

# PUBLIC SPACES PROTECTION ORDER

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| <b>Cabinet</b>                  | 22 August 2024  |
| <b>By</b>                       | Ingrid Brown, Head of Legal and Democracy   |
| <b>Cabinet Portfolio Member</b> | Councillor Rob Yates  |
| <b>Key Decision</b>             | This report concerns the call-in of a key decision  |
| <b>Decision classification</b>  | Appendix 4 of this report is a confidential annex in accordance with the provisions of paragraph 5, schedule 12 A Local Government Act 2000 |
| <b>Call in status</b>           | To Cabinet for consideration after call-in  |
| <b>Ward:</b>                    | All Wards   |

## Purpose of the Report

This report provides Cabinet with the information considered by the Overview and Scrutiny Panel on 20 August 2024 when it called-in the decision of Cabinet made on 25 July 2024 in relation to the Public Spaces Protection Order.

## Recommendation(s):

It is recommended that Cabinet:

1. Consider the content of this report together with the appendices attached to this report.
2. Consider the recommendations made by the Overview and Scrutiny Panel.
3. Decide whether to accept or reject the recommendation of the Overview and Scrutiny Panel set out in paragraph 1.3 of this report.
4. In the event that the recommendation of the Overview and Scrutiny panel is agreed, agree that Cabinet's decision made on the 25 July in respect of the Public Spaces Protection Order, be rescinded.
5. In the event that a decision is made to rescind the above decision, agree that work commences immediately towards implementation of a further combined PSPO for a period of three years.

## 1. Summary of Reasons

- 1.1 On the 2 August 2024 the Chair of the Council's Overview and Scrutiny Panel wrote to the Council's Monitoring Officer formally requesting to call-in Cabinet's decision referred to above on the basis of a letter under the pre-action protocol for judicial review, sent by the Free Speech Union (FSU) and dated the 31<sup>st</sup> July 2024, indicating their intention to judicially review the decision referred to in this report and indicating their grounds for such a challenge.

1.2 The Monitoring Officer considered the request for call-in against the provisions of the Council's constitution at Part 4, paragraph 15 (a). These provide that '*call-in should only be used in exceptional circumstances, for example, where members of the Overview & Scrutiny Panel have evidence which suggests that the Cabinet did not take the decision in accordance with the principles set out in Article 13 (Decision Making).*' The letter from the FSU clearly suggested that the decision referred to in this report was not in accordance with the principles set out in Article 13. In view of this as well as the fact the request for call-in was received in accordance with the provisions set out in the constitution, the call-in was allowed.

1.3 The Overview and Scrutiny panel met on 20 August 2024. It made the recommendations set out below:

*The Overview and Scrutiny Panel supported the aim of the proposed PSPO and considered that the PSPO was necessary for some areas of Thanet. However the Panel had some concerns that some of the detail of some aspects of the proposed PSPO may be open to question. The Panel therefore requested that Cabinet looked again at those areas to ensure that the PSPO could be smoothly implemented.*

## **2. Background**

2.1 The background to this matter is set out above. Prior to this decision being called in, it was first considered by the Overview and Scrutiny Panel (OSP) on 18 June 2024. OSP expressed some concerns about the Order and in particular the resourcing of the Order.

2.2 OSP considered this matter again on 16 July 2024. The Order being considered was an amended order to take into account some of the concerns raised in correspondence by the Free Speech Union. OSP made no comment to pass to Cabinet for consideration.

2.3 Cabinet considered this matter on 25 July 2024 and approved an amended PSPO for a period of one year rather than the three years initially intended. The reduced time period was to allow for a period of further monitoring and to consider the appropriateness of more targeted restrictions in the future.

2.4 As indicated above, OSP considered this matter when it called-in the decision of Cabinet, on 20 August 2024.

## **3. Relevant Issues**

3.1 The Alcohol and Anti-social Behaviour PSPO were due to expire at the end of July 2024. The intention to implement a combined Alcohol and Anti-Social Behaviour PSPO was published on the forward plan in December 2023.

3.2 The proposed combined order was drafted by the Community Safety Team having carefully considered the results of a strategic assessment.

3.3 The draft order was consulted on between 3<sup>rd</sup> May and 24<sup>th</sup> May 2024. Consultation was by way of an online form and also by way of social media platforms including the Council's website, the Community Safety Partnership social media page, and the

Police Community newsletter. Consultation was also face to face when the community safety team were at face to face engagement sessions.

- 3.4 The Free Speech Union responded to the consultation in a letter dated 24 May 2024. This raises a number of concerns about the scope and basis of the Order.
- 3.5 As indicated above the Overview and Scrutiny Panel met on 18 June 2024 to consider the proposed order. The Panel had a number of concerns about the Order and these were drafted to be passed to Cabinet.
- 3.6 On 23 June a further letter was received from the Free Speech Union indicating further concerns about the scope, detail and basis of the Order. The letter indicated that legal action was being considered in the event that these matters were not addressed.
- 3.7 The proposal to approve the Order was withdrawn from the Cabinet agenda for 25 June 2024.
- 3.8 A revised Order was put before OSP on 16 July 2024. This made a number of amendments to the original Order including in relation to the restricted area. OSP did not suggest any concerns be put forward to Cabinet.
- 3.9 The Free Speech Union wrote to the Council again on 23 July 2024 raising further concerns with the revised Order.
- 3.10 Cabinet considered the matter on 25 July and approved a further revised Order as set out in the decision notice attached to this report.
- 3.11 The Free Speech Union wrote to the Council on the 31<sup>st</sup> July under the pre-action protocol for Judicial Review. A copy of that letter is appended to this report. In view of the fact this matter has been called-in and as such the decision making process is not concluded, the Council has not yet provided a substantive response to this letter.

## **4. Alternative Options**

- 4.1 Cabinet may agree with the recommendations of the Overview and Scrutiny panel and decide to rescind the decision referred to in this report. Alternatively, it may decide that it does not agree with these recommendations and its decision in respect of the PSPO made on the 25<sup>th</sup> July 2024 will remain intact. The PSPO will go on to be implemented which will almost certainly give rise to litigation by way of a Judicial Review.

## **5. Consultation**

- 5.1 There is no statutory or public law duty to consult in relation to the decisions that the Cabinet must make in respect of this matter.

## **6. Corporate Implications**

### **6.1 Finance and Resources**

- 6.1.1 There are no financial implications arising from the decision sought in this report.

## 6.2 Legal and Constitutional

- 6.2.1 Please see the confidential appendix.
- 6.2.2 Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 permits a local authority to make a PSPO in the areas where a particular nuisance or problem occurs which is detrimental to the local community's quality of life.
- 6.2.3 In order to make a PSPO, the council must be satisfied on reasonable grounds that two statutory conditions are met and that the restrictions are reasonable and proportionate. Once made, a PSPO empowers a Constable (or other authorised persons) to enforce a prohibition or requirement set out in the PSPO.
- 6.2.4 The first condition that must be met is that: (a) activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or (b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.
- 6.2.5 The second condition is that the effect, or likely effect, of the activities (a) is, or is likely to be, of a persistent or continuing nature, (b) is, or is likely to be, such as to make the activities unreasonable, and (c) justifies the restrictions imposed by the notice.
- 6.2.6 Public Space Protection Orders potentially entail an infringement of individuals' human rights. The Anti-Social Behaviour, Crime and Policing Act 2014 also requires that in deciding whether to make a PSPO the Council must have particular regard to the rights of freedom of expression and freedom of assembly and association set out in articles 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Such qualified rights may be legitimately interfered with in the interests of public safety, the prevention of crime and disorder and in accordance with the law. When considering whether to make the orders the Council must balance the rights and freedoms of individuals in these regards against the needs of the wider community.
- 6.2.7 The Council is required to carry out the necessary consultation before making a PSPO and this must include consulting with "the chief officer of police, and the local policing body, for the police area that includes the restricted area" and with appropriate community representatives and those who own or occupy land within the restricted area.
- 6.2.8 In addition to the requirements of statutory consultation set out in the legislation, any consultation is governed by public law. Wherever there is a duty to consult, it is a duty to engage in lawful (and therefore fair) consultation. Similarly, if a public authority chooses to consult (whether or not required to do so), the consultation must be adequate and fair.
- 6.2.9 Sullivan J in [Greenpeace Ltd. R \(on the application of\) v Secretary of State for Trade and Industry \[2007\]EWHC 311 \(Admin\) \(15 February 2007\)](#)

*'A consultation exercise which is flawed in one, or even in a number of respects, is not necessarily so procedurally unfair as to be unlawful. With the benefit of hindsight it will almost invariably be possible to suggest ways in which a consultation exercise*

*might have been improved upon. That is most emphatically not the test. It must also be recognised that a decision-maker will usually have a broad discretion as to how a consultation should be carried out."*

*However, while the decision-maker has discretion to choose between a variety of "fair" ways of conducting a consultation exercise, the level of consultation required to satisfy the demands of fairness is a question for the court, not the decision-maker'.*

6.2.10 The Court will consider the Gunning principles which are as follows: [R v London Borough of Brent, ex p Gunning \[1985\] LGR 168](#) :

- a, The consultation must be at a time when proposals are still at a formative stage.
- b, The proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Those consulted should be aware of the criteria that will be applied when considering proposals and which factors will be considered decisive or of substantial importance at the end of the process, see [R \(Robin Murray & Co\) v The Lord Chancellor \[2011\] EWHC 1528 \(Admin\) \(16 June 2011\)](#).
- c, Adequate time must be given for consideration and response.
- d, The product of consultation must be conscientiously taken into account in finalising any statutory proposals.

6.2.11 There is a duty to carry out a fresh consultation when proposals have materially changed from those originally consulted on.

6.2.12 The relevant constitutional provisions are set out in the body of this report. The Monitoring Officer determined this was a valid call-in since evidence was provided which suggested that the decision making principles set out in Article 13 of the Council's constitution may not have been adhered to.

### **6.3 Council Policies and Priorities**

6.3.1 This report relates to the following corporate priorities: -

- To keep our district safe and clean
- To work efficiently for you

### **6.4 Risk**

6.4.1 The Free Speech Union have already indicated their intention to seek to Judicially Review this decision if it is implemented in its current form. The Council would then be at risk of significant costs as well as potentially reputational harm.

### **6.5 Climate Change and Biodiversity**

6.5.1 There are no climate change and biodiversity implications arising from the decision sought in this report.

## **7. Equality, Equity and Diversity Implications**

7.1 There are no equality implications arising from the decision sought in this report. There are equality implications pertaining to the substantive decision made by cabinet and these are detailed in the equality impact assessment which is appended to the report presented to Cabinet and is also appended to this report.

## **8. Crime and Disorder Implications and Community impact**

8.1 There are no crime and disorder implications arising from the decision sought in this report.

## **9. Subject History**

9.1 18 June 2024- Overview and Scrutiny Panel  
16 July 2024-Overview and Scrutiny Panel  
25 July 2024- Cabinet  
20 August 2024- Overview and Scrutiny Panel

## **Appendices**

Appendix 1- Cabinet Report -25.07.2024

Appendix 2- Decision Notice

Appendix 3- Letter under the Pre-Action Protocol from Free Speech Union dated 31 July 2024

Appendix 4- Confidential Appendix- Legal Comments

## **Background Papers**

There are no background papers.

**Report Author(s) Contact:** Ingrid Brown-Head of Legal and Democracy and Monitoring Officer

**telephone:** 01843 577455

**email:** Ingrid.brown@thanet.gov.uk

### **Report Sign Off:**

**Legal** Ingrid Brown- Head of legal and Democracy and Monitoring Officer

**Finance** Matthew Sanham - Head of Finance, Procurement and Risk