

## **Hambleton District Council**

**Report To:** Cabinet

**Date:** 11 January 2022

**Subject:** **Public Spaces Protection Order**

**Portfolio Holder:** Leisure  
Councillor P R Thompson

**Wards Affected:** Bedale Ward

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### **1.0 Purpose of the report**

1.1 The purpose of the report is for the Council to consider the findings and conclusions of a review of the Public Open Spaces Protection Order for the Leeming Bar Industrial Estate and surrounding area, and to consider whether to approve an extension or variation of the Order.

### **2.0 Background**

2.1 On 15 January 2019 Cabinet approved the implementation of a Public Open Spaces Protection Order for the Leeming Bar Industrial Estate and surrounding area. The Order was ratified by Council on 26 February 2019 to take effect from 7 March 2019 for a period of 3 years, with patrols to enforce the Order commencing in May 2019. The Order and plan of the Restricted Area can be found at Appendix 1 and 2.

2.2 The Public Open Spaces Protection Order was made 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. The Public Open Spaces Protection Order was made under powers created by the Anti-Social Behaviour, Crime and Policing Act 2014. In essence the Order prohibits drivers sleeping in their vehicle and/or depositing human waste or litter within the Restricted Area (see Appendix 1 and 2).

2.3 The Council would continue to appoint G&A Security to provide an enforcement service and they have the powers to enforce the conditions of the Public Space Protection Order.

2.4 In line with the Anti-Social Behaviour, Crime and Policing Act 2014 a Public Open Spaces Protection Order can be introduced for a maximum of three years and may be extended for a further three-year period(s) if the Council is satisfied on reasonable grounds that doing so is necessary to prevent:

- An occurrence or recurrence of the activities identified in the Public Open Spaces Protection Order or
- An increase in the frequency or seriousness of the activities identified in the Public Open Spaces Protection Order.

- 2.5 In preparing this report officers have had regard to the latest statutory guidance issued by the Home Office in January 2021 and the Guidance on Public Space Protection Orders issued by the Local Government Association.
- 2.6 In order to ascertain whether the Order should be extended, varied or discharged the Council has carried out a review and the required statutory consultation to help determine:
- Whether or not the Public Open Spaces Protection Order has been useful in reducing the issues reported by residents and businesses and therefore should continue unaltered or;
  - Whether any variations are required to the Public Open Spaces Protection Order to further support the work being undertaken in the area,
- 2.7 The detailed review has used the following sources:
- (1) Statistics and reports from the security company appointed to patrol the Public Open Spaces Protection Order zone (Appendix 3).
  - (2) Patrol reports from North Yorkshire Police, and reports from Hambleton District Council services: Waste and Street Scene, Environmental Health and the Safer Hambleton Hub (Appendix 4).
  - (3) Public consultation exercise undertaken between 18 October 2021 and 18 November 2021 (Appendix 5).
  - (4) Statutory consultation responses (Appendix 6).
- 2.8 The key findings from this review are:
- (1) The Council's agreed approach to enforcement has been a staged one with warnings and educational leaflets being issued for a first breach of the Order and the issuing of a Fixed Penalty Notice if there is a repeated breach within the following 6 months of a leaflet being issued. Since the patrols commenced in May 2019 the average number of educational leaflets issued has significantly reduced as follows:

Table 1

<b>Year</b>	<b>Total number of leaflets issued</b>	<b>Monthly average (taking account of COVID lock downs)</b>
May 2019 – April 2020	1635	149
May 2020 – April 2021	355	39
May 2021 – Present (7 month period)	262	37

- (2) 5 Fixed Penalty Notices have been issued between May 2019 and November 2021.
- (3) Patrol reports from North Yorkshire Police, and reports from Hambleton District Council services: Waste and Street Scene, Environmental Health and the Safer Hambleton Hub (see Appendix 4) identify that littering, deposits of human waste, noise pollution, dangerous parking and anti-social behaviour are still happening within the Public Open Spaces Protection Order restricted area although there has been a reduction in the problems since the Public Open Spaces Protection Order has been in place

- (4) The public consultation exercise resulted in 12 on-line and 1 paper submission. These are relatively small numbers, and this should be borne in mind when considering the percentages. 12 were from local residents and 1 was from a local community group. The key findings are included in Appendix 7.
- (5) The relevant statutory consultees have been contacted to determine their views in relation to the Public Open Spaces Protection Order. Responses have been received from the Office of the Police, Fire and Crime Commissioner (OPFCC), North Yorkshire Police and Leeming Bar and Aiskew Parish Council. All three organisations are supportive of the Order staying in place. North Yorkshire Police state that the Order has reduced calls for service for the Police and reduced anti-social behaviour. The OPFCC and the Parish Council support the conditions of the Order which they believe are proportionate to the problem. The Parish Council would like to see the addition of refrigerated trailer units included in the Public Open Spaces Protection Order.

## 2.9 Conclusions

Based upon the information referred to in 2.8 the following are key conclusions:

- (1) Taking into account the significant reduction in educational leaflets being issued and the community responses received there is evidence that the Public Open Spaces Protection Order is having a positive effect on the quality of life for the community, but issues of littering, human waste, dangerous parking and noise pollution are still prevalent.
- (2) There is significant support for the Order to remain in place.
- (3) In light of the continued anti-social behaviour of some, and the support from local residents to reduce the leniency of the current enforcement practice, it is concluded that reducing the timescale for issuing a Fixed Penalty Notice, if the Order is breached after a leaflet has been issued, may reduce the anti-social behaviour further. It is therefore proposed that the approach to issuing leaflets will cease and any person who has breached the Order will be issued with a Fixed Penalty Notice with immediate effect (see Appendix 10 for details of the Safer Hambleton Enforcement Policy and Appendix 11 for the Public Open Spaces Protection Order Protocol).
- (4) Some respondents to the consultation state they have observed a displacement of lorry parking to other areas in the vicinity of the Restricted Area. On 28 June 2021 North Yorkshire County Council extended a Clearway for Leases Road, Low Street and Roughly Bank which prohibits any vehicle from waiting or allowing goods to be loaded or unloaded from the vehicle along the road. The prohibition of the Clearway is enforced by North Yorkshire County Council's contracted Civil Enforcement Officer employed by Scarborough Borough Council. It is not proposed to extend the restricted area to which the Order applies at this stage.

- (5) The community state that there are ongoing issues caused by refrigerated trailers being parked dangerously within the Public Open Spaces Protection Order Restricted Area and with noise pollution during the evening and throughout the night from the units being left running. As it appears these issues are being caused by individual businesses located on Leeming Bar Industrial Estate it is more appropriate to issue Community Protection Notices which can be used against specific individuals responsible for causing harm or tackling problem premises, rather than a Public Open Spaces Protection Order which creates a broader ban covering a whole area. Our relevant internal services will be advised of this.
- (6) In the circumstances no variations are being proposed and the recommendation is simply to extend the period of time for which the current order has effect.

### 3.0 Link to Council Priorities

3.1 Areas of this Public Space Protection Order contribute to the Council's "Enhancing Health and Wellbeing" and "Providing a Special Place to Live" priorities 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.

### 4.0 Risk Assessment

4.1 The key risk in not approving the recommendations is shown below:-

Risk	Implication	Gross Prob	Gross Imp	Gross Total	Preventative action	Net Prob	Net Imp	Net Total
Continued and / or increased anti-social behaviour from lorry drivers	Continued complaints from residents and businesses, resulting in a negative impact upon their quality of life and reputational damage to the Council	4	3	12	Complaints to be managed by the Safer Hambleton Hub but without using anti-social behaviour powers people could not be removed from the area.	3	3	9

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

### 5.0 Financial Implications

5.1 In order to monitor and deliver an effective enforcement regime it is proposed that a revenue budget of £9,790 is provided. This accounts for all expenditure and the income raised from fines.

### 6.0 Legal Implications

6.1 This section of the report sets out the statutory framework for the extending of a Public Space Protection Order. Any extension may not be for a period of more than three years. In considering whether to approve an extension of the Public Space

Protection Order, the Council will need to be satisfied on reasonable grounds that doing so is necessary to prevent:

6.1.2. The occurrence or recurrence of the activities identified in the Public Open Spaces Protection Order or

6.1.2. An increase in the frequency or seriousness of the activities identified in the Public Open Spaces Protection Order.

6.2 The following paragraphs of this report explain the legislative framework within which those decisions should be made.

### 6.2.1 **Section 17 of the Crime and Disorder Act 1998**

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).

### 6.2.2 **The Anti-Social Behaviour, Crime and Policing Act 2014**

Public Spaces 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. A Public Open Spaces Protection Order can be extended more than once but any extension cannot be for more than three years. A Public Open Spaces Protection Order must be extended before it is due to expire if the Council is satisfied on reasonable grounds, that it is necessary to extend the order to prevent:

(a) the occurrence or recurrence after that time of the activities identified in the order or

(b) an increase in the frequency or seriousness of those activities after that time.

A Public Open Spaces Protection Order must be extended before it is due to expire.

6.3 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).

6.4 Section 72 (1) of the 2014 Act requires that in deciding whether to extend the Public Open Spaces Protection Order, and if so for how long, the Council must have particular regard to 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 extension of the Order.

6.5 As required under the 2014 Act the Council has carried out the necessary consultation and notification before deciding to extend the Public Open Spaces Protection Order. If the extension is agreed the Council must also publish the extended Public Open Spaces Protection Order in accordance with the Anti-Social Behaviour Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014.

6.6 If the Public Open Spaces Protection Order is approved to be extended by Cabinet it will be ratified by the Council and the period for which the Order will have effect will be extended to 6 March 2025.

## **7.0 Equality/Diversity Issues**

7.1 As part of the Public Open Spaces Protection Order review the Equality Impact Assessment (EIA) 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).

7.2 The Duty covers the following protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex (gender) and sexual orientation. It also applies to marriage and civil partnerships but only in the requirement to have due regard to eliminate discrimination.

7.3 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.

## **8.0 Recommendations**

8.1 Cabinet approves and recommends to Council that:

- (1) the Public Space Protection Order at Leeming Bar Industrial Estate which is due to expire on 7 March 2022 is extended for a further 3-years from midnight on 7 March 2022 to midnight on 6 March 2025 (Appendix 9) of the report;
- (2) the approach to enforcement is changed to that highlighted in paragraph 2.9 (3) (Appendix 10 and 11) of the report, and
- (3) the revenue budget as set out in 5.1 of the report is established.

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**Background papers:** Local Government Association: Public Spaces Protection Orders: guidance for councils

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