

	REPORT TO CABINET TO BE HELD ON 11 APRIL 2017
	Key Decision YES Forward Plan Ref No
Corporate Priority: ALL	Cabinet Portfolio Cllr. Sandra Holder Turner

REPORT OF THE DIRECTOR (TW) – 17/78

WARDS AFFECTED: CASTLE, NORTH BAY, RAMSHILL, NORTHSTEAD, CENTRAL, WEAPONNESS, STEPNEY

SUBJECT: INTRODUCTION OF A PUBLIC SPACE PROTECTION ORDER FOR SCARBOROUGH

RECOMMENDATION(S):

Cabinet;

1. Recommend that Council:
 - (a) approve the making of the Scarborough Public Spaces Protection Order ('the Order') as set out at Appendix A;
 - (b) approve the use of fixed penalty notices for offences under the Order;
 - (c) approve that the fixed penalty for offences under the Order be £100;
 - (d) delegate authority to the Directors;
 - (i) to issue fixed penalty notices for offences under the Order;
 - (ii) to authorise in writing any Officer of the Council to issue fixed penalty notices for offences under the Order.

REASON FOR RECOMMENDATION(S):

To provide an additional tool to address the issue of anti-social behaviour in the Borough.

HIGHLIGHTED RISKS

Failure to use all available tools may reduce the Council's ability to effectively tackle anti-social behaviour, which is a key concern for communities and impacts upon wellbeing, tourism, and the local economy.

1. INTRODUCTION:

- 1.1 This report sets out the outcome of the extensive consultation exercise upon the proposed making of a PSPO relating to anti-social behaviour within the Borough.
- 1.2 It also proposes the making of a more refined PSPO (the draft of which is set out at Appendix A) following full and proper consideration of the representations made during the consultation exercise.

2. CORPORATE AIMS/PRIORITIES AND THE COMMUNITY PLAN

- 2.1 This report supports all of the corporate aims and the community plan.

3. BACKGROUND AND ISSUES

- 3.1 On 20 October 2014, the power to make Designated Public Place Orders, Gating Orders and Dog Control Orders was repealed by the Anti-social Behaviour, Crime and Policing Act 2014 ('the Act').
- 3.2 The Act instead gives local authorities powers to deal with a broad range of anti-social behaviour through the use of Public Spaces Protection Orders (PSPOs).
- 3.3 PSPOs 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.
- 3.4 District Councils are responsible for taking the lead, with enforcement being carried out by both local authorities and the police.
- 3.5 A PSPO can be made by a Council if it is 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.
- 3.6 The maximum duration of a PSPO is 3 years, and at any point before expiry the Council can extend the PSPO by up to 3 years if it is considered necessary to prevent the original behaviour from occurring or recurring. The Council can also discharge or vary the PSPO.
- 3.7 Once a PSPO is made by the Council, it will be an offence for any person, without reasonable excuse, to do anything that is prohibited by the PSPO, or to fail to comply with any requirement under the PSPO. A person guilty of an offence is liable on summary conviction to a fine not exceeding Level 3 (currently £1000).
- 3.8 The Act also allows offences to be dealt with by use of Fixed Penalty Notice (FPN). The Council has the discretion to set the level of penalty up to a maximum amount of £100, and can also specify a discounted figure if the FPN is paid within a specified number of days (less than 14).
- 3.9 Where an FPN is not paid within 14 days, a prosecution can be initiated.
- 3.10 On 18 October 2016 Cabinet approved an 8 week consultation period relating to both the types of anti-social behaviour to be covered by the PSPO and the proposed area it was to cover.
- 3.11 Due to the level of interest the consultation was extended until 16 January 2017.

4. CONSULTATION

- 4.1 The wide range of provisions included for consultation reflected the types of complaints received, the levels of reported anti-social behaviour, and issues of concern raised by local communities and businesses. Feedback was sought on the following provisions:
- Intoxicating substances;
 - Rough sleeping;
 - Urination and defecation;
 - Begging;

- Inconsiderate busking and street entertainment;
- Street drinking;
- Pitching of tents;
- Lighting of bonfires on beaches;
- Street trading and peddling.

4.2 The proposed area for the PSPO focused on the town centre and surrounding areas. These areas were selected as they suffer from higher than average levels of anti-social behaviour.

4.3 A range of consultation methods were used, including:

- A survey on the Council's website which was promoted via press releases and social media;
- Hard copies of the survey were also available, and were distributed at tenants and residents meetings, and delivered door to door by the South Cliff Community Group;
- 2 drop in events were held at the Town Hall on 24 November 2016 and 13 December 2016;
- Statutory and voluntary organisations were made aware of the proposals through the Community Impact Team multi-agency meetings;
- Representatives from the Community Safety Team attended at the following meetings to explain and publicise the proposals and the survey;
 - South Cliff Community Group;
 - Castle Tenants and Residents Association;
 - North Bay Community and Police Group;
 - Scarborough Anti-Theft Group;
 - Weaponness Community Group;
 - South Bay Traders.

4.4 North Yorkshire Police and the Police and Crime Commissioner for North Yorkshire were consulted and were supportive of the proposals.

4.5 North Yorkshire County Council were also made aware of the proposals, although no direct responses were received from them.

- 4.6 There was an excellent response to the consultation with 493 responses to the survey. A breakdown of the results of the consultation is set out in Appendix B of this report.
- 4.7 The responses to the consultation included a wide range of views, from strong support for the proposals to equally strong opposition. Some of the more common themes included;
- (a) Support for the proposal on the basis that it will help to address problems and improve the image of Scarborough, and cannot be implemented soon enough;
 - (b) Several comments were made to the effect that people currently avoid the Town Centre because of these types of issues;
 - (c) There is already legislation in place enforcement of which is the job of the police and not the Council;
 - (d) That the level of penalty will not act as a deterrent;
 - (e) The PSPO needs to cover a wider area with concerns about displacement of problems;
 - (f) The proposals victimise the vulnerable;
 - (g) This was simply a way of making money and the Council should not have removed services and facilities;
 - (h) More information is needed and the proposals should be clearer.
- 4.8 The draft proposals included provisions concerning rough sleeping (making reference to prohibiting rough sleeping during the day or where alternative accommodation is available) and aggressive begging. Although these provisions were intended as a remedy of last resort after support had been offered, the consultation raised particular concerns about the impact of these provisions on vulnerable people.
- 4.9 A petition was received from the Scarborough Free Community group which was signed by 117 signatories opposing the introduction of a PSPO, and which stated:

“We demand that Scarborough Borough Council abandon plans for the introduction of a PSPO. We believe that this would promote the image of Scarborough as a town rife with problems and lacking in compassion. It unfairly targets vulnerable people and those behaving lawfully. Robust legislation already exists to tackle genuine anti-social behaviour, the Council and Police should use these powers instead of potentially criminalising a whole community.”

4.10 A letter was also received from the civil liberties group Liberty, who have raised concerns about PSPOs across the country. Their letter states (inter alia):

“...we are particularly concerned about the use of PSPOs to punish poverty related issues such as rough sleeping...”

4.11 The issues raised pursuant to the consultation exercise have been carefully considered, resulting in significant amendments to the proposals. In particular, a further review was undertaken to ascertain which of the proposals had the highest degree of support, and areas where the proposed remedy would be most appropriately used.

4.12 Whilst acknowledging the wide range of positive and negative views regarding the proposal, there does need to be strong consensus and support for the introduction of the PSPO and the proposals contained therein.

4.13 We have looked carefully at the level of support for each of the proposals, in particular those provisions where over 2/3 of those responding either agreed or strongly agreed with the provision. We have also taken particular regard of the concerns raised by Liberty and the Scarborough Free Community group about the potential impact on vulnerable persons.

4.14 As a consequence we have revised the proposals to include only 3 provisions:

(a) Street drinking;

(b) Intoxicating substances; and

(c) Urination and defecation.

4.15 For the purpose of clarity, none of the other provisions set out at paragraph 4.1 above are being put forward for inclusion in the PSPO.

4.16 The consultation exercise also resulted in the suggestion that the proposed area for the PSPO include 2 additional areas:

(a) Weaponness

A number of residents raised concerns about a potential increase in anti-social behaviour that could arise from the new university and the sports village. Whilst these concerns are acknowledged, there is a need for evidence to support the inclusion of a given area. In a 12 month period from February 2016 to February 2017 only 4 incidents of any kind were reported in this area, and only one of these related to anti-social behaviour.

There are a number of conditions attached to the management of the sports village and the football ground and we would expect these to minimise any incidents.

Whilst the position will be kept under review, there is insufficient evidence at present to justify the extension of this area.

(b) Grosvenor Road and the park area of The Crescent

A number of concerns were raised about drinking and anti-social behaviour in these areas and during the consultation a request was made to extend the area of the PSPO.

In the last year a total of 21 incidents have been reported to the police, including 12 incidents of anti-social behaviour. During the consultation the residents highlighted specific concerns about public drinking and alcohol related anti-social behaviour in this area.

It is therefore proposed that these areas are included in the PSPO boundary.

5. ASSESSMENT

5.1 We are proposing that the PSPO covers the area of Scarborough where most significant problems are experienced.

5.2 40% of all incidents of anti-social behaviour in the Borough are reported within the Castle, Central, and North Bay wards, which are the primary focus of the PSPO.

5.3 The number of incidents of anti-social behaviour for the last 3 years by ward are set out in the table below:

Ward	13/14	14/15	15/16
Castle	1840	1918	1769
North Bay	465	507	499
South Cliff/Ramshill	267	326	295
Weaponness	100	106	110
Northstead	221	219	212
Stepney	245	218	210
Central	400	393	410
TOTAL	3538	3687	3505

5.4 The Community Impact Team takes a proactive response to liaising with community groups, friends groups, residents associations, businesses and local residents, and regularly receives feedback about concerns including:

- Street drinking in public places including Peasholm Park, Crescent Gardens, Dean Road Cemetery, Town Centre, South Cliff Gardens, North Bay, and Foreshore Road;

- Signs of drug use, including new psychoactive substances (NPS) in public places including Peasholm Park, Crescent Gardens, Dean Road Cemetery, Town Centre, South Cliff Gardens, North Bay, Foreshore Road, and public toilets;
- Urinating in the Town Centre;
- Rough sleeping and aggressive begging, including begging by people who are known to have accommodation.

5.5 Taking into account the issues experienced it is considered that the PSPO would be a useful tool to discourage behaviour which impacts upon wellbeing, tourism, and the local economy. The PSPO would be used alongside existing approaches and powers as part of an integrated means of tackling anti-social behaviour within the community.

Street drinking

5.6 There was strong support for this provision with 69% of the respondents either agreeing or strongly agreeing that this should be included in the PSPO.

5.7 Specific areas of the Borough are currently covered by the Designated Public Places Order (DPPO), which gives police officers discretionary powers to require a person to stop drinking and to confiscate alcohol in public places within the designated area. Due to the new powers under the Act, no new DPPOs can be created, and any DPPOs that are in force will cease to have effect on 20 October 2017. This is because they are replaced by the wider ranging PSPO.

5.8 Alcohol related anti-social behaviour in the area currently covered by the DPPO is a significant concern, with 767 incidents reported over the last 3 years in the area proposed to be covered by the PSPO:

Ward	No. of incidents
Castle	196
North Bay	153
Ramshill	156
Weaponness	16
Central	116
Stepney	55
Northstead	75

TOTAL	767
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5.9 The above figures include instances where alcohol was surrendered under the DPPO provisions (separate data is not collated). Feedback from the police staff within the Community Impact Team shows that the DPPO is regularly used.

- 5.10 It is considered that the existing DPPO is a useful tool to deal with street drinking and anti-social behaviour, and in this respect the wording for this provision in the PSPO is similar to the existing wording under the DPPO.
- 5.11 It is not the intention of the PSPO to prohibit drinking in public places per se, but to provide a tool to prevent issues and to tackle anti-social behaviour arising from the use of alcohol. It would not be an offence to consume alcohol, so people peacefully enjoying a glass of wine with a picnic on the beach for example would be unaffected. The offence is to fail to comply with a request to cease drinking or to surrender alcohol in a controlled zone. The provision focuses on preventing problems. Neither would the PSPO apply to licensed premises.
- 5.12 As is currently the case, support will continue to be offered to persons who are vulnerable, including support to access appropriate substance misuse and other services. There are strong multi-agency arrangements in place for persons who may be vulnerable, in particular for individuals who may be rough sleeping.

Intoxicating substances

- 5.13 There were high levels of support for this provision with 70% of respondents either agreeing or strongly agreeing that this should be included in the PSPO.
- 5.14 The majority of drugs offences can be dealt with under the Misuse of Drugs Act 1971, however local intelligence shows that there is an issue with the sale and use of “new psychoactive substances” (NPS), formerly known as legal highs, which mimic the effects of controlled drugs.
- 5.15 The recent Psychoactive Substances Act 2016 created a blanket ban on the supply of NPS, however simple possession of such substances (except in a custodial setting) is not an offence.
- 5.16 It is therefore considered appropriate to include such provisions in the PSPO in order to provide an additional tool to discourage the use of NPS and to reduce the associated anti-social behaviour in public spaces to which the PSPO applies. The wording of the provision closely mirrors the wording relating to the street drinking provisions, to enable the surrender of the NPS in the majority of cases rather than the imposition of a fine.
- 5.17 As is currently the case, support will continue to be offered to individuals to access appropriate services.

Urination and defecation

- 5.18 There were high levels of support for this provision with 74% of respondents either agreeing or strongly agreeing that this should be included within the PSPO.

- 5.19 Urinating or defecating in public are not offences in themselves, although depending on the context (for example if perpetrators are drunk and disorderly or considered to be indecent) then action can be taken under other legislation such as the Public Order Act 1986 or the Criminal Justice Act 1967. Some Councils have byelaws prohibiting this type of behaviour but this does not apply to the Borough.
- 5.20 We know this is an issue in the Town Centre, particularly within the night time economy, where it is considered there are sufficient toilets within licensed premises to make this type of behaviour unnecessary. There is also evidence of regular urination within the shelters on South Cliff. In both cases the practice is unpleasant, unhygienic, and creates an additional cleaning burden for the Council and private businesses.
- 5.21 There are a number of other Councils who have opted to include this provision within their own PSPOs, and which relate to any street or public place within the restricted area.

Other provisions

- 5.22 As has been mentioned earlier in this report, following consultation it is proposed that the PSPO covers only 3 types of anti-social behaviour. Although there were legitimate concerns about the other provisions and the issues they sought to address, it is accepted at present that these issues can be dealt with by other means.
- 5.23 With reference to rough sleeping and begging (including pitching of tents), multi-agency arrangements to provide support and assistance to people who are rough sleeping and begging will continue, including working with specialist support services such as Changing Lives and local voluntary sector organisations. Where anti-social behaviour is a particular issue, existing legislation will be used where appropriate.
- 5.24 With reference to street trading, a new Council policy is being developed. Peddling is also currently regulated under the Pedlars Act 1871, which is administered by the police.
- 5.25 The Council consulted on 2 options in relation to inconsiderate busking and street entertainment. The first was to develop (in partnership) a code of practice for busking. There was a high level of support for this option with 75% of respondents supporting it. The second option was that the PSPO could be used to require buskers to seek permission to perform and comply with the code of conduct. Fewer respondents (55%) supported this option and therefore it is not proposed to include busking within the PSPO, but deal with the issue more informally instead.

The restricted area

- 5.26 The extent of the restricted area is set out in the Schedule to the draft PSPO at Appendix A. This includes areas currently covered by the existing DPPO,

however the boundary has been revised slightly to reflect comments made during the consultation so as to include the area around Grosvenor Road and the park area of The Crescent. In the last year a total of 21 incidents have been reported to the police, including 12 incidents of anti-social behaviour.

Enforcement

- 5.27 It is an offence for a person without reasonable excuse to do anything that they are prohibited from doing under the PSPO, or to fail to comply with a requirement to which the person is subject under the PSPO.
- 5.28 A person guilty of an offence is liable on summary conviction to a fine not exceeding Level 3 on the standard scale (currently £1,000).
- 5.29 The Act also allows for the service of a fixed penalty notice (FPN) where a constable or authorised officer has reason to believe that an offence has been committed. The legislation allows the penalty to be a maximum of £100, which must be paid within 14 days of service. A lesser penalty can be imposed for early payment however it is entirely at the discretion of the Council as to whether to offer such a discount, and if so what that discounted penalty would be.
- 5.30 Payment of a FPN within the 14 day period discharges any liability to conviction for the offence. Should the person fail to pay in full within the 14 day period, court proceedings can be issued for prosecution at the Magistrates' Court.
- 5.31 As noted above, the level of penalty for both fly-tipping and other offences has been subject to discussion at the Yorkshire and Humber Environmental Enforcement Managers Group.
- 5.32 It is proposed that the maximum fixed penalty of £100 should apply as this is not only the most appropriate penalty, but would also act as a deterrent. It is also proposed that there is no discount for early payment. This approach is in line with the approach that the Council have adopted in relation to FPNs for other offences.
- 5.33 In support of the position that there should be no reduction for early payment of an FPN (which has been put into operation by a majority of Councils), and on the basis of the Council's previous experience, allowing early payment options:
- (a) causes a considerable administrative burden and does not deliver the expected outcome of early and prompt payment;
 - (b) reduces the deterrent impact of the FPN regime;
 - (c) produces inequality between those who could afford, and those who may not be able to afford such penalties due to their economic background and circumstances, rather than willingness to pay the fixed penalty.

- 5.34 This Council did for a number of years allow for a discounted rate for early payment of FPNs in relation to other offences, however Officers state that this created a significant administrative burden. They advise that what tends to happen is that individuals will try and pay the reduced amount long after the discounted period has expired, resulting in the Council having to issue a credit prior to taking further proceedings if appropriate.
- 5.35 Officers are strongly in support of not adopting the discretionary early payment discount, which will simplify the system, strengthen the deterrent factor, reduce burden upon resources, and accord with the Council's neighbouring authorities across the region.
- 5.36 It is to be noted that where fines are issued by the Court following prosecution, they are paid to and retained by the Court, and prosecuting authorities must seek to recover their costs as a separate process.
- 5.37 Central Government have acknowledged as part of their rationale for allowing the use of FPNs that whilst not insignificant penalties exist for offenders found guilty of breaching a PSPO, and that authorities can apply to the Court for the payment of their costs (which is at the discretion of the Court and is reliant on the defendant's means in any case), the financial burden and resource commitments often outweigh the benefits and do not always provide a sufficient deterrent.
- 5.38 The new power is intended to provide a more cost effective alternative to prosecution, and it is anticipated that more serious incidents would still be subject to prosecution, as would serial offenders.
- 5.39 Any fines paid under FPNs are retained by the Council and can be used to offset the costs of enforcement.
- 5.40 A new FPN process has also been designed as part of the Transformation programme. This will enable FPNs to be issued and authorised in an efficient manner and for the use of the powers to be monitored.

Signage and publicity

- 5.41 The Council is required to publish the PSPO as made on its website, as well as causing to be erected on or adjacent to the public place to which the order relates such notices as the Council considers sufficient to draw the attention of any member of the public using that place to the fact that the order has been made, and the effect of the order.
- 5.42 The draft PSPO is set out in Appendix A to this report.
- 5.43 With reference to signage, Officers are in the process of finalising suitable wording. It is proposed that signage will wherever possible be located near existing signage, and will utilise street furniture (including bins and lampposts) in order to minimise the visual intrusion, whilst still providing clear information to

people about the provisions. Signs will be displayed in areas where particular problems are known to occur.

6. IMPLICATIONS

Policy

- 6.1 The provisions in this report support the implementation of the Community Safety Partnership Plan, which is part of the Council's policy framework.

Legal

- 6.2 Any interested person (who lives in, regularly works in or visits the restricted area) can challenge the PSPO when it is made or varied. The interested person must bring the challenge to the High Court within 6 weeks from the date it is made or varied. A challenge can only be made on 2 specified grounds:

(a) that the Council did not have power to make the PSPO, or to include particular prohibitions or requirements imposed by the PSPO; or

(b) that a requirement of the Act was not complied with in relation to the PSPO.

- 6.3 When making the PSPO, 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 Convention for the Protection of Human Rights and Fundamental Freedoms, and in the Human Rights Act 1998.

Financial

- 6.4 The Council will be required to put up signage and as such the estimated cost of this will be around £1,500. This can be accommodated within existing service budgets.

Equalities and diversity

- 6.5 All equalities and diversities issues have been considered in the body of this report.

Staffing implications

- 6.6 The PSPO will be managed by the Community Impact Team as part of a partnership response to dealing with anti-social behaviour.
- 6.7 Enforcement will be undertaken by staff from North Yorkshire Police and the Council, and administration will be managed by the police and Council support officers based within the Community Impact Team.
- 6.8 There will be implications in terms of staff time dealing with the enforcement, processing and administration of the PSPO, although this is to some extent mitigated by the time already spent dealing with these issues.

6.9 Where FPNs are unpaid, or where the offending is particularly serious or of a repeated nature, cases may be referred to the Court. This would have an impact upon the Legal Service as it would be necessary to draft appropriate documentation and represent the Council at Court. This will be mitigated by the fact that the use of sanctions under the PSPO would be in conjunction with other anti-social behaviour powers that are already being used and which the Legal Service already advise upon.

Planning implications

6.10 Signage will be erected in consultation with the Planning Service taking into account any conservation area requirements.

Crime and disorder implications

6.11 Under section 17 of the Crime and Disorder Act 1998, the Council has a duty to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it can to prevent crime and disorder in its area (including anti-social behaviour and other behaviour adversely affecting the local environment) and the misuse of drugs, alcohol and other substances, and re-offending in its area.

6.12 The PSPO will provide an additional tool through which the Council is able to tackle anti-social behaviour.

Health and safety implications

6.13 A full risk assessment will be undertaken regarding the use of the powers and guidance issued to relevant staff prior to implementation of the provisions.

Environmental implications

6.14 The PSPO will improve the local environment through more effectively controlling behaviour which impacts negatively on the Borough.

7. ACTION PLAN

7.1 Subject to the agreement of Council it is proposed that the PSPO will be implemented by 1 July 2017.

Action	Date
Risk assessment prepared and staff training	31 May 2017
Signage installed	June 2017
PSPO notice published on Council website	1 July 2017
PSPO implemented	1 July 2017



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Background Papers:

N/A

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT Jo Ireland ON 01723 384315 or e-mail jo.ireland@scarborough.gov.uk

Risk Matrix

Risk Ref	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
1	Incidents of anti-social behaviour are not effectively managed	Reduced quality of life and impact upon wellbeing, tourism, and the local economy	Implement PSPO	C3	B2	Jl	

Glossary of Terms

Risk	An event which may prevent the Council achieving its objectives
Consequences	The outcome if the risk materialised
Mitigation	The processes and procedures that are in place to reduce the risk
Current Risk Score	The likelihood and impact score with the current mitigation measures in place
Corporate Objectives	An assessment of the Corporate Objectives that are affected by the risk identified.
Target Risk Score	The likelihood and impact score that the Council is aiming to achieve
Service Unit Manager	The Service Unit or Officer responsible for managing the risk
Action Plan	The proposed actions to be implemented in order to reduce the risk to the target score

Risk Scoring

Impact	5					
	4					
	3					
	2					
	1					
		A	B	C	D	E
	Likelihood					

Likelihood:

A = Very Low
 B = Not Likely
 C = Likely
 D = Very Likely
 E = Almost Certain

Impact

1 = Low
 2 = Minor
 3 = Medium
 4 = Major
 5 = Disaster