

MINUTES OF THE SAFER STRONGER COMMUNITIES SELECT COMMITTEE

Tuesday, 27 June 2023 at 7.00 pm

IN ATTENDANCE: Councillors Liam Shrivastava, Hau-Yu Tam, Coral Howard, Mark Jackson, Ayesha Lahai-Taylor, Oana Olaru, Rachel Onikosi and Rudi Schmidt (ex officio).

ALSO JOINING THE MEETING VIRTUALLY: Councillor Ese Erheriene (ex officio).

APOLOGIES: None.

ALSO PRESENT: Councillor Sophie Davis (Cabinet Member for Housing Management, Homelessness and Community Safety), Benjamin Awkal (Scrutiny Manager) and Aleister Adamson, Senior Legal Advisor – Release.

ALSO PRESENT VIRTUALLY: Councillor Juliet Campbell (Cabinet Member for Communities, Refugees and Wellbeing), Jannet Hall (Head of Safer Communities), Daniel Fish-Halvorson (Anti-social Behaviour Lead), Karen Kemsley (Data Scientist), Superintendent Charlene Pavitt (Metropolitan Police Service) and Inspector Adrian Hanna (Metropolitan Police Service).

NB: Those Councillors listed as joining virtually were not in attendance for the purposes of the meeting being quorate, any decisions taken or to satisfy the requirements of s85 Local Government Act 1972.

1. Election of Chair and Vice-Chair

RESOLVED

That –

1. Cllr Liam Shrivastava be appointed as Chair.
2. Cllr Hau-Yu Tam be appointed as Vice-Chair.

2. Minutes of the meeting held on 2 March 2023

RESOLVED

That the minutes of the meeting held on 2 March 2023 be agreed as an accurate record.

3. Declarations of interest

None.

4. Proposed Public Space Protection Order

Witnesses

Cllr Sophie Davis, Cabinet Member for Housing Management, Homelessness and Community Safety

Jannet Hall, Head of Safer Communities

Daniel Fish-Halvorsen, Anti-social Behaviour Lead

Karen Kemsley, Data Scientist

Superintendent Charlene Pavitt, South East Basic Command Unit - Metropolitan Police Service

Inspector Adrian Hanna, South East Basic Command Unit - Metropolitan Police Service

Aleister Adamson, Senior Legal Advisor – Release

Key points from discussion

- 4.1. The Chair explained the Committee knew and accepted how harmful anti-social behaviour (ASB) was. The Committee's aim was to consider how effective the proposed Public Spaces Protection Order (PSPO) would be at addressing ASB and how it might affect vulnerable and marginalised people. Ahead of the meeting, the Chair had written to a range of experts and stakeholders to gain insights to inform the Committee's scrutiny – he tabled the responses received (see *Documents tabled at Committee*).
- 4.2. Officers gave an overview of the proposals and consultation methodology and responses. The Cabinet Member explained the Executive was flexible and receptive to feedback on whether and, if so how and when, the PSPO be implemented.
- 4.3. Residents and councillors reported that there were instances of persistent ASB, but the council and Police lacked the powers to tackle it or, where they had relevant powers, they were excessive. The council's approach to ASB was to engage and support residents to resolve issues before considering enforcement; the PSPO would continue this approach and be a tool of last resort when people refused to stop behaving anti-socially – officers would not be routinely or proactively seeking people to fine. Resorting to fines would indicate a failure to effectively resolve ASB through engagement and support.
- 4.4. The PSPO was intended to enable people to enjoy public spaces where they were currently unable to and not to police people's everyday enjoyment of public spaces.
- 4.5. The PSPO would be implemented by council and Police officers; a third-party PSPO enforcement service would not be commissioned. It was later clarified that the Parks Service, to which PSPO powers would be delegated, was a commissioned service. The council would not be able to further outsource its PSPO enforcement functions without review and procurement processes.
- 4.6. A memorandum of understanding (MOU) with the Police was being considered to ensure both parties were on the same page regarding the enforcement approach.

The Committee then put questions to witnesses from the council. The key points were:

- 4.7. The borough's previous (2018-2021) PSPO applied to the entirety of the borough.
- 4.8. It was accepted that data in the Evidence Pack showed the behaviours in question occurred in specific locations. Most of the measures under the proposed PSPO were intended to apply to the entirety of the borough due to the risk that a more geographically limited order would displace ASB to other areas of the borough where PSPO enforcement powers would be lacking unless the PSPO was updated to include those areas – this was likely to lead to resident frustration that the council had lacked the foresight to pre-emptively regulate those areas.
- 4.9. The previous PSPO was “as effective as it was implemented”. It was used in a targeted manner. However, accurate records could not be provided as the recording of its implementation was poor and data had been lost during a systems migration. The MOU re the proposed PSPO would require accurate and joint record keeping by the council and Police, such as that undertaken for Crime Protection Warnings and Crime Protection Notices. Under the new Assure system, the Police would only be able to provide, and not access, data on PSPO-related interactions, warnings and Fixed Penalty Notices (FPNs).
- 4.10. The data used to justify the proposed PSPO was unaffected by the aforementioned data loss. Social distancing restrictions could have affected ASB reporting/data. However, it was evident that ASB was occurring in the borough if one walked around it.
- 4.11. The proposed PSPO would provide the Police with less punitive powers (the ability to issue FPNs, rather than arrest) to enable engagement with ASB perpetrators.
- 4.12. During targeted enforcement activities, officers from other council services who could provide engagement, outreach and signposting would participate.
- 4.13. Routine monitoring of enforcement data would enable regular assessment of whether the PSPO was being used proportionately and enable responsive enforcement. The Cabinet Member noted she was already accustomed to conducting thematic reviews of enforcement through her executive role in relation to housing.
- 4.14. FPNs would not be issued to under 18s. If children were engaged in the consumption of drugs or alcohol, a safeguarding approach would be taken. Early Help and mentoring would also be available to under 18s.

Metropolitan Police Service officers then made opening remarks and took questions from the Committee. The key points were:

- 4.15. The PSPO would be a tool of last resort and the Police would engage in planned, joint days of action to address the causes of ASB. Enforcement data would be reviewed every six weeks to enable the targeting of appropriate resources, including from the third sector.
- 4.16. The PSPO was not intended to target “hardcore” ASB perpetrators, who would be targeted using Community Protection Warnings and Criminal Behaviour Orders; it was intended to create an enforcement mechanism to encourage behaviour change in people in whom there was such potential.
- 4.17. There would be no additional council or Police officers to enforce the PSPO.

- 4.18. The PSPO would not be a panacea but would enable more-effective engagement. It was hoped the PSPO would enable the Police and council to improve joint working and problem solving.
- 4.19. The Police already flagged people for intervention regarding substance misuse via the council and third sector on a daily basis; and the Police and council routinely collaborated and conducted targeted operations re ASB. The PSPO would provide the Police with less-punitive powers and the council with greater powers.
- 4.20. The Commissioner of Police of the Metropolis had indicated that neighbourhood priorities, including ASB, would be the focus for the force.
- 4.21. A member accepted the rationale for trying to intervene in a preventative manner, and asked why financial penalties, which could put vulnerable people in debt, exacerbating the issues they faced, was the best last resort. FPNs were a deterrent to encourage compliance. It would be inappropriate to target homeless communities with FPNs, which would be an option to address different levels of ASB. Residents were reporting ASB which detrimentally affected their lives, leading them to change how they went about their business.
- 4.22. Information regarding whether FPNs were used as a last resort in practice, extracted from officer's written statements, would be monitored under the six-weekly reviews. The MOU and training for council and Police officers would ensure powers were used in the intended manner.
- 4.23. A member noted that monitoring of Stop and Search had not resulted in it being used proportionately and asked why the PSPO would be different.

Aleister Adamson, Senior Legal Advisor - Release, made opening remarks and then took questions from the Committee. Key points raised included:

- 4.24. There was a risk that the PSPO would deepen the harms endemic in drugs policing. The Casey Review had found prejudice in the Metropolitan Police Service and there was a question regarding whether it was an appropriate time to give the force additional powers. In the Evidence Pack, a local police officer had stated existing powers – Stop and Search – were sufficient to police drugs.
- 4.25. The PSPO risked deepening the harm experienced by people most affected by drugs policing. Drug users could be prevented from accessing critical services by the dispersal power proposed under the drugs and psychoactive substances provision and be severely harmed by financial sanctions. The confiscation of a person's drugs was likely to result in them purchasing more, increasing the demand for, and trade in, illicit substances in the borough.
- 4.26. Young people, who tended to congregate in public spaces, particularly in the summer, could face criminalisation.
- 4.27. The proposed measure regarding unauthorised encampments essentially criminalised homelessness by prohibiting the use of shelter during a time of economic insecurity with limited support available to the public.
- 4.28. Existing police powers were used disproportionately against certain racial groups, especially Black communities, and there was a significant risk that the proposed PSPO would disproportionately impact those communities and worsen police-community relations.

- 4.29. There was insufficient or insufficiently clear justification for the PSPO, with data from the previous PSPO having been lost and the data relied on being from during the pandemic, when ASB reports doubled nationally.
- 4.30. The responses to the consultation on the proposed PSPO was unrepresentative of the borough's population. Just under 27 per cent of residents identified as Black in the 2021 Census, while 5.2 per cent of respondents (25 people) did so. Other non-White populations were also underrepresented, while White people were significantly overrepresented. It was also concerning that the consultation findings grouped all non-White groups together, diminishing the different experiences of different racial groups. Young people, particularly young men and young black men, who were disproportionately affected by Stop and Search, were also underrepresented; and there were no clear safeguards to protect them from disproportionate enforcement under the PSPO.
- 4.31. Regarding the presentation of enforcement of the PSPO as last resort following attempts at engagement and support, it was unclear what level of support would be provided. People with drug and alcohol problems needed a lot of support and patience; there was a question of when the threshold for enforcement would be crossed and how it would be ensured that threshold would be consistently applied.
- 4.32. It was unclear whether local drug and alcohol treatment services had been consulted during the development of the proposals.
- 4.33. Even the consultation responses which supported the PSPO did not explain why it was the preferable solution to ASB and many raised significant concerns regarding it.
- 4.34. Rather than sanctioning drug use, Release supported harm reduction. It was unclear what harm reduction initiatives were available in the borough and thus whether people who used drugs in public did so because they had no other choice. There were many middle-class people who used drugs in the comfort of their own homes; someone lacking a home or safe space to use their drugs did not provide justification to punish them for their drug use.
- 4.35. The references to multiple statutory powers in the proposed restriction re drugs and psychoactive substances risked the application of different powers in an arbitrary manner or people being punished multiple times under multiple provisions for the same act.
- 4.36. There was a risk that in the drive to tackle ASB, it is forgotten that ASB is not in and of itself a criminal offence; and there was a question regarding when a quasi-criminal response was an appropriate one for a non-criminal issue. A council officer responded that the payment of an FPN allowed people to discharge their criminal liability.

Further questions were put to the witnesses. The key points were:

- 4.37. The drugs and psychoactive substances restriction would only be used to address related ASB, not drug use alone. However, there was no reference to ASB in the proposed restriction, unlike the one regarding alcohol. The Committee was told the application only to cases of ASB would be addressed during drafting.

- 4.38. The drug restriction would not be used to target habitual public users who would not pay the FPN and were unconcerned by the prospect of receiving a criminal record.
- 4.39. Due to capacity, the Police would not be able to deal with all ASB if the PSPO was introduced but would be able to resource targeted enforcement in certain locations. It was envisaged that enforcement would only be undertaken when other approaches had failed, e.g. where there was persistent ASB.
- 4.40. PSPO enforcement powers would be delegated to officers in council teams including Anti-social Behaviour, Environmental Crime and Parks, increasing the resources available to tackle ASB. All such officers would receive training on enforcing the order.
- 4.41. A member asked how the risk that the PSPO would be disproportionately enforced against young people due to the greater likelihood that they were perceived to be intimidating would be mitigated and public pressure to disproportionately enforce against young people due to such perceptions resisted. The serious impact of ASB on residents and how it could deter people from using public spaces were noted, as was the frustration of residents when the council could not deal with serious cases. Nevertheless, the powers would need to be implemented in a way that did not add to the pressures experienced by over-policed communities; the importance of effectively monitoring enforcement was reiterated.
- 4.42. The Equality Analysis Assessment would seek to identify mitigations to the risks identified by the Committee. The council would seek to identify good practice from other areas also. The Chair noted, in the context of the unrepresentative consultation responses, the importance of the Assessment having regard to issues such as disparity in garden access between different racial groups.
- 4.43. It was noted by the Chair that the majority of ASB complaints received by the council were in relation to dogs, but the proposed dog restrictions were particularly unpopular among White consultation respondents.
- 4.44. The dog exclusions applied to cemeteries, crematoria, nature reserves, natural meadows and children's play areas. Enforcement action would only be taken against dog owners who were behaving in an anti-social manner and did not engage with enforcement officers.
- 4.45. In addition to the six-weekly monitoring by the Safer Communities Service, quarterly monitoring reports would be provided to the Safer Lewisham Partnership Board. The quarterly reports and thematic insights could be shared with the Select Committee. A member of the Committee could also sit on the monitoring board.
- 4.46. Examples could not be given of how the previous PSPO was enforced due to the missing data. However, there were anecdotal reports of it being effectively enforced for short periods of time in specific locations. The Cabinet Member offered to provide such examples subsequently if possible and desired by the Committee.
- 4.47. Conduct within events such as festivals would be regulated by those events' security. However, the PSPO could be enforced by the Police outside the bounds of those events.

- 4.48. Aleister noted that people anti-social behaviour was written into most council's tenancy agreements and frequently formed the basis of eviction proceedings. Subject access requests often found that there was limited evidence for allegations of ASB and allegations often existed in the context of wider neighbourhood disputes. Release's clients who used drugs or had mistrust in local authorities or the Police were less likely to report ASB by their neighbours. Release had found it conducive to encourage housing services to mediate neighbourhood disputes to avoid the need for eviction. Aleister asked what evidential threshold would be in place to ensure that every attempt to correct ASB was made but had failed before enforcement action was taken.
- 4.49. A dispersal power was proposed under the drugs and psychoactive substances restriction at page 44 of the report pack and what, if any, interface it had with Part 3 of the Anti-social Behaviour, Police and Crime Act 2014 needed to be considered. The potential interaction between the proposed PSPO and various existing statutory provisions including and further to Part 3 of the 2014 Act required consideration. A Police officer cautioned that any dispersal power would need to be carefully framed.
- 4.50. In the context of the council's positive obligation to facilitate the Gypsy and Roma Traveller (GRT) way of life, including a responsibility to establish sites on which members such communities could live, the absence of any such sites in Lewisham was noted and the question of what would happen if there was an unauthorised traveller site in the borough. The PSPO would not be used to target travelling communities as "more substantial" legislation was available to the Police – the threat of an FPN was described as unlikely to be sufficient to move travellers along. The council would always engage with unauthorised encampments in the first instance, including by seeking to identify any health or wellbeing concerns which may warrant referral, any subsequent enforcement action would be taken by the Police. The question of the availability of culturally suitable traveller sites was a wider question to be asked of the council.
- 4.51. The purpose of the restriction on unauthorised encampments was said to be to restrict encampments for economic purposes – where people decided to live in a park, field or common land as they were travelling for work.
- 4.52. It was noted that the proposed PSPO could effectively criminalise those without the means to pay an FPN. It was confirmed that the Fairer Lewisham Duty would be applied during the Equalities Impact Assessment, as well as the prisms of disproportionality, intersectionality, unconscious bias, unfairness and marginalisation. The PSPO's Equality Analysis Assessment would be a live document: updated using insights from the six-weekly monitoring meetings so that any concerns could be mitigated.
- 4.53. It was noted that the dispersal power proposed under the drugs and psychoactive substances restriction could prevent a drug user from accessing medical and professional support, and could force people to use drugs in more secluded areas, increasing the risk to them and the likelihood of paraphernalia littering those areas. Witnesses were asked how it would be ensured dispersal powers did not disproportionately impact vulnerable groups or criminalise people for being in public spaces; whether and what

protocols and safeguards would be put in place to avoid preventing people from accessing treatment and support services and managed accommodation; how the dispersal of drug and psychoactive substance users would interact with the council's implementation of the Supplemental Substance Misuse Treatment and Recovery Grant/Drugs Strategy; and, given Lewisham had the tenth highest rate drug-related death in London, how the measure related to drugs and psychoactive substances would not increase the risk of harm.

- 4.54. Specific substance misuse services and homelessness services had not been engaged or consulted regarding the proposed PSPO. Commissioning officers and housing partnerships sat on the Safer Lewisham Partnership Board and had been consulted. How young people, survivors of substance dependency or misuse or homelessness, and people living in fear of ASB, had been consulted on the PSPO proposals was later questioned.
- 4.55. It was noted that the PSPO was likely to increase police contact for certain groups, potentially increasing the use of Stop and Search against those groups. The Police witnesses did not anticipate that the PSPO would increase the use of Stop and Search in the borough as it would not generate the grounds required to conduct a Stop and Search. Any use of Stop and Search associated with the order would be monitored through the routine six-weekly meetings.
- 4.56. Police witnesses weren't familiar with the causal factors behind the disproportionate issuing of Covid-19-related fines to Black and Minority Ethnicity Groups during the pandemic. However, the importance of monitoring the implementation of the PSPO and the desire to increase public trust and confidence in the Police were reiterated.
- 4.57. It was clarified that the intention was to make the PSPO for three years, but there was flexibility in how and when it was monitored and reviewed.
- 4.58. The Chair summed up, noting that a range of concerns remained, including regarding:
- A lack of engagement with key stakeholders
 - The unrepresentativeness of consultation, particularly in relation to those likely to be disproportionately impacted by the proposals
 - A lack of clarity regarding the interactions between the proposed PSPO and existing legislation and the risk of double punishment
 - The purpose of the restriction on unauthorised encampments, as it had been put to the Committee that it was not to be used against the GRT community or homeless people.
- 4.59. Members noted further concerns, including:
- Human rights and equalities implications
 - Further regulating the lives of residents
 - The necessity, rather than convenience, of the proposals given the range of powers available to the council and partners under existing legislation
 - The threshold of ASB being *likely* to occur to engage the restriction related to alcohol.

The Committee suspended Standing Order 10 at 9.25pm.

RESOLVED

To refer to the Mayor and Cabinet the key issues and concerns noted during discussion and identified during the Committee’s research with a recommendation that, as the proposal and its implications require further consideration –

the proposed Public Spaces Protection Order should not be progressed until the issues and concerns contained in the referral have been fully considered, the proposed restrictions reviewed, comprehensive and representative engagement with stakeholders undertaken and a report regarding

- those issues and concerns;
- the broader policy and activities in place and further opportunities to address the behaviours which are the subject of the order;
- the findings of that further engagement; and
- the justification for the order, if it is to be progressed;

brought to the Safer Stronger Communities Select Committee.

5. Select Committee Work Programme

RESOLVED

That the work programme at Appendix D be agreed, subject to the inclusion of a holding item for a further report regarding the proposed Public Spaces Protection Order.

The meeting ended at 9.34 pm

Chair:

Date:
