

<b>Cabinet</b>			
<b>19 May 2021</b>			
Psychoactive Substances - Public Space Protection Order			
<b>Purpose of the report</b>	To make a decision		
<b>Report Author</b>	Will Jack Community Safety Officer Martin Cole Neighbourhoods Manager Jackie Taylor Group Head of Neighbourhood Services		
<b>Cabinet Member</b>	Councillor Richard Barrett	<b>Confidential</b> No	
<b>Corporate Priority</b>	Clean and Safe Environment		
<b>Recommendations</b>	<p><b>Cabinet is asked to:</b></p> <p><b>(a) make a Public Space Protection Order (PSPO) relating to possession and use of nitrous oxide with the listed offences set out below, in accordance with the Anti-social Behaviour, Crime and Policing Act 2014</b></p> <p><b>(b) adopt the Fixed Penalty Notices for breaches of the Nitrous Oxide PSPO which currently stand at £100</b></p> <p><b>(c) delegate authority to the Group Head of Neighbourhood Services to issue Fixed Penalty Notices for breaches of the above PSPO</b></p>		
<b>Reason for Recommendation</b>	<p><b>To reduce the possession and use of psychoactive substances for recreational consumption</b></p> <p><b>To increase public health awareness of potentially dangerous substances</b></p> <p><b>To reduce dangerous littering (metal nitrous oxide canisters)</b></p> <p><b>To help provide a safe &amp; clean environment for all</b></p>		

## 1. Key issues

- 1.1 In the last 10 years there has been an increase in the use of Novel Psychoactive Substances (NPS) throughout the UK that has challenged the scope of the Misuse of Drugs Act 1971. The NPS products in a large majority of cases contain no standard controlled drugs in themselves and even the base materials used cannot be categorised as being controlled within the act. This leaves law enforcement agencies with a lack of legislative tools to effectively manage the problem which has been showing clear signs of a considerable increase over the past 12 months.

- 1.2 NPS are also commonly known as ‘legal highs’. They often contain one or more chemical substances which produce similar effects to illegal drugs. Nitrous oxide, or ‘laughing gas’, is a well-known example of an NPS. The use of Nitrous Oxide is usually evident in the form of multiple silver canisters often found in open spaces.
- 1.3 On 26th May 2016 the Psychoactive Substances Act became law. The Act stipulates that “it is an offence to produce, supply, offer to supply, possess with intent to supply, possess on custodial premises, import or export psychoactive substances; that is, any substance intended for human consumption that is capable of producing a psychoactive effect”. However, the act does not account for either possession or consumption of NPS.. This means Police Officers and Council Officers cannot stop such activity or behaviour as these are outside of the scope of the current legislation.
- 1.4 Recent evidence also indicates that there are public health implications regarding the misuse of NPS. This report includes references to recent public health studies that show the detrimental impact to health caused by NPS. Recent studies have also found that there is a lack of awareness of the negative health implications of NPS, especially nitrous oxide, amongst young people (**Appendix C**).
- 1.5 Under S.60 Anti-social Behaviour, Crime and Policing Act 2014, the proposed Psychoactive Substances – Public Space Protection Order (PSPO) has two additional schedules that seek to tackle the problem by providing authorised officers with the legislative tools to prosecute offenders for using psychoactive substances and furthermore seize the said substance.
- 1.6 The proposed Psychoactive Substances - Public Space Protection Order, attached as **Appendix A**, includes restrictions on the following:
  - a. Use of Psychoactive Substances
  - b. Possession of Psychoactive Substances
- 1.7 Prior to the introduction of a PSPO the Council is required to carry out a consultation and that consultation would be the same regardless of whether the Council was renewing an existing PSPO or the introduction of a new order.
- 1.8 A consultation on the PSPO proposals was carried out between 18<sup>th</sup> January and the 28<sup>th</sup> February 2021 inclusive. The consultation was widely published through the Council’s website, Twitter, Facebook, Instagram and press releases to the local media. The Consultation consisted of an online survey asking for the public’s view on the proposed restrictions.
- 1.9 In total, 796 people took part in the consultation. The level of response means that we can be confident that we have a good understanding of the possible impact of the PSPO proposals on the community as well as residents in general. The results show, there was strong support for the PSPO proposals. The full summary of responses from the public can be found at **Appendix B**.
- 1.10 Participants were asked whether they agreed or disagreed with the proposed PSPO for Psychoactive Substances and the results were as follows-
  - a. In favour – 97.3% - 775 responses.
  - b. Against – 1.6% - 13 responses

c. Didn't know – 1% - 8 responses

- 1.11 The proposed geographical area to be covered is shown in the proposed order at **Appendix A, Schedule 1**.
- 1.12 Participants were then asked whether they believed that nitrous oxide was a problem within the borough. In total 97% stated that it was.
- 1.13 Participants were then asked how they had been affected. Responses varied and there were reports of psychoactive substances being linked to physical abuse, littering, intimidation, noise, public urination, verbal abuse and aggressive behaviour. (**Appendix B**).
- 1.14 Participants were then asked how often they were affected by the use of psychoactive substances. The responses varied from 'never' to 'daily'. The highest proportions were shown as 'a few times a month' at 30% and 'Two to three times a week' at 21%. (**Appendix B**)
- 1.15 Lastly, participants were invited to share their experiences. The responses were interesting in relation to the geographical areas within the borough that were adversely affected by the problem. A full list of the areas affected are highlighted in **Appendix D**.

## **2. Options analysis and proposal**

- 2.1 All of proposals that have been put forward seek to ensure that Spelthorne Borough is a welcoming and safe location for all residents and visitors.
- 2.2 Psychoactive substance misuse continues to be an issue to residents and the Council receives a large number of complaints during the course of a year, which are dealt with by members of the JET and Community Safety Teams.  
  
On 16<sup>th</sup> June 2020 the Community Safety Unit carried out a social media campaign with the intention of obtaining an 'Intelligence Snapshot' of the current problem. This pre-dated the public consultation and revealed the following information.
  - a. 130 reports of psychoactive substance misuse
  - b. 40 locations identified throughout Spelthorne Borough
  - c. Temporal analysis found that the highest offending times were between 1800hrs and 0600hrs
  - d. Most offences were witnessed on a Friday Night
- 2.3 One of the issues with enforcement is that there is a tendency to be reactive to events and situations which does not capture the full extent of what is happening in the Borough in relation to psychoactive substances control. The Council (and police) need to be proactive in its approach to psychoactive substance misuse.
- 2.4 The proposed measures will hopefully go some way to address the issues identified and make people seriously think twice about their actions or risk the real possibility of prosecution or being issued with a fixed penalty notice as outlined below.

- 2.5 Section 67 of the Anti-social Behaviour, Crime and Policing Act 2014 makes it an offence for a person without reasonable excuse-
- a. To do anything that the person is prohibited from doing by a public space protection order, or
  - b. To fail to comply with a requirement to which the person is subject to under a public space protection order.
  - c. A person guilty of an offence under this section is liable to a fine not exceeding level 3 on the standard scale currently £1000.
- 2.6 Section 68 provides the power for a constable or authorised person to issue a fixed penalty notice to anyone whom he or she has reason to believe has committed an offence under s.63 or s.67 in relation to a public space protection order. The current fixed penalty amount is £100.
- 2.7 Section 67 is reproduced above and s.63 deals specifically with the consumption of alcohol in breach of prohibition of an order, so not relevant in these circumstances.
- 2.8 There is nothing within these proposals that indicates any risk. All requisite signs will be affixed to entrances and/or exit gates/fences or securely attached to purpose- built poles.

### **3. Financial implications**

- 3.1 The main financial implication in relation to the making of a public space protection order is that every identified area within the order must have the correct signage placed at the location which would also include strategically placed larger signs covering the highway, the estimated total costs for the signs is £10,000. This can be funded from the Community Safety Budget.
- 3.2 There would also need to be a communications campaign which would include the production of a number of posters and flyers that could be delivered to strategic points in the borough as well as the Council Community noticeboards, there would be some cost for production. There will also be some material aimed at raising awareness among young people at schools and youth clubs.
- 3.3 There would be no resource increase for the JET Team or the Community Safety Team who would continue enforcing within their existing areas and patrols.
- 3.4 There is of course the possibility of a small increase in revenue depending on the number of fixed penalty notices issued for non-compliance.

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

- 4.1 The proposals detailed are unlikely to impact sustainability and/or climate change issues.

#### **5. Timetable for implementation**

- 5.1 If Cabinet and Council approval is granted, the implementation and enforcement of the Psychoactive Substances - Public Space Protection Order will proceed as follows;
- a. Cabinet 19 May 2021
  - b. Publish Notice of making the Order May 2021
  - c. Start of Order June 2021

#### **Background papers:**

None

#### **Appendices:**

Appendix A – Draft Public Spaces Protection Order (Psychoactive Substances)  
Appendix A – Schedule 1  
Appendix B – Consultation Public Responses  
Appendix C – Medical Considerations  
Appendix D – Geographical extent of the problem