

CABINET

Agenda Item: 10

Ward: Berkley

Portfolio: Neighbourhood Services

Report Author(s): Ian Glover

Meeting Date:
11 September 2017

SUBJECT: PSPO for Berkley Marsh (following TRC)

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Report Sign off	Seen by:	Name	Date
	Chief Executive/ Deputy Chief Executive(s)	Donna Nolan	28.08.2017
	Legal	Lesley Dolan	29.08.2017
	Finance	Duncan Moss	25.08.2017
	Group Manager	Liz Dawson	29.08.2017
	Portfolio Holder	Cllrs Nigel Taylor & Phillip Ham	29.08.2017
	Ward Member(s)	Cllr Clive Mockford	For Info.
Summary:	The purpose of this report is to update Members in regard to the Temporary Road Closure (TRC) at Berkley Marsh and to approve the making of a Public Space Protection Order (PSPO) under the Anti-Social Behaviour, Crime and Policing Act 2014 ("ABCPA") to permanently close the road to vehicular traffic. ¹		
Recommendation:	<p>That Cabinet is asked to RECOMMEND:</p> <ol style="list-style-type: none"> 1) The implementation of a Public Space Protection Order to make the road closures to vehicular traffic permanent. Pedestrians, cyclists and horse riders will not be affected (which has been the case for the last 18 months). 2) The nature of the type of hard road closure: <ol style="list-style-type: none"> a) Retain the concrete barriers (MDC own the hardware), or b) Replace the concrete barriers with industrial/military strength barriers (at substantial financial cost). 		
Direct and/or indirect impact on service delivery to our customers and communities:	Fly-tipping is defined as the ' <i>illegal deposit of any waste onto land that does not have a licence to accept it</i> '. Tipping a mattress, electrical items, green waste or a bin bag full of rubbish in the street causes a local nuisance and makes an area look ugly and run down.		

¹ A PSPO has replaced Gating Orders. A PSPO only lasts for 3-years but can be renewed.

	<p>Uncontrolled illegal waste disposal can be hazardous to the public, especially if it contains toxic material or asbestos. There could be a risk of damage to watercourses and soil quality from the dumped waste.</p> <p>Fly-tipping is a serious criminal offence for which the offender can be prosecuted. The courts have various powers available to them to tackle fly-tipping, including imprisonment, substantial fines of up to £50,000, orders to pay costs and an order to deprive rights to a vehicle used to commit the offence.²</p> <p>In Mendip District Council one area had a notorious hotspot for fly-tipping in the district, namely the Berkley Marsh area. That particular area almost doubled the costs of clearing fly-tips around the district. Year on year costs were spiraling up to £114,000.</p> <p>Criminals regularly dumped their waste illegally around the Gypsy Lane, Berkley Lane, Dark Lane and Pot Lane areas of Berkley, just outside Frome, causing an ugly blight on the countryside.</p> <p>In a ground breaking initiative the council renewed its efforts to identify offenders and reduce the number of fly-tipping incidents in the Gypsy Lane/Dark Lane area.</p> <p>The first step was to introduce an 18-month Temporary Road Closure of Berkley Lane, from the north side of the Pines Residential Site to a point just before the railway bridge before Berkley village. The closure also included Dark Lane, along its entire length to the junction of Pot Lane. The closure was necessary to stop the criminals accessing the quiet country lanes to dump their rubbish. The closure came into force on Monday 11th April 2016.</p>
<p>Contribution to Corporate Priorities:</p>	<p><i>This report directly links to the Corporate Plan 2015-19 and one of the priorities:</i></p> <ul style="list-style-type: none"> • <i>To improve the health and wellbeing of the residents and communities of Mendip</i> <p>Fly-tipping applies to all residents and visitors alike. Taking proactive steps to stop the criminality has a tremendous positive affect on the residents and communities.</p>
<p>Legal Implications:</p>	<p>The ABCPA 2014 has repealed Section 2 of the Clean Neighbourhoods and Environment Act 2005 and Sections 129A to 129G of the Highways Act 1980 in relation to Gating Orders and replaced them with a Public Space Protection Order (PSPO).</p>

² Facts taken from 'Keep Britain Tidy'

Section 59 of the ABCPA gives the power to a local authority to make a PSPO if satisfied on reasonable grounds that two conditions have been met:

- 1) The first condition is that:
 - a) activities carried out 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.

- 2) 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.

A PSPO may not have effect for a period of more than 3 years, unless extended.

Before the time when a PSPO is due to expire, the local authority that made the order may extend the period for which it has effect if satisfied on reasonable grounds that doing so is necessary to prevent:

- a) occurrence or reoccurrence after that time of the activities identified in the order, or
- b) an increase in the frequency or seriousness of those activities after that time.

An extension under the act may not be for a period of more than 3 years and must be published in accordance with the regulations made by the Secretary of State.

A PSPO may be extended more than once.

Section 65 of the ABCPA states that a PSPO may not restrict the public right of way over a highway that is:

- a) A special road
- b) A trunk road
- c) A classified or principal road
- d) A strategic road
- e) A highway in England of a description prescribed by regulations made by the Secretary of State.

Berkley Lane, Dark Lane and Pot Lane are unclassified roads and are not affected by the exclusions.

Section 66 of the ABCPA allows an interested person³ to apply to the High Court to question the validity of:

³ 'Interested person' means an individual who lives in the restricted area or who regularly works in or visits that area.

	<p>a) a PSPO, or b) a variation of a PSPO.</p> <p>The grounds on which an application under this section may be made are:</p> <p>a) that the local authority did not have the power to make the order or variation, or to include particular prohibitions or requirements imposed by the order (or by the order as varied);</p> <p>b) that a requirement under this Chapter was not complied with in relation to the order or variation.</p> <p>An application under this section must be made within the period of 6 weeks beginning with the date on which the order or variation is made.</p>																									
<p>Financial Implications:</p>	<table border="1" data-bbox="478 763 1442 1182"> <thead> <tr> <th>YEAR</th> <th>TOTAL OF INCIDENTS (DISTRICT)</th> <th>NO. OF INCIDENTS – JUST GYPSY LANE AREA</th> <th>COST OF GYPSY LANE CLEARANCE</th> <th>TOTAL COST FLY-TIPPING (DISTRICT)</th> </tr> </thead> <tbody> <tr> <td>2013-2014</td> <td>1834</td> <td>123</td> <td>£42,276.00</td> <td>£88,762.63</td> </tr> <tr> <td>2014-2015</td> <td>2026</td> <td>250</td> <td>£40,840.48</td> <td>£90,430.22</td> </tr> <tr> <td>2015-2016</td> <td>2078</td> <td>324</td> <td>£64,346.39</td> <td>£114,279.77</td> </tr> <tr> <td>2016-2017⁴</td> <td>1757</td> <td>83⁵</td> <td>£10,261.40</td> <td>£63,485.88</td> </tr> </tbody> </table> <p>There has been a saving of £50,793.89⁶ with a reduction of 321 fly-tips.</p> <p>It is accepted that there has been a minor displacement to villages in the surrounds of Berkley – but the figures are self-explanatory.</p> <p>(The actual cost of implanting the TRC cost the authority £10,740.53.)</p> <p>A decision will have to be made whether the interlocking concrete blocks and ‘Jersey’ barriers are retained (MDC property) or whether they are replaced with sturdy military standard metal barriers. If metal barriers are fitted at the 5 relevant locations there will be a further financial cost to the authority.⁷</p>	YEAR	TOTAL OF INCIDENTS (DISTRICT)	NO. OF INCIDENTS – JUST GYPSY LANE AREA	COST OF GYPSY LANE CLEARANCE	TOTAL COST FLY-TIPPING (DISTRICT)	2013-2014	1834	123	£42,276.00	£88,762.63	2014-2015	2026	250	£40,840.48	£90,430.22	2015-2016	2078	324	£64,346.39	£114,279.77	2016-2017 ⁴	1757	83 ⁵	£10,261.40	£63,485.88
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⁴ The stated figures are for the 12-month period 01.04.2016 – 31.03.2017. Additional statistics and break down of figures will be available at the Cabinet meeting if required.

⁵ The 12 months of the TRC has resulted in no fly-tips beyond the hard road closures. The costs accrued are for clearances on Gypsy Lane from Bath Road to The Pines Residential Site and the junction of Dark Lane and Pot Lane.

⁶ Historically Somerset Waste Partnership have given some financial reimbursement to MDC for the volume of fly-tipping generated in the Berkley area. There has been no reimbursement for 2016/17 as there has been such a substantial reduction of fly-tipping. This will be renegotiated at a later date.

⁷ Quotes for the military grade barriers exceed £45,000

	<p>NB: There is a severe risk to the operation if metal barriers is the chosen option.</p> <ul style="list-style-type: none"> • Barriers can be left open by interested persons • Keys can be lost • The side of the barriers which have to be wide enough for a horse to pass will allow breaches by vehicles and the blight of fly-tipping will re-commence. <p>Please Note: All formal requests to lift the hard road closures have been honoured. This applies to requests from interested persons and to Statutory Undertakers.</p> <p>Mobile homes and the relevant transporting vehicle can access The Pines from the rugby club end of Gypsy Lane and therefore they do not need to have access via Berkley Marsh.</p>
<p>Impact on Service Plans:</p>	<p>The introduction of the Public Space Protection order (PSPO) will support and enhance existing enforcement practices.</p> <p>This initiative has provided clear benefits to the community of Berkley Marsh and saved a substantial amount of tax payers' money.</p> <p>The Public Space Protection Order questionnaire was placed on the council' website in mid July 2017 as part of the public questionnaire.</p> <p>In addition, residents of Berkley Marsh emailed the author of the report with their personal views about the road closure and how it has made a positive contribution to their lives and well-being.</p> <p>At the time of print there are ongoing discussions with interested persons in the affected parish.</p>
<p>Value for Money:</p>	<p>The Public Space Protection Order (PSPO) has the potential to reduce resources deployed by the council while creating opportunities for enhancing enforcement practices with regards to anti-social behaviour and environmental crime, and for the police and other partners in tackling anti-social behaviour within this area of the district.</p> <p>NB: The outlay of just under £11,000 is balanced against the savings of £50,000.</p>
<p>Equalities Implications:</p>	<p>An Equality Impact Assessment has been produced in relation to the effect of a permanent road closure for the residents of The Pines Residential Site.</p> <p>Throughout the period of the TRC, the author has had regular contact with the residents. There has been no negative feedback and they welcome the continued road closure.</p>

<p>Risk Assessment and Adverse Impact on Corporate Actions:</p>	<p>Public Space Protection Orders (PSPO) fall within the Anti-social Behaviour, Crime and Policing Act 2014, and so before implementation of any orders the local authority should be satisfied that the two conditions are met as referred to in 'Legal Implications'.</p> <p>Nationally there has been a considerable amount of interest regards the introduction of PSPOs mainly on infringement of human rights and animal welfare grounds and whether they truly met the conditions required.</p> <p><u>Consultation</u></p> <p>The risks mainly revolve around our duty to consult in particular with marginalised groups and regards human rights and animal welfare. Therefore this risk is mitigated by our robust consultation with the public and engagement process.</p> <p><u>Legal Risk</u></p> <p>Legal challenge to the validity of the PSPO process leading to reputation damage to the Council and potential court costs via the High Courts.</p> <p><u>The Risk of Non-implementation</u></p> <p>If the council does not exercise the powers to introduce a PSPO to close the roads in Berkley Marsh as Part 4. Section 59 of the ABCPA 2014, there is a risk to the council in discharging its statutory requirements and regard to partnership working together with public perception regards addressing anti-social behaviour and enforcement activity within Mendip. These factors can be summarised as:</p> <p><u>Negative Impact</u></p> <ul style="list-style-type: none"> • Failure to adopt the PSPO will have a huge back lash from the community • Fly-tipping levels, both in tonnage and expense, will rise instantly and will undo all the hard work to date • Failure to build on the success of the initiative could lead to embarrassing negative feedback and publicity. <p>The community have positively backed the initiative, especially the residents of Berkley Marsh.</p> <p><u>Positive Impact</u></p> <ul style="list-style-type: none"> • MDC receive publicity for a successful initiative in combatting fly-tipping in one specific area • MDC see a reduction in complaints of fly-tipping due to positive action • MDC reap the benefits from the cost saving of the initiative.
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Scrutiny Recommendation (if any)	N/A

INTRODUCTION

The scourge of fly-tipping across England is getting worse with councils spending more than £67m to clean up public land and prosecute anyone they catch, according to official figures. So what should be done about the problem?

From old mattresses and fridges to tyres, masonry and green waste - almost a million incidents of rubbish dumped illegally are recorded each year.

Councils have been given new powers to fine people up to £400⁸ for fly-tipping offences, but this depends on evidence. It has left local authorities having to consider new ways to clamp down on those who illegally dump their waste - or try to persuade them not to do it in the first place.

The cost of fly-tipping in the Mendip area, especially at Berkley Marsh reached totally unsustainable and unacceptable levels. In the autumn of 2015 a multi-agency meeting was held which resulted in the decision to try a new initiative of closing relevant roads in the Berkley Marsh area under a Temporary Road Closure (TRC).

Berkley Lane, Dark Lane and part of Pot Lane were closed to vehicular traffic on the 11th April 2016. However the hard road closures allowed unfettered access to walkers, cyclists, joggers and horse riders.

The initiative was reviewed and early results and savings indicated that the TRC should remain in place for its full 18-month term.

The Anti-social Behaviour, Crime and Policing Act 2014 (ASCPA) has repealed Section 2 of the Clean Neighbourhoods and Environment Act 2005 and Sections 129A to 129G of the Highways Act 1980 in relation to Gating Orders and replaced them with a Public Space Protection Order (PSPO).

A public consultation was held in July 2017 to assess the impact of many subject areas but included a requirement for feedback regarding having a PSPO for Berkley Marsh.

The body of the report includes that feedback from Mendip residents together with email feedback from Berkley Marsh residents.

BACKGROUND

Fly-tipping in the Berkley Marsh area has been ongoing for over 50 years. The problem grew when the road network was changed after the building of the by-pass.

Year on year the number of instances have grown together with the volume and tonnage of waste having to be cleared regularly.

The author of the report was charged with the responsibility of investigating fly-tipping offences across the district. It was one of many enforcement responsibilities he had and continues to have.

⁸ MDC adopted the £400 Fixed Penalty Notice in 2016.

There was some success with offences around the district however the Berkley Marsh area proved to be his ‘Achilles heel’.

Both overt and covert observations and surveillance were held in the area. Although some offences were captured on camera no offender was ever brought to justice.

The costs of the clearance continued to spiral. Meetings were held with the local residents.

A multi-agency meeting was held with partners and the TRC was put in place.

OPTIONS CONSIDERED

Overt and covert operations were explored to no avail. The council believed it had tried all options and therefore the TRC was the next initiative to be tried.

RECOMMENDATIONS

That Cabinet is asked to

1. RECOMMEND the implementation of a Public Space Protection Order to make the road closures to vehicular traffic permanent. Pedestrians, cyclists and horse riders will not be affected (which has been the case for the last 18 months).
2. RECOMMEND the type of hard road closure:
 - a. Retain the concrete barriers (MDC own the hardware), or
 - b. Replace the concrete barriers with industrial/military strength barriers (at substantial financial cost).

REASONS FOR RECOMMENDATIONS

To enable the council to implement the PSPO in Berkley Marsh to try to maintain the quality of life of visitors and residents and to ensure the law-abiding majority can use and enjoy public spaces and country lanes, safe from particular nuisance and anti-social behaviour.

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[NB: Statistics, figures of tonnage and areas of minor displacement will all be available at the Cabinet meeting if required.]

List of background Papers: Appendix A (Selection of public comments)

Selection of comments from the public questionnaire and emails

The public consultation that came as part of the PSPO process closed on 14th August 2017. Here are some of the comments received on the Public Consultation Questionnaire:

“As a resident of Berkley Marsh, I am pleased that the lanes have been closed. It has hugely reduced the fly-tipping in the area and made it a pleasant place to live, walk, cycle, horse ride without the endless stream of vans.... More surveillance is necessary and hopefully this can happen if the closure becomes permanent. I hope it does, as do all the residents here.”

“The only effective action to date has been the closure of Berkley Lane and Dark Lane to vehicular traffic and this MUST continue in order to prevent the resurgence of this appalling problem. Since the lane closures Berkley Marsh has become much safer and pleasanter for local residents and the many walkers, joggers, cyclists and horse riders that use these lanes. The fly-tipping has been a serious problem in this locality for many years (even decades).”

“As a resident who has been directly affected by the appalling fly-tipping problem for many years, we already know that the temporary road closure has had a massively beneficial result. Although there is still a small amount of fly-tipping it has been drastically reduced.

To reopen the lane would be an act of total insanity by Mendip.

We now have a civilised procession of walkers, families, cyclists and horse riders making use of the beautiful lanes in the countryside around Frome, instead of vans, trucks and cars racing through the village to tip their unwanted rubbish, often blocking the roads entirely. The lanes are now a safe place for people to enjoy, instead of the procession of previous anti-social traffic, blowing their horns, speeding and dumping their rubbish – garden waste, house clearance, tyres, televisions, food waste & glass.

As a community, we have spent countless hours clearing the lanes of disgusting waste products on top of what the council spend – please factor this in.... hundreds of unpaid man hours just trying to keep our community a safer, nicer place to live.”

“I would be very pleased. If the road closure in BERKLEY LANE area remains closed, people you meet walking around here tell you how lovely and peaceful and clean it is now, and feel safer walking around the lanes now.”

In addition, some Berkley residents emailed the author of the report. Here are some of their personal comments on email:

“As you are fully aware, the levels of fly tipping that existed down Berkley Lane prior to the road closure was horrific. Commercial and garden waste blighted the lanes, making them unsightly, dangerous and I’m sure a costly exercise to remove said waste. At least once or twice a month the lanes became inaccessible due to the sheer volume of rubbish that was being dumped.”

“The road closure in place has drastically reduced the waste being dumped. The lanes have seen an increase in joggers, cyclists, horse riders and dog walkers alike all taking advantage of cleaner and safer lanes again a clear result of having the road closure in place. Having a young family we are now able to explore and use the lanes safely again without the nuisance and unsightly mess hindering our way. A reduction of general traffic down the lanes (often speeding) has also made them safer again.”

“Since the road closures Rooks Lane has quite simply been transformed into a quiet lane that has become a pleasure to walk, cycle and ride horses down. It is both fair and somewhat sad to say that we had become so used to hearing excessively speeding vehicles, finding nearby lanes blocked day after day with fly tipping that it was difficult to imagine a lane without such behaviour.”

"The thought of the lanes being reopened and seeing the speeding vehicles, the fly tipping returning to spoil the area for both ourselves and all other residents and visitors, walkers and riders is a sad and demoralising thought for all Berkley inhabitants.

My wife and I strongly support the continued or permanent closure and would welcome your support in helping make Berkley Marsh a safer, more accessible place for everyone!"

"So we know the area very well. Opening Gypsy Lane would not only be a nightmare with the increase in traffic along Rooks Lane and the Berkley Marsh area, but the lanes would also become increasingly unsafe for local residents, vehicles and walkers.

The area would be used as a 'rat run', which would be hazardous, as it is already noticed that some drivers drive at high speeds along the lane. This would only be exacerbated.

It would also open the fly tipping floodgates again. The area would become unsightly and dangerous for all.

We do hope that our request is heard and we remain hopeful that the Berkley Lane road remains closed - permanently!"

"I feel very strongly that the road closure should be PERMANENT. When it was open the fly tipping was much worse than now, with the roads out of the village, i.e. Kemp's Lane and Rook Lane, at times being impassable. In addition, there were many instances of vehicles dangerously speeding through the village churning up the grass verges.

Having taken part in village fly tipping clearing, it is of great importance to members of the community to retain the much reduced level of fly tipping seen since the temporary road closure.

The quality of life for the village residents and those who use the lanes on foot or cycle has been greatly enhanced since the temporary closure."

"The road closure has had a massive positive impact on our quality of life. Apart from the reduction in fly tipping we have experienced in the lane.

It is now a pleasure to live on the edge of town and enjoy the tranquillity of a small village, to not have to listen to cars racing through, with music blaring from them or horns honking at any time of day and night.

I work shifts, so to try and achieve a good work life balance is sometimes difficult. I am very often sleeping when others are awake and whilst I don't expect it to be as quiet as it would at night, it has made a massive difference to my daytime sleep with the lane closed off.

We are now able to walk the dog and the grandchildren down the lane without the fear of being run over or verbally abused, by those that choose to use it as a race track. We both cycle and are able to ride our bikes with enjoyment now, without the fear of getting knocked off or damage from rubbish dumped in the lanes.

It has been a pleasure to see others able to use the lane safely, such as dog walkers, runners and cyclists. People are even able to ride their horses through the lanes now. We can sit in our garden and hear happy voices, even laughter as people pass through.

We would like to see the Lane remain closed. As its closure has had a clear reduction in stress levels and an increase in quality of life for us our visiting families and our neighbours."

"Few locals ever ventured down the lanes for pleasure as it was so disgusting - who on earth would want their child, dog, bicycle or car tyre damaged by broken glass & metal splinters or to look at the huge piles of rubble lining the road sides or as in most months not being able to get through as the lanes are completely blocked by rubbish that has been illegally fly tipped?

Very few drivers ever used the lanes - except to fly-tip. We gave up cycling as we were always getting punctures from broken glass. The local farmers seem to have managed perfectly well.

Since the temporary closure has been in place we have seen a huge drop in the fly tipping... yes there are still several dumpings, but nothing like it used to be, this in turn has led to a big rise in the number of locals (not just from Berkley & Berkley Marsh) but from a much wider area, using the lanes for walking, dog walking, cycling, horse riding, all saying how much nicer it is and what a great idea to close the lanes.

This coupled with the huge saving in taxpayers' money (ours & yours included) this must make a strong case for the permanent closure of these lanes. I (and many others) would be extremely interested to view the cost figures of before & after of the lane closure. Presumably there will be some detailed figures of the specific savings involved that we can all see - we were always

informed what it cost before to clear the lanes, so let's see what it is now. This surely has got to be a very significant factor in keeping the lanes closed?"

"The lane prior to its temporary closure was a constant problem for dumping. The nature of the dumping was from small items of paper, bottles, cans to major household items like fridges, stoves, chairs, tables etc. The dumping of builders rubble which included, bricks, glass, tiles, doors, window frames was an even more dangerous problem for the dog walker, horse riders and runners using the Lane. The dumping of waste materials in barrels and other plastic containers was also very worrying. Tyres were along with, trailers and even cars a further worrying trend. The garden waste often blocked gate entrances to fields and on a number of occasions it was necessary to phone the fire brigade as waste was either set alight deliberately or by accident. The cost of removing this waste has been hugely expensive and often futile as the following days further items were dumped. We have spent many hours collecting the smaller waste ourselves. We have suffer from someone stealing our waste bins, gates and dropping rubbish at the top of our drive since closure we have suffered none of this. In addition to the dumping in the lane, the lane was used as a "rat run" with cars travelling far too fast for the nature of the single track and residential nature of the lane at the Berkley Marsh hamlet. The Lane closure has hugely improved the residential nature of the hamlet, It has become a haven for cyclists, dog walkers, runners, horse riders and those coming from the outer parts of Frome to walk and enjoy the rural nature of the lanes. The verges are safer for small children and dogs as they are no longer covered in tins and broken glass etc."

"As a resident of Berkley Marsh, for the past 24 years, I have seen the fly tipping in the area increase over time. I was very pleased when the council decided to try a closure of the lanes (Berkley and Dark) to see if this had any effect. It did indeed and although some bits of tipping have occurred over the past year, the reduction of incidents is huge. Also, with the removal of through traffic the lanes have become a safer very pleasant place to walk, cycle, jog and horse ride. In fact there has been a huge increase in the leisure usage since the closure. I wish dearly that the lanes become permanently closed as it will mean that our lives here as residents can continue in a pleasant way."

"My family & I regularly walk in these lanes and have noticed a huge improvement since the closure. When I first moved into the area 6 years ago I was absolutely disgusted by the amount of fly tipped waste that was dumped in these beautiful country lanes, I'm guessing because of the layout and the easy access in and out they were a target for fly tippers. What a difference the closure has made, no eye sores no fly tipping, just a lovely place to walk and pass the time with other like-minded people enjoying the beautiful countryside."