

Cheltenham Borough Council
Director of Environment – 3 July, 2020
Adoption 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	All
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>A PSPO was in force in Cheltenham to control public consumption of alcohol and dog control in public spaces expired on 2nd May 2020.</p> <p>A public consultation was undertaken to extend the current PSPO covering dogs and alcohol in order to have it in place for a further 3 years.</p> <p>The purpose of this report is to feedback on the consultation outcome and to outline the rationale to the Director of Environment for extending the PSPO using his delegated powers of authority having been satisfied that the evidence presented in this report justifies this course of action.</p>
Recommendations	<p>The Director of Environment is recommended to:</p> <ol style="list-style-type: none"> 1. Note the consultation feedback; and 2. Approve the proposed PSPO, copy attached at Appendix 3, which follows the format of the previously adopted PSPO, for a further three year period.
Financial implications	<p>There are no direct finance implications identified in this report.</p> <p>Contact officer: Andrew Knott, Andrew.Knott@publicagroup.uk</p>

Legal implications	<p>The extension of the 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 Court. 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 extension of our current PSPO for a further 3 years 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: Clare Jones, clare.jones@publicagroup.uk</p>
Key risks	<p>As set out in Appendix 1 below.</p>
Corporate and community plan implications	<p>The PSPO will help to ensure the quality of life of those living in and visiting Cheltenham, whilst also seeking to reduce the risk of harm to vulnerable people who may otherwise be affected by the behaviours the PSPO seeks to control.</p>
Environmental and climate change implications	<p>The PSPO will assist the authority, in partnership with Gloucestershire Constabulary, to address antisocial behaviour which is otherwise more likely to occur in Cheltenham, thereby enhancing the environment for others seeking to enjoy Cheltenham’s resident and visitor attractions.</p>
Property/Asset Implications	<p>None</p> <p>Contact officer: Dominic.Stead@cheltenham.gov.uk</p>

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 We have until very recently had a PSPO in force in Cheltenham to control the public consumption of alcohol and dog control in public spaces.
- 1.3 The council launched a consultation on the proposal to extend this PSPO for a further 3 years to control the public consumption of alcohol and dog control in public spaces.
- 1.4 The public consultation was open for six weeks between April and May 2020.
- 1.5 This report outlines the consultation responses received.

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:
 - (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.
- 2.4 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.

- 2.5 A PSPO may not have effect for a period of more than 3 years, unless extended or renewed.
- 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 (currently £1000) or may be issued with a fixed penalty notice (FPN) of a maximum £100. A level set at £75, reduced to £50 if paid within 10 days, is considered to be appropriate having regard to the level of fines set for other environmental offences enforced by the Council e.g. littering.

3. Statutory Guidance

- 3.1 The statutory guidance accompanying the 2014 Act was updated in December 2017, after the conclusion of the PSPO consultation.
- 3.2 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.”
- 3.3 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

- 3.4 “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.”
- 3.5 “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 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.”
- 3.6 “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.”
- 3.7 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.”
- 3.8 “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.”
- 3.9 “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.”

- 3.10 “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.”
- 3.11 “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.”

4. Consultation and feedback

- 4.1 A public consultation was undertaken for a period of 6 weeks between April and May 2020. Please see Appendix 4 for the consultation information published.
- 4.2 Thirteen consultation responses were received. These are attached at Appendix 2 to this report. One respondent was opposed to the extension of the PSPO, with the remaining eleven in support of it and one business in the borough made a neutral comment, with a request for a further area to be included within the PSPO.
- 4.3 The one respondent who was opposed to the PSPO commented that a number of European cities permit drinking in public spaces and yet they have a much lower incidence of harmful drinking. They reflected that from our evidence, there were 11 cases of antisocial drinking and they queried if any of these were significant and therefore, strongly refuted the idea that not having this PSPO would increase antisocial drinking in our public spaces. However, they did comment that during certain events/festivals the town must change regulations to make these mass events more orderly. Overall, they refuted the need for the extension, stating that it would harm local residents from enjoying their public spaces and hinder fostering of positive drinking behaviour.
- 4.4 The PSPO does not prohibit responsible drinking in public, but it does provide the power for police officers to request anyone behaving antisocially to desist from drinking and allows for the confiscation of alcohol from such individuals and states: ‘No person shall refuse to stop drinking alcohol, or refuse to hand over any containers (sealed or unsealed) which are believed to contain alcohol, when required to do so by a constable or an authorised person in order to prevent public nuisance or disorder.’
- 4.5 In addition to the consultation feedback, reference should also be made to the evidence submitted to support the case for a proposed PSPO. This is attached at Appendix 2.

5. Delegation

- 5.1 Cabinet resolved on 17th March, 2015 “That Cabinet gives a standing delegation to the Director of Environmental and Regulatory Services to, following appropriate consultation (to include the relevant Cabinet Member and ward councillors), 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.”

6. Reasons for recommendations

- 6.1 The proposals are intended to extend the current PSPO for a further 3 years regarding control over public consumption of alcohol and dog control, which will in turn help to 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. Extent of the PSPO

- 7.1 Attached at Appendix 3 is a copy of the proposed new PSPO.

8. Alternative options considered

- 8.1 **Extension of the scope relating to the previous PSPO** - The council, prior to beginning the consultation exercise to extend the current PSPO for a further 3 years, undertook work with officers and key stakeholders to review if an extension was considered necessary, as well as reviewing the numbers of complaints received regarding dog control and the public consumption of alcohol. Officers, partners and stakeholders indicated at an early stage their support to retain or extend the PSPO covering these issues. Furthermore, they referenced support in tackling ASB and envirocrime via the new co-ordinators for the borough in the council's Community Protection team, who have been key in assisting tackling these issues and related engagement and enforcement action.
- 8.2 **Not to renew the PSPO** - The Director of Environment, in consultation with the Cabinet Member for Development & Safety could decide to reject the proposed extension of the current PSPO. Consideration has been given to this, but in light of the evidence submitted showing the need for the extension to the order, supplemented by the consultation feedback, not proceeding with the proposed extension to the PSPO would be detrimental in reducing the powers available to the Police and Local Authority to address antisocial behaviour issues. There is also concern amongst partners that the permanent removal of the PSPO would be likely to lead to an increase in the prevailing level of antisocial behaviour, as a result of the suppression/deterrent effect associated with having a PSPO and associated signage in place.
- 8.3 The recent relaxation of lockdown arrangements relating to the Covid-19 pandemic has led to a significant increase in reports of antisocial behaviour associated with late night drinking, particularly in the council's parks and gardens and this has unfortunately coincided with the expiry of the previous PSPO, reducing the ability of the council and its partners to address the problems which have arisen. The new PSPO will address this position.

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 this is considered appropriate due to material changes in circumstance.

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Appendices	<ol style="list-style-type: none">1. Risk Assessment2. Consultation Responses3. Proposed 2020 PSPO4. Consultation web page information

Background information	<ol style="list-style-type: none">1. Anti-Social Behaviour, Crime and Policing Act 20142. Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers Statutory guidance for frontline professionals (December 2017)3. Cabinet, Tuesday, 17th March, 2015 Agenda item 10
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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 council does not approve the extension to the current PSPO to have it in place for a further 3 years, the council and its partners will be unable within existing resources to effectively deal with the issues caused through lack of dog control and behaviour relating to alcohol-related ASB.	Director of Environment	June 2020	4	3	12	Reduce	Approve new PSPO	July 2020	Env Health and Public Protection team leader	
	If the council does not approve the extension to the current PSPO, the council may suffer reputational damage if it is seen to be unwilling to deal with the issues of lack of dog control and behaviour relating to alcohol related ASB.	Director of Environment	June 2020	3	3	9	Reduce	Approve new PSPO	July 2020	Env Health and Public Protection team leader	
Explanatory notes											
<p>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)</p> <p>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)</p> <p>Control - Either: Reduce / Accept / Transfer to 3rd party / Close</p>											