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| Report Title: | Proposal for the continuation of two Public Spaces Protection Orders (PSPO) in Windsor, Maidenhead and Ascot to address dog fouling, dog control and cycling prohibition areas in Maidenhead and Windsor town centres |
| Contains Confidential or Exempt Information | No - Part I |
| Cabinet Member: | Councillor Werner, Leader of the Council and Cabinet Member for Community Partnerships, Public Protection and Maidenhead |
| Meeting and Date: | Cabinet – 27 March 2024 |
| Responsible Officer(s): | Andrew Durrant, Executive Director of Place Amanda Gregory, Assistant Director, Housing and Public Protection |
| Wards affected: | All |

REPORT SUMMARY

Public Spaces Protection Orders (PSPOs) were brought in under the Anti-social Behaviour, Crime and Policing Act 2014, which came into force on 20 October 2014. PSPOs specify an area where activities are evidenced to be taking place that are detrimental to the local community's quality of life. PSPOs impose conditions or restrictions on people using that area, such as alcohol bans or putting up gates.

1. This report deals with the proposal to continue two existing PSPOs in Windsor, Maidenhead and Ascot for a further 3 years.
2. The report recommends the continuation of a PSPO for a Borough wide ban on dog fouling and ineffective control of dogs.
3. The report also recommends the continuation of a PSPO which prohibits cycling on the highway in pedestrianised zones of High Street, Maidenhead and the pedestrianised zone of Peascod Street, Windsor.

The continuation of the PSPOs to tackle dog control/dog fouling in the Borough and cycling in pedestrianised zones of High Street, Maidenhead and the pedestrianised zone of Peascod Street, Windsor supports the Corporate Plan commitment to 'Taking action to tackle climate change and its consequences and improving our natural environment'.

1. DETAILS OF RECOMMENDATION(S)

RECOMMENDATION: That Cabinet notes the report and:

- i) **Approves the continuation of the Royal Borough of Windsor and Maidenhead, Antisocial Behaviour Crime and Policing Act 2014, Public Space Protection Order (dog control and dog fouling) 2021 and the Public Space Protection Order (cycling in pedestrianised areas) 2021 for a further 3 years.**
- ii) **Requests that the Assistant Director for Housing and Public Protection immediately reviews the restrictions relating to cycling, and carry out the**

required consultation in relation to a potential variation to the PSPO to the hours of 10am to 5pm to bring it in line with restrictions on motor vehicles and delegates authority to the Executive Director of Place in consultation with the Leader of the Council to make any variations necessary to the PSPO as a result of the consultation responses.

2. REASON(S) FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

Options

Table 1: Options arising from this report.

| Option | Comments |
|--|---|
| <p>To continue the PSPO for dog control and dog fouling.</p> <p>To continue the PSPO for cycling in pedestrianised areas.</p> <p>This is the recommended option</p> | <p>To continue the two PSPOs to be enforced by authorised persons. This option is recommended as the PSPOs are based on a solid and long- standing evidence base to address the related key issues.</p> |
| <p>Do nothing and allow the PSPOs to expire.</p> | <p>This option is not recommended as it would mean existing PSPOs expire in April 2024 and the issues would be unenforceable causing distress for residents and visitors of the Borough.</p> |

- 2.1 The PSPO to address dog control and dog fouling and cycling has been in place for the past 3 years and is due to expire on 27 April 2024 and needs to be renewed so that they can continue for a further 3 years. The PSPOs allow the police or other authorised officers to continue to be able to ask someone who has a dog that is behaving out of control to put their dog on a lead and for a person to clean up their dog’s mess. If that person does not comply, they could then be issued with a £100 fixed penalty notice. Similarly, continuing the PSPO for cycling allows authorised persons to ask cyclists to dismount from their bikes if they are seen cycling through the pedestrianised zones specified in the orders. If that person does not comply, they could then be issued with a £100 fixed penalty notice.
- 2.2 We are proposing to continue the PSPOs as having them in place for the past 3 years has had a positive effect on the number of incidents in the Borough. For dog fouling, our PSPO signage warning residents of their responsibility has resulted in an improvement noticed by our Wardens and residents. The Community Wardens have not had to issue any fines as they have not witnessed anyone dog fouling but patrol hotspots on a weekly basis and engage with dog walkers using the PSPOs as a tool to educate and remind dog walkers of their responsibilities. For cycling, the Community Wardens have carried out patrols in the two zones on daily basis and the majority of the time cyclists will dismount when asked or they have already dismounted after seeing the signage. Wardens have only had to issue fines on five occasions where cyclists have not complied with the instruction to dismount.

3. KEY IMPLICATIONS

Table 2: Key Implications

| Outcome | Unmet | Met | Exceeded | Significantly Exceeded | Date of delivery |
|--|--|--|--|---|------------------|
| The PSPO (dog fouling and dog control) continues and is enforced by authorised persons. | The PSPO does not continue, and authorised officers cannot enforce behaviours. Reports of anti-social behaviour continue/increase. | Conditions continue to be in place and dog fouling and effective control of dog conditions are enforced. | Reports of anti-social behaviour decrease. | Residents feel safe and this is reflected in the resident's survey. | 27 March 2024 |
| The PSPO (cycling on the highway in pedestrianised zones of High Street, Maidenhead and the pedestrianised zone of Peascod Street, Windsor) continues and is enforced by authorised persons. | The PSPO does not continue, and authorised officers cannot enforce behaviours. Reports of anti-social behaviour continue/increase. | Conditions continue and cycling on the highway in pedestrianised zones are enforced. | Reports of anti-social behaviour decrease. | Residents feel safe and this is reflected in the resident's survey. | 27 March 2024 |

4. FINANCIAL DETAILS / VALUE FOR MONEY

There are no financial implications arising directly from the recommendations in this report. The levels of charge for Fixed Penalty Notices (FPNs) in this Borough were approved by Cabinet on 27 September 2018 at £100 (reduced to £75 if paid within 10 days). It is proposed that these are kept as the charges for the two PSPO FPNs to be consistent with the other FPNs in place in the Borough.

5. LEGAL IMPLICATIONS

- 5.1 The Royal Borough is empowered under s.59 of the Anti-Social Behaviour, Crime and Policing Act 2014 to make PSPOs where activities carried on in a public place have had, or are likely to have, a detrimental effect on the quality of life of those in the locality;
- Are, or are likely to be, persistent or continuing in nature;
 - Are, or are likely to be, unreasonable; and
 - Justify the restrictions imposed.
- 5.2 Furthermore, under s.59, the Royal Borough has to consider the restrictions, and the duration of the order proposed.
- 5.3 Under s60 a public spaces protection order may not have effect for a period of more than 3 years, unless extended under that section.
- 5.4 Before the time when a public spaces protection order is due to expire, the local authority that made the order may extend the period for which it has effect if satisfied on the reasonable grounds that doing so is necessary to prevent:
- a) Occurrence or recurrence after that time of the activities identified in the order, or
 - b) An increase in the frequency or seriousness of the seriousness of those activities after that time.
- 5.5 Where a public space protection order is in force, the local authority that made the order may vary it:
- a) By increasing or reducing the restricted area
 - b) By altering or removing a prohibition or requirement included in the order or adding a new one.

Any proposed variation will require a further public consultation exercise in line with the statutory guidance.

- 5.6 Section 66 of the Anti-Social Behaviour, Crime and Policing Act 2014 allows that an interested person, i.e., “an individual who lives in the restricted area or who regularly works in or visits that area”, may challenge the validity of a PSPO, by application to the High Court where:
- A local authority did not have power to make the order; or
 - That a requirement under the legislation was not complied with

No such challenge has been received in relation to this proposal to date, and there have been no indications that anyone is considering such a challenge.

- 5.7 Additionally, Regulation 2 of the Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014 requires that the Royal Borough must take certain steps to publicise PSPOs.
- 5.8 The legislation stipulates that PSPOs must be subject to regular review. New orders should ideally be reviewed after a year, and thereafter PSPOs must be reviewed triennially.

- 5.9 Finally, under s.71, it must have had regard to the Rights of Freedom of Expression and of Assembly under the Human rights Act 1998, before making the Order. European Human Rights considerations are covered overleaf.
- 5.10 In accordance with the Council's Constitution; Public Space Protection Orders within a single ward have been delegated to the Licensing and PSPO Sub Committee; however as the PSPOs in this report relate to multiple wards these PSPOs must be approved by Cabinet.

6. RISK MANAGEMENT

6.1 Table 3: Impact of risk and mitigation

| Threat or risk | Impact with no mitigations in place or if all mitigations fail | Likelihood of risk occurring with no mitigations in place. | Mitigations currently in place | Mitigations proposed | Impact of risk once all mitigations in place and working | Likelihood of risk occurring with all mitigations in place. |
|---|--|--|--|---|--|---|
| There is a risk that there could be a legal challenge to the validity of the PSPO process which could result in reputation damage to the council and potential court costs. | Minor | Low | Review by internal and external legal counsel. Public consultation on PSPOs | <ul style="list-style-type: none"> • Ad hoc PSPO panel to decide on local PSPOs • Initial review of individual Panel to decide on strategic PSPOs • PSPOs Triennial reviews of all PSPOs | Minor | Low |

7. POTENTIAL IMPACTS

- 7.1 Equalities. An Equality Impact Assessment is available as Appendix A. We will review the consultation responses for any equalities considerations and if appropriate amend the EQIA as necessary.
- 7.2 Climate change/sustainability. There are no known identifiable factors that would impact climate change or sustainability.
- 7.3 Data Protection/GDPR. Data Protection Impact Assessment is not required. The information journey has been captured in the Privacy notice which can be found on

- 7.4 The Council will give regard to the rights and freedoms set out in Article 10 (right of freedom of expression) and Article 11 (right of freedom of assembly) of the European Convention of Human Rights in order to conclude that the restrictions on such rights and freedoms imposed by this Order are lawful, necessary and proportionate.

8. CONSULTATION

- 8.1 A full public consultation on the proposed continuation of the PSPOs took place between Monday 29 January 2024 and Monday 26 February 2024.
- 8.2 The consultation consisted of an explanation and copies of the existing PSPOs and a brief outline of the proposal and a short survey. The survey allows local residents or people with a connection to the Borough to express whether they agree or disagree with the proposals.
- 8.3 The consultation was publicised via a press release, social media channels such as RBWM Twitter and Facebook and notices in public areas such as libraries, notice boards in shops/parks and parish council's notice boards.
- 8.4 RBWM consulted with key stakeholders such as Thames Valley Police, Police and Crime Commissioner (PCC), Councillors, Town and Parish Councils, Landowners, Town Centre Managers, Kennel club, cycling groups and residents groups.
- 8.5 In total 297 people responded to the consultation. Out of all of the responses 287 were via the online survey accessed through the RBWM webpage. (Redacted responses can be shared upon request) and 10 were via paper copies of the survey.
- 8.6 Residents were first asked: How far do you agree or disagree with the proposal to continue the Public Spaces Protection Order (PSPO) to address dog fouling and effective dog control for Windsor, Maidenhead and Ascot for a further 3 years?
- 8.7 272 respondents agreed or strongly agreed to the proposed continuation. Only 14 respondents disagreed or strongly disagreed. The remainder did not respond.
- 8.8 Residents were then asked: How far do you agree or disagree with the proposal to continue the Public Spaces Protection Order (PSPO) to address cycling on the highway in pedestrianised zones of High Street, Maidenhead and the pedestrianised zones of Peascod Street, Windsor for a further 3 years?
- 8.9 238 respondents agreed or strongly agreed to the proposed continuation. Only 50 respondents disagreed or strongly disagreed. The remainder did not respond.
- 8.10 We received feedback on the proposals from the Windsor Ascot Maidenhead Active Travel, Windsor Cycle Hub & Active travel group, Windsor & Maidenhead Cycling Action group and the Windsor Cycle Hub. The primary suggestion was

that the PSPO relating to cycling operate during the hours of 10am to 5pm to bring it in line with restrictions on motor vehicles.

- 8.11 The comments have been noted and a recommendation has been made to further review the proposal made by the cycling groups and consider if a variation may be appropriate (see section 5.5 of this report). If a variation is proposed, then this will require a further public consultation.
- 8.12 We received feedback on the proposals from the Dogs Trust who fully support a well implemented order on fouling and suggested that an adequate number of disposal points are provided, free disposal bags and sufficient signage. They also questioned whether issuing on the spot fines was effective. We will pass on their feedback to our parks teams re bins and review our signage. We addressed the query re fines in that we first and foremost regard the PSPO as an opportunity to engage, educate and change behaviour with fines being a last resort and a deterrent.
- 8.13 We also received feedback from the Kennel Club who suggested some other proactive measures that could be implemented in addition to the PSPOs such as increasing the number of bins available for dog owners to use; communicating to local dog owners that bagged dog faeces can be disposed of in normal litter bins; running responsible ownership and training events; or using poster campaigns to encourage dog owners to pick up after their dog. They also encouraged local authorities to be more flexible and use targeted measures at their disposal. They also emphasised the importance of clear signage to ensure dog walkers are aware that PSPOs are operating in the areas.
- 8.14 The Kennel Club also encouraged the Council to allow for some flexibility when considering whether a disabled person's dog is acting as an assistance dog. They suggested that the Council could consider adopting the definitions of assistance dogs used by Mole Valley District Council or Northumberland County Councils. This will be passed onto our legal teams for consideration.
- 8.15

9. TIMETABLE FOR IMPLEMENTATION

- 9.1 Implementation date if not called in: Immediately. The full implementation stages are set out in table 4.

Table 4: Implementation timetable

| Date | Details |
|---------------|---|
| 27 March 2024 | Cabinet to decide whether a PSPO is appropriate. |
| 27 March 2024 | If Cabinet is satisfied that a PSPO is appropriate, the Council's solicitor shall be authorised to issue the Orders with the revised date and seal. |
| 27 March 2024 | New Orders are sealed following Cabinet. |
| 27 March 2024 | The Orders will be published on the website and notices will be erected at the sites as considered sufficient. |
| 8 May 2024 | Challenges to the PSPO must be made to the High Court within 6 weeks of the order being made. |
| 27 March 2025 | After 12 months, partner review meeting convened to review whether to continue/amend/remove the orders. |

10. APPENDICES

10.1 This report is supported by 5 appendices:

- Appendix A – Equality Impact Assessment
- Appendix B- Existing order for the PSPO relating to dog control and dog fouling.
- Appendix C – Existing order for the PSPO relating to cycling.
- Appendix D – Consultation Questionnaire
<https://rbwmtogether.rbwm.gov.uk/public-spaces-protection-orders-pspo-consultation>
- Appendix E- Responses from consultation-.

11. BACKGROUND DOCUMENTS

11.1 This report is supported by 2 background documents:

- Public Space Protection Orders are established in sections 59 to 75 of the Anti-Social Behaviour, Crime and Policing Act 2014. This can be viewed at:
<http://www.legislation.gov.uk/ukpga/2014/12/part/4/chapter/2/crossheading/public-spaces-protection-orders/enacted>
- Guidance on the legislation is available on the Home office publication:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/956143/ASB_Statutory_Guidance.pdf

12. CONSULTATION

| Name of consultee | Post held | Date sent | Date returned |
|-----------------------------------|--|--|---------------|
| <i>Mandatory:</i> | | <i>Statutory Officer (or deputy)</i> | |
| Elizabeth Griffiths | Executive Director of Resources & S151 Officer | 13/02/24 | n/a |
| Elaine Browne | Deputy Director of Law & Governance & Monitoring Officer | 13/02/24 | 21/02/24 |
| <i>Deputies:</i> | | | |
| Andrew Vallance | Deputy Director of Finance & Deputy S151 Officer | 13/02/24 | 13/02/24 |
| Jane Cryer | Principal Lawyer & Deputy Monitoring Officer | 13/02/24 | n/a |
| <i>Mandatory:</i> | | <i>Data Protection Officer (or deputy) - if decision will result in processing of personal data; to advise on DPIA</i> | |
| Samantha Wootton | Data Protection Officer | 13/02/24 | 22/02/24 |
| <i>Mandatory:</i> | | <i>Equalities Officer – to advise on EQiA, or agree an EQiA is not required</i> | |
| Ellen McManus-Fry | Equalities & Engagement Officer | 13/02/24 | 20/02/24 |
| <i>Directors (where relevant)</i> | | | |
| Andrew Durrant | Executive Director of Place | 13/02/24 | 13/02/24 |

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| <i>Assistant Directors (where relevant)</i> | | | |
| Amanda Gregory | Assistant Director of Housing and Public Protection | 13/02/24 | 29/02/24 |

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| Confirmation relevant Cabinet Member(s) consulted | Cabinet Member for Community Partnerships, Public Protection and Maidenhead portfolio. | Yes- approved at briefing paper stage. |
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REPORT HISTORY

| Decision type: | Urgency item? | To follow item? |
|--|---------------|-----------------|
| Key decision First entered into the Cabinet Forward Plan: 23/01/2024 | No | No |

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| Report Author: Mandy Mann, Anti-social behaviour coordinator, 07920504572 |
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