

Southend-on-Sea Borough Council

Report of Strategic Director (Legal and Democratic Services)

To

Cabinet

On

8th July 2019

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Agenda
Item No.

Southend Town Centre & Sea Front and Adjoining Areas Public Spaces Protection Order

Relevant Scrutiny Committee- Policy and Resources
Cabinet Member: Councillor Terry
Part 1 (Public Agenda Item)

1. Purpose of Report

- 1.1 To invite Councillors to consider and agree the proposed approach to dealing with certain behaviours identified in this report and to consider whether the Council should proceed with the making of a Public Spaces Protection Order (“PSPO”) under Section 59 of the Anti- Social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”) taking into consideration the results of the statutory consultation and further evidence as detailed in this report.
- 1.2 The purpose of a PSPO would be to assist the Council and its partners to provide an appropriate and robust response to various behaviours taking place in Southend Town Centre and Seafront (along with the 3 adjoining areas identified following the consultation as later detailed in this report), that existing enforcement powers have been unable to resolve. It would help ensure that the law-abiding majority can use and enjoy these public spaces, safe from anti-social behaviour (“ASB”).
- 1.3 The purpose of the PSPO would not be to target people based solely on the fact that someone is homeless or rough sleeping. The Council will continue to assist such individuals who require help and support.

2. Recommendations

- 2.1 That the Council makes a Public Spaces Protection Order (PSPO) over the areas identified in this report and in the form annexed at Appendix 3.
- 2.2 That the existing Designated Public Place Order (DPPO) from 2002 ceases to be enforced following implementation of the new PSPO.

3. Background

- 3.1 On 6th November 2018 a report was presented to Cabinet to decide whether to proceed with a public consultation on making a PSPO. The full background to the PSPO and anti-social behavioural issues was set out within the Cabinet report. Attached at **Appendix 1** is a copy of the 6th November 2018 Cabinet report and the corresponding minute 427 which was noted at Policy and Resources Scrutiny Committee on the 29th November 2018.
- 3.2 Following the decision of Cabinet a public consultation then commenced as detailed below.
- 3.3 Existing DPPO/PSPO
- 3.4 As set out in the previous report attached at **Appendix 1**, in 2002 the Council made a Designated Public Place Order (DPPO) which imposed restrictions on public drinking in the Town Centre and several other areas. From 20 October 2017 this was treated as though it was a PSPO for the purposes of enforcement by virtue of S.75 of the 2014 Act.
- 3.5 If the proposed PSPO is approved there will be an overlap with the DPPO. The proposed way forward on this is to cease enforcement of the existing transitioned DPPO (which will cease to exist by October 2020 in any event) and to commence enforcement under the proposed PSPO.
- 3.6 If the PSPO is approved it will have been ‘made’ as at the date of the Council’s meeting to approve it.

4. Consultation and other Evidence

- 4.1 A five week consultation was launched on the 4th February 2019 until 11th March 2019, which included information promoted online.
- 4.2 The Council was required to consult with the police, community representatives and owners or occupiers of land within the proposed restricted area.
- 4.3 The consultation could be accessed in many ways:
- directly online on the Council’s “Consultation Portal”;
 - an interactive questionnaire that could be returned via email; or
 - the opportunity to either download a hardcopy version from the website or a paper copy sent out by the Council so it could be completed by hand and sent in by post.
- 4.4 A total of 97 people accessed and responded to the consultation using either the paper questionnaire or online, responding to the questions set and using the free text sections to raise any other issues relating to this consultation. The full analysis report of the results from this consultation is included at **Appendix 2**.
- 4.5 Summary of results

The consultation provided a platform to voice opinions on a thorough cross section of issues relating to the proposed PSPO. The questions invited the

respondents to comment on the scope of area to be covered by the PSPO, the overall necessity of the PSPO and whether the different restricted activities have had a detrimental impact on their quality of life and of those in the locality.

4.6 It should be noted that the results of the consultation are a guide. A significant majority of those who participated were in favour of the PSPO. One of the early questions within the consultation asked whether the individual participating believed the proposed restrictions are necessary to improve the environment and safety of the local area. The response was an overwhelming majority with 87% of people agreeing with the statement to some degree.

4.7 The Restricted Area

4.8 There was a strong consensus that the proposed area to be covered by the PSPO (the 'Restricted Area') included the key areas that have issues with ASB that needed to be addressed, albeit further areas with issues were highlighted as detailed at paragraph 4.10 below.

4.9 A few respondents raised concerns that the Seafront did not have to be included so far east towards Shoebury as it currently does in the draft order. This area is included to address the predicted displacement of activities as these activities move away from the Town Centre and area of Seafront where they are currently prominent.

4.10 Another reoccurring concern that was raised throughout the consultation is that the area included in the PSPO should be extended to include 3 other areas subject to a high volume of ASB. Specifically:

- Southchurch Hall Gardens;
- Hamlet Court Road; and
- York Road.

4.11 The Council has collected and reviewed the evidence of the ASB within these areas and the evidence strongly suggests that these areas would benefit from being included within the PSPO Restricted Area and this is now the proposal. A report detailing the evidence for the whole area to be included within the PSPO is attached at **Appendix 7**. So to be quite clear, the originally proposed area of the Town Centre and Seafront has been extended to include these additional 3 areas.

4.12 Enforceability

4.13 Another concern raised was enforceability, which was highlighted by not only the public consultation but also in consultation with Essex Police. A Southend Community Policing Team Inspector from Essex Police has advised that enforceability will be a challenge over the originally proposed area, and more so if the Council looks to increase it. The Inspector additionally warned of the risk of creating an expectation that will be difficult to deliver.

4.14 In considering the views of Essex Police at paragraph 4.13 above it is important to note that a key benefit of the PSPO compared to other enforcement options

that may already be in place is that the PSPO provides enforcement powers to officers as designated by the Council. These include Community Safety Officers, Foreshore Officers and Park Rangers, hereafter referred to as “Authorised Officers”. This allows the Council to act on the issues present in the Restricted Area whilst limiting the additional strain on Essex Police.

- 4.15 Whilst the Council has collated the results of the formal consultation detailed in **Appendix 2** and provided a report of the evidence of ASB in **Appendix 7**, further evidence of ASB has been assembled and is attached at **Appendices 8 & 9**. **Appendix 8** is an Analytical Report of, amongst other matters, incidents and complaints received by the Council over the time periods so referenced with key findings as detailed therein. **Appendix 9** is a CCTV log in relation to the High Street area and Seafront that records incidents by category and volume for the period of the 1st June 2018 to the 31st August 2018.
- 4.16 Activities to be restricted
- 4.17 There was an overriding approval from the public consultation supporting the prohibition of activities included in the draft order, (“the Order”) attached at **Appendix 3**.
- 4.18 One of the specific concerns raised was in relation to the proposed prohibited activity “Consuming alcohol or failing to surrender any containers (sealed or unsealed) which are reasonably believed to contain alcohol, in a public place, when an Authorised Officer has required such consumption to cease”. The concern was that the current phrasing allowed for the potential for Authorised Officers to confiscate sealed/unopened containers whenever they so desired. This is a misreading of the proposed PSPO, the prohibition applies when an Authorised Officer has given a warning requiring consumption of alcohol to cease or requiring alcohol to be surrendered. If an Authorised Officer has given such a warning, an individual will breach the PSPO if (1) he/she continues to consume alcohol despite the warning and (2) if he/she fails to surrender alcohol after having been asked to do so. The intention of this part of the Order is to enable Authorised Officers to provide adequate warnings when a person is drinking within a designated Drinking Control Area (as defined in the Order) or drinking and acting in an anti-social manner elsewhere in the Restricted Area and to provide remedial options before reaching the enforceability provided by the Order.
- 4.19 Some respondents asked for additional activities to be included within the Order, specifically restrictions against dog fouling, dogs being off leads and sexual activity in a public place. It is not proposed to include restrictions relating to these matters at this time. The Council will keep these matters under review, and will continue to gather evidence about these activities and will further consider whether the proposed Order requires variation or extension, whether there is a need for a separate PSPO, or whether other powers may need to be considered. The consultation with Essex Police confirmed that they believe the current legislation to address public sexual activity is sufficient to respond to any public reports of such behaviour.

- 4.20 The Council has further considered the proposed restriction against the erection of tents and structures in the Restricted Area and there will clearly be times when they are permitted such as during festivals and markets in the High Street etc.
- 4.21 Additional concerns
- 4.22 One of the key concerns raised throughout the consultation was that enforceability and punishment will not help resolve the underlying issues causing homelessness and rough sleeping within the borough.
- 4.21 With regards to this observation the Council has many different strategies being implemented to help mitigate and resolve these issues. **Appendices 4 & 5** contain a summary of the Rough Sleeper Initiative and the Assisting Vulnerable Persons Strategy Summary. The documents contain details of the pro-active measures being undertaken by the Council to assist those in need and to address the underlying cause for some of these issues. There is a lot of work being done to support and provide assistance to those who are sleeping rough and the numbers have been reduced considerably. Of those that continue to sleep in public places, a number of individuals have been connected with incidents of ASB.
- 4.22 The purpose of the PSPO is to assist in tackling the repeat offenders whose ASB makes the Restricted Area a less pleasant place to be. The PSPO is intended as a last resort once it is clear that all attempts of assistance by the Council have been unsuccessful. Additionally, an Equality Analysis was undertaken following the consultation to consider the potential impact and different demographics and set out an action plan. This is included at **Appendix 6**.
- 4.23 In formulating the PSPO careful consideration has been given to both the statutory requirements and the Statutory Guidance for Frontline Professionals updated in December 2017, in particular section 2.5. The Guidance states that PSPO's should not be used to target people based solely on the fact that someone is homeless or rough sleeping as this in itself is unlikely to mean that such behaviour is having an unreasonable detrimental effect on the community's quality of life which justifies the restrictions imposed.
- 4.24 The Council has sought to identify the specific behaviours that are causing a detrimental effect on the community's quality of life by those sleeping in a public place such as the obstruction of shop doorways and obstructing members of the public and the leaving of litter and/or belongings (including suitcases, blow up beds, bedside tables). The evidence suggests that there is an increasing incidence of drug paraphernalia being left at sites where people have been sleeping in public places as well as human faeces. The evidence also suggests that many of those sleeping in public are also involved in begging, sometimes aggressively.
- 4.25 The PSPO does not ban rough sleeping itself and is not a tool to criminalise homelessness or the homeless. Paragraph 4(ii) of the Order at **Appendix 3** is directed at those sleeping in public who are having a detrimental impact of the quality of life of those in the locality.

- 4.26 The Council is aware that paragraph 4(iii) of the Order at **Appendix 3** has the potential to affect many of the people sleeping in public. This is not intended to be an indirect attempt to ban rough sleeping. The evidence suggests though that the existence of tents and other similar structures has a detrimental impact on the quality of life of those in the locality. The Council has received comments from members of the public voicing opinions regarding the number of rough sleepers and beggars within the Town Centre, and how it has impacted on their use. Please see attached at **Appendix 10**. A lot of the concerns are mirrored within the consultation analysis report at **Appendix 2**. These show how the current issues of ASB affect the Town's visitors and acts as a deterrent, discouraging people from visiting again which in turn can have a negative impact on local businesses and trade.
- 4.27 Common phrasing used within the comments at **Appendix 10** describe how the witnessed behaviour made the individuals feel; intimidated, unsafe, worried, and uncomfortable. There are also numerous references to the Town losing its appeal as a result of this behaviour. People have also mentioned feeling unable to bring their children into the Town in fear for their safety.
- 4.28 Urinating, defecating, spitting and littering also impact on people using the Restricted Area. As well as being a visual deterrent, both whilst taking place and after the behaviour has occurred, these acts carry negative environmental and health implications.
- 4.29 Response from Liberty
- 4.30 Liberty wrote a letter in response to the consultation, the full text can be found at the end of **Appendix 2**.
- 4.31 Liberty expressed concern that the evidence to support the proposed PSPO had not been published. However section 72(4) of the 2014 Act simply requires the proposed Order to be published, not all of the supporting documents. In addition, the Anti-Social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations SI 2014/2591 contains the publication requirements for an Order once it has been made. The Regulations do not specify any additional requirements whilst the Order is still under consideration. In being as transparent as possible, the Council has now made the following documents publicly available as they are referenced to in this Cabinet report:
- a) Evidence Pack at **Appendix 7**;
 - b) Analytical Support Document at **Appendix 8**; and
 - c) CCTV Log of ASB between 01/06/2018 and 31/08/2018 at **Appendix 9**.
- 4.32 Liberty also expressed concern at to the broad nature of paragraphs 4(ii) and (iii) of the proposed PSPO. As explained above the Council is not seeking to target rough sleeping per se but does seek to restrict sleeping in a public place when it has a detrimental effect of the quality of life of those in the locality. The

Equality Analysis (Appendix 6) has given express consideration to the human rights considerations, including the Article 8 rights highlighted by Liberty.

4.33 Current Powers to deal with ASB.

4.34 As set out in the previous Cabinet report attached at **Appendix 1** there are other powers to deal with ASB. These are:

- a) Under section 3 of the Vagrancy Act 1824 begging is a recordable offence that carries the maximum sentence of a level 3 fine. However, this is only enforceable by the police, and as such the offence must be witnessed by a police officer. Therefore this is limited to the resources and time they are able to allocate to deal with this behaviour.
- b) An option for civil enforcement is an Injunction to Prevent Nuisance and Annoyance. These can be applied for by multiple agencies including the chief officer of police and the local Council. This injunction can prohibit the ASB and impose requirements to engage in a particular activity to address some of the underlying causes, such as attending an alcohol awareness class. Breach of an injunction is treated as a civil contempt of court and has a maximum penalty of two years in prison and /or an unlimited fine. These cannot be applied to an area, but instead only to individuals. The process can be slow, expensive and time-consuming and enforcement can be difficult, especially where the effects of the ASB are not attributable to one identifiable individual.
- c) Another existing power to deal with begging and other ASB is Criminal Behaviour Orders. These are a replacement for the Anti-Social Behaviour Order and the Drinking Banning Order. They deal with the most serious and persistent ASB. However they carry the limitation that they can only be implemented where there has been a criminal conviction and must be applied for by the Criminal Prosecution Service. These are already implemented by the Southend Multi Agency Anti-social Behaviour Team (SMAART) and although affective in some individual circumstances, are not sufficient to tackle the underlying issues of ASB throughout the Restricted Area.
- d) Section 35 of the 2014 Act provides dispersal powers that could be used to tackle begging and the other ASB issues. However this action requires authorisation from a police officer at least the rank of inspector. Individuals and groups can be asked to disperse and not return for a maximum of forty eight hours, if they do it carries a maximum penalty of a level 4 fine or three months in prison. Although this can be used to help deal with short term issues relocating the culprits for short periods of time, it does not provide any long term incentives for improved behaviour.
- e) Additionally Community Protection Notices (CPN) can be issued to deal with ASB. These can be issued by either the local authority or police against any person over the age of 16 or to a body, including a business. They can include:

- a requirement to stop doing specific things;
- a requirement to do specified things; or
- a requirement to take reasonable steps to achieve specified results.

Breach of a CPN can result in different possibilities of enforceability, including a fixed penalty notice, remedial order to rectify any damage done to the area by the behaviour or forfeiture order resulting in the business being required to vacate their premises. However, this can only be used to address specific individuals and bodies, and has a requirement of providing a written notice. This could present an issue where repeat culprits are sporadic on when they carry out the ASB and no fixed address has been ascertained.

- 4.35 The PSPO therefore presents an option that addresses many of these shortfalls. The PSPO works as a deterrent and as motivation to encourage the more vulnerable potential perpetrators to engage in the support services available. It provides general enforcement powers to both the police and officers authorised by the Council, a vital component to addressing ASB while many resources are stretched. It enables the Authorised Officers to issue fixed penalty notices that do not involve a lengthy process. The fixed penalty is currently £100 alternatively the person could be prosecuted in the Magistrates' court resulting in a fine, currently of up to £1000.

5. Other Options

The Council could choose not to introduce a PSPO, however this would lose the opportunity to introduce this measure to tackle ASB which is having a damaging effect on our Town Centre, Seafront and other areas identified in this report. Additionally, following the support of the PSPO that has been displayed in the consultation, choosing to not implement the Order could negatively impact the reputation of the Council within the communities worst affected by the ASB.

6. Reasons for Recommendations

- 6.1 A PSPO covering the Town Centre, Seafront, Southchurch Hall Gardens, Hamlet Court Road and York Road is believed to be an appropriate additional tool to tackle persistent and unreasonable anti-social behaviour ("ASB") which is taking place. It can help provide realistic and proportionate enforceability to help reduce the ASB which discourages and prevents the law-abiding majority from feeling safe in, and subsequently using and enjoying, these public spaces.
- 6.2 The majority of respondents to the Consultation supported the necessity and implementation of the PSPO.
- 6.3 The Council considers that the requirements in S.59 of the 2014 Act are met and that the prohibitions are reasonable ones to be imposed within the meaning of S.59 (5) of the 2014 Act.

7. Corporate Implications

The Corporate implications were set out in the previous report to Cabinet on 6th November 2018 (**Appendix 1**).

7.1 Financial Implications

The costs of enforcement of the PSPO will be undertaken within the existing resources of the Community Safety Team and Essex Police. The costs of signage and their maintenance will be met from the existing services budget.

8. Background Papers

9. Appendices

Appendix 1 – Previous report to Cabinet dated 6th November 2018 with appendices and corresponding minute 427

Appendix 2 – PSPO Analysis report 2019

Appendix 3- Draft Order

Appendix 4 - Summary of the Rough Sleeper Initiative

Appendix 5 - Assisting Vulnerable Persons Strategy Summary

Appendix 6 – Equality Analysis

Appendix 7 - Evidence Pack

Appendix 8 - Analytical Support Document

Appendix 9 - CCTV Log of Anti –Social behaviour between 01/06/2018 and 31/08/2018

Appendix 10 – General Public's Comments received by the Council's Contact Centre and Social Media in relation to ASB.