

Strategy and Resources Committee

Ward(s) affected: Holy Trinity, Christchurch, Friary and St Nicolas

Report of Strategic Services Director

Author: Yasmine Makin

Tel: 01483 444070

Email: [yasmine.makin@guildford.gov.uk](mailto:yasmine.makin@guildford.gov.uk)

Lead Councillor responsible: Councillor Julia McShane

Tel: 01483 837736

Email: [julia.mcshane@guildford.gov.uk](mailto:julia.mcshane@guildford.gov.uk)

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## Public Spaces Protection Order Amendment

### Executive Summary

This report sets out the statutory process that has been followed to review whether or not an additional or amended Public Space Protection Order (PSPO) is required in Guildford and makes recommendations for a variation to the existing PSPO in line with the findings from the review.

The report provides the background and context of PSPOs including the conditions of the existing PSPOs in Guildford. It briefly sets out how the Anti-social Behaviour, Crime and Policing Act 2014 introduced 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 existing town centre PSPO and making the recommended amendments.

The Strategy and Resources Executive Advisory Board received a report detailing the process of the review in August 2021.

The report sets out the evidence base collected during the review and presents key outcomes of the evidence in relation to the recommended variation to the existing town PSPO. The variation of the Order is presented in Appendices 1 and 2.

The report presents the next steps required to implement and enforce the Order.

The key risks and the mitigations are presented at the end of the report along with the legal considerations associated with implementing the recommended variation to the Order.

**Recommendations**

1. That the Executive approve the variation of the existing town centre PSPO, as set in Appendices 1 and 2, including the extension of geographical area and variation in behaviours.
2. The Executive approves the proposed actions set out in Appendix 3 which aims to address the outstanding actions raised during the review of the PSPO.

**Reason(s) for Recommendation:**

The Council has demonstrated that it has undertaken the statutory process to be satisfied on reasonable grounds that:

- activities that have taken place have had a detrimental effect on the quality of life of those in the localities identified, or it is likely that activities will take place and that they will have a detrimental effect, and
- the effect or likely effect of these activities:
  - is, or is likely to be, persistent or continuing in nature,
  - is, or is likely to be, unreasonable, and
  - justifies the restrictions being imposed.

The PSPO review highlighted behaviours that are not appropriate for including in a PSPO and would be better addressed with other tools or existing powers.

The PSPO review presented evidence of a lack of awareness of the existing PSPO and an absence of a robust enforcement policy to respond appropriately to breaches.

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

No

**1. Purpose of Report**

- 1.1 The purpose of this report is to update the Executive on the PSPO review undertaken between March and December 2021, including the process followed and its findings, and to seek approval of the variation to the existing PSPO order, as set out in Appendices 1 and 2.
- 1.2 Additionally, this report informs the Executive of the other main findings of the review, outside the scope of a PSPO. The report seeks approval of the appropriateness of the work outlined in the action plan attached at Appendix 3 to address these issues.

**2. Strategic Priorities**

- 2.1 The review of the existing PSPO and the recommendations set out in this report support the Council's vision for 'strong and safe communities', 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.

### **3. 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 and the impact of that behaviour on communities and individuals.

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. There is no limit on the number of times a PSPO may be reviewed and renewed.

3.1.3 Orders can be introduced in a specific public area where the local authority is satisfied on reasonable grounds that certain conditions have been met. These are that the behaviours:

- 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.

3.1.4 As a minimum, the PSPO must set out:

- what the detrimental activities are;
- what is being prohibited and/or required, including any exemptions;
- the area covered;
- the consequences for breach, and
- the period for which it has effect.

#### **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 and reoffending, at a borough level. The SGP Plan 2021- 24 sets the framework for the SGP and is reviewed annually.

3.2.3 The SGP Annual Action Plan 2020-21 set out the actions agreed to achieve the priorities of the SGP as identified in the wider Plan. A review of the existing town centre PSPO with a view to considering the need for an additional or amended PSPO was included as an action for the Partnership. Completing this action is a priority for the Partnership in 21-22.

### 3.3 Existing PSPOs

- 3.3.1 The Council has two PSPOs in place, including a borough wide PSPO relating to dog fouling and a town centre PSPO relating to alcohol consumption. This report relates to the town centre PSPO.
- 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.

### 3.4 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 LGA has 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. Our Legal Services Team provide further advice and 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 recurring<sup>1</sup>.

### 3.5 Executive Advisory Board Report

- 3.5.1 At its meeting in August 2021 the Strategy and Resources Executive Advisory Board received a report detailing the process of the review as informed by the statutory and LGA guidance. The report highlighted that the process must be evidence-based with public consultation and include consideration of alternative tools for tackling ASB. More information on the use of the stakeholder focus group, data collection and analysis, and consultation can be [found within the report](#).

- 3.5.2 In summary, the process followed has included:

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<sup>1</sup> [Public spaces protection orders: guidance for councils \(local.gov.uk\)](#)

- a stakeholder focus group of internal teams, Experience Guildford and Surrey Police;
- data collection and analysis from a range of sources detailed in Appendix 4;
- stakeholder consultation including a survey sent to over 20 partner organisations to seek their views of ASB in Guildford (Appendix 5);
- an online public consultation that received over 600 responses (Appendix 6);
- enforcement planning, including working with the Council's Compliance Team to develop the draft corporate Enforcement Policy.

### 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 Consultations

#### *Stakeholders*

3.7.1 A range of stakeholders were 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*

3.7.2 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 and a public survey in spring 2021. The questions asked can be found in Appendix 5 and Appendix 6 of this report.

3.7.3 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*

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

### *Statutory partners*

- 3.7.5 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*

- 3.7.6 In January 2021, the Lead Councillor for Community Safety and the ward councillors for the existing town centre PSPO were invited to attend a presentation setting out our intentions to review the existing town centre PSPO. The presentation set out the role of the SGP and the process of reviewing a PSPO as described by the LGA.
- 3.7.7 Following the report to Executive Advisory Board in August 2021, the lead and ward councillors were updated on the review, its findings and subsequent recommendations and proposals in January 2022.

## **4. Summary of key evidence**

- 4.1 Appendix 4 provides reference to the evidence sources referred to in this section of the report including where applicable, the periods covered, the range, scope, purpose and context of the evidence.
- 4.2 Appendix 7 provides a summary report of the evidence and data analysis referred to in this section under the following aspects of the review:
- Response to the existing PSPO
  - Locations
  - Behaviours
- 4.3 Appendix 8 provides a map of the ICADs, demonstrated by red dots. The orange shapes on the map represent the locations of the 186 respondents that said the ASB was near where they live or their business premises.
- 4.4 Response to the existing PSPO
- 4.4.1 To assess the need for an additional or amended PSPO we reviewed the existing town centre PSPO. The impact and perception of the existing PSPO is important to understand, to be able to ascertain whether any proposed changes to the PSPO are the right measure and, if so, how it should be enforced and communicated.

### *Outcomes- existing PSPO*

- 4.3.2 The feedback from partners and results of the public survey demonstrated that the enforcement and awareness of the existing PSPO are key areas that need to be improved. In response, actions to review our corporate Enforcement Policy and to deliver a public communications campaign are included in the action plan set out in Appendix 3.

4.4.2 The newly established Compliance Team have engaged fully in this review and have progressed the review of our corporate Enforcement Policy in line with the new service structure and available resources. The revised draft policy and procedure sets out enforcement of PSPOs. This revised draft policy and the updated procedures will be consulted upon before being presented to the Executive for adoption later in the year.

#### 4.5 Locations

4.4.1 To assess the appropriateness of locations included in the existing PSPO boundary and the need for additional or amended locations, we reviewed data, perceptions and JAG referrals.

##### *Outcomes- Locations*

4.4.2 Joseph's Road, The Mount and Lido Road car park featured on the JAG agendas and have multiple ICADs recorded. Additionally, The Mount was raised consistently in the public survey results.

4.4.3 The Mount and Stoke Park both feature on the JAG, ICADs and the public survey.

4.4.4 The location evidence supports the extension of the existing PSPO to include The Mount and Stoke Park. The proximity to Stoke Park of Lido Road and Joseph's Road is significant. Extending the boundary to include those areas, will ensure clarity of boundaries and prevent displacement of behaviours.

4.4.4 The scope of additional evidence collected for this PSPO review was limited to the town centre area. The action plan in Appendix 3 contains further information on how the additional locations raised through the public survey and the review of JAG agendas will be taken forward.

#### 4.6 Behaviours

4.6.1 To assess the appropriateness of behaviours included in the existing PSPO (alcohol), and consider additional behaviours that could be introduced through an amendment or new PSPO, we needed to establish the type of behaviours causing ASB, the frequency and the impact of those behaviours.

##### *Outcomes- behaviours*

4.6.2 Consideration of behaviours to include in a PSPO must be given in the context of other tools that are available through legislation and of the impact and frequency.

4.6.3 Given the extensive number of ICADs categorised under 'rowdy and inconsiderate behaviour' and the fact that over 85% of public survey respondents who had directly experienced or witnessed ASB said this behaviour had affected them, 'rowdy and inconsiderate behaviour' is presented as persistent and detrimental.

- 4.6.4 Legal highs/psychoactive substances appeared as the fifth most common ASB according to partners whilst drugs/psychoactive substances ranked third on the public survey. Possession of psychoactive substances is not an offence, but the ASB associated with it can be argued to cause alarm and distress. Further consultation with Surrey Police suggests that including the possession and use of legal highs/psychoactive substances may prevent associated ASB.
- 4.6.5 Existing legislation is available to address illegal drug use, vandalism, criminal damage and graffiti. These behaviours do not require additional PSPO powers to enforce against them.
- 4.6.6 Alcohol-related ASB is already covered in the existing PSPO. As highlighted earlier in this report, increased awareness of the existing restrictions alongside a revised enforcement approach is necessary to continue to address this ASB.
- 4.6.7 Whilst littering was ranked the behaviour most affecting the public, there was limited supporting evidence from other sources. Littering is also already an offence under the Environmental Protection Act 1990. PSPO powers are not required to enforce against littering. Our Compliance Team has committed to undertaking more detailed work to understand the nature of the littering affecting Guildford, including the locations and the days and seasons. The Appendix 3 action plan contains more information on this work.

## **5. Next Steps**

- 5.1 In response to the evidence presented in this review, we have consulted with our Legal Services Team to draft an amended Order for Guildford Town (Appendices 1 and 2). This is the subject of the first recommendation of this report.
- 5.2 Publishing and adopting the amended Order.
  - 5.2.1 The draft wording of the Order has been published online for public comment. We have also targeted specific partners to understand if there are any discriminatory impacts on members of the public or groups that have not been anticipated. The feedback from this consultation has informed the equality impact assessment and the consideration of the Council's public sector equality duty.
- 5.3 Enforcing the PSPO
  - 5.3.1 Adoption of a PSPO is only part of the process to reduce the impact of ASB. Effective implementation and enforcement are key to the PSPO reducing the impact of ASB on residents and visitors. The SGP will monitor the implementation of the amended PSPO.
  - 5.3.2 Realistic expectations and resourcing for enforcement for the duration of a PSPO are critical to its successful implementation. The review of the corporate Enforcement Policy coinciding with the PSPO review presented an opportunity to ensure the Policy and the PSPO are aligned in terms of commitment of resources and scope of restrictions.

- 5.3.3 The draft Enforcement Policy will be consulted upon before being presented to the Executive for approval and includes a section on the PSPO, setting out the procedures for its enforcement. Appendix 3 contains an action on implementation of this Enforcement Policy.
- 5.3.4 During the review Surrey Police revised its processes for recording breaches of the existing PSPO. The result of this has been the effective and appropriate escalation of incidences to the Compliance Team as the responsible authority for the PSPO's enforcement, in line with the Council's Enforcement Policy.
- 5.3.5 The review also highlighted the need for a common and shared approach to the recording of PSPO breaches and enforcement action. Appendix 3 includes an action to develop an informal agreement between Surrey Police and Guildford Borough Council for recording breaches of the PSPO which will in turn, provide useful data at the next PSPO review.

#### 5.4 Additional outcomes of the review

- 5.3.1 The timing of the PSPO review following the impact of the pandemic and through the structural and resource changes in Future Guildford, has presented additional opportunities for:
- improved communication, engagement and partnership working
  - embedding the learning from the review
  - shared understanding of the ASB issues in Guildford
  - realistic and appropriate alignment to sustainable enforcement

## 6. Key Risks

- 6.1 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 minimum prescribed processes and in some cases exceeded them.
- 6.2 Recent case law provides insight into where authorities have been challenged on the content of PSPOs and other anti-social behaviour measures which have been deemed as discriminatory in nature and argued to contravene Convention rights (ECHR). To mitigate this risk, the recommendations for an amended PSPO target the behaviour itself causing distress and/or alarm. In addition, a full equality impact assessment (EQIA) has been completed to understand and consider any unintended consequences of any new restrictions, particularly on those with protected characteristics and vulnerable people. Through the EIA process we have also taken into account the Public Sector Equality Duty.
- 6.3 There is a risk of unmanaged expectations of enforcement from the public and stakeholders. Throughout the process, we have borne in mind the challenges to enforcement for specific behaviours and in the context of the resources available. The PSPO enforcement procedures are included within the recently reviewed draft Enforcement Policy. This Policy has been developed by the Compliance Team, ensuring it is based on the anticipated realities of the Council's resources.

The Policy has been produced in consultation with the PSPO Focus Group and aligned to the changes to the PSPO.

## **7. Financial Implications**

- 7.1 Adoption of the varied PSPO requires producing and displaying statutory notices detailing the conditions of the order. There is a financial cost to this which is within the remit of the Safer Guildford Partnership budget.

## **8. Legal Implications**

- 8.1 The legal foundation and criteria for the making of a PSPO are addressed within the body of the report. The relevant sections (Part 4, Chapter 2, sections 59 and 61) of the Anti-social Behaviour, Crime and Policing Act 2014 provides that a PSPO can only be made, extended and/or varied if certain statutory conditions are met.

- 8.2 The first condition is that:

1. activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or
2. it is likely that activities will be carried on in a public place within that area and that they will have such an effect.

- 8.3 The second condition is that the effect, or likely effect, of the activities:

1. is, or is likely to be, of a persistent or continuing nature,
2. is, or is likely to be, such as to make the activities unreasonable, and
3. justifies the restrictions imposed by the notice.

- 8.4 Section 59 of the Act requires that the Council *must be satisfied on reasonable grounds* that the conditions are met.

- 8.5 In terms of the nature of restrictions which can be imposed, section 59 also states that the only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order:

1. to prevent the detrimental effect referred to in subsection (2) from continuing, occurring, or recurring, or
2. to reduce that detrimental effect or to reduce the risk of its continuance, occurrence, or recurrence.

- 8.6 Case law confirms that:

- it is for local authorities, exercising a broad discretion and weighing up competing factors, to assess what amounts locally to detrimental effect
- it is enough if the behaviour has a persistent or continuing effect on 'persons in the area'
- there is no specific minimum burden of proof to satisfy in making a PSPO

- 8.7 A PSPO can impose both positive and negative obligations. Best practice is that a PSPO should not include behaviours which are already covered by other legislation or byelaws. It is also important to bear in mind that Section 70 of the 2014 Act provides that any byelaw creating an offence, which is also an activity regulated by PSPO will be of no effect in relation to the restricted area during the currency of the PSPO. The PSPO has been drafted so as not to impinge on any behaviours which are otherwise also criminal acts.
- 8.8 In addition, Section 72 of the 2014 Act requires Councils specifically to have regard to Articles 10 and 11 of the European Convention on Human Rights. Any PSPO and prohibitions / requirements contained within it must be reasonable and proportionate. This requirement has been considered and savings for these rights are contained within the draft wording.

#### *Challenge to PSPOs*

- 8.9 A PSPO can be challenged by a statutory High Court review process. An *interested person* (an individual who lives in or who regularly works in or visits the restricted area) may apply to the High Court to question its validity, or any variation. The grounds on which a challenge may be made are:
1. that the local authority did not have power to make the order or variation, or to include particular prohibitions or requirements imposed by the order / variation to order); and
  2. that a requirement under the PSPO provisions was not complied with.
- 8.10 There is a statutory time limit on making a challenge which is within the period of 6 weeks beginning with the date on which the order or variation is made.
- 8.11 It is believed that the Council has the power to order the prohibitions suggested for the proposed extension and variation to the PSPO and therefore the risk of any successful defence on this ground is not anticipated.
- 8.12 Legal Services have been engaged throughout the process of the review and have advised on the following legal aspects:
- the right to extend and vary
  - the need for evidence-based proposals
  - the consultation process and appropriate consultees
  - lawfully, appropriate behaviours to be included
  - behaviours that do not satisfy the legal test for inclusion
- 8.13 The report demonstrates that the legal requirement for evidence and a causal link to ASB have been fully understood by officers undertaking the review.

- 8.14 The proposed prohibitions for the extended and varied PSPO are lawfully included through a robust evidence base and balance of the community and the rights of persons affected.
- 8.15 Council must have due regard to the matters set out in section 149 of the Equality Act 2010, which imposes the Public Sector Equality Duty (PSED) in public authority decisions which might affect people with 'protected characteristics' (within the meaning of that expression in the 2010 Act).
- 8.16 Before approving the PSPO the decision-maker(s) must have due regard to the requirements of the PSED.
- 8.17 In conclusion, subject to consideration of the PSED, the Council is *satisfied on reasonable grounds* that the statutory conditions which permit the making of the PSPO are met.

## **9. Human Resource Implications**

- 8.1 A variation to the order places human resource requirements on officers, primarily in the Compliance Team. Both the Head of Environmental and Regulatory Services and the Compliance Lead have contributed to this review and the formulation of the variation. As a result, the variation has been developed in alignment with resources. The mitigation of risks associated with expectations on resources is discussed in section 6 of this report.

## **10. Equality and Diversity Implications**

- 10.1 An Equality Impact Assessment (EIA) has been completed, which encompasses the requirement to have regard to the Public Sector Equality Duty (PSED).
- 10.2 The implications of a variation to the PSPO and the potential unintended consequences of any new restrictions, particularly on those with protected characteristics and vulnerable people has been considered through the EIA, including consideration of the PSED with a view to ensuring that the aims of the PSED are taken into account. The results of this assessment will be considered and taken into account by the final decision-makers.

## **11. Climate Change/Sustainability Implications**

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

## **12. Conclusion**

- 12.1 In order to review the existing PSPO and consider the scope of any changes, we have followed the process set out in the legislative, statutory and LGA guidance.

- 12.2 The diligence applied to the process of this review ensures the recommended variation to the PSPO:
- remains robust to challenge,
  - meets the legal tests, and
  - has been developed with a managed approach to the associated risks
- 12.3 Section 4 of this report summarises the evidence outcomes which support the recommended variation to the PSPO as set out in Appendices 1 and 2.
- 12.4 The PSPO review has highlighted some additional actions which are addressed in the action plan set out in Appendix 3.

### **13. Appendices**

Appendix 1 – Drafted wording of amended PSPO

Appendix 2 – Proposed boundary map of amended PSPO

Appendix 3 – Action Plan

Appendix 4 – Evidence sources

Appendix 5 – Partner survey questions

Appendix 6 – Public survey questions

Appendix 7 – Summary report of the evidence and data analysis

Appendix 8 – Maps (ICADs and postcodes from ASB hotspots as highlighted in public survey)

Appendix 9 - Equality Impact Assessment and Public Sector Equality Duty