

TONBRIDGE & MALLING BOROUGH COUNCIL

CABINET

08 November 2022

Report of the Director of Central Services and Deputy Chief Executive

Part 1- Public

Executive Non Key Decisions

1 PUBLIC SPACE PROTECTION ORDERS (PSPO)

The Borough Council's Public Space Protection Order is due for renewal in April 2023. This report brings details of the current restrictions and proposes some additional restrictions.

1.1 Background to Public Space 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 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 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 which contained a number of different restrictions. This was then reviewed in 2020, with some new restrictions added to the original PSPO. Details of the current PSPO Order can be found at **Annex 1**.

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 The Statutory Guidance for frontline professionals on the Anti-social Behaviour, Crime and Policing Act 2014 advises that

‘the council should give due regard to issues of proportionality: is the restriction proposed proportionate to the specific harm or nuisance that is being caused? Councils should ensure that the restrictions being introduced are reasonable and will prevent or reduce the detrimental effect continuing, occurring or recurring. In addition, councils should ensure that the Order is appropriately worded so that it targets the specific behaviour or activity that is causing nuisance or harm and thereby having a detrimental impact on others’ quality of life. Councils should also consider whether restrictions are required all year round or whether seasonal or time limited restrictions would meet the purpose.’

1.2.5 In relation to groups hanging around/ standing in groups/ playing games, the guidance advises as follows

‘It is important that councils do not inadvertently restrict everyday sociability in public spaces. The Public Spaces Protection Order should target specifically the problem behaviour that is having a detrimental effect on the community’s quality of

life, rather than everyday sociability, such as standing in groups which is not in itself a problem behaviour.”

Where young people are concerned, councils should think carefully about restricting activities that they are most likely to engage in. Restrictions that are too broad or general in nature may force the young people into out-of-the-way spaces and put them at risk. In such circumstances, councils should consider whether there are alternative spaces that they can use.

People living in temporary accommodation may not be able to stay in their accommodation during the day and so may find themselves spending extended times in public spaces or seeking shelter in bad weather. It is important that public spaces are available for the use and enjoyment of a broad spectrum of the public, and that people of all ages are free to gather, talk and play games.’

- 1.2.6 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.
- 1.2.7 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.
- 1.2.8 Our current PSPO was authorised in April 2020 and will expire in April 2023. 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 The proposed PSPO for Tonbridge & Malling

- 1.3.1 After consultation with Borough Council officers, we are proposing to proceed with a PSPO containing multiple restrictions. Some of these restrictions are the same as were included previously, as we have been able to provide evidence to show that the issues are continuing. In addition, we are also proposing some new restrictions as they are new issues that have been reported to us since 2020 and which we feel meet the criteria of the PSPO and will help to reduce the problems. **Annex 2** sets out the current PSPO restrictions and the new/proposed restrictions.
- 1.3.2 As found in the previous PSPO, 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' (see paragraph 1.2.3 above) and that they will all help to prevent ASB in the borough.

- 1.3.3 Discussions were held with TMBC Officers to look at what evidence we had to show the need to continue with our current PSPOs and also to look at any additional restrictions we wanted to include. **Annex 3** lists the evidence that was gathered to show that there is a need for each of those restrictions proposed.
- 1.3.4 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. The new restrictions proposed include:
- 1.3.5 Vehicles on public open spaces (across the whole of the borough). Leisure Services Officers have reported that this issue occurs at sites across the borough and is persistent in nature. It causes significant damage to established public open spaces and creates health and safety issues with large divots and unofficial access points that pedestrians may be unaware of. We currently have no way of stopping this and an active PSPO would provide an effective way to bring the situation under control.
- 1.3.6 However, Cabinet may wish to discuss whether the restrictions should apply to geographical areas where we've had reports of this issue (such as Hurst Hill, Walderslade and Willowmead, Leybourne) or whether this should apply to the whole borough.
- 1.3.7 Nuisance associated with Car/motorcycle meetings (across the whole of the borough). This has become an issue where local Members and officers have received reports (particularly in relation to Blue Bell Hill car park and areas of Leybourne and Larkfield). It does have a detrimental effect on residents (they are affected by noise, dangerous driving etc).
- 1.3.8 The restriction would need to contain information about the specific behaviour we would want to stop, so we would need to carefully consider the wording of this restriction. For example, we may wish to restrict the following types of behaviour
- Driving in convoy
 - Racing
 - Performing stunts
 - Sounding horns (as to cause public nuisance)
 - Revving engines
 - Wheel spins

- Playing music (as to cause public nuisance)
- Congregating or loitering as part of a group surrounding or within one or more stationary vehicles at any time where such activity causes noise, exhaust fumes, harassment, alarm, or distress

1.3.9 Anti-social behaviour associated with fishing at Town Lock/Tonbridge Moorings.

Town lock has struggled with behaviour associated with unauthorised anglers and people camping on-site. The presence of anglers often acts as an invitation for others to attend and has regularly resulted in mass complaints from residents and regular visits from Kent Police. The noise of those fishing in the area causes issues for local residents and can encourage others to attend the area.

1.3.10 However, Cabinet may wish to consider whether it is the fishing itself that causes the problems, or the behaviour of anglers and others whilst they are there which needs to be addressed. In and of itself, fishing is not an antisocial activity. Rather, the issue seems to be individuals or groups acting in such a way as to cause nuisance to people living in the locality, in particular shouting, playing music (so as to cause a nuisance), dropping and leaving litter. It may therefore be appropriate to restrict these behaviours rather than fishing.

1.3.11 No unauthorised swimming/bathing/boating at Holborough Lakes. During the summer period the borough council and police received large amounts of reports of young people causing problems at Holborough Lakes. The Leader and Cabinet Member for Community Services also attended a meeting with Berkley Homes and resident's representatives to try and resolve the issues. It is therefore evident that these issues are causing a detriment to those in the locality.

1.3.12 One solution would be to put PSPO restrictions into place to help alleviate some of the issues. However, it should be noted that fines cannot be issued to under 16's and therefore if the majority of those going into the lake or causing problems are under the age of 16, the PSPO will not help. However, including the suggested restriction (no unauthorised swimming, bathing or boating) would show to residents that we are trying to stop some of the issues from occurring.

1.3.13 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 Cabinet meeting.

1.4 Enforcement processes and penalties

1.4.1 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.

1.4.2 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.

1.4.3 Fixed Penalty Notices will be issued by authorised Borough Council staff. During the period of the current PSPO we have issued 28 FPNs, the majority of these are related to unauthorised swimming at Leybourne Lakes Country Park.

1.4.4 At present the cost of the Fixed Penalty Notice is £80, reduced to £50 if paid within 10 days. The table below shows what other councils in Kent charge. It is proposed that we increase our FPN to £100 with no reduction for early payment, in line with what other councils charge.

| Local Authority | Fine charged |
|------------------------|------------------------------------------------------|
| Ashford | £100 fixed fee and no reduction if paid early |
| Canterbury | £100 fixed fee and no reduction if paid early |
| Dartford | £100 fixed fee and no reduction if paid early |
| Dover | £100 reduced to £75 if paid within 10 days. |
| Folkestone & Hythe | £100 fixed fee and no reduction if paid early |
| Gravesham | £75 with no reduced fee for early payment |
| Sevenoaks | No PSPO in place but FPNs for other offences are £75 |

1.5 Legal Implications

1.5.1 The power to make a PSPO is contained in section 59 of the 2014 Act. A local authority can only make a PSPO if it is satisfied on reasonable grounds that the conditions set out at paragraph 1.2.3 have been met.

1.5.2 In deciding whether to make/ extend/ vary or discharge a PSPO, the Council is required to have particular regard to the rights or freedom of expression and freedom of assembly set out in Articles 10 and 11 of the European Convention on Human Rights.

1.5.3 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 Financial and Value for Money Considerations

- 1.6.1 Although there are no direct costs associated with the establishment of the PSPO, there will be a resource implication for the Borough Council for issuing Fixed Penalty Notices and the work associated with this.

1.7 Risk Assessment

- 1.7.1 All appropriate risk assessments will be undertaken as required.

1.8 Equality Impact Assessment

- 1.8.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.9 Policy Considerations

- 1.9.1 Crime & Disorder Reduction

Recommendations

- 1.9.2 That the proposed Public Space Protection Order, as presented at Annex 2, be agreed
- 1.9.3 That the Fixed Penalty Notice charge be amended to £100, with no reduction for early payment.
- 1.9.4 That a public consultation be undertaken and reported back to an appropriate meeting.

Background papers:

Nil

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