

REPORT TITLE	Public Spaces Protection Orders in New Brighton and West Kirby
REPORT OF	Director of Neighbourhood Services

Councillor Tom Usher said:

Cllr Tom Usher, Cabinet Member for Children, Families and Education, said: “We are taking action to ensure all of our residents can access and enjoy safe, clean and pleasant green spaces.

Most people treat their green and open spaces with the respect they deserve. We want to protect green spaces on behalf of these residents. What we need are powers to protect these spaces against the minority who cause the problems that are a detriment to the quality of life of people who visit and live there.

Public Space Protection Orders give us, the police and other agencies responsible for community safety these powers. That way, we are able to protect local communities and ensure that these popular spots can be enjoyed by everyone.”

REPORT SUMMARY

This report recommends the implementation of 2 Public Spaces Protection Orders (PSPOs), one in New Brighton and the other in West Kirby. The recommendation follows a period of increased anti-social behaviour in these areas following the COVID-19 health emergency.

The report is in furtherance of the Council 2020 pledge for Wirral to have an attractive and sustainable environment, where good health and an excellent quality of life is enjoyed by everyone who lives here.

This matter affects the New Brighton, Wallasey, Hoylake and Meols and the West Kirby and Thurstaston wards within the Borough.

The decision is a key decision.

RECOMMENDATION/S

It is recommended that the Cabinet Member gives approval to the implementation, for a period of 2 years, of:

- a) a Public Spaces Protection Order in the New Brighton area; and
- b) a Public Spaces Protection Order in the West Kirby area

as set out in Appendix 1 of this report.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 There are 2 proposed PSPOs in the areas of New Brighton and West Kirby and they are specifically tailored to the behaviours which are having a detrimental effect on the local communities. The proposals are as a direct response to the increased reports of anti-social behaviour to Wirral Council and Merseyside Police.
- 1.2 Both areas often experience high levels of anti-social behaviour during the summer months but since the COVID-19 outbreak and lockdown measures both areas have attracted a significant increase in the amount of people visiting the areas which in turn has ended in increased anti-social behaviour and/or violence.
- 1.3 The evidence obtained has recorded large gatherings, intimidation, alcohol misuse, littering, urination, and defecation, use of nitrous oxide and alcohol related disorder including criminal damage and violence offences. This anti-social behaviour is causing a nuisance, annoyance, and distress to members of the public who visit and live in the area. The behaviour described has attracted a large social media coverage which has suggested that there is a lack of a suitable enforcement agency to deal with the matters contained within the proposed Orders.
- 1.4 Witness statements have been taken from various members of the public, the Council's Anti-Social Behaviour Team and Merseyside Police relating to both areas. This has provided the evidence base to individually tailor an Order specific to the behaviour identified and to support the implementation of a PSPO.
- 1.5 Human Rights Assessment and Equality Impact Assessments have been undertaken. No significant issues have been identified. Having regard to the restriction on movement it is proposed that the period of the orders should be limited to 2 years. This is regarded as being the minimum required to bring about a change in the habits of those engaging in the behaviour being restricted.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 Currently there are no permanent orders or restrictions in place to address this anti-social behaviour. Merseyside Police have implemented several Dispersal Zones in the area over the past number of months, however, complaints to the Police have not fallen despite Dispersal notices being issued.
- 2.2 The proposed Orders would provide a more permanent solution than ad hoc Dispersal Orders. The proposed Orders would be enforceable by Council officers and Police Officers within Merseyside Police.
- 2.3 In relation to littering, the areas affected have been supplied with additional bins for the disposal of litter, but this has not resulted in a reduction in the number of issues reported in relation to littering.

3.0 BACKGROUND INFORMATION

- 3.1 754 consultation responses were collected regarding the proposed PSPOs. 345 were non location specific. 333 related to the West Kirby PSPO. 46 related to the New Brighton PSPO. 97% of overall responses were positive. 98% were positive for West Kirby and 91% were positive for New Brighton. Paragraphs 3.2 to 3.9 of this report set out further detail of the responses arising from the consultation process.
- 3.2 In relation to the issue of congregating, in relation to both locations, most responses were positive. 27 consultees wanted the timescale to be extended and/or imposed earlier. Most consultees were positive about group size. 7 consultees said that the group sizes should be bigger before being enforced.
- 3.3 In relation to intoxicating substances there were no negative responses on the provisions. There were 34 direct consultees advocating the provisions on legal highs/gas/nitrous oxide.
- 3.4 There were over 200 references made specifically to litters/waste/rubbish. Further enforcement was requested.
- 3.5 Alcohol consumption was high on the agenda for comment with over 100 references to underage drinking and or alcohol /drinking in general.
- 3.6 In relation to the Dips there were 20 references specifically regarding urination and defecation. There were 40 comments regarding toilets with a number of respondents requesting additional facilities
- 3.7 There were 15 references to unauthorised vehicles in relation to the Dips, with an additional 25 comments regarding camper vans and motorhomes.
- 3.8 There were 65 references to displacement concerns. 217 consultees asked for Ashton Park to be included in the West Kirby PSPO, whilst 15 consultees asked for Harrison Park/Drive to be included in the New Brighton PSPO. There were 115 references to enforcement patrols or presence with questions asked about how the orders would be enforced.
- 3.9 10 responses (mainly opposing the orders) referenced the need for education engagement, youth support and youth services.

4.0 FINANCIAL IMPLICATIONS

- 4.1 If the Orders are implemented there is a statutory duty to ensure that there is sufficient signage erected in the affected areas so as to bring the existence of the Orders to the attention of the members of the public using the land.
- 4.2 The expected costs of such signage are expected to be relatively minor and the cost is likely to be recovered by the payment of any Fixed Penalty Notices that are issued should the Orders be breached.

5.0 LEGAL IMPLICATIONS

- 5.1 The Anti-Social Behaviour, Crime and Policing Act 2014 (the Act) is designed to put victims first and streamlined the enforcement powers available to Councils and the Police. Sections 59 to 75 of the Act set out provision for Councils to make Public Spaces Protection Orders (PSPOs). The Council can make a PSPO on any public space within its own 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.
- 5.2 PSPOs are intended to deal with a particular nuisance or problem in a specific 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 or by specified classes of person. They are intended to help ensure that the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour. It is important that the restrictions imposed are focused on specific behaviours and are proportionate to the detrimental effect that the behaviour is causing or can cause, and are necessary to prevent it from continuing, occurring or recurring.
- 5.3 The making of a PSPO is a discretionary power available to the Council. The Council may make a public spaces protection order if satisfied on reasonable grounds that two conditions are met.
- 5.4 The first condition is that—
- (a) activities carried on 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 on in a public place within that area and that they will have such an effect.
- 5.5 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 restrictions imposed by the notice.
- 5.6 A public space protection order is an order that identifies the public place referred to in the restricted area and—
- (a) prohibits specified things being done in the restricted area,
 - (b) requires specified things to be done by persons carrying on specified activities in that area, or
 - (c) does both of those things.

5.7 Breach of a PSPO is a criminal offence. The penalty upon conviction is a fine of up to £1000. Enforcement officers can issue a fixed penalty notice of up to £100 if appropriate.

5.8 Anyone who lives in, or regularly works in or visits the area can appeal a PSPO in the High Court within six weeks of issue. A further right of appeal is available each time the PSPO is varied by the Council.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

6.1 A PSPO can be enforced by an authorised officer of the Council, a Police Constable or an authorised Police Community Support and Traffic Officer. Legal Services will provide support where formal Court enforcement is considered necessary and in providing training to authorised officers.

7.0 RELEVANT RISKS

7.1 If the Council does not take action to address the increasing issues of anti-social behaviour affecting these areas there may be a detrimental impact upon the local economy and the quality of life for those who live nearby.

8.0 ENGAGEMENT/CONSULTATION

8.1 The proposed PSPOs have been out to public consultation for a period of 2 weeks. The guiding principles for a fair consultation can be summarised as follows:

- It should be at a time when proposals are at a formative stage;
- It must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response;
- Those consulted should be made aware of the factors that are of decisive relevance to the decision;
- Adequate time should be given for consideration and response;
- The product of the consultation should be conscientiously taken into account by the decision makers in finalising their statutory proposals when the ultimate decision is taken.

8.2 The consultation received 724 responses overall with an overwhelming 97% of responses being positive and in favor of the implementation of the proposed Orders as set out in Appendix 2 of this report.

8.3 The proposed Orders have been reported to Group Leaders on a regular basis and has been shared with Councillor Usher, Cabinet Member Portfolio Holder for Children, Families and Education, who is also supportive.

8.4 The proposed Orders have been discussed with partner agencies within the weekly Police Operations meeting and the monthly ASB Governance meeting. The proposals outlined have been considered with those partners, taking into account factors such as risks, gaps in service, priorities, implementation timescales and capacity to enforce the Orders.

8.5 Compared to the draft that was consulted upon there is a minor amendment in terms of effect that has been made to the proposed orders in that the specified classes of person identified as exceptions in the prohibitions relating to congregating in the areas between 10.30pm and 4am have been removed. This change was considered necessary as a result of the imperative to ensure that the order is clear and enforceable. Other minor changes have been made to the wording of the proposed Orders, but these changes have not changed the effect of the proposal.

9.0 EQUALITY IMPLICATIONS

9.1 The Council must have regard to the elimination of unlawful discrimination and harassment and the promotion of equality under the Equality Act 2010. There are no significant equality and diversity implications arising from this report

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 There are no environment and climate changes issues arising from the recommendations within this report save that there should be an improvement in the quality of the environment given that one of the prohibitions contained within the proposed orders relate to littering.

10.2 The recommendations contained within this report are expected to have no impact on emissions of greenhouse gases

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APPENDICES

Appendix 1 - Draft Public Spaces Protection Orders

Appendix 2 - Summary of Consultation Responses

BACKGROUND PAPERS

1. Consultation papers published 27 July 2020
2. Consultation responses
3. Witness Evidence of Anti-Social Behaviour
4. Human Rights Impact Assessment
5. Equalities Impact Assessment

SUBJECT HISTORY (last 3 years)

Council Meeting	NA
Committee	NA

Appendix 1



WIRRAL BOROUGH COUNCIL PUBLIC SPACES PROTECTION ORDER (WEST KIRBY BEACH/CALDY BEACH AND CUBBINS GREEN - 003) 2020

1. This Order is made on (date) by Wirral Borough Council under Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 and takes effect from that date for a period of 2 years.
2. This Order applies to the areas known as West Kirby Beach/Caldy Beach and the grassed area Cubbins Green outlined below referred to as the Restricted Area.
3. The following conduct is prohibited within the Restricted Area being all land within the boundary of these areas which are outlined in red on the map below:

- **CONGREGATING**

Being part of a congregation consisting of 4 or more persons between the hours of 10:30pm and 04:00am within the Restricted Area without the written authorisation of Wirral Council.

Any person or group instructed by an authorised officer to leave the Restricted Area, must leave without delay, by the shortest route and not return to the restricted area for a period of 24 hours.

- **INTOXICATING & PSYCHOACTIVE SUBSTANCES.**

Drinking, inhaling, injecting, or otherwise using or being in possession of any intoxicating substances or "legal highs" or drug paraphernalia including nitrous oxide canisters within the Restricted Area. This includes substances with the capacity to stimulate or depress the central nervous system.

Where a Police Officer or a person duly authorised by the Council reasonably believes that a person has been consuming any intoxicating substances or nitrous oxide, or that a person intends to consume any intoxicating substances or nitrous oxide in circumstances in which doing so would be a breach of that prohibition, the Police Officer or authorised person may require that person:

- (a) Not to consume, in breach of the prohibition, any intoxicating substance or "legal high" including nitrous oxide or anything which the Police Officer or authorised person reasonably believes to be an intoxicating substance or "legal high" including nitrous oxide.
- (b) To surrender anything in that person's possession which is, or which the Police Officer or authorised person reasonably believes to be an intoxicating substance or "legal high" including nitrous oxide and their containers/cannisters.

- (c) A Police Officer or authorised person may dispose of anything surrendered to him or her as a result of a requirement imposed by him or her in whatever way he or she thinks appropriate.
- (d) A Police Officer or an authorised person who imposes such a requirement must tell the person that failing without reasonable excuse to comply with the requirement is an offence.
- (e) A requirement imposed by an authorised person is not valid if the authorised person is asked to show evidence of his or her authorisation but fails to do so.

- **LITTER AND WASTE DISPOSAL.**

Throwing down, dropping or otherwise depositing or disposing of any litter or waste in any part of the Restricted Area other than in a bin or other container provided for the storage of litter or waste.

- **ALCOHOL CONSUMPTION**

Refusing to stop drinking or refusing to surrender any containers (sealed or unsealed) which are believed to contain alcohol, when required to do so by an authorised officer in the Restricted area.

Where a Police Officer or a person duly authorised by the Council reasonably believes that a person has been consuming alcohol, or that a person intends to consume alcohol in circumstances in which doing so would be a breach of that prohibition, the Police Officer or authorised person may, under section 63 (2) of the 2014 Act, require that person:

- (1) Not to consume, in breach of the prohibition, alcohol or anything which the Police Officer or authorised person reasonably believes to be alcohol.
- (2) To surrender anything in that persons possession which is, or which the Police Officer or authorised person reasonably believes to be, alcohol or a container for alcohol.
- (3) A Police Officer or authorised person may dispose of anything surrendered to him or her as a result of a requirement imposed by him or her in whatever way he or she thinks appropriate.
- (4) A Police Officer or an authorised person who imposes such a requirement must tell the person that failing without reasonable excuse to comply with the requirement is an offence.
- (5) A requirement imposed by an authorised person is not valid if the authorised person is asked to show evidence of his or her authorisation but fails to do so.



Exclusion Zone
West Kirby Beach
Wirral

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Scale:
 1:14000

Date:
 14.07.2020



APPEALS

Any challenge to this order must be made in the High Court by an interested person within six weeks of it being made. An interested person is someone who visits the restricted area. This means that only those who are directly affected by the restrictions have the right to challenge. The right to challenge also exists where an order is varied by the Council.

Interested persons can challenge the validity of this order on two grounds; 1) that the Council did not have the power to make the order or to include particular prohibitions or requirements or that 2) one of the requirements of the legislation has not been complied with.

When an application is made the High Court can decide to suspend the operation of the order pending the Court's decision, in part or totality. The High Court has the ability to uphold the order, quash it, or vary it.

Dated:

**THE COMMON SEAL OF
WIRRAL BOROUGH COUNCIL
was hereunto affixed in the presence of**

.....
HEAD OF LEGAL AND MEMBER SERVICES



**WIRRAL BOROUGH COUNCIL
PUBLIC SPACES PROTECTION ORDER (NEW BRIGHTON DIPS - 004) 2020**

1. This Order is made on (date) by Wirral Borough Council under Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 and takes effect from that date for a period of 2 years
2. This Order applies to the area known as New Brighton Dips outlined below referred to as the Restricted Area.
3. The following conduct is prohibited within the Restricted Area being all land within the boundary of the area which is outlined in red on the map below:

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Being part of a congregation consisting of 4 or more persons between the hours of 10:30pm and 04:00am within the Restricted Area without the written authorisation of Wirral Council.

Any person or group instructed by an authorised officer to leave the Restricted Area, must leave without delay, by the shortest route and not return to the restricted area for a period of 24 hours.

- **URINATING OR DEFECATING**

Urinating or defecating or emptying any portable toilet cassette within the Restricted Area except in a toilet, premises or any part of a premises designated for that purpose.

- **UNAUTHORISED VEHICLES ON THE GRASSED AREAS OF THE DIPS (AS PER RESTRICTED AREA).**

Driving, riding or being in any motor vehicle (including any motor car, motor cycle, moped and scooter but excluding disability buggies or motorised wheelchairs) onto or on any of the grassed areas within the Restricted Area without the written authority of Wirral council.

- **INTOXICATING & PSYCHOACTIVE SUBSTANCES.**

Drinking, inhaling, injecting, or otherwise using or being in possession of any intoxicating substances or "legal highs" or drug paraphernalia including nitrous oxide canisters within the Restricted Area. This includes substances with the capacity to stimulate or depress the central nervous system.

Where a Police Officer or a person duly authorised by the Council reasonably believes that a person has been consuming any intoxicating substances or nitrous oxide, or that a person intends to consume any intoxicating substances or nitrous

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- (a) Not to consume, in breach of the prohibition, any intoxicating substance or “legal high” including nitrous oxide or anything which the Police Officer or authorised person reasonably believes to be an intoxicating substance or “legal high” including nitrous oxide.
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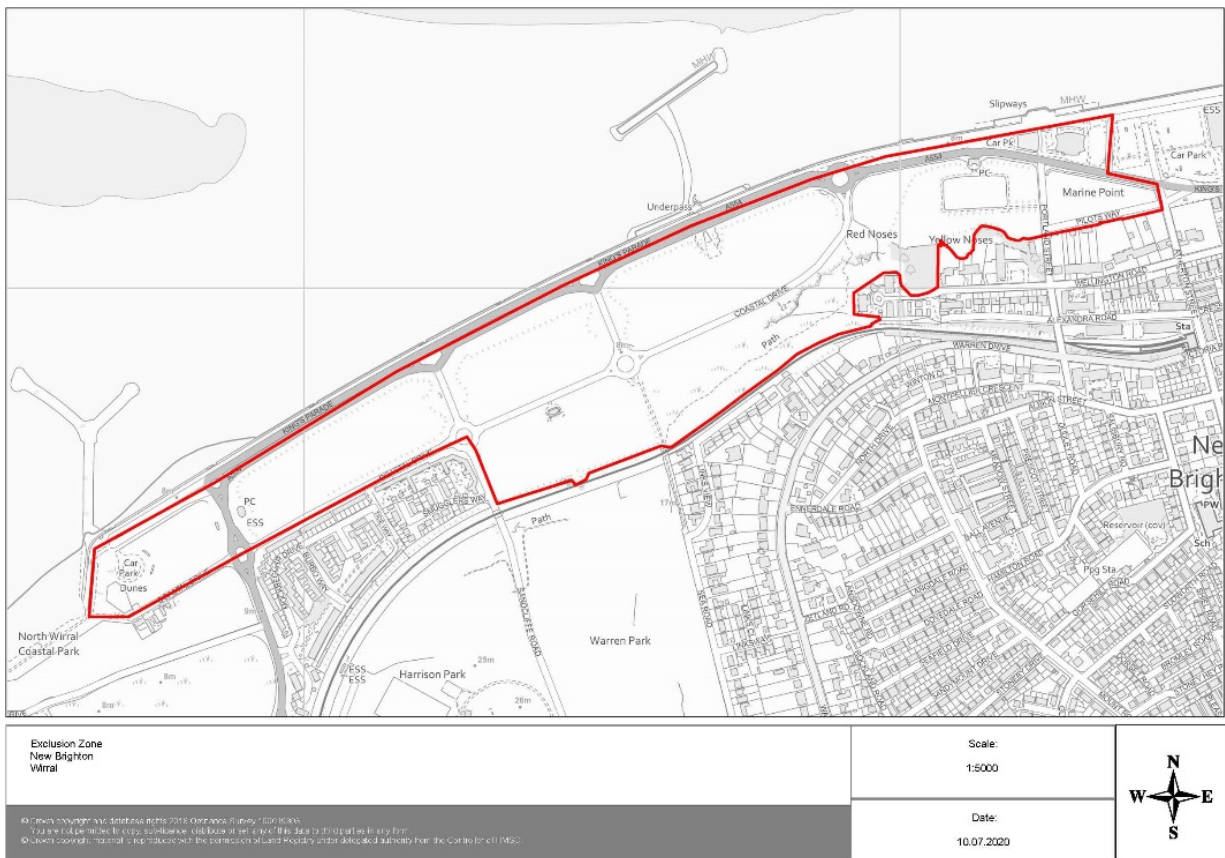
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Dated:

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.....
HEAD OF LEGAL AND MEMBER SERVICES

Appendix 2

PSPO: West Kirby and New Brighton

724 Responses were collected regarding the PSPOs
345 Responses were non location specific
333 Responses for West Kirby
46 Responses for New Brighton

97% of Responses of overall responses were positive
98% positive in West Kirby
91% positive in New Brighton

