

**Report to:** Cabinet

**Date:** 17 September 2018

**Title:** Telscombe Tye Public Spaces Protection Order

**Report of:** Director of Service Delivery

**Cabinet member:** Councillor Isabelle Linington (Cabinet Member for Environmental Impact)

**Ward(s):** East Saltdean and Telscombe Cliffs

**Purpose of report:** To enable Cabinet to consider the proposal to introduce a Public Spaces Protection Order to support Telscombe Town Council in reducing the number of dog on sheep attacks on Telscombe Tye by requiring dog walkers to keep their dogs under proper control.

To approve the draft Public Spaces Protection Order for consultation and authorise the Director of Service Delivery to undertake the consultation, amend as necessary and subsequently make the order on behalf of the Council.

**Decision type:** Key

**Officer recommendation(s):**

1. To approve the Public Spaces Protection Order in draft form (set out in Appendix 1) for consultation.
2. To grant authority to Director of Service Delivery:
  - i. to carry out statutory consultation on the draft Public Spaces Protection Order in conjunction with Telscombe Town Council;
  - ii. if necessary, and in consultation with the Lead Member, to amend the content of the Order in light of consultation responses
  - iii. to make and publicise the Order in accordance with relevant legislation
  - iv. to put in place arrangements to enforce the Order with Telscombe Town Council
  - v. to keep the Order under review; and, in consultation with the Lead Member, cease, renew or amend it at the end of its term, as appropriate.

**Reasons for recommendations:** To provide an effective response to sheep attacks on Telscombe Tye which meets the needs of local residents and partners.

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## **1 Introduction**

- 1.1 Telscombe Tye is an area of downland which is registered Common Land and owned by Telscombe Town Council.
- 1.2 The Tye has grazing rights for a number of sheep and the Town Council own and manage a community flock of 100 ewes on the Tye. This is to help maintain the land and it also provides an income for the town council, which in turn is for public benefit.
- 1.3 Whilst the Town Council encourage the public use of the Tye, including dog walking, over the years there have been a number of sheep killed on the Tye as a result of dog attacks. Between January 2017 and November 2017 31 ewes were killed. In this period 50 lambs were also lost, either from a direct attack or through abortion due to the stress of an attack on a ewe.
- 1.4 Despite local measures to try and prevent dog attacks, incidents continue and a Public Spaces Protection Order is now being proposed to help tackle the issue.

## **2 Public Spaces Protection Orders**

- 2.1 Public Spaces Protection Orders (PSPOs) were introduced by the Anti-Social Behaviour, Crime and Policing Act 2014 ('the Act') to provide community protection. They can be made by district councils to deal with issues that have a detrimental and persistent effect on the quality of life of residents in the area.
- 2.2 PSPOs place conditions or restrictions on what people can do within a specific area. Breaching a PSPO without reasonable excuse is a criminal offence punishable by a fixed penalty notice or prosecution. A PSPO can last for a maximum of three years but may be renewed after this period if justified.
- 2.3 We have a number of PSPOs already in place in Lewes district, addressing issues related to dog fouling and the public consumption of alcohol.

## **3 Proposal**

- 3.1 It is recommended that the Council makes a single PSPO, following consultation on three options as specified in Appendix 1.
- 3.2 A summary of the options can be found below and further information can be found under Appendix 2.

**3.3 Option 1 – Controls applicable all year round but only in the vicinity of sheep:**

A person is guilty of an offence if at any time and without lawful excuse he or she takes onto, or allows to enter or remain on, Telscombe Tye any dog which is not on a short lead and which is in the vicinity of sheep.

For the purposes of this Order, “short lead” means a lead of fixed length and of not more than two metres.

3.4 There is no set definition of ‘in the vicinity of’ but is a term used in other legislation including the Countryside and Rights of Way Act 2000.

**3.5 Option 2 – Controls applicable all year round:**

Subject to the below paragraph, a person is guilty of an offence if at any time and without lawful excuse he or she takes onto, or allows to enter or remain on, Telscombe Tye any dog and fails to keep the dog on a short lead.

A person is not guilty of the offence so long as he or she keeps the dog in sight at all times AND prevents it from approaching sheep, except where an authorised officer reasonably requests the person to place the dog on a lead.

For the purpose of this Order –

- i. “short lead” means a lead of fixed length and of not more than two metres;
- ii. “authorised officer” means an officer authorised by Lewes District Council

**3.6 Option 3 – More lenient dog control:**

As per Option 1 or Option 2 but replacing “on a short lead” with “on a lead or otherwise under close control”.

3.7 Careful consideration was given to the proposals to ensure that they satisfied the legal requirements of a PSPO (see further at paragraph 10 below) and strike a balance between effectively addressing the problem and ensuring that responsible dog owners are not penalised.

3.8 Telscombe Town Council resolved at its full council meeting on 15 August 2018 to refer the three options (as expressed above) to the Cabinet of Lewes District Council for consideration.

**4.0 Management and Enforcement of the Proposed Order**

4.1 As per the Town and Parish Council Public Spaces Protection Order Agreement (see Appendix 3), Telscombe Town Council is responsible for the enforcement and on-going management of the Order (e.g. installing and maintaining

appropriate signage).

- 4.2 However Telscombe Town Council does not have the necessary staff to enforce the Order at this time. Therefore discussions with the Town Council are underway to explore what role Neighbourhood First could take in enforcing the Order. Any activity undertaken by Neighbourhood First would be at a charge to the Town Council, once agreed.

## **5 Outcome expected and performance management**

- 5.1 The PSPO aims to reduce the number of sheep killed, injured or traumatised as a result of a dog attack on Telscombe Tye.
- 5.2 A PSPO may be amended or removed at any time during the three year period. This allows for changes to be made to the Order, subject to consultation, to ensure that the PSPO remains fit for purpose.
- 5.3 Lewes District and Eastbourne Borough Councils PSPO Review Group will oversee the PSPO during its lifetime.

## **6 Consultation**

### **6.1 Pre-consultation**

- 6.2 In July 2018 the PSPO Project Group carried out pre-consultation with key stakeholders to find out initial views on five proposed options, whether there were viable alternative options not previously considered, and whether there were any stakeholder groups to be engaged as part of the full consultation.
- 6.3 Responses were received from The Kennel Club, Telscombe Residents Association and Natural England. Moreover, Option 2 was developed in consultation with The Kennel Club, following a joint site visit to the Tye with Lewes District Council and Telscombe Town Council staff.
- 6.4 The feedback provided by these groups helped reduce the proposals down to the three options outlined in paragraphs 3.3 to 3.6. A copy of the pre-consultation report, including the original options, can be found under Appendix 2.

### **6.5 Full consultation**

- 6.6 Following Cabinet agreement, a formal consultation will take place in accordance with the Act.
- 6.7 The Act requires councils to 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

6.8 Consultation letters will be sent to all of the above and a survey will be hosted online to enable any other interested parties to make their views known. Copies of the survey will also be made available at Telscombe Town Hall.

6.9 Once the consultation ends, Director of Service Delivery would have regard to all consultation responses in deciding, in discussion with the Lead Member, whether any amendments to the draft Order are required. The Director would then prepare the definitive PSPO and bring it into force in accordance with the Act.

## **7 Corporate plan and council policies**

7.1 The proposed PSPO is in line with the council's aim to maintain the quality of public parks and community spaces.

## **8 Business case and alternative option(s) considered**

8.1 Telscombe Town Council's flock provides an income for the town council which is used for the benefit of residents. When a sheep is killed there is a loss of income for the town council and a cost in replacing the ewe. On average, it can cost £220 per ewe and the proposed PSPO will take steps to reduce the amount of public funding lost.

8.2 Over the years the Town Council and other agencies (such as Sussex Police and South Downs National Park Authority) have carried out a range of measures to try and prevent dog attacks on the Tye and elsewhere across the South Downs National Park. This includes articles in local media, prosecutions for sheep worrying, signage, campaigns and on-going education. However the problem remains.

8.3 The use of Community Protection Notices (a power available to councils to tackle perpetrators of anti-social behaviour) was considered as an alternative to a PSPO. However this approach would rely heavily on enforcement, which is resource intensive, and not encourage the necessary behaviour change to help prevent sheep attacks.

8.4 A range of alternative PSPO options were considered as part of the pre-consultation. However these were rejected on the basis of equalities and enforcement implications.

## **9 Financial appraisal**

9.1 Finance have made the following comments:

9.2 The cost of making the order will be met from within existing budgets, the consultation and ongoing operational costs are to be funded by the Town Council, from income collected.

## **10 Legal implications**

10.1 Legal Services have made the following comments:

10.2 The Part 4 community protection provisions of the Anti-social Behaviour, Crime and Policing Act 2014 permit a district council (but not a town council) to make a Public Spaces Protection Order if they are satisfied on reasonable grounds that the activity or behaviour concerned, carried out, or likely to be carried out in a public space—

- has had, or is 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

10.3 These legal tests focus on the impact that anti-social behaviour is having on victims and communities. As shown at paragraph 11.1 below, failure to keep dogs under proper control on the Tye can have serious consequences not just for the sheep under attack but elements of the local community, in terms of distress to those who witness the incident or its aftermath, and the financial impact ultimately borne by Telscombe council tax payers due to the cost of replacing ewes lost from the community flock.

10.4 All three options put forward for consideration and consultation are capable of meeting the legal tests. Responses to the pre- and full consultation should assist the Council in deciding which option most effectively deals with the anti-social behaviour (failure to control dogs around sheep) in a manner proportionate to the seriousness of the problem.

10.5 *Lawyer consulted 16.08.18. Legal ref: 006654-LDC-OD*

## **11 Risk management implications**

11.1 If a PSPO is not introduced it is likely that incidents will continue. Not only does this have a financial implication for the town council, but attacks can also have an emotional impact on those involved, including the farmer, dog owner and any witnesses.

11.2 Whilst the PSPO would be positive in addressing the problem it is possible that incidents may continue. An effective communications and enforcement strategy will need to be adopted by Telscombe Town Council to help manage expectations and educate local residents in responsible dog ownership.

11.3 There is a risk that the district and town council could receive negative feedback on the proposals from residents, and especially the dog walking community.

11.4 The use of PSPOs have recently been scrutinised by lobbying and special interest groups. There have been a number of high-profile cases in national and local media recently. PSPOs are occasionally challenged as being disproportionate. This proposal has been mindful of the need to be proportionate

(see para 3.7).

- 11.5 The PSPO Project Group have taken steps to mitigate this risk by carrying out pre-consultation engagement with stakeholders and working closely with The Kennel Club.

## **12 Equality analysis**

- 12.1 By their nature PSPOs can have an impact on anyone within their designated area. However, the Equality Analysis carried out on the proposed options (as highlighted in para 3.3 to 3.6) identified that they would have a greater impact on the protected groups: Disability, Age and Sex.

- 12.2 Exemptions for relevant disability groups have therefore been included in the proposed orders. If introduced, the enforcement of the PSPO would be monitored by Lewes District and Eastbourne Borough Council's PSPO Review Group to ensure that it would not disproportionately target Age and Sex protected groups.

## **13 Appendices**

- Appendix 1 – Draft Public Spaces Protection Order
- Appendix 2 – Telscombe Tye PSPO pre-consultation report
- Appendix 3 –Town and Parish Council Public Spaces Protection Order Agreement

## **14 Background papers**

The background papers used in compiling this report were as follows:

- Anti-Social Behaviour, Crime and Policing Act 2014. Available at: <http://www.legislation.gov.uk/ukpga/2014/12/contents/enacted>.
- Anti-social Behaviour, Crime and Policing Act 2014: anti-social behaviour powers – statutory guidance for frontline professionals (Home Office, 2014, updated December 2017 )  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/679712/2017-12-13\\_ASB\\_Revised\\_Statutory\\_Guidance\\_V2.1\\_Final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/679712/2017-12-13_ASB_Revised_Statutory_Guidance_V2.1_Final.pdf)
- Dealing with irresponsible dog ownership – Practitioner's Manual (DEFRA, Oct 2014)  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/373429/dog-ownership-practitioners-manual-201411.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/373429/dog-ownership-practitioners-manual-201411.pdf)
- Telscombe Tye Public Spaces Protection Order Equality and Fairness Analysis

