

# **Eastwood Village Public Space Protection Order**

The PSPO is designed to deal with a particular nuisance or problem in an area. The behaviour must be having a detrimental effect on the quality of life of those in the community, it must be persistent or continuing and it must be unreasonable. The PSPO can impose restrictions on the use of that area which apply to everyone who is carrying out that activity. The orders are designed to ensure that the law-abiding majority can enjoy public spaces, safe from anti-social behaviour.

## **Public Space Protection Orders- A background**

Public Spaces Protection Orders (PSPOs) were introduced to England and Wales in October 2014 by the then Conservative-Liberal Democrat Coalition Government, with parliamentary support from the Labour Party. They are one legal tool among a package of measures designed to enhance local agencies' abilities to reduce anti-social and nuisance behaviour.

A local authority may sanction a PSPO on reasonable ground that two conditions are satisfied:

1. Activities/ behaviour have had or are likely to have a detrimental effect on the quality of life of those in the locality.
2. The activity/ behaviour is likely to be of a persistent or continuing nature, such as to make the activity unreasonable.

Damian Green MP, the Minister for Policing and Criminal Justice at the time of the passage through Parliament of the Anti-Social Behaviour, Crime and Policing Act 2014, stated,

*"We all agree that public spaces are there for the enjoyment of the whole community, and we all know that there is too often a minority who spoil it for the majority. Local authorities need effective powers to tackle that minority, and we want to give them the right powers to protect communities' enjoyment of their public spaces".<sup>1</sup>*

PSPOs are intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community's quality of life... They are designed to ensure the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.<sup>2</sup>

The term 'quality of life' is not defined in the legislation. According to the Collins English Dictionary 'quality of life' is defined 'as the general well-being of a person or society, defined in terms of health and happiness, rather than wealth.' In recent years there has been a growing interest in the concept of quality of life in many disciplines including health, economics, philosophy, sociology and architecture. Organisations such as the EU<sup>3</sup>, the World Health Organisation and national governments<sup>4</sup> have sought to measure levels of quality of life. One problem for local authorities is this lack of clear and precise definition leads measures such as the PSPO open to critiques of subjectivity.

The second component required in satisfying the legal test for a PSPO is that activities are likely to be persistent or continuing, which makes the activities unreasonable and therefore justifies these restrictions on behaviour. This dissuades the local authority from sanctioning activities which occur as a one off or very rarely. In addition to this, these activities must be reasonable; or what is perceived as so to a reasonable person.

---

<sup>1</sup> Hansard, House of Commons, July 2<sup>nd</sup> 2013, Column 265

<sup>2</sup> Home Office, Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers Statutory guidance for frontline professionals (London: Home Office, 2014).

<sup>3</sup> Eurostat, Quality of Life: Facts and Views (Luxembourg: European Union, 2015).

<sup>4</sup> The Office for National Statistics, Measuring national well-being: Life in the UK: 2016 (London: Office for National Statistics, 2016)

## Eastwood Village Public Space Protection Order

In applying for such sanction, a local authority will find themselves balancing the quality of life of one group against that of another. As there is no need to establish harm, a local authority will often seek to protect the sensibilities of the law-abiding and reasonable majority.

During scrutiny of the legislation, the House of Lords proposed an amendment was added to the 2014 Act requiring that all local authorities must have regard to the rights of freedom of expression and freedom of assembly as set out in articles 10 and 11 of ECHR.<sup>5</sup> This provision has limited legal significance in that under section 6 of the Human Rights Act 1998 local authorities must already have regard to the convention rights in all of their actions, as they cannot purposefully act in contravention of these rights.

However, the statutory provision in the 2014 Act at least serves as a reminder that the PSPO is a legal intervention that has the potential to lead to the contravention of certain convention rights associated with public space. In line with ECHR and judicial review jurisprudence the local authority should be satisfied that the proposed restriction or prohibition is not arbitrary, unfair or based on irrational considerations<sup>6</sup>; it does no more than is necessary to accomplish its legitimate aim<sup>7</sup>; and that any interference with the rights of individuals is proportionate to the harm or potential harm caused<sup>8</sup>. Lord Taylor of Holbeach speaking on behalf of the Government sought to reassure peers as to how the test should be applied by local authorities:

*“Where orders are deemed to be unnecessary or disproportionate, there is still the ability for those affected to challenge it in court. The council will be mindful of this when judging whether the test has been met... The benefit to the community in tackling detrimental activities must be balanced against the impact of any prohibitions or requirements. I believe that local councils are capable of making such assessments and coming to the right decisions, having consulted the local community. If they get it wrong, or are perceived to have got it wrong, an order can be challenged in the courts”.*<sup>9</sup>

As a minimum, each PSPO must set out:

- What the detrimental activities are.
- What is being prohibited and/or required, including any exemptions.
- The area covered.
- The consequences for breach.
- The period for which it has effect.

### Literature Review- Public Space Protection Orders

In essence, a literature review looks at different published articles or research relevant to our subject matter. Below are some articles of note and a synopsis of findings of each.

#### **1. The Criminalisation of Public Space: The Use and Abuse of Public Spaces Protection Orders (PSPOs) in England and Wales**

---

<sup>5</sup> The 2014 Act, s72(1).

<sup>6</sup> Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223; Council of Civil Service Unions v Minister for the Civil Service [1983] UKHL 6.

<sup>7</sup> The Sunday Times v. The United Kingdom (1979) 2 EHRR 245.

<sup>8</sup> R (on the application of Daly) v Secretary of State for the Home Department [2001] 3 All ER 433.

<sup>9</sup> Hansard, House of Lords 25 Nov 2013 : Column 1221.

## Eastwood Village Public Space Protection Order

Brown, Kevin; (June 2017) Queen's University, Belfast, *The Hyper-Regulation of Public Space: The Use and Abuse of Public Spaces Protection Orders in England and Wales'* (2017) 37(3) *Legal Studies* 543-568

This paper explores through a doctrinal and socio-legal analysis how Public Spaces Protection Orders (PSPOs) are being used to enforce majoritarian sensibilities at the expense of due process and civil liberties. PSPOs were introduced to England and Wales in October 2014. These orders grant considerable discretion to local authorities to use the threat of criminal sanction to regulate activities in public spaces that they regard as being detrimental to the quality of life of residents. Initially, local authorities were slow to make use of PSPOs, but now many are now in place with their use steadily increasing. This paper fills a gap in the literature by providing a comprehensive critique of how these orders are used to target minority and vulnerable groups, whilst curtailing fundamental freedoms. The paper includes suggestions for reforms to make the PSPO function in a manner that is more compatible with a rights-based approach.

### **2. The Royal Borough of Kensington & Chelsea, Public Spaces Protection Order (PSPO) – ASB from motor vehicles**

Found at:

<https://www.rbkc.gov.uk/sites/default/files/atoms/files/ASB%20from%20Vehicles%20PSPO%20extension%20consultation%202018.pdf>

In essence, this piece is a review of the current PSPO in place in the borough which specially targets vehicle nuisance. The PSPO was launched in November 2015 after numerous nuisance complaints were received from residents and following a consultation with residents and the Police in the Knightsbridge area of the Royal Borough. The growing problem of ASB from motor vehicles in the area had increased over the previous few years. The main issue was the noise generated by “super cars” that were being driven through the area on an increasingly frequent basis. These vehicles are seen by many as status symbols and as is often the case, the louder the better. There are additional ASB issues such as sudden acceleration, loud stereo systems, illegal parking and congestion on the pavements caused by bystanders.

The article clearly stipulates a reduction of 55% in vehicle nuisance ASB in the borough from inception in 2016 to 2017. Of note, the borough has a dedicated PSPO email address for member of the public to contact, and from 2016 to 2017, has seen a drop in the usage of this by 36%.

### **3. Bhogul, K (2015), *Cornerstone on Anti-social Behaviour: The New Law*; Bloomsbury Professional Ltd**

This is a comprehensive guide of all legislation and case law used in the formulation of the Antisocial Behaviour, Crime and Disorder Act 2104. Of note, it highlights all powers contained within the legislation and justifications for its use, as well as examples of its effectiveness. This is particularly of interest to those with little knowledge or information on hand when it comes to ASB powers.

### **Evidence Based Policing- PSPOs of significance to the Eastwood Plan**

<b>Local Authority</b>	<b>Location</b>	<b>Prohibitions</b>
Gateshead Borough Council	Borough wide	<ul style="list-style-type: none"><li>• Prohibits drinking alcohol in the street</li><li>• Tackles dog fouling</li></ul>
Richmondshire council (2018)	Colburn & Brough with St Giles	<ul style="list-style-type: none"><li>• Congregating in a group that causes, or is likely to cause harassment, obstruction or</li></ul>

## Eastwood Village Public Space Protection Order

(initially set up to tackle youth ASB)	(mixture of residential/ park areas).	<p>concern for safety to another person</p> <ul style="list-style-type: none"> <li>• Threatening and/or abusing people within the restricted area</li> <li>• Continuing to consume alcohol when required to stop doing so by an authorised officer</li> <li>• Throwing objects which are liable to cause damage, nuisance, or injury to any person, animal or structure</li> </ul>
Royal Borough of Kensington & Chelsea (2015)	Borough wide initially, however they have made this smaller/ more specific due to the problems with resources to enforce such an area.	<ul style="list-style-type: none"> <li>• (Revving of engine(s) (as to cause a nuisance);</li> <li>• Repeated sudden and rapid acceleration (as to cause a nuisance);</li> <li>• Racing;</li> <li>• Performing stunts (as to cause a nuisance);</li> <li>• Sounding horns (as to cause a public nuisance);</li> <li>• Playing music in a motor vehicle (as to cause a public nuisance);</li> <li>• Using threatening, intimidating behaviour towards another person; and</li> <li>• Causing obstruction on a public highway, whether moving or stationary, including driving in convoy</li> </ul>
Oxford City Council	Foresters Tower	<ul style="list-style-type: none"> <li>• Young people under the age of 21, not legally resident in Foresters Tower are prohibited from entering (or having entered, remaining within) Foresters Tower, Woodfarm, Oxford, unless visiting a named legal resident of the place.</li> </ul>
Bassetlaw District Council- June 2018		<ul style="list-style-type: none"> <li>• No person shall shout, swear or act in a manner as to cause annoyance, harassment, alarm or distress to any person.</li> <li>• Persons aged 16 or under, who are not under the effective control of a parent or responsible adult are prohibited from gathering in groups of 3 or more. (only applies if group is causing annoyance, harassment, alarm, distress.</li> <li>• Any person, without reasonable excuse, continues to consume alcohol/ surrender any alcohol. A police officer/ designated person may dispose of any alcohol.</li> </ul>

### Of Note: The Royal Borough of Kensington & Chelsea

Positives	Negatives
-----------	-----------

## Eastwood Village Public Space Protection Order

<ul style="list-style-type: none"><li>• A 55% reduction in complaints from 2016 to 2017</li><li>• A 36% reduction in complaints via the dedicated PSPO email box from 2016 to 2017</li><li>• Dedicated PSPO patrols by the Council and Police</li><li>• Permanent traffic signage installed</li><li>• Temporary pedestrian signage installed</li><li>• At the busiest times for vehicle ASB, the Police utilised dispersal orders</li></ul>	<ul style="list-style-type: none"><li>• The PSPO cannot completely eradicate the ASB</li><li>• Tackling foreign plated vehicles is exceptionally difficult</li><li>• Unfortunately, the relevant embassies were not prepared to engage with this initiative</li><li>• Council and Police officers cannot be present all the time. Both have numerous competing priorities across the 18 wards in the Royal Borough</li><li>• Some witness statements from the public have generally been of a poor quality. The general public do not have the evidence gathering skills that Council and police officers possess</li><li>• There are no powers under the PSPO to seize vehicles</li></ul>
---	--

### Consultation

The council can make a PSPO on any public space within its own area but before doing so it must consult with the local police. The council must also consult whatever community representatives it thinks appropriate. This could relate to a specific group, (for instance a residents' association), or an individual or group of individuals, (for instance, regular users of a park or for specific activities such as busking or other types of street entertainment).

- The community safety partnership's strategic assessment
- Police data on crime and anti-social behaviour incidents (including the impact of some problem behaviours, such as excessive drinking)
- Hospital data on ingesting new psychoactive substances
- Calls to 101
- Calls to council services reporting incidents
- Residents' logs and photographs of anti-social behaviour
- Mapping of problem areas
- Data on the effectiveness of previous Gating Orders or Dog Control Orders
- CCTV footage of incidents
- Reports from council staff such as park
- Wardens and cleaners.

### Scrutiny and suggested questions for overview and scrutiny committees

These are not exhaustive, and are the ones laid out by Home Office directives on the implementation of PSPOs.

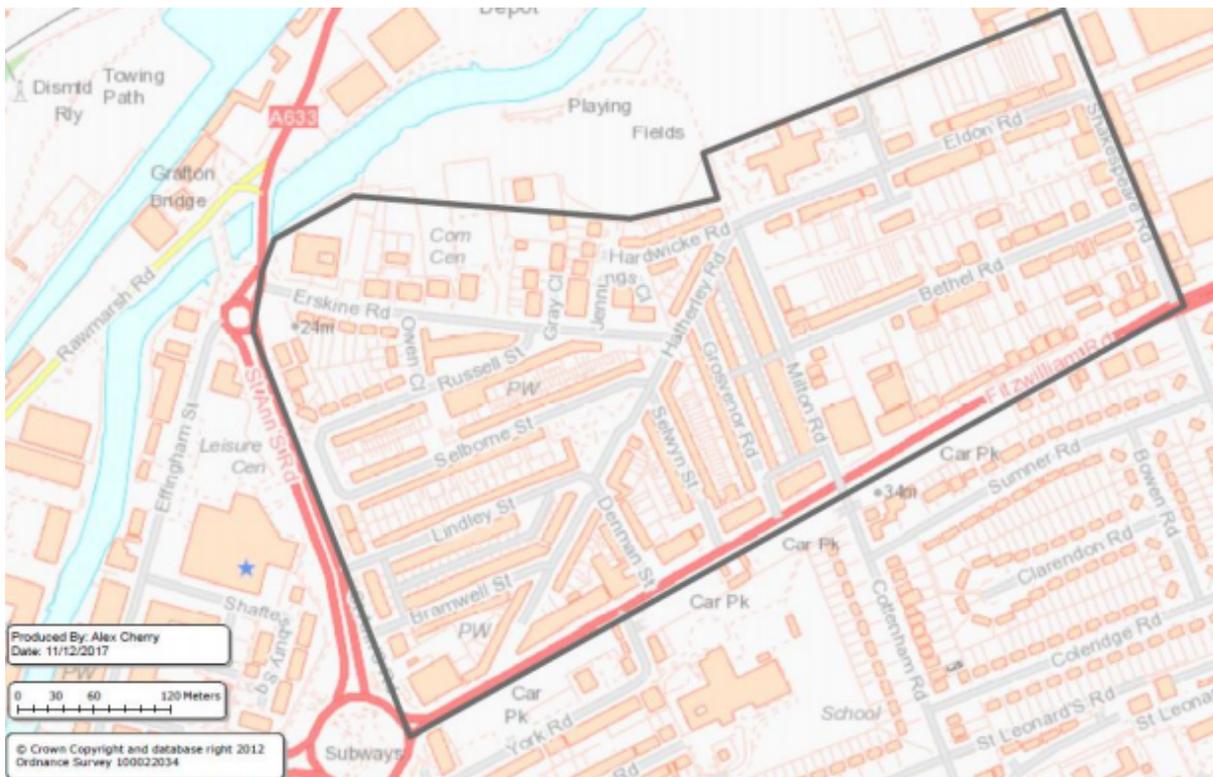
1. What evidence is there that the anti-social behaviour is or is likely to be persistent, detrimental and unreasonable?
2. Why is a PSPO being proposed to address this issue or issues?
3. Is the proposed restriction proportionate to the specific harm or nuisance that is being caused?

## Eastwood Village Public Space Protection Order

4. What alternative approaches are available and why is a PSPO appropriate in these circumstances?
5. Will the proposals alleviate each of the problem behaviours?
6. Have exemptions been considered?
7. What might be the unintended consequences for each aspect of the PSPO? What will be the impact on different groups? Has an equalities impact assessment been undertaken and what were its findings? What can be done to mitigate against any negative consequences?
8. How have the consultation outcomes and other evidence collated been taken into account? How will the PSPO be enforced for each restriction/requirement? Are there sufficient resources to do this effectively?

### The Eastwood Proposal

- The appropriate scope of the Order
- The area covered by the restrictions
- The potential impact of the proposals
- How each of the restrictions meets
- The legal test



### **Considerations for the area**

- Data for ASB focus on the use of the above area. Should the PSPO include the playing fields no Eldon Road? If so, where is the data to show ASB is this public space is an issue?

### Data analysis of ASB in Eastwood

2016-2017

## Eastwood Village Public Space Protection Order

The table below shows the breakdown of ASB by result sub-class over the last 2 years:

ASB Sub-Class	Year 1	Year 2	Change	% Change
PERSONAL	207	117	-90	-43%
NUISANCE	470	389	-81	-17%
ENVIRONMENTAL	36	52	16	44%
Grand Total	713	558	-155	-22%

It is noted that volumes of Personal and Nuisance ASB have reduced whilst reports of Environmental ASB have increased. When looking at the incident types, the same top 5 issues were reported in both year 1 and year 2, albeit with Noise becoming more of a concern in year 2.

ASB Sub-Class	Year 1	Year 2	Change	% Change
ROWDY/INCONSID	349	231	-118	-34%
NOISE	35	70	35	100%
NUISANCE NEIGHBOUR	88	63	-25	-28%
VEH NUIS/INAP USE	36	43	7	19%
DISTURBANCE/FIGHTING	30	35	5	17%
Grand Total	538	442	-96	-18%

***STILL AWAITING DATA FROM RMBC REGARDING IMPACT OF PSPO IN TOWN CENTRE.***

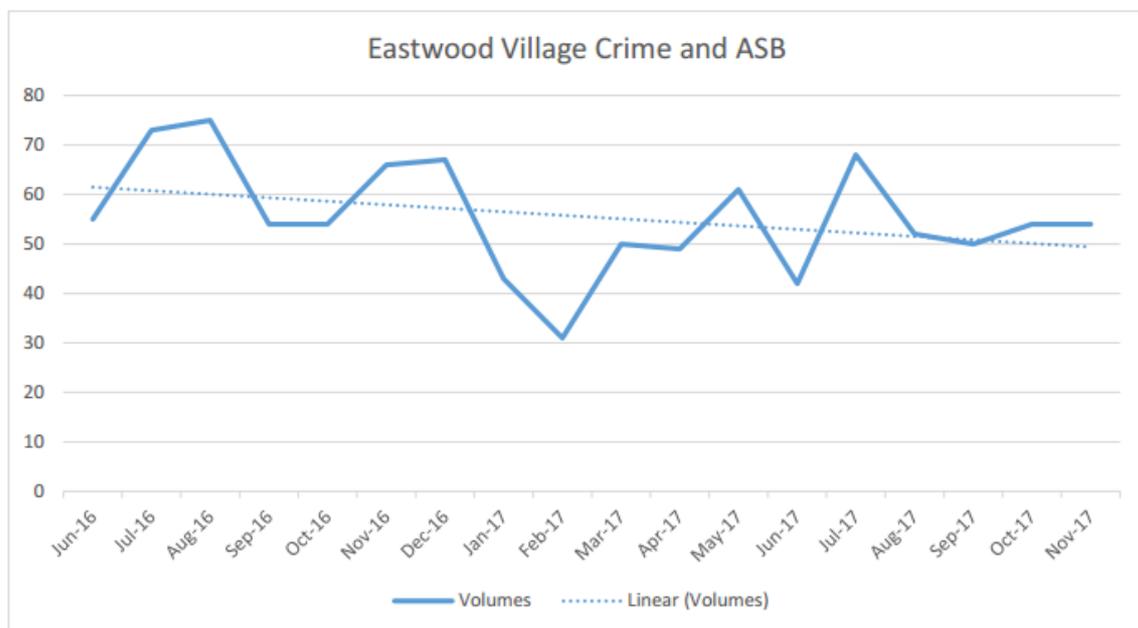
# Eastwood Village Public Space Protection Order

## ASB Volumes

- Eastwood Village recorded a **41% reduction** in ASB incidents between the two periods.
- This is in comparison to a slightly lower reduction seen across CC as a whole, 36%.

## Month-by-Month Comparisons

	CRIME				ASB				OVERALL			
	2016	2017	change	%	2016	2017	change	%	2016	2017	change	%
June	21	26	5	24%	32	16	-16	-50%	53	42	-11	-21%
July	31	45	14	45%	41	23	-18	-44%	72	68	-4	-6%
August	38	35	-3	-8%	33	17	-16	-48%	71	52	-19	-27%
September	31	37	6	19%	22	13	-9	-41%	53	50	-3	-6%
October	32	37	5	16%	20	17	-3	-15%	52	54	2	4%
November	41	41	0	0%	21	13	-8	-38%	62	54	-8	-13%
<b>Total</b>	<b>194</b>	<b>221</b>	<b>27</b>	<b>14%</b>	<b>169</b>	<b>99</b>	<b>-70</b>	<b>-41%</b>	<b>363</b>	<b>320</b>	<b>-43</b>	<b>-12%</b>



*Reductions can be seen across the 18 month period.*

<b>Scrutiny</b>	
Restrictions on alcohol	<ul style="list-style-type: none"> <li>• Issuing a PSPO ticket will be easier than a section 5 ticket.</li> <li>• Potential to sanction businesses in the area selling strong alcohol (as in Town Center).</li> <li>• More so a summer issue</li> <li>• Can the behaviour be deemed unreasonable and therefore meet the legal test?</li> <li>• Cannot issue a ticket to anyone that is already drunk</li> <li>• PCSO have not dealt with anyone drunk and disorderly in the Village area.</li> </ul>
Use of foul and	<ul style="list-style-type: none"> <li>• Allows for non-police staff to deal with behaviour positively and</li> </ul>

## Eastwood Village Public Space Protection Order

abusive language	<p>instantaneously; by enabling them to do so, will reduce reports and demand on police.</p> <ul style="list-style-type: none"> <li>• Limited in scope- could it be extend to behaviour that causes annoyance, harassment alarm and distress (Town Centre evidence base/ evidence from other local authorities).</li> </ul>
Vehicle nuisance	<ul style="list-style-type: none"> <li>• Gives council officers a power to enforce vehicles being driven in an antisocial manner.</li> <li>• It is an issue in Eastwood.</li> <li>• Police/ PCSO already have powers to ticket obstructions/ seize etc with ADM171/2.</li> <li>• Council has power to ticket for double yellow line parking</li> <li>• Cannot be issued for speeding as speed is objective and too open to legal scrutiny.</li> <li>• As in Kensington- there is difficulty implementing a PSPO on a foreign vrm.</li> </ul>
Tidy gardens	<ul style="list-style-type: none"> <li>• Will encourage residents and landlords to maintain properties.</li> <li>• Gives a proportionate impact- visit, warning, revisit, ticket.</li> <li>• Enables police to tickets for untidy/ dirty gardens.</li> <li>• Potential to save money from an environmental health perspective, as council will not be having to clear such large amounts of waste.</li> <li>• Do selective licensing have the power to enforce already? If so, is this creating more bureaucracy than needed?</li> <li>• Police/ PCSOs have a lack of training on environmental issues- yes we understand what is deemed 'messy' but may be less willing to ticket for the offence.</li> <li>• Difficulty in accessing most rear gardens due to design in Eastwood.</li> <li>• Most gate key locks have been changed.</li> <li>• Could it be fly tipping- and therefore are we sanctioning the wrong person?</li> <li>• May encourage people to fly tip elsewhere in Eastwood.</li> </ul>
Restricted access to open spaces/ groups of people	<ul style="list-style-type: none"> <li>• Lower burden of proof needed than a section 35 dispersal and therefore</li> <li>• Contravenes a person's human rights as set out in the ECHR.</li> <li>• PCSOs never needed to disbanded groups of people in the village area.</li> <li>• Police do have s35 dispersal if needed- when was the last used in Eastwood.</li> </ul>
Noise nuisance	<ul style="list-style-type: none"> <li>• Out of hours runs between Thursday-Sunday; does this mean they will be able to instantly issue tickets?</li> <li>• Difficulty in judging reasonable noise levels- could some noise ie a party be considered a 'one-off' and therefore not satisfy the legal test of the PSPO?</li> <li>• Council power to enforce nuisance noise already exist.</li> <li>• Council officers working after 16:00 in order to enforce the majority of noise complaints happening after these hours. Will it become the</li> </ul>

## Eastwood Village Public Space Protection Order

	sole burden of SYP to do so?
Business tidiness	<ul style="list-style-type: none"><li>• Enables a wider scope of police powers</li><li>• Lack of training in the police to help enforce this.</li></ul>
Evidence from residents may be subjective <ol style="list-style-type: none"><li>1. Allows for reports from local residents to sanctioned immediately</li><li>2. Reports from locals about ASB are limited, and arguably too subjective to use as evidence of a sanction being ignored.</li><li>3. Evidence gathering to sanction individuals may become a higher burden than is proportionate.</li></ol>	
Many of the sanctions covered in the proposals can be tackled by police/ council powers/ departments already <ol style="list-style-type: none"><li>1. Allows police/ council to share work loads more effectively by widening powers for both branches.</li><li>2. However, is it just a way of saving money from a wider budget by conferring these powers to all eg selective licensing core role will be effected by gardens proposals, environment agency by the businesses one.</li></ol> <ul style="list-style-type: none"><li>• Human rights and contravening these</li><li>• Public perceptions of only Eastwood Village being sanctioned may be detrimental to conducive living within wider Rotherham.</li><li>• An issue of resource</li></ul>	

### Conclusions

There is no doubt that a PSPO for the Eastwood Village area would help to tackle issues that have been the foundation of living in this community for far too long. The safety and quality of life of those in the area is paramount; no one disputes this and the PSPO will give us unbridled powers as both police and council workers to tackle issues that would sometimes require months of evidence gathering.

Training for those implementing such powers from both a police and council perspective will be needed to ensure its success ie training for police on tidiness/ cleanliness from an environmental health perspective, and training for the council from a traffic perspective to name a few.

It is also important to establish clear boundaries on expectations of enforcement ie, what, if any evidence is required to issue a ticket successfully?

In addition, we cannot forget the caveat of resource. In order for PSPOs to be successful, there must be dedicated officials in that area at all hours of the day. Is there scope for council workers to go beyond, or reestablish duty times in order to accommodate this? Will there be extra resources guided into the area in order to make the enforcement successful?

## Eastwood Village Public Space Protection Order

Proposed Timeline

PSPO Timeline							
Activity	Nov	Dec	Jan	Feb	Mar	Apr	May
Establish Timeline							
Outline Potential Conditions							
Establish Evidence Base							
Draft consultation plan							
Cabinet - Decision to Consult							
Consultation							
Develop Implementation Plan							
Cabinet - Final Decision							
Implement							