

Neighbourhood Services and Enforcement Committee



21 March 2024

Title	<i>Misuse of Public Land Public Space Protection Order (PSPO)</i>
Purpose of the report	To make a decision
Report Author	Tristan Gardner Neighbourhood Services
Ward(s) Affected	All Wards
Exempt	No
Exemption Reason	N/A
Corporate Priority	Environment
Recommendations	<p>Committee is asked to:</p> <p>(a) To make a Public Space Protection Order (PSPO) relating to misuse of public land in accordance with section 59 of the Anti-social Behaviour, Crime and Policing Act 2015.</p> <p>(b) Adopt the Fixed Penalty Notices for breaches of the misuse of public land PSPO which currently stand at £100.</p> <p>(c) Delegate authority to the Group Head Neighbourhood Services to issue Fixed Penalty Notices for breaches of the PSPO misuse of public land.</p>
Reason for Recommendation	To reduce levels of Anti-social behaviour caused as a result of the misuse of public land To create high levels of enjoyment and provide a safe environment for all users of Spelthorne Borough's parks and open spaces. To limit the issues caused by taxi drivers including littering and public urination/defecation.

1. Summary of the report

What is the situation	Why we want to do something
<ul style="list-style-type: none"> Anti-social behaviour caused by the irresponsible use of tents and barbecues on public land Anti-social behaviour caused by taxi and private hire drivers parking in communities close to Heathrow 	<ul style="list-style-type: none"> To ensure the Council is able to respond effectively to reports of anti-social behaviour

<p>Airport and littering/urinating/defecating in public.</p>	<ul style="list-style-type: none"> To maintain public confidence in the Council that their complaints will be dealt with
<p>This is what we want to do about it</p>	<p>These are the next steps</p>
<ul style="list-style-type: none"> Create a new Public Space Protection Order as follows: Ban the erection of any tent or similar structure on public land in the Borough of Spelthorne Ban the lighting of fires or use of any equipment utilising a naked flame within the Borough of Spelthorne Set up an exclusion area in Stanwell Moor and parts of Stanwell where no taxi or private hire vehicle will be allowed to park. 	<ul style="list-style-type: none"> When the PSPO is approved, we will launch a communications strategy to make the general public aware of the PSPO. Ensure requisite signage is procured and installed in appropriate places Commence education and enforcement once order is in place, making use of initiatives such as Partnership Action Days (PADs)

1.1 The proposed new Public Space Protection Order aims to deal with three main issues – the anti-social and irresponsible use of tents and barbecues on public land, and the anti-social behaviour of taxi and private hire vehicle drivers parking in communities close to Heathrow Airport. The proposed PSPO will allow JET officers to deal effectively with reported issues which include littering, public urination and defecation and damage to Council property.

2. Key issues

2.1 A Public Space Protection Order (PSPO) is made under Section 59 of the Anti-social Behaviour, Crime and Policing Act 2015. As part of the process when considering whether to make a new PSPO, two of the following conditions need to be met:

- a. 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
- 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 and
- c. Is or is likely to be, of a persistent or continuing nature,
- d. Is or is likely to be, such as to make the activities unreasonable, and
- e. Justifies the restrictions imposed by the notice.

2.2 The proposed restrictions are intended to combat the specific harm caused by the anti-social behaviour. The prohibition on tents and similar structures is intended to limit the littering and public urination and defecation caused by persons using tents on public land, during the day and night. The prohibition on barbecues and fires will limit the risk of fires growing out of control and

damage being caused to Council property. The exclusion area where no taxi, or private hire vehicle will be allowed to park is intended to limit the issues caused by some of the occupants including littering and public urination/defecation.

- 2.3 If adopted, the proposed PSPO would run for an initial three year period, after which time it would be formally reviewed.
- 2.4 The proposed Misuse of Public Land PSPO, attached as **Appendix A**, includes restrictions on the following:
 - a. Tents, bivouacs and similar structures
 - b. Fires, barbecues and cooking equipment using naked flames
 - c. Taxis and private hire vehicles
- 2.5 Prior to the introduction of a PSPO the Council is required to conduct a public consultation.
- 2.6 A consultation on the above PSPO proposals was conducted between 2 January and 31 January 2024 inclusive.
- 2.7 The consultation was widely published through the Council's website, Twitter, Facebook, press releases to local media, posters, and emails to relevant stakeholders – Surrey Police, the Office of the Police and Crime Commissioner, Surrey Fire and Rescue Service, Surrey County Council Highways, Natural England, the Licensed Private Hire Car Association, the National Private Hire and Taxi Association, Stanwell Moor Residents' Association, Heathrow, Staines Moor Masters and Transport For London.
- 2.8 The Consultation consisted of an online survey asking for the public's view on the proposed restrictions (the survey in full is shown at **Appendix B**).
- 2.9 In total, 349 people and 3 organisations, Surrey Police, Heathrow and Staines Moor Masters, 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 local community.
- 2.10 The responses from Surrey Police and Staines Moor Masters were supportive of the proposals. As the results show, there was strong support for the PSPO proposals. The full summary of responses from the public can be found at **Appendix C**. Heathrow's response to the consultation can be found in **Appendix D**.
- 2.11 Participants were asked whether they agreed or disagreed with the proposal to ban the erection of tents, bivouacs or similar structures on the parks and open spaces, Sites of Special Scientific Interest (SSSIs) of Dumsey Meadow and Shortwood Common, and Staines Moor. 233 respondents in total either strongly or fairly agreed with the proposal (67%).
- 2.12 In the comment section for this part of the PSPO, two main concerns were raised by respondents. These were the potential effect on the homeless, and the use of sun shelters to protect young children.
- 2.13 Spelthorne Borough Council are committed to assisting rough sleepers wherever possible, and runs a purpose-built facility to provide emergency accommodation. In line with this policy, enforcement action will not be undertaken against rough sleepers in tents unless all offers of assistance have been refused, and reports of anti-social behaviour are received.

Additionally, the Council must comply with Home Office guidance in this regard and have regard to its Public Sector Equality Duty.

- 2.14 Officers will always use discretion when enforcing any part of the order. It is unlikely that enforcement action would be taken against a parent seeking to provide shelter from the sun for their child, unless reports of associated anti-social behaviour were received.
- 2.15 Participants were asked whether they agreed or disagreed with the proposal to ban the use of any device for cooking that utilises a naked flame on the parks and open spaces, SSSIs of Dumsey Meadow and Shortwood Common, and Staines Moor. 255 respondents in total either strongly or fairly agreed with the proposal (73%).
- 2.16 In the comment section for this part of the PSPO, the question was raised as to why the Council did not provide dedicated barbecue areas within certain parks. This point has been raised with the Parks Manager, who advised that these facilities were previously available however were regularly misused, with hot coals being thrown into bushes and grass, and food being left behind, creating a risk of vermin issues and posing risks to wildlife through eating potentially dangerous items. The designated areas were discontinued and the equipment removed for these reasons.
- 2.17 An exemption for both the erection of tents and the use of barbecues will be in place as long as the owner, occupier or other person or authority having control of the land has given consent to the activity taking place. This exemption would allow the various fairs, fetes and other events to continue as normal, as these will be pre-arranged and approved with the Council.
- 2.18 Participants were asked whether they agreed or disagreed with the proposal to create an exclusion area encompassing Stanwell Moor and parts of Stanwell where no taxi, private hire vehicle or other vehicle carrying paying passengers would be allowed to wait. 281 respondents in total either strongly or fairly agreed with the proposal (80%).
- 2.19 Exemptions will exist under this section to allow the restricted vehicles to wait in the area if picking up or dropping off a fare from within the exclusion area, if the person in charge of the vehicle resides within the exclusion area or if the company operating the vehicle is based within the exclusion area. This will allow the individuals and businesses affected by these restrictions to continue operating, whilst reducing the impact to local communities.

3. Options analysis and proposal

- 3.1 The following decision options are available for consideration by the Committee:

Option 1 Preferred option

The Neighbourhood Services and Enforcement Committee agree to make the order, which will allow the JET team and Surrey Police to deal with complaints regarding the anti-social and irresponsible use of tents and barbecues on public land, and the anti-social behaviour caused by taxi and private hire vehicles.

Option 2

The Committee do not agree to make the order which would mean that no additional powers would be available to Spelthorne Borough Council officers to deal with the described issues.

Option 1 is recommended for the following reasons:

The proposed PSPO seeks to protect the community from the detrimental effect on the quality of life of those in the locality of the continuing unreasonable behaviours referred to within the order and will give the JET team and Surrey Police further powers to deal with the highlighted issues.

- 3.2 All of proposals that have been put forward seek to ensure that the Council's parks, open spaces and communities are welcoming and safe for all residents, visitors, and other users.
- 3.3 Spelthorne Borough Council's byelaws currently prohibit the erection of tents and the lighting of fires in the parks and open spaces covered by the byelaws. The options for enforcement for a breach of the byelaws are limited to either a warning, or prosecution for the offence, which carries a maximum penalty of £500. Because the legal cost to prosecute would likely outweigh the likely return, this is not viewed as a proportionate response.
- 3.4 Data concerning the number of incidents reported to the Council is not readily available. This is primarily because there is not a specific reporting form for any of the issues described.
- 3.5 During the summer months, JET officers frequently come across persons in tents, and the use of barbecues, as well as mess and damage left behind following their departure. Reports have been received of persons staying within tents using areas of the park as a toilet. This has led to the Council having to employ a specialist cleaning company on several occasions, costing over £1000 per clean.
- 3.6 The use of barbecues and other devices using naked flames also causes a number of issues. Damage has been caused to Council park furniture, notably picnic benches, where disposable barbecues have been used on the bench and melted the surface. Numerous areas of burned grass have been found in parks where the barbecue has been used directly on the ground. In some of the parks and open spaces, areas of grass are allowed to grow to encourage the recovery of wildlife, this carries an additional risk as a single stray spark carries the risk of causing a potentially devastating fire.
- 3.7 Data was obtained from Surrey County Council following a Freedom of Information Act request on the number of incidents attended by Surrey Fire and Rescue Service involving a barbecue between the months of April and September in 2022 and 2023. The data provided shows that SFRS attended 12 reports in this period within Spelthorne.
- 3.8 JET officers currently act proactively to ensure compliance with the Council byelaws. Engagement and education is regularly carried out through the summer months, however as detailed above, enforcement options are severely limited.
- 3.9 Photographs have been taken by JET officers of these issues, a selection of which are shown in **Appendix E**
- 3.10 The parking of taxis and private hire vehicles within the communities of Stanwell and Stanwell Moor has long been an issue, and previous attempts

have been made to resolve this. These include Surrey County Council installing double yellow lines at various points, which only served to push the drivers further into residential streets of these areas, and a multi-agency approach that resulted in Heathrow setting up an Authorised Vehicle Area for private hire vehicles, which is unfortunately underused.

- 3.11 The drivers who park within the area will often use the time they are waiting to clean out their vehicles, often depositing litter on the verges and in the hedgerows where they have parked. Reports have also been received that drivers will use the foliage to relieve themselves, as well as urinating in bottles or other containers and disposing of these in the bushes.
- 3.12 The operators of these vehicles have shown little regard for the communities they are affecting by their behaviour. It is notable that there are various facilities local to the area, including Tesco Extra on Town Lane, McDonald's on London Road, Esso on the Southern Perimeter Road and a number of public houses within the villages which have toilet facilities available, however despite this, drivers seemingly prefer to urinate and occasionally defecate in bushes, hedgerows and on the street.
- 3.13 Information has been provided by officers of the Stanwell Moor Residents Association in relation to the issues faced by the community, as well as from community groups such as Spelthorne Litter Pickers. Several comments have also been made on the consultation, which detail the daily issues faced by the residents. A selection of the photographs and comments provided by residents are shown in **Appendix F**.
- 3.14 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 these issues. The Council needs to be proactive in its approach.
- 3.15 The additional listed proposals over and above the current byelaw restrictions will be a useful tool for Council officers to deal with wider ASB issues in a more proactive manner. Most of these issues are being caused by a minority of irresponsible park users and taxi and private hire drivers.
- 3.16 The proposed measures will hopefully go some way to address all 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.
- 3.17 Section 67 of the Act 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.
- 3.18 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.

- 3.19 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.

There is nothing within these proposals that indicates any risk. All requisite signs will be prominently displayed and securely attached to street furniture or poles within parks and open spaces

4. Financial management comments

- 4.1 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 £3800. This cost will be met within existing budgets
- 4.2 The JET team would continue to enforce all PSPOs within their patrol areas.
- 4.3 There is the possibility of a small increase in revenue depending on the number of fixed penalty notices issued for non-compliance. The potential increase is difficult to quantify at this stage, as it is unknown what level of compliance will be achieved once the PSPO is in force.

5. Risk management comments

- 5.1 There are no specific risks associated with this PSPO
- 5.2 During any enforcement activity, there is a risk to the officers involved. This risk is mitigated by full risk assessments detailing necessary training and Personal Protective Equipment (PPE) to be carried by officers. These risk assessments have been approved by Health and Safety.

6. Procurement comments

- 6.1 The new signage will be procured by officers within Neighbourhood Services and will comply with contract standing orders.

7. Legal comments

- 7.1 The test for making a PSPO is set out in section 59 of the Anti-social Behaviour, Crime and Policing Act 2014, the "ASBCPA 2014". The Council may make a PSPO if satisfied on reasonable grounds that 2 conditions are met:
- (i) activities carried out in a public place are having, have had or it is likely to have a detrimental effect on the quality of life of those in the locality, and
 - (ii) those activities are or are likely to be (a) persistent or of a continuing nature (b) is or is likely to be such as to make the activities unreasonable, and (c) justify the restrictions imposed by the notice. The only prohibitions or requirements that may be imposed are ones that are reasonable to prevent or reduce the detrimental effect of the activity.
- 7.2 A prohibition of a PSPO may apply:
- (a) to all persons, or only to persons in specified categories or to all persons except those in specified categories;

(b) at all times, or only at specified times, or at all times except those specified; and/or

(c) in all circumstances, or only in specified circumstances, or in all circumstances except those specified (s59 (6) ASBCPA 2014)

- 7.3 In deciding whether to make a PSPO and formulating its contents, local authorities must (a) consult (b) publicise; and (c) notify.
- 7.4 Local authorities making a PSPO must have particular regard to the rights of freedom of expression and freedom of assembly safeguarded by articles 10 and 11 of the European Convention on Human Rights (s.72(1) ASBCPA 2014). Article 8 rights to privacy or family life may also be relevant in terms of protecting the rights of those affected by anti-social behaviour.
- 7.5 In seeking to strike a fair balance between the interests of the community on the one hand, and the rights of the persons affected on the other, The Council must ensure that PSPOs are used proportionately and are not targeted at minority or vulnerable groups. This is supported by Home Office guidance which explicitly states that PSPOs should not be used to target people based solely on the fact that they are homeless or rough sleeping.

8. Other considerations

- 8.1 There are no other matters to be considered arising from this report.

9. Equality and Diversity

- 9.1 The Council aims to be consistent and even-handed in all regards. The taking of any enforcement action to deal with members of the public for offences under the Misuse of Public Land PSPO is not intended to have either a positive or negative impact upon equality or diversity or apply differently to any group.
- 9.2 The Council has a public sector equality duty under the Equalities Act 2010 to have due regard to tackle discrimination and victimisation of persons that share the characteristics protected under s.4 of the Act. An Equality Impact Assessment has been completed and is shown in **Appendix G**.

10. Sustainability/Climate Change Implications

- 10.1 A reduction in litter will have a positive impact on climate change.

11. Timetable for implementation

- 11.1 If the committee agree to adopt the Misuse of Public Land PSPO and make the order, it will be uploaded to the Council website as soon as possible and published on all social media channels. Once the required signage has been procured and is installed, the PSPO will commence for an initial 3 year period.

12. Contact

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Neighbourhood Services

Background papers:

Anti-social behaviour, Crime and Policing Act 2014, Chapter 2 Public Space Protection Orders -

<https://www.legislation.gov.uk/ukpga/2014/12/part/4/chapter/2/enacted>

Equalities Act 2010

Human Rights Act 1998

Appendices:

Appendix A – Proposed Misuse of Public Land PSPO

Appendix B – Consultation Survey Questions

Appendix C – Consultation Summary of Responses

Appendix D – Response to consultation by Heathrow PLC

Appendix E – Photographs of tents and barbecues on public land

Appendix F – Photographs and comments from residents of Stanwell and Stanwell Moor concerning taxi and private hire vehicles.

Appendix G – Equality Impact Assessment