

**Report to CABINET**

# **Proposed Public Spaces Protection Order - Moorland and Public Open Spaces in Saddleworth**

**Portfolio Holder:**

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## **Reason for Decision**

Following a significant amount of fires upon the moorlands in Saddleworth and Tameside over the last two years, both Councils have undertaken statutory consultation exercises as the first stage of the legal process to consider of the making of Public Spaces Protection Orders (PSPO) pursuant to s59 of the Anti-Social Behaviour Crime and Policing Act 2014.

Such Orders will enable the introduction of behaviour controls upon the moorlands (FIRE RELATED ACTIVITIES) and prevent the significant impact of wildfires upon the community and services. Under the legislation each local authority must make its own PSPO, however should the Orders be made, it is intended that they will come into force on the same date and contain identical terms to avoid confusion along the contiguous geographical border.

The Cabinet is asked to approve the making of the Public Spaces Protection Order relevant to Oldham pursuant to s59 of the Anti-Social Behaviour Crime and Policing Act 2014.

## **Executive Summary**

The Anti-Social Behaviour Crime and Policing Act 2014 gives local authorities the power to make Public Spaces Protection Orders (PSPOs) to control behaviours on land to which the public have access, which have caused or may cause a detrimental effect on the quality of life of those in the locality and are likely to be on a continuing or persistent nature and are therefore unreasonable.

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In the last two years there have been a significant number of wildfires reported and responded to on moorland across Oldham and Tameside.

Between June 2018 and May 2019 Greater Manchester Police received 27 reports of moorland fires across various areas on Saddleworth Moor in Oldham. Some of the reports related to fires which were already being attended to by the emergency services and military personnel, but which had spread, or fires which had previously been extinguished but had re-ignited. During the same period 10 reports were made to police of people having barbecues on the moorland.

The fires have caused major loss to the land, the death of wildlife and damage to property. Without any further fires occurring, it is estimated that the land will take at least five years to recover and approximately ten years for the wildlife to return.

Oldham Council and Tameside Council are working together with the Greater Manchester Fire and Rescue Service, Greater Manchester Police and United Utilities, who own a significant portion of the moorland, to develop a response which would prevent and disrupt high risk activities, including lighting of fires, possession and use of barbecues, fireworks, Chinese lanterns and other open flame heat sources upon the moorland.

The potential implementation of Public Spaces Protection Orders, which are enforceable by means of fixed penalty notices or prosecution, has been identified as the most appropriate course of action to respond to the issues and reduce the likelihood of further moorland fires.

Under the provisions of the legislation, prior to the making of a PSPO, a statutory consultation exercise must be undertaken. The consultation exercise ended on the 5<sup>th</sup> August 2019.

Should the Orders be made both Orders will be identical in order to avoid confusion along the contiguous land border.

## **Recommendations**

To approve the making of the Public Spaces Protection Order pursuant to s59 of the Anti-Social Behaviour Crime and Policing Act 2014.

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**Proposed Public Spaces Protection Order – Moorland and Public Open Spaces in Saddleworth****1 Background**

- 1.1 On 24 June 2018, a fire broke out on Saddleworth Moor. Within 2 days, the fire covered an area of approximately 2000 acres & a major incident was declared. The fire continued to grow and became the most disruptive & widespread moorland fire in living memory. The fire eventually destroyed approximately 4500 acres of moorland, resulted in approximately 150 residents being evacuated from their homes in Carrbrook, Tameside.
  - 1.2 Firefighters from 15 Fire & Rescue Services, together with over 100 army personnel from the Royal Regiment of Scotland, and many other partner agencies were involved in fighting the fire.
  - 1.3 The fire resulted in destruction of wildlife, farm animals and vegetation over a large area. The air quality across the entire North West of England was impacted upon due to the smoke caused by the fire. Colleagues from Tameside have advised that at its height, smoke from the fire was visible from space and could clearly be seen to affect the area between Saddleworth Moor, Wirral and Morecambe Bay.
  - 1.4 Moorland fires are not uncommon. The 2018 fire was exceptional in its size and impact on local communities, but wildfires on moorland areas occur every year, and each fire runs the risk of developing into a disruptive and damaging incident which, like the 2018 fire, could cost many millions of pounds to deal with. It is often difficult to identify the causes of such fires – by the nature of these incidents, vital evidence is often destroyed. Arson can never be ruled out, but alongside blatant deliberate acts, there is strong evidence to suggest that many moorland wildfires are caused by careless and/or inconsiderate behaviour, such as the lighting of camp fires and bonfires, the use of charcoal and disposable barbecues, fireworks and “Chinese lanterns”.
  - 1.5 Between June 2018 and May 2019 Greater Manchester Police received 27 reports of moorland fires across various areas on Saddleworth Moor in Oldham. Some of the reports related to fires which were already being attended to by the emergency services and military personnel, but which had spread, or fires which had previously been extinguished but had re-ignited. During the same period 10 reports were made to police of people having barbecues on the moorland.
  - 1.6 There have already been a number of significant wildfires across the GM conurbation this year which has resulted in the destruction of land, loss of wildlife, damage to property and displacement of communities through emergency evacuations. A document detailing the analysis of moorland wildfires in Oldham is appended to this report (Appendix A)
  - 1.7 The recovery phase for moorland fires is for a period of no less than 5 years. A recent estimate for the full recovery of wildlife has been given as 10 years. In addition to the impact of such fires on land and local communities, there is significant concern relating to the demand which further fires will place upon services. It is also recognized that in the event of further fires demand is likely to be placed on neighbouring authorities as part of mutual aid arrangements. This by its very nature reduces the resources available locally to respond to need.
  - 1.8 The Anti-Social Behaviour, Crime & Policing Act 2014 introduced a number of measures which are available to the police & local authorities in dealing with a wide range of matters which have a negative impact on local communities. One of the options available to local authorities is the introduction of Public Spaces Protection Orders (PSPOs) which can be
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used to prohibit certain activities within a 'Restricted Area' which have had a detrimental effect on the quality of life of those in the locality.

- 1.9 Oldham Council is working in partnership with Tameside Council and United Utilities, which is a major landowner of some of the moorland area, to develop a response which will reduce the likelihood of further fires.
- 1.10 In addition, Oldham Council is also working with Pennine Prospects, including South Pennine Moorwatch and South Pennine Fire Operation Group. The Peak District Authority was included within the statutory consultation exercise as an adjacent landowner.
- 1.11 Tameside Council have undertaken their own statutory consultation exercise, and should it be determined that a Public Spaces Protection order is appropriate, then both Oldham Council and Tameside Council intend to make identical Orders. This will reduce the possibility of confusion of the terms of any Orders along the contiguous land border.
- 1.12 The fires have a devastating impact upon communities, including businesses and we are committed to working with our communities and partners to keep people and property safe from harm. The implementation of the Public Spaces Protection Order would support the Council's values, behaviours and corporate priorities.
- 1.13 There is a statutory requirement to publish the details of any Public Spaces Protection Order. Should the order be made then signage will be placed at access points to the moorland. A maximum budget of £10,000.00 has been allocated for the signage to be produced. United Utilities have confirmed that they will contribute towards the cost of the signage.
- 1.14 The local authority may issue a Fixed Penalty Notice for breach of a Public Spaces Protection Order as an alternative to prosecution. The local authority has the discretion to set the Fixed Penalty Fine value to the maximum allowed within the legislative framework. The maximum value currently allowed is £100.00.

## **2 Current Position**

- 2.1 At the current time there are no formal behavior controls in place upon the moorlands. A communications plan has been developed and is being implemented through the corporate communications team. The plan includes the dissemination of key messages on fire prevention in order to informally dissuade individuals from engaging in behaviours which may increase the risk of wildfires occurring. The District Team and volunteer networks are also sharing the key messages around the access points to the moorlands.
- 2.2 The consultation exercise commenced on Monday the 8<sup>th</sup> July 2019 and ended on Monday the 5<sup>th</sup> August 2019.

## **3 Options/Alternatives**

- 3.1 To approve the making of the Public Spaces Protection Order pursuant to s59 of the Anti-Social Behaviour Crime and Policing Act 2014.
- 3.2 To reject the making of a Public Spaces Protection Order (not recommended). The seriousness of the situation is such that the Council and its partners should look to utilise all available tools to prevent and/or reduce the likelihood of further wildfires.

## **4 Preferred Option**

- 4.1 To approve the making of the Public Spaces Protection Order pursuant to s59 of the Anti-Social Behaviour Crime and Policing Act 2014.
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4.2 The decision is within the budget/policy framework.

## 5 **Consultation**

5.1 The consultation exercise commenced on Monday the 8<sup>th</sup> July and ended on Monday the 5<sup>th</sup> August.

5.2 A list of consultees and responses received is attached to this report as Appendix A. The proposed Order was also published through social media and on the Council's website. Printed consultation documents were available to review in the Saddleworth District and the District Team distributed the documentation to the Saddleworth and Lees E-Network.

5.3 Overall those who responded to the consultation exercise support the making of the Order. During the consultation period a number of landowners responded and expressed concerns about the restrictions which would affect them upon their own privately owned land.

5.4 The Community Safety Manager has met with nominated representatives of the landowners and explained that it was not possible to identify all the landowners within the Restricted Area prior to the consultation exercise commencing.

5.5. Assurances have been provided to landowners that the intention of the Council is not to impact upon lawful business activity or private family life.

5.6 Through the discussions with the nominated representatives, it has been possible to identify land which can be excluded completely from the map of the Restricted Area and a revised map has been produced.

5.7 In addition, confirmation has been provided that the Order will not apply to behaviours upon land which is privately owned and where the land does not meet the 'public spaces' definition. It has been agreed that this will be confirmed in writing to the identified landowners should the Order be made.

5.8 In circumstances where there is public space within private land, for example a public footpath or right of way, the relevant identified landowners will receive confirmation in writing that the terms of the Order will not apply to behaviours upon their land which are undertaken with their consent. Inclusion of the consent clause will ensure that any members of the public who pass over their land through the use of a right of way for example, will remain subject to the terms of the Order.

5.9 Following the assurances which have been given that they will not be negatively affected, the landowners who responded to the consultation have confirmed that they support the making of the Order.

5.10 A formal objection has been received from the Open Spaces Society. The objection which is included with Appendix A includes three main elements;

- 1) The impact upon private landowners and businesses
- 2) The description of the land within the Restricted Area
- 3) The possession of items within the Restricted Area which have been purchased for use outside of the Restricted Area.

5.11 The first element of the objection has been fully addressed during the consultation period.

5.12 The second element has been addressed with a revised description of the land.

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5.13 The third element has been addressed with revised text in the draft Order. It should be noted that consideration has been given to ensuring the revised text does not provide an automatic defence to breach of the Order.

## 6 **Financial Implications**

6.1 The cost of PSPO signage is estimated to be approximately £10,000. As United Utilities own a significant portion of the land within the area, they have indicated that they will contribute to a collaborative budget for the signage.

6.2 Negotiations with United Utilities are at an early stage and therefore no funding confirmation has been agreed at this time, however, should a contribution be made then this will be allocated against the costs incurred within Community Safety.

6.3 No additional staffing resource is proposed by this report, as the enforcement of the PSPO. will be undertaken from within existing resources. The full costs of signage will be met by the directorate's existing budget within the Community Safety area.

6.4 Income of £100 per PSPO fine would be received for each successful prosecution. All income received would be set against enforcement costs within Environmental Services. It is not possible to quantify what this additional income could be; however, it is estimated to be low. (Carl Holdaway/Nicola Harrop)

## 7 **Legal Services Comments**

7.1 Before making a Public Spaces Protection Order, the Council must be satisfied on reasonable grounds that two conditions are met.

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.

The second condition is that the effect, or the 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 Order.

7.2 Before making a Public Spaces Protection Order the Council must consult the Police, appropriate community representatives and the owners or occupiers of land within the area covered by the order. However, the requirement to consult owners or occupiers of land applies only to the extent that it is reasonably practicable to do so.

7.3 It is an offence under section 67 of the Anti-Social Behaviour, Crime and Policing Act 2014 for any person without reasonable excuse to do anything that the person is prohibited from doing by a public spaces protection order or to fail to comply with a requirement to which the person is subject under a public spaces protection order. A person guilty of an offence under section 67 is liable on summary conviction to a fine not exceeding £1000.

7.4 The Council owes a general duty of care to the public to ensure that Public Spaces Protection Orders are complied with but provided the Council acts reasonably and in good faith, that general duty of care does not amount to a private law duty of care to individuals.

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The allocation of resources to enforce Public Spaces Protection Orders is a matter for the Council and the Police. (A. Evans)

## 8. **Co-operative Agenda**

8.1 The extension of the Public Space Protection Order is fully aligned with the Council's Co-operative agenda in creating safe neighbourhoods.

## 9 **Human Resources Comments**

9.1 N/A

## 10 **Risk Assessments**

10.1 The corporate communications team, District Team and Community Safety Services will be promoting the Council's efforts in working with partners and communities to develop a response to reduce the risk of further fires. If a Public Spaces Protection Order is implemented then this will reduce the risk of harm to life, land and property through fire.

10.2 If a Public Spaces Protection Order is not implemented, and there is no clear rationale for this e.g. no significant objections received, and further wildfires occur which result in loss of life or property, this may impact negatively upon the Council and the wider Community Safety Partnership, where there is public knowledge of the Council's ability to take action. (M. Stenson)

## 11 **IT Implications**

11.1 There are no IT implications.

## 12 **Property Implications**

12.1 There are no property implications

## 13 **Procurement Implications**

13.1 There are no procurement implications.

## 14 **Environmental and Health & Safety Implications**

14.1 There are significant environmental implications of further wildfires as detailed in part 1 of this report and there is a serious risk to the health and safety of personnel who attend to extinguish such fires. Residents and other individuals in the locality of such fires are also at risk from both the fires themselves and from the effects of poor air quality.

## 15 **Equality, community cohesion and crime implications**

15.1 The making of the Public Spaces Protection Order will not negatively impact upon any persons with protected characteristics as defined within the Equality Act 2010.

15.2 Many communities have been affected by the wildfires and it is expected that communities in the locality of the moors will fully support the making of the Order. It is anticipated that this will bring the communities closer together and promote social responsibility upon the moorland amongst residents, businesses and visitors.

15.3 Whilst fires may not be set deliberately, any fires which occur are likely to fall within the provisions of the Criminal Damage Act 1971, under reckless behaviours. The making of the Public Spaces Protection Order is likely to reduce the number of crimes which occur

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upon the moorland. It is hoped that the Order and visibility of volunteers and services will also deter persons from setting malicious fires.

**16 Equality Impact Assessment Completed?**

16.1 No. A specific EIA has not been completed. During the consultation period, analysis of all the available information will be included and there will be exploration and full consideration of the impact upon persons with protected characteristics as defined within the Equality Act 2010.

**17 Key Decision**

17.1 Yes

**18 Key Decision Reference**

18.1 NEI-12-19

**19 Background Papers**

19.1 The following is a list of background papers on which this report is based in accordance with the requirements of Section 100(1) of the Local Government Act 1972. It does not include documents which would disclose exempt or confidential information as defined by the Act:

File Ref : CSS/CR/19/01

Name of File : Anti-Social Behaviour, Crime and Police Act 2014

Records held in Community Safety Services Department, Oldham Civic Centre

Officer Name : Lorraine Kenny

Contact No : 0161 770 1582

**20 Appendices**

20.1 Appendix A - Consultees and Consultation Responses  
Appendix B - Proposed Restricted Area Map  
Appendix B - Proposed Public Spaces Protection Order

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