

Cheltenham Borough Council

Corporate Director and Monitoring Officer – 23 October

2023

Renewal of Public Spaces Protection Order

Accountable member:

Councillor Flo Clucas, Cabinet Member Safety & Communities

Accountable officer:

Louis Krog, Head of Public Protection

Ward(s) affected:

All

Key Decision: No

Executive summary:

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.

PSPOs are temporary, up to a maximum of 3 years. However they can be extended, following a review, for a period of three years each time. The current PSPO is the Public Spaces (Cheltenham) Order 2020.

A public consultation was undertaken to extend the current PSPO covering dogs and consumption of alcohol in order to have it in place for a further 3 years.

The purpose of this report is to feedback on the consultation outcome and to outline the rationale 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.

Recommendations:

The Corporate Director and Monitoring Officer is recommended to:

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.

1. Implications

1.1 Financial, Property and Asset implications

None specifically arising from this report.

Signed off by: Ela Jankowska, Ela.Jankowska@cheltenham.gov.uk

1.2 Legal implications

An extension of the PSPO would comply with the Council's duty under s17 of the Crime and Disorder Act 1998 to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment) and the misuse of drugs, alcohol and other substances in its area. The items dealt with the PSPO appear to be proportionate and the PSPO will assist the aim to keep public spaces welcoming.

Signed off by: Rachael Baldwin, Rachael.Baldwin@onelegal.org.uk

1.3 Environmental and climate change implications

None

1.4 Corporate Plan Priorities

This report contributes to the following Corporate Plan Priorities: *[please delete as appropriate]*

- Making Cheltenham the Cyber Capital of the UK
- Working with residents, communities and businesses to help make Cheltenham #netzero by 2030
- Increasing the number of affordable homes through our £180m housing investment plan
- Ensuring residents, communities and businesses benefit from Cheltenham's future growth and prosperity
- Being a more modern, efficient and financially sustainable council

1.5 Equality, Diversity and Inclusion Implications

Equality Impact Assessment undertaken. Attached at Appendix 4.

1.6 Performance management – monitoring and review

As outlined in the report.

2 Background

2.1 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.

2.2 We have until very recently had a PSPO in force in Cheltenham to control the public consumption of alcohol and dog control in designated public spaces.

2.3 The authority 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.

2.4 Consultation was undertaken between 21/08/2023 and 02/10/2023.

2.5 This report outlines the consultation responses received and seek approval to renew the PSPO for a further years.

3 Statutory Considerations

3.1 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:

3.3 The first condition is that:

3.3.1 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

3.3.2 it is likely that activities will be carried on in a public place within that area and that they will have such an effect.

3.4 The second condition is that the effect, or likely effect, of the activities:

3.4.1 is, or is likely to be, of a persistent or continuing nature;

3.4.2 is, or is likely to be, such as to make the activities unreasonable; and (c) justifies the restrictions imposed by the notice.

3.5 A PSPO identifies a public place also known as “the restricted area” and:

3.5.1 prohibits specified things being done in the restricted area;

3.5.2 requires specified things to be done by persons carrying on specified activities in that area; or

3.5.3 does both of those things.

3.6 Prohibitions or requirements imposed by a PSPO can only be ones that are reasonable to:

3.6.1 prevent the detrimental effect referred to in subsection (2) from continuing, occurring or recurring; and

3.6.2 reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.

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

4 Statutory Guidance

4.1 There is statutory guidance accompanying the 2014 Act (Revised in March 2023).

4.2 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

- 4.3 *“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.”*
- 4.4 *“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.”*
- 4.5 *“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 lawabiding majority can use and enjoy public spaces, safe from anti-social behaviour.”*
- 4.6 *“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.”*
- 4.7 *“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.”*
- 4.8 *“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.”*
- 4.9 *“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.”*
- 4.10 *“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 Justification for extension

5.1 Data from 2020 – 2023 of incidents reported:

5.1.1 Dogs related offences – 272

5.1.2 ASB related offences – 101

5.1.3 Alcohol related offences – 5

5.1.4 Litter related offences - 345

5.2 Data from 2020 – 2023 of (FPN) fines issued:

5.2.1 Dogs related offences – 3

5.2.2 ASB related offences – 0

5.2.3 Alcohol related offences – 0

5.2.4 Litter related offences - 27

5.3 Complaint and incident data from the last two years which has been recorded the authority is outlined below:

Issue	1 st April 2019 – 31 st March 2020	1 st April 2020 – 31 st March 2021	1 st April 2021 – 26 th March 2022
ASB	34	16	21
Litter	106	95	172
Alcohol consumption	3	2	0
Dogs	75	89	107

5.4 Although the data above suggests the recorded issues in public spaces are relatively few, a large proportion of these issues are primarily reported to the police in the first instance.

5.5 The existence of the order being in place controls and justifies any potential escalation of behaviours, and encourages and requires proactive patrols and partnership working approach to enforce the order effectively.

6 Delegation

6.1 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.”

6.2 As a result of a recent restructure, the post of Director of Environmental and Regulatory Services was made redundant. The delegation now sits with the Corporate Director and Monitoring Officer.

7 Reasons for recommendations

7.1 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.

8 Alternative options considered

- 8.1 Extension of the scope relating to the previous PSPO - The authority, 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, reinforced by the consultation feedback, support to retain or extend the PSPO covering these issues.
- 8.2 Not to renew the PSPO - The Corporate Director and Monitoring Officer, in consultation with the Cabinet Member Safety & Communities, 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 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 anti-social behaviour, as a result of the suppression/deterrent effect associated with having a PSPO and associated signage in place.

9 Consultation and feedback

- 9.1 Consultation was undertaken between 21/08/2023 and 02/10/2023.
- 9.2 A total of 14 responses were received during the consultation period. These are outlined in appendix 2 of this report.
- 9.3 The majority of resident and visitor respondents expressed support for the PSPO renewal with only one resident calling for the alcohol restrictions to be dropped.
- 9.4 More extensive comments were submitted by the Dogs Trust. Whilst, in general, they were not opposed to the renewal of the PSPO, they raised questions about the enforceability of certain dog control orders under the PSPO or its effectiveness without adequate enforcement resourcing.
- 9.5 The corporate Neighbourhood Team holds the responsibility for enforcement of dog control measures proposed under the PSPO. Officers cover a designated geographical area. These officers know their areas very well including hot spots and where to focus effort. With this, there is a high degree of confidence that officers will be effective in dealing with irresponsible dog owners.

10 Key risks

- 10.1 As outlined in Appendix 1.

Report author:

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Appendices:

- i. Risk Assessment
- ii. Consultation Feedback Report
- iii. Draft Public Spaces (Cheltenham) Order 2023
- iv. Equality Impact Assessment

Background information:

1. [Anti-Social Behaviour, Crime and Policing Act 2014](#)
2. [Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers Statutory guidance for frontline professionals \(March 2023\)](#)
3. Cabinet, Tuesday, 17th March, 2015 Agenda item 10

Appendix 1: Risk Assessment

Risk ref	Risk description	Risk owner	Impact score (1-5)	Likelihood score (1-5)	Initial raw risk score (1 - 25)	Risk response	Controls / Mitigating actions	Control / Action owner	Deadline for controls/ actions
	If the authority does not approve the extension to the current PSPO to have it in place for a further 3 years, the authority 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.	Head of Public Protection	4	3	12	Accept	Adopt the recommendations	Corporate Director and Monitoring Officer	Report date
	If the authority does not approve the extension to the current PSPO, the authority 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	Head of Public Protection	3	3	9	Accept	Adopt the recommendations	Corporate Director and Monitoring Officer	Report date

Risk ref	Risk description	Risk owner	Impact score (1-5)	Likelihood score (1-5)	Initial raw risk score (1 - 25)	Risk response	Controls / Mitigating actions	Control / Action owner	Deadline for controls/ actions
	alcohol related ASB.								