

CABINET

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PUBLIC SPACE PROTECTION ORDER – NUISANCE VEHICLES

Portfolio Holder: Councillor Tristan Osborne, Portfolio Holder for Community Safety and Enforcement

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Summary

Public Spaces Protection Orders ('PSPOs') were introduced by section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 (this section came into force on 20 October 2014). PSPOs are an order created in relation to areas within the local authority's jurisdiction, where activities are taking place that are, or are likely to be, detrimental to the local community's quality of life. PSPOs impose conditions or restrictions on people within that area. A breach of a PSPO is an offence punishable by a fixed penalty notice and/or prosecution in the Magistrates Court.

This report covers the outcomes of the public consultations carried out seeking views on the introduction of a Medway wide PSPO to address antisocial behaviour (ASB) from vehicles by introducing a Medway wide order.

1. Recommendations

- 1.1. The Cabinet is asked to note the responses to the consultation to introduce a Medway wide PSPO, as detailed in section 8 and at Appendix 2 of the report.
- 1.2. The Cabinet is asked to recommend Full Council to approve the introduction of a Medway wide PSPO to tackle nuisance vehicles.

2. Suggested reasons for decisions

- 2.1. The introduction of a PSPO should assist our Kent Police partners and Council Community Safety Team in addressing incidents of nuisance related to ASB from vehicles, and over the long-term improve the quality of life for residents, visitors and local businesses.

3. Budget and policy framework

- 3.1. Approval of Public Spaces Protection Orders and any variations, in accordance with s59 of the Anti-Social Behaviour, Crime and Policing Act 2014, is a matter for Full Council.

4. Background

- 4.1. One of the key powers of interest to the Council, partners and the community is the Public Spaces Protection Order (PSPO). PSPOs are designed to deal with a particular nuisance or problem in an area by placing conditions on the use of the area and for those that do not comply.
- 4.2. On 20 October 2014, the Government implemented most of the Anti-Social Behaviour Crime and Policing Act 2014 ("the Act). The purpose of the Act is to give local authorities and others more effective powers to tackle anti-social behaviour (ASB), providing better protection for victims and communities.
- 4.3. Amongst these tools and powers are PSPOs, which are designed to control the use of public spaces. It is for each individual Council to determine what behaviour(s) they want to make the subject of a PSPO.
- 4.4. PSPOs provide Councils with a flexible power to implement local restrictions to address a range of anti-social behaviour issues in public places in order to prevent future problems. An Order should help to significantly reduce incidents of relevant ASB in the area over the long-term and improve the quality of life for residents, visitors and local businesses.
- 4.5. Local authorities can make an order as long as two conditions are met:
- First condition:
- Activities carried out in a public space within the local authority's area have had a detrimental effect on the quality of life of those in the locality, or;
 - It is likely that activities will be carried out in a public place within the area that will have such an effect.
- Second condition:
- The effect or likely effect of the activities:
- Is, or is likely to be, of a persistent or continuing nature
 - Is, or is likely to be, such as to make activities unreasonable
- and
- Justifies the restrictions imposed by the notice.
- 4.6. A number of Local Authorities across England and Wales have introduced PSPOs. However, one of the key challenges has come from human rights campaigners who argue that these types of controls impact disproportionately on protected rights. These include Article 8 - the right to a private and family life, Article 10 - the right to freedom of expression and Article 11 – the freedom of assembly and association.

- 4.7. Any prohibition or requirement must be reasonable in order to prevent the detrimental effect from occurring or reoccurring, or must reduce the detrimental effect or reduce the risk of its occurrence, reoccurrence or continuance.
- 4.8. PSPOs can be made for a maximum of three years. The legislation provides that they can be extended at the end of the period, (if the authority is satisfied on reasonable grounds that it is necessary for various reasons), but only for a further period of up to three years. However, orders can be extended more than once. Local authorities can increase or reduce the restricted area of an existing order, amend or remove a prohibition or requirement, or add a new prohibition or requirement. They can also discharge an order but further consultation must take place for varying or discharging orders.
- 4.9. Before making the order the local authority must notify potentially affected people of the proposed order, inform those persons of how they can see a copy of the proposed order, notify them of how long they have to make representation, and consider any representations made.
- 4.10. Any interested person can challenge the validity of a PSPO in the High Court but the challenge must be made within six weeks of the making of the Order. An 'interested person' means an individual who lives in the restricted area or who regularly works in or visits that area.
- 4.11. As a Council, we are determined to tackle ASB, the tools and powers contained within the Act have helped us to develop our joint work alongside Kent Police. Over the past 18 months the Council has seen an increase in complaints related to nuisance vehicles, on the road and off road. This has precipitated consideration of the powers currently available to police and the Council to address the issues that these vehicles cause.
- 4.12. Kent Police continue to receive repeated complaints from residents, visitors and local businesses across Medway about unreasonable ASB from nuisance vehicles, both on road and off road. These include, but is not limited to Medway City Estate, Hoo and the Isle of Grain, Barnfield Recreation Ground and Lordswood. Complaints show that reported ASB has a detrimental effect on the quality of life of those living in or using certain areas, reducing their ability to feel safe in, use or enjoy public spaces.
- 4.13. This PSPO will seek to control the anti-social use of motor vehicles, some of these behaviours include, but are not limited to:
 - Off road
 - Driving in convoy
 - Racing
 - Performing stunts
 - Sounding horns (as to cause public nuisance)
 - Revving engines
 - Wheel spins
 - Playing music (as to cause public nuisance)
 - Creating significant public nuisance

- Engaging in any other activity that a reasonable person would consider to be “car cruising”.
- 4.14. Kent Police are increasingly using their powers conferred in Section 59 of the Police and Reform Act 2002 to address the issue in the form of careless or inconsiderate driving. These powers allow an officer to seize and remove a vehicle that he or she believes is being driven inconsiderately or carelessly and is causing, or is likely to cause, alarm, distress or annoyance to members of the public. However, the police cannot seize a vehicle under this provision without first warning the driver that the vehicle will be seized if the driving persists. There are also practical challenges to seizure of vehicles, as Police will have to plan additional resources to do this, which are not always available.
- 4.15. Intelligence over the years has identified hotspot areas where this behaviour is most prevalent with a notable increase in activity over the Spring and Summer months.
- 4.16. Partner operations will also be planned at the joint weekly tasking meeting with Kent Police to respond to any emerging hotspots. The PSPO will also provide improved powers to the police to intervene in a more timely and effective manner. The level of activity will be delivered within available resources.
- 4.17. This report sets out the rationale for adopting a Medway-wide PSPO in relation to nuisance vehicles. This order would cover the whole of Medway.

5. Options

- 5.1. Option 1 – do not recommend full Council to agree to the PSPO.
- 5.2. Option 2 – recommend full Council to agree to the PSPO for hotspot areas only and not implement a Medway wide order.
- 5.3. Option 3 – recommend full Council to agree to the introduction of a Medway wide PSPO to tackle nuisance vehicles. **This is the recommended option.**

6. Advice and analysis

- 6.1. The implementation of option 3 will provide additional powers to the Council and Kent Police to address the growing complaints being received in relation to ASB from nuisance vehicles. The order needs to be Medway wide as it is known that those involved in these activities move areas and do not stay in one location.
- 6.2. Historically local authorities could designate by order, a Designated Public Place Order (DPPO) in any public place within their area if they were satisfied that nuisance, annoyance or disorder was taking place. The first were introduced in Rochester in 2003, followed by Chatham, Gillingham and Strood and addressed the anti-social consumption of alcohol. These were commonly

known as 'Alcohol Control Zones'. These automatically became PSPOs in 2017 under the Act.

- 6.3. PSPOs have the power to fine people – failure to comply could lead to arrest. Kent Police will continue to patrol and respond to incidents as part of their community response. However, the Council have delegated powers to the Community Safety Team that already work in Medway which enables them to enforce the new PSPO.
- 6.4. It is proposed that the PSPO will be implemented in late 2023 or any foreseeable date before that subject to Cabinet approval. Relevant PSPO signage will be affixed across Medway, informing the public of the prohibitions in place.
- 6.5. PSPOs have been an agenda item at the Strategic Executive Group of the Community Safety Partnership, which is chaired by the Cabinet Member responsible for Community Safety and Enforcement, as well as representation from the responsible authorities, Kent Police, Kent Fire and Rescue Service, The Probation Service and the Integrated Care Board. The Office of the Police and Crime Commissioner, although not a responsible authority is also represented.

7. Risk management

- 7.1. There are reputational, environmental, economic and legal risks to the Council for not pro-actively pursuing a PSPO to tackle nuisance vehicle behaviours.

Risk	Description	Action to avoid or mitigate risk	Risk rating
We do not consult	Risk of legal challenge	Ensure full consultation is carried out as per guidance	DII
We do not enforce	ASB returns to the areas controlled and extends areas which incorporate new housing developments. Reputational risk. Increased pressure on service complaints	Ensure Medway Council Officers are supported by Senior Management and by Kent Police.	DII

Likelihood	Impact:
A Very likely	I Catastrophic
B Likely	II Major
C Unlikely	III Moderate
D Rare	IV Minor

8. Consultation

- 8.1. Home Office statutory guidance (see appendix 1) states that before extending (as well as introducing, varying or discharging a PSPO) there are requirements under the Act regarding consultation. Local authorities are obliged to consult with the local chief officer of police; the police and crime commissioner; owners or occupiers of land within the affected area where reasonably practicable, and appropriate community representatives. Any parish or community councils (for example PACTs) that are in the proposed area covered by the PSPO must be notified.
- 8.2. Any Order must identify and publicise (e.g., on social media and through the provision of public signage in the designated areas) the public space as a 'restricted area' and must prohibit specified activities being carried out in the restricted area (prohibitions) or require specified things to be done by persons carrying out specific activities in that area (requirements), or both.
- 8.3. In accordance with legislative requirements, a six-week consultation process relating to the potential use of a PSPO for such purposes was carried out. The details of the consultation were published on the Council's website in accordance with the legal guidance under the Anti-Social Behaviour, Crime and Policing Act 2014. The consultation questionnaires were sent directly to all Members to raise awareness in all respective wards. The Police and Crime Commissioner and Borough Commander for Kent Police in Medway was consulted and has endorsed the scope of the PSPO proposed by the Council.
- 8.4. To advertise the consultation, a link to the Council's website was also advertised on social media from the Community Safety Partnership Twitter account. All Town Centre Forums were advised as were all Neighbourhood Watch Coordinators and PACT groups (Partners and Communities Together).
- 8.5. Summary of the main findings from the 931 respondents to the consultation are shown in Appendix 2.

9. Climate change implications

- 9.1. There are neither positive nor negative climate change/carbon emission implications arising from the report.

10. Financial implications

- 10.1. There will be a small cost to install a number of signs across Medway, which will be met within the existing budget. Enforcement activity will also be met from within existing budgets.
- 10.2. There is potential to generate additional income from the enforcement of the PSPO, however it is not possible to quantify the potential impact at this stage.

11. Legal implications

- 11.1. Under section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 (the Act), a local authority may make a PSPO in the areas where a particular nuisance or problem occurs which is detrimental to local community's quality of life. In order to issue a PSPO, the council must be satisfied on reasonable grounds that the two statutory conditions set out in s59 (2) and s59 (3) are met and that the restrictions are reasonable and proportionate. The Cabinet now needs to consider the proposals.
- 11.2. Section 59 (2) of the 2014 Act states that the first condition is that:
 - (a) activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or
 - (b) It is likely that activities will be carried on in a public place within that area and that they will have such an effect.
- 11.3. Section 59(3) of the 2014 Act states that the second condition is that the effect, or likely effect, of the activities –
 - (a) Is, or is likely to be, of a persistent or continuing nature,
 - (b) Is, or is likely to be, such as to make the activities unreasonable, and
 - (c) Justifies the restrictions imposed by the notice.
- 11.4. Section 59(5) of the 2014 Act provides that the only prohibitions or requirements that may be imposed are ones that are reasonable for the specified objectives of the PSPO that are:
 - (a) to prevent the "detrimental effect" referred to in section 59(2) of the 2014 Act from continuing, occurring, or recurring: or
 - (b) to reduce that detrimental effect or to reduce the risk of its continuance, occurrence, or recurrence.
- 11.5. The Home Office statutory guidance for frontline professionals (The Home Office Guidance) (pg. 48) states; "these orders can restrict what people can do and how they behave in public spaces. It is important that the restrictions imposed are focussed on specific behaviours and are proportionate to the detrimental effect that the behaviour is causing or can cause, and are necessary to prevent it from continuing, occurring, or recurring".
- 11.6. Before deciding to make the PSPO, the council must comply with certain statutory requirements relating to publication, consultation, notification, and information in respect of the proposed PSPO in the relevant areas. In addition, the council will need to evidence that it has given regard to statutory guidance issued by the Secretary of State.

- 11.7. Breach of a PSPO is a criminal offence, subject to a fixed penalty or prosecution and a fine.
- 11.8. Once approved, the PSPO must be published on the council website and notices erected publicising the fact that the PSPO has been made and its effect.
- 11.9. When considering the Human Rights Act the council must balance the rights and freedoms of individuals, in relation to the proposed restrictions imposed, against the needs of the wider community.
- 11.10. The tests which the Cabinet are required to consider are set out at paragraph 4.5 above. In considering these criteria the Cabinet will need to assess whether the evidence provided objectively meets the tests set out in the legislation.
- 11.11. Any Interested person can challenge the extension of PSPO by bringing a claim in the High Court within 6 weeks of the order being varied, such a challenge can argue either that the Council did not have the power to make the variation or that a requirement of the process was not complied with this ability to challenge under Section 66 of the Anti-Social Behaviour crime and policing Act 2014 is in addition to the usual ability to challenge by way of judicial review within 3 months of making the decision on any of the normal public law grounds.
- 11.12. The Court may suspend the operation of the PSPO or any of the prohibitions imposed by it until the determination of the proceedings. Should the Court be satisfied the council erred and the applicant has been substantially prejudiced by that failure, it may quash the Order or any of the prohibitions imposed by it.

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Appendices

Appendix 1 – Statutory Guidance, The Anti-Social Behaviour, Crime and Policing Act 2014

Appendix 2 - Nuisance Vehicle PSPO Survey Charts

Background papers

None