

**Body:** Cabinet

**Date:** 12<sup>th</sup> July 2017

**Subject:** Public Space Protection Orders (PSPO) for (1) Public Consumption of Alcohol, (2) Dog Fouling, (3) Dogs on Leads and (4) Dog Ban.

**Report of:** Ian Fitzpatrick, Director of Service Delivery

**Ward(s)** All

**Purpose** To enable the Cabinet to consider the proposal to introduce four Public Space Protection Orders to replace the Designated Public Place Order and Dog Control Orders in Eastbourne.

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 make the definitive Orders.

**Decision type:** Key decision

**Recommendation:** Cabinet is recommended to:

1. Approve the Public Space Protection Orders in draft form set out in Appendices B to E, for consultation
2. 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.

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## **1.0 Introduction**

- 1.1 Part 4 (i.e. the community protection provisions) of the Anti-Social Behaviour, Crime & Policing Act 2014 ("the 2014 Act") introduced new powers to tackle anti-social behaviour, which were designed to be more streamlined and victim focused. These provisions include the power to make Public Space Protection Orders.
- 1.2 Designated Public Place Orders ("DPPOs") and Dog Control Orders ("DCOs") in existence when part 4 of the 2014 Act came into force continue until October 2017, unless repealed. From that date they automatically become Public Space Protection Orders ("PSPOs") and would remain in force for a maximum of 3 years.
- 1.3 However, rather than simply waiting for DCOs and DPPOs to convert to PSPOs in October 2017 by operation of law, it is recommended that we take the opportunity now to review their content, agree modifications with relevant authorities (the police in particular), repeal the original Orders, and expressly replace them with new PSPOs

## **2.0 Designated Public Place Orders & Dog Control Orders**

- 2.1 Eastbourne Borough Council implemented a DPPO in 2005, in conjunction with Sussex Police, covering the town centre as highlighted in Appendix A.
- 2.2 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 the designated area not to drink alcohol and, if required, to ask a person to surrender any alcohol in their possession.
- 2.3 Where it's not an offence to drink alcohol in a designated public place, 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.
- 2.4 The Clean Neighbourhoods and Environment Act 2005 introduce Dog Control Orders to enable Councils to deal with anti-social behaviour relating to dogs under this legislation. Eastbourne Borough Council has introduced three Dog Control Orders, namely: Dog Fouling Order, Dog on Lead Order and Dog Ban Order.
- 2.5 The Dog Fouling Order made it an offence for anyone to fail to remove dog faeces deposited by a dog for which he or she is responsible. It also designated the land to which it applies, covering all land within the Borough of Eastbourne open to the air and to which public are entitled or permitted to have access with or without payment.
- 2.6 The Dog Ban and Dog on Lead Orders also designate land to which they apply. However, unlike the Dog Fouling Order, the land to which the Order applies depends on the time of year. For example, the Dog Ban and Dog on

Lead Orders include areas, such as the seafront, that only apply from 1<sup>st</sup> May to 30<sup>th</sup> September. Other areas, such as parks, have restrictions that apply all year.

2.7 The Dog Ban Order makes it an offence for anyone to permit a dog to enter any land from which dogs are excluded. The Dog on Lead Order makes it an offence for anyone to fail to keep a dog on a lead whenever in certain areas.

2.8 Since October 2014 when part 4 of the 2014 Act came into force, it has no longer been possible to make any further DPPOs or DCOs.

### **3.0 Public Space Protection Orders**

3.1 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.

3.2 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.

3.3 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 and/or requirements where Officers believe that it is reasonable to do so in order to prevent or reduce the detrimental impact.

3.4 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.

3.5 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

### **4.0 The Proposal**

4.1 It is recommended that the Council makes four Public Space Protection Orders. One to deal with anti-social drinking in public and the remaining three to replace the Dog Fouling, Dog Ban and Dog on Lead Orders.

4.2 The street drinking PSPO (see draft at Appendix B) would replicate the current DPPO in Eastbourne and would provide that:

Person(s) within the area defined within the attached map (see draft at Appendix A) 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.

- 4.3 The current DPPO is solely related to alcohol anti-social behaviour, which continues to be an issue within Eastbourne. There are also regular street drinkers who congregate in various locations in the town centre and along the seafront that can cause a nuisance to residents, visitors and businesses.
- 4.4 Analysis of crime and incident data obtained from Sussex Police, presents challenges to justify the introduction of a PSPO to tackle street drinking outside of the town centre. Where there is evidence to support the issues as outlined above this is not the case in other areas such as Old Town, Langney or Hampden Park.
- 4.5 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 the boundaries of the current DPPO.
- 4.6 The second proposed PSPO would reflect the Councils' Dog Fouling Control Order (see draft at Appendix C) and it makes an offence, subject to minor exceptions, for any person in charge of a dog on any land in the Borough of Eastbourne to fail to remove their dog's faeces from that land.
- 4.7 Although incidents of dog fouling in Eastbourne have decreased over the years, there were 414 reports during 2016/17. Initiatives such as Not in My Street have positively contributed to the reduction of reports, but dog fouling across the borough still remains a top priority for our local residents.
- 4.8 The third PSPO (see draft at Appendix D) would replace the 'Dog Ban' Control Order. The proposed PSPO will make it an offence for a person in charge of a dog to take their dog onto, or permits their dog to enter or to remain on, any part of the Restricted Areas.
- 4.9 Similar to the original, the Order will apply at all times in certain areas. Other areas will apply between 1<sup>st</sup> May and 30<sup>th</sup> September every year. For the purpose of the Order these two areas are known as "the Restricted Areas". These areas will be highlighted within the final version of the PSPO.
- 4.10 The fourth PSPO will replace the 'Dog on Lead' Control Order (see draft at Appendix E). The proposed PSPO will make it an offence if a person in charge of a dog does not keep the dog on a lead in any part of the Restricted Areas.
- 4.11 Like the 'Dog Ban' PSPO, the sections of 'Dog on Lead' PSPO apply throughout the year with other areas applying between 1<sup>st</sup> May and 30<sup>th</sup>

September every year. These are also known as the Restricted Areas and will also be highlighted within the final version of the PSPO.

- 4.12 The proposals also recommend slight alterations to the existing boundaries of the current Dog Ban and Dog on Lead Orders. Subject to consultation, the proposals recommend that certain areas of Sovereign Harbour and Meads are also included within the PSPO.
- 4.13 At the time the original DCOs were introduced by the Council, Sovereign Harbour had not yet been fully developed. In addition, there have been a number of complaints of dog related anti-social behaviour in Sovereign Harbour and in areas of Meads that are not included within the current Orders.
- 4.14 The proposals aim to address these issues by extending the boundaries of the current DCOs when introducing the PSPO.

## **5.0 Consultation**

- 5.1 Subject to Cabinet approval of the recommendations to in report, the Director of Service Delivery would, where required under the 2014 Act, carry out a consultation exercise for a minimum of 28 days. Where consultation is a requirement, 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
- 5.2 Consultation letters would be sent to all of the above, along with relevant partnerships (such as the Eastbourne Community Safety Partnership and Business Crime Group). Engagement events in locations within the proposed Orders, such as parks, will also be considered.
- 5.3 In regards to the requirement to consult affected land owners, 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 would be used to inform residents and businesses of the consultation and a press release issued to the media to raise awareness of the survey.
- 5.4 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.
- 5.5 Under the 2014 Act there is no requirement for councils to undertake a new consultation where existing DPPOs or DCOs apply and transition to PSPOs

ahead of October 2017.

- 5.6 As the proposals outlined in this report recommend that the DPPO and DCOs in Eastbourne are reviewed and replaced by PSPOs on a like for like basis, there's no requirement to carry out a consultation on the 'Street Drinking' and 'Dog Fouling' PSPO.
- 5.7 However, as the proposals recommend slight changes to the boundaries of the 'Dog Ban' and 'Dog on Lead' PSPOs, a consultation will need to take place in relation to these particular orders. The consultation would only focus on the new areas proposed within the Order, such as Sovereign Harbour and areas of Meads outside of the current DCOs.

## **6.0 Implementation**

- 6.1 A public notice of the Orders must be published on the Council's website before they come into force.
- 6.2 Signage will also be erected in Eastbourne to explain the PSPOs 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.

## **7.0 Enforcement**

- 7.1 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, such as the Business Wardens.
- 7.2 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.
- 7.3 The Council will, however, enforce requirements on dog related PSPOs as part of its usual business.
- 7.4 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.

## **8.0 Corporate plan and council policies**

- 8.1 The introduction of the proposed PSPOs relates to a number of priorities outlined in the corporate plan.
- 8.2 By ensuring a continued response to dog related anti-social behaviour the proposals meet the Councils priority theme Quality Environment and its aims (i) a clean and attractive town; (ii) excellent park and open spaces.
- 8.3 In addition, the proposed 'Street Drinking' PSPO takes positive action to meet the Councils priority theme Thriving Communities and the aim:

keeping crime and anti-social behaviour levels low.

## **9.0 Business case**

9.1 The purpose of the proposals outlined in this report is to ensure that the current DPPO and DCOs in Eastbourne are replaced with PSPOs. This is in line with legislation brought about by the 2014 Act and allow a continued response to alcohol and dog related anti-social behaviour. It does not, therefore, propose the introduction of any further prohibitions and/or requirements.

## **9.2 Risk Management:**

9.3 A number of risks were identified during the process of producing the proposals.

9.4 It is possible that the proposed 'street drinking' 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.

9.5 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.

9.6 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 Eastbourne Borough Council.

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

9.8 As outlined in Paragraphs 4.1 to 4.14, the prohibitions and requirement of the proposed PSPOs reflect the current Orders in place, which are justifiable and proportionate to the needs of Eastbourne.

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

## **9.10 Legal Implications:**

9.11 The Legal Services Department have made the following comments:

9.12 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.

9.13 The Council's powers and obligations in relation to PSPOs are set out in Part 4, Chapter 2, 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

9.14 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.

9.15 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.

9.16 Each draft Order includes the required information about how its validity may lawfully be challenged.

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

9.18 **Financial:**

Finance have made the following comments:

9.19 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.

9.20 **Benefits and Impact:**

9.21 Anti-social behaviour can have a detrimental impact on communities' quality of life. It can leave people feeling frightened, unsafe and anxious.

9.22 The proposals aim to provide a continued response to alcohol related anti-social behaviour in light of changes to legislation under the 2014 Act. It is to ensure that residents, businesses and visitors continue to use the town centre without fear of victimisation and impacting on their quality of life.

9.23 In addition, like street drinking, dog related anti-social behaviour can also have similar effects on the quality of life of the community. The proposals ensure that there's an on-going response to dog fouling (and other dog related ASB).

9.24 As discussed in Paragraph 2.2 enforcement of current DPPOs can only be carried out by a Police Officer or accredited person (such as a PCSO). The 2014 Act provides further benefits as the legislation allows Council officers to enforce all prohibitions and requirements on the PSPOs.



9.25 This allows the Council to take a greater role in enforcing alcohol related ASB as the proposals enhance the powers available to Local Authorities.

## **10.0 Equality analysis**

10.1 A full equality analysis has been produced to identify any impact to protected groups following the introduction of the PSPOs<sup>(2)</sup>. A copy of the Equality Analysis is available on request. The equality analysis will be included within the consultation.

## **11.0 Performance and outcomes**

11.1 It's intended that the proposals will be implemented by October 2017 and a number of key performance measures have been planned to monitor progress. This includes:

- Consultation completed and final version of the PSPOs approved – to be achieved by August 2017
- Signage for the PSPO to designed and developed– to be completed by September 2017
- Signage erected and formal notification of the PSPO given – to be completed by October 2017.

11.2 The success of the proposals will be judged by the completion of the above measure by the proposed dates. Progress will be monitored through the Councils Performance Management systems and a Project Group will have the responsibility of delivering the proposals.

## **12.0 Conclusion**

12.1 The Anti-Social Behaviour, Crime & Policing Act 2014 conferred new powers on specified public to tackle anti-social behaviour. This included the power given to local authorities to make Public Space Protection Orders, which can be used to replace existing Designated Public Place Orders and Dog Control Orders.

12.2 Existing DPPOs and DCOs continue until October 2017 but then convert to PSPOs on identical terms unless repealed before then.

12.3 The proposals and recommendations outlined in this report aim to ensure that there's a continued and updated response to alcohol and dog related anti-social behaviour in Eastbourne by reviewing the existing DPPOs and DCOs, amending them as appropriate, and expressly re-making them as PSPOs by October 2017.

## **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>

2 - Draft Equality & Fairness Analysis for the introduction of Eastbourne Borough Council Public Space Protection Orders

## **Appendices**

Appendix A – Copy of Map Highlighting Eastbourne DPPO Boundaries

Appendix B – Draft Eastbourne Borough Council 'Street Drinking' PSPO

Appendix C – Draft Eastbourne Borough Council 'Dog Fouling' PSPO

Appendix D - Draft Eastbourne Borough Council 'Dog Ban' PSPO

Appendix E - Draft Eastbourne Borough Council 'Dog on Lead' PSPO