COMMUNITY SAFETY PARTNERSHIP

REPORT

Subject: Public Spaces Protection Orders

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Authors: Katherine Gilcreest, LBBD Antisocial Behaviour Manager
Katherine.Gilcreest@lbbd.gov.uk 020 8227 2457
Sonia Drozd, LBBD Drug Strategy Manager
Sonia.Drozd@lbbd.gov.uk 020 8227 5455

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1. Purpose of Presenting the Report and Decisions Required

1.1 This report is to provide the partnership information about Public Spaces Protection Orders (PSPOs) and suggest areas where this legislation could be used to deal with current community concerns.

1.2 This report outlines the existing Designated Public Protection Order (DPPO) in the Borough, which enables Police Officers to require people to stop drinking in public. The introduction of PSPOs means that DPPOs will expire from 19 October 2017. PSPOs are more flexible and can be put in place against a wider range of issues than DPPOs. Therefore this report sets out potential emerging issues which a PSPO could address for the Community Safety Partnership (CSP) Board to consider, including the use of new psychoactive substances (including nitrous oxide) and localised issues in Station Parade and Hertford Road.

2.3 Councils issue a public spaces protection order (PSPO) after consultation with the Police, Police and Crime Commissioner and other relevant bodies, including CSPs. In Barking and Dagenham we would need a full Council decision to grant a PSPO. The CSP Board are therefore asked to consider whether it is felt to be appropriate to recommend that a proposal to introduce a PSPO to the Council.

1.3 It is recommended that the Community Safety Partnership Board:

- consider whether the Borough should replace the current Designated Public Places Order with a PSPO;
- consider the use of a PSPO to prohibit the use of nitrous oxide and other new psychoactive substances;
- consider the use of a PSPO to deal with environmental and antisocial behaviour (ASB) issues in Station Parade, Barking;
2. Public Spaces Protection Orders

2.1 PSPOs were introduced by the Antisocial Behaviour Crime and Policing Act 2014 and commenced on the 20 October 2014.

2.2 PSPOs are designed to stop individuals or groups committing anti-social behaviour in a public space. The definition of a public space is very wide and includes any area to which the public would have unrestricted access however they do not include registered common land and some other types of land like open moorland.

2.3 The test for a PSPO is behaviour which:

- has, or is likely to have, a detrimental effect on the quality of life of those in the locality;
- is persistent or continuing in nature; and
- is unreasonable.

2.4 PSPOs set restrictions and/or requirements on people within a defined area. These can be blanket restrictions or requirements or can be targeted against certain behaviours by certain groups at certain times. More than one restriction can be added to the same PSPO, meaning that a single PSPO can deal with a wide range of behaviours.

2.5 It is an offence for a person, without reasonable excuse, to do anything that the person is prohibited from doing by a PSPO (other than consume alcohol- see below); or fail to comply with a requirement to which the person is subject under a PSPO. A person guilty of an offence is liable on summary conviction to a fine not exceeding Level 3 on the standard scale.

2.6 It is not an offence to drink alcohol in a controlled drinking zone. However, it is an offence to fail to comply with a request to cease drinking or surrender alcohol in a controlled drinking zone. This is also liable on summary conviction to a fine not exceeding Level 2 on the standard scale. If alcohol is confiscated, it can be disposed of by the person who confiscates it.

2.7 Depending on the behaviour in question, the enforcing officer could decide that a fixed penalty notice (FPN) would be the most appropriate sanction. The FPN can be issued by a police officer, PCSO, Council officer or other person designated by the Council.

2.8 The maximum duration of a PSPO is three years but they can last for shorter periods of time where appropriate. Short-term PSPOs could be used where it is not certain that restrictions will have the desired effect, for instance, when closing a public right of way, Councils may wish to make an initial PSPO for 12 months and then review the decision at that point. At any point before expiry, the Council can extend a PSPO by up to three years if they consider that it is necessary to prevent the original behaviour from occurring or recurring.
3. **Replacing the DPPO with a PSPO**

3.1 Barking and Dagenham has had a Borough-wide Designated Public Places Order (DPPO) since May 2010. DPPOs are legislation from the Police and Criminal Justice Act 2001.

3.2 Designated Public Places Orders give powers to Police Constables to require people consuming alcohol in public to stop. The consumption of alcohol within a DPPO area is not an offence, the offence is failing to cease drinking if required to do so by an authorised person. PCSOs are delegated powers to surrender alcohol under Paragraph 5 of Schedule 4 of the Police Reform Act 2002.

3.3 The Police and Criminal Justice Act did not time limit Designated Public Places Orders, so once in place were in place until they were revoked by the Local Authority. However, the introduction of PSPOs has placed a time limit on any existing DPPOs, which will end on the 19 October 2017.

3.4 Several areas have or are considering replacing DPPOs with PSPOs. The reasons for doing this include:

- DPPOs are now time limited to 19 October 2017. Any PSPO could be put in place for 3 years with the option to extend for a further 3 years;
- the consultation process for a PSPO is less prescriptive than the previous DPPO with the requirement to advertise in the local press removed;
- PSPOs can be enforced by officers with delegated power to do so from the Local Authority, this means that police constables, Police Community Support Officers and Council Officers can enforce, rather than just police officers and PCSOs; and
- PSPOs are far more flexible so can also tackle other issues which have or are likely to have a detrimental impact on the local community within the same order.

4. **Consideration for a PSPO to Prohibit Nitrous Oxide**

4.1 The Council’s Substance Misuse Strategy Team has received enquiries as to when Barking and Dagenham will be taking action to prohibit the sale and use in public of so called ‘legal highs’ also called New Psychoactive Substances (NPS) following other areas taking this action. The first area to use PSPOs to prohibit the sale and use of NPS was Lincoln in April 2015 and the London Borough of Lambeth has been the first London Borough to put in place an area wide PSPO in regards to this issue which was enacted on the 17 August 2015.

4.2 NPS have existed for a long time, mostly created as legal compounds to replace substances that become prohibited. In recent years, with developing technologies, NPS have become more prominent and available. Where there has been a decline in the use of illegal drugs nationally, the use of NPS has increased rapidly.

4.3 Nitrous Oxide, also known as ‘laughing gas’, is used with canisters containing Nitrous Oxide inflated into balloons and inhaled. The effects of the drug make users feel ‘giggly’ for a short amount of time. Because of the short lived ‘high’ people tend to use a number of times. However, the more it is used the more it restricts oxygen
4.4 In a short survey of 41 young people, 14 had heard of Nitrous Oxide and eight had admitted to using it in the past. There have been no young people to date that have reported to drug treatment with a dependency to laughing gas. Locally there have been no reports of people admitted to hospital as a result of using Nitrous Oxide, although risk can increase with alcohol use and it may be alcohol that is reported as the key factor in hospitalisation.

4.5 Residents have raised concerns regarding the litter that accompanies Nitrous Oxide – the canisters have been seen in particular parts of the borough and can cause blockages in machinery and drainage systems. There have been particular complaints about this issue in Eastbrook Ward and residents report that this substance is being used by students of Barking and Dagenham College and the debris being left in residential areas. There have also been complaints about the use of Nitrous Oxide in a number of garage sites and alleyways across the borough and in areas of Barking Town Centre.

4.6 In the Republic of Ireland the Criminal Justice (Psychoactive substances) Act 2010 (the “Act”), prohibiting the use of psychoactive substances. This legislation is not working well for two main reasons: first, in order to bring a prosecution the police have to scientifically demonstrate that a substance has psychoactive effects, which is evidentially hard to prove. A recent BBC report\(^1\) found that in 5 years only 4 successful prosecutions have been made under the Act. In its report the BBC found that synthetic cannabis, which is dangerous, was being openly traded in some Irish towns despite the existence of the Act. Second, while the Act has been successful in closing down the head shops, this alone has not been enough to reduce use of psychoactive substances. In fact, actual use increased from 16% in 2011 to 22% in 2014 with young people accessing the drugs via friends, dealers and the internet.\(^2\) Given the experience of Ireland commentators are wary of the Government's intention to introduce similar legislation in this country.

4.7 A PSPO prohibiting the sale and use of Nitrous Oxide in public places in Barking and Dagenham is unlikely to have the same impact as the legislation in Ireland. The main differences are:

- the proposed PSPO is to prohibit the sale and public use of Nitrous Oxide, rather than all NPS. This is a relatively easy to identify substance unlike other NPS which may require testing;
- the penalty for a breach of a PSPO is a Fixed Penalty Notice rather than criminal prosecution in the first instance;
- the PSPO would provide enforcement officers with powers to seize Nitrous Oxide, which currently they do not have; and
- empirical evidence suggests that Nitrous Oxide is currently purchased most commonly on the internet. There are no reports of this being sold in commercial premises in the area.

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\(^1\) Call to halt legal highs ban based on “flawed” Irish system Accessed on 24.08.15 at http://www.bbc.co.uk/news/uk-33226526
4.8 The CSP is requested to consider whether consultation with the community should be commenced in Barking and Dagenham regarding a PSPO to prohibit the sale and public use of Nitrous Oxide.

4.9 The risks in terms of consulting and not consulting on this are discussed in section 8.

5. **Antisocial Behaviour Issues in Station Parade, Barking**

5.1 Station Parade Barking is a generator for antisocial behaviour issues common to many town centres: it is a transport hub and huge numbers of people travel through the area, there are a large number of fast food and licensed premises in the vicinity and there is seating and opportunities for people to congregate here.

5.2 There have consistently been complaints about street drinking, begging, rowdy and inconsiderate behaviour and litter in this location for a number of years. These complaints reduce when there is specific action to tackle the behaviour and the police and the Council have used ASB tools such as Antisocial Behaviour Orders and Antisocial Behaviour Injunctions against individuals to manage this behaviour.

5.3 Despite the previous work there are on-going issues with this behaviour in this location and where previously the people causing these issues have been a small group of people known to the police and Local Authority, offenders now are much more transient. The Police have put in place a specific team to police the commercial elements of Abbey Ward and this team have identified that dealing with antisocial behaviour in Station Parade is one of their key priorities.

5.4 A Public Spaces Protection Order would provide the opportunity to put in place powers to deal with all the issues which impact on this area and could be applied for to provide powers for police or Council officers to ask people to stop doing any of the following:

- begging;
- drinking alcohol and causing ASB;
- having a dog off a lead causing a nuisance;
- loitering and causing ASB. This includes being in a group drinking, swearing, shouting and intimidating others;
- littering;
- misusing a public toilet, this includes taking drugs; and
- urinating or defecating in a public place.

Police or Council officers can ask people to giving up certain items such as alcohol. Any breach of the order could result in the issue of a £100 fixed penalty notice or being taken to Court and receiving a fine of up to £1,000.

5.5 The London Borough of Hackney have used a PSPO covering these issues for an area of their Borough. This came into force on the 8 June 2015 and was amended on the 15 June 2015.

5.5 The risks associated with consulting on a PSPO in relation to Station Parade are discussed in section 8.
6. Antisocial Behaviour Issue in Hertford Road, Barking

6.1 There have been concerns raised by the public about a group of males who stand in Hertford Road, Barking since late 2013. The police initially attended the area and spoke to the males and ascertained that they were there waiting for casual building work. At this point there were usually between six and 12 males present between 6:00 and about 9:00am. The Police had received complaints that these males were making sexually explicit comments to women using and working in nearby businesses. However the Police spoke to the males who agreed to modify their behaviour and this seemed to have the desired impact for a period of time.

6.2 In April 2015 complaints to the Police about the behaviour of the males increased, with complainants stating that the size of the group had grown and that they were present in the area for longer periods of time. Complaints were received from local businesses that males who did not get work would stay in the location until the afternoon and would be sitting on the grass and on the pavements, drinking alcohol. There were also complaints about males urinating and defecating in the street and in the car park and leaving large amounts of rubbish, which the businesses were required to clear. At the time of writing there are regularly 40 people standing in a small area of the road waiting for work. Local businesses state that they escort their female workers to and from their vehicles because they are concerned about their safety and no longer want clients visiting their premises due to the rubbish and other environmental issues in the area.

6.3 This is an issue which is shared by other London Boroughs with Wickes stores on arterial roads; specifically Haringey. Haringey have had used Antisocial Behaviour Orders and Dispersal Orders to try and tackle the issue in the past and are also looking at a PSPO. Like Barking and Dagenham they have attempted to engage with HMRC to assist them to tackle this issue but HMRC have declined to become involved. The London Borough of Brent are also currently consulting on a PSPO which would prohibit anyone from approaching any person in a public place within the restricted area to offer, or with the intent to offer, them casual employment.

6.4 The CSP is asked to consider whether it feels it would be appropriate to introduce a PSPO to tackle this issue. The PSPO would cover a very small geographical area and prohibit anyone picking up any person for work in the area or from any person loitering there between the hours of 6:00 and 11:00.

7. Resource Implications

7.1 A Public Spaces Protection Order will only be effective if it is robustly enforced and this will have resource implications in terms of staffing costs.

7.2 Although breach of a PSPO (excluding where related to consumption of alcohol) is a fixed penalty of £100 and up to £1,000 on conviction, in practice the resource implications in terms of enforcing the scheme are likely to be much greater than any income recovered through fines. This is particularly true of any conditions which prohibit behaviour such as begging, where it is very unlikely that individuals engaged in this behaviour would have the ability to pay a fine. In this case, the PSPO would be used as a tool to engage these individuals with services.

7.3 Although the PSPO has resource implications these issues are already being dealt with within existing resources without the additional powers of a PSPO.
7.4 Appeal of a PSPO is through judicial review by the High Court, which is a significant risk in terms of resources. Hackney were threatened with judicial review regarding their initial PSPO which prohibited rough sleeping and Oxford City Council withdrew its proposed PSPO which prohibited persistent

8. Risks in relation to Consulting on PSPOs

8.1 The public would need to be consulted as part of the process of potentially implementing a PSPO. The risks of commencing consultation in relation to a PSPO are:

- once consultation is commenced there is an expectation that the PSPO will follow. There are financial implications to this, particularly in regards to judicial review which is the mechanism through which PSPOs are challenged;
- consideration needs to be given as to the financial implications of enforcement of any PSPOs. Consideration therefore needs to given to pre-consultation with the police and Environmental Services regarding the resources required to enforce any orders made;
- in relation to legal highs, consultation may suggest to the public that legal highs are a very serious issue in our area and therefore impact on confidence.

8.2 The risks of not undertaking consultation related to the PSPOs are:

- there is a risk of the public being dissatisfied if relevant legislation is not used to address an issue of concern to them; and
- there is a risk of not having an effective approach to respond to the antisocial behaviour issues connected with this behaviour, the behaviour continuing and this having a negative impact on the area.
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