



Cabinet Member Report

Date	24 June 2021
Classification	Open
Title or report	Extension of Borough-wide Street Drinking and Dog Control Public Space Protection Orders
Report of	Raj Mistry, Executive Director Environment & Communities
Decision maker	Cllr Heather Acton, Cabinet Member for Communities and Regeneration
Wards involved	All
Financial summary	None
Report author and telephone	Adam Taylor, Commissioning Manager Community Safety

1. Executive summary

- 1.1. On 9 April 2021 the Cabinet Member gave approval to create new controlled drinking and dog control Public Space Protection Orders (PSPO) while we consulted on a longer-term extension of up to 3-years.
- 1.2. These orders expired on 21 June and this paper makes recommendations to create new orders for a 3-year period commencing on Friday 25 June 2021.

2. Recommendations

- 2.1. The Cabinet Member is asked to:
 - a) Approve a new borough wide PSPO for the control of street drinking until 29 June 2024
 - b) Approve a new borough wide PSPO for dog control until 29 June 2024
 - c) Agree to keep the consultation open for a further 6-weeks to capture more feedback on the current orders and proposed variation to the dog control order

3. Reasons for decision

- 3.1. Powers to create PSPOs came into force in October 2014. The PSPO's replace Designated Public Place Orders (also known as Controlled Drinking Zones) and Dog Control Orders. The existing Designated Public Place Orders and Dog Control Orders automatically became PSPOs by automatic operation of law on 20 October 2017., The

PSPOs remained in place for three years unless extended by the making of a new PSPO by the Council. The existing PSPOs expired on 20 October 2020 and new orders created on 12 April 2021.

- 3.2. The Anti-Social Behaviour, Crime and Policing Act 2014 states that a local authority may establish a PSPO if satisfied on reasonable grounds that the activity or behaviour concerned, carried out, or likely to be carried out, in a public space:
 - a) has had, or is likely to have, a detrimental effect on the quality of life of those in the locality.
 - b) is, or is likely to be, persistent or continuing in nature.
 - c) is, or is likely to be, unreasonable; and
 - d) justifies the restrictions imposed.
- 3.3. On 9 April 2021, the Cabinet Member agreed to make new PSPOs commencing on 12 April and expiring on 21 June unless extended, varied or discharged. A public consultation process continued during that period with a consultation survey on the council website.
- 3.4. As the previous orders have expired, the Cabinet Member must consider the outcome of the consultation and EQIA and agree to create a new order.

4. Alternative options considered

- 4.1. Take no action. The current Alcohol Control and Dog Control PSPOs have expired on 21 June 2020.
- 4.2. Not having valid PSPOs in place, will have a detrimental impact on Police and Council officers' ability to enforce drinking and dog-related nuisance across the borough. This may then lead to increased dog fouling, dogs causing a nuisance and not being adequately controlled, dogs entering children's play areas, sports areas and marked pitches and an increase in people drinking alcohol and engaging in behaviour likely to cause nuisance and annoyance to residents and other members of the public.
- 4.3. Delay deciding until further consultation can be carried out on the proposed Alcohol and Dog Control PSPOs.
- 4.4. Given how few responses we have received to the public consultation, and the limited publicity afforded to it, allowing for more feedback to be provided seems appropriate. However, given previous challenges associated with al fresco dining, current concerns over alcohol related disorder associated with the European Championships Football and the need to have preventative powers in place to manage these, the desire to retain these preventative powers remains.
- 4.5. Both options would be contrary to the need for the PSPOs to continue and the public support for their continuation. It would also result in the re-occurrence of the activities that are detrimental to the quality of life of people who live, visit or work in the areas where the PSPOs can be enforced.

5. Background information

- 5.1. PSPOs for alcohol and dog control came into effect as an automatic transition from previous Designated Public Place Orders (DPPO) and Dog Control Orders (DCO) in October 2017. They remained in place for 3-years.
- 5.2. However, owing to a misunderstanding on the expiry date of these orders they lapsed and so between October 2020 and April 2021 there were no orders in place in Westminster.
- 5.3. Having identified this error and with the need to have these powers in place as the city came out of lockdown, new, short-term orders were put in place on 12 April for 10 weeks while we carried out a full consultation on a longer-term extension. New PSPOs were made on 12 April 2021 relating to alcohol and dog control and were due to expire on 21 June 2021.
- 5.4. Given the unusual circumstances in which we were establishing new orders, while consulting on extending the orders further legal guidance was sought to provide reassurance that the processes followed were lawful and there was no significant risk of challenge. These risks are addressed in section 13 below. In seeking advice there has been a further delay to making our recommendations and consequently the orders have again lapsed, and new orders are required.

6. Public Space Protection Orders (PSPO)

- 6.1. The Police and Council are responsible for tackling anti-social behaviour. PSPOs are an effective deterrent to deal with nuisance or problems in an area that is detrimental to the local community's quality of life.
- 6.2. A PSPO works by imposing conditions on the use of that area, which apply to everyone. A PSPO is designed to ensure that residents and visitors can use and enjoy public spaces without experiencing anti-social behaviour.
- 6.3. In accordance with s60 (2) of the Anti-Social Behaviour Crime and Policing Act 2014 (the Act), a PSPO cannot have effect for a period of more than 3 years, unless extended under s60 (2). This section permits a local authority to extend a PSPO where it is satisfied on reasonable grounds that doing so is necessary to prevent an occurrence or recurrence of the activities identified in the order, or an increase in the frequency or seriousness of those activities after that time.
- 6.4. The introduction of PSPOs for alcohol control has enabled the Police to remove alcohol from those that are engaging in or are likely to engage in anti-social behaviour.
- 6.5. The PSPO for Dog Control enables officers from the Police and Council to give direction regarding dogs off lead and dogs causing nuisance in a public place, this includes dog fouling and other related dog issues.
- 6.6. These PSPOs enable the Council and the Police to take preventative enforcement action in public places on:
 - Dog Control Order
 - Dogs fouling on land.

- Dog exclusion in specified areas.
- Dogs on lead in specified areas.
- Dogs on lead by direction.
- Alcohol consumption in a prohibited area.

7. Dog Control Order

- 7.1. The latest City Survey (2020) found that 26% of residents considered dog fouling to be a fairly or very big problem in their local area, and fewer than half didn't consider it a problem at all. However, in the North West and South of the Borough where additional restrictions are in place, 50% and 35% respectively, considered it to be a fairly or very big problem and only 30% and 41% of people thought it wasn't a problem. Overall, concern has increased slightly in the past couple of years.
- 7.2. In 2019, residents made 433 reports requesting the removal of dog faeces, increasing to 612 in 2020, and 182 this year to date.
- 7.3. Over the past four years, we have continued to issue a small number of FPNs and warnings to dog owners in breach of the requirements.

Notice	2017	2018	2019	2020	2021 ¹
Dog FPN (PSPO)			2	1	
Dog Fouling FPN	11	9	6	6	
Dog Warning – Fouling		9	5	5	
Dog Warning – Dogs off Lead (PSPO)			1	6	1
Dog Warning – Exclusion Areas					
Dog Warning – Nuisance					
Dog Welfare & Misc.				2	
TOTAL	11	18	14	20	1

- 7.4. The Dog Control PSPO is not put in place to restrict the exercising or recreation of dogs across Westminster. The reason for making the Order is to address the detrimental effect on the quality of life of those in the locality caused by the irresponsible behaviour of a small minority of dog owners; and to set out a clear standard of behaviour to which all dog owners are required to adhere.
- 7.5. Fortunately, compliance with this order is good and we do not often have to use formal enforcement to ensure adherence to the requirements and prohibitions; however, the order also supports informal interventions to persuade and advise residents of appropriate dog ownership.

8. Alcohol consumption in prohibited areas

- 8.1. The Controlled Drinking Order does not ban street drinking but introduces a preventative power whereby an officer, if a person who is drinking alcohol or carrying

¹ 12 April – 21 June 2021

alcohol in an open can, can request the person to surrender their alcohol or pour it away not to continue to drink alcohol when required to do so.

- 8.2. It is not an offence to drink alcohol in a controlled drinking area. It is an offence to fail to comply with a request to stop drinking or surrender alcohol in the area covered by the Order. The power should therefore only be employed where there is or is likely to be nuisance and disorder caused by drinking in the street.
- 8.3. Failure to comply with either requirement is an offence. A breach of the Order can incur a Fixed Penalty Notice of £100.00 or a fine not exceeding level three (£1000.00) upon summary conviction.
- 8.4. There are various tools, which the Council and the Police can use to manage crime and disorder in the borough with or without alcohol as a qualifying factor these include
 - The Licensing Act 2003.
 - The Anti-Social Behaviour, Crime and Policing Act 2014.
 - Review of Premises Licences.
 - Confiscation of Alcohol (Young Person) Act 1997 a Police officer can remove alcohol from a person suspected of being underage; and
 - Licensing Act 1872 on the spot penalties for being drunk on the highway or other public place. For exhibiting disorderly, conduct whilst drunk in a public place (Criminal Justice Act 1967). The Police can also deal with behaviour causing harassment, alarm or distress (with or without alcohol as a qualifying factor).
- 8.5. A review of the PSPO highlights the need to renew the powers to tackle individuals drinking on the street.
- 8.6. 40% of all violent crimes in Westminster are alcohol related and Westminster continues to have the highest volume of alcohol related call outs across London, accounting for 8% of calls.
- 8.7. Covid-19 and the associated restrictions have had a significant impact, with 42% fewer incidents recorded between April and September compared to the previous 6-months with the greatest reductions in the West End by 18-24-year olds.
- 8.8. Although most of the alcohol related disorder reported to police is concentrated in the West End and associated with the night-time economy, the 2020 City Survey shows that people being drunk in their area is an increasing cause for concern in the more residential areas of the City. 46% of residents in the North West of the city rate this as a fairly or very big problem compared to just 25% in 2019 and 26% across the city.

9. Consultation methodology and key outcomes

- 9.1. A two-part consultation has been utilised to meet the immediate need to have PSPOs covering alcohol and dog control. The first consultation was published online between 29 March and 9 April 2021 (2-weeks), with the second consultation published on 17 May and remains open (5 ½ weeks to date).

- 9.2. The consultation encouraged respondents to make comments about the PSPOs as they were previously drafted, and the extent to which they experience the problems the orders are intended to address.
- 9.3. At the time of writing only 2 responses have been received both of which focussed on the alcohol order and were strongly in favour.
- 9.4. Police colleagues responded positively to the consultation and their response is copied below.

Central West BCU are in support of the Alcohol PSPO for the following reasons:

On the occasions that lockdown has been eased in the last 12 months we have seen a significant increase in the consumption of alcohol in open spaces such as parks and garden squares. This is fuelled by alcohol from off licences and supermarkets and whilst some of the larger chains have assisted us with the removal of cheap alcohol from the shelves it is otherwise quite difficult to restrict and control.

In residential areas adjacent to open spaces the street drinking described above is to the detriment of the resident's quality of life. There is frequently ASB associated with this in the form of late-night noise and litter. Last summer we received a high volume of complaints from residents in and around Soho, more specifically Soho Square.

... there are street drinking issues in parts of Westminster outside of the West End which have also been the subject of complaints by residents, for example the group that congregated around Elgin Avenue j/w Harrow Road

Added to this are the complexities of the street population across the BCU. The PSPO is an invaluable tool in helping to reduce ASB by the homeless community many of whom have challenges with addiction to both drink and drugs.

With the move to Step 2 and the restrictions easing on 12th April and giving consideration to the learning from the Movement Strategy last July I consider that it is vital that the PSPO remains in place across Westminster.

- 9.5. Approval is awaited to publicise the current consultation through the council's resident newsletters and social media channels. While we have met the minimum requirements for consultation by publishing online, it is recommended that we keep the consultation open and review the decision in 6-8 weeks' time (see section 13).

10. Financial implications

- 10.1. Signage is already in place to advertise the Dog Control Orders in key areas however, there is limited signage in place to advertise the Controlled Drinking Zone, a point that was raised in several consultation responses. If new signage is agreed, these are expected to cost less than £10,000, which will be met through existing service budgets.

10.2. Once implemented this will enable the issuing of Fixed Penalty Notices (FPNs) by the Animal Warden Service, Police and City Inspectors to ensure compliance.

11. Legal implications

11.1. PSPO's took effect from 20 October 2014 under the Anti-Social Behaviour, Crime and Policing Act 2014 ("the 2014 Act") enabling the Council to follow prescribed procedures to seek to declare a PSPO.

11.2. PSPO's are intended to deal with a particular nuisance or problem in a particular 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.

11.3. The Statutory Guidance issued in July 2014 and revised in January 2021 gives guidance on the applicable test for the making of a PSPO, the Guidance provides that:
"The test is designed to be broad and focus on the impact anti-social behaviour is having on victims and communities. A PSPO can be made by the Council if they are satisfied on reasonable grounds that the activities carried out, or likely to be carried out, in a public space:

- have had, or are likely to have, a detrimental effect on the quality of life of those in the locality.
- is, or is likely to be, persistent or continuing in nature.
- is, or is likely to be, unreasonable; and
- justifies the restrictions imposed".

11.4. Before making a PSPO, the Council must consult with the local police and whatever community representatives the Council considers appropriate. The Council will need to decide how best to identify and consult with interested persons and can include the use of newspapers, the Council's own website and other social media. On consultation the Statutory Guidance recommends that:

"...the council engages in an open and public consultation to give the users of the public space the opportunity to comment on whether the proposed restriction or restrictions are appropriate, proportionate or needed at all".

11.5. It is an offence for a person, without reasonable excuse, to:

- (i) do anything that the person is prohibited from doing by a PSPO.
- (ii) fail to comply with a requirement to which the person is subject under a PSPO.

A person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

11.6. The validity of a PSPO can be challenged on two grounds:

- (i) that the Council did not have the power to make the PSPO, or to include particular prohibitions or requirements; or

- (ii) that one of the requirements, for instance consultation, had not been complied with.

The High Court can suspend the operation of the PSPO in part or in whole as well as uphold the PSPO, quash it, or vary it.

11.7. The maximum duration of a PSPO is 3 years. A PSPO can be for a shorter period. .

12. Equalities implications

- 12.1. Overall, groups with protected characteristics will be positively impacted by the proposal which aims to assist the council in tackling anti-social behaviour and to improve cleanliness.
- 12.2. The local authority recognises that people who are registered blind, have a mobility issue, those with assistance dogs would struggle to comply with the requirements of the Dog Control aspects of the PSPOs. Therefore, these groups have been and will continue to be exempt from prosecution if found to be in breach of the dog control provisions of the PSPOs.
- 12.3. The council also recognises that street drinking is prominent amongst the street homeless population, who statistically more likely to be men, and who often have mental health problems. Extensive support and intervention are initially undertaken to address alcohol and other related issues through referrals to outreach services; providing individuals with the opportunity to engage in support and rehabilitation, prior to any decision to take enforcement action.

13. Risks

- 13.1. Although the legislation and associated statutory guidance do not specify in detail what consultation must be carried out to create a PSPO, the onus is on openness and transparency, allowing anyone with an interest in the restrictions and requirements imposed to provide feedback.
- 13.2. Exacerbating this risk is that we were consulting on an extension to existing orders, not new orders. However, there is little material difference from a consultation point of view as the orders themselves have previously been in place for many years and we are not proposing to change them. The risk here is considered low.
- 13.3. While in publishing the consultation on our website and therefore making it possible for anyone to respond meets the statutory requirements, the fact that we have not been able to advertise the survey could be subject to challenge on the basis that it is seen to be insufficient consultation.
- 13.4. However, there are also significant risks to not having the orders in place as the city reopens and in particular during the European Football Championships. Police have expressed concern that not having the alcohol order in place limits their tactical options to deal with alcohol related disorder which is expected to increase in the coming weeks.
- 13.5. To mitigate these risks, it is recommended that the cabinet member agrees to create new orders for the full 3-years, but that we keep the consultation open and advertise it for an additional 6 weeks. After that point it is proposed that we revisit the decision and

update the cabinet member on the outcome of this additional consultation period. If the consultation changes our recommendations, we have the option to vary or discharge the orders if they are no longer deemed appropriate.

For completion by Cabinet Member

Declaration of Interest

- I have no interest to declare in respect of this report

Signed Date
NAME:

- I have to declare an interest

State nature of interest

.....

Signed Date
NAME:

(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter.)

For the reasons set out above, I agree the recommendation(s) in the report entitled **Renewal of Borough-wide Street Drinking and Dog Control Public Space Protection Orders** and reject any alternative options which are referred to but not recommended.

Signed

Cabinet Member for

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:

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