

Southend-on-Sea Borough Council

Agenda
Item No.

Report of Executive Director
(Neighbourhoods & Environment)
to
**Traffic Regulation Working Party
and Cabinet Committee**
on
22 February 2021

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Thorpe Bay Gardens Covenant

Place Scrutiny Committee - Cabinet Member: Councillor Woodley Part 1 Public Agenda Item

1. Purpose of Report

- 1.1 To inform the Traffic Regulations Working Party and the Cabinet Committee of a covenant (“the Covenant”) that affects Council owned land, that has been bought to the attention of the service in relation to parking restrictions in Thorpe Bay Gardens.

2. Recommendation

- 2.1 **The Working Party is requested to agree that, given the terms of the Covenant, the service is to implement a scheme to restrict parking further.**
- 2.2 **There is concern that implementing restrictions in order to meet the requirements of the Covenant will cause major displacement in neighbouring roads; therefore Option 3 outlined below if agreed by Cabinet Committee is likely to save further requests at a later stage being requested of the service.**

3. Covenant

- 3.1 When the Council acquired the freehold of the land in 1962, as landowner, it covenanted with the Seller to:

“ensure as far as reasonably possible, that no parking of cars is permitted on the North side of Thorpe Bay Gardens, eastwards from its junction with St Augustine’s Avenue”.

A covenant is a restriction over land whereby usually the party acquiring the land (here the Council) agrees not to do something for the benefit of those who retain adjoining land.

- 3.2 Currently parking restrictions of a single yellow line restricting parking from 09:00 to 18:00, with no restriction at all during winter months is arguably not in keeping with the Covenant which states “*all reasonable steps*” to be taken by the Council to restrict parking.
- 3.3 Parking in this location has for many years been an issue; however, since the start of COVID-19 the number of vehicles parking up in this location has increased to the point that residents are now asking for the Covenant to be fully implemented.

It must be noted that whether there is one car parked or multiple it is irrelevant to the compliance of the covenant.

3.4 Residents have therefore requested that to support the Covenant the seasonal restriction be removed, and the single yellow lines must be replaced with double yellow lines 24/7. A further request to install double yellow lines on the opposite side of the road has also been received due to the potential displacement that double yellow lines will create. The south side is not though subject to the Covenant.

3.5 The Cabinet Committee do need to take into consideration that any decision they make is as the highways authority and not as landowner and the Council, as landowner, is, in effect, asking the Council as highways authority to implement the terms of the Covenant.

4. Options

4.1 Option 1:

- Do nothing is an option but leaves the Council, as landowner, open to potential legal challenge by the residents of Thorpe Bay Gardens if they have acquired the ability to enforce the covenant against the Council to compel it to comply with the Covenant. If any such potential claim was successful, then the Council will potentially be liable for the associated legal costs of both parties.

4.2 Option 2:

- To replace the Single Yellow Lines with Double Yellow Lines; North side of Thorpe Bay Gardens, eastwards from its junction with St Augustine's Avenue
- To implement the double yellow line enforcement 12 months of the year
- To implement a restriction that covers 24/7 *

4.3 Option 3:

- To replace the Single Yellow Lines with Double Yellow Lines; North and South side of Thorpe Bay Gardens, eastwards from its junction with St Augustine's Avenue.
- To implement the double yellow line enforcement 12 months of the year

- To Introduce double yellow lines along Barrow Sands and Marcus Avenue to support further displacement of vehicles.

Notes:

** enforcement officers do not currently work 24/7; although enforcement hours are being reviewed it is likely they will not be asked to work 24/7 apart from pre-planned targeted enforcement operations that will occur across the borough.*

** Blue Badge Holders will still be permitted to park on double yellow lines without further loading restrictions (yellow kerb markings).*

5. Corporate Implications

5.1 Contribution to the Southend 2050 Road Map.

- 5.1.1 Ensuring that driver behaviour is improved, and speed and collisions reduced, will be consistent with the Council's 2050 Vision of Safe & Well and that people in all parts of the borough feel safe and secure at all times.

5.2 Financial Implications

- 5.2.1 Costs for implementation of this review and development of the associated action plan, if approved, would need to be met from revenue of the parking account

5.3 Legal Implications

- 5.3.1 The statutory consultative process for Traffic Regulation Orders will be followed. Any objections received will be responded to by the service area.
- 5.3.2 Non-compliance of the Covenant by the Council could leave the Council open to legal challenge as detailed in Option 1

5.4 People Implications

- 5.4.1 Works required to implement the scheme will be undertaken by existing staff resources.

5.5 Property Implications

- 5.5.1 None

5.6 Equalities and Diversity Implications

- 5.6.1 Any implications have been taken into account in designing the review.

5.8 Risk Assessment

- 5.8.1 The proposals are designed to improve highway safety and as such, is likely to have a positive impact.

5.9 Value for Money

- 5.9.1 The Council's term contractors, have been selected through a competitive tendering process to ensure value for money.

5.10 Community Safety Implications

- 5.10.1 The review and subsequent action plan, if implemented, will lead to improved community safety.

5.11 Environmental Impact

- 5.11.1 The potential environmental impact is not known at this stage, but it is envisaged that there could be a potential improvement in air quality if driver behaviours can be positively adjusted.

6. Background Papers

- 6.1 None

7. Appendices

- 7.1 **Appendix 1** – Copy of the conveyance dated 14 December 1962 made between (1) Thorpe Bay Estate Company and (2) The Mayor Aldermen and Burgesses of the County Borough of Southend on Sea (contains the covenant: the Second Schedule, paragraph 4).