

TONBRIDGE & MALLING BOROUGH COUNCIL

COMMUNITY and ENVIRONMENT SCRUTINY SELECT COMMITTEE

08 February 2023

Report of the Director of Central Services and Deputy Chief Executive

Part 1- Public

Matters for Recommendation to Cabinet - Non-Key Decision

1 PUBLIC SPACE PROTECTION ORDER – CONSULTATION FEEDBACK

To provide feedback on the responses received on the Public Space Protection Order (PSPO) consultation and agree on the terms for the PSPO

1.1 Background to the Public Space Protection Order

- 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 and with Cabinet, 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 have also proposed 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.
- 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. Cabinet also discussed the initial proposals on 8 November 2022.
- 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. Cabinet agreed that this restriction should apply to the whole of the borough.
- 1.3.6 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).
- 1.3.7 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

1.3.8 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.

1.3.9 Cabinet agreed to 'no fishing' within the proposed PSPO.

1.3.10 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.

1.3.11 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 and Cabinet agreed to include this restriction within the proposals.

1.3.12 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 further.

1.4 Enforcement 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. Cabinet agreed to increase our FPN to £100 with no reduction for early payment, in line with what other councils charge.

1.5 Consultation responses

- 1.5.1 The consultation process opened on 5 December 2022 and closed on Sunday 15 January 2023. This was an online consultation, but hard copies were available if requested. A summary of the responses received can be found at Annex 2. We received 93 online responses.
- 1.5.2 The Police and Crime Commissioner also responded to the consultation and gave his provisional support to the proposed order across the Borough, subject to the outcome of the consultation. A copy of the letter received from the Police and Crime Commissioner is attached at Annex 3.
- 1.5.3 A summary of comments from the online consultation is given below:
- The majority of respondents agreed with the current PSPO restrictions, as well as the new proposed restrictions.
 - The proposal with the most comments related to the nuisance associated with car/motorbike meetings. Many respondents gave their own experiences of the nuisance caused by these activities and how this had affected them/their quality of life and were supportive of the restriction. There were, however, concerns from some respondents who did not want responsible clubs from being prevented in gathering. It should be noted that this restriction would only target those causing nuisance behaviour and therefore anyone meeting in a controlled manner would not breach the restrictions.
 - The proposal for Holborough Lakes also provided a fairly large response. Although most replies were supportive, there were suggestions of other restrictions that could be imposed – such as preventing the gathering of groups. It should be noted that the Police do already have the powers to put a dispersal order into place which prevents the gathering of groups and therefore a PSPO would not be the most appropriate tool to use in this instance.

- Other general comments provided by respondents related to the need to enforce the PSPOs, the need for additional police presence and increased traffic calming measures. Some respondents misinterpreted some of the proposed restrictions (e.g. that we were looking to stop drones altogether or stop people from enjoying public open spaces). The PSPO will not stop any activity but will mean that activities have to be authorised or can be enforced if anti-social behaviour is taking place.

1.5.4 Leybourne Parish Council also provided a response to the consultation and asked a number of questions in relation to their own play areas and issues around specific locations within their parish area. These questions can be seen in Annex 4.

1.5.5 A more detailed response will be provided to Leybourne Parish Council but it should be noted that many of the queries raised are already covered by the general restrictions contained within the PSPO (e.g. dog fouling can be enforced across the whole of the borough, as can asking people to cease drinking alcohol if they are causing anti-social behaviour). Members are also reminded that the PSPO can only be used on those over the age of 16.

1.5.6 The proposed new restriction around vehicles on public open land would help to address some of the concerns raised in relation to Castle Lake and as the definition of a public place within the 2014 Act is fairly broad (it includes any place to which the public or a section of the public has a right of access, with or without payment, or the ability to access with express or implied permission) we believe that this would be sufficient to cover play areas within the leases held by the Parish Council from KCC.

1.5.7 However, if it was felt that we wanted to extend the area covered by the PSPO or to include new proposals we would need to gather evidence to support the need for the restriction(s) and to go out for consultation again.

1.6 The next steps

1.6.1 Following the consultation and the responses received it is clear that the majority of the public who replied are happy with the continuation of the current restrictions and also happy to include the additional restrictions. We therefore feel that we can proceed with the PSPO as recommended previously and this is attached at Annex 5.

1.6.2 This proposal will need to be agreed by Cabinet and then finalised before April 2023 (when the current PSPO ends).

1.6.3 A response will be provided to Leybourne Parish Council on the queries they raised.

1.7 Legal Implications

- 1.7.1 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.
- 1.7.2 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.
- 1.7.3 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.

1.8 Financial and Value for Money Considerations

- 1.8.1 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.

1.9 Risk Assessment

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

1.10 Equality Impact Assessment

- 1.10.1 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.

1.11 Policy Considerations

- 1.11.1 Community Safety

1.12 Recommendations

- 1.12.1 That the proposed Public Space Protection Order, as presented at Annex 4, be agreed

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

Background papers:

Nil

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