

Cheltenham Borough Council
Cabinet Member for Development & Safety – 9 November 2017
Variation of Public Spaces Protection Order

| | |
|---------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Accountable member | Councillor Andrew McKinlay, Cabinet Member for Development & Safety |
| Accountable officer | Mike Redman, Director of Environment |
| Ward(s) affected | Lansdown, College, All Saints, St. Pauls, Pittville & Prestbury |
| Key/Significant Decision | No |
| Executive summary | <p>A Public Space Protection Order (“PSPO”) is designed to prevent individuals or groups committing anti-social behaviour in a public space where the behaviour is having, or is likely to have, a detrimental effect on the quality of life of those in the locality and the behaviour is, or is likely to be, persistent or continuing in nature and is unreasonable.</p> <p>There is currently a PSPO in force in Cheltenham to control public consumption of alcohol and dog control in public spaces.</p> <p>The purpose of this report is to seek permission to consult on a proposal to vary the current PSPO to include ticket touting during key horse racing events.</p> |
| Recommendations | Cabinet Member for Development & Safety is recommended to approve the revised Public Spaces Protection Order attached at Appendix 2 for consultation. |

| | |
|-------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Financial implications | <p>Varying the current PSPO to include touting would allow the Council to impose fixed penalty notices on offending individuals of up to £100. While this income stream would most likely be negligible, it would go some ways towards offsetting the cost that the Council already incurs in trying to discourage unwanted activity around race days.</p> <p>Contact officer: Myn Cotterill, myn.cotterill@cheltenham.gov.uk, 01242 774958</p> |
|-------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

| | |
|----------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Legal implications | <p>The introduction of any Order or variation of an existing order presents a risk of legal challenge to the Council. Section 66 of the Anti-social Behaviour Crime and Policing Act 2014 states that “interested persons” may challenge the validity of any Order in the High Courts. This means that the Council could face a challenge against its ability to implement the Order. An application of this nature must be made within six weeks, beginning on the day the Order is made or varied. There are two grounds upon which a challenge could be made: 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) or That a requirement under this element of the legislation was not complied with in relation to the order or variation. The High Court would have the power to quash, amend or uphold the Order.</p> <p>Other legal implications and requirements are set out later in the report.</p> <p>Contact officer: Vikki.fennell@teWKesbury.gov.uk, 01684 272015</p> |
| HR implications (including learning and organisational development) | <p>There are no direct HR implications identified in this report.</p> <p>Contact officer: Carmel Togher, HR Business Partner Email: carmel.togher@cheltenham.gov.uk Tel: 02142 775215</p> |
| Key risks | As identified in Appendix 1 |
| Corporate and community plan Implications | |
| Environmental and climate change implications | None |
| Property/Asset Implications | None Contact officer: David Roberts@cheltenham.gov.uk |

1. Background

- 1.1 A Public Space Protection Order (“PSPO”) is designed to prevent individuals or groups committing anti-social behaviour in a public space where the behaviour is having, or is likely to have, a detrimental effect on the quality of life of those in the locality and the behaviour is, or is likely to be, persistent or continuing in nature and is unreasonable.
- 1.2 There is currently a PSPO in force in Cheltenham to control public consumption of alcohol and dog control in public spaces.
- 1.3 The purpose of this report is to seek permission to consult on a proposal to vary the current PSPO to include ticket touting during key horse racing events.

2. Statutory considerations

- 2.1 The Anti-Social Behaviour, Crime and Policing Act 2014 (“2014 Act”) commenced on 20 October 2014.
- 2.2 Section 59 of the 2014 Act gives local authorities the power to adopt a PSPO if satisfied, on reasonable grounds, that two conditions are met:
 - 2.2.1 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; and
 - (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.
 - 2.2.2 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.
- 2.3 A PSPO identifies a public place also known as “the restricted area” and:
 - 2.3.1 prohibits specified things being done in the restricted area;
 - 2.3.2 requires specified things to be done by persons carrying on specified activities in that area; or
 - 2.3.3 does both of those things.
- 2.4 Prohibitions or requirements imposed by a PSPO can only be ones that are reasonable to:
 - 2.4.1 prevent the detrimental effect referred to in subsection (2) from continuing, occurring or recurring; and
 - 2.4.2 reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.
- 2.5 A PSPO may not have effect for a period of more than 3 years, unless extended.

- 2.6 A person guilty of an offence under conditions set out in the Order, under section 67 of the 2014 Act is liable on summary conviction to a fine not exceeding level 3 on the standard scale (£1000) or fixed penalty notice(FPN) of a maximum £100. A level set at £75 reduced to £50 if paid within 10 days would be consistent with fines set for other environmental offences enforced by the Council e.g. littering.

3. Ticket Touts

- 3.1 Cheltenham has a long and proud tradition of hosting internationally renowned horse racing events.
- 3.2 There has been a consistent increase in the popularity of these events which has had a direct correlation with increased spectator numbers particularly for the race events in March, November and New Year's Day.
- 3.3 Ticket touts are not a new phenomenon but with the increased popularity of horseracing events their numbers have increased around the town. The consequence of this saturation is that the "touting" market has become more competitive which in turn has caused touts to become bolder and aggressive in their approach to ensure they are able to sell their tickets before the end of the festival to mitigate financial loss.
- 3.4 Attached at **Appendix 3** is evidence of letters and complaints received in relation to the activities of tickets touts referred to above.
- 3.5 The problem is widespread with ticket touts located around the town centre, at the railway station, along the Honeybourne Line and all the way along the route to the racecourse and on the racecourse itself. Attached at **Appendix 4** is a proposed restricted area.
- 3.6 The 2014 Act defines a public space, where the PSPO can have effect, as "...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."
- 3.7 This council is of the view that the amended PSPO, in so far as it relates to ticket touts, can have effect on the racecourse's public spaces in addition to the public realm and highway.

4. Reasons for recommendations

- 4.1 The proposals are intended to address ticket touting during key horse racing events racing events and protect the public from anti-social behaviour that is having or likely to have a detrimental effect on the quality life of those in the locality.

5. Alternative options considered

- 5.1 The council in partnership with the police and racecourse have been working together over the last two years to deal with the increasing problems posed by ticket touts. The work done so far included council and police operations to gather evidence and to disrupt the activities of touts. In addition, the racecourse have made changes to its ticket terms & conditions, refund policy and plan to setup a number of ticket exchange booths on key race days.
- 5.2 These measures have gone some way to address some of the issues mentioned but it needs to be underpinned with formal enforcement powers which is currently lacking.
- 5.3 The Cabinet Member can reject the proposal. Consideration has been given to this but in light of the evidence submitted showing that ticket touts are becoming an increasing problem during key horse racing events, not proceeding with the proposed Order would reduce the powers available

to the Police and Local Authority to address this problem.

6. Consultation and feedback

- 6.1 Consultation has been undertaken with Legal Services, GOSS finance and HR.
- 6.2 The council is obligated to consult when making, extending, varying or discharging a PSPO.
- 6.3 Consultation must be undertaken with:
 - 6.3.1 the chief officer of police, and the local policing body, for the police area that includes the restricted area;
 - 6.3.2 whatever community representatives the local authority thinks it appropriate to consult; and
 - 6.3.3 the owner or occupier of land within the restricted area.
- 6.4 There is no statutory provision set out in the 2014 Act with regards to the format or length of the consultation. It therefore leaves it to the local authority to consult in a manner considered appropriate for the local area.
- 6.5 It is proposed that a 6 week consultation be undertaken in relation to the variation of the PSPO.

7. Delegation

- 7.1 In March 2015 Cabinet passed a resolution delegating authority to the then Director of Environmental and Regulatory Services to adopt and publish Public Spaces Protection Orders where the area covered by the proposed Order is within the borough and subject to the statutory requirements for the making of an Order being satisfied.
- 7.2 Since that decision there has been an organisational restructure that has affected the post of the Director of Environmental and Regulatory Services. Following advice from One Legal, the delegation now sits with the Managing Director of Place & Economic Development.

8. Performance management –monitoring and review

- 8.1 A PSPO lasts for up to 3 years and will need to be reviewed after this time.

| | |
|-------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Report author | Contact officer: Louis Krog, louis.krog@cheltenham.gov.uk, 01242 775200 |
| Appendices | <ul style="list-style-type: none">1. Risk Assessment2. Draft revision of PSPO3. Evidence4. Map of proposed restricted area |
| Background information | <ul style="list-style-type: none">1. Anti-Social Behaviour, Crime and Policing Act 20142. Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers, Statutory guidance for frontline professionals |

| The risk | | | | Original risk score (impact x likelihood) | | | Managing risk | | | | |
|-----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-------------|-------------------------------------------|----------------|-------|---------------|---------------------------------------|----------|---------------------|------------------------------|
| Risk ref. | Risk description | Risk Owner | Date raised | Impact 1-5 | Likelihood 1-6 | Score | Control | Action | Deadline | Responsible officer | Transferred to risk register |
| | If the Cabinet Member does not approve the draft Order for consultation, the council and its partners will be unable to effectively deal with the growing problem of ticket touts. | | | 2 | 4 | 8 | Reduce | Approve draft Order for consultation. | | | |
| | If the Cabinet Member does not approve the draft Order for consultation, the council may suffer reputational damage if the council is seen to be unwilling to deal with the issue of ticket touts. | | | 2 | 3 | 6 | Reduce | Approve draft Order for consultation. | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |

Explanatory notes

Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)

Likelihood – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)

Control - Either: Reduce / Accept / Transfer to 3rd party / Close