

# Report to Cabinet

**7 February 2024**

<b>Subject:</b>	Implementation of Boroughwide Public Spaces Protection Orders
<b>Cabinet Member:</b>	Public Health & Communities Cllr Syeda Khatun
<b>Director:</b>	Director of Borough Economy Alice Davey
<b>Key Decision:</b>	Yes
<b>Contact Officer:</b>	Business Manager Community Safety & Resilience Tessa Mitchell <a href="mailto:tessa_mitchell@sandwell.gov.uk">tessa_mitchell@sandwell.gov.uk</a>

## 1 Recommendations

- 1.1 That approval be given to the implementation of a Boroughwide Public Space Protection Order for alcohol to enable authorised officers / constables, where satisfied that nuisance or disorder associated with alcohol is occurring, to require people not to consume alcohol in the area and to surrender any alcohol in their possession.
- 1.2 That approval be given to the implementation of a Boroughwide Public Space Protection Order to tackle nuisance caused by dog fouling making it:-
- (i) an offence for a person in charge of a dog to fail to pick up the dog's faeces forthwith should it defecate whilst in their control;
  - (ii) an offence for a person in charge of a dog to fail to be able to produce a receptacle to pick up dog faeces such as a dog poo bag;



- (iii) an offence for a person in charge of a dog to allow a dog into an enclosed children's play area / sports area.

Registered disability assistance dogs and their owners to be exempt from the requirements of the order

1.3 That approval be given to the implementation of a Boroughwide Public Space Protection Order to tackle the risks associated with BBQs and fires in public spaces by :-

- (i) making it an offence to have fires / BBQs in public spaces in Sandwell and not to stop these when requested to do so by authorised officers / constables;

- (ii) requiring individuals to surrender anything in their possession which an authorised officer / constable or has reasonable suspicion to be an article that has been used OR is likely to be used in conjunction with these prohibited activities.

1.4 That approval be given for alcohol, dog fouling and BBQs and fires Boroughwide Public Space Protection Orders to be implemented for a period of three years commencing 1 March 2024;

1.5 That the Director Borough Economy, or any successor position, be authorised to implement, monitor and enforce the Public Spaces Protection Orders.

## 2 Reasons for Recommendations

2.1 In October 2017 SMBC introduced 4 Boroughwide PSPOs; 1 in relation to consumption of alcohol in a public place and 3 in relation to dogs. These were previously in place as a Designated Public Place Order and 3 Dog Control Orders which under the transitional arrangements of the Anti-Social Behaviour Crime and Policing Act 2014 automatically became Public Spaces Protection Orders.

2.2 PSPOs last for up to 3 years and then need to be reviewed. The orders



were renewed in March 2021 and are now up for consideration again alongside a new proposal relating to fires / BBQs. Having undertaken this review and public consultation it is recommended that the 2 existing PSPOs including additional requirements in relation to dogs are renewed and a new PSPO put in place regarding fires / BBQs on public land.

2.3 The existing PSPOs have been relatively well used during the last 3 years, particularly in terms of engagement to improve behaviour and enable support to be offered where necessary. Enforcement has also been used where needed with 8 and 5 FPNs being issued respectively in relation to the 2 existing orders. Both have run throughout the covid pandemic and lockdowns.

2.4 The alcohol PSPO works in tandem with the West Bromwich Town Centre PSPO introduced in 2019, which has also contributed to tackling crime and ASB in the designated area. This prohibits:

- *Acting or inciting others to act in a manner that causes, or is likely to cause, harassment alarm or distress to any person.*
- *Threatening any person with violence and /or being verbally abusive towards any person.*
- *Begging or asking members of the public for money or loitering for the purpose of begging or asking members of the public for money.*
- *Causing a motor vehicle or trailer to stand on a road and /or footpath so as to cause any unnecessary obstruction of the road and /or footpath.*

The powers of both complement each other, particularly in relation to street drinking and homelessness which remain issues across Sandwell.

2.5 Summer 2022 saw a spate of fires on public land arising from BBQs being used, particularly disposable ones. There are limited options to tackle these and therefore introducing a PSPO will provide powers to adopt a preventative approach and tackle these concerns locally.





2.6 Dogs and Alcohol are both ongoing Public Health concerns.

2.7 All the PSPO proposals have been supported by Sandwell's Multi Agency Borough Tasking Group.



- 2.8 All 3 issues are a concern in Sandwell with our public consultation showing 97% support for the Alcohol PSPO, 98% support for the Dog Fouling PSPO and 87% support for a PSPO in relation to Fires / BBQs .
- 2.9 These PSPO proposals demonstrate the council's commitment to listening to its residents, partners and communities and to take action to address issues that are important to them.

### 3 How does this deliver objectives of the Corporate Plan?

	<p>The Best Start in Life for Children and Young People</p> <ul style="list-style-type: none"> <li>• Avoidance of dog mess in public places which is a considerable health risk to children.</li> <li>• Ability to challenge street drinkers and others so as to set an example related to behaviours and health</li> <li>• Understanding of the dangers of fires and damage that these can cause</li> </ul>
	<p>People Live Well and Age Well</p> <ul style="list-style-type: none"> <li>• Standards set around cleanliness of public spaces and support for those with alcohol issues / dependency. This is particularly helpful in relation to proactive engagement with street drinkers / rough sleepers</li> <li>• Reduce risk of life changing injury and death from fires</li> </ul>
	<p>Strong Resilient Communities</p> <ul style="list-style-type: none"> <li>• PSPOs provide SMBC and other partners additional tools and powers to effectively reduce and manage ASB and its negative impact on residents</li> <li>• All three PSPOs support public confidence in relation to challenging Anti-Social Behaviour through offering advice and support and sanctions for non-compliance.</li> <li>• There is also an educational element to all three PSPOs and opportunities for engagement</li> </ul>
	<p>Quality Homes in Thriving Neighbourhoods</p> <ul style="list-style-type: none"> <li>• These PSPOs address ASB, which is an essential component of creating a thriving neighbourhood.</li> <li>• Both also demonstrate the council's commitment to</li> </ul>



	listening to its residents, partners and communities and to take action to address issues that are important to them
--	--

## 4 Context and Key Issues

### 4.1 Background

In October 2017, existing Designated Public Place and Dog Control Orders were replaced as Boroughwide PSPOs under the transitional arrangements of the Anti-Social Behaviour Crime and Policing Act 2014. These orders have to be reviewed every 3 years.

In 2021 following review and public consultation the existing orders in relation to dogs and alcohol were renewed. As outlined above these are now due for further review alongside consideration of an additional prohibition in relation to fires / BBQs in public places.

The national PSPO guidance concentrates on the need for proportionality and suggests that the question to be asked is: is the restriction proposed proportionate to the specific harm or nuisance that is being caused? Both existing PSPOs have continued to be used during the last 3 years, providing opportunities for engagement and where necessary enforcement. The public consultation has also demonstrated support for all three proposals including the additional requirements.

### 4.2 Consultation

A public consultation on all 3 proposals took place between 16<sup>th</sup> September and 16<sup>th</sup> November 2023. Guidance regarding undertaking Consultations on a Public Space Protection Order was published by the Local Government Association in 2018. This guidance was adhered to and the proposed PSPO was advertised in the local press, The Sandwell Herald and on SMBCs website and social media. Other specific consultees were:

West Midlands Police	Office of the Police & Crime Commissioner
West Midlands Fire Service	West Midlands Ambulance Service
SMBC Public Health	Cranstoun
DECCA	Transport For West Midlands



230 people took the time to take part in the consultation run through Sandwell Consultation Hub. 60% of respondents (138) stated that they had witnessed ASB related to these proposals.

### 4.3 Consultation Findings

An overview of the results for each element is given below:

#### 4.31 Alcohol

It is recognised that the consumption of alcohol in public spaces can be closely linked with Anti-Social Behaviour (ASB). The existing PSPO renewed last in 2021 **‘enables authorised officers / constables, where satisfied that nuisance or disorder associated with alcohol is occurring, to require people not to consume alcohol in the area and to surrender any alcohol in their possession. It is an offence to fail to comply with these requirements without reasonable excuse’.**

97% (222/230) were in favour of continuing with the alcohol restriction. Comments included:

*‘Alcohol and anti-social behaviour associated with it in public does not create a good image ( especially to younger people who are influenced easily), along with discarded tins and bottles etc’.*

*‘Drinking alcohol in the street is not necessary, enough pubs around. It can make people abusive and very unfriendly’.*

*‘I think people should be able to enjoy public spaces without fear of those consuming alcohol’.*

4.32 SMBCs Public Health Team were concerned that those who enforce this PSPO should be equipped to understand that the confiscation of alcohol from a person who is physically dependent can result in withdrawals and fatal seizures. There is a real need for officers who may be the ones



confiscating the alcohol to understand and assess the risk their action may result in.

To help mitigate such risks it is imperative that officers enforcing the scheme should work closely with local alcohol treatment provider, Cranstoun who are able to support engagement and delivery of harm reduction approaches including on the site delivery and support through their outreach model which covers the 6 towns of Sandwell. Awareness and training for staff is available through the Sandwell Drug and Alcohol Partnership.

#### 4.33 **Dog Fouling**

Sandwell has also had a PSPO in place in relation to dog fouling since 2017 **‘making it an offence for a person in charge of a dog to fail to pick up the dog’s faeces forthwith should it defecate whilst in their control’** Since being renewed in 2021 this PSPO has also been relatively well used over the past 3 years, again not only providing a useful additional enforcement tool where necessary but also opportunities for engagement and education. This power promotes responsible dog ownership and reinforces the Public Health messages in relation to dog fouling and keeping our streets and green spaces clean and safe for all.

An option to strengthen this has been included in the consultation this year in relation to adding 2 additional requirements:

**‘making it an offence for a person in charge of a dog to fail to be able to produce a receptacle to pick up dog faeces’**

**‘making it an offence for a person in charge of a dog to allow a dog into and enclosed children’s play area / sports area’**

4.34 Results from the consultation found 98% (225/230) of respondents supported the existing requirement with 92% (211/230) supporting the requirement to have receptacles to clean up dog waste and 91% (210/230) supporting dog exclusion areas. Comments included:



*'I'm sick of seeing dog mess everywhere I go it's disgusting and people need to be dealt with'.*

*'It is a danger to young children who can risk getting toxocarid which can cause blindness. It is also a health risk, children and adults should be able to walk around and go to play area's without fear of falling, or trending into dog mess'.*

*'Dog fouling is an ongoing issue throughout Sandwell and it isn't pleasant when walking down the street or in parks and green areas. It's a hazard, unsightly and just disgusting and more should be done to tackle this problem and punish those who don't pick it up'.*

*'As a dog owner I always clear up after my own dog but am horrified by the number of people who don't'.*

#### 4.35 **Fires / BBQs on public land**

The consultation this year has also included a new prohibition in relation to BBQs and fires on public land.

**'making it an offence to have fires / BBQs in public spaces and not to stop these when requested to do so by authorised officers / constables.'**

During summer 2022, Sandwell experienced a significant increase in outdoor fires caused by individuals having fires / BBQs in public spaces. This is a preventable danger both to individuals, wildlife and the environment. The increasingly drier and hotter conditions have increased this fire risk. This PSPO requirement provides designated officers with opportunities to engage with those undertaking such activities to make them aware of the risks and to enforce if needed.

This type of PSPO is in place in many other areas and provides a focus on the dangers that fires and BBQs can have.

4.36 87% of respondents supported this approach (201/230) with 7% (10) unsure and 5% (8) against. Comments included:





*'Barbecues left unattended could cause fire or injury to people, animals or wildlife so should be banned in public spaces. Also the gathering of people for a barbecue in public spaces then goes on to cause other problems i.e. anti-social behaviour and drinking alcohol also in public places'*

*'There are plenty of notices around the parks /Sandwell Valley to not have BBQ's fires etc but people ignore this because there are no consequences. If it was made an offence then people could either be fined or the BBQs removed and fires extinguished'*

*'Many times we have walked in the park and people have left portable barbecues or in general leave all the mess it's disgusting'*

However it was recognised by some that people need to be encouraged to use parks and green spaces and that having a BBQ can be part of that. Several suggested having designated areas where these could be held safely which will be reviewed.

## 5 Summary of Findings

- 5.1 230 people took part in the survey which is considerably more than in 2021. Whilst acknowledging this remains an overall small number, feedback from those who took the time to respond showed clear public support for all three PSPOs as part of a toolkit of measures to continue to address these issues which are concerns across the Borough with relevant controls and safeguards in place. An overview of the consultation is attached as Appendix 1.

Public Health raised the need for training in addition for those who can confiscate alcohol from users. The Kennel Club highlighted previously the need to take account of assistance dogs and to use the PSPO as an engagement opportunity to support responsible dog ownership which will continue. Engagement is a key part of any PSPO and owners of registered disability dogs will continue to be exempt.

- 5.2 Other respondents felt that more patrols, cameras and education needed to be put into place. As a Council it is recognised that PSPOs need to be used as part of a strategy that includes enforcement



alongside other engagement to tackle these issues as effectively as possible. The use of a PSPO should never be used in isolation as for many types of crime, ASB and other unacceptable behaviour as other remedies are more appropriate and more effective. These proposals will also be shared with Scrutiny in January 2023.

5.3 A PSPO is an opportunity to engage with individuals and to offer support and advice. Enforcement is always a final resort. There are many examples of such engagement and assertive outreach work taking place across Sandwell supported by our strong partnership approaches. These provide opportunities to promote responsible behaviour and important public health messages. It is therefore, recommend that these powers are renewed and enhanced.

## 6 Alternative Options

6.1 Sandwell has had controls in place in relation to alcohol and dog fouling for many years. It is clear that both these issues remain public concerns and feedback indicates that they are both still needed and serve a purpose in dealing with these issues and providing reassurance for residents. The recent rise in fires attributed to fires and BBQs in public land and the dangers and destruction posed by these is also a significant concern. These PSPO's are supported by partners and will ensure direct action is taken using the most suitable tools and powers as required by individual situations. SMBC could opt to not renew / strengthen these powers and deal with any issues individually but this will require significant resources and has already proved difficulty in relation to BBQs / Fires with no specific powers available. It would also weaken opportunities for engagement. This is not recommended.

## 7 Implications

<b>Resources:</b>	The implementation of these PSPOs will not require any additional strategic resources that require the council or partners to operate outside existing budgets.
-------------------	---



**Legal and Governance:**

Under sections 59-75 of the Anti-Social Behaviour, Crime and Policing Act 2014, local authorities have powers to make PSPOs.

The Council can only make a PSPO when it is satisfied on reasonable grounds that the activities carried out or likely to be carried out in a public place have a detrimental effect on the quality of life of those in the area and are persistent, continuing and unreasonable. The Council would also need to be satisfied that the restrictions imposed were justified.

Should anyone object to the granting of a PSPO they would have to make a High Court application within 6 weeks of the order being granted.

For that appeal to be successful they would have to show that the Council did not have the power to make the order, as the issue covered has not been demonstrated, usually by empirical evidence, to be a significant enough issue to justify the restriction. The other grounds for the appeal would be to demonstrate that the consultation process was inadequate.

PSPOs can only apply to public places. This means any place to which the public, or and sections of the public, on payment or otherwise, have access to as of right or by virtue of express or implied permission.

The Council must comply with the Anti-Social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014 by publishing the orders on its website and by erecting notices on or near the affected land sufficient to draw the attention of the public to the face that the orders are in place and the effects of this.

A PSPO can last up to three years unless it is extended by the relevant local authority (section 60). More than one extension can be granted, with each extension lasting up to three years. Where a PSPO is



	<p>extended then the relevant local authority should comply with the necessary publication requirements</p> <p>Non-compliance with a PSPO is an offence which can result in the issue a fixed penalty notice of up to £100, if appropriate. If the Fixed Penalty Notice is not paid, court proceedings can be initiated to prosecute for the offence of failing to comply with the PSPO where the maximum fine is currently £1000 (level 3 on the standard scale). Following conviction, the Council could apply for a Criminal Behaviour Order which can contain both prohibitions and positive requirements.</p>
<p><b>Risk:</b></p>	<p>Tackling crime and anti-social behaviour through partnership working is central to the delivery of the Community Safety Strategy 2022-26. This is business as usual and adheres to all required risk assessments and required mitigations. There could be a reputational risk to SMBC in retaining existing powers and not following up on the support evident from the consultation.</p>
<p><b>Equality:</b></p>	<p>An EIA has been completed as part of this process. In particular we have been aware that street drinkers are often particularly vulnerable and the PSPO guidance specifically requires the council to consider the appropriateness of a PSPO to address issues caused by those who are homeless and rough sleeping. This PSPO will facilitate ongoing engagement with this group and offer them advice and support to address their issues. Data from the JSNA has been used but it is recognised that the data currently held in relation to protected characteristics and these specific concerns is limited.</p> <p>Previous feedback from The Kennel Club has also highlighted the need for some assistance dogs to be exempt from this PSPO and for that to be recognised by those undertaking enforcement activities.</p> <p>Public Health messages around alcohol and dogs may specifically benefit pregnant women.</p>



<b>Health and Wellbeing:</b>	<p>Reducing and managing anti-social behaviour, and protecting its victims has a positive impact on health and wellbeing.</p> <p>Engaging with and supporting vulnerable people in relation to alcohol consumption, who are also more vulnerable to becoming victims of crime and exploitation will also have a positive longer-term impact on their health and wellbeing</p> <p>Reducing dog mess on streets is also a key public health message to residents which can reduce illness, especially in relation to children</p> <p>Reducing risk of injuries / death from fire is also supported</p>
<b>Social Value:</b>	Both PSPOs support environmental enhancements and provide opportunities for engagement with local residents regarding public health messages and strengthening civic pride. Enforcement is done through our locally employed EPOs
<b>Climate Change:</b>	Reducing the opportunities for fires in public places and the resulting pollution and environmental damage supports SMBCs climate change ambitions.
<b>Corporate Parenting:</b>	Implications for Corporate Parenting responsibilities

## 8 Appendices

- Appendix 1 Consultation Overview
- Appendix 2 Equality Impact Assessment
  - 2a – Alcohol
  - 2b – Dogs
  - 2c – BBQs / Fires
- Appendix 3 Draft PSPO Alcohol
- Appendix 4 Draft PSPO Dogs
- Appendix 5 Draft PSPO BBQs / Fires



## 9 Background Papers

List source/background documents

- Anti-Social Behaviour, Crime and Policing Act 2014  
<https://www.gov.uk/government/collections/anti-social-behaviour-crime-and-police-bill>
- LGA Guidance in Relation to PSPO Implementation 2018  
<https://www.local.gov.uk/publications/public-spaces-protection-orders-guidance-councils>

