

WELWYN HATFIELD BOROUGH COUNCIL
CABINET - 10 OCTOBER 2023
REPORT OF THE SERVICE DIRECTOR (RESIDENT AND NEIGHBOURHOOD)

PROPOSAL FOR A PUBLIC CONSULTATION ON A PUBLIC SPACES PROTECTION ORDER (PSPO) FOR THE TOWN CENTRE IN WELWYN GARDEN CITY

1 Executive Summary

- 1.1 The town centre in Welwyn Garden City is experiencing anti-social behaviour associated with:
- Begging, aggressive begging and associated ASB
 - ASB in public places caused by consumption of alcohol
 - Rough sleeping and non-engagement with support services
 - Urinating and defecating in public
- 1.2 These anti-social behaviours have been persistent and continuing for some time, and despite a number of interventions and support that has been undertaken to try to address these behaviours, it is not resolving the issues.
- 1.3 Police records show that when comparing the period August 2021-August 2022 to August 2022-August 2023 for the location, there has been a 25% increase in nuisance Anti-Social Behaviour (ASB). This is the category that the related ASB to those begging and rough sleeping would fall into.
- 1.4 Street Link figures show that when comparing 2022 data with 2023, there has been a 72% increase in reports of begging and rough sleeping. This increase is indicative of the current issues within the proposed PSPO area.
- 1.5 In addition, there has been ongoing reports of street drinking in the area to the police and ASB team. There have been historic and more recent issues with youths street drinking within the proposed designated area and the current homeless population are regularly seen with alcohol. This has led to alcohol related ASB, such as violence and public urination/defecation.
- 1.6 It is therefore recommended that we undertake a public consultation proposing the introduction of a Public Spaces Protection Order for this location to prohibit these activities and undertake enforcement action.
- 1.7 This report explores the evidence base and recommends a public consultation, to consider the introduction of a zoned PSPO for the area as set out in Appendix A.

2 Recommendation(s)

- 2.1 That Cabinet approve a public consultation exercise be undertaken to gain feedback about the proposed introduction of a zoned PSPO within Welwyn Garden City town centre (within Handside ward). This is as a result of certain persistent and continuing antisocial behaviours. The proposed PSPO is supported by the Community Safety Partnership and Joint Action Group (JAG).
- 2.2 The map covering the proposed PSPO area is in Appendix A.

3 Explanation

Background

3.1 The town centre in Welwyn Garden City is experiencing anti-social behaviour associated with:

- Begging, aggressive begging and associated ASB
- ASB in public places caused by consumption of alcohol
- Rough sleeping and non-engagement with support services
- Urinating and defecating in public

3.2 These anti-social behaviours have been persistent and continuing for some time, and despite a number of interventions and support that has been undertaken to try to address these behaviours, it is not resolving the issues. This is detailed further in paragraphs 3.23-3.33.

3.3 It is therefore recommended that we undertake a public consultation proposing the introduction of a Public Spaces Protection Order for this location to prohibit these activities and undertake enforcement action.

Public Spaces Protection Orders (PSPOs)

3.4 In October 2014 the Secretary of State enacted new powers according to the Anti-social Behaviour, Crime and Policing Act 2014 (“the Act”) relevant to tackling ASB. These new powers made changes to some existing legislation and were part of a Government commitment to putting victims at the centre of approaches to tackling ASB.

3.5 The aims of the Act are as follows:

- for local agencies to focus on the needs of victims
- to support people and communities in establishing what is and what is not acceptable, and support them to hold local agencies to account
- to ensure that professionals have the powers they need to tackle problems
- to focus on long term solutions.

3.6 One of the provisions within the Act relates to PSPOs (Sections 59-68). A PSPO is intended to deal with behaviours and problems that are considered to be detrimental to the local community’s quality of life, are persistent or continuing in nature, are unreasonable and justify the restrictions imposed by the PSPO. The orders are meant to be flexible and can be applied to a broad range of issues, with local authorities having the ability to design and implement their own prohibitions or requirements.

3.7 A PSPO has previously been implemented in Hatfield to address the associated ASB from street drinking, begging, rough sleeping. Since its introduction in 2018, it has proven to be a successful tool for tackling these issues, and there has been a significant reduction in both the reporting and incidents of ASB.

3.8 Local authorities have the power to make PSPOs if satisfied on reasonable grounds that two conditions are met:

1. 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 activities will be carried on in a public place within that area and that they will have such an effect.

2. 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.

- 3.9 A PSPO is an order that identifies the public place to which it applies (“the restricted area”) within which the impact has or is likely to occur 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 ones to impose in order to (a) prevent the detrimental effect from continuing, occurring or recurring; or (b) in order to reduce the detrimental effect or the risk of it continuing, occurring or recurring.
- 3.10 A PSPO can be made to apply to specific people within an area, or to everybody within that area. It can also apply at all times, or within specified times and equally to all circumstances, or specific circumstances.
- 3.11 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 payment of a fixed penalty notice (FPN) of £100.
- 3.12 Before deciding whether to make a PSPO the local authority must carry out the necessary consultation, notification (if any) and publicity.
- 3.13 In deciding if the local authority should make a PSPO the local authority must:-
- a) have particular regard for the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the European Convention on Human Rights (“ECHR”);
 - b) take account of the consultation responses
- 3.14 Article 10 of the European Convention on Human Rights (ECHR) relates to freedom of expression. Article 11 of the ECHR relates to freedom of assembly and association. Whilst a PSPO may interfere with the rights granted under Articles 10-11 of the ECHR, careful consideration needs to be given so that prohibitions and requirements under a PSPO do not unnecessarily interfere with what would otherwise be legitimate under the law. Local authorities must show that they have tried to use less restrictive methods to address the issues under the PSPO. In essence it is a balancing exercise between the competing interests of the individual, other individuals and the community at large.
- 3.15 Under section 72 of the Act, before making a PSPO, the Council must consult with the following:
- chief police officer of police, and the local policing body for the local area that includes the restricted area
 - land owners or occupiers within the affected area
 - any community representatives that the local authority feels appropriate
- 3.16 Home Office Guidance states that it is good practice to consult with the county council as Highways Authority.
- 3.17 Subject to approval of this report, a comprehensive consultation plan has been developed. This includes consulting with the following:
- Chief Constable of Herts Police

- Police and Crime Commissioner
- Hertfordshire County Council
- Chamber of Commerce
- Welwyn Hatfield Community Safety Partnership Joint Agency Group
- Homeless Prevention Partnership
- Welwyn Garden City Business Improvement District (BID)
- Local businesses
- Local residents
- Local schools
- Tenants Panel
- Ward councillors

As well as writing directly and promoting face to face and via flyers, the consultation will also be available on the council's website for local residents, visitors and businesses to complete.

- 3.18 There is no specific timescale requirement over which the consultation should take place. Six weeks is recommended as the minimum period required to allow for an open and transparent process, which seeks the views of members of the public. There is no duty to advertise in a local newspaper.
- 3.19 It is our intention to consult for a period of 6 weeks (11 October 2023 to 22 November 2023). The consultation will be held on the Council's website but a paper version of the consultation will be available if requested. Letters and emails will be sent to the above consultees making them aware of the consultation and inviting them to participate. We will promote the public consultation via our website, social media and flyer handouts in the town centre.
- 3.20 It is a requirement of Section 72 of the Act to notify the following of the proposed PSPO.
- the parish council or community council (if any) for the area that includes the restricted area
 - in the case of a public spaces protection order made or to be made by a district council in England, the county council for the area that includes the restricted area
- 3.21 It is a requirement of Section 72 of the Act to publicise the text of the proposed PSPO.
- 3.22 If the PSPO is subsequently approved by Cabinet, the PSPO would apply for a maximum of three years. It could be extended if a repeat process of review and consultation carried out by the authority identifies that the issues are still occurring and that the order is having the required effect. Thereafter it can be extended for a further three years. It can be extended more than once for periods up to three years each time.

ASB in Welwyn Garden City Town Centre

- 3.23 An engagement exercise in Welwyn Garden City Town Centre by Council officers in June 2023 (as part of ASB week) found support for a PSPO from residents and business owners via Welwyn Garden City BID. The proposed PSPO is also supported by the Community Safety Partnership.
- 3.24 Although initiated by the local authority, guidance has been sought from members of the Community Safety Partnership (CSP), in order to consider the most effective ways to utilise the new powers and address current ASB issues. Through the Joint Agency Group (JAG) and other local engagements, the following ASB issues were identified as the most problematic:
- Begging, aggressive begging and associated ASB

- ASB in public places caused by consumption of alcohol
 - Rough sleeping and non-engagement with support services
 - Urinating and defecating in public
- 3.25 The Council have a maintained commitment to eliminating rough sleeping in the district and significant resources have been committed to this purpose. Support and assistance are part of the ReStart Rough Sleeper Project as well as focus on outreach, accommodation and move on into longer term settled accommodation. ReStart is commissioned by the Council Housing Options Service and works alongside other charities including Herts Young Homeless, Druglink, CGL and OneYMCA to support those without accommodation.
- 3.26 Despite a commitment to approach individuals that have been reported as rough sleeping, and to offer assistance to get them away from a life on the streets or in the open, many such attempts are declined with the individuals refusing to engage with any support services.
- 3.27 Some of the individuals who are rough sleeping are also known by the police and the council's Anti-Social Behaviour Team to beg the public for money and drink alcohol in the Town Centre. Reports relating to these people have increased, which include reports of drug use, needle finds, verbal abuse to residents, urination and defecation in a public place, with residents feeling generally unsafe in the local area as a result.
- 3.28 It should also be noted that there is increasing tension between these individuals that are rough sleeping / begging. There have been threats of violence, physical altercations, arson attacks and rivalry between them. There is also strong evidence that those who are begging are using the money given by residents to fund drug and substance misuse. This has in turn, led to an increase in drug dealing activity in the area. In 2022 Welwyn Hatfield had the highest number of county lines reported than any other district in Hertfordshire with 22 being identified. We anticipate that the PSPO will help equip us to tackle these issues in its defined area.
- 3.29 As a Community Safety Partnership, we are keen to ensure that vulnerable people are safeguarded appropriately and receive support as necessary. Where an individual is identified in breach of the PSPO and has clear vulnerabilities and complex needs we will ensure they are approached with support and advice in the first instance.
- 3.30 The Responsible Authorities Group (RAG) also recommended that a PSPO should be considered, in order to effectively tackle these issues.
- 3.31 JAG understands that the requirements for a PSPO have been met based on evidence gathered by Hertfordshire Constabulary and the Council and evidence from local businesses, residents, police recorded crime and ASB statistics. Police records show that when comparing the same period August 2021-August 2022 to this August 2022-August 2023, there has been a 25% increase in nuisance Anti-Social Behaviour (ASB) in the location. Nuisance ASB includes incidents where an act, condition, thing or person causes trouble, annoyance, inconvenience, offence or suffering to the local community. This is the category that the related ASB to those begging and rough sleeping would fall into.
- 3.32 Street Link figures show that when comparing 2022 data with 2023 there has been a 72% increase in reports of begging and rough sleeping. This increase is indicative of the current issues within the suggested PSPO area.
- 3.33 In addition, there has been ongoing reports of street drinking in the area to the police and ASB team. There have been historic and more recent issues with youth's street drinking within the proposed designated area and the current homeless population are regularly seen with alcohol. This has led to alcohol related ASB, such as violence and public defecation.

3.34 JAG has agreed that the Town Centre is the primary location requiring a zoned PSPO, due to the prevalence of rough sleeping / begging ASB taking place. A map of the proposed area can be viewed in Appendix A.

3.35 This proposal has been developed to provide opportunities to impact on the issues detailed above through enforcement (backed by support and interventions). The recommendation is to seek approval for a public consultation for a proposed PSPO for the defined area of the town.

3.36 It is proposed that the PSPO include the following prohibitions:

Person(s) within this area will not:

- Approach another person either verbally or through actions to beg from the other person.
- Loiter at or within ten metres of any pay machine (including banks, supermarkets and car parks) unless waiting legitimately to use the machine for the purpose it is designed for.
- Sit on the ground in a public place, street, highway or passage in a manner that may be perceived that you are inviting people to give you money.
- Consume alcohol in a public place (except within the licensed area of a premises licence premises or the licensed area of a temporary event notice).
- Urinate or defecate in a public place.
- Sleep in any public place which is or includes;
 - Open to the air
 - within a vehicle for a sustained period
 - within a car park
 - a non-fixed structure including a caravan or a tent without the prior written consent of the owner or occupier of the land

3.37 These prohibitions represent specific behaviours, exhibited by individuals and groups of people who either live within Welwyn Hatfield, or commute to the town to undertake criminal activity. The PSPO will be utilised to prevent and disrupt antisocial behaviour. This is deemed to be a reasonable approach based on the specified objectives within Section 59(5) of the Act; ie (a) to prevent the detrimental effect from continuing, occurring or recurring; or (b) to reduce the detrimental effect or to reduce the risk of it continuing, occurring or recurring.

3.38 If approved following public consultation, the PSPO can be enforced by the Police, authorised Street Wardens and ASB Officers. Implementation and enforcement of the PSPO will be included in the CSP action plan and will primarily be enforced by police officers and PCSOs without the need for additional resources. The order allows for officers to use the powers where they witness someone in breach of the prohibitions within the defined area. Subject to the results of the consultation and any approval to introduce the PSPO, a protocol will be agreed with the Police regarding enforcement.

3.39 Only Council Officers with legal accreditation to issue Fixed Penalty Notices are authorised to enforce the PSPO.

3.40 Enforcement will be made through various means:

- Warnings if appropriate; or
- fixed penalty notices payable to the Council (statutory maximum of £100); or
- prosecution through the courts for persistent offenders (liable to a fine of up to £1000 upon summary conviction).

4 Financial Implication(s)

- 4.1 Enforcement costs under this order will be met by existing police and Council staff and resources.
- 4.2 Any supplementary enforcement or back-office work will form a part of the role of the Police and Council's ASB team.
- 4.3 There will be some costs associated with the public consultation, and if the PSPO is approved such as publicity of the order, stationery (FPN booklets) and signage. These costs will be met within existing budget.
- 4.4 Income from FPNs is expected to be small and could be used to cover some of the associated costs of implementing the proposal.
- 4.5 Home Office Guidance states that the council is liable for all court action undertaken by way of prosecution against the PSPO.

5 Legal Implications

- 5.1 The legal provisions for the public consultation of a proposed PSPO, the making of it and its publicity are outlined earlier in this report.
- 5.2 In the event that approval is given for a consultation, the consultation must be clear and concise, have purpose, be informative, last for a proportionate amount of time and be targeted. The result of the consultation will need to be taken into consideration by the council in deciding whether or not to approve the making of a PSPO.
- 5.3 If made, a PSPO, can be challenged by any person who lives or regularly works in the restricted area or visits that area under section 66(2) of the Act within six weeks beginning on the date when the PSPO is made on the following grounds:-
 - a) That the local authority did not have power to make the order or variation, or to include particular prohibitions or requirements imposed by the order (or by the order as varied);
 - b) That a requirement under Chapter 2 of Part 4 of the Act was not complied with in relation to the order or the variation.
- 5.3 In addition, a defence or challenge may be made under section 67(3) as a defence to a charge that a PSPO has been breached (on the basis that the local authority did not have the power to include a particular prohibition or requirement in a PSPO).

6 Risk Management Implications

- 6.1 Legal challenge could present a financial and reputational risk to the council and wider Community Safety Partnership. The legislation states that "interested persons" may challenge the validity of the order within a period of six weeks. The High Court has the power to quash, amend or uphold the order. This risk is mitigated by a comprehensive consultation process, which will include approaches to interested groups such as Liberty. Any views expressed during the consultation period will be considered and reported to Cabinet, prior to a decision about whether or not the proposed PSPO is made.
- 6.2 The penalty for breaches of a PSPO relate to fines, and there is a risk that this may lead to non-payment and therefore the need to take prosecutions.
- 6.3 If the process to introduce a PSPO is not followed correctly this could lead to a legal challenge, which will mean the council could face legal costs and reputational damage. This will be mitigated by demonstrating a clear understanding of the legislative scope through a comprehensive consultation process and, subject to approval, a targeted and specific PSPO.

- 6.4 There is a risk that, in the event that a decision is taken in due course to make a PSPO, expectations will be raised by the PSPO which agencies cannot meet, or that the order may not resolve the issues. This will be mitigated by clear communication during the consultation and subject to agreement, as part of the implementation of the PSPO.
- 6.5 The making and implementation of a PSPO Order could lead to displacement. This will be monitored by the Joint Action Group.
- 6.6 Some of the proposed prohibited activities could be construed negatively by the media due to a lack of understanding. This can be mitigated by producing a communications plan to run in tandem with the consultation process.
- 6.7 Not taking action presents a reputational risk as businesses and residents have been complaining about these issues for some time.

7 Security & Terrorism Implication(s)

- 7.1 There are no known security and terrorism implications associated with this recommendation.

8 Procurement Implication(s)

- 8.1 There are no procurement implications associated with this recommendation.

9 Climate Change Implication(s)

- 9.1 There are no climate change implications associated with this recommendation.

10 Human Resources Implication(s)

- 10.1 There are no human resources implications associated with this recommendation.

11 Health and Wellbeing Implication(s)

- 11.1 Addressing the ASB associated with these activities in the town centre will contribute towards the feeling of safety and assurance to residents, visitors and businesses in the location.

12 Link to Corporate Priorities

- 12.1 The subject of this report is directly linked to the Council's Corporate Priority – 'A sense of community where people feel safe.'
- 12.2 In addition the PSPO would enhance the community safety partnership's ability to tackle ASB through a targeted but flexible approach; and help to deliver its objectives of:
- Help people to feel safe in their homes and local community
 - Safeguard vulnerable people
 - Working in partnership to prevent and tackle serious violence

11 Equality and Diversity

- 11.1 An initial Equality Impact Assessment (EqIA) has been carried out prior to the consultation to understand the potential impact on groups with protected characteristics. There are some potential negative impacts on the protected characteristics of age, disability and ethnicity.
- 11.2 If the PSPO is implemented in due course, should individuals with vulnerabilities be found, support and signposting to services will be undertaken. However, the proposed

PSPO is considered necessary and justified due to the impact of the anti-social behaviours causing detriment to the quality of life of the community. A further EqIA will be done once the outcome of the consultation is known. A copy of the pre-consultation EqIA is attached as Appendix B.

Name of author	Sue McDaid
Title	Service Director (Resident and Neighbourhood)
Date	14.09.2023

Appendices

Appendix A – WGC proposed PSPO area map

Appendix B - EqIA