



**Cabinet**  
9 September 2019

**Report from  
Strategic Director of Regeneration  
and Environment**

**Public Spaces Protection Order (PSPO) for Parks Open  
Spaces Graveyards and Cemeteries**

<b>Wards Affected:</b>	All
<b>Key or Non-Key Decision:</b>	Key
<b>Open or Part/Fully Exempt:</b> (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
<b>No. of Appendices:</b>	<p>Appendix 1: Public Spaces Protection Order proposed recommendations</p> <p>Appendix 2: Drugs Analysis 2018-2019</p> <p>Appendix 3: Police Partnership Tasking Team support statement</p> <p>Appendix 4: Drinking Analysis 2017-2018</p> <p>Appendix 5: Autumn Nights enforcement operations 2017</p> <p>Appendix 6: Brent open spaces qualitative assessment keep Britain tidy 2017</p> <p>Appendix 7: Supporting dog control statement Commercial Manager</p> <p>Appendix 7.1: Crisis representation Brent PSPO</p> <p>Appendix 7.2: St Mungos response to Brent PSPO</p> <p>Appendix 8: Public Realm Dog data 2016-2018</p> <p>Appendix 8.1: Complaints Parks data 2016-2019</p> <p>Appendix 9: Brent Cemetery Regulations</p> <p>Appendix 9.1 Lead member briefing Sky lanterns 16 March 2018</p> <p>Appendix 10: Supporting statement Sky Lanterns Head of Neighbourhood Management</p> <p>Appendix 10.1: Complaints of Fires</p> <p>Appendix 11: Supporting statement London Fire Brigade</p> <p>Appendix 12: Consultation Outcome</p> <p>Appendix 13: Consultation Outcome secondary analysis</p> <p>Appendix 14: Equality Impact Assessment</p>
<b>Background Papers:</b>	n/a
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**1.0 Summary**

- 1.1 Brent Council is committed to maintaining a clean and safe environment and it is the Council's responsibility to keep our parks, open spaces, graveyards and cemeteries

and local environment clear of litter and obstructions and deal with other local environmental quality issues including anti-social behaviour.

- 1.2 The proposal to adopt a borough-wide Public Spaces Protection Order (PSPO) for Council parks, open spaces, graveyards and cemeteries is in line with this priority. In particular, issues of enviro-crime and anti-social behaviour, which includes matters that cause harassment, annoyance and / or nuisance. The Council knows that the majority of those who live in, work in and visit the borough do keep the area clean and safe; however, it wants to ensure where this is not the case that it uses the relevant legislation and approaches to maintain a clean and safe environment.
- 1.3 There has been historic lack of enforcement of Brent's current byelaws which were implemented in 1977. In recent years funding cuts to park wardens have left many of our open areas unmanned, leading to an increase in forms of anti-social behaviour, including a rise in rough sleeping and substance misuse issues where the council's approach is always to support and safeguard vulnerable cohorts in line with our duty of care principles.
- 1.4 A renewal exercise to update Brent's byelaws was conducted by the Parks Teams in 2016. This was discontinued in March 2017 following delays to the national consultation process by the Department for Environment Food and Rural affairs. A meeting with teams across Regeneration and Environmental Services was convened in April 2018 to look at the most proactive way of addressing issues taking up the most demand across Brent's Parks and open spaces. This led to a list of prohibitions being drawn up which are mostly prohibited under the Council's byelaws.
- 1.5 Section 70 of the Anti-Social Behaviour Crime and Policing Act 2014 allows for a PSPO to supersede any byelaw once in operation and the maximum fine for breach of Brent's byelaws is £20 which is currently not enforced. The creation of the Anti-Social Behaviour (ASB) legislation has given local authorities the opportunity to bring in proportionate measures for a maximum of 3 years and is being adopted by many local authorities in the UK.
- 1.6 The initiative will also support the delivery of the Council's borough plan. This will include supporting strategic themes around:
  - living in a borough where we can all feel, safe, happy and healthy.
  - living in a cleaner and more considerate Brent.

## **2.0 Recommendation(s)**

### **2.1 Cabinet is asked to:**

- a) Consider and confirm which option Members approve in respect of the introduction and implementation of the proposed PSPO in the draft terms and the options as set out in appendix one for a period of three years and give authority to the Strategic Director for Regeneration and Environment to set the date on which the PSPO will become effective and in force.

- b) Note that the previous delegation provided by Cabinet to the Chief Operating Officer (now the Strategic Director of Regeneration and Environment) in consultation with the lead member for Community Safety and Engagement for the function of making Public Spaces Protection Order under the Anti-Social Behaviour Crime and Policing Act 2014 remains in place for future PSPO proposals.
- c) Note that a separate review and update report will be submitted to Cabinet in due course reviewing the decision making process for the PSPOs made to date and considering whether to have alternative arrangements for making a PSPO
- d) To note that the Council's bye laws relating to its parks, open spaces, cemeteries and graveyards will no longer be in force when the proposed PSPO comes into force.

### **3.0 Detail**

- 3.1 Under Section 59 of the Anti-Social Behaviour Crime and Policing Act 2014 ("the 2014 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 PSPO. These can be blanket restrictions or targeted at particular groups (such as dog walkers), or apply at certain times. Breach of a PSPO is a criminal offence and could lead to a fixed penalty notice of £100 or a maximum penalty of £1000 if prosecuted.
- 3.2 The proposed prohibitions were identified looking at the evidence base, complaints to members, and issues which have an adverse effect to safety of residents and the wider public.
- 3.3 The proposed borough wide PSPO recommendations can be seen in Appendix 1, with option 1 setting out the preferred prohibitions. Sections 3.5 - 3.62 below outline the justification for all prohibitions and how these behaviours or likeliness of these behaviours could affect the quality of life of Brent residents. The sub-headings in bold below (up to paragraph 3.59) relate to each proposed restriction (including prohibition and requirement) to be imposed.
- 3.4 The legal requirements regarding the Council's powers to make PSPOs are set out in section 7 of this report and they must be taken into account (in particular paragraphs 7.1 to 7.4, including additional local threshold criteria for making a PSPO in Brent) when Members consider each prohibition and requirement of the proposed PSPO.

#### **Use of illegal drugs or psychoactive substances (formerly known as legal highs).**

- 3.5 Drug use and drug dealing have been a persistent problem in Brent for the last 3 years. This was the highest reported anti-social behaviour category to the Council in the year 2018/19. Open drug markets and drug addiction problems are prevalent

in Brent which is one of the top priorities for the Council's Community Protection Unit, Public Health and Brent Police. Analysis of drug supply and possession offences obtained by the police from April 2018 to March 2019 recorded over 1700 offences in almost all 21 wards in Brent. This can be seen in Appendix 2 paged 3-5.

3.6 Brent Police received over 1900 calls related to drug use in the period 1st June 2018 to 30th May 2019. The top 2 wards were **Harlesden** and **Kensal Green** with 303 and 244 incidents recorded. **Queensbury, Stonebridge, Mapesbury and Preston** also featured in the top 6 wards for recorded drug use. *Appendix 2* provides a summary of the highest three localities for reported drug offences which are Kingsbury High Road, Craven Park Road / Harlesden High Street and Hirst Crescent.

3.7 In the period 1<sup>st</sup> June 2018 to 31<sup>st</sup> May 2019, there were 1622 crime reports generated which related to either possession or supply of drugs. The vast majority of crime reports related to possession rather than the supply of drugs. Only 5.5% related to supply. The table below shows a comparison between the type of drug and offence between 1<sup>st</sup> June 2018 to 31<sup>st</sup> May 2019 and the same period in the previous year.

<b>Jun 18 to May 19</b>	Cannabis	Other Class B/C	Class A
Possession	1359	28	146
Supply	53	3	33

<b>Jun 17 to May 18</b>	Cannabis	Other Class B/C	Class A
Possession	1164	43	149
Supply	72	4	72

3.8 The detrimental effect of drug use can lead to physical and mental health issues. The Community Protection Team has seen a significant correlation between youth violence involving knife, guns and gangs. There is strong evidence of vulnerable minors being exploited and relocated to areas around the country to supply drugs. A full analysis of this can be referenced in the Community Safety Strategic assessment. The implementation of this prohibition gives the Council greater powers to monitor and enforce these areas and signpost individuals to drug support services. This is currently an issue which is very prevalent in most London Boroughs today with the trend increasing year on year.

3.9 Dispersal Powers under the ASB Crime and Policing Act 2014 have been used by police to remove suspected drug dealers from town centres where this activity is most prevalent. This behaviour has led to some displacement in some of our larger parks such as One Tree Hill, Gladstone Park and Roundwood Park with limited resources to monitor. This proposed prohibition will give the Council the ability to recruit more enforcement officers and ensure we work jointly with the police on tackling this illegal activity and also mirroring the approach used in our town centres.

3.10 The effects of this activity are also outlined in more detail in a witness statement provided by the Sergeant of the Partnership Tasking Team who has had experience of policing Brent's parks and open spaces since April 2017. This is attached as Appendix 3.

3.11 All comments recorded in the consultation results favoured drug use being penalised. Should this prohibition be adopted there will also be positive requirements to signpost individuals apprehended, to drug and alcohol support services. Consideration must also be given to the legal requirements for making a PSPO set out in section 7 of this report, and in particular paragraphs 7.1 to 7.3.

3.12 There is recorded data around drug use in every ward in Brent and an increase of drug reported incidents to Brent's Anti-Social Behaviour Team. We are satisfied that this activity has been persistent and is likely to continue.

### **Consumption of alcohol - "Unless permitted under a licensable event organised or endorsed by Brent"**

3.13 Complaints around consumption of alcohol creating a nuisance was the second highest category reported to the Anti-Social Behaviour Team in April 2018 to March 2019. Following the implementation of a Borough wide street drinking PSPO in October 2017, there has been an increasing use of alcohol in Brent's open spaces, typically in the spring and summer months. This activity is currently prohibited under Brent's Park byelaws. A full breakdown of Street drinking calls to the police in April 2018-2019 can be seen in Appendix 4.

3.14 There is a direct causal link between the behaviour of street drinkers which is characterised by drinking in the street, park, vacant land or private land in groups or singly, littering the streets etc. urinating and on occasions defecating. At the most recent licensing appeal the District Judge stated such behaviour is clearly anti-social, is a public nuisance and amounts to crime and disorder, resulting in a diminution in the quality of life of local residents". The approach to addressing this activity will be to target those individuals who litter beer cans, urinate and cause a nuisance to park users.

3.15 The implementation of this prohibition will also give the Council the ability to monitor and take enforcement action where necessary, including safeguarding members of the public and signposting individuals to alcohol treatment services commissioned by Brent.

3.16 In 18/19 the Council received complaints from the Barnhill Residents Association, Wembley Central Residents and Alperton Association, Friends of Gladstone Park and Local Councillors in the Sudbury Ward about increased drinking affecting One Tree Hill Park, Gladstone Park, Barn Hill open space and Butlers Green in 18/19. Regeneration and Environmental services have for the last 2 years have conducted "summer and autumn nights" enforcement operations in the spring and summer months where there has be an increase in this activity. The Council's Policing Partnership Tasking Team have also dealt with nuisance attributed with consumption of alcohol in the areas mentioned, including Harrow Cemetery and other areas throughout the borough as outlined in Appendix 3. The disadvantage of a proposed ban only in areas where there is recorded data is that it would increase the risk of displacement to other areas where there is a lack of enforcement. A breakdown of the autumn nights' programme can be seen in Appendix 5.

- 3.17 The Council's approach should this prohibition be adopted would not be to penalise those who drink moderately without causing a nuisance and dispose of their beer or wine bottles lawfully. Where someone is evidenced drinking alcohol in the park and the nuisance test has been met, officers would approach the individuals concerned and request they stop drinking alcohol, if they fail to comply with the order a fixed penalty notice will be issued for non-compliance. There is also a lack of recorded complaints drinking in relation to drinking alcohol across all parks and open spaces as most parks are unpoliced (apart for the areas prescribed 3.10 where these activities have been evidenced). Cabinet should consider carefully the pros and cons of restricting the prohibition to only the areas with recorded complaints and the likeliness of displacing this activity to other parks. Consideration must also be given how these proposals 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. Consideration must also be given to the legal requirements for making a PSPO set out in section 7 of this report, and in particular paragraphs 7.1 to 7.4.
- 3.18 The consultation feedback recorded some comments in favour of banning excessive drinking in Roundwood park. This prohibition will come with a positive requirement to signpost individuals apprehended, to drug and alcohol services. The Home Office Guidance of December 2017 states the following regarding PSPOs and restricting the use of alcohol in public spaces: *"However, such an Order [i.e. PSPO] cannot be used to restrict the consumption of alcohol where the premises or its curtilage (a beer garden or pavement seating area) is licensed for the supply of alcohol (other than council operated licenced premises). There are also limitations where a temporary event notice has been given under Part 5 of the Licensing Act 2003, or where the sale or consumption of alcohol is permitted by virtue of permission granted under section 115E of the Highways Act 1980."*

#### **Littering (such as cigarettes, bottles, cans, packets, food).**

- 3.19 Littering has become a growing problem in Brent's Park with increasing costs, year on year to clean Brent parks, open spaces graveyards and cemeteries. From April 2018 to March 2019, it is estimated that over £45,000 was spent keeping our parks and open spaces free of litter.
- 3.20 Littering can have a serious environmental consequence that can persist for decades. Styrofoam containers take up to a million years to decompose and break down. A disposable diaper can take more than 500 years; cigarette ends last more than 10 years and even orange or banana skins takes months to biodegrade. Litter also has the potential to cause harm to human health, safety, welfare, as well as the environment. The harmful impact of litter includes trapping or poisoning animals, killing aquatic life directly through choking and indirectly through its impact on water quality. Littering can be a fire hazard and it attracts pests and rodents. Litter carries germs and rats are carriers of many types of diseases that make people ill. Litter also cause accidents as drivers try to avoid litter on the road. Young children fall on litter in playgrounds and can get injured. Litter also harms plants, vegetation and natural areas.

3.21 There are also many examples of Community groups helping the Council in making our open spaces free of litter. Some examples include the Welsh Harp Litter pickers who organised a clean-up at Neasden Recreation Ground in 2018. Thames 21 have organised a number of litter picks including recently at Quainton Street Open Space. The Barn Hill Conservation Group collect several hundred full-bags of litter and a range of larger items each year. For recent calendar years the litter they collected from Fryent Country Park:

Year	Number of bags (refuse bags)
2015	1,043
2016	351
2017	319
2018	260

3.22 In the autumn of 2017, Brent commissioned a survey by the Keep Britain Tidy group. Appendix 6 includes an open spaces qualitative assessment survey by Keep Britain Tidy assessors (the bulk of the reports) and summary results of public perception. Information is presented also individually for most of the larger parks and includes cleanliness, litter, and dog issues.

3.23 There are volume reports everyday around littering on Brent Cleaner App which is one of the biggest issues, tackled by the Envirocrime Enforcement Team. It is most likely this activity will continue and this prohibition gives us greater capacity to address and enforce against this behaviour in the Council's parks and open spaces. There are no objections to this prohibition recorded in the consultation results. Consideration must also be given to the legal requirements for making a PSPO set out in section 7 of this report, and in particular paragraphs 7.1 to 7.3.

**Erecting or occupying any shelter, sleeping apparatus or caravan with the intention of residing in it, without the written consent of the London Borough of Brent.**

3.24 This activity is currently prohibited under Brent's Park byelaws and the last two years has seen an increase this activity in spring and summer months. Brent currently commission St Mungo's to provide outreach and support for homeless people and the Council currently has a local protocol to safeguard vulnerable or transient members of the community who are found rough sleeping in parks and open spaces. 200 homeless individuals were engaged with by St Mungo's in April 19 to March 19 and a full break down on their data can be seen in Appendix 7.2. Veolia recorded data of removed rubbish illegally dumped in our parks and open spaces is as follows:

2018/19 Parks Info		
Illegal rubbish dumping tip reports / investigation by Environmental Enforcement	Clear up cost warning letters issued	Reports illegal rubbish dumping / Clearances by Veolia
29	25	346

- 3.25 This activity contributes to increased littering, defecation and urination with the detrimental impact outlined in section 3.10 and presents an additional financial cost to the council to remove fly tips from our parks and open spaces. The effects of this behaviour is also further outlined by the Police in Appendix 3. Brent's approach will be not to enforce this proposed PSPO against any verified homeless individual in breach of this prohibition but Council officers will signpost such individuals to support and housing services. It is not the intention of officers to specifically target homeless individuals with this proposed prohibition.
- 3.26 A comment received from the consultation results suggested all parks should be gated and locked however most of the Council's parks and open spaces are unfenced and cover a very large area. There were also representation received from Crisis and St Mungo's (homeless outreach charities) who felt this prohibition would unfairly target homeless individuals. Officers refer to the content of the previous paragraph in response to that representation.
- 3.27 Officers dealing with individuals erecting, occupying any shelters, or sleeping apparatus, will engage with this individuals and conduct checks vulnerability checks with homeless, mental health and support services. Individuals in the first instance will be referred to St Mungo's who specialise in providing support and housing pathways for homeless people to conduct outreach in the identified areas. If some groups refuse to engage and cause a nuisance, they would have the sleeping apparatus or shelters confiscated with fines only applied, if there is a means to pay. Cabinet should consider carefully the pros and cons of restricting this prohibition. Consideration must also be given to the legal requirements for making a PSPO set out in section 7 of this report, and in particular paragraphs 7.1 to 7.4.

#### **Urinating or defecating in a place other than a serviced public convenience.**

- 3.28 With regard to urination and defecation, the Crown Prosecution Service (CPS) does not classify urinating in the street as a basic offence that would fall under Section 5 of the Public Order Act 1986, enforced by the Police. However, urination in the street can be part of a drunk and disorderly offence, but the offence must also include evidence of abusive language or disorderly behaviour. Urination alone is not enough for either offence.
- 3.29 In recent times, Brent has seen a rise in the use of park and other open areas for transient populations leading to complaints of urination and defecation within these areas. Members are referred to the evidence provided by the Police in Appendix 3. There is limited action that can currently be taken to address this, hence the inclusion in the proposed PSPO of offences in respect of both urination and defecation. This would also allow Police greater powers to tackle such anti-social behaviour. The Policy, Projects and Support Manager confirmed this is a frequent problem. Neasden Recreation Ground, Welsh Harp, Roe Green, Hazel Road Open Space and One Tree Hill have all recorded e-mails and complaints of being used as a toilet.
- 3.30 There were no objections in the consultation results disagreeing with the implementation of this prohibition. Should this prohibition be adopted there will also be positive arrangements to signpost homeless individuals apprehended, to



homeless outreach and housing support services. Consideration must also be given to the legal requirements for making a PSPO set out in section 7 of this report, and in particular paragraphs 7.1 to 7.3.

### **Feeding wildlife.**

- 3.31 There is a current byelaw prohibiting this activity and there is supporting evidence that this behaviour does attract vermin and contribute to the overall cleaning cost of food waste left behind. Paragraph 3.20 above outlines how detrimental this activity could have on quality of life of residents.
- 3.32 Annual maintenance littering costs are estimated £45,000 and this prohibition would be consistent with keeping our parks and open spaces free of litter. The Council since 2016 has spent over £40,000 on maintenance each year.
- 3.33 Food left uneaten attracts vermin, who come to rely on it and remain in the area – such as rats which are dangerous for children. Officers are concerned that if this prohibition is not in place when the current byelaw expires, it is likely that this will lead to and exacerbate the increase of vermin in the Council's parks which will have adverse consequences for the proper upkeep of these parks for local communities and public health. There is no specific supporting evidence to show how this has impacted Brent parks and the prohibition to ban littering could also address such behaviours. Consideration must be given by Cabinet as to the merit of this prohibition going forward.
- 3.34 There was a comment received in the consultation results stating this could unfairly penalise residents who might be unaware that this activity is prohibited. If this proposed prohibition is implemented, there will be sufficient signage to ensure that it is clearly communicated that the activity of feeding wildlife in Brent's parks is prohibited. Consideration must also be given to the legal requirements for making a PSPO set out in section 7 of this report, and in particular paragraphs 7.1 to 7.3.

### **Use of motor vehicles without the written consent of the London Borough of Brent.**

- 3.35 There is evidence of driving over a grass verges throughout the Borough, with limited action viable by the Council. The detrimental impact of this activity is damage to the verges and open spaces, which not only spoils the appearance of the street, but involves the Council in unnecessary additional expense in making good the damage. Enforcement can only take place if it can be directly shown that a vehicle has caused damage to the verge / footpath. By introducing this prohibition to the Public Spaces Protection Order, it provides officers with a far more straightforward approach to ensuring verges, open spaces, footpaths and footways are not damaged and not causing nuisance or risk.
- 3.36 Motor vehicles cause damage to path surfaces particularly during the wetter months of the year, causing poaching of the ground. Where grassland is poached, the disturbance can lead to subsequent weed growth. There is also damage to vegetation when vehicles are driven through areas of grassland, or on paths or damage to car park surfaces and erosion, due to revving of engine / spinning. Motor

Vehicles are a large problem in our parks. King Edwards Park in Willesden, King Edwards Park in Wembley, Roe Green, Barn Hill, Neasden Recreation Ground and Gladstone Park, to name a few all experience issues with motorised scooters being driven across them at night causing disturbance and health and safety issues for other users.

- 3.37 During 2018/19 Brent spent over £200,000 repairing the infrastructure in our parks and open spaces. There have been regular traveller incursions in Roe Green, Gladstone Park, One Tree Hill and Welsh Harp open space in the last 3 years, with this activity becoming more frequent. A tri borough meeting between Brent, Barnet and Harrow was held on 12 June 2019 to see how intelligence around these incursions can be better shared and developing a more joined up approach to tackle the problem. All traveller incursion over the last 2 years have resulted in damage to the Council's grass verges in those parks. Such illegal incursions have been addressed by the Police with the assistance of Council officers and on occasions, the Council has had to take its own legal action and incur the cost thereof to force the dispersal of those persons and vehicles from the Council's parks and open spaces. From April 2018 to date, Brent incurred 12 traveller incursions
- 3.38 There were no objections to this prohibition recorded in the consultation results. Consideration must also be given to the legal requirements for making a PSPO set out in section 7 of this report, and in particular paragraphs 7.1 to 7.3.

#### **Defacing or damaging fixtures, furniture or other items.**

- 3.39 Damage to infrastructure to our parks and open spaces is very costly to the Council. From April 2018 to March 2019 (as referenced in paragraph 3.19 above) over £200,000 was spent repairing the infrastructure in our parks and open spaces, this includes damage to verges and grasses and fixing damaged furnishings. 73% of sites fell below the green flag award following the Brent Open Spaces qualitative assessment in 2017. This includes buildings, fences, gates and pathways which need to be remedied. Damage to parks infrastructure can also be referenced on page 19 and 20 of Appendix 6.
- 3.40 Examples of some of the issues include damage to toilets, pavilions and structures, destruction of gym equipment installed in some of our parks and evidence of grounds being dug up to make unauthorised cricket pitches. Some examples can also be seen in Appendix 6. The Public Realm Team have confirmed receiving requests for work on an almost daily basis for items in our parks that have been damaged or vandalised. This can be a toilet door that is jammed or broken, gym or playground equipment that has been vandalised, wooden borders to flower beds that have been set on fire; damage to buildings caused by people climbing on them; benches damaged or stolen; perimeter fences cut and damaged; height barriers damaged, gates broken, bins set fire to etc.
- 3.41 There were no objections to this prohibition recorded in the consultation results. Consideration must also be given to the legal requirements for making a PSPO set out in section 7 of this report, and in particular paragraphs 7.1 to 7.3 7.2.

## **Dog Control**

- 3.42 With the introduction of the Anti-Social Behaviour, Crime and Policing Act 2014, legislative scope was given to replace previous dog control orders (which included addressing dog fouling) with use of Public Spaces Protection Orders. It is an emotive subject, and while the majority of dog owners are responsible in their approach, unfortunately it still remains an issue. The Statutory Guidance provided by the Home Office in December 2017 sets out some guidance regarding the use of PSPOs relating to dog control in public spaces.
- 3.43 Dog fouling is often seen as one of the most offensive types of nuisance anti-social behaviour, affecting parks and streets. Dog excrement is also a public health risks and no person using the streets or parks of Brent should have to worry about this risk of infection.
- 3.44 The Council is therefore looking at a double approach to this aspect using the proposed Public Spaces Protection Order, being the offence of allowing a dog to foul and not clearing it up, as well as not having the suitable means to pick it up. This is consistent with neighbouring Boroughs, who have adopted such provisions for a number of years. The Commercial Manager for Environmental Health who has the portfolio of all Brent's Cemeteries has also confirmed receiving many complaints around dog fouling and urination on grave sites which unfortunately have not been documented. He has provided a supporting statement on complaints his service has received which can be seen in Appendix 7. Similarly, the Public Realm team have confirmed receiving numerous complaints around dog fouling and on occasion dangerous dogs throughout the year which have not all be recorded. A full breakdown of Public Realm recorded Dog data for 2016 to 2019 can be seen in Appendix 8. Complaints regarding Brent Parks received by the Councils complaints team, can be seen in Appendix 8.1.
- 3.45 The requirement to have dogs on leads in prescribed areas in our Parks and Open Spaces is a current byelaw. A majority of comments recorded in the consultation results were in favour of dogs being off leads in parks and open spaces. All respondents were in favour of dog on leads in prescribed areas such as the multi games play areas, tennis courts and walled gardens. There was a significant majority of dog users who were against keeping dogs off leads specifically in Paddington Cemetery. However, some grave owners were favour of in keeping dogs on leads in Paddington Cemetery due to urination and defecation on graves by some dogs. There were a few comments disagreeing with the prohibition restricting individuals to walking a maximum of 4 dogs at a time, with a similar number of individuals who commented in favour of the prohibition. There were no comments disagreeing with the requirement to dispose of dog faeces immediately. The byelaws relating to Pleasure Ground were confirmed by the Secretary of State and came into operation on 1st November 1977. To date this has not been enforced but it is something to which officers have given consideration to prohibiting by way of a PSPO. Use of a PSPO to address this activity would ensure a fixed penalty notice of £100 is applied to all proposed prohibitions where the current penalty under the cemetery regulations is £10. Dogs are currently allowed off leads to exercise in all Brent parks unless in restricted areas such as playgrounds. The proposed PSPO will supersede this byelaw.

- 3.46 Section 27 of the Cemetery Regulations also states that no dogs [Guide dogs excepted] shall be allowed into Alperton, Carpenders Park, and Willesden Cemeteries. Dogs are permitted into Paddington Cemetery provided they are kept on a lead and that any dog waste is deposited in the bins provided. A full list of the cemetery regulations can be seen in Appendix 9. There has been no evidence of any enforcement under this regulation in Brent Cemeteries since they were enacted. Consideration must also be given to the legal requirements for making a PSPO set out in section 7, and in particular paragraphs 7.1 to 7.3. Page 52 of the Home Office Guidance of December 2017 states the following: “*Consideration must also be given on how any dog walking restrictions being proposed would affect those who rely on assistance dogs, ensuring any prohibition or requirement is compliant with the provisions of Equality Act 2010 or considering what exemptions should apply for assistance dogs.*”

**Flying of drones or any other form of model aircraft without the written consent of the London Borough of Brent.**

- 3.47 This activity is currently prohibited under our existing byelaws with the exemption of the Northwick Park site where a Licence is required. Northwick Park is the only site which has the infrastructure and safe landing area to accommodate this activity. Flying of drones and other model air crafts which is unregulated can be very dangerous. There has been an increase in this activity which can have really severe consequences for the safety of air passengers or other third parties.
- 3.48 The likelihood of the public being injured or damage to dwellings, if not properly regulated, is very high. There has also been a trend on an increase of this activity both locally and nationally with the Government currently looking at further legislation to regulate this activity. The Public Realm Team have confirmed over 20 reported incidents of unauthorised use of drones over our parks in the current financial year.
- 3.49 There were no objections to this prohibition recorded in the consultation results. Consideration must also be given to the legal requirements for making a PSPO set out in section 7 of this report, and in particular paragraphs 7.1 to 7.3.

**Launching sky lanterns that “rely on an open flame to heat the air inside the lantern”.**

- 3.50 Similar to the unregulated use of drones or model aircraft, use of Chinese sky lanterns has been banned in most London Boroughs as there is potential for a fire hazard which could present a safety risk to members of the public, including in our parks and open spaces.
- 3.51 In March 2018 the lead member for stronger communities was briefed by the Head of Neighbourhood Management that the Council had received some complaints of sky lanterns and twenty-five local authorities have banned the use of lanterns from their land. The Lead Member briefing report can be seen in Appendix 9.1 and the Council has received some complaints around this activity as referenced in

Appendix 10. Whilst there is no recorded data, the likelihood of this activity to cause fires must be consistent with that of lighting fires and using barbecues.

3.52 According to the UK Maritime and Coastguard Agency, there have been 1679 incidents attributed to Sky lanterns since 2007. In addition, they have given rise to a number of safety concerns including:

- (a) Risks to livestock and animal health (including marine animals): Anecdotal reports and media coverage suggest widespread concern from farming groups and others over the impacts of sky lanterns on the health and welfare of livestock and horses. However, the evidence reviewed by the project team indicates that the number of cases reported each year of animals affected through panic and fright and of ingestion of sky lantern debris is very small.
- (b) Fire risk and damage to crops and property: Incidents in which sky lanterns were said to be directly implicated in starting fires have been reported by a variety of sources, including the Chief Fire Officers Association. A huge fire involving 100,000 tonnes of plastic recycling material, thought to have been sparked by a Chinese lantern, produced a 6,000ft smoke plume and is said to have caused £6 million damage to the Jayplas waste depot in Greater Birmingham.
- (c) Impact on the environment, including littering on land and at sea: On the basis of the evidence presented, the project team concluded that the contribution of sky lantern debris to overall environmental littering is small and less significant than potential fire risks and risks to aviation.
- (d) Risks to aviation: Sky lanterns pose a safety risk to aviation due to possible ingestion into engines when airborne. The Civil Aviation Authority has provided quantifiable evidence to the study in the form of Mandatory Occurrence Reports. A total of 48 of these were reported to be due to sky lanterns and helium balloons between 2001 and 2012.

3.53 Although Brent has not had more than 5 incidents of this activity in our parks, the Public Realm Team responsible for maintaining Brent's park and open spaces have stated the risk of fires in Brent parks is considered high, especially in parks with meadow areas. There are 22 of these parks with longer grass; in large areas which are sometimes up to half of the park area. There is a serious potential for serious fire incidents anywhere in the Borough, should one of these sky lanterns come down.

3.54 Whilst Brent hasn't seen a reported increase in use of sky lanterns the likelihood of this activity being detrimental and dangerous to public space and members of the public is quite high. This has led to a campaign by the National Farmers Union, reported in the Telegraph on 16 July 2019, wanting sky lanterns banned after several crops were ruined by fire. The lead member briefing in March 2018 and a supporting statement by the head of Neighbourhood Management on banning use of sky lanterns can be referenced in Appendix 9.1 and 10.

3.55 There were no objections to this prohibition recorded in the consultation results. Consideration must also be given to the legal requirements for making a PSPO set out in section 7 of this report, and in particular paragraphs 7.1 to 7.3.

#### **Lighting of fires or using barbeques.**

3.56 This activity could result in smoke nuisance to residential premises and also presents a fire risk to all parks and open spaces. There have been some reports of domestic fires resulting in damage to the parks and open spaces with the most recent incident occurring in Barnhill open space in May 2019. Some supporting evidence can be seen in Appendix 10.1.

3.57 London Fire Brigade responded to 3447 incidents in Brent with 657 of those incidents being actual fires. However, the data is unable to be broken down in relation to fires as a result of barbeques. There is also a likelihood in the view and submission of Council officers that unregulated barbeques could increase the potential for fires in our open spaces which could have serious consequences on people and property. A breakdown of the LFB data can be access at: <https://data.london.gov.uk/dataset/london-fire-brigade-incident-records>.

3.58 Officers have explored the viability of having barbeque zones in our parks. The Public Realm team have stated there is no hardstanding or provisions in Brent parks for BBQ zones. Council officers advise against losing any more green space in the Council's parks for the purpose of building concrete BBQ areas thereon.

3.59 As referenced in paragraph 3.52 above, Brent has 22 parks with longer grass; in large areas which are sometimes up to half of the park area. A fire in one of these areas would be catastrophic with potentially serious and devastating consequences for the Council's parks, members of the public and neighbouring properties. Last year with the dry weather, the London Fire Brigade issued a city wide ban on BBQs. Should another prolonged dry spell occur again, fire damage caused by BBQ's could poses a serious risk to the Council; particularly as all of the Council's parks and open spaces are so close to residential properties.

3.60 The Council is already facing calls from residents about fire damage in some of the Council's parks and therefore officers recommend that this prohibition is retained in the in the proposed PSPO. The Public Realm Team have confirmed over 10 reported incidents of lighting fires or using barbeques in our parks in the current financial year.

3.61 There were no objections to this prohibition recorded in the consultation results. Consideration must also be given to the legal requirements for making a PSPO set out in section 7 of this report, and in particular paragraphs 7.1 to 7.3.

3.62 There appears to be nothing specific in the 1977 byelaws regarding fires or byelaws. However, if a fire causes damage to a structure, then the damage was covered by the byelaws. It is hoped having this prohibition would further reduce the likelihood of this activity damaging our public spaces with the activity prevented before any damage might occur. A supporting statement by the London Fire Brigade can be seen in Appendix 11.

## **4.0 Consultation summary**

- 4.1 A six-week consultation was conducted on 4 March 2019 up until 18 April 2019. 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. Brent's Consultation Team sent out the consultation to over 700 community and resident groups currently signed up to receive information from the Council.
- 4.2 The consultation was shared with all Local Councillors in Brent, the Brent Safer Neighbourhood Board and Safer Neighbourhood Police Teams in the Borough. Safer Neighbourhood Teams assisted with the distribution of paper copies in respective wards. The Commercial Manager for Environmental Health also wrote to Brent Cemetery grave owners to encourage them to take part in the consultation.
- 4.3 The Parks Service also held several meetings with various park user groups in Brent informing them of Brent's plans to introduce the PSPO and encouraging active participation in this process.
- 4.4 The Safer Neighbourhood Cluster inspector for Brent and all Community Safety statutory partners at the Brent Joint Action Group were also consulted and endorsed the scope of the PSPO proposed by Brent.
- 4.5 During the consultation period a lot of representation were received from various dog walker groups using Paddington Cemetery who raised an objection to the prohibition to dogs off leads. A public meeting was convened on 15 March 2019 to listen to their concerns about the introduction of enforcement of dog on leads specifically in Paddington Cemetery. Similarly, Crisis and St Mungo's which are local charities which specialise in homeless intervention, raised objections about the prohibition to "Erect or occupy any shelter, sleeping apparatus or caravan with the intention of residing in it, without the written consent of the London Borough of Brent", as they felt this would unfairly target homeless cohorts. Almost all the other prohibitions proposed were unanimously endorsed.
- 4.6 Brent's communication team also utilised social media, to raise awareness on the public consultation.

### **Current consultation outcome**

- 4.7 423 respondents participated in the consultation to introduce a PSPO in all Parks Open Spaces Graveyards and Cemeteries. There was also direct representation made to the Community Protection Team around the consultation from St Mungo's, Crisis, Kilburn Forum and various dog walkers and community groups who predominantly use Paddington Cemetery. A full breakdown of the consultation outcome can be seen in Appendix 12.
- 4.8 A secondary analysis was conducted on all the respondents who were not in favour of the order and also all the representations made in the comments section.

- 4.9 The question asks if they Strongly Agree, Agree, Strongly Disagree, Disagree or Neither Agree nor Disagree. We can see that **53.2 %** of overall responses Strongly Agree or Agree with the Consultation, while **39.5%** overall responses Strongly Disagree or Disagree with the PSPO, this percentage changes significantly when looking specifically at Dogs and / or Paddington Cemetery. Responses concerned with Paddington Cemetery, 55.5%, disagree or strongly disagree with PSPO. 61.7% disagree with dogs on leads and 72.8% responses concerned with Dogs and Paddington cemetery disagree with the PSPO with the predominant issues being dogs on leads. A full breakdown of the secondary analysis can be seen in Appendix 13.
- 4.10 The overall Consultation findings show that most participants are in favour of the implementation of all prohibitions proposed under the PSPO however, the majority of those not in favour of the PSPO, predominantly objected to the issue of dogs on leads, with the primary area of contention being Paddington Cemetery. This is typically a good response rate for a consultation as the recent Budget 2019-22 consultation received 275 responses.

## **5.0 Implementation Timeline**

- 5.1 It is expected that the proposed PSPOs will be implemented in September 2019 subject to Cabinet approval and it is proposed that the commencement date when the PSPOs will become effective will be set by the Strategic Director for Regeneration and Environment. PSPO signage will be affixed in all parks and open spaces, informing the public of the prohibitions in place.

## **6.0 Financial Implications**

- 6.1 The approximate cost of affixing the notices in our parks, open spaces, graveyards and cemeteries will be £5K and will be funded by the Regeneration and Environmental Services budget.

## **7.0 Legal Implications**

- 7.1 The Anti-Social Behaviour, Crime, Crime and Policing Act 2014 (“the 2014 Act”) provides the Council with power to make PSPOs in the areas where a particular nuisance or problem which is detrimental to local communities quality of life, by imposing conditions on the use of those areas. PSPOs can also be used to deal with likely future problems (section 59). In order to issue a PSPO, the Council must be satisfied on reasonable grounds that the two statutory conditions are met and that it is reasonable and proportionate for the restrictions

the first condition (section 59(2) of the 2014 Act) is that:

- a) the 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 the activities will be carried on in a public place within that area and that they will have such an effect, and



the second condition (section 59(3) of the 2014 Act) 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.

The statutory code of guidance issued by the Home Office provides for “*is likely to have a detrimental effect*” in relation to the first condition (a).

7.2 The reasonableness requirement is set out in section 59(5) of the 2014 Act which provides that the only prohibitions, or requirements that may be imposed are ones that are reasonable to impose in order-

- (a) prevent the detrimental effect referred to from continuing, occurring or reoccurring, or
- (b) to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.

S59(6) provides that a prohibition or requirement may be framed-

- (a) so as to apply to all persons, or only persons in specified categories, or to all persons except those in specified categories;
- (b) so as to apply at all times, or only at specified times, or at all times except those specified;
- (c) so as to apply in all circumstances, or only in specified circumstances, or in all circumstances except those specified

The Home Office Anti-Social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers 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”.

7.3 In Appendix 2 of the April 2015 Cabinet report in relation to the implementation of the 2014 Act, it sets out a local protocol within Brent for making a PSPO. The local protocol includes a local threshold criteria in addition to the requirements for making a PSPO to those set out in section 159 of the 2014 Act and the additional local threshold criteria are as follows:

- “The nuisance behaviour described has taken place on at least five occasions over a one-year period;

- Evidence has been gathered over a three-month period”.

7.4 Before deciding to make the PSPOs, the Council must comply with certain statutory requirements relating to publication, consultation, notification and information in respect of the proposed PSPOs 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 of restrictions proposed, the following consideration points are brought to the Cabinet’s attention:

- a) the term “detrimental effect” is not defined by statute. The term has been considered by case law<sup>1</sup> and the current position is “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 (1) 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 members are reminded that “it should look at each proposal under the PSPO and not focus on just the matters raised in writing”<sup>2</sup>.
- c) The Home Office Guidance of December 2017 (pg. 51), makes clear PSPOs should not be used to target people based solely on the fact that someone is homeless or rough sleeping; it states: “Public Spaces Protection Orders should not be used to target people based solely on the fact that someone is homeless or rough sleeping, as this in itself is unlikely to mean that such behaviour is having an unreasonably detrimental effect on the community’s quality of life which justifies the restrictions imposed. Councils may receive complaints about homeless people, but they should consider whether the use of a Public Spaces Protection Order is the appropriate response. These Orders should be used only to address any specific behaviour that is causing a detrimental effect on the community’s quality of life which is within the control of the person concerned.

Councils should therefore consider carefully the nature of any potential Public Spaces Protection Order that may impact on homeless people and rough sleepers. It is recommended that any Order defines precisely the specific activity or behaviour that is having the detrimental impact on the community. Councils should also consider measures that tackle the root causes of the behaviour, such as the provision of public toilets.

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<sup>1</sup> Summers v Richmond Upon Thames [2018] EWHC 782 (Admin) and applied in Florica Alina Dulgheriu, Andrea Orthova v The London Borough of Ealing, case no Co/1695/2018., [2018] EWHC 1667 (Admin).

<sup>2</sup> Summers v Richmond Upon Thames [2018] EWHC 782 (Admin)

The council should also consider consulting with national or local homeless charities when considering restrictions or requirements which may impact on homeless people and rough sleepers.”

The Home Office Guidance of December 2017 also provides guidance regarding dog control and restricting the use of alcohol.

- d) The Local Government Association 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 Local Government Association (“LGA”) does not provide statutory guidance 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.

7.5 Furthermore, the council will need to evidence that it has given regard to The Human Rights Act 1998. The rights and freedoms provided for in the Human Rights Act are qualified rights which means they can lawfully be restricted providing it is a proportionate and necessary means of achieving a legitimate aim. In 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.

7.6 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 or 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.

7.7 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).

7.8 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 Order under the 2014 Act and for this arrangement to be reviewed after one year”.*

7.9 The post of Chief Operating Officer has since been deleted and the relevant functions transferred to the Strategic Director of Regeneration & Environment. Consequently, the delegation is also “inherited” by the said Strategic Director. In the current circumstances and considering the political sensitivities involved in this matter,

officers recommend that the decision to make a PSPO as proposed in this report is made by the Cabinet rather than by officers with delegated authority.

- 7.10 Once approved, the PSPO must be published on the Council website and notices put up where practical on or adjacent to the public places to which the PSPO relates publicising the fact that the PSPO has been made and its effect.

## **8.0 Diversity Implications**

- 8.1 The implementation and policing of PSPO has been and will be in accordance with the Equality Act 2010. There will be no discriminatory policing of this proposed order in line with our Public Sector Equality duty.

- 8.2 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 the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act, to advance equality of opportunity and 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.

- 8.3 Consideration must also be given how these proposals regarding the prohibitions and requirements of the proposed PSPO 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.

- 8.4 An Equality Impact Assessment was carried out and did identify some groups which could be negatively impacted by the proposed PSPO. To mitigate these impacts, positive actions will be taken to make these groups aware of the proposed PSPO with a duty to signpost identified groups to relevant support and outreach services. The EIA can be referenced in Appendix 14.

## **9.0 Staffing Implications**

- 9.1 The Enviro Crime Enforcement Officers will police the order primarily and there is a current recruitment exercise to develop a street scene team in the summer 2019, to add capacity. There will also be some assistance from relevant Safer Neighbourhood Teams and the Council’s Police Partnership Tasking Team who are on the last year of the S.92 agreement.

## **Related Documents**

Safer Brent Partnership Priorities - Strategic Assessment 2019

**Report sign off:**

**Amar Dave**

**Strategic Director, Regeneration  
and Environment**