

TONBRIDGE & MALLING BOROUGH COUNCIL
COMMUNITIES and HOUSING ADVISORY BOARD

23 July 2019

Report of the Director of Central Services

Part 1- Public

Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)

1 PUBLIC SPACE PROTECTION ORDER (PSPO)

To provide a report giving details of the proposed Public Space Protection Order (PSPO) 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 placed a new duty on the Council to tackle Anti-social Behaviour (ASB), working co-operatively with the Police, social landlords and other agencies. The Act put victims at the heart of the response to ASB and was intended to give professionals the flexibility they needed to deal with any given situation.
- 1.1.2 Public Spaces Protection Orders (PSPOs) were one of a number of new tools contained within the Act and were intended to deal with a particular nuisance or problem in a particular area that was detrimental to the local community's quality of life, by imposing conditions on the use of that area which apply to everyone. They were designed to ensure the law-abiding majority could use and enjoy public spaces, safe from anti-social behaviour.
- 1.1.3 Councils are responsible for making the PSPOs. 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 have replaced dog control orders, designated public place orders (also known as Alcohol Control Zones) and gating orders.
- 1.1.5 A PSPO has been in place in the borough since April 2017 and this contained a number of different restrictions. Details of the current PSPO Order can be found at **Annex 1**.
- 1.1.6 A PSPO can be in place for three years and after this time the Council can decide if they wish to end the PSPO, extend the PSPO or add any additional restrictions

to it. In order to extend or add additional requirements the Council will need to consult with the public and other bodies.

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 a 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. It does not just apply to land owned by the Borough Council but to any open space anywhere in the borough (even land owned by Parish Councils or Kent County Council).

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 Our initial PSPO (as seen at **Annex 1**) was authorised in April 2017 and will expire in April 2020. We have therefore considered whether we want to continue with our current restrictions and also looked at whether we want to include any new restrictions.

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 officers and the Police we are proposing to proceed with a PSPO which contains many of the same restrictions as our current Order and we have produced evidence to show the need for these to continue. However, we have also gathered evidence to show the need for two additional restrictions that we are proposing to include.

1.4.2 These two new restrictions being proposed are 'no unauthorised drones on Borough Council land' and 'keeping dogs on a lead in St Stephen's and St Peter and St Paul's Churchyards'. **Annex 2** sets out the proposed PSPO.

1.4.3 Officers used evidence and professional judgement to develop this proposed PSPO and have considered all issues/areas against the stated test process. During the process of these discussions there were some issues/areas raised that were rejected as they either did not pass the test process, had procedures already in place which could tackle the anti-social behaviour or could not be adequately enforced by the Borough Council. **Annex 3** shows the evidence that was collated by Officers to show the need for continuing with the current restrictions and adding the new proposals.

1.4.4 Fixed Penalty Notices (FPNs) have been set 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, which includes speaking to their parents where possible before issuing any enforcement against them.

1.4.5 Fixed Penalty Notices will be issued by authorised Borough Council staff. During the period of the current PSPO we have only issued three Fixed Penalty Notices. The low numbers reflect how difficult it can be to catch someone in the process of breaching the PSPO but also no doubt reflect that the majority of the public are following the restrictions put in place and therefore FPNs do not need to be issued.

1.4.6 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 5 August and will end on 30 September 2019. 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 the Communities and Housing Advisory Board on 12 November 2019.
- 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 consultation questionnaire is shown at **Annex 4**.

1.6 Legal Implications

- 1.6.1 As the PSPO is a legal requirement of the ASB legislation we will continue to seek 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.

1.7 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 Community Safety

1.11 Recommendations

1.11.1 That the proposed Public Spaces Protection Order, as presented at **Annex 2**, 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

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