

## **CABINET**

<b>DATE</b>	8 <sup>th</sup> March 2023
<b>REPORT OF</b>	Cllr Ron Shepherd, Portfolio Holder for Safer Communities
<b>RESPONSIBLE OFFICER</b>	Carolina Borgstrom, Director for Environment, Economy and Infrastructure
<b>SUBJECT</b>	Introduction of Public Space Protection Order covering Resort and Parks and Open Spaces
<b>STATUS</b>	Open
<b>FORWARD PLAN REF NO.</b>	CB 02/23/02

### **CONTRIBUTION TO OUR AIMS**

The recommendations within this report contribute to the strategic objectives and priorities of the Council to continue the programme of delivering behaviour change through robust enforcement and targeted communications.

Delivering robust enforcement to tackle anti-social behaviour demonstrates that North East Lincolnshire Council is committed to taking reasonable and proportionate enforcement approach as identified as a priority within the Council Plan 2022/23

By improving neighbourhoods, the Council can contribute towards ensuring North East Lincolnshire is a better place to live, work, invest and visit.

### **EXECUTIVE SUMMARY**

This report continues our Placed Based approach around introducing new Public Space Protection Orders (PSPOs) in defined geographical areas covering a wider range of prohibitions where evidentially appropriate. It is proposed that ten prohibitions are introduced in North East Lincolnshire into a Resort and Parks and Open Spaces Public Space Protection Order.

We want parks, beaches, the sea front and other open spaces in North East Lincolnshire to be safe and clean places for local people and visitors to enjoy. Most people respect these important places, but we often receive complaints about anti-social behaviour and people acting irresponsibly.

This PSPO is a means of managing that behaviour in parks and open spaces, on the beaches and other public spaces. These behaviours include: -

1. Bonfires and barbecues
2. Unauthorised Vehicle Parking on the Pier slipway and Brighton slipway
3. Illegal encampments and overnight camping/caravanning on all council land
4. Releasing of Chinese lantern type devices
5. Using a jet ski too close to other water users
6. Using council land as a take-off or landing site for paragliders, paramotors and hang gliders
7. Use of metal detectors
8. Fishing
9. Bait Digging
10. Obstruction of Officer

## **RECOMMENDATIONS**

It is recommended that Cabinet:

1. Approves the introduction of the PSPO and the prohibitions as defined for 3 years from implementation.
2. Authorises the Director of Economy, Environment and Infrastructure, in consultation with the Portfolio Holder for Safer and Stronger Communities, to approve all future renewals, variations and extensions to this PSPO, where evidence supports the application.
3. Delegates the necessary enforcement powers in relation to Public Space Protection Orders under the Anti-Social Behaviour, Crime and Policing Act 2014 in relation to anti-social behaviour to City of Doncaster Council.
4. Authorises the Monitoring Officer to execute all legal documentation in connection with this PSPO.

## **REASONS FOR DECISION**

Approving the proposed PSPO will enable the Council and Police to deal more effectively with reoccurring unreasonable anti-social behaviour (ASB) within our identified public spaces.

The anti-social activities are having a negative and detrimental effect on our resort, parks and open spaces, affecting residents and visitors/tourists to the area who are engaging in normal or leisure activities individually or as a family.

## 1. BACKGROUND AND ISSUES

- 1.1 The introduction of this PSPO is required due to the following issues:
- Concerns of safety
  - Concerns of Partners
  - Links to the Habitat Management Plan and considering Protected species, heritage, archaeology, and natural habitats
  - NELC has a legal duty under the Wildlife and Countryside Act 1981 as a competent authority, to manage and protect the species and habitats of the Humber Estuary / Site of Special Scientific Interest (SSSI) units, within the local authorities boundaries.
- 1.2 This PSPO is part of the council's wider management strategy for the Cleethorpes Coastline and forms an integral part of the delivery of the Cleethorpes Habitat Management Plan.
- 1.3 A PSPO can be introduced in a specific public area where the local authority is satisfied on reasonable grounds that certain conditions have been met. Under section 59 of the 2014 Act, local authorities must be satisfied on reasonable grounds that the activity subject to an Order:
- has a detrimental effect on the quality of life of those in the locality (or it is likely that activities will take place and have such an effect)
  - is (or is likely to be) persistent or continuing in nature
  - is (or is likely to be) unreasonable
  - justifies the restrictions being imposed.
- 1.4 Pursuant to section 70 of the Act, any existing byelaws which prohibits an activity regulated by a PSPO has no effect in relation to the restricted area during the currency of the PSPO. Therefore, such byelaws will no longer apply while the PSPO is in place.
- 1.5 The Home Office statutory guidance re issued in December 2017 states that proposed restrictions should focus on specific behaviours and be proportionate to the detrimental effect that the behaviour is causing or can cause, and are necessary to prevent it from continuing, occurring or recurring. A single PSPO can be used to target a range of different ASB issues.
- 1.6 The legislation sets out several additional requirements for consultation and communication before an Order is introduced and once it is implemented. Humberside Police was consulted as part of this project group.
- 1.7 Used proportionately and in the right circumstances, PSPOs allow local areas to counter unreasonable and persistent behaviour that affects the quality of life of its residents.

1.8 They can send a clear message that certain behaviours will not be tolerated and help reassure residents that unreasonable conduct will be addressed.

### 1.9 **Human Rights Act Implications**

1.10 There are some limitations set out in the legislation regarding behaviours that can be restricted by PSPOs. Under the 2014 Act, local authorities must have regard to the freedoms permitted under articles 10 and 11 of the Human Rights Act 1998 when drafting, extending, varying or discharging an Order.

1.11 These cover freedom of expression, and freedom of assembly and association respectively. Wherever proposals for an Order have the potential to impinge on the rights under articles 10 and 11, consideration must be given as to how to demonstrate that they satisfy the requirements of paragraph 2 in each of the articles.

1.12 The implementation of this PSPO is compliant with Article 10 and 11 of the Human Rights Act 1998.

1.13 Article 10 and 11 relates to the “Freedom of Expression” and the freedom to be part of a “Lawful Assembly and Lawful Association”. Local Authorities are allowed to put conditions in place under both articles to prevent: -

- crime and disorder,
- protect health and morals,
- protect individual rights and reputations.

### 1.14 **Equality and Diversity Impact Assessment**

1.15 Although it is not a specific requirement of the legislation an Equality and Diversity Impact Assessment will be carried out prior to implementation to assess whether the proposed PSPO will have disparate impact on groups with protected characteristics. This process will help to establish any potential negative impacts and consider how to mitigate against these. This exercise will also help to ensure transparency.

### 1.16 **Consultation Results on Prohibitions**

1.17 Prior to public consultation, Portfolio holders for Environment and Transport, Safer and Stronger Communities and Culture, Heritage and Visitor Economy were briefed on proposed Prohibitions. In addition, members were consulted informally on proposed prohibitions during a combined Tourism and Visitor Economy and Communities Scrutiny meeting. This took place on 27 September 2022.

1.18 Public consultation on the introduction of the ten prohibitions was undertaken through the council’s website between November 2022 and January 2023.

1.19 The results showed 684 people viewed the consultation. A total of 374 people started the survey and 328 people (88%) completed it.

1.20 Results show overall 98% of respondents believe that our parks and open spaces including the beach and seafront should be safe and clean for all to use.

1.21 The rationale for introducing each prohibition, along with the public consultation results, the theme of each prohibition and reasons to support introduction, if not majority supported is given below.

## 1.22 **Bonfires and Barbecues**

### Rationale for Introduction

This prohibition is needed to prevent damage to SSSI/SPA features and other protected habitats within the borough.

It would also be preventative from a safety perspective as this would reduce the risk of wildfires starting in protected habitats, open spaces, croplands and buildings and homes. In addition, debris often left following an open fire can harm and kill certain wildlife. The resultant litter is also a nuisance and would need removing.

### Prohibition Wording

*“To prohibit the lighting of fires and the use of any barbecues and disposable barbecues on council-owned parks, open spaces, beaches and the seafront.”*

- Support – 77%
- Don't support– 23%

## 1.23 **Unauthorised Vehicle Parking on the Pier slipway and Brighton slipway**

### Rationale for Introduction

This prohibition is needed due to public safety reasons. The slipways need to be kept clear so to allow beach safety and the coastguard to access in case of emergencies.

### Prohibition Wording

*“To prohibit any vehicle from parking on the Pier slipway and Brighton slipway outside of the resorts permitted rules”*

- Support - 91%
- Don't support - 9%

## 1.24 **Illegal encampments and overnight camping/caravanning on all council land**

### Rationale for Introduction

This prohibition is needed due to problems with Illegal encampments and overnight camping/caravanning on council land which is not suitable for such activities. The impact of such is differing but, likely to be anti-social and in some circumstances which can contribute to the fear of crime and can be intimidating for visitors and residents.

### Prohibition Wording

*“To prohibit any Camping or the erection of any structure (this includes but is not exclusive to vehicles, tents, yurts and any other temporary building) being used to occupy land on beaches, promenades, parks and open spaces, footpaths, car parks and surrounding areas of the public realm without prior consent of the Council with the exception of sunshades”*

- Support – 80%
- Don't support this – 20%

## 1.25 **Releasing of Chinese lantern type devices**

### Rationale for Introduction

This prohibition is needed to prevent damage to SSSI/SPA features and other protected habitats within the borough.

It would also be preventative from a safety perspective as this would reduce the risk of wildfires starting in protected habitats, open spaces, croplands and buildings and homes.

### Prohibition Wording

*To prohibit the deliberate or intentional release of any Sky lanterns, Chinese lanterns and helium balloons or anything carrying an open flame on council-owned parks, open spaces including the beach and the seafront.*

- Support - 90%
- Don't support 10%

## 1.26 Using a jet ski too close to other water users

### Rationale for Introduction

This prohibition is needed following several safety reports and reported incidents from swimmers/paddleboarders following issues in the water with jet ski users.

### Prohibition Wording

*“To prohibit the irresponsible use of Personal Water Craft (PWC) (including jet skis) on and around the seafront that causes alarm, distress and harassment to others. This may include but is not limited to the following:”*

- *The use of craft in a manner that poses a risk to the safety of people*
- *Risk of disturbance to wildlife*
- *The use of craft in a manner that has the potential to cause harassment, alarm and distress to any other beach or coast users, or residents. E.g., in the dedicated swim lanes, clearly marked out by buoys.*
- Support - 90%
- Don't support – 10%

## 1.27 Using council land as a take-off or landing site for Paragliders, Paramotors and Hang Gliders

### Rationale for Introduction

This prohibition is needed to ensure public safety by preventing take off/landing in parks/open spaces which can present a danger to residents/visitors using the space for other leisure activities.

This follows several safety reports and complaints from residents of Paramotorists flying too close to housing and people.

In addition, preventing this will protect the SSSI/SPA areas, wildlife and protected habitats, open spaces, croplands.

### Prohibition Wording

*“To prohibit any paragliders, paramotors or hang gliders to land in or take off from council land, council- owned parks, the protected Site of Special Scientific Interest (SSSI) area, open spaces and the seafront other than in an emergency”.*

- Support - 73%
- Don't support - 27%

## 1.28 Use of Metal Detectors

### Rationale for Introduction

This prohibition is needed to prevent land, habitats and for public safety reasons. While the act of metal detecting does not itself create a public safety risk, the resultant hole created does cause environmental damage, this may be to the SSSI/SPA features or other protected/wildlife, local nature reserves including the ancient woodland of Bradley Woods or any parks and open spaces.

It also disturbs the local habitat and species in their own environment which may be protected, rare or locally important including local archaeology and scheduled Monuments.

In addition, all parks and open spaces are operational and require consideration of public health and safety. Unfilled holes are likely to cause injury or harm.

### Prohibition Wording

*“To prohibit the use of any device designed or adapted for detecting or locating any metal or mineral on any council land including council-owned parks and open spaces, beaches, SSSI area and the seafront”.*

- Support - 41%
- Don't support - 59%

### Reasons to support introduction

Although this prohibition is not supported by the majority of the public respondents, this prohibition is needed for the following reasons: -

- 1 There are laws concerning protected sites, and of particular importance within North East Lincolnshire and the whole Humber Estuary, is the Humber Estuary Site of Special Scientific Interest (SSSI) which is also protected in law as a Special Protection Area (SPA), Special Area of Conservation (SAC), International Wetland of Importance under the Ramsar Convention, and a European Marine Site (EMS).
- 2 The protected area within North East Lincolnshire is the whole of the coastline from the northern boundary in Immingham to the southern boundary at Tetney Marshes/Fitties car park.
- 3 There are also environmental concerns for habitats and species that can include seasonal variations, scheduled Monuments, registered archaeological sites, Priority Habitats and Species, Local Wildlife and Geological Sites.
- 4 All parks and open spaces in NELC ownership are operational and require consideration of public health and safety. Unfilled holes are likely to cause injury or harm.
- 5 Metal detecting is already prohibited under a byelaw.

- 6 Public safety is at risk regarding unfilled holes, unexploded ammunition, shallow-capped land-fill sites.
- 7 A financial and reputational risk of insurance claims from non-backed filled holes and recovered detritus, and damage to grounds maintenance machinery.

## 1.29 **Fishing**

### Rationale for Introduction

This prohibition is needed to allow the council to manage and control lakes and ponds and to regulate to avoid bad practices, littering, harm to wildlife and damage and disturbance to wildlife.

### Prohibition Wording

*“Fishing is only at permitted at the Boating Lake, Cleethorpes Country Park and Sidney Park subject to the below conditions:”*

- a) *All anglers must have a valid ticket, purchased from NELC website*
- b) *All anglers must have appropriate rod licence issued by the Environment Agency with them and produce on demand.*
- c) *Failure to comply with either part a or part b will breach this PSPO.*
- d) *Fishing at any other council managed or maintained lakes and ponds is prohibited and will breach this PSPO.*

- Support - 87%
- Don't support - 13%

## 1.30 **Bait Digging**

### Rationale for Introduction

This prohibition is needed to protect the SSSI/SPA and ensure we have robust enforcement measures in place for anyone who breaches the current permitting scheme in place.

To protect the SSSI/SPA/SAC through regulation requiring adherence to legislation under the Wildlife & Countryside Act 1981 (as amended) section 28 (4)(b) substituted by Schedule 9 to the Countryside and Rights of Way Act 2000

### Prohibition Wording

*“Bait digging is only permitted in the following locations:*

- a) Subject to conditions of having a valid permit (a map will be provided with the permit) from NELC to dig bait in the designated areas below*
  - b) From North Promenade, between wonderland Terminal Groyne (Rock Groyne) and the Pier*
  - c) From Humberston, between the northern end of the Fitties and the dune stabilisation zone, at the end of 5<sup>th</sup> Avenue pedestrian access.*
  - d) The whole of the area that is legally protected under the Sites of Special scientific Interest (SSSI)*
  - e) Baiting digging outside of these conditions will breach this PSPO*
- Support both sites – 82%
  - Only support the North Promenade site – 5%
  - Only support the Humberston site – 3%
  - Don't support - 10%

### 1.31 **Obstruction of Officer**

#### Rationale for Introduction

This prohibition is needed due to the levels of obstruction that officers engaged in this area of enforcement are subjected to by certain members of the public which is evidenced by other PSPO's operated within the borough.

This obstruction can be the wilful interference of a third party to disrupt the issuance process between an offender and officer or similar obstruction.

#### Prohibition Wording

*Anyone wilfully obstructing or disturbing any authorised officer of the Council in his duties in the proper execution of this Public Space Protection Order will be deemed to be in breach of this Order.*

- Support this – 89%
- Don't support this – 11%

### 1.32 **Local Enforcement**

Under section 67 of the Anti-social Behaviour Crime and Policing Act 2014 an individual may be issued with a fixed penalty fine of £100 or be reported for a summary offence where upon conviction is liable to a fine not exceeding level 3 on the standard scale.

This PSPO will be delivered in line with our current Service Level Agreement with the City of Doncaster Council, who will manage an enforcement provider, currently LA Support and their officers, who will act as authorised persons of North East Lincolnshire Council.

In line with other PSPO's, the Environmental Enforcement Officers within the council and Humberside Police would also be authorised persons.

### 1.33 **Implementation and Duration**

1.34 It is anticipated this PSPO will become effective on 1<sup>st</sup> April 2023 and would remain in force until the review date in 3 years namely 1<sup>st</sup> April 2026.

1.35 For the first month, a softer enforcement approach will be taken, that will involve warning people and giving advice only. From 1<sup>st</sup> May 2023 onwards, fixed penalty notices will be issued on a zero-tolerance approach.

## 2. **RISKS AND OPPORTUNITIES**

2.1 There is always a risk around public expectation and for reputational damage to NELC and the North East Lincolnshire area resulting from taking any enforcement action.

2.2 This is an opportunity for a place-based approach to deal with issues that are relevant to communities to allow the authority to identify individuals and use enforcement powers to reduce ASB within our public open spaces.

2.3 With regard to public expectation, enforcement of this order will depend on capacity of those authorised to enforce and they will not be present all the time and attend every incident due to their competing demands.

2.4 Reputationally, negative publicity could come from people who have visited the resort or parks and open spaces and believe they have been unfairly treated when enforcement action is taken against them.

2.5 However, there is equally a potential for reputational damage to the council, if the Authority does not use all the legal options available to us to combat such nuisance activities which are high priority to our residents and visitors to the borough.

## 3 **OTHER OPTIONS CONSIDERED**

For this report, the following alternate options were considered:

### 3.1. **Option 1** – Introduce this PSPO in full

This notes the lack of majority public support to introduce prohibitions around Metal Detecting however accepts there is a need to introduce that prohibition considering the councils Habitat Management Plan and other factors. Therefore, all prohibitions would be implemented. **(Recommended)**

### 3.2. **Option 2** – Not to Introduce this PSPO

It is felt that without a PSPO in place, the likelihood of changing behaviour around these activities would be very limited. **(Not Recommended)**

### 3.3. **Option 3** - Introduce this PSPO in part

To introduce all of the prohibitions listed except for the prohibition around Metal Detecting given a lack of majority public support and accepting the risks against the councils Habitat Management Plan and other factors **(Not recommended)**

### 3.4 **Option 4** – Introduce a selection of prohibitions only

To introduce only selected prohibitions **(Not recommended)**

## 4 **REPUTATION AND COMMUNICATIONS CONSIDERATIONS**

4.1. There is always potential for reputational damage to NELC and the North East Lincolnshire area resulting from taking any enforcement action.

4.2. Communications will be essential to ensure that the public understand the nature of this PSPO, and the prohibitions concerned. This will include publicity through the established outlets as well as coverage through our social media platforms and council website.

4.3. There will also be a need to generate positive publicity to show the commitment of the Council to use all tools available to them to improve the lives of the people living in and visiting North East Lincolnshire from these actions and to show the Council is focusing on activity to deter those who are intent on committing offences that blight our communities.

4.4. Signage in the specific locations will also be needed. This will include the designated Entrances/Exits to our parks and open spaces along with the key other locations around the borough. A full assessment will be undertaken. Temporary signage may be used for areas of concern.

## 5 **FINANCIAL CONSIDERATIONS**

5.1. Any revenue generated through income from Fixed Penalty Notices will be retained by the Council. This will be subject to any contract/service level agreement in place.

5.2. There will be legal staffing costs, if an individual fails to pay a Fixed Penalty Notice fine and the matter proceeds to the court.

5.3. Current capacity is not a cause for concern, but this will depend on the volume of cases moving forward.

5.4. Therefore, in the future additional resources may be needed to cover prosecutions costs for fixed penalty notices issued by North East Lincolnshire Council that are unpaid and where legal action through the court is taken. This position is reviewed periodically.

- 5.5. There will be costs associated with signage and installation of approximately £10,000 and this will need to complete prior to launch and commencement of enforcement.
- 5.6. This includes the purchase and installation of 150 A3 signs and having them securely fixed in the relevant locations onto an existing lamppost or additional post if needed. The signs will be supplemented by adhesive signs within the designated areas fixed to appropriate surfaces.
- 5.7. Year on year costs relating to replacement signage, following damage or graffiti is estimated at £2000 per year. These costs will be met by Environment through revenue budgets offset by fixed penalty notice income received.

## **6 CHILDREN AND YOUNG PEOPLE IMPLICATIONS**

- 6.1. Juveniles will not be issued any fixed penalty notices as part of this PSPO.
- 6.2. However, where deemed appropriate action can be taken similar to other PSPO's in operation across the borough. This may include working with Police to identify youth offenders and referring through existing youth/ASB routes.

## **7. CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS**

- 7.1 The behaviours this PSPO seeks to change links to the Habitat Management Plan outcomes around protected species, heritage, archaeology and natural habitats.
- 7.2 It also enables us to satisfy our statutory obligations covering protected sites, species and habitats

## **8. CONSULTATION WITH SCRUTINY**

A presentation covering the consultation results and proposed Public Space Protection Order prohibitions was presented to a joint Communities Scrutiny Panel and Tourism and Visitor Economy Scrutiny Group on 2<sup>nd</sup> March 2023.

## **9. FINANCIAL IMPLICATIONS**

- 9.1 The initial cost of signage will be in the region of £10,000 and will be met from within Environment Services available budget envelope.
- 9.2 Ongoing costs relating to the replacement of signage following damage or graffiti, estimated at £2,000 per annum, will be met from Environment Services revenue budgets offset by fixed penalty notice income received.

## **10. LEGAL IMPLICATIONS**

- 10.1 The Anti-social Behaviour, Crime and Policing Act 2014 ("the Act") came into effect on 20<sup>th</sup> October 2014.

- 10.2 Section 59 of the Act gives local authorities the power to make Public Space Protection Orders (PSPO's) which are intended to deal with anti-social behaviour and nuisance in a particular area that is detrimental to the local community's quality of life by imposing conditions on the use of that area.
- 10.3 Before making a PSPO, councils must consult with the local police (section 72(3) and 72(4) of the Act). The Act also stipulates that councils must consult with the local community on any proposed PSPO. Consultation on this matter has been undertaken as recorded in the main body of the report.
- 10.4 A PSPO can be made for a maximum duration of up to three years, after which it must be reviewed and may be extended if certain criteria under section 60 of the Act are met.
- 10.5 The council should consider carefully what length of time would be reasonable and proportionate given the nature of behaviour in question and the impact of the restrictions being posed.
- 10.6 The council must consider Articles 10 and 11 of the Convention and carry out the necessary consultation, publicity and notification pursuant to section 72 of the Act.
- 10.7 Anyone who lives in or regularly works or visits the area can appeal a PSPO in the High Court within six weeks of issue on the grounds that the council did not have the power either to make the order or to include particular prohibitions or requirements, or that proper processes had not been followed as prescribed by the Act.
- 10.8 Pursuant to section 70 of the Act, any byelaw which prohibits an activity regulated by a PSPO has no effect in relation to the restricted area during the currency of the PSPO.

## **11. HUMAN RESOURCES IMPLICATIONS**

There are no direct HR implications arising from the contents of this report.

## **12. WARD IMPLICATIONS**

- 12.1 While some aspects of this PSPO are focused on the resort (Croft Baker and Haverstoe) due to the extent of other parks and open spaces it would apply in all wards.

## **13 BACKGROUND PAPERS**

Link to Consultation results [PSPO Consultation Questions - Dashboard \(questionpro.eu\)](https://questionpro.eu)

## **14 CONTACT OFFICER(S)**

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