

# WAVERLEY BOROUGH COUNCIL

## COUNCIL

20 APRIL 2021

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**Title:**

**Public Space Protection Order No.3 (Anti-social Behaviour) 2021**

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**Portfolio Holder: Cllr. Nick Palmer Portfolio Holder for Operational and Enforcement Services**

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

**Key decision: Yes**

**Access: Public**

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### **1.0 Purpose and summary**

- 1.1 This report provides feedback from the consultation in respect of the draft Public Space Protection Order No.3 (Anti-social Behaviour) 2021 (PSPO) which ran from 1 March 2021 until 2 April 2021. Section 9 of the report and **Annexe B** detail and responds on the feedback from the consultation. Changes have been made to the draft Order where appropriate following that consultation feedback and the final draft of the Order is attached at **Annexe C**.
- 1.2 It recommends the Council approve the amended Order to assist in addressing anti-social behaviour issues which are having a significant detrimental impact on the community in some parts of the borough.

### **2.0 Recommendation**

- 2.1 That Council approves and makes the Public Space Protection Order No.3 (Anti-social Behaviour) 2021 as set out in **Annexe C** to this report.

### **3.0 Reason for the recommendation**

- 3.1 To ensure Waverley Borough Council and authorised persons (enforcing officers) including police officers and PCSO's of Surrey Police have the appropriate range of powers to deal with various forms of anti-social behaviour taking place within 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 (as in an earlier PSPO made by the Council). 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, which has been carried out both independently of, and as part of the consultation process.

- 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 PSPO's?

4.14 The issues can range from irresponsible dog ownership (already subject to existing PSPO's) 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 (PSPO) 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 in relation to anti-social behaviour.

- 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 within the Godalming geographical area includes:
- large groups 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 retail outlets have suffered shoplifting. The staff have been assaulted and subjected to threatening, abusive and intimidating behaviour causing them to fear for their safety.
  - Criminal damage has been caused to the defibrillator unit attached to the William Noyce Centre, and there have also been reports of verbal abuse and intimidation of the public, and drunkenness.
  - South West Trains have reported verbal abuse and threatening behaviour to passengers and staff, illegal access to the driver's cab on occasion where use has been made of the PA system and the horn sounded. Items have been thrown from and at trains causing health and safety issues. Rail staff are understood to be feeling stressed and anxious about being at work and the behaviour reported is having an impact on customer satisfaction.
- 5.6 Surrey Police has 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
  - South West Trains (Stagecoach South Western Trains Limited)
  - Bowring House
  - Broadwater School
  - British Transport Police
  - Farncombe Day Centre
  - Jeremy Hunt MP
  - The Mayor of Godalming
  - St John's Church
  - Surrey Police Superintendant

- Surrey Police Contact Centre
- Wilfred Noyce Centre

Over the last 2 years, the Police have recorded 246 incidents relating to anti-social behaviour (ASB) in Farncombe and 99 in Godalming.

5.7 It is considered therefore that there is sufficient evidence of the need for an PSPO to be considered in respect of anti-social behaviour taking place within the Godalming geographical 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 owned and managed land and often left unattended or unextinguished. This has been particularly problematical at Frensham Pond and other leisure, parks and open green spaces. Lighting fires and BBQs and leaving them unattended in such natural environments can have disastrous consequences for wildlife and the environment as was demonstrated by the heathland fires at Thursley Common, in May of 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 represent a complete ban but would allow them under controlled conditions where appropriate and agreed in advance with the Council.

## 6.0 **Proposed Public Space Protection Order.**

6.1 The original draft of the PSPO in respect of anti-social behaviour in the Godalming geographical area and in respect of bonfires and BBQs on Council owned or managed land borough wide is attached as **Annexe A** to this report. Members will note it sought 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 (DPPO's 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 BBQ's on Council owned / managed parks and open spaces

6.2 The area of concern to consult on and for clauses A to D of the proposed Order is the Godalming geographical area bounded by the red line on the plan attached as part of **Annexe A** to this report. Clause E, in relation to Bonfires and BBQs would apply to Council owned or managed parks and open spaces borough wide.

## 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 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 Fixed Penalty Notices (FPN's). 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 the enforcement of the new PSPO where appropriate along with their existing enforcement of the PSPOs relating to dog fouling and dog controls
- 8.1.2 IT systems for issuing FPN's are already in place in relation to environmental offences and the existing PSPO's. 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 £1,300 per officer.
- 8.1.3 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, the outcome of the formal consultation process, and in partnership with Surrey Police.

### **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 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' Upon making, 'necessary publicity' requires the text of the order to be published and legislation specifies notification requirements.
- 8.3.3 Details of the consultation that has been undertaken and the feedback from it and commentary on that feedback is set out in section 9 below.
- 8.3.4 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.
- 8.3.5 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 natural environments including green and open 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 initial informal consultation over several months with Surrey Police and engagement with Godalming Town Council and other partners and agencies listed in 5.6 above.

- 9.2 The draft PSPO has also been subject to formal public consultation, in line with legal requirements. All borough councillors, town and parish councils and a range of other agencies were written to on 1 March 2021 and invited to comment. The proposals were publicised on social media and press releases and the proposals were also posted on the council's website. The closing date for feedback on the proposals was 2 April 2021.

- 9.3 The proposals were also considered by the Environment Overview and Scrutiny Committee on 15 March 2021 and the Community Well Being Overview and Scrutiny Committee on 16 March 2021.

- 9.4 There were a number of responses from the public, from Councillors and from some Town and Parish Councils. These responses are set out in **Annexe B** to this report along with comments from the council in reply. The Council is grateful for this feedback and has taken it into account, where considered appropriate, when finalising the wording of the Order.

- 9.5 There was overall support for the principle of the Order along with some reservations and concerns about its meaning and application. Some key themes and concerns emerged from the comments received, namely:

- Displacement of anti-social behaviour to parishes adjoining the Godalming geographical area;
- The need for a joined up approach with other agencies to support young people and avoid criminalising them.
- Who will enforce it and how will it be enforced

## **Concerns re displacement of Anti-social Behaviour from the Godalming geographical area.**

- 9.6 Potential displacement of anti-social behaviour to areas surrounding the Godalming geographical area was raised by some Councillors and Parish Councils and was discussed at length at the two Overview and Scrutiny Committees. Detailed comments on this are set out in the table in **Annexe B**.
- 9.7 These concerns were discussed with Officers from the Surrey Police Neighbourhood teams which cover Godalming and the surrounding parishes. They advised that to try and understand whether action on ASB in the Godalming geographical area has previously resulted in displacement, they had reviewed all the ASB incidents recorded over the last 24 months in Milford and Witley, to clarify whether the perpetrators of ASB in the Godalming/Farncombe areas are travelling further afield. Whilst Covid had clearly had an impact on ASB during the last year, the figures between March 2019 and March 2020 did not reflect an ASB problem in Milford and Witley to the extent that was being experienced in Farncombe during the same period.
- 9.8 Whilst the Police appreciated the concerns expressed, it is impossible to predict the impact that the PSPO is going to have on neighbouring villages as this is the first time that one will be in place. Should displacement occur, then the Police will have a range of other powers which can be used to deal with any incidents including Dispersal Orders, Step Letters, Acceptable Behaviour Contacts and Criminal Behaviour Orders (CBO) as well as their existing powers to police criminal offences.
- 9.9 The Police went on to advise that if and when the PSPO has been granted, any impact on other areas will be closely monitored. If ASB escalates and other measures such as Dispersal Orders etc. mentioned in 9.8 above are ineffective, then consideration can be given to the area of the existing PSPO being extended (varied) as required.
- 9.10 The Police are keen to reassure the community that if the PSPO is granted, the Waverley Safer Neighbourhood Police Team will continue to focus their patrols in areas where ASB is occurring including working with people to divert them away from disruptive activities.
- 9.11 It was also emphasised that the Police and the Council see this PSPO as a pilot where there is sufficient evidence to support a PSPO. If problems with ASB arise elsewhere and if after reviewing other measures which have been taken to deal with it, a PSPO is considered the appropriate route then either an extension (variation) of the PSPO or the introduction of a similar one can be considered.

## **The need for a joined up approach with other agencies to support young people and avoid criminalising them.**

- 9.12 It is important to emphasise that the proposed Order is not specifically targeting young people or any particular group of people. It will apply equally to everyone in the community.
- 9.13 It is also important that the Order is not seen in isolation but as part of a range of measures to address ASB issues which have occurred. The Police have been

working closely with this Council, Godalming Town Council, Surrey County Council and other agencies to explore all ways to address the underlying issues.

- 9.14 At the height of the recent ASB issues recorded in Farncombe, a public meeting was called. That meeting identified three key strands to explore in support of action to address the problems of ASB. These were:
- Social/youth engagement activity;
  - Local participation, engagement and participation.
  - Strengthen enforcement powers.
- 9.15 The first strand is at the Town Council level and a youth services working group is exploring options to bring forward. A Farncombe Community Team was created but unfortunately, due to Covid, all the diversionary activities and street patrols that were due to commence in April 2020 have been delayed.
- 9.16 The second strand has been some of the work of the Safer Waverley Partnership to engage with the local community, to work with social and community workers and to get local people cleared (in a safeguarding sense) to work more directly on the ground. Much of this has also been delayed by covid, but the safeguarding work has continued and this is likely to be able to resume in full quite soon. This strand has also been to communicate the facts and figures of ASB and to encourage proper reporting to the police. Essentially to restore faith in community policing and also to make the distinction between ASB and just groups of 'children being children'..
- 9.17 The third strand, which is this consultation on the proposed PSPO is a legal avenue which a Borough Council can implement (assuming the relevant test is met) to improve the quality of life of those within its area and which may equally empower the police with additional enforcement tools. The consultation has been important because the Council needs to understand if this is something the community really needs as well as to understand the views and experiences of the community .

### **Who will enforce it and how will it be enforced**

- 9.18 Whilst Council officers can enforce any PSPO it is important to note that other agencies, particularly Surrey Police Officers and PCSO's would also be able to enforce any PSPO made and issue FPN's. 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. Officers will be authorised under the legislation as Surrey Police Officers or by the Council.
- 9.19 Environmental Enforcement Officers and other front line Council officers will not be authorised until they have had appropriate formal enforcement training and instruction on the application of the provisions in the Order.
- 9.20 In accordance with the Statutory Guidance on ASB issued by the Home Office, Officers will be taking an incremental approach to enforcement which would normally always start with an informal warning and requests to stop whatever is the cause of anti-social behaviour before a more formal approach to enforcement is taken.

## **Other issues arising form consultation feedback**

- 9.21 Following the consultation and a review of evidence base, it is proposed that the provisions in relation to Flyposting and graffiti will be wremoved from the Order.
- 9.22 It is also proposed that the word ‘annoyance’ be removed from sections C1 and d) a.(under Offences) of the Order as it is considered too vague and open to misinterpretation.
- 9.23 A number of drafting, typographical and grammaticval corrections have been made to the Order in response to the feedback. The final draft of the Order is attached as **Annexe C** to this report.

## **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 Report to Council – 20 April 2021

## **Attachments**

- Annexe A Initial draft Public Space Protection Order – Anti-social Behaviour for consultation
- Annexe B Feedback from Consultation
- Annexe C Final draft Public Space Prtoection Order – Anti-social Behaviour

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