PUBLIC SPACES PROTECTION ORDER (PSPO)

Wards Affected: Abbey

Officer contact: Sarah McBrearty Ext:3876

Email: sarah.mcbrearty@wycombe.gov.uk

RECOMMENDATION TO CABINET MEMBER FOR COMMUNITY

To agree to proceed with a public consultation on the implementation of a Public Spaces Protection Order to close footpath HWU/80/1.

Reason for Decision

1. There have been ongoing reports to the police, Wycombe District Council and the local Councillor about anti-social behaviour occurring along the footpath running behind the houses on West End Road.

Corporate and Legal Implications

- This report recommends legal action be taken by the Authority in accordance with the new legislation. The legal parameters laid out within the Act will be considered carefully against the proposal for an Order.

- The introduction of any Order presents a risk of legal challenge to the Council. Section 66 of the Anti-social Behaviour Crime and Policing Act 2014 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 two grounds upon which a challenge could be made:

    - 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)
    - That a requirement under this element of the legislation was not complied with in relation to the order or variation

- The High Court would have the power to quash, amend or uphold the Order.
- Other legal implications and requirements are set out later in the report.

Finance

- There will be the cost of purchasing and installing the gates, as well as undertaking any maintenance and repairs throughout the duration of the PSPO. A quote has been obtained and the cost will be approximately £3,500

Executive Summary

2. The Anti-Social Behaviour, Crime and Policing Act 2014 introduced the Public Spaces Protection Order which can be used to restrict access to a public right of way. There have been numerous reports of anti-social behaviour taking place along this footpath which have been reported to the local Councillor, the Anti-Social Behaviour Officer and the police. Whilst a number of approaches have been tried to tackle the problem, it is felt that the behaviour is causing such an ongoing problem that restricting the public right of way is the only option now available.

Sustainable Community Strategy/Council Priorities - Implications

3. The Implementation of a PSPO will contribute towards the Council's priority 'People' in terms of working and engaging with local communities by reducing and dealing effectively with anti-social behaviour. It will also contribute to the 'Place' priority by making the District a place where people want to live, work and visit by controlling and preventing low level crime and anti-social behaviour.

Background and Issues

4. In October 2014 the Secretary of State enacted new powers under the Anti-Social Behaviour, Crime and Policing Act 2014, to tackle anti-social behaviour.
5. Prior to the 2014 Act, the Council had powers under the Highways Act 1980 to make a Gating Order to restrict the use by the public of a 'relevant highway' and authorise the placing of gates.
6. On 20th October 2014, section 129A of the Highways Act 1980 and The Highway Act 1980 (Gating Order)(England) Regulations 2006 were repealed by the Anti-Social Behaviour, Crime and Policing Act 2014 and Gating Orders were replaced by Public Spaces Protection Orders.

Public Spaces Protection Orders to close Public Rights of Way

7. The Anti-Social Behaviour, Crime and Policing Act came into force in October 2014. Chapter 2 of the Act contains provisions for Public Spaces Protection Orders (PSPO).

8. Local authorities have the power to implement a PSPO if satisfied on reasonable grounds that two conditions have been met. The first condition is that:

   a) activities carried out 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 out in a public place within that area and that they will have such an effect.

9. 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 restriction imposed by the notice.

10. In addition, when using the Orders to restrict public right of way over a highway, the local authority must consider-

    a) The likely effect of making the order on the occupiers of premises adjoining or adjacent to the highway;
    b) The likely effect of making the order on other persons in the locality;
    c) In cases where the highway constitutes a through route, the availability of a reasonable convenient alternative route.

11. Before making an Order to restrict public right of way over a highway, a local authority must also:

    a) Notify potentially affected persons of the proposed order,
    b) Inform those persons how they can see a copy of the proposed order,
    c) Notify those persons of the period within which they may make representations about the proposed order, and
    d) Consider any representations made.

Potential issues arising from closing this footpath

12. Between 26th April and 28th July 2016 there were 13 incidents reported to the police relating to anti-social behaviour occurring along this footpath. The behaviour included people hanging around drinking alcohol; people shouting and swearing; and criminal damage and graffiti. Having obtained further statistics from the police covering the period 29th July 2016 to 15th January 2017, there have been 5 additional calls to the police about various disturbances along the footpath, such as people arguing, suspected drug dealing and youths carrying baseball bats. In addition there were a further 7 emails sent to the PCSO who is working on this issue, all of which relate to people drinking and swearing whilst using the footpath. The neighbourhood policing team has undertaken increased patrols along this footpath to disrupt the behaviour, and the area has been cleared of litter. Residents have also been approached to undertake repairs to their rear garden fences to discourage people from littering their gardens.

13. In addition to this, between May 2012 and July 2015, 16 incidents were reported to the police by one specific property. These incidents were investigated by the police and Anti-Social Behaviour Officers, which included extra patrols and the installation of mobile CCTV cameras within the property.

14. The footpath has been inspected by a colleague from the Highways department at Bucks County Council. At present there are two bollards installed along the footpath (as indicated by X on Appendix A), however these have been ineffective and there is a need for the full length of the footpath to be closed off. If the footpath were only closed off between the existing bollards, this would provide two smaller areas at each end where people could still congregate, thus not eliminating the problem.

15. There are, however, two further concerns that need to be addressed if the footpath is closed off. Firstly, at the end which leads to Desborough Avenue, three of the residents currently use the footpath as an access to drive their cars to parking spaces in their rear gardens. Members of the public, including the neighbouring residents, have an automatic right of way over a public highway, and in exercising this they can undertake activities which are reasonably incidental to the right of passage. However, such incidental use of the public highway should not go beyond what is legally permitted and should not obstruct

the free passage of other users. In this instance, it can be said that the owners of the properties are legally permitted to cross the public footpath in order to park in their back gardens. This means that any gate that is installed will need to have an opening wide enough for these residents to drive through.

16. At the West End Street end of the footpath, between the bollard and the main road, the footpath widens and there are often a number of cars parked on it. Parking on the public footpath goes beyond what is legally permitted and also obstructs free passage over the public footpath for other users of the footpath. So by parking on the public footpath people are exceeding their right to use the public footpath and they become trespassers and may be guilty of an offence. So, the gate at this end of the footpath would not need to be wide enough to provide vehicular access.

17. If the footpath is closed, access will need to be given not only to the residents whose rear gardens back onto the path and the local shop that also has rear access, but also to BCC, Waste and Cleansing for maintenance, and the emergency services. This will mean that there is a risk that the gates may not remain closed at all times.

18. The cost of installing the gates and their maintenance will be met by Wycombe District Council. There is a low risk that closing this footpath as a result of the anti-social behaviour occurring, may result in calls to close other footpaths across the district. However there are no other footpaths with a similar level of reported concerns at the moment.

19. Whilst reports have been received about anti-social behaviour occurring along this footpath, it is important to note that there are a number of other footpaths in this area, in particular the footpath that continues from this one on the other side of Desborough Avenue. There is a risk that the anti-social behaviour that is occurring in footpath HWU/80/1 will be displaced to this nearby footpath.

20. Cabinet recently agreed to a Public Spaces Protection Order for the town centre and surrounding area which prohibits drinking alcohol and acting in an anti-social manner. This footpath is included within this PSPO area, and therefore any such behaviour along the footpath is prohibited. The problem is that the perpetrators of the anti-social behaviour along the footpath are not known, and the behaviour is taking place at times where there are no patrols in the areas – therefore we have not been able to deal with the perpetrators.

21. BCC Highways colleagues have suggested the use of CCTV along this footpath rather than closing it, to both deter perpetrators, and potentially use the images to take legal action. Whilst the cameras may deter some, it is unlikely we can use the images to issue any Fixed Penalty Notices or take any other legal action at present.

Proposal

22. The recommendation is to consult on a Public Spaces Protection Order to install gates to restrict the public right of way to footpath HWU/80/1 (Appendix A).

23. The gates would need to be 6ft tall, anti-climb with ‘soft’ spikes to prevent people climbing over.

24. Keys (or a key-code) would need to be provided to all residents/business owners whose homes back onto the path so that they can access their rear garden. Keys

(or a key code) would also need to be supplied to emergency services, Bucks County Council, and Waste and Cleansing.

25. The intention is that the gates would be closed 24/7, while the residents will be able to open them as required, the importance of keeping them locked would be emphasised.

26. The gates would be in place for three years, after which the PSPO would need to be reviewed, and the consultation exercise repeated if it is felt the problem would continue if the gates were removed.

Consultation

27. Following Cabinet Member approval, a formal consultation will be launched and run for 7 weeks. As above, the Act is not specific about what constitutes an appropriate consultation; however it is clear that it requires the local authority to consult with the following:

    a) Chief Officer of Police for the local area
    b) Police and Crime Commissioner
    c) Land owners in the area
    d) Any community representatives the local authority considers appropriate – these would include any walking groups, rambler societies, local businesses, Bucks County Council and local schools.

28. Posters will also be displayed in the area asking people to report any concerns regarding closure of the footpath to the Community Safety team.

Implementation

29. An estimate of approximately £3,500 has been obtained for the gates; however a firm quotation will be needed.

30. The footpath would need to be monitored to ensure it does not become overgrown, or that the gates are not damaged. Any damage costs would need to be met by Wycombe District Council.

Enforcement

31. No enforcement activity would be required.

Risk Implications

32. If WDC does not install gates, the current PSPO which prohibits acting in an anti-social manner whilst consuming alcohol could be used for this area. However, enforcement will be difficult as the times when incidents are occurring are outside of the police patrol times.

33. CCTV could be explored for the area, but there would be a cost for this, and there would be significant collateral intrusion as this is a public right of way. It may prove difficult to identify perpetrators from the images unless they are already known to the police.

Key risks associated with the preferred approach

34. If the required process to introduce a PSPO is not strictly followed, this could lead to a challenge which would mean that the authority could face legal costs and reputational damage.

35. There is a risk that by closing this footpath, the anti-social behaviour will move to another footpath. This area of Desborough does have a number of footpaths in close proximity. This would be monitored.

Next Steps

36. If the Committee support the recommendation to the Cabinet Member for Community for the principle of proceeding with the implementation of a PSPO, The Cabinet Member would be asked to agree the above mentioned consultation process to be carried out. A further report would need to be submitted to Cabinet in due course if findings supported implementation of a PSPO.

37. An Information Item will be submitted to High Wycombe Town Committee detailing the findings of the consultation.

Background papers

Anti-Social Behaviour, Crime and Policing Act 2014

Statutory Guidance

Appendix A


LANSDALES R
PC
23
233
221
200
205
188
185
DESBOROUGH AVENUE
Surgery
65
74
80
Ward Bdy
ED &
74.3m
68
139
131
CW
HWU/80/1
103
HWU/78/1
104
105
109
Nees
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