



Call-In Sub-Committee

Minutes

27 September 2023

Present:

Chair: Councillor Amir Moshenson

Councillors: June Baxter Rashmi Kalu
Govind Bharadia Jerry Miles

**In attendance
(Councillors):** Paul Osborn
Anjana Patel

7. Attendance by Reserve Members

RESOLVED: To note that there were no reserve Members in attendance at the meeting.

8. Declarations of Interest

RESOLVED: To note that there were no declarations of interests made by Members.

9. Minutes

RESOLVED: That the minutes of the meeting held on 6 July 2022 be taken as read and signed as a correct record.

10. Appointment of Vice-Chair

RESOLVED: To appoint Councillor Jerry Miles as Vice-Chair of the Call-In Scrutiny Sub-Committee for the 2023/2024 Municipal Year.

11. Protocol for the Operation of the Call-In Sub-Committee

The Chair advised that the call-in notice had been received and drew attention to the document "Protocol for the Operation of the Call-In Sub Committee" contained in the agenda pack.

He outlined the procedure to be followed at the meeting and the options open to the Sub-Committee at the conclusion of the process.

In accordance with Committee Procedure Rule 46.5, a notice seeking to invoke the call-in procedure must state at least one of the following grounds in support of the request for a call-in of the decision:

- a) inadequate consultation with stakeholders prior to the decision.
- b) the absence of adequate evidence on which to base a decision.
- c) the decision is contrary to the policy framework, or contrary to, or not.
- d) wholly in accordance with the budget framework.
- e) the action is not proportionate to the desired outcome.
- f) a potential human right challenge.
- g) insufficient consideration of legal and financial advice.

Referring to paragraph 8 of the Protocol, the Chair stated that the Sub-Committee, having considered the grounds for the call-in and the information provided at the meeting, may come to one of the following conclusions:

- 1) that the challenge to the decision should be taken no further and the decision be implemented.
- 2) that the decision is contrary to the policy framework, or contrary to, or not wholly in accordance with the budget framework and should therefore be referred to the Council. In such a case the Call-in Sub-Committee must set out the nature of its concerns for Council; or
- 3) that the matter should be referred back to the decision taker (that is, the Portfolio Holder or Executive, whichever took the decision) for reconsideration. In such a case the Call in Sub Committee must set out the nature of its concerns/reasons for referral for the decision taker/Executive.

Resolved Items

12. Call in of the Cabinet Decision - 14 September 2023 - Public Space Protection Order (PSPO) Approval for Publication

The Sub-Committee received the notices in respect of the call-in submitted by 184 signatories in relation to a decision made by the Cabinet on 14 September 2023, on the Public Space Protection Order (PSPO) Approval for Publication. The detail of the grounds for the Call-In were circulated at the meeting.

The Chair advised the Sub-Committee on the suggested order of proceedings and reminded Members of the timings allowed for submissions and questions. The Chair then invited the representative of the signatories to present their reasons for the call-in.

The representative began by explaining that the call in was on the decision on the PSPOs Public Spaces Protection Orders and read out the grounds for the Call-In which are attached as appendix to these minutes.

The call in was based on the following reasons.

The Action is not proportionate to the desired outcome.

Restriction on political, charitable, religious activities. Distribution of leaflets.

The PSPO breaches rights contained within Human Rights Legislation

The Leader of the Council and the Portfolio Holder for Highways, Infrastructure and Community Safety responded to the points raised as below.

The main issue of contention was whether the measures being considered were proportionate. It was emphasised that there had been significant issues with anti-social behaviour across the borough.

The Leader advised that distinctions were made between what was deemed necessary in the borough as a whole, town and district centres, parks, housing estates, and other areas. The aim was to be proportionate and only impose restrictions where necessary. The Cabinet had acknowledged, and consideration had been given to Home Office and Local Government Association (LGA) guidance. Changes had been made based on feedback, particularly in ensuring that restrictions did not affect charitable, political, or religious activities. An exemption was added for such activities. It was discussed that further examination was needed to determine whether the definition of organisations eligible for exemptions should be expanded to include community interest companies or co-ops. The importance of ensuring reputable organisations and checks and balances for permissions were stressed.

Public liability insurance was discussed in relation to the use of tables and other setups in town centres. A risk assessment would be carried out in cases where public liability insurance might not be necessary, although it was recommended for added security. Balancing the need for safety and practicality was emphasised. Changes had been made to the process to address conflicts of interest in permissions, ensuring transparency and fairness.

Both the Leader of the Council and the Portfolio Holder spoke about the regulations related to dogs. Different restrictions were applied based on the location, with specific considerations for sites of special scientific interest and wildlife. The consultation process had supported these measures.

Regarding the congregation of groups, changes had been made to the wording of restrictions to clarify the criteria for issuing fines. The aim was to address concerns without overly restricting lawful assembly. The Leader and Portfolio Holder reiterated the commitment to upholding freedom of speech and the right to assemble. Exemptions for political, charitable, and religious organisations were noted. The balance between protecting the rights of individuals and addressing anti-social behaviour had been discussed during the preparation of PSPO.

Substantial evidence was cited as the basis for implementing these measures. The challenges of enforcing dog fouling regulations were acknowledged, leading to the introduction of fines for not carrying disposal bags. The need for practical enforcement was emphasised.

Extensions had been granted to accommodate feedback, and efforts had been made to ensure a comprehensive consultation.

The response from representative of the Call-In notice signatories was discussed, with specific attention to the 52 points raised in their submission. Changes had been made based on this feedback, particularly regarding implementation, exemptions, and specific issues such as dog fouling.

The Leader of the Council and Portfolio Holder concluded with a commitment to continue monitoring and reviewing these measures. Flexibility to adjust and continue to have open dialogues with the signatories was offered by the Leader. The Leader and Portfolio Holder advised that the main aim was to educate both members of staff and contractors handing out the fines but also the people receiving them.

The Chair thanked the representative of the signatories, the Portfolio Holder and the Leader of the Council for their attendance, participation and responses.

The Sub-Committee adjourned from 8:58 pm to 9:37 pm for deliberations.

RESOLVED: That the challenge to the decision should be taken no further and the decision be implemented.

Resolved to Recommend: (to Overview and Scrutiny Committee)

That the implementation of PSPOs be included in their work programme.

(Note: The meeting, having commenced at 8.00 pm, closed at 9.39 pm).

(Signed) Councillor Amir Moshenson
Chair

Grounds for call in of PSPO

I have been asked to speak at this call in on behalf of a number of community groups and residents. These include Harrow Law Centre, HASVO, NOMAD, Harrow Trades Union Council, Wealdstone baby bank, dog walkers groups and local informal groups who are opposed to the development of unaffordable tower blocks such as that known as Tesco Towers.

These are active citizens who contribute considerably to the local community and who have raised concerns about existing PSPOs but feel they have not been listened to and who are very concerned at the new PSPOs.

These Local residents have no problem with measures intended to deal with genuine anti social behaviour. However, we believe the PSPO goes much wider than this and impinges without good reason, evidence or justification on legitimate activities of local residents.

Specific concerns centre around the restrictions to:

- Restrictions on Political, religious and charitable activities
- Dogs
- Congregating groups

Residents and community groups also have more general concerns at

- That the PSPOs has exceeded its power in this PSPO by restricting activities that are not anti social.
- The inadequacy of the consultation exercise,
- The lack of any meaningful equalities impact assessment
- The lack of evidence to justify such draconian measures – ultimately these can lead to a criminal conviction
- The lack of consideration to alternative measures such as educating rather than punishing and criminalising

I will deal with all of these in more detail in each of the grounds of call in.

The Action is not proportionate to the desired outcome

Public Spaces Protection Orders (PSPOs) are intended to deal with anti social behaviour, where a Local Authority has evidence of anti social behaviour in a specified area. Although the proposed PSPO does contain elements to deal with anti social behaviour several parts of the order go much further. Yet the council has introduced a PSPO which effectively applies to the entire borough. It is effectively saying that there is no corner of Harrow that is free from Anti social behaviour. If that is the message this administration is giving to its residents that is a serious failing of our politicians and unlikely to encourage people to live or work in the Borough.

The power to introduce PSPOs is contained in the Anti-Social Behaviour, Crime and Policing Act 2014. The Act allows orders be introduced in a specific public area where the Local Authority is satisfied on reasonable grounds that two conditions have been met.

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

The provisions in the Act must be considered alongside the statutory guidance issued by the Home Office to Local Authorities, and the Local Government Association (LGA) guidance on PSPOs. The Home Office Statutory Guidance states that any proposed restrictions should focus on specific behaviours and must be proportionate to the detrimental effect that the behaviour is causing or can cause.

The Home Office Guidance reiterates that PSPOs should be used responsibly and proportionately, and **only in response to issues that cause anti-social behaviour and only where necessary to protect the public.**

The LGA guidance adopts a similar approach and warns that Councils should consider both the necessity of PSPOs and that the PSPO must be a proportionate measure to address an identified problem of anti-social behaviour.

The burden is on the Local Authority to show it has met this threshold but has offered no evidence that the threshold has been met in respect of the proposed restrictions to political, religious and charitable activities, dog walkers and gatherings.

Harrow Council appears to have drafted the Order without regard to the relevant guidance and has not provided the necessary evidence or justification for this Order to be lawfully made.

Restriction on political, charitable, religious activities. Distribution of leaflets

The existing Town Centre PSPO has caused problems for residents with people inappropriately issued with fixed penalty notices simply for discussing politics and handing out leaflets. This is despite the fact that the existing town centre PSPO contains an exemption for political religious and charitable activities. Examples of this were provided to the council in the response by Harrow Law Centre. That very detailed response was omitted in the council papers to cabinet.

We are pleased that the new PSPO contains a similar exemption on leafleting for political, religious or charitable reasons. However, given past experience and the lack of detail or definition in the PSPO we have no confidence that this exemption will be adhered to or that the private companies employed by Harrow have sufficient training to understand that an activity is exempt.

We have been informed by Harrow Council Officers that the exemption for charitable activities will only apply to registered charities. Many charitable organisations in Harrow are not registered charities. Some may be Community Interest Companies or Co-ops. Some very small start up charities or mutual aid groups are run purely by volunteers and do not have sufficient income to register as a charity.

The lack of definition within the order is almost certainly likely to lead to inappropriate and unlawful fixed penalty notices being issued.

Restriction on Political, Charitable, Religious activities. Placing of tables, stands, or other furniture / fixings

The PSPO requires anyone wanting to have a table to leaflet for political, religious or charitable reasons to seek permission. However, we have been advised by Harrow Council Officers that in order to get permission a group must have public liability insurance. Whilst this may not be a problem for large organisations it will prevent smaller political, charitable or religious organisations from being able to do so. For example a trades union council wishing to publicise information about trades unions and which wishes to set up a small table in the town centre to do so would be prohibited. Similarly the growing number of residents who are campaigning against unaffordable tower blocks. They don't have public liability insurance. They are residents trying to be good and active citizens engaging in legitimate democratic activities.

This requirement places unreasonable restrictions on small charities, political organisation or informal groups who wish to be active citizens from being able to do so. More fundamentally, in order to issue a PSPO covering this matter the Local Authority is required to show that this is a matter that is anti social and have a detrimental impact on the community and it is a measure to protect the public. The Local Authority has provided no evidence that the activities of these groups is a cause of anti social behaviour.

Currently permission to set up a table rests with Harrow BID. The process is far from straight forward. Some charities report they have had to wait 2 months to get a decision. Equally Harrow BID is comprised of a group of businesses in the town centre. So there is considerable scope for a conflict of interest. For example if a small group of people wish to protest about poor employment practices or environmental impact of a particular company which is a member of Harrow BID. A private company is unlikely to abide by the rules that a public body adheres to in terms of declaring conflicts.

Equally there is no clarity as to what is deemed to be political activity. The errors of the past in issuing fixed penalty notices to young people leafleting on political matters leaves us with concern at the ability of enforcement officers to understand when an activity may fall into the exempt category.

Dogs

There are a number of areas of concern in respect of dogs. In particular the fixed penalty notices being issued for failure to have a suitable receptacle for dog faeces and the requirement to have dogs on leads at all times at Bentley Priory.

Residents have reported inappropriate and overzealous enforcement by officers under the current PSPOs. One woman with a dog on a lead in the town centre was approached and asked by an enforcement officer if she had a bag. The woman replied no but that her husband who was in a nearby shop did. The enforcement officers went to the shop and asked the husband to show evidence that they had sufficient bags on him or he would face a fine.

The evidence in the documents presented to Cabinet of 14th September was that in total only 4 fixed penalty notices for dog fouling had been issued in the previous year. But 68 had been issued by an enforcement officer who deemed that the person did not have a suitable or sufficient bags to collect any possible dog fouling. Dog walkers report that in many cases they did have something suitable to collect any fouling by their dog but the enforcement officer decided it was not and that they were deemed in breach of the PSPO. Residents have experience of being told by enforcement officers that they risk being fined because they do not have sufficient bags with them. The majority of dog owners in Harrow are very responsible owners. If they find that they are without a designated bag they improvise and borrow a bag from another dog owner or use leaves or another suitable method.

With only 4 actual cases of fouling it cannot be said that the restriction in this PSPO to have a borough wide restriction meets the legal test of being a persistent and continuing problem or that the PSPO is a justified, reasonable or a proportionate response.

In respect of Bentley Priory and the requirement to have dogs on a lead at all times. Bentley Priory spans hundreds of acres of land. No evidence has been presented by the Council that shows that well behaved dogs in this area are a cause of anti social behaviour. No detail has been provided as to the specific problem. Nor as to whether any alternative measures have been considered to deal with the perceived problem, despite the guidance requiring the council to consider alternative measures. For example if the issue is dogs going in the pond or cattle or birds in certain areas signs could be put up to alert owners and responsible dog owners will then put their dogs on leads in these areas.

Congregation of Groups

There is concern that this category allows for discrimination. Already Black and Minority Ethnic Groups in Harrow report that such punitive measures disproportionately impact on Black and other minority ethnic groups. But this is compounded in Harrow because of the scale of poor housing and overcrowding and the lack of facilities for young people. The lack of council housing or alternative affordable housing in Harrow means that thousand of families are living in overcrowded homes. It is not unusual to find that there are 6 people living in two rooms. Much of the housing is in a very poor state of repair with toxic mould and

damp. Yet the council rarely takes enforcement action against rogue landlords. Consequently people from poorer households are more likely to seek to socialise outside the home. Equally the provision for young people in the borough is very poor. The PSPO is so widely drafted that a group of young people just socialising and causing no harm could be targeted and issued with a fine.

The PSPO breaches rights contained within Human Rights Legislation

The Local Authority as a public body must ensure that it complies with its duties under the Human Rights Act 1998 and the Equalities Act 2010. The Human Rights Act 1998 alongside the European Convention on Human Rights provides citizens with the right to certain freedoms which include Freedom of Religion and Belief (Article 9), Freedom of Expression (Article 10) and Freedom of Assembly and Association (Article 11). These rights may only be curtailed in certain limited circumstances.

The Equalities Act 2010 sets out specific duties for public bodies. Not only must a Local Authority ensure it does not discriminate against those with protected characteristics, but the Act requires public authorities to have a proactive role in reducing the disadvantages and to encourage those with protected characteristics to participate in public life and other activities. Section 149 of the Act requires public bodies to ensure that its policies do not discriminate against protected characteristics. The relevant protected characteristics being age, race, disability, gender reassignment, pregnancy and maternity, religion or belief, sex, and sexual orientation. It specifies “the council, in the exercise of its functions, must 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) (iii) fostering good relations between those who have a relevant protected characteristic and those without.

These duties extend to any organisations undertaking public law functions on behalf of a public body. Consequently those duties extend to Harrow BID and Kingdom Services who are contracted to carry out the enforcement and administration of the existing PSPOs and the proposed extended PSPOs.

Harrow Council has been alerted to failings in the current system to adhere to these duties. In particular the lack of understanding of enforcement officers of these obligations, the lack of consistency in decision making and appeals yet the proposed PSPO contains no measures to deal with these problems.

Harrow is one of the most diverse boroughs in the UK. The council was alerted in the consultation exercise by a number of community groups that the measures would have a disproportionate impact on particular ethnic groups and on young people. Yet the Equalities Impact assessment is woefully inadequate. Para 12.4 of the document provided to Cabinet states “An Equality Act Assessment has been carried out which finds the proposed PSPO is likely to have a positive impact on the general

population of Harrow, including those from protected groups...and will apply to the whole population and its use will be determined by the behaviour occurring rather than the protected group.” This statement betrays a woeful lack of understanding of the duties of public bodies to be pro active in the exercise of its duties under the Equalities Act. Further more the EIA does not appear to have been provided in the papers to Cabinet.

The PSPO requires anyone wanting to have a table to leaflet for political, religious or charitable reasons to seek permission. However, in order to get permission the group has to have public liability insurance. Whilst this may not be a problem for large charities or political organisations it will severely hamper the ability of smaller organisations or informal groups who wish to be active citizens from doing so. As such these restrictions are likely to be in breach of the rights contained in the Human Rights Act 1998.

There is an absence of evidence upon which to base the decision

The Home Office Guidance reiterates that PSPOs should be used responsibly and proportionately, and **only in response to issues that cause anti-social behaviour and only where necessary to protect the public.** Yet the Local Authority has provided no evidence at all that those engaged in political, charitable or religious activity causes anti-social behaviour and that such measures are necessary to protect the public. These organisations are the ones who are more likely to be active citizens who care about the community than involved in any anti social behaviour.

Similarly the council has provided no evidence in relation to dog walkers that there is a significant issue with dog owners not ensuring they remove any dog faeces appropriately.

The consultation has been inadequate

In its consultation the Council has presented the PSPO as being solely about anti-social behaviour. Most people if asked with agree with measures to tackle genuine anti social behaviour but they would not be so supportive of measures to prevent them from carrying out lawful activities. No information at all was presented about the aspects of the PSPO which would impact on the ordinary every day activities of law abiding residents. Many residents still remain unaware of the far reaching scope of the order.

A failure to pay a fixed penalty notice can lead to criminal proceedings. So for example a person concerned at the unaffordable tower blocks appearing throughout Harrow may set up a table in the town centre to get signatures to a petition but be fined for doing so. Unable to meet the cost of the fine or perhaps unaware of the next stages they find themselves appearing in the magistrates court charged under criminal legislation. With such severe consequences it was incumbent on the council to ensure that it gave a fair representation of the restrictions and consequences of the PSPO but it failed to do so concentrating solely on issues which would be populist.

It is unclear that decision makers had access to all the consultation responses. Harrow Law Centre is a local charity which provides legal advice and representation on a range of issues. The council is aware that it has advised and represented a number of groups and individuals on a range of issues related to current PSPOs. It submitted a detailed consultation response within the time frame and yet it is not contained in the documents presented to Cabinet nor even mentioned in the summary of responses from the voluntary sector and organisations.

The consultation was limited to those living or working in the borough but not to those who are students in Harrow even though this group are likely to be affected by the PSPO.

Several groups have raised the problem that such orders have a disproportionate impact on particular ethnic groups and as such discriminate. Yet there is no indication that these concerns have been meaningfully addressed.

27/9/23