

WELWYN HATFIELD BOROUGH COUNCIL  
COUNCIL – 9 JULY 2018  
REPORT OF THE CORPORATE DIRECTOR (HOUSING AND COMMUNITIES)

**Part I**

PROPOSED FIXED PENALTY NOTICE (FPN) CHARGE FOR BREACH OF HATFIELD PUBLIC SPACE PROTECTION ORDER

**1. Executive Summary**

- 1.1 In February of this year, following a comprehensive consultation with residents, businesses and relevant stakeholders, Council approved the recommendation to introduce a Public Space Protection Order (PSPO) within Hatfield.
- 1.2 An officer group has been working on the implementation of this Order and has established an enforcement protocol using templates based on similar PSPOs implemented around the county and taking account of the council's Enforcement Policy.
- 1.3 As part of the enforcement of a PSPO, those in breach of the Order could be issued a Fixed Penalty Notice (FPN).
- 1.4 This report seeks approval for the recommended level of penalty to be levied, where a Fixed Penalty Notice has been issued under the agreed enforcement protocol.

**2 Recommendation(s)**

- 2.1 Council to approve that the level of charge for a Fixed Penalty Notice associated with a breach of the Hatfield PSPO is set at £75 for a single breach, reduced to £50 if paid within 14 days.
- 2.2 Council to note that, subject to agreement of 2.1, the council's fees and charges schedule will be updated accordingly.
- 2.3 Council to note that fees and charges associated with breach of the PSPO will be reviewed annually along with other council Fees and Charges during the budget setting process.

**3 Explanation**

- 3.1 A PSPO is an order that identifies the public place ("the restricted area") to which it applies and can make requirements, or prohibitions, or both within that area. This means that the local authority can require people to do specific things in a particular area or not to do specific things in a particular area provided that the prohibitions or requirements imposed are reasonable.
- 3.2 A failure to comply with either a prohibition or requirement of the order is an offence and carries criminal sanctions. Upon summary conviction (offences

heard within the Magistrates Court) defendants can face a fine not exceeding level three on the standard scale (currently £1000). Breaches of the order can also be discharged by use of a fixed penalty notice (FPN).

- 3.3 It is important to recognise that FPNs are not a fine but are an alternative to prosecution whereby an individual accepts payment of a sum of money to discharge their liability for conviction. Failure to pay an FPN may result in the case being progressed to Court.
- 3.4 The Hatfield PSPO has an enforcement protocol which makes it clear that issuing an FPN is a tool that can be used if the accredited officer at the time of dealing with an incident feels that it is justified. The council officers and local police officers who will be enforcing the PSPO are aware that support, guidance and advice are still the first actions to be undertaken. Only when it is felt that an individual is not willing to take advice and/or support or is consistently in breach of the PSPO will enforcement action be taken.
- 3.5 Home Office Guidance states that the council is responsible for all court action undertaken and associated costs, by way of prosecution as a result of a breach of the PSPO. The council has an existing procedure for dealing with the use of FPNs. Any FPN issued as a result of the proposed PSPO will be dealt with in line with this procedure, however it is not anticipated that there will be a large volume of Notices issued.
- 3.6 The Home Office Guidance also states that in cases where an individual is convicted of a breach the maximum fine is a level 2 fine (max £500) for alcohol consumption or a level 3 fine (max £1000) for other breaches.
- 3.7 There is a great deal of support for the implementation of the PSPO in the designated area and officers and partners are proposing to have this in place by late July.

## **Implications**

### **4 Legal Implication(s)**

- 4.1 Section 68 of the Anti-Social Behaviour, Crime and Policing Act 2014 states that an authorised person may issue a fixed penalty notice to anyone he or she has reason to believe has committed an offence under section 63 -67 of the act in relation to a public space protection order. All Council officers who will be issuing fixed penalty notices will be authorised in writing to do so.
- 4.2 The Anti-Social Behaviour, Crime and Policing Act 2014 details the procedures to follow when issuing a fixed penalty notice and states that the amount specified on the fixed penalty notice should not exceed £100
- 4.3 Financial Implication(s)
- 4.4 It is proposed that the fixed penalty notice charge for a breach of the PSPO will be set at £75, reduced to £50 if paid within 14 days.
- 4.5 For persistent breaches, defendants can face a fine upon summary conviction (offences heard within the Magistrates Court) not exceeding level three on the standard scale (currently £1000).

- 4.6 Enforcement costs under this order will be met by existing police and council staff. The Anti-Social Behaviour Team will undertake all administration functions with regards to enforcement, including any enforcement action deemed appropriate. This will be met from existing budget.
- 4.7 Income from FPNs is expected to be small and could be used to cover some associated costs of implementing the proposal. As the income is expected to be minimal it is not proposed to update the budget in this respect.
- 4.8 Home Office Guidance states that the council is liable for all court action undertaken by way of prosecution for breaches of the PSPO. The council has an existing procedure for dealing with the use of FPNs. Any FPN issued as a result of the proposed PSPO will be dealt with in line with this procedure, however it is not anticipated that there will be a large volume of Notices issued.

## **5 Risk Management Implications**

- 5.1 Legal challenge. FPNs will be issued in accordance with the PSPO enforcement protocol and having regard to the council's Corporate Enforcement Policy. Likelihood Low; Impact Low.
- 5.2 Non-payment of fines. The penalty for breaches of this order relate to fines (FPNs), and there is a risk that these may not be paid and that recovery action will be required. Each case will be considered on its merits and in accordance with the council's debt recovery procedures. Likelihood Medium; Impact Low.

## **6 Security and Terrorism Implication(s)**

- 6.1 There are no specific security and terrorism implications arising from this report.

## **7 Procurement Implication(s)**

- 7.1 There are no direct procurement implication from this report at this time.

## **8 Climate Change Implication(s)**

- 8.1 There are no direct climate change implications from this report at this time.

## **9 Link to Corporate Priorities**

- 9.1 The subject of this report is linked to the Council's Corporate Priorities:
- Maintain a safe and healthy community
  - Protect and enhance the environment
- 10.2 In addition the PSPO will enhance the community safety partnership's ability to tackle ASB through a targeted but flexible approach; and help to deliver its objectives of:
- Prevent Antisocial Behaviour,
  - Reduce the damage caused to neighbourhoods by drugs and alcohol misuse.

**10 Equality and Diversity**

11 The Equality Impact Assessment identified that there is the potential for negative impacts on Age, Disability and Ethnicity because of their ability to pay and/or understand what behaviours are prohibited in the restricted area. Actions have been agreed to mitigate these impacts. These actions include: a case by case approach to enforcement, varied methods of payment available and different formats that the information will be made available to those within the community about the new Order and it is considered that with these mitigating actions in place, it would be appropriate to recommend the proposals in this report.

**12 Communication Plan**

12.1 There is an agreed communication plan in place for the implementation of the PSPO. It includes social media and website posts, fixed signage within the PSPO designate area and information leaflets to individuals who work and live in the area. There will also be a soft launch prior to the official implementation and enforcement of the PSPO to make sure that the community is aware on the new Order. Information will also be in the Council's LIFE Magazine this summer about the implementation of the PSPO.

Name of author	<i>Matt Rayner</i>
Title	<i>Community Partnership Manager</i>
Date	<i>13 June 2018</i>

Background papers to be listed (if applicable)

Recommendation to full council - implementation of Public Space Protection Order - 21 February 2018