

Consultation on Public Spaces Protection Order

Problem behaviour relating to the consumption etc. of psychoactive substances.

Introduction

Epsom & Ewell Borough Council (the “Council”) is consulting on a proposal to introduce a Public Spaces Protection Order (“PSPO”) with the aim of reducing the possession and consumption of psychoactive substances.

Prior to making the PSPO there will be a consultation period of at least 8 weeks. The consultation period of will end on 6 September 2021.

What are psychoactive substances?

A “psychoactive substance” means any substance which is capable of producing a psychoactive effect in a person who consumes it and is not an exempted substance.

For the purposes of the proposed PSPO a substance produces a psychoactive effect in a person if, by stimulating or depressing the person’s central nervous system, it affects the person’s mental functioning or emotional state. For example, it causes hallucinations, changes in alertness or perception of time and space, stimulates mood or empathy with others or causes drowsiness.

An example of a psychoactive substance is nitrous oxide (N₂O) commonly known as ‘laughing gas’. N₂O has legitimate uses e.g., as an inhalation anaesthetic and as an aerosol spray propellant within whipped cream canisters. N₂O canisters provide a recreational dose when dispensed into balloons, which are used to inhale the gas.

Reference to psychoactive substances for the purposes of the proposed PSPO does not include substances like alcohol, nicotine, tobacco and controlled drugs regulated by the Misuse of Drugs Act 1971, but it can include other products that contain psychoactive substances e.g. solvents and butane that are not fit for human consumption.

What is a PSPO?

Introduced by the Anti-social Behaviour Crime and Policing Act 2014, PSPOs are intended to tackle identified problem behaviour in a specific location rather than individuals or properties. Local authorities can implement PSPOs to prohibit specified

activities, and/or require certain things to be done by people engaged in particular activities, within a defined public area.

An activity amounts to problem behaviour where it is detrimental to the local community's quality of life. The PSPO works by imposing conditions on the use of the identified area which apply to everyone. It is designed to ensure that the law-abiding majority can use and enjoy public spaces, safe from activities that amount to problem behaviour.

It is an offence for a person, without reasonable excuse, to do anything that they are prohibited from doing by a PSPO or for them to fail to comply with a requirement to which they are subject to under the PSPO.

What problem behaviour will be covered by the PSPO?

PSPOs are aimed at reducing and controlling certain problem behaviour in public places where those activities have a detrimental effect on the local community. Under a PSPO authorised officers including council officers and the police have additional powers with regard to problem behaviour that allows them to issue fines if problem behaviour continues.

The Council is considering introducing a PSPO to address problem behaviour related to the consumption and disposal of psychoactive substances and their disposal. Consider the example of laughing gas. The detrimental effect on the local community includes the consumption of laughing gas in public places leaving the user temporarily "*out of it*" as well as leaving public places littered with detritus e.g., used canisters and balloons.

How does a PSPO reduce the detrimental effect of this activity?

PSPOs help the Council and police deal with problem behaviour affecting the local community's quality of life.

Where a PSPO is in place, the police and authorised council officers will have the power to stop people from breaching the PSPO in a specified area known as a restricted area (see below). If a person continues with problem behaviour after being asked to stop by an authorised officer they are in breach of the PSPO.

A breach of the PSPO is a criminal offence, which can be dealt with, either by way of a fixed penalty notice (FPN) of up to £100 or prosecution. If prosecuted, an individual could be liable to a fine up to £1,000.

Who must be consulted?

The Council must formally consult with the Police through the Chief Officer of Police and the Police and Crime Commissioner, but this can be led by officers at the working level.

In addition, all owners or occupiers of the land within the area to be restricted by the PSPO must be consulted. The Council will also consult relevant community representatives along with the wider general public to give the users of the public space the opportunity to comment on whether the proposed restriction or restrictions are appropriate, proportionate or needed at all.

What is the test for making a PSPO?

The threshold for making a PSPO is set out in s.59 Anti-social Behaviour Crime and Policing Act 2014 which permits local authorities to make a PSPO if satisfied, on reasonable grounds, that the following conditions are met as defined by the Act:

- (a) activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or
- (b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect
- (c) the activities is, or is likely to be, of a persistent or continuing nature,
- (d) is, or is likely to be, such as to make the activities unreasonable, and
- (e) justifies the restrictions imposed by the PSPO

The Council must be satisfied that the above test is met and in reaching that conclusion it will need to consider the following questions.

- Is the Council satisfied that activities related to the consumption of psychoactive substances amounts to problem behaviour that should be restricted under a PSPO?
- Is the Council satisfied that this problem behaviour has occurred in the restricted area (as shown in Schedule 1 to the Draft PSPO) and has had a detrimental effect on the quality of life of those in the locality?

[OR]

Is the Council satisfied that this problem behaviour is likely to occur in the restricted area and will have a detrimental effect on the quality of life of those in the locality?

For example the problem behaviour would have a detrimental effect where the consumption etc. of nitrous oxide, leads to anti-social behaviour, leads to behaviour likely to cause harassment, alarm, distress, nuisance or annoyance.

- Is the Council satisfied that this problem behaviour is or is likely to continue in the restricted area?

[OR]

Is the Council satisfied that the problem behaviour is, or is likely to be, of a persistent nature?

- Is the Council satisfied that the problem behaviour is, or is likely to be unreasonable such that the Council can justify the restrictions imposed by the ?
- Is the Council satisfied that the prohibitions imposed by the PSPO are reasonable and necessary to prevent the detrimental effect from continuing, occurring, or recurring or to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence?
- In making the PSPO has the Council had regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the European Convention on Human Rights and Equality Act 2010?
- In all the circumstances, is it appropriate to make the PSPO?

How long can a PSPO last?

Any PSPO introduced can only be valid for a maximum of three years or shorter and must thereafter be extended if still required. Such extension is subject to the Council being satisfied that it is reasonable and necessary to do so and is subject to the same publication requirements as the introduction of a PSPO. The extension period is also restricted to a maximum of three years.

What locations are covered?

The Council can make a PSPO on any public space within its local authority area. The definition of public space is wide and includes any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, for example a shopping centre.

The Council proposes to make a PSPO over all public spaces in the Borough which will be referred to as the "Restricted Area". The reason why it is being proposed this way is because the behaviour is not restricted to one open space and there is evidence of it occurring over a much wider area matching the locations where people congregate.

The Restricted Area can be seen on the map attached at Schedule 1 to the Draft PSPO.

What are the draft terms of the PSPO?

Before the PSPO is made, the Council must publish the draft version of the PSPO in accordance with regulations published by the Secretary of State and ensure that the draft PSPO is available on its website.

The Council proposes to introduce a PSPO that will make it an offence to fail to:

1. immediately stop consuming any psychoactive substances when asked to do so by an authorised person.
2. surrender any psychoactive substances (e.g. nitrous oxide canisters) in that persons possession to an authorised person.
3. surrender any equipment and paraphernalia being used for the consumption of any psychoactive substance (e.g. a whipped cream dispenser) in that persons possession to an authorised person.

The PSPO will be enforceable 24 hours a day, 7 days a week.

What happens after the closing date?

The consultation responses will be published together with the Council's recommendations and those recommendations will be taken to Council's Environment and Safe Communities Committee for a decision whether to make the PSPO or make a PSPO with different terms to those contained in the draft PSPO or in respect of a different area.

When will the PSPO come into effect?

If the Committee decides to make the PSPO or make a PSPO with different terms, it will come into effect within 4 months from the date of that decision. This allows the Council officers time to draft and approve guidance and other documents, comply with certain publication requirements and take other necessary steps before the PSPO comes into effect.

Where can I find more information about the PSPO?

You can find the draft PSPO on the Council's website at www.epsom-ewell.gov.uk/council/consultations.

Tell us what you think!

We would like to hear your views and you can get involved by completing an online survey with the link at www.epsom-ewell.gov.uk/council/consultations or by requesting an emailed copy from ehpublichealth@epsom-ewell.gov.uk. You may write to us at PSPO Consultation, Community Safety, Epsom & Ewell Borough Council, Town Hall, The Parade, Epsom, Surrey KT18 5BY or telephone on 01372 732000.

You can find out more by visiting www.epsom-ewell.gov.uk/council/consultations

EPSOM AND EWELL BOROUGH COUNCIL

DRAFT PUBLIC SPACES PROTECTION ORDER NO [X] OF 2021: PSYCHOACTIVE SUBSTANCES

PREAMBLE

The Preamble to the Order will refer to the Council's powers under the Anti-Social Behaviour Crime and Policing Act 2014 and confirm that the powers are exercised in accordance with that Act and other relevant legislation. IN particular:

1. Are the requirements in sections 59 of the Anti-Social Behaviour Crime and Policing Act 2014 met?

(1) A local authority may make a public spaces protection order if satisfied on reasonable grounds that two conditions are met.

(2) The first condition is that

(a) activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or
(b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.

(3) The second condition is that the effect, or likely effect, of the activities

(a) is, or is likely to be, of a persistent or continuing nature,
(b) is, or is likely to be, such as to make the activities unreasonable, and
(c) justifies the restrictions imposed by the notice.

2. Is the Council satisfied that the prohibitions proposed below are reasonable and necessary to prevent the detrimental effect from continuing, occurring, or recurring or to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence
3. In making the Order has the Council had regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the European Convention on Human Rights and Equality Act 2010?
4. In all the circumstances, is it appropriate to make the Order?

DRAFT ORDER

IN ACCORDANCE WITH PART 3 OF THE COUNCIL'S CONSTITUTION THE HEAD OF HOUSING & COMMUNITY WILL RECOMMEND THAT THE ENVIRONMENT AND SAFE COMMUNITIES COMMITTEE THE COUNCIL MAKES THE FOLLOWING ORDER

In exercise of its powers under section 59 of the Anti-Social Behaviour Crime and Policing Act 2014.

1. This Order may be cited as Epsom and Ewell Borough Council (Psychoactive Substances) Public Spaces Protection Order No.[X] of 2021 ("the Order"). This Order takes effect on the [a date within 4 months of the Committee's decision] and continues to have effect for a period of [up to three years] thereafter until [date].
2. This Order applies to the land described in the Schedule below ("Restricted Area") and which is shown edged red on the attached plan found in Schedule 1 ("the Order plan").
3. This Order applies to all persons in 'public places' within the Restricted Area at all times of the day and night, save on where otherwise stated within the prohibitions.
4. For the purposes of this Order, 'public places' means any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.

5. PROHIBITIONS

- a. Person(s) within the Restricted Area will not: Ingest, inhale, inject, smoke, possess or otherwise use psychoactive substances (e.g. nitrous oxide, solvents and butane) and which is causing or likely to cause harassment, alarm, distress, nuisance or annoyance to members of the public.
- b. Meaning of "psychoactive substance" etc "Psychoactive substance" means any substance which is capable of producing a psychoactive effect in a person who consumes it and is not an exempted substance. For the purposes of this prohibition a substance produces a psychoactive effect in a person if, by stimulating or depressing the person's central nervous system, it affects the person's mental functioning or emotional state.
- c. For the purposes of this prohibition a person consumes a substance if the person causes or allows the substance, or fumes given off by the substance, to enter the person's body in any way. Exemptions shall apply in cases where the substances are used for a valid and demonstrable medicinal use, given to an animal as a medicinal remedy, are nicotine and tobacco (e.g. cigarettes) or vaporisers or are food stuffs regulated by food health and safety legislation.
- d. Persons within the Restricted Area who breach this prohibition shall
 - i. immediately stop consuming any psychoactive substances when asked to do so by an authorised person.
 - ii. surrender any psychoactive substances (e.g. nitrous oxide canisters) in that persons possession to an authorised person.
 - iii. surrender any equipment and paraphernalia being used for the consumption of any psychoactive substance (e.g. a

whipped cream dispenser) in that persons possession to an authorised person.

An authorised person could be a police constable, Police Community Support Officer or authorised person designated by Epsom and Ewell Borough Council under a Grant of Authority (made on the template in Schedule 2) and must be able to present their authority upon request (an "Authorised Person").

6. OFFENCE AND PENALTY

- a. Any person who, without reasonable excuse, fails to comply with the prohibitions in a-d above commits an offence.
- b. Any person who is guilty of an offence under prohibitions a-d of the Order shall be liable to summary conviction to a fine not exceeding level 3 on the standard scale.

7. ENFORCEMENT

- a. This Order shall be enforced by Authorised Persons.
- b. Any Authorised Person may issue a fixed penalty notice (FPN) to anyone they believe has committed an offence.
- c. A person committing an offence will have 28 days to pay the fixed penalty of £100.00, reduced to £80.00 or early payment, failing which that person may be prosecuted. No further proceedings will be taken against a person before the expiration of 28 days following the date of the FPN.
- d. An Authorised Person may dispose of anything surrendered to that Authorised Person as a result of a requirement imposed by them in whatever way they think is appropriate.
- e. An Authorised Person may take other necessary and proportionate enforcement action in reference to the Borough's Enforcement Policy & Procedure. This may include referral to support services, low level enforcement or referral to court action.

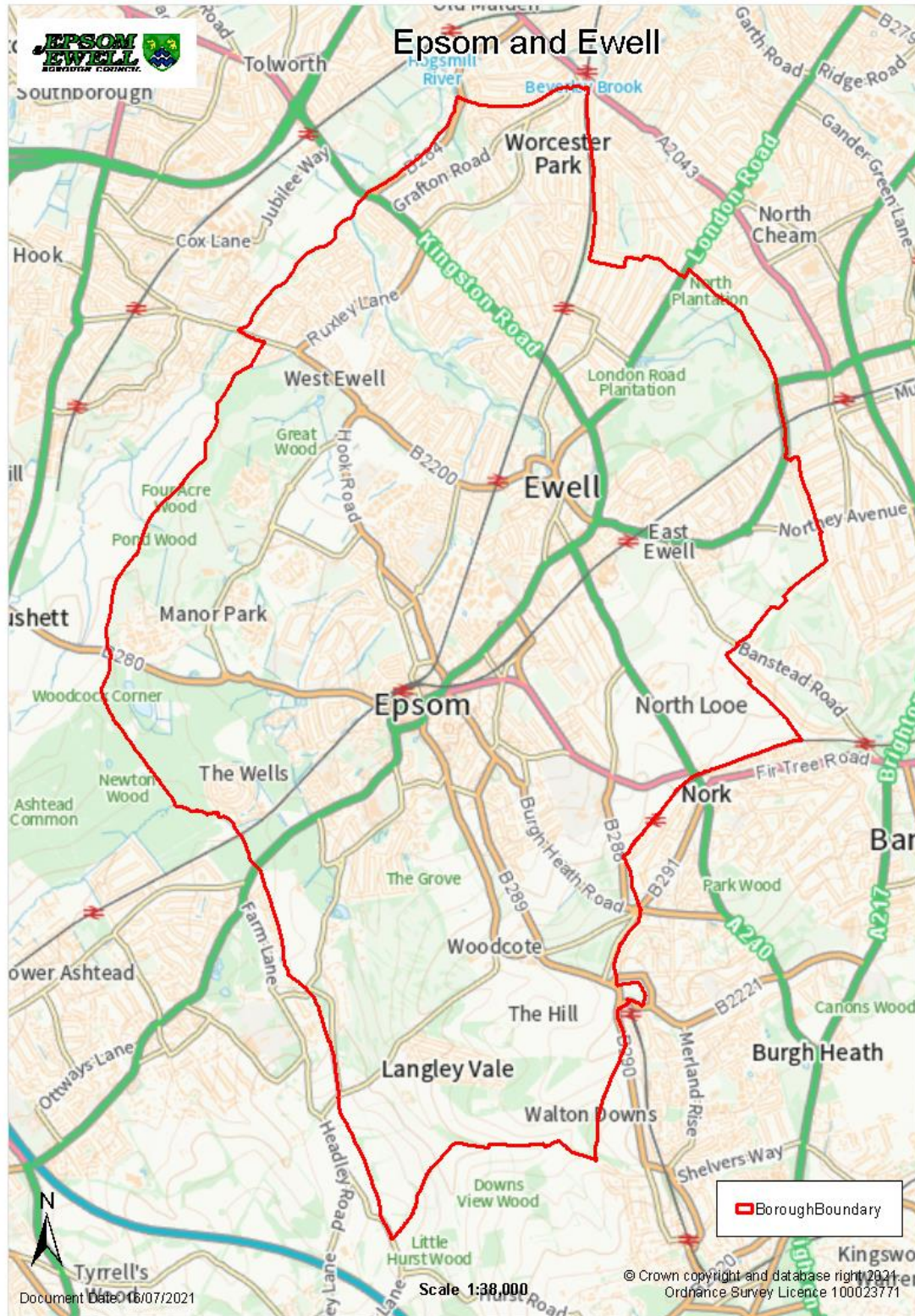
8. APPEALS

The Order will make clear that under Section 66 of the Anti-Social Behaviour Crime and Policing Act 2014, any challenge to this order must be made in the High Court by any interested person within 6 weeks of it being made.

IN WITNESS WHEREOF THE COMMON SEAL OF
THE MAYOR AND BURGESSES OF EPSOM AND E WELL

Schedule 1: Restricted Area

Restricted Zone Marked in Red



Schedule 2: Grant of Authority

EPSOM AND EWELL BOROUGH COUNCIL

Public Spaces Protection Orders. Anti-Social Behaviour Crime and Policing Act 2014.

OFFICER AUTHORITY

To: [OFFICER]

Date: [INSERT DATE] 2021

Subject matter: EEBC – PSPO for Psychoactive Substances

Authority: Chief Executive of Epsom and Ewell Borough Council

Signed: Name: Designation: