

LIBERTY

Communities, Housing & Environment Committee
Maidstone House
King Street
Maidstone
Kent, ME15 6JQ

By email only to: consultation@maidstone.gov.uk

Our ref: 39/LW/CCT

2 May 2023

Dear Communities, Housing & Environment Committee,

Renewal of Public Space Protection Order (PSPO) in Maidstone Town Centre

I am writing in relation to Maidstone Borough Council's ("the Council") consultation regarding the proposed extension of its Town Centre Public Spaces Protection Order ("the PSPO"). Our letter is based on information regarding the consultation as set out on the Council's website¹, as well as within the draft PSPO itself.²

1. Background to Liberty's concerns

Liberty has been concerned about the impact of PSPOs since their inception and has successfully persuaded a number of local authorities not to pursue their proposed PSPOs. We are particularly concerned about the potential misuse of PSPOs, especially those that punish poverty-related behaviours such as begging. For the reasons set out below, we are against the renewal of the PSPO.

2. Lack of evidence

We are disappointed that no evidence has been published on the Council's website to support the renewal of the PSPO, particularly the provisions that seek to criminalise behaviours associated with poverty.

The Council is required by s. 59 of the Anti-social Behaviour, Crime and Policing Act 2014 (the "Act") to be satisfied on reasonable grounds that the PSPO is necessary to prevent the occurrence or recurrence of the activities specified in the PSPO, or to prevent an increase in the frequency or seriousness of those activities. The Council cannot reasonably be satisfied of these conditions without first considering robust evidence on the situation in the area which will be covered by the renewed PSPO. Having had the original PSPO in place since 2017 (and the revised version in place since 2020), there should be extensive evidence available on

¹ <https://letstalkmaidstone.uk.engagementhq.com/town-centre-bsp0-2023-review>

² <https://letstalkmaidstone.uk.engagementhq.com/21926/widgets/64927/documents/39479>

LAWYERS

HEAD OF LEGAL CASEWORK
Louise Whitfield, Solicitor

Lana Adamou, Solicitor
Megan Goulding, Solicitor
Katy Watts, Solicitor

The solicitors employed by Liberty are individually authorised and regulated by the Solicitors Regulation Authority.

whether it has reduced the occurrence of the behaviours it seeks to deter.

The Council's website states that "*a review undertaken with community safety partners has found that the existing PSPO remains an effective tool against specific forms of anti-social behaviour*", yet no evidence has been provided to support this statement. Many councils have realised that PSPOs are a blunt instrument and only serve to "move" the problem to a nearby area. Indeed, research by criminologists in 10 towns in England and Wales have found that PSPOs "merely recycle the homelessness problem rather than go any way towards deterring – let alone preventing – the problems associated with homelessness."³

By way of comparison, we have found that other councils have relied on, and published, data, witness statements, police reports, surveys, impact assessments, and many other sources of information to justify the need for a PSPO before setting out a proposed order and starting a consultation. If the Council goes ahead with renewing this PSPO without sufficient evidence, then it will be unlawful and vulnerable to challenge in the High Court. If you assert that evidence has been considered, we request that you provide evidence to demonstrate that the renewal of the PSPO is necessary to prevent the 'antisocial' behaviours. Please do so without delay so that we may review it.

Furthermore, when considering any evidence, the Council should ensure that its consultation has heard a representative sample of views, including from those who will be negatively affected by the PSPO, who are likely to be among the most vulnerable and marginalised members of the community.

3. General concerns

Firstly, the presence of people living on the streets, who may be begging, is a symptom of poverty and of the detrimental impact of economic inequality and other factors, not the cause. The Council should liaise with local community partners to address the causes of poverty and homelessness; not renew a PSPO that targets and criminalises those living on the streets and in poverty, thereby simply moving the problem to a nearby area.

Secondly, The PSPO provisions below also constitute a potential interference with Article 8 and 10 of the European Convention on Human Rights ('the Convention'). Under s.6 of the Human Rights Act 1998, the Council must not act in a way which is incompatible with any rights contained in the Convention. Article 8 of the Convention grants the right to respect for family and private life. This extends to the protection of personal autonomy and can apply to activities conducted in public; this is especially true of homeless people whose scope for private life is highly circumscribed. Article 10 protects the right to freedom of expression. Any interference with this right must be '*in accordance with the law*', a concept which has been interpreted to mean that any relevant legal provision must be circumscribed with precision and allow sufficient foreseeability of its breadth and consequences. There is a clear risk that the terms included in the PSPO fail to satisfy this requirement and are therefore interfere with rights under Article 8 and 10.

We have set out below more detailed concerns that we have in respect of prohibition [1] relating to begging.

³ <https://www.theguardian.com/society/2022/sep/27/dispersing-homeless-people-fails-to-stop-antisocial-behaviour-finds-study>; accessed on 24 April 2023.

4. Begging

- a. ***All persons are prohibited from approaching another person, either physically or verbally or sitting, laying or loitering in doorways or similar, or next to an ATM within the Restricted Area in order to beg from any other person, including by the use of signage, children, animals or any other means, in order to solicit monies from another other person or using any receptacle to contain monies for the purpose of begging.***

This prohibition does not apply to any authorised collections made on behalf of a registered charity.

We object to the proposal of the prohibition relating to begging for the reasons outlined below.

The Council is required by s.59 of the Anti-Social Behaviour, Crime and Policing Act 2014 to be satisfied on reasonable grounds that the conditions to implement the PSPO are met. The Council can only impose PSPO requirements that is reasonable to impose. It is clearly not reasonable to impose requirements that are simply not needed or could be addressed by more focused provisions of a PSPO.

Additionally, it is not reasonable (or efficient) to target those who are begging with fines that they cannot afford to pay. Indeed, it would be particularly cruel and perverse for those caught begging in violation of the PSPO to have to pay a fine using what little money they might have saved from charitable donations.

The Home Office's guidance "Anti-social Behaviour, Crime and Policing Act 2014 – Anti-social behaviour powers – Statutory guidance for frontline professionals" revised in March 2023 (the 'Statutory Guidance')⁴ emphasises that the prohibited behaviour itself must be unreasonable, and that PSPOs should only be used to address any specific behaviour which is within the control of the person concerned.⁵ Begging when in poverty is not in itself harmful or unreasonable, nor does that person have any other option where begging is their only means to provide for themselves.

The only method of enforcing a PSPO is by way of a Fixed Penalty Notice (an 'FPN') of up to £100 or, upon prosecution, a fine of up to £1,000. A PSPO does not give council officers, police officers or Magistrates any other additional powers, for example powers to require engagement with substance misuse services. However, this is not made clear in the consultation at all. Prosecution for breaching a PSPO cannot, other than in the most exceptional circumstances, lead to the imposition of a community sentence.

Begging is not anti-social behaviour: it is often an act of desperation. This PSPO draws some of the most vulnerable people into the criminal justice system. People who resort to begging are likely to do so because of poverty, addiction and/or mental health issues. They are also highly unlikely to be able to pay an FPN or a Magistrate's Court fine, and a resulting criminal record will not alleviate their poverty or address the underlying causes.

The prohibition on begging constitutes an interference with Articles 8 and 10 of the Convention and is therefore a breach of the Human Rights Act 1998. The measure interferes with these rights in two ways: firstly, begging is arguably an expression of poverty and disadvantage, and criminalising such conduct may undermine the right to freedom of expression under Article 10

⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/956143/ASB_Statutory_Guidance.pdf, accessed 24 April 2023.

⁵ Page 61.

of the Convention. Secondly, Article 8 of the Convention extends to the protection of personal autonomy and can apply to activities conducted in public. Begging is a form of interaction with others and, its criminalisation falls within the scope of the right to respect for private life in Article 8.

In a recent case in the European Court of Human Rights (ECtHR), a blanket ban on begging was held to be unlawful.⁶ The court stated that the penalty given impaired the very “essence” of Article 8 and ultimately undermined “human dignity”; it had not been “proportionate either to the aim of combating organised crime or to the aim of protecting the rights of passers-by, residents and shopkeepers.”⁷ In addition, the Court noted the opinion of the United Nations Special Rapporteur on extreme poverty and human rights, according to which the motivation to render poverty less visible in a town, and (thereby) to attract investment, is not compatible with a proper regard for human rights.⁸ The Council should therefore be aware of the unlawful nature of its blanket ban on begging.

There are well-established links between homelessness and disability, based on a range of academic studies in this area. This is recognised in the Government’s September 2022, Ending Rough Sleeping for Good,⁹ which states that “many people sleeping rough suffer from poor mental health and substance misuse.” Those who fail to engage with support services among the homeless and destitute are precisely those who are the most vulnerable; they should not be criminalised.

There is therefore a risk that this prohibition unlawfully discriminates against disabled people.

5. Rough Sleeping

The survey on the Council’s website asks whether “*in the last three years there has been any change in people lying in or sleeping in a public space*”. This appears as though the Council is asking for the public’s view as to whether rough sleeping should be addressed via the renewed PSPO. No proposed PSPO wording is set out; but we are very concerned that any such prohibition would unfairly target rough sleepers and those who are hungry and in most need of support, not criminalisation.

Like begging, rough sleeping is not anti-social behaviour. It is an act of sheer desperation. They should be offered any support they need– they should not be criminalised.

Any prohibition on living on the streets would also constitute an interference with Article 8 of the Convention. Local authorities are bound by s. 6 of the Human Rights Act 1998 not to act in any way which is incompatible with any rights contained in the Convention. Article 8 of the Convention extends to the protection of personal autonomy and can apply to activities conducted in public; this is especially true of the homeless whose scope for private life is highly circumscribed.

CONCLUSION

The Council’s proposed renewal of the PSPO in Maidstone town centre is unreasonable and potentially unlawful. The PSPO would disproportionately interfere with people’s basic rights, including their right to inherent human dignity. It adds nothing to the fight to alleviate poverty.

⁶ Lăcătuș v. Switzerland (application no. 14065/15) [19.01.2021], paras 115-117.

⁷ Ibid, para 115.

⁸ Ibid, para 113.

⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1102408/20220903_Ending_rough_sleeping_for_good.pdf, , accessed 24 April 2023.