

# Southend-on-Sea Borough Council

Agenda  
Item No.

Report of Executive Director  
(Neighbourhoods & Environment)

to

Traffic Regulation Working Party  
and Cabinet Committee

on

10<sup>th</sup> June 2021

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## Thorpe Bay Gardens Covenant

Traffic and Regulation Working Party - Cabinet Member: Councillor Woodley  
Part 1 Public Agenda Item

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### 1. Purpose of Report

- 1.1 Following a report on the 22<sup>nd</sup> February 2021 to the Traffic Regulation Working Party and the Cabinet Committee to provide an update upon a covenant (“the Covenant” as detailed at paragraph 3.1) that affects Council owned land, in relation to parking restrictions in Thorpe Bay Gardens and to further make recommendations.

### 2. Recommendations

- 2.1 The Council acting in its capacity as the Highways Authority recommend that the seasonal restrictions are extended to cover the 12-month period (Option 1 at paragraph 5.1); and,
- 2.2 To keep the situation under review with a report to the first available committee meeting after January 2022 to update following further surveys and evidence gathering carried out over the Summer and Winter months in nearby adjoining roads. (Option 2 at paragraph 5.1).

### 3. Background and the Covenant

- 3.1 The Council has received complaints from some residents (the “Residents”) who are local to Thorpe Bay Gardens that the current parking restrictions, which consists of a single yellow line restricting parking from 09:00 to 18:00 during March to October each year with no restriction at all during winter months, is not in keeping with a covenant. This covenant (“the Covenant”) is contained within a conveyance dated 14 December 1962 made between (1) Thorpe Bay Estate Company (“the Seller”) and (2) The Mayor Aldermen and Burgesses of the County Borough of Southend on Sea.
- 3.2 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.

3.3 The Covenant provides that the Council covenants 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”.*

3.4 The Residents also claim that a number of vehicles parking in this location has increased and have requested that the Council should consider removing the seasonal restrictions and install double yellow lines to prevent parking 24/7 all year, to comply with its obligations under the Covenant.

3.5 The Residents further requested the installation of double yellow lines on the opposite side of the road at Thorpe Bay Gardens and along Barrow Sands and Marcus Avenue due to the potential displacement that double yellow lines will create.

3.6 The Covenant therefore placed an obligation on the Council, as landowner, to ensure as far as is reasonably possible, that there is no parking of cars on the North side of Thorpe Bay Gardens.

3.7 Whilst in 1962 the Borough of Southend was the Highways Authority, the Covenant was not expressed to be given by the then County Borough Council in the exercise of any of its statutory functions as Highways Authority. Therefore there is a clear distinction between what the responsibilities of the Council are as landowner and what they are as Highways Authority.

3.8 This obligation contained in the covenant is therefore inconsistent with the proper exercise of the Highways Authority’s statutory functions. It is considered that as the Covenant concerns the use of a highway, the Council should act only in its capacity as the highway authority and that such requests should be considered in relation to the Council’s statutory powers that regulate the use of the highway.

3.9 The Covenant appears to fetter the Council’s power to control parking on the highway and as the Local Authority cannot fetter the exercise of a statutory discretion, the Covenant appears to be inconsistent with the proper exercise of the Highways Authority’s discretion.

3.10 The Cabinet Committee, when considering the Options set out in paragraph 5, need to take into consideration that any decision the Council makes is in its capacity as the Highways Authority only and not in the capacity as the Council acting as landowner.

#### **4. Current restrictions**

4.1 There are restrictions in place on Thorpe Bay Gardens whereby parking is not between March to October, 9am - 6pm.

4.2 There have been two parking surveys undertaken (November 2020 and April 2021) to show the issues with parking which capture information on the parking stress whilst restrictions are in place and again when they are not. Photos can be found in Appendix 2.

4.3 Appendix 2 of this report shows photographs of parked vehicles. As you will see from the evidence captured there is an increase of parked vehicles throughout the winter months which would be expected due to not having any restrictions in place to prevent parking.

4.4 There is potential for displacement of vehicles into already busy adjoining streets; parking pressure surveys will be undertaken and if required a proposal for further restrictions into these roads will be presented at a future committee.

## **5. Options**

### **5.1 Option 1:**

- To remove the seasonal restrictions and implement the current restrictions for 12 months;

### **Option 2:**

- Monitor the situation and keep under review with a report to the first available committee meeting after January 2022 to update following additional surveys carried out over the Summer and Winter months.

## **6. Corporate Implications**

### **6.1 Contribution to the Southend 2050 Road Map.**

6.1.1 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.

### **6.2 Financial Implications**

6.2.1 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.

### **6.3 Legal Implications**

6.3.1 The statutory consultative process for Traffic Regulation Orders will be followed. Any objections received will be responded to by the service area.

6.3.2 The Covenant appears to fetter the Council's powers to control parking on the highway.

6.3.3 The Covenant concerns the use of the highway. The Council should act only in its capacity as the Highways Authority in accordance with its powers to regulate the use of the highway in accordance with the Highways Act 1980 and the Road Traffic Regulation Act 1984 ("RTRA 1984") and in particular, consideration of the prohibition of parking on the highway in accordance with Part 1 of the RTRA 1984.

6.3.4 The power to prohibit parking by way of a Traffic Regulation Order is not conferred upon the Council for the purpose of benefitting the successors in title of land (of the original seller in 1962). It must be exercised for the purposes set out in Part 1 of the RTRA 1984.

- 6.3.5 The Covenant is not expressed to be given by the County Borough Council in 1962 in the exercise of its statutory functions and is considered to impose an obligation that is inconsistent with the proper exercise of its functions under the RTRA 1984.
- 6.3.6 The Options being considered should be determined on public interest considerations of the RTRA 1984.
- 6.3.7 The Council, as landowner, could be open to legal challenge for not complying with the terms of the Covenant. If such a challenge occurs then such a challenge would be defended.

#### **6.4 People Implications**

- 6.4.1 None.

#### **6.5 Property Implications**

- 6.5.1 None

#### **6.6 Equalities and Diversity Implications**

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

#### **6.7 Risk Assessment**

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

#### **6.8 Value for Money**

- 6.8.1 Any works required will be undertaken by the Council's term contractors, who have been selected through a competitive tendering process to ensure value for money.

#### **6.9 Community Safety Implications**

- 6.9.1 N/A

#### **6.10 Environmental Impact**

- 6.10.1 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.

### **7. Background Papers**

- 7.1 None

**8. Appendices**

- 8.1 **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).
- 8.2 **Appendix 2** – Photos of parking pressures

**Appendix 2 – Photos  
Thorpe Bay Gardens – April 2021**



**Appendix 2 – Photos  
Thorpe Bay Gardens – October 2020**



**Appendix 2 – Photos**  
**Thorpe Bay Gardens – November 2020**

