

Waverley Borough Council

Report to: Full Council

Date: Tuesday 20 February 2024

Ward(s) affected: All.

Report of Director: Strategic Director for Community Wellbeing

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Report Status: Open

Key Decision: No

Renewal of Anti-social Behaviour Public Spaces Protection Order (PSPO)

1. Executive Summary

On 21 April 2021 Waverley Borough Council made a Public Spaces Protection Order (PSPO) intended to deal with anti-social behaviour in Godalming and Farncombe and the prohibition of lighting barbecues and bonfires on Waverley managed parks and open spaces throughout the borough. The Order is named PSPO (No 3) Waverley Borough Council 2021

The Order was put in place for a maximum of 3 years and is due to expire on 20 April 2024. At any point before the expiry date, the council can extend the PSPO by up to 3 years if considered necessary to prevent the original behaviour(s) from occurring or recurring.

Approval is requested to extend the PSPO and hence a process must be followed to seek agreement to extend the Order. This process involves the Community Services Team evaluating through engagement and consultation with key stakeholders whether the Order is still required.

Following completion of this consultation, findings are presented to CMB, the Executive and Overview and Scrutiny (Services) to then seek a decision by Full Council.

Unfortunately, following a consultation process that will end in mid-March, the nearest available Full Council meeting is scheduled for 23 April 2024 – which is three days after the expiry of the existing PSPO. Sound governance does not permit retrospective approval.

Legal advice suggests that Full Council could delegate authority to extend the PSPO to the Executive Head of Community Services.

2. Recommendation to Council

2.1 That Council :

- a) delegates authority to the Executive Head of Community Services to extend PSPO (No 3) Waverley Borough Council 2021; and
- b) that the Executive Head of Community Services be delegated authority to decide the period of extension

3. Reason(s) for Recommendation:

3.1 Delegating authority to extend the PSPO will allow for the Order to continue to be used beyond 20 April 2024 without interruption and with appropriate governance. If the Order expires, we will need to start a new process for any part of the Order we want to continue, and this will take longer than the process to extend – impacting our community.

3.2 Failure to renew the Order will have an adverse impact on the work of the Parks and Countryside Team throughout the spring and

summer months as they will no longer be able to enforce conditions around the use of barbeques and lighting of bonfires until a new Order is put in place. There will also be an impact on our police partners in the Godalming and Farncombe areas, in that they will no longer be able to use specific PSPO powers to deal with anti-social behaviour until a new Order is put in place.

4. Exemption from publication

No

5. Purpose of Report

- 5.1 This report intends to provide information on the status and review of the PSPO for Godalming, Farncombe and Waverley managed parks and spaces, and in order to extend the Order, requests approval for delegation of authority to extend PSPO (No 3) Waverley Borough Council 2021 to the Executive Head of Community Services

6. Strategic Priorities

- 6.1 PSPO's are a key element of work within Community Safety. Through our work to tackle Anti-Social Behaviour and work within the Safer Waverley Partnership we are engaging with partners and taking action to ensure delivery on our strategic commitment to the health and wellbeing of our residents

7. Background

- 7.1 Section 59 of the Anti-social Behaviour, Crime and Policing Act 2014 provides the power for Local Authorities to make Public Spaces Protection Orders (PSPO) if they are satisfied that activity or behaviour that is carried out, or likely to be carried out, in a public space:
- Has had, or is likely to have, a detrimental effect on the quality of life in the locality,

- Is, or is likely to be, persistent or continuing in nature,
- Is, or is likely to be, unreasonable, and
- Justifies any restrictions imposed within the Order.

- 7.2 In 2021 Waverley Borough Council applied these criteria to issues and incidents of anti-social behaviour in areas of Godalming and Farncombe and incidents of barbecues being used, and bonfires being lit on Waverley managed parks and open spaces throughout the borough.
- 7.3 Following consultation with Members, stakeholders, and communities, a PSPO was put in place with the duration of the Order having a maximum of three years - expiring on 20 April 2024.
- 7.4 Since the introduction of the PSPO our Parks and Countryside Teams and Waverley Police have, where appropriate, applied the restrictions and conditions contained within the Order and used provided powers to deal with activity and behaviour. Initial consultation with both the Police and Parks and Countryside identified that they would want the PSPO to be extended beyond the current expiry date.
- 7.5 The process to extend the PSPO is provided in the Home Office Statutory Guidance for the Anti-social Behaviour, Crime and Policing Act 2014. It requires an evaluation as to whether the Order is still required based on evidence of activity and measures of success or achievement. This currently has been provided by the Police and Parks and Countryside teams.
- 7.6 The process requires a minimum of 2 weeks engagement and consultation with stakeholders such as the Police, Police and Crime Commissioner, resident associations, community representatives and the wider community. Our consultation period will be between 19 February and 13 March 2024.
- 7.7 The process also requires the details of the Order and extension proposal to be published prior to it being extended. This will take account of the evidence, information and feedback from evaluation

and consultation and is scheduled to take place from 26 March to 15 April 2024.

7.8 The governance streams involved in the proposal are scheduled to commence on 26 March 2024 and will include:

- Overview and Scrutiny Committee – 26 March 2024
- Corporate Management Board – 2 April 2024
- Executive Briefing – 2 April 2024
- Executive – 9 April 2024

If agreed, this will be followed by the approval of the extension by delegated authority and ratification of the decision at Full Council on 23 April 2024.

8. Consultations

8.1 Initial consultation has taken place with Members of Overview and Scrutiny Committee (Services), The Council Leader, Parks and Countryside Services and the local Police Borough Commander in relation to the desire and intention to extend the PSPO beyond 20 April 2024.

8.2 Formal engagement and consultation will take place with Members, stakeholders such as the Police, Police and Crime Commissioner, residents associations, community representatives and the wider community as part of the review and extension process for the PSPO as of 19 February 2024.

9. Key Risks

9.1 Failure to extend the Order will remove several restrictions, conditions, and powers to deal with anti-social behaviour in Godalming and Farncombe and the use of barbecues and bonfires in various public areas of the borough.

This may have a detrimental effect on the quality of life of residents and visitors to those areas.

- 9.2 Delegating authority to extend the PSPO to the Executive Head of Community Services may be seen as controversial or lacking transparency and public accountability. This would be mitigated by ensuring adequate public engagement, consultation, and publicity together with appropriate governance through Overview and Scrutiny, CMB and Executive.

In addition, we would recommend further overview and ratification of the approval decision at the Full Council meeting on 23 April 2024.

10. Financial Implications

- 10.1 There are no financial costs associated with delegating authority to the Executive Head of Community Services
- 10.2 Any costs associated with the evaluation, consultation and publicity relating to the PSPO extension will be met within current budget provision.

11. Legal Implications

- 11.1 The power and requirements for extending a PSPO are set out in Part 4 of Chapter 2 of the Anti-social Behaviour, Crime and Policing Act 2014 Act. These are supplemented by the Anti-Social Behaviour Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014 (the Regulations) and statutory guidance issued by the Secretary of State – “Anti-Social Behaviour Powers revised Statutory Guidance for Frontline Professionals”.
- 11.2 The basic requirements for extending the duration of an existing PSPO are set out in the body of this report.
- 11.3 In deciding whether to extend the Order and if so, for how long, Council must, by Section 72 of the 2014 Act, have particular regard to the rights of freedom of expression and freedom of assembly (as relevant) as set out in Articles 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (“the

Convention”). These are qualified rights—which have to be balanced against the public interest and may therefore be interfered with, subject to a number of conditions set out in the relevant Articles. In broad terms the conditions are similar for each of these rights, in that they both require any interference to be in accordance with the law and necessary in a democratic society. The restriction must also be proportionate.

- 11.4 Prior to the expiration of the Order, where Council proposes to extend it the council must undertake the “necessary consultation” under Section 72 of the 2014 Act. This involves consulting with police as well as community representatives and any owners and occupiers of the land within the Restricted Area.
- 11.5 The Council must also publicise its proposal to extend a PSPO.
- 11.6 As set out in the report, Council has the power to make a PSPO provided it is satisfied that activities being carried on in a given location are having a detrimental effect on the quality of life of those in that locality or it is likely that such activities will occur. The effect or likely effect of the activities in question must be persistent or continuing, unreasonable in nature and of sufficient to justify any restrictions imposed by the PSPO. The Order may prohibit, or impose requirements upon, activities carried on in the area to which the Order applies, or both. Any prohibition or restriction must be reasonable to impose in order to prevent or reduce the detrimental effect referred to above.
- 11.7 A person who lives in an area subject to a PSPO or who regularly works in or visits that area may apply to the High Court to challenge the validity of the Order. Such challenge must be made within 6 weeks of the Order being made.

12. Human Resource Implications

- 12.1 The process is being led and managed by the Anti-Social Behaviour Officer and there are no additional staffing implications.

13. Equality and Diversity Implications

13.1 Equality impact assessments will be carried out, when necessary, to ensure any activity, restrictions or conditions meet the requirements of the Public Sector Equality Duty under the Equality Act 2010.

14. Climate Change/Sustainability Implications

14.1 There are no climate change or sustainability implications for this report.

15. Overview & Scrutiny comments

15.1 Overview and Scrutiny Committee (Services) were updated on the proposal to extend the PSPO on 21 November 2023 and they were supportive of the extension. The final proposal will be taken back to Overview and Scrutiny on 26 March 2024.

16. Summary of Options

16.1 The existing PSPO (No 3) Waverley Borough Council 2021 expires on 20 April 2024. There is an appetite to extend the Order and commence the formal process to do this.

16.2 Formal consultation can begin on 19th February with consequent governance streams through Overview and Scrutiny (Services) CMB and The Executive to confirm approval to extend the Order.

16.3 So that the extension can occur (if agreed) within the timeframe, the Council approves the delegation of authority to extend the PSPO (No 3) Waverley Borough Council 2021, to the Executive Head of Community Services – which will then be ratified by Full Council on 23 April 2024.

16.4 Full Council has the option to not follow the above and thereby end PSPO (No 3) Waverley Borough Council 2021

17. Conclusion

- 17.1 The Anti-social Behaviour PSPO for Godalming, Farncombe and Waverley managed parks and open spaces has been in place since April 2021 and is due to expire or be extended on 20 April 2024.
- 17.2 Waverley Borough Parks and Countryside officers and the Police have used the restrictions, conditions and powers contained within the Order to deal with the issues that were highlighted in 2021 and they have indicated that they would want the PSPO to be extended beyond the current expiry date.
- 17.3 The process to evaluate, engage and consult on the proposed extension with the appropriate level of governance has commenced and will be completed by 9 April at the earliest.
- 17.4 The decision to extend the PSPO should be made by Full Council, however, the nearest available Full Council meeting is scheduled for 23 April 2024 which is after the deadline for an extension and retrospective approval cannot be granted.
- 17.5 In order to ensure the PSPO (No 3) Waverley Borough Council 2021 continues to provide powers to protect our communities, it is requested that Full Council delegate authority to approve the extension of PSPO (No 3) Waverley Borough Council 2021 to the Executive Head of Community Services which will then be ratified by Full Council on 23 April 2024.

18. Background Papers

- 18.1 none

19. Appendices

- 19.1 PSPO (No 3) Waverley Borough Council 2021

Please ensure the following service areas have signed off your report.
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Service	Sign off date
Finance / S.151 Officer	N/A
Legal / Governance	12/2
HR	N/A
Equalities	N/A
Lead Councillor	N/A
CMB	N/A
Executive Briefing/Liaison	N/A
Committee Services	12/2

Proposal to submit report discussed and agreed with CMB on Tuesday 6 February and signed off by Executive Head for Community Services on 9/2/2024