Crawley Borough Council

Report to Overview and Scrutiny Commission
4 July 2022

Report to Cabinet
6 July 2022

Public Spaces Protection Order – Keep your dog on a lead in Tilgate Park

Report of the Head of Community Services, **HCS/41**

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1. Purpose

1.1 To review the findings of the consultation and consider the options set out in the report for the making of a Public Spaces Protection Order (PSPO) to prohibit dog related anti-social behaviour in Tilgate Park.

2. Recommendations

2.1 To the Overview and Scrutiny Commission:

That the Commission consider the report and decide what comments, if any, it wishes to submit to the Cabinet.

2.2 To the Cabinet

The Cabinet is recommended to:

a) Request that Full Council make a PSPO as set out in Option 4 (section 5.10 and Appendix A), with the restricted area covering main lake, silt lake, Peace Garden and lawn area and golf course within Tilgate Park, as shown in Appendix B, all year round

b) Resolve that the level for Fixed Penalty Notices which may be issued for a breach of the PSPO (in the event that Full Council makes the PSPO in the form of the draft at Appendix A of this Report, HCS/41) be set at £100.

3. Reasons for the Recommendations

3.1 A PSPO would provide a practical enforcement solution for the rules as stated on the Council's website regarding dogs at Tilgate Park and seek to deter anti-social behaviour relating to dogs off lead in other areas of the park. Report HCS/34 set out information which demonstrates that both conditions (as set out in paragraph 4.6) are met.

4. Background

4.1 At the Cabinet meeting on 12 January 2022, it was agreed in principle to implement a Public Spaces Protection Order (PSPO) to prohibit dog related anti-social behaviour in Tilgate Park for a period of 3 years, requiring dogs to be kept on leads in all areas of the park unless explicitly specified otherwise, subject to first undertaking a consultation exercise.

4.2 In addition, it was agreed to reinstate a proactive and high-profile education and information programme encouraging owners to keep their dogs on leads in Tilgate Park.

4.3 The decision to progress with the PSPO process was in response to a petition received by the Council requesting that the Council increases on site information signage and Community Warden patrols to inform and enforce the rules stated on the Council's website requiring dogs to be kept on leads in Tilgate Park, specifically around the lake.

4.4 In 2021 there were 10 formal reports involving dogs off leads in Tilgate Park (9 Council and 1 police reports). Complaints typically related to the lake area (and main lawn) and involved dogs off lead approaching park users uninvited. Over a three-year period (2018 – 2021) 22 dog related reports were made to Sussex Police specifically relating to Tilgate Park. Also anecdotally, complaints on social media channels had increased and staff had witnessed dogs causing nuisance to other park users during their working day.

4.5 It was recognised that whilst the majority of formally reported and anecdotal incidents were largely focused around the lake and lawn areas, there was evidence of issues affecting the entire park. It was also acknowledged that there was likely to be under-reporting of incidents and the true scale of issues was not necessarily reflected in formal complaints and reports, particularly in the case of dogs interfering with the park's wildlife.

4.6 PSPOs were introduced under the Anti-social Behaviour Crime and Policing Act 2014 and are designed to address unreasonable and persistent behaviour that affects the quality of life of a local authority's residents. PSPOs last for up to 3 years unless extended before they expire or discharged (revoked). PSPOs can only be made where the Council is satisfied on reasonable grounds (i.e. there is evidence demonstrating) the following 2 conditions:

(1) that there has been (or it is likely to be) activities carried on in a public place which have had (or are likely to have) a detrimental effect on the quality of life of those in the locality,

(2) 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.
- justifies the restrictions imposed.

4.7 Breach of a PSPO is a criminal offence and can be dealt with by way of a fixed penalty notice (FPN) (currently set at £100) or a fine up to level 3 (£1000) on prosecution. Authorised officers are able to issue a FPN immediately upon witnessing a breach of PSPO.

4.8 The Council has already implemented two Borough wide PSPOs to address anti-social behaviour relating to consumption of alcohol in a public place and car cruising.

5. Information & Analysis Supporting Recommendation

5.1 Before making a PSPO the Council must publicise the text of the proposed order and:

- consult with the chief police officer and the local policing body
- consult with such community representatives as the Council thinks appropriate
- consult (as reasonably practicable) the owners or occupiers of land in the area of the proposed order
- consider any representations made.

5.2 Letters were sent via email to Sussex Police, via the local District Commander, the Police and Crime Commissioner, WSCC and The Kennel Club regarding the proposal for a new PSPO relating specifically to Tilgate Park. Sussex Police, WSCC and the Police and Crime Commissioner replied with no comments or feedback regarding the proposed PSPO.

5.3 The Kennel Club

The response from The Kennel Club advised that they would not condone a general dogs on lead PSPO, saying that "despite some reported cases of irresponsible dog ownership, local dog owners do have a duty of care to provide their dogs with adequate exercise, including off lead, and should be able to walk their dogs at their local park in order that they do not have to drive somewhere else to do so."

The Kennel Club did highlight other strategies such as Acceptable Behaviour Contracts and Community Protection Notices could be used to target specific irresponsible dog owners and that the council could arrange awareness raising events in the park to welcome dog owners and communicate the importance of keeping their dogs under proper control.

They did acknowledge the concerns raised within the local area and in order that all access users are able to enjoy the park, that some areas within the park might benefit from a dogs on lead PSPO. They would not oppose this providing that the majority of the park remained open to dog walkers wishing to exercise their dogs off lead and that the land to do so is appropriate and safe and large enough.

The underlying principle that The Kennel Club seek to see applied is that dog controls should be the least restrictive to achieve a given defined and measurable outcome. And that in many cases a seasonal or time of day restriction will be effective and the least restricted approach rather than a blanket year-round restriction. For instance, a "dogs on lead" order for a picnic area is unlikely to be necessary in mid-winter.

The Kennel Club also recommended that the council communicates changes positively to dog walkers in order that they are still encouraged to use the park to exercise their pets.

5.4 All businesses operating in the park and tenants of the recreation huts were sent letters via email regarding the proposed PSPO and public consultation. All residents living within the park were hand delivered letters regarding the proposed PSPO and public consultation.

5.5 In addition, the Council has conducted a wide consultation exercise with the general public, as described below in 5.7.

5.6 In response to the consultation, the wording of draft PSPO (in Appendix A) has been amended to include the statutory definition of 'public place' and incorporated that into the definition of 'restricted area' to make it clear that a PSPO would only apply to land to

which the public has access i.e. it would not apply to the private houses and gardens etc of those who live within the restricted area. Aside from this one minor amendment, the proposed draft wording which was circulated for the consultation exercise was as set out in Appendix A.

5.7 Public Consultation

- Consultation took place from the 25th February to 27th March 2022. A copy of the consultation questions is included in Appendix C. The consultation was made available online. A copy of the draft order and map showing the restricted area was made available on the Council's website.

- The consultation was also supported by drop-in sessions that were held at Tilgate Park on 12th and 17th March to enable users/visitors to the park to complete the consultation survey in person rather than completing it online. This led to 175 public interactions yielding 50 paper surveys. Promotional posters containing a QR code were displayed around the park informing the public about the consultation and drop-in sessions.

- The consultation was promoted via press release and online through the Council's website and social media channels. In addition to posters displayed within Tilgate Park, posters were also displayed in neighbourhood notice boards. Other businesses, churches, schools and surgeries and community groups in the Tilgate area were emailed the consultation link.

- A total of 2,803 responses were received.
    - 99.3% of respondents were members of the public.
    - 65.4% of respondents were dog owners
    - 86.9% of respondents were Crawley residents.

5.8 Analysis of the Consultation responses:

Question: Do you support the implementation of a Public Spaces Protection Order for dog related anti-social behaviour in Tilgate Park?

There were 2,795 responses to this question, with the majority not in support.

- 58.4% (1,631) of respondents did not support the implementation of a PSPO.
- 38.7% (1,082) of respondents did support the implementation of a PSPO
- 2.9%(82) of respondents did not know if they supported the implementation of a PSPO

70.3% of those who were not dog owners were in support of the PSPO compared to only 22% of those who owned dogs who were in support of the PSPO. The majority of those who owned dogs were not in support of the PSPO.

Those who were not in support or were uncertain about the implementation of the PSPO were given the opportunity to comment on why they had answered 'No' or 'Don't know'. 1,586 comments were made.

One of the most common reasons respondents were not in support of the proposed PSPO was that it was perceived as unfair that the majority of responsible dog owners would be penalised due to the actions of a minority of irresponsible owners.

Respondents also stated that the PSPO area covering the whole of Tilgate Park was excessive, and owing to the size of the park, it will be too large to effectively patrol and enforce the PSPO effectively. However, respondents mentioned that having dogs on leads in areas, such as around the lake, would be appropriate in order to protect wildlife etc., whilst also being more practical to manage and enforce.

It was also questioned whether the PSPO was proportionate as many stated that they hadn't personally experienced anti-social behaviour from dogs being off lead and were concerned that the consultation documents did not provide evidence or data of anti-social behaviour issues being identified in the proposed area.

It was also noted that for many dogs, walking on lead only would not provide enough stimulation to keeps dogs physically healthy.

Question: Would you support the provision of an area within Tilgate Park where dogs can be off lead?

- 63% (1,758) of respondents supported the provision of an area within Tilgate Park
- 26.4% (737) of respondents were not in support of the provision an area within Tilgate Park
- 10.5% (294) of respondents did not know if they support the provision of an area

In relation to those in support of an area within Tilgate Park where dogs can be off lead there was an even split between those who were dog owners (62.9% in support) and non dog owners (62.4% in support).

Those who were not in support or were uncertain about the provision of an area where dogs can be off lead within Tilgate Park were given the opportunity to comment on why they had answered 'No' or 'Don't know'. 931 comments were made.

The most common response from respondents indicated that they required further clarity and definition on the size and specification of the proposed designated area before making a decision to support such a proposal.

There was a concern over restricting dogs to one area of the park, with the potential for closer proximity between dogs potentially leading to issues.

Another reason stated for opposing a designated area was that it was felt dogs shouldn't be confined or limited to one area of the park to be allowed off lead.

Conversely, there were comments in opposition to a designated area on the basis that dogs should be on a lead throughout the park to ensure they are under control, and the proposal could create confusion around area boundaries.

At the end of the consultation survey respondents were given the opportunity to comment further on the proposed PSPO. A total of 1,285 responses were provided. These additional comments about the proposals mirrored those presented in the previous questions comment sections. Additional emerging themes are as follows:

- The subject of enforcement of the PSPO itself was raised, with respondents querying how it would be implemented in terms of both signage and visible patrols.

- Concerns were also raised about behaviour from other park users causing issues around public safety with regards to cyclists, scooters and runners for example.
- In relation to areas of the park where dogs should be on or off lead, a common response was that wooded/forested areas and the golf course should be areas where dogs could be let off lead.
- It was also suggested that implementing a PSPO would be unlikely to affect the behaviour of irresponsible dog owners and addressing these owners with punitive action measures should be the primary focus.

In addition to the formal consultation, a number of individuals contacted the Council via email setting out their reasons for opposing the proposed PSPO. The general themes are as follows:

- Lack of evidence to justify implementing a PSPO
- Concerns for dog welfare if not allowed off lead
- Penalising owners with well-behaved dogs
- Focus should be on education for owners and training

In the general comments section, a number of responses refer to incidents involving dogs off lead taking place in Tilgate Park. The general theme of comments related to dogs off lead not being under control of their owners, running around jumping up at members of the public. There were multiple comments regarding owners not being aware of where their dog was or what their dog was doing, whilst off lead. Of particular concern was dogs off lead running up to children. There were several comments saying that they no longer came to the park as there are too many dogs off lead.

There were a number of comments relating to individuals having been bitten by dogs or having their own dog attacked by another dog off lead. Witnessing dogs off lead attacking ducks and cygnets. One comment stated that a horse rider's horse was attacked by a dog off lead causing the rider to be thrown off, sustaining a broken arm. In relation to the golf course, there were comments regarding disruption of those playing golf due to dogs running across the fairway and of dogs tearing around the greens and scratching up the turf. It is not known if any of these incidents were reported to either the council or police.

The table below provides further information regarding the types of comments made in relation to incidents/issues seen or experienced with regard to dogs off lead.

Unwanted attention from dogs off lead (this includes dogs jumping up at people, dogs chasing runners, dogs running over/interfering with picnics, being approached by dogs off lead)	88 comments
Dogs on lead approached by dogs off lead	21 comments
Bitten by dog off lead	7 comments
Dogs off lead attacking/fighting with other dogs	10 comments
Dogs off lead seen chasing/attacking wildfowl/wildlife (including one incident of a deer being chased)	21 comments
Dogs off lead doing their business and owners not clearing it up	11 comments
Dogs off lead a nuisance on fairway and greens	7 comments
Dogs off lead seen in the lake	9 comments

Freedom of Information requests have also been received in relation to the proposed PSPO.

5.9 Officer comment re consultation and PSPO options

Reducing the restricted area is an approach that would be supported by The Kennel Club as they oppose blanket restrictions on dog walkers accessing public open Spaces. Having a reduced restricted area is also something that was supported by the public consultation.

Having a reduced restricted area without a physical boundary could present challenges regarding enforcement, as there could be issues identifying where the restricted areas starts and finishes. This would need to be taken into consideration when designing and installing signage.

Consideration of the PSPO being seasonal is also an approach that is supported by The Kennel Club. Making the PSPO enforceable between March and October around the main lake would protect ducklings, goslings and cygnets during the key months after hatching. Dogs being on lead on the main lawn area would also reduce the unwanted attention from dogs over the summer months when many visitors picnic on the lawn.

Under the Animal Welfare Act 2006, dog owners have a legal duty of care to provide their dogs with appropriate daily exercise. The Department for Environment, Food & Rural Affairs Code of practice for the welfare of Dogs states that “a dog needs regular exercise and regular opportunities to walk, run, explore, play, sniff and investigate”. Although there is no mention of this needing to be off lead, The Kennel Club in their response stated that in most cases this will be off lead whilst still under control. Reducing the restricted area would enable off lead exercise in other areas of park, as would the provision of a dedicated area for off lead exercise.

5.10 Options Appraisal

A number of options were considered based on evidence and the results of the consultation.

Option 1 *- Decide not to recommend to Full Council to make a PSPO regarding dog control at Tilgate Park at this time.*

Not making a PSPO is not an option, as although the number of formally reported incidents involving dogs off lead is comparatively low, the anecdotal evidence indicated that there are incidents and issues involving dogs off lead.

Option 2 *- Recommend to Full Council that it makes a PSPO in the form set out in Appendix A with the restricted area covering the whole of Tilgate Park as per the consultation and as shown in Appendix D to include Tilgate Golf Course and forest to the boundary of the M23 to the south, the railway line to the east, Tilgate neighbourhood to the north and Forestry Commission land to the west.*

The option of making a PSPO that covered the whole area of Tilgate Park has been ruled out based on the lack of evidence covering all areas of the park and the lack of support as demonstrated by the results of the public consultation.

Option 3 *- Recommend to Full Council that it makes a PSPO in the form set out in Appendix A but that the restricted area to be limited to around the main lake and lawn area as shown in Appendix E.*

A reduced restricted area is supported, however limiting the restricted area to just the main lake and lawn does not address issues experienced in the wider areas surrounding the lake and the golf course.

Option 4 *- Recommend to Full Council that it makes a PSPO in the form set out in Appendix A but the restricted area to be limited to an area to encompass the main lake, silt lake, Peace Garden, lawn area and surrounds and the golf course, as shown in Appendix B*

This is the preferred option.. This option ensures that high footfall areas and the key areas of concern (main lake, lawns and surrounds and golf course) are covered by the requirement for dogs to be on lead at all times, whilst also providing areas within the park for dogs to be exercised off lead. A reduced restricted area was also an approach supported by The Kennel Club. Comments from those not in support of the PSPO said they would support a smaller restricted area that still enabled them to still let their dogs off lead, reference to the forest/wooded areas was mentioned frequently. Clear signage and a comprehensive communication plan will be required to ensure that all users of Tilgate Park are clear on what areas the PSPO applies to.

Option 5 *- Recommend to Full Council that it makes a PSPO in the form set out in Appendix F which is the same as Appendix A except that it would apply only from 1st March to 31st October, and also which of the 3 restricted area options should apply to the PSPO (the full area as in Appendix D or the reduced area as in Appendix E.*

Making the PSPO seasonal was not considered an option as Tilgate Park is used all year round not just by dog walkers but by other users of the park. Just over a third of reports to the police occurred between November and February. Having the PSPO only applicable part of the year could be confusing to visitors of the park and make enforcement more challenging.

6. Implications

Financial

6.1 There would be no additional resource implications to enforce the policy because this work will be absorbed within existing resources.

6.2 Revenue resource, in the region of £15,000, would be required to invest in permanent signage in key locations. This would come from within existing budget for Tilgate Park.

6.3 There would be legal costs associated with enforcement policy related prosecutions although full costs would be sought from the courts in the case of a successful prosecution.

Legal

6.4 Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 gives local authorities the powers to make, vary or renew a PSPO. The procedure is set out in section 72 of the 2014 Act and in the Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014 made under that Act.

6.5 If Cabinet decides to recommend to Full Council to make a PSPO, a draft of it including a map of the restricted area will need to be published on the Council's website in advance of Full Council to comply with Section 72 of the Anti-social Behaviour Crime and Policing Act 2014.

6.6 Section 66 of the Act gives the right to any an individual who lives in the restricted area or who regularly works in or visits that area to challenge the validity of the PSPO in the High Court within six weeks of it being made. There are 2 grounds on which the validity of a PSPO can eb challenged: (1) that the Council did not have the power to make the PSPO or to include particular prohibitions or requirements within it; or (2) that the Council did not comply with a legal requirement in making the PSPO.

Equalities

6.7 The draft PSPO wording includes provision for an exemption for assistance dogs from the dogs on leads policy and any associated enforcement.

7. Background Papers

HCS/30 Petition "Keep your dog on a lead in Tilgate Park" – 8 September 2022
HCS/34 Information on Option 3 in Relation to Petition – 'Keep your dog on a lead in Tilgate Park' – 12 January 2022

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