

Southend-on-Sea Borough Council

Agenda
Item No.

Report of Executive Director (Neighbourhoods & Environment)

To
**Traffic Regulations Working Party
and Cabinet Committee**
on

04/01/2022

Report prepared by:
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Thorpe Bay Gardens

Cabinet Member: Councillor Ron Woodley
Part 1 (Public Agenda Item)

1. Purpose of Report

This report provides background information to the issues regarding the introduction of a parking restriction in Thorpe Bay Gardens, to enable appropriate and effective scrutiny of the matter.

2. Recommendation

2.1 That, the Traffic Regulations Working Party and Cabinet Committee reconsider its resolution that the draft TRO amending the waiting restrictions be confirmed as advertised and the proposals implemented for the reasons given in the report and either:

2.2 Resolve to accept the original Officer recommendation not to progress the proposals at this time; or,

2.3 Authorise the Head of Traffic and Highways to survey and research the extent of the alleged anti-social behaviour occurring in Thorpe Bay Gardens, and if established consult with the police and interested parties on measures to reduce the activity by means of a PSPO subject to funding being made available for the project.

3. Background

3.1. The at its meeting on 13th September 2021, the Traffic Regulations Working Party and Cabinet Committee considered the representations to a draft traffic regulation order (TRO) amending the existing waiting restrictions in Thorpe Bay Gardens (Minute 323 refers). A copy of Minute 323 of Cabinet Committee is also attached at **Appendix 1**. A copy of the report is attached to this report at **Appendix 2**.

- 3.2. This matter was called in for consideration by the Place Scrutiny Committee at its meeting on 4th October 2021. At that meeting there was concern that the matter, in connection with the decision relating to Thorpe Bay Gardens, could not be adequately scrutinised, as the relevant Cabinet Member was absent. Accordingly, the matter was referred back to the Cabinet Committee for reconsideration (and the decision then referred up under SO 39) (Minute 364 refers).
- 3.3. This report summarises the issues regarding the matter in relation to Thorpe Bay Gardens to assist Councillors in fulfilling their scrutiny role.

4.0 History

- 4.1 In 2019, complaints were received from residents regarding dangerous driving and speeding vehicles in Thorpe Bay Gardens. A multi-agency response, involving officers from the Council's Community Safety, Highways, Parking and Environmental Care Teams and the Police, sought to address the problems.
- 4.2 Initial involvement with residents identified two separate issues:
- Regular reported occurrences of dangerous high speeding vehicles along Thorpe Bay Gardens, mainly in the evenings. Residents reported that the road was being used as a 'racetrack' and that vehicles were estimated to be travelling up to 70mph.
 - Regular reported anti-social behaviour from groups of individuals meeting on the green open space, involving noise nuisance, alleged drug use, littering, illegal parking and general intimidation to residents in Thorpe Bay Gardens.
- 4.3 Anti-social behaviour reported by residents subsided as a result of the work undertaken, as well as likely seasonal influences. However, reports from residents of dangerous speeding continued.
- 4.4 In respect of speeding, the following work has been undertaken. Joint patrols of the area, involving Community Safety, Highways and Police officers were undertaken on certain days between 14th June and 22nd July 2020 up to 10pm. Council officers witnessed specific incidents involving vehicles speeding, believed to be well in excess of the 30-mph limit, on the following occasions:
- 30th May approx. 9pm (mopeds speeding and pulling wheelies)
 - 14th June approx. 7pm (white BMW)
 - 14th June approx. 7pm (Red Seat Leon)
- 4.5 Details of the speeding vehicles were provided to the Police for them to follow up although the Council is not aware of any action taken by the Police as a result.
- 4.6 Traffic monitoring to obtain speed data was undertaken by the Council's Highways Team between 21st June to 3rd July 2020. During that period, speeds

were recorded up to a maximum of 71mph. It must be noted that the high speeds were all captured after 7pm. This correlates with the reports received from residents.

- 4.7 Police created a specific operation, to respond to the issues reported by the residents of Thorpe Bay Gardens and liaised the Council's Community Safety and Highways officers throughout.
- 4.8 The matter was reported to the Traffic Regulations Working Party and Cabinet Committee at the meeting on Thursday 12th September 2019, where a request for the introduction of speed humps in Thorpe Bay Gardens was approved (Minute 386 refers). This was subsequently called-in for scrutiny and referred back for reconsideration at the meeting of Cabinet Committee on 4th November 2019. In the light of further information, the Cabinet Committee resolved to proceed with the introduction of the speed control measures (Minute 505 refers). The speed humps were installed in July 2020.
- 4.9 In January 2021, the Highways Team was informed that when Council acquired the freehold of the land to the south of Thorpe Bay Gardens in 1962, a covenant in was in place requiring the Council as the landowner 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”.

- 4.10 In the light of the above information and following consultation with the Cabinet Member, the Highways Team submitted a report for consideration by the Traffic Regulations Working Party and Cabinet Committee on 22nd February 2021 (Minute 848 refers) recommending the following to support the Covenant and reduce the risk of a legal challenge from residents:

- the replacement of the single yellow lines with double yellow lines on the north and south sides of Thorpe Bay Gardens, eastwards from its junction with St Augustine’s Avenue;
- the implementation of the double yellow line enforcement 12 months of the year; and
- the introduction of double yellow lines along Barrow Sands and Marcus Avenue to support further displacement of vehicles.

- 4.11 This matter was deferred for officers to obtain clarification of the legal implications of the covenant before implementing any further restrictions.

- 4.12 The advice received from Counsel was that whilst the Council was the Highways Authority when it obtained the land in 1962, 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 was a clear distinction between what the responsibilities of the Council are as landowner and what they are as Highways Authority.

- 4.13 This was reported to the Traffic Regulations Working Party and Cabinet Committee on 10th June 2021, when it was recommended that the seasonal restrictions be extended to cover the 12-month and to keep the situation under review with a report to the first available committee meeting after January 2022. It was also recommended that further surveys and evidence gathering be carried out over the summer and winter months in nearby adjoining roads.
- 4.14 The Cabinet Committee considered the views of the Traffic Regulations Working Party in respect of this matter and, in view of the concerns expressed by residents, resolved to commence the statutory consultation for the revocation of the existing seasonal restrictions in Thorpe Bay Gardens from its junction with St Augustine's Avenue to its eastern extremity and the introduction of no waiting at any time restrictions daily between the hours of 8am and 10pm and that the situation in Thorpe Bay Gardens be monitored and kept under review and that a report be submitted to the meeting of the Traffic Regulations Working Party and Cabinet Committee within one year. (Minute 49 refers).
- 4.15 This decision was called in for consideration by the Place Scrutiny Committee at its meeting on 5th July 2021. The Place Scrutiny Committee noted the decision of Cabinet Committee, but the matter was referred to full Council for consideration under Standing Order 39 (Minute 105 refers). The Council noted the decision of Cabinet Committee and the draft TRO in respect of the proposals was subsequently advertised in accordance with the statutory requirements.
- 4.16 A number of representations were received during the statutory consultation period. These were reported to the Traffic Regulations Working Party and Cabinet Committee for consideration on 13th September 2021, where it was recommended that on the basis of the majority of responses not being in favour of the proposals they should not be progressed. It was resolved that the draft TRO amending the waiting restrictions be confirmed as advertised and the proposals implemented. (Minute 4 refers).
- 4.17 This was subsequently called-in to the Place Scrutiny Committee for consideration at its meeting on 4th October 2021.

5. Legal Position

- 5.1 As stated in paragraph 4.12 above, whilst the Council was the Highway Authority when it obtained the land to the south of Thorpe Bay gardens in 1962, the Covenant was not expressed to be given by the then County Borough Council in the exercise of any of its statutory functions as Highway Authority. There is a clear distinction between the responsibilities of the Council as landowner and those as the Highway Authority.
- 5.2 This obligation contained in the covenant is therefore inconsistent with the proper exercise of the Highway 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.

- 5.3 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 Highway Authority's discretion. When considering all of the possible options in relation to this matter the Council must act in its capacity as the Highway Authority only and not in the capacity as landowner.
- 5.5 In accordance with its powers under the Highways Act 1980 and the Road Traffic Regulation Act 1984 ("RTRA 1984"), the Council as Traffic/Highway Authority may introduce a TRO where it appears to the authority making the order that it is expedient to make it:
- (a) for avoiding danger to persons or other traffic using the road or any other road or for preventing the likelihood of any such danger arising, or
 - (b) for preventing damage to the road or to any building on or near the road, or
 - (c) for facilitating the passage on the road or any other road of any class of traffic (including pedestrians), or
 - (d) for preventing the use of the road by vehicular traffic of a kind which, or its use by vehicular traffic in a manner which, is unsuitable having regard to the existing character of the road or adjoining property, or
 - (e) (without prejudice to the generality of paragraph (d) above) for preserving the character of the road in a case where it is specially suitable for use by persons on horseback or on foot, or
 - (f) for preserving or improving the amenities of the area through which the road runs, or
 - (g) for any of the purposes specified in paragraphs (a) to (c) of subsection (1) of section 87 of the Environment Act 1995 (air quality).
- 5.6 The Council may potentially introduce waiting restrictions where consistent antisocial behaviour is directly linked to areas of parked vehicles where the vehicles are left unattended or where parked vehicles could potentially cause a hazard to other highway users.
- 5.7 There is a possibility that children may attempt to walk across the green from the seafront and up the slope between vehicles parked on the south side of Thorpe Bay Gardens during the winter period. The Highways Team has not, however, received any concerns or reports of any such incidents and has no real evidence regarding any parking or safety issues in this area.

6. Other Options

- 6.1 Public Spaces Protection Orders (PSPO) is a relatively new power for local authorities granted under the Anti-social Behaviour, Crime and Policing Act 2014. A PSPO is intended to deal with anti-social behaviour in a local area that is detrimental to the community's quality of life. A PSPO imposes conditions on the use of that area. A breach of a PSPO is a criminal offence where an FPN can be issued by a police officer in uniform or authorised council official.

- 6.2 A PSPO can only be introduced with the agreement of the police and where consultation and local engagement to establish exactly the nature and extent of the anti-social behaviour has taken place. A PSPO can only be introduced for a maximum 3-year period.
- 6.3 There is a an existing PSPO covering the town centre, seafront and adjoining areas including Thorpe Bay Gardens. The provisions of the PSPO allow for the enforcement of anti-social behaviour and was introduced in July 2019 and will expire on 21st July 2022. A copy of the current PSPO is attached to this report at **Appendix 3**.
- 6.4 Work on a replacement PSPO will need to commence early in 2022 to ensure the control of anti-social behaviour can continue to be enforced. As part of this process there will need to be a review of enforcement activity and consideration of any issues or improvements that may need to be included in the new PSPO and/or the frequency of patrols.

7. Reasons for Recommendations

- 7.1 The Council must act in its capacity as Highway/Traffic Authority in this matter and not in its capacity as landowner. Any reference to the Covenant is irrelevant.
- 7.2 A TRO can only be introduced in accordance with the powers granted under section 1 of the Road Traffic Regulation Act 1984. This does not include measure for the control of anti-social behaviour. There is a risk of the Council being subjected to legal challenge if the Traffic Regulations Working Party and Cabinet Committee continues with its decision of 13th September 2021 that the draft TRO amending the waiting restrictions be confirmed as advertised and the proposals implemented.
- 7.3 A PSPO granted under the Anti-social Behaviour, Crime and Policing Act 2014 is considered the more appropriate measure for the control of anti-social behaviour.

8. Corporate Implications

8.1 Contribution to the Southend 2050 Road Map

Roads that feel safe for the public, residents and visitors are part of the 2050 road map. The use of PSPOs to control anti-social behaviour are an essential tool to the delivery of this road map.

8.2 Financial Implications

There are financial implications associated with the recommendations in this report insofar as there will be a need for police and community engagement to establish if a PSPO is a practical solution to the issues in Thorpe Bay Gardens.

Continuing with the decision to introduce a TRO is unlikely to resolve anti-social behaviour and has the risk of legal challenge and the associated costs in

preparing and presenting a legal case at the High Court. It will also deplete resources and delay work on other schemes that are high priority.

8.3 Legal Implications

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

Any issues relating to the Covenant concerning the use of the highway is irrelevant. The Covenant appears to fetter the Council's powers to control parking on 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.

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.

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.

The Council, as the adjoining 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.

8.4 People Implications

There is nothing to raise at this time.

8.5 Property implications

There is nothing to raise at this time.

8.6 Consultation

There is nothing to raise at this time.

8.7 Equalities and Diversity Implications

There is nothing to raise at this time.

8.8 Risk Assessment

Whilst there may be a risk of legal challenge to the Council in not upholding its responsibilities specified in the Covenant, the Council may only act in accordance with its powers as Highway Authority under the Highways Act 1980 and the Road Traffic Regulation Act 1984. The Council will therefore defend its position as appropriate.

There is also a risk of legal challenge to the Authority if the Council was to act outside of its powers as Highways Authority in relation to this matter.

8.9 Value for Money

There is nothing to raise at this time.

8.10 Community Safety Implications

The Council as Highway Authority may only act in accordance with its powers as Highway Authority under the Highways Act 1980 and the RTRA 1984. Issues relating to antisocial behaviour are matters for the police, or where so authorised such as through the PSPO, the Council's enforcement officers.

8.11 Environmental Impact

There is nothing to raise at this time.

9. Background Papers

[Public spaces protection orders: guidance for councils \(local.gov.uk\)](https://www.local.gov.uk/public-spaces-protection-orders-guidance-for-councils)

10. Appendices

Appendix 1 – Minutes of the meeting of Cabinet Committee held 13th September 2021 [Agenda Template \(southend.gov.uk\)](https://www.southend.gov.uk/agenda-template)

Appendix 2 – Report of Executive Director (Neighbourhoods and Environment) to Traffic Regulations Working Party and Cabinet Committee on 13th September 2021 ([Public Pack](https://www.southend.gov.uk/public-pack)) [Agenda Document for Traffic Regulations Working Party, 13/09/2021 18:30 \(southend.gov.uk\)](https://www.southend.gov.uk/agenda-document-for-traffic-regulations-working-party-13-09-2021-18-30)

Appendix 3 – Public Spaces Protection Order (Southend Town Centre, Seafront and Adjoining Areas) No. 1 of 2019.

[public-spaces-protection-order-southend-town-centre-seafront-and-adjoining-areas-no-1-of-2019](https://www.southend.gov.uk/public-spaces-protection-order-southend-town-centre-seafront-and-adjoining-areas-no-1-of-2019)