



Cabinet
12 September 2022

**Report from the Corporate Director,
Resident Services**

**Public Spaces Protection Order (PSPO) Nuisance Vehicles –
Scope, Outcome of Consultation and Proposals for
Implementation**

Wards Affected:	All
Key or Non-Key Decision:	Key
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	Five Appendix 1: PSPO Notice for Nuisance Vehicles Appendix 2: Vehicle Nuisance Data reports Appendix 3: CitizenLab PSPO Survey Data Appendix 4: CitizenLab PSPO Summary and Freeform Survey Data Appendix 5: Equality Impact Assessment
Background Papers:	None
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1.0 Purpose of the Report

- 1.1 Brent Council is committed to maintaining a clean and safe environment and it is the Council's responsibility to address a range of environmental quality issues, including anti-social behaviour (ASB).
- 1.2 The Anti-Social Behaviour, Crime and Policing Act 2014 sets out the tools and powers available for tackling ASB. Public Spaces Protection Order (PSPOs) are one of the tools available under the 2014 Act. These are wide-ranging and

flexible powers for local authorities, which recognise that councils are often best placed to identify the broad and cumulative impact that ASB can have on communities. The Act gives councils the authority to implement PSPOs in response to the particular issues affecting their communities, provided certain criteria and legal tests are met. A breach of a PSPO without a reasonable excuse is an offence. This gives councils the ability to enforce with Fixed Penalty Notices (FPN's) or court action any behaviour causing nuisance, alarm, harassment or distress to those who live, work or visit an area.

The council has effectively utilised PSPO powers in order to control street drinking since 2017, including powers implemented to support enforcement work around Wembley Stadium primarily on event days. The powers are a critical complementary tool to those provided to the police and other agencies to tackle ASB in Brent.

- 1.3 Over the past 18 months the council has seen an increase in complaints related to nuisance vehicles on pedestrian footways and the use of private use e-scooters. This has precipitated consideration of the powers currently available to police and the council to address the issues that these vehicles cause
- 1.4 This report sets out the rationale for adopting a borough-wide PSPO in relation to nuisance vehicles and use of private e-scooters. It also outlines the outcomes of a recent consultation process that supports the creation of a PSPO and suggests the scope of the order and process for implementation.

2.0 Recommendation(s)

2.1 Cabinet is asked to:

- a) Note the rationale for the proposed implementation of a Public Spaces Protection Order (PSPO) for Nuisance Vehicles and private e-scooters as set out in the report.
- b) Note the outcome of the recent consultation process, indicating significant support for its creation.
- c) Review and provide comments on the scope of the proposed PSPO as set out in Appendix 1 to this report.
- d) Give authority to the Operational Director for Regeneration & Environment to set the date on which the PSPO will become effective and in force.

3.0 Detail

- 3.1 Under Section 59 of the Anti-Social Behaviour Crime and Policing Act 2014 (the Act) a Public Spaces Protection Order (PSPO) may be made by the council after consultation with the Police, Mayor's Office for Policing and Crime, and any other relevant bodies, groups or individuals (such as community leaders or users of a particular area/facility). The PSPO places restrictions and/or requirements on people using the area defined by the Order. These can be blanket restrictions or targeted at particular groups (such as street drinkers), or

apply only at certain times. Breach of a PSPO is a criminal offence and can lead to a fixed penalty notice of £100 or a maximum fine of £1000.

3.2 In recent years and particularly during the past 18 months, a significant increase in complaints related to nuisance vehicles has occurred within the borough. In addition, the increased use of e-scooters has resulted in the requirement to review the powers available in respect of this relatively new form of transport in order to ensure that they are used appropriately and legally. As a result, the council is considering the implementation of a PSPO that will address the following issues;

- (A) Revving of Engine(s) as to cause a public nuisance
- (B) Repeated Sudden and rapid acceleration (as a public nuisance),
- (C) Racing
- (D) Performing stunts (as to cause a public nuisance)
- (E) Without lawful authority or reasonable excuse wilfully causing obstruction on a public highway, whether moving or stationary, including driving in a convoy
- (F) Vehicles driving over Footways, Footpaths and Verges without reasonable or lawful excuse (Illegal Crossovers)
- (G) Unauthorised use of a privately owned Electric scooter (e-scooter) on the public highway within the London Borough of Brent. (Excluding e-scooters under any London approved rental trial scheme). – (Prohibition Withdrawn reference 7.13)

The sections below provide more information regarding the basis and justification for the use of PSPO for the purposes set out above:

Nuisance Vehicles

- (A) Revving of Engine(s) as to cause a public nuisance
- (B) Repeated Sudden and rapid acceleration (as a public nuisance),
- (C) Racing
- (D) Performing stunts (to cause a public nuisance)
- (E) Without lawful authority or reasonable excuse wilfully causing obstruction on a public highway, whether moving or stationary, including driving in a convoy

3.3 In recent years, the Council has experienced a significant increase in incidents captured on CCTV, relating to street racing, driving in a dangerous way and vehicles causing excessive noise on our highway. These activities have resulted in a number of accidents and indeed tragically, a fatality relating to this inappropriate use.

3.4 The past 18 months in particular has seen a large increase in anti-social behaviour calls related to the use of vehicles in comparison to previous years. For example, data gathered between the months of June 2020-June 2021 identifies 798 calls linked to vehicle nuisance reported to the Police. Reports range from racing, driving in a convoy, performing wheel spins and anti-social

driving across the borough. A breakdown of this data is provided in Appendix 2.

- 3.5 The Police are increasingly using their powers conferred in Section 59 of the Police and Reform Act 2002 to address the issue in the form of careless or inconsiderate driving. These powers allow an officer to seize and remove a vehicle that he or she believes is being driven inconsiderately or carelessly and is causing, or is likely to cause, alarm, distress or annoyance to members of the public. However, the police cannot seize a vehicle under this provision without first warning the driver that the vehicle will be seized if the driving persists. There are also practical challenges to seizure of vehicles, as Police will have to plan additional resources to do this, which isn't always available.
- 3.6 Bringing in a PSPO to address this nuisance behaviour will ensure Brent residents and interested stakeholders are given reasonable information around the problem profile and the nuisance impact to the Council. Intelligence over the years has identified hotspot areas where this behaviour is most prevalent with a notable increase in activity over the spring and summer months. Deployment of mobile CCTV cameras will be undertaken in these hot spot areas to monitor activity, which will inform joint police and council operations based on intelligence gathered. The implementation of the Borough-wide Street Drinking PSPO has informed how joint targeted policing can work more effectively and we plan to utilise and enhance existing arrangements.
- 3.7 Partner operations will also be planned at the council's weekly tasking meeting with the police to respond to any emerging hotspots. The PSPO will also provide improved powers to the police to intervene in a more timely and effective manner.
- 3.8 Officers are currently discussing with Kensington and Chelsea counterparts who operate a similar PSPO and primarily use acoustic cameras to monitor nuisance vehicles and issue FPN's by post. The Council will seek to establish arrangements with DVLA in order to obtain registered keeper details for nuisance vehicles under the ASB Crime and Policing Act 2014 so that the ability to enforce is maximised. Once in place there is also scope to use existing parking lane watch cameras in Brent to monitor and enforce this activity.

Driving Over the Footway

- 3.9 This year has also seen an increase in complaints regarding vehicles driving over footways, footpaths and verges throughout the Borough. The detrimental impact of this activity is potential danger to pedestrians and damage to the verges and open spaces, which not only spoils the appearance of the street, but also involves the council in unnecessary additional expense in making good the damage. The phenomenon of delivery drivers on scooters riding onto the footway has proven to be an issue of significant concern for the public and an activity against which it is presently difficult to enforce.
- 3.10 Under s184 Highways Act 1980, a person who knowingly uses a footway or verge as an unlawful crossing is guilty of an offence and liable to a fine not

exceeding £20 or, in the case of a second or subsequent offence, to a fine not exceeding £50. Currently, an officer could inspect a location up to 6 times to ensure compliance under the Highways Act. If the PSPO is implemented these inspections will be reduced significantly, as the onus will be on the owner of the property to appeal/challenge the issue of a FPN by proving that the breach did not occur. Therefore, introduction of a PSPO in relation to driving over footways provides officers with a far more straightforward approach to ensuring verges, open spaces, footpaths and footways are not damaged and any nuisance behaviour because this activity is enforced against.

- 3.11 The PSPO will ensure businesses; residents and members of the public are made aware on the damage caused to surfaces and the financial impact to the council. Council officers will enforce this in accordance with Brent's Enforcement Policy where there will be a process of engagement in the first instance, before any FPN is issued and similar to all FPNs issued, a public interest test would be applied before any prosecution is considered.

Use of E-Scooters

- 3.12 Using an e-scooter on private land is legal but for public use, e-scooters are classed as powered transporters, which means that the same laws that govern the use of cars and other motor vehicles apply. That means it is illegal to ride them on pavements, footpaths, cycle lanes and in pedestrianised zones. To be ridden on public roads they need to conform to the same rules as cars, including the display of licence plates, indicators, rear lights and insurance. The only exception to these laws is the government-approved trials being carried out in 32 cities around the UK.
- 3.13 E-scooters hired through these schemes can be ridden on roads and cycle paths and are insured by the operators. The scooters are limited to 15.5mph, with lower limits imposed in some areas via geofencing. E -scooters on a London approved trial scheme will be exempt from the prohibitions within the PSPO.
- 3.14 A PSPO will also provide the council with new legal powers to enforce against this behaviour. It will allow for better consistency in policing this issue in partnership with our Police colleagues, through a consistent application of engagement and education alongside fixed penalty notices in accordance with Brent Enforcement Policy, for those in breach. The police currently do not have the resource capacity to routinely fine and seize e-scooters being used illegally with greater priority given to tackle acquisitive and violent crime. However, a joined up enforcement approach with the council under the PSPO will increase that resource capacity.
- 3.15 As part of the process of implementing the PSPO, we will ensure residents, businesses and members of the public are informed and educated on the legal guidance around e-scooters, and the council's enforcement scope under the PSPO to safeguard residents and commuters who live and visit the borough.

3.16 In addition the Council will continually keep informed on any changing legislation around the use of E-Scooters on the public highway and it will be important that the Council engage users over the next 12 months, raising awareness and educating on the lawful, appropriate and safe use in Brent as part of its enforcement approach. There are also opportunities for the Council to review the merits of a trial scheme in Brent, enhancing more sustainable modes of travel.

4.0 Financial Implications

4.1 The approximate cost of affixing the notices across the borough will be £7-10,000 and will be met from existing budgets within Regeneration & Environment. There is potential to generate some income from fines and prosecutions but there is no baseline to project this annually at this stage.

5.0 Legal Implications

5.1 Under section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 (the Act), a local authority may make a PSPO in the areas where a particular nuisance or problem occurs which is detrimental to local community's quality of life. In order to issue a PSPO, the council must be satisfied on reasonable grounds that the two statutory conditions set out in s59 (2) and s59 (3) are met and that the restrictions are reasonable and proportionate.

5.2 Section 59 (2) of the 2014 Act states that 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.

5.3 Section 59(3) of the 2014 Act states that 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.

5.4 Section 59(5) of the 2014 Act provides that the only prohibitions or requirements that may be imposed are ones that are reasonable for the specified objectives of the PSPO that are:

- (a) to prevent the "detrimental effect" referred to in section 59(2) of the 2014 Act from continuing, occurring or recurring; or
- (b) to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.

- 5.5 The Home Office statutory guidance for frontline professionals (The Home Office Guidance) (pg. 48) states; “these orders can restrict what people can do and how they behave in public spaces. It is important that the restrictions imposed are focussed on specific behaviours and are proportionate to the detrimental effect that the behaviour is causing or can cause, and are necessary to prevent it from continuing, occurring or recurring”.
- 5.6 Before deciding to make the PSPO, the council must comply with certain statutory requirements relating to publication, consultation, notification and information in respect of the proposed PSPO in the relevant areas. In addition, the council will need to evidence that it has given regard to statutory guidance issued by the Secretary of State. Given the number and type of restrictions proposed, the following consideration points are brought to the attention of Cabinet;
- a) the term “detrimental effect” is not defined by statute. The term has been considered by case law and the current position is that local authorities have been given a wide discretion to decide what behaviours are troublesome and require to be addressed within their local area. This requires local knowledge, taking into account conditions on the ground, exercising judgement; (i) about what activities need to be covered by a PSPO and (ii) what prohibitions or restrictions are appropriate for inclusion in the order. There may be strong feelings locally about whether any particular activity does or does not have a detrimental effect. In such cases a local authority will need to weigh up competing interests. The behaviours which PSPOs are intended to target are those which are seriously anti-social, not ones that are simply annoying”.
 - b) Cabinet is asked to note that when considering its decision, it should look at each specific restriction (A-G) to be contained within the PSPO and the practical issues and implications that each raises.
 - c) The Local Government Association (LGA) paper entitled “Public Spaces Protection Order, Guidance for Councils” (pg. 15), although non-statutory guidance, states, “Councillors ...have an important role in examining the processes used in drafting the proposal. This will include analysing the outcomes of the consultation process and other supporting evidence offered to satisfy the statutory criteria, and determining whether, on balance this provides sufficient grounds to proceed”. The LGA guidance is not mandatory and local authorities are not legally obliged to follow advice from the LGA. However, the LGA provides useful advice to local authorities on areas of best practice in relation to the exercise of various local authority functions.
- 5.7 PSPOs, or their variation, may be challenged within six weeks of being made by way of an application to the High Court. The Court may suspend the operation of the PSPO or any of the prohibitions imposed by it until the determination of the proceedings. Should the Court be satisfied the council erred and the applicant has been substantially prejudiced by that failure, it may quash the Order or any of the prohibitions imposed by it.

- 5.8 Breach of a PSPO is a criminal offence, subject to a fixed penalty notice (of up to £100) or prosecution and a fine of up to £1,000 (Level 3 of the Standard Scale).
- 5.9 The decision notice for the Cabinet meeting of 14 April 2015 regarding the delegation of functions in the exercise of powers under the 2014 Act, which covers PSPOs, confirms “delegated authority to the Chief Operating Officer in consultation with the Lead Member for stronger communities for the function of making Public Spaces Protection Orders under the 2014 Act”.
- 5.10 The post of Chief Operating Officer has been deleted and the relevant functions transferred to the Corporate Director Resident Services. The relevant Cabinet Member is now the Member for Safer Communities and Public Protection.
- 5.11 Once approved, the PSPO must be published on the council website and notices erected publicising the fact that the PSPO has been made and its effect.
- 5.12 When considering the Human Rights Act the council must balance the rights and freedoms of individuals, in relation to the proposed restrictions imposed, against the needs of the wider community.
- 5.13 Article 10 of ECHR (Freedom of Expression) states the following:
1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.
- 5.14 Article 11 of ECHR (Freedom of assembly and association) states the following:
1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the

imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

6.0 Equality Implications

6.1 The public sector equality duty, as set out in section 149 of the Equality Act 2010, requires the council, when exercising its functions, to have “due regard” to:

- a) the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act,
- b) to advance equality of opportunity and
- c) foster good relations between those who have a “protected characteristic” and those who do not share that protected characteristic.

The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

6.2 Consideration must also be given as to how the proposals contained within this report might impact adversely on those persons with protected characteristics as set out in the Equalities Act 2010 and whether there should be any mitigated actions proposed in relation to any potential adverse impacts of such proposals.

6.3 The implementation and policing of a PSPO must be in accordance with the Equality Act 2010. There will be no discriminatory policing of this order in line with our Public Sector Equality duty.

6.4 An Equality Impact Assessment has been undertaken and is attached at Appendix 5.

7.0 Consultation with Ward Members and Stakeholders

7.1 In accordance with legislative requirements, a six-week consultation process relating to the potential use of a PSPO for such purposes took place between 8 November and 20 December 2021. The details of the consultation were published on the council’s website in accordance with the legal guidance under the Anti-Social Behaviour, Crime and Policing Act 2014. The consultation was shared through the council’s Citizens Hub Portal.

7.2 The consultation questionnaires were sent directly to all Local Councillors in Brent, the Brent Safer Neighbourhood Board and shared with all Brent Safer Neighbourhood Police Teams to raise awareness in all respective wards. The Parks Service also raised awareness around the consultation exercise with various park user groups and encouraging active participation in this process.

7.3 The Safer Neighbourhood Cluster Police Inspector for Brent and all Community Safety statutory partners at the Brent Joint Action Group were consulted and endorsed the scope of the PSPO proposed by the council.

- 7.4 Brent's communication team utilised twitter and Facebook to raise awareness on the public consultation. The Consultation was published in the Brent Kilburn Times and sent to all Borough contacts through the Online Watch Link (OWL).

Consultation outcome

- 7.5 126 respondents participated in the consultation to introduce the PSPO. Over 85 % of all responses strongly agreed or agreed with all prohibitions consulted on while under 5% of all responses strongly disagreed or disagreed with the proposals for nuisance vehicles, with 8% disagreeing or strongly disagreeing with the proposed measures in relation to e-scooters. A full breakdown of data is provided in Appendices 3 and 4.
- 7.6 The blue line in each graph on page 3 of Appendix 3 shows the distribution of the Brent population as a whole, which conveys how representative respondents were in respect of age, ethnicity, religion, gender, disability, sexual orientation and gender identity. Older age groups are massively overrepresented in taking part in the consultation. Residents aged 45+ make up about two thirds of respondents (70/104, 67.5%). Over 35% of respondents were White, 15% Asian and 9% Black. 14% of respondents identified as having a disability and over 3% identified as being Lesbian, Gay or Bisexual. Over 45% of respondents identified as Christian, 18% other and just over 5% Muslim and Hindu.
- 7.7 The most responses came from Dollis Hill, Mapesbury and Northwick Park, and the least from Alperton, Fryent, Kenton, Kilburn & Queensbury. The charts in page 4 of Appendix 3 also show where responses are in a ward with a high level of deprivation or digital exclusion (where one is the highest level).

Comments

- 7.8 The majority of respondents submitted supportive comments around the potential introduction of the PSPO and expressed a view that it would help tackle dangerous driving and illegal crossovers that are experiencing a year on year increase. Others felt that the introduction of the PSPO would also help police, and reduce illicit drug activity that is alleged to be perpetrated using e-scooters.
- 7.9 Some respondents felt that e-scooters reduce car journeys and is part of the wider government strategy for new sustainable ways of travelling. However, those who lawfully use e-scooters and are part of an approved trial scheme would not in breach of the proposed order. Brent is not currently running a trial scheme for e-scooters but more sustainable ways of travelling is a Borough priority and a 12 month review will be conducted on the prohibition of e-scooters in order to ensure that use as a sustainable form of travel are not being negatively impacted.
- 7.10 Respondents who identified as disabled felt that they were impacted by illegal use of e-scooters on pavements and felt there should be prior dialogue with businesses before the implementation of the PSPO.

- 7.11 Direct representation was made by the Brent Cycling Campaign who were concerned that cyclists mounting or riding on the pavement for practical purpose would fall within the parameters of the proposed PSPO. However, this would fall outside the scope of enforcement, as that would be classed as a reasonable and lawful excuse, with a nuisance test always applied by the enforcement officer.
- 7.12 A full break down of all comments received is provided in Appendix 4. Based upon the outcome of the consultation process, it is recommended that the proposed PSPO be implemented.

8.0 Scope and Implementation Timeline

- 8.1 It is proposed that the PSPO will be implemented in early 2023 or any foreseeable date before that subject to Cabinet approval. It is proposed that the commencement date upon which the PSPO will become effective will be set by the Corporate Director, Resident Services. Relevant PSPO signage will be affixed across Brent, informing the public of the prohibitions in place.
- 8.2 As outlined in 3.15 a communications exercise and awareness raising with residents and businesses will also be undertaken across the borough to outline the Brent enforcement policy. Enforcement will be data driven and targeted in hotspot areas as outlined in the report. Use of surveillance assets to monitor nuisance vehicles, (mirroring the Kensington and Chelsea model) will be an integral approach going forward.

Report sign off:

Peter Gadsdon,
Corporate Director, Resident Services