

Southend-on-Sea City Council

Report of Interim Executive Director for Neighbourhoods & Environment

To

Cabinet

On

12th January 2023

Agenda
Item No.

Report prepared by: Simon Ford, Head of Community Safety

Southend Car Cruise Injunction Expiry Options

Relevant Scrutiny Committee: Policy and Resources
Cabinet Member: Councillor Martin Terry
Part 1 (Public Agenda Item)

1. Purpose of Report

- 1.1 To highlight the expiry of the existing car cruise injunction on 12th April 2023 and invite Members to consider whether the Council should apply to extend this injunction or commence statutory consultation on changing this injunction to a Public Spaces Protection Order (PSPO).
- 1.2 It should be noted that Members are not being asked to decide whether the PSPO should be implemented, but to approve the commencement of a statutory consultation. A further report of the next steps will be made once the consultation process has been completed. At that future stage, Members may be asked to implement a 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 on that at this stage.

2. Recommendations

- 2.1 That consultation be undertaken into the possibility of the Council implementing a Public Spaces Protection Order under Sections 60 & 61 of the Anti-Social Behaviour, Crime and Policing Act 2014 in respect of the area and activities detailed in Appendix 2.
- 2.2 That the proposed consultation process commences as soon as practically possible.

- 2.3 That the Executive Director Neighbourhoods and Environment and Director of Public Protection are delegated to:**
 - 2.3.1 Finalise the draft PSPO to form part of the Consultation.**
 - 2.3.2 Agree the final form of the Consultation.**
 - 2.3.3 Explore and report back to Cabinet following the consultation 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 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 behaviour can have on both communities and individuals, particularly on the most vulnerable.
- 3.3 Local Authorities can use PSPO's to prohibit specified activities, and/or require certain things to be done by people engaged in particular activities, within a defined public area. PSPOs 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.
- 3.4 Under the 2014 Act, authorised officers have the power to issue fixed penalty Notices (FPN's) to anyone they reasonably believe is in breach of the PSPO. Whilst the 2014 Act sets out a framework for issuing FPN's, councils will also have their own wider protocols around issuing fines. The Council currently has an enforcement policy for Council's enforcement team to ensure fairness and best practice is exercised and this can be found at Appendix 8.2. This will be reviewed and updated to consider the new subject matter of the proposed ASB.
- 3.5 Southend-on-Sea City Council secured a five-year High Court injunction on 11th April 2018 to give police and council enforcement officers extra powers to deal swiftly with dangerous driving and antisocial behaviour at unauthorised car cruise events.
- 3.6 The injunction was issued by the County Court in Chelmsford and is valid from 11 April 2018 until 12 April 2023. Activities prohibited by the injunction include, racing, speeding and creating noise, where this puts public safety at risk or causes nuisance. The injunction gives officers additional powers to address

dangerous driving and antisocial behaviour and breaching the injunction is considered a contempt of court and can result in a custodial sentence.

- 3.7 Covid-19 and the associated restrictions saw a stop to organised cruising in the City, but upon relaxation of restrictions, enthusiasts started to return and a number of large cruise events were held in the City from mid-2021 going through 2022. At its worse, cruise nights have seen visitors and public line the street whilst anti-social driving has occurred including burn outs, wheel spins and racing. This has resulted in genuine concerns for safety of the public gathered in the area, for safety of officers working there and wider spread fear and intimidation by local residents who are disturbed by the events occurring and avoid the area.
- 3.8 Many complaints have been received from local businesses and residents regarding noise from the vehicles, smell of smoke in the air, loud music, parking breaches, littering and other examples of anti-social behaviour. Three MP complaints have also been received since June 2021 through the official complaints process on behalf of their constituents about these matters.
- 3.9 Full evidence on the necessity 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 made for a decision on whether to implement a PSPO.
- 3.10 The Council is required under the 2014 Act to carry out consultation and necessary publicity and notification before making a PSPO.
- 3.11 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).
- 3.12 The proposed wording of the Order and the proposed Restricted Area as part of the consultation will be finalised prior to the consultation.
- 3.13 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.
- 3.14 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).

- 3.15 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?

4. Other Options

- 4.1 The Council could choose to apply to the High Court to extend the car cruise injunction for a further period.
- 4.2 The Council could choose not to renew the existing car cruise injunction or engage in the consultation process for a PSPO. This would result in the car cruise injunction expiring at midnight on the 11th April 2023, 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 The existing car cruise injunction is against "persons unknown", as there could be no realistic way of ensuring every participant in a cruise was aware about the injunction prior to attending the City.
- 5.2 On 10th November 2020, Sharif v Birmingham City Council, successfully challenged the persons unknown injunction and the wider implications of this case meant that the Southend Council car cruise injunction couldn't be used against persons unknown.
- 5.3 This remained the case until 12th May 2021 when Barking & Dagenham LBC v Persons Unknown, challenged this ruling and it was successfully held.
- 5.4 Schedule 3 of the Injunction Order of 11th April 2018 sets out how the service of the order should take place. It requires an officer from the Council or Police to record the name and address of the person served and at the same time as the Order being served, the person must be given an Explanatory notice. Providing the person has been correctly identified, the Council Officer (or Police) must then serve a copy of the application for the Injunction with Particulars of Claim and witness statements by post to the address provided by the individual. This makes the task of service onerous.
- 5.5 The process for recording a breach against a person's unknown under the current car cruise injunction means that a check will first need to be carried out to ascertain if the person has been correctly served with the injunction order in line with schedule 3 of the Order. Once this has been established and if the person has been served, then the evidence will be considered, and a decision will be made on whether to issue committal proceedings (prosecution). If a person has not been previously served with the injunction order, then committal proceedings (prosecution) cannot take place. The Order will then need to be served as set out in Schedule 3. This makes the task of enforcement against a breach of the injunction much more onerous. The process of serving an FPN against a breach

of a PSPO is dealt with far quicker and more expedient to serve. There can be a high number of breaches at a single car cruise event, so the current process is time consuming and doesn't enable a prompt deterrent response when breaches occur.

5.6 The proposed behaviours to be consulted on are: (and are solely in respect of car cruiser events) -;

- Excessive noise of any kind
- Danger to road users and pedestrians
- Damage or risk of damage to any property
- Litter
- Any nuisance to another person not participating in the car cruise
- Driving at excessive speed
- Driving in convoy
- Racing other motor vehicles (including motorcycles and quad bikes)
- Performing stunts in motor vehicles (including motorcycles and quad bikes)
- Sounding horns or playing radios
- Dropping litter
- Shouting, swearing, abusing or otherwise intimidating another person
- Parking and exiting motor vehicle whilst left in a non-designated parking space (with regard to car cruiser events only)
- Nitrous Oxide use within vehicles
- Performing stunts (including but not limited to burn outs and wheel spins)
- Excessive noise emanating from modified vehicle exhaust systems

6. Corporate Implications

6.1 Contribution to the Southend 2050 Road Map

Safe and Well agenda and activity plan (keeping people safe).

6.2 Environmental Impact

6.2.1 There are no Environmental Impacts associated with the decision to consult. However, there are environmental considerations which will be topics for consideration within the consultation i.e. noise pollution, air pollution, and litter

6.3 Financial Implications

6.3.1 The costs of consulting on a possible PSPO will be relatively modest. 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 extent, particularly in terms of signage and clean up. Regarding enforcement of the PSPO, this service under the injunction is currently covered in the Community Safety Team business as usual operations and so there is limited anticipated costs related to this.

6.4 Legal Implications

6.4.1 The introduction 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.

6.4.2 Under Section 59 of the 2014 Act, local authorities must be satisfied on reasonable grounds that the activity subject to an Order:

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

6.4.3 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 that all these stages to have particular regard to articles 10 and 11 of the Human Rights Act 1998.

6.4.4 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 Executive Director for Neighbourhoods and Environment 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 or processes or legislation.

6.4.5 Before making a PSPO the Council must consider comments and representations received.

6.5 People Implications

6.5.1 There are no People implications associated with this report.

6.6 Property Implications

6.6.1 There are no Property implications associated with this report.

6.7 Consultation

6.7.1 This is the purpose of this report and what is being sought

6.8 Equalities and Diversity Implications

6.8.1 There are no Equality and Diversity implications associated with this report.

6.9 Risk Assessment

6.9.1 There are no Risk Assessments associated with this report.

6.10 Value for Money

6.10.1 If the PSPO is commenced, potential reduction in costs associated with crime, ASB and clean up.

6.11 Community Safety Implications

6.11.1 There are no Community Safety implications associated with this report. To be fully addressed if recommendations approved.

7. Background Papers

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

[2018 report for consultation.pdf](#)

8. Appendices

8.1 Southend Council PSPO Enforcement Policy.

8.2 Current car cruise injunction