

Report for: <p style="text-align: center;">DECISION</p>
Item Number:

Contains Confidential or Exempt Information	YES
Title	Future of the Mattock Lane Safe Zone
Responsible Officer(s)	Nicky Fiedler (Strategic Director, Housing & Environment)
Author(s)	Paul Murphy (Head of Community Safety)
Portfolio(s)	Tackling Inequalities
For Consideration By	Cabinet
Date to be Considered	7 February 2024
Implementation Date if Not Called In	19 February 2024
Affected Wards	Walpole (wider reach)
Keywords/Index	Protest, Vigil, Sexual, Health, Intimidation, Harassment, Anti-Social, behaviour, ASB, Women, Clinic, Mattock, Space, Protection, Renewal, Order, Review, Consultation, Variation, PSPO, Safe Zone.

Purpose of Report:

The purpose of this report is to invite members first to consider the impact and effectiveness of the Public Spaces Protection Order (Mattock Lane) ('the PSPO') since its introduction for a three-year in April 2018 and renewal for a further three-year period in April 2021; then consider the outcome of the consultation undertaken by the Council between 23 November 2023 and 15 January 2024 and finally to decide upon what action to take ahead of the existing PSPO coming to an end in April 2024.

Key points for action and decision:

- Review the impact and the effectiveness of the PSPO.
- Consider the statutory framework for extending the period for which a PSPO can have effect.
- Review the outcome of the consultation undertaken by the Council regarding the options for whether or not to extend the period of the PSPO.
- Decide whether the Council will extend the PSPO and, if so, for what period.

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1. Recommendations

1.1 It is recommended that Cabinet:

- i. Considers the evidence of the impact and effect of the Order on the behaviours targeted;
- ii. Considers the outcome of the statutory consultation undertaken from 23 November 2023 to 15 January 2024;
- iii. Assesses all of the evidence presented and decides whether or not it is proportionate and necessary to extend the Order;
- iv. If minded to extend the Order, authorises the Strategic Director for Housing & Environment to extend the period for which the existing Order has effect, for a period of 3 years with effect from 11 April 2024 until 10 April 2027.

Executive summary

- 1.2 The Public Spaces Protection Order (Mattock Lane), herein referred to as ‘the Order’, exhibited at **Appendix 1a**, was introduced by Ealing Council in April 2018. It was the first order of its kind in the United Kingdom and was designed to protect women accessing the MSI abortion clinic (the Clinic) on Mattock Lane, Clinic staff and others in the locality from the detrimental effect caused by the behaviour of individuals and groups involved in frequent protest and vigil activities in the area immediately outside the Clinic.
- 1.3 The Council’s decision to introduce the Order has been rigorously tested in the High Court and Court of Appeal, where legal challenges to the Order were rejected by the Courts. An application for permission to pursue a further appeal of the Order was rejected by the Supreme Court. Throughout this process the Order has prevailed.
- 1.4 In 2021, prior to the expiry of the three-year Order and following review and a statutory consultation, the Council took the decision to renew the Order for a period of three years, this being the maximum extension permitted by the legislation governing PSPOs. The Order will expire on 10 April 2024 if no action is taken by the Council.
- 1.5 This report considers the outcomes of the Order to date; the outcome of the further statutory consultation exercise conducted by the Council during the period November 2023 – January 2024; and recommendations to Cabinet for the future of the Order.

- 1.6 Members are asked to consider whether it is appropriate to extend again the period for which the existing Order has effect. For reasons detailed in this report, there is no recommendation to vary any of the prohibitions or requirements contained in the Order.
- 1.7 Much of the information that was considered by Cabinet when deciding whether to make the existing Order will be relevant and should be considered alongside the further information contained in this report, as well as the outcome of the additional recent consultation exercise the Council was required to undertake. Some of this information is appended to this report, also included are links to other documents, which Members are asked to take into consideration in reaching their decision.

2. Legal framework

- 2.1 This section of the report sets out to Cabinet the statutory framework for making a Public Spaces Protection Order (PSPO), including the Human Rights and Equality Act (2010) considerations.
- 2.2 Much the of the contents of this section are referred to in the previous reports to Cabinet of April 2018 and April 2021; it is repeated here for ease of reference.
- 2.3 For clarity, **paragraphs 2.16-2.18 set out the considerations the Council must take when deciding whether to extend a PSPO.**
- 2.4 When the decision to introduce the Order was made, the Council needed to be satisfied about a number of things in order to decide whether to make a PSPO. These were:
 - a. The nature of the activities taking place.
 - b. Whether those activities could be said to have had a 'detrimental effect on the quality of life of those in the locality'.
 - c. If the detrimental effect existed, whether it was persistent or continuing in nature, *and*
 - d. Whether that detrimental effect made the activities unreasonable, *and*
 - e. Whether the detrimental effect justified the restrictions and requirements imposed in the proposed PSPO.
 - f. Whether the proposed prohibitions were reasonable to impose to prevent or reduce the detrimental effect from continuing, occurring or recurring.
 - g. Whether the proposed PSPO was justified and proportionate.
 - h. Whether the proposed PSPO should be made for the full three-year period or for some lesser time.

- 2.5 The following paragraphs of this report explain the overall legislative framework within which those decisions were made.

Section 17 of the *Crime and Disorder Act (1998)*

- 2.6 The *1998 Act* imposes a duty on the Council to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can, to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment).

The *Anti-Social Behaviour, Crime and Policing Act (2014)*

Making a PSPO

- 2.7 PSPOs were created by the *Anti-Social Behaviour, Crime and Policing Act (2014)*. They are designed to place controls on the use of a public space and everyone within it. The orders have effect for up to three years and can be extended. Only local authorities can make PSPOs. 'Public place' means any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.

- 2.8 The Council can make a PSPO if satisfied on reasonable grounds that two conditions are met. These are found in section 59 of the 2014 Act:

The **first condition** is that:

- (a) activities carried on in a public place within the Council'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.

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.

- 2.9 A PSPO must identify the public place in question and can:

- (a) prohibit specified things being done in that public place
- (b) require specified things to be done by persons carrying on specified activities in that place; or
- (c) do both of those things.

- 2.10 The only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order to prevent or reduce the risk of the detrimental effect continuing, occurring or recurring.

- 2.11 Prohibitions may apply to all persons, or only to persons in specified categories, or to all persons except those in specified categories.
- 2.12 The PSPO may specify the times at which it applies and the circumstances in which it applies or does not apply.
- 2.13 Unless extended the PSPO may not have effect for more than 3 years.
- 2.14 Breach of a PSPO without reasonable excuse is a criminal offence. The Police or a person authorised by the Council can issue fixed penalty notices, the amount of which may not be more than £100. A person can also be prosecuted for breach of a PSPO and on conviction the Magistrates' Court can impose a fine not exceeding level 3 on the standard scale (currently £1,000).
- 2.15 In deciding to make a PSPO the Council *must* have particular regard to Article 10 (Right of Freedom of Expression) and Article 11 (Right of Freedom of Assembly) of the European Convention on Human Rights ('ECHR'). Members are advised that for this proposed PSPO it is also relevant to consider Article 8 (Right to Private and Family Life), Article 9 (Freedom of Thought, Conscience and Religion) and Article 14 (Right to Freedom from Discrimination).
- 2.16 The Council must also carry out the necessary prior consultation, notification and publicity as prescribed by s.72 of the 2014 Act.
- 2.18 As with the previous reports, in preparing this report Officers have had regard to the statutory guidance issued by the Home Office and the Guidance on PSPOs issued by the Local Government Association.

Extending the period for which a PSPO has effect

- 2.19 A PSPO can be made for a maximum duration of up to three years, after which the period for which the PSPO has effect may be extended if the requirements of *Section 60* of the Act are met. For a council to make the decision to extend a PSPO, they must be satisfied that an extension is *necessary to prevent*:
 - i) *occurrence or recurrence of the activities after order is due to expire, or*
 - ii) *an increase in frequency or seriousness of the activity*
- 2.20 Guidance for councils sets out that, where activity having a detrimental effect has been *eradicated* as a result of a PSPO, it is proportionate and appropriate to consider the *likelihood of recurrence of problems* if the Order is not extended.

The *Equality Act (2010)* and the European Convention on Human Rights ('ECHR') and the Public Sector Equality Duty

- 2.21 The Council is a public authority and the *Human Rights Act (1998)* requires it to act compatibility with the ECHR.
- 2.22 In addition, section 72(1) of the 2014 Act requires the Council to have *particular* regard to the rights protected by Article 10 (Freedom of Expression) and Article

11 (Freedom of Assembly and Association) when deciding whether to extend the period for which an order has effect under *Section 60*.

- 2.23 When the Council explored making the current Order in 2018 some difficult issues arose under the *Equality Act (2010)* and the ECHR. These considerations remain relevant to the proposed extension.
- 2.24 These were and remain difficult issues because the proposed order requires the Council to have regard to the *competing* rights of members of the various represented groups who engage in protest and vigils outside the Clinic and the rights of the service users / Clinic staff. A consideration of these rights requires the Council to reflect on how to achieve the appropriate balance between the respective rights. They are also difficult because an ECHR right can only be interfered with where the interference is in accordance with the law, necessary and in furtherance of a permitted objective.
- 2.25 Both the High Court and Court of Appeal have endorsed the approach adopted by Ealing Council when it made the Order. However, these issues have been considered afresh when looking at the issue of extension as part of the Equalities Impact Analysis, exhibited at **Appendix 5**. The Council will need to decide whether it is necessary to extend the period for which the Order has effect and make an assessment as to whether allowing the Order to expire would mean that the activities identified in the order would reoccur.

3 Background and timeline

- 3.1 As outlined in the executive summary, the Order has been in place since 10 April 2018 and was introduced following a decision made by Ealing Council in response to issues in the locality of the Clinic that were found to be having a detrimental impact on people in the locality, including those accessing the Clinic.
- 3.2 The Council's community safety team undertook an investigation following a resolution at Full Council on 10 October 2017 in which Ealing Council committed to exploring all options to address the behaviours causing distress to women accessing the Clinic. The resolution followed a debate triggered by a petition (signed by 3,593 people and submitted under the council's petition scheme) in July 2017, which calling on Ealing Council to explore ways of introducing a 'buffer zone' outside the Clinic.
- 3.3 The decision to introduce the Order was taken by Ealing Council's Cabinet after it considered reports on the outcome of the community safety team's investigation (which took place during late 2017 and early 2018). Ealing's Cabinet also considered the outcome of (and evidence obtained during) the subsequent consultation on the proposed Order that took place over 8 weeks in January – March 2018.
- 3.4 The Order introduced certain restrictions on behaviours, as well as requirements on people in the defined area. Following its introduction, Ealing Council were

notified on 26 April 2018 of an appeal made to the High Court to challenge the Council's decision. The appeal was filed by individuals employed by and connected to Pro-Life groups, specifically the *Good Counsel Network*. The High Court heard the case in June 2019 and judgment was handed down in July 2019, rejecting the appeal and upholding the Order in its full terms. Members are directed to **Appendix 3a**, which includes a link to the copy of the High Court judgment.

- 3.5 The appellants appealed the decision of the High Court to the Court of Appeal and a hearing took place in July 2019. Judgment was handed down on 21 August 2019, in which the Court of Appeal rejected this further appeal, again upholding Ealing's decision and the Order in its full terms. Members are directed to **Appendix 3b**, which includes copy of the Court of Appeal's Judgment.
- 3.6 Following the judgment of the Court of Appeal, the appellants applied for permission to appeal again, this time to the Supreme Court. On 11 March 2020 the Supreme Court notified all parties of its decision to *refuse* permission to appeal on the basis the appeal did not raise any arguable point of law. A copy of the certificate of decision can be found at **Appendix 3c**.
- 3.7 The Council's decision to introduce the Order has therefore been subject to extensive independent judicial scrutiny and has prevailed.
- 3.8 As the three-year period for which the Order was in force approached, in November 2020 Ealing's Cabinet took the decision to begin a further eight-week consultation on whether or not the period for which the order has effect should be extended beyond April 2021. In February 2021, Ealing's Cabinet considered a further report detailing the responses to this consultation and took the decision to renew the PSPO for a period of three years. Cabinet took this decision having been provided with extensive appendices and having had sight of the original substantial evidence bundle, as well as the Equalities Impact Analysis.
- 3.9 The decision in February 2021 meant the PSPO was extended to April 2024 and will expire at that time if no further action is taken.
- 3.10 Members are directed to the original evidence base for the decision to introduce a PSPO in 2018, including the original report to Cabinet in April 2018 and all appendices (links to which are included at the end of this report). Members are additionally directed to the report to Cabinet in February 2021 and associated appendices (again, links to which are included at the end of this report).
- 3.11 The April 2018 report and its appendices set out in full the evidence on which the Council's decision to introduce the Order was made. This includes extensive witness testimony, photographic and documentary evidence and the extensive responses to the Council's original consultation on the introduction of the Order.
- 3.12 In addition to all of the evidence on which the April 2018 decision was made, the links and Appendices to this report include a copy of the Order, copies of all subsequent court judgments and decisions in respect of the Order, full analysis and disclosure of all responses received to the 8-week consultation undertaken

from 23 November 2023 – 15 January 2024 and the detailed Equalities Impact Analysis undertaken by the Council.

4 Evaluation of existing order

- 4.1 Prior to the introduction of the Order, individuals and groups with Pro-Life and Pro-Choice views were congregating on a near daily basis in the area immediately outside of the Clinic. Individuals representing Pro-Life views included members and employees of Pro-Life organisations, most prominently *The Good Counsel Network* but also *The Helpers of God's Precious Infants* and *The Society of Pius X*. Those with Pro-Choice views congregating in this area most commonly were volunteers with a group called *Sister Supporter*.
- 4.2 As outlined in Section 3 the Council's community safety team began an investigation into the issues reported to be affecting people accessing the Clinic in the second half of 2017. Further evidence of the nature and impact of the behaviours was received during the formal consultation process the Council undertook during January–March 2018.
- 4.3 Based on the evidence obtained through this investigation and the further evidence and outcome of the consultation Ealing Council's Cabinet took the decision in April 2018 to introduce the Order.
- 4.4 The key activities identified through the investigation and consultation as having a detrimental effect were:
- Women and those accompanying them to Clinic appointments (including partners, friends and relatives) being approached by Pro-Life group members when entering the Clinic.
 - Pro-Life group members attempting to engage women and those with them in conversation or to hand them leaflets.
 - Women and those accompanying them being approached by members of Pro-Life groups when *leaving* the Clinic, including them and comments being made to them, including reference to what has happened to their unborn child.
 - Women being closely monitored entering and leaving the Clinic by members of the Pro-Life groups.
 - Members of Pro-Life groups engaging in prayer outside the Clinic, which was said to be on behalf of the women and / or their unborn children.
 - Images of a foetus in various stages of development in the form of colour photos being held by members of Pro-Life groups, handed to women or left on the pavement outside the Clinic.
 - Shouting and other disruptive activities when Pro-Choice counter demonstrations were taking place.
 - Women feeling they were being tracked, watched and judged by members of the Pro-Life groups.

- The presence of placards with references to views on abortion, sometimes with emotive and upsetting language, including 'murder'.

- 4.5 The investigation and the information received through the consultation was able to establish that, while some of the activities in and of themselves may not have been viewed as objectionable in isolation, the very specific time and place the represented groups had been choosing to engage in these activities meant they were targeted women at the precise moment they were accessing health services of a deeply personal nature.
- 4.6 Following the introduction of the Order, the Council has kept the Order under continual review. Council CCTV has been deployed at the location, regular observations of the space by Police and Council officers has taken place, officers have engaged with the Clinic, local residents and elected members and have continued to liaise with statutory partners and other organisations to understand the levels of compliance with the Order and the overall impact it has had.
- 4.7 Since the introduction of the order in April 2018 (and its renewal in April 2021), the Order has largely been complied with, although a small number of breaches have occurred. The first alleged breach took place in April 2018, when an individual attended the area outside the Clinic during the same week the Order had been introduced and made a brief demonstration about Public Spaces Protection Orders and freedom of speech; no action was taken in this instance.
- 4.8 A further breach took place in August 2019, in which a self-described anti-abortion activist was detained by Police after refusing to disperse from the area when asked; the case was ultimately not proceeded with by the Crown Prosecution Service.
- 4.9 A third breach of the Order occurred in March 2020, when an individual deposited leaflets relating to abortion services at two entrance / exit points of the Clinic; this breach was enforced via service of a Fixed Penalty Notice, which was served on the individual and paid in full within the required time period.
- 4.10 Another alleged breach that occurred in 2023 was being dealt with via the courts at the time this report went to publication and an outcome is anticipated in February 2024.
- 4.11 As outlined in the 2021 report to Cabinet, the Clinic no longer maintains a diary in relation to instances of women facing intimidation and interference when accessing services. A diary had been maintained for some years prior to the introduction of the Order and formed part of the significant bundle of evidence Cabinet members had sight of when they took the decision to introduce the Order. The Clinic has advised the positive impact of the Order means the requirement to maintain a diary is no longer there. Clinic management have described to officers the positive impact on women attending appointments and

what they describe as an 'air of normality', existing outside the Clinic. Clients are described by the Clinic as presenting as 'less tense' when they arrive.

- 4.12 An important aspect of the Order has been the provision of a *designated area* within the footprint of the Order, where the prohibitions and requirements of the Order do *not* apply and where activities such as protest about abortion (albeit with some restrictions) are permitted. This area has been used by Pro-Life group members on a near daily basis since 2018. Those using the area congregate in small groups, regularly displaying small signs relating to abortion, distributing leaflets to and attempting to engage in dialogue with passers-by, particularly targeting women and girls. The Pro-Choice group *Sister Supporter* have chosen not to use the designated area and have not attended the area since the introduction of the Order.
- 4.13 While the Council occasionally receives reports from residents and people visiting the area that object to the continued presence of Pro-Life group members in the designated area, none of these reports have identified any breach of the Order taking place and the *designated area* continues to form an important part of the careful consideration the Council has made in balancing the rights of those visiting the Clinic with those of the groups wishing to assemble, protest, impart information and express their religious beliefs and for those individuals who wish to receive the information that is being shared from that location. As far as the Council is aware the people attending the *designated area* have complied with the restrictions which apply within that area.
- 4.14 Prior to the introduction of the Order, it was usual for there to be a significant increase in represented groups attending the location immediately outside the Clinic during the period of Lent (the six weeks leading up to Easter) and on other sporadic occasions. Photographic evidence and witness testimony detailing the size and impact of these groups is included in the evidence presented in the 2018 report. These groups often formed part of the *40 Days for Life* initiative.
- 4.15 Since the introduction of the Order these sporadic and Lent time congregations typically now take place at the East end of Mattock Lane on the threshold of the PSPO area, near Ealing Green. Annually the Council's community safety team receive a small number of complaints from residents about the presence of these groups, however there have been no indications that these groups have ever gathered within the footprint of the Order or that their activities have otherwise breached the Order. The Council has on occasion been asked by residents to expand the footprint of the Order to include the area.
- 4.16 While it is recognised that some residents find the activities of the groups congregating at this location during this time distressing or objectionable, the activity is taking place at a distance from the Clinic, which reduces the detrimental effect it has on those visiting or working at the Clinic and those in the locality.

4.17 The on-going presence of Pro-Life groups in the *designated area* and the regular presence of Pro-Life congregations, protest and vigil in the locality of Ealing Green on the threshold of the area covered by the Order remains an issue of concern for many residents and underscores the careful approach the Council has taken. The on-going presence of Pro-Life groups in these spaces also highlights the near certainty of the behaviours targeted by the Order rapidly returning to the gates of the Clinic if the decision were taken to allow the Order to expire.

5 Options considered and reasons for Recommendations

5.1 As outlined in Section 4 of this report, since its introduction in 2018 the Order has been complied with for the most part and it has been successful in tackling the activities found to be having a detrimental effect on women accessing the Clinic, Clinic staff and others in the locality.

5.2 The Order was never intended to completely stop abortion related protest or prayer from occurring; it was designed to prevent the activities found to be having a detrimental effect from occurring within a very precise and clearly defined area where their impact was most acute. Since being in place it has almost entirely achieved that purpose.

5.3 As outlined, the Order permits some abortion related protest / vigil activities within the within the footprint of the Order, within a clearly identified *designated area*, in which certain requirements and prohibitions still remain. In addition, it is worth highlighting that the PSPO does not impose any restrictions on protests which take place in a location outside of the Safe Zone area.

5.4 There have been occasions during the period where groups of individuals who had been involved in protest / vigil in the immediate locality of the Clinic have attended Ealing civic centre (Perceval House) instead, where they have stood outside and displayed signs and images objecting to abortion.

5.5 The on-going near daily use of the *designated area* by the Pro-Life groups, the sporadic protests / vigils at Perceval House and the regular presence of groups involved in protest / prayer at the threshold of the area covered by the Order, all indicate a continued interest in the location by the Pro-Life groups who had previously been congregating at the entrance to the Clinic. The breaches committed by self-styled Pro-Life campaigners have also point to the likely recurrence of the behaviours targeted by the Order. It is reasonable to conclude from the continued presence of protestors and campaigners at these sites that, were the order to expire, they will return to the area outside the Clinic and continue the activities previously engaged in at this location.

5.6 The Pro-Choice group, *Sister Supporter*, that had been regularly present outside the Clinic prior to the introduction of the Order have chosen not to use the *designated area* to continue their activities, although it has always been open to them to do so, provided their activities complied with the provisions which apply to that space.

- 5.7 The 2018 report detailed the various options that were considered by the Council before taking the decision to make the Order and a detailed Options Assessment was included as part of the extensive appendices; these options will not be repeated here. Officers have reviewed the previous options assessment and considered whether any of the alternatives the Order within that assessment may now be a preferred solution or whether there are any *new* options that may be considered.
- 5.8 One notable change in the national picture since the Council's decision in 2021 to renew the Order has been the introduction of *Safe Access Zones* in parts of the UK. *Safe Access Zones* are now in place in Northern Ireland, and the Scottish Government is in the process of considering a *Safe Access Zones* Bill. In England and Wales, *Safe Access Zones* were introduced in May 2023 as part of an amendment to the *Public Order Act (2023)*. However, this provision is not currently in force and there has been a disappointing lack of any indication from the government as to when the legislation will come into force. The latest development in relation to the *Public Order Act* offences is a period of Government consultation on a document published by the Home Office called "Non-Statutory Guidance on Abortion Clinic *Safe Access Zones*". The consultation runs from 11 December 2023 – 22 January 2023. As currently drafted the consultation appears to undermine various aspects of the offence created by the 2023 Act. If the guidance is adopted in its current form the Council may still require a local PSPO to regulate the evidenced detrimental effect that has taken place at the Clinic. Further consideration will need to be given to this once the contents of the final guidance is known.
- 5.9 Additionally, there have been some developments on a local level in parts of the country following Ealing's introduction of Ealing's *Safe Zone*. A number of other councils have taken similar action, using their powers to create a PSPO with similarly crafted prohibitions and requirements to tackle similar behaviours occurring in the locality of clinics offering abortion services within their area. Ealing is aware of two of these orders being challenged in the Courts since Ealing's own PSPO was appealed. The abortion clinic related PSPOs made by both Birmingham and Bournemouth, Poole and Christchurch (BCP) Councils have each been appealed in the courts. In December 2023 the High Court dismissed both the statutory challenge and the judicial review that was issued in respect of the BCP PSPO. The Birmingham litigation is still in progress and has not yet reached a conclusion, it is understood that this was on hold pending the outcome of the BCP litigation.
- 5.10 In reviewing the PSPO the Council has reviewed the abortion clinic orders made by the other councils. Most of the other orders have followed a similar format to Ealing's Order (this being the first PSPO of this type of have been implemented) and in made with the prevailing local circumstances in mind. The Council has given careful consideration to whether the Ealing PSPO should be amended in view of these other orders. There is nothing in this review of the PSPO that suggests that Ealing's Order requires amendment; it continues to serve the local circumstances well and has been largely successful in reducing the detrimental effect that was being experienced at this location. Furthermore, it has been

upheld in the courts in full and there is nothing to suggest that it requires amendment.

- 5.11 At this stage, it remains the case that no new national powers exist to deal with the issues. Officers remain of the view that the other options previously considered are either not suitable to tackle the activities or are less suitable than the existing Order. It is officers' conclusion from the review of existing evidence and the feedback from the consultation that the effectiveness of the Order indicates that it is an appropriate measure to deal with the activities which had been having a detrimental effect.
- 5.12 The period for which a PSPO has effect can be extended for up to three years and it is the recommendation of this report that the Order is extended for the full three-year period.
- 5.13 Officers have given consideration to whether a shorter period of extension may be appropriate. With the anticipated implementation of the *Public Order Act (2023)* in England and Wales, it is possible the requirement for Ealing's *Safe Zone* may reduce or cease entirely. However, given the lack of clarity from government as to the timetable for this national legislation coming into force and the significant resourcing and statutory consultation required when considering any future extensions, there would be significant risks in the Council choosing to extend the Order for only a short period of time. This is particularly clear when one considers the high probability of the behaviours found to have a detrimental effect returning to the location as soon as the Order comes to an end.
- 5.14 It is not recommended that a shorter time period for extension is applied; it is recommended that extension is for the full three-year period. It is reasonable to conclude that, without the Order in place, the activities found to have had a detrimental effect on those in the locality will recur.
- 5.15 It is worth noting that, as and when appropriate national legislation is in place that is proven to afford the same appropriate level of protection as the current Order does to Ealing residents, Clinic users and staff from the detrimental effect of the behaviours identified, a decision may be taken at any time by Cabinet to end the Order prior to April 2027.
- 5.16 It is for these reasons the recommendation is that Cabinet extend the Order for the full period of three years.

6 Consultation

- 6.1 Upon the recommendations of a report on 8 November 2023, Ealing Council's Cabinet took the decision to begin a formal consultation on the option of extending the Order for a period of time beyond April 2024. Consultation is a statutory requirement by virtue of s.72 (4) of the 2014 Act.
- 6.2 As set out in Section 2 of this report, it is the Council which has to decide whether the *Section 60* test is met, namely the need to be satisfied on reasonable grounds that extending the period for which the Order has effect is necessary (in order to

prevent an occurrence or recurrence or an increase in frequency or seriousness of the activities). In making this assessment, the Council is entitled to have regard to the consultation responses but the decision is ultimately one for the Council to make.

- 6.3 An 8-week formal consultation commenced on 23 November 2023, concluding on 15 January 2024. The consultation was widely publicised by the Council online, through social media channels, the Council's website, press release and by direct correspondence to statutory partners and interested parties, including groups known to be involved in activities regulated by the Order. A letter-drop publicising the consultation to residents in the area covered by the Order was also completed.
- 6.4 The primary consultation took the form of an online survey, consistent with the methodology used in both 2018 and 2020-21. Consultees were additionally provided with the opportunity of submitting supplementary written responses to the consultation via post or email to the safer communities team. A specific telephone number and email address were also provided for anyone with any queries relating to the consultation.
- 6.5 The survey asked questions in relation to the activities that, during the Council's 2017-18 investigation, were found to have causing a detrimental impact on people in the locality namely:
 - I. People present, individually or with others, inside the proposed PSPO area, for praying or counselling.
 - II. People approaching or attempting to engage in conversation with persons entering or leaving the Marie Stopes Clinic.
 - III. People approaching, following or challenging any person entering or leaving the Marie Stopes Clinic.
 - IV. People taking photographs or other recording of persons using the Marie Stopes Clinic.
 - V. Campaigners displaying text or images relating to the termination of pregnancy.
- 6.6 Statutory and non-statutory consultees who were written to directly included the Metropolitan Police Service's local Chief of Police, the Mayor's Office for Policing and Crime (MOPAC) as Police and Crime Commissioner, NHS, British Pregnancy Advisory Service (BPAS) and MSI Reproductive Choices, as well as Pro-Life and Pro-Choice represented groups documented as having previously having taken part in protest and vigil outside the Clinic (this included *The Good Counsel Network*, *Helpers of God's Precious Infants*, *the Society of Pius X* and *Sister Supporter*).

- 6.7 Formal written consultation responses were received from most of the statutory and non-statutory agencies invited to take part in the consultation and these are included in **Appendix 4b**. All of those agencies wrote in support of the Order.
- 6.8 No separate written response to the consultation was received from any of the Pro-Life represented groups, despite letters being sent to them and the extensive publicity surrounding the consultation. These groups have previously responded to consultation and provided their views on the Order as well as evidence. This information is contained in previous reports linked within this report and members are directed specifically to Paragraphs 4.4.1-4.4.3 and 6.1-6.9.1 of the April 2018 Cabinet report and relevant appendices, as well as to Paragraphs 6.30-6.40 of the February 2021 Cabinet report and relevant appendices.
- 6.9 *Sister Supporter*, a group previously involved in Pro-Choice protest in the locality of the Clinic wrote in support of the renewal of the Order.
- 6.10 BPAS and MSI responded in support of renewing the Order and the Clinic operations manager additionally wrote in support of renewing the Order.
- 6.11 As anticipated the most common method of responding to the consultation was via the online survey; in total 2,165 people responded via this conduit. Of the 1,878 (86.7%) provided a postcode from within Ealing, with the highest concentration of responses (59.4%) coming from residents with W5 or W13 postcodes, these being areas closest to the PSPO footprint. A copy of the consultation feedback report is attached at **Appendix 4a** and a full unabridged and unredacted report detailing every individual response is provided as a confidential appendix for members to review at **Appendix 4c**.
- 6.12 In terms of the relationship of respondents to the PSPO location, 19.1% of respondents to the survey said they lived within or bordering the PSPO area; 5.4% said they worked within or close to the PSPO area. 55.8% said they use services, shops or facilities within the locality of the PSPO area. 9.38% reported to be clients of the Clinic or providing support to people who were.
- 6.13 The survey asked participants on their view, if the Order were to expire, how likely or unlikely they believed the activities outlined would occur or recur; increase in frequency; and increase in seriousness. It also provided a number of free-text fields for respondents to provide additional supporting information or views. The collated responses to all of these are set out in **Appendix 4a**.
- 6.14 There was significant support for the renewal of the Order, with many of those responding stating the Order had improved the space. One resident wrote: *“There has been significant benefit to the general public including myself and my family from the enforcement of the current zone with the forbidding of offensive visual materials, harassment of virtually all passers by and of potential users of*

the Marie Stopes Clinic. A quieter, less stressful and peaceful atmosphere has been enabled.”

- 6.15 The theme of compromise was also raised in the survey responses, with a number of comments that the Order had struck the right balance in dealing with problematic activity, with one respondent writing *“The council’s decision to create the Mattock Lane Safe Zone has correctly balanced the rights of women to access health care without impediment or intimidation with the rights of Christian groups to hold prayer meetings and vigils. It benefits our community and our neighbourhood.”* Another wrote: *“A woman may choose to approach these protesters outside of the ‘safe zone’ but is not compelled to do so. This gives her a meaningful choice.”*
- 6.16 Of those who believed the Order should not be extended, some expressed their concern that women visiting the Clinic could no longer receive ‘help’, with one writing *“Please listen to the Mums whom received help from the vigils. How they were delighted to be given the chance to have their children.”*
- 6.17 Some who believed the Order should not be extended suggested the Council was unreasonable to target the identified behaviours, with one writing *“The law allows for harassment, obstruction and public order to be dealt with by the police. No anti abortion campaigners have ever been arrested under these laws. The PSPO is an attempt to restrict otherwise legal campaigning activities because they do not agree with the political stance of the current council. It is an attack on fundamental civil liberties.”*
- 6.18 Others who responded that the Order should not be extended flagged concerns about the methodology of the consultation itself, with one writing it was *“very unbalanced”* and another writing *“the questionnaire seems to have been designed to get a particular answer”*. No specific detail for these comments was cited. It is worth noting the consultation has followed the same open and transparent methodology applied to previous consultations relating to the Order.
- 6.19 Some respondents used the free-text spaces within the consultation to request the Council extend the geographical area of the Order and raised concerns about the daily activity of Pro-Life protesters and vigil members using the *Designated Area*. One respondent wrote: *“I am a 25 year old woman... I am approached by these campaigners most days, every time I walk to Walpole park or head into central Ealing. Despite never actually using the clinic, on many occasions I have been followed down the street and chased across the road by middle-aged men in this group trying to give me leaflets... If the ban is not extended - I genuinely believe it will drive young women like myself out of the area altogether. I can’t begin to imagine the detrimental impact this would have on the clinic and it’s patients. It is absolutely imperative that the ban is continued at least - with a view to extending the area / banning their protest altogether.”*

- 6.20 Concerns about the impact of on-going Pro-Life protest and vigil activity were also flagged in the response of the Clinic operations manager, who wrote: *“Whilst the PSPO has 99% removed the issue, there still remains a contingent of protestors at least five days a week in the dedicated area for them. And on the edges of the PSPO order, we also regularly see protestors. These protestors will now harass anyone walking by, hoping to find someone who may be visiting the clinic. It is clear that if the PSPO was not there, they would be right outside the clinic relentlessly.”*
- 6.21 The survey ultimately asked participants for their view on whether or not the PSPO should be extended and, if so, for what period of time. Of the people who chose to answer this question 96.99% of respondents said they believed the Order should be extended for the full period of three years; 2.5% said they believed the Order should not be extended. 0.15% of respondents said they believed the Order should be extended but for a period of less than three years and 0.36% of respondents said they didn't know.
- 6.22 The outcome of the consultation is detailed in **Appendix 4** attached to this report, which includes the consultation summary (**4a**); responses from agencies (**4b**); a confidential unabridged report of every response to the survey (**4c**) as well as additional correspondence received (**4d**).
- 6.23 The consultation collected a range of equalities information, including the gender and religion of those taking part in the survey. Of the people who chose to answer these 73.74% identified as female, 21.79% as male and 0.51% as non-binary, with 3.95% preferring to self describe or not to say. The majority of respondents cited having no religion (56.81%), with 26.07% reporting to be Christian, 1.34% Jewish, 1.29% Hindu, 0.87% Muslim, 0.67% Sikh, 0.41% Buddhist and 12.55% citing another religion or preferring not to say.
- 6.24 In addition to the responses received via the survey, a total of three written representations were made by email (one in favour of renewing the Order and two that were unclear but appeared to be critical of the Order). These emails are included (with personal details redacted) within **Appendix 4b**.

7 Financial implications

- 7.1 There are no tangible financial implications of this report, given there are no anticipated unbudgeted cost for implementing the recommendations of this report, namely extending the PSPO for a period of three years to April 2027.
- 7.2 The original investigation and all of the consultation processes to date have all been managed within the existing resources and budget of Ealing's community safety team, albeit with the need to reprofile budgets and manage conflicting priorities and officer working patterns.

- 7.3 Similarly the costs of implementation of the PSPO, primarily relating to deployment of CCTV and the design, manufacture and installation of signage at the location, have been met from the Community Safety approved budget and have to date amounted to approximately £0.02m. There have also been costs relating to the on-going monitoring and engagement at the location by council officers which have been met from existing Community Safety budgets.
- 7.4 The Council's *legal* costs (primarily incurred from resisting the appeals outlined in Section 4 of this report but also resulting from legal enforcement relating to alleged breaches) have to date amounted to approximately £0.170m. It is worth noting this does not include the significant cost of officer time in supporting the various streams of work associated with the extensive legal proceedings.
- 7.5 There is no cost associated with the design, manufacture or installation of signage, as the signs already in place are sufficient for the Order to be understood and enforced.
- 7.6 There is the small revenue cost of continued CCTV deployment to the location, however this CCTV would in any case be required at the location if the PSPO were not to be extended, given the high likelihood of the situation that existed prior to April 2018 returning should the order be left to expire.

8 Legal implications

- 8.1 The applicable statutory framework in respect of the matters in this report is set out in Section 2 of this report and in the Equalities Impact Analysis appended to it.
- 8.2 Any decision to extend the Order for a further period of time may be challenged. It is not clear whether such challenge would be made.

9 Risk management

- 9.1 It is well established that by introducing the Order and defending numerous legal challenges, the Council was exposed to significant financial and reputational risk. To date, with the Council having prevailed through all of legal challenges, these risks have been managed in line with the risk management plan set out in 2018.
- 9.2 There is of course a risk of further legal challenge should the Council take the decision to extend the period of the Order and this may expose the Council to additional legal costs.
- 9.3 The Council of course may decide to take no action and allow the Order to expire. As outlined in the extensive evidence, this would almost certainly result in the return of the behaviours found to have caused detrimental effect and established to have had a disproportionate detrimental effect on a protected characteristic (pregnant women). Such a decision would therefore likely create a renewed issue requiring Council intervention.

10 Community Safety

- 10.1 The Council has a duty under the *Equality Act (2010)* and our commitment to a safer Ealing to protect women, and particularly pregnant women, (both of whom are groups with protected characteristics under the 2010 Act), accessing health services. The Council's duties pursuant to the *Crime and Disorder Act (1998)* are also engaged by the issues evidenced to have been occurring in the locality of the Clinic.

11 Links to the Council's Priorities

- 11.1 Continued action to ensure women accessing clinic services are protected from fear of intimidation, harassment or distress – and that those in the locality are not negatively impacted by the behaviours described - links to the Council priority of *Tackling Inequality*.

12 Equalities, Human Rights and Community Cohesion

- 12.1 A full Equalities Analysis Assessment and assessment of the Council's Public Sector Equality Duty was completed prior to the introduction of the PSPO and prior to renewal in April 2021. A renewed Equalities Analysis has been undertaken as part of the recommendations made in this report in relation to the order beyond April 2024. The renewed Equalities Analysis Assessment can be found at **Appendix 5** of this report.

13 Staffing/Workforce and Accommodation implications

- 13.1 There are no proposed changes to Council staff or workforce within the outlined proposal.

14 Property and assets

- 14.1 There are no implications for Council property or assets beyond the continued deployment of CCTV and signage at the location.

15 Any other implications

- 15.1 There are no additional implications of Cabinet approving the proposals within this report that have not been addressed within the key implications outlined above.

16 Timetable

- 16.1 If Cabinet are minded to follow the recommendations of this report, the Order will be extended for a period of three years with effect from 11 April 2024 until 10 April 2027.

17 Appendices

Appendix 1a: Copy of the Order

Appendix 1b: Copy of April 2018 Cabinet report and link to all appendices and evidence considered by Cabinet in April 2018 when the decision to introduce the Order was taken: [Meeting of Cabinet on Tuesday, 10 April 2018, 7.00 pm \(moderngov.co.uk\)](https://www.moderngov.co.uk/2018/04/10/10-04-2018-7-00pm)

Appendix 1c: Copy of Cabinet report of February 2021 and link to all appendices and evidence considered when the decision was taken to extend the Order for a period of three years: [Meeting of Cabinet on Tuesday, 9 February 2021, 7.00 pm \(moderngov.co.uk\)](https://www.moderngov.co.uk/2021/02/09/09-02-2021-7-00pm)

Appendix 2: Copy of Cabinet report of November 2023 (decision to consult on renewal)

Appendix 3a: High Court judgement, dated 2 July 2018

Appendix 3b: Court of Appeal judgement, dated 21 August 2019

Appendix 3c: Supreme Court certificate of decision, dated 10 March 2020

Appendix 4a: Summary of online survey responses

Appendix 4b: Responses from statutory and non-statutory consultees

Appendix 4c: [CONFIDENTIAL]: Full unabridged data collation from online survey.

Appendix 4d: Additional responses to the consultation received via email.

Appendix 5: Equalities Impact Analysis

Consultation

Name of consultee	Post held	Date sent to consultee	Date response received	Comments appear in paragraph:
Internal				
Ronnie Hopkins	Lawyer	06/01/2024	08/01/2024	
Justin Morley	Head of Legal Services	06/01/2024	11/01/2024	
Helen Harris	Director of Legal Services	10/01/2024	12/01/2024	
Nicky Fiedler	Strategic Director, Strategic Director, Housing & Environment	06/01/2024	10/01/2024	
Jess Murray	Assistant Director, Community Protection	06/01/2024	08/01/2024	
Multiple	SLT	10/01/2024	11/01/2024	
External				
Kuljit Bhogal	Counsel	06/01/2024	10/01/2024	

Report History

Decision type:	Urgency item?
Key decision	No
Report no.:	Report author and contact for queries:
	Paul Murphy Head of Community Safety (ext. 8807)