

CABINET

14 DECEMBER 2021

PUBLIC SPACE PROTECTION ORDERS EXTENSION

Portfolio Holder: Councillor Adrian Gulvin, Portfolio Holder for Resources
Report from: Richard Hicks, Director of Place and Deputy Chief Executive
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Summary

Public Spaces Protection Orders ('PSPOs') were introduced by section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 (this section came into force on 20 October 2014). PSPOs are an order created in relation to areas within the local authority's jurisdiction, where activities are taking place that are, or are likely to be, detrimental to the local community's quality of life. PSPOs impose conditions or restrictions on people within that area. A Breach of a PSPO is an offence punishable by a fixed penalty notice and/or prosecution in the Magistrates Court.

There are currently four schemes in existence that address alcohol related anti-social behaviour (ASB) issues –

- PSPOs in Chatham, Gillingham, Rochester and Strood (also known as 'alcohol control zones').

These orders were extended for a further three years in 2020 and approved. This report covers the outcomes of the public consultations carried out seeking views on the extension of the boundaries of Chatham, Rochester and Strood. The Cabinet will need to consider each extension individually. The request to consult on the three new areas was identified by elected Members and was formally requested at the Regeneration, Culture and Environment Overview and Scrutiny Committee in December 2020.

1. Budget and policy framework

- 1.1. Approval of Public Spaces Protection Orders and any variations, in accordance with s59 of the Anti-Social Behaviour, Crime and Policing Act 2014, is a matter for Full Council. Should the Cabinet decide to support one or more of the proposals, it would need to recommend each one individually to full Council for approval.

2. Background

- 2.1. One of the key powers of interest to the Council, partners and the community is the Public Spaces Protection Order (PSPO). PSPOs are designed to deal with a particular nuisance or problem in an area by placing conditions on the use of the area and for those that do not comply.
- 2.2. On 20 October 2014, the Government implemented most of the Anti-Social Behaviour Crime and Policing Act 2014 ("the Act"). The purpose of the Act is to give local authorities and others more effective powers to tackle anti-social behaviour (ASB), providing better protection for victims and communities.
- 2.3. Amongst these tools and powers are PSPOs, which are designed to control the use of public spaces. It is for each individual Council to determine what behaviour(s) they want to make the subject of a PSPO.
- 2.4. PSPOs provide Councils with a flexible power to implement local restrictions to address a range of anti-social behaviour issues in public places in order to prevent future problems. An Order should help to significantly reduce incidents of relevant ASB in the area over the long-term and improve the quality of life for residents, visitors and local businesses.
- 2.5. Local authorities can make an order as long as two conditions are met:

First condition:

- Activities carried out in a public space within the local authority's area have had a detrimental effect on the quality of life of those in the locality, or;
- It is likely that activities will be carried out in a public place within the area that will have such an effect.

Second condition:

The effect or likely effect of the activities:

- Is, or is likely to be, of a persistent or continuing nature
- Is, or is likely to be, such as to make activities unreasonable
and
- Justifies the restrictions imposed by the notice.

- 2.6. A number of Local Authorities across England and Wales have introduced Public Spaces Protection Orders. However, one of the key challenges has come from human rights campaigners who argue that these types of controls impact disproportionately on protected rights. These include Article 8 - the right to a private and family life, Article 10 - the right to freedom of expression and Article 11 – the freedom of assembly and association.
- 2.7. Any prohibition or requirement must be reasonable in order to prevent the detrimental effect from occurring or reoccurring, or must reduce the

detrimental effect or reduce the risk of its occurrence, reoccurrence or continuance.

- 2.8. PSPOs can be made for a maximum of three years. The legislation provides that they can be extended at the end of the period, (if the authority is satisfied on reasonable grounds that it is necessary for various reasons), but only for a further period of up to three years. However, orders can be extended more than once. Local authorities can increase or reduce the restricted area of an existing order, amend or remove a prohibition or requirement, or add a new prohibition or requirement. They can also discharge an order but further consultation must take place for varying or discharging orders.
- 2.9. Before making the order the local authority must notify potentially affected people of the proposed order, inform those persons of how they can see a copy of the proposed order, notify them of how long they have to make representation, and consider any representations made.
- 2.10. Any interested person can challenge the validity of a Public Space Protection Order in the High Court but the challenge must be made within six weeks of the making of the Order. An 'interested person' means an individual who lives in the restricted area or who regularly works in or visits that area.
- 2.11. As a Council, we are determined to tackle ASB, the tools and powers contained within the Act have helped us to develop our joint work alongside Kent Police.
- 2.12. Kent Police continue to receive repeated complaints from residents, visitors and local businesses across Medway about unreasonable ASB. Complaints show that reported ASB has a detrimental effect on the quality of life of those living in or using certain areas, reducing their ability to feel safe in, use or enjoy public spaces.

3. Options

- 3.1. We have consulted upon extending the boundaries of our existing PSPOs which cover the consumption of alcohol in Chatham, Rochester, and Strood, see appendix 1 for maps showing existing areas and the proposed extensions. The Cabinet will need to consider each proposal individually.
- 3.2. Historically local authorities could designate by order, a Designated Public Place Order (DPPO) in any public place within their area if they were satisfied that nuisance, annoyance or disorder was taking place. The first were introduced in Rochester in 2003, followed by Chatham, Gillingham and Strood and addressed the anti-social consumption of alcohol. These were commonly known as 'Alcohol Control Zones'. These automatically became PSPOs in 2017 under the Act. This proposal seeks to widen the areas that addresses the anti-social consumption of alcohol as shown in the maps at appendix 1.

- 3.3. The orders do not mean a blanket ban on drinking in public but do mean a police officer (or authorised council officer) could prevent anyone drinking alcohol if they were behaving anti-socially.
- 3.4. Statutory guidance (see appendix 2) states that before extending (as well as introducing, varying or discharging a PSPO) there are requirements under the Act regarding consultation. Local authorities are obliged to consult with the local chief officer of police; the police and crime commissioner; owners or occupiers of land within the affected area where reasonably practicable, and appropriate community representatives. Any parish or community councils (for example, PACTs (Partners and Communities Together) that are in the proposed area covered by the PSPO must be notified.
- 3.5. Any Order must identify and publicise (e.g. on social media and through the provision of public signage in the designated areas) the public space as a 'restricted area' and must prohibit specified activities being carried out in the restricted area (prohibitions), or require specified things to be done by persons carrying out specific activities in that area (requirements), or both.
- 3.6. The orders have the power to confiscate and dispose of alcohol and fine people up to £500 – failure to comply could lead to arrest. Pubs and clubs in the area were not affected by the ban if the consumption of alcohol takes within their premises.

4. Advice and analysis

- 4.1. PSPOs have been an agenda item at the Strategic Executive Group of the Community Safety Partnership, which is chaired by the Cabinet Member for Resources, as well as representation from the responsible authorities, Kent Police, Kent Fire and Rescue Service, The Probation Service and the Kent and Medway Clinical Commissioning Group. The Office of the Police and Crime Commissioner, although not a responsible authority is also represented.
- 4.2. A Diversity Impact Assessment (DIA) will not be required as this report does not recommend any policy/service change.

5. Risk management

- 5.1. There are reputational, environmental, economic and legal risks to the Council for not pro-actively pursuing an extension of our existing PSPOs.

Risk	Description	Action to avoid or mitigate risk	Risk rating
We do not consult	Risk of legal challenge	Ensure full consultation is carried out as per guidance	E2

Risk	Description	Action to avoid or mitigate risk	Risk rating
We do not extend the areas as shown on the maps at appendix 1	Alcohol related ASB increases in these areas and extends into areas which incorporate new housing developments. Reputational risk; Increased pressure on service complaints	Advise Kent Police or consider installation of rapid deployment <u>short term</u> CCTV (costs would be covered by funding the CSP receives from the Police and Crime Commissioner).	E2

6. Consultation

- 6.1. Responses received to the consultations were in support of their extension. The response rates are listed below.
- 6.2. The Police and Crime Commissioner, the Borough Commander for Kent Police and Town Centre Policing Team are in support of the proposals.
- 6.3. Do you support the continuation of the Public Space Protection Order to prohibit the drinking of alcohol in the proposed extension –
 - Chatham – 91%
 - Rochester – 90%
 - Strood – 100%
- 6.4. As noted at 6.3, responses received to the consultations were in support of the zone extensions, however it is worth noting that the actual numbers were low. A total of 58 responses were received in relation to variations despite the consultation being live for three months.
- 6.5. The summary reports are attached to this report at appendix 3, 4 and 5. The question posed was - do you support the extension of the area covered by the Public Space Protection Order?" The options were 'yes', 'no' or 'don't know'.
- 6.6. Comments from respondents are included in each of the summary reports.
- 6.7. Chatham – 35 responses. 31 respondents replied 'yes'.
- 6.8. Rochester – 20 responses. 18 respondents replied 'yes'.
- 6.9. Strood – 3 responses. 3 respondents replied 'yes'.
- 6.10. To advertise the consultation, a link to the consultation was put on the Council's website, this was also advertised on social media from the Community Safety Partnership Twitter account. All Town Centre Forums were advised as were all Neighbourhood Watch Coordinators, Councillors and PACT groups (Partners and Communities Together).

7. Climate change implications

- 7.1. There are neither positive nor negative climate change/carbon emission implications arising from the report.

8. Financial implications

- 8.1. A small amount of expenditure will be needed to install a number of signs around the extended boundary area and this will be met from within existing budgets.

9. Legal implications

- 9.1. The Anti-Social Behaviour Crime and Policing Act 2014 and associated guidance sets out a series of requirements for introducing PSPOs and the policy for their extension. As noted in the report, the process for the extension of the PSPOs required a programme of consultation as detailed above. The Cabinet is now required to consider the proposals individually and should it support one or more of them, to recommend each one individually to full Council for approval.
- 9.2. The tests which the Cabinet are required to consider are set out at paragraph 2.5 above. In considering these criteria the Cabinet will need to assess whether the evidence provided objectively meets the tests set out in the legislation particularly in light of the very low rate of response.
- 9.3. Any Interested person can challenge the extension of a PSPO by bringing a claim in the High Court within 6 weeks of the order being varied, such a challenge can argue either that the Council did not have the power to make the variation or that a requirement of the process was not complied with. This ability to challenge under Section 66 of the Anti-Social Behaviour Crime and Policing Act 2014 is in addition to the usual ability to challenge by way of judicial review within 3 months of making the decision on any of the normal public law grounds.

10. Recommendations

- 10.1. The Cabinet is asked to note that although the response rate was low, those that responded to the consultation were in favour of the boundary extensions as was the Police and Crime Commissioner and Kent Police's Borough Commander.
- 10.2. It is recommended that the Cabinet recommends Full Council to approve the boundary extension of the existing town centre PSPO in Chatham, as shown in the map at Appendix 1 to the report.
- 10.3. It is recommended that the Cabinet recommends Full Council to approve the boundary extension to the existing town centre PSPO in Rochester, as shown in the map at Appendix 1 to the report.

10.4. It is recommended that the Cabinet recommends Full Council to approve the boundary extension to the existing town centre PSPO in Strood, as shown in the map at Appendix 1 to the report.

11. Suggested reasons for decisions

11.1. The extension of the PSPOs should assist our Kent Police partners in addressing incidents of alcohol related ASB in the new areas over the long-term and improve the quality of life for residents, visitors and local businesses.

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Appendices

Appendix 1 – Maps showing existing PSPOs in Chatham, Rochester and Strood and the proposed boundary extension.

Appendix 2 – Statutory Guidance, The Anti-Social Behaviour, Crime and Policing Act 2014

Appendix 3 – Chatham survey summary report

Appendix 4 – Rochester survey summary report

Appendix 5 – Strood survey summary report

Background papers

None