

CABINET
24th February 2022

**PROPOSAL FOR PUBLIC SPACES PROTECTION ORDER -THE
DARTFORD BOROUGH COUNCIL PUBLIC SPACES PROTECTION
ORDER 2022– NUISANCE VEHICLES – BOROUGH OF DARTFORD**

Borough Wide.

1. Summary

- 1.1. This report sets out a proposal to implement Part 4, Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 to make a Public Spaces Protection Order (PSPO), to suppress the growing incidents of traffic offences and associated anti-social behaviour occurring principally due to nuisance vehicles across the Borough.
- 1.2. This report also proposes that the existing Public Spaces Protection Order that is in place in Town Ward remains in place.

2. RECOMMENDATIONS

- 2.1 That on being satisfied that the anti-social behaviour activities detailed in paras.3.91 and 3.92 of the report are having, or are likely to have, a detrimental effect on the quality of life of those in the locality, are persistent or continuing nature and unreasonable, the Director of Housing and Public Protection be authorised to commence the statutory consultation to enable the Council to make a Public Spaces Protection Order prohibiting anti-social behaviour associated with the gathering displaying and racing of motor vehicles as well as driving on land other than a road on terms set out in Appendix A to the report, to apply to the whole of the Council's administrative area, as identified on the Order Map, at Appendix B to the report.
- 2.2 That, should recommendation 2.1 be approved, a second report be presented to Cabinet which takes into account the outcome of the consultation process with a view to seeking authority for the Head of Legal Services to make The Dartford Borough Council Public Spaces Protection Order 2022 – Nuisance Vehicles – Borough of Dartford, for a period of three years.
- 2.3 That the Public Spaces Protection Order for Dartford Town Centre remains in place.

3. Background and Discussion

- 3.1. Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014, came into effect in October 2014, and allows local authorities to introduce Public Spaces Protection Orders (PSPOs) to tackle anti-social behaviour.
- 3.2. A PSPO is intended to deal with nuisances or problems in a particular area that are detrimental to the local community's quality of life by imposing conditions on the use of that area which apply to everyone.

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- 3.3. A PSPO is designed to ensure the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.
- 3.4. The Council can make a PSPO on any public space within its area. The definition of public space is wide and includes any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, for example a shopping centre.
- 3.5. A public place may be designated by a PSPO if the local authority is satisfied that specified behaviour is having, or is likely to have, a detrimental effect on the quality of life of those in the locality; is persistent or continuing in nature; is unreasonable and justifies the restrictions imposed.
- 3.6. Rather than the generic term 'anti-social behaviour', which is generally considered as behaviour which causes alarm and distress, or is repetitive so to cause harassment, the Act allows authorities to specify the particular behaviour to be prohibited or restricted by the PSPO.
- 3.7. In addition to prohibiting/restricting certain behaviour, the Act also allows authorities to specify certain 'required behaviours,' which must be complied with. An example of 'prohibited' and 'required' behaviours interlinking would be a PSPO to tackle dog fouling, which could prohibit owners from leaving dog waste, as well as a positive requirement that owners must carry a bag for collecting waste and present this when asked to do so by an officer.
- 3.8. The PSPO is designed to stop individuals or groups committing anti-social behaviour in a public space. It can apply at all times; or a specified time; or all times except a period specified. It can apply in all circumstances; or in specified circumstances.
- 3.9. The legislation allows for PSPOs to replace designated public place orders, dog control orders and gating orders. There are no such orders in the Borough.
- 3.10. The Community Safety Unit and the Police have, over a prolonged period been receiving reports of vehicles being used in such a manner so as to cause alarm, harassment and distress to other road users and residents whilst they are either at home or using some of the open air amenities available within the Borough. Typically, the antisocial behaviour the PSPO is aiming to reduce manifests itself in one of two ways;
 - The gathering of (predominantly) motor cars in car parks and other public places which are then driven on the Borough's arterial-road system in such a manner and at such a volume so as to cause significant alarm, harassment and distress to other road users and nearby residents. To date this has occurred predominantly in the area of "Crossways Boulevard" but there have been instances of similar behaviour in other locations, the most notable one being the Sainsbury's Car Park in Town Ward.

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- Vehicles, predominantly motorcycles that are ridden on land other than a road (such as woods, parks and other open spaces) without the land owner's permission. The vehicles used are often ridden by people under the age of 18, with the bikes not being road legal, emitting excess noise, and driven in a manner that causes alarm, harassment and distress to residents that live nearby or to people using the amenities for other lawful pursuits
- 3.11. Whilst the two issues are related in as much as they involve the anti-social use of motor vehicles, the evidence needed to illustrate the nature of the problem is different, so they will be considered separately.
4. Vehicles gathering and being used in an antisocial manner on Public Roads within the Borough.
- 4.1. This problem has been occurring over a prolonged period. To date, it has mainly (but not exclusively) taken place around the Crossways Boulevard area (Stone Castle Ward) of the Borough predominantly at the weekend, in the evening and early hours of the morning. Typically participants will gather in a nearby car park or open space, such as the ScrewFix car park at Quadrant Court, or Asda where they will display their vehicles. Some, not all, participants will proceed to conduct "driving stunts" such as wheel spinning, "doughnutting" and loud revving of engines. Such gatherings will coincide with reports from local residents about cars being driven around the dual-carriage way area of Crossways Boulevard at speeds and in a manner which suggests they are racing or conducting "time-trials". Apart from the obvious danger of such activity, this behaviour leads to excessive noise which causes significant alarm, harassment and distress to a large number of residents who are, in many cases, trying to sleep. Whilst there is little proof to show conclusively the purpose of this activity, there is ample evidence to show the adverse impact the manner of driving and noise has on the surrounding community.
- 4.2. Between November 2010 and October 2021 Kent Police recorded 576 calls from members of the Public that related to nuisance vehicles. Whilst difficult to analyse each individual call in detail, it appears that approximately 199 of those calls related to vehicles gathering and/or being used in an antisocial manner on Public Roads within the Borough.
- 4.3. The data highlights of those 199 reports 90 (45.23%) relate to the area around Crossways Boulevard. However, the data also demonstrates that it is not a problem exclusively confined to Stone Castle ward, Figure 1 shows the distribution of all 199 of the calls by Ward. It appears that residents in nearly all of the Borough's wards have reported incidents in the past 12 months. Whilst the numbers involved and the frequency elsewhere in the Borough may be less, and not normally "organised" events such as those in Stone Castle Ward, the same risk of serious injury disturbance caused by the behaviour still exists. The evidence indicates that the PSPO is therefore required to be Borough wide to protect residents from the existing levels of nuisance as well as prevent escalation caused by any displacement.

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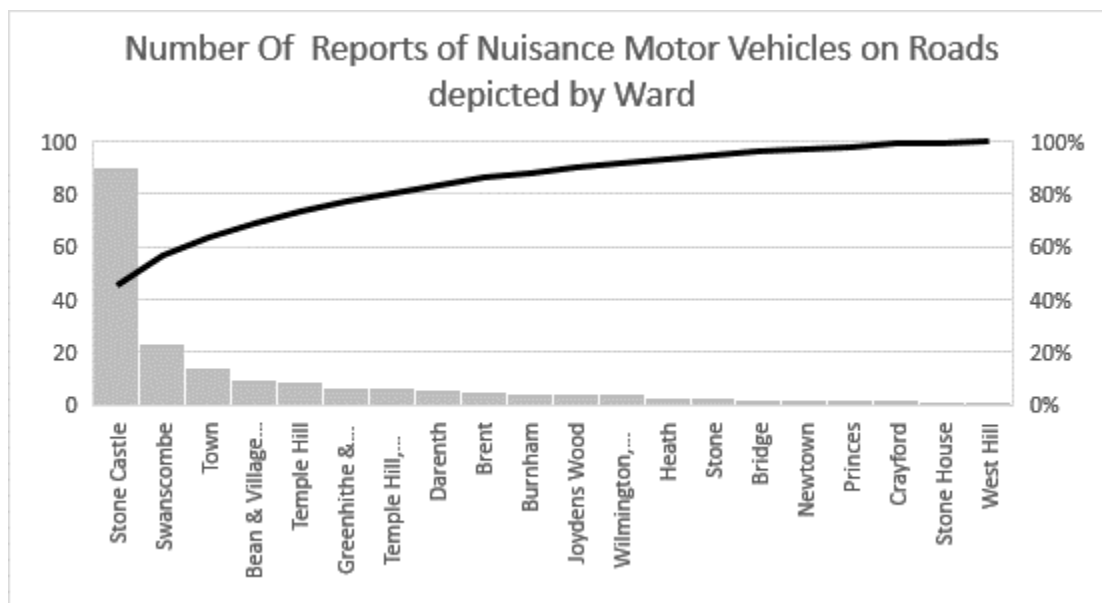


Figure 1 Graph showing the number (columns) and percentage (Line) of reports made to Kent Police of “nuisance motor vehicles” by ward

- 1.1. Whilst it is not possible to accurately predict the effect the PSPO will deliver, an indication as to its legitimacy can be drawn from the tactics that have deployed to the problem in the last 12 months. One approach has been to encourage landowners to take measures to secure their land. Experience shows however that unless landowners are constantly reminded, security regimes soon lapse. Even with better cooperation the approach is flawed as there are an abundance of suitable locations for such gatherings throughout the Borough. It should also be noted that a gathering of vehicles is not in itself unlawful, and there are a large number of car enthusiasts who wish to meet and do so without any detriment to the surrounding community. The PSPO seeks to strike a balance by placing the emphasis on the car owners who chose to gather at a location to “display” their vehicles have specific permission from the landowner to do so. If “authorised” events such occur but the anti-social behaviour of the type under consideration is present, there will be an opportunity hold the land owner through other legislation. Without this approach, “legitimate” events such as the Steam Rally within Central Park could be interpreted as breaching the PSPO.
- 1.2. Additionally the use of the Section 34 Anti-Social Behaviour, Crime and Policing Act 2014 power gives some indication how effective the PSPO might be, particularly in preventing gatherings of the type which normally attract community concern. This legislation enables Police Officers to exclude a person from an area for 48 hours with an Inspector's authority. Kent Police have invoked these orders over the past year when information has come to light of a planned “meet”. They use social media to advertise the Order is in place with the intention of preventing the “meeting” taking place. In total, 5 Section 34 Orders have been issued during 2021 that specifically covered Nuisance Vehicles at Crossways Boulevard, Quadrant Court and Bluewater. There was a total of just 1 report of a nuisance vehicle across all the periods the Orders were in place.

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- 1.3. Unfortunately however there are limitations to the use of this legislation, one being that there needs to be specific intelligence and justification that the Order is needed, the other is that they can only be authorised for a maximum of 48 hours, which is insufficient time to cover the critical times of Friday evening into the early hours of Monday morning.
- 1.4. Town Ward currently has a PSPO in place which also prohibits the anti-social use of vehicles and gatherings of the type being seen elsewhere in the Borough. This was used to good effect in January 2020, to stop such gatherings taking place in Sainsbury's car park. The proposed PSPO, whilst overlapping some of the prohibitions of the one currently in Town Ward, does not create any ambiguity and the two easily sit alongside each other without the need for any variation.

2. Off Road Motor Cycle Nuisance

- 2.1. The second nuisance it is proposed the PSPO will seek to reduce is that which involves the use of "off road" motor cycles when they used on land other than a road (such as woods, parks and other open spaces) without the land owner's permission.
- 2.2. Again, whilst difficult to accurately interrogate the data there were 239 reports of this type of Anti-Social Behaviour across the Borough between November 2010 and October 2021.
- 2.3. The distribution of the location of the reports is included in Figure 2. It highlights that whilst, as one would expect given the need for a specific type of environment, there are geographic hotspots, there have been incidents reported from most Wards within the Borough.

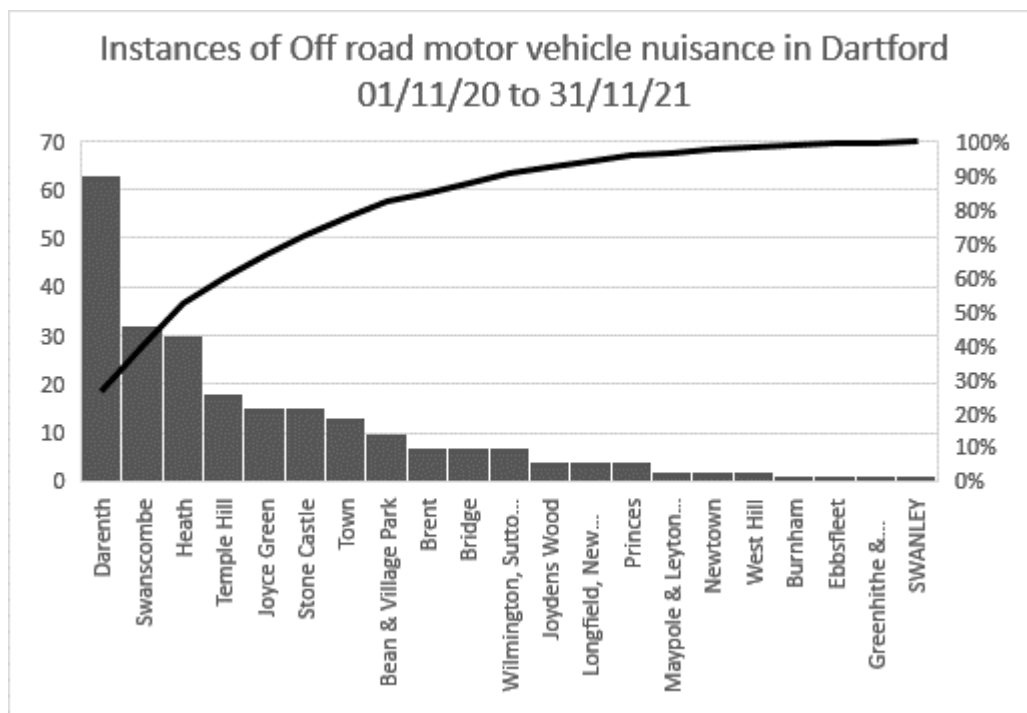


Figure 2 Graph showing the number (columns) and percentage (Line) of reports made to Kent Police of "nuisance of f road vehicles" by ward.

- 1.1. Unlike the previous example, the Police have legislation available to

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them that is well suited to tackling the problem, Section 59 (1) of the Police Reform Act 2002 establishes that *“where a police constable in uniform has reasonable grounds for believing that a motor vehicle is being used on any occasion in a manner which contravenes section 3 or section 34 of the Road Traffic Act 1988 (careless and inconsiderate driving and prohibition of off-road driving) and is causing, or is likely to cause alarm, distress or annoyance to members of the public, a constable in uniform has the power to order the person driving to stop the vehicle, to seize and remove the vehicle, to enter any premises (other than a dwelling) on/in which the officer has reasonable grounds for believing the motor vehicle to be and to use reasonable force where necessary, in order to do so. A Police Community Support Officer has the same powers as a constable, EXCEPT that they can only enter premises when in the company, and under the supervision of, a constable”*. Whilst there are caveats to the application of this statute it is questionable how much value a PSPO which targets this behaviour is likely to add to the current legislation. The main challenge to effective enforcement has always been the ability to safely stop and identify offending vehicles and riders; a challenge which the PSPO will not diminish. In addition the majority of those engaged in this activity are under the age of 18 which is the usual threshold for the Dartford Borough Council to pursue prosecution

- 1.2. However a number of reports have been made that describe adults transporting off road bikes in vans to locations across the Borough in order to facilitate the bike's use (normally by a young person) in circumstances as outlined above. Such practice is not in itself unlawful, and the police have no powers to deal with this, but it does reflect the organised and systemic elements of some of the problem.
- 1.3. It is therefore proposed that the PSPO includes a clause specifically aimed at prohibiting this practice with a view to reducing the anti-social behaviour that is being committed as a result of the bikes being ridden off-road.

2. Next Steps.

- 2.1. The Council is required to consult with the owners or occupiers of land within the restricted area to the extent that it is reasonably practicable to do. The Authority is also required to consult with the Police, the Police and Crime Commissioner and other relevant bodies prior to making the PSPO. Police consultation should be carried out through the Chief Officer for the force responsible for the area, although details could be agreed by working-level leads. This is an opportunity for the Police and Council to share information about the area and the problems being caused as well as discuss the practicalities of enforcement. Kent County Council as highway authority will also need to be consulted. Parish that are in the proposed area covered by the PSPO must be notified.

- 2.2. The Council must also consult with whatever community

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representatives it deems appropriate. This could be a group such as a residents association, or a group of individuals such as users of a park. Before the PSPO is made, the Council must also publish the draft PSPO in accordance with the legislation.

- 2.3. Consultation will be carried out in accordance with the Council's Consultation and Engagement Strategy Toolkit. The feedback received from the Consultation will be collated by the Community Safety Unit and will inform the final recommendations to Cabinet regarding the conditions and implementation of the PSPO. The draft consultation questionnaire is to be found at Appendix C. If the recommendations in this report are approved, the questionnaire will be professionally formatted and made available online.
- 2.4. A PSPO can be appealed in the High Court by anyone who lives in, regularly works in, or visits the area the PSPO affects. This appeal must take place within six weeks of the PSPO being made. The grounds for such a challenge are constrained by the legislation.
- 2.5. Enforcement of the PSPO will normally be carried out by Police Officers, Police Community Support Officers (PCSOs) and [Council] Officers under delegated authority. Kingdom LA Support are currently authorised to enforce any PSPO operated by Dartford Borough Council. They will use discretion in the exercise of this power. A Police Officer, PCSO, or other authorised officer may issue a penalty notice for breaching the PSPO, or prosecute in the Magistrates' Court. If convicted, a fine of up to £100 may be imposed. This nature of this PSPO means that some of its elements of its enforcement can only fall to the Police Officers, as it will involve operating on fast road networks, with moving motor vehicles which requires specialist skills and powers that neither Council Officers nor PCSOs have.
- 2.6. Regulations set out requirements regarding the publication of a PSPO. They stipulate that the PSPO must be published on the local authority's website; erected on or adjacent to the place the Order relates to and be sufficient to draw attention. Notices should set out the effect of the Order and whether it has been made, varied or extended. Providing signage which meets this criteria and covers the whole Borough will be challenging in terms of both location and cost. There is however potential to offset the initial outlay through the revenue generated by fines collected during the lifetime of the PSPO.
- 2.7. Despite the significant challenge of implementing such a scheme, the level of community upset demonstrated within the data compels the CSU to recommend the making of a Public Spaces Protection Order, which will prohibit a range of behaviours evidenced over the past 12 months within the Borough. The aim will be to exert greater control on anti-social behaviour that is related to certain vehicle gatherings, manner of driving and riding on land other than roads, in circumstances which are both unnecessary and damaging to the quality of life of many residents.
- 2.8. The behaviours that will be prohibited/restricted are detailed in draft

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PSPO at Appendix A to the report. The area of land affected by the proposed PSPO is shown on the Order Map at Appendix B to the report.

3. Relationship to the Corporate Plan

The proposal supports the Corporate Plan by contributing to the creation of an environment that makes Dartford the place of quality and choice, a place where people choose to live, work and enjoy their leisure time.

Safer Communities: To create a safer Borough in which to live, work and socialise.

SC1: To use the Council's statutory functions to ensure public safety in the Borough.

SC2: To reduce anti-social behaviour

SC3: To increase public perception of the borough as a safe place

4. Financial, legal, staffing and other implications and risk assessments*

Financial Implications	<p>The setup costs related to signage and printing of this initiative will be approximately £5,000. A virement has been identified which can fund this from an expected increase in income elsewhere in the department. If this is not sufficient use of reserves has been authorised for these one off costs.</p> <p>Additionally, it is expected that the initial outlay will be recovered over the life of the PSPO, through the issuing of Fixed Penalty Notices.</p>
<p>Legal Implications</p> <p>Equality Duty</p> <p>Crime & Disorder</p>	<p>In establishing which restrictions or requirements should be included, the Council have ensured that the measures are necessary to prevent the detrimental effect on those in the locality or reduce the likelihood of the detrimental effect continuing, occurring or recurring.</p> <p>There are no Equality Implications as the conditions do not disadvantage any person or group or people.</p> <p>The duty placed on the Council to consider crime and disorder is one of the main factors in considering both the consultation and making of a PSPO.</p>
Staffing Implications	<p>There are no extra resources currently been proposed to either enforce or administer the PSPO.</p>
Administrative Implications	<p>Requirement for officers to receive the relevant training in relation to issuing the Fixed Penalty Notices and also refresher training on PSPOs as</p>

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	this is a new area of work for both the Council and the Police in Dartford.
Risk Assessment	<p>There is a need to balance the rights of the residents with those of car owners who legitimately want to display their vehicles in circumstances that do not cause disproportionate nuisance. The PSPO mitigates this risk by providing an exemption of obtaining the land owners permission prior to any event taking place. Should any such event create activity that is deemed anti-social, there will be recourse through the land owner.</p> <p>Working with vehicles travelling at high speed on public roads presents a high risk to the Council and Kingdom LA Support Officers as they are neither trained or have sufficient legal powers to work in such an environment. There will therefore be some elements of the PSPO that can only be enforced by the Police.</p>

6. Details of Exempt Information Category

Not applicable

7. Appendices

Appendix A – [Proposed]-The Dartford Borough Council Public Spaces Protection Order 2022– Nuisance Vehicles – Borough of Dartford

Appendix B – Order Map

Appendix C – Proposed Consultation Questions

BACKGROUND PAPERS

<u>Documents consulted</u>	<u>Date / File Ref</u>	<u>Report Author</u>	<u>Section and Directorate</u>	<u>Exempt Information Category</u>
Anti-Social Behaviour Crime and Policing Act 2014		Tony Henley (01322) 343502	Community Safety Manager Enforcement & Regulatory Services (EAR's) Housing and Public Protection	N/A