

Recommendation to Consult Report

Public Space Protection Order (PSPO) Extension; Street Gambling and Street Gaming on the South Bank

Final Report Completed Date: 17th July 2019

Report Authorised by: Doug Perry, Assistant Director of Environment

Portfolio: Cabinet Member for Housing – Councillor Paul Gadsby

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Executive Summary

In October 2016, Cabinet authorised the making of a Public Spaces Protection Order (PSPO) under Section 59 of the Anti-Social Behaviour Crime and Policing Act 2014 (the Act) targeting anti-social behaviour (ASB) associated with street gaming and street gambling on the South Bank, specifically around Westminster Bridge (entitled Public Space Protection Order for Street Gambling and Gaming 2016). That Order was made for three years and is due to lapse on 10th October 2019.

At any point before the expiry of the Order, the Council can extend it by up to three years if it is considered necessary to prevent the occurrence or recurrence of the activities identified in the order, or an increase in the frequency or seriousness of those activities. Extending the Order requires that the council consult with the local police and any other community representatives they think appropriate before doing so.

This report seeks approval for officers to initiate consultation upon the extension of the Order for a further three years and sets out the basis for suggesting that the statutory tests for our doing so (set out at Section 60(2) of the Act) is met.

Recommendation

1. That approval is given for officers to undertake statutory consultation pursuant to Section 72(3)(b) of the Act (detailed at paragraphs sections 7.4 – 7.6 of this report), regarding the extension, for another three years, of the Public Space Protection Order for Street Gambling and Gaming 2016.

1. Context

- 1.1 The Public Space Protection Order for Street Gambling and Gaming was agreed and implemented in October 2016. The effect of the PSPO is to prohibit people from engaging in street gambling (defined to include the playing of a game of chance for winnings in money or money's worth, whether any person playing the game is at risk of losing any money or not) and street gaming, and from frequenting or loitering in the street on his own behalf or on the behalf of someone else, for the purpose of betting, agreeing to bet, or paying, receiving or settling bets, or assisting others to do so. The prohibitions apply in an area that extends along the Lambeth side of Westminster Bridge and an area surrounding the approach to the Bridge on the Lambeth side. A copy of the Order is attached (Appendix A)
- 1.2 The PSPO makes it an offence for a person without reasonable excuse to engage in the activities prohibited by this Order and a person found to be in breach is liable on summary conviction to a maximum penalty of a Level 3 fine, up to £1000. As an alternative to prosecution, an offender may be given a Fixed Penalty Notice. If the offender pays the fixed penalty within the time stipulated for doing so in the Notice (in this case £100 within 28 days) this would discharge that person's liability to be prosecuted for the substantive offence.
- 1.3 A Local Authority can only implement a PSPO within its borough's boundaries. As this issue occurs across the span of Westminster Bridge and thus directly along the Lambeth/Westminster border, it is necessary, in order to ensure seamless enforcement across the bridge to have two PSPO's that butt-up against one another – one covering each boroughs portion of the Bridge.
- 1.5 Enforcement is delivered by both Lambeth Police and Lambeth Council officers, and in order to enforce the PSPO, signage needs to be erected in the area in which the PSPO has effect. This did not occur throughout 2017, so in early 2018 Lambeth officers escalated this with senior officers in Westminster. This resulted in an agreement between the two boroughs being reached, whereby Westminster would erect the signs for both boroughs (to ensure they were consistent throughout the entire area), and Lambeth would provide enforcement books and manage the payment/prosecution process.
- 1.6 Regrettably, signage was not delivered during 2017 or 2018 and delays meant that neither borough could enforce the PSPO for over two years following implementation. Lambeth, as agreed, ensured that the infrastructure was in place to adhere to our part of the agreement.
- 1.7 The problems associated with street gambling and street gaming persisted throughout 2017 and 2018 as evidenced by the data held by both the Council and the Police.
- 1.8 Recognising the risk that without evidence Lambeth would not be able to extend their PSPO in October 2019 (when the Lambeth PSPO will lapse) Lambeth Public Protection and Regulatory Services (PPRS) decided to create and install signs on the Lambeth side of the bridge – independently of Westminster. This was to enable us to begin enforcing and developing an evidence base in order to extend the PSPO.
- 1.9 Since the PSPO was made enforceable in February 2019, Lambeth officers have issued over 290 Fixed Penalty Notices (FPN). This demonstrates the persistent and continuing nature of the problem in Lambeth.

- 1.10 LBL Officers report that the offenders they interact with are often nonchalant and arrogant, regularly intimating that the enforcement activity we undertake will have no impact. However, PPRS expects that once individuals are prosecuted, their behaviour will change and that additional court powers exercisable upon conviction may assist further in this respect.
- 1.11 With the above in mind, it is important that we understand Westminster's intentions in respect of their PSPO. Particularly whether or not they wish to extend theirs and on what basis they are likely to do so, given that they have not utilised it since its implementation in 2016. Should Westminster decide not to extend, there will displacement implications on the bridge which is likely to increase the severity of the problem on the Westminster side of the bridge. The Westminster PSPO lapses in late December 2019.
- 1.12 The scale of the enforcement in a small timescale, coupled with the persistent and continuing nature of the behaviour, underpins Lambeth PPRS's intention to extend its current PSPO. The existing Order expires on 10th October 2019.

2. Proposal and Reasoning

- 2.1 We have the power under section 60 of the Anti-social Behaviour, Crime and Policing Act 2014 to extend the existing Public Space Protection Order for another three years. We are required to extend the original order before it is due to expire on 10th October 2019.
- 2.2 We must be satisfied that on reasonable grounds, extension of the order is necessary to prevent occurrence or reoccurrence of the activities identified by the order, or that there will be an increase in frequency or severity of the activities identified.
- 2.3 Offence's relating to the 'provision of gambling facilities' and 'cheating, attempting to cheat, or assisting another person to cheat at gambling' are relevant to this behaviour and is provided for under the Gambling Act 2005¹. However, these offences are difficult to prove as prescribed by the legislation and as such, the associated anti-social behaviour (ASB) goes un-policed. Witnessed associated ASB includes:
- Large groups blocking the bridge;
 - Pedestrians being forced into the road to avoid games and the crowds it attracts;
 - Offenders harassing passers-by, touching members of the public, encouraging them to play;
 - People refusing to hand over money being verbally abused and threatened with physical violence; and
 - Attracting other unlawful activity to the bridge, including unlicensed street performers and vendors.

¹ <https://www.gamblingcommission.gov.uk/for-licensing-authorities/GLA/Appendix-D-Summary-of-offences-under-the-Gambling-Act-2005.aspx>

2.4 Since the introduction of signage in the PSPO area in February 2019, Lambeth has issued over 290 FPN's. This shows that street gaming and street gambling is persistent and continuing as per section 59 (3) of the Anti-Social Behaviour Policing and Crime Act 2014.

2.5 Intelligence analysis of those fines through PPRS's Partnership Tasking and Co-Ordination (PTAC) forum, coupled with other data held by Public Protection and the Metropolitan Police Service (MPS), has reaffirmed that the behaviours and associated ASB occurs in a public place, within the authority's area, and continues to have a detrimental effect on the quality of life of those in the locality. The detrimental impact on people in the locality manifests itself in the form of:

- Modern day slavery – vulnerable people are coerced to work for the groups co-ordinating street gaming or street gambling on the bridge, often through threats of violence to themselves or their families;
- Human trafficking of both adults and minors – victims are often trafficked from Eastern Europe, either under false pretence or coercion based on intimate knowledge of victim's family circumstances;
- Prostitution – groups running the street gaming operation on Westminster Bridge and surrounding areas also have links to brothels and prostitution related activity in other parts of London;
- Exploitation of minors – social services have engaged with minors involved in street gaming and street gambling due to concerns for the welfare of young people who are exploited by groups running street gaming and street gambling;
- Pick pocketing and theft – this is a common theme of offending behaviour associated with those who also conduct street gaming and street gambling on Westminster Bridge. Millions of tourists use Westminster Bridge and the surrounding area annually, street gambling and street gaming increases the vulnerability of tourists in the area to theft;
- Deliberate targeting of vulnerable people – there have been reports of people with addictions or mental health problems being exploited by those street gaming and street gambling in the area. In some instances, this has led to incidents where the victim has threatened to commit suicide.

2.6 Since the beginning of January 2017 there have been 100 crimes committed which match the search "cup and ball", "illegal gambling" or "illegal gaming". Despite being of considerable volume, this is likely to be an under-representation of the scale of the issue as these offences are typically not reported to the authorities, and only offences that match the searched key word terms were included within this analysis. The following list summarises the themes within reported offences since the beginning of January 2017:

- Report of theft or pickpocketing;
- Victim lured into revealing cash which was then snatched/stolen;
- Individual or group witnessed street gaming or street gambling;

- Report that the victim has been fraudulently conned out of money;
 - Breach of Criminal Behaviour Order;
 - Victim surrounded and threatened by a group of gamers;
 - Weapon found on gamers following search;
 - Assault or obstruction of a police officer;
 - Offenders found in possession of stolen goods;
 - Missing person linked to street gaming or street gambling;
 - Vulnerable child taken into police protection.
- 2.7 There are numerous examples throughout the past two years of victims having had multiple hundreds of pounds stolen, on more than five occasions victims had more than £300 stolen, and one victim lost £700 in cash during a single incident.
- 2.8 The above themes identify the direct detriment caused by the behaviours associated with street gaming and street gambling to people in the locality. Combined with the evidence that these behaviours remain persistent and occur in a public place, Lambeth PPRS is satisfied that the statutory test for the PSPO to be extended has been met.
- 2.9 Furthermore, it stands to reason, that if the existing PSPO is not extended, then there will be an increase in the severity and frequency of the detriment caused to people in the locality, by reducing the capability and efficiency of Council and Police Officers to enforce against individuals in breach of the PSPO.

3. Consideration of Alternatives

- 3.1 Due consideration has been applied regarding the appropriateness of the use of a Public Space Protection Order in this instance. The current legislation is difficult to put into practice on the scale that is observed on Westminster Bridge and associated ASB often goes unenforced. The PSPO ensures that the enforcement of this issue is far more efficient than other available methods.
- 3.2 The Anti-social Behaviour, Crime and Policing Act 2014 has a number of legislative tools which allow local authorities and the police to tackle anti-social behaviour, crime and disorder. Within the act, the following options are available; Injunctions, Criminal Behaviour Orders, Dispersal Powers, Community Protection Notices, Closure Orders and Closure Notices. This section will address each of those options.
- 3.3 Injunctions are individually focused and granted through a court process. The evidence in this report shows the behaviours identified are sufficiently widespread and need to be responded to immediately. As such, it would be too slow, costly, and impractical to process and enforce individual injunctions with varying conditions for each person.
- 3.4 Criminal Behaviour Orders, as with Injunctions, are individually focused and granted through a court process. They stipulate that a court must be "*satisfied, beyond reasonable doubt that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to any person*". In relation to street gaming and street gambling, the detrimental impact evidenced in section 2 does not always relate to

OFFICIAL

harassment, alarm and distress caused to any person. Additionally, as with injunctions, the same practical implications apply with regards to the cost, processing, and enforcement of such individual orders relating to such a widespread issue.

- 3.5 Dispersal powers are not universally expedient for street gaming and gambling. They relate only to police officers, which reduces the resources that can deal with the issue. The existing PSPO and proposed extension authorises Council Officers as well as Police Officers to enforce the order. Dispersal powers are also time limited to 48 hours, and have to be repeatedly put in place by an officer ranked Inspector or above. They only allow the officer to compel an individual to leave a specified locality for an exclusion period, which would not prevent future street gaming or gambling. Police Officers must be satisfied that the person in the locality has contributed or is likely to contribute to harassment, alarm or distress to members of the public, or the occurrence of crime and disorder in the locality.
- 3.6 Community Protection Notices are focused on individuals and premises. Like PSPO's they focus on detrimental impact on the quality of life of those in the locality. However, they are more suited to individual specific issues caused by one person or one premises. This does not resolve the issue of street gaming or street gambling. The evidence indicates the issue is too widespread, with behaviour often exhibited by numerous people, often at the same time, and over large geographical areas.
- 3.7 Closure Notices issued by the police or local authority and Closure Orders issued by a court relate to specific premises which either have, or are likely to have, engaged in crime and disorder or serious nuisance. They are time limited and relate to premises only, so do not adequately deal with the scale of the problem or the individuals involved.
- 3.8 A Public Space Protection Order is the most suitable measure because it allows:
 - A suitable geographical area to be defined;
 - Prohibitions to apply to everyone;
 - Street gaming and street gambling equipment to be seized following a breach;
 - Council officers and police officers are able to enforce the order; and
 - The order to last long enough to effect change.

4. Past Enforcement

- 4.1 On council systems there are 297 Fixed Penalty Notices (FPN) that have been issued since the implementation of the order in February 2019.
- 4.2 There have been 100 recorded crimes on the MPS system between 1 January 2019 and 13 June 2019. Theme analysis of these crimes detail the significant harm that street gaming and street gambling in the area covered by the PSPO causes on people in the locality.
- 4.3 Lambeth PPRS is in the late stages of its first prosecutions for PSPO breaches on Westminster Bridge. Prosecutions have been significantly delayed due to the logistical issues stemming from disagreement with Westminster. However; now that Lambeth has initiated the first prosecutions, the process should become smoother. It is expected that once prosecutions begin to occur, it will prompt significant behaviour change amongst

offenders. This is likely to be as a result of the three strike rule the Home Office employs before deporting foreign nationals. The vast majority of people that officers have come into contact with are Eastern European, and multiple criminal convictions would have a significant impact on the way the organised groups operate. This is what Lambeth PPRS anticipate will cause the most noticeable displacement effect in Westminster.

5. Finance

- 5.1 Financial costs for consultation will be borne by existing budgets.

6. Legal and Democratic

- 6.1 Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 ('the 2014 Act') provides a power for local authorities to make what this provision calls a Public Spaces Protection Order (PSPO). A PSPO is designed to tackle a range of activities which have a detrimental effect on a local community's quality of life and may in respect of a specified area, either prohibit specified things being done in that location and/or require specified things to be done by persons carrying on specified activities in that place. Those restrictions/requirements can be targeted at specific people and designed to apply only at specific times or in certain circumstances. Once made, a PSPO empowers a Constable (or other authorised persons as defined in the 2014 Act) ("Officers") to enforce a prohibition or requirement set out in the PSPO.
- 6.2 A PSPO may be made if the council is satisfied on reasonable grounds that two conditions are met:
1. 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 it is likely that activities will be carried on in a public place within that area and that they will have such an effect.
 2. That the effect, or the likely effect, of the activities is, or is likely to be, of a persistent or continuing nature such as to make the activities unreasonable, and justifies the restrictions imposed by the order.
- 6.3 As to the prohibitions set out in the Order, the council must be satisfied that they are reasonable to impose so as to, (a) prevent the detrimental effect referred to from continuing, occurring or recurring, or (b) reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.
- 6.4 Anyone breaching the terms of a PSPO without reasonable excuse commits an offence punishable by a fine set at level 3 on the standard scale (currently £1000). Officers may issue an offender with a Fixed Penalty Notice (FPN) in lieu of prosecution, in which case payment of the FPN would discharge the offender from any criminal liability.
- 6.5 A PSPO may not have effect for more than 3 years unless it is extended under Section 60 of the 2014 Act. The process for extending an Order in this way must be undertaken before the

OFFICIAL

PSPO expires. In accordance with Section 60(2), the council may extend a PSPO if satisfied on reasonable grounds that that this is necessary to prevent:

- a. Occurrence or recurrence after that time of the activities identified in the Order;
or
- b. An increase in the frequency or seriousness of those activities after that time.

6.6 In October 2016 the council made a PSPO targeting street gambling and street gaming in Lambeth. That PSPO is due to lapse on 10 October 2019. This report proposes to extend the PSPO for a period of 3 years and seeks authority for officers to trigger the attendant statutory processes for this purpose.

6.7 Section 72 (1) of the 2014 Act requires that in deciding whether to extend a PSPO and, if so, for how long, the Council must have particular regard to the rights of freedom of expression and freedom of assembly and association set out in articles 10 (right to respect to for private life) and 11 (right to freedom of assembly and association) of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”). Whilst acknowledging that the proposed Order potentially entails an infringement of the aforementioned Articles of the Convention, it is considered that these qualified rights may in this instance be legitimately interfered with in the interests of public safety, the prevention of crime and disorder and in accordance with the law.

6.8 Sections 72(1) & (3) of the 2014 Act requires that a local authority carry out the necessary consultation and publication, before deciding to extend a PSPO. This means that the council must publish a notice on its website setting out its proposal to extend the Order in question and to consult with the chief officer of Police and MOPAC, with such local community groups as the council sees fit, and with any owners of land covered by the PSPO.

6.9 In respect to the consultation, it is essential that we follow the principles set out in a recent High Court case: First, a consultation had to be at a time when proposals were still at a formative stage. Second, the proposer had to give accurate and sufficient reasons for any proposal to permit of intelligent consideration and meaningful response. Third, adequate time had to be given for consideration and response, and finally, the product of consultation had to be considered with a receptive mind and conscientiously taken into account in finalising any statutory proposals. The process of consultation had to be effective and looked at as a whole it had to be fair. Fairness might require consultation not only upon the preferred option, but also upon discarded options. The Council is obliged to take account of any representations made during the consultation period and all objections received must be properly considered by the decision maker in the light of administrative law principles, Human Rights law and the relevant statutory powers.

6.10 Section 149 of the Equality Act 2010 sets out the new public sector equality duty replacing the previous duties in relation to race, sex and disability and extending the duty to all the protected characteristics i.e. race, sex, disability, age, sexual orientation, religion or belief, pregnancy or maternity, marriage or civil partnership and gender reassignment.

6.11 The public sector equality duty requires public authorities to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation;
- Advance equality of opportunity; and

OFFICIAL

- Foster good relations between those who share a protected characteristic and those who do not.
- 6.12 Part of the duty to have “due regard” where there is disproportionate impact will be to take steps to mitigate the impact and the Council must demonstrate that this has been done, and/or justify the decision, on the basis that it is a proportionate means of achieving a legitimate aim. Accordingly, there is an expectation that a decision maker will explore other means which have less of a disproportionate impact.
- 6.13 The Equality Duty must be complied with before and at the time that a particular policy is under consideration or decision is taken – that is, in the development of policy options, and in making a final decision.
- 6.14 The Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014, sets out the manner in which a PSPO must be publicised once it is extended and requires that we, (a) publish the order as extended on our website; and (b) cause to be erected on or adjacent to the public place to which the order relates such notice (or notices) as it considers sufficient to draw the attention of any member of the public using that place to (i) the fact that the order has been extended, and (ii) the effect of that order being extended.
- 6.15 Further guidance in relation to the making of a PSPO is set out in the Home Office Guidance Document (Anti-Social Behaviour, Crime and Policing Act 2014: Policing Act 2014: Anti-social behaviour powers - Statutory guidance for frontline professionals) Updated December 2017 (See background documents).

7. Consultation and Co-Production

- 7.1 The first order was implemented following a four week public consultation from 15 August 2016 until the 9 September 2016. The results of this consultation and all other evidence were presented to Cabinet on 10 October 2016. Following this, Cabinet agreed to implement the order.
- 7.2 It is also obligatory under Section 72, subsection (3)(b), that a local authority must carry out the necessary consultation and the necessary publicity, and the necessary notification (if any), before extending the period for which a PSPO has effect.
- 7.3 Due to this being an extension of an already existing order which was passed with a significant level of public scrutiny in 2016, the appropriate legal and statutory tests have been applied as required and the wording of the order to be implemented has not changed. It is more practical for the implementation of the extension of the order to be a delegated decision for the Strategic Director of Resident Services, and not the Cabinet Member or full Cabinet.
- 7.4 Given that the current order expires on 10 of October 2019, and that our power under Section 60 only applies before expiry, it is essential that authority to proceed to consultation is granted at the earliest opportunity. Appropriate time must be allocated to enable thorough analysis of the consultation results. The current plan is to go live with the consultation on Monday 22 July 2019 and close the consultation on Sunday 1 September 2019.

7.5 Initial expectations are that the consultation will ask questions along the lines of the following:

1. Thinking about the proposed restricted area shown in the map, how much of a problem, if at all, do you think street gambling or gaming is to people living in, working in, or visiting the area?
2. Again thinking about the proposed restricted area shown in the map, has street gambling affected you in either a positive or negative way over the last 12 months when you have been in the area?
3. Have you personally been affected by anti-social behaviour which is linked to street gaming or street gambling?
4. If yes, what exactly did those conducting the games do? (conditional question)
5. If yes, how did the experience it make you feel? (conditional question)
6. To what extent do you support or oppose the use of a PSPO to prohibit street gambling or gaming in the area shown in the map?
7. Do you have any other comments regarding street gambling and gaming or the use of a Public Spaces Protection Order (PSPO)?

For each free text question, a blank text field will be left for respondents to enter more specific comments. In addition, each resident was asked their residential area, age, sex and ethnicity anonymously.

7.6 The consultation will be widely published across the borough, utilising all available communications methods. This will include:

- London and Local Press;
- Southbank Business Improvement District mailing list;
- South Bank Business Crime Reduction Partnership;
- LBL Communications and Engagements team full mailing list;
- Local ward councillors;
- The Community Round Up;
- Lambeth Website;
- The Love Lambeth Blog;
- Social Media; and
- Statutory Consultees

8. Risk Assessment

8.1 If the process to introduce a PSPO is not followed correctly this could lead to a challenge to the authority including legal costs and reputational damage. To mitigate risks, all key stakeholders will be involved in consultation and implementation.

OFFICIAL

- 8.2 If the PSPO order is implemented but not enforced due to capacity or other issues, this could lead to reputational damage to the council and a waste of public funds implementing the order. This is particularly important as there have been historic delays to enforcement due to a lack of co-ordination between Lambeth and Westminster.
- 8.3 There is the risk that expectations will be raised by this order which agencies cannot meet. An effective communications strategy will be devised to succinctly explain that the order may not resolve all of the issues, but will go some way to reducing the current detrimental impact to people in the locality.
- 8.4 If Lambeth extend their PSPO and Westminster do not, there is a risk that behaviour associated with illegal gambling will be significantly displaced and concentrated on Westminster's half of the bridge. This will lead to a long term situation where on the southern half of the bridge the PSPO can be enforced, but on the northern half it cannot. Lambeth have reached out to Westminster on numerous occasions in respect of this issue and will again engage with colleagues and partners regarding our intentions to extend. Lambeth would support Westminster through sharing our evidence base, to allow Westminster to make the case for extension, as the issue affects both boroughs.

9. The PSPO Area

- 9.1 This PSPO is restricted to a specific area on the South Bank, between Westminster Bridge and Waterloo Bridge and surrounding areas. The existing signage (Appendix B) which erected in numerous locations within the PSPO, clearly defines the area.

10. Other Required Tasks

- 10.1 Public consultation for a minimum six week period, 22 July 2019 to 1 September 2019.
- 10.2 Equalities impact assessment to be conducted alongside consultation.

11. Approval and Authority to Proceed

Name	Title	Approval Date
Cllr GADSBY	Councillor, Housing	04.07.19 (CMB)
Bayo DONSUMU	Strategic Director, Resident Services	26.06.19 (DMT)
Raj MISTRY	Director, Environment	20.06.19 (DMT)
Doug PERRY	Associate Director, Environment	20.06.19 (DMT)