

**Report for:**  
**ACTION**

**Item Number:**

<b>Contains Confidential or Exempt Information</b>	<b>NO</b> (If yes, state to which paragraph of the Access to Information Rules the exemption relates)
<b>Title</b>	Renewal of Ealing's borough-wide PSPO
<b>Responsible Officer(s)</b>	Mark Wiltshire
<b>Author(s)</b>	Paul Murphy, Safer Communities Operations Manager
<b>Portfolio(s)</b>	Tackling Inequality
<b>For Consideration By</b>	Cabinet
<b>Date to be Considered</b>	14 <sup>th</sup> September 2022
<b>Implementation Date if Not Called In</b>	27 <sup>th</sup> September 2022
<b>Affected Wards</b>	All
<b>Keywords/Index</b>	PSPO; Community; Safety; Public; Spaces; Police; ASB; Parks, Town; Borough; Safer Communities

**Purpose of Report:**

The purpose of this report is to invite members to consider the evidence base and outcome of the Council's consultation in relation to the renewal of the existing borough-wide Public Spaces Protection Order (PSPO) and to decide whether the Council will extend the PSPO for a further period of time.

## 1. Recommendations for DECISION

- 1.1 Approve the renewal of the existing PSPO following consideration of the evidence base as set out in this report and detailed in the appendices, alongside the feedback from residents, businesses, visitors to the borough and professional partners via the consultation.
- 1.2 Approve the renewal of the order set out in Appendix 1 for the full three year period until 14<sup>th</sup> September 2025.

## 2. Recommendations for NOTING

- 2.1 It is recommended that Cabinet notes the evidence outlined in this report and provided within the appendices alongside the feedback from the consultation in reaching its decision.

## 3. Reason for Decision and Options Considered

- 3.1 The borough-wide PSPO is a central part of the Safer Ealing Partnership's strategy, a key strand of is the effective management of spaces. Ealing's borough-wide PSPO was introduced in September 2019 following an extensive investigation and public consultation, which took into account a broad range of evidence of behaviours that most affect residents' quality of life. The borough-wide PSPO identifies four defined area 'types' across the borough:
- The entirety of the borough
  - Six town centres: Acton, Ealing, Hanwell, Greenford, Southall and West Ealing
  - The borough's parks and open spaces
  - Ealing Council managed housing estates
- 3.2 Cabinet have an existing understanding of PSPOs, and full outline of the legal framework governing PSPOs can be found in the Legal section of this report. PSPOs are wide ranging powers governed by the *Antisocial Behaviour, Crime and Policing Act 2014*, which allows for a local authority to introduce certain requirements or prohibitions (conditions) in specified areas where certain tests are met in relation to repeated unreasonable behaviours having a detrimental effect on people within an area. Ealing's PSPO was crafted to address specific behaviours: some were found to be ubiquitous and affecting people everywhere in the borough, others were more specific to certain area types. The PSPO therefore introduced some conditions across the borough as a whole and others in more tightly defined areas of the borough.
- 3.3 The PSPO took into account the views of a broad range of professionals from across the Safer Ealing Partnership and from residents, businesses and visitors to Ealing in shaping an order that meaningfully targeted issues found to have had a detrimental effect on residents and to be drivers of broader crime and anti-social behaviour concerns.
- 3.4 The original investigation indicated that **Anti-social outdoor drinking** was a key concern by residents and professionals. Anti-social drinking featured in feedback from 77% of professionals surveyed as one of the top 5 behaviours having a detrimental impact on people in Ealing. 106 reports of anti-social outdoor drinking were received by the safer communities team in the year period assessed and such reports connected to every ward in the borough. During that same time, London Ambulance Service attended 4,974 in Ealing.
- 3.5 Police safer neighbourhood teams had investigated 58 separate cases relating to public anti-social drinking in the one year period up to May 2019 and **Urinating, defecating and / or spitting in public or communal spaces** was identified by 31% of professionals surveyed as one of the top 5 behaviours having a detrimental impact.
- 3.6 **Failure to fully extinguish cigarettes before disposing of them in a bin** is a driver of avoidable fires. In the current environment, where an increase in hotter and drier conditions is being recognised as the new normal, this issue is more important than ever. During the investigation into outdoor fires, it was

established there were 273 fires in open spaces between January 2015 and October 2018 and LFB reported a year on year increase in such fires. The professional opinion of LFB is intentional act and careless disposal of cigarettes are the key drivers for these types of fire.

- 3.7 **Consumption, use, and / or possession of psychoactive substances** was identified by 80% of professionals surveyed as one of the top 5 behaviours having a detrimental impact on people in Ealing. This was supported by data from police, which noted 74% of drug offences as occurring in public spaces and by information held by the safer communities team relating to 687 drug related reports in the period January 2017 – December 2018.
- 3.8 **Congregating and/or loitering in groups of 2 or more whilst engaged in anti-social or criminal behaviour** was identified by 71% of professionals surveyed as one of the top 5 behaviours having a detrimental impact on people in Ealing. It was referenced as a concern in 284 reports made to the safer communities team in the period January 2017 – December 2018, the majority of which related to Ealing Council managed housing estates and town centres in the borough.
- 3.9 **Intimidating or aggressive begging** was identified by 26% of professionals surveyed as one of the top 5 behaviours having a detrimental impact on people in Ealing. The key geographical areas where this was identified as a concern were the borough's town centres. **Commercial waste** was also identified as a significant concern, based on the high number of fixed penalty notices (1,760 FPNs issued in the year prior to the introduction of the order) issued by the council's Street Services team for incorrect disposal of waste. During 2017-2018, Improper disposal of black bag waste accounted for almost half (48.5%) of FPNs issued for fly-tipping in the borough..In terms of **dog control**, the impact of inconsiderate and irresponsible dog ownership has been evidenced in the information provided by park rangers, Parkguard and park users (in the context of the consultation as well as the preliminary evidence base) and this has been used to design specific prohibitions and requirements relating to dog fouling, damage to property and measures to minimise distress and risk to other park users and animals.
- 3.10 **Driving on park land** is evidenced as a concern in the information from park rangers and by the costs of maintaining and repairing some park areas from the damage caused by vehicles that have been driven across them. Requirements and prohibitions within the proposed PSPO have been developed to protect both parks land for the enjoyment of all and to protect park users from the risk of vehicles being irresponsibly driven. In terms of **obstructions**, the obstruction of certain spaces by vehicle or other items or by people congregating was a behaviour connected with a wide range of ASB reports and featured frequently in reports relating to anti-social drinking and drug related activity. It is also worth noting that every housing officer taking part in the professionals survey identified this as one of the top 5 behaviours having a detrimental impact on residents of Ealing's housing estates. The proposed

PSPO includes specific measures to address the issue of obstructions on housing estates and in town centres.

3.11 For the **Whole Borough**, as shown edged in black on the map at Appendix 1, the behaviours targeted by the PSPO are:

- Street drinking while engaged in anti-social behaviour;
- Urinating and/or defecating and/or spitting in public or communal spaces;
- Failure to fully extinguish cigarettes before disposing of them in a bin;
- Consumption, use, and/or possession of psychoactive substances

3.12 For Ealing Council Managed **Housing Estates** (as shown highlighted in red on the attached maps at Appendix 1) the behaviours targeted are:

- Obstructing entrances to and exits from any building, or the free passage of persons on or in a stairwell;
- Causing an obstruction which prevents or hinders the free passage of pedestrians or vehicles
- Congregating and/or loitering in groups of 3 or more whilst engaged in anti-social or criminal behaviour;
- Fly-tipping;
- Depositing unroadworthy vehicles

3.13 For the borough's managed **Parks and Open Spaces**, as shown highlighted in green on the attached maps at Appendix 1, the behaviours targeted are:

- Dogs causing distress to any person or animal, or damage to any Council structure, equipment, tree, plant or turf
- Dog fouling;
- Littering, including of bottles, cans and drug paraphernalia;
- Congregating and/or loitering in groups of 3 or more whilst engaged in anti-social or criminal behaviour;
- Driving vehicles, mopeds, caravans or any other motor propelled vehicle on park land without prior permission

3.14 Finally, for the six areas within Ealing that are formerly recognised as **Town Centres** (Acton, Ealing, Hanwell, Greenford, Southall and West Ealing - shown highlighted in blue on the attached plan in Appendix 1) the behaviours targeted are:

- Congregating and/or loitering in groups of 3 or more whilst engaged in anti-social or criminal behaviour
- Intimidating or aggressive begging;
- Obstructing access to business premises during opening hours;
- Leaving commercial waste in a public space for the purposes of collection for an unreasonable length of time

- 3.15 The order can be enforced by Police (and any other authorised officers) and allows for officers to instruct any person to disperse from an area if they are breaching a PSPO and / or to issue the person with a Fixed Penalty Notice (FPN) of £100. Repeated breaches of the order or a failure to pay an FPN may result in prosecution.
- 3.16 In line with the recommendations of the Cabinet report from September 2019, Ealing's borough-wide PSPO was made for a period of three years (the maximum period for which a PSPO can be made before a decision relating to renewal is made). This means that if no action is taken, the order would expire on 17th September 2022.
- 3.17 Ealing Council's Cabinet considered the evidence base for Ealing's borough-wide PSPO in September 2019, following on from an extensive investigation and evidence gathering exercise undertaken by the safer communities team, which took place during the period Autumn 2018 - Summer 2019.
- 3.18 The investigation and research exercise examined behaviours in public places driving the issues most affecting residents. As well as the quantitative crime and ASB data held by the safer communities team and partners, it is recognised that there are issues of importance to residents for which purely quantitative analysis does not always present a full picture: for example an area where residents may feel most concerned for their safety may be an area with paradoxically less reported crime because residents actively avoid it or because certain behaviours are perceived as 'tolerated'. Some of this softer intelligence was established through issues raised in public forums, through enquiries from elected members and information shared by local partners.
- 3.19 In forming the PSPO in 2019 the team therefore assessed this more anecdotal information alongside the extensive objective data held by the service and by police and other key partners, and this. The key strands of the evidence base examined during that exercise included:
- Safer Communities data
  - Police data
  - London Fire Brigade data
  - Data from Ealing's Parks and Estates Patrol Service, Parkguard Ltd
  - Street Services data
  - CCTV data
  - Elected members reports data
  - Professionals' surveys
- 3.20 Following the conclusion of the investigation, recommendation for a draft Public Spaces Protection Order (PSPO) was made, which went to public consultation during Summer 2019.
- 3.21 Over 1,400 residents took part in the online consultation in addition to responses received from partners and from residents via other channels. The feedback from the consultation demonstrated significant support for the order

and additionally provided further evidence of the issues the order was designed to address; this feedback additionally helped shape the order, with the original draft order ultimately being amended as a result.

- 3.22 Following the introduction of the order, signage was installed at key locations across the borough, allowing for the order to be enforced at those locations and raising public awareness about the existence of the order and behaviours that are not tolerated. Training in enforcing the order was rolled out by the safer communities team with Police colleagues and a process of issuing and tracking FPNs issued was established.
- 3.23 The enforcement plan for the PSPO promoted 'Engagement, Explaining, Educating and Enforcing', with a strong focus on enforcing only in situations where an engagement approach proves unsuccessful, where a person does not desist from behaviour or where there is an aggravating element.
- 3.24 As outlined in the 2019 Cabinet report, maintaining and improving public confidence in the PSPO is key and it is critical that the PSPO is not (and is not perceived to be) a source of income generation for the council. Enforcement of the order therefore has been carefully balanced against this ongoing focus on public confidence.
- 3.25 Equally critical to the success of the PSPO has been a focus on ensuring no vulnerable people or groups are targeted and that the order is not used to target behaviours that are as a result of vulnerabilities (for example rough sleeping). The PSPO enforcement plan has focussed on the 'Four Es' principle: Engage, Explain, Encourage and Enforce, with enforcement being a last resort. The data from the three years the PSPO has been enforce demonstrates that engagement, explanation and encouragement accounts for the majority of Police and Council activity, with enforcement only being taken in cases where a direction to comply with the order is refused or in cases or repeated or aggravated breaches.

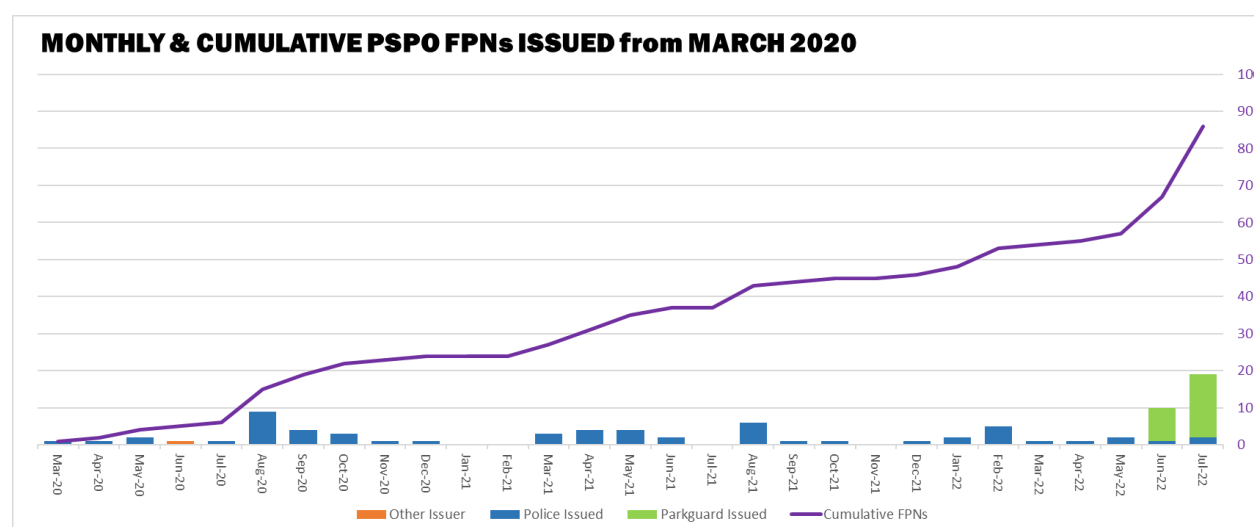


Fig 1: FPNs issued under the PSPO since implementation

- 3.26 Since the implementation of the order 86 FPNs have been issued for breach of the PSPO and 22 prosecution cases (prosecutions relate either to non-payment of a fine or for repeated or aggravated breaches). This underscores that the approach taken in enforcing the order has been proportionate and that the order is being used to target the specific problematic behaviours it was designed to. The levels of FPNs issued highlight that the PSPO is not perceived as and is not being used as a source of income generation by the council. Within month's of the borough-wide PSPO being introduced in Ealing, the Covid-19 pandemic resulted in significant restrictions being implemented, which presents some challenges in objectively tracking the enforcement of the order. A continued trend for moderate enforcement of the order is seen during this time, however, with Spring and Summer months perhaps unsurprisingly proving busier in terms of enforcement activity.
- 3.27 In terms of the key *behaviours* for which FPNs have been issued under the PSPO to date, 22% of the FPNs issued were in relation to possession and use of psychoactive substances (previously referred to as 'legal highs'); 21% were for public urination; 20% for anti-social outdoor drinking and refusing to surrender alcohol. Other behaviours for which FPNs were issued included littering, spitting and failing to leave an area when asked by an officer.
- 3.28 In terms of the key *areas* targeted by the PSPO, the borough's town centres continue to be the areas associated with the highest rates of crime and anti-social behaviour and have perhaps unsurprisingly seen a significant level of the enforcement activity (although parks and housing estates have equally seen a sharp focus in enforcement). This is consistent with other London boroughs and areas of the UK, where transport networks, high footfall, high number of commercial premises and a busy night time economy results in specific problematic behaviours being more likely.
- 3.29 These areas of targeted PSPO enforcement are broadly consistent with the clustering of locations where women told us they feel most unsafe in the borough: as part of the *A Safer Ealing for Women* public survey, 2,100 pins were dropped on the interactive map by women and girls participating in the survey, with a clear clustering in the town centre locations along the Uxbridge Road corridor. These same areas tend to be affected more by violent crime (including knife related crime) than Ealing as a whole, indicating the PSPO's enforcement focus areas are appropriate. It is recommended these areas continue to be targeted for activities nudging behavioural change, enhancing these spaces and driving increased perception of an area where anti-social behaviour is not tolerated.
- 3.30 Although having significantly lower rates of crime and anti-social behaviour in comparison, the borough's parks and open spaces have been areas where residents have reported encountering specific problematic behaviours that affect their quality of life. These behaviours are often of a 'lower level' nature and range from concerns about dog control to the use of mopeds, however they all contribute to a reduced perception of public safety in these spaces. These

areas were also found to be places where women and girls reported feeling less safe as part of the *A Safer Ealing for Women* public survey.

- 3.31 Similarly, resident feedback and crime and ASB data tells us that issues often described as 'lower level' have a detrimental effect on residents living on and visiting some of the council's managed housing estates. Such issues include people engaged in intimidating behaviour congregating within stairwells or in areas around entrances to residential blocks, as well as fly-tipping and problem vehicles.
- 3.32 These issues are specifically targeted in these areas by the existing PSPO. As part of the ongoing commitment to focus on these areas, in 2022 a number of officers from the council's Parks Patrol team, Parkguard, were additionally trained in and authorised to enforce the PSPO and to issue FPNs. To date, 28 FPNs have been issued by Parkguard in the borough's parks and council managed housing estates.
- 3.33 The PSPO investigation was informed by the the borough's multi-agency violence and exploitation forum (MAVES) which, along with police colleagues, regularly review areas of concern in the borough around child exploitation and issues of violence affecting children and young people. One of the key themes that emerged during the 2018-19 investigation was the presence of parks and open spaces among the areas most regularly discussed as coming to attention for activities related to child exploitation. During the professionals' meetings reviewing the PSPO evidence based, it was established that requirements and prohibitions in relation to groups congregating in parks support the wider strategy to tackle individuals involved in child exploitation and to protect potential victims from harm.
- 3.34 As outlined in the original 2019 report, recommending the PSPO's introduction, it is challenging to objectively measure the impact of an order of this kind, given the myriad of factors that drive crime and anti-social behaviour in any location, particularly one as wide as an entire London borough. However, one indicator of impact may be found in the overall trends of key crimes in Ealing compared with London as a whole. In the rolling year July 2021-August 2022, as outlined in Fig 2, the overall crime trend in London has been upwards (in part driven by the easing of Covid restrictions), and the same is true for Ealing. However, the increase in crime in Ealing has been significantly lower, at 2.5%. in comparison to the average London increase of 9%.
- 3.35 Indeed, for all key categories (Violence; Violence With Injury; Sexual Offences; Arson & Criminal Damage), the increase experienced in Ealing has been less than for London as a whole. This relatively better performance will of course be influenced by a wide range of factors, including Police tactics and activities by all partners focussed on improving public safety. It may also be linked to increased targeted enforcement and patrolling, using the PSPO powers as part of Ealing's broader drive to tackle crime and anti-social behaviour.



<b>TNOs</b>	<b>Year-on-year trend</b>	<b>Crimes per 1000 population</b>
London (MPS area)	+9.0%	107.0
Ealing	+2.5%	99.3 (19th of 32)

<b>Violence</b>	<b>Year-on-year trend</b>	<b>Crimes per 1000 population</b>
London (MPS area)	+6.4%	27.0
Ealing	+5.2%	28.2 (14th of 32)

<b>Violence With Injury</b>	<b>Year-on-year trend</b>	<b>Crimes per 1000 population</b>
London (MPS area)	+12.1%	8.6
Ealing	+4.9%	8.2 (19th of 32)

<b>Sexual Offences</b>	<b>Year-on-year trend</b>	<b>Crimes per 1000 population</b>
London (MPS area)	+20.2%	2.8
Ealing	+18.6%	2.7 (18th of 32)

<b>Arson &amp; Crim. Damage</b>	<b>Year-on-year trend</b>	<b>Crimes per 1000 population</b>
London (MPS area)	+4.7%	6.0
Ealing	+3.2%	5.9 (19th of 32)

Fig 2: Crime trends in Ealing comparative to London in the period July 2021-August 2022

## 4. Key Implications

- 4.1 The key implication for Ealing if the decision is taken to renew the borough-wide PSPO is in effect a continuation and development of the existing strategy to proactively tackle criminal and anti-social behaviour across the borough's public spaces and to increase awareness and confidence among people who live in, work in and visit our borough.

## 5. Financial

- 5.1 There are no significant financial implications to the recommendation and no additional funds are being sought.
- 5.2 The cost of the investigation, consultation and delivery of the PSPO to date has been met from within the existing approved Safer Communities budget and the cost of the PSPO review and monitoring continues to be managed within this approved budget.
- 5.3 The costs of implementation of a renewed PSPO is minimal, given the primary costs are in relation to ensuring the order continues to be widely publicised and understood by all residents, businesses and visitors to the borough via existing pathways and signage.
- 5.4 In line with the legal requirements of the *Antisocial Behaviour, Crime and Policing Act 2014* signage was installed across a wide range of locations in the borough during 2019-20 to raise awareness of the order and allow for it to be enforced. No further signage has been required to date and therefore no additional costs are anticipated in relation to signage manufacture or installation. Reserve signage is retained by the safer communities team for installation at identified new locations or at locations where existing signage may have been damaged or removed. The signage used includes a

combination of branded colour A3 and A2 size heavy duty metal signage at key locations and at points of high pedestrian or vehicle flow.

- 5.5 As with almost any decision made by the council, the risk exists that a decision to renew the PSPO may be challenged by an interested party. Ealing's experience indicates the likelihood of such challenge is low and that our PSPO has been through a rigorous process of investigation, consultation and review. Should the decision to renew the order be challenged, such a challenge would be heard in the High Court and resisting such a challenge may involve associated costs. More on this potential risk is outlined in the Legal section of this report.

## **6. Legal**

- 6.1 This section of the report sets out the statutory framework for the making of and renewal of a PSPO.
- 6.2 In considering the recommendations of this report the Council will need to be satisfied about a number of things in order to decide whether to renew each of the restrictions within the PSPO. These are:
- a. The nature of the activities taking place
  - b. Whether those activities can be said to have had a 'detrimental effect on the quality of life of those in the locality'
  - c. If the detrimental effect exists, is it persistent or continuing in nature?
  - d. Does that detrimental effect make the activities unreasonable? and
  - e. Does it justify the restrictions imposed in the proposed PSPO?
  - f. Are the proposed prohibitions reasonable to impose to prevent or reduce the detrimental effect from continuing, occurring or recurring?
  - g. Is the proposed PSPO justified and proportionate?
  - h. Should the PSPO be renewed for a full three years or some lesser period?
- 6.3 The following paragraphs of this report explain the legislative framework within which those decisions should be made.

### **Section 17 of the Crime and Disorder Act 1998**

- 6.4 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**

- 6.5 PSPOs were created by the Anti-Social Behaviour, Crime and Policing Act 2014. They are designed to place controls on the use of public spaces and those within them. The orders have effect for up to three years and can be extended. Only local authorities can make PSPOs.
- 6.6 The Council can make a restriction within 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.

6.7 A restriction within 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.

6.8 Each of the restrictions within the PSPO must satisfy the legal tests above.

6.9 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.

6.10 Prohibitions may apply to all persons or only to persons in specified categories. Prohibitions may also apply to all persons *except* those in specified categories.

6.11 A PSPO may specify the times and the circumstances in which it applies or does not apply.

6.12 Unless extended, a PSPO may not have effect for more than 3 years. There is no statutory requirement to review a PSPO once made, however Ealing have developed a practice for reviewing PSPOs continually as part of our wider community safety partnership plan. In this instance, it is proposed that, if renewed, the PSPO should be renewed for a three year period, with provision for continual review.

### **Enforcement of a PSPO**

6.13 Breach of a PSPO without reasonable excuse is a criminal offence. The Police or any 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).

### **Requirement for consultation**

- 6.14 The Council must also carry out the necessary prior consultation, notification and publicity as prescribed by s.72 of the 2014 Act. Ealing's consultation is outlined in detail in section 16 of this report.

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

- 6.15 The Council is a public authority and the Human Rights Act 1998 requires it to act compatibility with the European Convention on Human Rights. In addition to this general position s.72(1) of the 2014 Act requires the Council to have *particular* regard to the rights protected by Article 10 (Freedom of Assembly) and Article 11 (Freedom of Expression) when deciding whether to make a PSPO.
- 6.16 The proposed order requires the Council to have regard to the *competing* rights of persons exercising the rights and person living in or visiting the borough who are being affected by anti-social behaviour. 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. These issues are considered more fully below.
- 6.17 The Council must take account of Articles 10 and 11 of ECHR. In considering interference with the rights, the Council are required to consider that any interference is:
1. In accordance with the law  
*and*
  2. Necessary in a democratic society in the interests of:
    - National Security *or*
    - Territorial integrity or public safety *or*
    - The prevention of disorder or crime *or*
    - The protection of health or morals *or*
    - The protection of the reputation or rights of others
- 6.18 It is broadly under the protection of rights of others that the interferences presented by the proposed PSPO fall. The following paragraphs outline the key Articles engaged by the decisions Members are asked to make. Members will then find a summary of how any interference is said to be permissible:

#### Article 10 Right to Freedom of Expression and Information

- 6.19 Article 10 of the European Convention of Human Rights protects the right of everyone to freedom of expression. This includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority. Article 10 is a qualified right, which means it can be interfered with in certain situations, for example, to protect the rights of others.
- 6.20 Again, this is an important fundamental right in any democracy. It includes the entitlement to express views that others might disagree with, find distasteful or even abhorrent. Article 10 provides a protection to express those views and is an important part of a free and democratic society.

### Article 11 Right to Freedom of Assembly

- 6.21 Article 11 of the European Convention of Human Rights protects everyone's right to freedom of peaceful assembly and to freedom of association with others. Article 11 is again a qualified right, meaning it can be interfered with in certain situations, for example, to protect the rights of others.
- 6.22 It is possible that the prohibition on congregating in groups whilst engaged in anti-social behaviour could impact on persons intending to assemble together and protest against particular issues.

#### **Is the interference 'in accordance with the law'?**

- 6.23 If the Council is satisfied that the conditions for making a PSPO are met, and that the restrictions or prohibitions it imposes are reasonable to impose in order to prevent or reduce the identified detrimental effect from occurring, occurring or recurring, then the PSPO will have been made in accordance with the statutory provisions. As a result any interference with the relevant ECHR right will be in accordance with the law.

#### **Is the interference 'necessary in a democratic society'?**

- 6.24 The Council must have regard to the content of the relevant rights as summarised above. It is reminded that the Articles 10 and 11 rights are important rights in a free a democratic society. If the Council wishes to interfere with these rights the interference must be 'necessary' in order to achieve a stated aim, here the aim that the Council is seeking to achieve is the protection of the rights and freedoms of others. Those rights and freedoms include the right not to be adversely affected by the anti-social behaviour of others. 'Necessary' means that the interference must be connected to achieving the stated objective and must not interfere any more than is required in order to achieve it.
- 6.25 The ECHR rights have been firmly in mind when the proposed order was being formulated. All of the prohibitions in the proposed PSPO are believed to be proportionate to the aim of preventing a detrimental effect on residents and visitors to the borough. Officer advice to Members is that the interference with ECHR rights is in accordance with the law and necessary to protect the rights and freedoms of others.

#### **The public sector equality duty ('PSED')**

- 6.26 Section 149 of the Equality Act 2010 requires the Council in the exercise of its functions to have due regard to the need to:
- a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Act;
  - b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are:

- Age
- Gender reassignment
- Race
- Sex,
- Marriage and civil partnerships
- Disability
- Pregnancy and maternity
- Religion or belief
- Sexual orientation

6.27 The PSED means that, in making decisions, the Council must have regard to the need to remove or minimise disadvantage or to meet particular need, such as through ensuring access to services for particular groups. The good relations duty also now applies across all of the protected characteristics. In particular, the Council must have due regard to the need to tackle prejudice and promote understanding between people who share a protected characteristic and those who do not.

6.28 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

6.29 Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

(a) tackle prejudice and (b) promote understanding.

6.30 Members should be aware that compliance with the duties in this section may involve treating some persons more favourably than others.

6.31 The law also requires that the duty to pay 'due regard' is demonstrated in the decision making process and the Council must be able to demonstrate that decisions are made in a fair, transparent and accountable way, considering the needs and the rights of different members of the community. This is achieved through assessing the impact that imposing restrictions and prohibitions through a PSPO could have on different protected groups and, where possible, identifying methods for mitigating or avoiding any adverse impact on those groups.

## Analysis

- 6.32 In making a decision on whether to renew the order, the Council needs to balance the various rights of visitors and residents and those of the persons who are likely to be negatively affected by the PSPO, ensuring due consideration of these. An Equalities Analysis Assessment ('EAA') has been completed and is contained in Appendix 3.

## **7. Value For Money**

- 7.1 The costs of the existing order were managed within the existing safer communities budget, with the principal costs relating to design and installation of signage across key areas of the borough, allowing for the order to be enforced.
- 7.2 All enforcement activity, including the issuing and payment of FPNs, and prosecutions, is tracked centrally by the safer communities team. As outlined in the *Legal* section of this report, the legal enforcement of the order is broadly cost neutral and managed within the partnership's existing budget.

## **8. Sustainability Impact Appraisal**

- 8.1 The PSPO contributes positively to Ealing's sustainability objectives in targeting behaviours including littering, careless disposal of cigarettes and inappropriate disposal of rubbish by businesses. It provides an additional tool for Police and authorised officers to use in responding to these issues as well as sending a clear message in publicity and public signage that these behaviours are not tolerated in Ealing.
- 8.2 Ealing benefits from superb parks and public spaces and the PSPO is focused on enhancing these for all. Longer term, the PSPO contributes to improving these spaces and positively impacting resident perception of safety in areas where residents have told us they feel less safe. This in turn improves access to public spaces and contributes to our longer term ambition that all public spaces are viewed by residents as safer spaces for them to visit and walk through. Ultimately, the PSPO plays a key part in the broader strategy to 'open up' public spaces in the borough to all, which increases the levels of people choosing walking and cycling over journeys by car.
- 8.3 On a physical level, signage used for the PSPO across the borough is resilient metal signage, reducing the requirement to produce high volumes of low quality and lower duty plastic signage. Metal clamps (as opposed to plastic cable ties) are used, reducing the possibility of adverse local environmental impact and contributing to the sustainability of the PSPO.

## **9. Risk Management**

- 9.1 There are no specific risks identified as part of this proposal, beyond the potential for the decision to renew the order being challenged by an interested

party. The detail in relation to this risk is outlined comprehensively in the *Legal* section of this report. This is a low likelihood / moderate severity risk.

- 9.2 The key risks are therefore financial and reputational in the event of a successful challenge. It is considered these risks have been mitigated significantly by the careful research, analysis and evidence gathering process taken to date in developing the original evidence base for the order and the subsequent monitoring, review and further consultation that has taken place. Throughout, the focus has been on a transparent resident and multi-agency consultative approach, which takes into account the views of a very wide range of residents, representatives and professional partners in understanding the issues important to Ealing's residents and developing a range of area specific requirements and prohibitions that are enforceable on a practical level and which do not interfere in an unreasonable way with the established rights of residents nor disproportionately affect any minority group.
- 9.3 As outlined within the *Legal* section of this report, as with the decision to introduce any PSPO, there will be a risk of potential High Court challenge, which would give rise to the risk of associated legal costs. Depending on the decision taken as to whether and how to resist such a challenge, it is possible these costs may not be met from within the existing resources of the safer communities team and approval would in that case be required for utilisation of corporate contingency budgets. The quantum of such hypothetical legal costs cannot known at present and will be difficult to predict, as they would depend on the scale and complexity of any High Court challenge.

## **10. Community Safety**

- 10.1 The proposal carries a positive impact on community safety in Ealing, given the focus is on specifically targeting and tackling behaviours residents, businesses and visitors to the borough have told us have a detrimental impact on them.

## **11. Links to the 3 Key Priorities for the Borough**

- 11.1 The proposal carries a positive impact on the Borough priority of *fighting inequality* by targeting the areas most affected by anti-social behaviour and providing enforcement officers with additional tools to meaningfully tackle behaviours in those areas that are found to have a detrimental effect on these communities and people visiting the area. The focus is around continuing to enhance these spaces for all.

## **12. Equalities, Human Rights and Community Cohesion**

- 12.1 An Equality Analysis Assessment (EAA) was undertaken prior to the introduction of the borough-wide PSPO in 2019 and a fresh analysis has been



undertaken as part of the process around the recommended renewal of the order. The EAA is attached as Appendix 3.

### **13. Staffing/Workforce and Accommodation implications**

13.1 There are no staffing or workforce implications.

### **14. Property and Assets**

14.1 There are no property or asset implications.

### **15. Any other implications**

15.1 There are no other implications not covered within this report.

### **16. Consultation**

- 16.1 The borough-wide PSPO has been continually monitored and reviewed with partners for its effectiveness and impact. In developing the recommendation in relation to its continuation (renewal), formal consultation on the renewal of the PSPO began on 12<sup>th</sup> July 2022 and concluded on the 4<sup>th</sup> September 2022.
- 16.2 The consultation was conducted in line with the statutory requirements and developed best practice. And, as with the original decision making on whether to introduce a borough-wide PSPO, extensive consultation took place over an 8 week period. The consultation statement and report are provided at Appendix 2.
- 16.3 The consultation took the form of an online survey. Hard copies of the full survey were again additionally available from council offices and on request and representations from interested parties were additionally welcomed via the safer communities duty desk (which operates a customer facing duty telephone and email service 9am-5pm, Monday to Friday) as well as in letter form. A high amount of residents engaged with the consultation.
- 16.4 The *Anti-Social Behaviour, Crime and Policing Act 2014* states that a PSPO may be made where specific behaviours are having a persistent and detrimental effect on the quality of life of those in the locality and questions within the survey sought to better understand the current perception of the impact of the behaviours targeted by the order. The public survey provided residents from across the borough (and those who live outside but have a connection to the borough as a visitor or worker) the opportunity of providing their views and feedback on every aspect of the order and invited feedback on whether participants felt the behaviours targeted by the order remain a concern for them, whether they agreed with the conditions and whether they felt the order should be renewed.
- 16.5 The survey therefore directly asked participants their views on the conditions in the existing order and to what extent they agreed with each and every condition. Every question within this section additionally provided a free-text

field for respondents to explain their reasoning or to add additional information they felt may be relevant.

- 16.6 The survey asked participants to outline their overall support or opposition to the proposed PSPO and again free text fields were provided for participants to explain their reasoning and provide any other comments they felt relevant. As with the implantation of the PSPO (and other PSPOs in the borough), the consultation process is not a 'referendum' exercise, and decisions to introduce the order or parts of the order should not be made on the basis of any arbitrarily defined level of support. The popularity of an order does not equate to its lawfulness and the purpose of the consultation is to capture the views (and potential concerns) of as wide a group of interested parties as possible in the most accurate way possible.
- 16.7 A common theme raised by those responding in support of the PSPO was the view that enforcement of the order needs to be robust and this was reflected in a range of comments received: *'This is a great thing and it should continue. However the enforcement of the existing one is patchy.'* Other comments reflected this concern, with a high level of residents citing 'resource' as an important factor in the success of the order. There is significant support within the consultation therefore for the increased training and authorisation of officers.
- 16.8 Some participants in the consultation raised concerns that, while they were supportive of the PSPO being renewed, they believed prevention and intervention played an important role, with one writing: *'The main focus seems to be on the effects of this behaviour. Please place more emphasis on the causes, and provide better mental health support, better education and housing facilities for youngsters. There should also be better help for the drug and alcohol addicts who are victims of their addiction.'* A number of other comments chimed with this, citing concerns that people from poorer social backgrounds may be disproportionately targeted under the enforcement of the order, something that is explored within the Equalities Impact Analysis.
- 16.9 A less prominent but nonetheless significant concern raised by participants in the consultation was the possibility of the PSPO to be utilised to ban protest. It is important to outline that there are no conditions within the order that target protest, although tackling those congregating as part of a group involved in anti-social behaviour is on a theoretical level open to abuse. In ensuring absolute mitigation against the order, our enforcement plan for all authorised officers makes it clear that the borough-wide PSPO does not target and cannot be used to target protest of any kind.
- 16.10 Broader comments in support of the renewal tended to focus on the importance of the council's role in setting standards of behaviour and setting out a commitment to tackle anti-social behaviour, which ties in with the wider tactics in place in relation to improving women's safety in the borough and tackling violence and knife crime: *"Any scheme introduced to help better the life of residents should and must be endorsed and helped to succeed."*

*Antisocial behaviour in all its forms must be stopped.” A comment that was echoed throughout the responses was: “they [the conditions of the PSPO] demonstrate some socially agreed boundaries to work with.”*

- 16.11 As a statutory consultee and partner, Police formerly wrote to the council in support of the extension of the PSPO. Responding on behalf of the Metropolitan Police Service, Superintendent Anthony Bennett wrote: *“West Area BCU are supportive of this application and we would see it as forming a key part of our violence reduction strategy in Ealing. There have been a number of alcohol related assaults and murders in Ealing over the last 12 months and enabling a PSPO will allow police to leverage the legislation to reduce violence and hence protect the community from harm in partnership with the Local Authority. Agreeing it for the whole of the Borough will help address displacement issues as we know that if only part of a location is covered those looking to drink alcohol in open spaces will just move to another area, exponentially exacerbating the issues at that location.”*
- 16.12 Overall, 836 people took part in the received to the public survey. Support for the renewal of the PSPO and for the individual conditions was consistently high, with 81% of participants ‘strongly agreeing’ with the proposal to renew the order and a further 9.67% ‘slightly agreeing’, bringing the overall level of participants in support at over 90%. Less than 4% of participants opposed the renewal of the order.
- 16.13 A relatively small number of comments were received in the section of the consultation that invited participants to raise any concerns they had about the order negatively impacting their day-to-day lives. These responses primarily related to concerns about ‘unreasonable enforcement’ by ‘private contractors’, with repeat comments made about fines issued for perceived low level littering offences (the repeat example was cigarette butts). Again, the enforcement plan for the PSPO focuses on engagement, education and explaining prior to enforcement for such offences. This will continue to be closely monitored and reviewed.
- 16.14 All of the extensive feedback from the consultation process provides additional valuable insight into the views of those living in, working in and visiting Ealing. This information will help inform longer term decisions about the borough’s community safety strategy, as well as the enforcement plan for the PSPO moving forward.

## **17. Timetable for Implementation**

- 17.1 If the decision is taken, as recommended, to renew the borough-wide PSPO for a period of three years, this will take effect immediately. Unless action is taken to otherwise end the PSPO at an earlier date, the PSPO will then expire on 14<sup>th</sup> September 2025 (should no action be taken at that time, although it may be decided that a further consultation and extension is appropriate prior to that point).

- 17.2 The PSPO will continue to be reviewed on a regular basis, with the level of FPNs issued and reasons being closely monitored to continue to ensure enforcement of the order is reasoned, proportionate and appropriate.

## **18. Appendices**

**Appendix 1:** Copy of Ealing's borough-wide PSPO, recommended for renewal.

**Appendix 2:** Consultation statement and report.

**Appendix 3:** Equalities Impact Analysis.

## **19. Background Information**

*Any additional background information will be included prior to the final report being circulated. Also included for members' attention will be the link to the government guidance document on PSPOs.*

[Public spaces protection orders: guidance for councils \(local.gov.uk\)](https://www.local.gov.uk/public-spaces-protection-orders-guidance-for-councils)

## **Consultation**

<b>Name of consultee</b>	<b>Post held</b>	<b>Date sent to consultee</b>	<b>Date response received</b>	<b>Comments appear in paragraph:</b>
<b>Internal</b>				
Shabana Khan	Senior Lawyer (Housing), Legal Services	11/08/22	11/08/22	
Justin Morley	Head of Legal Services (Litigation)	01/09/22	01/09/22	
Yalini Gunarajah	Senior Finance Business Advisor	11/08/22	11/08/22	
Emily Hill	Head of Finance	01/09/22	01/09/22	
<b>External</b>				
Chief Superintendent Sean Wilson	Metropolitan Police Service, West Area BCU Commander.	16/08/22	29/08/22	
Superintendent Anthony Bennett	Metropolitan Police Service, Acting West Area BCU Commander.	16/08/22	29/08/22	

## **Report History**

<b>Decision type:</b>	<b>Urgency item?</b>
Key decision	No
Report no.:	Report author and contact for queries:
	Paul Murphy, Safer Communities Operations Manager