



<b>Report for:</b>  <p style="text-align: center;"><b>DECISION</b></p>
<b>Item Number:</b>  <p style="text-align: center;"><b>11</b></p>

<b>Contains Confidential or Exempt Information</b>	No
<b>Title</b>	Options for the review of the Mattock Lane PSPO
<b>Responsible Officer(s)</b>	Mark Wiltshire (Director of Community Development)
<b>Author(s)</b>	Paul Murphy (Operations Manager, Safer Communities)
<b>Portfolio(s)</b>	Inclusion and Community Safety
<b>For Consideration By</b>	Cabinet
<b>Date to be Considered</b>	10 <sup>th</sup> November 2020
<b>Implementation Date if Not Called In</b>	
<b>Affected Wards</b>	Walpole (although wider borough reach)
<b>Keywords/Index</b>	Protest, Vigil, Sexual, Health, Harassment, Anti-Social, behaviour, ASB, Women, Clinic, Mattock, Health, Space, Protection, Order, Review, Consultation, Variation

**Purpose of Report:**

The purpose of this report is to invite members to consider the impact and effectiveness of the Mattock Lane Public Spaces Protection Order (PSPO) and decide on whether consultation should be commenced on a possible extension/variation of the order.

Key points for action and decision:

- Review the impact and effectiveness of the current PSPO
- Consider the statutory framework for extending / varying a PSPO
- Decide whether the Council will consult to extend or vary the PSPO (or take other action)

**1. Recommendations**

It is recommended that Cabinet:

1. Considers the impact and effect of the Mattock Lane PSPO on the behaviours targeted as set out in this report;

2. Authorises the Director of Community Development to undertake a consultation on the renewal or variation of the Mattock Lane PSPO

## **2. Reason for Decision and Options Considered**

- 2.1 There have been occasions during the period 2018-20 where groups of individuals who had been involved in protest / vigil in the immediate locality of the Clinic have instead attended Ealing civic centre (Perceval House), where they have stood outside and displayed signs and images expressing a Pro-Life view and objecting to abortion.
- 2.2 The order has complied with for the most part and has been successful in tackling the objectionable activity it was introduced to address. The introduction of the order has not stopped any of the activities of abortion related protest or prayer themselves from occurring, it has simply prevented them from occurring within the narrowly and clearly defined area of the PSPO.
- 2.3 The (almost) daily continued use of the designated area by represented groups, the sporadic protests / vigils at Perceval House and the presence of groups involved in protest / prayer at the threshold of the PSPO area all indicate a continued interest in the location by all of the represented groups who had previously been congregating at the entrance to the Clinic. It is reasonable to conclude from their continued presence at these sites that, were the order to expire, they will return to the area outside the Clinic and continue the activities previously engaged in at this location.

## **3. Overview**

- 3.1 This report considers the impact and effectiveness of the existing Mattock Lane Public Spaces Protection Order (PSPO), which was introduced following a cabinet decision in April 2018 to tackle behaviours having an impact on those in the locality of Mattock Lane, and in particular those visiting the Marie Stopes clinic.
- 3.2 The PSPO will expire in April 2021 if no action is taken. This report additionally sets out the options for consultation on the extension or variation of the PSPO.
- 3.3 Members are asked to consider whether it is appropriate to consult on the extension or variation of the PSPO, in view of the legal framework for consultation, implementation and extension of PSPOs. That legal framework, including the human rights and equalities considerations, is set out in Section 3 of this report. Members are asked to have this framework firmly in mind in reaching their decision.
- 3.4 Members are directed to the evidence base set out in the report to cabinet in April 2018, links to which are included at the end of this report. The April 2018 report

and appendices set out in full the evidence on which the Council's decision to introduce the PSPO was made, including witness testimony and the responses to the Council's original consultation on the introduction of a PSPO (conducted from 29<sup>th</sup> January to 26<sup>th</sup> March 2018).

3.5 Included in the Appendices to this report are a copy of the existing PSPO (Appendix 1), copies of subsequent court judgements and decisions in respect of this order (Appendices 2-4) and a copy of the comprehensive Equalities Impact Analysis undertaken prior to the Council's decision to introduce the order (Appendix 5).

3.6 Members are then invited consider the impact and effectiveness of the PSPO in terms of what it set out to achieve and the necessity for the continuation of the order in its current or varied form.

#### **4. Background**

4.1 On 10th April 2018 Ealing Council's Cabinet voted unanimously to introduce a Public Spaces Protection Order (PSPO) in response to issues in the locality of the Marie Stopes clinic that were believed to be having a detrimental impact on people in the locality, including those accessing the clinic. The decision was taken by Cabinet after considering a report on the outcome of the safer communities investigation, the outcome of an eight week consultation conducted during the period of January to March 2018, and all evidence obtained as a result.

4.2 On 26th April 2018 Ealing Council were notified of an appeal made to the High Court to challenge the Council's decision by individuals employed by and connected to Pro-Life groups.

4.3 A directions and full hearing took place in the High Court in May and June 2019 respectively. Judgement was handed down in July 2019. The High Court rejected the appeal and upheld Ealing's PSPO in its full terms. Members are directed to **Appendix 2**, a copy of the High Court judgement.

4.4 The appellants appealed the decision of the High Court to the Court of Appeal and, in January 2019, the council was informed that the Court of Appeal had given permission to this further appeal.

4.5 This appeal hearing took place over two days on 16<sup>th</sup> and 17<sup>th</sup> July 2019 and judgement was handed down on 21<sup>st</sup> August 2019. The Court of Appeal rejected the appeal and upheld Ealing's PSPO in its full terms. Members are directed to **Appendix 3**, a copy of the Court of Appeal Judgement.

4.6 Following that judgement, the appellants then applied for permission to appeal the decision of the Court of Appeal to the Supreme Court. On 11<sup>th</sup> March 2020 the council were notified of the decision of the Supreme Court to refuse permission to appeal. A copy of this judgement can be found at **Appendix 4**.

4.7 The appellants have indicated in social media posts and press releases their intent to further appeal the order to the European Court of Human Rights, however at the time this report was drafted, no direct communication had been received from either the appellants or the Court in relation to this.

4.8 In light of the above, it is important to recognise the Council's decision to introduce a PSPO has been subject to intense challenge and independent scrutiny, and has been upheld in full throughout.

## **5. Evaluation of existing order**

5.1 Prior to the introduction of the current PSPO, protests and vigils by individuals and groups representing Pro-Life and Pro-Choice views had been occurring outside the Clinic for over 20 years. The Pro-Life groups involved consisted of members from a variety of networks and organisations, including *The Good Counsel Network*, *The Helpers of God's Precious Infants*, *40 Days For Life*, *Ealing Pro-Life Group* and *The Society of Pius X*. The principle Pro-Choice group involved was *Sister Supporter*.

5.2 During the second half of 2017 the Council's Safer Communities Team undertook detailed investigative work into the issues reported to be affecting Clinic users, staff and those in the locality of the Clinic. Further evidence was received through the formal consultation process undertaken by the council in January–March 2018, which resulted in the decision in April 2018 to introduce the PSPO as outlined in **Appendix 1**.

5.3 The key activities identified through the investigation and consultation as having a detrimental effect were:

- Women and their partners / friends / relatives being approached by a member or members of the Pro-Life groups when entering the Clinic and attempting to engage women and those with them in conversation or to hand them leaflets.
- Women being approached by members of Pro-Life groups when leaving the clinic, who attempted to engage them in conversation, including making reference to what has happened to their unborn child.
- Women being closely observed entering and leaving the Clinic by a members of the Pro-Life groups
- Members of Pro-Life groups engaging in prayer outside the Clinic, which was said to be on behalf of the women and / or their unborn children.
- Images of a foetus in stages of development in the form of colour photos being held by members of Pro-Life groups, handed to women or left on the pavement.

- Shouting and other disruptive activities when Pro-Choice counter demonstrations were taking place.
- Women feeling they were being monitored, watched and judged by members of the Pro-Life groups.
- The presence of placards with references to 'murder' and other similar statements.

5.4 The evidence obtained through the investigation and consultation demonstrated that, while many of the activities in and of themselves may not have been viewed as objectionable in isolation, the very specific time and place in which the represented groups had been choosing to engage in these activities meant they were targeted women at the precise moment those women were accessing health services of a deeply personal nature.

5.5 As outlined in Section 3 of this report, the Council has kept the Mattock Lane PSPO under continuous review as part of its monitoring arrangements. These arrangements include the presence of CCTV at the location, proactive observations of the space by Police and Council officers, engagement with the Clinic and careful examination of any alleged breaches.

5.6 Such continued and careful examination of the impact and effectiveness of the order has not only formed part of the existing local arrangements for monitoring PSPOs, it has been a key part of the Council's efforts in responding comprehensively to the legal challenges it has faced.

5.7 Since the introduction of the order in April 2018, there have only been three alleged breaches of the order the Council is aware of. One alleged breach took place in April 2018, when an individual attended the area outside the clinic for a brief demonstration about PSPOs and freedom of speech; no action was taken in this instance.

5.8 A further breach took place in August 2019, when a male was detained by Police after refusing to disperse from the area when asked. The case was ultimately not proceeded with by Police.

5.9 The third alleged breach of the PSPO occurred in March 2020, when an individual deposited leaflets regarding abortion services at two entrance / exit points of the Clinic. This breach was enforced via service of a Fixed Penalty Notice, which was paid in full within the required time period.

5.10 There have been no other reported breaches of the PSPO.

5.11 As part of the continued review of the PSPO, Council officers have engaged with the Clinic in regard to the diary that had been maintained, documenting instances where patients and family members had reported being distressed by activities outside the Clinic. Clinic management have confirmed following

introduction of the PSPO, these events stopped occurring and it has ultimately become unnecessary for them to maintain this record.

- 5.12 Clinic management have described to officers the positive impact on women attending appointments and what they an 'air of normality', which they have described as existing outside the clinic; they say this permeates the Clinic environment in a positive way and describe clients presenting as 'less tense' when they arrive at the Clinic.
- 5.13 An important aspect of the order has been the provision of a *designated area* within the footprint of the PSPO, where the prohibitions and requirements of the PSPO do *not* apply and where activities such as protest about (albeit with some restrictions) are permitted. This area has been used by Pro-Life group members on a near daily basis, almost continuously since the introduction of the order. The individuals using that area congregate in small groups, often displaying small signs relating to abortion, offering leaflets to and attempting to engage with passers-by.
- 5.14 While the Council occasionally receives reports from residents and people visiting the area that object to the continued presence of Pro-Life group members in the designated area, none of these reports have identified any breach of the PSPO taking place and the designated area continues to form an important part of the careful consideration the Council has made in balancing the rights of those visiting the Clinic with those of the groups wishing to assemble, protest, impart information and express their religious beliefs. As far as the Council is aware the people attending the designated area have complied with the restrictions which apply within that area.
- 5.15 As outlined in the evidence to Cabinet in April 2018, during the Lent period leading up to Easter, the area has historically seen high levels of represented groups attending the location immediately outside the Clinic. These groups often form part of the *40 Days for Life* initiative referenced above. During the Lent period of 2020, these congregations took place at the East end of Mattock Lane on the threshold of the PSPO area.

## **6. Options considered and consultation process**

6.1 As outlined in Section 3, the council have two key options at this juncture:

1. Take no action. This will mean the PSPO will come to an end on 10<sup>th</sup> April 2021.
2. Proceed with consultation on renewal or variation of the existing order. This will require a consultation to be undertaken in line with the process undertaken in January – March 2018.

6.2 If option 1 is considered appropriate by Cabinet, no further action needs to be taken by members. The PSPO will expire on 10<sup>th</sup> April 2021, signage will be removed and none of the prohibitions or requirements of the order will apply to any persons in the locality thereafter, save for by further order or other action.

6.3 If Cabinet are minded to conclude option 2 is most appropriate, a full consultation is required to be undertaken. This will involve specific consultation with all groups known to be involved in the activities regulated by the PSPO, as well as with Marie Stopes, British Pregnancy Advisory Service (BPAS), clinic service users, the Metropolitan Police, Clinical Commissioning Group, NHS, Public Health and local faith groups. It will also involve an online survey in line with the public survey undertaken in 2018.

6.4 Following this consultation a further report to Cabinet (likely February 2021) would be presented, outlining the outcome of the consultation and a full review of the assessed impact and effectiveness of the order to date, along with advice to Cabinet on the requirement for renewal or variation of the PSPO.

## **7. Financial implications**

7.1 The investigation has been managed within the existing resources of the Safer Communities Team, albeit resulting in the need to realign priorities.

7.2 These costs of the investigation and implementation of the PSPO have been met from the Safer Communities approved budget.

7.3 The Council's legal costs, primarily incurred from resisting the appeals, have to date amounted to £0.144m. This does not include the significant cost of officer time in investigating the activities, collating evidence and witness statements, coordinating an extensive consultation and analysing the results and preparing significant reports, legal bundles and representations.

7.4 The cost of the recommended consultation is estimated to be around £0.005m and will be managed within the existing resources of the Safer Communities Team.

## **8. Legal framework**

8.1 The power for local authorities to draft, implement, vary and extend PSPOs is governed by the *Anti-social Behaviour, Crime and Policing Act 2014*. The Act gives councils the authority to implement PSPOs in response to defined issues affecting their communities, provided certain criteria and legal tests are met. PSPOs can be used to prohibit specified activities, and / or to require certain things be done by people engaged in particular activities, within a defined public area.

8.2 Breach of a PSPO without reasonable excuse is a criminal offence. The Police or a person authorised by the Council can issue fixed penalty notices, the amount of which may not be more than £100. A person can also be prosecuted for breach of a PSPO and on conviction the Magistrates' Court can impose a fine not exceeding level 3 on the standard scale (currently £1000).

8.3 A PSPO can be made by a local authority if it is satisfied on reasonable grounds that two conditions are met. These are found in section 59 of the 2014 Act:

8.4 The first condition is that:

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

The second condition is that the effect, or likely effect, of the activities:

- i) *is or is likely to be, of a persistent or continuing nature,*
- ii) *is, or is likely to be, such as to make the activities unreasonable, and*
- iii) *justifies the restrictions imposed by the notice.*

The PSPO must identify the public place in question and can:

- i) *prohibit specified things being done in that public place*
- ii) *require specified things to be done by persons carrying on specified activities in that place; or*
- iii) *do both of those things.*

8.5 The only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order to prevent or reduce the risk of the detrimental effect continuing, occurring or recurring.

8.6 Prohibitions may apply to all persons, or only to persons in specified categories, or to all persons except those in specified categories.

8.7 The PSPO may specify the times at which it applies and the circumstances in which it applies or does not apply.

8.8 Unless extended the PSPO may not have effect for more than 3 years. There is no statutory requirement to review a PSPO once made, however Ealing has continually reviewed the impact of the order as part of its on-going monitoring arrangements and in the significant work undertaken to respond to challenges in the High Court and Court of Appeal.

8.9A PSPO can be made for a maximum duration of up to three years, after which it may be extended if certain criteria under Section 60 of the Act are met. For a council to make the decision to extend a PSPO, they must be satisfied that:

- i) *An extension is necessary to prevent activity recurring, or*
- ii) *There has been an increase in frequency or seriousness of the activity*

8.10 Guidance for councils sets out that, where activity having a detrimental effect has been *eradicated* as a result of a PSPO, it is proportionate and appropriate to consider the *likelihood of recurrence of problems* if the Order is not extended.

8.11 If a PSPO is to be extended or varied, the council is required to undertake a further consultation process. If no action is taken the PSPO will end at the end of the period for which it was made (in the case of Mattock Lane, this would mean on 10<sup>th</sup> April 2020).

## **9. Risk management**

9.1 By introducing the order and defending numerous legal challenges, the Council has been exposed to financial risk, albeit all of which has to date fallen within the contingencies made in 2018.

9.2 In proceeding with a consultation, it should be noted that, as with the introduction of any order, any subsequent decision to vary or renew the order can also be challenged in the High Court.

9.3 Along with these risks to the Council, the risk of taking no action would itself result in the risk of the return of behaviours established to have caused detrimental effect.

## **10. Community Safety**

10.1 The Council has a duty under the Equality Act 2010 and our commitment to a safer Ealing to protect women, and particularly pregnant women, (both of which are groups which have protected characteristics under the 2010 Act), accessing health services. The Council's duties pursuant to the Crime and Disorder Act 1998 are also engaged by the issues evidenced to have been occurring in the locality of the Clinic.

## **11. Links to Council Priorities**

11.1 Continued action to ensure those accessing clinic services are protected from fear of intimidation, harassment or distress links to Ealing's priority of *A healthy and great place*, which outlines the Council's commitment to working with residents to build strong, fair communities and to keep the borough a clean, safe and attractive place to live.

## **12. Equalities, Human Rights and Community Cohesion**

12.1 A full Equalities Analysis Assessment and assessment of the Council's Public Sector Equality Duty was completed prior to the introduction of the PSPO and is exhibited at **Appendix 5** of this report. Should Cabinet be minded to proceed with the recommended consultation, an additional Equalities Analysis Assessment will be completed prior to the recommendation from that consultation being set out to Cabinet in February 2021.

## **13. Staffing/Workforce and Accommodation implications**

13.1 There are no proposed changes to Council staff or workforce within the outlined proposal beyond the staff resource required to coordinate the consultation process, analyse and present the responses and deliver the results to Cabinet.

## **14. Property and assets**

14.1 There are no implications for council property or assets beyond the continued deployment of CCTV and signage at the locality.

## **15. Any other implications**

15.1 There are no implications of the proposals that have not been addressed within the key implications outlined above.

## **16. Consultation**

16.1 Prior to the introduction of the PSPO the Council engaged with and sought engagement from all groups known to be involved in vigils and protest outside the Marie Stopes clinic. It additionally engaged with Marie Stopes, British Pregnancy Advisory Service (BPAS), clinic service users, the Metropolitan Police, Clinical Commissioning Group, NHS, Public Health and local faith groups. It is recommended that any consultation on the renewal or variation of the PSPO includes all of these groups.

16.2 Similarly, if the decision is made to consult on the renewal or variation of the PSPO, it is recommended formal consultation be progressed in line with the approach taken prior to the decision to introduce the order. This would include an online survey for a period of eight weeks, with the full results, along with analysis and consultation report provided to Cabinet in February 2021.

## **17. Timetable**

17.1 Should no action be taken, the PSPO will expire on 10<sup>th</sup> April 2021.

17.2 Should Cabinet conclude to proceed with consultation on extension or variation of the PSPO, the following timetable is provided as a guide for the subsequent milestones:

- **November 2020** – Consultation begins
- **January 2021** – Consultation closes
- **9<sup>th</sup> February 2021** – Cabinet consider consultation report and make decision on extension

## **18. Appendices**

**Appendix 1:** Copy of PSPO and map

**Appendix 2:** Copy of High Court judgement

**Appendix 3:** Copy of Court of Appeal judgement

**Appendix 4:** Copy of Supreme Court decision

**Appendix 5:** Copy of Equalities Impact Analysis

## **Section 18: Background Information**

Link to Mayor of London commitment of the 16/11/2017, page 13:

<https://www.london.gov.uk/moderngov/documents/s67400/Appendix%20%20-Questions%20to%20the%20Mayor%20-%20Transcript.pdf>

Link to Hansard Select Committee of the 12<sup>th</sup> of December 2017:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/harassment-and-intimidation-near-abortion-clinics/oral/75524.pdf>

Link to Cabinet report and appendices of 10<sup>th</sup> April 2018:

<https://ealing.cmis.uk.com/ealing/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/4980/Committee/3/Default.aspx>

## Consultation

<b>Name of consultee</b>	<b>Post held</b>	<b>Date sent to consultee</b>	<b>Date response received</b>	<b>Comments appear in paragraph:</b>
<b>Internal</b>				
Keith Robinson	Lawyer	21/09/20	13/10/20	
Mark Wiltshire	Director of Community Development	13/10/20		
Jess Murray	Head of Safer Communities and Resident Services	13/10/20		
Justin Morley	Head of Legal Services (Litigation)	13/10/20	16/10/20	
Yalini Gunarajah	Finance Manager	13/10/20	16/10/20	
<b>External</b>				
Kuljit Bhogal	Counsel	21/09/20	13/10/20	

## Report History

<b>Decision type:</b>	<b>Urgency item?</b>
Key decision	No
<b>Report no.:</b>	<b>Report author and contact for queries:</b>
	Paul Murphy Safer Communities Operations Manager (ext. 8807)