

Cabinet

Date of Cabinet: 10 October 2016

Report title: Public Space Protection Order (PSPO) for street gambling and gaming

Wards: Bishops Ward

Report Authorised by: Sue Foster Strategic Director, Neighbourhoods and Growth

Portfolio: Cllr Mohammed Seedat - Cabinet Member for Healthier and Stronger Communities

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Report summary

This report seeks approval for the implementation of a Public Space Protection Order (PSPO) to reduce Anti-Social Behaviour (ASB) associated with street gambling and gaming on Westminster Bridge and any area in its immediate vicinity. As Westminster Bridge straddles Lambeth and Westminster City Council boundaries, both authorities have coordinated their efforts and an identical PSPO is being brought forward by Westminster City Council, so as to ensure the proposed restrictions apply to the whole length of the bridge. This report details the work undertaken by Lambeth in this connection, the consultation process used, along with the outcomes from this process and recommends that a PSPO in the terms proposed in the attached draft Order is made.

Finance summary

The only costs associated with the recommendation are for communications, which will be approximately £1000 and will be funded from the agreed Community Investment Fund allocation for Community Safeguarding. No other costs are expected as enforcement work will be undertaken by existing officers within the Police. No significant income for the authority is expected as a result of this PSPO as the fines will be issued by the police and the expected cohort of offenders is relatively small. Any such income will be used to fund general enforcement activity.

Recommendations

1. To consider the contents of this report.
2. To authorise the implementation of the proposed Public Spaces Protection Order in the terms set out in Appendix A.
3. Agree that the proposed Order shall take effect from 31 October 2016 and remain in force for three years from that date.
4. That a review of the impact of the PSPO is undertaken with Westminster City Council and the Police after 12 months from the date the Order comes into force.

1. Context

- 1.1 The Anti-Social Behaviour, Crime and Policing Act 2014 received Royal Assent in April 2014 and its main provisions were brought in to force in October 2014. The Act provides a number of new powers targeting a broad range of anti-social behaviours, including PSPO's.
- 1.2 These orders are more flexible and can be applied to a much broader range of issues than previous powers, with local authorities having the ability to design and implement their own prohibitions or requirements where certain conditions are met. These conditions centre on the impact to the quality of life in the locality, persistence, and whether the impact makes the behaviour unreasonable.
- 1.3 Street Gambling on Westminster Bridge has been the source of a number of complaints from members of the public, businesses and members of Parliament in recent years. Complaints include:
 - fraudulent activities portrayed as games of chance but with little chance of winning, preying on tourists and vulnerable people;
 - crowds gathering blocking the pavement and forcing pedestrians into the road to pass; and,
 - arguments and other disputes between those involved in these activities and members of the public.
- 1.4 The evidence collected by Lambeth Community Safety, Westminster City Council and the Metropolitan Police in the months preceding this report include numerous witness statements and photo/video evidence of ASB in the Westminster bridge area associated with illegal gambling. The behaviour in question has been described as intimidating and aggressive and as having a negative impact on tourism. Despite numerous successful police operations these problems persist.
- 1.5 Police interventions to date:
 - Between January and September 2015, police made 211 arrests for offences of illegal gaming¹ and related offences, following up with 54 post-conviction Criminal Behaviour Orders (CBO)
 - During the summer of 2015, Operation Lulworth took place led by Westminster and Lambeth Police. This was a ten day operation to tackle some of the local issues on Westminster Bridge and the South Banks, predominantly illegal gambling and related ASB. Operation Lulworth resulted in 11 arrests, 90 stops and a number of other interventions including immigration referrals.
 - However, despite the success of this operation problems persist and in January 2016, Operation Stronos run by Westminster Police resulted in a further 16 arrests for illegal gambling and related anti-social behaviour, with a further ten CBOs obtained at court. Furthermore, five offenders were found to be in breach of previously imposed CBOs
- 1.6 The proposed PSPO will be the first example of a joint PSPO between councils (Lambeth and Westminster). Both boroughs have consulted on implementing an identically worded PSPO covering their respective areas.

¹ Section 33 of the Gambling Act, 2005 – provision of facilities for gambling

1.7 This will be the second PSPO implemented in Lambeth. In 2015, a borough wide PSPO banning the sale, possession and consumption of legal highs was passed. The evaluation of the first year of this PSPO is currently underway, but initial feedback from local police indicates this PSPO has improved their ability to tackle the issue.

2 Proposal and Reasons

2.1 This is a proposed joint PSPO with Westminster, targeting the street gambling and gaming on the bridge and surrounding area. It is proposed that each borough implement an identically worded PSPO covering its area of the bridge and surrounding environments, creating a continuous area of coverage between the two boroughs. Within the enclosed area (as detailed in Appendix B), street gambling and gaming would not be permitted.

2.2 The PSPO would allow both councils and police the ability to levy Fixed Penalty Notices upon people who are contravening the terms of the Order. Breaching a PSPO is a criminal offence, but paying a Fixed Penalty Notice discharges the offender from any criminal liability for that offence.

2.4 Although illegal street gambling is, by definition, illegal, the associated ASB is (mostly) not and much harder to effectively police, requiring significant resources not appropriate for the scale of the problem. Witnessed ASB includes:

- Large groups blocking the bridge
- People forced into 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 leading to verbal abuse and threats of physical violence
- Attracting other unlawful activity to the bridge, including unlicensed street performers and vendors.

This PSPO would allow for rapid dispersal by local policing officers of the groups involved and thus significantly reduce the obstruction and other ASB issues on the bridge.

2.5 The enforcement would be delivered primarily by the police across both boroughs. At this stage neither council officers nor South Bank wardens would enforce the PSPO, although we will investigate the potential for this upon implementation. This would not create an ongoing revenue cost to the authority. Similar to our previous PSPO for Legal Highs, this is principally about creating an additional tool for the police to tackle a persistent anti-social behaviour issue which is having an ongoing and detrimental effect on the quality of life in that area.

2.6 The effect of the PSPO would be to make it an offence for a person without reasonable excuse to engage in an activity that is prohibited by this Order, namely street gambling and gaming, within the outlined area. A person found to be in breach of this Order would be 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.

- 2.7 Following conversations with the police, local residents and businesses, the boundary of the Lambeth PSPO has included the Southbank/Waterloo and Hungerford Bridge areas. This PSPO will apply only to parts of the bridges that are located within the London Borough of Lambeth boundaries. This is to account for anticipated dispersal of the targeted behaviour from Westminster Bridge. This area is indicated by the map in Appendix B.
- 2.8 We are proposing this PSPO due to the long history of illegal street gambling and gaming on the bridge and surrounding area, which causes significant ASB and obstruction on the bridge, as well as defrauding tourists and visitors to the area. The issue has been raised many times by local businesses, police and local politicians.
- 2.9 The police in particular have strongly requested the implementation, at both the strategic level through the Borough Commander and at an operational level through the neighbourhood policing units. In addition local businesses through the South Bank BID have made representations about this issue.
- 2.10 Police analysis of offences on the Bridge attributes 25% of offences directly to illegal Street Gambling / Trading / Performance. It is possible that the number of offences related to illegal street gambling are higher than this, but it is difficult to measure the full impact. Data does appear to show a correlation between total offences recorded on the bridge and reported sightings of illegal street gamblers.
- 2.11 In addition police witness statements from were provided highlighting the scale of the issue and the continued ASB caused in the area (included as part of the exempt from disclosure documents due to their confidential nature). Some of the issues highlighted include:
- A tourist having £40 physically taken from their purse
 - A customer losing over £200 to illegal street gambling on the bridge that he felt he was forced to take part in.
 - Numerous reports of intimidation and aggression
 - Stolen items and knives discarded in St Thomas hospital grounds
- 2.12 On the back of this evidence base, a decision to consult upon the adoption of a PSPO was taken on Thursday 11th August by the designated Deputy of the Director for Neighbourhoods and Growth as outlined in the Council's delegation of powers. This was done in agreement with the Cabinet Members for Healthier and Stronger Communities, Councillors Mohammed Seedat and Jim Dickson; and, the Deputy Leader of the Council (Investment and Partnerships), Councillor Paul McGlone.
- 2.13 Given the responses to the consultation (see Section 5), and the evidence gathered through this process, this report recommends that Cabinet make the proposed draft PSPO (attached as Appendix A) in the area identified (in Appendix B) for a period of three years. This would come into effect on 31 October 2016.

- 2.14 Through this Order we hope to reduce the number of criminal incidents of illegal gambling and gaming as well as the ASB associated with these offences. We will measure all of these outcomes throughout the lifespan of the PSPO.
- 2.15 We will conduct a twelve month review of the Order, in conjunction with Westminster, should it be implemented to assess its effectiveness and monitor any unforeseen consequences. As this is a new type of order, targeting an ongoing issue in the borough, we are mindful that it could have unforeseen impacts and will ensure that it is appropriately reviewed to ensure it is achieving our stated outcomes.

3 Finance

- 3.1 Consultation and communications packages are expected to cost approximately £1000 and will be funded from the agreed Community Investment Fund (CIF) allocation for the Community Safeguarding Model.
- 3.2 This proposal is unlikely to generate significant income; any income raised will be used to fund ongoing enforcement activity within Community Safeguarding.

4 Legal and Democracy

- 4.1 Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 ('the 2014 Act') provides a power for local authorities to make a 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.
- 4.2 This report proposes and seeks Member authorisation for the introduction of a PSPO to reduce Anti-Social Behaviour associated with illegal street gambling on Westminster Bridge and an area surrounding that location.

This Order applies to the area in the London Borough of Lambeth (the Restricted Area) to which the public have or are permitted to have access, whether with or without payment, as identified in Appendix B and more particularly shown edged in black on the plan attached, including any street, road, footway, footpath, square, courtyard, bridge, grassed area, stairway, walkway, subway or other similar place in the open air.

- 4.3 The effect of the proposed Order would be to restrict people from engaging in Street Gambling or Street Gaming in the Restricted Area detailed in Appendix B. For the purposes of the Order, Street Gaming is 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. Street Gaming is defined, again for the purposes of the Order, so as to include the frequenting or loitering in the street within the restricted area either 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; and, to include pretended games of chance where there is in reality no opportunity to win.

Anyone breaching the terms of this Order 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.

4.4 It is proposed that this Order shall remain in force for a period of three years unless extended under Section 60 of the Act.

4.6 Before a PSPO can be made, Members must be satisfied (on reasonable grounds) that the following two conditions are met:

- That activities carried on in a public place within the authority's area (namely street gambling and gaming) have had a detrimental effect on the quality of life of those in the locality, or that it is likely that these activities will be carried on in a public place within that area and that they will have such an effect; and,
- That the effect, or the likely effect, of the activities is (or is likely to be) of a persistent or continuing nature and which is such as to make the activities unreasonable and that this justifies the restrictions set out in the PSPO. As to the restrictions and requirements proposed in the PSPO, Members must be satisfied that they are reasonable to impose in order to prevent the detrimental effect on those in the locality or reduce the likelihood of the detrimental effect continuing, occurring or recurring.

4.7 Section 72 (1) of the 2014 Act requires that in deciding whether to make a PSPO and, if so, what it should include, 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 ("the Convention"). Whilst acknowledging that the proposed Order potentially entails an infringement of individuals' human rights, including the right to respect for private life and potentially the right to freedom of assembly and association, 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.

4.8 If Members are satisfied that all of the above conditions are made out then subject to the procedure being followed to implement a PSPO, a PSPO can be put into effect following authorisation.

Once authorised, 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 and requires that once the Order is made we:

- a) publish the order 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 made; and,
 - ii. the effect of that order being made.

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: reform of anti-social behaviour powers) July 2014 (See background documents).

- 4.9 A challenge to a PSPO can be made in the High Court, within six weeks of the PSPO being made, by those interested persons directly affected by the restrictions on the following grounds:
- a) the local authority did not have the power to make the order, or to include particular prohibitions or requirements; and,
 - b) the local authority did not fulfil its requirements in making the order..
- 4.10 Pending the outcome of such an appeal, the High Court can suspend the PSPO in whole or part.
- 4.11 Paragraph 5 details the outcome of the statutory consultation undertaken. The following principles of consultation were 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 sufficient reasons for any proposal to permit of intelligent consideration and response. Third, adequate time had to be given for consideration and response, and finally, the product of consultation had to be conscientiously taken into account in finalising any statutory proposal or reaching a decision. 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 any discarded option(s). 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.
- 4.11 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.

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,
- foster good relations between those who share a protected characteristic and those who do not.

- 4.12 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.
- 4.13 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. A public body cannot satisfy the Equality Duty by justifying a decision after it has been taken. An impact assessment has been carried out and the outcome is detailed at paragraph 7.

4.14 There were no further comments from Democratic Services.

5 Consultation and co-production

5.1 As part of the evidence base for implementing this proposed PSPO, a substantial public consultation has taken place over the last month across the borough. The consultation ran from the 15 August 2016 until the 9 September 2016.

5.2 The consultation was accessible on the Lambeth Council website as per standard consultation protocol.

5.3 In addition the consultation was published through:

- The Evening Standard;
- Southwark News;
- London SE1;
- The Southbank Business Improvement District mailing list of over 400 people, including local residents associations;
- Met police social media; and,
- Local ward councillors.

5.3 The consultation asked:

- 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?
- 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?
- 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?
- Do you have any other comments regarding street gambling and gaming or the use of a Public Spaces Protection Order (PSPO)?
- For each question a blank text field was left for respondents to enter more specific comments. In addition, each resident was asked their residential area, age, sex and ethnicity anonymously.

5.4 Consultation responses showed high levels of support for implementing the proposed PSPO and concerns about the impacts of ASB associated with illegal gambling and the impacts of this on tourism (See Appendix 3 for full consultation responses).

5.5 The top line results from the consultation were that 98% of respondents supported the introduction of the PSPO, and 95% strongly supported it.

5.6 60% of respondents feel street gambling is a very big problem, and 34% feel that it is a fairly big problem. 82% feel that they have been affected negatively by street gambling or gaming.

5.7 In terms of the qualitative comments people made for supporting the introduction, the majority of comments were regarding intimidating and anti-social behaviour, including, harassment, blocking pavements and abusive language as well as reports of associated theft. Sample comments included:

- *“Zero tolerance to anti-social behaviour. Why should visitors and workers to the area have to put up with this.”*
- *“I understand that others have been affected by street gambling in the area. The area is a busy one with large crowds (mostly visitors to London) and therefore seems appropriate to me to ensure that the police have proportionate additional tools to enforce existing legislation.”*
- *“The street gambling scam is disgraceful, I've seen tourists holidays ruined due to this and it has a negative effect on London's image.”*
- *“I think the action that the Council is considering is fantastic and I'm delighted at what Lambeth Council is doing.”*

5.7 Regarding the comments from the qualitative statements opposing the introduction of the order, the only comment was that the Council's focus should be on issues such as obesity and the NHS instead of this.

5.8 In addition as part of the specific legislation for PSPOs, we have a duty to consult with the Chief Officer of Police and the local policing body for the affected area, any specifically affected communities, and any owner or occupier of land within the affected area.

5.9 In London the local policing body, the Mayors Office for Policing and Crime, have delegated this duty to the local borough police. As outlined under Section 2.2, the local police heavily support the introduction of this order.

5.10 The Chair of South Bank Business Watch submitted a witness statement regarding the negative impact associated ASB has on businesses and their customers, in support of the introduction of the PSPO.

5.11 It is clear that there is a large majority in favour of the PSPO through the public consultation and the specific responses from the police and local business community. Based on these responses from consultation the decision is to recommend implementation of the proposed order.

6 Risk management

6.1 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 have been involved in consultation and implementation and statutory guidance was followed throughout.

6.2 If the order is enacted and enforced, and we do not achieve the outcomes we expect as outlined under Section 2.10, then as part of the 12 month review process we will review the implementation and usage levels of the order to determine the cause. We will involve the borough's Business Crime Reduction Partnership in this review as well as local affected community groups to establish

what other options are available to reduce the levels and impact of legal high usage, particularly around the anti-social behaviour.

7 Equalities impact assessment

- 7.1 An equalities impact assessment was conducted during the development of this proposal,. This will be monitored as part of the six month review of the order if implemented, and then annually, to mitigate against any unforeseen equalities impacts.
- 7.2 Although the PSPO itself does not target any specific group, as it applies to all street gambling and gaming in the affected area, it is possible that there may be an equalities impact. Based on previous police operations targeting this issue, a majority of offenders who may breach the order may be of non-UK origin. During implementation we will monitor the use of the powers and the appropriateness to ensure that we fulfil our duties under the equalities act.

8 Community safety

- 8.1 A PSPO will have a positive impact on current crime and disorder on the bridges and surrounding area. This order will reduce anti-social behaviour.

9 Organisational implications

- 9.1 Environmental
None.
- 9.2 Staffing and accommodation
There will be no new provision of staff. Primary duty of PSPO will be carried out by the Metropolitan Police.
- 9.3 Procurement
None.
- 9.4 Health
None.

10 Timetable for implementation

- 10.1 October 2016 - Public notification of PSPO implementation and signage erected.
- 10.2 31 October 2016 - PSPO for Street Gambling and Gaming implemented.

Audit trail				
Consultation				
Name/Position	Lambeth cluster/division or partner	Date Sent	Date Received	Comments in para:
Sue Foster	Strategic Director, Neighbourhoods and Growth	13/09/16	19/09/16	
Finance	Corporate Resources Business Partnering	13/9/16	15/9/16	
Legal Services	Corporate Resources: Integrated Support	13/09/16		throughout
David Rose, Democratic Services	Corporate Resources	15/09/16	15/09/16	4.14
Councillor Seedat	Cabinet Member for Stronger and Healthier Communities	13/9/16		
Councillor Kevin craig, Ben Kind, Jennie Mosley	Bishop's Ward Councillor	13/9/16		

Report history	
Original discussion with Cabinet Member	11.09.16
Report deadline	28.09.16
Date final report sent	30.09.16
Report no.	311/16-17
Part II Exempt from Disclosure/confidential accompanying report?	Yes
Key decision report	No
Date first appeared on forward plan	09.09.16 (Notice of confidential information)
Key decision reasons	N/A
Background information	Home Office – Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers
Appendices	Appendix A: Draft Order Appendix B: Map of affected area Appendix C: Consultation results Appendix D: Westminster evidence Appendix E: Witness statements (PART II RESTRICTED)