

ALLEY GATING PANEL

21 APRIL 2015

PRESENT: Councillors Geoff Hill (Chairman), Malcolm Beer, Clive Bullock, David Hilton, Mrs Maureen Hunt (substituting for Councillor John Stretton) and George Fussey.

Officers: Robert Dunford, Andrew Fletcher, Hannah Hughes, Brian Martin, Karen Shepherd, Sarah Smith, and Catherine Woodward.

Also Present: Sergeant Walker, Thames Valley Police

PART I

01/14 APOLOGIES FOR ABSENCE

Apologies for absence had been received from Councillor John Stretton, Chairman of the Rights of Way and Highway Licensing Panel.

02/14 DECLARATIONS OF INTEREST

There were none.

03/14 MINUTES

RESOLVED: That the minutes of the meeting of the Panel held on 19 August 2011 be approved.

04/14 ORDER OF BUSINESS

The order of business was noted.

05/14 PUBLIC SPACE PROTECTION ORDER (PSPO) IN RESPECT OF ETON THAMESIDE / FOOTPATH 51, ETON

Community Safety Officer

Mr Dunford, the Anti-Social Behaviour Co-ordinator, stated that under the Anti-social Behaviour, Crime and Policing Act 2014, the local authority had the power to restrict areas of land where anti-social behaviour occurred. The council's Alley Gating policy was to consult with residents if representations were received in relation to anti-social behaviour. Residents of Eton Thameside had submitted an electronic petition to the council in February 2015, containing 117 signatures. As a result, a consultation had taken place between 20 February 2015 and 20 March 2015. Responses, as reproduced in appendix 2, numbered 48. Of these, 22 were in objection, 18 were not in objection and 6 were deemed 'other' comments. The recommendation from the Community Safety team was neutral; the decision lay with the Panel. The test was whether the criteria in the legislation had been met and, if so, the appropriate level of restriction. The legislation required the

authority to consider whether the behaviour:

- Had had, or was likely to have, a detrimental effect on the quality of life of those in the locality; and whether its effect
- Was, or was likely to be, persistent or continuing in nature;
- Was, or was likely to be, unreasonable; and
- Justified the restrictions imposed

If agreed, the decision was subject to challenge under Section 66 of the Act by an interested party via an application to the High Court within 6 weeks.

Planning Officer

Sarah Smith, Principal Planning Officer, explained that in 2011 a planning application had been submitted to redevelop the boat houses. The application was in a sensitive location as it was a conservation area. There had been concerns during the application process about the impact on the area and the loss of the boathouses, therefore a number of public benefits were suggested to outweigh the impact, including a public right of way that did not previously exist. The right of way included a clause to ensure that it was available at all times for pedestrians and cyclists. From a planning perspective any restriction would need to be balanced against the harm of restricting.

Highways Officers

Andrew Fletcher, Rights of Way Officer, commented that the level of anti-social behaviour and the location of incidents was not clear, particularly from the police report. The advice from the Local Access Forum had been given based on sufficient evidence being present for an order to be made. The path had not been in place very long, therefore perhaps it was too early to consider gating. The development was currently only partially full; perhaps when it was more fully occupied there would be more eyes watching to deter anti-social behaviour.

Mr Fletcher suggested that, if the Panel was minded to approve a gating order, he suggested closure from point A to just north of point B on the map. This could be closed at night without unduly restricting access to the river. The existence of a gate, even one unlocked, could be a deterrent; therefore any gate should be locked open during the daytime. Effective signage would also be required to explain rights to use the path.

Mr Fletcher felt the timings in the proposal from residents were too restrictive. The Local Access Forum had suggested 10pm-6am however the evidence from the police would mean midnight to 5am would be sufficient. He also expressed concern that gates that were manually opened and closed they were at risk of not being opened, or opened late. It would be hard for any group of residents to manage the opening and closing of gates on time every day. This issue could be addressed by gates that automatically locked and unlocked. However no system was infallible therefore a named contact would need to be available to the public if there were any issues.

The legal officer also reminded the Panel that as the proposed PSPO related to a highway, it was necessary for the Panel to consider matters listed in section 64 of the Act namely the likely effect of making a PSPO on occupiers of premises adjoining or adjacent to the highway, the effect of making of a PSPO on other persons in the locality and the availability of a reasonably convenient alternative route.

Questions to the Officers

In response to questions:

The Planning officer confirmed that the gates as currently in place did not have planning permission and would likely need permission. Irrespective of planning permission, she believed they were in breach of the public right of way order.

The Anti-Social Behaviour Co-ordinator explained that as this was a new piece of legislation there were no precedents as to the level of anti-social behaviour needed to gate. Brian Martin, the Community Safety Manager commented that in the past more data had been provided by Thames Valley Police, for example maps showing incident sites. Ideally reports from both the police and residents would include specific location, time and date. It was difficult to determine the effectiveness of surveillance (e.g. CCTV) as a deterrent. The CCTV at Thameside was privately installed and monitored.

The Rights of Way Officer commented that anti-social behaviour related to the public house (e.g. smokers seeking shelter) could be alleviated by the proposal to gate from points A to B as mentioned earlier.

It was confirmed by a resident in attendance that the CCTV was self-monitored; it was not monitored by an external agency or RBWM. Recordings were taken 24 hours a day and were available to residents for a period of 7 days. It was not high-grade CCTV and had been installed by the developer. When the CCTV had first been installed the cameras had acted as a deterrent; it was now less effective. A recent cycle theft had been recorded and reported to the police, but the police had failed to collect the CCTV recording.

The Community Safety Officer commented that CCTV recorded but did not stop anti-social behaviour entirely. The difference to CCTV on for example the High Street was that it was not constantly monitored nor were incidents automatically alerted to the police.

Thames Valley Police

Sergeant Walker of Thames Valley Police explained that he had been asked to give evidence about anti-social behaviour affecting the area; it would be difficult to specify locations because the new system used did not provide this level of information. Without CCTV evidence it would be difficult to pinpoint locations. The proposal from residents referred to graffiti, late night noise, drunkenness and urination, which could all be related to the public house and the night-time economy across the bridge. The peak time was midnight-5am during the summer. He commented that the figure of 31 incidents of anti-social behaviour was out of kilter with an area such as this. The issue was whether or not it was affecting the residents of Thameside. In his view, all residents in the area were

affected.

Questions to Thames Valley Police

Sergeant Walker confirmed that the majority of people leaving Windsor late at night went up the High Street to seek a taxi rather than in the direction of the footpath. There was no evidence to say that other footpaths in Eton were affected by similar noise problems. Anti-social behaviour such as urination in the alleyway next to Costa did not have the effect of waking residents. The police had not been made aware of specific problems in that location. The only evidence he was aware of in relation to the footpath was the cycle theft referred to earlier, which required more investigation. PSCOs had reported vagrants in the area. In his opinion if CCTV coverage was expanded and viewing ability improved, more convictions could be secured. CCTV was only as good as the person identifying the offender. Appropriate warning signage could be a deterrent.

Sergeant Walker commented that anti-social behaviour had occurred in the area for some time, because of the new development the river frontage was also now potentially accessible for anti-social behaviour.

A resident in attendance highlighted to Members the 11 'statements of fact' about incidents experienced in the locality, which may or may not have been reported to the police. Five URNs that occurred two weeks previously about drunks in the alleyway may not be included in the figures.

Sergeant Walker confirmed that issues were reduced due to regular patrols of the area. The neighbourhood team patrolled during the daytime, the night-time response unit was responsible for monitoring during the night. It was difficult for the police to deal with noise disturbance on their own. Drunken behaviour and violence could be more easily dealt with.

Representations by local residents in favour of Alley Gating

Mr Paul Edwards of 3 Eton Thameside, spoke on behalf of residents of Eton Thameside. He was also the author of the official response to the consultation. Residents had been blighted by anti-social behaviour since August 2014. In no way did residents wish to deny residents or visitors access to the Brocas or river front. The e-petition and application did not request permanent closure of the footpath, but specific timed closure overnight. Anti-social behaviour incidents clearly had a detrimental effect on the quality of life of residents and were likely to be persistent in nature. Anti-social behaviour was not new to the Eton community.

Mr Edwards stated that footpath 51 was the only access for residents to their properties, including disabled residents. At night this could be hazardous and intimidating. A safe and secure environment in around your home was a basic human right. The geography of Eton Thameside was unique, badly designed and encouraged anti-social behaviour. Evidence in the response related to verbal abuse, theft, drunkenness and fear of violence and burglary. It was therefore proportionate for residents to apply for the alley to be gated. Early-sleeping residents should be afforded the same protection as late-sleepers;

therefore he felt the gate should be locked between the hours of darkness. Both gates should be unlocked during all other times and accompanied by appropriate signage.

Mr Edwards commented on the potential future legal liability for the council of its failure to make Eton Thameside safer by issuing a PSPO.

Ms L. Oatway commented that she was a long-time resident of Windsor (35 years) with the last 15 in Eton. She lived in a property overlooking the Brocas. She fully supported the restriction because 24 hour opening would encourage a rise in noise pollution and anti-social behaviour. The Brocas did not have a PSPO. In her view there was no loss as there were other stretches of the Thames available for people to enjoy. Her personal experience was that anti-social behaviour in Windsor was not dealt with appropriately by the police because they were too busy elsewhere. She and her neighbours regularly called the police to report fighting, fornication, cruelty to wildlife and urination. The police usually did not attend. She had seen bottles, glasses and nappies on the footpath in recent weeks. There were no litter bins.

Questions to residents in favour of Alley Gating

Mr Edwards confirmed that as soon as residents moved in they experienced anti-social behaviour; hence they launched the e-petition. There was a comprehensive and overwhelming argument for gating from day one. There was a certain level of tolerance with purchasing such a property but it was clear there was a real problem late into the night. Residents would be able to manage the locking and unlocking of gates at appropriate times. Alternatively an automated mechanical system could be used, although there were health and safety risks with this option. He felt unlocked but closed gates was the safest option.

Mr Stuart Rogers commented that residents were more concerned with the principle than specific times. If the footpath was gated, people could access the river on the other side during the evening.

Mr Edwards commented that a disproportionate request would be a 24 hour closure. There was the potential for incidents early in the morning when someone was leaving for work, hence the times proposed were fair and balanced.

Ms. Oatway commented that as a resident overlooking the Brocas she experienced anti-social behaviour was luckier than Eton Thameside residents because her property was set back.

Councillor Beer suggested sunset to sunrise would be an appropriate closure time. Mr Edwards concurred.

The Anti-Social Behaviour Co-ordinator explained that a PSPO would have a 3 year lifespan, at which point there would be a mandatory review. Any new PSPO was likely to be reviewed in a shorter time periods to ensure it was operating properly.

Mr Edwards commented that Article 1 of the Human Rights Act (the protection of property)

applied. It was not an easy decision, but gates would offer protection. He did not dispute that gates would need planning permission. The majority of incidents took place after 7pm. There was an increase in severity late at night. Mr Edwards felt that the proposal to gate different sections at different times would not be effective as the section between B and C was very exposed, with no natural surveillance. The storage units would be exposed to anti-social behaviour. He rejected the proposition of a gate at point B as being counter-productive. Riverfront properties would be open to opportunistic burglars. A further gate at point C, locked at night, was a good proposal.

Further to the earlier comments of Mr Edwards, the legal officer stated that the council would not have a future legal liability to the residents of Eton Thameside if the Panel decided not to issue a PSPO.

Representations by local residents against Alley Gating

Mr Turner, of 81 High Street, Eton stated that he had lived in Eton for 21 years above his business near the bridge. Anti-social behaviour had always been a part of living in Eton. However in the last 21 years incidents had not been so great to petition for the need for a gate. The footpath was a fantastic amenity, providing views you could not get from the Brocas. He had sympathy with the residents if they felt threatened but to close a path so recently opened would be disproportionate. The river frontage, which was just an expanse of concrete, could be fenced off. It would be easy for the gates to not be opened for a period of time therefore if the application were approved, he requested automatic gates be fitted.

The legal officer confirmed that prohibition of the consumption of alcohol on the public footpath could be included in a PSPO, irrespective of the authorisation of a gate. Dog fouling could also be dealt with without a gate. If a gate was approved, Members should be mindful of the arrangements for locking/unlocking, who would install and maintain the gate and the need for a contact number if the gate was not unlocked at the stated time so as to minimise any interference with the public use of the footpath. The local authority was required to have regard to the statutory guidance and this stated that the rationale for the making of a PSPO was to ensure the law-abiding majority could use public open spaces, rather than simply for the purposes of restricting access. The Panel needed to apply the requirements of the legislation to the application before them.

Mr Peter Eaton stated that he lived adjacent to the Brocas. The footpath was a condition of the planning application and had legal standing. The statutory footpath network had been hard fought for over time; restriction should be the last resort. The request to gate overnight was more about privacy than protecting property in his opinion. If there was an overnight closure, he questioned who would practically close the footpath? Efforts should be made to manage the anti-social behaviour rather than remove a community facility. Anti-social behaviour would continue in the area because it was close to the public houses and the Brocas. He supported a 24 hour alcohol prohibition, but this had not been in the consultation.

The Community Safety Manager commented that the borough currently had four DPPOs. Under the new legislation these would be replaced with PSPOs. A report would go to Cabinet in May 2015 to consider the issue. The Panel did not currently have the power to put restrictions relating to alcohol or littering and dog fouling into a PSPO, but could agree to gate an alley.

Questions to residents against Alley Gating

None

Summary

The Chairman invited all present to summarise their case.

The Anti-Social Behaviour Co-ordinator re-iterated that it was necessary for the Panel to be satisfied that grounds for making a PSPO as set out in the legislation had been met.

Ms Oatway commented that the petition had been circulated to all residents of the Brocas. She wished to highlight this in response to questions over the occupancy levels of Eton Thameside and the number of people on the electoral register. Mr Edwards stated that 12 of the 13 properties were now occupied; all residents had signed the e-petition.

A resident in attendance commented that she did not necessarily want to report every incident and overburden the police. Urinating was anti-social behaviour but she would not report this to the police. The alley created the opportunity for anti-social behaviour.

Another resident commented that better lighting and CCTV were needed. Free access to the footpath was important; it should be advertised prominently. The original planning application had taken time to consider the means of escape in times of flooding. A fixed gate could contradict this aspect. Mr Edwards commented that his risk assessment showed separate escape routes for fire and flood.

The Rights of Way Officer referred to case law and the psychological deterrent of an unlocked but closed gate.

A resident suggested the erection of fences or hedging could alleviate the concerns about burglary in the storage area. Mr Edwards commented that the bedrooms on the frontage were susceptible to burglary. There was no segregation between the front of the river and the private property in front of the town houses.

Mr Eaton suggested an alcohol-related PSPO was needed.

The Planning Officer commented that the Thames Valley Crime and Prevention officer had commented on the planning application that the means of escape did not rely on the footpath.

Decision

The Panel then retired to consider the application and evidence that had been presented.

During the Panel meeting, Members considered oral evidence submitted by the Community Safety Officers, Highways Officer and Principal Planning Officer of the Royal Borough, Sergeant Walker of the Thames Valley Police, and local residents. In addition, the Panel considered written evidence in the form of the report prepared by the Community Safety Officers, the summary of consultation responses, a consultation response from the Local Access Forum, an initial consultation response from Thames Valley Police and the consultation response from Eton Thameside Residents. All written evidence had been circulated to Panel Members in advance of the hearing.

The Panel noted that the Royal Borough was empowered under s.59 of the Anti-Social Behaviour, Crime and Policing Act 2014 to make PSPOs where activities carried on in a public place:

- Have had, or are likely to have, a detrimental effect on the quality of life of those in the locality;
- Are, or are likely to be, persistent or continuing in nature;
- Are, or are likely to be, unreasonable; and
- Justify the restrictions imposed.

The Panel considered the tests as detailed above and was of the opinion that, having regard to the evidence provided in support of the PSPO, it was not possible to confirm that the activities had had, or were likely to have, a detrimental effect on the quality of life of those in the locality; were or were likely to be, persistent or continuing in nature; or were or were likely to be so unreasonable as to justify the proposed closure of the public footpath and the consequential loss of this amenity to the residents of the locality as prescribed in s.64 of the Act. The Panel were therefore of the opinion that the restrictions of a PSPO would not be justified in this case.

In making their decision, the Panel had regard to the following:

- Home Office Guidance
- The likely effect of making an order on occupants adjacent to the highway (the residents of Eton Thameside) and the likely effect on other persons in the locality (users of the footpath).
- The Section 106 agreement in place and the requirement for the provision of a footpath to mitigate the effect of the development.
- The fact that the footpath had only been in place since August 2014 and the e-petition to the council seeking partial closure was open for signatures from September 2014.
- Other options that would be available to residents of Eton Thameside to improve their security in relation to the covered entrance to the alleyway, including improved CCTV and clear notices that CCTV is in operation, improved lighting in the alleyway and whether consideration should be given to fencing at the front of the building (noting that any such proposal would be subject to planning permission).

The Panel was of the view that the Royal Borough Cabinet should be recommended to consider a PSPO dealing with dog fouling, littering and alcohol consumption on FP51.

The Panel also noted the potential planning enforcement issue in relation to the gates already installed, and the presence of the gates on a highway contrary to highways legislation that would also need to be addressed.

RESOLVED UNANIMOUSLY: That, having considered the representations for and against restricting the alley through Eton Thameside / FP51 via a Public Space Protection Order (PSPO), that no PSPO should be progressed.

05/14 MEETING

The meeting, which began at 6.30pm ended at 8.45pm. Deliberations concluded at 9.35pm.

Chairman:

Date: