

Southend-on-Sea City Council

Report of Executive Director of Strategy, Change and Governance

To

Cabinet

On

1st July 2022

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Agenda
Item No.

Southend Town Centre, Seafront and Adjoining Areas Public Spaces Protection Order- Extension and Variation

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 extending the Southend Town Centre, Seafront and Adjoining Areas Public Spaces Protection Order (“the PSPO”) for three years and to include the proposed variations identified in this report under Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 (“the Act”) taking into consideration the results of the statutory consultation and further evidence as detailed in this report.
- 1.2 The purpose of the PSPO is to assist the Council and its partners in addressing persistent anti-social behaviour (ASB) within an identified area (“The Restricted Area”) as displayed in the draft order at **Appendix A**. It helps ensure that the law-abiding majority can use and enjoy these public spaces, safe from ASB.
- 1.3 Cabinet are required to consider all material considerations including proportionality i.e., are the proposed restrictions proportionate to the harm/nuisance that is being caused.

2. Recommendations

- 2.1 That the Council varies the Public Spaces Protection Order (PSPO) over the restricted area in the form annexed at **Appendix A** and plan at **Appendix B** and extend it to run for a further three years.
- 2.2 That the Director of Public Protection in consultation with the Director of Legal Services explore further options for authorising third parties, including South Essex Property Services (SEPS), to enforce the PSPO and take the necessary steps to implement and ensure that training is provided in accordance with the enforcement policy at **Appendix C**.

2.3 The Council extends the Drinking Control Area to include the Queensway Estate.

3. Background

- 3.1 On the 11th July 2019 the Public Spaces Protection Order (Southend Town Centre, Seafront and Adjoining Areas) No1 of 2019 came into force. Under the Act this can only run for three years before expiring and requires a public consultation before the Council can agree that the PSPO is extended for up to a further three years.
- 3.2 On 22nd February 2022 a report was presented to Cabinet to decide whether to proceed with a public consultation on extending and varying the PSPO as provided in the Background papers.
- 3.3 The following ASB is currently prohibited in the Restricted Area:
 - 3.3.1 Urination, defecation, spitting and littering
 - 3.3.2 Sleeping in a public place in a manner that has a detrimental impact
 - 3.3.3 Erecting tents or other structures without permission from the Council
 - 3.3.4 Consuming alcohol or failing to surrender containers reasonably believed to contain alcohol within a drinking control area (hatched blue on **Appendix B**)
 - 3.3.5 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 B** shaded pink)
 - 3.3.6 Ingesting, inhaling, injecting, smoking or otherwise using drugs or substances reasonably believed to be psychoactive substances
 - 3.3.7 Begging or approaching someone for that purpose
 - 3.3.8 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.
- 3.4 Following complaints received by the Council the consultation also included possible restrictions on cycling and the use of e-scooters in pedestrianised areas and the ASB associated in using these in pedestrianised areas.
- 3.5 The report considered by Cabinet on the 22nd February 2022 also considered restrictions on Barbeques and on restrictions on use of Personal Water Craft (PWCs). These two items are subject to their own consultation and therefore not for consideration as part of this report.
- 3.6 Councillors are reminded that 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 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 E**.

- 3.7 Failure to comply with a PSPO is a criminal offence and can result in prosecution which could lead upon conviction to a fine of up to £1,000 or a fixed penalty notice of £100.

4. Consultation and Evidence

Consultation

- 4.1 A four-week consultation was launched on the 27th of May 2022 until 25th June 2022, which included information promoted online.
- 4.2 The consultation could be accessed by residents and businesses by either:
- directly online on the Council's "Consultation Portal"; 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.
- 4.3 The Council liaised directly with Essex Police and the Police Fire and Crime Commissioner for Essex for comments as well as Southend BID and South Essex Homes.
- 4.4 The following responses were received:
- 4.4.1 The Police District Commander for Southend confirmed that he was really pleased with the proposals with some suggestions regarding the drafting of the PSPO regarding e-scooters that the Council has taken this into account.
- 4.4.2 South Essex Homes responded asking if:
- (a) That the Drinking Control Area is extended to include Queensway Estate. People sit on the raised walkway around the play area drinking. This is more prevalent in the Summer months and in the immediate vicinity of people's homes.
- (b) That South Essex Homes & South Essex Property Services (SEPS) CSAS Accredited Officers are authorised to enforce the PSPO and provided with adequate training. SEPS Staff carry out neighbourhood patrols across the Queensway estate, provide security presence at The Forum, Victoria Plaza and Bus Station. This will strengthen the CSP response to enforcement within the identified high crime/anti social behaviour locations.
- (c) In respect of new restrictions pertaining to cycling, it does not make it clear that this excludes motorised scooters (E-Scooters), this is expanded upon on page 4 under definitions however feel that a member of public would not specifically at the definition and assume an E-scooter could be ridden. Perhaps some clarity within the restriction would make this easier to understand.'

[nb. *The order has been amended to reflect this*]

4.4.3 Southend BID provided the following statement:

'Southend BID supports any provisions that will help and improve the experience of Southend City Centre for businesses, residents and visitors alike. Our view is that this PSPO aims to actively help combat some of the problematic issues that have continued to have a negative effect on the High Street in recent times and therefore Southend BID gives it our full support. We hope that its implementation will yield positive results for our City.'

- 4.5 A total of 372 people accessed the consultation, and 83 of those responded, with one additional emailed response. The full analysis report of the results from this consultation including the questions themselves is included at **Appendix D**

The key points that arose are:

- 4.5.1 98% of those who participated agreed that the existing restrictions need to be renewed for a further three years over the restricted area.
- 4.5.2 80% agreed the proposed restrictions of cycling and e-scooters in pedestrianised areas.
- 4.5.3 94% agreed to extend the drinking control area to cover the area by Toledo Road.
- 4.6 The analysis of the consultation results at **Appendix D** also contains all the submitted written comments, some of which opposed the proposed restrictions with concerns around inadequate facilities for cycling within the city. It is worth noting in response to these concerns that, as set out below, the proposed cycling and e-scooter restrictions bring existing restrictions together under modern legislation and enable wider and more consistent enforcement. There is no intention to restrict cycling where currently permitted such as cycle lanes, the highway, etc. The majority are clearly in favour of the additional PSPO restrictions.
- 4.7 Other areas of concern were also identified included, Ambleside drive, Absurham Road/ London Road, Shoebury High Street and Shoebury East Beach, Leigh Area (there is currently a PSPO for Leigh old Town), Westcliff Sea front (specifically noise concerns from excessively loud cars and people leaving the casino); and requests to include the entire City within the PSPO.
- 4.8 It should be noted that the results of the consultation are a guide. A significant majority of those who participated were in favour of continuing with the current PSPO and the additional Restrictions.

Cycling and Electric Scooters (e-scooters)

- 4.9 During the Covid19 lockdowns the Council saw an increase of cyclists and while the majority were responsible that cannot unfortunately be said for all. Further the Council also saw an increase in those cycling in pedestrianised areas such as the highstreet which saw accidents and complaints increase as a result.
- 4.10 Similarly, with the growing availability of electric scooters for purchase it is becoming common place to see them being used on the Highstreet and other public areas.

- 4.11 Currently there are restrictions against the use of e-scooters and cycling on the pedestrianised areas within the restricted area separate to the PSPO. These are:
- 4.11.1 Moving Traffic Speed Order 2006- The order attached at **Appendix G** prohibits cycling on the town centre in paragraph 4. The relevant entries in Schedule one of the traffic order starts at item 3624. Although this order is sufficient for banning cycling on the Highstreet, its enforcement is limited to police officers. Therefore the Council's authorised officers cannot enforce under this Order.
- 4.11.2 Section 72, Highways Act 1835-This legislation is enforceable by both police and community safety officers (CSO's) when restricting cycling and enforceable by the police when restricting e-scooters. However this legislation applies only to footpaths that are adjacent to roads. Whilst parts of the pedestrianised areas in the highstreet and on the seafront could be deemed to be covered by this legislation, by introducing the PSPO to include this ASB then enforcement is possible across all areas.
- 4.12 Therefore, whilst there are existing ways of dealing with cycling and e-scooters the PSPO brings them within one specific tool that can be used to combat such ASB.

Evidence

- 4.13 In making any decision the Council need to consider the attached evidence report (**Appendix F**) that provides statistics relating to the PSPO considering the volume of FPNs that have been issued. Southend-on-Sea City Council has a community safety team responsible for issuing fixed penalty notices. 129 Fixed Penalty Notices have been issued in the PSPO restricted area during the period identified 01st March 2020 to 28th February 2022.
- 4.14 Key Findings from the evidence report are as follows:
- 4.14.1 Covid -19 restrictions has had an impact on crime and anti-social behaviour (ASB) across the city. Crime reduced, ASB increased likely due to additional Covid breach recordings.
- 4.14.2 Footfall to Southend-on-Sea increased significantly once legal restrictions had been removed which caused an increase in crime and disorder in the PSPO area.
- 4.14.3 20% of crime reported in a two year period occurred in the PSPO area. An increase in Crime and anti-social behaviour (ASB) is likely to occur mostly at weekends, this is likely due to the increase in footfall to the area.
- 4.14.4 Community Protection Warnings/Notices and Fixed Penalty Notices are predominantly given to people for not surrendering/drinking alcohol in the area.
- 4.14.5 The report also provides data from other Council teams and Veolia confirm that there has been a significant increase in discarded drug litter (Figure 12 of

Appendix F) but a decrease in people sleeping in public places (Figure 13 of **Appendix F)**

- 4.14.6 There are reports regarding Barbeques, e-scooters and Personal Water Crafts however these are small in reporting numbers. This may be due to reporting mechanisms for these type of incidents/detections have not been previously set and will be addressed (save for e-scooters) within the report that considers these matters.
- 4.15 The volume of FPN's issued, 129, over a two year period could raise concern that this is a low volume and question as to why more FPNs have not been issued. In the alternative it could suggest that preventative measures are working without the need to resort to issuing a FPN, which is the overriding objective of the PSPO, prevention, not correction.

The Restricted Area

- 4.16 The Restricted Area considered as part of the Consultation has not in itself increased. Part of the area near Toledo Road and the Seaway roundabout was amended to fall within the Drinking Control Area as ASB associated with drinking has been identified as an issue in this area. Previously the area was outside the Drinking Control Area. This area is marked in green in the plan at **Appendix B.**
- 4.17 Not used.

Enforceability

- 4.18 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 (**Appendix C**) 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.
- 4.19 A concern originally raised in 2019 was enforceability, which was highlighted by not only the then public consultation but also in consultation with Essex Police. A Southend Community Policing Team Inspector from Essex Police then advised that enforceability will be a challenge over the restricted 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.
- 4.20 In considering the views of Essex Police at paragraph 4.19 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, hereafter referred to as "Authorised Officers" and could possibly include other officers, subject to training and consultation. This allows the Council to act on the

issues present in the Restricted Area whilst limiting the additional strain on Essex Police.

- 4.21 The comments from the Consultation also refer to enforceability and that the Council can provide the resources to tackle the ASB therefore this will remain an ongoing exercise in monitoring enforcement and if additional resource is required then a further report will come before Cabinet.
- 4.22 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. Further specific licences for stalls to sell alcohol will not be caught by the restrictions.

Additional concerns

- 4.23 With regards rough sleeping, there are pro-active measures being undertaken by the Council to assist those in need and to address the underlying cause for some of these issues. Work continues to be done to support and aid those who are sleeping rough, and the numbers have been reduced considerably. The PSPO is not designed 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.
- 4.24 For clarity, 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 A** is directed at those sleeping in public who are having a detrimental impact of the quality of life of those in the locality.

5. Other Options

- 5.1 The Council could choose not to continue with the PSPO, however this would lose the opportunity to continue this measure to tackle ASB which is having a damaging effect on our City 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.
- 5.2 This would also 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. The Police do of course have their own powers to deal with ASB, generally and the Community Safety Team have powers delegated from the Police that considers some elements of ASB, but not with regards to all the express ASB set out in the PSPO.
- 5.3 Alternatively the Council could retain the current PSPO and not include the additional restrictions concerning cycling and e-scooters, or not extend the

Drinking Control Zones as proposed at Queensway and adjacent to the Seaway carpark.

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 overwhelming majority of respondents to the Consultation supported the necessity and continuation of the PSPO including the New Restrictions
- 6.3 The Council considers that the requirements in S.59 of the 2014 Act are met and that the prohibitions are reasonable ones.

7. Corporate Implications

- 7.1 Contribution to the Southend 2050 Road Map
Safe and Well. Residents feel safe and secure in their homes, neighbourhoods and across the borough.
- 7.2 Financial Implications
- 7.2.1 Whilst the costs of enforcement of the PSPO will be undertaken within the existing resources of the Community Safety Team and Essex Police the Council needs to keep this under review to ensure the effective resourcing and visibility.
- 7.2.2 The costs of signage and their maintenance will be met from the existing services budget
- 7.3 Legal Implications
- 7.3.1 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.
- 7.3.2 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.

7.3.3 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.

7.3.4 Before making, amending or varying a PSPO the Council must consider comments and representations received that have now been received following the Consultation.

7.4 Environmental Impact

It is considered there would be a positive impact on the environment as the PSPO would enable enforcement against littering and improving street cleanliness.

7.5 People Implications

There are likely to be some resource implications in terms of enforcement of any PSPO and this has been referred to within the report

7.6 Property Implications

None identified

7.7 Consultation

This report provides the results of the consultation.

7.8 Equalities and Diversity Implications

7.8.1 Under the Equality Act 2010, the Council must have due regard to:

- (a) Eliminating unlawful discrimination, harassment and victimisation and any other conduct prohibited by this act;
- (b) Advancing equality of opportunity between people who share a protected characteristic and people who do not share it; and
- (c) Fostering good relations between people who share a protected characteristic and people who do not share it.

7.8.2 It is therefore important to consider how the proposals contained within this report may positively or negatively affect this work. To support this consideration, an Equality Analysis has been carried out as attached at **Appendix E**. This Equality Analysis has looked at the anticipated (positive and/or negative) impacts of the proposals on people from Southend's diverse communities, and whether any group (or groups) is likely to be directly or indirectly differentially affected. In conclusion it is not anticipated that the

proposals will have a significant disproportionate impact on any of Southend's diverse groups.

7.8.3 The Council has also had regard to the rights and freedoms under Article 10 (freedom of expression) and Article 11 (freedom of assembly and association) as set out in the European Convention on Human Rights and is satisfied that the restrictions imposed by the proposed PSPO are lawful, necessary and proportionate.

7.9 Risk Assessment

Risks associated with the continuation and varying of the PSPO, particularly in terms of protecting vulnerable members of society and displacement have been considered within the report and continue to be relevant in updating the enforcement policy.

7.10 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.

7.11 Community Safety Implications.

Keeping Southend-on-Sea a safe and enjoyable place to live, work and visit is a key priority for the Council. Continuing with and varying the PSPO as set out in this report (subject to Cabinet approval) would retain an additional tool to the Council and its partners to tackle ASB.

8. Background Papers

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

Report to cabinet dated 22nd of February 2022 and the corresponding minute.

9. Appendices

<u>Appendix A</u>	The Public Spaces Protection Order (Southend City Centre, Seafront and Adjoining Areas) No 2 . (Without Plan as provided at Appendix B)
<u>Appendix B</u>	PSPO Plan
<u>Appendix C</u>	Draft PSPO Enforcement Policy
<u>Appendix D</u>	PSPO Consultation analysis and comments
<u>Appendix E</u>	Equalities Assessment
<u>Appendix F</u>	PSPO Evidence report
<u>Appendix G</u>	Moving Traffic Speed Order 2006

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