

Overview and Scrutiny



Safer Stronger Communities Select Committee Tabled Document

Tuesday, 27 June 2023

7.00 pm

Civic Suite

Lewisham Town Hall

London SE6 4RU

4. Submissions received by the Committee regarding the proposed Public Spaces Protection order

3 - 22

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Safer Stronger Communities Select Committee

Report title: Submissions received by the Committee regarding the proposed Public Spaces Protection order

Date: 27 June 2023

Key decision: No

Class: Part 1

Ward(s) affected: all

Contributors: Benjamin Awkal, Scrutiny Manager, and external bodies.

Note: The Chair of the Committee wrote to a range of organisations and individuals with expertise and interests in respect of the proposed Public Spaces Protection Order (PSPO). The responses which the Committee received and has permission to publish are contained in this agenda supplement.

1.1. To obtain expert insights to inform the Committee's scrutiny of the proposed PSPO, the Chair wrote to the following organisations seeking their views on the Council's proposals:

- 999 Club
- Action for Refugees in Lewisham
- Bench Outreach
- Crisis
- Deptford First
- Dr Vicky Heap, Sheffield Hallam University
- Friends of parks groups in Lewisham
- Federation of Small Businesses (Greater London)
- Lewisham Law Centre
- Lewisham Refugee and Migrant Network
- Lewisham Safer Neighbourhood Board
- Lewisham Young Mayor and Advisors
- Liberty
- London Gypsies and Travellers
- New Direction Lewisham
- Probation Service (Lewisham Office)
- Release
- St Mungo's (Spring Gardens)
- South East London Chamber of Commerce
- Tenants and residents associations via Lewisham Homes

1.2. The following organisations and people made responses, which are published in the annexes noted below.

- Chair of the Lewisham Safer Neighbourhood Board (Appendix A)

- Friends of Mountsfield Park (Appendix B)
- Friends of Albion Millennium Green (Appendix C)
- Release (Appendix D)
- Dr Vicky Heap, Reader in Criminology and Fellow of the Sheffield Institute for Policy Studies, and Benjamin Archer, Lecturer in Law, Sheffield Hallam University (Appendix E)
- London Gypsies and Travellers (Appendix F)

Appendix A – Chair of the Lewisham Safer Neighbourhood Board

Thank you for the mail that requested for LSNB opinion regarding the proposed order.

I have not had opportunity to consult and discuss with board members but would like to express my views which others are likely to support.

The issues itemised and areas of concern appear to be in need of some remedial actions which the proposed order could address if properly implemented.

I am however mindful of how additional powers will be monitored to ensure fairness and integrity is maintained.

Also, would the council put in place for instance, available toilets in parks at all times to discourage urination especially when it affects young children when parks are the only places available to those without back gardens to use as recreational space.

I will endeavour to attend the meeting and further contribute if I have other views from my board.

*With Best Wishes-
Tayo Prince | Chair, LSNB*

Appendix B – Friends of Mountsfield Park

I don't think that Friends of Mountsfield Park has been consulted on this to date. Not sure why we are not one of the named parks? We have lots of drug, alcohol and dog related anti-social behaviour at our park. We have let our Rushey Green Councillors know about this and the parks Council Officers. The George Lane park entrance is left open at night which may also be a contributing factor. We would like Mountsfield Park to be included on the Area Specific Measures list, in particular our children's play area and our community garden which we would like to be designated as dog free, no smoking, no drugs and no alcohol areas, to reduce anti social behaviour. Unfortunately the Mountsfield Park community garden is a no go area for most people in the evening because it becomes dominated by groups of men smoking drugs, drinking spirits and other alcoholic drinks. In the morning the leftover empty bottles, cans and plastic cups discourage people from visiting the community garden. We are not able to maintain the space as a family and wildlife friendly area, when it often becomes a hub for antisocial behaviour. If the community garden was included on the Area Specific Measures list, that could help improve the park for more people.

Appendix C – Friends of Albion Millennium Green

I am writing on behalf of the Friends of Albion Millennium Green to support the introduction of a Public Space Protection Order which would apply to the entire Borough of Lewisham.

The Friends of Albion Millennium Green is a group of volunteers who care for Albion Millennium Green which is one of 245 green spaces created in cities, towns and villages across England to celebrate the turn of the Millennium. The Green consists of a hectare of mixed of woodland and meadow, a community orchard, two small ponds and a labyrinth. It has a good range of habitats and species present and offers a place of tranquillity for the enjoyment of the public. We are holders of the Green Flag Community Award which recognises high quality green spaces managed by voluntary and community groups.

Albion Millennium Green is owned by a Charitable Trust and not Lewisham Council. Nevertheless we would hope that a PSPO would also apply to us.

We have ongoing problems with:

- 1. Alcohol consumption in public and related anti-social behaviour such as verbal abuse and littering by leaving cans and broken bottles which are sometimes broken and may injure the public.*
- 2. Consumption of drugs and psychoactive substances, drug dealing and the leaving of drug paraphernalia.*
- 3. Public urination and defecation which is a health hazard.*
- 4. Dog related anti-social behaviour such a dogs being allowed to run free off leads and scaring other users of Green, owners "hanging" dogs from tree branches to strengthen their jaws which causes damage to our trees and not picking up dog faeces which is a health hazard to the public and especially children playing on The Green.*

In the past we have had problems with illegal encampments which were associated with anti-social behaviour, consumption of drugs and urination and defaecation.

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Lewisham Council's Proposed Public Space Protection Order (PSPO)

**Release comments for Lewisham
Council's Select Committee on 27 June
2023**



Release is the national centre of expertise on drugs and drugs law in the UK. The organisation, founded in 1967, is an independent and registered charity. Release provides free non-judgmental, specialist advice and information to the public and professionals on issues related to drug use and to drug laws. The organisation campaigns directly on issues that impact on its clients - it is their experiences that drive the policy work that Release does and why Release advocates for evidence-based drug policies that are founded on principles of public health rather than a criminal justice approach.

Release believes in a just and fair society where drug policies should reduce the harms associated with drugs, and where those who use drugs are treated based on principles of human rights, dignity and equality. Release is a NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

Contact: Aleister Adamson, Senior Legal Adviser (Aleister@release.org.uk)

Introduction

1. Release has been asked to comment on a borough wide PSPO being considered by Lewisham Council's Safer Stronger Communities Select Committee on 27 June 2023.
2. Our comments will focus on the proposed provisions relating to the consumption of drugs and psychoactive substances. The proposed provision states:

"Any person who, without reasonable excuse, fails to surrender any such substance in their possession, and if requested, leave the area and not return for 48 hours when asked to do so by a Constable, Police Community Support Officer (PCSO) or Council Officer, commits an offence and may be liable to prosecution or may be issued a Penalty Notices for Disorder or arrested, either under the Misuse of Drugs Act 1971 or issued an Fixed Penalty Notice for failure to comply with a PSPO (local authority FPN)."

3. The proposal includes a dispersal power, and provision for a punishment for noncompliance.
4. We also offer some more limited insight into the provisions on so-called illegal encampments. The proposed measure states:

"Any person who, without reasonable excuse, occupies any vehicle, caravan, tent or other structure on public land owned or managed by the London Borough of Lewisham, without prior authorisation from the London Borough of Lewisham, commits an offence."

5. Release opposes the expansion of anti-social behaviour (ASB) powers. The concept of using these powers to understand and respond to issues of community safety is racialised and classed. Our comments focus on the likely impact the PSPO will have on young people and vulnerable residents, particularly people experiencing homelessness and marginalised communities.
6. Through our legal outreach projects, we offer support to people accessing drug and alcohol treatment services, homeless projects, and sexual health clinics supporting them in relation to

housing, social welfare, benefits and debt. We are therefore uniquely placed to comment on the proposed approach to a number of issues raised in the proposal.

Background: Increase in police/local authority powers and oppressive effect in the context of police force undermined by institutional prejudice

7. Lewisham’s proposed PSPO states that “*enforcement of these powers would support the wider strategy in Lewisham to address alcohol related harm*” However, the use of PSPOs perpetuates and exacerbates the harms associated with increased contact with the police, particularly as this creates the clear risk of increased use in stop-search powers. The use of the criminal justice system to tackle concerns about alcohol consumption and drug use has been proven to do little to make communities safer, while also decreasing public trust and confidence in the police and increasing demographic disparities.

8. The Baroness Casey Review into the standards of behaviour and internal culture of the Metropolitan Police Service drew attention to the ways in which measures designed to increase police contact have exacerbated racial disparities and are used disproportionately. The Met Police already consistently account for 40-50% of all stops carried out in England and Wales.¹ These stops are disproportionately acquired against Black communities, as the Met have publicly admitted that they target areas of high crime which tend to be poorer areas where Black communities are more likely to live, however rather than targeting crime this inevitably manifests itself in the targeting of the communities themselves.² The Misuse of Drugs Act is consistently the most used reason to stop and search in London, accounting for 60 per cent of all such police interactions between April 2022 and April 2023³. The Report concludes:
 - *“Existing scientific evidence does not support the widespread use of [police stops] as a proactive policing strategy.”*
 - *Those stopped by the police suffer far more mental and physical health problems than those who live in the same neighbourhoods but have not been stopped by police.*
 - *Those who have been stopped showed a significantly more negative attitude towards the police than those who had not been stopped.*
 - *Level of distrust in police was twice as high among those who had been stopped compared with those who had not been stopped.”⁴*

¹ Home Office, 27 October 2022, Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2022, <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/111337/7/stop-search-data-tables-summary-mar22.ods>

² Baroness Casey of Blackstock DBE CB, *An Independent Review into the standards of behaviour and internal culture of the Metropolitan Police Service*, <<https://www.met.police.uk/SysSiteAssets/media/downloads/met/about-us/baroness-casey-review/update-march-2023/baroness-casey-review-march-2023a.pdf>> p.317

³ <https://www.met.police.uk/sd/stats-and-data/met/stop-and-search-dashboard>

⁴ Casey, 2023, p.319

9. Liberty's report, to which Release is contributing partner, "Holding Our Own: A Guide to Non-Policing Solutions to Serious Youth Violence"⁵ explored the harms perpetuated by drugs policing, demonstrating how increasing police powers and contact is both ineffective and fuels racial disparities, undermining public trust in the police.
10. Stop and search is an ineffective police practice. Even when the number of stop searches tripled in 2016 under Operation Blunt 2 to respond to knife crimes, analysis by the Criminal Justice Alliance demonstrated that nearly three-quarters of all stop and searches found no weapons or any other prohibited item. While it is claimed to be used to keep communities safe, the majority of stop and searches are for low-level drug offences such as possession, especially cannabis, for personal use. Overall, the find rates are so low that stop and search ultimately enables police to intimidate, harass and create violence in the lives of young people much more effectively than it is at removing illicit substances from communities.⁶
11. The effects of the PSPO will be particularly acute in Lewisham. Lewisham is a diverse area, with high levels of deprivation and ethnic, religious and racial diversity. Lewisham already has a high level of policing, in April 2023 (the most recent month reported) Lewisham was the eighth most policed borough in London, representing 3.6% of all stop and search in London.⁷
12. Black communities are particularly overrepresented in the Met's stop and search demographic data in the Lewisham area. Between June 2022 and April 2023, the black population were overrepresented amongst Lewisham's stop and search volumes, with 2414 searches conducted against people of black ethnic appearance compared to 1862 for people of white ethnic appearance, according to Metropolitan Police data on Lewisham stop and search. The racial disparities throughout this period range Black people were stopped and searched at between 2 to 3 times the rate of White people in the borough.⁸
13. Furthermore, Lewisham is a large borough encompassing several areas of deprivation.⁹ A loosely defined PSPO covering the whole borough risks the abuse of these wide-ranging powers to criminalise poverty, and to widen issues of over-policing of poorer communities.
14. Even in the unlikely event that the PSPO is implemented consistently across racial lines, this does not eliminate the risks that over-policed communities, in particular black people, will face severe

⁵<https://www.release.org.uk/sites/default/files/pdf/publications/Liberty%20and%20Release%20Submission%20-%20Anti-Social%20Behaviour.pdf>

⁶ Liberty & ors, *Holding Our Own: A Guide to Non-Policing Solutions to Serious Youth Violence*, <https://www.libertyhumanrights.org.uk/wp-content/uploads/2023/04/HoldingOurOwn_Digital-DoubleSpreads.pdf>, p.62

⁷ <https://www.met.police.uk/sd/stats-and-data/met/stop-and-search-dashboard>

⁸ Ibid

⁹ <https://www.observatory.lewisham.gov.uk/deprivation/map/>

consequences following the increased powers. The Baroness Casey report and previously the Stephen Lawrence enquiry have highlighted the tragic consequences of over-zealous policing of black communities. Release also highlighted this in our research, *The Colour of Injustice*¹⁰, which looked at drug law enforcement and racial disparities the *Holding Our Own Report* in the context of drugs policing:

15. Overwhelmingly, the evidence as highlighted by the Met police’s own stop and search data, and independent reports such as the Baroness Casey review, demonstrate that increasing police powers through measures such as a PSPO, with its broad brushstroke approach to giving wide powers over wide areas for a long period of time, does more to harm communities, criminalise poverty, and exacerbate existing racial tensions and mistrust in police, than it does to prevent ASB and make communities safer.

Lewisham’s PSPO: Lack of justification and clarity for additional powers

16. The proposed PSPO gives the police the power to fine anyone found in breach. The police already have the power to seize any illicit substances found in a person’s possession under s.23 of the Misuse of Drugs Act 1971, as well as arrest and conviction for a possession offence (which itself could include a fine). As such, the penalties for a breach of the PSPO’s terms are not justified considering the existing power of the police in these circumstances.
17. The proposed wording of the PSPO is that “[a]ny person who... commits an offence and may be liable to prosecution or may be issued a Penalty Notices for Disorder or arrested, **either** under the Misuse of Drugs Act 1971 or issued an Fixed Penalty Notice for failure to comply with a PSPO” (emphasis added). The use of the word ‘either’ leaves open the possibility for enforcement using the PSPO or the Misuse of Drugs Act 1971, or potentially both. A person found in possession of illicit substances could conceivably be sanctioned for a breach of the PSPO for failing to surrender drugs, receive a fine and potential prosecution, *and* be convicted and punished for a possession offence, thus creating a double punishment for the same offence.
18. The evidence relied on in the Evidence Pack is unreliable. The data is from January 2020 to September 2022, which includes 2 years of data skewed as a result of the COVID-19 pandemic. During the pandemic, “*the rate of recorded anti-social behaviour in England and Wales rose sharply to more than double its expected level in the early months of the pandemic*”.¹¹ Halford, Dixon and Farrell report that this is due to lockdown breaches being recorded as ASB, as non-COVID-19 related ASB stayed “*at similar to expected levels across the pandemic*”. From 2022-onwards, ASB levels have also remained around expected levels,¹² demonstrating that the increase of ASB in the period cited by Lewisham Council is not an accurate reflection of the levels

¹⁰ <https://www.release.org.uk/publications/ColourOfInjustice>

¹¹ Halford, E., Dixon, A., and Farrell, G. 2022. Anti-social behaviour in the coronavirus pandemic. *Crime Science* 11, 6 . Available at: <https://crimesciencejournal.biomedcentral.com/articles/10.1186/s40163-022-00168-x>

¹² *Ibid.*

of ASB in the community, and therefore cannot be relied upon to support the introduction of a PSPO.

19. The Evidence Pack that sets out supporting statements from local police officers. These supporting statements provide specific and very localised reports, including referring to singular venues and footpaths. There is a lack of anecdotal evidence and the statements do not balance those specific experiences with the wider Borough. It is not justifiable to limit the freedoms of the Borough on the basis of only three statements that only mention singular venues, and do not reflect the experience of the Borough at large.

Disproportionate impact on young people, poor people, people experiencing homelessness and people who use drugs

Drugs measure: Dispersal powers

People who use drugs

20. PSPOs which capture the location of drug and alcohol treatment services can have detrimental consequences for individuals as consistent treatment is fundamental to mitigating drug-related harms. A 48-hour exclusion may preclude a person from accessing treatment, their pharmacy and other medical and professional support. This can include crucial harm-reduction initiatives such as needle exchanges. This has the dual effect of preventing a person from accessing help and empowers the Local Authority and Police to target people simply for existing in public.
21. Where a person is using drugs in the vicinity of their accommodation provider, as has been identified in the Supporting Statements in the Evidence Pack, this is often because that person is not permitted to use drugs within the premises. Dispersal powers have the effect of excluding that person from accessing that accommodation. Release would encourage the Council to engage with housing providers to encourage a tolerated use policy within those accommodation providers. This approach is adopted by a number of other providers of shelters, and Release would be delighted to speak to the Council about this life saving approach.
22. Additionally, dispersal powers may force a person into more secluded areas, thereby increasing drug-related risks such as overdose.¹³ People who use drugs need safe, clean spaces to take drugs, which have access to on-site medical staff. This pragmatic and public health approach to drug-use would not only prevent the risk of overdose and drug-related death, but also the issue of drug-related paraphernalia littering public spaces and streets. In framing drug use as ASB there is a danger that dependent users, and particularly those without access to housing, will simply be forced to move from one public space to another. It does nothing to engage with the

¹³ European Monitoring Centre for Drugs and Drug Addiction, Perspective on Drugs: Drug Consumption rooms: an overview of provision and evidence. Available at:

https://www.emcdda.europa.eu/system/files/publications/2734/POD_Drug%20consumption%20rooms.pdf

difficult question of how to actually help people. It is worth noting that Lewisham has the tenth highest rate of drug related death in the Capital's boroughs.¹⁴

23. Release objects to criminalising and intimidating people who use drugs with police powers. The failure of these policies lie in the fact that they do little to resolve the issues they claim to be tackling (such as drug-related litter) and instead, force people who use drugs into further isolation and marginalisation, all of which put them at further risk of harm.

Young people

24. Youth services have seen their budgets decimated as a result to local authority funding, at a huge cost to the wellbeing and safety of young people. In too many cases, this has left young people without dedicated spaces to go to in their community. The proposed exclusion power makes it more difficult to spend time with friends and risks criminalising young people for simply being in public spaces.
25. Release objects to the use of dispersal powers in the context of the existing raft of police powers and sentencing legislation already used to label, and criminalise, groups of young people as 'gangs', with this impacting young Black people in particular. The evidence showing the use of dispersal powers to target young people shows a clear conflation of 'criminal' behaviour and 'congregating' behaviour. Young people may congregate together because they have a shared affinity with a particular area or they feel a greater sense of safety when together as a friendship group, or that they simply do not have the private space to meet. Use of dispersal powers disrupt the bonds young people create with their peers when experiencing play and joy.

Drugs measure: Punitive element

People who use drugs

26. Breaching a PSPO carries an on the spot fine of up to £100, increasing up to £1,000 and prosecution in the Magistrates' Court if the person does not pay.
27. Lewisham has areas of high deprivation and several of those areas have been specifically identified in the Supporting Statements. Subjecting people experiencing poverty to financial sanctions can have far-reaching consequences beyond that initially intended by the sanction. Compelling a person to pay £100 on-the-spot can be the difference between eating, paying for rent, paying for bills and other outgoings, and being simply unable to do so.
28. Where a person does not have access to that amount immediately due to their limited means, which may be unavoidable where a young person is sanctioned, they face the prospect of a

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<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/datasets/drugmisedeathsbylocalauthority>

much higher fine and prosecution. This mechanism effectively criminalises a person for having limited means. Where an individual is subjected to the harsher penalty, this can have life-changing consequences.

29. In the case of young people, prosecution and a criminal record can have a devastating impact on their life's outcomes, including in educational attainment and accessing employment in a wide range of professions and roles.
30. Those with limited means that fall into arrears that are subject to the higher fine and prosecution may have their lives significantly upturned. This can include falling into rent arrears or being unable to afford basic necessities.
31. Requiring a person to surrender drugs in their possession can also have far-reaching consequences for that person and may have the adverse effect of actually magnifying some of the issues raised in the Evidence Pack. For opiate users in particular, the confiscation of drugs can have harmful health impacts including withdrawal and a risk to life. The likely reality is that a person will simply buy more, thereby increasing the demand and trade in the area.
32. Release opposes the enforced surrender of drugs and encourages the Council to be led by a public health and harm-reduction approach.

Young people

33. It is well reported that law enforcement with respect to drugs has a disproportionate impact on young people. For example, "*[b]etween 2007 and 2017, 3,861 people have been given a custodial sentence [for cannabis possession], and of these 43% (1,663) were young people aged 12-24, and 18% (687) identified as Black - despite making up less than 4% of the population of England and Wales*".¹⁵
34. The life-altering impacts of criminal records are also felt much more deeply for young people, which is a further reason why the proposed PSPO should not be approved. If the PSPO does not displace the powers of seizure and arrest, and therefore risk double punishment for possession offences, this will produce the effect of imposing life-changing consequences of criminal records on young residents of Lewisham.
35. The timing of the proposed PSPO raises concerns, particularly for young people, coming into the summer months where people regularly socialise in parks and other public areas. The proposed PSPO will sanction people for failing to surrender alcohol, for small drug possession, littering and playing music. There is a clear link between people gathering in public spaces when the weather

¹⁵Garius, L. & Ali, A. (2022) *Regulating Right, Repairing Wrongs: Exploring Equity and Social Justice Initiatives within UK Cannabis Reform*, London: Release. Available at: https://www.release.org.uk/sites/default/files/pdf/publications/Regulating-Right-Repairing-Wrongs-UK-Cannabis-Reform_Release.pdf

is warmer and these potential breaches. Young people are more likely to be socialising in this way, and the PSPO will thus produce a disproportionate impact on young Lewisham residents.

36. The Mayor of Lewisham, Damien Egan, has previously put his support behind diversion programs for people under 25 who are found in possession of drugs and the decriminalisation of cannabis.¹⁶ This demonstrates that there is an understanding of the disproportionate impact of drugs policing on young people, and the harms that stem from enforcement. The proposed PSPO contradicts the Mayor's beliefs and support for harm reduction measures.

So-called illegal encampments and homelessness

37. The concerning tendency for powers within PSPOs to be used to unfairly target people experiencing homelessness and poverty was addressed in 2021 Home Office Guidance: “[PSPOs] should not be used to target people based solely on the fact that someone is homeless or rough sleeping, as this is in itself unlikely to mean that their behaviour is having an unreasonably detrimental effect on the community's quality of life which justifies the restrictions imposed.”¹⁷ Reference to homelessness and poverty was removed in the 2023 guidance. This itself is deeply concerning.

38. There are several examples in the Evidence Pack's Supporting Statements which frame homelessness and poverty as requiring a punitive response:

“[R]esidents complain that the presence of homeless people within the tunnel is off putting for them and they feel intimidated by it. There are also reports that these people are begging. This matter has been referred to the council before and was recently subject to a joint police and council visit. Officers have recently issued 3 Community Protection Warnings here. The main protagonist here did for a period have a place at Miriam Lodge but rather chose to sleep in the tunnel with her partner until he recently died, as they couldn't stay together at Miriam Lodge.”

39. Seeking to criminalise homelessness does not help anybody, neither does seeking to use enforcement powers to compel a person to live away from their partner. Release advocates for access to safe, suitable and secure housing. As the Council will be aware, this is difficult to come by and it is fundamental that support is available to people experiencing homelessness who should at no stage be sanctioned for simply existing in a public space.
40. In relation to so-called illegal encampments, the proposal effectively criminalises a person experiencing homelessness from using a shelter. Positively, the Evidence Pack notes that

¹⁶ Keane, D. 2022. Decriminalise cannabis to protect young Londoners, says Mayor of Lewisham. Evening Standard. Available at: <https://www.standard.co.uk/news/london/mayor-of-lewisham-damien-egan-decriminalise-cannabis-plan-london-b978852.html>

¹⁷ Home Office. 2021. Anti-social Behaviour, Crime and Policing Act 2014: Reform of Anti-social Behaviour Powers - Statutory guidance for frontline professionals. January 2021, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1146322/2023_Update_ASB_Statutory_Guidance_-_FINAL_1_.pdf

reported cases occur “*relatively infrequently*”, with a steady rate of 30 reports over a period of just less than two years.

41. Release opposes the punishment of people seeking shelter, who will overwhelmingly be experiencing poverty and homelessness. The resources committed to the discharge of punitive powers would be much more effectively utilised ensuring that individuals have access the robust support to access safe, suitable and secure housing as opposed to needlessly moving a person from one public space to another and criminalising them at various points along the way. Support into housing can take a substantial period, particularly where individuals are self-advocating. There is a real risk that people will be sanctioned where they are already trying themselves to access permanent accommodation.
42. Release would also urge the Council to consider other options, such as dedicating unused public land to authorised encampments, serviced by sanitary facilities, rubbish disposal and on-site housing support. This approach would solve the main issues in the evidence pack and provide a long-term solution to people occupying impermanent shelter.

Conclusion

43. Release has serious concerns about the impact that the proposed PSPO will have on vulnerable populations including those experiencing homelessness, young people, black people and other ethnic minorities. We would urge Lewisham Council to adopt different, and more effective, strategies to ensure that those that would suffer the greatest harm under this proposal are instead supported by their Local Authority.

23 June 2023

Dear Councillor Shrivastava,

Re: Proposed Public Spaces Protection Order in Lewisham

Thank you for your letter dated 9 June asking me to provide written comments about the proposed Public Spaces Protection Order (PSPO) for Lewisham, detailed in the evidence pack and corporate report you supplied. I have discussed the proposals with my colleague Benjamin Archer, Lecturer in Law, who is on the verge of completing his PhD on the implementation of PSPOs. This is our joint response, based on the findings from our combined body of research in this area. These are our comments, not those of the university, and they do not constitute legal advice. This submission may be tabled and published when the Safer Stronger Communities Select Committee meets on 27 June 2023.

We have provided a range of comments related to different aspects of the PSPO proposal. From the outset it is important to clarify our perspective on the ASB tools and powers. First, we are of the opinion that ASB victimisation should be taken seriously and, in some cases, requires an enforcement response. All enforcement should be proportionate to the behaviour in question and implemented in the most productive and least harmful way to marginalised communities (e.g., people experiencing street homelessness). Our comments are grounded in the concept of legal literacy (Braye and Preston-Shoot, 2016), which promotes:

- Doing things right and in the spirit of the law
- Doing the right thing in terms of professional ethics
- Rights thinking, which respects human rights and social justice.

Second, PSPOs and other ASB powers are blunt tools. They deal with the symptoms of behaviour (e.g., drug use), rather than the causes (e.g., addiction). It is unclear from the evidence pack and corporate report what wider measures are in place to tackle the causes of the ASB problems reported. For example: if public urination and defecation is a problem, what public toilet facilities are available or required in the areas with increasing numbers of incidents? Similarly, alcohol consumption in public spaces; people experiencing street homelessness (generally) have no option but to drink outside, so what provision is made for them to do so in a safe manner for themselves and members of the wider community? Enforcement action against these types of behaviours will not necessarily deter the perpetrator, therefore the long term, most productive and least harmful approach is to solve the problem. This notion is borne out by the proposal to re-introduce a PSPO, which was previously in place between 2018 and 2021.

Geographical scope of the order

The proposed scope of the PSPO is borough-wide. From looking at the evidence pack, some ASB incidents occur across the borough (i.e., alcohol-related anti-social behaviour and disorder, consumption of drugs and psychoactive substances, dog-related anti-social behaviour and, to an extent, public urination and defecation). This would suggest that a borough-wide order would be an appropriate imposition. However, the accompanying maps indicate that some behaviours are more locationally specific (i.e., amplified music or speech and illegal encampments) and are not as widespread. In these circumstances, it would be disproportionate to place all users of the borough under the jurisdiction of a PSPO, especially as the evidence states that "[U]nauthorised encampments occur relatively infrequently". Instead, alternative targeted measures should be considered for these behaviours when required. For example, different and more appropriate legislation can be used to disband unauthorised encampments. A further point about borough-wide PSPOs stems from Archer's research, specifically that the effectiveness of borough-wide orders is perceived to decrease without appropriate resourcing for enforcement. We return to comment on resourcing later.

Consultation process

It is unclear from the documents circulated if a new consultation about the proposed PSPO has already taken place. There are several considerations for this process. Archer's study found that local authorities consulted primarily through online platforms, such as SurveyMonkey, due to financial constraints. Both of our studies have underlined how local authorities have insufficiently consulted with marginalised groups likely to be subject to enforcement under a PSPO. From the evidence provided here, it is unclear whether any vulnerable groups will be consulted, particularly those experiencing street homelessness who could be disproportionately represented in any enforcement action should the PSPO be implemented and often lack consistent internet access (Dyce, 2019). The ability for vulnerable groups to participate in the consultation should be considered in any equality impact assessment. Furthermore, Archer's findings uncovered that police officers, particularly those responsible for enforcing a PSPO, were sometimes insufficiently consulted by local authorities during the implementation phase. It would be beneficial to canvas the perspectives of those enforcing the PSPO as well as the public and to begin a dialogue surrounding the feasibility of resourcing a proposed borough-wide order at this juncture. Other groups to consider specifically targeting to participate in the consultation include: The Kennel Club (who have commented/advised on dog-related prohibitions in other areas), Gypsy, Roma, and Traveller communities, as well as homelessness charities, drugs and alcohol services, and youth services on a borough-wide basis. For the consultation to be as accurate as possible, the responses should represent the opinions of those living/operating in the geographic area being considered for the PSPO, which in this case should be the whole borough.

Prohibitions and requirements

The proposed prohibitions (particularly alcohol-related anti-social behaviour and disorder, consumption of drugs and psychoactive substances, public urination and defecation, and illegal encampments) are all regulations that can potentially target vulnerable groups, notably people experiencing street homelessness (Sanders & Albanese, 2017). Revisiting our earlier point about addressing the causes as well as tackling the symptoms of the behaviour, what measures are in place to ensure that marginalised groups are not disproportionately punished, and that support is provided to those facing different and/or multiple forms of vulnerability? For example, street homelessness and addiction.

One of the more concerning prohibitions relates to drug and psychoactive substance consumption. The evidence pack states that:

Any person who, without reasonable excuse, fails to surrender any such substance in their possession, and if requested, leave the area and not return for 48 hours when asked to do so by a Constable, Police Community Support Officer (PCSO) or Council Officer, commits an offence and may be liable to prosecution or may be issued a Penalty Notice for Disorder or arrested, either under the Misuse of Drugs Act 1971 or issued a Fixed Penalty Notice [FPN] for failure to comply with a PSPO (local authority FPN).

The proposal of this restriction is ultra vires (beyond the scope of the power) and could be subject to challenge and wider criticism. Neither the Anti-Social Behaviour, Crime and Policing Act 2014 nor the Home Office (2023) ASB guidance state that the Misuse of Drugs Act 1971 can be combined with the jurisdiction of a PSPO, as the 1971 statute has criminal jurisdiction, and the PSPO is a civil power. The proposal circumvents the law by layering these two powers together in a perceivably disproportionate manner. An arrest is, however, a consequence of breaching a Section 35 Direction to Leave Notice, but these powers are authorised by police officers following a Section 34 dispersal authorisation and are active for 48 hours, representing a more targeted dispersal measure than the proposed PSPO.

Furthermore, the borough-wide nature of the proposed PSPO results in a lack of specification. In particular, what would "leav[ing] the area" constitute in practice:

- Does it mean the whole borough or only a certain area of it?

If it is the whole borough, this is a disproportionate use of the powers. If only part of the area, however, further concerns are:

- Who decides the remit of the area that a perpetrator must leave?; and,
- How will someone required to "leave the area" be informed of its boundaries?
- How will this be enforced over a wide area?

Giving enforcement officers the discretion to decide the scope of dispersal in this prohibition increases the potential for inconsistent application of the power and risks the disproportionate punishment of perpetrators through ad hoc dispersals. It also has the potential to exclude people experiencing street homelessness from accessing support such as food or prescribed medicine. Heap et al.'s (2022) research found that dispersal measures were temporary, often causing displacement of the behaviour, which returned to the original site once the time period had expired. Participants talked of a 'cat and mouse' scenario which created more ASB and the strained relationship between perpetrators and the policing bodies. Again, the underlying problem was not solved.

Layering different anti-social behaviour tools and powers

The use of a PSPO with other anti-social behaviour tools and powers can be problematic. As the corporate report states:

... a PSPO would allow the serving of a Fixed Penalty Notice, Community Protection Warning [CPW] and Community Protection Notice [CPN]. It must be noted that if this power does not resolve the matter, there are other options such as seeking an injunction at a Magistrates Court, however the implementation of a PSPO would save time and resources.

The penalty for breaching a PSPO is a fixed penalty notice or fine on conviction, but CPWs and CPNs, whilst notably similar in some legislative respects, are distinctly separate powers to a PSPO and can be issued to individuals without a PSPO in place. Similarly, Civil Injunctions are more serious penalties than those associated with a PSPO and can also be pursued without a PSPO. The wording within the corporate report conflates and layers the available anti-social behaviour powers. Both Archer's and Heap et al.'s (2022) findings have explored the layering of formal and informal tools, with the latter highlighting how these practices disproportionately affect people experiencing street homelessness. Moreover, there was often a lack of clarity on the part of the recipient about exactly *which* power they were being subject to enforcement through.

Resourcing the PSPO

The resourcing required to enforce PSPOs is substantial, and whilst the evidence pack acknowledges the importance of avoiding "*regulations that cannot be enforced*", the corporate report also suggests that local authority enforcement will only occur "*where it is more appropriate for the Service to do so instead of the Police*". In Archer's study, police officers were frustrated by being tasked to enforce the PSPO alongside the increased enforcement expectations placed on them by local authorities, especially for sub-criminal behaviour. For example, in the study, a PSPO that prohibited urination and defecation failed because police officers could not dedicate the time and resources towards its enforcement. When considering the imposition of the proposed order, will sufficient resources be available to enforce the order and all the proposed behaviour? A lack of enforcement was also found in Heap et al.'s (2022) research, whereby PSPOs were implemented but not proactively enforced, with the powers often held in reserve and/or used on 'days of action'. Without consistent enforcement, many participants did not adhere to the prohibitions, which delegitimised the PSPO in the eyes of potential perpetrators. This has the potential to create a gap between public expectations of the PSPO and the reality of how it is enforced, which can damage public confidence. Further, whilst implementing an order could save "*time and resources*" compared to individual Civil Injunction applications, this is a potentially disproportionate use of this power against the rights of all public space users within the borough.

In conclusion, the proposals being put forward for a borough-wide PSPO in Lewisham demonstrate a range of conflicts with the research evidence generated by our empirical work. Anti-social behaviour is a difficult problem to tackle, but we hope you can navigate the tools and powers to ensure any enforcement action takes place in the least restrictive and most proportionate fashion for all members of your borough.

We would be happy to clarify any of our comments if necessary and have provided hyperlinks to published works below, where available.

Yours sincerely,

References

Archer, B. (forthcoming). *Investigating the implementation of public spaces protection orders*. Sheffield Hallam University doctoral thesis.

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Home Office. (2023). *Anti-social behaviour, crime and policing act 2014: Anti-social behaviour powers – Statutory guidance for frontline professionals*. <https://tinyurl.com/5n8davub>

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**Comments on Proposed Lewisham PSPO
June 2023**

London Gypsies and Travellers (LGT) is a charity which challenges social exclusion and discrimination, working for change in partnership with Gypsies and Travellers. LGT works with the community and a range of trusted partners to contribute to the development of local, regional and national policy.

We wish to respond to the consultation on the proposed Lewisham PSPO, to express our concerns about the inclusion of the following clause as one of the behaviours prohibited by the Order at Borough-wide level:

Proposed Measure: Any person who, without reasonable excuse, occupies any vehicle, caravan, tent or other structure on public land owned or managed by the London Borough of Lewisham, without prior authorisation from the London Borough of Lewisham, commits an offence.

We are worried that this will disproportionately affect members of Romany Gypsy and Traveller communities for whom living in a vehicle or caravan is an integral part of their culture and traditional way of life, and those who are nomadic or homeless, and have nowhere safe and suitable to stop in the Borough. There is currently no provision of culturally suitable accommodation such as transit sites or stopping places for nomadic communities in Lewisham. In the absence of transit sites, stopping places or negotiated stopping policies, many Gypsies and Travellers who want to pursue their nomadic way of life, or those who have no authorised caravan sites to live on and are effectively homeless, are often forced to resort to stopping on open and green spaces.

The use of PSPOs to prohibit unauthorised encampments has been analysed by legal experts in this field and considered to be potentially unlawful. Please refer to this article from Community Law Partnership which sets out the legal opinion:

<https://www.communitylawpartnership.co.uk/news/the-unlawful-use-of-public-spaces-protection-orders>

Recent judgments in the High Court and Court of Appeal regarding Borough-wide injunctions against 'persons unknown' occupying land, have highlighted the

disproportionate impacts on the Romany Gypsy and Traveller groups of a blanket ban from stopping on land, and have highlighted the steps that Local Authorities need to consider before seeking such extensive powers. The guidance provided by the Court of Appeal in the case *LB Bromley v Persons Unknown* requires Local Authorities to look at the provision of transit sites or negotiated stopping, carry out Equality Impact Assessments and effective engagement with Gypsies and Travellers who resort to the area, among other measures. More information can be found here

<http://www.londongypsiesandtravellers.org.uk/news/2020/01/21/injunctions-criticised-in-landmark-ruling/>

For these reasons, we would strongly recommend that Lewisham Council removes the above clause referring to 'illegal/unauthorised encampments' from the PSPO and explores alternative approaches to managing encampments. For example, negotiated stopping is a balanced and humane approach, based on a mutual agreement between the local authority and Gypsy and Traveller families on what short term accommodation is appropriate, fair and in the best interests of all residents. This involves dialogue with families, providing waste disposal and basic temporary facilities, and sometimes directing Gypsy and Traveller families away from contentious public spaces to more appropriate council land. Please refer to our report 'The potential for negotiated stopping in London' for further information about this approach:

http://www.londongypsiesandtravellers.org.uk/wp-content/uploads/2019/11/LGT_report_28Nov_web.pdf

We would welcome a further conversation with the Local Authority on the issue of accommodation need for Gypsy and Traveller people in Lewisham, both in terms of permanent sites and temporary stopping places, to explore how an alternative to enforcement and criminalisation could be put in practice.