

Meeting:	Executive Member Decision Session Housing, Planning & Safer Communities
Meeting date:	13/11/2024
Report of:	James Gilchrist
Portfolio of:	Cllr Michael Pavlovic, Executive Member for Housing, Planning & Safer Communities

Decision Report: Proposal to Introduce a Citywide Public Space Protection Order (PSPO) to cover: Street Urination & Defecation, Dog Fouling & Control.

Subject of Report

1. To seek approval to progress to the statutory consultation stage of the process to introduce a citywide PSPO to cover: Street urination and defecation, dog fouling and dog control.
2. A follow-up report, presenting the results of the consultation and data relating to the number of reports/council activity around these offences (cleansing etc) will be presented at a future meeting for an evidence-based decision to be made in respect to the introduction of the PSPO.

Benefits and Challenges

3. Introduction of the PSPO will allow for the following benefits:
 - a reasonable, proportionate, and staged enforcement approach to be taken in respect of these offences, consistent with the council's Corporate Enforcement Policy
 - A more cost effective and efficient way of working, by reducing the number of prosecution case files needed to be prepared, reviewed, and presented at court.

- Raise the level of the dog fouling fine to a more appropriate level. The fine for dog fouling, the more harmful offence, is currently less than that of Littering.
4. Challenges may arise from concerns raised during the consultation process. The proposed restrictions seek to allay concerns by targeting unreasonable behaviour, rather than impose disproportionate blanket restrictions on the public's day to day activities. However, the results of the consultation will ultimately shape the PSPO's final provisions.

Policy Basis for Decision

5. The proposal contributes to Council Plan commitments of Health & Well-Being and Cutting Carbon, Enhancing the Environment for Our Future. In addition, it contributes to the Health and Well-Being Strategy. Having access to safe, green and clean spaces has been found to reduce stress, improve mood, and enhance overall psychological well-being.
6. Ensuring that a Fixed Penalty Notice (to discharge liability for prosecution) option is available for these offences significantly reduces the likelihood of cases progressing to court, where higher fines and costs would be imposed, therefore contributing to Affordability. The PSPO will contribute to a safer and cleaner environment across the city, impacting on peoples' feelings of safety and improving health and well-being. In terms of Human Rights, the proposed PSPO aims to address unreasonable behaviour, rather than imposing blanket restrictions on people's activities and introduces exemptions for Assistance Dogs.

Financial Strategy Implications

7. The proposal will introduce a more efficient way of working. It will reduce the officer time required to prepare, review and present cases to court across both the Neighbourhood Enforcement and Legal Services teams.

The proposal will increase the dog fouling fine.

It is possible that the number of Fixed Penalty Notices for Street Urination and Defecation will increase as enforcement agencies,

including North Yorkshire Police, feel the ability to discharge liability for prosecution is more proportionate for non-aggravated offences.

There will be cost implications for signage which will need to be sited along main arterial routes into the city and in public spaces. It is proposed to use lamp-post stickers where possible.

Recommendation and Reasons

8. The recommendation is for approval to proceed to the consultation stage of the process. This will allow for a full evidence-base to be developed, providing a robust basis for a decision to be made in respect to adoption of the PSPO.

Background

9. PSPOs were introduced under the Anti-Social Behaviour, Crime & Policing Act 2014. They can prohibit activities and/or require certain things to be done by people engaged in specified activities in a defined public area. Restrictions are placed on the behaviour of everyone in that locality, allowing for some exemptions. Breach of a PSPO is an offence, enforced by Fixed Penalty Notice in the first instance. The FPN for breach of PSPO is currently £100 (£75 early repayment within 10 days).
10. Council's must be satisfied that there is an evidence base to justify the introduction of PSPO requirements. The local authority should be satisfied on reasonable grounds that the anti-social behaviour in question is of an unreasonable, persistent, and continuing nature and has a detrimental impact on the quality of life of those in the locality
11. Before introducing a PSPO, there are requirements under S.72 (4) of the Anti-Social Behaviour Crime and Policing Act 2014 to consult with:
 - (a) the chief officer of police, and the local policing body, for the police area that includes the restricted area;
 - (b) whatever community representatives the local authority thinks it appropriate to consult;
 - (c) the owner or occupier of land within the restricted area (unless the land is owned by the LA, or it is not reasonably practicable to do so)

Ward and Parish councils only need to be notified, not necessarily consulted (though there is a wide discretion as to who the Council thinks it is appropriate to consult). It is proposed that councillors are included in the consultation.

12. In addition, we propose to consult with groups who represent the elderly, the disabled and the Armed Forces/Veteran community and those that have an interest in dog welfare and represent dog owners.
13. The proposed PSPO seeks to replace the existing 1998 Street Urination and Defecation byelaw in that while the PSPO is in effect, the byelaw has no effect for the duration of the PSPO in the area to which it relates. Once the PSPO expires/is revoked/fails to be renewed, the position reverts to that in the existing byelaw. The byelaw allows for prosecution route only for these offences. Introduction of a Fixed Penalty option will allow for the offences to be treated more proportionately and for a staged approach to enforcement to be taken as advocated by the council's Corporate Enforcement policy. However, a summary conviction will still be sought for repeat offenders and/or aggravating circumstances.
14. The fine for dog fouling is currently restricted under the Dogs (Fouling of Land) Act 1996 to £75. The fine for Littering has been subject to annual inflationary increases and is currently £120. The £100 FPN for breach of PSPO will bring the dog fouling fine to a more appropriate level, comparable to that of Littering, given that dog fouling is arguably the more harmful offence.
15. The introduction of a Dog Control requirement will increase flexibility and proportionality when dealing with Dog Control Offences.
16. At present the council has two enforcement options when dealing with Dog Control offences. Option 1 is to apply the court for a civil Dog Control Order. Option 2 is to issue a Community Protection Warning (CPW) followed by a Community Protection Notice (CPN) if offences continue. An FPN is issued on breach of CPN.
17. Option 1 should only be taken for the most serious of offences. It requires the enforcement officer to submit a case file, to be presented at court by Legal Services, incurring Court Hearing charges.

18. Due to the delay between issuing a CPW and CPN, Option 2 doesn't always provide a sufficiently timely, responsive way to deal with dogs whose behaviour is less serious, e.g. repeatedly escaping from a garden and jumping up, growling or aggressively barking at members of the public, causing fear, alarm, or distress.
19. The introduction of the PSPO Dog Control requirement below will provide an intermediate option:
20. *A person in charge of a dog on land to which this order applies, must ensure that the dog is kept under proper control.*

'Proper control' means that the person in charge of a dog should not allow it to cause fear, alarm, or distress to any person in the vicinity. This would include being permitted to repeatedly behave aggressively towards or make unrestrained physical contact with another person or animal.
21. The proposed PSPO introduces exemptions for Assistance Dogs, anyone training an Assistance Dog and where the dog is being used by police or other agencies permitted by the council, for official purposes.

Consultation Analysis

22. Initial discussions have taken place with the council's Legal Services and Neighbourhood Enforcement teams and with North Yorkshire Police who are supportive of the proposal.

Options Analysis and Evidential Basis

23. Option 1: Proceed to the consultation stage. The results of the consultation will contribute to an evidence base upon which to make a final decision in respect to the proposed PSPO. This will include whether to adopt the PSPO and/or if amendments to its conditions should be made.
24. Option 2: Not to proceed with the proposal to introduce the PSPO and continue with existing arrangements in dealing with the offences prescribed.

Organisational Impact and Implications

25. The report has the following impacts and implications:

- **Financial**

The recommendation in the report is to enter consultation as to whether to introduce a citywide PCSO. This can be done within current budgets in the Community Safety Team. Should the PCSO be introduced there will be one off costs in producing and installing signs and a budget will need to be identified to fund this.

The amount of income raised from Street Urination & Defecation, Dog Fouling & Control isn't significant (<£10,000) but the new process may allow for additional PCN's issues and revenue.

- **Health and Wellbeing**

There is strong evidence that greenspaces and have positive physical and mental health outcomes, to enable individuals access these spaces they should be free from possible health hazards, i.e dog fouling, street urination and defecation. Therefore, Public Health support the proposal to proceed to the consultation stage explained in this paper. As the report outlines this would be an appropriate approach to ensure a sound evidence base is established to adopt the changes in the PSPO across the city.

- **Environment and Climate action.**

Discouraging Street Urination & Defecation and Dog Fouling will improve the environment of our public spaces making them more enjoyable for all.

- **Affordability. No known implications.**

- **Equalities and Human Rights**

The Equalities Impact Assessment will be completed when the results of the consultation are known.

- **Data Protection and Privacy**

The data protection impact assessment (DPIAs) screening questions were completed for the recommendations and options in this report and as there is no personal, special categories or criminal offence data being processed to set these out, there is no requirement to complete a DPIA at this time. However, this will be reviewed following the approved recommendations and options from this report and a DPIA completed if required.

- **Legal**

The Council has power to introduce a PSPO subject to a) compliance with consultation requirements, and b) being satisfied

that the order is a proportionate response to the harm targeted and is consistent with the Public Sector Equality Duty.

The introduction of a PSPO is generally a quicker method of introducing measures to tackle anti-social behaviour, and multiple issues can be dealt with in a single PSPO. This is therefore the preferred method of introducing these measures rather than revoking and introducing individual byelaws which deal with these behaviours, which can be a lengthy process.

The option to issue an FPN under the PSPO would result in a reduced administrative burden on the Council as well as a more proportionate approach from the offender perspective.

Per s.70 of the Anti-Social Behaviour, Crime and Policing Act 2014, where a byelaw prohibits an activity which is also regulated by a PSPO, the PSPO provision prevails and the byelaw is of no effect for the duration of the PSPO in the area to which it relates. As this proposed PSPO is city-wide and at all times, the existing byelaw would have no effect, and no prosecution could be brought under it. It is therefore recommended that the PSPO contain an option to both issue an FPN and/or seek a summary conviction, which could be reserved for the more serious offences or persistent offenders.

The recommendation at this stage is to approve commencement of consultation. Legal advice has been provided in relation to the requirements of statutory consultation, and this advice is summarised at paragraph 11 of this report.

- **Communications**

Introducing a citywide PSPO to address street urination, defecation, dog fouling, and dog control requires clear communication to emphasise the benefits to the city. It's important to focus on the key messages as part of the proposed consultation, while being transparent about the legal process and how residents can provide input. A proactive comms plan will enable targeted communications for key stakeholders.

- **Economy**

An important factor of maintaining a successful economy is to make sure the conditions that build York's reputation as a welcoming city for business growth and visitors alike is to make sure it is clean and safe. The introduction of PSPO will help deliver this.

Risks and Mitigations

26. No known risks.

Wards Impacted

27. All wards.

Contact details

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Background papers

Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers Statutory Guidance for Frontline Professionals
https://assets.publishing.service.gov.uk/media/6422a19b60a35e00120cae63/2023_Update_ASB_Statutory_Guidance_-_FINAL__1_.pdf

LGA Guidance for Councils on PSPOs

https://www.local.gov.uk/sites/default/files/documents/10.21%20PSPO%20guidance_06_1.pdf

Annexes

Annex A: Supporting Data