

Southend-on-Sea Borough Council

Agenda
Item No.

Report of

The Assistant Director Legal Services

To

Cabinet

On

22nd February 2022

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Services
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Title of Report

Southend Town Centre & Seafrost Public Spaces Protection Order (No 2)

Relevant Scrutiny Committee: Policy and Resources

Cabinet Member: Councillor Mulroney

Part 1 (Public Agenda Item)

1. Purpose of Report

- 1.1 To invite Members to consider whether the Council should commence statutory consultation (the 'Consultation') on extending and varying the Public Spaces Protection Order (Southend Town Centre, Seafrost and Adjoining Areas) No 1 of 2019 ('the 2019 PSPO').
- 1.2 It should be noted that Members are not being asked to decide whether the 2019 PSPO should be extended or amended, but to approve the commencement of the Consultation. A further report of the next steps will be prepared once the Consultation has been completed. At that future stage, Members may be asked to extend and vary the 2019 PSPO (or potentially consider making a new PSPO) if the statutory criteria are met and it is thought to be a necessary and proportionate response to the issues that have been identified. No decision or recommendation is made or required on that in this report.

2. Recommendations

- 2.1 That a Consultation be undertaken into the possibility of the Council extending and varying (and/or making a new) Public Spaces Protection

Order (PSPO) under Sections 59, 60 & 61 of the Anti-social Behaviour, Crime and Policing Act 2014 in respect of the area and activities detailed in this report.

- 2.2 That the proposed Consultation process commences as soon as practically possible.**
- 2.3 That the Assistant Director for Legal Services in consultation with the Cabinet Member for Environment, Culture, Tourism & Planning is delegated to:**
 - 2.3.1 finalise the draft PSPO to form part of the Consultation;**
 - 2.3.2 settle the final form of the Consultation;**
 - 2.3.3 explore and report back to Cabinet following the Consultation any additional resource requirements to effectively enforce the PSPO.**

3. Background

- 3.1 Local Authorities have a key role to play in helping to make local areas safe places to live, work and visit. Tackling behaviour which has a detrimental impact on the quality of life of those in the locality is a key element of this role. These behaviours are sometimes called anti-social behaviour ('ASB'). It is to be noted that behaviour which has a detrimental impact can be broader than that which has traditionally been described as ASB.
- 3.2 The Anti-social Behaviour, Crime and Policing Act 2014 ('the 2014 Act') introduced several new tools and powers for use by councils and their partners to address ASB in their local areas. These tools, which replaced and streamlined a number of previous measures, were brought in as part of a Government commitment to put victims at the centre of approaches to tackling ASB, focussing on the impact ASB can have on both communities and individuals, particularly on the most vulnerable.
- 3.3 Local Authorities can use a Public Spaces Protection Order ('PSPO') to prohibit specified activities, and/or require certain things to be done by people engaged in particular activities, within a defined public area. PSPO's differ from other tools introduced under the 2014 Act as they are council-led, and rather than targeting specific individuals or properties, they focus on the identified problem behaviour in a specific location. The Home Office's statutory guidance reiterates that PSPOs should be used responsibly and proportionately, in response to issues that cause ASB, and where necessary to protect the public.
- 3.4 Under the 2014 Act, authorised council officers have the power to issue a fixed penalty notice ('FPN') to anyone they reasonably believe is in breach of the PSPO. Whilst the 2014 Act sets out a framework for issuing FPNs, councils will also have their own wider protocols around issuing fines. The Council currently has an enforcement policy for the Council's enforcement team to ensure fairness and best practice is exercised. This will be reviewed and updated following any

future decision of the Council in relation to any additional restrictions that form part of any varied, extended or new PSPO.

3.5 The 2019 PSPO.

3.5.1 The 2019 PSPO prohibits certain ASB within a geographical area ('the Restricted Area') and the Restricted Area plan can be found at **Appendix A**. The current Restricted Area is contained within the red line on this plan and includes the Town Centre, Seafront, Southchurch Hall Gardens, Hamlet Court Road and York Road.

3.5.2 The following ASB is prohibited in the Restricted Area:

- Urination, defecation, spitting and littering
- Sleeping in a public place in a manner that has a detrimental impact
- Erecting tents or other structures without permission from the Council
- Consuming alcohol or failing to surrender containers reasonably believed to contain alcohol within a drinking control area (hatched blue on **Appendix A**)
- Outside the drinking control area consuming alcohol and behaving in an anti-social manner or failing to surrender containers when required (within the area on **Appendix A** shaded pink)
- Ingesting, inhaling, injecting, smoking or otherwise using drugs or substances reasonably believed to be psychoactive substances
- Begging or approaching someone for that purpose
- Approaching or stopping someone to enter into arrangements for future charity payments or to collect information to assist in a future arrangement without the Council's permission.

3.5.3 The 2019 PSPO can be found at **Appendix B**.

3.6 It is proposed that along with the potential renewal of the existing restrictions, to consider additional restrictions to combat ASB that has become apparent over the last three years and includes:

- Cycling in pedestrianised areas
- Using electronic scooters ('e-scooters') in pedestrianised areas
- Restricting the use of barbeques ('BBQs') to dedicated areas at East Beach, Shoeburyness and Eastern Esplanade between the former Gas works building and the Camper Road Jetty
- Restrictions on the appropriate use and disposal of BBQs within the designated areas
- Restrictions on launch points, recovery points and areas used for Personal Water Crafts (PWCs)
- Conduct when in charge of or operating PWCs.

3.7 Evidence for the requirement of these restrictions will be provided to Cabinet along with the results of the Consultation and details of enforcement implications after the Consultation has been concluded, for a decision on whether, or not, to implement the extension and amendments or otherwise.

- 3.8 The Council is required under the 2014 Act to carry out a Consultation and necessary publicity and notification before making, extending or varying a PSPO.
- 3.9 As a minimum, the Council must consult with the Chief Officer of Police, the Police Fire and Crime Commissioner, appropriate community representatives, and the owners or occupiers of land in the area to be designated (where reasonably practicable).
- 3.10 The proposed wording of the PSPO and the proposed restricted area as part of the Consultation will be finalised prior to the Consultation.
- 3.11 During the Consultation process the Council will seek comments on:
- Whether a PSPO is appropriate, proportionate or needed at all;
 - The proposed restrictions; and
 - The proposed area to be designated as the Restricted Area.
- 3.12 Consultation would be over a 4 week period, with the following stakeholders:
- Chief Officer of Police for Southend
 - The Police Fire and Crime Commissioner
 - Town Centre/Seafront Businesses
 - Ward Councillors
 - The voluntary sector
 - Community representatives
 - Local residents/those working nearby/Visitors (via a survey).
- 3.13 Findings from the Consultation will be brought back to Cabinet along with evidence in relation to the necessity for any restrictions, for Cabinet to decide whether to proceed with the PSPO and, if so, the area to be designated and the restrictions which would apply. At that point the Cabinet would have to consider all material considerations including proportionality i.e. are the proposed restrictions proportionate to the harm/nuisance that is being caused?
- 3.14 Clearly there will be challenges in enforcement of the PSPO, with any additional restrictions, over a wide area. PSPOs can be resource-intensive to introduce and enforce and there will need to be commitment from partners to ensure it can be implemented effectively. Consideration may have to be had to whether the PSPO is disaggregated into two separate PSPOs considering the area covered and the various ASB and whether the ASB associated to BBQs and PWC's is more effectively dealt with by a separate PSPO. The Consultation will help inform this. Further, in some areas, codes of practice around certain practices such as that possibly related to the PWCs, may provide effective solutions in responding to particular concerns.

4. Other Options

The Council could choose not to engage in the Consultation process. This would result in the current PSPO expiring at midnight on the 10th July 2022 and this enforcement power would no longer be available to Essex Police and the Council's authorised officers for tackling ASB in the restricted area.

5. Reasons for Recommendations

5.1 Whilst the 2019 PSPO has provided authorised council officers with an additional tool to tackle ASB, there has been a growing number of other complaints received in the last three years about the following:

- Cycling on the footway and e-scooters, particularly in the Town Centre area where there have been a number of reported near misses. This escalated during the Covid-19 Pandemic during the different phases of restrictions during the lockdown periods whereby a number of residents took to using cycles/e-scooters for their exercise and commuting.
- ASB associated with the use of PWCs.
- ASB associated with use of BBQs on beaches.

5.2 Therefore the Council proposes to consult on all these activities and to bring the findings back to Cabinet in a report along with a summary of findings and evidence of the operation of the 2019 PSPO to then decide whether to extend and vary the 2019 PSPO or progress with any new PSPO.

6. Corporate Implications

6.1 Contribution to the Southend 2050 Road Map

Safe and Well. Residents feel safe and secure in their homes, neighbourhoods and across the borough.

6.2 Financial Implications

The costs of consulting on the PSPO and gathering further evidence of ASB will be relatively modest but will draw upon a significant amount of officer time (which, in itself, is an associated cost). Following the Consultation, if agreed, a further report to Cabinet will provide greater visibility as to the costs of proceeding with the PSPO which will depend on the extent of any PSPO in terms of scope and geographic area, particularly in terms of signage and enforcement.

6.3 Legal Implications

6.3.1 The introduction, varying or amending of a PSPO must be undertaken in accordance with the 2014 Act and the Statutory Guidance. Failure to do so could result in a legal challenge.

6.3.2 Under section 59 of the 2014 Act, local authorities must be satisfied that the follow two conditions are met to make a PSPO:

- (a) The first condition is that on reasonable grounds that the activity subject to a PSPO has a detrimental effect on the quality of life of those in the locality (or it is likely that activities will take place and have such an effect).

(b) If so, then the second condition is that the effect, or likely effect, of the activities:

- is (or is likely to be) persistent or continuing in nature
- is (or is likely to be) unreasonable
- justifies the restrictions being imposed.

6.3.3 Section 72 of the 2014 Act provides that the Council must carry out necessary consultation before making a PSPO. Similarly, under section 72 councils are required to have particular regard to articles 10 and 11 of the Human Rights Act 1998.

6.3.4 Draft proposals for a PSPO must be published as part of the Consultation process. Further, a copy of the draft order should be provided. Therefore, whilst the proposals are included within this report some further work is required to finalise the proposed draft order. Recommendation 2.3 provides that the Assistant Director for Legal Services in consultation with the Cabinet Member for Environment, Culture, Tourism and Planning is delegated to finalise the draft PSPO that is to form part of the Consultation. This allows the draft PSPO to be finalised following clarifications that enforcement through the PSPO would not prejudice enforcement through other means, processes or legislation. It is important to remember that in some cases existing legislation covering various forms of ASB or public order may be adequate and proportionate to deal with that ASB or public order.

6.3.5 Before making, amending or varying a PSPO the Council must consider comments and representations received.

6.4 Environmental Impact

There would arguably be a positive impact on the environment as the PSPO would enable enforcement against littering hence improving street cleanliness. Further, through enforcement the PSPO provides additional protection of our parks and gardens, reducing the effects and dangers of BBQs and the dangerous use of PWCs on swimmers and marine life.

6.5 People Implications

None specific for the Consultation.

6.6 Property Implications

None specific for the Consultation.

6.7 Consultation

N/A. This is the purpose of this report and what is being sought to commence.

6.8 Equalities and Diversity Implications

An updated Equality Analysis will be undertaken.

6.9 Risk Assessment

None specific for the Consultation.

6.10 Value for Money

If the PSPO is extended, varied, or a further PSPO is made there may be a potential reduction in costs associated with crime and ASB. Further there may be a wider benefit to the community if footfall increases which will benefit local businesses.

6.11 Community Safety Implications.

None specific to this report. To be fully addressed in the further report following the Consultation.

7. Background Papers

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

[2018 report for consultation.pdf](#)

8. Appendices

A Plan of the Restricted Area contained in the Public Spaces Protection Order (Southend Town Centre, Seafront and Adjoining Areas) No 1 of 2019.

B The Public Spaces Protection Order (Southend Town Centre, Seafront and Adjoining Areas) No 1 of 2019. (Without Plan as provided at Appendix A)