

**REPORT TO:** Cabinet

6 November 2019

**LEAD CABINET MEMBER:** Cllr Bill Handley, Environmental Services & Licensing

**LEAD OFFICER:** Mike Hill, Director Housing, Health & Environmental Services

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## **Public Space Protection Order**

### **Proposed gating of Setchel Drove, Cottenham**

#### **Key Decision**

1. This is not a key decision.

#### **Recommendations**

2. That Cabinet agrees
  - a. A 3-step “education, enforcement & engineering” approach to reducing incidences of illegal fly-tipping of waste at Setchel Drove, Cottenham
  - b. That as part of this approach, South Cambridgeshire DC introduces a Public Space Protection Order (PSPO) to restrict access by means of a unlockable barrier to Setchel Drove, Cottenham to disrupt and prevent illegal fly-tipping of waste.
  - c. Delegates the final drafting, wording and consultation of the Public Spaces Protection Order to the Director of Health & Environmental Services in consultation with the Lead Cabinet Member for Environmental Services and Licensing.
  - d. That the Public Spaces Protection Order is reviewed after 2 years.

#### **Reasons for Recommendations**

3. Cabinet has powers under The Anti-Social Behaviour Crime & Policing Act 2014 to enact a PSPO. Full consultation with local residents, land-owners and statutory consultees has shown significant support for the introduction of barriers to reduce access to the Drove to reduce fly-tipping. Additionally, discussions at South Cambridgeshire DC Scrutiny & Overview Committee recognised that restricting access to the Drove via a PSPO alone will not reduce and prevent future illegal fly-tips and supported increased covert surveillance of the Drove as part of a blended “education, enforcement, and engineering” approach to tackling illegal fly-tipping at this location.

## Details

4. Running beyond Smithy Fen traveller site, Setchel Drove is an isolated highway not overlooked by any occupied properties, leading through agricultural fields to the Cambridge Fish Preservation & Angling Society based at the Heritage Lake. The Drove has suffered repeated incidents of fly-tipping both on the Drove itself and on adjoining land owned by local farmers who have had to pay for the removal of illegally fly-tipped waste. South Cambridgeshire District Council has been required to remove fly tipped material on multiple occasions from the site. Removal often requires specialist equipment due to the waste being located in drainage ditches along the Drove. Estimated clear up costs for the current tips on the Drove are £2200.
5. In Sept 2018, South Cambridgeshire DC installed a covert CCTV camera to capture evidence of the perpetrators of the continued fly-tipping. Unfortunately the camera was wilfully destroyed and no evidence was retrieved. Warning signage displayed to deter fly tippers has merely moved the problem further along the drove. Appendix A shows maps and photographs of the location. Deployment of more sophisticated covert surveillance equipment is a next step, subject to Magistrates' approval of an application under the Regulation of Investigatory Powers Act (RIPA).
6. Since gathering evidence for enforcement has to date proved unsuccessful, consideration has been given to other ways of stopping the fly-tipping. The South Cambridgeshire DC & Cambridge City Greater Cambridge Shared Waste Service has recently launched a "S.C.R.A.P. Fly-tipping" communication and education campaign which will include targeting "hot spots" such as Setchel Drove. Further work is being explored to improve the Council's capabilities in the use of covert surveillance equipment to gather evidence. Along with an approach that uses enforcement and education, a third approach is to consider "engineering" and introducing physical barriers to prevent fly-tipping.
7. Public Space Protection Orders (PSPO) are a control measure created by the Anti-Social Behaviour, Crime & Policing Act 2014. They are council-led, and rather than targeting specific individuals or properties, they focus on the identified problem behaviour in a specific location. When used appropriately, proportionately and with local support, PSPOs can be a positive device that help to prevent anti-social behaviour such as fly-tipping and can provide an effective response to some of the issues local residents and businesses face on a daily basis. The Home Office statutory guidance re-issued in December 2017 states that proposed restrictions should focus on specific behaviours and be proportionate to the detrimental effect that the behaviour is causing or can cause, and are necessary to prevent it from continuing, occurring or recurring.
8. Other options should actively be considered before a PSPO is pursued and where a PSPO is used, it should be carefully framed and employed alongside other approaches as part of a broad and balanced anti-social behaviour strategy.
9. The Act gives councils authority to draft and implement PSPOs in response to particular issues affecting their communities, provided certain criteria and legal tests are met. The first test concerns the nature of the anti-social behaviour, requiring that:
  - Activities that have taken place have had a detrimental effect on the quality of life of those in the locality, or it is likely that activities will take place and that they will have a detrimental effect

- The effect or likely effect of these activities:
    - Is, or is likely to be, persistent, or continuing in nature
    - Is, or is likely to be, unreasonable
    - Justifies the restrictions being imposed
10. A PSPO can last for up to three years, after which time it must be reviewed. Following review, a PSPO can be extended. As a minimum, each PSPO must set out:
    - a. what the detrimental activities are
    - b. what is being prohibited and/or required, including any exemptions
    - c. the area covered
    - d. the consequences for breach
    - e. the period for which it has effect.
  11. PSPOs replace “Gating Orders” were previously issued under the Clean Neighbourhoods and Environment Act 2005. Gating Orders enabled Councils to put gates across roads and paths to restrict access.
  12. It is proposed to issue a PSPO at Setchel Drove, Cottenham to install a barrier and so help prevent on-going fly-tipping. The effect of the proposed order would be to restrict vehicle access to Setchel Drove by the installation of one lockable barrier at the point shown on the map at Appendix A. The barrier would remain locked 24 hours a day except for private access to the agricultural fields and Heritage Lake fishing club by authorised code/ key-holders and for the purposes of maintenance and emergency access. Any unauthorised tampering with the locked gate will be a breach of the PSPO and may result in either a fixed-penalty notice of £100 or prosecution.
  13. Introduction of a PSPO to restrict access and freedom of movement is a serious matter. Guidance advises that PSPOs restricting access should only be introduced where the anti-social behaviour complained of is facilitated by the use of that right of way – otherwise it may be more appropriate to draft an Order focussed on the problem behaviour instead. In this case, use of Setchel Drove facilitates the illegal fly-tipping of waste. As a result, a PSPO restricting access is considered an appropriate tool.
  14. Responsibility for the maintenance of the gate and the keeping of the access key / code will lie with South Cambridgeshire District Council.

## Consultation responses

15. A key part of the process to explore introduction of a PSPO is a statutory requirement to consult with stakeholders that may be effected. A consultation document was available for comment on SCDC’s website from 29<sup>th</sup> May 2019 to 10<sup>th</sup> July 2019. In addition, the document was emailed to interested and relevant agencies for comment and feedback. This included the OPCC, local neighbourhood Policing team, Cambridgeshire County Council, Cottenham Parish Council, Ely Drainage Board, and Cambridge Fish Preservation and Angling Society. A verbal consultation by door to door knock was also undertaken with traveller families living on Setchel Drove. Full written consultation responses are attached at Appendix B.
16. 19 written responses were received, 14 in favour of the proposal, 3 against and 2 neither for nor against. Verbal responses from the local traveller community were in favour of the proposal.

17. It should be noted that the landowners that own the largest proportion of the land either side of Setchel Drove have detailed very strong views against implementing a PSPO. Their biggest concerns are for the personal safety of the family members, farmers and contractors who access Setchel Drove several times a day. They highlight verbal abuse, intimidation, physical abuse and threats to life which have been documented by the police. A recent incident reported to Police in July 2019 relates to a farmer being injured after a brick and scaffold pole were thrown through a tractor window. The family is concerned that anyone seeking to fly-tip down the drove being met with a locked gate may simply deposit the waste on the part of the drove leading up to the gate. This could lead to farming vehicles or vets being unable to drive down the drove to access livestock. The family have also raised a concern for the well-being of the head of the family who is in his 70s and would have to repeatedly climb in and out of his tractor on a daily basis.

18. These concerns will be addressed by working closely with the landowners and residents adjacent to the Drove to agree a suitable location for any barrier and seeking agreement on how any anti-social behaviour might be prevented in the future, considering the use of suitable technology to reduce the number of occasions regular users need to leave their vehicles to unlock any barrier, and continued surveillance of the barrier to gather evidence of fly-tipping at the barrier.

19. The local neighbourhood police sergeant raised several challenges in his response:

- Have we considered any other/combined methods of resolving the problem, for example overt or covert CCTV options, adequate signage, enforcement options based on identifiable property left behind, media involvement to make the problem more high profile across the region?

*Yes. Covert trail cameras have been previously used but were destroyed, likewise signage is often removed. The police technical support officers have recently given the council further advice on how to better camouflage and covertly install surveillance equipment which has yet to be trialled. Enforcement officers do pursue perpetrators where evidence is left behind and issue fixed penalty notices. Since the consultation process took place the countywide 'S.C.R.A.P. It' campaign has been launched to raise the profile of fly-tipping across the district and Setchel Drove will be one of the target areas to be targeted with banners/posters etc.*

- Has consideration been given to the risk of displacement consequences?

*Yes. It is acknowledged that displacement is a risk. There is also a risk that materials/waste will be dumped on the approach to the gate.*

- Are we considering this measure to be a pilot for future locations across South Cambs and how do we intend to measure the outcome of this approach?

*No other fly tipping hotspot areas are currently being considered for a PSPO. The number of fly-tips in the drove would be recorded and comparison could be made to historical data. We would also need to be mindful of displacement consequences in the local area.*

- Do we require a PSPO to install gated access or can we use other legislation?

*Yes. PSPO's have replaced gating orders previously issued under the Clean Neighbourhoods and Environment Act 2005. The alternative would be to seek permission of landowners and the County Council. Consultation responses show the key landowners are not supportive of the installation of a gate via a PSPO.*

- Is enforcement of the PSPO simply enforcement of a softer penalty for a similar or higher cost?

*No. We would continue to investigate and pursue offences of fly tipping, the PSPO gives the ability to introduce a physical barrier to unauthorised persons. The current fixed penalty for fly tipping is £400 and the fixed penalty for breach of a PSPO is £100. Both penalties would be pursued in any investigation.*

- Considering the cost of securing a PSPO would that money be better spent on detection technology such as CCTV and ANPR?

*The PSPO gate as a stand-alone physical barrier is unlikely to be effective against fly-tipping and so would be used in conjunction with other activities as part of an “Enforcement-Education-Engineering” mixed approach. Officers are already scoping further investment in covert surveillance equipment to support this approach.*

- There are concerns that a simple lock could be chopped off easily and the gate be broken or even stolen. While costs may be prohibitive, has consideration been given to other methods of controlling access such as rising bollards with a keypad control?

*Yes. This view has also been echoed by the byways officer at Cambridgeshire County Council. Bollards would need to be sufficiently robust to avoid being wilfully damaged and would require keypad activation. Approx cost £1800 per bollard (plus installation costs TBC)*

#### 20. Other key consultation comments of worthy note:

- Due to the large number of individuals who need access to the Drove, a key code would be preferred over keys.
- A gate would need to be wide enough to accommodate large farm vehicles and excavators.
- The gate would be better positioned further down the drove so that vehicles don't have to park up outside the traveller site whilst opening the gate. (This would reduce any noise-disturbance to residents of the site.)
- Setchel Drove has drainage ditches either side which means that clearance costs are often higher than for other locations in the district as specialist equipment has to be hired in.

## Options

21. To agree the proposal for a PSPO and approve installation of a physical barrier, thereby restricting vehicular access to Setchel Drove alongside further enforcement and education activities; or
22. To refuse implementation of the proposed PSPO and instead focus on targeted surveillance methods to gather evidence against perpetrators of fly tipping and education activities.
23. Any other combination and timing of appropriate education, enforcement and “engineering” actions.

## Implications

24. Taking into account financial, legal, staffing, risk, equality & diversity, climate change, and any other key issues, the following implications have been considered:-

### Financial

25. There will be costs associated with the initial installation of the gate itself (possibly £2k-5k) and also in any associated camera surveillance equipment required to monitor the gate and the wider area. Precise costs would be dependant on the type of gate and cameras but as a guide gates could be in the region of £2-3.5k, trail cameras approx. £200 each, time lapse cameras approx. £200 and smaller more covert type cameras are approx. £3k. These costs can be met from capital reserves. Any costs would be off-set by savings in clear-up costs should fly-tipping be successfully stopped.

### Legal

26. If cameras are deployed covertly then a RIPA authorisation would need to be granted by the Magistrates Court. Alternatively, signage would have to be displayed to alert members of the public to the cameras' presence, increasing vulnerability to theft/damage.

27. Legal challenge against the PSPO can be made under the Act on the grounds that the local authority did not have the power either to make the Order or include particular prohibitions or requirements, or that proper processes had not been followed as prescribed by the legislation. Challenges must be made to the High Court within six weeks of the Order being made, and by an individual who lives in, regularly works in or visits the restricted area. It is therefore essential that due regard be given to all consultation responses to demonstrate that proper process has been followed.

### Staffing

28. There would be a resource implication in order to monitor and maintain any ongoing camera surveillance. Regular downloading of images, replacement of batteries and checking on the integrity of cameras. It is anticipated that this is manageable within current officer resources.

### Risks

29. The effectiveness of the gate/bollards will be heavily reliant on all persons accessing the Drove remembering to shut and lock it behind them.

30. There are approx. 1200 members of the Cambridge Fish Preservation & Angling Society that would also potentially require access to Heritage Lake located on Setchel Drove, in addition to farmers, drainage board, utility services, emergency services that would all require access to the coded entry. With such large numbers there is a risk that any secure keycode could end up in the public domain.

31. In the experience of the local police and the County Council Byways officer gates/barriers often fall victim to damage or theft.

32. By restricting access to the Drove fly-tipping may be displaced to other nearby droves, lanes and byways, such as Lockspit Hall Drove and Oxholme Drove. To counter this, it may be considered appropriate to extend the geographical coverage of any PSPO and gating arrangements to these Droves. Further consultation would take place before progressing such an approach.

33. Fly-tipping may continue on Setchel Drove up to the point where the barrier is installed.

## **Equalities Impacts**

34. It is not considered that introduction of a PSPO would adversely impact any groups with protected characteristics under Equalities legislation. However, a full Equalities Impact Assessment will be undertaken as part of the detailed development of any PSPO.

## **Effect on Council Priority Areas**

### **Being Green to our Core**

35. Preventing, detecting and pursuing the perpetrators of fly tipping contributes to the Council's business plan objective to protect and enhance the district's heritage and environment.

## **Appendices**

Appendix A: Maps and photographs showing the location of Setchel Drove and the proposed location of the gate at consultation stage.

Appendix B: Copies of Consultation responses

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