

TONBRIDGE & MALLING BOROUGH COUNCIL

CABINET

31 January 2017

Report of the Director of Central Services and Monitoring Officer

Part 1- Public

Executive Non Key Decisions

1 PUBLIC SPACES PROTECTION ORDER

To provide a report giving details of the proposed Public Spaces Protection Orders (PSPOs) for the borough, including details of the borough wide restrictions, as well as restrictions for particular geographical areas.

1.1 Background to Public Spaces Protection Orders (PSPO)

- 1.1.1 The Anti-social Behaviour, Crime and Policing Act 2014 places new duties on the Council to tackle Anti-social Behaviour (ASB), working co-operatively with the Police, social landlords and other agencies. The Act puts victims at the heart of the response to ASB and is intended to give professionals the flexibility they need to deal with any given situation.
- 1.1.2 Public Spaces Protection Orders (PSPOs) are one of a number of new tools contained within the Act and are intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area which apply to everyone. They are designed to ensure the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.
- 1.1.3 Councils will be responsible for making the new PSPO. District Councils will take the lead in England with county councils undertaking the role only where there is no district council. The new power is not available to parish councils or town councils.
- 1.1.4 The PSPOs will be replacing dog control orders, designated public place orders (also known as Alcohol Control Zones) and gating orders.

1.2 The requirements of a PSPO

- 1.2.1 The council can make a PSPO on any public space in its own area. The definition of public space is wide and includes any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, for example a shopping centre.

- 1.2.2 Before making a PSPO the council must consult with the local police. This is an opportunity for the police and council to share information about the area and the problems being caused as well as to discuss the practicalities of enforcement. In addition the owner or occupier of the land should be consulted as well as community representatives as appropriate.
- 1.2.3 The test for a PSPO is designed to be broad and focus on the impact anti-social behaviour is having on victims and communities. A PSPO can be made by the council if they are satisfied on reasonable grounds that the activities carried out, or likely to be carried out, in a public space:
- have had, or are likely to have, a detrimental effect on the quality of life of those in the locality;
 - is, or is likely to be, persistent or continuing in nature;
 - is, or is likely to be unreasonable; and
 - justifies the restrictions imposed.
- 1.2.4 A single PSPO can include multiple restrictions and requirements in one order. It can prohibit certain activities, such as the drinking of alcohol, as well as placing requirements on individuals carrying out certain activities, for instance making sure that people walking their dogs keep them on a lead.
- 1.2.5 The maximum duration of a PSPO is three years but they can last for shorter periods where appropriate. At any point before expiry the council can extend a PSPO by up to three years if they consider that it is necessary to prevent the original behaviour from occurring or reoccurring. If a new issue arises in an area where a PSPO is in force the council can vary the terms of the order at any time. This can change the size of the restricted area or the specific requirements or restrictions. As well as varying the PSPO, a council can also seek to discharge it at any time.

1.3 Enforcement process and penalties

- 1.3.1 It is an offence for a person, without reasonable excuse, to:
- do anything that the person is prohibited from doing by a PSPO
 - fail to comply with a requirement to which the person is subject under a PSPO.
- 1.3.2 If a person fails to adhere to the PSPO they may be issued with a Fixed Penalty Notice (FPN). Where the FPN is not paid within the required timescale, court proceedings may be initiated.

1.4 The proposed PSPO for Tonbridge & Malling

- 1.4.1 After consultation with Borough Council offices and Police officers we have decided to proceed with a PSPO containing multiple restrictions [see Annex 1]. Some of the restrictions are borough wide (e.g. deterring dog fouling, dogs on leads by direction) and some are specific to geographical locations depending on particular issues (for example to prevent the use of unauthorised BBQs within Leybourne Lakes Country Park). We believe that each of the proposed restrictions passes the PSPO 'Test' and that they will all help to prevent ASB in the borough.
- 1.4.2 Officers have used evidence and professional judgement to develop this proposed PSPO and have considered all issues/areas against the stated test process. There are some areas that were considered and then rejected as they did not pass the test process and have procedures already in place which can tackle the anti-social behaviour. In particular, officers discussed the possibility of including fishing around the Town Lock area within the PSPO. It was noted that ASB has been associated with people who also fish in this area, and it was also noted that fishing is prohibited in this area. The sole activity of fishing could not be described as having a detrimental effect on the quality of life of people in the area, and it was also noted that the associated behaviours (such as drinking and camping) would be controlled under the proposed PSPO.
- 1.4.3 Officers also discussed whether or not to include 'No unauthorised camping' within the PSPO. The Council already has powers under the Criminal Justice and Public Order Act 1994 ("CJPOA") to deal with unauthorised encampments, involving the service of a notice, which has a duration of 3 months. Breach of such notice is an offence. It was felt, however, that the CJPOA process was too lengthy, time consuming and potentially costly to the authority to deal with very temporary encampments which may still have a significant detrimental effect in areas such as the Country Parks. We have therefore included 'No unauthorised camping' within the proposals for Leybourne Lakes, Tonbridge Moorings, Haysden Country Park, Tonbridge Racecourse Sports Ground and Tonbridge Castle and Tonbridge Farm Sports Ground.
- 1.4.4 This restriction is not intended to be used for homeless individuals and anyone who is found to be homeless will be offered the appropriate help and advice.
- 1.4.5 We will be looking to set the Fixed Penalty Notices (FPNs) at £80, reduced to £50 if paid within 10 days. This follows the Borough Council's Enforcement Policy, which the PSPO will also adhere to. Under 18's will be dealt with in accordance with the Borough Council's Enforcement Policy.
- 1.4.6 Fixed Penalty Notices will be issued by authorised Borough Council staff. We anticipate that there will be a high expectation from the public in regards to enforcing the PSPO and this is something that we will need to manage. It may be that we need to seek alternative ways of enforcing any breaches and we may

therefore explore the potential for other partners (such as Parish Councils) to gather evidence or give witness statements if they see anyone breaching any of the restrictions within the PSPO. This is something that we would look to take forward outside of this consultation.

- 1.4.7 We have also liaised with the Police regarding the PSPO and following these discussions it has been agreed that they will not issue Fixed Penalty Notices but will provide evidence as required. A protocol will be developed with Kent Police to take this forward.
- 1.4.8 It is not possible, or appropriate, to include every area within the borough with an anti-social behaviour issue (or perceived issue). The majority of ASB can be dealt with through other measures without the need for a Public Spaces Protection Order. However, if through the consultation process a request for a restriction is provided then this will be considered (assuming the test has been met) and discussed at the appropriate Council meeting.

1.5 Consultation process

- 1.5.1 The consultation period will start from 1 February 2017 and will end on 15 March 2017. We will be consulting with all Parish Councils, the Police and Crime Commissioner, partners within the Community Safety Partnership and community groups as relevant. Copies of the PSPO consultation will be available in a variety of locations as well as online.
- 1.5.2 The responses to the consultation will be reported to Cabinet on the 21 March 2017, and then Full Council on the 11 April 2017.
- 1.5.3 Once agreed, a copy of the Order will be published in accordance with regulations made by the Secretary of State.
- 1.5.4 A copy of the response questionnaire is shown at **Annex 2**.

1.6 Legal Implications

- 1.6.1 As the PSPO is a legal requirement of the new ASB legislation we will be receiving legal guidance to ensure that we meet the criteria. Once the final PSPO measures are agreed the PSPO will need to be published in accordance with the regulations made by the Secretary of State.
- 1.6.2 Currently TMBC enforce against dog fouling using the Dog (Fouling of Land) Act 1996. It was repealed by Clean Neighbourhoods and Environment Act 2005 section 65, and replaced by similar legislation in the same act, namely Dog Control Orders (DCOs). However, as TMBC did not adopt a DCO for fouling across the whole borough, we were still able to enforce under the Dog (FoL) Act. The introduction of the PSPO for dog fouling borough-wide will supersede this legislation and enforcement for such offences will then only be possible using the PSPO. This means that every three years, the PSPO will have to be amended to

ensure that dog fouling offences can still be enforced against. If the PSPO is not renewed, no legislation would exist to deal with fouling unless new legislation is introduced.

1.7 Financial and Value for Money Considerations

1.7.1 There is no significant cost associated with the establishment of the Public Spaces Protection Order within the borough.

1.8 Risk Assessment

1.8.1 All appropriate risk assessments will be undertaken as required.

1.9 Equality Impact Assessment

1.9.1 Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to (i) eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010, (ii) advance equality of opportunity between people from different groups, and (iii) foster good relations between people from different groups. The decisions recommended through this paper directly impact on end users. The impact has been analysed and does not vary between groups of people.

1.10 Policy Considerations

1.10.1 Crime & Disorder Reduction

1.11 Recommendations

1.11.1 That the proposed Public Spaces Protection Order, as presented at **Annex 1**, be circulated for consultation.

The Central Services Director confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

Background papers:

Anti-social Behaviour, Crime and Policing Act 2014
Guidance for the Anti-social Behaviour, Crime and Policing Act 2014

contact: Anthony Garnett
Licencing and Community
Safety Manager

Adrian Stanfield
Director of Central Services and Monitoring Officer