



## Mayor and Cabinet

### Public Space Protection Order

**Date:** 2 November 2022

**Key decision:** No

**Class:** Part 1

**Ward(s) affected:** The entire borough of Lewisham

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### Outline and recommendations

This report seeks approval to undertake a public consultation on the introduction of a Public Space Protection Order (PSPO). PSPOs sit amongst a broad range of powers and tools to tackle anti-social behaviour locally. A PSPO can be used to prohibit specified activities and/or require certain things to be done by people engaged in particular activities, within a defined public space.

Local issues in scope of the consultation are as follows; alcohol related anti-social behaviour and disorder, amplified music and speech, dog related anti-social behaviour in public spaces and parks, consumption of drugs and psychoactive substances, illegal encampments and public urination on land open to the air.

It is recommended that Mayor and Cabinet agree to a public consultation to seek views on whether the Council should introduce a new PSPO across the borough for three years from the date of commencement.

### Timeline of engagement and decision-making

**2 November 2022:** Mayor and Cabinet

**January 2023 - February 2023:** Public consultation

**April 2023:** Findings to Mayor and Cabinet for review and final decision

## 1. Summary

- 1.1 This report seeks Mayor and Cabinet approval for public consultation on introducing a new Public Space Protection Order (PSPO). The PSPO will introduce several new powers for use by the Council and partners to address anti-social behaviour (ASB) within the Borough.

## 2. Policy Context

- 2.1 The Anti-Social Behaviour, Crime & Policing Act 2014, places a duty on local authorities to tackle anti-social behaviour by working in partnership with the police, social landlords and other agencies. The Act makes provision for a PSPO, which is intended to be used to control and restrict anti-social behaviour in public spaces. It can also help by giving local Councils and the police additional powers to tackle anti-social behaviour in specific locations.
- 2.2 The powers contained in the Act will assist the Council in meeting its priority to 'Build Safer Communities', whereby every resident feels safe and secure living within the borough, working towards a borough that is free from the fear of crime, as set out in the Council's Corporate Strategy.
- 2.3 Building Safer Communities is one of Lewisham's current Corporate Priorities and the proposed PSPO is intended to support the deliver of this priority specifically relating the the commitments that we ensure there is/are:
- Less crime and less fear of crime
  - Less young people involved in, or impacted by criminal behaviour
  - Communities and individuals empowered and supported to work in partnership with the Council and the Police

## 3. Background

- 3.1 Mayor and Cabinet previously agreed to the introduction of a PSPO in 2018, which expired in 2021. Many of the issues identified as a concern were similar to those considered for the proposed consultation, which included anti-social alcohol consumption in public places, dog control, psychoactive substances and unauthorised encampments. Since the expiry of the PSPO in 2021, evidence suggests that these activities have increased and therefore the powers should be reintroduced with the addition of a number of powers, which are outlined for consideration in this paper.

## 4. Public Space Protection Order

- 4.1 As previously stipulated in paragraph 3, the Anti-Social Behaviour, Crime & Policing Act 2014, places a duty on local authorities to tackle anti-social behaviour (ASB) by working in partnership with various stakeholders. The Act introduced several new tools and powers, which included the PSPO. The Act recognised that Councils are often best placed to identify the broad and cumulative impact of ASB, thus these powers allow focus on the identified problem behaviour in a specific location. This means that regardless of the individual or property, the behaviour is addressed.
- 4.2 The exact details of a local PSPO are defined by a local Council, which can include Borough-wide restrictions, a focus on certain types of behaviour at particular times of the day or the powers can be used to control access to public spaces (including some highways) where that route is being used to commit anti-social behaviour.

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- 4.3 Once agreed, a PSPO can be enforced by a Police Officer, Police Community Support Officer and delegated Council officers. A breach of the PSPO is a criminal offence and can be dealt with through the issuing of a Fixed Penalty Notice (FPN) of up to £100, or a fine of up to £1,000 on prosecution. Any income from an FPN is likely to be used to offset the costs of managing the PSPO, for items that include, but are not limited to signage and Court fees for failure to pay fines through to communicating the controls in place.
- 4.4 A PSPO can be implemented for up to three years, after which it must be reviewed. If the review identifies that the concerns remain and the requirements of the PSPO are met, an extension can be granted for a further three years. It must be noted that there is no limit on the number of times an Order may be reviewed and renewed, provided the review supports an extension and all requirements are satisfied.
- 4.5 The recommendation for consultation is a PSPO, which spans three years, with a review set at 30 months.

## **5. Why the introduction of a PSPO?**

- 5.1 When considering whether a PSPO is necessary, consideration of other enforceable actions and/or powers are compulsory as is the balance between introducing items that people identify as making them feel safer and happier in the borough, and the restriction of enjoyment for others.
- 5.2 The Council can make a PSPO if satisfied on reasonable grounds that the following conditions are met in relation to the activities sought to be regulated:
- That they are or are likely to be carried out in a public place within the Borough;
  - That they have had, or are likely to have, a detrimental effect on the quality of life of those in the locality;
  - The effect, or likely effect, of the activity is likely to be persistent or continuing in nature;
  - Is or is likely to be such as to make the activities unreasonable; and
  - Justifies the restrictions sought to be imposed by the Order.
- 5.3 Due to a number of anti-social behaviour reports received by the Council, a Council scoping exercise was undertaken during 2022, which included the analysis of anti-social behaviours across the Borough, using various data sets from the Police, Council departments and other stakeholders. Also considered were complaints from residents, those that work in the Borough and Councillors.
- 5.4 The following concerns were identified:
- Alcohol related anti-social behaviour and disorder
  - Amplified speech or music in open spaces
  - Dog related anti-social behaviour in public spaces and parks
  - Consumption of Drugs and Psychoactive Substances
  - Illegal Encampments
  - Public urination and defecation
- 5.5 The results are described in Appendix A, London Borough of Lewisham Public Space Protection Order Evidence Pack, and summarised in each of the following sections.

## **6 What is proposed for the PSPO?**

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- 6.1 The Council proposes the following measures based on the data received from the scoping exercise:

**Alcohol related anti-social behaviour and disorder**

- 6.2 Street drinking is sometimes associated with anti-social behaviour, causing high levels of noise, rowdy and nuisance behaviour, harassment and intimidation of passers-by, as well as the littering of cans and bottles, vomiting and urination in public spaces. There are often further concerns linked to underage drinking, sexual activity, criminal damage and/or substance misuse.
- 6.3 A PSPO would not ban the consumption of alcohol in a public place, but address alcohol related anti-social behavior/nuisance. It would not be an offence to consume alcohol in a public space; the offence would be failing to comply with an officer's request to stop the consumption of alcohol or failing to surrender containers when requested to do so. Authorised officers could only request that alcohol consumption cease on the grounds that anti-social behavior is or is likely to occur. The attached evidence pack summarises the data supporting these measures.
- 6.4 In summary, complaints made to the Council about this issue evidence that street drinking associated with rubbish, drugs and noise, affect a variety of areas such as roads, parks and residential areas. While there were pockets of higher activity around town centres, they were not confined to these areas showing the need to address the issue borough-wide. There were also a high number of alcohol-related incidents reported by the Police and ambulance services.

**Amplified music or speech**

- 6.5 The noise generated from amplified music and speech can cause alarm and distress to those in the vicinity. Evidence suggests a 26% increase of complaints in relation to noise in a public place between 2020 and 2021, with reports of members of the public using portable and vehicle speakers. Over the same period, the Police received over 1,000 calls reporting noise-related anti-social behaviour. The attached evidence pack summarises the data supporting this measure.
- 6.6 Due consideration must be given to peoples' right to assembly and expression, under the Human Rights Act 1998 Articles 10 and 11, which allow Freedom of Expression and Freedom of Assembly and Association. Therefore, whilst it is proposed that amplified music be addressed through the proposed PSPO, the right to assemble, associate or express a point of view would not be enforceable through this measure.

**Dog related anti-social behaviour in public spaces and parks**

- 6.7 There is a need to enforce dog controls to ensure public spaces are clean and safe for all to enjoy. Responsible dog ownership enforcement via a PSPO will aid the reduction of risk to the general public from catching toxocariasis from dog waste; potential animal attacks and dog related accidents. It is proposed that both the public and wildlife will be safeguarded via the 'dog on a lead', 'dog exclusion' and 'maximum number of dogs' elements.
- 6.8 In relation to dogs and their owners, the PSPO will continue to enforce existing dog control Orders including:
- Excluding dogs from designated areas, not allowing dogs within fenced children's play areas, cemeteries, ball courts, tennis courts, recreational areas and outdoor gyms.
  - Requiring dog waste to be picked up by owners or any person in charge of the animal on any land, which is open to the air to, which the public have access.

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- Requiring dogs to be kept on leads in designated areas; or placed on a lead if considered to be out of control upon request by authorised officers.
- Persons should not be in control of more than four dogs at any time in any public space or highway.

6.9 This PSPO would also like to introduce additional restrictions including:

- Dogs on leads within designated area,

6.10 The attached evidence pack summarises the data supporting these measures. In summary, a significant number of complaints regarding dog-related anti-social behaviour were made to the Council during 2020 and 2022 covering a widespread area of the Borough. Residents were particularly concerned about dog waste and control in parks close to where children play, and dog waste left on streets and pavements, particularly close to schools. Council employees who work in public parks and cemeteries also report issues with dog waste creating an unpleasant environment for all users of public spaces.

### **Consumption of Drugs and Psychoactive Substances**

6.11 Consumption of drugs and psychoactive substances has been highlighted as a concern by Councillors and residents and data suggests that the issue is Borough wide. A PSPO would allow a designated officer to ask for the person in question to surrender any such substance in their possession and leave the area.

6.12 The attached evidence pack summarises the data supporting this measure. In summary, review of drug related complaints to the Council show incidents related to noise, smell, smoke, public urination and rubbish. A wide area of the borough was affected, which included parks, roads and residential areas. The Police reported a large number of substance-related incidents and local Police officers have provided statements which support a PSPO to tackle this issue.

### **Illegal Encampments**

6.13 Unauthorised encampments occur relatively infrequently, but have a high impact in the areas they are located. Issues observed include no sanitary facilities for human waste; disposing of rubbish illegally; noise; alcohol or drug-related anti-social behaviour and open fires.

6.14 The PSPO would give additional powers to a designated officer to remove people who are illegally encamped on land, which does not belong to them. The main enforcement power currently falls to the Police through the Criminal Justice and Public Order Act 1994. However, a PSPO would allow the serving of a Fixed Penalty Notice, Community Protection Warning and Community Penalty Notice. It must be noted that if this power did 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 resource.

### **Public Urination and Defecation**

6.15 It is proposed that the Order prohibit urination or defecation without reasonable excuse within the Borough on land open to the air. Police Officers and authorised Council officers would be able to issue an FPN for this behavior. As with other measures, this would be a criminal offence for a person without reasonable excuse to breach this Order.

6.16 The attached evidence pack includes a review of the complaints to the Council. In 2021 there were approximately 70 complaints, a 25% increase from 2020. They suggest public urination is more common where groups congregate, such as street drinkers and drug

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users, and where rubbish has been discarded previously. Concerns are also raised about the smell and potential impact on health. Please refer to the evidence pack for more details.

## **7 Area - Specific Measures**

7.1 In addition to the Borough-wide measures, the following measures would be proposed within the boundaries of the designated areas outlined below:

### **Dog Exclusion**

7.2 No person in charge of a dog would be permitted to take the dog onto or to enter or to remain on any land to which the PSPO applies.

7.3 Area applies to:

- Children's play areas within parks, dens and open spaces within the London Borough of Lewisham
- Children's play areas on housing estates within the London Borough of Lewisham
- Fenced sports areas within parks, gardens and open spaces within the London Borough of Lewisham
- Devonshire Road Nature Reserve – SE23 3SZ
- Garthorne Road Nature Reserve – SE23 1AA
- Dacres Wood Local Nature Reserve – SE23 2NR
- Besson Street Multi Cultural Garden
- Brookmill Local Nature Reserve – SE8 4JJ
- Queenswood Nature Reserve (Sydenham Gardens) – SE23 2LW
- Chinbrook Allotments - SE12 9SB
- Grove Park Library Gardens
- Telegraph Hill Park – lower
- Friendly Gardens – upper
- Brookmill Park - SE8 4JJ
- Horniman's Play Park
- Friendsbury Gardens – SE4 2BL
- Broadway Fields – east of the river
- Central Field in Mayow Park
- Central Field in Northbrook Park
- Cornmill Gardens – waterway link exempted
- Manor House Gardens
- Iona Close Orchard Nature Reserve – SE6 4RN
- Burnt Ash Pond Local Nature Reserve – SE12 0AL

7.4 It is unlawful under the Equalities Act 2010 to either directly or indirectly discriminate against a disabled person. Therefore, preventing assistance dogs from entering those places otherwise prohibited to dogs may be considered unlawful as it could be considered that someone is being treated unfavorably because of something connected to their disability. Therefore these restrictions will not be applicable to persons using an assistance Dog within the locations identified.

### **The Dogs on Leads**

7.5 All persons in charge of a dog must keep the dog on a lead on any land to which this Order applies.

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Area applies to:

- All roads within the London Borough of Lewisham at all times (as defined by Section 142 of the Road Traffic Regulation Act 1984)
- In Cemeteries and Crematoriums within the London Borough of Lewisham
- Grove Park Local Nature Reserve – SE12 0UW
- Hare & Billet Pond – SE8 0RB
- Sydenham Cottages Nature Reserve – SE12 9PW
- London Squares green spaces within Rushey Green
- Beckenham Place Park (smaller area delineated red appendix III)
- Sue Godfrey Nature Park Local Nature Reserve – SE8 3DT
- Pepys Park Nature Area – SE8 3GD
- Bridgehouse Meadows Nature Area - SE14 XB
- Downham Woodland Walk Local Nature Reserve

## 8 Financial implications

- 8.1 There are no cost implications to the Council regarding enforcement as these services are in place. However, given that the Safer Communities Service can issue a fine, there may be some income generated from this enforcement. This is not expected to be a significant income across the financial year as the service are not a 'patrolling' or 'responsive' Service, and will only be exercising powers where it is more appropriate for the Service to do so instead of the Police.

## 9 Legal implications

- 9.1 As stated in this Mayor and Cabinet Report, the Council is empowered by the Anti-Social Behaviour, Crime and Policing Act 2014 to make a PSPO in Order to tackle activities carried on in a public place which have a detrimental effect on the quality of life of those in its locality, however this is provided such activities are or likely to be of a persistent nature, unreasonable and justify the restrictions being imposed.
- 9.2 An interested person for example a person who lives or regularly works in the restricted area, can within six weeks of the Council making the PSPO, apply to the High Court to challenge the validity of the PSPO or seek a variation of it on the grounds that the Council had no power to make it or on the basis that requirements have not been correctly followed.
- 9.3 Additionally the offence of failing to comply with a PSPO requires the failure to comply with the PSPO to be without "reasonable excuse". This in effect gives an individual the opportunity in the criminal proceedings to both argue their individual circumstances to seek to show that they had some reasonable excuse for the breach, in addition to allowing them to argue that the PSPO could not lawfully be used to prohibit or restrict a particular activity, for example, occupying an unauthorised encampment by rough sleeping, which the Home Office has stated a PSPO should not be used for and is a matter that can give rise to a claim for Judicial Review.
- 9.4 Further in making and enforcing a PSPO, the Council must have regard to rights protected by the European Convention on Human Rights and the guidance to Councils by the Secretary of State requires that restrictions imposed are focused on specific behaviours and are proportionate to the detrimental effect, and are necessary to prevent it from continuing, occurring or recurring."

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## 10 Equalities implications

- 10.1 Anecdotally we believe that this PSPO is likely to have a more significant impact upon the activities of those with alcohol or drug dependency and those from the traveller communities and possibly those with mental health issues. However, the introduction of a PSPO also has the opportunity to impact positively on the Council's duty under the equalities act in that the Order (PSPO), aims to tackle behaviour that causes harassment and victimisation of protected groups, such as the elderly and minority groups who are often adversely affected by issues being addressed by the PSPO. As part of the consultation a full equalities analysis assessment will be undertaken.

## 11 Climate change and environmental implications

- 11.1 There are no environmental implications in this report.

## 12 Crime and disorder implications

- 12.1 Crime, disorder and anti-social behaviour can have devastating effects on individuals, families and communities. The Council has a duty to respond to issues of crime and anti social behaviour, and by exercising these powers correctly the Council is taking steps to improve the quality of life of residents in the Borough.

## 13 Health and wellbeing implications

- 13.1 In general the implementation of the PSPO for health and wellbeing should be seen as a positive step forward for the majority of the Borough's residents as the aim of the actions from these powers is to create an environment free of ASB related to alcohol and drugs, but we should also consider that this may cause some disruption to those who are dependent on these substance and as such it may effect their life system and thus their view of their wellbeing. As part of our and our partners enforcement we will look to signpost users to the appropriate services

## 14 Glossary

- PSPO            Public Space Protection Order
- FPN            Fixed Penalty Notice
- CPW            Crime Protection Warning
- CPN            Crime Protection Notice
- NR             Nature Reserve
- LNR            Local Nature Reserve

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**For financial implications:**

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## **16 Appendices**

- *Appendix A – London Borough of Lewisham Public Space Protection Order Evidence Pack*

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