

## **Council**

**29 February 2024**

### **Public Space Protection Orders – Alcohol Control**

Portfolio Holder: Councillor Tristan Osborne, Portfolio Holder for Community Safety and Enforcement

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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.

This report includes outcomes to the public consultations carried out seeking views on the renewal of the four town centre alcohol control zone PSPOs.

The report was previously considered by the Cabinet on 13 February 2024, the decision of which is set out at section 6 of the report.

#### **1. Recommendation**

1.1. The Council is requested to note the decision of the Cabinet, as set out at section 6 of the report.

1.2. It is requested that the Council approves the extension for a further 3 years of the existing four town centre alcohol control PSPOs (not varied or discharged).

#### **2. Budget and policy framework**

2.1. Approval of Public Spaces Protection Orders, in accordance with s59 of the Anti-Social Behaviour, Crime and Policing Act 2014, is a matter for Full Council.

### 3. Background

- 3.1. 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.
- 3.2. 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.
- 3.3. 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.
- 3.4. PSPOs provide Councils with a flexible power to implement local restrictions to address a range of anti-social behaviour (ASB) 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.
- 3.5. 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:

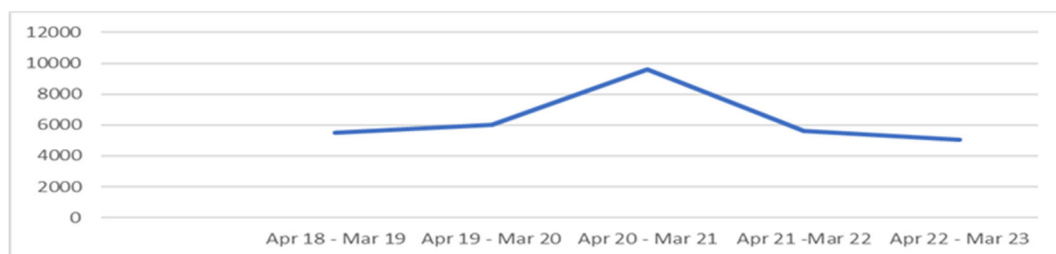
The effect or likely effect of the activities:

- 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.

- 3.6. 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.
- 3.7. 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.

- 3.8. 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.
- 3.9. 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.
- 3.10. 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.
- 3.11. It is very positive to see that our preventative approach to anti-social behaviour (ASB) has once again seen a decline in the 2022-23 period, falling by 10%. Kent Police and partner agencies have undertaken many initiatives to tackle cases of ASB.



- 3.12. As a Council, we are determined to reduce this figure further, and with the creation of our Community Safety Team and the use of the tools and powers contained within the Act have helped us to develop our joint work alongside Kent Police.
- 3.13. 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.
- 3.14. This report sets out the rationale for renewing the four alcohol control PSPOs.

## 4. Options

- 4.1. Home Office statutory guidance (see appendix 1) 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; both are in support of their renewal.
- 4.2. 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.
- 4.3. 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, were renewed in 2020 with extensions made to the zones in Chatham, Rochester and Strood in 2021.
- 4.4. We have consulted upon the renewal of the four town centre alcohol control PSPOs, which can affect the quality of life of both residents and those working in Medway. The results were in favour of renewing all four PSPO's, consultation outcomes are shown as appendix 2.
- 4.5. 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. They would also 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 as long as drinking took place within their premises.
- 4.6. Although the town centre PSPO's cover slightly wider areas, the enforcement has only been carried out by Kent Police within the footprint of the town centres themselves.
- 4.7. Kent Police will continue to patrol and respond to incidents as part of their community response.

## 5. Advice and analysis

- 5.1. PSPOs have been an agenda item at the Strategic Executive Group of the Community Safety Partnership, which is chaired by the Cabinet Member for Community Safety and Enforcement, as well as representation from the responsible authorities, Kent Police, Kent Fire and Rescue Service, The Probation Service and the Integrated Care Board. The Office of the Police and Crime Commissioner, although not a responsible authority is also represented.

5.2. A Diversity Impact Assessment (DIA) will not be required as this report does not recommend any policy/service change.

## 6. Cabinet

6.1. The Cabinet considered the report on 13 February 2024 and its decision is set out below:

6.2. The Cabinet recommended to Full Council approval of the extension for a further 3 years of the existing four town centre alcohol control Public Space Protection Orders (not varied or discharged).

## 7. Risk management

7.1. 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	D2
We do not enforce	ASB returns to the areas controlled and extends areas which incorporate new housing developments. Reputational risk. Increased pressure on service complaints	Ensure Medway Council Officers are supported by Senior Management and by Kent Police.	D2

For risk rating, please refer to the following table:

Likelihood	Impact:
A Very likely	I Catastrophic
B Likely	II Major
C Unlikely	III Moderate
D Rare	IV Minor

## 8. Consultation

8.1. In accordance with legislative requirements, a six-week consultation process relating to the potential use of a PSPO for such purposes was carried out. The details of the consultation were published on the Council's website in accordance with the legal guidance under the Anti-Social Behaviour, Crime and Policing Act 2014. The consultation was shared through the Council's website. The consultation questionnaires were sent directly to all Members to raise awareness in all respective wards. The Police and Crime Commissioner

and Borough Commander for Kent Police in Medway was consulted and endorsed the scope of the PSPO proposed by the council.

- 8.2. 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 and PACT groups (Partners and Communities Together).

## 9. Climate change implications

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

## 10. Financial implications

- 10.1. A small budget will be needed to refresh a number of signs across Medway and will be met within budget.
- 10.2. There is potential to generate some income from fines and prosecutions but there is no baseline to project this annually at this stage

## 11. Legal implications

- 11.1. Under section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 (the Act), a local authority may make a PSPO in the areas where a particular nuisance or problem occurs which is detrimental to local community's quality of life. In order to issue a PSPO, the council must be satisfied on reasonable grounds that the two statutory conditions set out in s59 (2) and s59 (3) are met and that the restrictions are reasonable and proportionate.

- 11.2. Section 59 (2) of the 2014 Act states that the first condition is that:

(a) activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or

(b) It is likely that activities will be carried on in a public place within that area and that they will have such an effect.

- 11.3. Section 59(3) of the 2014 Act states that the second condition is that the effect, or likely effect, of the activities –

(a) Is, or is likely to be, of a persistent or continuing nature,

(b) Is, or is likely to be, such as to make the activities unreasonable, and

(c) Justifies the restrictions imposed by the notice.

- 11.4. Section 59(5) of the 2014 Act provides that the only prohibitions or requirements that may be imposed are ones that are reasonable for the specified objectives of the PSPO that are:

- (a) to prevent the “detrimental effect” referred to in section 59(2) of the 2014 Act from continuing, occurring, or recurring: or
- (b) to reduce that detrimental effect or to reduce the risk of its continuance, occurrence, or recurrence.

- 11.5. The Home Office statutory guidance for frontline professionals (The Home Office Guidance) (pg. 48) states; “these orders can restrict what people can do and how they behave in public spaces. It is important that the restrictions imposed are focussed on specific behaviours and are proportionate to the detrimental effect that the behaviour is causing or can cause, and are necessary to prevent it from continuing, occurring, or recurring”.
- 11.6. Before deciding to make the PSPO, the council must comply with certain statutory requirements relating to publication, consultation, notification, and information in respect of the proposed PSPO in the relevant areas. In addition, the council will need to evidence that it has given regard to statutory guidance issued by the Secretary of State.
- 11.7. PSPOs, or their variation, may be challenged within six weeks of being made by way of an application to the High Court. The Court may suspend the operation of the PSPO or any of the prohibitions imposed by it until the determination of the proceedings. Should the Court be satisfied the council erred and the applicant has been substantially prejudiced by that failure, it may quash the Order or any of the prohibitions imposed by it.
- 11.8. Breach of a PSPO is a criminal offence, subject to a fixed penalty or prosecution and a fine.
- 11.9. Once approved, the PSPO must be published on the council website and notices erected publicising the fact that the PSPO has been made and its effect.
- 11.10. When considering the Human Rights Act the council must balance the rights and freedoms of individuals, in relation to the proposed restrictions imposed, against the needs of the wider community.

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## Appendices

Appendix 1 – Statutory Guidance, The Anti-Social Behaviour, Crime and Policing Act  
2014

Appendix 2 – PSPO Consultation outcomes.

## Background papers

None