



Public Space Protection Order in Relation to Alcohol Control

Key Decision No. NH S028

CABINET MEETING DATE (2021/22)

18th October 2021

CLASSIFICATION:

Open

If exempt, the reason will be listed in the main body of this report.

WARD(S) AFFECTED

All wards

CABINET MEMBER

Cllr Susan Fajana -Thomas, Community Safety

KEY DECISION

Yes

REASON: Affects more than two Wards

GROUP DIRECTOR

Ajman Ali, Neighbourhoods and Housing

1. CABINET MEMBER'S INTRODUCTION

- 1.1 Public Space Protection Orders (PSPOs) are intended to deal with nuisance or problems in a particular area that are detrimental to the local community's quality of life, by imposing conditions on the use of the area, which apply to everyone.
- 1.2 PSPOs ensure that Community Safety and Enforcement Officers and Police Officers have powers to deal with anti-social behaviour (ASB) associated with the consumption of alcohol in a public place.
- 1.3 A Borough Wide DPPO in relation to alcohol control was previously introduced on 24 May 2010. This was repealed in 2014 by the Anti-Social Behaviour, Crime and Policing Act and allowed to remain in place for three years. Once that three year period expired (in October 2020), it came to an end because a PSPO may not have effect for a period of more than three years. This proposal remains similar to the provisions in the original DPPO and PSPO.
- 1.4 As the Cabinet Member for Community Safety, I am supportive of the proposals contained in this report to approve a PSPO relation to ASB associated with the consumption of alcohol in public places in Hackney.
- 1.5 I commend this report to the Cabinet.

2. GROUP DIRECTOR'S INTRODUCTION

- 2.1 The Council believes that introducing a Public Space Protection Order (PSPO), will help with controlling ASB associated with alcohol consumption in public places within the borough. It will also enable Community Safety and Enforcement Officers and Police Officers to issue warnings and fixed penalty notices to those not complying with the requirements of the proposed PSPO.
- 2.2 The Council undertook a consultation exercise between 24th May and 4th July 2021 to gauge support on having a PSPO in place, including for a ban on the consumption of alcohol in London Fields Park. It asked whether residents were concerned about ASB associated with street drinking, the type of behaviour that had been witnessed, whether/and how often they had witnessed this behaviour.
- 2.3 Fuller information about the consultation can be found at paragraphs 6.4.1 to 6.4.12 of this report and in the consultation report at Appendix 2. In summary, there were 1,527 responses to the consultation with 48% of those who responded in favour of the proposed PSPO with 48% against it. Even though the responses were evenly split, Officers are recommending that the proposed PSPO be approved because there was a sufficient number of

respondents who have witnessed and been detrimentally affected by alcohol related anti-social behavior to justify the making a PSPO to place controls on this type of behaviour .

- 2.4 In relation to the proposed on the consumption of alcohol in London Fields Park 77% of respondents were opposed to this with 20% in favour. Based on this it is recommended that Cabinet approve the making of a borough wide PSPO in relation to the control of alcohol in a public place and it is not recommended that the proposed ban on the consumption of alcohol in London Fields Park is approved at this time. The existence of anti-social behaviour related to alcohol consumption within London Fields will be kept under review with a view to deciding whether further steps are required in the future.

3. RECOMMENDATION

- 3.1 That Cabinet approves the making of a Borough Wide Public Spaces Protection Order which would place controls on alcohol related ASB. The Order would be made under Section 59 of the Anti-Social Behaviour Crime and Policing Act 2014 and would last for a period of three years. A copy of the proposed Order is attached to this report as Appendix 1.

4. REASONS FOR DECISION

- 4.1 A PSPO is a tool to ensure the law-abiding majority can use and enjoy public spaces safe from activities, which have a detrimental effect on the quality of their life in that area. The proposed PSPO should ensure that Hackney has an effective response to ASB associated with the consumption of alcohol in any public place in the Borough of Hackney.
- 4.2 PSPOs are intended to be used to deal with a particular nuisance or problem in an area that is detrimental to the local community's quality of life by putting in place conditions on the use of that area that apply to everyone. They are designed to ensure people can use and enjoy public spaces safe from activities, which have the requisite detrimental impact.
- 4.3 In preparing this report Officers have had regard to the statutory guidance issued by the Home Office and the Guidance on PSPOs issued by the Local Government Association.

5. DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 5.1 As DPPOs are no longer available, not having a PSPO in place means that Community Safety and Enforcement Officers/Police Officers would be required to attempt to address the ASB associated with the consumption of alcohol across the borough through other means.

5.2 The Council could apply for an injunction under section 1 of the Anti-Social Behaviour Crime and Policing Act 2014 in relation to a person causing ASB associated with the consumption of alcohol in a public place. This would mean taking action against one individual at a time as opposed to the proposed PSPO which would apply to everyone within the Restricted Area.

5.2.1 Where Hackney Enforcement Officers respond to a report to alcohol related ASB that results in the requirement to stop consuming alcohol or surrender alcohol a ASB Warning Notice is completed and submitted to the Intelligence Hub. The Street Population Coordinator will then ensure that the appropriate support mechanisms are in place and engaged through the HSUOM.

The Council Intelligence Hub, Street Population Coordinator and Principal Enforcement Officers will monitor the returns to identify repeat offenders and ensure support mechanisms are activated.

The current intervention and enforcement process using ASB Warning Notices is;

- a) 1st Warning – Recorded for monitoring and cross referencing databases linking cases
- b) 2nd Warning – Warning letter and referral to SUOM & Turning Point
- c) 3rd Warning – Final letter/ home visit advising the person to stop the behaviour before other enforcement action is taken; CPW, CPN, Prosecution, CBO, Injunction.

The Hackney Street Users Outreach Meeting (HSUOM) plans and coordinates treatment and support interventions and enforcement actions in relation to individual street users, including clients with multiple needs. For example:

- Improved access and engagement with services (e.g. specialist care and support into drug / alcohol treatment services, homelessness, mental health, street based sex work etc) – The aim is to resolve issues before it reaches the stage of enforcement action.
- Community Safety (e.g. arrest, imposition of Anti-Social Behaviour Order) may be needed due to an individual's behaviour, or issues related to a known drug / alcohol, or ongoing risks associated with hot spots.

- To improve and increase communication across the HSUOM partnership in order to prevent work being carried out in silos, and increase the effectiveness of interventions being delivered to street users.
- To support the development of shared, best practice in relation to multi-agency work with street users experiencing complex and multiple needs.

- 5.3 The Police also have powers to deal with this type of ASB under the current dispersal options provided by section 35 of the Anti-Social Behaviour, Crime and Policing Act 2014. The police can use their dispersal powers if a constable has reasonable grounds to believe that the behaviour of a person has contributed, or is likely to contribute, to members of the public in the locality being harassed, alarmed or distressed or the occurrence of crime or disorder. The use of the s.35 dispersal power has to be authorised by a police officer of at least the rank of inspector. This would mean that forms would need to be completed Computer Aided Dispatch and Criminal Intelligence maps showing the zone would need to be printed and provided to the Officers issuing the dispersal orders. This can take up considerable time to authorise, implement and get the necessary material to Officers on scene to begin the dispersals. This is particularly an issue in the evenings. In addition to the time required to implement a dispersal area, and the limited duration of time for which it has effect, the 2014 only enables the Police to issue dispersal orders (and not the Council's enforcement officers). This can be authorised for a maximum of forty eight hours only and persons can be dispersed for up to eight hours.
- 5.4 In addition to the above, the police would have their usual powers in respect of situations where they believe a criminal offence has been committed.
- 5.5 The proposed PSPO is replacing the powers that were available under the old DPPOs. The intention is to stop alcohol related anti-social behaviour before it is allowed to escalate into a bigger problem.
- 5.6 Officers noted that the previous DPPO was borough-wide and provided an effective remedy in respect of alcohol related anti-social behaviour. In formulating the PSPO officers are mindful of the need to avoid displacement of the behaviour, if the area is smaller, there is a risk that the activities could occur elsewhere in areas not covered by the proposed order. Officers have also taken account of the relatively "light-touch" nature of the PSPO in that breach would only occur if a person fails to comply with a request to cease consumption of alcohol where there is a reasonable belief that the person has engaged in anti-social behaviour or a request to surrender alcohol. Having taken account of the evidence of alcohol related anti-social behaviour within the borough, and the nature of the restrictions/requirements imposed by the

proposed PSPO, officers are satisfied that the proposed order is a justified and proportionate means of dealing with the issues.

6. BACKGROUND

6.1 Policy Context

6.1.1 Historically alcohol related ASB was regulated by the Council's DPPO. When PSPOs were created, the power to create further DPPOs was repealed and existing orders were allowed to last for a three-year period until October 2017. After October 2017, existing DPPOs could be enforced as though they were PSPOs and they expired in October 2020, these were "transitioned" PSPOs.

6.1.2 The Borough Wide DPPO was introduced on 24 May 2010. The purpose of the DPPO was to ensure that the consumption of alcohol in a public place did not cause disorder, nuisance or annoyance to members of the public, or a section of the public within the London Borough of Hackney.

6.1.3 After three years the DPPO was treated as a transitioned PSPO for the purposes of enforcement by virtue of s.75(3) of the 2014 Act. Once that a further three years expired (in October 2020), the DPPO came to an end because a PSPO may not have effect for a period of more than three years (s.60(1)).

6.1.4 Public Spaces Protection Orders are intended to deal with a particular nuisance or problem in a specific area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area which apply to everyone. They are intended to help ensure that the law-abiding majority can use and enjoy public spaces, safe from ASB.

6.1.5 Given that these orders can restrict what people can do and how they behave in public spaces, it is important that the restrictions imposed are focused on specific behaviours and are proportionate to the detrimental effect that the behaviour is causing or can cause, and are necessary to prevent it from continuing, occurring or recurring.

6.2 Equality Impact Assessment

6.2.1 An Equality Impact Assessment (EIA) has been undertaken to assess the potential of an adverse positive or negative impact of the proposed PSPO on protected groups. A copy of the EIA is attached as Appendix 2 of this report. In completing the EIA the Council has also considered its Public Sector Equality Duty ('PSED') per the requirements of s.149 of the Equality Act 2010.

6.2.2 The PSED consists of a general equality duty, supported by specific duties which are imposed by secondary legislation. In summary, those subject to the

equality duty must, in the exercise of their functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

6.2.3 The proposed PSPO sets out a range of powers available to the Council and how these will be legally applied. Officers have taken specific account of the Council's duties when formulating the proposed PSPO, the fuller analysis can be found in the EIA.

6.3 Sustainability

6.3.1 A PSPO will expire after a period of three years unless it is varied or extended.

6.4 Consultation

6.4.1 The Council undertook a public consultation on the proposed PSPO in accordance with statutory requirements found in section 72 of the 2014 Act. Those consulted included the Metropolitan Police, appropriate community groups, owners and occupiers of land.

6.4.2 The consultation was live for 6 weeks from 24 May to 4 July 2021. 1,527 responses to the questionnaire were received during the consultation period. The majority of respondents stated that they were "a Hackney resident" (85%). All others accounted for a very small proportion of respondents. More than half of the respondents were from the "E8" postcode area (52%). This was followed by smaller respondent profiles from across the other postcode areas "N16" (9%), "E2" (8%) and "E9", "N1" and "E5" (7% respectively).

6.4.3 In relation to the Borough-wide PSPO More than half of the respondents (56%) indicated that they were "not concerned" about anti-social behaviour resulting from street drinking. However, 31% indicated that they were "concerned", with 13% ambivalent about the issue, indicating that they were "neither concerned nor unconcerned". Of the proportion of residents that identified themselves as living in "E8", (787), nearly 4 in every 10 respondents (37%) indicated that they were concerned about antisocial behaviour resulting from street drinking.

6.4.4 More than 60% of respondents stated that they had not witnessed anti-social behaviour as a result of street drinking over the last year, whilst 40% of respondents stated that they had witnessed it. Of those who'd stated that they'd witnessed alcohol related ASB in public spaces: . 38% stated that they'd witnessed anti-social behaviour related to street drinking in public

spaces, “more than 10 times”, 24% “1 - 2 times”, 21% “3 - 4 times” and 17% “5 - 10” times, over the last year.

- 6.4.5 When asked to indicate the types of antisocial behaviour they’ve witnessed, the types of ASB most often cited were: litter (25%), public urination (23%), noise (22%) and verbal abuse (14%). The other types of ASB garnered slightly lower levels of responses.
- 6.4.6 Half of the respondents indicated that the ASB they’d witnessed had a persistent and detrimental impact on their quality of life, whilst 42% of the respondents indicated that it hadn’t had a persistent or continuing detrimental impact on their quality of life.
- 6.4.7 A higher proportion of older respondents felt that the antisocial behaviour they’d witnessed had a persistent or continuing detrimental effect on their quality of life. 62% of respondents aged 45 to 54, 66% of respondents aged 55 to 64 and 61% of respondents aged 65 to 74.
- 6.4.8 In relation to the London Fields proposed alcohol ban nearly six in every ten respondents, 59%, indicated that they weren’t concerned about anti-social behaviour in and around London Fields, whilst 29% stated that they were concerned, with 12% neither concerned nor unconcerned.
- 6.4.9 Of the proportion of residents that identified themselves as living in “E8”, 66% were concerned about antisocial behaviour in and around London Fields, whilst 47% weren’t concerned and 44% were ambivalent about the issue, choosing “neither concerned nor unconcerned”. A higher proportion of “male” respondents were unconcerned about ASB in and around London Fields, 64%, compared to 55% of “female” respondents. A higher proportion of older respondents were concerned about the ASB they’d witnessed in and around London Fields. 60% of respondents aged 65 to 74, 59% of respondents aged 55 to 64.
- 6.4.10 Of the respondents who were concerned about ASB, 82%, indicated that the anti-social behaviour they’d witnessed was connected to street drinking (namely alcohol consumption in public spaces). 77% of the respondents didn’t support the proposal to ban the consumption of alcohol in London Fields park, whilst 20% were supportive of the proposal. More than 80% of male respondents (81%) oppose the proposal to ban the consumption of alcohol in London Fields park, compared to 73% of female respondents oppose the proposal.
- 6.4.11 A higher proportion of younger respondents are against the proposal to ban the consumption of alcohol in London Fields (72%), 25-34 (64%). In contrast the older cohort were more supportive of the proposal, 65-74 (75%), 55 - 64 (63%) and 45 - 54 (66%).

6.4.12 A copy of the consultation report is attached as Appendix 3 of this report.

6.5 Risk Assessment

6.5.1 The purpose of stakeholder engagement was to clarify that there was not a ban on drinking alcohol in a public place or within the boundary of a licensed premises. However, if a person was to drink beyond the legal boundary of a licensed premises and cause ASB and did not stop drinking if asked to do so by an authorised Officer, they would be subject to enforcement action.

6.5.2 The purpose of the proposed PSPO is to provide a better understanding of the balanced approach to managing freedoms for all with the need to control inappropriate behaviour that infringes the freedoms of the community more widely.

7. COMMENTS OF THE GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES

7.1 The cost of implementing and enforcing the proposed PSPO is met from the Community Safety and Enforcement approved budgets.

8. VAT Implications on Land & Property Transactions

8.1 Not applicable.

9. COMMENTS OF THE DIRECTOR, LEGAL AND GOVERNANCE SERVICES

9.1 The recommendation set out in paragraph 3 of this report is for Cabinet to approve the proposed Borough wide Public Spaces Protection Order.

Councils can make a PSPO after consultation with the Police and other relevant bodies and communities. The legislation sets out a two-pronged test of which a local authority has to be satisfied on reasonable grounds before a PSPO can be made. These conditions are as follows:

(1) That the activities carried out in a public place have had a detrimental effect on the quality of life of those in the locality; or that it is likely that they will have such an effect.

(2) That the effect or the likely effect of the activities:

- *Is (or is likely to be) persistent or continuous.*
- *Is (or is likely to be) unreasonable.*
- *Justifies the restriction imposed by the notice.*

- 4.4 A PSPO must identify the public place in question and can:
- (a) prohibit specified things being done in that public place
 - (b) require specified things to be done by persons carrying on specified activities in that place; or
 - (c) do both of those things.
- 4.5 The only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order to prevent or reduce the risk of the detrimental effect continuing, occurring or recurring.
- 4.6 Prohibitions may apply to all persons, or only to persons in specified categories, or to all persons except those in specified categories.
- 4.7 The PSPO may specify the times at which it applies and the circumstances in which it applies or does not apply.
- 4.8 Unless extended the PSPO may not have effect for more than 3 years.
- 4.9 Breach of a PSPO without reasonable excuse is a criminal offence. The Police or a person authorised by the Council can issue fixed penalty notices, the amount of which may not be more than £100. A person can also be prosecuted for breach of a PSPO and on conviction the Magistrates' Court can impose a fine not exceeding level 3 on the standard scale (currently £1000).
- 4.10 In deciding to make a PSPO the Council must have particular regard to Article 10 (Right of Freedom of Expression) and Article 11 (Right of Freedom of Assembly) of the European Convention on Human Rights ('ECHR').
- 4.11 The Council must also carry out the necessary prior consultation, notification and publicity as prescribed by s.72 of the 2014 Act.
- 4.12 Within the Mayors Scheme of delegation it states that 'Anti-Social Behaviour Crime and Policing Act 2014-Exercise the Council's powers to issue a Public Spaces Protection Orders (PSPO) to tackle issues in public places such as, but not limited to other anti-social behaviour, parking, alcohol consumption, or noise' is a decision reserved to Mayor and Cabinet. Further, the PSPO regarding alcohol control is a key decision affecting two or more wards. The Cabinet has the authority to approve the recommendation in this report.

APPENDICES

Appendix 1 - Proposed PSPO Alcohol Control

Appendix 2- Equality Impact Assessment
Appendix 3 - Consultation Report

EXEMPT

Not applicable

CONFIDENTIAL

No

BACKGROUND PAPERS

None

Report Author	Gerry McCarthy, Head of Community Safety, Enforcement and Business Regulation gerry.mccarthy@hackney.gov.uk 020 8356 7087
Comments for and on behalf of the Group Director of Finance and Resources	Avril Smith, Service Accountant, Neighbourhoods and Housing avril.smith@hackney.gov.uk Tel:020 8356 3947
Comments for and on behalf of the Director of Legal & Governance	Jo Sterakides, Senior Lawyer josephine.sterakides@hackney.gov.uk 020 8356 2775