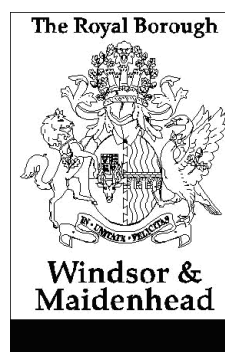


Report for: *ACTION*



Contains Confidential or Exempt Information	NO - Part I
Title	Recommendations for a New Type of Public Space Protection Order (PSPO)
Responsible Officer(s)	Simon Fletcher – Strategic Director of Operations & Customer Services
Contact officer, job title and phone number	Craig Miller - Community Protection & Enforcement Service Lead 01628 683598
Member reporting	Cllr Carwyn Cox – Lead Member for Environmental Services
For Consideration By	Cabinet
Date to be Considered	31 March 2016
Implementation Date if Not Called In	Immediately
Affected Wards	All

REPORT SUMMARY

1. This paper proposes that Cabinet recommends that full Council considers and approves an extension to the scope of PSPOs available for use within the Royal Borough to include anti-social behaviour (ASB) arising from barbecues lit in public spaces.
2. The paper also recommends that delegated authority be given to the Lead Members for Environmental Services and Highways and Transport in conjunction with the Strategic Director of Operations & Customer Services to make further recommendations (as appropriate in the future) on the extension of the scope of PSPOs direct to full Council.
3. The paper also sets out a number of anti social behaviour issues that the council has received contact about. These issues have been considered under the PSPO framework by other local authorities. The paper suggests further research is undertaken in conjunction with the Policy Committee and stakeholders to determine the most appropriate response (if any) to these matters.

If recommendations are adopted, how will residents benefit?	
Benefits to residents and reasons why they will benefit	Dates by which residents can expect to notice a difference
A reduction in barbecue-related anti-social behaviour in the locations where relevant PSPOs are implemented.	Immediately from the inception of an appropriate PSPO.

1. DETAILS OF RECOMMENDATIONS

RECOMMENDATION: That Cabinet:

- i. Approves Option1 in section 2.9 below;**
- ii. Delegates authority to the Strategic Director of Operations & Customer Services in conjunction with the Lead members for Environmental Services and Highways & Transport to propose any future widening of the scope of ASB covered by PSPOs directly to full Council;**
- iii. Requests the Strategic Director of Operations & Customer Services in conjunction with the Policy Committee and relevant stakeholders to complete an options appraisal of the potential responses to the items detailed at a) to e) in section 2.7.**

2. REASON FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

- 2.1 Certain types of anti-social behaviour are more prevalent in some areas than others. Public Space Protection Orders (PSPOs) provide the tool by which such ASB can be tackled. A paper to July 2015 Cabinet considered the introduction of PSPOs in detail and whilst it just dealt primarily with the replacement of the borough's old Designated Public Space Orders, it indicated that PSPOs would in future be used to tackle other types of ASB occurring in public places.
- 2.2 The main item being put forward in this paper is anti-social behaviour (ASB) that can arise from barbecues being lit in public spaces (smoke annoyance and safety concerns from hot coals and fire). The council has over the past few years received contact and complaints from residents and ward councillors in respect of barbecues that have been lit on Bath's Island, Windsor during weekend and bank holiday periods. An initial review of e-mails and complaints made to the council's Environmental Protection team alone highlights six formal complaints made about barbecues on Baths Island between the end of May 2014 and the end of April 2015. One of these details a patrol that identified 15 barbecues lit on the island with another complaint detailing significant numbers of users on the Island many with barbecues.
- 2.3 As a result, Community Wardens have been tasked to patrol this location for the past three years during peak periods to prevent people lighting barbecues (on average 2 -5 per day). On average this has required 8 hours Community Warden overtime per weekend. This results in an additional cost to the council of circa £6,000.
- 2.4 The council currently has little or no enforcement power to tackle this issue effectively and relies on good will and interpersonal skills when issues occur. The ability to issue a Fixed Penalty Notice for a breach of a PSPO would act as a

strong deterrent. This would also provide an actual sanction for any instance where all other informal efforts and attempts to rectify an issue have been exhausted.

- 2.5 It is likely that this ability will also help improve some of the wider issues associated with the use of barbecues in public spaces e.g. littering and damage to grass from disposable barbecues etc. Leisure services officers have received complaints and experienced issues of this nature in open spaces within the Borough. Appendix 1 shows images of Baths Island, Windsor and the extent of littering and waste left on the Island following good weather periods when barbecues have been lit.
- 2.6 It is important to note that should Cabinet be minded to make a recommendation to Council to extend the scope of PSPO's and it is approved, this does not mean an order is in existence. The determination and implementation of an actual PSPO is undertaken by a PSPO panel with local ward member representation. This would be done on the basis of a referral to a panel supported by an appropriate evidence base for the issue and location(s) in hand.
- 2.7 The council has received contact about a number of other anti social behaviour issues that currently do not currently fall within an existing work stream or enforcement mechanism. Other authorities have considered such issues within the PSPO framework. The issues comprise:
- a) Anti social behaviour (urinating, defecating and aggressive behaviour towards customers) associated with persons sleeping in council owned car parks overnight (in the stairwells and enclosed parts);
 - b) Issues with dog control in some parks e.g. one person trying to keep control of numerous dogs and causing issues for other park users and other dog owners;
 - c) Anti-social driving and parking outside many of the borough's 63 schools;
 - d) Anti social behaviour associated with illegal moorings; and
 - e) Anti social behaviour associated with illegal encampments (litter, defecation etc) in the borough's public open spaces.
- 2.8 Officers are aware of media coverage about alleged over zealous use of PSPO powers by some authorities and in particular for issues related to homelessness. The items listed at a) to e) can be complex and sensitive issues. Officers believe it would be prudent to undertake further research to determine whether each issue requires a response from the council. Where this is the case an appraisal of all options available including PSPOs should be completed to ensure any intervention or action is necessary and proportionate. It is recommended that this work be completed in conjunction with the council's Policy Committee and relevant stakeholders. If necessary a subsequent report can be submitted to cabinet and or council for determination of any proposed actions that fall outside of existing officer delegations or work streams.

2.9 Options

Option	Comments
1. Cabinet proposes that Council should if necessary be able to implement PSPOs covering	Full Council is the body that authorises PSPOs either itself or via its PSPO Panel. It also decides which types of

Option	Comments
the anti-social behaviour (ASB) associated with barbecues in public spaces. This is the recommended option	ASB can be tackled using PSPOs. Using a PSPO is useful in that it is not directed at specific individuals and therefore can be used to reduce a type of ASB in a specified area.
2. To utilise other ASB tools such as ASB Contracts and Community Protection Notices rather than PSPOs. This is not recommended	Most of the other ASB tools relate specifically to individuals rather than a specified area. These tools should where appropriate be used in conjunction with a PSPO when addressing ASB within a specified area.
3. Do nothing. This is not recommended.	The borough would be failing to utilise the tools provided by the ASB Crime and Policing Act (2014) and in doing so would be failing to realise the opportunities to reduce these behaviours.

3. KEY IMPLICATIONS

3.1 The 30th July 2015 Cabinet Meeting agreed the following measures of success and this paper proposes these should be continued.

Defined Outcomes	Unmet	Met	Exceeded	Significantly Exceeded	Date they should be delivered by
PSPO Scope is extended to include ASB associated with barbecues lit in public spaces by:	Post 26/04/16	26/04/16	n/a	n/a	26/04/16
PSPO's for ASB associated with barbecues lit in public spaces are available for consideration and use by PSPO panels by:	Post 31/05/15	31/05/16	n/a	n/a	31/05/16

4. FINANCIAL DETAILS

Financial impact on the budget

	2015/16	2016/17	2017/18
	Revenue £'000	Revenue £'000	Revenue £'000
Addition	£0	£1	£
Reduction	£0	£0	£0

	2015/16	2016/17	2017/18
	Capital £'000	Capital £'000	Capital £'000
Addition	£0	£0	£0
Reduction	£0	£0	£0

The main financial implications are the revenue cost of printing of two-part Fixed Penalty Notice (FPN) stationery and the cost of signage which can be met from existing budget provision.

5. LEGAL IMPLICATIONS

5.1 The Royal Borough is 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.

“Public place” is defined by s74 (1) as “any place to which the public or any section of the public has access....”

Further, under s59, it has to consider the restrictions, and the duration of the Order proposed.

Also, before an Order is made, then under s71, it must have had regard to the Rights of Freedom of Expression and of Assembly under the Human rights Act 1998, before making the Order. European Human Rights considerations are covered below:

Article 10 – Freedom of expression

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11 – Freedom of assembly and association

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

The Passing of the ASB Act 2014 by Parliament allows RBWM to make a PSPO that could restrict the above Rights, where that is compatible with those Rights.

Finally, (under s72(3)) before an Order is made it must also have carried out the “necessary consultation” with the Police, Community Representatives and the owners and occupiers of the affected land (the latter only where “reasonably practicable”) and have carried out “necessary publicity”, which means publishing the text of the proposed Order. Note that in certain categories of land there is a wider duty of consultation, for example land designated as “open access” land will require consultation with any relevant groups such as Ramblers depending on the restriction proposed. Therefore in respect of any proposed PSPO for Bath’s Island it will be essential to check that this is not one of these special categories of land.

Section 66 of the Anti-Social Behaviour, Crime and Policing Act allows that an interested person, i.e. “an individual who lives in the restricted area or who regularly works in or visits that area”, may challenge the validity of a PSPO by application to the High Court where:

A local authority did not have power to make the order; or
That a requirement under the legislation was not complied with

Additionally, Regulation 2 of the Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014 requires that the Royal Borough must take certain steps to publicise PSPOs.

The legislation stipulates that PSPOs must be subject to regular review. New orders should ideally be reviewed after a year, and thereafter PSPOs must be reviewed triennially.

Once made the Royal Borough can extend (s60) vary or discharge (s61) an Order. An Order can be extended where there are reasonable grounds that doing so is necessary to prevent an occurrence or recurrence of the activities identified in the Order or an increase in the frequency or seriousness of those activities. An Order can only be varied to include a wider area and/ or impose more extensive prohibitions or requirements only if the original statutory criteria under s59 are met.

6. VALUE FOR MONEY

- 6.1 PSPOs have the potential to reduce long-term ASB costs in terms of resourcing e.g. police and council officer time, allowing these resources to be deployed elsewhere.

7. SUSTAINABILITY IMPACT APPRAISAL

- 7.1 None.

8. RISK MANAGEMENT

Risks	Uncontrolled Risk	Controls	Controlled Risk
Legal challenge to the validity of the PSPO process	Reputation damage to the Council, potential court costs	<ul style="list-style-type: none">• Public consultation on PSPOs• Ad hoc PSPO panel to decide on local PSPOs• Cabinet to decide on strategic PSPOs• Initial review of individual PSPOs after one year• Triennial reviews of all PSPOs	Low

9. LINKS TO STRATEGIC OBJECTIVES

- 9.1 *Residents First*
- Improve the Environment, Economy and Transport
 - Work for safer and stronger communities

Delivering Together

- Enhanced Customer Services
- Strengthen Partnerships

10. EQUALITIES, HUMAN RIGHTS AND COMMUNITY COHESION

- 10.1 Each PSPO application would be assessed on its own merits incorporating equality, human rights and community impacts.

11. STAFFING/WORKFORCE AND ACCOMMODATION IMPLICATIONS

- 11.1 ASB associated with Barbecues will be the responsibility of Community Wardens and potentially Environmental Protection Officers. Appropriate signage will be erected in an agreed location and those lighting barbecues will be issued with a fixed penalty notice.

12. PROPERTY AND ASSETS

- 12.1 None

13. ANY OTHER IMPLICATIONS

- 13.1 The fees associated with Fixed Penalty Notices and Community Protection Notices will be the subject of a paper to full Council. There are different charging ranges for FPN's depending on the type of offence they are issued for. The most common range is £50 to £80 with £75 being the default penalty level. This default position is the current recommendation for FPN's associated with PSPO's, however a benchmarking exercise is being concluded at the time of writing and will be provided within the council paper to inform the final decision in this regard.

14. CONSULTATION

- 14.1 This paper is scheduled for consideration by the Crime & Disorder Overview & Scrutiny Panel scheduled for 22 March 2016. The feedback and comments from this meeting will be made available to Cabinet.

15. TIMETABLE FOR IMPLEMENTATION

Date	Details
31 st March 2016	Cabinet proposes widening the scope of Public Space Protection Orders to Council.
26 th April 2016	Council approves the introduction of the new types of PSPO allowing the potential for consulting on new PSPOs to commence in May 2016.

16. APPENDICES

Appendix 1 – Images of Baths Island, Windsor

17. BACKGROUND INFORMATION

Public Space Protection Orders are established in sections 59 to 75 of the Anti-Social Behaviour, Crime and Policing Act 2014. This can be viewed at: <http://www.legislation.gov.uk/ukpga/2014/12/contents/enacted>

Regulations regarding the publication of PSPOs are covered by the Anti-Social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014. This can be viewed at: <http://www.legislation.gov.uk/uksi/2014/2591/contents/made>

Guidance on the legislation is available via the Home Office publication "**Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers** Statutory guidance for frontline professionals". PSPOs are covered in pages 46 to 52: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final_2_.pdf

18. CONSULTATION (MANDATORY)

Name of consultee	Post held and Department	Date sent	Date received	See comments in paragraph:
Internal				
Cllr Burbage	Leader of the Council	08/03/16		

Cllr Cox	Lead Member Environmental Services	07/03/16	08/03/16	
Simon Fletcher	Strategic Director of Operations & Customer Services	29/02/16	1/03/2016	
Michaela Rizou	Cabinet Policy Assistant	03/04/16	04/03/16	
Craig Miller	Head of Community Protection & Enforcement	16/02/16	29/02/16	
Neil Allen	Shared Legal Services	26/02/16	29/02/2016	
Mark Lampard	Finance Partner			

REPORT HISTORY

Decision type:	Urgency item?
Non-key decision	No

Full name of report author	Job title	Full contact no:
Brian Martin	Community Safety Manager	01628 796337

Appendix 1 – Images of Bath's Island, Windsor

The images show the extent of waste and litter cleared following peak use periods on Baths Island, Windsor. Fire/barbecue damage to the grass is also evident in the first image.

