



Community Leadership and Libraries Committee

20th June 2022

Title	Proposal to consult on a borough wide Public Spaces Protection Order.
Report of	Community Leadership and Libraries Committee Chair.
Wards	All
Status	Public
Urgent	No
Key	Key
Enclosures	Appendix 1: Proposed Borough Wide PSPO 2022 Frequently Asked Questions factsheet Appendix 2: Proposed Borough Wide PSPO 2022 Consultation Questionnaire
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Summary

This report provides the Community Leadership and Libraries Committee with a summary of the proposed public consultation in relation to a potential (3 year) borough-wide Public Spaces Protection Order (PSPO). Authority is sought in relation to consultation and potential implementation of the PSPO.

Officers Recommendations

1. That the Community Leadership and Libraries Committee note and comment on the 12 proposed prohibitions for this proposed PSPO.

2. That the Community Leadership and Libraries Committee give their approval to proceed to public consultation for this proposed PSPO
3. To delegate to the Executive Director of assurance in consultation with the Chair to finalise the wording of the consultation document
4. That the Community Leadership and Libraries Committee delegate authority to the Executive Director of Assurance in consultation with the Chair to consider the consultation, the EQIA and all necessary steps to make the order.

1. WHY THIS REPORT IS NEEDED

BACKGROUND CONTEXT

- 1.1 Barnet Council has trialled the use of PSPOs to tackle behaviours such as poor dog control and street drinking through the period of 2018-2021. This report seeks the Community Leadership and Libraries Committee's support and approval to progress to a public consultation for a proposed Borough-wide PSPO for the maximum period allowed of 3 years.
- 1.2 The pilot PSPOs of 2018 and 2019 were initially implemented for a period of 2 years and extended for a period of 1 year during the Covid19 Pandemic.
- 1.3 At the present time there are no live PSPOs in Barnet.
- 1.4 A number of positive outcomes were achieved using PSPO powers in Barnet. Those outcomes can be measured by the reductions in those anti-social behaviours in the PSPO areas; the issuing of PSPO breach warnings and notices to offenders; and where deemed appropriate the imposition by the courts of Criminal Behaviour Orders upon those offenders who have persisted in their breach of the PSPO conditions.
- 1.5 The recorded impact and use of the PSPO powers in Barnet prior to the impact of Covid19 were as follows:
 - Use of PSPO power in Barnet - 149
 - Number of Community Protection Notices issued linked to PSPOs - 33
 - No of Criminal Behaviour Orders issued related to PSPOs – 6
 - A significant reduction in the number of alcohol related call outs for London Ambulance Service.
- 1.6 Following the lifting of Covid19 restrictions it is considered that there is an identified need to protect our communities in public space settings from reported/defined behaviours that are proven to have detrimental impact upon the law-abiding majority in Barnet.
- 1.7 A Borough-wide PSPO with the conditions being proposed is therefore key to the Council and Policing partners ability to identify, challenge and prosecute persons who behave anti-socially using this power as a primary intervention and deterrent tool across all areas of the borough.

1.8 The Proposed Borough Wide PSPO 2022 Frequently Asked Questions factsheet is attached to Appendix 1 of this report, and this includes a summary of the prohibitions that are proposed for the borough wide PSPO.

1.9 Public Spaces Protection Orders (PSPOs)

1.9.1 The Anti-social Behaviour, Crime and Policing Act 2014 provides the power of Public Spaces Protection Orders (PSPOs). PSPOs are intended to deal with a particular nuisance or problems in a particular area that is detrimental to the local communities quality of life, by imposing conditions on the use of that area. They are designed to ensure the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.

1.10 Consultation, publicity and notification

Before making (or extending or varying or discharging) a PSPO, the Act requires that a local authority carries out the necessary consultation. This means consulting with the chief officer of police and the local policing body, as well as community representatives thought appropriate to consult with, and owner/occupiers of land in the restricted area.

The Council's intention for a proposed Borough-wide PSPO has been shared with the MPS Chief Superintendent of the Tri-Borough policing area (Barnet, Harrow and Brent) and, subject to our sharing with the police the findings of the public consultation, this proposed PSPO has the initial support of the police. They will be included in the formal consultation too.

1.11 In deciding to place restrictions on a particular public space, councils should consider the potential 'knock-on' effects of that decision. Introducing a blanket ban on a particular activity may simply displace the behaviour and create victims elsewhere.

1.12 As noted above, the council must also consult whatever community representatives they think appropriate. This could relate to a specific group, for instance the resident's association, an individual or group of individuals, for instance, regular users of a park or specific activities such as busking or other types of street entertainment.

1.13 Before a PSPO is made, the council has to publish the draft order in accordance with regulations published by the Secretary of State. The final order will not be drafted until after the public consultation and, subject to the recommendations in this report being agreed. The draft order shall be finalised once agreed by the Executive Director of Assurance in consultation with the Chair. Appendix 2 sets out the draft conditions for the order.

1.14 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.

1.15 Proposed prohibitions: The proposed prohibitions (or conditions) for the PSPO to be consulted upon are listed in Appendix 2 of this report in the document titled: Proposed Borough Wide PSPO 2022 Consultation Questionnaire.

2. REASONS FOR RECOMMENDATIONS

2.1 For reasons stated in section 1.1 to 1.7 of this of this report the Committee is asked to note and comment on the 12 proposed prohibitions in Appendix 2 of this report for this proposed PSPO in order that officers' can proceed to a public consultation for this proposed Borough-wide PSPO, and potential introduction of it.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

3.1 Do nothing – this option is not recommended.

To not progress with the public consultation is not recommended as it is a statutory requirement in order to introduce a PSPO. It will also show what the public's perception of the need and support or opposition for such an order is. Without this, it will not be possible to consider the introduction of a PSPO and the council will only be able to rely on other powers which may not be as quick and effective.

3.2 Proceed to public consultation – **this option is recommended.**

By proceeding to a 10-week public consultation the Council can seek to establish a clear understanding of the levels of public support or opposition for such a PSPO and also the levels of public support or opposition for each of the restrictions/conditions proposed.

4. POST DECISION IMPLEMENTATION

4.1 If the Community Leadership and Library Committee agree the recommendations in this report the next steps will be for the Community Safety Team to finalise the 10-week public consultation. The findings of the consultation will inform the drafting for the potential final proposed PSPO to be reviewed and considered by the Executive Director of Assurance in consultation with the Chair before being authorised.

5. IMPLICATIONS OF DECISION

Corporate Priorities and Performance

5.1. The result of the recent local election is that the Council has a new Labour administration. The new Administration has made several commitments, one of which 'safer streets across the Borough, with a strong focus on tackling crime and anti-social behaviour'. The proposal within this report supports the delivery of that commitment.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.2.1 There are no finance implications identified in this report.

5.2.2 There are no property implications identified in this report.

5.2.3 There are no staffing implications identified in this report.

5.3 Social Value

5.3.1 Whilst there are no direct social value considerations for this report it is highlighted that the consultation undertaken with the public and the use by the police and council partnership to actively listen to resident, business and elected members concerns show that it remains a priority for the Council and Partnership to not only take action to tackle crime and anti-social behaviour but be seen to do it. By doing so this will help to improve the resident's and business' satisfaction in the services we deliver to tackle and reduce crime and anti-social behaviour in Barnet and improve their confidence in reporting such issues to us.

5.4 Legal and Constitutional References

5.4.1 The Anti-Social Behaviour, Crime and Policing Act 2014 (the Act) provides the power and process for implementing a PSPO.

5.4.2 Certain conditions have to be met in order for the authority to make a PSPO. A PSPO sets a restricted area within which doing specified things are prohibited, or are required, or both.

Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 states that:

A local authority may make a public spaces protection order if satisfied on reasonable grounds that two conditions are met.

The first condition is that:

- 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
- 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 likely effect, of the activities:

- is, or is likely to be, of a persistent or continuing nature
- is, or is likely to be, such as to make the activities unreasonable and
- justifies the restrictions imposed by the notice

5.4.3 Before making or extending an Order, the Council must consult with the chief officer of police, the local police, any representatives of the local community it considers appropriate, and owners or occupiers of land within the restricted area. Orders may last for a maximum of three years, after which they may be reconsidered for renewal or discontinued. There are also requirements to publicise, and notification requirements in relation to a proposed PSPO.

5.4.4 The authority also needs to have particular regard to the rights of freedom of expression and freedom of assembly as set out in articles 10 and 11 of the European Convention on Human Rights. The statutory guidance on the Anti-social behaviour posers under the Act states the following, in the section on PSPOs:

Homeless people and rough sleepers Public Spaces Protection Orders should not be used to target people based solely on the fact that they are homeless or rough sleeping, as this in itself is unlikely to mean that their behaviour is having an unreasonably detrimental effect on the community's quality of life which justifies imposing restrictions using a PSPO. Councils may receive complaints about homeless people, but they should consider whether the use of a Public Spaces Protection Order is the appropriate response. These Orders should be used only to address any specific behaviour that is causing a detrimental effect on the community's quality of life which is within the control of the person concerned. Councils should therefore consider carefully the nature of any potential Public Spaces Protection Order that may impact on homeless people and rough sleepers. It is recommended that any Order defines precisely the specific activity or behaviour that is having the detrimental impact on the community. Councils should also consider measures that tackle the root causes of the behaviour, such as the provision of public toilets. The council should also consider consulting with national or local homeless charities when considering restrictions or requirements which may impact on homeless people and rough sleepers.

5.4.5 Under the Act an interested party can challenge the making of a PSPO, or its variation, by application to the High Court. The grounds for such a challenge are that the local authority did not have the power to make or vary the order or to include certain prohibitions/requirements, or that a requirement under the Act was not complied with. There is a 6-week time limit to bring such a challenge from the date of the order or variation.

5.4.6 Where an Order has been made and has come into effect, it is an offence to fail to comply with its provisions. The Police are given additional powers in relation to the consumption of alcohol within the restricted area.

5.4.7 The case of *Summers v London Borough of Richmond Upon Thames* [2018] EWHC 782 (admin) concerned a challenge to a PSPO that included limits on the number of dogs that one person could be walk at any one time and also in

relation to persons having proper control over a dog when in charge of a dog(s). The court found in favour of the council in relation to these two aspects (Richmond imposed a 4 dog limit), although it did quash two parts of the PSPO in relation to persons in charge of dog being guilty of an offence if the dog 'caused annoyance to any other person or animal', or if it caused 'damage to any Council structure, equipment, tree, plant, turf or other Council property.'

5.5 Risk Management

5.5.1 Whilst the statutory process and guidance will be followed in the preparation of this proposed PSPO, there remains a possibility that the lawfulness of the PSPO could be challenged. It should be noted that the community will be consulted via the Council's website and Engage Barnet processes, all social media platforms available and that officers will take into account the public consultation responses when preparing a draft order for the Committee to consider.

5.6 Equalities and Diversity

5.6.1 If the recommendations in this report are agreed, pursuant to the Public Sector Equality Duty under section 149 of the Equality Act 2010, a new Equalities Impact Assessment (EIA) will be required to ensure the approach and proposed PSPO does not have a disproportionate adverse impact on persons, particularly those with protected characteristics under the Equality Act 2010.

5.6.2 The public sector equality duty is set out in Section 149 of the Equality Act 2010. A public authority must, in the exercise of its functions, have *due regard* to the need to:

(a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

5.7 Corporate Parenting

5.7.1 The decision to proceed with the proposed PSPO is not considered to have a direct or indirect impact on children in care and care leavers

5.7.2 Should any person under 18 years old or care leavers be identified as being involved directly or indirectly with the contravention of any PSPO introduced, they will be referred to the MASH in accordance with standard protocols for vulnerable young people.

5.8 Consultation and Engagement

5.8.1 In accordance with the council's process for community consultation all consultation responses will be considered, and any changes considered to the proposed PSPO conditions will be made and presented to the Executive Director of Assurance and the Chair for their review and endorsement.

5.8.2 In the case of R (Moseley) v Haringey London Borough Council [2015] 1 All ER 495, the court reasserted the principles set out in the earlier case of R (Gunning) v Brent London Borough Council [1985] 84 LGR 168 when undertaking a consultation:

- (i) consultation should take place when proposals are still at a formative stage,
- (ii) sufficient reasons should be given for any proposal to allow intelligent consideration and response,
- (iii) adequate time should be provided for consideration and response, and
- (iv) the outcome of the consultation has to be conscientiously taken into account in finalising any proposals.

Additionally, the degree of specificity with which the public authority should undertake the consultation might be dependent on the identity of those being consulted.

5.9 Insight data

5.9.1 Not relevant for this report

5.10 Environmental Impacts

5.10.1 There are no direct environmental implications from noting the recommendations. Implementing the recommendations in the report will lead to a positive impact on the council's carbon and ecology impact, or at least it is neutral.

6. BACKGROUND PAPERS

6.1 Recent papers to various committees on enforcement and some examples of web links to the council's service specific enforcement actions are listed below.

Anti-social Behaviour, Crime and Policing Act 2014:

[Anti-social Behaviour, Crime and Policing Act 2014 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2014/122)

Home Office Statutory Guidance for frontline professionals - Anti-social Behaviour, Crime and Policing Act 2014:

[\[Title\] \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/304111/anti-social-behaviour-crime-and-policing-act-2014-statutory-guidance-for-frontline-professionals.pdf)