

Rother District Council

Report to:	Cabinet
Date:	13 December 2021
Title:	Public Spaces Protection Order
Report of:	Head of Service - Environmental Services, Licensing and Community Safety
Cabinet Member:	Councillor Field
Ward(s):	All
Purpose of Report:	To make a Public Spaces Protection Order (No 2A) for three years (2022-23) following final consultation with the Police and Crime Commissioner, Sussex Police and East Sussex County Council Highways.
Decision Type:	Key
Officer Recommendation(s):	It be RESOLVED : That a Public Spaces Protection Order (No 2A) for three years (2022-23) following final consultation with the Police and Crime Commissioner, Sussex Police and East Sussex County Council Highways be made.
Reasons for Recommendations:	The existing Public Space Protection Order (No 2) expired in November 2021. This Public Space Protection Order was used to control anti-social behaviour.

Introduction

1. The Council made a Public Spaces Protection Order (PSPO) for the control of anti-social behaviour. This Order expired in November 2021 – see [THE PUBLIC SPACES PROTECTION ORDER \(NO. 2\) \(rother.gov.uk\)](https://rother.gov.uk/public-spaces-protection-order-no-2). Consultation has taken place with Parish and Town Councils. Their responses (if received) are set out in Appendices A and B.
2. In September, Cabinet authorised consultation with the public and the responses to the consultation are set out in Appendix B. To justify including controls within the PSPO, evidence that a problem exists or is likely to occur is required. The results of the consultation provide evidence that certain controls are necessary.

Public Spaces Protection Order

3. PSPOs can be used to control anti-social behaviour in a particular area. Such as alcohol bans, bans on the playing of amplified music, busking, swearing etc.

4. PSPOs are intended to deal with a nuisance or problem in a particular area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area which apply to everyone. They are designed to ensure the law-abiding majority can enjoy public spaces, safe from anti-social behaviour.
5. A PSPO can be made by the Council if they are satisfied on reasonable grounds that the activity/activities carried out, or are likely to be carried out, in a public space:
 - have had, or are likely to have, a detrimental effect on the quality of life of those in the locality;
 - is, or is likely to be, persistent or continuing in nature;
 - is, or is likely to be, unreasonable; and
 - justifies the restrictions imposed.
6. The restrictions specified in a PSPO can be set by the Council; these can be blanket restrictions or requirements or can be targeted against certain behaviours by certain groups at certain times. They can restrict access to public rights of way where that route is being used to carry out anti-social behaviour.
7. Short-term PSPOs could be used where it is not certain that restrictions will have the desired effect, for instance, when closing a public right of way. At any point before expiry, the Council can extend a PSPO by up to three years if they consider that it is necessary to prevent the original behaviour from occurring or recurring.
8. The breach of a PSPO is a criminal offence; enforcement officers can issue a fixed penalty notice of up to £100 if appropriate, but a fine of up to £1,000 can be made on prosecution.
9. More than one restriction can be added to the same PSPO, meaning that a single PSPO can deal with a larger range of behaviours.

Enforcement

10. PSPOs can be enforced by council officers and police officers. Since the PSPO was made only one fixed penalty notice has been issued, although numerous written warnings have been issued to persons aggressively begging and sleeping in vehicles overnight. The Police also use the power to control street drinkers.

Home Office Guidance

11. Home office guidance advises against making orders that discriminate against homeless or young people. The existing Order mitigates against such discrimination by requiring officers to provide housing assistance before issuing a fixed penalty notice. The Order seeks to control behaviours, such as aggressive begging rather than targeting disadvantaged or vulnerable people. It should be recognised that people begging may have housing and are simply requesting financial income from the public, who may themselves be vulnerable.

Consultation

12. Despite extensive publicity there were disappointingly few public responses, 96 in total. This compares with 450 responses to the consultation carried out three years ago. Battle, Brightling, Brede and Camber Parish/Town Councils made detailed comments, which Members should carefully consider.

Proposed Controls in new PSPO (2A)

13. A number of options now present themselves, including:

Option 1-replicate previous PSPO and extend to Battle and Camber parishes

14. It is proposed that the new PSPO should replicate the existing PSPO (No 2) as these controls are already in place and therefore already having an effect on behaviour. In addition, these controls are supported by the public and the vast majority of Parish Councils.

Applying the control on aggressive begging and consumption of alcohol in public places to Battle and the control on consumption of alcohol in public places to Camber, as these controls were requested by the Parish Councils.

Option 2-Introduce new controls as requested by Parish Councils

15. New controls should not be introduced unless there is evidence that a problem exists to justify it, normally through the public consultation. However, Members can be guided by their own knowledge and the views of Parish and Town Councils. Members should consider the following new controls:
 - a. Battle Town Council proposed a control on wanton or dangerous cycling, hover boards, scooting, skating or skateboards on Battle High Street. Given the width of the pavement in the High street these activities could be simply prohibited.
 - b. Battle Town Council proposed a control on motorbike riding on public footpaths [and bridle ways] (with rights of way).
 - c. Brede Parish Council proposed controls on drones, swearing/shouting, amplified sound, cooking/fires and dangerous cycling to be included in the order for all public spaces throughout Rother.
 - d. Brightling Parish Council proposed that the inclusion of "the flying or preparation for flying of drones in a manner that causes or likely to cause harassment, alarm or distress to any person".
16. The PSPO procedure is relatively straightforward in allowing new controls to be added to existing Orders at any time in the next three years, if evidence to justify doing so arises. Members may therefore wish to defer a decision on applying these controls until next year.

Conclusion

17. It is recommended that a new PSPO (No 2A) is made replicating the PSPO (No. 2) and applying all controls to Battle and Camber parishes.

Financial

18. Contained within existing estimates.

Legal

19. Contained within report.

Crime and Disorder

20. An effective PSPO supports controlling crime and disorder in the district.

Risk Management

21. The Council may be criticised for not exercising its discretion to have a relevant and comprehensive PSPO. There is a right of appeal to the High Court.

Human Rights

Article 2: Right to life- not applicable

Article 3: Freedom from torture etc- not applicable

Article 4: Freedom from slavery and forced labour-not applicable

Article 5: Right to liberty and security-not applicable

Article 6: Right to a fair trial-complies

Article 7: No punishment without law-complies

Article 8: Respect for private and family life-not interfered with if recent encampment

Article 9: Freedom of thought, belief and religion-not affected

Article 10: Freedom of expression-not affected

Article 11: Freedom of assembly and association- not affected

Article 12: Right to marry-not affected

Article 14: Right to be free from discrimination-mitigated against

Protection of property: not applicable

Right to education: not applicable

Environment

22. A PSPO can be used to prevent damage to the local environment.

Equalities and Diversity

23. The safeguards incorporated in the existing PSPO (No2), namely the requirement to provide assistance to homeless persons, mean that all persons would be treated equally. There are no diversity concerns.

Other Implications	Applies?	Other Implications	Applies?
Access to Information	No	Exempt from publication	No
Report Contact Officer: Richard Parker-Harding			

Telephone Number:	01424 787551
e-mail address:	Richard.parker-harding@rother.gov.uk
Appendices:	A – Parish and Town Councils Consultation Responses B – Parish Councils and Public Consultation Responses
Relevant Previous Minutes:	CB21/30
Background Papers:	None
Reference Documents:	https://www.gov.uk/government/news/new-guidance-on-the-use-of-the-anti-social-behaviour-crime-and-policing-act-2014

Parish/Town Council responses

Parish	Control on alcohol consumption in public	Aggressive Begging	Sleeping in public place	Response-supports new PSPO?
Ashburnham and Penhurst			Applies	No
Battle	Requested	Requested	Applies	Yes
Beckley			Applies	Not required
Bexhill	Applies	Applies	Applies	Support PSPO for alcohol and aggressive begging but not the sleeping in a public place.
Bodiam			Applies	Yes
Brede			Applies	Yes
Brightling			Applies	No
Burwash			Applies	
Camber	Requested		Applies	Yes
Catsfield			Applies	
Crowhurst			Applies	
Dallington			Applies	Yes
East Guldeford			Applies	
Etchingham			Applies	Yes
Ewhurst			Applies	Yes
Fairlight			Applies	Yes
Guestling			Applies	Yes
Hurst Green			Applies	
Icklesham			Applies	Yes
Iden			Applies	Yes
Mountfield			Applies	Yes
Northiam			Applies	
Peasmarsh			Applies	Yes
Pett			Applies	Yes
Playden			Applies	Yes
Rye		Applies	Applies	Yes
Rye Foreign			Applies	
Salehurst and Roberstbridge			Applies	Yes
Sedlescombe			Applies	Yes
Ticehurst			Applies	
Udimore			Applies	
Westfield			Applies	Yes
Whatlington			Applies	Yes

Battle Town Council reported there was no problem with rough sleeping and had found the original order helpful for all three behaviours (public drinking, aggressive begging, rough sleeping). They wanted rough sleeping to continue to cover Battle and all of Rother. **They would prefer public drinking and aggressive begging to cover Battle as well because, although these activities are not currently carried**

out, the Councillors feel that they could be carried out.

Battle Town Council found none of the other suggested behaviours were a problem in Battle except the misuse of litter bins, which is a problem from time to time. The Town Council agreed the order would be helpful in addressing all of the anti-social behaviours. There was potential for any of the behaviours to cause harassment in the near future and Battle Town Council would welcome their inclusion in the PSPO for that reason.

Battle Town Council were aware of incidents of dangerous cycling on the pavements of the High Street in Battle. **Councillors would welcome the extension of the PSPO to include wanton or dangerous cycling, hover boards, scooting, skating or skateboards on Battle High Street.**

Battle Town Council also asked the council to consider adding to the order these other issues:

- Motorbikes and cars exceeding the decibel limits through the town centre.
- Driving cars and riding motorbikes round and round public car parks.
- Motorbike riding on public footpaths (rights of way).
- Leaving engines running while cars are parked/waiting.
- Discarding cigarettes in the street (as cigarette ends account for the majority of litter in Battle's main streets).

Officer comments: Given the width of the pavements in Battle High Street, it would be simpler to prohibit cycling etc. Noisy motorbikes and cars (including idling) are subject to the Road Vehicles (Construction and Use) Regulations 1986 and Highway Code enforced by the police. The Council would be unable to carry out any enforcement on the highway. Anti-social behaviour in car parks can be controlled by serving community protection notices on the registered keepers of identified vehicles. Discarding cigarettes is an offence. To throw down, drop or otherwise deposit and leave litter in any place open to the air, including private land, is a criminal offence under section 87 of the Environmental Protection Act 1990 (EPA), (as amended by the Clean Neighbourhoods and Environment Act 2005). Including such a control in the PSPO would not be a great benefit.

Brede Parish Council wanted drones, swearing/shouting, amplified sound, cooking/fires and dangerous cycling to be included in the order for all public spaces throughout Rother.

Brightling Parish Council replied that the inclusion of "the flying or preparation for flying of drones in a manner that causes or likely to cause harassment, alarm or distress to any person" would be welcomed by Brightling Parish Council. No other suggestions were relevant to the locality of Brightling.

Officer comments: Anti-social behaviour related to the flying of a drone can be controlled by serving a community protection notice on the operator of the drone.

Bexhill Town Council

It was RESOLVED not to support at PSPO for wanton cycling/scooters/skating.

Camber Parish Council asked for the following addition to the order due to issues that have arisen in the village.

- Drinking in public spaces – in particular on Jubilee Green and Johnsons Field. This leads to an accumulation of beer cans littering the area and bins being filled with the empty cans.
- Use of drugs in public spaces – in particular on Jubilee Green and Johnsons Field. There is an increasing use of cannabis in these areas which are designated as children's play areas and family picnic spots.
- Whilst drinking and use of drugs in Jubilee green and Johnsons Field has been a particular problem for the Parish Council as these are areas managed by them, there is also noted similar issues on the sea wall at Broomhill.
- The peddling of wares and busking in public areas. The 'setting up shop' on the sea wall or other areas to sell items to passers-by and setting up amplification from vehicles to busk in the village.
- Urinating and defecating in public - this has become a particular issue with the large number of visitors. People are using the dunes when they are on the beach and the gardens of the residents of Camber when visitors arrive or leave the village close to where they have found a parking space. Planted areas of Johnsons Field and Jubilee Green are also used as a toilet which is concern to the Parish Council as this is unpleasant for our litter picker/handyperson.
- Street vendors who do not appear to be licensed – in particular if selling food from vans which are not in an authorised position such as one of the car parks and not displaying any certification and if parked in laybys and overhanging the highway due to leaving space for people to queue. Also setting up of barbeques on the sea wall etc. to serve passers-by with food and alcohol.

Officer comments: These examples of anti-social behaviour are already offences, under existing legislation, enforced by the police, which means including controls within the PSPO would not have a great benefit, as it would be difficult for Council officers to enforce. It would be possible to introduce street trading controls, which could be referred to the Licensing and General Purposes Committee to consider, as it is not an executive function.

Rye Town Council had no additional comments and were happy with the current order.

Parish / Town Council and Public Consultation Responses

Received from

Bexhill – 72

Battle – 4

Rye – 10

Rural – 9

Other – 1

1. Control on alcohol consumption in public – Bexhill

In the last 12 months this was

Not a problem 36%

A bit of a problem 22%

A problem 20%

Total 42% said it was a problem

Don't know 8%, Don't visit 13%

PSPO control would be helpful

Helpful – 73%

A bit helpful – 10%

A bit unhelpful – 4%

Unhelpful – 2%

Don't know – 12%

Officer recommendation: This was supported by Bexhill Town Council. There is public support and as this control was included in the last Order it should be included in the proposed Order.

1A Public consumption of alcohol in public – Battle and Camber (proposed by Battle PC and Camber PC)

Officer recommendation: There were only 9 responses from rural areas this control should not be included in the proposed Order. However, as the Parish Councils requested this control, it should also apply to Bexhill and Camber.

2. Aggressive begging in Rye and Bexhill

In the last 12 months this was

No problem – 47%

A bit of a problem – 25%

A problem – 17%

42% said it was a problem

Don't know – 8%, Don't visit – 13%

PSPO control would be helpful

Helpful – 81%

A bit helpful – 9%

A bit unhelpful – 1%

Unhelpful – 4%

Don't know – 5%

Officer recommendation: This was supported by Bexhill and Rye Town Councils. There is public support and as this control was included in the last Order it should be included in the proposed Order. Battle Town Council requested the control.

3. Sleeping in Public Space – all of Rother

In the last 12 months this was

No problem – 39%

A bit of a problem – 25%

A problem – 25%

50% said it was a problem

Don't know 7%, Don't visit 4%

PSPO control would be helpful

Helpful – 71%

A bit helpful – 7%

A bit unhelpful – 7%

Unhelpful – 11%

Don't know – 4%

Officer recommendation: This control was supported by all Parish and Town Councils except Ashburnham and Penhurst, Bexhill and Brightling. We receive many complaints about people sleeping in camper vans, particularly on Bexhill seafront. There is public support and as this control was included in the last Order it should be included in the proposed Order.

4. New controls proposed

Taking off into flight (with wings, canopies with or without a motor) and landing from flight in a manner that causes or likely to cause harassment, alarm or distress to any person.

No problem – 51%, a problem – 19%

A control would help: 59%

Officer recommendation: There is no public support for this control, therefore this control should not be included until we have sufficient evidence that this control is required.

The flying or preparation for flying of drones in a manner that causes or likely to cause harassment, alarm or distress to any person.

No problem – 46%, a problem – 32%

A control would help: 69%

Officer recommendation: There is no public support for this control, therefore this control should not be included until we have sufficient evidence that this control is required.

Swearing or shouting in a manner that causes or likely to cause harassment, alarm or distress to any person.

No problem – 23%, a problem – 68%

A control would help: 84%

Officer recommendation: Although there is public support, given the low number of responses and as this would be a new control, this control should not be included until we have sufficient evidence that this control is required. It is an existing public order offence enforced by the police.

Producing or allowing the production of amplified sound on the beach, promenade or Town centre in a manner that causes or likely to cause harassment, alarm or distress to any person.

No problem – 32%, **a problem – 57%**
A control would help: 86%

Officer recommendation: Although there is public support, given the low number of responses and as this would be a new control, this control should not be included until we have sufficient evidence that this control is required.

Cooking or having fires (including BBQs) on the beach or other public place in a manner that causes or likely to cause harassment, alarm or distress to any person during or after the fire or BBQ.

No problem – 48%, a problem – 29%
A control would help: 74%

Officer recommendation: There is no public support for this control, therefore this control should not be included until we have sufficient evidence that this control is required.

Depositing domestic waste in bags or commercial waste in a litter bin or beside a litter bin.

No problem – 20%, **a problem – 68%**
A control would help: 85%

Officer recommendation: Although there is public support, given the low number of responses and as this would be a new control, this control should not be included until we have sufficient evidence that this control is required.

Dangerous Cycling/Skateboarding, etc. on Bexhill Promenade

Not a problem – 24%
A bit of a problem – 20%
62% said there is a problem
Do not visit – 14%

A control would be
Helpful – 66%
A bit helpful – 11%
A bit unhelpful – 3%
Unhelpful – 10%
Don't know 11%

Officer recommendation: This new control was not supported by Bexhill Town Council. Although there is public support, given the low number of responses and as this would be a new control, this control should not be included until we have

sufficient evidence that this control is required.

Information about respondents

Disabled – 14%

Not – 86%

No under 18s

18-29 – 2

30-49 – 13

50-64 – 30

65-79 – 46

80+ - 4

White British – 93%

White Other – 3%

Mixed White/Asian – 1

Mixed White/Black – 1

Other – 1

Male – 46%

Female – 54%