

HAMBLETON DISTRICT COUNCIL

Report To: Cabinet
3 December 2019

Subject: PUBLIC SPACE PROTECTION ORDERS

Bedale and Thirsk Wards
Portfolio Holder for Leisure: Councillor Mrs B S Fortune

1.0 PURPOSE AND BACKGROUND:

- 1.1 On 15 January 2019 Cabinet approved the implementation of a Public Space Protection Order and an effective enforcement regime for the Leeming Bar Estate and surrounding area. In addition it required that a detailed review be undertaken following the initial 6 month period. The Public Space Protection Order was implemented as a considered response to the continued anti-social behaviour being experienced by local residents. This was predominantly as a consequence of lorry drivers parking their vehicles overnight within the vicinity.
- 1.2 Prior to the implementation of the Public Space Protection Order the Council had considered, with other partners but without success, a number of interventions to reduce the incidents of anti-social behaviour at Leeming Bar Industrial Estate, these are identified with Appendix 1.
- 1.3 The Order was sealed on 22 May 2019, covering areas in and around the Leeming Bar Industrial Estate (see Appendix 2), to enforce the following restrictions:
 - 1.3.1 All persons shall not be permitted to remain overnight in any vehicles including a HGV or campervan or motorhome or a temporary structure that is designed or intended to provide shelter or accommodation.
 - 1.3.2 If instructed to do so by an authorised officer a person shall clear away any vehicles, temporary structure and/or associated paraphernalia without delay.
- 1.4 Once the Order had been made a 6 week High Court challenge period followed for any interested party (who lives in, regularly works in or visits the restricted area). No challenge to the High Court was made. Since this time the Council has been undertaking an educational phase to raise awareness of the Order to those that have been parking overnight at the Industrial Estate. The Council has chosen not to exercise its power to issue any fixed penalty notices during the initial 6 month period.
- 1.5 As required from the original Cabinet report a detailed review using the following sources has now been completed:
 - 1.5.1 Statistics and reports from the security company appointed to patrol the Public Space Protection Order zone. (Appendix 3)
 - 1.5.2 Patrol reports from North Yorkshire Police. (Appendix 4)
 - 1.5.3 Public consultation exercise undertaken between 8 October 2019 and 5 November 2019. (Appendix 5)

- 1.5.4 Notice sent to and feedback received from Statutory Consultees – North Yorkshire County Council Highways, North Yorkshire Police, the local parish council and the North Yorkshire Police, Fire and Crime Commissioner and owners and occupiers of land within and surrounding the restricted area. (Appendix 6)
- 1.5.5 Feedback from a local residents and business focus group. (Appendix 7)
- 1.5.6 Individual feedback from interested parties since the implementation of the Public Space Protection Order.
- 1.6 The key findings are:
- 1.6.1 There has been a significant reduction in the number of drivers using the area to sleep or rest in their vehicle, G&A Security data shows that 269 educational leaflets were issued in June (the first full month of patrolling) to 170 in October.
- 1.6.2 There has been a steady decrease in the number of leaflets issued by G&A Security over the period with the average number reducing from 10.88 to 3.69 per patrol, reflecting the reduction of drivers using the area to sleep/ rest in their vehicles.
- From the public consultation exercise:
- 1.6.3 67 responses were received. Of these 74.6% were part of the local community as residents, local businesses, community groups or as a councillor; 11.9% were lorry drivers who parked in the Public Space Protection Order area, with 13.5% classifying themselves in the “Other” category.
- 1.6.4 75.4% support the current prohibition within the Public Space Protection Order; 23.1% are not supportive of it and 1.5% are unsure.
- 1.6.5 64.6% would support the suggested variation of the Order to define the restrictions as follows:
- (i) Sleeping or otherwise remaining in any vehicle within the Restricted Area for any period of time between the hours of xx:xxhrs and xx:xxhrs (to be established)
 - (ii) Depositing any human waste anywhere in the Restricted Area other than a facility designed for this purpose
 - (iii) Depositing litter anywhere in the Restricted Area.
- 1.6.6 53.8% of people would vary the Order in other ways – these ranged from extending the restricted area to include the village and surrounding areas, to not allowing any parking at all times. 7% indicated that the prohibition should be removed altogether.
- 1.6.7 20.3% of people reported that drivers were parking in other places since the Order was made in May 2019. These were predominantly in other parts of the restricted area.
- 1.6.8 37.5% of survey consultees recognised that there had been a reduction in the number of lorries parking overnight, however the attendees at the focus group identified that numbers were starting to increase again.
- 1.7 Following consultation, the proposal is to amend the restricted area covered by the Public Space Protection Order to exclude the field known as Roughly Corner Farm. This is because the problems relate to the roads surrounding the field (which are still covered by the Public Space Protection Order) and not to the field itself. The restricted area will be kept under review to assess whether there is any displacement of the behaviour into areas not presently included in the Public Space Protection Order (Appendix 9 Schedule 1).

- 1.8 The enforcement of the Public Space Protection Order will be in line with the Council's Leisure and Environment Policy 2018 and the Communities – Enforcement Options annex at Appendix 10. Following Council approval this annex will be added to the existing Leisure and Environment Policy and the Communities function will be added to the introduction section.
- 1.9 The Council's approach to enforcement of the Leeming Bar Public Space Protection Order will be a staged approach with warnings being issued where the Order has been breached without reasonable excuse before a Fixed Penalty Notice is issued although this may be not always the case, particularly for repeat infringements. The owners of the vehicles/goods will be approached as well as the drivers.
- 1.10 As part of the patrols by the security company they advise drivers of availability at local lorry parks. Whilst these parks often have capacity there are also many occasions when they are full. It is recognised that this is a real issue faced by the drivers with a key solution being the provision of additional capacity within the region. There is work being done to secure additional HGV parking spaces; in May 2019, the Coneygarth Services were granted approval to increase their parking capacity by 50 HGV spaces with toilet and showering facilities. In May 2019, plans were submitted to Selby District Council for motorway services near to Sherburn in Elmet which includes 101 HGV parking spaces and in July 2019, plans were submitted for a new service station on the A1(M) at the Catterick junction to include 40 HGV parking spaces. Planning decisions have not yet been made on these submissions.
- 1.11 Whilst it is recognised that there is a need for more HGV parking spaces, the records kept by G & A Security (Appendix 3) show that there are usually parking spaces available in the Coneygarth lorry park sited at Leeming Bar. What this shows is that drivers are choosing to park on the Leeming Bar site even when there are spaces at the appropriate overnight stopping locations. It is understood that some drivers choose to park at Leeming Bar because there is a charge for using the overnight parking in other locations. By continuing to use the Leeming Bar site as a lorry park, the drivers' activities are having a continued detrimental impact on the quality of life of those in the locality.
- 1.12 From the information considered as part of the review it would appear that the educational phase of the exercise has helped to reduce the number of vehicles parking overnight in the Public Space Protection Order area, although this now appears to have plateaued. However, the problem of anti-social behaviour, and as a consequence the detrimental impact upon local peoples' quality of lives, has not been eradicated. The majority of consultees support a Public Space Protection Order, with most of them also supporting a variation to the current Public Space Protection Order that provides clarity regarding the prohibited activities and the times of the Order. This would also assist in the enforcement of any fixed penalty notices. With regards to the daily times of the Order consideration has been given to the consultation feedback from all parties – including local residents, businesses and the Police; operational hours of local lorry parks and the needs of drivers. It is therefore proposed that the Order is varied to state:
- (i) Sleeping or otherwise remaining in any vehicle within the Restricted Area for any period of time between the hours of 19:00hr and 07:00hr
 - (ii) Depositing any human waste anywhere in the Restricted Area other than a facility designed for this purpose
 - (iii) Depositing litter anywhere in the Restricted Area other than into a receptacle intended for this purpose.

1.13 In the original Cabinet report it was stated that consideration would be given to the implementation of the Public Space Protection Order at the Thirsk Industrial Estate if it has been proven to work at Leeming Bar. Whilst significant problems continue to persist in the Thirsk area it is proposed that due consideration is given to the implementation of a Public Space Protection Order once the Council has experience of the full enforcement phase of the Leeming Bar Order and can therefore make an informed evaluation of the overall suitability of such an approach.

2.0 LINK TO COUNCIL PRIORITIES:

2.1 This Public Space Protection Order contributes to the Council's "Enhancing Health and Wellbeing" and "Providing a Special Place to Live" by reducing crime and disorder (anti-social behaviour) and supporting residents' wellbeing. The Order is being considered in response to the needs of the community, residents and businesses, and will result in the Council continuing to work with partners to make best use of its devolved powers for local decision making.

3.0 RISK ASSESSMENT:

3.1 Risks in approving the recommendations:

Risk	Implication	Gross Prob	Gross Imp	Gross Total	Preventative action	Net Prob	Net Imp	Net Total
Lorry parking displacement at Leeming Bar	Other areas becoming affected by lorry drivers' anti-social behaviour instead	4	3	12	Continue efforts to increase capacity at lorry parking facilities; clear signage for where lorries can park; ongoing dialogue with lorry parks	3	3	9
Problems at Thirsk Industrial Estate persist	Continued anti-social behaviour and complaints	4	3	12	Order is amended / implemented at Leeming Bar to enable consideration of 'lessons learned' as soon as possible for Thirsk	3	3	9

3.2 The key risk is in not approving the recommendation(s) as shown below:-

Risk	Implication	Gross Prob	Gross Imp	Gross Total	Preventative action	Net Prob	Net Imp	Net Total
Inability to effectively enforce the Order	The Public Space Protection Order is not fully effective and the problems persists	4	3	12	Approval of the recommendations.	1	2	2
Continued anti-social behaviour from lorry drivers	Continued complaints from residents and businesses, resulting in reputational damage to the Council	4	3	12	Action could continue to be managed through the Safer Hambleton Hub but with less of an impact without powers to remove people from the area	3	3	9

Prob = Probability, Imp = Impact, Score range is Low = 1, High = 5

4.0 FINANCIAL IMPLICATIONS:

4.1 Overall the estimated annual indicative revenue effects of implementing and policing a Public Space Protection Order will be as follows:-

Revenue Effects	2019/20 £	2020/21 £
Cost of: Signage	<u>4mths</u> £500.00	<u>12mths</u> £500.00
Enforcement (2 hours per night x 5 nights)	£3,466.00	£10,400.00
Financed by: Income from fixed penalties (indicative) at £100 each (40 and 109 respectively).	<u>£3,966.00</u>	<u>£10,900.00</u>

5.0 LEGAL IMPLICATIONS:

- 5.1 The Council has taken independent legal advice to ensure that all foreseeable legal requirements have been considered and that the proposed variations to the Order are reasonable in attempting to address the anti-social behaviour at Leeming Bar Industrial Estate referred to in the report.
- 5.2 The Anti-Social Behaviour, Crime and Policing Act 2014 was introduced and designed to put victims at the heart of the response to anti-social behaviour and give professionals the flexibility they need to deal with any given situation through six powers, of which Public Space Protection Orders are one. The process which has been followed to date of taking the land category into account, consulting all parties and the content and terms of the Order meets the requirement of the Act.
- 5.3 This section of the report sets out the statutory framework for the making of a Public Space Protection Order including the human rights and Equality Act 2010 considerations. In considering whether to approve a variation of the Public Space Protection Order, Members will need to be satisfied about a number of things, these are:
- The nature of the activities taking place
 - Whether those activities can be said to have had a 'detrimental effect on the quality of life of those in the locality?'
 - If the detrimental effect exists, is it persistent or continuing in nature?
 - Does that detrimental effect make the activities unreasonable? and
 - Does it justify the restrictions imposed in the proposed Public Space Protection Order?
 - Are the proposed prohibitions reasonable to impose to prevent or reduce the detrimental effect from continuing, occurring or recurring?
 - Is the proposed Public Space Protection Order justified and proportionate?
 - Should the Public Space Protection Order be made for the full three years or some lesser period?
- 5.4 The following paragraphs of this report explain the legislative framework within which those decisions should be made.

Section 17 of the Crime and Disorder Act 1998

- 5.5 The 1998 Act imposes a duty on the Council to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can, to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment).

The Anti-Social Behaviour, Crime and Policing Act 2014

- 5.6 Public Space Protection Orders were created by the Anti-Social Behaviour, Crime and Policing Act 2014, hereinafter called the '2014 Act'. They are designed to place controls on the use of public space and everyone within it. The orders have effect for up to three years and can be extended. Only local authorities can make Public Space Protection Orders. 'Public place' means 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.
- 5.7 The Council can make a Public Space Protection Order if satisfied on reasonable grounds that two conditions are met. These are found in section 59 of the 2014 Act:
- The first condition is that:
- (a) activities carried on in a public place within the Council's area have had a detrimental effect on the quality of life of those in the locality, or
 - (b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.
- The second condition is that the effect, or likely effect, of the activities:
- (a) is or is likely to be, of a persistent or continuing nature,
 - (b) is, or is likely to be, such as to make the activities unreasonable, and
 - (c) justifies the restrictions imposed by the notice.
- 5.8 A Public Space Protection Order must identify the public place in question and can:
- (a) prohibit specified things being done in that public place
 - (b) require specified things to be done by persons carrying on specified activities in that place; or
 - (c) do both of those things.
- 5.9 Section 59(5) states that only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order to prevent or reduce the risk of the detrimental effect continuing, occurring or recurring.
- 5.10 Prohibitions may apply to all persons, or only to persons in specified categories, or to all persons except those in specified categories.
- 5.11 The Public Space Protection Order may specify the times at which it applies and the circumstances in which it applies or does not apply.
- 5.12 Unless extended the Public Space Protection Order may not have effect for more than 3 years and there is no statutory requirement to review a Public Space Protection Order once made.
- 5.13 Breach of a Public Space Protection Order without reasonable excuse is a criminal offence. The Police or a person authorised by the Council can issue fixed penalty notices, the amount of which may not be more than £100. A person can also be prosecuted for breach of a Public Space Protection Order and on conviction the Magistrates' Court can impose a fine not exceeding level 3 on the standard scale (currently £1000).

- 5.14 Section 61 of the 2014 Act deals with Public Space Protection Orders which are being varied. The Council has to be satisfied that any prohibitions or requirements in the proposed varied Public Space Protection Order are ones that s.59(5) (referenced above) allows to be imposed.
- 5.15 In deciding to make a Public Space Protection Order the Council *must* have particular regard to Article 10 (Right of Freedom of Expression) and Article 11 (Right of Freedom of Assembly) of the European Convention on Human Rights ('ECHR'). Members are advised that for this proposed Public Space Protection Order it is also relevant to consider Article 8 (Right to Private and Family Life). These rights state that there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, 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. Following the consultation undertaken it is not believed that any of these Convention rights are contravened by the proposed Order in either area.
- 5.16 In preparing this report Officers have had regard to the latest statutory guidance issued by the Home Office in August 2019 and the Guidance on Public Space Protection Orders issued by the Local Government Association.
- 5.17 The Council has appointed G&A Security to provide an enforcement service and they have the powers to enforce the conditions of the Public Space Protection Order.
- 5.18 It was confirmed by North Yorkshire County Council Highways Authority on 3 April 2019 that the signs installed as notification of the Public Space Protection Order are considered to be public notices; as such they are permitted within the Traffic Signs Regulations and General Directions 2016 without the need for special authorisation from the Secretary of State.
- 5.19 If the varied Public Space Protection Order is approved by Cabinet and ratified by the Council it will come into effect on 31 December 2019.

6.0 EQUALITY/DIVERSITY ISSUES

- 6.1 As part of the 6 month review the Equality Impact Assessment (EIA) for the Public Space Protection Order has been reviewed (see Appendix 8). This assessment takes account of the Public Sector Equality Duty's three aims that considers the needs of all individuals when shaping policy and delivering services as follows:
1. Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act.
 2. Advance equality of opportunity between people who share a protected characteristic and people who do not share it (remove or minimise disadvantages, meet the needs of people, encourage participation in public life).
 3. Foster good relations between people who are a protected characteristic and people who do not share it (tackling prejudice and promoting understanding, it may also include positive action).
- 6.2 The Duty covers the following protected characteristics: age, disability, gender reassignment, pregnancy & maternity, race, religion or belief, sex (gender) and sexual orientation. It also applies to marriage & civil partnerships but only in the requirement to have due regard to eliminate discrimination.

6.3 The EIA looks at the anticipated (positive and/or negative) impacts of the proposals on those affected by the Public Space Protection Order, and whether any group (or groups) is likely to be directly or indirectly differentially affected. This assessment supports the Council's efforts to balance the interests of different sections of the community and concludes that the steps being taken are reasonable and fair.

7.0 RECOMMENDATIONS:

7.1 That Cabinet approves and recommends to Council that:

- (1) the Public Space Protection Order at Leeming Bar Industrial Estate is retained and varied as detailed within this report (including Appendix 9);
- (2) the Communities Enforcement Options annex (Appendix 10) is approved, and
- (3) a report is brought to Cabinet in Summer 2020 with regards the implementation, or otherwise, of a Public Space Protection Order at Thirsk Industrial Estate.

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Background papers: None

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