

## Committee: Overview and Scrutiny Commission

**Date: 15 July 2020**

Wards: All wards, but with a focus on Lavender Fields, Cricket Green, Figges Marsh, Graveney and Ravensbury

## **Subject: London Borough of Merton Public Space Protection Order**

Lead officer: Kiran Vagarwal (Head of Safer Merton)

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### **Recommendations:**

- A. For the Overview and Scrutiny Commission to have the opportunity to comment on proposals for a new PSPO proposed for Merton
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### **1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1. Public Space Protection Orders (PSPOs) are one of a range of measures introduced by the Anti-Social Behaviour (ASB), Crime and Policing Act 2014 (the Act) to combat ASB.
- 1.2. A PSPO identifies a public space (the Restricted Area) and prohibits certain activities within that area and/or requires certain things to be done by persons engaging in certain activities within that area. PSPOs should focus on an identified problem behaviour rather than targeting specific individuals or properties. A breach of a PSPO is a criminal offence.
- 1.3. In 2013 the Council made the *Alcohol Consumption in Designated Public Places London Borough Merton Order 2013*, which created a borough wide "Controlled Drinking Zone". In 2017 this Order transitioned into a PSPO under the provisions of the Act. This Order will expire on 20 October 2020 unless extended before that date. The attached paper outlines our proposal to make a new PSPO to restrict the public consumption of alcohol but for a smaller geographical area to come into force as the existing Order lapses.
- 1.4. An Equalities Impact Assessment (EIA) is underway and on the 29 June 2020, a public consultation on the proposal was launched. A Multi-Agency Engagement and Enforcement plan will be in place to support the new PSPO if it is made.
- 1.5. The Council must ensure that the PSPO, including the restrictions it seeks to impose, is proportionate to the activities identified in the Restricted Area and the statutory Guidance is followed. A PSPO can be subject to a statutory challenge in accordance with the Act, or an application for Judicial Review.
- 1.6. The proposal is to take a final report to the September Cabinet meeting seeking a decision whether to make a new PSPO based on the evidence and feedback from the statutory and public consultation. The report will include the results of the consultation, the implementation and tactical plan and the completed Equalities Impact Assessment.

## 2 DETAILS

### Background

- 2.1. The Act introduced a set of streamlined tools to address ASB and the impact that such behaviour can have on individuals and communities. PSPOs are one of these tools. Through the provisions of the Act, Local Authorities are empowered to make PSPOs providing certain criteria and legal tests are met. PSPO's differ from other tools as they are council led and are designed to prohibit certain activities and/or can require that people do certain things when engaging in certain activities within a defined public area. They should focus on an identified problem behaviour rather than targeting specific individuals or properties. A breach of a PSPO is an offence, although as an alternative a Fixed Penalty Notice (FPN) may be issued.
- 2.2. In 2013 Merton made the *Alcohol Consumption in Designated Public Places London Borough Merton Order 2013*, which created a borough wide "Controlled Drinking Zone" (CDZ). The CDZ was designed to target alcohol related ASB across Merton. In 2017 this Order transitioned into a PSPO under the transitional arrangements in the Act and the restrictions on the public consumption of alcohol became under the PSPO regime. Therefore, since 2017, Merton has had one borough wide transitioned PSPO specially designed to address the associated ASB related to alcohol. This PSPO will expire on 20 October 2020, unless extended before that date.
- 2.3. In reviewing whether to extend the existing transitioned Order, or to make a new PSPO, restricted to a more geographically defined area, we have considered the statutory criteria for making a PSPO, and the appropriate scope of any Order to ensure that it is proportionate to the problem and the restrictions apply to the appropriate geographical area. We have also had to consider the impact that any PSPO may have. Our intention is to gather this information through the Public liaison with the police and other partners, statutory and public consultation and through the completion of an Equalities Impact Assessment. Finally, we have had to consider whether the proposed restrictions will meet the legal test.
- 2.4. Under section 59 of the Act, to make a PSPO a local authority must be satisfied that: -
  - The activities have had, or is likely to have, a detrimental effect on the quality of life of those in the locality; and
  - that the effect, or likely effect of the behaviour is, or is likely to be - (a) of a persistent or continuing in nature, is (b) such as to be unreasonable and justifies the restrictions being imposed.
- 2.5. The following analysis seeks to do this.

### Evidence led approach and proportionality

- 2.6. Robust evidence is essential when considering whether a PSPO is appropriate. The Council needs to be satisfied that the evidence demonstrates that the conditions in para 2.4 have been met. A detailed review of the available alcohol related data has taken place and the results of the public consultations will also be considered.

2.7. The quantitative analysis for the time period (where possible) 2018 and 2019 calendar years found the reports of ASB related to alcohol consumption to either the ASB Team or the Police were low. Whilst the CCTV data does show more logs in the Wimbledon area in 2018, this has moved to the Mitcham area in 2019 (closely followed by Wimbledon). The other available data does point to more of a problem in the Mitcham area, however the figures again are small. Enforcement action for breaches of the existing transitioned PSPO has not been significant, with only 19 FPN's issued in the last year.

Table 1: Summary of figures

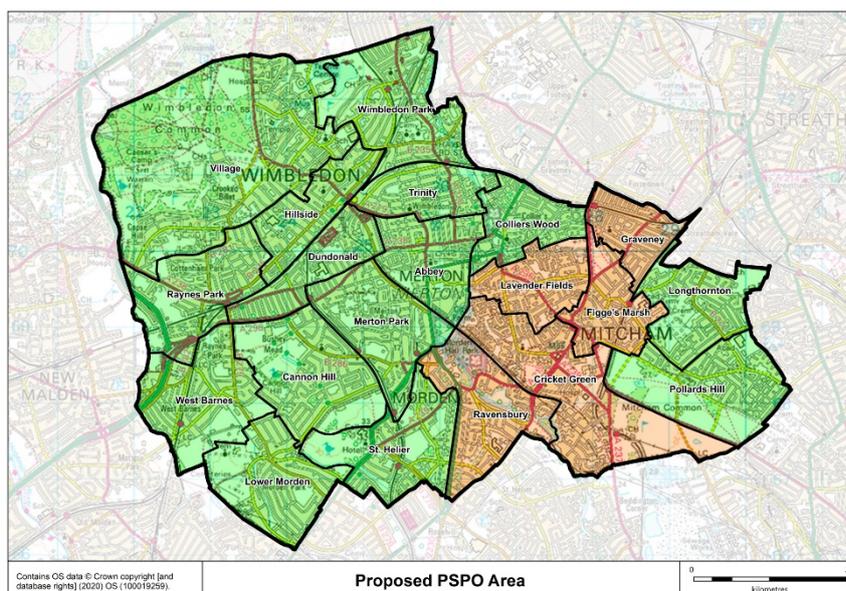
Data Source	2018	2019
ASB Complaints	61	84
CCTV Logs	271	255
PSPO FPN's Issued	24	19
Ambulance Callouts (Sep 17 – Aug 18 and Sep18 – Aug 19) via Safe Stats	1185	847
Street Drinking Police Calls	21	29

2.8. In addition to the quantitative data, it was also important to consider the views of the public; we therefore, considered the perception information from the surveys that have been conducted recently on the Borough. When looking at the results of the Borough's surveys:

- The Annual Resident's Survey (2019) indicated that concern about drunk and rowdy behaviour had reduced in comparison to the previous survey (2017).
- The Ward where people saw it as more of a problem was Graveney in the East of the Borough.
- The Safer Merton Strategic Assessment Survey, however showed that approximately 244 people felt that street drinking was a fairly or very big problem in the Borough. When assessing the data, particularly the public perception information, there is an indication of an impact on the quality of life of those particularly working and living in the Mitcham area.
- The Licensing Team are currently consulting on the Cumulative Impact Zones for the Borough. Based on their assessment of available data they are recommending that zone's be maintained in Mitcham Town Centre and Wimbledon Town Centre.

### Location

2.9. As mentioned earlier in the report, we need to ensure the PSPO is proportionate, so based on both the quantitative and qualitative data available, the proposal is for the PSPO to target a smaller geographical area of Lavender Fields, Graveney, Ravensbury, Figges Marsh and Cricket Green as shown on the map.



- 2.10. A risk to the proposal for a Mitcham area based PSPO is the notion of displacement. Displacement is a risk with a smaller geographically focused PSPO where the problem may simply move to another area within, or indeed outside, the Borough. This would need to be monitored and addressed should it arise. The option of additional PSPOs in the future is possible, providing there is sufficient evidence to support it and satisfy the statutory tests. Targeted intervention and enforcement with the more persistent individuals who continue their behaviour in other parts of the Borough will also need to be considered using Community Protection Warnings<sup>1</sup> and/or Notices.
- 2.11. The Mitcham area, in particular the town centre, has undergone significant re-development over the last few years. Mitcham has also been identified by the Safer Merton Partnership as a strategic priority for the last two years due to complex and multiple problems in the area. Activity in the area is regularly discussed and monitored via the Borough's Location Board (a partnership problem solving group). A number of joint patrols have been undertaken with the Police, Council Officers and Kingdom Security to address the problems in the area. CCTV Team regularly monitor activity and report incidents directly to the Police or other relevant partners when needed. We are also working with the Licensing Team in the Regulatory Services Partnership

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<sup>1</sup> A CPN is a Community Protection Notice. The Council can issue a CPN to anyone who is 16 or over, or business, or organisation if satisfied, on reasonable grounds, that a person's conduct is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality, and the conduct is unreasonable. Before issuing a CPN the Council must give a community protection warning (CPW) advising that a CPN may be issued unless the conduct having the detrimental effect does not cease within such period as is sufficient for him/her to address it.

For more information, see the government advice here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/823316/2019-08-05\\_ASB\\_Revised\\_Statutory\\_Guidance\\_V2.2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/823316/2019-08-05_ASB_Revised_Statutory_Guidance_V2.2.pdf)

around the implementation of the Cumulative Impact Zones to ensure that intelligence is shared.

### **Engagement and Enforcement**

- 2.12. The proposal is that if the PSPO is made and comes into force in October, signage will go up a week before it goes live and the Order will be publicised in accordance with the Act and the Guidance. During the first 3 weeks of the PSPO, we will focus on engagement and raising awareness of the restrictions, following which the enforcement will begin.
- 2.13. Enforcement is a key element of the PSPO and as such, ensuring the right restrictions is vital. As part of the public consultation, we are asking for views on the following proposed restriction:-
- Constables, police community support officers and persons authorised by the Council will be authorised to require a person consuming alcohol in the restricted area so as to cause or be likely to cause a nuisance or annoyance: -
    - a) To stop drinking and/or
  - To surrender any alcohol, or container for alcohol, and dispose of anything surrendered.
- 2.14. There are a number of enforcement options ranging from a Warning, and or issuing a FPN to prosecuting either where the fixed penalty is not paid or without first issuing a FPN. For more persistent breaches of the PSPO, consideration will be given to issuing CPWs, followed by CPNs, where appropriate, and Criminal Behaviour Orders.
- 2.15. We are currently in the process of working with partners to develop a co-ordinated Engagement and Enforcement Plan. The Plan will not only cover the direct enforcement of the PSPO, which we will look to do collaboratively with the Police and Kingdom Security, but will also seek to outline avenues for support, which might be needed to help those where alcohol has become a challenge.

### **Consultation**

- 2.16. We have already begun the process of engaging with partners to establish an Engagement and Enforcement Plan should the PSPO go live in October. The Plan will not only establish what partners are currently delivering in the area in terms of enforcement, compliance and engagement but also establish, with the assistance of the SLLP, the scenario for the use of each enforcement option listed above section 2.14.
- 2.17. The Council is required by the Act to consult with the Police, the Mayor's Office for Policing & Crime (MOPAC), Community Representatives community representatives and the owner and occupier of land within the restricted area. Whilst consultation with partners and groups has already begun, the wider public consultation over four weeks commenced on 29 June. The results will be analysed and presented in the final report which will be submitted to Cabinet in September.

2.18. The consultation can be accessed at the following link [www.merton.gov.uk/pspo](http://www.merton.gov.uk/pspo)

### 3 ALTERNATIVE OPTIONS

3.1. Alternative options considered were:

- Allow the existing transitioned PSPO to expire and not introduce a new more targeted PSPO. However, this would mean that the Council was not effectively using the power to make a PSPO to prevent, deter and reduce the impact alcohol related ASB is having on a specific location and community within the Borough. This option is therefore not recommended.
- To extend the duration of the existing borough wide transitioned PSPO or to make a new borough wide PSPO. This option is also not recommended as there is insufficient evidence to satisfy the statutory test in Section 59 of the Act. Any PSPO made without satisfying the test would be unlawful and susceptible to legal challenge. It would also raise community expectations of the Council's ability to enforce such a large PSPO.
- To implement a targeted PSPO, based on the evidence of ASB related to alcohol consumption. This is the recommended option since the Council will be able to demonstrate that the statutory test for making a PSPO to address the ASB within the restricted area has been satisfied and that the restrictions are proportionate to the ASB.

### 4 CONSULTATION UNDERTAKEN OR PROPOSED

4.1. See para.s 2.15 – 2.17 above. As part of the public consultation exercise in addition to the PSPO related questions, we are asking more general questions around feelings of safety in the area, as well as monitoring questions, to allow us to assess the representativeness of the responses. We have also taken on board resident feedback provided through other council surveys.

### 5 TIMETABLE

Milestone	Date to be completed
Initial outline report to CSP	May 2020 (Completed)
Launch Consultation	June 29 <sup>th</sup> for 4 Weeks
Present report to Scrutiny Commission	14 July 2020
Analysis of Consultation Results	5 August 2020
Equality Impact Assessment	5 August 2020
Engagement and Enforcement Plan agreed	5 August 2020
Paper to Cabinet Leaders Strategy Group	24 August 2020
Final report submitted to Cabinet requesting authorisation of PSPO	7 September 2020

Procure signage and decide where signage will be displayed	20 September 2020
Publication of PSPO	25 September 2020
Remove Signage for the borough wide PSPO	20 <sup>th</sup> October 2020
Ensure signage is displayed	21 <sup>st</sup> October 2020
<b>PSPO comes into force</b>	<b>21<sup>st</sup> October 2020</b>
Initial launch of the PSPO – communication and engagement	21 <sup>st</sup> October 2020 – 10 <sup>th</sup> November 2020
Start of Enforcement of the PSPO	11 <sup>th</sup> November 2020
Regular Monitoring of the PSPO	Proposed to be either through the Locations Board or the Community MARAC

## **6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

- 6.1. The preparation of the PSPO is being completed within existing officer's resources. In addition, there will be legal costs to draft the final order and ensure all due statutory processes are followed, and costs associated with the production and installation of signage in the area, should the PSPO be agreed. It is expected that these costs can be funded from existing resources.

## **7 LEGAL AND STATUTORY IMPLICATIONS**

The power and requirements for making a PSPO are Part 4 of Chapter 2 of the Act, and is supplemented by the Anti-social Behaviour Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014 and statutory guidance issued by the Secretary of State. The basic requirements for the making of a PSPO are set out in the body of this report.

Under Section 66 of the Act any challenge to the validity of a PSPO must be made in the High Court by an interested person within six weeks of it being made. An interested person is an individual who lives in, or regularly works in, or visits the restricted area. This means that only those who are directly affected by the restrictions have the power to challenge. The validity of a PSPO can be challenged on two grounds only:

- (a) that the Council did not have power to make the order, or to include particular prohibitions or requirements imposed, or
- (b) that the procedural requirements for making the PSPO (for instance, consultation) were not complied with.

On any application to the High Court challenging the validity of an Order the Court may suspend its operation or any of the prohibitions or requirements imposed by it until the final determination of the proceedings. If the Court is satisfied the Council did not have the power to make the PSPO, or it did but

the Council failed to comply with the procedural requirements and, the applicant has been substantially prejudiced by that failure, it may quash the Order or any of the prohibitions or requirements imposed by it.

In deciding whether to make a PSPO and, if so, what restrictions should be included, by Section 72 of the Act 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 for the Protection of Human Rights and Fundamental Freedoms 1950 (“the Convention”).

A PSPO may also be challenged by way of an application for judicial review which must be brought promptly and in any event not later than 3 months after the grounds to make the claim first arose.

At this preliminary stage the above is provided for information since the Council is not, at this point, deciding whether to actually make a PSPO but rather reporting on its proposals, which are subject to the output of the statutory and public consultations and an evaluation of the evidence of ASB etc. A further report will be brought to Cabinet for this decision.

## **8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

- 8.1. To ensure that we consider the rights of individuals who live, work and visit the area, we will ensure the proposed PSPO is proportionate to the needs in the area, as identified through the analysis and consultation.
- 8.2. As detailed in Section 7 above, in deciding whether to make a PSPO and, if so, what should be included the Council is required to have regard to the Convention and Articles 10 and 11 in particular.
- 8.3. We are also undertaking an Equalities Impact Assessment to ensure that all the evidence is available to present to Cabinet prior to a final decision.

## **9 CRIME AND DISORDER IMPLICATIONS**

The purpose of the proposed PSPO is to help tackle alcohol related ASB in the Mitcham area and to help improve the quality of life for those who live, work and visit the area with the aim of having a positive impact on the levels of crime and ASB in this locality.

## **10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

- 10.1. Whilst the focus of the PSPO is around enforcement, it is acknowledged that this may identify individuals for whom alcohol is particularly problematic. We will therefore be working closely with support services to ensure that such individuals can be offered the support they need, should they want it.
- 10.2. Officers enforcing the PSPO will take into consideration existing organisational policies and procedures for personal safety and risk management.

**11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT**  
N/A

**12 BACKGROUND PAPERS**

- Data Report

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