

WAVERLEY BOROUGH COUNCIL

ENVIRONMENT OVERVIEW AND SCRUTINY COMMITTEE

15 MARCH 2021

COMMUNITY WELLBEING OVERVIEW AND SCRUTINY COMMITTEE

16 MARCH 2021

Title:

Public Space Protection Order (Anti Social Behaviour) 2020

Portfolio Holder: Cllr. Nick Palmer Portfolio Holder for Operational and Enforcement Services
Cllr Ann-Marie Rosoman Portfolio Holder for Housing and Community Safety
Cllr. Liz Townsend Portfolio Holder for Economic Development, Parks & Leisure

Head of Service: Richard Homewood, Head of Environmental & Regulatory Services

Key decision: Yes

Access: Public

1.0 Purpose and summary

1.1 This report seeks the views of the Overview and Scrutiny Committee on a proposed Public Space Protection Order (PSPO) to assist in addressing anti social behaviour issues, which are having a significant impact on the community in some parts of the borough.

2.0 Recommendation

2.1 That Overview and Scrutiny Committee consider the report and provide comment on the proposed PSPO as part of the consultation process.

3.0 Reason for the recommendation

3.1 To afford Overview and Scrutiny Committee the opportunity to comment on the proposed PSPO which is intended to ensure Waverley Borough Council and Surrey Police have the appropriate range of powers to deal with various forms of anti-social behaviour in certain areas of the borough.

4.0 Background

4.1 The Anti-social Behaviour, Crime and Policing Act 2014 (ASBCPA 2014) introduced a range of new anti-social behaviour (ASB) powers for dealing with street scene issues, including Public Spaces Protection Orders (PSPOs), Community Protection Notices (CPNs), and Civil Injunctions (CIs). Many of the

powers are available to a range of agencies including local authorities, the Police, and social landlords.

- 4.2 According to the Home Office guidance: "Public spaces protection orders 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". In accordance with the legislation, Waverley Borough Council is able to make PSPOs where certain conditions are met.
- 4.3 The test for determining if a PSPO is appropriate 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.
- 4.4 The Council can make a PSPO on any public space within its own area and consideration should be given to how the use of powers may impact on vulnerable members of society and displacement effects of any order. 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.
- 4.5 The PSPO can be drafted to address the individual issues being faced in a particular public space or it 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. However, activities are not limited to those covered by the Orders being replaced (such as alcohol and dog controls), and so the new PSPOs can be used more flexibly to deal with a wider range of local issues such as aggressive begging, the use of psychoactive substances etc.
- When deciding what to include, the Council should consider scope. The PSPO is designed to make public spaces more welcoming to the majority of law-abiding people and communities and not simply restrict access. Restrictions or requirements can be targeted at specific people, designed to apply only at certain times or apply only in certain circumstances. In establishing which restrictions or requirements should be included, the Council should ensure that the measures are necessary to prevent the detrimental effect on those in the locality or reduce the likelihood of the detrimental effect continuing, occurring or recurring.
 - The maximum duration of a PSPO is three years but they can last for shorter periods of time 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 recurring.

They should also consult with the local police and any other community representatives they think appropriate.

- A PSPO can cover a number of different restrictions and requirements so there should be little need to have overlapping orders in a particular public space. However, 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. For instance, when the problem has ceased to exist or the land ceases to be classified as a public space.
- It is an offence for a person, without reasonable excuse, to do anything that the person is prohibited from doing by a PSPO, or fail to comply with a requirement to which the person is subject under a PSPO.
- Depending on the behaviour in question, the enforcing officer could decide that a fixed penalty notice (FPN) up to £100 would be the most appropriate sanction. In making the decision to issue a FPN, the officer should consider that if issued, payment of the FPN would discharge any liability to conviction for the offence. However, where the FPN is not paid within the required timescale, court proceedings can be initiated (prosecution for the offence of failing to comply with the PSPO).
- The guidance states that: "Although PSPOs are made by the Council in an area, enforcement should be the responsibility of a wider group. Council officers will be able to enforce the restrictions and requirements, as will other groups that they designate, including officers accredited under the community safety accreditation scheme. In addition, police officers and PCSOs will have the ability to enforce the order".

4.13 There are legal tests and a legal process to be followed for consulting on and making a PSPO. The fundamental question to consider is do we have evidence of anti-social behaviour (ASB) associated with public spaces in Waverley that needs to and can be addressed by PSPOs?

4.14 The issues can range from irresponsible dog ownership to street drinking and substance abuse, and the associated anti-social behaviour, which can blight public areas such as the town centres, parks and open spaces and shopping precincts.

5.0 **Demonstrating the need for a Public Space Protection Order in respect of Anti-Social Behaviour.**

5.1 Members will recall that in 2018 and 2019 the Council consulted on and introduced Public Space Protection Orders in respect of dog fouling and dog control issues.

5.2 At that time, work had also started with Surrey Police, through the Safer Waverley Partnership, on a draft PSPO in relation to anti-social behaviour issues that were being experienced at the time in some parts of the borough. On reviewing the evidence on and the scale of anti-social behaviour at the time and the alternative

powers available to the Police to deal with the issues of concern (e.g. Dispersal Orders), it was agreed not to proceed with the proposed PSPO.

- 5.3 More recently, there has been an increasing incidence of anti-social behaviour in the Godalming area related to street drinking, substance abuse and general rowdiness, which are having a negative impact on community well-being, crime and disorder, the sustainability of the local economy and potential impact on external investment from businesses considering opening in Waverley.
- 5.4 Through the Waverley Safety Partnership, the Council and Surrey Police have reviewed evidence and scale of recent anti-social behaviour in certain parts of the borough and it is felt that the introduction of a PSPO in respect of anti-social behaviour may be appropriate to address issues in certain areas of the borough.
- 5.5 The anti-social behaviour being experienced in the Godalming area includes:
- large groups of youths gathering outside Bowring House making residents feel intimidated due to the noise and foul language. Criminal damage being caused in the vicinity of Bowring House and St John's church which includes graffiti, broken windows, mirrors smashed in the church toilets, the church door being spat on, plants pulled up in the churchyard and water thrown from the font. Evidence of drug misuse has been found in the churchyard. There have also been reports of youths intimidating users of the church and hall.
 - Both Waitrose and the Co-op have suffered shop lifting from youths. The staff have been assaulted and subjected to threatening, abusive and intimidating behaviour causing them to fear for their safety.
 - Youths have been on the roofs in Godalming town, causing damage and throwing items at passers-by.
 - Criminal damage has been caused to the defibrillator unit attached to the William Noyce Centre, and there have also been reports of youths verbally abusing and intimidating the public, drunkenness and litter.
 - South West Trains have had youths verbally abusing and threatening passengers and staff, accessing the drivers cab, using the PA system and sounding the horn. Items have been thrown from and at trains causing a safety issue. Rail staff are feeling stressed and anxious about being at work and the youth's behaviour is having an impact on customer satisfaction.
- 5.6 The Police have collated significant evidence of the impact of anti-social behaviour on the community. This evidence includes impact statements from:
- Town Clerk, Godalming Town Council
 - Waitrose Godalming
 - SW Railways
 - Bowring House
 - Broadwater School
 - British Transport Police
 - Farncombe Day Centre

- Jeremy Hunt MP
- The Mayor of Godalming
- St John's Church
- Surrey Police Superintendent
- Surrey Police Contact Centre
- Wilfred Noyce Centre

Over the last 2 years, the Police have recorded 246 incidents relating to ASB in Farncombe and 99 in Godalming.

5.7 It is considered therefore that there is sufficient evidence of the need for a PSPO to be considered in respect of anti-social behaviour taking place in the Godalming Town Council area.

5.8 There have also been anti-social behaviour issues over a wider area of the borough in relation to bonfires and BBQs being lit on council land and often left unattended or unextinguished. This has been particularly problematical at Frensham Pond and other leisure parks and open spaces. Lighting fires and BBQs and leaving them unattended in such environments can have disastrous consequences for wildlife and the environment as was demonstrated by the heathland fires at Hankley Common, Thursley last year.

5.9 The draft order therefore includes a clause on the prohibition of bonfires and BBQs on all council owned parks and open spaces across the borough without the consent of the council. This would not therefore be a complete ban but would allow them to be lit under controlled conditions agreed in advance with the council.

6.0 **Proposed Public Space Protection Order.**

6.1 The draft PSPO in respect of anti-social behaviour in the Godalming Town Council area and in respect of bonfires and BBQs on council owned/managed land borough wide is attached as Annexe A to this report. Members will note it seeks to address a number of aspects of anti-social behaviour, these include:

- consumption of alcohol in a public place resulting in alcohol related disorder – PSPOs restricting the consumption of alcohol in public places are intended to replace designated public place orders (DPPOs under the Criminal Justice and Public Order Act 2001);
- use of drugs, 'legal highs' and other intoxicating substances; and
- general anti social behaviour causing harassment alarm and distress
- graffiti, fly posting or defacement of property
- irresponsible lighting and lack of control of bonfires and BBQs on Council owned / managed parks and open spaces

6.2 The area of concern to consult on for clauses A to D of the proposed Order is the Godalming Town Council area bounded by the red line on the plan at Appendix 1 to the Order. Clause E, in relation to Bonfires and BBQs will apply to Council owned / managed parks and open spaces borough wide, which are also listed in Appendix 2 to the Order.

7.0 **Relationship to the Corporate Strategy and Service Plan**

- 7.1 The recommendations of this report will help support the Corporate Strategy's aims to 'improve the health and well-being of our residents and communities' and 'taking action to protect the environment.'

8.0 Implications of decision

8.1 Resource (Finance, procurement, staffing, IT)

- 8.1.1 The proposed PSPO will be publicised on the council's website and social media and a press release will be issued inviting feedback on the proposals.
- 8.1.2 Whilst Council officers can enforce any PSPO it is important to note that other agencies, particularly Surrey Police would also be able to enforce any PSPO made and issue FPNs. Given the nature of the ASB and the likely times, it will occur it is most likely that Surrey Police would lead on enforcement where an order is made. Environmental Enforcement Officers will be trained in enforcing the new PSPO where appropriate along with the enforcement of the existing PSPOs relating to dog fouling and dog controls, which will be included in the imminent review of Council enforcement and inspection.
- 8.1.3 IT systems for issuing FPNs are already in place in relation to environmental offences and the existing PSPOs. Additional coding and scripts would need to be added for any new PSPO and if the number of Waverley front line officers expands, then additional hardware will be required for each officer (hand held device and mobile printer.) The estimated cost of the hardware is £1300 per officer.
- 8.1.4 Additional and updating training will be required but this will need to be planned for as part of Waverley's business case for the implementation of the outcome of the inspection and enforcement review and the outcome of the formal consultation process.

8.2 Risk management

- 8.2.1 There is a risk of challenge following the making of any PSPO but officers consider at this stage that the evidence available is sufficient to proceed to consultation regarding the draft PSPO.

8.3 Legal

- 8.3.1 As set out within the report, a local authority can make a PSPO in accordance with section 59(4) ASBCPA 2014 if satisfied on reasonable grounds that certain conditions (set out within the report) are met.
- 8.3.2 Before making a PSPO, a local authority must observe certain 'necessary consultation publicity and notification requirements', including open and public consultation with the Chief Officer of Police and the local policing body for the area, any community representatives including Parish and Town Councils and owner/occupiers of land within the proposed restricted area. 'Necessary publicity'

requires the text of the order to be published and legislation specifies notification requirements.

8.3.3 Legal proceedings can be brought to challenge the validity of an Order on specific grounds by interested persons on the basis that the local authority did not have the power to make the Order or to include particular requirements or prohibitions and or where the legal procedural requirements were not met. In addition, by judicial review on public law grounds.

8.3.4 Non compliance with any PSPO made is an offence and a person (without reasonable excuse) will be liable on summary conviction to a level three fine in the Magistrates Court. A FPN may be offered as an alternative to prosecution in order to discharge any liability for conviction (to a maximum of £100)

8.4 Equality, diversity and inclusion

8.4.1 An equality impact assessment has ensured that no particular group or individual will be disadvantaged by this Order to a greater extent than any other group or individual.

8.5 Climate emergency declaration

8.5.1 Waverley has in place climate change and sustainability strategies, which bring together work in relation to air quality, green spaces and waste. The Council seeks to improve and protect green spaces and the proposed PSPO will address and support some key climatic targets on air quality and waste to enable and support the community. This is in line with the Council's vision to promote and sustain a sense of responsibility for our environment, and linked to the wider objective of promoting biodiversity and protecting our planet.

9.0 Consultation and engagement

9.1 There has been extensive informal consultation with Surrey Police and engagement with Godalming Town Council and other partners and agencies listed in 5.6 above.

9.2 The draft PSPO will be subject to formal consultation and advertised publicly and a period of 4 weeks will be allowed for feedback from the public and other organisations / agencies. Feedback from the consultation will be reported to the Executive and the Executive will make a recommendation to the Council in respect of the Order if it considers it should proceed.

9.3 The timetable for the project is attached as Annexe B to this document.

10.0 Other options considered

10.1 The Police have used and reviewed the effectiveness of a range of other powers to control anti-social behaviour, including Dispersal Orders, Acceptable Behaviour Contracts, Step Letters and Criminal Behaviour Orders, but none of these are considered to have had or be able to have the same comprehensive impact in

addressing anti-social behaviour as a PSPO could have.

11.0 Governance journey

- 11.1 Project Plan attached as Annexe C to the report
- Report to Management Board – 9 February 2021
 - Report to Executive Briefing – 16 February 2021
 - Consultation Period – 8 March – 5 April 2021
 - Report to Environment O&S Committee – 15 March 2021
 - Report to Community Wellbeing O&S Committee – 16 March 2021
 - Report to Executive Briefing on public consultation – 20 April 2021
 - Report to Executive – 4 May 2021
 - Report to Council – 25 May 2021

Attachments

- Annexe A Draft Public Space Protection Order – Anti-Social Behaviour
Annexe B Project Timetable

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Agreed and signed off by:

Legal Services: date

Head of Finance: date

Strategic Director: date

Portfolio Holder: date