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| SUBJECT: | PROPOSALS FOR THE IMPLEMENTATION OF A PUBLIC SPACE PROTECTION ORDER |
| DIRECTORATE: | DIRECTOR OF HOUSING AND COMMUNITY SERVICES |
| LEAD OFFICER: | SAM BARSTOW, PUBLIC PROTECTION AND ANTISOCIAL BEHAVIOUR SERVICE MANAGER |

1. Purpose of Report

- 1.1 To brief Executive members on the process and consideration given to date, to the implementation of a Public Space Protection Order in the City Centre area of Lincoln.
- 1.2 To seek the views of the Executive Committee on proposals regarding the potential to implement a new Public Space Protection Order (PSPO), and the scope to which this could be applied in conjunction with relevant partners.

2. Executive Summary

- 2.1 In October 2014 the Secretary of State enacted new powers from the Anti-Social Behaviour, Crime and Policing Act, relevant to tackling Anti-Social Behaviour. These new powers also make changes to some of the relevant existing legislation and the Council is required, within the period of three years, to reconsider its Designated Public Place Orders (DPPOs) and either withdraw or replace them with new Public Space Protection Orders (PSPOs).
- 2.2 The new orders are more flexible and can be applied to a much broader range of issues, with local authorities having the ability to design and implement their own prohibitions or requirements where certain conditions are met. These conditions centre on the impact to the quality of life in the locality, persistence, and whether the impact makes the behaviour unreasonable.
- 2.3 The City of Lincoln, much like other towns and cities nationally, has a recurring issue with street drinking, in particular in the summer months. Whilst a number of initiatives have helped to reduce the impact and prevalence of this behaviour, along with having a positive impact on reporting, there is concern about loss of the ability to enforce provision relating to alcohol should the DPPO be withdrawn without replacement.
- 2.4 New Psychoactive Substances (NPS), often referred to as 'legal highs', have become a major concern to local agencies over the last three years. Three shops within the City have attracted significant attention, leading to numerous Police and multi-agency actions. These issues in particular have had an impact in the City Centre. The lower High Street and St Mary's Street area has suffered increases in Anti-Social Behaviour directly related to the prevalence of shops in this area selling these substances. Anecdotally officers are told that Lincoln is well known across the midlands for having a ready and cheap supply of these substances, leading to

what has become known amongst agencies as “legal high tourism”.

- 2.5 Officers from a range of local agencies, but in particular Lincolnshire Police and the City of Lincoln Council, have considered the potential use of the new powers to address the current issues within Lincoln City Centre. They have developed a proposal designed to provide opportunities to significantly impact, through enforcement (ultimately backed by support and interventions), the issues caused by use of intoxicating substances, in public, in the City Centre area.
- 2.6 A public consultation process has been conducted, which has been considered by the Council’s Policy Scrutiny Committee. They have recommended implementation of the Order on the terms set out within the report.

3. Review of the Designated Public Place Orders

- 3.1 The City of Lincoln Council introduced the provision for Designated Public Place Orders, in conjunction with Lincolnshire Police, with orders covering Lincoln City Centre, Temple Gardens and the Arboretum. The former in 2012, and the later two in 2006.
- 3.2 The repeal of this section of the Police and Criminal Justice Act 2001 necessitates changes to the designation of Public Place Orders and these will either require conversion, to a new Public Space Protection Order, or abolition. Either action is required within a period of three years from the date of enactment, i.e. by 20 October 2017.
- 3.3 Both the Arboretum and Temple Gardens DPPO have been in force for significant periods of time, having first been established in 2006. These areas have received limited enforcement attention and the Orders have therefore not been thoroughly or formally reviewed. Where there has been focus however is within the City Centre area, which was initially implemented in April 2012, following approval by full Council on the 22 November 2011. For clarity, the Designated Public Place Order allows a constable, where he reasonably believes consumption of the alcohol within the area will lead to Anti-Social Behaviour being committed by the individual, to request forfeiture of any alcohol in the individual’s possession. Failure to comply with the request is an offence. This has been considered as quite ambiguous in terms of its application and can lead to broad interpretation and, at times, limits the impact of the order.
- 3.4 The Policy Scrutiny Committee conducted a thorough review of the implementation and effectiveness of this order in 2013 and took evidence from the Council’s Anti-Social Behaviour Team, Lincolnshire Police, Bailgate Guild, Visit Lincoln and Lincoln Business Improvement Group (BIG).
- 3.5 It was clear from the evidence heard that the DPPO had been effective in mitigating issues, however the issues it was designed to tackle had not been resolved. At point of review on this matter a strategy was being created which would seek to address issues more thoroughly through improved partnership working. Again this project has had some impact against the level of incidents relating to alcohol fuelled ASB in the area, however it is clear that despite improvement the problem persists. What has been clear throughout the operation of this order is that the Police have found it challenging to enforce due to the ambiguity of the requirement for

knowledge of resultant behaviour. This can lead to complexities in enforcement which can lead to the power being underutilised. The historic order has also been exclusively the domain of a police constable to enforce.

4. Public Space Protection Orders

4.1 The Anti-Social Behaviour, Crime and Policing Act came into force on 20th October 2014. This Act contains the provisions for the Public Space Protection Order, which was enacted by order of the Secretary of State on the 20th October 2014

4.2 Local authorities have the power to make Public Spaces Protection Orders if satisfied on reasonable grounds that two conditions are met.

The first condition is that—

- a) activities carried on in a public place within the Authority's area have had a detrimental effect on the quality of life of those in the locality, or
- b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.

4.3 The second condition is that the effect, or likely effect, of the activities—

- a) is, or is likely to be, of a persistent or continuing nature,
- b) is, or is likely to be, such as to make the activities unreasonable, and
- c) Justifies the restrictions imposed by the notice.

Activities can include things that a person or a group does, has done or should do (in order to reduce the detrimental effect).

4.4 A Public Space Protection Order is an order that identifies the space to which it applies ("the restricted area" within which the impact has or is likely to occur[ed]) and can make requirements, or prohibitions, or both within the area. This means that the local authority can, by virtue of the order, require people to do specific things in a particular area or not to do specific things in a particular area. The local authority can grant the prohibitions/requirements where it believes that they are reasonable in order to prevent or reduce the detrimental impact. The order can be made so as to apply to specific people within an area, or to everybody within that area. It can also apply at all times, or within specified times and equally to all circumstances, or specific circumstances. The order can apply for a maximum of three years upon which the process of reviews and consultation must be repeated to ensure the issues is still occurring and the order is having the required effect. Thereafter it can be extended for a further three years and, upon the reviews and consultation taking place, can be extended more than once for further periods of three years.

4.5 Failure to comply with either a prohibition, or requirement, within the order is an offence. Upon summary conviction (offences heard within the Magistrates Courts) defendants can face a fine not exceeding level three on the standard scale (currently £1000). The defendant cannot be found guilty of an offence under a prohibition/requirement where the local authority did not have the power to include it in the order. Breaches of the order can also be discharged by use of a fixed penalty notice (FPN).

4.6 Consumption of alcohol, contrary to the terms of any order made, is a separate issue and is not in itself an offence, the offence is committed by failure to comply

with a request to surrender the alcohol, from an authorised person.

- 4.7 The Act is not overly descriptive about the necessary process required for application of these powers. It has therefore been necessary to design a process that is considered to be appropriate and suitably robust.

After consultation with the Portfolio Holder for Public Protection and the Environment, and the Leader approval was given to launch a PSPO consultation based on a proposal, as set out below.

5. The Proposal

- 5.1 The Recommendation is to seek a Public Space Protection Order, in the area defined by the attached map (Appendix A), with the following prohibition:

Person(s) within this area will not:

- *Ingest, inhale, inject, smoke or otherwise use intoxicating substances.*

Intoxicating Substances is given the following definition (which includes Alcohol and what are commonly referred to as 'legal highs'): Substances with the capacity to stimulate or depress the central nervous system.

Exemptions shall apply in cases where the substances are used for a valid and demonstrable medicinal use, given to an animal as a medicinal remedy, are cigarettes (tobacco) or vaporisers or are food stuffs regulated by food health and safety legislation.

Persons within this area who breach this prohibition shall: surrender intoxicating substances in his/her possession to an authorised person

(An authorised person could be a Police Constable, Police Community Support Officer or Council Officer, and must be able to present their authority upon request)

- 5.2 The justification for this area is based on a similar premise to that of the original Designated Public Place Order in terms of the Lincoln BIG (City Centre area). It is clear that the prevalence of these issues remain within this area. There is also significant concern, in relation to the lower High Street, that through the creation of this order, there is likely to be behaviour that will have a detrimental impact on the quality of life of those in the locality in both the East and West residential areas that sit either side of the lower High Street. The Council has already seen a significant increase in the issues in the Chaplin Street area (as above) and Hermit/Portland Street areas of the City, and therefore Officers believe that displacement of any city centre issues to these areas, would be highly likely and would have a clear and detrimental effect.

6. The Process To Date

- 6.1 Following approval by the Portfolio Holder a formal consultation was launched on the 17th November 2014. As above, the Act is not specific on what constitutes an appropriate consultation, however it is clear that it requires that the local authority consult with the following:
- Chief Officer of Police for the local area

- Police and Crime Commissioner
- Land Owners in the area
- Any Community Representatives the local authority feels appropriate.

Consultation letters were sent to all of the above, along with a significant array of partnership agencies (providing treatment, support, enforcement and representing business interests). Formal responses were received from;

- Member of Parliament
- Chief Officer of Police

6.2 The Act requires that landowners within the area are consulted, the method of which can differ. In this case there were around 10,000 properties within the proposed area, making direct individual contact unviable. A successful press campaign was therefore launched to solicit responses and the following media coverage was achieved;

- BBC News (Look North)
- BBC Radio Lincolnshire
- Lincs FM
- Siren FM
- The Lincolnite

6.3 Media coverage and interest from other local authority areas was also apparent with media coverage in Kent and Plymouth areas, agency interest from Leeds and Leicestershire areas, and discussion at a national conference held at Leeds, along with direct contact from the Home Office.

There were a total of 196 responses received in the online survey, a summary of which is provided and attached as Appendix B.

6.4 Following closure of the consultation on the 15th December 2014, a report was drafted and considered at the Council's Policy Scrutiny Committee on the 17th December 2014. Speakers were also invited and the Committee heard from; The Lincoln Business Improvement Group, Framework Charity, Lincoln Resident and Lincolnshire Police, all of which were broadly supportive of the measures proposed and referenced various experiences, both personal and organisational, which supported the proposal. The minutes of this meeting are attached as Appendix C.

6.5 Committee members did raise some concerns around enforcement. It was agreed that an enforcement strategy should be drafted and agreed by both Lincolnshire Police and City Council officers, which will make clear the commitment and methods to be used to enforce the order (should the Council agree to its creation at its meeting in February). It was furthermore agreed that this order should be reviewed after six months following its enactment, expected to be November 2015.

7. Creating a Public Space Protection Order

7.1 In order to make the Public Space Protection Order, members would need to be satisfied that the legal conditions, laid out above, have been met. Officers' view is that these requirements have been met based on:

- Evidence gathered by the Council itself, and from other associated agencies

including the Police, recording crime and ASB statistics for the area. Attached as appendix D. Figures from the centre for social justice relating to legal highs attached as appendix E.

- Feedback from the consultation including giving vital personal experiences Summary attached as appendix B. Full responses are available on request from Democratic Services.
- Scrutiny committee's views based on assessment of the evidence, consultation feedback, and verbal submissions at Committee from third parties (ref Appendix C).

7.2 This requirement was made clear to members of the Policy Scrutiny Committee who were briefed that in order to make a positive recommendation, they must be satisfied on legal grounds.

7.3 The final decision on approval of the Order will be made by full Council at its meeting on the 25th February 2015 and must be made with due consideration to the evidence provided throughout the process.

7.4 In relation to the DPPOs covering the Arboretum and Temple Gardens, officers have recommended that these remain in place until the review of the new Public Space Protection order in November 2015 has taken place, at which point consideration will be given to the value of revoking DPPOs and instating PSPOs for these areas also.

8. Implementation

8.1 Implementation of this order, legally, would require a public notice to be published, This would be done through a formal notice in the local newspaper, notification on our website and press releases through media outlets.

8.2 Although not necessarily a statutory requirement, signage would normally be required in the area explaining the order in plain English and what it means in practical terms. This is to provide support for the enforcement and prevent risks of mitigation pleas from those found to be in breach. Such signage would be small and concise, and would ordinarily be on all major entrance-ways to the City Centre, replacing the existing DPPO signage.

9. Enforcement

9.1 In relation to enforcement of these orders there are two fundamental differences to that of our abilities under the Designated Public Place Orders, these are:

- Police Community Support Officers can enforce
- Council Officers can enforce

9.2 It has been accepted by both Council officers and Lincolnshire Police that whilst the local Authority may have the legal ability to enforce, it does not have the skills or the resources to do on-street enforcement of this nature. It is also accepted that enforcement of this order will present a heightened element of risk to personal safety, due to the nature of the problem, and therefore would not be appropriate for Council Officers with their current training and safety measures. Lincolnshire Police have committed therefore that should this order be made, they will accept responsibility for enforcement, with back office support conducted by the Council if

required.

- 9.3 A detailed document surrounding enforcement approach, resources and partnership mechanics will be provided as an appendix to the final report made to Council in February 2015.

10. Implications

- 10.1 As with any new legislation of its type, this is untested ground and the legislation will be further defined in years to come by a process of appeals and High Court rulings. Any legal challenge presents a risk to the Authority. The legislation supporting implementation of the new Orders states that “interested persons” may challenge the validity of any order in the High Courts. This means that the Council could face a challenge against its ability to implement the Order. An application of this nature must be made within six weeks, beginning on the day the Order is made or varied. There are three grounds upon which a challenge could be made, these are:

- That the local authority did not have the power to make the order or variation, or to include particular prohibitions or requirements imposed by the order (or by the order as varied)
- That a requirement under this element of the legislation not complied with in relation to the order or variation
- The High Court would have the power to quash, amend or uphold the order.

- 10.2 The penalty for breaches of this order relate to fines alone, which may lead to significant levels of non-payment. The suite of new powers available however would allow officers to utilise a range of measures for those identified as persistently breaching the order, for example:

- Community Protection Notices could be issued against the individuals
- An Anti-Social Behaviour Order (ASBO) could be sought against individuals, which carries tougher sanctions (this will be replaced by the Civil Injunction next year)
- A Criminal Behaviour Order could be sought. Breach of the PSPO is an offence and upon conviction, individuals could be made subject to a Criminal Behaviour Order. This carries both tougher sanctions, along with the ability to implement positive conditions requiring support for substance misuse issues.

11. Strategic Priorities

- 11.1 Growing the local economy

As identified within the body of the report, anti-social behaviour has a real impact on the City Centre. Any actions the authority can take to improve community safety and consequently the reputation of the City Centre will be of benefit to local business.

11.2 Protecting the poorest people in Lincoln

Generally it is understood anti-social behaviour has a disproportionate affect effect on those most vulnerable in our communities.

12. Organisational Impacts

12.1 Finance

Enforcement costs under this order will be met by existing Police staff. Any supplementary enforcement will form a part of the role of the Public Protection and Anti-Social Behaviour Officers. There were some internal costs for consultation and a small cost associated with the publication of the Order and stationary for FPNs along with signage. These will be met from within existing budgets.

Income from FPNs is expected to be small and will be used to cover the associated costs of implementing the proposal.

12.2 Legal Implications including Procurement Rules

This report recommends legal action be taken by the Authority in accordance with the new legislation, and also involves subsequent legal enforcement relevant to that action. The legal parameters laid out within the Act will be considered carefully against the proposal for an Order.

12.3 Land, property and accommodation

All land owners within the area are required to be consulted, which has been satisfied through the consultation conducted.

12.4 Equality, Diversity & Human Rights (including the outcome of the EA attached, if required)

The Act requires that consideration is given to both Human Rights and Rights to Assembly. As a part of the report to Council a full assessment will be completed.

12.5 Significant Community Impact

This report identifies a proposal that has the potential to deliver a significant positive community impact if enforced to its full potential.

13. Risk Implications

13.1 (i) Options Explored

Do nothing – The current Designated Public Place Order could be left unchanged for a further period of three years. This option was disregarded due to both the ambiguity of the Act and the associated issues, along with the clear need to tackle issues relating to use of new psychoactive substances.

Replace the DPPO with a simple alcohol related PSPO. This was again disregarded due to the ambition and need to tackle new psychoactive substances.

Create a new PSPO designed to tackle the use of new psychoactive substances and alcohol and the associated impact this has on those living, visiting and working within Lincoln City Centre.

13.2 (ii) Key risks associated with the preferred approach

If the correct process to introduce a PSPO is not followed correctly this could lead to a challenge which will mean the Authority could face legal costs and reputational damage.

There is also a risk that expectations will be raised by this order which agencies cannot meet. The order may not resolve the issues. The order will not resolve health risks associated with use of these substances and may assist in the development of an 'underground' trade.

Implementation of this order could lead to displacement. The most likely areas of displacement are East and West of the lower High Street. Officers have considered this and think it justified that to mitigate this risk, the Order be made to cover these areas. Note the areas covered in appendix A.

The order will be reviewed by the Council's Crime and Disorder Scrutiny Committee 6 months after implementation, and annually thereafter in order to mitigate the prevalence of any of the associated risks.

14. Recommendation

14.1 The recommendation of the Policy Scrutiny Committee is to endorse the proposal, and refer it to Full Council on 25th February 2015.

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| Key Decision | No |
| Do the Exempt Information Categories Apply? | No |
| Call in and Urgency: Is the decision one to which Rule 15 of the Scrutiny Procedure Rules apply? | No |
| How many appendices does the report contain? | Appendix A – Map of Area Appendix B – Summary of Responses Appendix C – Minutes of Policy Scrutiny Appendix D – ASB Statistics Appendix E – Figures from Centre for Social Justice |
| List of Background Papers: | None |
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