

## **PUBLIC SPACES PROTECTION ORDER – THE VINE SEVENOAKS**

**PEOPLE & PLACES ADVISORY COMMITTEE – 20 June 2023**

**Report of:** Deputy Chief Executive and Chief Officer People & Places

**Status:** For Approval

**Also considered by:** Cabinet – 13 July 2023

**Key Decision:** Yes

**Executive Summary:** The Council has a duty to do all that it reasonably can to prevent crime and disorder in its area and work towards delivering the objectives of the Sevenoaks District Community Safety Plan. The Community Safety Unit working alongside Sevenoaks Town Council would like to propose to undertake a public consultation to start the process of a Public Spaces Protection Order (PSPO) for 3 years at The Vine and surrounding green areas, Sevenoaks. The area proposed is owned by Sevenoaks Town Council and has been agreed by them.

**This report supports the Key Aim of:** The Sevenoaks District Community Safety Partnership Plan and Community Plan

**Portfolio Holder:** Cllr Lesley Dyball

**Contact Officer(s):** Kelly Webb, Ext. 7474

### **Recommendation to People and Places Advisory Committee**

- a) To note the contents of the report and the process for implementing a Public Spaces Protection Order (PSPO).
- b) To support a recommendation to Cabinet to authorise a 6 week consultation with members of the public and partners on implementing a PSPO at The Vine and surrounding grass areas, commencing on 24 July 2023.

### **Recommendation to Cabinet**

- c) To note the contents of the report and the process for implementing a Public Spaces Protection Order (PSPO).
- d) To authorise a 6 week consultation with members of the public and partners on implementing a PSPO at The Vine and surrounding grass areas, commencing on 24 July 2023.

## **Introduction and Background**

1. The Anti-social Behaviour, Crime and Policing Act 2014 placed a new duty on the Council to tackle Anti-social Behaviour (ASB), working co-operatively with the Police, social landlords and other agencies. The Act put victims at the heart of the response to ASB and was intended to give professionals the flexibility they needed to deal with any given situation.
2. Public Spaces Protection Orders (PSPOs) were one of a number of new tools contained within the Act and were intended to deal with a particular nuisance or problem in a particular area that was detrimental to the local community's quality of life, by imposing conditions on the use of that area which apply to everyone. They were designed to ensure the law-abiding majority could use and enjoy public spaces, safe from anti-social behaviour.
3. Councils are responsible for making the PSPO, although the Police also have enforcement powers. District Councils take the lead in England with county councils undertaking the role only where there is no district council. The power is not available to parish councils or town councils.
4. The PSPOs have replaced dog control orders, designated public place orders (also known as Alcohol Control Zones) and gating orders.

## **The requirements of a PSPO**

5. The Council can make a PSPO on any public space in its own boundary area. The definition of a public space is wide and includes any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, for example a shopping centre. It does not just apply to land owned by the District Council but to any open space anywhere in the district (even land owned by parish councils or Kent County Council).
6. Before making a PSPO the Council must consult with the local police. This is an opportunity for the Police and Council to share information about the area and the problems being caused as well as to discuss the practicalities of enforcement. In addition, the owner or occupier of the land should be consulted as well as community representatives as appropriate.
7. In addition to the specific statutory consultation requirements, the Council has to adhere to the publication requirements which form part of the Anti-Social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014 ("The regulations"). These specify both advertising requirements and the need for notification to be placed on land affected.

8. The test for a PSPO is designed to be broad and focus on the impact anti-social behaviour is having on victims and communities. A PSPO can be made by the Council if they are satisfied on reasonable grounds that the activities carried out, or likely to be carried out, in a public space:
- have had, or are likely to have, a detrimental effect on the quality of life of those in the locality;
  - is, or is likely to be, persistent or continuing in nature;
  - is, or is likely to be unreasonable; and
  - justifies the restrictions imposed.

9. The Statutory Guidance for frontline professionals on the Anti-social Behaviour, Crime and Policing Act 2014 advises that

*'the council should give due regard to issues of proportionality: is the restriction proposed proportionate to the specific harm or nuisance that is being caused? Councils should ensure that the restrictions being introduced are reasonable and will prevent or reduce the detrimental effect continuing, occurring or recurring. In addition, councils should ensure that the Order is appropriately worded so that it targets the specific behaviour or activity that is causing nuisance or harm and thereby having a detrimental impact on others' quality of life. Councils should also consider whether restrictions are required all year round or whether seasonal or time limited restrictions would meet the purpose.'*

10. In relation to groups hanging around/ standing in groups/ playing games, the guidance advises as follows

*'It is important that councils do not inadvertently restrict everyday sociability in public spaces. The Public Spaces Protection Order should target specifically the problem behaviour that is having a detrimental effect on the community's quality of life, rather than everyday sociability, such as standing in groups which is not in itself a problem behaviour.'*

*Where young people are concerned, councils should think carefully about restricting activities that they are most likely to engage in. Restrictions that are too broad or general in nature may force the young people into out-of-the-way spaces and put them at risk. In such circumstances, councils should consider whether there are alternative spaces that they can use.*

*People living in temporary accommodation may not be able to stay in their accommodation during the day and so may find themselves spending extended times in public spaces or seeking shelter in bad weather. It is important that public spaces are available for the use and enjoyment of a broad spectrum of the public, and that people of all ages are free to gather, talk and play games.'*

11. A single PSPO can include multiple restrictions and requirements in one order. It can prohibit certain activities, such as the drinking of alcohol, as well as placing requirements on individuals carrying out certain activities, for instance making sure that people walking their dogs keep them on a lead.
12. Should the PSPO be implemented, the Council will work with the Police to ensure that front-line officers are aware of the power and how to use it, to maximise the impact of the PSPO.
13. A breach of the PSPO is a criminal offence, which can be dealt with, either by way of a fixed penalty notice (FPN) or prosecution. If prosecuted, an individual could be liable for a fine.
14. The maximum duration of a PSPO is three years but they can last for shorter periods where appropriate. At any point before expiry the council can extend a PSPO by up to three years if they consider that it is necessary to prevent the original behaviour from occurring or reoccurring. If a new issue arises in an area where a PSPO is in force the council can vary the terms of the order at any time. This can change the size of the restricted area or the specific requirements or restrictions. As well as varying the PSPO, a council can also seek to discharge it at any time.

#### **The proposed PSPO for The Vine, Sevenoaks**

15. The Sevenoaks District Community Safety Partnership Strategy and Action Plan is developed and supported by agencies across the District who can have an impact on reducing crime, anti-social behaviour and the fear of crime. The Strategy helps to:
  - Reduce and detect crime
  - Reduce anti-social behaviour and the fear of crime
  - Strengthen community involvement
16. Officers from agencies including Sevenoaks District Council, Sevenoaks Town Council, Kent Police, Kenward Trust, West Kent Housing Youth Services have used data, evidence and professional judgement to develop this proposed PSPO and have considered all issues/areas against the stated test process. Over many years there has been reoccurring Anti-Social Behaviour (ASB), Underage Drinking, Drug Use and Criminal Damage at the Vine, usually occurring from April to June. However this year has seen ASB, criminal damage, underage drinking (alcohol) and drug misuse. Following the fireworks evening at The Vine a number of pupils from local and out of area schools have been arranging meet ups at the Vine. These meet ups have been mainly on a Friday evening and has consisted on some evenings up to 200 young people congregating on The Vine.

17. From 5 November 2022 to 6 May this year, there were 31 reports to Police regarding The Vine and a further 11 reports to the Community Safety Unit. Although this may not seem a lot of reports, each report has recorded over 50-100 gathering on the Vine, reports have been fighting, underage drinking, intimidation, drug use, criminal damage, rubbish including smashed glass in the grass and public disorder.
18. A Task & Finish Group was set up and continues to meet up to look at the actions around the Vine. Appendix B sets out the initial Action Plan and a further updated one.
19. A neighbourhood survey was sent out to local residents in March 2023. 12 surveys were returned identifying the following concerns:-
  - ASB – large gatherings of young people
  - Drug Use
  - Damage to the Pavilion
  - Underage Drinking
  - Intimidation and feeling unsafe
  - Injuries to dog paws due to smashed glass
  - Adverse effect on residents, businesses and visitors
20. Sevenoaks Town Council raised this at their two youth council meetings who agreed that the PSPO should be put in place.
21. The restrictions proposed for the PSPO are to include:
  - Failing to comply with a direction not to consume, in breach of this order, alcohol, or anything which an authorised person reasonably believes to be alcohol where the authorised person reasonably believes that a person has engaged in anti- social behaviour.
  - Failing to surrender a container of alcohol (whether open or not) when asked to do so by an authorised person.
  - Engaging in anti-social behaviour which is likely to cause harassment alarm and distress to those persons in the locality.
  - Not to return within 24 hours.

## **Consultation**

22. There is a requirement on the Council to consult when implementing or varying a PSPO. The specific wording of the Act sets out that Local Authorities are obliged to consult with:

23. a) The chief officer of police, and the local policing body, for the police area that includes the restricted area (Kent Police has agreed that this should be the Chief Inspector, District Commander);
- b) Whatever community representatives the local authority thinks it appropriate to consult;
- c) The owner or occupier of land within the restricted area;
24. We will also be consulting directly with local ward councillors in the wards affected.

### **Next steps**

25. The Council would like to conduct a formal 6-week consultation to allow residents and visitors to provide their comments and to provide feedback on a PSPO covering a geographical area cover The Vine and surrounding green areas.
26. A public consultation would be made available via our partners in the voluntary sector to engage with groups likely to be affected.

### **Enforcement processes and penalties**

27. It is an offence for a person, without reasonable excuse, to:
- do anything that the person is prohibited from doing by a PSPO
  - fail to comply with a requirement to which the person is subject under a PSPO.
28. If a person fails to adhere to the PSPO they may be issued with a Fixed Penalty Notice (FPN). Where the FPN is not paid within the required timescale, court proceedings may be initiated.
29. FPNs issued to under 16s will be sent to the alleged offender under cover of a letter, which will also be copied to the parent/guardian. FPNs for under 16s will not be issued on the spot.
30. Fixed Penalty Notices will be issued by authorised District Council staff. The table below shows what other councils in Kent charge. Once the PSPO consultation has been completed, a further report will be presented to People and Places Advisory Committee and Cabinet later this year, outlining the responses and seeking approval to proceed with implementing the PSPO. Within this update report, it will be proposed that we increase our current FPN fee to £100 with no reduction for early payment, in line with what other councils charge across Kent to ensure greater consistency.

| Authority          | Fine charged                                  |
|--------------------|---|
| Ashford            | £100 fixed fee and no reduction if paid early |
| Canterbury         | £100 fixed fee and no reduction if paid early |
| Dartford           | £100 fixed fee and no reduction if paid early |
| Dover              | £100 reduced to £75 if paid within 10 days.   |
| Folkestone & Hythe | £100 fixed fee and no reduction if paid early |
| Gravesham          | £75 with no reduced fee for early payment     |

### Reasons for recommendation

31. The Council could chose to not take any further action, however the Council has a duty to do all that it reasonably can to prevent crime and disorder in its area and work towards delivering the objectives of the Sevenoaks District Community Safety Plan. The implementation of any PSPO assists the Council with meeting these requirements by providing the Council and Police with additional powers to tackle the issues identified.

### Key Implications

#### Legal Implications and Risk Assessment Statement.

32. The power to make a PSPO is contained in section 59 of the 2014 Act. A local authority can only make a PSPO if it is satisfied on reasonable grounds that the conditions set out at paragraph 1.2.3 have been met.
33. A public consultation has to be completed for 6 weeks before a PSPO can be authorised.
34. In deciding whether to make/ extend/ vary or discharge a PSPO, the Council is required to have particular regard to the rights or freedom of expression and freedom of assembly set out in Articles 10 and 11 of the European Convention on Human Rights.
35. Once the final PSPO measures are agreed the PSPO will need to be published in accordance with the regulations made by the Secretary of State.
36. The Council needs to ensure that the powers are used in a reasonable, consistent, appropriate and proportionate manner and must comply with the consultation requirements set out in this report.

37. The area that the PSPO covers must be considered as part of the consultation and data collection, as the Council must evidence that there is a significant nuisance or problem in a specific area that is detrimental to the local community's quality of life.
38. If we do pursue a new PSPO it will be important to ensure that its scope and the process for introduction is in accordance with the powers and requirements of the 2014 Act. Any challenge to a PSPO would have to be made by an interested person by way of an application in the High Court for permission to seek a Judicial Review. That application must be made within six weeks of the PSPO being made. An interested person is someone who lives in, regularly works in, or visits the restricted area.
39. A person who receives an FPN due to a breach of PSPO can also challenge the validity of the order. This means that only those who are directly affected by the restrictions have the power to challenge. This right to challenge also exists where an order is varied by a council. Interested persons can challenge the validity of a PSPO on two grounds. They could argue that the council did not have power to make the order, or to include particular prohibitions or requirements.
40. In addition, the interested person could argue that one of the requirements (for instance, consultation) had not been complied with. When the application is made, the High Court can decide to suspend the operation of the PSPO pending the verdict in part or in totality. The High Court can uphold the PSPO, quash it, or vary it.
41. The Council will have to take measures to mitigate against these risks by, for example, embarking on a full consultation process, publishing the proposed order and map and putting in place measures to publicise the PSPO through street signage and an intention to publish the final Order on the Council website in accordance with the act.

### Financial

There are limited capital or revenue implications associated with this report. The primary cost if we were to proceed with a PSPO would be installing new signage through the proposed PSPO zone and would be met from existing budgetary provision and also from the land owner (Sevenoaks Town Council. This will cost approximately £500-£1000. There may be a staffing resource implication for the District Council for issuing Fixed Penalty Notices and the work associated with this.

### Equality Assessment

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.



## Net Zero Implications

The decisions recommended through this paper have a remote or low relevance to the council's ambition to be Net Zero by 2030. There is no perceived impact regarding either an increase or decrease in carbon emissions in the district, or supporting the resilience of the natural environment

## Wellbeing

If we were to work towards introducing a new PSPO this will enable the Council and its partners to utilise additional powers to tackle street based anti-social behaviour within the selected area, helping to increase quality of life and wellbeing in the area affected.

## Conclusion

The Council has a duty to do all that it reasonably can to prevent crime and disorder in its area and work towards delivering the objectives of the Sevenoaks District Community Safety Plan. The implementation of any PSPO assists the Council with meeting these requirements by providing the Council and Police with additional powers to tackle the issues identified. This report seeks Cabinet approval to commence a 6 week public consultation for the new PSPO at The Vine. Once the consultation is complete and results have been evaluated, they will be presented to the relevant Advisory Committee and Cabinet for final consideration and decision to implement the PCSO.

### **Appendices**

**Appendix A – Draft Public Spaces Protection Order**

**Appendix B – Task & Finish Group Action Plan x 2**

**Appendix C – Draft Consultation Questions**

**Sarah Robson**

**Deputy Chief Executive and Chief Officer – People & Places**