

# Overview and Scrutiny Committee



Forest Heath  
District Council

<b>Title of Report:</b>	<b>Public Space Protection Orders (PSPOs) – Changes to Anti-Social Behaviour Legislation</b>	
<b>Report No:</b>	<b>OAS/FH/17/003</b>	
<b>Report to and date/s:</b>	<b>Overview and Scrutiny Committee</b>	12 January 2017
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<b>Purpose of report:</b>	To provide an update to Councillors on legislation relating to Public Space Protection Orders (PSPOs) and to propose changes prior to public consultation.
<b>Recommendation:</b>	<p><b>It is <u>RECOMMENDED</u> that:</b></p> <p><b>(1) Members <u>note</u> that the Newmarket alcohol-related PSPO order remains in place, with no changes to the conditions or area covered.</b></p> <p><b>(2) Members <u>note</u> that the Brandon alcohol-related PSPO order remains in place, with no changes to the conditions or area covered.</b></p> <p><b>(3) Cabinet be recommended to approve the adoption of a PSPO relating to dog control across Forest Heath, subject to public consultation.</b></p>
<b>Key Decision:</b>  <i>(Check the appropriate box and delete all those that <b>do not</b> apply.)</i>	<p><i>Is this a Key Decision and, if so, under which definition?</i></p> <p>Yes, it is a Key Decision - <input checked="" type="checkbox"/></p> <p>No, it is not a Key Decision - <input type="checkbox"/></p> <p>(a) A key decision means an executive decision which, pending any further guidance from the Secretary of State, is likely to:</p> <p>(i) be significant in terms of its effects on communities living or working in an area in the District.</p> <p>(b) A decision taker may only make a key decision in accordance with the requirements of the Executive procedure rules set out in Part 4 of this [the] Constitution.</p>

<p><b>Consultation:</b></p>	<ul style="list-style-type: none"> <li>• Newmarket alcohol related PSPO – as there are no proposed changes to the location or the conditions in the current order, there is no requirement for formal public consultation. However all elected members, Police Safer Neighbourhood Team (SNT) and key contacts have been consulted at an early stage.</li> <li>• Brandon alcohol related PSPO – as there are no proposed changes to the location or the conditions in the current order, there is no requirement for formal public consultation. However all elected members, Police SNT and key contacts have been consulted at an early stage.</li> <li>• Dog control PSPO – prior to Cabinet approval, a mandatory public consultation will take place.</li> </ul>
<p><b>Alternative option(s):</b></p>	<ul style="list-style-type: none"> <li>• Do nothing</li> <li>• The current DPPOs could be discharged and not replaced with any orders; however the Police and other stakeholders believe that the orders are necessary</li> </ul>
<p><b>Implications:</b></p> <ul style="list-style-type: none"> <li>• The former orders in place for dog fouling (The Dogs [Fouling of Land in Forest Heath] Order 1998) will in time cease to be enforceable. It will not be possible to implement the suggested restrictions on dog access into defined areas.</li> </ul>	
<p>Are there any <b>financial</b> implications? If yes, please give details</p>	<p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <ul style="list-style-type: none"> <li>• Purchase and erection of replacement signage.</li> <li>• Alcohol PSPO areas will require approximately 20 signs in Newmarket and 10 signs in Brandon. Working on an estimated cost of £30 per sign (including erection on public furniture), the total cost is estimated at £900.</li> <li>• Funding has been identified from historic ASB Home Office funding within the Families and Communities team budget.</li> <li>• Dog exclusion sites will require approximately 62 signs across 31 sites in Forest Heath. Working on a cost of £25 per sign, the total cost will be £1550.</li> <li>• Funding has been identified from with existing Leisure and Culture budgets.</li> </ul>

Are there any <b>staffing</b> implications? If yes, please give details		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> <ul style="list-style-type: none"> <li>PSPOs can be enforced by Police Officers, Police staff (PCSOs) and the West Suffolk councils' enforcement officers.</li> <li>There are no plans to increase the number of council enforcement officers.</li> </ul>	
Are there any <b>ICT</b> implications? If yes, please give details		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> <ul style="list-style-type: none"> <li></li> </ul>	
Are there any <b>legal and/or policy</b> implications? If yes, please give details		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <ul style="list-style-type: none"> <li>Proposed orders have been drafted by the councils' legal team.</li> </ul>	
Are there any <b>equality</b> implications? If yes, please give details		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> <ul style="list-style-type: none"> <li></li> </ul>	
<b>Risk/opportunity assessment:</b> <i>(potential hazards or opportunities affecting corporate, service or project objectives)</i>			
<b>Risk area</b>	<b>Inherent level of risk</b> (before controls)	<b>Controls</b>	<b>Residual risk</b> (after controls)
	Low/Medium/ High*		Low/Medium/ High*
Public perception-negative perception of the impact of the PSPO	High	Information provided. Consultation process.	Medium
Reputation – no enforcement activity taken	High	Work with community. Encourage information and evidence to be provided.	Medium
<b>Ward(s) affected:</b>		Newmarket alcohol-related PSPO – All Saints, St Marys and Severals. Brandon alcohol-related PSPO – Brandon East, Brandon South, Brandon West. Dog Control PSPO: <ul style="list-style-type: none"> <li>dog fouling condition – all wards in Forest Heath;</li> <li>dog exclusion condition – those wards detailed in the proposed order.</li> </ul>	
<b>Background papers:</b> <i>(all background papers are to be published on the website and a link included)</i>		The Dogs (Fouling of Land in Forest Heath) Order 1998.  The Fouling of Land by Dogs (Aspal Close Local Nature Reserve, Beck Row) Order 2013.	
<b>Documents attached:</b>		<b>Appendix A</b> - Draft Alcohol Orders  <b>Appendix B</b> - Draft Dog fouling PSPO Orders	

## **Key issues and reasons for recommendation**

### **1. Background**

- 1.1 The Anti-Social Behaviour Crime and Policing Act 2014 tidied up, amalgamated and redefined a number of anti-social behaviour (ASB) powers. This included replacing Designated Public Space Orders (DPPOs) and Dog Control orders with Public Space Protection Orders (PSPOs). The PSPO is designed to deal with particular nuisance or problems in an area that are detrimental to the local community's quality of life by imposing conditions on use of that area which apply to everyone. District/Borough councils are responsible for making a PSPO.
- 1.2 PSPOs replace the following powers:
- Dog Control Order
  - Gating Order
  - Designated Public Place Order (DPPO)
- 1.3 PSPO can be used to deal with both existing problems and problems that are likely to arise in the future. The orders are intended to make public spaces more welcoming to the majority of law-abiding people and communities.
- 1.4 A PSPO can only be made if the council is satisfied, on reasonable grounds, that two conditions are met.

#### **First condition**

- Activities carried out in a public place have a detrimental effect on the quality of life of those in the locality. Or
- It is likely that the activities will be carried out in a public place within the area that will have such an effect.

#### **Second condition**

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; and
- justifies the conditions imposed.

### **2. Transition arrangements from Designated Public Place Orders to Public Space Protection Orders**

- 2.1 Where a DPPO is currently in force, as in the case in Newmarket and Brandon, it will continue to be valid until October 2017, which is three years following the introduction of the new legislation. At this point the DPPO would be treated as a PSPO and remain in place for a further period of up to three years unless varied or discharged. Only if there is a variation or discharge of the order does the change from DPPO to PSPO need to be subject to a period of consultation and be considered by the council's democratic process.

- 2.2 The two current DPPOs (in Newmarket and Brandon) were put into place to combat alcohol-related anti-social behaviour. The orders state that it is a criminal offence for an adult to refuse to stop drinking alcohol, or refuse to hand over unopened or open containers of alcohol, within the area covered by the order when asked to do so by a Police officer. In order for a Police officer to use this power there has to be, or likely to be, alcohol-related anti-social behaviour which will cause, or is likely to cause, alarm, harassment or distress to persons not of the same household.
- 2.3 Given the significant role the Police have played in enforcing these orders, council officers have liaised with the local Police teams to review the effectiveness of the current schemes. In light of past experience, the Police have been asked for their views in terms of whether or not the orders should remain in place unchanged, apart from a change of name from DPPO to PSPO or:
- remain in place but have conditions and/or locations changed; or
  - be discharged, i.e. there is no evidence to suggest the tests in paragraph 1.4 can be met, therefore no requirement for an order to be in place.
- 2.4 Suffolk Police have been approached to provide data about the number of times the current DPPO powers have been used in Newmarket and Brandon; however this data is not specifically collected. This is because it is normally enforced by requesting compliance and therefore no offence is committed, so doesn't feature in recorded crime statistics.

### **3. Newmarket and Brandon**

- 3.1 The orders were made to address alcohol-related anti-social behaviour in the town centres. Whilst the nature of the night time economy has changed recently, alcohol related ASB can still arise in the town centre areas and public green spaces especially in relation to street drinkers. Having reviewed the order, both the Police and Families and Communities officer propose that the Newmarket and Brandon orders should remain with no changes to the conditions or area covered until October 2017 and then become a PSPO with a review date set for a further two-year period.
- 3.2 With the above in mind, it is recommended that the condition in the orders remains as follows, with the areas covered as per the maps which can be found at **Appendix A**.

**No person shall, within the restricted area, refuse to stop drinking alcohol or hand over containers (sealed or unsealed) which are believed to contain alcohol when required to do so by an authorised officers, to prevent public nuisance, anti-social behaviour or disorder.**

- 3.3 Whilst there is no requirement to carry out a full public consultation where no changes are to be made, the views of Newmarket and Brandon councillors and other key stakeholders in the towns were sought. Feedback suggests that elected members and key stakeholders leaders are supportive of the order remaining in place with the current conditions and boundaries.

#### **4. Transition from Dogs Fouling of Land Act 1996 Orders and Clean Neighbourhoods and Environment Act 2005 Orders to PSPO – Dog Control Orders**

- 4.1 The current legislation for dealing with the offence of dog fouling has been replaced and enhanced by powers contained within the Anti-Social Behaviour, Crime and Policing Act 2014 through the application of PSPOs.
- 4.2 The Dogs (Fouling of Land in Forest Heath) Order 1998 came into force in May 1998. This legislation introduced a requirement for dog walkers to clear up after their dogs.
- 4.3 The Dogs (Fouling of Land in Forest Heath) Order 1998 enforcement powers were limited in respect of dog fouling at Aspal Close Nature Reserve as the Order contained a number of excluded land types which Aspal Close fell under, therefore it was not possible to issue notices under that act at that specific location. To address this anomaly Forest Heath adopted a Dog Control Order for Aspal Close Local Nature Reserve (LNR), under the Clean Neighbourhoods and Environment Act 2005. The Fouling of land by Dogs (Aspal Close, Beck Row) came into force in October 2013.
- 4.4 The proposed new order includes rules excluding dogs from specific locations such as play areas in order to prevent dog fouling. These specific rules are currently advisory only, but by adopting the new legislation, it will be an offence and offenders will be liable to incur a fixed penalty fine.
- 4.5 As part of the development of the PSPO for controlling dog behaviour, the recommended conditions are as follows.
  - a) **All public space in Forest Heath to require those in charge of a dog to clear up after their dog. Failure to do so will incur a fixed penalty (maximum permitted fine is £100. The level agreed across Suffolk is £80).**
  - b) **To exclude dogs from the locations listed in Appendix A. This is intended to prevent dogs from entering and fouling within specific children’s play areas and, during football season, certain fenced football pitch areas. These locations have been identified as those in which children and other members of the public have the greatest risk of contracting Toxocara Canis, an infection which is a cause of blindness and may provoke rheumatic, neurologic, or asthmatic symptoms.**

Draft orders can be found in **Appendix B**.

#### **5. Consultation requirements**

- 5.1 In accordance with the legislation, where there are already orders in place and no alterations are being proposed to either the conditions or areas, consultation is not required. However, key partners have been informed and comments invited in the case of the Newmarket and Brandon alcohol-related PSPOs.

5.2 Changes to current orders or new PSPOs require public consultation before final consideration and approval by Cabinet. Following this meeting, information will be published in order to encourage public and stakeholder feedback on the proposed change to the orders in Forest Heath. Following public consultation, recommendation will be made to Cabinet at a meeting later this year.

## **6. Publication and signage**

6.1 Following the period of consultation and democratic approval, the order should be published and displayed by appropriate signage. This will be on or adjacent to the area of the PSPO.

6.2 Where there is signage relating to a current order, this will need to be reviewed to ensure it meets the new requirements and, if not, replaced with new signage. There will be a cost implication to purchase new signage (and erection of the signs, if not on land belonging to the authority, for example street furniture).

6.3 Alcohol PSPO areas will require approximately 20 signs in Newmarket and 10 signs in Brandon. Working on an estimated cost of £30 per sign (including erection on public furniture) the total cost is estimated at £900. Funding has been identified from historic ASB funding within the families and communities area.

6.4 Dog exclusion PSPO areas will require approximately 62 signs across 31 sites in Forest Heath. Working on a cost of £25 per sign the total cost will be £1550. This will be covered from existing budgets.

## **7. Enforcement**

7.1 A PSPO can be enforced by council enforcement officers, Police Officers or Police Community Support Officers.

7.2 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 a person is subject under a PSPO.

7.3 A breach of a PSPO is an offence. This will be disposed of by way of a fixed penalty notice (up to £100) or by prosecution. On conviction a level 3 summary fine can be applied by a magistrate.

## **8. Review of PSPOs**

8.1 A review date will be set for each PSPO. This cannot exceed three years and is likely to be set at two years, so that time can be allocated to carrying out a robust review before the order expires at the end of the three year period. The review will be carried out by the lead officer in the appropriate service, in consultation with relevant elected members and key community stakeholders.



8.2 A review can be called at any time during the life of the PSPO if circumstances change.