

Agenda Item No: 9.11 **Report No:** 99/17

Report Title: Public Space Protection Orders (PSPO) for (1) Public Consumption of Alcohol and (2) Dog Fouling

Report To: Cabinet **Date:** 26th June 2017

Cabinet Member: Councillor Nicholson, Cabinet Member for Customers and Partners

Ward(s) Affected: All

Report By: Ian Fitzpatrick, Director of Service Delivery

Contact Officer(s)-

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Purpose of Report:

To enable the Cabinet to consider the proposal to introduce two Public Space Protection Orders to replace the Designated Public Place Order in Lewes town and Dog (Fouling of Land) Order across Lewes district.

To approve the draft Public Space Protection Orders for consultation and authorise the Director of Service Delivery to undertake the consultation, amend as necessary and subsequently adopt.

Officers Recommendation(s):

- 1** To approve the Public Space Protection Orders in draft form set out in Appendices D and E, for consultation.
- 2** To grant authority to Director of Service Delivery:
 - i. to carry out statutory consultation on the draft Public Space Protection Orders;
 - ii. if necessary, to amend the content of the Orders in light of consultation responses;
 - iii. to make and publicise the Orders in accordance with relevant legislation;
 - iv. to put in place arrangements, including with external parties, to enforce the Orders; and
 - v. to keep the Orders under review; and to cease, renew or amend them at the end of their term, as appropriate.

Reasons for Recommendations

3. To ensure a continued response to alcohol related anti-social behaviour in Lewes town and dog fouling across the district in light of recent changes introduced by the Anti-Social Behaviour, Crime & Policing Act 2014⁽¹⁾.

Information

4.0 Designated Public Place Orders & Dog Control Orders

- 4.1 Lewes District Council implemented a DPPO, in conjunction with Sussex Police, covering areas of Lewes, Newhaven, Seaford, Peacehaven and Telscombe.
- 4.2 DPPOs enable local authorities to designate places where restrictions on public drinking apply. Police officers (and other accredited persons) then have the powers to deal with anti-social drinking in areas where a DPPO applies. This includes the power to require a person in a DPPO not to drink alcohol and, if required, to ask a person to surrender any alcohol in their possession.
- 4.3 Where it's not an offence to drink alcohol in a designated public place and the power is used with discretion, failure to comply with an officer's requirements, without reasonable excuse, is an arrestable offence. Penalties for the offence include: (i) a Penalty Notice for Disorder (PND); (ii) arrest and prosecution for a level 2 fine, maximum of £500.
- 4.4 The Lewes District Council Dogs (Fouling of Land) Order came into force on 18th July 2005. The order designated land to which the Dogs (Fouling of Land) Act 1996 applies, meaning that if a dog defecates at any time on the designated land and a person who is in charge of the dog and at that time fails to remove the faeces, without reasonable excuse, is guilty of an offence.
- 4.5 The designated land included any land within the administrative boundary of the Council, which is open to the air and to which the public are entitled or permitted to have access with or without payment - excluding areas described and defined in section 1(3) and (6) of the Dogs (Fouling of Land) Act.
- 4.6 However, the Clean Neighbourhoods and Environment Act 2005 repealed Orders and were replaced with Dog Control Orders, introduced by the 2005 Act. These Orders were designed to encourage Councils to deal with dog fouling by means of the Order.
- 4.7 The 2014 Act then removed the power to make any further DPPOs or DCOs. At that time all existing DPPOs and DCOs remained valid for a period of three years (unless terminated in the interim), at which time they automatically convert to a PSPO.

5.0 Public Space Protection Orders

5.1 The 2014 Act gave local authorities the power to implement a PSPO if satisfied on reasonable grounds that two conditions have been met. The first condition is that:

- a) 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
- b) It is likely that activities will be carried out in a public place within that area and that they will have such an effect.

5.2 The second condition is that the effect, or likely effect, of the activities:

- a) is, or is likely to be, of a persistent or continuing nature
- b) is, or is likely to be, such as to make the activities unreasonable, and justifies the restriction imposed by the notice.

5.3 The Order outlines the space to which it applies and can make requirements, prohibitions or both within the area. The Council can then enforce the prohibitions/requirements where Officers believe that they are reasonable in order to prevent or reduce the detrimental impact.

5.4 The Order can apply for a maximum of three years, after which a review and consultation must again be carried out to ensure that the issues are still occurring and the Order is having the required affect. After the review the Order can be renewed for periods of up to three years.

5.5 Failure to comply with either a prohibition, or requirement, within an Order is an offence. A breach of the Order can incur a fixed penalty notice of up to £100 or a fine not exceeding level three (£1,000) upon summary conviction.

6.0 The Proposal

6.1 It is recommended the Council make two Public Space Protection Orders: one to deal with anti-social drinking in public, the other to deal with dog fouling.

6.2 The first of these (see draft at Appendix A) would replicate the current DPPO in Lewes town and would provide that:

Person(s) within the area defined within the attached map (see draft at Appendix B) shall:

- not continue to drink alcohol or consume intoxicating substances when required to stop doing so by an Authorised Officer of the Authority
- surrender any alcohol or intoxicating substances in his or her possession when required to do so by an Authorised Officer of the Authority.

- 6.3** The current DPPOs are solely related to alcohol anti-social behaviour, which continues to be an issue within Lewes. There are also regular street drinkers who congregate in various locations in the town centre and can cause a nuisance to residents, visitors and business.
- 6.4** Lewes town also has unique issues relating to alcohol anti-social behaviour at the bonfire night celebrations and issues relating football fans travelling to the Amex Stadium, Brighton.
- 6.5** Analysis of crime and incident data obtained from Sussex Police, presents challenges to justify the introduction of PSPOs outside of Lewes. Where there is evidence to support the issues as outlined in Paragraphs 6.3 and 6.4 this is not the case for the DPPOs outside of the town.
- 6.6** With the need to act justifiably and proportionately, this report does not recommend that a PSPO to tackle alcohol related anti-social behaviour is sought outside of Lewes town at this time. In addition, powers are already available to Sussex Police to deal with local issues outside this area; such as the powers to address underage drinking along (as sometimes experienced along Seaford seafront).
- 6.8** The second proposed PSPO would reflect the Council's Dogs (Fouling of Land) Order (see draft at Appendix C) and makes it an offence, subject to minor exceptions, for any person in charge of a dog on any land in the Lewes District to fail to remove their dog's faeces from that land.
- 6.9** Although incidence of dog fouling in the Lewes district has decreased slightly since 2013/14, there were 131 reports during 2016/17. Initiatives such as Paws on Watch have positively contributed to the reduction of reports, but dog fouling across the district still remains a top priority for our local residents.
- 6.10** Consideration was given to whether the scope of this PSPO need be widened to encompass other forms of dog control. However, it was concluded that the Council's byelaws adequately deal with such issues, by prohibiting or restricting the presence of dogs in specified seashores, promenades and cemeteries, and by requiring dogs to be kept on leads in certain locations.

7.0 Consultation

- 7.1** Following Cabinet agreement, a formal consultation would be launched and run for a minimum of 28 days. The Council must consult with the following bodies over the proposals:
- Chief Officer of Police for the local area
 - Police and Crime Commissioner
 - Land owners of the affected areas
 - Any community representatives the local authority considers

appropriate

- 7.2 Consultation letters will be sent to all of the above, along with relevant partnership agencies (such as the Lewes District Community Safety Partnership and Business Crime Group).
- 7.3 The Act requires that landowners within the area are consulted. In this case, due to the number of properties within the proposed area, making direct individual contact would not be viable. Therefore an online survey will be created to consult with the wider public. The Council's email alter system will be used to inform residents and businesses of the consultation and a press release will be issued to the media to raise awareness of the survey.
- 7.4 The Director of Service Delivery would have regard to all consultation responses in deciding whether any amendments to the draft PSPOs are required. The Director would then prepare the definitive PSPOs and bring them in to force in accordance with the 2014 Act.

8.0 Implementation

- 8.1 A public notice of the Orders must be published on the Council's website before they come into force.
- 8.2 Signage will also be placed in Lewes town to explain the alcohol PSPO and what it means in practical terms. This is to provide support for the enforcement agencies and prevent risk of mitigation pleas from those found to be in breach.

9.0 Enforcement

- 9.1 Like DPPOs, PSPOs can be enforced by Police Officers and Police Community Support Officers. A PSPO can also be enforced by the Council and any groups that it designates, including officers accredited under the community safety accreditation scheme.
- 9.2 However, through consultation with Sussex Police, it has been agreed that, whilst the Council may have the legal ability to enforce, it does not currently have the skills or resources to undertake on-street enforcement of requirements and probations relating to the consumption or surrendering of alcohol at this time.
- 9.3 Sussex Police have therefore agreed to undertake the majority of enforcement in relation to the above and this will be reviewed by the Council following any changes to resourcing or structures that may impact on this decision.
- 9.4 The Council will, however, enforce requirements on dogs fouling on land as part of its usual business. In addition, as noted in paragraph 10.1, the Council can designate groups to carry out the enforcement of PSPO. This could include Town & Parish Councils if it is seen as a viable option.
- 9.5 The Council could also explore consulting with Town & Parish Councils to identify where a PSPO may assist in dealing with an on-going local issue in

their areas. The Council could then introduce a PSPO to support Town & Parish Councils in tackling these problems.

9.6 However, in both occasions, this would require Town & Parish Councils to have the necessary skills and resources to enforce the prohibitions and requirements of the PSPOs. In addition, the Council would also not be responsible for any legal implications following the enforcement of a PSPO and Town and Parish Councils would require their own legal services.

9.7 It is important to note that even if PSPOs are in place, if the prohibitions are breached and this is not witnessed by a designated officer, legal action cannot be taken.

10.0 Financial Appraisal

10.1 Finance have made the following comments:

10.2 The cost associated with consulting on and the subsequent implementation and enforcement of the two PSPOs outlined in this report will be met from existing budgets and there is no additional impact on the General Fund recurring budget

11.0 Legal Implications

11.1 The Legal Services Department have made the following comments:

11.2 Section 75 of the 2014 Act sets out the basis on which DPPOs and DCOs in existence when the Act commenced continue for a maximum of 3 years, after which, if those Orders still exist, they become PSPOs

11.3 The Council's powers and obligations in relation to PSPOs are set out in Part 4 of the 2014 Act and associated regulations. The Council must be satisfied that for each PSPO, the behaviour being restricted has to:

- be having, or be likely to have, a detrimental effect on the quality of life of those in the locality;
- be persistent or continuing in nature
- be unreasonable

11.4 A further requirement is that in deciding whether to make a PSPO and 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. It is not considered that either of these Convention rights will be infringed by the proposed PSPOs.

11.5 A PSPO must be publicised in accordance with regulations laid down in statutory instrument no. 2014/2591. These provisions are reflected in the body of the report above.

11.6 Each draft Order includes the required information about how its validity may

lawfully be challenged.

11.7 Lawyer consulted 16 May 2017. Legal ref: 005600-Joint-OD

12.0 Risk Management Implications

12.1 It is possible that the proposed alcohol PSPO will not adequately deal with the anti-social behaviour it is targeting. It is also possible that the PSPO will lead to displacement of such behaviour to areas outside the PSPO boundary.

12.2 To mitigate this risk, communities will be encouraged to report incidents of anti-social street drinking as part of the implementation phase; so too will Police reports of this behaviour be monitored. In response, the scope of the PSPO will be kept under review, and amendments drafted if required. A PSPO may be varied at any time, so long as the statutory process is followed.

12.3 There is still negative national press coverage in relation to the implementation of PSPOs by local authorities. There is a risk that the PSPO could result in negative feedback about Lewes District Council.

12.4 However, analysis of PSPO consultations across the country shows that the prohibitions relating to rough sleeping, begging and unauthorised encampments draw the greatest controversy.

12.5 As outlined in Paragraph 7.2 and 7.3, the prohibitions and requirement of the proposed PSPOs reflect the current Orders in place, which are justifiable and proportionate to the needs of Lewes district.

12.6 A full consultation plan will be developed in partnership with Sussex Police and reactive statements will be prepared in case of any media interest.

13.0 Equality Screening

13.1 A full equality analysis has been produced to identify any impact to protected groups following the introduction of the PSPOs. A copy of the Equality Analysis can be found under Appendix D. The equality analysis will be included within the consultation.

Background Papers

The Background Papers used in compiling this report were as follows:

*1 - Anti-Social Behaviour, Crime & Policing Act 2014, available at:
<http://www.legislation.gov.uk/ukpga/2014/12/contents/enacted/data.htm>*

Appendices

Appendix A – Draft Lewes District Council Public Space Protection Order (Street Drinking)

Appendix B – Draft Map of Draft Street Drinking PSPO

Appendix C – Draft Lewes District Council Public Space Protection Order (Dog Fouling)

Appendix D – Copy of Draft Equality Analysis for the introduction of Lewes District Council Public Space Protection Orders