

Overview & Scrutiny Committee

Date: 7th September 2022

Wards: Cricket Green, Figge's Marsh, Graveney, Lavender Fields and Ravensbury

Subject: London Borough of Merton Public Spaces Protection Order (PSPO)

Lead officer: Calvin McLean, Interim Assistant Director Public Protection

Lead member: Councillor Eleanor Stringer, Cabinet Member for Civic Pride

Contact officer: Alun Goode QPM, Interim Head of Community Safety, Katy Saunders, Interim Community Safety Team Manager

Recommendations:

- A. For the Overview & Scrutiny Committee to have the opportunity to comment on proposals for an extension of the current PSPO in Merton and to conduct further consultation in view of applying for a future borough wide PSPO to make Merton a responsible drinking borough.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

Public Spaces 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.

- 1.1. 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 identified problem behaviour(s), rather than targeting specific individuals or properties. A breach of a PSPO is a criminal offence.
- 1.2. 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, the Order transitioned into a PSPO under the provisions of the Act. This Order expired in October 2020.
- 1.3. At Cabinet on 7th September 2020, a new more localised PSPO was approved covering five wards (*Lavender Fields, Graveney, Ravensbury, Figge's Marsh and Cricket Green*).
- 1.4. On 13th October 2020 th Council made the London Borough of Merton (Alcohol Consumption in Public Places) Order 2020 which came into force on 21st October 2020 and is due to expire on 20th October 2022 (the current PSPO).
- 1.5. This report outlines our recommendation to extend the Current PSPO for a further three years.
- 1.6. It is important to note that the Current PSPO only applies to ASB related alcohol consumption. Officers will continue to only enforce this prohibition when people drinking alcohol are *currently or likely to cause ASB*.

- 1.7. An Equalities Impact Assessment (EIA), attached as Appendix 3, conducted in July 2022, concluded that extending the Current PSPO will not have a detrimental effect on any person with protected characteristics living, working, or visiting the area.
- 1.8. A multi-agency engagement and enforcement approach to support the extension of the PSPO is being agreed with partners, subject to the decision whether to extend the duration of the Current PSPO. The engagement and enforcement activity will be monitored through the Locations Board.
- 1.9. If Members agree to the extend the duration of the Current PSPO as proposed in this report, in accordance with the Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014 (the Regulations), the Council will publish the full order as extended on the Council's website advising that it will not expire on 20th October 2022 but has been extended for a further three years, or whatever period the Cabinet decides.
- 1.10. Public notices which are currently erected to mark the boundaries of the PSPO will also be updated to reflect its extension for a further three years. A draft of the notice is attached as Appendix 4 of this report.

The Council may extend the period the Current PSPO has effect if satisfied on reasonable grounds that doing so is necessary to prevent—

 - (a) occurrence or recurrence after the expiry of the activities identified in the order, or
 - (b) an increase in the frequency or seriousness of those activities after that time.
- 1.11. In considering whether to extend the Current PSPO, and if so for how long, the Council must follow the requirements of the Act, the Regulations, and the Statutory Guidance – *Anti-social Behaviour, Crime and Policing Act 2014: ASB Powers Statutory guidance for frontline professionals (Revised June 22)*. The validity of a PSPO can be subject to a statutory challenge in accordance with the Act, or an application for Judicial Review.
- 1.12. On the 27th June 2022, a six week public consultation on the Current PSPO was launched. In total the Council received 186 responses via the online survey. In summary, 86% of respondents agreed with the renewal of the Current Order and 82% agreed with the renewal of the geographical area of the current prohibition. The full results of the consultation are attached as Appendix 1.
- 1.13. From gathering evidence from our partners and the results of the public consultation, we believe there is a case to extend operational area of the controls in the Current PSPO to other areas of the Borough.
- 1.14. Therefore, the further recommendation, if approved by Cabinet, is to begin work on making on a borough wide alcohol consumption PSPO in the autumn of 2022. This will aim to make Merton a responsible drinking borough that does not prohibit the drinking of alcohol in public but reflects a decision to control ASB linked to alcohol consumption.

- 1.15. This work will include a broader consultation with residents which will take into account the increased of the geographical area of the proposed PSPO, across the whole of the Borough not just the five current wards . It will also provide an opportunity to include in the consultation on other ASB issues of concern having a detrimental effect on the quality of life of all those in the borough.
- 1.16. **Proposal for a borough wide PSPO**
- 1.17. Tackling ASB and the detrimental effect it has on quality of life is a strategic priority of the Community Safety Partnership. The recommendation to make Merton a responsible drinking borough under a borough wide PSPO will give the Police and Council enforcement officers additional powers to target those causing alcohol related ASB and offer them additional support.
- 1.18. It will provide reassurance to residents that something is being done to tackle these issues which can have a detrimental effect on communities.
- 1.19. This work links with Merton’s corporate priorities in terms of creating civic pride and a borough where residents feel safe to enjoy our high streets and town centres. It also links to clean streets and the environment with regards to ensuring that our parks and open spaces are a place where residents can enjoy a safe environment free from anti-social behaviour.
- 1.20. In addition, a responsible drinking borough will aid the development of a safe and prosperous Night Time Economy and assist in preventing displacement of problematic drinkers from one area of the borough to another.
- 1.21. It also links with the Government’s 10-year drugs strategy ‘From harm to hope¹’ which focuses on tackling drug supply, reducing drug demand and improving drug and alcohol treatment and recovery services. The strategy states ‘local partnerships should ensure that their plans sufficiently address alcohol dependence and wider alcohol-related harms.’ Under this provision the Combatting Substance Misuse Partnership is being established, which will focus on a multi-agency approach to coordinating action to prevent and reduce drug and alcohol related harm in Merton.
- 1.22. We have briefed the boroughs whose borders surround Merton on the borough wide PSPO proposal. A borough wide PSPO is already in place in Wandsworth. Kingston and Sutton also have PSPOs in place for tackling alcohol related ASB. For Kingston this is very localised but for Sutton, 17 alcohol related ASB PSPOs have been made covering much, but not all of the Borough.

2 DETAILS

2.1. Background

- 2.2. 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 implement PSPOs, providing certain criteria and legal tests

¹ [Guidance for local delivery partners \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

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.

- 2.3. 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, the Order transitioned into a PSPO under the transitional arrangements in the Act and the restrictions on the public consumption of alcohol became subject to the PSPO regime. This transitioned order expired on 20th October 2020 and was replaced by a more localised PSPO which began on 21st October 2022 called the London Borough of Merton (Alcohol Consumption in Public Places) Order 2020 (the Current Order). This covers five wards (*Lavender Fields, Graveney, Ravensbury, Figges Marsh and Cricket Green*).
- 2.4. The Current Order will expire on 20th October 2022 unless extended. The Council may extend the period it has effect if satisfied on reasonable grounds that doing so is necessary to prevent—
 - (a) occurrence or recurrence after the expiry of the activities identified in the order, or
 - (b) an increase in the frequency or seriousness of those activities after that time.
- 2.5. Before extending the Current Order the Council must also carry out the consultation and publicity required by the Act, including publicising its proposal to extend. We have considered the impact the extension. We have gathered this information by consulting on the proposal with the Police, MOPAC, other partners, a public consultation and through the completion of an Equalities Impact Assessment. Finally, we have considered whether the proposed extension satisfies the legal test in paragraph 2.4 above, via consultation with our legal advisers.
- 2.6. **Evidence led approach and proportionality**
- 2.7. Robust evidence is essential when considering whether an extension to the Current Order is appropriate. The Council needs to be satisfied that the evidence demonstrates that the conditions in paragraph 2.4 have been met. A detailed review of the available alcohol related data has taken place and the results of the public consultations have been considered. The Evidence paper can be found in Appendix 2.
- 2.8. However the effectiveness of the PSPO should not solely be judged on the number of enforcements, as its benefits are broader, and the preventative effect of the controls should be noted. Officers using the PSPO powers to intervene at an early stage by asking individuals in the first instance to desist from drinking alcohol is a good way to prevent unreasonable behaviour escalating. For example, occasions where Officers worked positively with

individuals, asking them to stop drinking and encouraging them to access support, before it was necessary to escalate to the level of issuing an FPN. There is difficulty in recording these encounters.

- 2.9. The current PSPO covers the Mitcham area, in particular Mitcham town centre, where there has been a longstanding issue with ASB linked to street drinking. It should be taken into consideration that without the PSPO, the situation in this location could have escalated. Seeing officers patrolling the area and enforcing the PSPO enhances feelings of safety and also acts a deterrent, sending the message that this behaviour is not acceptable.
- 2.10. It should also be noted that following a review of the Community Safety Partnership’s Locations Board meeting, going forwards the engagement and enforcement of the PSPO will monitored via a standing agenda item on a monthly basis to ensure this is a key focus of the partnership.
- 2.11. The current number of street drinking reports to either the Council’s ASB team or Police is low. Enforcement figures for the Current Order are also low, with six Fixed Penalty Notices (FPNs) issued by Council Officers in the last year. Furthermore, conversations with the Police have highlighted the fact they do not have the facility to record action taken by Officers to support the PSPO, this is a common feature across London.
- 2.12. There were 14 calls from public to the Police classified as Street Drinking. The Police are supportive of the proposal to extend the Current Order and consulting on a proposal for a borough wide alcohol related ASB PSPO.
- 2.13. Table 1.1 summary of figures

Data Source	FY 2021-22
ASB Complaints related to alcohol	80
CCTV Logs	300
Alcohol Related Ambulance Callouts (time period) via Safe Stats	709
Street Drinking Police Calls	14
PSPO FPN’s Issued	6

- 2.14. In addition to the quantitative data, it is 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:
- 2.15. The Annual Resident’s Survey (2021)² indicated that concern about drunk and rowdy behaviour has increased compared to the previous survey in 2019. Concerns regarding drunk and rowdy behaviour are more concentrated in East Merton and Mitcham and South Merton and Morden.
- 2.16. The Safer Merton Strategic Assessment Survey (2021) showed that residents thought alcohol disorder and street drinking were the biggest problem in their area, followed by drug paraphernalia (canisters) and drug use.

² [Performance : Residents’ surveys | Merton Council](#)

- 2.17. The Your Merton consultation showed that ASB and safety in public spaces were concerns for East Merton and Mitcham residents, with alcohol consumption often cited as an issue.
- 2.18. **Location**
- 2.19. The Current Order covering five wards expires on 20th October 2022. Recommendation B is to extend the Current Order for a further three years.
- Since the Current Order was made, the London Borough of Merton Electoral Changes Order 2020³, has come into force. This Order makes changes to electoral arrangements for the Borough following recommendations made by the Local Government Boundary Commission for England. Whilst the area of the Borough remains unchanged, the Order abolishes all the existing electoral wards and replaces them with 20 new ones. It also establishes the names and areas of the new electoral wards. The 5 Wards identified in the Current Order as the restrict areas to which the controls apply have not been renamed but there have been slight adjustments of the former Ward boundaries. The Current Order identified the Restricted Areas by reference to the name of the Wards but also a plan so the extent of the areas subject to the alcohol related ASB controls remains clear and certain. Accordingly, if the Cabinet resolves to extend the duration of the Current Order it will operate in relation to the former ward boundaries, shown edged red on the Plans to the Current Order.
- 2.20. **Engagement and enforcement**
- 2.21. If Members agree to extend the Current Order it will come into force on 21st October 2022. Public signage will be updated a week before the go live date and the Order will be publicised in accordance with the Act and the Regulations. During the first three weeks the extended PSPO is in operation, we will focus on engagement and raising awareness of the controls, following which the enforcement will begin.
- 2.22. Enforcement is a key element of the PSPO and as such, ensuring the right controls is vital. The following restrictions area proposed for the PSPO:
- (i) 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
 - b) To surrender any alcohol, or container for alcohol, and dispose of anything surrendered.
- 2.23. There are a number of enforcement options ranging from a Warning, and or issuing an FPN, prosecution where the FPN is not paid or where it is not considered appropriate to issue an FPN. For more persistent breaches of the extended PSPO, consideration will be given to issuing Community

³ <https://www.legislation.gov.uk/ukxi/2020/1382/contents/made>

Protection Warnings (CPNW), followed by Community Protection Notices (CPN) and seeking Criminal Behaviour Orders (CBO), where appropriate⁴.

- 2.24. A draft of the PSPO signage can be found in Appendix 4. The signage outlines the area and controls which apply with the restricted area identified by the PSPO. It explains how any ASB can be reported and where people can go to find more information. Note the sign will be updated with the relevant date following approval of the extension of the PSPO.
- 2.25. It is important to add that whilst the Council may issue an FPN offering the opportunity to extinguish liability to prosecution on payment of £150, reduced to £100 on early payment,, the maximum fine to prosecution for breaching the PSPO is a level 2 fine on the standard scale, currently £500. The Council may prosecute if the fixed penalty is not paid or instead of issuing an FPN. Where a person believes to have breached the PSPO refuses to give his/her name and address they may be prosecuted and on conviction fined up to level 3 fine on the standard scale, currently £1,000.
- 2.26. We are working with partners to deliver a co-ordinated Engagement and Enforcement Plan. The plan not only covers the direct enforcement of the PSPO, via the Police and Kingdom Security, but will outline pathways for accessing support, which might be needed to help those where alcohol has become a challenge, through our partnership with Public Health and Westminster Drugs Project (WDP), our commissioned adult substance misuse service.
- 2.27. As part of the Equalities Impact Assessment we will ensure that the PSPO signage is clear, and there is good engagement and publicity. Moreover, we will consider making the information available in different languages.

3 ALTERNATIVE OPTIONS

- 3.1. *Allow the Current Order to expire and not extend its duration.* This would mean that the Council was not effectively using the power to make a PSPO to prevent, deter and reduce the known impact alcohol related ASB is having on specific locations and communities within the Borough. It would leave the Borough with no operational PSPO until the time a borough wide PSPO is made, assuming the statutory tests for make such an order are satisfied. This option is therefore not recommended.
- 3.2. *To extend the Current Order, targeted on the five former Wards for a further period of up to three years and not consider making a borough wide alcohol*

⁴ 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 ceases 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

related ASB PSPO. This would not take into account evidence gathered that such ASB is also an issue in other areas of the Borough which needs to be addressed and the benefits of making Merton a responsible drinking borough.

- 3.3. *To implement a new targeted PSPO in other specified areas of the Borough, based on the evidence of ASB related to alcohol consumption*. Due to the legal process required, such a PSPO could not be made before the expiration of the current PSPO. If the Current Order is extended any new PSPO could be made in addition to that Order, or a new PSPO could be made “absorbing” the existing restricted area, in which case the Current Order could then be discharged.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. Before extending the duration of an existing PSPO a local authority is required to carry out *necessary consultation* and *necessary publicity* as specified by the Act. A six-week public consultation was launched on the 27th June 2022 and in total we received 186 responses to our online survey. To publicise the survey, it was circulated to members of Merton Neighbourhood Watch, Merton Safer Neighbourhood Board, members of the Council’s Equality Forums, Merton Connected, Merton Chamber of Commerce, the borough’s drug and alcohol service, Catch 22, the borough’s homelessness service, all Members and via the council’s social media channels on Facebook and twitter.
- 4.2. The public consultation asked respondents whether they supported the current prohibition, of which 86% did. The respondents were also asked whether they were in agreement with the renewal of the geographical area of the current prohibition, of which 82% did. The full results can be found in appendix 1.
- 4.3. We have also taken on board resident feedback provided through other council surveys including the Annual Residents Survey and the Your Merton consultation.
- 4.4. In addition we consulted with our partners including the Police, MOPAC, Public Health, WDP and Kingdom Security.

5 TIMETABLE

- 5.1. Next steps should the recommendations be approved by Cabinet

Milestone	Date to be completed
Report submitted to Overview and Scrutiny Committee	7 th September 2022
Final report submitted to Cabinet	19 th September 2022
If Cabinet agrees the proposal to extend the Current Order for a further period of up to 3 years, make an extension Order	20 th October 2022 at latest (Critical Date)
Publish the Current Order as extended	Once the extension comes into force 21 st October 2002

Extension of current PSPO comes into force	21st October 2022
Regular Monitoring of the PSPO	Via the Locations Board
If agreed by Cabinet, preparation of legal process and further consultation for introduction of a borough wide PSPO begins	1 st November 2022

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. The preparation of the extension of the Current Order is being completed within existing officer resources. There will be legal costs to draft the extension of the Order and ensure all due statutory processes are followed, and costs associated with the production and installation of updated signage, should the extension be agreed.
- 6.2. Should it be agreed that a further borough wide PSPO be obtained, there will be additional legal costs to draft the new order and ensure all due statutory processes are followed, subject to a further Cabinet report to decide whether a further PSPO should be made borough wide or for specific areas of the Borough. There will be costs associated with production and installation of signage borough wide.
- 6.3. It is expected that the costs outlined above can be funded from existing resources.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. The power and requirements for making, extending, varying and charging 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 referred to at para 1.11 above. The basic requirements for the extending the duration of an existing PSPO are set out in the body of this report.
- 7.2. In deciding whether to extend the Current Order and if so, for how long, the Council must, by Section 72 of the Act, 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").
- 7.3. 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 vary, or to include particular prohibitions or requirements imposed, or
- (b) that the procedural requirements for making, or varying, the PSPO (for instance, consultation) were not complied with.
- 7.4. 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.

- 7.5. The statutory challenge procedure in Section 66 of the Act does not appear to apply where an existing order is only extended and not also varied. The decision to extend the Current Order would however be susceptible to challenge 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.

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 extend the Current Order and, if so for how long, the Council is required to have regard to the Convention and Articles 10 and 11 in particular.
- 8.3. We have also undertaken an Equalities Impact Assessment which will be monitored to ensure that future intelligence and information which better informs our understanding and impact of the extended PSPO is considered.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. The purpose of extending the Current Order is to help tackle alcohol related ASB in the Borough and to help improve the quality of life for those who live, work, and visit the Borough, with the aim of continuing to have a positive impact on the levels of crime and ASB within the restricted areas specified.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. The focus of the Current Order is around enforcement, but it is acknowledged that this may identify individuals for whom alcohol is particularly problematic. If the Current Order is extended we will continue to work 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, if it is extended 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

- Appendix 1 - Public Consultation Results
- Appendix 2 - Evidence Paper
- Appendix 3 - Equalities Impact Assessment
- Appendix 4 - Draft PSPO sign

12 BACKGROUND PAPERS

- 12.1. *The London Borough of Merton (Alcohol Consumption in Public Places) Order 2020*
- 12.2. *ASB Crime and Policing Act 2014 ASB Powers Statutory guidance for frontline professionals (Rev's 06.22).*
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1088750/2022_Updated_ASB_Statutory_Guidance-_FINAL.pdf

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