

Report of the Strategic Director, Place to the meeting of Regulatory and Appeals Committee to be held on 20 May 2019

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Subject:

Public Space Protection Order for parts of Bradford District relating to antisocial behaviour arising from lighting fires and barbecues on moorland sites and subsequent risk of wildfire

Summary statement:

This report outlines the proposals and seeks approval to begin the required public consultation exercise to implement a Public Space Protection Order for defined areas within Bradford District relating to antisocial behaviour arising from lighting fires and barbecues (and other materials) on moorland sites and subsequent risk of wildfire.

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Overview & Scrutiny Area:

Regeneration and Environment

1. SUMMARY

1.1 This report outlines proposals and seeks approval to begin the required public consultation exercise to implement a Public Space Protection Order ('PSPO') for parts of Bradford District relating to antisocial behaviour arising from lighting fires and barbecues (and other materials) on moorland sites and subsequent risk of wildfire.

2. BACKGROUND

2.1 In March 2014 the Government enacted new powers contained in the Anti-Social Behaviour, Crime and Policing Act 2014 (later referred to as 'the Act') relating to tackling anti-social behaviour including the making by local authorities of PSPOs which can prohibit certain types of antisocial behaviour and make breaches of such subject to fixed penalties and prosecution before the magistrates court subject to a fine not exceeding £2000.00.

2.2 The majority of the Act including these powers came into force in October 2014. Where a PSPO makes arrangements to deal with matters already enforceable under existing local legislation it makes/made provision for the:-

- (i) the temporary suspension of the Council's existing byelaws where prohibitions in the byelaws are covered in a PSPO.
- (ii) The Council's existing Dog Control Orders (DCOs) in October 2017 becoming PSPO's.
- (iii) The Council's Drinking in Public Places (Designation) Orders (DPPOs) becoming PSPO's in October 2017.

2.3 The making of a PSPO will improve enforcement powers. Fixed penalties and fines for breaches of a PSPO under the Act stand at a maximum of £100 and level 2 and 3 accordingly (refer to section 8.4).

2.4 The power to create a Public Space Protection Order (PSPO) could specify an area where activities are taking place that are or may likely be detrimental to the local community's quality of life. A PSPO can impose conditions or restrictions on people using that area. A PSPO can support the enforcement activity within the District.

2.5 Bradford Council would like to consider a PSPO relating to defined areas of publicly accessible land, with the purpose of reducing the risk of wildfire by prohibiting the use of barbecues, lighting of fires, fireworks and Chinese lanterns on such land, with the intentions of authorising West Yorkshire Police, with delegated powers to enforce any breaches of PSPO along with designated Council Officers.

2.6 Wildfire is an increasing risk on the District's open spaces, particularly moorland sites where public access is allowed. A significant portion of the District's moorland areas are subject to rights of access, either because of their designation as common land, or as "open country" and therefore subject to a right to roam afforded by the Countryside and Rights of Way Act 2000. Members of the public rightly visit these areas for recreation purposes but often this includes lighting camp fires or portable barbecues. Despite the fact that many areas have signage warning of the risks of such behaviour, the activity

still persists. During the recent wildfire on Ilkley Moor over the Easter weekend, groups of people were seen lighting barbecues on the moor whilst the wildfire was at its height. It is also quite possible that this fire was started through negligent use of barbecue or camp fire.

2.7 Evidence from past years shows that a number of incidences of wildfire have been recorded in the Bradford District – many of which will have been the result of careless or negligent behaviour in respect of fires and barbecues, rather than deliberate arson (see Appendix 2).

2.8 In the aftermath of the fires in West Yorkshire over Easter 2019 (there was another significant wildfire at Marsden Moor in Kirklees over the same weekend), the Chief Fire Officer of West Yorkshire Fire and Rescue Service wrote to the Council's Chief Executive urging that consideration be given to introducing a PSPO to prohibit barbecues and other risks (Appendix 3).

2.9 Other Local Authorities are also pursuing such PSPOs for the same reasons and so a consistent approach across most of West Yorkshire is developing. Major landowners of other moorland areas within the Bradford District (e.g. Yorkshire Water) support such a move and these are included in the proposed "Restricted Areas" to which the PSPO would apply.

3. OTHER CONSIDERATIONS

3.1 Local Authorities have the power to make PSPOs if satisfied on reasonable grounds that two conditions are met.

The first condition is that:

- a) activities carried on in a public place within the Authority'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 those 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 Justifies the restrictions imposed by the notice. Activities can include things that a person or a group does, have done or should do in order to reduce the detrimental effect).

3.2 Public Space Protection Order is an order that identifies the space to which it applies and can make requirements, or prohibitions within the area. This means that the local authority can, require people to do specific things in a particular area or not to do specific things in a particular area. The local authority can grant the prohibitions/requirements where it believes that they are reasonable in order to prevent or reduce the detrimental impact. The order can be made so as to apply to specific people within an area, or to everybody within that area. It can also apply at all times, or within specified times and equally to all circumstances, or specific circumstances. The order can apply for a maximum of three years upon which the process of reviews and consultation must be repeated to ensure the issues is still occurring and the order is having the required effect. Thereafter it can be extended for

a further three years and, upon the reviews and consultation taking place, can be extended more than once for further periods of three years.

- 3.3 The Act is not overly prescriptive about the necessary process required for application of these powers. It has, therefore, been necessary to design a process that is considered to be appropriate and legally robust.
- 3.4 The recommendation following the consultation period is to make a PSPO with the terms as set out below namely the prohibition of.
- the lighting of fires; barbecues; Chinese lanterns; fireworks or using any article/object which causes a naked flame and which poses a risk of fire.
 - This to apply to the Restricted Areas (as defined by the map attached – see Appendix 1)
- 3.5 The PSPO should apply for a maximum of three years from its date of enactment, after which, if deemed necessary, a further consultation and Order can be progressed.
- 3.6 The effect of the Order would be that a person or persons are required to extinguish and surrender anything in their possession which a constable or authorised person has reasonable suspicion to be an article that has been used OR is likely to be used in conjunction with the prohibited activities referred to in this Order.
- 3.7 Any person who fails without reasonable excuse to comply with a requirement imposed on him by this Order or does anything that he is prohibited from doing by this Order commits an offence under section 67 of the Act and is liable on summary conviction to a fine not exceeding level 3 on the standard scale or may be issued with a fixed penalty notice requiring payment of a sum not exceeding £100.
- 3.8 The primary enforcement role falls to the Council, with support from Police in certain circumstances (e.g. during events, when conditions are exceptional etc.)
- 3.9 Evidence is available to support the need for the introduction of a PSPO in the identified area. Evidence was gathered from:
- (i) Records of wildfire on Council land and other areas within Bradford
 - (ii) Report from Moors For The Future incorporating and Fire and Rescue Services data (“Spatial pattern of wildfire distribution on the moorlands of the South Pennines” August 2009)

4. FINANCIAL & RESOURCE APPRAISAL

The costs of consultation on the implementation of the PSPO will be met from within existing revenue resources. Future enforcement effort (if the PSPO is approved) will also come from within existing resources, with assistance from partner agencies but will inevitably add to existing workload.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

There are no risk management or governance issues apparent.

6. LEGAL APPRAISAL

6.1 The Act contains the provisions for the making of a PSPO.

6.2 Under section 59 of the Anti Social Behaviour Crime Policing Act 2014 local authorities have the power to make PSPO if satisfied on reasonable grounds that two conditions are met?

- (i) The first condition is that—
 - a) activities carried on in a public place within the Authority'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 those they will have such an effect.
- (ii) 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.

6.3 Activities can include things that a person or a group does, have done or should do (in order to reduce the detrimental effect). As with any new legislation of its type, this is untested ground and the legislation will be further defined in years to come by a process of appeals and High Court rulings. Any legal challenge presents a risk to the Authority. The legislation supporting implementation of the new Orders states that "interested persons" may challenge the validity of any order in the High Courts. This means that the Council could face a challenge against its ability to implement the Order. An application of this nature must be made within six weeks; beginning on the day the Order is made or varied. There are three grounds upon which a challenge could be made, these are:

- (i) That the local authority did not have the power to make the order or variation, or to include particular prohibitions or requirements imposed by the order (or by the order as varied)
- (ii) That a requirement under this element of the legislation not complied with in relation to the order or variation.
- (iii) The High Court would have the power to quash, amend or uphold the order.

6.4 Section 67 creates offence of failing to comply with the order

- (1) It is an offence for a person without reasonable excuse—
 - (a) to do anything that the person is prohibited from doing by a public space protection order, or
 - (b) To fail to comply with a requirement to which the person is subject under a public spaces protection order.

- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) A person does not commit an offence under this section by failing to comply with a prohibition or requirement that the local authority did not have power to include in the public spaces protection order.

6.5 The penalty for breaches of a PSPO relate to fixed penalty notices and fines alone, which may lead to significant levels of non-payment. The suite of new powers available however would allow officers to utilise a range of measures for those identified as persistently breaching the order, for example:

- (i) Community Protection Notices could be issued against individuals
- (ii) An Anti-Social Behaviour Injunction (ASBI) could be sought against individuals, which carries tougher sanctions and ultimately imprisonment
- (iii) A Criminal Behaviour Order could be sought.
- (iv) A Breach of the PSPO is an offence and upon conviction, individuals could be made subject to a Criminal Behaviour Order. This carries both tougher sanctions, along with the ability to implement positive conditions requiring support for substance misuse issues.

6.6 In order to implement a PSPO the procedure under section 72 of the Act must be followed. Section 72 states

Convention rights, consultation, publicity and notification

- (1) A local authority, in deciding—
 - (a) whether to make a public spaces protection order (under section 59) and if so what it should include,
 - (b) whether to extend the period for which a public spaces protection order has effect (under section 60) and if so for how long,
 - (c) whether to vary a public spaces protection order (under section 61) and if so how, or
 - (d) whether to discharge a public spaces protection order (under section 61),
 must have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the Convention.
- (2) In subsection (1) “Convention” has the meaning given by section 21(1) of the Human Rights Act 1998.
- (3) A local authority must carry out the necessary consultation and the necessary publicity, and the necessary notification (if any), before—
 - (a) making a public spaces protection order,
 - (b) extending the period for which a public spaces protection order has effect, or
 - (c) Varying or discharging a public spaces protection order.
- (4) In subsection (3)—

“the necessary consultation” means consulting with—

 - (a) the chief officer of police, and the local policing body, for the police area that includes the restricted area;
 - (b) whatever community representatives the local authority thinks it appropriate to consult;

(c) the owner or occupier of land within the restricted area;

“the necessary publicity” means—

(a) in the case of a proposed order or variation, publishing the text of it;

(b) in the case of a proposed extension or discharge, publicising the proposal;

“the necessary notification” means notifying the following authorities of the proposed order,

extension, variation or discharge—

(a) the parish council or community council (if any) for the area that includes the

restricted area;

(b) in the case of a public spaces protection order made or to be made by a district

Council in England, the county council (if any) for the area that includes the restricted area.

(5) The requirement to consult with the owner or occupier of land within the restricted area—

(a) does not apply to land that is owned and occupied by the local authority;

(b) Applies only if, or to the extent that, it is reasonably practicable to consult the owner or occupier of the land.

(6) In the case of a person or body designated under section 71, the necessary consultation also includes consultation with the local authority which (ignoring subsection (2) of that section) is the authority for the area that includes the restricted area.

(7) In relation to a variation of a public spaces protection order that would increase the restricted area, the restricted area for the purposes of this section is the increased area.

6.7 Guidance relating to publication of PSPOs is set out in the Anti-Social Behaviour Crime and Policing Act 2014 (Publication of PSPOs) Regulations 2014. There is also the July 2014 Home office guidance which will assist in the legal formalities in creating an order.

6.8 In any event a PSPO last for 3 years only and requires review every three years which is an expensive and time consuming process. Such a review and consultation process will in any event be required every 3 years to keep an existing PSPO in force.

6.9 The local authority must consult with the following groups to before seeking to make a PSPO.

- Chief Officer of Police for the local area
- Police and Crime Commissioner
- Land Owners in the area
- Any Community Representatives the local authority feels appropriate.
- Member of Parliament

6.10 The 2014 Act requires that landowners within the area are consulted; due to the vast population of Bradford it makes direct individual contact unviable but key affected landowners will be consulted.

7. OTHER IMPLICATIONS

None

7.1 EQUALITY & DIVERSITY

Generally it is understood anti-social behaviour has a disproportionate affect on those most vulnerable in our communities.

7.2 SUSTAINABILITY IMPLICATIONS

Wildfire poses a risk to people and property. It also destroys biodiversity and amenity of those sites affected. The more hidden impacts include release of carbon (thus increasing greenhouse gas emissions), air pollution (with associated public health risks), water pollution (in areas used for water catchment, ash and other material washed into water supply is difficult and expensive to remove), flood mitigation (where surface vegetation is burnt off, run-off is quicker and so the risk of flooding below the moors is increased). The cost and resource implications to the Council, Fire and Rescue Services and Police of fighting wildfire are significant. Thus any measures which assist in reducing wildfire risk will have positive sustainability implications.

7.3 GREENHOUSE GAS EMISSIONS IMPACTS

See above.

7.4 COMMUNITY SAFETY IMPLICATIONS

Wildfire poses a risk to people, whether visitors to the area or residents, and property. During the recent fire on Ilkley Moor, the fire came within 200m of housing and consideration was given to evacuating those residents in closest proximity. Given that this fire was possibly started by a portable barbecue or camp fire, the Community Safety implications will be reduced by the introduction of this PSPO.

7.5 HUMAN RIGHTS ACT

The consultation with the public will address the Human Rights Act 1998 implications.

7.6 TRADE UNION

There are no trade union implications apparent

7.7 WARD IMPLICATIONS

Wildfire is a district wide issue, although it is more prevalent in some wards. Ward Councillors will be invited to comment on the proposals as part of the statutory consultation process.

7.8 AREA COMMITTEE ACTION PLAN IMPLICATIONS

If obtained the PSPO will relate to defined "Restricted Areas" as mapped in

7.9 IMPLICATIONS FOR CORPORATE PARENTING

7.10 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT

8. NOT FOR PUBLICATION DOCUMENTS

There are no items that are not for publication

9. OPTIONS

- Authorise the Strategic Director, Place to undertake the required consultation exercise in pursuance of a PSPO to prohibit fires, barbecues, Fireworks and Chinese lanterns on identified areas.
- Ask the Strategic Director, Place to identify alternative options for regulation of such items

10. RECOMMENDATIONS

- 10.1 That the Strategic Director, Place be authorised to undertake the required (minimum 6 week) consultation exercise to implement a Public Space Protection Order for Restricted Areas within Bradford District.
- 10.2 That further to the completion of the necessary consultation process, the proposed Order be submitted to this Committee for approval or, alternatively
- 10.3 That further to the completion of the necessary consultation process, the proposed Order be approved under delegated powers by the Strategic Director, Place.

11. APPENDICES

Appendix 1: Map showing extent of PSPO (i.e. restricted areas)

Appendix 2: Evidence of the need for PSPO – data relating to locations of wildfires in the Bradford District

Appendix 3: Letter to Bradford Council Chief Executive from West Yorkshire Chief Fire Officer requesting that the Council considers a PSPO banning use of barbecues.

Appendix 4: Draft PSPO

12. BACKGROUND DOCUMENTS

None required