

CABINET

15 November 2016

Title: Public Spaces Protection Orders - Application and Use	
Report of the Cabinet Member for Enforcement and Community Safety	
Open Report	For Decision
Wards Affected: All	Key Decision: Yes
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Accountable Strategic Director: Claire Symonds, Strategic Director of Customer, Commercial and Service Delivery	
Summary: <p>This report seeks Cabinet approval of a framework for the Council's approach to adopting Public Spaces Protection Orders.</p> <p>Public Spaces Protection Orders, as set out in the Anti Social Behaviour Crime and Policing Act 2014, are orders that place restrictions on specific activities in an area with the aim of preventing those activities having a detrimental effect of the quality of life of those in the locality.</p> <p>Council officers have been looking at a number of areas and activities where a Public Space Protection Order would have positive effective in addressing anti-social behaviour and enviro-crime issues. The expectation is that these orders can be used as an effective enforcement mechanism to support behaviour change.</p> <p>The report sets out a Council-wide approach to Public Places Protection Orders, including the approval of such orders by the lead Strategic Directors following consultation with, amongst others, the Community Safety Partnership Board.</p>	
Recommendation(s) <p>The Cabinet is recommended to:</p> <ul style="list-style-type: none">(i) Approve the framework for approving Public Spaces Protection Orders as set out in the report; and(ii) Delegated authority to Strategic Directors to approve the formal adoption of Public Spaces Protection Orders.	

Reason(s)

1. To ensure that the Council has a consistent approach to Public Spaces Protection Orders.
2. To enable the council and its partners to implement Public Spaces Protection Orders swiftly to the benefit of local residents

1. Introduction and Background

- 1.1 The Anti Social Behaviour Crime and Policing Act 2014 set out a number of fundamental changes to the legislation related to anti social behaviour.
- 1.2 In summary the act aimed to simplify the legislation related to addressing anti social behaviour, since the introduction of the Crime and Disorder Act 1998, by reducing the numbers of powers to just six:-
 - Civil Injunctions
 - Criminal Behaviour Orders
 - Community Protection Notices
 - Closure Orders
 - Public Space Protection Orders and
 - Dispersal Powers
- 1.3 The introduction of Public Spaces Protection Orders brings to an end a range of area based control orders such as Dog Control Orders and Designated Public Places Orders. Where these types of area-based controls are in place, they will come to an end no later than 2 years from the introduction of the above act.
- 1.4 A local authority can make a Public Spaces Protection Order if it is satisfied that two conditions are met:-
 - First condition – Activities carried out on a public place 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 on in a public place within that area and they will have such an effect.
 - Second condition – That the effect of the specified activities is or is likely to be of a persistent or continuing nature, is or is likely to be unreasonable and justifies the restrictions imposed by the notice.
- 1.5 The order identifies the area that the restriction applies and prohibits specific things from being done, and/or requires specific things to be done by persons carrying out specified acts in that area. For example a Public Space Protection Order can include such activities as:-
 - Drinking alcohol in a specified public place
 - Control of dogs in a specified public place
 - Playing loud music in a specified public place
 - Parking inconsiderately near a school
 - Persistent disturbance from motor vehicles driving inconsiderately to the

detriment of local people

- 1.6 The breach of the order is an offence, discharged by the local authority through a fine. These will be issued through the Council's Enforcement Service.
- 1.7 The order is for a period of no more than three years. However there is provision to extend the order, both in terms of the time period and the area that it covers.
- 1.8 A number of Local Authorities across England and Wales have introduced Public Spaces Protection Orders. 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.

2. Proposal and Issues

- 2.1 Barking and Dagenham is seeing significant changes socially, economically and demographically. These changes both increase opportunity for existing and future residents and businesses but also increase the risk of behaviour that can have a detrimental effect on the quality of life in the Borough's town centres and residential areas.
- 2.2 Public Space Protection Orders provide a valuable tool by placing a framework in an area which controls behaviour which has been evidenced as a significant nuisance to local people. As such, Public Space Protection Orders are a key part of enforcement activity, as set out in the Council's Enforcement Policy. They support the aim to change behaviour and increase civic pride, alongside an ability to deal with matters quickly.
- 2.3 Public Spaces Protection Orders are a useful tool that provides the Council with the ability to control activities that cause persistent anti-social behaviour to local communities.
- 2.4 A number of Council services have been looking at the possibility of introducing these orders for a range of different issues, across different areas of the borough. This includes street drinking, dog fouling and racing of motor vehicles.
- 2.5 At present there is no formalised Council approach for the introduction of such an order. This could result in an inconsistency and challenges against the council.
- 2.6 The process that a Local Authority must follow for approving Public Space Protection Orders can be quite time consuming and has been known to exceed six months in some cases, which has prevented councils and their partner agencies being in a position to move swiftly on emerging issues. This is known to be a concern for residents, councillors and partner agencies, particularly where the anti social behaviour or enviro-crime has such a significant impact on local communities that it effects people's daily lives.
- 2.7 To ensure that Barking and Dagenham has a robust and responsive process that minimises delay, it is proposed that the following principles in relation to the Introduction of a Public Spaces Protection Order:

- Principle 1 – for an application for a Public Spaces Protection Order, there needs to be a clear evidence base that the nuisance is a persistent nuisance in the defined area. Evidence will need to be gathered through statistical data and/or resident’s survey feedback to demonstrate this.
- Principle 2 – There needs to be a period of consultation of no less than one month prior to the creation of an Order. Consultation must include council and partnership services as well and the public, specific interested bodies and ward councillors. This will take place through a range of communication sources, including the council’s Community and Voluntary Sector portal, Safer Neighbourhood Ward Panels and Public Notices.
- Principle 3 – The Public Spaces Protection Order must be supported by the Police. In addition the Public Spaces Protection Order must be endorsed by the LBBD Community Safety Partnership (CSP) Board. The membership includes the relevant Cabinet Member and senior representatives from the 6 co-operating authorities: the Local Authority, Police Service, NHS, National Probation Service, Fire Authority and Transport for London. The CSP Board meetings are open to the public, enabling public participation. The CSP Board would also be responsible for review applications.
- Principle 4 – The final report seeking formal adoption of a Public Spaces Protection Order must be signed off by the relevant Strategic Director and the Director of Law and Governance, or their authorised nominees. That final report must include consideration of the Human Rights convention in adoption and be accompanied by an Equality Impact Assessment.
- Principle 5 – Once adopted there must be signage around the area defined by the Public Spaces Protection Order, clearly identifying the order and the relevant restrictions.

2.8 Public Space Protection Orders are one of a number of tools available to the council and its partner agencies for addressing anti social behaviour that affects the quality of life of local communities. These include injunctions, dispersal powers, fines and prosecutions. The council can use these powers during the period of consultation and prior to the introduction of a Public Space Protection Order, to provide a short term respite or remedy.

2.9 Following endorsement of the Public Spaces Protection Order by the relevant bodies as set out above, it is proposed that the adoption will be formally signed off by the relevant Strategic Director under delegated authority from the Cabinet.

3. Options Appraisal

3.1 The Council should have a formal process in place for dealing with Public Spaces Protection Orders. The recommended option is considered to represent the best balance for dealing with enviro-crime or anti-social behaviour issues in a structured and responsive manner while ensuring that proper consultation with the local community and relevant authorities takes place to ensure a balanced and fair approach. Alternative options are as follows:-

- To continue with the current position where different departments continue to consider and develop orders. Whilst there is a cross referencing process through the current governance and constitutional arrangements, these processes are at the latter stages of the development of an order. As a result the opportunity for duplication and potential costs to the council will exist.
- Apply the 5 principles that are set out above and require formal approval of an Order to be made by the Cabinet, instead of the authority being delegated to a Strategic Director. This could result in unnecessary delays in the implementation of an Order.

3.2 In consideration of the above proposals, it is proposed that the recommendations of the report provides the Council with a clear framework for Public Spaces Protection Orders, whilst ensuring the authority for final approval enables a swift introduction of the controls.

4. Consultation

4.1 The Community Safety Partnership team in the Council has been consulted, along with Legal Services.

4.2 Consultation has taken place with the senior representatives of the Police who support the approach.

4.3 It is intended that there will be ongoing consultation with residents, interested parties and internal Council departments in relation to any application for a Public Spaces Protection Order, as set out in Principle 2 above.

5. Financial Implications

Implications completed by: Katherine Heffernan, Finance Group Manager

5.1 This report seeks to formalise the Council's approach to Public Space Protection Orders. There is no specific funding available for this work and so any costs of implementing such orders must be met from within the resources of the Council services involved.

6. Legal Implications

Implications completed by: Chris Pickering, Principal Solicitor

6.1 The Anti Social Behaviour Crime and Policing Act 2014 and associated guidance sets out a series of requirements for introducing PSPOs and the policy for their adoption. As noted in the report, the process for adoption of PSPOs will be done in conjunction with Legal Services and follow a programme of full consultation.

7. Other Implications

7.1 **Crime and Disorder Issues** - The proposals in this report are fully supportive of section 17 of the Crime and Disorder Act.

7.2 **Environmental Issues** - There are no direct implications in adopting the enforcement policy and minimal environmental impact from adoption of the policy

itself. However successful application of the policy will assist in delivering efficient regulation which may reduce environmental damage, and ensure that resources are targeted where there is most significant environmental harm.

- 7.3 **Risk Management** - The proposals will ensure that the public continue to have a number of avenues for involvement in the process prior to any determination.
- 7.4 **Corporate Policy and Customer Impact** - A screening for the equalities impact assessment has been carried out on the effect of the policy. The policy has low relevance in relation to its impact on the areas under the statutory duties contained in the equalities impact assessment, but contributes towards the corporate priorities of the council, open and transparent decision making.

The Council, when taking decisions in relations to any of its functions, must comply with its public sector equality duty as set out in S149 of the Equality Act 2010 (Act).

An Equality Impact Assessment will need to be carried out for any application for a Public Space Protection Order. No order will be approved without an Equality Impact Assessment having been completed.

Public Background Papers Used in the Preparation of the Report: None

List of Appendices: None