

# LIBERTY

Hackney Borough Council  
Town Hall  
Mare Street  
London  
E8 1EA

By email only to: [consultation@hackney.gov.uk](mailto:consultation@hackney.gov.uk)

## LAWYERS

HEAD OF LEGAL CASEWORK  
Louise Whitfield, Solicitor

Lana Adamou, Solicitor  
Lara ten Caten, Solicitor  
Megan Goulding, Solicitor  
Katy Watts, Solicitor

The solicitors employed by Liberty are individually authorised and regulated by the Solicitors Regulation Authority.

19 July 2022

Dear Hackney Council

## Public Spaces Protection Order Consultation – Wick Woodland/Hackney Marshes

We write in relation to Hackney Borough Council's ('the Council') Consultation ('the Consultation') regarding the proposal for a Public Spaces Protection Order ('PSPO') containing six prohibitions, following the expiration of a PSPO for the Wick Woodland area which expired in June 2022.

The prohibitions in the proposed PSPO are unreasonable and unduly restrict civil liberties. For the reasons set out below, we ask that the Council drops its proposals to introduce these provisions.

### 1. Background to Liberty's concerns

Liberty has been concerned about the impact of PSPOs since their inception and has successfully persuaded a number of local authorities not to pursue their proposed PSPOs. We are particularly concerned about the potential misuse of PSPOs, especially those that punish poverty-related behaviours and unduly restrict civil liberties. For the reasons set out below, we are against the proposed PSPO in Wick Woodlands/Hackney Marshes.

### 2. Evidence

We are disappointed with the lack of evidence that has been published on the Council's website to support the introduction of the PSPO and, in particular, the provisions that criminalise outdoor gatherings and inhibit the right to protest. We are also concerned that the evidence cited in respect of unauthorised events in these locations dates from May 2020 to August 2021, a period of time when there were obvious and unique external factors arising from the Covid-19 pandemic that increased the likelihood of outdoor gatherings taking place.

The Council is required by s. 60 of the Anti-social Behaviour, Crime and Policing Act 2014 (the

'Act') to be satisfied on reasonable grounds that the PSPO is necessary to prevent the occurrence or recurrence of the activities specified in the PSPO or to prevent an increase in the frequency or seriousness of those activities. In the information that is publicly available about the PSPO, the Council has failed to note how it is satisfied that these conditions are met. Failing to publish any evidence for the purpose of the consultation as to how the Council is satisfied that the conditions required in the 2014 Act are met raises concerns as to whether there is actually a need for the proposed PSPO. Indeed, the Council itself notes that no fixed penalty notices have been issued at all under the current Wick Woodland PSPO, which has been in place for three years.

If the Council goes ahead with making this PSPO without sufficient evidence, it will be unlawful and vulnerable to challenge in the High Court.

### 3. General concerns

The Council alleges that large gatherings are anti-social. As noted above, there are good reasons that large outdoor gatherings may have been more likely to take place in the period from May 2020 to August 2021. We note that Wick Woodlands, Hackney Marshes, Millfields Park, Daubeney Fields and Mabley Green comprise large green spaces that serve wide, and in many cases deprived communities, many of whom were severely impacted by the Covid-19 Pandemic, and for whom access to outdoor space during that period was vital. Access to public spaces, and the ability to gather and enjoy them communally should only be limited in a way which is proportionate and in the least intrusive way possible. The proposed area and terms of this PSPO are impermissibly wide and vague, and will serve to criminalise communal public enjoyment of Hackney's green spaces.

We are additionally concerned by the criminalisation of behaviour that is likely to inhibit peaceful and democratic protest, such as the condition forbidding "amplified music".

The specific PSPO provision that we have identified below constitute a potential interference with Articles 10 and 11 of the European Convention of Human Rights ('**the Convention**') that we argue cannot be justified in the circumstances. The Council is bound by s. 6 of the Human Rights Act 1998, under which it must not act in any way which is incompatible with any rights contained in the Convention.

### 4. Amplified music

***There shall be no playing of amplified music without the prior and express permission of the Council.***

This provision is far too broad. It potentially criminalises a lone person playing music through the speaker on their phone, while in any of the locations listed in the PSPO. It could capture an extraordinarily wide range of individuals, engaging in nothing more antisocial than listening to music in what is one of the largest expanses of green space in Inner London.

The prohibition also potentially engages the right to peaceful protest and freedom of expression, enshrined by Article 10 of the Convention. Music is often a vital component of protest and expressive acts, and the proposed prohibition undermines it. The Council does not seem to have considered s. 72 (1) of the Act which states that in considering whether to make or vary a PSPO the Council must have particular regard to the rights of freedom of expression and freedom of assembly set out in Articles 10 and 11 of the Convention. If the

council states that it has considered s. 72 (1), we request evidence of that consideration.

If the council does not intend to target peaceful protest with this condition, it must make it clear on the PSPO itself.

The fact that the PSPO may not anticipate that the powers it proposes could be used against legitimate forms of protest does not mean that they would not be in practice. Existing legislation has been used against peaceful protest despite not being originally intended for that purpose.<sup>1</sup> The risk that these measures, once implemented, would be used against peaceful protesters highlights their potential chilling effect of the rights enshrined by Article 11 of the Convention.

Under the 2014 Act, the Council must consider whether any restriction is reasonable to impose. The Council must therefore be satisfied that this PSPO is necessary on top of the existing penalty for gathering in the open air and playing amplified music at section 63 of the Criminal Justice and Public Order Act 1994. This seems unlikely, as that Act already provides for wide powers to prevent exactly the kind of 'raves' this PSPO claims to be targeting.

#### 5. Conclusion

The Council's proposed PSPO is unlawful and would be of detriment to the local community if imposed. It will curtail basic civil liberties and threaten the rights of communities who depend on these areas for access green spaces. It is clear the Council have not considered the effect of these provisions. We ask the Council to think again and drop the above conditions from the PSPO.

Yours faithfully,



**KATY WATTS**

**Lawyer**

katyw@libertyhumanrights.org.uk

---

<sup>1</sup> For example, the Protection from Harassment Act 1997, the Terrorism Act 2000 and the Serious Organised Crime and Police Act 2005.