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| Report for: | Cabinet |
| Title of report: | Town Centre Public Spaces Protection Order |
| Date: | 12 th July 2022 |
| Report on behalf of: | Councillor Julie Banks, Portfolio Holder for Communities |
| Part: | I |
| If Part II, reason: | N/A |
| Appendices: | Appendix A – Consultation Responses including comments Appendix B – draft PSPO Appendix C – Current PSPO Appendix D – Community Impact Assessment |
| Background papers: | |
| Glossary of acronyms and any other abbreviations used in this report: | PSPO – Public Spaces Protection Order |

Report Author / Responsible Officer

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| Corporate Priorities | A clean, safe and enjoyable environment |
| Wards affected | ALL |
| Purpose of the report: | <ol style="list-style-type: none">To note the consultation results and the reportTo consider the PSPO to be introduced |
| Recommendation (s) to the decision maker (s): | <ol style="list-style-type: none">That Cabinet approves the proposed Public Spaces Protection Order (Hemel Town Centre) (Dacorum Borough Council) 2022 |
| Period for post policy/project review: | 3 years |

1 Introduction/Background:

Dacorum Borough Council is committed to improving the environment, maintaining low crime and improving community safety. Directly relating to this commitment are the Council's actions 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 issues become bigger problems.

As a result, a PSPO was introduced in 2019 to prohibit a number of activities in the town centre, detailed below. Any PSPO lasts for a maximum 3 years, leading to the need to re-consult to seek to renew for up to a further 3 years.

2 Public Spaces Protection Orders

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

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

2.2. Hemel Town Centre PSPO

This report seeks to renew powers around the following activities:

- Cycle or skateboard in the defined area
- Spit, urinate or defecate in the defined area

It also seeks to introduce a new power around:

- Riding an electric scooter in the defined area

2.2.1 Cycling and Skateboarding

Proposed Restriction: No person shall cycle or skateboard within the area coloured blue on order plan 2.

The consultation highlighted that cycling and skateboarding in the town centre is perceived to be a problem which has an impact on the enjoyment of the area. 85.2% of respondents supported the inclusion of the prohibition in the PSPO. This figure has increased from 61.9% from when the PSPO was first introduced. Specific comments made by respondents have highlighted problems with people being at risk from injury by persons cycling or skateboarding and aggressive or intimidating behaviour. However, respondents also commented that a blanket ban would not be appropriate as it may push people into more dangerous areas and respondents also highlighted that it is a healthy activity which should not be discouraged, especially in light of the climate emergency changes.

It is not the intention of the PSPO to stop people cycling or skateboarding to and from the town centre and using this as a means of travel; however, in a pedestrianised area such as the town centre, there is a conflict if users are riding through a heavily congested area particularly if users are acting inconsiderately. The prohibition will not stop persons from dismounting and walking with their cycle or skateboard once they have arrived within the town centre.

Comments from the consultation have been taken on board in terms of cycle lanes so opportunities to improve such access in the future will be explored.

Contraventions of the proposed prohibitions may be by juveniles (aged 10-17) but a common sense approach is being adopted where warnings are given, parents / legal guardians are written to and Community Protection Warnings are used where appropriate.

In summary, the consultation responses highlight that cycling and skateboarding is an issue within the town centre and it is therefore recommend for inclusion in the proposed PSPO.

2.2.2 Spitting (including discharge of chewing gum), public defaecation or urination.

Proposed Restriction: Not to Spit (including discharge of chewing gum), urinate or defecate in a public place within the area coloured blue on order plan 1.

The consultation received overwhelming support for this power, with 97.53% being in favour, up from 83.1% previously.

Specific issues raised highlighted included that chewing gum on pavements was an issue and this is evidenced by significant areas of newly laid paving now being covered with chewing gum. Respondents reported issues with standing in chewing gum and it getting stuck to pushchairs.

There have also been reports of urinating/defaecation in public areas of the town centre, particularly in areas around the Full House public house.

The prohibited activity will often be linked to the consumption of alcohol and enforcement actions will generally need to take place in the evening and therefore this will need to be planned appropriately taking account of available resources.

Comments made included a concern around over-zealous enforcement and medical reasons. These are noted, with clear guidelines for enforcement to ensure FPNs are issued only where confident they can be defended if challenged. As with all legislation, the enforcement of a PSPO does take into account reasonable excuses, and therefore medical reasons (evidenced) are accepted.

In summary, however, and noting the issues with enforcement, the consultation responses highlight that spitting, urinating and defecating are an issue within the town centre and is therefore recommended for inclusion in the proposed PSPO.

Over recent years the number and type of bins in the town centre area have also been increased to remove excuses, and further education and communication will take place.

2.2.3 Electric Scooters

Proposed Power: Unauthorised use of a privately owned Electric scooter (E scooter) on the public highway within the designated area. (Excluding rental scooters under any Council recognised trial scheme).

Whilst privately owned e-scooters remain illegal to use in public spaces, they are widely available for purchase. Private e-scooters are currently unregulated, meaning they are not currently required to meet any minimum vehicle standards.

The consultation highlighted that scooters in the town centre are perceived to be a problem which has an impact on the enjoyment of the area. 82.2% supported the inclusion of the prohibition in the PSPO, although there were a lot of general comments around the use of manual scooters by children. The specific comments made by respondents did highlight similar complaints related to bikes and skateboards around safety, but with concerns over the “silent” nature increasing the risk. A total of 223 people travelling on foot were wounded by e-scooters in Britain last year, including 63 who were seriously hurt. That is up from 57 pedestrian casualties in 2020, which included 13 serious injuries¹. With increased accessibility to e-scooters, and resulting increased use, it is accepted that such statistics are likely to increase, especially where the segregation between pedestrians and riders is not defined.

Mobility scooters did get mentioned as one aspect that should fall outside the prohibition, which is a sensible and agreed way forward.

2.3 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 £80 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.

In line with the normal approach taken with the Borough Wide PSPO already in place, as well as other matters of low level environmental issues, education and engagement will be the primary stance. This involves explaining to those potentially breaching the order what the requirements are and how to meet them. Persistent offenders or those who refuse to heed advice will lead to escalation.

As is the situation at present, the use of the Third Party Enforcement company will continue to provide a visual presence to deter, educate and enforce the requirements of any PSPO put in place. This started in November 2021, with the enforcement figures being:

¹ [Hertfordshire could be set for E-Scooter accidents surge following new law change - HertsLive \(hertfordshiremercury.co.uk\)](https://www.hertfordshiremercury.co.uk/news/2021/05/12/hertfordshire-could-be-set-for-e-scooter-accidents-surge-following-new-law-change/)

| Offence Type | Offence Type Count |
|--------------------------------------|---------------------------|
| PSPO-Cycling or Skateboarding (PSPO) | 280 |
| PSPO-Spitting (PSPO) | 70 |
| PSPO-Urinating or Defecating | 3 |

2.4 How will the PSPO be advertised?

If the Order is put in place, then information will be placed on the Council's Website, and other forms of media. Signage is already erected in relevant areas and other methods as appropriate will be used to maximise publicity for the Order. This will include working with partners to raise awareness.

2.5 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.

But this is not to state that the PSPO will stay in place for the full 3 years, as the intention is to conduct further consultations over the next year to capture what other areas of annoyance, nuisance and harassment that people suffer in the town centre.

2.6 Will it work?

The previous 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, it is considered that this approach does work but it will be kept under review to make sure it is effective.

3 Options and alternatives considered

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

1. Cabinet approves the Public Spaces Protection Order (Hemel Town Centre) (Dacorum Borough Council) 2022 (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 approves some aspects of the Public Spaces Protection Order (Hemel Town Centre) (Dacorum Borough Council) 2022 (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 does 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, this is likely to put additional strain on the Police, who have certain powers related to the prohibitions suggested, and unlikely to be an area they can resource properly. In addition, a lot of the legislation, that may be used, allows for grey areas which limit enforcement prospects.

4 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). Police are in favour of the continuation of the PSPO across all elements, and have been regularly using social media to promote and support the scheme. Hemel BID were also consulted and in favour of its continuation. 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 in March 2022, 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. Overall, there were 649 responses (Appendix A)

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 |
|--|------------|----------------|
| Spitting, Urination and Defecation | 97.53% | 2.47% |
| Riding of bicycles and skateboards | 85.2% | 14.8% |
| Riding of manual and electric scooters | 82.2% | 17.8% |

As mentioned, even though the consultation included manual scooters, the feedback from the consultation recognised the main issues to be that of e-scooters and therefore the approach being taken is to tackle this aspect. Should evidence emerge of increased issues with manual scooters, then the PSPO can be amended as stated above.

5 Financial and value for money implications:

The enforcement shall be carried out within the Environment and Community Protection Service as well as the Police and the use of the Council's 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.

6 Legal Implications

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.

7 Risk implications:

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 | |

| | | |
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| 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 ▪ 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 body worn 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 | |
| Proposal not agreed leading to limitations of action by officers | <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 | |

8 Equalities, Community Impact and Human Rights:

Community Impact Assessment reviewed/carried out and annexed* - the use of the PSPO will not have a detrimental impact based on the evidence to date, but will positively impact those with visual and audio disabilities.

Human Rights – there are no Human Rights Implications arising from this report

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 are required.

9 Sustainability implications (including climate change, health and wellbeing, community safety)

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.

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.

10 Council infrastructure (including Health and Safety, HR/OD, assets and other resources)

The resourcing of such a PSPO was an area of concern highlighted in the consultation feedback. The main enforcement activity will be undertaken by District Enforcement, the on street contracted enforcement officers. This provides the capacity to allow visible presence and effective enforcement.

In addition, Environment & Community 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.

11 Statutory Comments

Deputy Monitoring Officer:

Further to section 60 of the Anti-social Behaviour Crime and Policing Act 2014, a public space protection order cannot be in force for more than three years unless it is extended before its expiry. The requirement to undertake the necessary consultation in relation of the proposed extension of the Town Centre PSPO has been met and will not therefore pose a risk of legal challenge.

Deputy S151 Officer:

The financial implications of this decision are detailed at section 5 to this report. No further comments to add to the content of the report.

12 Conclusions:

If the scheme is not introduced, then it will limit the Council's ability to undertake enforcement action in these areas, with resources being focused on individual problems, which may not address the wider issues and which will limit the action that is feasible to be taken and prevent the widening the ability for partners (e.g. Police) to deal with anti-social behaviour.

Therefore, in conclusion, it is recommended that the draft PSPO in Appendix B is approved