

Report for: Cabinet

Date of Meeting:	27 May 2021
Subject:	Harrow Town Centre Public Spaces Protection Order
Key Decision:	Yes
Responsible Officer:	Mark Billington, Acting Corporate Director (Community)
Portfolio Holder:	Councillor Peymana Assad, Portfolio Holder for Community Cohesion, Crime and Enforcement
Exempt:	No
Decision subject to Call-in:	Yes
Wards affected:	All
Enclosures:	Appendix A – Consultation Responses Appendix B – Consultation written responses Appendix C – Draft Town Centre PSPO Appendix D – Equality Impact Assessment (EQIA)

Section 1 – Summary and Recommendations

This report proposes to introduce a Public Spaces Protection Order (PSPO) to cover Harrow Town Centre, as set out under the Anti-Social Behaviour, Crime and Policing Act 2014, to address matters of Anti-Social Behaviour (defined as activities that have a detrimental effect on the quality of life to those in the locality)

Recommendations:

Cabinet is asked to:

1. Consider and approve the proposed Public Spaces Protection Order (Harrow Town Centre) (Harrow Council) 2021

Reason: (For recommendation)

The PSPO would allow direct action against low level anti-social behaviour, with the benefit of being able to issue fixed penalty notices for breaches, if appropriate.

Section 2 – Report

Introduction

Harrow Council is committed to improving the environment, maintaining low crime and improving community safety. Directly relating to this commitment is the Council's action to address anti-social behaviour and related complaints in its main urban centre.

In March 2014, the Anti-Social Behaviour, Crime and Policing Act 2014 came into force, with commencement of various provisions staggered. One of the aims of the legislation is to enable intervention before something becomes a bigger problem.

Included within the legislation is the power to put in place a Public Spaces Protection Order, details of which are provided below. In November 2015, Cabinet granted the Corporate Director of Community authority to approve any PSPO affecting up to three bordering wards following consultation with the Portfolio Holder¹. Proposed PSPOs falling outside of this limitation need Cabinet approval.

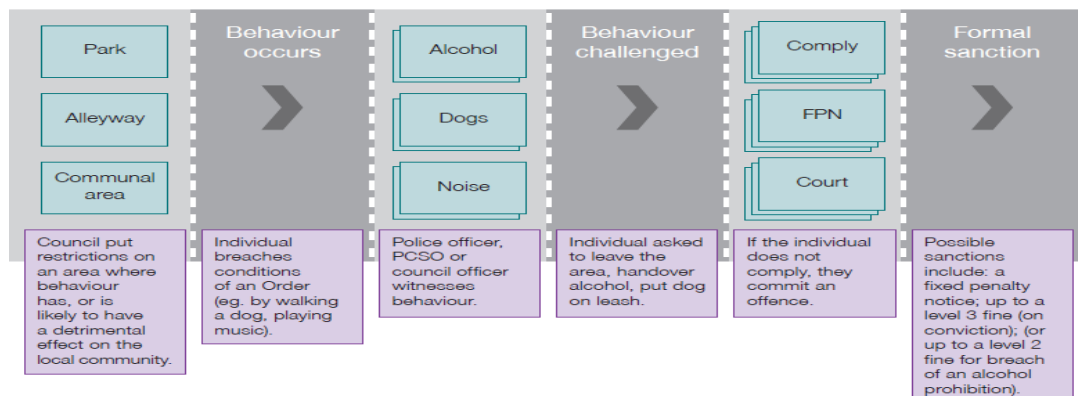
In this case, while the PSPO could in theory be approved by the Corporate Director, it is considered preferable for Cabinet to consider it instead given the location of it and the effect it will have on people from various parts of the borough visiting the town centre.

Public Spaces Protection Orders

Public Spaces Protection Orders provide a power to deal with particular nuisance or problems that directly affect an area.

An overview of the process is shown below, taken directly from the Official Guidance that accompanies the legislation.

Public spaces protection order



¹ <http://moderngov:8080/ieListDocuments.aspx?Cid=249&Mid=62618&Ver=4>

Harrow Town Centre PSPO

What are the activities that the proposed PSPO seeks to address?

It will introduce **new** powers around the following:

- Amplification of music and voice
- Financial Agreements (people trying to get visitors to sign up to them)
- Placing of tables, chairs, stands and other fixings / furniture on the street (not associated with a business, which is covered under other licensing)
- Feeding of birds and vermin
- Distribution of leaflets
- Illegal street trading (not associated with a business which is covered under other licensing)

Some other controls, as can be seen in the consultation document in Appendix B, were also consulted on but removed from this final draft order as these are now covered by a Borough Wide Public Spaces Protection Order that came into place on 1st February 2021. This includes:

- Alcohol consumption in public places
- Urinating, defecating and spitting

A prohibition for begging in the designated area was also consulted upon. However, on careful consideration, and taking into account other Councils who have sought this approach, this aspect of the proposed PSPO will not be pursued at this stage. It is felt that working with the Homeless Strategy Group and putting in place a clear strategy that seeks to engage and help genuine homeless persons would be a better approach, of which the aspect of begging can be considered as part of this.

For those who are not homeless and beg for other reasons, the Police have powers to deal with begging as well as powers for the Police and Local Authority under the ASB, Crime and Policing Act 2014 (matters of nuisance, harassment and annoyance).

All the proposed new powers, if introduced, will be subject to a communications campaign to raise awareness and aid in educating all, as the intention is to change behaviour and lead to compliance, rather than seeking continual enforcement.

Amplification of Music and Voice

While it is accepted that busking can add positively to the environment, it must be in a controlled manner and not to cause nuisance. Additionally, the town centre is subject to frequent occurrences of person(s) / groups using amplifiers to project their voices for different reasons. In many cases, it has led to a number of different amplifiers being used, competing with each other and causing nuisance. Harrow Council is not against free speech but needs to find a balance with the rights and enjoyment of others.

In relation to busking, a buskers pilot scheme has been implemented for 6 months from December 2020 to be able to enjoy busking for all and reduce unnecessary disturbance to others. For example, the Council has received complaints of people with amplifiers sat outside a business, playing very loud music that affects those within the business both customers and staff. This appears to be a common problem being faced by town centres now, with others taking a similar approach for example Hammersmith & Fulham² If this busking pilot proves successful, then it will go to Cabinet for final sign off. Information can be found at <https://www.harrow.gov.uk/licences/busking>

Financial Agreements

Harrow Council works with various businesses and charities to allow them to operate in the town centre, to get donations and sign people up to direct debits. This is mainly done through informal and / or verbal agreements. Unfortunately, it is an increasing case that more and more of this type of activity is occurring, leading to people walking through the town centre being accosted more often and leading to complaints. Again, this is not to stop such activities but to control them so they can take place but without causing nuisance.

Placing of tables, stands, and other furniture / fixings on the street

Harrow Council has an obligation to keep its streets free from unnecessary obstructions, especially by those who do so without permission or consideration. This would make it an offence to place such items without permission from the Council and partners where there is a need, and to ensure it is done in a safe way, and not just be placed wherever convenient for the trader as is the case now. Harrow Council is witnessing more and more people coming into the town centre and setting up stalls for leaflets, goods or other reasons without any due consideration and carried out in a way that does not benefit the area.

This is different to normal street trading, which has a licensing process in place but concentrates on the sale of goods but would not necessarily cover the setting up of furniture for the purposes other than sale of goods.

Feeding of birds and vermin

While Harrow Council understands that for some people, it is nice to feed the birds or it is carried out for a religious purpose, it has to balance this against the fact that such activities encourages both birds (e.g. pigeons) and vermin (e.g. rats). These then cause damage to the area, for example pigeons though their excrement that can cause damage to buildings and pavements and costs thousands of pounds to clean every year, as well as present a public health risk. People can safely feed birds elsewhere away from the urban centre without such an adverse effect on others, and therefore we are seeking to restrict this activity in the town centre

² <https://www.lbhf.gov.uk/articles/news/2019/07/amplifiers-removed-hammersmith-town-centre-make-it-safer-and-more-pleasant>

Distribution of leaflets

This is linked to both the placing of furniture as well as financial arrangements, in that if done correctly and with permission they can happen in a safe manner without nuisance or annoyance. But unfortunately, Harrow is witnessing more and more people turning up and handing out leaflets for various reasons, leading to increased litter in an area as well as complaints about nuisance. This control will let a better management of use of the town centre to ensure there are not a barrage of people handing out leaflets, and leading to nuisance from those visiting or working there.

Illegal street trading

Harrow Town Centre has seen an increase in people trying to manipulate the residents and visitors of Harrow by selling unsafe, counterfeit or unauthorised products, for instance "Perfume" that is fake and contains many different liquids from water to bleach. Not only does it endanger the customer, but it also directly affects the trade of local compliant businesses.

While street trading licensing is in place across the Borough, this is related to fixed pitches (e.g. outside shops or market stalls) and can cause a current grey area around transient sellers. This aspect removes that grey area.

What are the requirements for making a PSPO?

The ASB, Crime and Policing Act 2014, Section 59 sets out the conditions that need to be met for a PSPO to be made.

The first condition is that:

- (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 the 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

The only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order:

- (a) To prevent the detrimental effect referred to in the first condition above
- (b) To reduce the detrimental effect or to reduce the risk of its continuance, occurrence or recurrence

How will the PSPO be enforced?

Failure to comply with a PSPO is an offence and can lead to a summary conviction and fine not exceeding level 3 on the standard scale. In February

2015, the Council agreed that a Fixed Penalty (FPN) of £100 could be applied to any non-compliance with a PSPO if appropriate, rather than a prosecution. However, for repeat offenders or in cases where it is believed the issuing of a FPN would not deter future action, or the offence is deemed or if the offender fails to pay the FPN, a prosecution may be taken. A person authorised by the Council, a Police Officer and / or a Police Community Support Officer (PCSO) if authorised can enforce the PSPO.

How will the PSPO be advertised?

If the Order is put in place then information will go on the Council Website, using various forms of media, signage will be erected in relevant areas and through use of other methods to maximise publicity of the Order. This will include working with partners.

How long will the PSPO last?

Any PSPO can last a maximum of 3 years, although it can be extended if necessary, and/or reviewed (and varied or discharged) during the course of its life. In this case, the proposed PSPO is sought for 3 years.

Will it work?

The previous use of a Borough Wide PSPO showed that it was an efficient and effective means to control issues in the Borough, streamlining the approach to them and giving clear requirements and enforcement action. Therefore, this approach does work but will be kept under review to make sure it is effective.

Options considered

In relation to the recommendation in this report, the main options include:

1. Cabinet approve the Public Spaces Protection Order (Harrow Town Centre) (Harrow Council) 2021 (as drafted in Appendix C)

This would result in all aspects of the proposed PSPO coming into force for a duration of 3 years.

This is the preferred option and is supported by the consultations carried out as set out in Appendix to this report.

2. Cabinet approve some aspects of the Public Spaces Protection Order (Harrow Town Centre) (Harrow Council) 2021 (as drafted in Appendix C)

Where Cabinet does not agree with all the proposals, these can be removed or amended. Additionally, Cabinet can choose a shorter period for the PSPO.

3. Cabinet do not approve the Public Spaces Protection Order (as drafted in Appendix C)

By choosing this option, the Council will rely on current provisions, if any, to seek to achieve the same outcomes. However, there are inadequate or no provisions for dealing with the other issues that the proposed PSPO seeks to tackle, or grey areas around what is allowed and not. For example, with the use of amplifiers, reliance would have to be on other ASB powers, which has already been challenged by some when raised with them.

3. Community Consultation

The Anti-Social Behaviour, Crime and Policing Act 2014 and the '*Reform of anti-social behaviour powers Statutory guidance for frontline professionals*' sets out the requirements for consultation around a PSPO.

Before making a PSPO, the council must consult with the Chief Officer of Police, and the local police body, which was done in relation to the proposed PSPO and support was given (see consultation responses). Additionally, Ward Councillors were also kept informed of the intent to introduce the PSPO and provided support around this.

The council must also consult whatever community representatives they think appropriate, including charities that the Council works with in terms of homelessness. In this case, a consultation took place on the Council website from 23rd November 2020 to 15th January 2021, to seek maximum coverage and so that anyone could comment on the proposal. Communications took place around this to advertise the consultation, including the use of social media, local newspapers³ and also public notices put up in and around Harrow Town Centre. Additionally, Harrow Business Improvement District (BID) were actively involved in the advertising and promotion of the consultation including contacting businesses in their BID as well as on their website⁴

Appendix B provides the feedback from the consultation. As can be seen, there is wide support for all aspects of the proposed PSPO. The results regarding support for each proposal is seen below:

	For	Against	Don't Know
Amplification of music and voice	77%	13%	10%
Financial Agreements	88%	7%	5%
Placing of tables, stands and other items	80%	10%	10%
Feeding birds and vermin	87%	9%	4%
Distribution of leaflets	78%	12%	10%
Illegal Street Trading	97%	2%	1%

³ <https://www.harrowtowncentre.co.uk/news/article-details/help-us-remove-unwanted-activities-from-the-town-centre/13010/>

⁴ <https://www.halbid.co.uk/news/help-us-remove-unwanted-activities-from-the-town-centre/>

The main issues raised with amplification was concern that this would stop good busking taking place in the town centre. This is addressed by the fact a busking pilot is in place for this area to ensure busking continues but in a controlled way. The proposed PSPO does not seek to stop busking altogether. Additionally, it only affects the town centre and provides ample other venues for busking to take place with amplification in the Borough as long as not causing nuisance.

With distribution of leaflets, the main complaint was the amount of times people are approached by those giving out leaflets and also the litter generated. Again, the PSPO would allow permitted distribution, but stop the random acts taking place that have no controls over them.

Implications of the Recommendation

Resources

The resourcing of such a PSPO was an area of concern highlighted in the consultation feedback.

The management and enforcement of the PSPO will be through current staffing levels using on street enforcement officers, Community & Public Protection Officers, Police and all authorised officers will be able to take action where an offence under the PSPO is witnessed. These Officers are used to understanding and enforcing PSPOs due to the history of the Borough wide PSPO.

Legal comments

Chapter 2 of Part 4 of the Anti-Social Behaviour, Crime and Policing Act 2014 deals with Public Spaces Protection Orders (PSPO).

Sections 59 – 61 inclusive deal with the power to make such orders, their duration, and their variation and discharge.

In order to make a PSPO, a local authority has to be satisfied on reasonable grounds that two conditions are met:

1. *That—*

(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

2. *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.

A PSPO prohibits, or requires, things to be done in an area or for both – i.e. prohibit and require, but these must be to prevent or reduce detrimental effect in the area. A PSPO can be limited to apply by time/circumstances etc but must be clear to understand what is required and/or prohibited. The legislation sets out the requirements for the content of a PSPO and publication requirements that must be followed.

Under Section 60 of the Act, a PSPO cannot have effect for longer than 3 years unless extended.

Sections 62 and 63 covers aspects relating to PSPOs prohibiting the consumption of alcohol.

Sections 64 and 65 deal with orders restricting public rights of way over the highway.

Section 66 specifically provides an interested party (as defined in the Act) the ability to challenge the validity of a PSPO, or its variation, by application to the High Court. The grounds for such a challenge are that the local authority did not have the power to make or vary the order or include certain prohibitions/requirements, or that a requirement under the relevant part of the Act was not complied with.

There is a 6 week time limit to make such an application from the date of the order or variation. Pending full determination, the High Court can suspend the operation of the order, or variation. Upon determining the application, the Court, if it finds that the authority did not have the power to do what it did/required under the order, or that the interests of the applicant have been substantially prejudiced by a failure to comply with a requirement of the Act in relation to PSPOs, can quash or vary the order or any prohibitions or requirements under it.

When considering any proposed PSPOs, the authority must consider any equality issues pursuant to its duty under section 149 of the Equality Act 2010.

Financial Implications

The enforcement shall be carried out within the Public Protection Service as well as the Police and the use of our current third-party enforcement contractor. The third-party enforcement contractor works on the basis of taking a proportion of Fixed Penalty Notices (FPN) income successfully collected, so there is no cost to the Council.

Any income from FPN will be used to offset costs associated with managing the PSPO requirements and issuing fixed penalty notices which will be met from existing budgets, as well as environmental campaigns to increase education and compliance. To this end the scheme is based on cost recovery but should any income above and beyond this be received it shall be ring fenced to the environmental compliance team for this purpose and a review of fees carried out as it is not intended as an income generation tool.

Performance Issues

Improving the environment and reducing matters of anti-social behaviour will have a positive impact on helping make a difference to families, businesses and communities.

The introduction of the Public Spaces Protection Order puts in place clear requirements across the Borough that are less bureaucratic and more efficient to enforce.

If the scheme is not introduced, then it will limit the ability to enforce by the Council in these areas, with resources being focused on individual problems, not addressing the wider issues and limiting the action that is feasible to be taken and prevents the widening the ability for partners (e.g. Police) to deal with anti-social behaviour.

Environmental Impact

The aspects seeking approval are expected to have a hugely positive impact on the Environment, by putting in place a proactive scheme that addresses matters evidenced within the area.

By having clear requirements in place, backed up by the means of a timely penalty for non-compliance (Fixed Penalty Notices), it allows matters that affect the environment to be addressed in a more efficient and effective means and hopefully leading to longer term behavioural changes.

Procurement Issues

There are no procurement issues

Risk Management Implications

Risks included on corporate or directorate risk register? **No**

Separate risk register in place? **No**

The relevant risks contained in the register are attached/summarised below.
N/A

The following key risks should be taken into account when agreeing the recommendations in this report:

Risk Description	Mitigations	RAG Status
Bad publicity due to level of fine issued	<ul style="list-style-type: none"> ▪ Consultation has taken place to understand any issues that may lead to bad publicity ▪ Fines are standard for PSPO as agreed by Cabinet ▪ Communication in place and will be continued to seek compliance prior to need for fines to be issued 	
Poor payment of fines, therefore limited impact	<ul style="list-style-type: none"> ▪ Work has taken place with legal about streamlining prosecution process for non-payment including standardising templates ▪ More emphasis put on initial messaging to those receiving fines about consequences, as well as better follow up ▪ Past experience of collection of such fines shows a high payment rate (above 70%) and all others go to prosecution 	
Lack of resources to take these fines forward	<ul style="list-style-type: none"> ▪ 3rd Party on street enforcement team in place, working 7 days a week ▪ Training of staff to incorporate into normal work (e.g. compliance visits for food hygiene will pick up shop front trade offences) ▪ Re-investment of fines to increase capacity if needed 	
Lack of evidence to support follow up action	<ul style="list-style-type: none"> ▪ All Officers are required to provide statements to support offence as well as attend court ▪ Use of bodyworn cameras by 3rd party enforcement officers ▪ Quality assurance checks carried out by Management ▪ Contract with 3rd party company results in payment only for each successfully paid fine 	
Inconsistent approach to issuing, leading to loss of reputation	<ul style="list-style-type: none"> ▪ Operational policy in place around fixed penalty notices ▪ Training of officers issuing tickets ▪ Monthly performance checks to understand what has been issued by whom and why 	
Cost of administering the scheme outweighs the benefits	<ul style="list-style-type: none"> ▪ Contract with 3rd party company results in payment only for each successfully paid fine ▪ Systems set up to minimise cost of the scheme, including on line payment system 	
3 rd party officers fail to follow council policies and procedures, leading to loss of reputation	<ul style="list-style-type: none"> ▪ Clear contract in place with 3rd party ▪ Monthly performance and monitoring meetings ▪ Team leader conducts regular 1-2-1 meetings, team meetings and checks 	

<p>Proposal not agreed leading to limitations of action by officers</p>	<ul style="list-style-type: none"> ▪ Offences would have to be pursued through use of legal notices where feasible (e.g. Community Protection Notices) or prosecution ▪ Those FPNs already in place could still be enforced at the levels already set 	
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Equalities implications / Public Sector Equality Duty

Pursuant to section 149 of the Equality Act 2010 (“the Act”), the council, in the exercise of its functions, has to have ‘due regard’ to (i) eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; (ii) advancing equality of opportunity between those with a relevant protected characteristic and those without; and (iii) fostering good relations between those who have a relevant protected characteristic and those without.

The relevant protected characteristics are age, race, disability, gender reassignment, pregnancy and maternity, religion or belief, sex and sexual orientation. The duty also covers marriage and civil partnership, but to a limited extent.

In line with this, an initial Equalities Impact Assessment (EqIA) was completed but did not find that a full EqIA was required as no potential adverse impacts in relation to the decision for this report were considered likely for any of the protected groups. This was reviewed post consultation and no changes required.

Council Priorities

The introduction of the Town Centre PSPO clearly links in with the Council priority of:

1. **Improving the environment and addressing climate change**
2. **Maintaining low level crime and improving community safety**

Section 3 - Statutory Officer Clearance

Statutory Officer: Jessie Man

Signed on behalf of the Chief Financial Officer

Date: 5th March 2021

Statutory Officer: Paresh Mehta

Signed on behalf of the Monitoring Officer

Date: 6th May 2021

Statutory Officer: Nimesh Mehta

Signed by the Head of Procurement

Date: 4th March 2021

Statutory Officer: Mark Billington

Signed by the Acting Corporate Director - Community

Date: 18th May 2021

Statutory Officer: Susan Dixon

Signed by the Head of Internal Audit

Date: 5th March 2021

Mandatory Checks

Ward Councillors notified: No as Borough Wide

EqIA carried out: YES

EqIA cleared by: D Corby

Section 4 - Contact Details and Background Papers

Contact: Richard Le-Brun, Head of Community and Public Protection, 020 8424 6267, Richard.lebrun@harrow.gov.uk

Background Papers: Briefing Note – Town Centre PSPO

Call-in waived by the Chair of Overview and Scrutiny Committee

NO