

Strategy and Resources Executive Advisory Board Report

Ward(s) affected: Holy Trinity, Christchurch, Friary and St Nicolas, and potentially surrounding wards.

Report of Strategic Services Director

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Public Spaces Protection Order Review

Executive Summary

This report provides the EAB the opportunity to examine the process followed in reviewing the current town centre Public Space Protection Order (PSPO) and invites the EAB to advise and comment on the adherence to and appropriateness of the process followed in relation to the statutory guidance and Council's obligations.

The report sets out the context of the Council's existing PSPOs, the legal framework and the statutory guidance relevant to the review of a PSPO. The Anti-social Behaviour, Crime and Policing Act 2014 introduced Public Space Protection Orders (PSPOs) as a tool for councils to address anti-social behaviour (ASB) in their areas. The legislation includes statutory requirements for councils to adhere to when reviewing, developing, and implementing PSPOs. The Local Government Association (LGA) has produced guidance for councils based on the legislation and statutory requirements.

The Council has used the guidance to inform its approach to reviewing the current town centre PSPO. This report sets out how the Council has approached the review and adhered to the statutory guidance.

The report provides a summary of the consultation undertaken in the process so far and closes by setting out the next steps to be progressed in the review. The key risks associated with this review and the mitigations are also considered at the end of the report.

Recommendation

That the Board considers the process followed so far and comments on the adherence to and the appropriateness of the process in relation to the statutory guidance and the Council's obligations.

Reason(s) for Recommendation:

As part of its advisory role to the Executive the EAB's comments and feedback are valuable to ensure the process of reviewing the current PSPO and considering a new one is robust and adheres to the statutory guidance, ensuring the most appropriate outcome of the review.

Is the report (or part of it) exempt from publication?

No

Purpose of Report

- 1.1 The purpose of this report is to provide the EAB the opportunity to examine the process followed in reviewing the current town centre Public Space Protection Order (PSPO).
- 1.2 The report invites the EAB to advise and comment on the adherence to and appropriateness of the process followed in relation to the statutory guidance and Council's obligations.

Strategic Priorities

- 2.1 The review of the current PSPO and consideration of a new PSPO support the Council's vision of making the borough 'a desirable place to live, work and visit', by reducing anti-social behaviour. PSPOs address and reduce anti-social behaviour and the detrimental impact it causes, including to the most vulnerable people in our community.

Background

3.1 Public Space Protection Orders

- 3.1.1 PSPOs, introduced through the Anti-social Behaviour, Crime and Policing Act 2014, are one of a range of tools available to councils to address anti-social behaviour. Rather than targeting specific individuals or properties, PSPOs focus on the identified problem behaviour in a specific location.
- 3.1.2 PSPOs can last up to three years before councils are required to review them, at which point they may be removed, amended, or extended by up to a further three years. The length of a PSPO should reflect the need for a proportionate response to the problem and may only need to be one or two years to address very specific issues. There is no limit on the number of times a PSPO may be reviewed and renewed.
- 3.1.3 PSPOs can prohibit specified activities and/or require specific action, such as prohibiting consumption of alcohol or requiring the surrendering of alcohol when asked. PSPOs apply to defined public areas and the activities included must:
 - have had (or be likely to have) a detrimental effect on the quality of life of those in the locality,
 - be (or be likely to be) persistent or continuing in nature,
 - be (or be likely to be) unreasonable, and
 - justify the restrictions being imposed.

3.2 Safer Guildford Partnership

- 3.2.1 The Safer Guildford Partnership (SGP) is our local community safety partnership which brings together both statutory and non-statutory strategic partners, as required by the Crime and Disorder Act 1998 amended by the Police Reform Act 2002 and the Police and Justice Act 2006.

- 3.2.2 The role of the SGP is to facilitate information sharing, identify local priorities and coordinate a planned response to the prevention of crime, disorder, anti-social behaviour (ASB) and reoffending, at a borough level. The SGP Plan 2018-21 sets the framework for the SGP and is reviewed annually.
- 3.2.3 The SGP Annual Action Plan 2020-21 sets out the actions agreed to achieve the priorities of the SGP as identified in the wider Plan. A review of the current town centre PSPO with a view to considering the need for an additional PSPO is included as an action in the Action Plan for 2021.

3.3 Existing PSPOs

- 3.3.1 The Council currently has two PSPOs in place, including a borough wide PSPO relating to dog fouling and a town centre PSPO relating to alcohol consumption.
- 3.3.2 In October 2020 the Council extended the town centre PSPO by three years, with a commitment to carry out a full review to determine whether there is a case for a PSPO covering a wider range of behaviours and locations.
- 3.3.3 We began this review early in 2021 with a view to conclude in the autumn.

3.4 Statutory guidance

- 3.4.1 In addition to statutory guidance developed by the Home Office to accompany the Anti-social Behaviour, Crime and Policing Act 2014, the Local Government Association (LGA) produced guidance aimed at councils considering a new PSPO. The LGA guidance sets out the practical implementation of the statutory guidance. This guidance also sets out the circumstances in which PSPOs are, and are not, appropriate and the legal tests PSPOs must meet.
- 3.4.2 PSPOs will not be suitable in all circumstances and should not be used in the place of other, more proportionate methods of tackling ASB. These other methods should be considered before a PSPO is pursued. Where a PSPO is used it should accompany other tools and methods in a balanced anti-social behaviour approach.
- 3.4.3 The legislation sets out the framework councils must adhere to before an order is introduced, once it is implemented and where it is extended, varied, or discharged. This includes determining the scope, areas covered and impact of the PSPO, as well as how each of the restrictions meets the legal test.

Legal tests

- 3.4.4 There are strict legal tests PSPOs must meet including the criteria set out in this report at paragraph 3.1.3. Our Legal Services Team provide further scrutiny against the statutory guidance.
- 3.4.5 Proposed restrictions must focus on specific behaviours and be proportionate to the detrimental effect that the behaviour is causing or can cause, and be necessary to prevent it from continuing, occurring, or recurring¹.

¹ [Public spaces protection orders: guidance for councils \(local.gov.uk\)](https://www.local.gov.uk/public-spaces-protection-orders-guidance-for-councils)

3.5 Process so far

3.5.1 The process followed so far has been informed by the statutory and LGA guidance. This includes being evidence-based, carrying out public consultation, and actively considering alternative tools for tackling ASB. The following paragraphs set out the key aspects of the guidance documentation and how we have adhered to it during this process.

Focus Group

3.5.2 The guidance emphasises the need to work with partners and consult where beneficial, to establish a thorough understanding of the issues and to ensure any new PSPO will be supported by effective enforcement.

3.5.3 A focus group of relevant internal and external partners was set up in March 2021, to ensure the review is informed by relevant experience and expertise. The focus group meets at least monthly and includes representatives from Surrey Police, Experience Guildford, and the Council's Parks, Legal, Community Safety, and Compliance leads.

Data collection and analysis

3.5.4 The LGA guidance explains 'the most robust Orders will be supported by a solid evidence base and rationale, that sets out how the statutory criteria for each of the proposed restrictions have been met and demonstrates a direct link between the anti-social behaviour and the PSPO being proposed in response'².

3.5.5 Collating data and evidence is key to the process of reviewing the need for a PSPO as this will help us determine whether the legal tests are met. The LGA guidance describes collating information about the nature and impact of the ASB as 'core elements of the evidence gathering and consultation process'.

3.5.6 Data collected from a range of sources should inform decision making and will avoid challenge at a later stage. We have collected and analysed a range of data from various sources to get a full understanding of the behaviours, locations and impacts of ASB in and around the town centre. The data we have gathered so far includes:

- Data extracted from Surrey Police's database (NICHE) on incidents of ASB recorded in the town centre, which has then been used to create a map showing the most common locations of the ASB
- Data from the Business Crime Reduction Partnership showing the types of behaviours and their locations affecting businesses in the town centre
- Reports from Surrey Police provided through the Joint Neighbourhood Survey for west Surrey, containing the results of quarterly perception surveys of residents, including on matters such as ASB. These reports have been considered where information is relevant to the PSPO

² [Public spaces protection orders: guidance for councils \(local.gov.uk\)](https://www.local.gov.uk/public-spaces-protection-orders-guidance-for-councils)

- Results of the Purple Flag perception survey that the Council carries out each year as part of the Purple Flag accreditation scheme. We have used the community safety related results of the Purple Flag perception surveys in 2018 and 2019, to inform our evidence-base
- Surveys of our stakeholders, residents and visitors to support and validate the data collected when assessing the case for the development and implementation of a PSPO

Consultation requirements

- 3.5.7 The Anti-social Behaviour, Crime and Policing Act 2014 requires a consultation process before an Order can be made. The guidance sets out the statutory partners the Council must consult. More information about how we have consulted so far is contained within paragraph four of this report.

Enforcement

- 3.5.8 Some behaviours potentially suitable for inclusion in a PSPO are already covered by other legislation and regulation, such as littering under the Environmental Protection Act 1990.
- 3.5.9 Realistic expectations and resourcing for enforcement for the duration of a PSPO are critical to its successful implementation. To achieve this, representatives from Surrey Police and the Council's Compliance Team continue to inform the development of the enforcement plan and its implementation, through the focus group.
- 3.5.10 Consideration has also been given to ensure any new or updated protocol or procedure is aligned to the Council's existing and future approaches and policies around enforcement.

3.6 Impact of Coronavirus (Covid-19)

- 3.6.1 Coronavirus (Covid-19) and the associated restrictions have had an impact on both the nature of, and people's perceptions of, ASB. This has been borne in mind throughout the review and consultation. We have:
- considered issues presented to the Joint Action Group (JAG) over a three-year period to support the evidence case,
 - explicitly focused on longer-term, persistent behaviours that existed before Coronavirus (Covid-19) through all consultation, and
 - collected data from all sources over a three-year period, where available.

3.7 Next Steps

- 3.7.1 The PSPO review project plan sets out the following steps to be progressed, in line with the statutory guidance:

- detailed analysis of the responses received through the public survey
- a full review of all the data and evidence provided to determine the behaviours and the suitability of a revised or additional PSPO

If there is a case for a revised or additional PSPO:

- its scope and restrictions will be developed in a draft Order, in consultation with key stakeholders and our Legal Services team
- the draft order will be shared with key stakeholders
- the draft order will be published on the Council's website (see 4.2.7 below)
- an equality impact assessment (EQIA) will consider any unintended consequences of the PSPO which may impact those protected under the Equality Act 2010

3.7.2 A final Order will be adopted through the Council's Executive.

3.7.3 As discussed earlier in this report, adoption of a PSPO is only part of the process. Effective implementation and enforcement are key to a successful PSPO which results in less ASB and therefore a reduction of its impact on residents and visitors. The SGP will monitor and report on the implementation of a revised or additional PSPO.

4. Consultations

Stakeholders

4.1.1 A range of stakeholders have been identified including residents, visitors, businesses, ward councillors, Surrey Police, Experience Guildford, internal Council teams and specialist charity organisations. Each stakeholder has been involved at the most appropriate time according to their role and involvement in the review.

Partner and public surveys

4.2.1 In order to scope the behaviours and locations that should be considered in a revised or additional PSPO we carried out a survey of partners in spring 2021. The questions asked can be found in *appendix one* of this report.

4.2.2 The issues and problem behaviours raised through the stakeholder survey were used as the basis for a public survey which ran for four weeks from 4th June to 2nd July 2021. The questions asked can be found in *appendix two* of this report.

4.2.3 In addition to meeting the statutory requirement to consult, the results of these surveys provide a more robust understanding of the ASB issues and, most importantly, the impact ASB has on residents and visitors.

Notification to relevant councils

4.2.4 The statutory guidance requires councils to notify the relevant county and parish councils when reviewing or developing a PSPO. Both have been informed of the Council's intentions.

Statutory partners

- 4.2.5 Statutory partners have been consulted including: the local chief of police, Surrey Police and Crime Commissioner, owners or occupiers of land within the affected area where reasonably practicable, and community representatives.

Lead and ward councillors

- 4.2.6 In January 2021, the lead councillor for Community Safety and the ward councillors for the current town centre PSPO were invited to attend a presentation setting out our intentions to review the current town centre PSPO. The presentation set out the role of the SGP and the process of reviewing a PSPO as described by the LGA. Further presentations to the relevant councillors will continue as the review develops, as and when appropriate.

Further consultation

- 4.2.7 If, after a thorough assessment of the evidence, a case for an additional PSPO is found, a proposal for a new Order will be developed in partnership with Surrey Police, relevant Council teams and organisations identified in the EQIA. A draft version of this Order will be published on the Council's website for two weeks for public comment.

5. Key Risks

- 5.1 PSPOs can be challenged including on the grounds that proper processes have not been followed as prescribed by the legislation. To mitigate this risk, we have adhered to the prescribed processes and exceeded them where deemed possible and appropriate.
- 5.2 There have been cases in recent years where councils have been challenged on the content of PSPOs that have been deemed as discriminatory in nature and argued to contravene the Human Rights Act 1998. In order to mitigate this risk any new PSPO must target the behaviour itself causing distress and/or alarm. In addition to this there will be a full equality impact assessment (EQIA) to understand and consider any unintended consequences of any new restrictions, particularly on those with protected characteristics and vulnerable people.
- 5.3 There is a risk around unmanaged expectations of enforcement. Throughout the process, we have borne in mind the challenges to enforcement, especially for particular behaviours and in the context of the resources available. Any new PSPO will have an associated enforcement procedure which will include details on how to enforce against specific behaviours. It will be based on the anticipated realities of both Council and Police resources for the duration of the PSPO.

6. Financial Implications

- 6.1 There are no financial implications arising directly from this report. Should a new PSPO be implemented, there is a financial cost to producing public notices detailing the conditions of the order. These costs are within the remit of the Safer Guildford Partnership budget.

7. Legal Implications

- 7.1 Under s.59 of the Anti-Social Behaviour, Crime and Policing Act 2014, a PSPO can only be granted if the conditions set out in paragraph 3.1.3 above are met. This means that there must be a strong evidence base that identifies specific behaviours that have an impact on the quality of life of those in the community. Without justification for the prohibition, there is a risk that the PSPO could be successfully challenged.
- 7.2 Only “interested people” may challenge the PSPO. An “interested person” is a person who lives in or regularly works in or visits the area. The grounds for challenge are:
- The Council did not have the power to make/vary the PSPO, or to include particular prohibitions or requirements within it; or
 - That the statutory requirements were not complied with.
- 7.3 When making the PSPO, the Council must be satisfied on reasonable grounds that the PSPO is necessary to prevent the occurrence or recurrence of the behaviour, or to prevent an increase in the frequency or seriousness of the activities specified.
- 7.4 As identified above, the PSPO should not cover any behaviours which are already covered by other legislation or byelaws. In other words, they should only be used to cover gaps in legislation. If the PSPO covers the same behaviour as a byelaw, the byelaw is not deemed to have effect within the area covered by the PSPO.

8. Human Resource Implications

- 8.1 There are no direct HR implications arising from this report. The report lists the internal teams supporting the review.
- 8.2 The implications of a new PSPO being developed would place human resource requirements on officers, primarily in the Compliance Team. Alignment to resources, policies and approaches to enforcement is discussed in paragraph 3.5.9 of this report. The mitigation of risks associated with expectations on resources is discussed in paragraph 5.3 of this report.

9. Equality and Diversity Implications

- 9.1 An equality impact assessment will be completed before any decisions to amend the current PSPO or implement a new PSPO are made.
- 9.2 The implications of a new PSPO and the potential unintended consequences of any new restrictions, particularly on those with protected characteristics and vulnerable people are discussed in paragraph 5.2 of this report.

10. Climate Change/Sustainability Implications

10.1 There are no climate change/sustainability implications arising from this report.

11. Conclusion

11.1 In order to review the current PSPO and consider the scope of new one, we have followed the process set out in the statutory and LGA guidance. We will continue to adhere to the prescribed processes to ensure:

- the review process remains robust to challenge,
- the outcome of the review and legal tests of any new PSPO are met, and
- any associated risk to the Council is managed

12. Appendices

Appendix one – Partner survey questions.

Appendix two – Public survey questions.

Service	Sign off date
<i>Finance / S.151 Officer</i>	<i>27/07/2021</i>
<i>Legal / Governance</i>	<i>15/07/2021</i>
<i>HR</i>	<i>26/7/2021</i>
<i>Equalities</i>	<i>26/07/2021</i>
<i>Lead Councillor</i>	<i>27/07/2021</i>
<i>CMT</i>	<i>20/07/2021</i>
<i>Committee Services</i>	<i>28/07/2021</i>