

## MEMBER BRIEFING PAPER

### PUBLIC SPACES PROTECTION ORDERS (PSPOs) USE OF PORTABLE & DISPOSABLE BARBEQUES, LIGHTING OF FIRES AND ANY OTHER ACTIVITIES WHICH MAY INCREASE THE RISK OF WILD FIRES

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#### 1 BACKGROUND

- 1.1 This briefing paper has been produced in response to a requisition from at least five Councillors to debate the motion as set out to urgently undertake a public consultation exercise to ascertain the level of support for the introduction of a Public Spaces Protection Order, to prohibit the use of portable and disposable barbeques, the lighting of fires, and any other activities which may increase the risk of wild fires; such an Order to extend to those areas of the District which are considered to be most vulnerable to outbreaks of wild fires.
- 1.2 The paper sets out current arrangements in place and necessary measures to consult to enable the introduction of a new Public Space Protection Order (PSPO) in order ensure that members are fully aware of the implications of auctioning any such request.

#### 2 CURRENT PSPOs AND ENFORCEMENT

- 2.1 The PSPOs are one of the tools available under the Antisocial Behaviour, Crime and Policing Act 2014. These are wide-ranging and flexible powers for Local Authorities. The Act Gives Councils the authority to draft and implement PSPOs in response to the particular issues affecting their communities, provided certain criteria and legal tests are met.
- 2.2 For the Derbyshire Dales, PSPOs were first introduced in 2015. The current PSPOs run from the 1<sup>st</sup> November 2018 until the 31<sup>st</sup> October 2021 and cover:-
1. Dog Control Public Places
  2. Parks & Open Spaces – prohibition of fires and barbeques and prohibition of driving or parking on parks and open spaces
  3. Prohibition of alcohol consumption.
- 2.3 The Parks & Open Spaces PSPO includes:-

##### **PROHIBITION OF FIRES AND BARBEQUES**

- a. No individual shall light or maintain a fire, stove, barbeque or anything of a similar nature within the area referred to in Schedule 1 of this Order unless prior written consent has been obtained from the Council.
- b. No individual shall be permitted to be associated with a fire, stove, barbeque or anything of a similar nature within the area referred to in Schedule 1 of this Order unless prior consent has been obtained from the Council.
- c. Any person on request by an authorised person, Police Officer or Police Community Support Officer shall:-
  - i. dispose of items relates to the fire or barbeque as directed; and / or
  - ii. permit a Council Officer, Police Officer or Fire Officer to extinguish a fire

- 2.4 The Dog Control Order, as well as covering District Council owned land, also covers some Town and Parish land. For the other two PSPOs, only District Council land is included.
- 2.5 Full copies of the PSPOs, further information and a summary document can be found on the District Council's website via the following link:-  
<https://www.derbyshiredales.gov.uk/community-a-living/crime-prevention/public-space-protection-orders>
- 2.6 The rationale behind the current PSPO which prohibits fires and barbeques was to protect people, particularly children and dogs, from any injury as a result of unextinguished fires and barbeques on the District Council's parks and open spaces and also to protect the ground from scorch marks and damage.
- 2.7 The District Council currently does not have the human resources or financial capacity to carry out any further enforcement, but is liaising with the Police to negotiate an agreement for them to carry out enforcement on behalf of the District Council as part of their routine patrols.
- 2.8 As the District Council works towards the new PSPOs, it is hoped to train Officers to have the ability to enforce, but this would only form a small part of their wider duties. There may also be options in the future (not until at least July 2021), to add a localised PSPO enforcement agreement to the existing parking enforcement contract.
- 2.9 The District Council has made enquiries with two enforcement providers but costs could be in the region of £100,000 per annum for a contract to operate an enforcement service on behalf of the District Council.

### **3 NEIGHBOURING AUTHORITIES**

- 3.1 Discussions and research undertaken by officers with neighbouring authorities indicates that there is no evidence that any surrounding Derbyshire authorities have PSPOs in place for barbeques. The only area of the Peak District National Park covered by PSPOs is an area (Dovestones) under the jurisdiction of Kirklees Council.
- 3.2 Some Authorities have introduced such PSPOs, usually in response to moorland fires, e.g. Tameside Council (in partnership with Oldham Council), Calderdale and Kirklees. Kirklees' PSPO covers their land, Yorkshire Water and National Trust. The Tameside PSPO covers all land owned by Tameside Metropolitan Borough Council excluding residential properties and Calderdale worked with Yorkshire Water and Natural England to introduce their PSPOs.
- 3.3 Kirklees Council introduced their PSPOs for the control of fires and barbeques in 2018 (renewed 6<sup>th</sup> April 2020) as a result of the moorland fires they had experienced. The PSPO was introduced fairly quickly with little consultation because of the urgency and severity of the situation. At present, Kirklees Council have little capacity for enforcement and Yorkshire Water and the National Trust do not enforce either or make any financial contribution to enforcement, although Rangers will chat to people whilst out and about. Only one Fixed Penalty Notice has been issued in respect of this PSPO.

- 3.4 Members will be aware that the Peak District National Park Authority issued the following press release on the 5<sup>th</sup> June 2020:-

*“Following a spate of damaging recent fires, the Peak District National Park has come together with its partners to announce that barbeques and open fires are not permitted anywhere in open countryside throughout the Peak District. As land-owner permission is required to light or tend a fire, the Authority has said that all major land owners and Letters were also sent to local businesses who sold disposable barbeques”*

- 3.5 Whilst the above has no legal power, the Peak District National Park Authority sought co-operation from businesses and those enjoying the countryside to act responsibly.

## 4 **SUPPORTING EVIDENCE**

- 4.1 In order to introduce any new or revise any existing PSPOs there must be a robust evidence base.
- 4.2 The District Council will need to be satisfied that legislative requirements have been met and clear evidence obtained. The evidence will need to be weighed up before a decision can be made as to whether or not it is appropriate and proportionate to introduce a PSPO at all and whether the draft proposals are suitable.
- 4.3 Nationally there has been much publicity recently on the potential impact of disposable barbeques and fires.
- 4.4 The District Council's Clean & Green Team have reported a few isolated incidents over the summer months but nothing major. The Clean & Green Manager believes that the District Council's social media campaign raised awareness and helped prevent incidents.

## 5 **CONSULTATION PROCESS FOR INTRODUCING NEW PSPOs**

- 5.1 Ahead of the new PSPOs being adopted (1<sup>st</sup> November 2021), a review of the current PSPOs and a consultation exercise will take place, commencing late 2020. Based on the evidence of the three previous years, and enforcement of the PSPOs and the consultation results, amendments may be made to the Order.
- 5.2 Should Members wish to introduce a new or revised PSPO ahead of the 1<sup>st</sup> November 2021, then the review and consultation would need to be brought forward which will have a consequential Impact upon other Council priorities.
- 5.3 Advice has been sought on the consultation process from the District Council's Legal Services Manager (Lee Gardner).
- 5.4 The main thing to note is the requirement to consult and any decision would need an Equality Impact Assessment and the effects of any displacement of people the order may have. (Also, we would have to check that the Order does not conflict with any pre-existing statutory right.)

5.5 The Local Authority is required to carry out “necessary” consultation which is:-

### ***Consultation Requirements***

5.6 Local Authorities must openly and publicly consult with:-

- the Chief Officer of Police and the local Policing body for the Police area that includes the restricted area;
- any community representatives the Local Authority considers it appropriate to consult with. For example, residents’ groups or particular groups of individuals who use a local amenity (for example, buskers, people who use the National Park). Discussing the scope of potential restrictions or requirements with local residents or interest groups is particularly useful as it can ensure that the final PSPO meets the needs of the local community and is also less likely to be challenged by residents;
- the owner or occupier of land within the restricted area.

5.7 These consultation requirements enable the Police and Local Authorities to consider how enforcement should be organised. As a PSPO will restrict the behaviour of those using a public space, then the reform of antisocial behaviour powers guidance suggests that elected Members of a Local Authority should be closely or directly involved and, in the interests of openness and accountability, decisions should be put to Cabinet or full Council,. There is no point in having a PSPO if it is not enforced so consideration needs to be given to who would have the powers to issue PSPO breach notices.

### ***Notification Requirements***

5.8 Local Authorities must notify the following authorities of a proposed PSPO, or extension, variation or discharge of an existing PSPO:-

- the Parish Council or community Council (if any) for the area that includes the restricted area;
- where the PSPO is made or will be made by a District Council in England, the County Council (if any) for the area that includes the restricted area.

5.9 Where a PSPO has been made, extended or varied, this involves a Local Authority:-

- publishing the PSPO as it has been made, extended or varied on its website;
- erecting on or adjacent to the public place to which the PSPO relates such notice (or notices) as it considers sufficient to draw the attention of any member of the public using that place to the fact that the PSPO has been made, extended or varied and the effect of this.

5.10 In addition to the comments of the Legal Services Manager, other suggestions and considerations are:-

- the District Council may wish to set up a Working Group including the Fire Service and main land-owners;
- consult with the tourism and hospitality industry, camping and caravanning sites;
- consult with rambling and other established / organised groups who enjoy the countryside.

## **6. RESOURCES, TIMESCALES AND CONSIDERATIONS**

6.1 As can be seen from section 5 above, the consultation process for a PSPO involves a considerable amount of work, particularly where proposals cover new areas of land and new constraints. This cannot be accommodated alongside other work currently being progressed. Council would therefore need to determine its priorities.

6.2 It is important that the consultation is undertaken thoroughly with all relevant parties affected having an opportunity to comment.

6.3 The consultation would need to include:-

- consideration of the clauses;
- defining the scope of the PSPO, i.e. what activities will it cover and where the restricted areas will be;
- supporting evidence to substantiate the introduction of a PSPO in certain areas (e.g. from the District Council's Clean & Green Team, public reports, Fire and Rescue);
- consultation replies and the need for the Order;
- Equality Impact Assessment;
- Council approval;
- printing and erecting of signs;
- monitoring, effective enforcement, awareness raising / education.

6.4 It is difficult to quantify, but anticipate that the consultation and order making will take a considerable amount of resources from across the Council, including Officers from Neighbourhoods, Legal, Communications, Regeneration & Policy (EIA) and support services which may, in part of wholly, divert Officers from other duties.

6.5 If Members decide to consult on areas not previously covered, then consideration would also need to be given as to how Members wish Officers to proceed. The options are as follows:-

- consult on a new PSPO covering the existing and new areas, then enact the new Order and discharge the existing Order;
- consult on a new Order to come into force on the expiry of the existing Order;
- have a separate Order covering the new areas and have two PSPOs running at the same time with different renewal dates.

## **7. LEGAL CONSIDERATIONS**

7.1 The legislation covering PSPOs is contained in Part 4, Chapter 2 of the Antisocial Behaviour, Crime and Policing Act 2014. The power to make an Order lies with the District Council and the Order can last no longer than 3 years.

7.2 Orders can be discharged and amended during the 3 years. After 3 years the Order lapses which means that a new Order can be put in place or the Order can be renewed.

- 7.3 If any person is dissatisfied with a PSPO then they can appeal to the High Court within 6 weeks of the Order being made or varied. They can only apply on the grounds that the District Council did not have the power to make the Order or include particular provisions / requirement or that a requirement was not complied with, i.e. adequate consultation.
- 7.4 Failure to carry out the required consultation could put the Council at risk of legal challenge. Also, the final Order or variation following consultation would need to be approved by the Council.

## **8. SUMMARY**

- 8.1 It can be seen from the above that a consultation process would be lengthy and time consuming and, in addition, the District Council has no current enforcement capacity.
- 8.2 Whilst other Councils have been referenced, they also struggle to carry out enforcement.
- 8.3 Whilst the desire to protect moorland areas from fire is clearly well intentioned, the time and effort required would in the officers opinion, be better spent and more effective on a multi-agency approach with the Police Authority, the Fire Authority and the Peak District National Park Authority, in order to develop a campaign to deter fires and barbeques and raise awareness of potential consequences.
- 8.4 Notwithstanding the above, should Members wish to progress such an initiative, it would be appropriate to refer the matter to the Community and Environment Committee where full consideration can be given to all relevant options and an informed decision can be taken, having regard to costs, resources, priorities, statutory procedures and timescales. Council should not make key policy decisions without being in full possession of all relevant information.

## **9 CONTACT INFORMATION**

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