

Committee: Cabinet

Date of meeting: 8 February 2022

Subject:	Green Spaces PSPO consultation
Lead Officer:	Head of Culture, Leisure and Environment
Portfolio Holder:	Leisure and Culture
Link to Council Priorities:	Love Elmbridge, Thriving Elmbridge.
Exempt information:	None
Delegated status:	For resolution

EXECUTIVE SUMMARY:

Our open spaces are incredibly valuable to our residents and during the pandemic these spaces have become increasingly popular with a wide range of users. As custodians of all of our open spaces the Council is responsible for protecting our land for all of its users.

The increasing popularity of portable fire pits, and barbeques has led to an increased risk of wildfires, which have become more of a risk as we have seen less rainfall during the summer months. This was especially seen during the droughts in the summer of 2022.

Our open spaces adjacent to the River Thames have also proved very popular with picnickers, swimmers, paddleboarders and fishermen. Albany Reach, Thames Ditton and Cigarette Island have also been popular with fishermen who often camp for an extended period without the necessary toilets or other facilities, and it is this presence that is cited as a further source of nuisance behaviour.

The Council has been working with partners including the Environment Agency and District Enforcement to seek a long term solution to unauthorised mooring in the Borough. Where boats are moored without permission on Elmbridge land but are unregistered these are still very challenging to move on.

It is recommended that consultation is undertaken on the introduction of a PSPO to alleviate residents and other users of the parks and open spaces from the 3 anti-social behaviours listed above.

RECOMMENDATION: THAT

- (A) CABINET AGREES TO THE PROPOSED GREEN SPACES PSPO CONSULTATION; and**

(B) THE RESULTS OF THE CONSULTATION ARE BROUGHT BACK TO CABINET IN JULY.

(C) DELEGATED AUTHORITY IS GIVEN TO THE STRATEGIC DIRECTOR IN CONSULTATION WITH THE PORTFOLIO HOLDER OF LEISURE & CULTURE AND THE HEAD OF LEGAL & GOVERNANCE TO CARRY OUT A CONSULTATION FOR A PSPO TO CONTROL DOG ANTI-SOCIAL BEHAVIOUR IF SUFFICIENT EVIDENCE IS RECEIVED.

REPORT:

1. Background

2. In October 2014 the Anti-Social Behaviour Crime and Policing Act 2014 (“the Act”) came into force. This Act introduced several tools and powers for use by councils and the police to address anti-social behaviour (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. This act introduced the powers available to the police and local authorities to deal with anti-social behaviour. One of these measures is the use of Public Space Protection Orders (PSPO).
3. PSPOs are intended to deal with a particular nuisance or problem in a particular area where the behaviour is detrimental to the local community’s quality of life, by imposing conditions on the use of that area. These can apply to everyone who uses that area or can be specifically structured to apply only to certain groups or categories of person, at different times or in specified circumstances. The Council is responsible for making a PSPO and also have enforcement powers, along with Surrey Police and other agencies as delegated by the Chief Executive.
4. The Council can make a PSPO if satisfied, on reasonable grounds that the following conditions are met in relation to the activities sought to be regulated:
 - That they are or are likely to be carried out in a public place within the Borough;
 - That they have had, or are likely to have, a detrimental effect on the quality of life of those in the locality;
 - The effect, or likely effect of the activities is likely to be, persistent or continuing in nature;
 - Is or is likely to be such as to make the activities unreasonable; and
 - justifies the restrictions sought to be imposed by the order.
5. 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.

6. If made, details of the making of a PSPO will have to be made available on the Council’s website and notification is required to be placed on the land affected in such a manner as to bring the order to the notice of persons using the restricted land. Any variation or discharge of the orders must be similarly publicised.
7. 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.
8. 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. Only those aged over 18 can be issued with an FPN.
9. Any PSPO introduced is only valid for a maximum of three years and must thereafter be extended if still required. Such extension is subject to the Council being satisfied that it is reasonable and necessary to do so and is subject to the same publication requirements as the introduction of a PSPO. The extension period is also restricted to a maximum of three years.
10. The use of PSPO’s helps to contribute towards the current Council plan under Sustainable Elmbridge, Love Elmbridge and Thriving Elmbridge and also the Elmbridge Community and Safety Partnership 2022/23 priorities:
 - Protecting the vulnerable
 - Building confidence
 - Offender management
11. The Council has already introduced a PSPO for an area of Walton on Thames which has worked well, which covers a range of behaviours that includes intimidating behaviour, substance misuse, cycling, skateboarding and hoverboarding. This is due to expire in at the end of 2024.

12. Current issues

13. During the Covid19 pandemic, many people came to place increased value on their local open space, and this resulted in seeing a large increase in visitors to many of our sites across the Borough, especially riverside sites. This increase in usage has also led to a number of complaints and issues where various uses of the sites have conflicted.

14. Naked Flames

The use of single use barbecues, and other naked flames for heating or cooking present a number of environmental issues and pose problems for the council in terms of clear up and costs. In addition, with the more frequent hot summers and drought conditions there is a significant increase in risk to wild fires caused by naked flames in our open spaces.

15. In other areas of the UK there have been cases where refuse lorries have caught fire due to a disposable barbecue, several supermarkets have now

withdrawn these from sale and a number of other Councils (Brighton and Hove, Dorset, Horsham) have all introduced PSPOs to ban the use of barbecues in their parks and open spaces.

16. There are now a lot more portable heaters\ fire pits available on the market which can be used to provide outdoor heat for gatherings and socialising. These are equally a fire risk to our open spaces.
17. While smoking is banned in enclosed public spaces it is still permitted in public open spaces. It is not proposed to include the use of cigarettes or e-cigarettes (or vaping) in this PSPO consultation.
18. This would not include the burning of materials by the Countryside Team which is often used for good management of the Countryside.

19. **Overnight fishing**

Our open spaces adjacent to the river have been more popular than ever among picnickers, swimmers, paddleboarders and fishermen. Albany Reach, Thames Ditton and Cigarette Island, have been some of our busiest sites with a large rivers edge and gently sloping 'beach' which has been popular with families. These sites have also been popular with fishermen who often stay for an extended period and it is this presence that is cited as the source of the nuisance behaviour.

20. We have received complaints from users of the open space for littering, open fires, and large tents in situ for a number of days for camping\ shelter associated with fishing on the site.
21. Fishing on all of Elmbridge's sites is permitted, and the Environment Agency remain responsible for the monitoring of fishing licenses in the UK. All users must have a rod fishing licence for fishing for salmon, trout, freshwater fish, smelt or eel with a rod and line.

22. **Unauthorised mooring**

Officers have been working with members and neighbouring boroughs, Surrey County Council, Surrey Police and the Environment Agency to consider a consistent way forward to managing unauthorised moorings.

23. A long-term solution is needed to the issue of unauthorised moorings. In 2019, Elmbridge Borough Council led a stakeholder consultation to seek a long-term solution to manage the ongoing issues of illegal moorings, very aware of the unreasonable and persistent nature of mooring without consent which can having a detrimental effect on those living in the locality.
24. One of the outcomes of the consultation was that the Environment Agency appointed an enforcement team to patrol the River Thames. In May 2022 the Environment Agency confirmed that all mooring compliance and enforcement activities on Environment Agency owned land and moorings would be undertaken by Environment Agency teams. All Environment Agency remote sites will be monitored by the local teams via routine foot and boat patrols.
25. The Council has been working with District Enforcement who are monitoring the Council owned sites at Cigarette Island, Ditton Reach and Albany Reach

to monitor any boats who overstay the permitted 24 hour mooring. District Enforcement are only able to apply mooring charges to registered vessels, and where overstaying boats are unregistered these are referred on to the EA to inspect the boats to investigate other registration offences.

26. In other areas such as Cigarette Island where there are persistent moorings, the council seek proceedings to recover possession of the land. The owners will be issued with a formal notice to advise that the occupants are trespassing on council-owned land and to give them 10-14 days to leave before legal action is taken and to check if there are any welfare issues that the council needs to be aware of.
27. At the same time District Enforcement will maintain a regular presence and reinforce the message that these boats are trespassing and mooring without consent
28. Surrey County Council (SCC) own the landing stage adjacent to Hampton Court Bridge\ Elmbridge land. Boats moored without consent have often moved between the 2 landowners once notices have been served on them. In order to provide a more joined up approach SCC have confirmed that they would be interested in being included within the PSPO proposals and would enforce any moorings on SCC land.
29. Officers have continued to work with the EA and to continue to lobby them to manage the overstaying boats on EA land within the Borough. The EA's current position is that all mooring compliance and enforcement activities on Environment Agency (EA) owned land and moorings, will be undertaken by Environment Agency employees.
30. All EA remote sites will be monitored by the local teams via routine foot and boat patrols. These moorings will permit 24 hours mooring only, with no return within 72 hours. There will be no charge for the 24-hour stay. The EA will consider taking enforcement action against anyone overstaying the time limit at these moorings.
 - Mooring fees for lock-based mooring will be paid to lock keepers and recorded in the toll books.
 - The same mooring conditions will apply at all sites. 24hrs free, plus an additional charged period of 48hrs.
 - A full list of mooring locations with the terms and conditions is available on the EA website
 - Simple signage will be installed guiding boaters to the lock office for information on moorings and payment.
31. Officers have consulted with the EA about the proposals to consult on a PSPO and if the PSPO powers would provide additional legal powers to assist the EA in managing their sites.
32. While the EA have shown an interest in whether a PSPO would assist with managing anti social behaviour on the river, , they have also confirmed that their Officers do not have the powers to require an individual to give us their

contact details. We feel that unless the Police are able to enforce such an order then they may have limited effect.. Similarly, Surrey Police and Elmbridge Council would not have the resources to enforce the PSPO's on EA land and as such EA land has not been included in the consultation scope for these PSPOs. Should the EA's position on enforcement resources change in the future this could be considered again at that time.

33. Initial consultation

34. The proposed Green Spaces PSPO has been raised with the with the Overview and Scrutiny Community Safety Working Group on 8 February, and then the Overview and Scrutiny Committee in March 2022.
35. Surrey Police and Surrey Fire and Rescue have been consulted on the proposals and their feedback is below:

SFRS

The placing of fire pits and barbecues on green spaces can only and will only attract residents and visitors and with that there's a risk with some of them causing antisocial behaviour i.e. loading too much combustible materials in the fire pits and leaving the barbecues still alight however, the area around the spaces are managed and clear of vegetation so reducing any fire spread.

Surrey Police

Surrey Police support Elmbridge Borough Council in seeking to consult the community regarding these conditions for a PSPO. Whilst the police have very limited involvement directly with these matters outlined under this proposal we are aware that such activity associated with them may constitute to be anti-social. It is therefore vital that Elmbridge Borough Council seek to address the issues raised by the local community and have sufficient powers to deal with them.

36. Officers have consulted with the Community and Safety Partnership, who were supportive of consulting on the 3 areas that may be suitable for a PSPO.
37. The Council have received a number of complaints on the 3 proposed PSPO areas:
38. Fire – The Greenspaces team receive a number of calls with concern regarding the risk of fire to vegetation on our Greenspaces during the summer 2022 drought. We received 14 emails requesting the reduction or cut back of vegetation due to concerns regarding fires, predominately near private property.

There were two fires recorded at Molesey Heath and Oxshott Heath, both were reported and contained quickly and did not spread.

39. Fishing- There are a number of local residents and Councillors that have grouped together to make a formal complaint regarding the fishing at Albany Reach. An onsite meeting was held with a number of residents in

attendance. The complaint raised covered noise, litter (including hooks and wires left in the water), defecation and antisocial behaviour.

40. 98 complaints have been received Borough wide relating to unauthorised moorings since 2014, with 13 specifically relating to Hampton Court Bridge\ Cigarette Island.
41. The previous stakeholder consultation in 2019 elicited a wide range of opinions on the consultation from boat owners\ representative bodies and other stakeholders\ residents. Amongst those who wished to see greater enforcement of unauthorised moorings there was no clear preferred solution, other than 'do nothing' not being an option. There was slightly more support for either a managed mooring or PSPO solution. Equally there was strong representation among the boating community not to be seen to unfairly target boat owners and legitimate use of the river.

42. Proposals

A PSPO could be considered to alleviate residents and other users of the parks from a variety of anti social behaviours as listed above. It is recommended that consultation is undertaken on the introduction of a PSPO with 3 elements as set out below:

- 1) Implement an order to ban the use of all naked flames (excluding cigarettes, and authorised management) on Elmbridge owned Green Spaces and open spaces throughout the year.
 - 2) Overnight camping\ fishing *either*
 - a) Implement a late night curfew at Albany Reach and Cigarette Island Open Spaces requiring people to leave the park between 11pm and 5am or
 - b) Implement an order at Albany Reach and Cigarette Island Open Spaces to restrict fishing to daytime only (07:00 am to 7:00 pm)
 - 3) Implement an order on Elmbridge owned land at Ditton Reach, Albany Reach, Cigarette Island, Cowey Sale and Hurst Park and Surrey County Council's land adjacent to Hampton Court bridge (Parrs mooring) and to restrict moorings to a maximum of 24 hours in the ordinary course of navigation with no return within 72 hours.
43. Maps of each of the sites has been included in the appendices and will form part of the consultation.

44. Control of dogs

45. The Council promotes responsible dog ownership, alongside the police, the Dogs Trust, the RSPCA, and other organisations and encourage dog owners and walkers to follow:
 - Government guidance in [controlling your dog in public](#)
 - RSPCA advice – [being a responsible dog owner](#)
46. We are aware of a large number of dog walking companies using Elmbridge open spaces. At this time there is no national licensing scheme for dog walking, or legislation to limit the number of dogs one handler can manage.

47. This has been raised recently in parliament through Prime Ministers Question Time and the Government have established a working group between police, local authorities and other key stakeholders to consider all aspects of tackling irresponsible dog ownership. That working group will make its recommendations later this year.
48. In the meantime, the Council has been reviewing the use of its sites by commercial dog walkers and possible means to regulate and limit this activity within existing legislation. Public Space Protection Orders (PSPO) could be introduced to control the walking of dogs however to introduce a PSPO, substantial evidence is required for its implementation which would be based on specific complaints and concerns raised directly with the Council, however the level of feedback we have received is insufficient to consider a PSPO at this stage.
49. Similarly, a licensing scheme could be considered to regulate professional dog walking companies on Elmbridge owned land, however there are no powers available to the Council to then monitor or enforce any such scheme.
50. Officers are proactively recording any dog related issues on our open spaces through a dedicated dog web page and any issues are encouraged to be reported from any users <https://www.elmbridge.gov.uk/leisure-and-culture/dogs/> This page will be widely promoted on social media and on site posters.
51. Should sufficient evidence be received in the coming months, it is recommended that delegated authority is given to the Strategic Director in consultation with the Portfolio Holder of Leisure & Culture and the Head of Legal & Governance to carry out a consultation for a PSPO to control dog anti-social behaviour if sufficient evidence is received. This would ensure that any possible proposals could be considered at the earliest opportunity.
52. Other areas, including London boroughs have used other powers contained within the City of London Corporation (Open Spaces) Act 2018 or with a PSPO. As such this is not a route that could currently be followed in Elmbridge. This will be kept under continual review, and a PSPO could be considered at a later date should the evidence received be sufficient.
- 53. Consultation Timeline**
54. Subject to agreement by Cabinet, it would be proposed to carry out consultation from February to March and for the results of the consultation to be presented to the first Cabinet meeting of the new municipal year.
55. Encouraging open discussion as part of the PSPO consultation process can help to identify how best to balance the interests of different groups- both those affected by anti social behaviour and those who will be restricted by the terms of the Order- and a chance to explore whether there may be unintended consequences from the proposals, in particular any adverse impacts on vulnerable people.
56. Consultation agreed by Cabinet Feb 22
Consultation 21 Feb to 20 March 22

Results considered by Cabinet 5 July 22

Implementation July onwards

57. The consultation will be widely promoted on the specific sites Ditton Reach, Albany Reach, Cigarette Island, Hampton Court Landings, Cowey Sale and Hurst Park and more widely on all open spaces and through social media and the Elmbridge Council website.
58. Consultation will also be sent to the following stakeholders:
 - The Angling Trust
 - Environment Agency
 - Local Friends Groups
 - River User Groups
 - Surrey County Council
 - Surrey Police
 - National Bargee and Traveller Association
 - Thames Landscape Strategy
 - Elmbridge Rentstart
 - Transform Housing & Support
 - Homeless Link

59. Enforcement

60. Enforcement of the above PSPOs would be carried out by the Councils Environmental Enforcement Team with support and additional advice and education where necessary from Surrey Police and Surrey Fire and Rescue.
61. It is proposed that any breach of the PSPO would then follow the Elmbridge PSPO [Enforcement policy](#) through the issuing of a £100 Fixed Penalty Notice which has previously been approved by members

62. Potential impact on the vulnerable

63. Statutory guidance issued by the Home Office on anti-social behaviour powers was updated in December 2017 and makes it clear that PSPOs should not be used to target people based solely on the fact that someone is homeless or rough sleeping and that councils should therefore consider carefully the nature of any PSPO that may impact on homeless people and rough sleepers. The guidance also indicates that councils should also consider consulting with national or local homeless charities when considering restrictions or requirements which may impact on homeless people and rough sleepers.
64. The Council's Housing Service has no recent record of approaches from owners or occupiers of houseboats in relation to actual or threatened homelessness from houseboats on local waterways and is not aware of a significant quantum of expressed housing need (in terms of those occupying said boats being on the Council's Housing Register). However, without contacting the individual boat dwellers to carry out some form of assessment of housing need, it is difficult to state definitively what the impact of a potential PSPO would be in terms of duties on the local housing

authority. It may be that some individuals would be able to access alternative accommodation without assistance, some boat owners may be able to secure legal moorings elsewhere and others may move to other unlawful moorings. On the other hand, some of the affected individuals may require assistance from the Council to help prevent or relieve their homelessness, through the development of personal housing action plans as well as, in some cases, the Council having to arrange temporary accommodation for certain individuals who are homeless, eligible for assistance and in priority need.

65. As such, as it may be prudent for some form of assessment to be carried out to quantify the likely impact of a PSPO in terms of the housing circumstances of those occupying the boats in question, before introducing such an order. It would also be good practice to consult with local homelessness charities (Rentstart, Transform Housing and Support, Homeless Link) to solicit their views on the matter as part of the wider consultation.

66. Potential displacement

67. There is the possibility that by introducing possible PSPOs, especially around fishing and mooring at certain specific locations that the anti social behaviour experienced at these locations may be displaced into other areas. We will continue to work with partners, including the EA to make other agencies aware of these plans and that they have their own enforcement plans in place should this occur.

68. The impact of any PSPO that may be implemented will be monitored and if any of the issues are displaced.

Financial implications:

Enforcement of the PSPO would be met from within existing staff resources. Printing of signs to advertise the PSPO would be met from existing budgets.

Environmental/Sustainability Implications:

A possible PSPO will assist the Council in protecting the Councils open spaces for use by the local community.

Legal implications:

It is required to demonstrate that the statutory conditions for making a PSPO have been satisfied and this action will be a measured response to the incidents of anti-social behaviour identified in this report. Consultation is required prior to the making of a PSPO with partners, stakeholders and the general public. An impact assessment of these proposals on the freedoms permitted by Articles 10 and 11 of the Human Rights Act 1998 indicates that a PSPO is lawful, necessary and proportionate.

Equality Implications:

The Council must take care to ensure compliance with the public sector equality duty under the Equality Act 2010. The proposals have been reviewed but it is not considered that an PSPO will have a disparate impact on groups with protected characteristics. An Equality Impact Assessment was carried out in January 2023.

Risk Implications:

PSPOs are a result of legislation and may be tested through the courts, which may require us to revisit details of the order in future. The penalty breaches of this order relate to fines alone, which may lead to levels of nonpayment. This proposal does not rely on securing income from the FPNs. It is proposed that any income secured will be ring fenced to support community safety measures.

Community Safety Implications:

The request for this order is in response to a local complaints raised about the risk of fires, fishing and unauthorised mooring. This also contributes towards the current Council plan under Sustainable Elmbridge, Love Elmbridge and Thriving Elmbridge and also the Elmbridge Community and Safety Partnership 2022/23.

Principal Consultees:

Borough Commander, Inspector Bert Dean
Surrey Fire and Rescue Services, Mark Stewart
Head of Culture, Leisure and Environment
Head of Housing Services
Elmbridge Community and Safety Partnership
Elmbridge Joint Action Group (JAG)
Overview and Scrutiny Community Safety Working Group

Background papers:

None

Enclosures/Appendices:

Appendix A- List of Elmbridge open spaces
Appendix B – Elmbridge riverside mooring sites Cowey Sale, Albany Reach, Hurst Park
Appendix C- Cigarette Island and Hampton Court Bridge
Appendix D- Fishing sites at Albany Reach and Cigarette Island

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