

Committee: Cabinet

Date of meeting: 7 February 2024

Subject:	Unauthorised Mooring- PSPO consultation Phase 2 outcomes
Lead Officer:	Head of Culture, Leisure and Environment
Portfolio Holder:	Cllr Simon Waugh, Portfolio Holder for Leisure, Culture and Commercial Strategy
Link to Council Priorities:	Love Elmbridge, Thriving Elmbridge.
Exempt information:	None
Delegated status:	For resolution

Executive Summary:

Our open spaces are incredibly valuable to our residents and in recent years these spaces have become even more popular with a wide range of users, especially in our riverside sites. As custodians of all of our open spaces the Council is responsible for protecting our land for all of its users.

The Council has already taken steps to address public concerns about littering, fly tipping and dog fouling through a multi-faceted approach – a Keep Elmbridge Tidy communications campaign, encouraging our litter picking groups, new bins in our towns and high streets and more visible enforcement through external contractors.

Further action has been taken with the introduction of 2 new Public Spaces Protection Orders (PSPOs) from summer 2023 to tackle the risk of naked flames, and anti-social behaviour arising from overnight fishing on our open spaces.

The Council continues to seek a long-term solution to unauthorised mooring in the Borough. Where boats are moored without permission on Elmbridge owned land but these boats are not registered with the Environment Agency, these are still very challenging to move on. It is assessed that a PSPO may be a suitable solution on Elmbridge owned land. Whatever solution is found, will need the support and assistance of the Environment Agency to implement and to address the issues of boats on other agencies land on the river.

Following extensive consultation, 766 consultation responses were received during phase 1 of this process and a further 256 responses to phase 2 of the consultation.

This report now considers the feedback from both consultation phases and recommends the introduction of an Unauthorised Mooring PSPO to provide the Council with powers to alleviate residents and other users of the river from the detrimental effect of the activities on the local community's quality of life associated with Unauthorised Mooring at the sites listed in this report.

Recommended: that the Cabinet

- (A) considers the results of the two consultation phases on proposals to introduce an Unauthorised Mooring Public Spaces Protection Orders (PSPO)**
- (B) being satisfied on reasonable grounds that the statutory conditions for making such orders are met, agrees to make the Elmbridge Borough Council Unauthorised Mooring Public Spaces Protection Order 2024 in the form and covering the locations shown in appendix 8 and 9 to the report, all in accordance with Section 59, 64 and 72 of the Anti Social Behaviour Crime and Policing Act 2014**
- (C) Authorises officers to carry out all necessary steps to monitor the effectiveness of the said order and publicise the said order for the maximum period of 3 years up to March 2027**
- (D) That the updated Environmental Enforcement Policy (2024) is agreed**

REPORT:

1. Background

2. In October 2014 the Anti-Social Behaviour Crime and Policing Act 2014 (“the Act”) came into force. This Act introduced several tools and powers for use by councils and the police to address anti-social behaviour (ASB) in their local areas. These tools, which replaced and streamlined a number of previous measures, were brought in as part of a government commitment to put victims at the centre of approaches to tackling ASB, focussing on the impact behaviour can have on both communities and individuals, particularly on the most vulnerable. This act introduced the powers available to the police and local authorities to deal with ASB. One of these measures is the use of Public Space Protection Orders (PSPO).
3. PSPOs are intended to deal with a particular nuisance or problem in a particular area where the behaviour is detrimental to the local community’s quality of life, by imposing conditions on the use of that area. These can apply to everyone who uses that area or can be specifically structured to apply only to certain groups or categories of person, at different times or in specified circumstances. The Council is responsible for making a PSPO and also has enforcement powers, along with Surrey Police and other agencies as delegated by the council.
4. The Council can make a PSPO if satisfied, on reasonable grounds that the following conditions are met in relation to the activities sought to be regulated:
 - That they are or are likely to be carried out in a public place within the Borough;
 - That they have had, or are likely to have, a detrimental effect on the quality of life of those in the locality;
 - The effect, or likely effect of the activities is likely to be, persistent or continuing in nature;
 - Is or is likely to be such as to make the activities unreasonable; and
 - justifies the restrictions sought to be imposed by the order.

5. The use of PSPO's helps to contribute towards the Council's Vision to achieve a sustainable, thriving Elmbridge driven by the power of our community and also the Elmbridge Community and Safety Partnership priorities:
 - Protecting the vulnerable
 - Building confidence
 - Offender management
6. A report was considered by Cabinet in February 2023 on a range of issues within the Council's open spaces and resolved to introduce Public Space Protection Orders for both 'naked flames' and 'overnight fishing' following public consultation. These were implemented and enforced during the Summer of 2023.
7. **Unauthorised mooring**

Officers have been working with Councillors and neighbouring boroughs, Surrey County Council (SCC), Surrey Police and the Environment Agency (EA) to consider a consistent way forward to managing unauthorised moorings.
8. The Council has been working with District Enforcement who are monitoring the Council owned sites at Cigarette Island, Ditton Reach and Albany Reach to monitor any boats who overstay the permitted 24 hour mooring. District Enforcement are only able to apply mooring charges to registered vessels, and where overstaying boats are unregistered these are referred on to the EA to inspect the boats to investigate other registration offences. As a result, this approach has had minimal impact as many of the boats are unregistered.
9. SCC own the landing stage adjacent to Hampton Court Bridge and Cigarette Island. Boats moored without consent at this location have often moved between the 2 landowners once legal notices have been served on them. In order to provide a more joined up approach, SCC have been included, with their consent, within the PSPO proposals and would assist with the enforcement of unauthorised moorings on SCC land.
10. Officers have consulted with the EA about the proposals to introduce a PSPO and if the PSPO powers would provide additional legal powers to assist the EA in managing their sites. While the EA have shown an interest in whether a PSPO would assist with managing ASB issues on the river, they have also confirmed that their Officers do not have the powers to require an individual to give us their contact details. The EA's view is that unless the Police are able to enforce such an order then they may have limited effect in relation to the EA sites.
11. Should the EA's position on enforcement change in the future this could be reviewed.

12. Proposals

13. Following the agreement by Cabinet in February 2023, consultation was undertaken on the introduction of a PSPO to manage unauthorised moorings as set out below:

Implement an order on Elmbridge owned land at Ditton Reach, Albany Reach, Cigarette Island, Cowey Sale and Hurst Park and Surrey County Council's land adjacent to Hampton Court bridge (Parrs mooring) and to restrict moorings to a maximum of 24 hours in the ordinary course of navigation with no return within 72 hours.

14. Consultation – Phase 1

15. Phase 1 of the consultation was open to the public to respond from 18 February to 4 June 2023 (with the exception of the pre-election period from 24 March to 4 May.)

16. The consultation was widely promoted on the specific sites Ditton Reach, Albany Reach, Cigarette Island, Hampton Court Landings, Cowey Sale and Hurst Park (solely the area under Elmbridge management) and more widely on all open spaces and through social media and the Elmbridge Council website.

17. Details of the consultation was also sent to the following stakeholders:

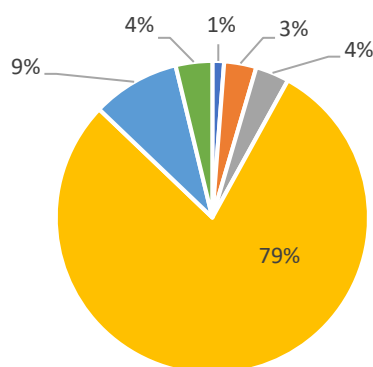
- The Angling Trust
- Environment Agency
- Local Friends Groups
- River User Groups
- Surrey County Council
- Surrey Police
- National Bargee and Traveller Association
- Thames Landscape Strategy
- Elmbridge Rentstart
- Transform Housing & Support
- Homeless Link

18. Results

19. In total, 766 consultation responses were received, coming from the following wards:

Thames Ditton	29%
Molesey	25%
Walton-on-Thames	9%
Others	8%
Weybridge	7%
Esher	4%
Hinchley Wood	4%
Hersham	3%
Long Ditton	2%
Cobham and Downside	2%

20. And from the following groups:



- Local business
- A local stakeholder
- Visitor
- Local community or voluntary group
- An Elmbridge resident
- Other

21. Respondents were asked if a Public Space Protection Order to prevent mooring without permission on Elmbridge Borough Council-owned land at Ditton Reach, Albany Reach, Cigarette Island, Cowey Sale and Hurst Park (solely the area under Elmbridge management) and SCC's land adjacent to Hampton Court bridge (Parrs mooring) was the best way to protect these open spaces for all and to preserve them. The response was as follows:

	%
Strongly agree	76
Strongly disagree	12
Agree	9
Neither agree or disagree	2
Disagree	1

22. **Literal comments in favour of the proposal:**

- This is long overdue action on illegal boats setting up permanent moorings at Hurst Park, discharging sewage into the river, land-grabbing riverside space, preventing residents from using the riverbank and brazenly flouting 24 hour mooring rules.
- I am most concerned about the illegal moorings, which are increasing in number. I am not against the use of the riverbank for river activities - we want a busy, active river - but it needs managing
- Illegal moorings prevent others from having access to the riverbank. People using the river for water pursuits are affected by the pollution from these boats.

Literal comments against the proposal:

- Boaters should not be criminalised for exercising their public right to navigate, including mooring.
 - Any PSPO or other enforcement should specifically target littering and noise, not the action of simply mooring a boat. It is not a criminal offence to moor a boat. Boaters should not be criminalised for exercising their public right to navigate, including mooring.
 - Some people in these boats would be on the streets if we take away the free moorings, this cannot be forgotten about.
 -
23. There was strong support from the phase 1 consultation results to a Public Space Protection Order to prevent unauthorised moorings on Elmbridge Borough Council-owned land at Ditton Reach, Albany Reach, Cigarette Island, Cowey Sale and Hurst Park (solely the area under Elmbridge management) and SCC's land adjacent to Hampton Court bridge (Parrs mooring) as the best way to protect these open spaces for all and to preserve them (88% strongly agree\ agree with 13% strongly disagree\disagree).
24. A number of the responses received were supportive of a PSPO to help to manage the riverbank and allow a busy active riverbank. There were also a number of responses concerned about the potential targeting of boaters, and possibly making boat owners homeless.
25. Comments were received on other mooring locations, including the Weybridge and Wey navigation, and Desborough Island. As both of these sites are owned and managed by the EA, these are not currently being considered for a PSPO.
26. A full set of the consultation results for Phase 1 can be found at Appendix 1.
- 27. Representations against the proposal**
28. As part of the first phase of the consultation, the National Bargee Travellers Association (NBTA) submitted a detailed response to the consultation which raised a number of issues:
- Inaccurate terminology
 - Public Right of Navigation
 - The definition of Anti Social Behaviour
 - Equality Act 2010 and welfare issues
 - Risk implications and community safety implications
 - Article 8 and Article 14 of the Human Rights Act 1998
 - Accommodation Needs Assessment
 - Council ownership and control of Cigarette Island disputed
 - Consultation issues
 - No alternative options proposed
29. A response to those key points raised in the NBTA response can be found at Appendix 2.
30. While a number of the concerns raised in the consultation had already been answered, some aspects required further clarity, and in order to be transparent and to ensure that the statutory conditions for making such an order are met, these details were published as part of the second phase of

the consultation as to how a potential PSPO for unauthorised moorings would be implemented and enforced.

31. **Consultation – Phase 2**

32. Phase 2 of the consultation was open to the public to respond from 10 November 2023 to 29 December 2023.

33. Phase 2 consultation documents: ([available online](#))

1. Boat Dwellers Site Assessment 2022
2. Boat Dwellers Accommodation Assessment 2022
3. Initial Equality Impact Assessment Green PSPO (Feb 23)
4. Unauthorised Mooring PSPO Equality Impact Assessment
5. Updated Environmental Enforcement Policy
6. Unauthorised Mooring PSPO Risk Assessment
7. Draft Unauthorised Mooring PSPO Order
8. Approved EA mooring locations

34. The consultation was widely promoted on the specific sites Ditton Reach, Albany Reach, Cigarette Island, Hampton Court Landings, Cowey Sale and Hurst Park and more widely on all open spaces and through social media and the Elmbridge Council website and newsletters.

35. Details of the phase 2 consultation were sent to the same stakeholders as in phase 1, namely:

- The Angling Trust
- Environment Agency
- Local Friends Groups
- River User Groups
- Surrey County Council
- Surrey Police
- National Bargee and Traveller Association
- Thames Landscape Strategy
- Elmbridge Rentstart
- Transform Housing & Support
- Homeless Link

36. The phase 2 consultation considers the results from phase 1 and seeks comments and observations on the technical documents listed in section 33 of this report. As such this does not return a structured set of quantitative results, but a qualitative set of comments on the details of the implementation of such a policy for consideration.

37. **Results – Phase 2**

38. In total, 256 consultation responses were received. It is noted that a portion of these responses refers to areas which are not included in the list of sites that are proposed to be subject to a PSPO. 214 comments were received in favour of the proposals, with 42 comments against the proposed PSPO. The

detailed comments received as part of the Phase 2 consultation can be found at Appendix 3.

39. Summary of Comments in favour of the proposal:

- 'Waste' was mentioned 42 times in responses. Pollution with regards to the environment (15 times), general litter (24), human waste (12), health hazard (13) and sewage in the river (11).
- Impact of wildlife (11) and deterioration of habitat and riverbank (14)
- Lack of access to the riverbank (56)
- Obstructions to path with encroachment on riverbank (5)
- Noise/loud music (8)
- Use of drugs and cannabis (10)
- Anti-social behaviour (35) including intimidation, verbal abuse, aggressive, challenging behaviour
- Aggressive dogs (3)
- Residents not feeling safe (39)
- Spoiling enjoyment of the community (11)

Other comments included:

- Unable to moor up for day trips due to long stay moorings.
- Boats using public bins, and littering general areas
- Noise from boat inhabitants and generators is disturbing
- Lack of waste facilities\ Increased pollution in the river
- Fencing off public areas and restricting public access
- Will require regular enforcement
- Concern that enforcement on EBC land will displace the issues into other areas.

40. Stakeholder responses-

The EA support any effective measures intended to regulate activities on the riverbank associated with mooring that a riparian owner may wish to introduce. We have reviewed the EBC proposals to introduce PSPOs, which in our view does not interfere with the Public Right of Navigation and/or ancillary rights of mooring.

We note Elmbridge Borough Council's Unauthorised Mooring PSPO Risk Assessment states, enforcement of the PSPO for mooring for longer than 24 hours will not take place when Red and Yellow stream warnings are being displayed on the River by the Environment Agency.

We support Elmbridge Borough Council's proposal to use PSPOs and encourage EBC to flag up this work through the Local Government Association, as the LGA would be the conduit to raise awareness of this approach across other riparian councils.

Surrey Police support Elmbridge Borough Council in seeking these new conditions to the PSPO targeting littering, noise and general anti-social behaviour in the vicinity of the river. Surrey Police have limited involvement with these ASB related activities, however - are aware of the impact that such behaviour has on other river users, residents and visitors to the area. It

is therefore vital that Elmbridge Borough Council seek to address the issues raised by the local community and have sufficient powers to deal with them.

SCC has confirmed their support for a PSPO to help manage the moorings at Hampton Court Bridge

River User Group 8 have indicated their support for the proposed PSPO

Molesey Riverside Action Group (MRAG) responded :In March 2013 there were almost no unauthorised overstaying boats moored on the Thames in Elmbridge. In Nov 2022, according to the Environment Agency (EA), there were 115 unauthorised overstaying boats. The number now is likely to be even greater. There is therefore an urgent need for action by the authorities (EA and EBC in particular).

I therefore support the introduction of the PSPO to which this Consultation refers in order to assist EBC in removing unauthorised overstaying boats from the Thames in Elmbridge.

Ajax Sea Scouts are fully supportive of the broad proposals and welcome the support for the activities we provide to support Scout activities.

41. Elmbridge Green Space Manager has confirmed their support and highlighted that the green spaces bins on Hurst Park closest to the moored boats are regularly filled with domestic waste, and that this has increased as the number of boats moored in this location have increased (see appendix 4)
 42. There is clear evidence of storage of personal materials (barbeques, firewood), littering and fly tipping on the riverbank close to the mooring locations along the River Thames in Elmbridge. Appendix 5 demonstrates further the impact of the moorings on the locations considered under this proposed PSPO.
 43. Summary of Comments not in support of the proposal:
 - The proposed PSPO would make it impossible for boaters to live in Elmbridge (34)
 - Restriction would have impact on work (31), children (30)
 - Potential annihilation of boating community in the area (28)
 - Prejudice towards travellers and boating community (3)
 - Discriminating boating lifestyle (4)
- Other comments included:
- Weybridge (Desborough Island) should be included in the PSPO
 - The PSPO is contrary to the Equality Act (2010) and Human Rights Act (1998)
 - Presence of boats makes the waterside feel safer
 - Give consideration to a 2 week restriction (similar to Henley) or a 36 to 72 Hour restriction would be fairer especially for visitors, or disabled people who may need to rest before moving moorings again.
44. Stakeholder responses.

In addition to the comments received above, there were 2 formal responses from the National Bargee Traveller Association (NBTA) and from Heine Planning. These responses and Elmbridge's Comments to these responses can be found at Appendices 6 and 7.

45. The key issues raised by the NBTA are:
 - The Public Right of Navigation does not define what is considered as a 'reasonable time' to moor;
 - Mooring in itself cannot be considered Anti Social Behaviour and as such as PSPO is not the correct legislation to use, and that insufficient evidence has been provided;
 - The potential welfare of the boat dwellers who will be affected has not been suitably assessed.
 - Potential risk implications of the PSPO
 - No account has been taken of the right to respect for private, family life and home under Article 8 of the European Convention on Human Rights
 - The Boat Dwellers Accommodation Needs Assessment has not been given consideration in the context of the proposals to make a PSPO.
 - No alternative proposals have been put forward.
46. The Key issues raised by Heine Planning Consultancy are:
 - There is a lack of clarity what behaviour this PSPO is tackling;
 - The Council should be addressing the identified need and making provision for long stay and short moorings with proper facilities;
 - Proposals more onerous than those applied by the EA and
 - Unregistered boats is a matter for the EA and not the Council
47. These points have all been carefully considered and responded to in appendix 6 and 7.
48. **Proposals**
49. Being satisfied on reasonable grounds that the statutory conditions for making such an order are met, it is proposed to make the following Elmbridge Borough Council Public Spaces Protection Order 2024 in the form and covering the locations shown in Appendix 8 and 9 to the report, all in accordance with Section 59, 64 and 72 of the Anti Social Behaviour Crime and Policing Act 2014, for:

A Public Space Protection Order (Unauthorised Moorings) to prevent the activities of Unauthorised Mooring(s) and the associated littering, noise, and preventing others from temporary mooring for 24 hours in association with the Public Right of Navigation of the River Thames in a Restricted Area has a detrimental effect on the quality of life of those in the locality.
50. **Partnership working with the EA**
51. Officers continue to work in partnership with the EA to seek a long-term solution to the ongoing problem of unauthorised mooring.
52. The Leader and Deputy Leader, and the Chief Executive have met with, and have written to the EA and local MPs on a number of occasions pressing for

a more strategic approach to enforcement and clarity on demonstrable action from the EA to resolving these ongoing issues along the Elmbridge stretch of the River Thames. Recognising the impact this continues to have on our residents we will continue to lobby at the highest level to resolve this river wide issue.

53. Officers are also having regular meetings with the EA and interested local groups to progress actions agreed in the above meetings and monitor progress and improvements to the number of boats moored without consent or registration.

54. **Implementation**

55. In addition to the specific statutory consultation requirements, the Council has to adhere to the publication requirements which form part of the Anti-Social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014 ("The regulations"). These specify both advertising requirements and the need for notification to be placed on land affected.
56. If agreed by Cabinet, details of the making of a PSPO will be made available on the Council's website and notification will be placed on the land affected in such a manner as to bring the order to the notice of persons using the restricted land. Any variation or discharge of the orders must be similarly publicised.
57. At the time of writing, the River Thames conditions (Red\ yellow boards) are as such that it would not be safe to commence enforcement. Enforcement of the PSPO, if agreed, would commence once river conditions allowed. The wording of the proposed PSPO and the Environment Enforcement Policy takes into account the published River Thames conditions.
58. A breach of the PSPO is a criminal offence, which can be dealt with, either by way of a fixed penalty notice (FPN) or prosecution. If prosecuted, an individual could be liable for a fine. Only those aged over 18 can be issued with an FPN.
59. Any PSPO introduced is only valid for a maximum of three years and may thereafter be extended. Such an extension is subject to the Council being satisfied that it is reasonable and necessary to do so and is subject to the same publication requirements as the introduction of a PSPO. The extension period is also restricted to a maximum of three years.
60. **Enforcement**
61. Enforcement of the above PSPOs would be carried out by the existing Council's Environmental Enforcement Team with support and additional advice and education where necessary from Surrey Police and Surrey Fire and Rescue.
62. At the same time, as part of its Keep Elmbridge Tidy campaign, the Council has additional enforcement support from Kingdom LAS, who carry out extra litter patrols and will also be able to support enforcement of the PSPO's should they be agreed.

63. Elmbridge produced an Interim Environmental Enforcement Policy in February 2023 as part of the implementation of the 2 new PSPOs. This Policy has been further updated as part of the Phase 2 consultation on the Unauthorised Mooring PSPO and is attached at Appendix 9.
64. It is proposed that any breach of the PSPO would then follow the Environmental Enforcement Policy and, in most instances, would result in the issue of a £100 Fixed Penalty Notice, in lieu of prosecution.
65. **Next steps**
66. Subject to agreement by Cabinet, and the call in period, the PSPOs for Unauthorised Mooring would be introduced during March 2024. Signage advertising the PSPOs will be made available on the Council's website and signage will be placed on the land affected in such a manner as to bring the order to the notice of persons using the restricted land.

Financial implications:

Enforcement of the PSPO would be met from within existing staff resources and through Kingdom LAS as part of the ongoing work. Printing of signs to advertise the PSPO would be met from existing budgets.

Environmental/Sustainability Implications:

The proposed PSPO will assist the Council in protecting the Council's open spaces and riverbank for use by the local community and other users of the river. The proposed PSPO seeks to address:

- the unreasonable activities identified in this report, and considers the restrictions it seeks to impose to be justified, and
- the number of incidences where the mooring(s) overstaying is causing a material interference with navigation on the river that amounts to obstruction and a public nuisance.

Legal implications:

It is required to demonstrate that the statutory conditions for making a PSPO have been satisfied and this action will be a measured response to the incidents of anti-social behaviour and consultation responses as identified in this report.

Consultation is required prior to the making of a PSPO with partners, stakeholders and the general public. An impact assessment of these proposals on the freedoms permitted by Articles 10 and 11 of the Human Rights Act 1998 indicates that a PSPO is lawful, necessary and proportionate.

Equality Implications:

The Council must take care to ensure compliance with the public sector equality duty under the Equality Act 2010. The proposals have been reviewed but it is not considered that an PSPO will have a disparate impact on groups with protected characteristics. An Equality Impact Assessment was carried out as part of the phase 2 consultation.

Risk Implications:

PSPOs are a result of legislation and may be subject to challenge through the courts, which may require us to revisit details of the order in future. The penalty for breaches of this order relate to fines alone, which may lead to levels of non-

payment. While this proposal does not rely on securing income from the FPNs, it is proposed that any surplus income secured will be ring fenced to support community safety measures.

Community Safety Implications:

The request for this order is in response to local complaints and consultation raised about unauthorised mooring. This also contributes towards the Council's Vision and the Elmbridge Community and Safety Partnership 2023/24.

Principal Consultees:

Borough Commander, Inspector Bert Dean
Surrey Fire and Rescue Services, Mark Stewart
Head of Culture, Leisure and Environment
Head of Housing Services
Elmbridge Community and Safety Partnership
Elmbridge Joint Action Group (JAG)

Background papers:

None

Enclosures/Appendices:

Appendix 1- Phase 1 Consultation results
Appendix 2 –Phase 1 responses to key points from NBTA consultation response
Appendix 3 - Phase 2 consultation feedback
Appendix 4 – Green Spaces Manager response
Appendix 5 – Photo evidence of ASB
Appendix 6 - Phase 2 responses to key points from NBTA consultation response
Appendix 7 - Phase 2 responses to key points from Heine Planning consultation response
Appendix 8- Draft PSPO Unauthorised Mooring order
Appendix 9 - PSPO site location maps
Appendix 10 - Updated Environment Enforcement Policy

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