



Key Decision Report

Report of the Strategic Director of Regeneration & Environment

Public Spaces Protection Order (PSPO) for area surrounding Wembley Stadium

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| Wards Affected: | Tokington, Wembley Central & Barnhill |
| 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: | 5 (A- E) - Appendix A: Wembley PSPO Maps Appendix B: Witness Statements Appendix C: Consultation Appendix D: Equality Impact Assessment Appendix E: Draft PSPO |
| Background Papers: | None |
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1.0 Purpose of the Report

- 1.1 This report seeks approval from the Strategic Director for Regeneration & Environment, following his consultation with the Lead Member for Community Safety to adopt a Public Space Protection Order (PSPO) for the area surrounding Wembley Stadium. The extent of the area covered by the proposed PSPO is attached in Appendix A and includes the areas between the three main transport hubs namely; Wembley Park Station, Wembley Stadium Station and Wembley Central Station.
- 1.2 The proposed PSPO covers the following unauthorised activities within the defined area in Appendix A: (1) illegal street trading, (2) distribution of free literature (including giveaway items), (3) charity street collections, (4) street drinking, (5) littering (including urination), (6) fly-posting, (7) flying of drone(s), (8) games or competitions, (9) pyrotechnics (including fireworks, flares or smoke emitters, (10) idling engines), and (11) busking including the use of loud speakers.

2.0 Recommendation(s)

- 2.1 That the Strategic Director for Regeneration & Environment, following consultation with the Lead Member for Community Safety:
- a. consider and confirms the introduction and implementation of the proposed PSPO in the draft terms attached in **Appendix E** one for a period of three years.
 - b. considers and notes the proposed area and other relevant maps for the PSPO targeting a range of different anti-social behaviour (ASB) in **Appendix A**, the evidence supporting the PSPO in **Appendix B**, the consultation responses in **Appendix C** and the equalities impact assessment in **Appendix D**.
 - c. set the date on which the PSPO will become effective and in force.

3.0 Detail

- 3.1 The Anti-Social Behaviour, Crime and Policing Act 2014 ('the 2014 Act') provides a legal framework within which PSPOs can be implemented. PSPO's can be introduced for a specific public area where the local authority is satisfied that certain conditions have been met. The legal requirements and conditions regarding the Council's powers to make PSPOs are set out in further detail in section 5 of this report and they must be taken into account (including any additional local threshold criteria for making a PSPO in Brent) when the Strategic Director for Regeneration and Environment, in consultation with the Lead Member for Community Safety consider each prohibition and requirement of the proposed PSPO.
- 3.2 The London Local Authorities Act allows enforcement on streets and not on enclosed private land. A PSPO would allow enforcement on private land as well as public land including open spaces against un-licensed traders. This will allow enforcement to be undertaken in all areas highlighted in the attached plan (Appendix A). The enforcement of the PSPO and London Local Authorities Act 1990 would be a stepping stone to obtaining the injunction against un-named illegal traders. Such an injunction was brought by the Jockey Club at Cheltenham Racecourse and Chelsea Football Club which has resulted in drastically reducing the number of illegal traders.
- 3.3 The Council has to demonstrate that the activities that have taken place have had a detrimental impact on the quality of life on those in the locality or that the activities will be carried on in a public place within that area and that they will have a detrimental impact on those in the locality. In addition, the effect, or likely effect of these activities is likely to be persistent, unreasonable and justifies the restrictions imposed.
- 3.4 A PSPO can be used to target a range of different Anti-Social Behaviour (ASB) issues. This report proposes a number of prohibitions to target a range of different ASB issues as set out in paragraph 1.2.
- 3.5 Sporting and other recreational activities such as concerts at Wembley Stadium, SSE Arena and now the new Wembley Troubadour Theatre attract thousands of people (at times exceeding 90,000 people). However, the

experience of those attending the venue, those working in the area and residents is seriously marred by illegal traders (including ticket touts), street drinkers, littering (including urination), unauthorised distribution of printed material etc. whose activities blight the streets and spaces around Wembley Stadium as well as the footprint between Wembley Park, Wembley Stadium and Wembley Central Stations.

Prohibition 1: Illegal Street Trading

- 3.6 Illegal street trading is enforced under the London Local Authorities Act (as amended).
- 3.7 On event days, numerous illegal street traders including ticket touts are located along the main foot print of Wembley Stadium and also along the High Road Wembley, First Way etc... It is believed that the traders form part of an organised group and many have criminal convictions.
- 3.8 The goods that are sold to members of the public are often of a dubious quality, which may also breach intellectual property rights of the event owner. Consumers who purchase counterfeit goods such as scarves, t-shirts and tickets from illegal street traders are put in a position where they cannot return the goods as the traders do not have a fixed location. This provides a poor experience for visitors and creates unfair competition in the Borough
- 3.9 Street trading also includes activities like free face painting, hair braiding, massages and therapy etc. At some events these services are offered at no cost to entice members of the public to subscribe to or purchase something at a later date, occasionally it is just a free event. This form of street trading is sometimes used as an alternative form as a form of promotional advertising without the traditional printed materials or physical object giveaways. Evidence shows these activities are usually offered in areas of high footfall thereby causing an obstruction and congestion. These traders are also often not controlled by Regulation and can even be harmful to customers. For example, face painters may use of allergenic products or have poor cleaning processes for face painting.
- 3.10 Moreover, the vicinity around Wembley Stadium attracts vast amounts of new residents, workers and visitors. The effects of illegal street traders not only cause a nuisance due to their poor behaviour and unwelcoming presence, they also cause an obstruction on the public highway by displaying their goods across roads that are closed to traffic.
- 3.11 Enforcement Officers have encountered aggressive illegal traders who have verbally and physically threatened officers. On several occasions officers have been thrown on the floor, which is upsetting and distressing. To prevent such events occurring, police assistance is required to prevent a breach of peace and verify details of the illegal traders. In addition, certain traders are known to give false details and provide no fixed abode in order to challenge Council Officers. It is also unfair on those traders who have been licenced, are trading legally and in compliance with the appropriate Regulations and Council process and have the appropriate public liability insurance in place.
- 3.12 The Council have and continues to receive complaints from licenced traders about un-licenced traders who are affecting their livelihoods and the impact on

their legitimate business. They have even offered to pay for Council enforcement to remove this nuisance.

- 3.13 The cost of staffing the events, securing evidence, prosecuting individuals, preparing reports, attending court and disposing of forfeited items have all increased tremendously, putting additional pressure on limited resources. Using the London Local Authorities Act 1990 the following prosecutions were recently undertaken successfully: 38 in 2017, 33 in 2018 and 17 so far in 2019. Furthermore, four criminal behaviour orders have been obtained. These individuals are still present on the Wembley footprint acting as 'spotters' for other traders who trade illegally.
- 3.14 The illegal street traders do not appear to be affected by the court convictions and fines as they continue to attend events and sell merchandise regardless. The same traders present themselves in the Wembley foot print time and time again. Resources are very limited; therefore, the Council cannot always be present to enforce every event. The PSPO regime is a stronger enforcement measure for the council to use and also enables us to apply for an injunction for persistent offenders.

Prohibition 2: Distribution of Free Literature (including giveaway items)

- 3.15 The area around the stadium attracts a large number of literature distributors due to hundreds of thousands of people attending events at the stadium. The majority of these individuals have not applied for a literature distributors licence. Distribution of free literature has been of concern due to people dropping the printed material as litter. Current controls, namely, statutory nuisance provisions (which only apply to public land), seizure and disposal of literature under London Local Authorities Act 1996 have had limited impact because the distributors return with more literature. Furthermore, there are no controls in place to limit the number of distributors or recover the cost of enforcement.
- 3.16 Section 23 of the Clean Neighbourhoods and Environment Act 2005 ("CNEA The Act") as inserted by section 94B and Schedule 3A of the Environment Protection Act 1990 provides specific provisions to control the distribution of free literature. The powers provide a presumption to allow distribution of free literature but only under consents (to be issued in the form of a licence) by the Council. The licence includes specific conditions to control problems arising from the consequences of distributing free literature. Breach of a licence is a criminal offence which can lead to prosecution.
- 3.17 In 2012 members agreed to designate the following roads as places where free literature may not be distributed without the Council's prior written consent in the form of a licence: Bridge Road, Wembley Hill Road, Wembley Park Drive, Park Lane, Empire Way, South Way, Rutherford Way, Engineers Way, Fulton Road, Olympic Way, Brook Avenue, Great Central Way, First Way, Fourth Way, Fifth Way, High Road, Harrow Road, St John's Road, Lancelot Road, Ealing Road, Ecclestone Place, London Road, Dagmar Avenue, Linden Avenue and Mostyn Avenue.
- 3.18 However, the CNEA Act powers only apply to land within the ownership of the Council (as the principle littering authority) or to Highways for which it is responsible as the Highway Authority. It does not apply to private land. Please

see attached maps in Appendix A. The PSPO for the proposed area in Appendix A.

Prohibition 3: Unauthorised Charity Street Collections

- 3.19 The Metropolitan Police Charities commission provides dates each year to local authorities whereby the Local Authorities Mayor can give permission for street collections to take place for small charities. If a local charity wants to make a street collection, a letter from the Mayor has to be presented to Police Charities Commission who then verifies the applicant and gives consent to collect on the streets. In the area surrounding Wembley Stadium individuals present themselves with their buckets collecting money without consent from the Council and the Metropolitan Police Charities Commission.
- 3.20 This practice means that individual's donation has a potential of going to those who are not genuine collectors. Street collections do not apply on private land.

Prohibition 4: Street Drinking

- 3.21 A Borough-wide PSPO for street drinking was introduced in October 2017. However, it did not include private land nor open spaces. It is not due to be reviewed until 2020. Furthermore, within the Wembley footprint new roads have emerged since 2017 and private land/open spaces that are not subject to the proposed PSPO. The aim of the street drinking prohibition is to reduce anti-social behaviour in areas identified as problematic., The proposed PSPO would also enable the local authority and the Metropolitan Police Service to identify hotspots so that it can be referred to the Borough Joint Action Group to ensure the Metropolitan Police Service, Local Authority and partners tackle the identified issues in relation to street drinking.
- 3.22 There has been significant residential and business development around the Stadium footprint, the number of residents affected by anti-social behaviour from street drinking has increased due to the residential development in the locality. As certain streets are not included in the proposed PSPO for street drinking, the Police and Local Authority have to rely on other less effective legislation to tackle alcohol related matters. This has resulted in the offenders 'wising up' to the fact that they can step onto private land to avoid any action taken against them.
- 3.23 Most recently, several hundred people have been observed on a number of occasions to be standing around and drinking on Olympic Way, Wembley Splay, Wembley Park Boulevard adjacent to Arena Square around the London Designer Outlet, Empire Way, Wembley Hill Road and Wembley Green. The drinking of alcohol in open public areas and the associated anti-social behaviour has been particularly bad during events on 31st March 2019 (Checkatrade Trophy), 7th April 2019 The Emirates FA Cup semi-final and on 27th May 2019 (Championship Play-Off Final).
- 3.24 In addition to the drinking of alcohol and consequential anti-social behaviour, visiting fans leave the area littered with beer cans, bottles and other general litter/waste; this is despite Wembley Stadium and Wembley Park providing extra litter bin during event days. The street drinking also contributes to people urinating against people's properties, leaving the area with detritus and offensive smells which linger for weeks. This has resulted in numerus

complaints from residents and businesses. These large group of drinkers together with the illegal traders operating in the Wembley footprint cause obstruction and create a health & safety and public risk to residents, local workers and visitors.

Prohibition 5: Littering (including but not limited to urination, spitting or dropping of cigarette ends).

- 3.25 Litter is anything from a crisp packet or cigarette butt to a bag of rubbish. All litter is unsightly and makes the local areas look untidy and uncared for. Common litter items include fast-food packaging, sweet wrappers, drinks cans, bottles and cigarette butts. Litter does not clean itself away. It can take years to degrade, causes harm to wildlife and habitats. In addition, food people drop – whether it is half-eaten burgers, chips or apple cores - can attract pigeons and vermin such as rats. In the UK, the cost to the taxpayers for street cleaning is over £1 billion a year. Research shows that litter contributes to further crime and that people feel less safe in areas that are littered.
- 3.26 The Environmental Protection Act 1990 makes certain ‘duty bodies’ legally responsible for keeping land which is under their control, and to which the public has access, clear of litter and refuse and their highways must be kept clean, as far as is practicable. Duty bodies include crown authorities, principal litter authorities (Brent Council is one), governing bodies of educational institutions and statutory undertakers such as transport companies and operators.
- 3.27 If litter is dropped on privately-owned land, it is either the owner or occupier who is held responsible for clearing this litter away. Whilst the Council, Wembley Park (land owner around the Stadium) and Wembley National Stadium work together to address the problems that cause a nuisance to local residents and visitors; for example, by the provisions of extra bins and toilets along the main thoroughfares during events at Wembley Stadium. There is still an accumulation of vast amounts of litter during event days. Therefore, a PSPO for littering will allow this issue to be addressed within the proposed area attached in Appendix A on public and private land.

Prohibition 6: Unauthorised Fly-posting, advertisement, affixation or distribution of any promotional adverts, offers or items (including but not limited to stands, stalls, banners, posters)

- 3.28 In England/Wales, fly-posting is illegal (in certain circumstances) under the Highways Act 1980 and the Town and Country Planning Act 1990. Offences under the 1980 Act include that of obliterating a traffic sign, while under the 1990 Act it is an offence to display an advertisement in a way that breaches specified Regulations. The legislation:

Sections 131(2) and 132(1) of the Highways Act 1980
Section 224(3) of the Town and Country Planning Act 1990

- 3.29 The main legislation mentioned above covers public land but not private land. A PSPO for fly-posting will allow this issue to be addressed within the proposed area attached in Appendix A on both public and private land.

Prohibition 7: Unauthorised flying of drone(s)

3.30 The Regulations for recreational unmanned aircraft flights (Drones) are contained within the Air Navigation Order 2016 (ANO) which is the primary document for all aviation regulations within the UK. In order to keep the regulations at a proportionate level for these small UAS (Unmanned Aircraft System), a set of specific, simpler, Regulations apply to aircraft that have a mass of 20kg or less (which are termed 'small unmanned aircraft' within the ANO).

These regulations state that:

- you are responsible for flying your UAS in a safe manner
- you must keep the UAS in your direct sight at all times while it is flying, so that you can ensure that it does not collide with anything, especially other aircraft
- you must not endanger anyone, or anything with your UAS, including any articles that you drop from it
- you must not fly more than 400ft above the surface. If flying over hilly/undulating terrain or close to a cliff edge, this may be interpreted as being a requirement to remain within a distance of 400ft from the surface of the earth
- you must not fly within the Flight Restriction Zone of a protected aerodrome
- if your UAS weighs more than 7kg, additional rules apply if you fly in certain types of airspace.

3.31 If a UAS is fitted with a camera, there are also a number of additional limitations surrounding where you can fly it, and how close you can fly it to other uninvolved people or objects. In order to be able to fly within these areas, or closer than the minimum distances that are in the regulations, you must obtain prior permission from the Civil Aviation Authority (CAA) to do so.

3.32 The government is preparing a new Drones Bill, which will give police powers to clamp down on those misusing drones and other small unmanned aircrafts, including a power to access electronic data stored on drones with a warrant. In addition, the Home Office announced new stop and search powers for drones around aerodromes, which are to be included in the Drone's Bill.

3.33 These enforcement powers will complement legislation introduced last year which will require the mandatory registration of operators and the online competency testing of remote pilots for drones over 250g. These requirements will become a legal obligation in November this year (2019) and we will work with the new police powers to increase accountability and clamp down on irresponsible and dangerous behaviour.

3.34 The Home Office is further reviewing the UK's response to the malicious use of drones, and will consider how best to protect the full range of the UK's critical national infrastructure, as well as testing and evaluating technology to counter drones. These actions will help to combat the misuse of drones, so that small unmanned aircraft can be used safely and securely, and continue to support the development and growth of this rapidly expanding new industry.

3.35 A PSPO is shortly to be introduced for parks/open spaces, but streets etc. are not covered. Should an individual wish to fly a drone around Wembley stadium,

should an individual wish to fly a drone whilst hundreds and thousands of people are walking along Olympic Way or the surrounding area, it can cause people to stop in their tracks which can cause the flow of movement of several thousand people to come to an abrupt stop with a potential to cause an obstruction resulting in crushing or more serious injuries. Therefore, a PSPO for flying unauthorised drone(s) is required in the proposed area in Appendix A.

Prohibition 8: Games or competitions

3.36 Wembley National Stadium's primary offer is that of sporting events – mostly football. Many of the spectator's attending these events also enjoy playing the various associated sports. In some locations – particularly within locations around the stadium which are closed off to traffic such as Fulton Road, Engineers Way, Olympic Way, Wembley Boulevard, Arena Square, the White Horse bridge etc. groups of spectators occasionally engage in a kick-about, or in the case of NFL – a throw-about involving a ball or other objects have been observed. While this behaviour is generally seen to be harmless if the group is small and is not consuming alcohol, on some events these activities quickly grows in size and attract individuals who are or have been consuming alcohol. The result of this is that a large crowd quickly develops in an area either set aside as a fan-zone or designated as a thoroughfare whose focus is intent on chasing, kicking or throwing a ball or other object often in a very excitable manner with little or no consideration for others around them. This in turn results in obstruction, risk of injury, risk of damage to property and on occasion violent aggression directed at other persons relaxing in or passing through the space if they take offence.

3.37 Where such activities are small and not seen to be posing a threat or causing a nuisance it is reasonable to allow them to continue. However, in certain areas where the risk of these activities is seen to be dangerous or can cause an obstruction, or where such activities involve large groups who have been or are consuming alcohol, this then becomes both a nuisance and a danger. A prohibition to stop such nuisance or dangerous activities therefore would be a preferred approach to enable officers to control such activities on the public highway and on private land within the Wembley area.

Prohibition 9: Pyrotechnics including Fireworks including flares or smoke emitters

3.38 Pursuant to the Fireworks Regulations, one cannot buy 'adult' fireworks if they are under 18 years of age. Adult fireworks are category 2 and 3 fireworks - they do not include things like party poppers. Category 4 fireworks can only be used by professionals.

3.39 One must not set off fireworks between 11pm and 7am, except for:

- Bonfire Night, when the cut off is midnight
- New Year's Eve, Diwali and Chinese New Year, when the cut off is 1am

It is illegal to let fireworks off in the street or a public place. However, fireworks can be let off on private land such as a garden or on land where you have the landowner's permission. It is not a legal requirement to have any form of licence or training to let off consumer fireworks. However, for larger displays which are insured, some form of training may be a requirement of the underwriters.

- 3.40 Enforcement under the Fireworks Regulations of 2004 is a police function. Local Authorities do not have any legal powers to take action under the act. A common theme at many football stadia events is for spectators to launch or set off fireworks, flares or smoke emitters while travelling to or waiting to get into the stadium. In Wembley Stadium, these items are prohibited from being brought into the stadium and prevented through bag searches because they can be dangerous and are a nuisance to others yet they are still used freely outside the stadium and on the public highway.
- 3.41 Fireworks are dangerous in terms of being a fire hazard, the smoke that some of them emit is unpleasant, unhealthy to inhale and they are often noisy. Furthermore, if fireworks, including flares are let off in a busy thoroughfare, they have a great potential of spooking the crowds with a potential to cause injuries to members of unsuspecting public. Given that the Fireworks Regulations only provides powers to police officers, a number of Local Authorities have already opted to use PSPO's to allow their officers to tackle the nuisance aspect associated with fireworks which are not related to commercial fireworks events, fireworks nights or other aspects of fireworks regulation that the police would normally deal with. These PSPO's focus mainly on controlling fireworks nuisance on the public highway and in parks and open spaces.
- 3.42 Given the growing trend for spectators to carry and set off fireworks in crowded spaces, on thoroughfares and adjacent to roads there is a clear and ongoing potential risk to public safety and a nuisance. Such nuisance has been observed and reported to Public Safety Officers of the Council. A PSPO allowing officers to control the use of such fireworks if they are seen to be dangerous or causing a nuisance is therefore seen to be essential in terms of improving the experience for both visitors to, and residents of, the borough in the Wembley area on event days.

Prohibition 10: Idling Engines

- 3.43 Leaving an engine idling is already an offence under the Section 42 of the Road Traffic Act 1988. The Act enforces rule 123 of the Highway Code, which states 'you MUST NOT leave a vehicle engine idling whilst the vehicle is stationary on a public road'. If drivers are caught doing this, they could face a £20 fixed-penalty fine under the Road Traffic (Vehicle Emissions) Regulations 2002. This can increase to £80 depending on how local councils decide to enforce the rule. Currently officers are only permitted to impose such a fine if drivers fail to turn off their emission and stay parked for another minute.
- 3.44 Although initially promoted as a public transport venue, events at Wembley Stadium attract thousands of vehicles to the borough each year in the form of spectators' cars and coaches, staff, contractors and taxi's. While most vehicles coming to the stadium eventually park in car parks, a large number of vehicles are there only to pick up friends and family or carry out post event works or activities and therefore circle the stadium perimeter waiting for the event to end or their passengers to come out or wait nearby until called upon.
- 3.45 There are a number of designated waiting areas around the stadium including pickup areas in car parks, on private forecourts and a temporary taxi rank is created on Engineers Way during the event dispersal period. Given that drivers of vehicles often wait in a 'ready to move state' – often while parked illegally or use their vehicle technology, heating or air-conditioning to maintain comfort

while waiting, vehicle engines are more often than not kept running for long periods of time while waiting. This behaviour has caused a nuisance in terms of noise and pollution resulting in complaints from local residents. It is also harmful to the environment- particularly emphasised by Brent's recent commitment to join the movement to declare a climate emergency.

- 3.46 Although officers have within their power the means to use the Road Traffic Act to enforce this legislation, it does not relate to private land. By introducing a PSPO to prevent idling by waiting vehicles on private land this widens the scope of officers to address this issue. It further protects the environment and enables both the Local Authority and its partners Such as Wembley Park, Wembley Stadium and the arena to ensure a joint, cohesive and more responsible approach to tackling idling engine emissions. This will supersede powers conferred under the Road Traffic Act 1988.

Prohibition 11: Busking including use of loud speakers

- 3.47 Busking is not a licensable activity. This is because busking is usually 'incidental' to other activities, such as shopping, or the premises where the music is played will not have been provided for busking to take place. In order to busk, an individual would need to ensure that they have the relevant permission for the area in which they wish to use, for example, to contact TFL for permissions relating to the London Underground. If the land proposed to be used is private, then permission must be sought from the land owner. If it is on a pavement etc. one would require a consent from the Council.
- 3.48 There have been busking events around the stadium footprint during the international busking week. These events have had consent from the Council and the private land owners. Care is taken to ensure that a nuisance is not caused to those who live, work and visit the area. However, there have been several occasions when individuals have set up loud speakers to busk or preach/deliver sermons to members of the public. This has a potential to cause a nuisance from the continual noise to those who live, work and visit the area. The likelihood of this nuisance continuing and causing a nuisance is extremely high due to the high footfall in the Wembley Area.
- 3.49 It is an offence to use loudspeakers at any time to advertise entertainment, trade, for business. It is an offence to use loudspeakers for any purpose in the street at night between 9pm and 8am under The Control of Pollution Act 1974. Exceptions when a loud speaker can be used are in emergencies, as a public address system or if Council gives consent. In an emergency loud speakers can be used by the police, fire brigade, ambulance service, environment agency, water and sewage companies or public transport companies.
- 3.50 However, there have been several instances when individuals come to the area with their loudspeakers to preach sermons and advertise their services. This causes great distress to local residents when this practice continues for days on private land. Therefore, a PSPO is sought to address the problem of unauthorised busking and use of loudspeakers in the proposed area in Appendix A.
- 3.51 Evidence and statements supporting the proposed PSPO are contained in Appendix B

4.0 Financial Implications

4.1 Enforcement will be undertaken by the Neighbourhood Patrol team.

5.0 Legal Implications

5.1 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).

5.2 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.

Section 59(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”.

- 5.3 Appendix 2 of the April 2015 Cabinet report, in relation to the implementation of the 2014 Act, 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, or
 - evidence has been gathered over a three-month period”.
- 5.4 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 Strategic Director for Regeneration & Environment’s attention:
- a) the term “detrimental effect” is not defined by statute. The term has been considered by case law 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 intereststhe behaviours which PSPOs are intended to target are those which are seriously anti-social, not ones that are simply annoying”.
 - b) the Strategic Director for Regeneration & Environment is reminded that “it should look at each proposal under the PSPO and not focus on just the matters raised in writing”.
 - c) 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.
- 5.5 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.
- 5.6 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.

- 5.7 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).
- 5.8 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.
- 5.9 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.
- 5.10 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.
- 5.11 As stated in the body of the main report, and pursuant to s21 of The London Local Authorities Act 1990, the council cannot enforce its street trading powers on private land pursuant to S21 defines a street as including
 - a) *“any road, or footway*
 - b) *Any other area, not being permanently enclosed premises, within 7 metres of any road, or footway, to which the public have access without payment;*
 - c) *Any part of such road, footway or area;*
 - d) *Any part of any housing development provided or maintained by a local authority under Part II of the Housing Act 1985”.*

6.0 Equality Implications

- 6.1 The implementation and policing of PSPO will be in accordance with Equality Act 2010.
- 6.2 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.
- 6.3 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.

6.4 An Equality Impact Assessment has been undertaken and the finding and mitigations are attached as Appendix D.

7.0 Consultation with Ward Members and Stakeholders

7.1 Consultation has been undertaken with ward members from Wembley Central, Toyknton and Barnhill wards.

7.2 An on-line consultation for the proposed PSPO was undertaken from 30 August 2019 to 30 September 2019. All businesses in Wembley were sent a link to the consultation via WhatsApp by the Town Centre Manager who also distributed the PSPO proposal. Similarly, Tipi (the largest landlord in Wembley Park) at Wembley Park informed residents in and around Wembley Stadium.

7.3 26 responses were received. A summary report is attached in Appendix C

7.4 Responses received support and welcome the introduction of the proposed PSPO.

8.0 Human Resources/Property Implications (if appropriate)

8.1 The Neighbourhood Enforcement Officers will enforce the proposed PSPO. Enforcement Officers from Regulatory Services will also undertake enforcement when they undertake Wembley Stadium enforcement duties or when required to do so.

Report sign off:

STRATEGIC DIRECTOR Amar Dave
Strategic Director of Regeneration & Environment