

Cheltenham Borough Council
Cabinet Member for Development & Safety – 19 February 2018
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	Yes
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>Ticket tout activity during key horse racing events in Cheltenham has become an increasing problem for visitors and residents of the town.</p> <p>A public consultation was undertaken on a proposed variation of the council’s current PSPO to include measures to restrict the activity of ticket touts during key horse racing events.</p> <p>The purpose of this report is to feedback on the consultation outcome and for the Cabinet Member for Development & Safety to determine if it is appropriate to adopt the revised PSPO.</p>
Recommendations	<p>The Cabinet Member for Development & Safety, is recommended to:</p> <ol style="list-style-type: none"> 1. Note the consultation feedback; and 2. Adopt the proposed PSPO attached at Appendix 4 to be incorporated in to the Public Space Protection (Cheltenham) Order 2017; 3. Delegate authority to the Director of Environment to implement the revised PSPO.

Financial implications	<p>There are no direct finance implications identified in this report.</p> <p>Contact officer: Andrew Knott, Finance Business Partner</p> <p>Email : Andrew.knott@cheltenham.gov.uk</p> <p>Tel: 01242 264121</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>The making of a PSPO will enable Police Officers and PCSO’s to issue Fixed Penalty Notices to persons breaching the Order.</p> <p>Contact officer: vikki.fennell@tewkesbury.gov.uk Tel no: 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</p> <p>Email : carmel.togher@cheltenham.gov.uk</p> <p>Tel: 01242 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 council launched a consultation on a proposal to vary the current PSPO so to include measure to restrict the activity of ticket touts during key horse racing events in the town.
- 1.4 The public consultation was open for six weeks between October and December 2017.
- 1.5 This report outlines the consultation responses received.

2. Ticket Touts

- 2.1 Cheltenham has a long and proud tradition of hosting internationally renowned horse racing events.
- 2.2 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 and November.
- 2.3 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.
- 2.4 Attached at **Appendix 2** is evidence of letters and complaints received in relation to the activities of tickets touts referred to above.
- 2.5 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.

3. Statutory considerations

- 3.1 The Anti-Social Behaviour, Crime and Policing Act 2014 (“2014 Act”) commenced on 20 October 2014.
- 3.2 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:
 - 3.2.1 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.

- 3.2.2 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.
- 3.3 A PSPO identifies a public place also known as “the restricted area” and:
- (a) prohibits specified things being done in the restricted area;
 - (b) requires specified things to be done by persons carrying on specified activities in that area; or
 - (c) does both of those things.
- 3.4 Prohibitions or requirements imposed by a PSPO can only be ones that are reasonable to:
- (a) prevent the detrimental effect referred to in subsection (2) from continuing, occurring or recurring; and
 - (b) reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.
- 3.5 A PSPO may not have effect for a period of more than 3 years, unless extended.
- 3.6 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.

4. Statutory Guidance

- 4.1 The statutory guidance accompanying the 2014 Act was updated in December 2017, after the conclusion of the PSPO consultation.
- 4.2 The updated statutory guidance document states: “This updated guidance emphasises the importance of ensuring that the powers are used appropriately to provide a proportionate response to the specific behaviour that is causing harm or nuisance without impacting adversely on behaviour that is neither unlawful nor anti-social.”
- 4.3 Relevant extracts from the statutory guidance are quoted below. These must be read in conjunction with the statutory guidance document particularly Part 1 and Part 2.5 “Public Spaces Protection Order”.

Relevant Extracts

- 4.4 “The legal tests that govern the use of the anti-social behaviour powers are focused on the impact that the behaviour is having, or is likely to have, on victims and communities. When considering the response to a complaint of anti-social behaviour, agencies are encouraged to consider the effect that the behaviour in question is having on the lives of those subject to it recognising, for example, the debilitating impact that persistent or repeated anti-social behaviour can have on its victims, and the cumulative impact if that behaviour persists over a period of time.”
- 4.5 “The legislation requires the relevant local agencies to be satisfied that the specific legal tests and safeguards set out in the legislation are met before the anti-social behaviour powers are used.

These tests are intended to help to ensure the appropriate and proportionate use of the powers and that they are being used to target specific problems or specific circumstances. They do allow for preventative action to be taken, for agencies to intervene early to prevent problems from escalating, and in some instances for there to be a focus on tackling the underlying causes of the anti-social behaviour.”

- 4.6 “Public Spaces Protection Orders are intended to deal with a particular nuisance or problem in a specific area that is detrimental to the local community’s quality of life, by imposing conditions on the use of that area which apply to everyone. They are intended to help ensure that the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.”
- 4.7 Given that these orders can restrict what people can do and how they behave in public spaces, it is important that the restrictions imposed are focused on specific behaviours and are proportionate to the detrimental effect that the behaviour is causing or can cause, and are necessary to prevent it from continuing, occurring or recurring.”
- 4.8 “The council can make a Public Spaces Protection Order 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, for example a shopping centre.”
- 4.9 “When deciding what to include, the council should consider scope. The broad aim is to keep public spaces welcoming to law abiding people and communities and not simply to restrict access. So restrictions or requirements can be targeted at specific people, designed to apply only at certain times or apply only in certain circumstances.”
- 4.10 “In establishing which restrictions or requirements should be included, the council should be satisfied on reasonable grounds that the measures are necessary to prevent the detrimental effect on those in the locality or reduce the likelihood of the detrimental effect continuing, occurring or recurring.”
- 4.11 “As with all the anti-social behaviour powers, the council should give due regard to issues of proportionality: is the restriction proposed proportionate to the specific harm or nuisance that is being caused? Councils should ensure that the restrictions being introduced are reasonable and will prevent or reduce the detrimental effect continuing, occurring or recurring. In addition, councils should ensure that the Order is appropriately worded so that it targets the specific behaviour or activity that is causing nuisance or harm and thereby having a detrimental impact on others’ quality of life. Councils should also consider whether restrictions are required all year round or whether seasonal or time limited restrictions would meet the purpose.”

5. Consultation and feedback

- 5.1 A public consultation was undertaken for a period of 6 weeks between October and December 2017.
- 5.2 Eight consultation responses were received. These are attached at Appendix 3 of the report. Two of the eight respondents were opposed to the variation of the PSPO with the remaining 6 being supportive of it.
- 5.3 The two respondents who were opposed to the PSPO commented on the need for an official ticket exchange. It is worth noting at this stage that the proposed varied PSPO is just one of a number of measures being undertaken to address the issues referred to in this report. Cheltenham Racecourse will in 2018 be setting up a number of official ticket exchange booths around the town during key horse racing events.

5.4 If the official exchange programme proves sufficient to address the concerns caused by the operation of ticket touts, consideration will be given to a further review of the PSPO in accordance with the statutory guidance.

5.5 In addition to the consultation feedback, reference should also be made to the evidence submitted to support the case for a proposed PSPO. These are attached at Appendix 2.

6. Reasons for recommendations

6.1 The proposals are intended to address ticket touting during key horse 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.

7. Amended PSPO

7.1 Attached at **Appendix 4** is a copy of the revised PSPO. The revised PSPO has taken into consideration the comments submitted on behalf of the Chief Constable and the Police and Crime Commissioner.

8. Alternative options considered

8.1 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.

8.2 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.

8.3 The Cabinet Member for Development & Safety can decide to reject the proposed variation of the PSPO. Consideration has been given to this but in light of the evidence submitted showing that ticket touts are becoming an increasing problem, supplemented by the consultation feedback, during key horse racing events, not proceeding with the proposed variation to the PSPO would reduce the powers available to the Police and Local Authority to address this problem.

9. Performance management –monitoring and review

9.1 A PSPO lasts for up to 3 years and will need to be reviewed after this time or sooner if appropriate.

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Appendices	<ol style="list-style-type: none">1. Risk Assessment2. Evidence3. Consultation Responses4. Draft revision of PSPO

Background information	<ol style="list-style-type: none"><li data-bbox="536 152 1257 188">1. Anti-Social Behaviour, Crime and Policing Act 2014<li data-bbox="536 219 1410 318">2. Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers Statutory guidance for frontline professionals (December 2017)
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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