

Committee: Cabinet

Date: 7th September 2020

Wards: All wards, but with a focus on Cricket Green, Figges Marsh, Graveney Lavender Fields and Ravensbury wards, with the addition of Morden Town Centre.

Subject: London Borough of Merton (Alcohol Consumption in Public Places) Order 2020

Lead officer: Kiran Vagarwal (Head of Safer Merton)

Lead member: Cllr Edith Macauley

Contact officer: Kelly Marshall (Safer Merton Strategic Development Lead)

Recommendations:

For Cabinet to: -

- A. Note the Evidence Report (Appendix 1), Public Consultation Results (Appendix 2) and the Equalities Impact Assessment (Appendix 3);
 - B. Approve the making of the proposed Public Space Protection Order (PSPO) related to the consumption of alcohol in public places in the restricted areas detailed in the PSPO and shown highlighted in section 2.8, map 1 below. The form of the proposed PSPO is in Appendix 4;
 - C. Agree the amount of the fixed penalty payable where a Fixed Penalty Notice (FPN) is issued in respect of breaches of the Order, as an alternative to prosecution, be set at £100, payable within 14 days and that no discount be authorised as an incentive for early payment;
 - D. Authorise the Director of Environment and Regeneration to finalise and make the PSPO, affixing the corporate seal on execution. The PSPO shall come into force on 21 October 2020 once the remaining procedural formalities have been completed;
 - E. Consider and comment on the proposed signage (Appendix 5) to be displayed in the restricted areas advising members of the public of the PSPO and its effect and to authorise the Director of Environment and Regeneration to finalise form of the signs having regard to Cabinet's views; and
 - F. Agree the process for making, varying and/or discharging any further PSPOs or varying and/or discharging any existing PSPOs as set out in section 2.26 table 2 of this report.
 - G. Note that further analysis and consultation for the areas of Morden Town Centre, Wimbledon Town Centre and the wards of Abbey, Trinity, Pollards Hill and St. Hellier to assess either further expansion of the proposed PSPO and/or a separate PSPO, ensuring the legal test and statutory guidance is complied with at all times.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. This report seeks member support to introduce a more localised Public Space Protection Order (PSPO) for Merton following the expiry of the current borough wide PSPO on 20 October 2020. This report sets out the approach followed by Safer Merton to ensure compliance with the relevant statutory requirements and guidance on making a PSPO. This includes ensuring there is sufficient evidence to support the PSPO and that it is proportionate.
- 1.2. Map 1 in section 2.8 of this report highlights the areas to be covered by the proposed PSPO. Having due regard to proportionality and reviewing its continued necessity it is proposed that the PSPO runs for 2 years, from 21 October 2020 ending on 20 October 2022 but subject to an annual review.
- 1.3. This report proposes that further analysis and consultation is conducted for the areas of Morden Town Centre, Wimbledon Town Centre and the wards of Abbey, Trinity, Pollards Hill and St.Hellier to assess either further expansion of the proposed PSPO and/or a separate PSPO ensuring the legal test and statutory guidance is complied with at all times.
- 1.4. This report also proposes an authorisation process to ensure Merton has the ability to introduce PSPOs swiftly to respond to anti-social behaviour (ASB). This proposal is set out in section 2.18 of this report
- 1.5. All relevant supporting documents for the proposed PSPO are attached to this report, as follows:
 - Appendix 1 – Evidence of ASB and need for action/PSPO
 - Appendix 2 – Public Consultation Results
 - Appendix 3 – Equalities Impact Assessment
 - Appendix 4 – Draft Order
 - Appendix 5 – Draft Public Sign
- 1.6. PSPOs are one of a range of measures introduced by the Anti-social Behaviour, Crime and Policing Act 2014 (the Act) to combat ASB.
- 1.7. A PSPO identifies a public place (the Restricted Area) and prohibits specified things within that area and/or requires specified things to be done by persons carrying on specified activities within that area. PSPOs should focus on an identified problem behaviour rather than targeting specific individuals or properties. A breach of a PSPO is a criminal offence.
- 1.8. In 2013 the Council made the *Alcohol Consumption in Designated Public Places London Borough Merton Order 2013*, which created

a borough wide “Controlled Drinking Zone”. In 2017 this Order transitioned into a PSPO under the provisions of the Act. This Order will expire on 20 October 2020 unless extended before that date. This report outlines our proposal to make a new PSPO to restrict the public consumption of alcohol which gives rise to ASB but for a smaller geographical area. It is intended that the new PSPO if approved will come into force as the existing order lapses.

- 1.9. An Equalities Impact Assessment (EIA), attached as Appendix 3 to this report, was conducted in July 2020 and concluded that the PSPO will not have a detrimental effect on any person with protected characteristics living, working or visiting the area.
- 1.10. On the 29 June 2020, a six-week public consultation on the proposal was launched. In total the Council received 122 responses via the online survey and two further formal responses. In summary, 87% of respondents agreed with the prohibition and 61% agreed with the geographical area proposed. The full results of the consultation are attached as Appendix 2 of this report
- 1.11. A Multi-Agency Engagement and Enforcement approach to support the PSPO is being agreed with partners. The engagement and enforcement activity in the area will be monitored through regular quarterly meetings with partners convened by Safer Merton. The implementation of the plan will take place if the new PSPO is agreed by Cabinet.
- 1.12. The PSPO has been drafted by the SLLP and is attached as Appendix 4. If Cabinet agree the form of the proposed PSPO, in accordance with the provisions of the Act, the text Order, will be published on the Council’s Website before it is actually made and after it is made. Public notices will also be displayed in the areas covered by the PSPO. A draft of the proposed sign is attached as Appendix 4 of this report for comment by the Cabinet.
- 1.13. The Council must ensure that the PSPO, including the restrictions it seeks to impose, are proportionate to the activities identified in the Restricted Area and the statutory guidance is followed. A PSPO can be subject to a statutory challenge in accordance with the Act, or an application for Judicial Review.

2 DETAILS

Background

- 2.1. The Act introduced a set of streamlined tools to address ASB and the impact that such behaviour can have on individuals and communities. PSPOs are one of these tools. Through the provisions of the Act, local authorities are empowered to make PSPOs providing certain criteria and legal tests are met. PSPOs differ from other tools as they are council led and are designed to prohibit specified activities and/or can require that people do certain things when engaging in certain activities within a defined

public area. They should focus on an identified problem behaviour rather than targeting specific individuals or properties. A breach of a PSPO is an offence, although as an alternative a Fixed Penalty Notice (FPN) may be issued.

- 2.2. In 2013 the Council made the *Alcohol Consumption in Designated Public Places London Borough Merton Order 2013*, which created a borough wide “Controlled Drinking Zone” (CDZ). The CDZ was designed to target alcohol related ASB across Merton. In 2017 this Order transitioned into a PSPO under the transitional arrangements in the Act and the restrictions on the public consumption of alcohol came under the PSPO regime. Therefore, since 2017, Merton has had one borough wide transitioned PSPO specially designed to address ASB associated with the public consumption of alcohol. This PSPO will expire on 20 October 2020, unless extended before that date.
- 2.3. In reviewing whether to extend the existing transitioned Order, or to make a new PSPO restricted to a more geographically defined area, we have considered the statutory criteria for making a PSPO, and the appropriate scope of any order to ensure that it is proportionate to the problem and the restrictions apply to the appropriate geographical area. We have considered the impact that any PSPO may have. We have gathered this information by consulting with the police, other partners, and public consultation and through the completion of an Equalities Impact Assessment. Finally, we have considered whether the proposed restrictions will meet the legal test in consultation with our legal advisers the SLLP.
- 2.4. Under Section 59 of the Act, to make a PSPO a local authority must be satisfied that, on reasonable grounds, that two conditions are met: -
 1. That the activities carried on in a public place within the authorities are have had, or is likely to have, a detrimental effect on the quality of life of those in the locality; and
 2. 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 order.

Evidence led approach and proportionality

- 2.5. Robust evidence is essential when considering whether a PSPO is appropriate. The Council needs to be satisfied that the evidence demonstrates that the two conditions in Section 59

above have been met. A detailed review of the available alcohol related data has undertaken and the results of the public consultations have been considered. The Evidence of ASB and need for action/PSPO can be found in Appendix 1.

- 2.6. The quantitative analysis for the time period (where possible) 2018 and 2019 calendar years showed 61 complaints in 2018 and 84 in 2019. The CCTV data does show more logs in the Mitcham area in 2019 compared to the previous year (closely followed by Wimbledon). The other available data also points to more of a problem in the Mitcham area. Enforcement action for breaches of the existing transitioned PSPO has not been significant, with 19 FPN's issued in the last year.

Table 1: Summary of figures

Data Source	2018	2019
ASB Complaints	61	84
CCTV Logs	271	255
PSPO FPN's Issued	24	19
Ambulance Callouts (Sep 17 – Aug 18 and Sep18 – Aug 19) via Safe Stats	1185	847
Street Drinking Police Calls	21	29

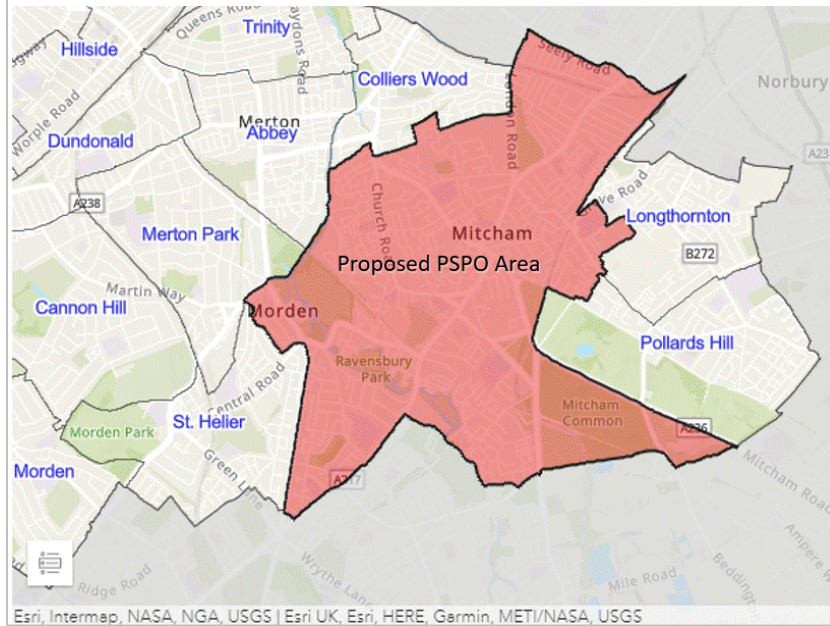
- 2.7. In addition to the quantitative data, it was also important to consider the views of the public; we therefore, considered the perception information from the surveys that have been conducted recently in the Borough. When looking at the results of the Borough's surveys:

- The Annual Resident's Survey (2019) indicated residents remain concerned about drunk and rowdy behaviour.).
- The Safer Merton Strategic Assessment Survey, showed that approximately 244 people felt that street drinking was a fairly or very big problem in the Borough. When assessing the data, particularly the public perception information, there is an indication of an impact on the quality of life of those particularly working and living in the Mitcham area.
- The Licensing Team are currently consulting on the Cumulative Impact Zones (CIZs) for the Borough. Based on their assessment of available data they are recommending that CIZ's be maintained in Mitcham Town Centre and Wimbledon Town Centre.

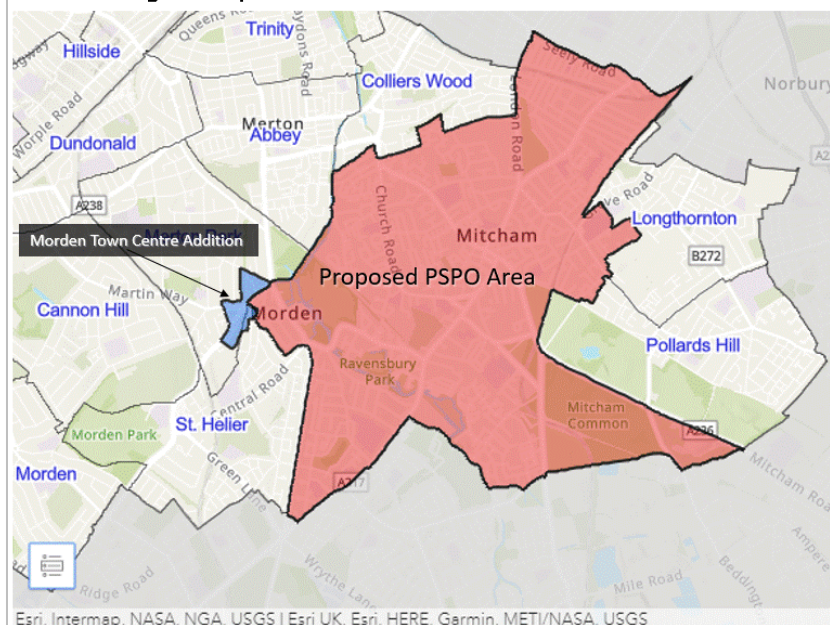
Location

- 2.8 As mentioned earlier in the report, the Council needs to ensure any new PSPO is proportionate, so based on both the quantitative and qualitative data available, the proposal is for the PSPO to target a smaller geographical area of the Wards of Cricket Green, Figges Marsh, Graveney, Lavender Fields, and Ravensbury (Map 1 below).

MAP 1 - Original Proposed PSPO Area for Consultation



MAP 2 - Original Proposed PSPO Area with Addition of Morden Town Centre

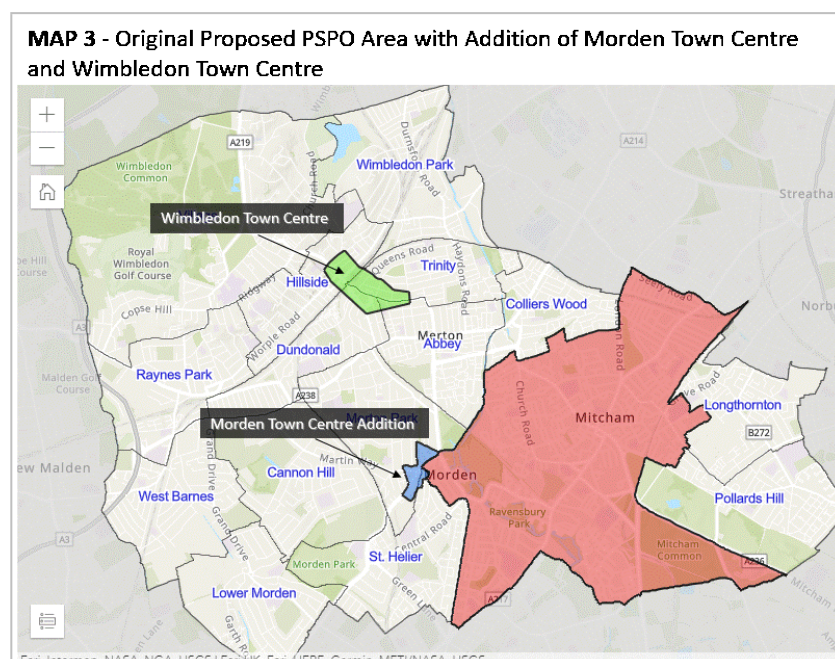


2.9

A report was also taken to the Overview and Scrutiny Commission in July 2020 for member consideration. The Commission resolved the following

- That the Commission supports action being taken to address street drinking that occurs to such an extent that it intimidates the public, makes an area undesirable and becomes an area that people wish to avoid. The Commission wishes the proposals to be expanded to include other areas where there is unacceptable street drinking, namely Morden and Wimbledon town centres. It is understood that this would not cover all of the wards, just the town centre areas.

- 2.10 The Commission further RESOLVED that this reference should be included and responded to within the officer report to the meeting of Cabinet in September at which the consultation results and proposals for the PSPO would be considered.
- 2.11 If the Council wishes to extend the Restricted Areas identified by the proposed PSPO, so as to include Morden Town Centre, Wimbledon Town Centre and or any other wards, this would require evidence to satisfy the statutory conditions in Section 59 of the Act. The revised proposals would also require further consultation and publicity to satisfy Section 72 of the Act.
- 2.12 Officers will continue to monitor ASB related to the consumption of alcohol anywhere in the Borough, including Wimbledon Town Centre, together with the Police and other partners. Should there be sufficient evidence to satisfy the statutory conditions in Section 59 of the Act, officers would consider a new PSPO or (if granted) a variation of this proposed PSPO. The authorisation of which will be covered under the new delegated powers as set out in Section 2.26 and recommendation (F) of this report.
- 2.13 In order to avoid a delay in implementing the proposed PSPO it is recommended that, following the decision of Cabinet, the Council goes out to consultation (6 weeks) for the areas of Morden Town Centre, Wimbledon Town Centre and the wards of Abbey, Trinity, Pollards Hill and St. Hellier and collates further evidence, submitting findings and the results of the consultation to the Director of Environment and Regeneration and the Lead Member for Community Safety for their consideration. In the event it is considered a further PSPO is required, by variation to the existing PSPO or otherwise, it would be made pursuant to the new delegated powers as set out in Section 2.26 and recommendation (F) of this report.



- 2.14 A risk to the proposal for a Mitcham area based PSPO is the notion of displacement. Displacement is a risk with a smaller geographically focused PSPO where the problem may move to another area within, or indeed outside, the Borough. This will be monitored and addressed should it arise. As indicated above, there is always the option of an additional PSPO in the future, providing there is sufficient evidence to justify it and the two statutory conditions in Section 59 of the Act are satisfied. Targeted intervention and enforcement with the more persistent individuals who continue their behaviour in other parts of the Borough will also be followed up using Community Protection Warnings¹ and Community Protection Notices.
- 2.15 The Mitcham area, in particular the town centre, has undergone significant re-development over the last few years. Mitcham has also been identified by the Safer Merton Partnership as a strategic priority for the last two years due to complex and multiple problems in the area. Activity in the area is regularly discussed and monitored via the Borough's Location Board (a partnership problem solving group). A number of joint patrols have been undertaken with the Police, Council Officers and Kingdom Security personnel to address the problems in the area. The CCTV Team regularly monitors activity and reports incidents directly to the Police, or other relevant partners, when needed. We are also working with the Licensing Team in the Regulatory Services Partnership around the implementation of the CIZs to ensure intelligence is shared.

Engagement and Enforcement

- 2.16 If Cabinet agrees the proposed PSPO it will come into force on 21 October 2020, public signage will be displayed a week before the "go live" date and the Order will be publicised in accordance with the Act, the accompanying Regulations and the Guidance. During the first 3 weeks of the PSPO, we will focus on engagement and raising awareness of the effect of the PSPO, following which the enforcement will begin.
- 2.17 Enforcement is a key element of the PSPO and as such, ensuring the right restrictions is vital. The following restrictions are proposed for the PSPO:

¹ A Community Protection Warning can be issued to anyone who is 16 or over, or business, or organisation if satisfied, on reasonable grounds, that a person's conduct is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality, and the conduct is unreasonable. This can be followed by a Community Protection Notice where the Community Protection Warning has not been complied with.

An Authorised Person, which is defined as a constable, police community support officer or other person authorised by the Council, will be authorised to require a person consuming alcohol, or anything the authorised person reasonably believes to be alcohol in the restricted area so as to cause, or be likely to cause a nuisance or annoyance: -

- a) To stop drinking and/or
- b) To surrender anything in his/her possession which is, or which the authorised person reasonably believes to be alcohol, or a container for alcohol, and dispose of anything surrendered.

Where a person fails to comply with such a requirement the authorised person may require the person in breach to provide his or her name and address.

- 2.18 Any person who breaches the proposed Order commits a criminal offence and is liable to prosecution. There are however a number of enforcement options ranging from a Warning, or issuing a Fixed Penalty Notice (FPN), as an alternative to prosecution. For more persistent breaches of the PSPO, consideration will be given to issuing Community Protection Warnings (CPW), followed by Community Protection Notices (CPN) and seeking Criminal Behaviour Orders (CBO) where appropriate.
- 2.19 A draft of the proposed PSPO signs can be found in Appendix 5. The signage outlines the area and prohibition of the PSPO. It explains how ASB can be reported and where people can go to find more information. The Regulations accompanying the Act require the signage to advise members of the public using the restricted area that the PSPO has been made and its effect.
- 2.20 By Section 68 of the Act the Council cannot impose fixed penalty in excess of £100. The Council has not fixed the amount of the fixed penalty for breaches of PSPOs generally but, instead, has sought to fix the amount when each order is made. It is proposed that the amount be fixed at the maximum and that there be no discounted amount as an incentive for early payment.
- 2.21 The maximum fine the magistrates' court may impose for breaching the PSPO in respect of the offence for failure to stop drinking, or surrender alcohol etc. is a Level 2 fine on the Standard Scale, currently £500. The maximum fine the magistrates' court may impose for the offence of failing to provide a name and address, or giving a false, or inaccurate, name or address is a Level 3 fine on the Standard Scale, currently £1000.
- 2.22 Where a person is issued with a FPN s/he has 14 days within which to pay and, if he/her does so, it discharges any liability to conviction for the offence. If not paid within that period s/he may be prosecuted in the magistrates' court for the offence.
- 2.23 We are working with partners to deliver a co-ordinated Engagement and Enforcement Plan. The Plan will not only cover

the direct enforcement of the PSPO, but will also seek to outline avenues for support, which might be needed to help those where alcohol has become a challenge, through our partnership working with public health and Westminster Drugs Service (our commissioned substance misuse service).

2.24 As part of the Equalities Impact Assessment and through our engagement with partners, we know the proposed Restricted Area is a more diverse area of the Borough, accordingly if the proposed PSPO is agreed, we will ensure that the signage is clear, there is good engagement and publicity and where needed leaflets are made available in the relevant languages.

Authorisation of Future PSPOs

2.25 In order to ensure the PSPO tool is used effectively to respond to persistent ASB and nuisance in a public place it is important to agree a process of authorisation that enables swift decision making and implementation, subject to compliance with the statutory provisions and the Guidance. It is therefore proposed that members consider the following approach to authorise future PSPOs in Merton, including the variation or discharge of existing orders.

Table 2:

Proposed levels of authorisation to making, variation and discharge of a PSPO's in Merton

	Area to be covered	Authorisation
1	PSPO covers up to 2 wards/ 2 ward boundaries. (and where a variation is no more than two additional wards)	Delegated authority to the Director of Environment and Regeneration in consultation with the Lead member of Community Safety
2	PSPO covers anything above 2 wards (and where a variation will result in an additional 3 or more wards being added)	Cabinet

2.26 All proposals to make, vary or discharge PSPOs, regardless of the method of authorisation will be made in accordance with the statutory provisions and the Guidance. This includes:

- Ensuring proportionality, supported by an evidence base
- Community & Partnership consultation
- Equalities Impact Assessment
- Enforcement and engagement plan supporting the PSPO

3

ALTERNATIVE OPTIONS

3.1. Alternative options considered were:

- (a) Allow the existing transitioned PSPO to expire and not introduce a new more targeted PSPO. However, this would mean that the Council was not using the power to make a PSPO to prevent and reduce, or reduce the risk of, the detrimental effect of ASB related to the public consumption of the alcohol on the quality of life of those in the locality from continuing, occurring or recurring. This option is therefore not recommended.
- (b) To extend the duration of the existing borough wide transitioned PSPO, or to make a new borough wide PSPO. This option is not recommended as there is insufficient evidence to satisfy the two statutory conditions in Section 59 of the Act. Any PSPO made without satisfying those conditions would be unlawful and susceptible to legal challenge. It would also raise community expectations of the Council's ability to enforce such a large PSPO.
- (c) **To implement a targeted PSPO, based on the evidence of ASB related to the public consumption of alcohol. This is the recommended option since the Council can demonstrate that the two statutory conditions in Section 59 of the Act for making a PSPO to address the ASB within the restricted areas are satisfied and that the restrictions are proportionate to the ASB. (Recommended option)**
- (d) To not implement the proposed PSPO, allow the current borough wide PSPO to expire on 20 October 2020, but go out to consultation on the additional areas suggested in this report with a view to including them in a new PSPO if the statutory conditions are satisfied. This option is not recommended as it will leave the proposed restricted areas, which the Council is ready to protect against alcohol related ASB by means of the proposed PSPO, unregulated after the existing transitioned PSPO expires until the additional evidence gathering, consultation and publicity has been completed. The outcome of this further work is uncertain and may on analysis not justify a PSPO in these extended areas (Morden Town Centre, Wimbledon Town Centre and the wards of Abbey, Trinity, Pollards Hill and St.Hellier).

4

CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. Consultation has taken place through the presentation of the PSPO at the Safer Neighbourhood Board, which has community representation, the Locations Board and the Safer and Stronger Executive Board. Partners in attendance at these meeting have included the Police, Probation, Public Health as well as many teams across the Council.

- 4.2. We have also taken on board resident feedback provided through other council surveys including the Annual Residents Survey and the Children and Young People's Plan Survey.
- 4.3. A report was also taken to the Overview and Scrutiny Commission in July 2020 for member consideration. The Commission resolved the following
- That the Commission supports action being taken to address street drinking that occurs to such an extent that it intimidates the public, makes an area undesirable and becomes an area that people wish to avoid. The Commission wishes the proposals to be expanded to include other areas where there is unacceptable street drinking, namely Morden and Wimbledon town centres. It is understood that this would not cover all of the wards, just the town centre areas.
 - The Commission further RESOLVED that this reference should be included and responded to within the officer report to the meeting of Cabinet in September at which the consultation results and proposals for the PSPO would be considered.
- 4.4. In accordance with Section 72 of the Act a six-week public consultation was launched on 29 June and in total we received 122 responses to our online survey and a further two formal responses, one from the Labour MP for Mitcham and Morden and another from the Conservative Group. To publicise the survey, it was circulated to members of Neighbourhood Watch, members of the Council's Equality Forums, via Merton Voluntary Sector Council, Merton Chamber of Commerce, the Borough's Drug and Alcohol Service, Catch 22, all councillors and via the Council's social media channels on Facebook and Twitter.
- 4.5. The public consultation asked respondents whether they supported the prohibition, of which 87% did. The respondents were also asked whether they were in agreement with the area identified and 61% were. The survey also asked respondents about general feelings of safety, specific locations within the boundary where street drinking was an issue as well as asking if there were other issues that were a problem in the location. The full results can be found in Appendix 2.
- 4.6. As part of the consultation process, we received a response from the Labour MP for Mitcham and Morden. In summary, the MP was in support of the PSPO but asked for the wards of Pollards Hill and St Helier to be considered. The MP also commented the issues of street drinking and anti-social behaviour have been longstanding and significant problems, particularly in and near Mitcham Town Centre and as expressed at well attended community meetings, members of the community are at times fearful to visit the town centre, which can have an economic impact also. The response also outlined that as the issues have been longstanding, people don't always report what is going on.

- 4.7. The consultation response received from the Conservative Group, The Merton Conservatives Group welcomed the proposal to use a PSPO in Mitcham to deter anti-social behaviour and street drinking. They recognise that this has been a significant problem in the past, and hope the PSPO will be an effective deterrent. They are also concerned that there is still significant anti-social behaviour in Wimbledon town centre linked to alcohol consumption. Whilst there has been some drop in this in recent years, it is still significant and a great concern for residents. If the situation in Wimbledon escalates then they would support the rapid introduction of a PSPO.

NEXT STEPS SHOULD THE PSPO BE AGREED BY CABINET

Milestone	Date to be completed
Publish text of the proposed order approved by Cabinet	20 September
Make the PSPO in the form agreed by Cabinet	1 st October 2020
Procure signage and decide where signage will be displayed	20th September 2020
Publish the PSPO as made	25th September 2020
Remove Signage for the borough wide PSPO	20th October 2020
Ensure signage is displayed	21 st October 2020
PSPO comes into force	21st October 2020
Initial launch of the PSPO – communication and engagement	21 st October 2020 – 10 th November 2020
Collate and analyses evidence for the additional areas Launch consultation of the additional areas	December 2020
Start of Enforcement of the PSPO	11th November 2020
Regular Monitoring of the PSPO	Proposed to be either through the Locations Board or the Community MARAC
12 Month review of the PSPO to assess need and geography, report to the Safer and Stronger Executive board	September 2021

5 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 5.1. The preparation of the PSPO is being completed within existing officer resources. In addition, there will be legal costs to draft the final order and ensure all due statutory processes are followed, and costs associated with the production and installation of signage in the area, should the PSPO be agreed. It is expected that these costs can be funded from existing resources.

LEGAL AND STATUTORY IMPLICATIONS

The power and requirements for making a PSPO are Part 4 of Chapter 2 of the Act, and is supplemented by the Anti-Social Behaviour Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014 and statutory guidance issued by the Secretary of State. The basic requirements for the making of a PSPO are set out in the body of this report, in particular, satisfying on reasonable grounds the two statutory conditions in Section 59 of the Act.

In deciding whether to make a PSPO and, if so, what restrictions should be included, by Section 72 of the Act, the Council must have particular regard to the rights of freedom of expression and freedom of assembly set out in Articles 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (“the Convention”). The restrictions imposed by the proposed PSPO are not considered to engage these Articles and are considered compatible with rights under the Convention. In the event however that the Articles are considered to be engaged, it is considered that the restrictions are permitted by paragraphs (2) of both those Articles. This is on the basis that the restrictions on those rights imposed by the PSPO are lawful, necessary and proportionate. This conclusion is reached given the nature of the restrictions, their imposition in accordance the relevant statutory provisions and Guidance and having regard to the evidence and detrimental affect alcohol related ASB is having, or is likely to have of the lives of those in the locality of the Restricted Areas.

Under Section 66 of the Act any challenge to the validity of a PSPO must be made in the High Court by an interested person within six weeks of it being made. An interested person is an individual who lives in, or regularly works in, or visits the restricted area. This means that only those who are directly affected by the restrictions have the power to challenge. The validity of a PSPO can be challenged on two grounds only:

- (a) that the Council did not have power to make the order, or to include particular prohibitions or requirements imposed, or
- (b) that the procedural requirements for making the PSPO (for instance, consultation) were not complied with.

On any application to the High Court challenging the validity of an Order the Court may suspend its operation or any of the prohibitions or requirements imposed by it until the final determination of the proceedings. If the Court is satisfied the Council did not have the power to make the PSPO, or it did but the Council failed to comply with the procedural requirements and, the applicant has been substantially prejudiced by that failure, it may quash the Order, or any of the prohibitions or requirements imposed by it.

Note that Section 66 provides that the validity of a PSPO may not be challenged in any legal proceedings except by an application under that section or, on prosecution, on the basis that the Council did not have the power to include the prohibition or requirement in the PSPO. This must however be read as being subject to the High Court’s supervisory jurisdiction by way of an application for judicial review. Such an application must be

brought promptly, and in any event not later than 3 months, after the grounds to make the claim first arose.

In considering the proposal members of the Cabinet must consider the Council's Public Sector Equality Duty (PSED) under Section 149 of the Equality Act 2010 (2010 Act). The Council must, when exercising its functions, have due regard to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited by the 2010 Act and to advance equality of opportunity and foster good relations between those who share a 'protected characteristic' under the 2010 Act and those who do not share a protected characteristic. A 'protected characteristic' is defined in the 2010 Act as age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Marriage and civil partnership are also protected characteristics for the purposes of the duty to eliminate discrimination. Cabinet must consider how the decision whether to make the proposed PSPO will contribute to meeting the duty in light of other relevant circumstances.

7 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 7.1. To ensure that we consider the rights of individuals who live, work and visit the area, we will ensure the proposed PSPO is proportionate to the needs in the area, as identified through the analysis and consultation.
- 7.2. As detailed in Section 6 above, in deciding whether to make a PSPO and, if so, what should be included the Council is required to have regard to the Convention and Articles 10 and 11 in particular.
- 7.3. In order to have proper regard to the PSED a full Equalities Impact Assessment (EQIA) (Appendix 3) has been carried out and should be considered alongside this Report. Having carefully considered the EQIA it is considered the impact of the proposed PSPO is consistent with the Council's PSED and does not disproportionately affect any part of the community. The EQIA will be monitored to ensure that future intelligence and information which better informs our understanding and impact of the PSPO is considered.

8 CRIME AND DISORDER IMPLICATIONS

The purpose of the proposed PSPO is to help tackle alcohol related ASB in the area and to help improve the quality of life for those who live, work and visit the area with the aim of having a positive impact on the levels of crime and ASB in this locality.

9 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 9.1. Whilst the focus of the proposed PSPO is around enforcement, it is acknowledged that this may identify individuals for whom alcohol is particularly problematic. We will therefore be working closely with

support services to ensure that such individuals can be offered the support they need, should they want it.

- 9.2. Officers enforcing the PSPO will take into consideration existing organisational policies and procedures for personal safety and risk management.

10 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Appendix 1 – Evidence of ASB and need for action/PSPO
- Appendix 2 – Public Consultation Results
- Appendix 3 – Equalities Impact Assessment
- Appendix 4 – Draft Order
- Appendix 5 – Draft Public Sign

11 BACKGROUND PAPERS

- Minutes from the Overview and Scrutiny Commission 15th July 2020
<https://democracy.merton.gov.uk/ieListDocuments.aspx?CId=148&MId=3702&Ver=4>