

Southend-on-Sea City Council

Agenda
Item No.

Report of Executive Director (Neighbourhoods & Environment)

To

**Traffic Regulations Working Party
and Cabinet Committee**

on

12th September 2022

Report prepared by:

Sharon Harrington, Head of Traffic & Highways

Evaluation of evidence - Thorpe Bay Gardens

**Cabinet Member: Councillor Steven Wakefield
Part 1 (Public Agenda Item)**

1. Purpose of Report

1.1 This report:-

1. Provides an evaluation of all the evidence of alleged anti-social behaviour on Thorpe Bay Gardens provided by residents, the Police and the Councils Community Safety team since the introduction of a Public Spaces Protection Order (PSPO) in 2019.
2. Provides a review of the covenant relating to the land bounded by the public highways (but not including the said public highway) of Thorpe Bay Esplanade and Thorpe Bay Gardens.
3. Makes recommendations.

2. Recommendation

2.1 That, the Traffic Regulations Working Party and Cabinet Committee must reconsider its earlier resolution that the draft TRO amending the waiting restrictions be confirmed as advertised. This is on the basis that there is no justification under the Road Traffic Act to advertise and implement and is likely to be unlawful to do so.

2.2 Resolve to accept the original Officer recommendation not to progress the proposals at this time.

3. Background

3.1. The Traffic Regulations Working Party at its September 2021 meeting considered a report on the results of Statutory Consultation on proposals to introduce waiting restrictions on Thorpe Bay Gardens. The report recommendation was not to implement waiting restrictions as the results of the Statutory Consultation showed the majority of respondents against the proposals.

- 3.2. The Traffic Regulations Working Party decided to implement waiting restrictions on Thorpe Bay Gardens. This decision was called in for scrutiny where 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. At the 4 January 2022 meeting of the Traffic Regulations Working Party reviewed its earlier decision and instructed the Head of Traffic and Highways to undertake a full review of all evidence of alleged anti-social behaviour and provide a further report and recommendations to a future meeting.
- 3.4. This report will review and evaluate:-
 - the covenant relating to the amenity land known as Thorpe Bay Gardens;
 - alleged anti-social behaviour submitted by local residents;
 - all anti-social behaviour reports to the Community Safety team under the PSPO for Thorpe Bay Gardens;
 - Police evidence in relation to anti-social behaviour on Thorpe Bay Gardens.

4.0 History

- 4.1 In December 1962 the then County Borough of Southend (the Council) purchased a piece of land from the Thorpe Bay Trading Company. The land in the transfer was to be laid out as open space, gardens, and parking.
- 4.2 In 2019 complaints from residents of Thorpe Bay Gardens of anti-social behaviour were received involving alleged activity around vehicles stopped/parked on the highway and speeding vehicles.
- 4.3 The Council's community safety team, Police and representatives of local residents took part in a month-long multi-disciplinary investigation into anti-social activities on Thorpe Bay Gardens during June/July 2019. The Excel spreadsheet submitted as evidence by residents (and contained in the Appendix to this report) was collected as part of this investigation.
- 4.4 The Council in July 2019 introduced a (PSPO) under the Anti-social Behaviour, Crime and Policing Act 2014. A PSPO enables local authorities to control and enforce anti-social behaviour in public spaces by imposing conditions on the use of the area. The central Southend and seafront PSPO includes the public highway known as Thorpe Esplanade, Thorpe Bay Gardens and the public space known as Thorpe Bay Gardens (between Thorpe Esplanade and the public highway of Thorpe Bay Gardens).
- 4.5 A summary of the investigation into the speeding issues was summarised in a paper dated October 2019 and contained in the background papers. As a result of the investigation, the Council introduced traffic calming measures on Thorpe Bay Gardens. Since the introduction, the speeding issues have stopped.

5.0 Evaluation of the covenant relating to the amenity land known as Thorpe Bay Gardens

5.1 In December 1962 the piece of land now known as Thorpe Bay Gardens was purchased by the then County Borough of Southend (the Council) from the Thorpe Bay Estate Company. The land in the transfer does not include the adopted public highways that surround the land (Thorpe Bay Gardens, Thorpe Esplanade, St. Augustine's Avenue and Maplin Way) but uses them to define the boundary of the land being purchased.

5.2 A covenant ("the Covenant") was contained within the conveyance to purchase the land referred to above and was detailed in the conveyance dated the 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.

5.3 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".

5.4 The Council received complaints in or around 2019 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 this Covenant. The Residents also claimed 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.

5.5 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.

5.6 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. Thorpe Bay Gardens is the name of the highway and therefore the covenant could be interpreted to just relate to that part of the highway that is the northern part of the road.

5.7 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.

5.8 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. 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.

- 5.9 The Cabinet Committee, when considering implementing any restrictions on the highway 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.

Conclusion

- 5.10 **Whilst 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.**

- 5.11 **The Covenant is therefore to be disregarded in considering the highways restrictions.**

6.0 Evaluation of resident's evidence

- 6.1 Mr B. Robbins is understood to be a resident on Thorpe Bay Gardens and has submitted evidence from residents which they believe shows anti-social behaviour occurring on Thorpe Bay Gardens. The evidence submitted includes:-

- An undated statement from Mr Robbins that he represents 27 of the 30 properties on Thorpe Bay Gardens.
- An excel spreadsheet of alleged incidents between 30th June 2019 and 25th July 2019. This is assumed to be information collected as part of the investigation referenced in paragraph 4.3 above.
- A series of photographs of alleged incidents mostly recorded from a first-floor balcony of a property at the junction of Marcus Avenue and mostly dating from 2019.
- An image of the front page of the Echo reporting a brawl on 23 June 2020 at Thorpe Bay Gardens.

A copy of the evidence submitted by Mr Robins is set out in Appendix A. Certain information (vehicle registration marks) is redacted from the Excel spreadsheet where personal data is shown.

Excel spreadsheet

- 6.2 It is understood that the data gathered and shown on the spreadsheet formed part of a month-long multi-disciplinary monitoring exercise carried out during June/July 2019 involving the Council's Community Safety team, Highways

team, and the Police. The spreadsheet records twenty-four incidents between 30th June 2019 and 25th July 2019. Seven of the recorded incidents involved speeding vehicles. The remaining incidents involve vehicles that are stopped/parked and/or people adjacent or close to the vehicles.

- 6.3 The spreadsheet information provides a historic record only. The Council in 2019 introduced a PSPO which covers the seafront and Thorpe Bay Gardens (Section 7 of the report provides detail of the PSPO). The Council also introduced traffic calming measures on Thorpe Bay Gardens in 2019 which has resolved issues with speeding vehicles in the area.

Photographic evidence

- 6.4 There are a number of photographs submitted as evidence. The majority are dated from 2019 and pre-date the introduction of the PSPO and the introduction of traffic calming measures. These break down into the following episodes:-

21 March 2019	3 June 2020
4 April 2019	10 June 2020
23 April 2019	16 June 2020
28 April 2019	
8 July 2019	
25 July 2019	

- 6.5 The images show vehicles stopped on the highway and in some instances, people close to or around the stopped vehicles. Six of the occurrences are dated 2019 and predate the introduction of the PSPO and traffic calming measures and can be considered of historic interest only.
- 6.6 There are three groups of photographs taken in 2020. The images show vehicles stopped on the highway and in some instances, people close to or around the stopped vehicles. These break down into the following episodes:-
- 3 June 2020;
 - 10 June 2020;
 - 16 June 2020.
- 6.7 There are three undated images taken from the same location on Thorpe Bay Gardens. Of these, two images appear to be concurrent and show the same vehicles stopped on the highway during the day and the third image is an evening view of vehicles stopped on the highway from the same location.
- 6.8 It is worth noting that there is no evidence submitted by residents of any alleged anti-social behaviour taking place in 2021.
- 6.9 **All the images submitted by Mr Robbins are set out by date in Appendix A and a summary of the content of the images.**
- 6.10 The majority of the photographs show a small number of vehicles clustered and stopped on the south side of the otherwise empty public highway of Thorpe Bay

Gardens. Most of the images are taken either in the evening or after dark. It can be seen that in many of the images the vehicles are occupied and have headlights on which would possibly indicate the engines may have been running at the time the images were taken.

- 6.11 Vehicles stopped with the engines running or where drivers and/or passengers remain within the vehicle that is stopped without the engine running are technically and legally not defined as being parked or waiting. Instead, they are considered to be legally either stopped or idling. Even if there were an active yellow line waiting restriction in place, a stopped or idling vehicle would not be in contravention of a waiting restriction and a penalty charge notice (PCN) could not be issued to the vehicle.
- 6.12 The submitted photographs do not show any obvious anti-social behaviour taking place. A stopped or parked vehicle on the public highway is not considered anti-social behaviour in itself.

Echo report of brawl on 20 June 2020

- 6.13 The image of the press report of the incident on 20 June 2020 was part of the evidence pack. This relates to an incident which is reported as having started on Thorpe Esplanade and extended into Thorpe Bay Gardens open space and then involving a vehicle driven across the open space and into a parked vehicle on the south side of the public highway of Thorpe Bay Gardens. This was reported to Essex Police shortly before 9pm. It is understood from the reports that the Police actions involved an investigation by the Police Criminal Investigations Department and additional Police officer patrols in the area.

Conclusion

- 6.14 **The evaluation of the resident's photographic evidence consists of images of vehicles stopped on the south side of the public highway of Thorpe Bay Gardens. Vehicles parked or stopped on the public highway cannot be considered as anti-social behaviour in isolation. None of the images show any obvious incidents of anti-social behaviour taking place on or adjacent to the public highway.**
- 6.15 **The only exception being the incident on the 20 June 2020 which was reported to the Police who acted at the time and afterwards.**
- 6.16 **The evidence submitted by Mr Robbins on behalf of residents does not show anti-social behaviour taking place on the public highway. It also does not show a problem with excessive numbers of vehicles parked on the public highway necessitating the introduction of waiting restrictions to ensure the free flow of traffic along the public highway.**

7.0 Evaluation of the success of the PSPO

- 7.1 A (PSPO) covering the town centre, seafront and adjoining areas including Thorpe Bay Gardens was introduced in July 2019 under the Anti-social Behaviour, Crime and Policing Act 2014.

- 7.2 A multi-agency response, involving officers from the Council's Community Safety, Highways, Parking and Environmental Care Teams and the Police decided that the most appropriate approach to deal with anti-social behaviour in a local area that is detrimental to the community's quality of life was the introduction of a PSPO.
- 7.3 A PSPO imposes conditions on the activities and use of that area and any breaches of a PSPO is a criminal offence where a fixed penalty notice (FPN) can be issued by a Police officer in uniform or authorised council official.
- 7.4 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. A replacement PSPO is currently being drafted by the Council and will be in place to ensure continuity for another 3-year period.
- 7.5 The Council's community safety team have confirmed that residents from Thorpe Bay Gardens were made aware of the PSPO reporting process at its introduction in 2019 and encouraged to report any instances of anti-social behaviour to the team. Since the introduction of the PSPO there has been only one report of alleged anti-social behaviour in the Thorpe Bay Gardens area, and this was in November 2020 and was for an alleged breach of Covid-19 restrictions on the public open space.
- 7.6 The Police were contacted for their assessment of anti-social behaviour in the Thorpe Bay area. PS 42074739 responded that the Police do not consider the area to have an anti-social behaviour problem.

Conclusion

- 7.7 **A PSPO is the most appropriate procedure for tackling anti-social behaviour as it gives power for the local authority and Police to apply conditions of use and issue a FPN where those conditions are broken.**
- 7.8 **Since the introduction of the PSPO there has only been 1 reported incident of alleged anti-social behaviour (and this was COVID-19 related) in the Thorpe Bay Gardens area. This would indicate that anti-social behaviour is no longer an issue in this part of the city.**
- 7.9 **It should be noted that Cabinet on 1 July 2022 (minute No. 64) approved a new PSPO to ensure continuity of the existing PSPO measures from July 2022 for another 3-year term.**
- 8.0 **Evaluation of the merit of the proposed change to waiting restrictions**
- 8.1 The Traffic Regulations Working Party and Cabinet Committee on 10th June 2021 approved the advertising of a draft traffic regulation order in response to the Thorpe Bay Gardens covenant (see section 5 above) and concerns expressed by local residents about anti-social behaviour. The proposal was to

revoke the current seasonal restrictions (March to October between 9am-6pm) and replace them with extended restrictions to cover a 12-month period and operational hours of 8am-10pm every day.

- 8.2 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.
- 8.3 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).
- 8.4 The results of the statutory consultation along with independent counsel's legal opinion in respect of the covenant and the rationale for proposing the traffic order were reported to the Traffic Regulations Working Party and Cabinet Committee for consideration on 13th September 2021.
- 8.5 Counsel's view is that the covenant (as set out at 5.3 above in this report) concerns the use of highway and that the only capacity in which the Council could be expected to act is as the highway authority or traffic authority. The Council, as a public body, cannot fetter in advance the exercise of a statutory discretion, otherwise it will have acted unlawfully (see section 5 above). Therefore, the Council's general powers to regulate the use of the highway are conferred on it either as highway authority, principally by the Highway Act 1980 or as traffic authority, principally by the Road Traffic Regulation Act 1984 (see paragraph 8.3). Section 1 of the Road Traffic Regulations Act 1984 does not permit the traffic authority to make Orders to control anti-social behaviour.

- 8.6 The analysis of comments and objections to the draft Order showed that of the 60 responses received within the objection period, 31% (13 No.) were in favour, 69% (29 No.) objected to the proposals and 17 responses were overruled as they did not provide an address. One other response was overruled as it was a query. In addition, the Police have also commented that they do not support the proposed change to the restrictions. This was received out of time for objections to the draft Order and technically could be discounted but given the Police have a role in enforcement of anti-social behaviour their views should not be ignored.
- 8.7 While a local authority has the power to overrule objections, it can only do so after giving proper consideration to the objection. This is usually done as a 'test' against the statement of reasons for proposing the Order. Where an objection is overruled, the Council must set out the reasons for doing so and communicate this in writing to the objector.
- 8.8 The officer recommendation was not to progress the proposals and not to 'Make' the traffic order as the legal basis for the proposals was unsound and there was not public support for the proposals.
- 8.9 The old adage that 'Officers advise, and Members decide' remains true. Where Members go against the Officer recommendation, they take on individual and collective responsibility for that decision. The Cabinet Committee decision to proceed with the proposals and 'Make' the traffic order was called into consideration by the Place Scrutiny Committee at its October 2021 meeting. The matter was referred up and back to the Cabinet Committee for reconsideration.

Conclusion

- 8.10 **The Council do not have the powers to make a traffic regulation order to control anti-social behaviour.**
- 8.11 **There is little evidence that there has been a problem of anti-social behaviour in Thorpe Bay Gardens since the PSPO was introduced in 2019. A new PSPO was approved in July 2022 for a further 3 years.**
- 8.12 **There is no evidence that there is a problem with excessive parking, in the area that impedes the safe and free passage of traffic (including pedestrians) to merit the introduction of proposals under section 1 of the Road Traffic Regulation Act 1984. This leaves the Council at risk of legal challenge and reputational damage if Members do not reconsider their earlier decision.**

9.0 Reasons for Recommendations

- 9.1 The Council must act in its capacity as a highway/traffic authority in this matter and not in its capacity as landowner. Any reference to the covenant is irrelevant.

- 9.2 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 measures 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.
- 9.3 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. A PSPO has been in place since 2019 and only one recorded incident of alleged anti-social behaviour in Thorpe Bay Gardens has been reported in the three years and that was for an alleged breach of COVID-19 restrictions in 2020. There is no evidence of an anti-social behaviour problem occurring in Thorpe Bay Gardens.
- 9.4 There is no evidence of problems associated with parked vehicles on Thorpe Bay Gardens that would necessitate the introduction of measures under section 1 of the Road Traffic Regulation Act 1984.

10. Corporate Implications

10.1 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 and have been successfully used for control of the central town and seafront areas of the city. A new PSPO is being drafted and will be in place to ensure continuity of control when the current PSPO expires in July 2022.

10.2 Financial Implications

Continuing with the decision to introduce a TRO cannot be justified by the evidence 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 a high priority.

10.3 Legal Implications

The legal implications have been set out in detail in section 5 and section 8 of the report. The Council do not have the power to make a traffic order for the control of anti-social behaviour. There is no evidence of parking, or traffic access or safety concerns on Thorpe Bay Gardens, to justify the proposals under section 1 of the Road Traffic Regulation Act 1984.

The Council could be open to legal challenge and reputational damage if it were to continue with the current decision and not agree the report recommendations.

10.4 People Implications

N/A

10.5 **Property implications**

N/A

10.6 **Consultation**

N/A

10.7 **Equalities and Diversity Implications**

See **Appendix B**.

10.8 **Risk Assessment**

There is a risk of legal challenge and reputational damage to the Council if the report recommendations are not adopted.

10.9 **Value for Money**

See 10.2 above.

10.10 **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 Road Traffic Regulation Act 1984.

10.11 **Environmental Impact**

11. **Background Papers**

TRWP&CC Report – Thorpe Bay Gardens Covenant – 22 February 2021

[\(Public Pack\)Thorpe Bay Gardens Covenant Agenda Supplement for Traffic Regulations Working Party, 22/02/2021 18:30 \(southend.gov.uk\)](#)
[Agenda Template \(southend.gov.uk\)](#)

TRWP&CC Report – Thorpe Bay Gardens Covenant – 10 June 2021

[\(Public Pack\)Agenda Document for Traffic Regulations Working Party, 10/06/2021 18:30 \(southend.gov.uk\)](#)
[Agenda Template \(southend.gov.uk\)](#)

TRWP&CC Report – Thorpe Bay Gardens Statutory Consultation – 13 September 2021

[\(Public Pack\)Agenda Document for Traffic Regulations Working Party, 13/09/2021 18:30 \(southend.gov.uk\)](#)
[Agenda Template \(southend.gov.uk\)](#)

TRWP&CC Report – Thorpe Bay Gardens xxx – 04 January 2022

[\(Public Pack\)Agenda Document for Traffic Regulations Working Party, 04/01/2022 18:30 \(southend.gov.uk\)](#)
[Agenda Template \(southend.gov.uk\)](#)

Cabinet Report – PSPO 01 July 2022

[Agenda Template \(southend.gov.uk\)](#)

[Public spaces protection orders: guidance for councils \(local.gov.uk\)](#)

[public-spaces-protection-order-southend-town-centre-seafront-and-adjoining-areas-no-1-of-2019](#)



Thorpe Bay Gardens
Briefing October 2019

10. Appendices

Appendix A – evidence submitted by residents

Appendix B – equality assessment