

Report to: Cabinet

Date of Meeting: 6 March 2017

Report Title: Public Space Protection Orders for Hastings

Report By: Mike Hepworth, Assistant Director, Environment and Place

Purpose of Report

To seek approval to carry out a formal public consultation on draft Public Spaces Protection Orders (PSPOs) relating to dog control measures and anti-social behaviour such as that associated with drug and alcohol abuse in public places.

Recommendation(s)

Authorise the Assistant Director Environment and Place in consultation with the Director of Operational Services, the Chief Legal Officer, and the Lead Member for Environment and Place to go out to public consultation on the 2 draft PSPOs for a period of four weeks, review feedback from the consultation and amend the draft PSPOs as appropriate before reporting the finalised PSPOs to Cabinet, seeking approval for the Chief Legal Officer to make the Orders in accordance with regulations published by the Secretary of State.

Reasons for Recommendations

PSPOs replace existing controls such as those relating to dog fouling, under the provisions of the Anti-social Behaviour, Crime and Policing Act 2014. The existing provisions are superseded in October 2017.

They also enable local authorities and their partners such as the Police to address serious anti-social behaviour in public places.

The work set out in this report will contribute to the Council's vision for a safer cleaner town.

Public Space Protection Orders

1. The Anti-social Behaviour, Crime and Policing Act 2014 introduced a range of new anti-social behaviour (ASB) powers for dealing with street scene issues, including Public Spaces Protection Orders (PSPOs), Community Protection Notices (CPNs), and Civil Injunctions (CIs). Many of the new powers are available to a range of agencies including local authorities, the Police, and social landlords. Statutory guidance was issued by the Home Office in July 2014, but it was essentially just a description of the new powers with some suggestions about how they may be applied. Prescribed forms of Notice and more detailed operational guidance for practitioners has not yet been forthcoming.
2. According to the Home Office guidance: "Public spaces protection orders are intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area which apply to everyone. They are designed to ensure the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour". In Hastings the Borough Council is responsible for making PSPOs.
3. The test is designed to be broad and focus on the impact ASB is having on victims and communities. A PSPO can be made by the Council if they are satisfied on reasonable grounds that the activities carried out, or likely to be carried out, in a public space:-
 - 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.
4. The Council can make a PSPO on any public space within its own area. The definition of public space is wide and includes 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, for example a shopping centre.
5. The PSPO can be drafted from scratch based on the individual issues being faced in a particular public space. A single PSPO can also include multiple restrictions and requirements in one Order. It can prohibit certain activities, such as the drinking of alcohol, as well as placing requirements on individuals carrying out certain activities, for instance making sure that people walking their dogs keep them on a lead. However, activities are not limited to those covered by the Orders being replaced (such as alcohol and dog controls), and so the new PSPOs can be used more flexibly to deal with a wider range of local issues such as aggressive begging, the use of psychoactive substances etc.
6. When deciding what to include, the Council should consider scope. The PSPO is designed to make public spaces more welcoming to the majority of law abiding people and communities and not simply restrict access. Restrictions or

requirements can be targeted at specific people, designed to apply only at certain times or apply only in certain circumstances. In establishing which restrictions or requirements should be included, the Council should ensure that the measures are necessary to prevent the detrimental effect on those in the locality or reduce the likelihood of the detrimental effect continuing, occurring or recurring.

7. The maximum duration of a PSPO is three years but they can last for shorter periods of time where appropriate. At any point before expiry, the Council can extend a PSPO by up to three years if they consider that it is necessary to prevent the original behaviour from occurring or recurring. They should also consult with the local police and any other community representatives they think appropriate.
8. The new PSPO can cover a number of different restrictions and requirements so there should be little need to have overlapping orders in a particular public space. However, if a new issue arises in an area where a PSPO is in force, the Council can vary the terms of the order at any time. This can change the size of the restricted area or the specific requirements or restrictions.
9. As well as varying the PSPO, a Council can also seek to discharge it at any time. For instance when the problem has ceased to exist or the land ceases to be classified as a public space.
10. It is an offence for a person, without reasonable excuse, to do anything that the person is prohibited from doing by a PSPO, or fail to comply with a requirement to which the person is subject under a PSPO.
11. Depending on the behaviour in question, the enforcing officer could decide that a fixed penalty notice (FPN) up to £100 would be the most appropriate sanction. In making the decision to issue a FPN, the officer should consider that if issued, payment of the FPN would discharge any liability to conviction for the offence. However, where the FPN is not paid within the required timescale, court proceedings can be initiated (prosecution for the offence of failing to comply with the PSPO).
12. The guidance states that: "Although PSPOs are made by the Council in an area, enforcement should be the responsibility of a wider group. Council officers will be able to enforce the restrictions and requirements, as will other groups that they designate, including officers accredited under the community safety accreditation scheme. In addition, police officers and PCSOs will have the ability to enforce the order".
13. It is proposed that the Council should make 2 borough wide Public Spaces Protection Orders specifying certain restrictions to be applied to specified areas of the borough relating to 2 broad areas of enforcement:-
 - Dog control; and
 - Anti-social behaviour (ASB) often associated with street community issues.

Reviewing and updating the Council's dog control powers

14. New statutory provisions arising from the Anti-social Behaviour, Crime and Policing Act 2014 mean that the Council's existing powers for dealing with irresponsible dog

ownership issues need to be reviewed and updated. The Act requires that the Council move from The Dogs on Leads (Borough of Hastings) Order 2008 and other Dog Control Orders in respect of fouling, exclusion zones and dog on lead by direction, to a PSPO.

15. If we don't undertake a review, the current dog control orders will automatically become a PSPO in October 2017. But by 2020 the Council will be expected to have drafted new Orders. Therefore, this is a useful opportunity to consult on our existing dog control measures with interested parties including the dog owning public, park users, community groups and the police. Cabinet considered a report related to this on 5th December 2016 responding to a petition about dog controls in St Leonards Gardens. It was agreed that no changes would be made until the transition from the existing dog control measures to the new PSPOs had been subject to an appropriate public consultation process.
16. In recent weeks we started a high profile behaviour change campaign using social media materials and posters focussed on littering and dog fouling. There has been a big positive public response to the campaign, with lots of people asking for a more rigorous and robust approach to enforcement against people committing these common offences, as well as helpful intelligence on where and when offending is taking place. This shows that dog control offences such as dog fouling are still seen as serious issues in Hastings, and that many residents want the Council to do more about them.
17. The Wardens and Park Rangers are mainly responsible for the enforcement of the Council's existing dog controls. These controls are set out in the leaflet at appendix one. An internal review of the existing dog controls has been carried out with input from all of the relevant Council services. It was concluded that relatively minor changes were required and these will need to be consulted on along with the existing controls.
18. Essentially fouling, dogs on leads by direction and the exclusion areas are the same. Whereas changes are proposed regarding dogs on leads schedule 1, where we have added f to k and extended d and e to cover more of the park/s.
19. This means that the dogs on lead requirements will be changed to cover:-
 - The whole of St Leonards Gardens from 8am until 6pm (rather than 9am till 6pm) – plan 4;
 - The whole of Warrior Square Gardens rather than just the Rose Gardens – plan 5;
 - The Stade Open Space – plan 6;
 - Grosvenor Gardens – plan 7;
 - West Marina Gardens – plan 8;
 - Gensing Gardens – plan 9;
 - Linton Gardens – plan 10; and
 - West Hill Green Space (childrens play park area) – plan 11.

20. The area of foreshore and beach between groynes 1 and 3 South of the small Rock a Nore car park and the Hastings motor boat and yacht club, has not been included in the draft PSPO, whereas it is currently covered by the Dogs on Leads Order.
21. The grassed area East of Marine Court (plan 12) has been added in relation to Dogs on Leads, as it has been the subject of many complaints from local residents.

The need for action to tackle anti-social behaviour in Hastings public spaces

22. Anti-social behaviour (ASB) associated with public spaces has long needed careful management in Hastings. The issues range from irresponsible dog ownership to street drinking and substance abuse, and the associated ASB which can blight public areas such as the foreshore, parks and open spaces and shopping precincts.
23. Street drinking in particular has required Council led multi-agency interventions over a long period. Historically being most prevalent in Central St Leonards, where much positive work has been carried out. The Council's approach has always been to utilise proportionate and appropriate enforcement powers, whilst also working with partners to ensure that there is suitable specialist health and social care available, such as for alcohol and substance abuse.
24. With the help of East Sussex County Council, the Hastings and Rother Clinical Commissioning Group, and other organisations responsible for commissioning health and social care services, Hastings has a very well developed range of support services for vulnerable members of our community such as street drinkers and the homeless.
25. However, in the last 2 years, like many other seaside towns, Hastings has experienced an escalation of ASB associated with the street community. Perhaps the most obvious example being the significant increase in the number of people congregating in the town centre drinking alcohol in Wellington Place outside Sports Direct, McDonalds and Pound Stretcher.
26. Last Summer on a daily basis the public seating area in Wellington Place was the venue for large groups of street drinkers, but also later in the day for groups of younger people, some of school age. The number of people involved and the intimidating nature of their behaviour meant that the general public mostly avoided the area, and local businesses complained that this had a serious impact on business in the town centre. The area concerned is a 'pinch point' between the pedestrianised areas of the town centre, the seafront, and the main routes to the Old Town, where the majority of shoppers and tourists will pass down Wellington Place and through the underpass heading for Pelham Place, the seafront and the Old Town.
27. The Council received many complaints from residents, businesses, and visitors about the behaviour of the wider street community in this area of the town, and the impact it was having. They cited ASB associated with alcohol and substance abuse, including drunkenness, fights, intimidating and threatening behaviour, human waste, drugs paraphernalia, and other litter, rubbish and dog control issues.

28. However, these issues are not restricted to the area described above and have affected other areas of the town including the foreshore, Harold Place underpass and Carlisle Parade underground car park, Station Plaza, parts of St Leonards and the Old Town, Cinque Ports Way, as well as some of our parks and gardens.
29. Last Summer in response to complaints, the Let's Do Business Town Centre Manager and our Community Safety Manager carried out a survey of town centre businesses. Many of the responses highlighted serious concerns about the negative impact of the street community on the sustainability of the local economy, and the impact it might have on external investment from businesses considering opening in Hastings.
30. Although it's easy to understand the sort of concerns raised by residents, businesses and visitors, perhaps the most important reason that the authorities need to address this escalating issue is to reduce the negative impact on the health of the street community, and the other vulnerable people their presence attracts.
31. As stated last year by the Leader of the Council: "The consequences of becoming a street drinker aren't good. Street drinkers have a life expectancy of 46, but this is misleading – their lives as street drinkers are probably no more than four or five years. It's a very self-destructive lifestyle".
32. Last Summer there was evidence of very young vulnerable people beginning to associate with the wider street community congregating in the town centre, and it's essential that the authorities work together to address this.
33. Chief Inspector Steve Curry, Police Commander for Hastings and Rother has endorsed the Council's proposals and advised that: "Sussex Police supports Hastings Borough Council's proposal for the introduction of a Public Spaces Protection Order. The police consider this a necessary and proportionate step to enable the local authority, police and partners to address the serious anti-social behaviour within the wider street community. Local surveys and analysis provides evidence of the significant community impact and harm experienced through this sustained anti-social behaviour associated with alcohol and substance misuse. Sussex Police are committed to working with the Council and partners to enforce ASB powers, under the terms of the PSPO, as part of a balanced package of measures of enforcement and support to address the entrenched issues that exist".

Legal powers and best practice

34. In the absence of detailed operational guidance on the new ASB powers uptake has been mixed. Some Councils were quick to make PSPOs for their district, but then had to withdraw or amend them due to legal challenges from groups objecting to the nature of the restrictions the local authority was trying to introduce. For example in relation to rough sleeping and begging.
35. The Chief Legal Officer, Community Safety Manager and colleagues in our enforcement services have researched the developing best practice, including looking at the experience of early adopters, and recently a visit to Thanet with Police colleagues.

36. The Home Office guidance states that: "A PSPO can be used to restrict the consumption of alcohol in a public space where the test has been met. However, as with the Designated Public Place Order which it replaces, there are a number of limitations on using the power for this end". These are exemptions for licensed premises operating within the PSPO area.
37. In Hastings the existing Designated Public Places Order (DPPO) introduced in 2005, covers the entire borough. The DPPO doesn't prohibit the consumption of alcohol in public places, but it does allow a police officer to require the surrender of alcohol in a public place, if it appears that a person is causing a nuisance or annoyance or disorder associated with the consumption of alcohol.
38. Last November the National Consortium of Police and Crime Commissioners published guidance called "Tackling Street Drinking", and this highlights the following key factors in addressing this common issue affecting many town centres:-
- A multi-agency approach including joint action planning;
 - Good assertive outreach/support services to help address drug and alcohol dependency and mental health issues;
 - Focusing on the most prolific offenders as this will have the greatest positive impact for the community;
 - Use of the new ASB powers, particularly PSPOs and civil injunctions and anti-social behaviour contracts;
 - Use of the civil injunctions to require the recipient to engage positively with specified support services.
39. As set out in the Police Commissioners guidance, enforcement is only one part of a successful strategy to address street community issues. Assertive and effective health and wellbeing support services are also essential. But PSPOs are clearly an essential part of the overall strategy.

Action already taken to address the street community issues

40. In light of the issues described above, the Council's Director of Operational Services convened meetings with senior managers of all of the authorities responsible for commissioning and delivering services associated with the wider street community. The group includes representation from the Council, the Police, East Sussex County Council youth services and social and caring services, the Clinical Commissioning Group, and Hastings Voluntary Action.
41. The organisations involved are committed to working together to address the wider street community issues, on the basis of a 'task force approach'. A joint action plan is being developed encompassing a range of measures including:-
- Physical changes to the built environment in Wellington Place, such as planting/landscaping/public art etc.
 - The potential for different uses for the public seating area in Wellington Place, such as by pop up businesses.

- The potential for the Council to pilot the use of a specialist environmental enforcement contractor to tackle littering and dog control offences with a small dedicated team of Enforcement Officers supplementing the Council's Warden Team.
- Introducing PSPOs aimed at restricting the abuse of alcohol and drugs and general ASB associated with the wider street community in specified public places.
- Developing the role of the Council's Warden Team in order to provide effective enforcement of the new ASB powers within the PSPOs. Our Wardens will need to achieve community safety scheme accreditation from Sussex Police. This will enable them to be authorised to use additional powers which are otherwise only available to the Police. For example requiring the surrender of alcohol, and requiring a person suspected of committing an offence to provide their name and address.
- Police support for the Council's enforcement services.
- Consideration of more focussed work with the street community, such as by youth services and health and wellbeing services.

42. Some of these matters are set out in more detail in another report on this Cabinet agenda titled: "Improving the Hastings Street Scene".

43. A PSPO addressing the wider street community issues is therefore essential to the success of this multi-agency project.

Process for consulting on the Council's PSPO proposals

44. Two PSPOs have been drafted for Hastings, one addressing dog control issues, and the other addressing the street community issues. They are attached at appendices 2 and 3.

45. Before making a PSPO, the Council must consult with the local police. This should be done formally through the chief officer of police and the Police and Crime Commissioner, but details can be agreed by working level leads. This is an opportunity for the police and Council to share information about the area and the problems being caused as well as discuss the practicalities of enforcement. In addition, the owner or occupier of the land should be consulted. This should include the County Council (if the PSPO application is not being led by them) where they are the Highway Authority. In our case we have been developing these ideas in conjunction with senior colleagues within East Sussex County Council and the Police.

46. The Council must also consult whatever community representatives they think appropriate. This could relate to a specific group, for instance a residents association, or an individual or group of individuals, for instance, regular users of a park or specific activities such as busking or other types of street entertainment. Before the PSPO is made, the Council also has to publish the draft Order in accordance with regulations published by the Secretary of State.

47. It is proposed that we should consult widely on both PSPOs, but limit the consultation to 4 weeks, starting in March and ending in April. As well as media

releases, information on our website, and contacting the statutory consultees (Police, Police and Crime Commissioner and East Sussex County Council as the Highways Authority), the Foreshore Trust. We will also approach the Hastings Observer suggesting they produce an article on the proposals. We will also identify key stakeholders such as dog clubs in relation to the PSPO for dog controls, the St Leonards Gardens petitioners from last December, and groups working with the local street community. Under Section 74 of the Act the draft text of the Orders will need to be published.

48. There is also a requirement to put up notices on land to which the Orders relate. The notices must be sufficient to draw the attention of any member of the public to the fact that the Order is proposed and then made.

Process for implementing the Council's PSPO proposals

49. Upon completion of the consultation process it is proposed that in consultation with the Lead Member for Environment and Place, Officers will review feedback and amend the draft Order as appropriate and report the finalised PSPOs to Cabinet, seeking approval for the Chief Legal Officer to formally make the Orders in May.
50. Any challenge to the PSPO must be made in the High Court by an interested person within six weeks of it being made. An interested person is someone who lives in, regularly works in, or visits the restricted area. This means that only those who are directly affected by the restrictions have the power to challenge. This right to challenge also exists where an order is varied by a Council.
51. Interested persons can challenge the validity of a PSPO on two grounds. They could argue that the Council did not have power to make the Order, or to include particular prohibitions or requirements, perhaps because there was insufficient evidence of a particular problem. In addition, the interested person could argue that one of the requirements (for instance consultation) had not been complied with.
52. When the application is made, the High Court can decide to suspend the operation of the PSPO pending the verdict in part or in totality. The High Court has the ability to uphold the PSPO, quash it, or vary it.

Reviewing the Council's enforcement policy for environmental and street scene offences

53. As set out in another report on this Cabinet Agenda (Improving the Hastings Street Scene), there is a need to review and update the Council's current enforcement policy and operational guidance for environmental and street scene offences. That report seeks approval for the Assistant Director Environment and Place, in consultation with the Lead Member for Environment and Place, the Director of Operational Services and the Chief Legal Officer, to review and update the Council's enviro-crime enforcement policy on an ongoing basis as and when necessary. This flexible approach will enable the appropriate changes to be made in parallel with the introduction of the Hastings Public Space Protection Orders.
54. This is necessary because to some extent this enforcement policy will inform our Warden's enforcement choices in relation to the new PSPOs, where the use of Community Protection Warnings and Notices, and the associated FPNs may be

important. The maximum level of these FPNs is £100 and it is suggested that they should be set at this maximum for the greatest deterrent effect.

Financial Implications

55. There are additional costs associated with the introduction and enforcement of the PSPOs. For example in relation to:-
- The consultation process;
 - Enforcing the dog control and ASB PSPOs;
 - New signage notifying the general public that certain behaviours are restricted in specified areas of the borough.
56. Apart from the new signage, it's anticipated that the costs can be met from within existing budgets. Details of the new signage will be obtained during the consultation and costs estimated.
57. If the Council proceed with the 12 month pilot scheme working with a specialist environmental enforcement contractor, as suggested in the "Improving the Hastings Street Scene" report, enforcement of the new dog control PSPOs will be more effective than our existing arrangements, and may generate additional income that can be used to offset the costs of operating the PSPOs.

Other Policy Implications

58. The 2 PSPOs should have a positive impact on the local environment, crime and fear of crime, and local people's views. As they should result in less ASB in public places such as the town centre, and less ASB arising from irresponsible dog ownership issues, and therefore a better quality of life for residents, and possibly also for the street community.
59. From an equalities and community cohesiveness perspective, the ASB issues associated with the wider street community have generated a lot of complaints and probably undermined community cohesiveness. It is hoped that if the ASB PSPO is implemented community cohesiveness will improve, and enforcement linked with assertive outreach support will help vulnerable members of the street community to address their health and wellbeing issues, and improve their quality of life.
60. All of the agencies that will be involved with the PSPOs are aware of the need to ensure that the people they are working with are not discriminated against. Whether they are offenders or potential victims of crime, or both. The purpose of the PSPOs is to address unacceptable anti-social behaviours displayed by an individual and not targeting any specific group or type of person based upon their race, gender, religion etc. The welfare and safeguarding of vulnerable people will be considered by the officers enforcing the PSPOs, for example in relation to mental health.
61. As described earlier in this report, there are organisational implications for the Council's Warden Team, as we need to develop their role to help address the emerging ASB issues and enforce the PSPOs. Management will liaise with the

Executive Manager of People, Customer and Business Support in this respect, as well as the staff and their representatives.

Wards Affected

All Wards

Policy Implications

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness	Yes
Crime and Fear of Crime (Section 17)	Yes
Risk Management	No
Environmental Issues	Yes
Economic/Financial Implications	Yes
Human Rights Act	No
Organisational Consequences	Yes
Local People's Views	Yes
Anti-Poverty	No

Additional Information

Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers - Statutory guidance for frontline professionals published by the Home Office July 2014

Tackling Street Drinking - Police and Crime Commissioner Guidance on Best Practice - published by the National Consortium of Police and Crime Commissioners November 2016

Supporting evidence of the nature and scale of the anti-social behaviour associated with the wider street community in Hastings, prepared by the Council's Community Safety Manager during 2016 and 2017. Including reports and statements from Sussex Police, local Councillors and members of the public.

Appendices

Appendix 1 - Hastings Borough Council leaflet summarising existing dog controls.

Appendix 2 - Draft Public Spaces Protection Order (No 1) - Hastings Borough Council 2017

Appendix 3 - Draft Public Spaces Protection Order (No 2) - Hastings Borough Council 2017

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