides new powers to deal with dog fouling and emerging anti-social behaviour issues.
- 1.3 The consultation process for the proposed PSPOs ran from 9th November 2015 to the 24th January 2016 and for the draft Environmental Crime Policy from 14th December to the 24th January 2016. The results of the consultation have informed the development of the PSPO which is provided in **Essential Reference Paper 'C'**. The consultation findings are summarised in **Essential Reference Paper 'D'**. Approval is now sought to bring the PSPO into force with effect from 1st May 2016.

## 2 Report

- 2.1 The Anti-social Behaviour, Crime and Policing Act 2014 provides local authorities with powers to create a Public Spaces Protection Order (PSPO) where they are satisfied that activities carried on in a public place
- have had, or are likely to have, a detrimental effect on the quality of life of those in the locality;
  - is, or is likely to be, persistent or continuing in nature;
  - is, or is likely to be, unreasonable; and
  - justifies the restrictions imposed.
- 2.2 The Council's three existing DCO's were introduced in 2007 and made it an offence to allow your dog off a lead at Hertford Castle Grounds, Bishops Stortford Castle Gardens, and all Council owned allotments; to allow your dog in designated East Herts children's play areas, games areas, bowling greens and marked playing pitches when there is a match in play; for one person to take more than 4 dogs on to any East Herts land at any one time. The Dogs (Fouling of Land) Act 1996 made it an offence to fail to pick up dog faeces. Offences are dealt with by the issue of a fixed penalty notice (FPN) requiring a £50 payment. Alternatively, and in cases of non-payment, the matter is taken to court where a fine of up to £1000 may be imposed on summary conviction.

2.3 The five existing Designated Public Place Orders (DPPOs) restrict the consumption of alcohol in the five designated zones in the main town centres; Bishops Stortford, Buntingford, Hertford, Sawbridgeworth and Ware. It is not an offence to consume alcohol in a designated area but to failing to give up drinking and surrender alcohol, at the request of an officer, can result in a penalty notice of £50 or if the matter is taken to court a fine of up to £500.

2.4 The proposed PSPO will cover:

1. Dog fouling
2. Dogs on leads when directed
3. Dogs on leads in specified areas
4. Dog exclusion in specified areas
5. Walking more than four (4) dogs on East Herts owned land
6. Failing to produce a receptacle for picking up dog faeces
7. Using a mechanically propelled vehicle in a disorderly or anti-social manner
8. Requirement to surrender possession when asked of any new psychoactive substances
9. Prohibition of alcohol consumption in five (5) designated areas (replacing the current DPPO)
10. Expanding the Ware DPPO to a wider area
11. Shouting, swearing, screaming or making unnecessary noise where alcohol restrictions are in place.

2.5 Measures 1, 2, 6, 7 and 8 of the PSPO apply to 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 (s 74(1) of the Act). This means that the dog fouling measures will also apply to agricultural land.

2.6 The new PSPO will replace the existing DCO's. The PSPO will expire after 3 years; however, that period can be extended for a further 3 years if it continues to be necessary.

2.7 The measures do not apply to assistance dogs used by the blind or by persons who lack the physical ability to comply with the requirements of the PSPO.

2.8 The consultation resulted in 327 responses (314 online and 13 paper questionnaires). Overall the majority of the responses were supportive.

2.9 The results obtained for the consultation are as follows:

<b>Offence</b>	<b>% of All Consultees who agree</b>
To allow your dog to foul and then fail to pick up after it	87.8%
To fail to put your dog on a lead in a specified area	87.5%
To allow your dog into specified area	93.9%
Walking more than four (4) dogs	82%
To fail to put an out of control dog on a lead when directed to do so	91.4%
To fail to provide a receptacle for dog faeces upon request	87.5%
Using a mechanically propelled vehicle in a disorderly or anti-social manner	91.6%
Fail to surrender possession when asked of any new psychoactive substances	91%
To fail to surrender alcohol when asked in a designated area	91.6%
To extend the DPPO in Ware	74.2%
Shouting, swearing, screaming or making unnecessary noise where alcohol restrictions are in place.	91%

- 2.10 The results show support for the retention of the four existing dog control offences and the introduction of the offences of not being able to produce the means to pick up and to put a dog on a lead when directed to do so.
- 2.11 Over 90% of respondents gave support for the majority of the other ASB related offences. The proportion of consultees who gave positive responses for the extension of the DPPO in Ware were lower as 21.4% did not express an opinion either way , as this is a localised issue for Ware only.
- 2.12 155 detailed responses were received as part of the consultation including Hertfordshire Police Commissioner, Town Councils, the Kennel Club and the Hertford & Stortford Labour Party.

- 2.13 The Hertfordshire Police Commissioner's response was that 'where there is a concern voiced by local people, clear evidence of a specific problem and support from the Constabulary, then the Commissioner would support the creation of an appropriate order'.
- 2.14 Sawbridgeworth Town Council requested that its 2 play areas and 4 allotment gardens could be added to the dog exclusion order.
- 2.15 Buntingford Town Council supports the proposals.
- 2.16 Hertford Town Council largely approved of the proposals, but also added that restrictions on drones in public spaces should be added. It also requested that Pinehurst Playing Field be added to the order. Officers have met with the Police and although Drones aren't specifically mentioned they are defined as an 'unmanned aerial vehicle' and therefore this power could be applied to persistent nuisance caused by drones where this is clearly demonstrated as being a problem.
- 2.17 Some Town and Parish Councils have requested for us to include their own assets such as play areas and allotments in the order. While it is theoretically possible for East Herts Council to extend the powers to this land, it does not do this for other functions and significant additional resources would be required to inspect and enforce.
- 2.18 The Kennel Club provided a detailed response to the dog control measures. In summary it supports the dog fouling measures and the restrictions on dog access to areas such as children's playgrounds as long as alternate provisions are made nearby. They support proactive measures by the Council to reduce dog fouling but have concerns over the plans to introduce an offence of 'not having the means to pick up'. Their concerns are that dog owners may be unfairly penalised if approached at the end of walk having already used the bags for their own dog or given their last spare bag to another dog owner. They add that in theory dog walkers may be forced into a decision of whether to use their last bag and risk being caught without means to pick up should they be stopped later on in their walk or risk not picking up the poo, to ensure that they can comply with the new restriction. Some of these concerns are also echoed by several of the other responses to the consultation. They also have some concerns regarding the wording of the proposed offence as it doesn't define whether the person in charge of the dog has to have the 'means' on his or her person, or whether a bag held or provided by someone walking

with them or another dog walker in the vicinity will suffice.

- 2.19** They request that an appropriately worded exemption for working dogs should be included within the Order as the PSPO guidance document states “PSPOs are not intended to restrict the normal activities of working dogs and these activities are not envisaged to meet the threshold for the making of a PSPO”. Our response is that the PSPO contains the clause that “having a reasonable excuse is a defence for failing to comply with a PSPO”; which allows for any genuine activities of working dogs.
- 2.20** They are supportive of dogs on leads restrictions when used in a proportionate and evidence based way. They add that dog owners are required to provide their dogs with appropriate daily exercise such as ‘walk and run’ and in many case off the lead, in line with the code of practice under the Animal Welfare Act 2006. The Dogs on Leads by Direction measure follows their preferred approach which is a more flexible and targeted rather than a blanket restriction which they would not support. They concluded that it is also important that that appropriate signage is installed making it clear where the order will be enforced.
- 2.21** We note the concerns of the Kennel Club and therefore will be ensuring that an effective communication campaign will take place so people are aware of the plans and have an excess supply of bags on them. At the start of the campaign a warning will be given on the first occasion to a dog walker that fails to have the means to pick up. This proposal is supplementary to the existing dog fouling measure and not meant to replace it, so officers will using this as an additional tool where we have dog fouling problem areas and catching the perpetrators is a problem. In these areas additional signage will be installed regarding the means to pick up warning dog owners of the increased patrols.
- 2.22** Hertford & Stortford Labour Party also raised concerns about the application of the order in particular the measures regarding producing the means to pick up and surrendering possession when asked of any new psychoactive substances.
- 2.23** They have concerns about who the authorised officers will be and that innocent people will be stopped and searched. Additionally they wanted clarification on the definition of new psychoactive substances.
- 2.24** Our response is that these powers are not intended to be used as a stop and search mechanism. This report clarifies the application

of the 'means to pick up' measure in paragraph 2.21. Only trained authorised officers will be using the powers in an appropriate way, and it is intended that not all officers will have all the powers. The term 'new psycho active substances' is in line with Home Office and local guidance. There are nicknames for legal highs however we do not want to list these as it will not include any new terms or drugs that are introduced to the market.

- 2.25 Other comments arising from the consultation process have been analysed and responses provided where necessary – a summary of these is shown in **Essential Reference Paper 'D'**.
- 2.26 54 responses also had concerns that whether the Council had enough resources to employ these measures, in particular issuing fixed penalty notices for dog fouling and litter. Currently the Council has 8 officers employed who are authorised to issue FPNs as very small part of their role, resulting in on average 10 FPNs for litter issued per year. Should members wish to increase this a further report into the options available would be required. It should be noted, however, that the answer to dog fouling is community support and intelligence allowing targeted interventions. In a large rural district random patrols are highly unlikely to be effective.
- 2.27 If the Executive authorises the proposed 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 state that where a Local Authority has made a PSPO, they must publish it on its 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.
- 2.28 For a period of three months after the introduction of the PSPO officers will use their discretion and adopt an informal/educational approach to the enforcement of the new legislation. During this period a campaign will run aimed at alerting the public to the new laws and to engage with the parishes, particularly on the issue of replacement signage and patrolling of hotspots.
- 2.29 A revised Environmental Crime Policy is provided at **Essential Reference Paper 'B'**, with some minor amendments following the consultation. Nine comments were received during the consultation period. Most of these were about specific issues or areas outside of the Policy. Both Hertford and Ware Town Council's supported the policy provided that it is enforced and that there is a reporting mechanism to monitor its effectiveness put in

place.

2.30 FPN charges will be set by the Council and subject to variation by appropriate Head of Service in consultation with the Portfolio Holder. A full list of FPNs for Environmental Crime and the discounted payments can be found in **Essential Reference Paper 'E'**.

### 3 Implications/Consultations

3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

#### Background Papers

None

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