

CORPORATE DIRECTOR (OPERATIONS AND DELIVERY)

REPORT FOR THE PORTFOLIO HOLDER FOR ENVIRONMENT

31 May 2024

Dog Control and Dog Fouling Public Spaces Protection Order 2024

(Report prepared by Darren O'Neill)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

- To set out the background to the implementation of a Public Spaces Protection Order (PSPO) under section 59 of the Anti-social Behaviour, Crime and Policing Act 2014
- For the Portfolio holder for Environment to agree to the implementation of the PSPO in respect of dog control and dog fouling in the Tendring District.
- For the Portfolio Holder to agree to the publication of the PSPO and for the signage promoting the PSPO to be installed in the proposed locations as detailed in this report

EXECUTIVE SUMMARY

The Dogs (Fouling of Land) Act 1996, was repealed by the Clean Neighbourhoods and Environment Act 2005 (CNEA 2005) meaning Dog Control Orders can be introduced by councils in order to deter and enforce against dog fouling and deal with other dog control issues.

In October 2014, the power to make Dog Control Orders was repealed by the Anti-social Behaviour, Crime and Policing Act 2014.

Under Section 59 of the Anti-social Behaviour, Crime and Policing Act 2014 a Public Spaces Protection Order (PSPO) can be made and this allows the authority to expand the area enforceable and increases the Fixed Penalty from £75 to £100.

The following actions have been undertaken so far:

- Following ongoing complaints received by the Council regarding dogs off leads, dogs out of control and dog fouling within public spaces within the Tendring District, a working group was assembled to explore introducing a new PSPO to help tackle the issues highlighted.
- A 12 Week Public Consultation began on 29th August 2024, ending on 14th November 2024.
- The feedback from the public consultation results has been collated and a summary presented within this report.

- Discussions have been held with the Portfolio Holder for Environment outlining the consultation results and to seek approval for the implementation of the PSPO and proposed signage and intended locations.

It is imperative that the decision made by the Portfolio Holder considers if any rights under Articles 9, 10 and 11 of the Human Rights Act 1998 (below) are impacted upon by the implementation of the PSPO, and if so whether the interference is justified.

Article 9 - Freedom of thought, conscience and religion

1 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2 Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10 - Freedom of expression

1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11 - Freedom of assembly and association

1 Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2 No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

In relation to the proposed Public Spaces Protection Order covering the entire district of Tendring (as referred to in Appendix A and outlined in Appendix D) – any rights under Articles 9, 10 and 11 have been considered and are not impacted in this case.

RECOMMENDATION(S)

It is recommended that the Portfolio Holder for Environment :

1. takes into consideration the outcome of the public consultation in respect of the proposal to implementation a Public Spaces Protection Order for the District of Tendring, as presented within this report;
2. determines they are satisfied on reasonable grounds that the activity or behaviour covered by the proposed PSPO is carried out, or likely to be carried out, in a public space:
 - has had, or is 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. Agrees that the requirements of the Anti-social Behaviour, Crime and Policing Act 2014, the Human Rights Act 1998 and the Equalities Act 2010 have been followed in the preparation for and drafting of the Public Spaces Protection Order (PSPO) in respect of dog control and dog fouling;
4. Agrees to the making, publishing and implementation of a Public Spaces Protection Order (PSPO) under section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 in respect of dog control and dog fouling, to be implemented in the Tendring District from August 2024; and,
5. Agrees to the proposed signage design and locations for the signage to be displayed, delegating authority to officers to determine locations for further signage as deemed necessary once the PSPO is in force.

REASON(S) FOR THE RECOMMENDATION(S)
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The power to make PSPOs, is set out in the Anti-social Behaviour, Crime and Policing Act 2014:

- (1) A local authority may make a public spaces protection order if satisfied on reasonable grounds that two conditions are met.
- (2) 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.

- (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.
- (4) A public spaces protection order is an order that identifies the public place referred to in subsection (2) (“the restricted area”) and—
 - (a) prohibits specified things being done in the restricted area,
 - (b) requires specified things to be done by persons carrying on specified activities
In that

area, or
 - (c) does both of those things.
- (5) The only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order—
 - (a) to prevent the detrimental effect referred to in subsection (2) from continuing, occurring or recurring, or
 - (b) to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.
- (6) A prohibition or requirement may be framed—
 - (a) so as to apply to all persons, or only to persons in specified categories, or to all persons except those in specified categories;
 - (b) so as to apply at all times, or only at specified times, or at all times except those specified;
 - (c) so as to apply in all circumstances, or only in specified circumstances, or in all circumstances except those specified.
- (7) A public spaces protection order must—
 - (a) identify the activities referred to in subsection (2);
 - (b) explain the effect of section 63 (where it applies) and section 67;
 - (c) Specify the period for which the order has effect.

- (8) A public spaces protection order must be published in accordance with regulations made by the Secretary of State.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The work of the Community Safety Team and its partners in the Community Safety Partnership supports a number of strategic priorities at District, County and National level. These include the following:

- Tendring District Council – Corporate Plan 2024 - 2028
- Community Safety Partnership Strategic Assessment 2024
- Community Safety Partnership Delivery Plan 2024 – 2025
- Police and Crime Plan 2021 – 2024 (to be renewed post PFCC Election in May 2024)
- Tendring District Council – Corporate Enforcement Strategy

Community Safety Partnerships are required to be cognisant of various pieces of legislation, including:

- Anti-Social Behaviour Act 2003
- Anti-Social Behaviour Crime and Policing Act 2014

OUTCOME OF CONSULTATION AND ENGAGEMENT (including with the relevant Overview and Scrutiny Committee and other stakeholders where the item concerns proposals relating to the Budget and Policy Framework)

A 12 week public consultation was undertaken and included all external stakeholders and members of the public. The results have been collated, reviewed and presented to the Portfolio Holder.

Part of the process of introducing a PSPO includes a public consultation to determine the views of the local community. Under section 72 of the Crime and Policing Act 2014, before introducing a PSPO the Council is obliged to carry out a consultation with the Chief of Police, the local Policing body and any community representatives and owners/occupiers of land covered within the order, which are deemed necessary.

The Council launched a public consultation in September 2023 which was made publicly available through the Council's website, in local media and the Council's social media platform. It remained open for 12 weeks for all interested external stakeholders and members of the public to provide any relevant feedback.

Following the 12 week consultation period, the results were reviewed and collated. 32 responses were received in total and these were received from members of the public, several parish councils Essex Police and Essex Highways Authority. No

objections to the proposed PSPO were received.

The proposed PSPO was well received and the general opinions/comments were extremely positive and huge support was shown for the Council from members of the public.

The proposals were met with full support from the Parish Councils who responded although they did raise some general enquiries relating to other waste issues, such as the request for additional litter bins in areas such as the seafronts and areas within their own wards.

As stated above, Essex Highways did not raise any objections, however, they did request that if the Council wished to erect signage on the highway, permission must be sought prior to doing so and that this may take a prolonged period to authorise.

To counter this, it is suggested signage is erected on specifically selected areas of Council owned land that are listed below, having been selected in consultation with the Open Spaces Manager: (attached pictures and allocated number coincides with the list below.

1. Harwich – Welfare Park
2. Dovercourt – Boating Lake, Low Road
3. Clacton – Greensward
4. Walton – Opposite toilet block Kino Road
5. Frinton – Greensward adjacent to toilet block (end of Connaught Avenue)
6. Frating – Crossroads opposite Kings Arms
7. Brightlingsea – Corner of Samsons Road (at the fork)
8. Lawford – Cox’s Hill (Lawford Down)

LEGAL REQUIREMENTS (including legislation & constitutional powers)

Is the recommendation a Key Decision (see the criteria stated here)	YES	If Yes, indicate which by which criteria it is a Key Decision	<input checked="" type="checkbox"/> Significant effect on two or more wards <input type="checkbox"/> Involves £100,000 expenditure/income <input type="checkbox"/> Is otherwise significant for the service budget
		And when was the proposed decision published in the Notice of forthcoming decisions for the Council (must be 28 days at the latest prior to the meeting date)	7 th March 2024

The TENDRING DISTRICT COUNCIL (DOGS) (DESIGNATION OF LAND) (WHOLE OF TENDRING DISTRICT) ORDER 1997, currently applies to any public area in the district.

The Dogs (Fouling of Land) Act 1996, was repealed by the Clean Neighbourhoods and Environment Act 2005 (CNEA 2005) meaning Dog Control Orders could be introduced in order to enforce dog fouling and deal with other dog control issues.

In October 2014, the power to make Dog Control Orders was repealed by the Anti-social Behaviour, Crime and Policing Act 2014.

In March 2006, a preservation order known as The Clean Neighbourhoods and Environment Act 2005 (Commencement No.1, Transitional and Savings Provisions) (England) Order 2006, was implemented.

This order means that the Dogs (Fouling of Land) Act 1996 would remain in place until a PSPO is implemented under 59 of the Anti-Social Behaviour, Crime and Policing Act 2014.

Section 59 of the Act provides local authorities with powers to make PSPOs. These orders intend to address activities carried out in public spaces that have a detrimental effect on the quality of the life of those in the locality.

PSPOs must be reviewed every three years to assess whether the issue(s) are still prevalent and whether the PSPO should be amended and / or extended. All reports and complaints are to be duly logged on a central database in order to build up an evidence base as to the effectiveness of the PSPO. Current capacity within both the Waste and Recycling team and Customer Support team will allow for the necessary data recording to be undertaken.

The Monitoring Officer confirms they have been made aware of the above and any additional comments from them are below:

The purpose of the PSPO is to prevent anti-social behaviour in public places. This is achieved by imposing legally enforceable controls on the behaviour of individuals. Power to make a PSPO is conferred on local authorities by s59 of the Antisocial Behaviour, Crime and Policing Act

Section 59(1) provides that a local authority may make a PSPO if two threshold conditions are met. The first of these is specified by a s59(2):

“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.”

The second threshold condition is specified by s59(3), in 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.”

Section 59(4) defines a PSPO as “an order that identifies the public place referred to in subsection (2) (‘the restricted area’) and (a) prohibits specified things being done in the restricted area, (b) requires specified things to be done by persons carrying on specified activities in that area, or (c) does both of those things.” Section 59(5) limits the prohibitions or requirements that may be imposed to “ones that are reasonable to impose in order (a) to prevent the detrimental effect referred to in subsection (2) from

continuing, occurring or recurring, or (b) to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.”

Section 72(1) provides that in deciding whether to make a PSPO the authority (must have particular regard to the rights of freedom of expression and freedom of assembly” set out in Articles 10 and 11 of the ECHR.

The Monitoring Officer has previously drawn officers attention to the judgement in TOSSICI-BOLT v BOURNEMOUTH, CHRISTCHURCH AND POOLE COUNCIL (2023) EWHC 3229 (Admin), where the Claimant challenged the validity of a PSPO made by the Council in October 2022. The main issues were whether the Order was unlawful because it went beyond the scope of the Council’s statutory powers to make PSPOs or because it involves unjustified interference with individual rights and freedoms, including the freedoms of expression and assembly guaranteed by Articles 9, 10 and 11 of the ECHR and is hence a breach of the Council’s duties under s6 of the Human Rights Act 1998 (HRA).

Through the decision to make or vary a PSPO the Council must have regard to these rights and demonstrate they have taken them into account through their decision making.

The Court observed that it is inherently likely that some PSPOs will interfere with the exercise of the rights guaranteed by Articles 10 and 11 of the ECHR. It is therefore understandable that s72(1) of the 2014 Act highlights and requires a local authority to have “particular regard” to the right guaranteed by those Articles. The statutory language is similar to that of s12(4) of the HRA which requires a Court to have “particular regard” to the importance of the right protected by Article 10 when it is considering whether to grant any relief that may affect the exercise of that right.

There are four uncontroversial points to be made:

- (1) Firstly, it is not every PSPO that will affect the freedom of expression or assembly;
- (2) Secondly, the rights granted by Articles 10 and 11 are both qualified rights; measures that interfere with freedom of expression or assembly can be justified where that is necessary in a democratic society in pursuit of one of the legitimate aims specified in the Article, and proportionate to that aim;
- (3) Thirdly, a requirement to have “particular regard” to a specified Convention right is not a duty to have regard “only” to those rights: it does not relieve a public authority of the duty imposed by s6 of the HRA to avoid acting incompatibly with other human rights that are relevant in the circumstances of the case;
- (4) Finally, a requirement to have “particular regard” to a qualified ECHR right does not give it any presumptive priority over another qualified right; such rights as such are of equal value; any conflict between them falls to be resolved by focussing intensely on the comparative importance of the specific rights in play and the necessity and proportionality of any interference with them.

The Court concluded that when making the Order the Council lawfully followed the democratic and consultative procedures prescribed by the 2014 Act. The decision-maker was entitled to conclude that the threshold conditions for making an order were satisfied. The detailed provisions of the Order are consistent with s59(5) of the 2014 Act and with the Council’s duty under s6 of the HRA. To that extent that the Order interferes with the human rights and the interference is justified by the legitimate aim of protecting the rights of others. The claim was dismissed.

Therefore, it is imperative that the decision made by the Portfolio Holder

considers if any rights under Articles 9 and 10 are impacted upon by the variation, and if so whether the interference is justified.

FINANCE AND OTHER RESOURCE IMPLICATIONS

The Fixed Penalty Notice (FPN) charge for a breach of a PSPO is set at a standard rate under the legislation at £100 thereby increasing the current penalty for dog fouling from £75 to £100. This change is unlikely to have an impact upon the service budget for 2024/25.

New signage will be installed and existing signage throughout the district will be replaced as and when Officers are in the area.

The following quote has been received from a local firm for the proposed signage.

A3 aluminium sign panels x8

Panel with rails (suitable to fit onto posts, railed fences, lamp posts etc with the relevant fixings) - £38.57 + vat each

Total £308.56

A4 printed vinyl stickers x100

X100 Stickers
£2.93 + vat each

Total £293

Grand Total £601.56

The aluminium signs are to be erected at the eight locations detailed above and the vinyl stickers will be distributed by officers throughout the district and located on litter bins or other appropriate structures.

Officers are encouraged to engage and educate any person failing to adhere to the PSPO, however the current FPN booklets have the relevant legislation already included which allows officers to issue an FPN of £100, when required.

Any additional and replacement signage (where applicable) can be met from service budgets for 2024/25.

The exact location of signage is identified in Appendix B.

<input type="checkbox"/>	The Section 151 Officer confirms they have been made aware of the above and any additional comments from them are below:
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There are no further comment over and above those set out elsewhere in the report.

USE OF RESOURCES AND VALUE FOR MONEY

The following are submitted in respect of the indicated use of resources and value for money indicators:

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	The PSPO will be Policed by existing TDC officers in line with their daily duties. Signage costs £601.56 which will come from an existing budget.
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	Evidence based through feedback, from businesses and residents affected by Dog Control and Dog Fouling issues across the District.
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	In line with the Community Safety Priorities to reduce ASB, a PSPO could assist with the root causes of ASB/Dog Control and Dog Fouling Issues.

MILESTONES AND DELIVERY

The consultation has now concluded, and 32 responses have been received and evaluated. Approval is now sought from the Portfolio Holder for the implementation of the PSPO

If the proposal is agreed, the Waste and Recycling Team will ensure that it is published on the Tendring District Council website and all other social media platforms and newspapers.

ASSOCIATED RISKS AND MITIGATION

PSPOs must be reviewed every three years to ensure the issue(s) are still relevant and require a PSPO in the area. All reports and complaints are duly logged, which is in line with the Council's recording already in place and details are stored on a central database to assist and support the decision as to whether a further extension to a PSPO is required.

EQUALITY IMPLICATIONS

The PSPO will be applicable to all publicly accessible areas of the district.

Nothing in the PSPO shall apply to a person who –

- (a) is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948; or
- (b) has a disability which affects his mobility, manual dexterity, physical coordination or ability to lift, carry or otherwise move everyday objects
- (c) is not a person falling within the criteria mentioned in (a) or (b) but who the Authority considers should be exempt due to an impairment of that particular person.
- (d) Nothing in the PSPO shall apply to the normal activities of a working dog whilst the

dog is working. This includes dogs being used for work in connection with;

- Emergency search and rescue
- Law enforcement
- HM Armed Forces
- Farm dogs

SOCIAL VALUE CONSIDERATIONS

There are no social value considerations in respect of this decision.

IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030

The decision does not impact upon the Council's aim to be net zero by 2030.

OTHER RELEVANT CONSIDERATIONS OR IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder

The PSPO is ultimately aimed at deterring anti-social behaviour associated with dogs in public spaces.

Health Inequalities

None

Subsidy Control (the requirements of the Subsidy Control Act 2022 and the related Statutory Guidance)

None

Area or Ward affected

All wards within the district will be affected.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

Local Authorities were granted powers to introduce PSPOs in 2014 through section 59 of the Anti-social Behaviour, Crime and Policing Act 2014. PSPOs replaced previous legislation and introduced wider discretionary powers to deal with nuisances or problems that harm the local community's quality of life.

An order is intended to ensure that people can use and enjoy public spaces, living safely and free from anti-social behaviour. An order will specify an area where activities are taking place that are detrimental to the quality of life of those in the area and can impose conditions and restrictions on people using the specified areas.

The law requires the order must be published in writing and reasonable signage must be put up in the area.

Breaching an order is a criminal offence that can result in a fixed penalty notice (FPN) of £100 or prosecution. If prosecuted, an individual could be fined up to £1,000. Only those aged over 18 or over can be issued with an FPN. Currently the Council enforces dog fouling using the Dogs (Fouling of Land) Act 1996 by issuing an FPN set at £75. This sum will increase to £100 under the new PSPO. The Dogs (Fouling of Land) Act 1996 has now been repealed and further details of this are outlined within the legal section of this report.

The problem of dog fouling in Tendring is widespread and complaints are received by the Council on a weekly basis via e-mail and telephone, regarding the amount of dog mess left on paths, playing areas, open spaces and seafront areas.

Tendring District Council also receives complaints regarding dogs off leads, especially around our seafront areas and open spaces, which in turn causes alarm and distress to members of the public. This issue increases during summer months and can negatively impact upon the tourist trade.

This order will give a Police Officer and an authorised officer of the Council additional powers to instruct dog owners to place their dogs on leads if required and provides a useful enforcement tool by way of a FPN if they fail to comply. It also states a person in charge of a dog shall not take the dog into any enclosed children's play area or any enclosed sports facilities in the District of Tendring and again the penalty for this can be imposed by way of a £100 FPN.

A PSPO can be made for a maximum duration of up to three years, after which it may be extended if certain criteria under section 60 of the Act are met. This includes, for example, that an extension is necessary to prevent activity recurring or that there has been an increase in frequency or seriousness of the activity. Extensions can be repeated, with each lasting for a maximum of three years. Effective evaluation of Orders will be important when determining whether any extensions or variations would be appropriate.

Councils 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 – byelaws, which are permanent, may be more appropriate if the issue concerned is unlikely to be transient. The impact of the original Order should be evaluated before any extensions are approved – where ASB has been completely eradicated as a result of a PSPO, it is proportionate and appropriate to consider the likelihood of recurrence of problems if the Order is not extended.

The Council takes the health and well-being of residents and visitors very seriously and seeks to promote a healthy and safe environment.

This PSPO will allow the Council to introduce additional controls in respect of dog fouling and dog control and over a greater area of the district including parts of the highway and various open spaces. Parish council owned land is included and will therefore allow the authority to work closely with them in order to tackle dog-related issues and take enforcement action when required. As this order relates to the whole district (excluding Section 6 of the Order - entitled "Exemptions") this will enable the

authority to take a more robust and consistent approach to tackling dog related issues and will give residents and visitors a clear understanding of what the authority is responsible for enforcing.

In addition to the areas subject to dog controls being extended, the FPN level will also be increased from £75 to £100 which sends a clear message to those that continue allow their dog to be out of control or who fail to pick up their dogs waste, that the Council intends to take a tougher approach to this offending and will take the necessary enforcement action when required.

PREVIOUS RELEVANT DECISIONS

Decision dated 21st July 2023 made by the Portfolio Holder for Environment to implement a 12 week consultation in respect of the proposed PSPO [Decision - Implementation of 12-week consultation in respect of the implementation of a Dog Control and Dog Fouling Public Spaces Protection Order \(PSPO\) under section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 \(tendingdc.gov.uk\)](#)

BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

None.

APPENDICES

Appendix A - Copy of Draft Order

Appendix B - Signage

Appendix C - Photographs of all proposed locations

Appendix D – Map outlining the area to be covered by PSPO

REPORT CONTACT OFFICER(S)

Name	Darren O'Neill
Job Title	Waste & Recycling Officer
Email/Telephone	01255 686590

3.2 BACKGROUND PAPERS FOR DECISION

None

