

Subject:	Managing Anti-social Behaviour in City Parks and Open Spaces		
Date of Meeting:	14 July 2016		
Report of:	Executive Director for Finance and Resources		
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Ward(s) affected:	All		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 The purpose of this report is to document progress for managing anti-social behaviour in city parks and open spaces using a Public Spaces Protection Order (PSPO) that is now available using new powers under the Anti-social Behaviour Crime and Policing Act 2014 (ASBCPA). This report considers the use of this new power following consultation and a full equality impact assessment in locations where there is reported anti-social behaviour.

2. RECOMMENDATIONS

That the committee agrees to the making of a Public Spaces Protection Order under Section 59 of the Anti-social Behaviour Crime and Policing Act and the prohibitions and requirements in the specific areas of the city outlined in this report for the duration three years.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 PSPOs are intended to be used to deal with a particular nuisance or problem in an area that is detrimental to the local community's quality of life by imposing conditions on the use of that area that apply to everyone. They are designed to ensure people can use and enjoy public spaces safe from anti-social behaviour.
- 3.2 Councils can make a PSPO after consultation with the police, the Police and Crime Commissioner, and other relevant bodies and communities. The following criteria must be met in relation to the behaviour being restricted:
- be having a detrimental effect on the quality of life of those in the locality;
 - be persistent or continuous; and
 - be unreasonable
- 3.3 This report proposes the use of a PSPO to deal with anti-social behaviour reported to the council and police. Those reports show that the occupation of some areas causes nuisance and annoyance that is detrimental to the quality of

life of people using those areas or living nearby. In some instances there have been reports of damaging land by driving on it, defecating nearby, leaving rubbish, setting fires and criminal damage.

- 3.4 The consideration of the use of a PSPO has been taken within the context of the local authority area. The city is bounded by the sea and the South Downs National Park. The city is densely populated with some significant housing pressures. There is a significant and growing group of people who reside in tents and vans. The aim of the PSPO is to achieve protection for a limited number of green spaces within the city. These are sensitive areas, for example they are parks that are used by high volumes of people or there are environmental issues, which mean that anyone residing in them is likely to cause problems. The legitimate aims are varied, but in general it is ensuring that the health and wellbeing of the residents of the city is protected and people can use those spaces free from anti-social behaviour.
- 3.5 The PSPO will be a further option to support the range of other remedies including byelaws and possession actions under the Civil Procedure Rules. It is intended that all relevant government guidance, on matters such as welfare checks will be complied with and the purpose of the orders is to provide an immediate response once the relevant issues have been assessed. The PSPO serves to complement the existing range of powers and sets out areas of particular sensitivity, producing a clear demarcation of areas that are not suitable for toleration of the prohibited behaviours.
- 3.6 The collation of recently reported incidents (over the past two years) has highlighted twelve areas where it would be proportionate to manage anti-social behaviour using a PSPO. These locations include sites that are sensitive because they have heritage status, are heavily used, or are adjacent to densely populated areas and are as follows:

- Greenway (adjacent to railway New England Quarter)
- Hollingbury Park
- Lawn Memorial Cemetery and adjacent land (Woodingdean)
- Preston Park
- Rottingdean Recreation Ground
- The seafront including the A259 from Black Rock to Hove Lagoon
- Sheepcote Valley and East Brighton Park
- St Helens Green
- Stanmer Park
- Surrenden Field
- Waterhall
- Wild Park

Maps showing defined areas are available in Members' rooms.

- 3.7 A PSPO can include prohibitions and positive requirements and based on reported incidents the following would be appropriate and proportionate:

Prohibitions:

- Occupying any vehicle, caravan, tent or other structure

- Driving any vehicle on grass
- Littering or fly tipping
- Lighting or maintaining a fire
- Defecating or urinating

Positive requirements:

- Removing any vehicle, caravan, tent or other structure within 12 hours
 - Disposing of items as directed
 - Permitting a council, police or fire officer to extinguish a fire
 - Providing name, address and date of birth when required to do so by a council or police officer
- 3.8 Breaching a PSPO is a criminal offence. A fixed penalty notice can be issued or a summons can be served. It is suggested that a fixed penalty notice carries a fine of £75.00, this is the same fine that is applied to a fixed penalty notice in relation to littering and flytipping. The amount of the fine will be kept under review. If police are not satisfied regarding the identification or an address given by an offender they can arrest under the Police and Criminal Evidence Act 1984. A breach of a PSPO can be enforced by a council or police officer.
- 3.9 People staying in these locations include ethnically defined Gypsies and Travellers who tend to use large caravans and towing vehicles, new travellers who use a variety of older large vehicles including caravans, people who choose to sleep in tents rather than rough sleep in the city centre, and in some instances people camping whilst visiting Brighton. In relation to the tent encampments, these include a broad range of people often with vulnerabilities.
- 3.10 Because the PSPO recommended here could have a disproportionate effect on some sections of society there has been extensive consultation in relation to its possible implementation, and there has been an early and ongoing Equality Impact Assessment which was shared as part of the consultation. The order is restricted to 12 sites initially and a new transit site for Gypsies and Travellers will be open when the order would be implemented.
- 3.11 The proposed PSPO would enable officers to expand the range of options already available to them to manage anti-social behaviour. There will need to be a clear rationale as to why the PSPO was used or was not used to manage a situation. This will also include consideration of capacity to enforce at the time. Consideration will also be given to what is the safest method of dealing with a problem with an assessment as to whether the order could be enforced by council staff alone or would police need to be involved.
- 3.12 Key to decision making on whether to use a PSPO in a given situation will be whether it is the appropriate proportionate response in the circumstances. Officers will receive appropriate briefing and training prior to the enforcement of the PSPO.
- 3.13 In deciding what action to take in relation to an incursion by Gypsies and Travellers consideration will be given to the welfare of those present and the availability of pitches at the new transit site in Horsdean. This new provision, which has a 21 pitch transit site together with 12 permanent pitches will be open by the time that the PSPO would be implemented.

- 3.14 If the recommendation is agreed the next steps will be to develop, agree and locate signage, develop a fixed penalty notice process and deliver training and briefing as necessary. There will be a quarterly meeting of relevant officers to monitor and evaluate the use of the PSPO and its equality impact. This may be more frequent to start with.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 Injunctions, powers under the Criminal Justice and Public Order Act 1994 to move people on and other legislation have been used in the past to manage the occupation of land and associated anti-social behaviour with varying degrees of success.
- 4.2 The further use of injunctions has been considered, the primary difficulty being the identification of the people involved. If an injunction is appealed the land could continue to be occupied. Private land occupied by tents has been very difficult to deal with using existing powers.
- 4.3 Further provision of stopping spaces over and above new provision at Horsdean would also be likely to further reduce the occupation of parks and open spaces.
- 4.4 Finally another option would be not to use a PSPO and to carry on using existing processes and powers to manage ASB in high impact areas.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 Consultation and engagement regarding the possible use of a PSPO as outlined in this report has been extensive. A widely publicised consultation exercise using the consultation portal on the council website resulted in 1109 responses. The analysis of this at Appendix One of this report.
- 5.2 An offer was made to community groups and park user groups to meet and consider their views. Council officers met with officers of Friends, Families and Travellers (FFT) and a group of about 20 new travellers. The notes from that meeting are available in Members' rooms
- 5.3 There were also three written responses to the consultation. Responses from the Equality and Human Rights Commission, Liberty and Friends, Families and Travellers are included at the end of Appendix One.

6. CONCLUSION

- 6.1 Existing measures to manage the occupation of parks and land have had limited success in managing ASB associated with the unauthorised occupation of land. The implementation of a PSPO in areas that are most impacted by the unauthorised occupation of land or associated anti-social behaviour would show that the council and partners are prepared to use other means of addressing the issue.

- 6.2 The use of PSPOs in city parks and open spaces is likely to disproportionately impact on some sections of society. The use of this new legislation needs to be proportionate to the harm being caused.
- 6.3 The Equality Impact Assessment and relevant actions will be closely monitored.
- 6.4 If the recommendation is agreed officers will begin the next stages towards implementation developing signage, a fixed penalty notice process and delivering training and briefing as necessary.
- 6.5 The proposed PSPO will be another option for officers to consider when addressing reported anti-social behaviour in city parks and open spaces.

7. FINANCIAL & OTHER IMPLICATIONS

Financial Implications:

- 7.1 This legislation is untested in relation to using a PSPO the manner outlined in this report. Any prosecutions may be subject to legal challenge. A challenge to the Order itself must be made in the High Court.
- 7.2 There is a requirement to publicise the existence of the order and there will be an accompanying communication plan.. Some signage will be needed. Officers will need to be trained and a fixed penalty process will need to be implemented. This will need to be costed.

Finance Officer Consulted: Dave Kuenssberg

Date:4/6/2016

Legal Implications:

- 7.3 The report already refers to legal issues about the practicalities and legitimacy of this as an action, which do not need to be repeated.
- 7.4 What is required is consideration of the interplay between the relevant pieces of legislation. This includes but is not limited to the Equality Act; the Human Rights Act and a variety of legislation and guidance which is directly relevant where specifically Gypsies and Travellers (who meet the statutory definition) are concerned. It is not the intent of the making of a PSPO to circumvent the legislation. What needs to be achieved is a consideration of all the circumstances and to identify whether there is a legitimate aim which can be pursued which allows the making of the order even where there may be some conflict with other duties. For instance the aims of the Equality Act are clear. It will be argued that the effect of the PSPO will be to cause discrimination direct or indirect. The Act is very clear that if a public body can show it to be a proportionate means of achieving a legitimate aim, then the Act is not breached.
- 7.5 The issue therefore is what is the legitimate aim that is being pursued and whether or not it is proportionate. Great consideration has been given about what the chosen sites should be. Equally consideration has been given to the terms to be included. Each site has been selected according to a set of criteria that is relevant to that site or more generally. It reflects concerns and issues raised with a range of bodies. So the legitimate aim will be protection of the sites

for a combination of reasons. Whether the making of the PSPO is proportionate (in terms of the legitimate aim) is a balancing exercise between competing interests. It is a matter of looking at all the factors involved, the local circumstances, the circumstances specific to each piece of land, the people involved (both those housed and those not) and the people impacted. If the conclusion is that this is the most proportionate way of achieving the desired outcome then the action is legitimate.

- 7.6 It is also relevant to be mindful that there are already a number of powers available to take action where there are problems. This means that the PSPO is supplementing legitimate methods (and not replacing them). In one sense therefore we are simply adding a different route to the same result. If this is correct then it is a legitimate and proportionate measure at least in this regard.
- 7.7 It should be noted that this is a very sensitive area, where with regards to Gypsies and Travellers and especially new travellers we have experienced many legal challenges. The council has always been successful in defending the legal challenges previously made, but this is a new area of law. Despite the considerable amount of work which has been undertaken in terms of preparation, consultation, the consequential analysis and the work on consideration as to the equalities impact, there is the potential for challenge by way of judicial review. This exists both in relation to the approval of the PSPO by the members and subsequently when it is utilised. We are confident that we would prevail in such an application, but it could introduce delay and costs.

Lawyer Consulted: Simon Court

Date: 24/6/2016

Equalities Implications:

- 7.8 An EIA has been developed through the process of considering and developing the PSPOs and a draft was shared as part of the consultation. The full EIA is available in Members rooms.
- 7.9 The council has legal obligations to both local residents wishing to use the parks and to Gypsies and Travellers and other groups.
- 7.10 The legitimate aims of the PSPO are varied, but in general they are to ensure that people are free to use public spaces free from anti-social behaviour. This would contribute to the health and well-being of citizens in an urban environment.
- 7.11 The order has to be taken within the context of the local authority area. The City is an area which is bisected across the top third by the South Downs National Park (which then becomes the planning authority). It is a high density city with some significant and hard to tackle housing issues. There is a significant and growing group of people who reside in tents and vans. These are in addition to the traditional ethnic Gypsies and Travellers and new travellers. The aim of the PSPO is to achieve protection for a limited number of green spaces within the city. The areas covered by the proposed PSPO have been identified using evidence from police and council, covering complaints, reports of incidents, use by large numbers of people and/or for sports, and details of sensitivity of sites (historical and environmental).

- 7.12 The council has a duty to foster good relations between groups. Council communications in relation to this proposal have been and will remain clear that the purpose is not to target any specific group and that discrimination and hate crimes or incidents are and will remain unacceptable and may potentially lead to police investigation.
- 7.13 The terms of the order will impact a broad range of people. In relation to groups protected by the Equality Act 2010, there is likely to be an impact on ethnic Gypsies and Travellers, because their lifestyle means that they are more likely to be frequently affected by the PSPO prohibitions. However there is a new transit site and permanent site being opened in July 2016. It is not the case that Gypsies and Travellers protected in the Equality Act 2010 because of their ethnicity will be prevented from following their lifestyle, but rather there may be limits in specific areas for legitimate reasons.
- 7.14 The council has also made efforts over a number of years to improve provision for the Gypsy and Traveller population through work including its development of a permanent site at Horsdean, the work of its Traveller Liaison team and its Traveller School Liaison Officer. The council's Gypsy and Traveller Strategy contains a 'toleration protocol'. Where possible attempts have been made to negotiate with groups and to tolerate stopping in specific places. The numbers of pitches required to meet Gypsy and Traveller needs is constantly under review and further action will be taken if required.
- 7.15 Discretion in relation to the enforcement of the proposed PSPOs will remain: the council will continue to assess the welfare needs of site residents, including the needs of children. Equally the council and police continue to be able to use other legal remedies for moving on encampments and will continue to employ these. PSPOs provide an additional option.
- 7.16 Gender issues have also been considered. It may be that in relation to ethnic Gypsies and Travellers most of the impact of enforcement will fall on women since men tend to be out working during the day and women are more likely to be on site when enforcement action will be taken.
- 7.17 New Travellers do not have the same protection under the equality Act 2010 as those from an ethnic Gypsy or Traveller background. Attempts will be made to engage with this group to ascertain which people are Travellers with a background of nomadic economic migration and those who simply have no recourse to other accommodation and are living in vehicles or tents. Identifying and working positively with them will enable any mental or physical health needs to be met as appropriate.
- 7.18 People occupying tents or other structures may be residing in these because they are homeless. Officers and agencies working with the homeless population do report that these people are often vulnerable with diagnosed or undiagnosed mental health and substance misuse issues. They are mainly male, a low number are BME or LGBT.
- 7.19 The orders themselves will be one more option to support the existing range of options including byelaws and possession actions under the Civil Procedure Rules. It is intended that all relevant government guidance, on matters such as

welfare checks will be complied with and the purpose of the PSPO is to provide an immediate response once the relevant issues have been assessed. In that sense it serves only to complement that already existing range of powers and clearly defines areas of particular sensitivity that will normally be presumed to be unsuitable for any toleration of the prohibited behaviour, for the legitimate reasons outlined above and in the papers.

Sustainability Implications:

- 7.20 A PSPO can be made for three years. Consideration needs to be given to capacity to enforce in the future.

SUPPORTING DOCUMENTATION

Appendices:

Appendix One: PSPO Consultation Report

Appendix Two: Written responses (x3)

Available in Members rooms:

PSPO Equality Impact Assessment

Maps defining locations suggested

Notes from meeting with New Travellers

Appendix One: PSPO Consultation Report

Consultation Report:

PUBLIC SPACES PROTECTION ORDERS (PSPOs) in City Parks and Open Spaces, 2016

Contact

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1. Introduction and purpose

Public Spaces Protection Orders (PSPOs) are intended to deal with a particular nuisance or problem in an area that is detrimental to the local community's quality of life by imposing conditions on the use of that area that apply to everyone. They are designed to ensure people can use and enjoy public spaces safe from anti-social behaviour. The council is proposing to use PSPOs to deal with issues in parks and open spaces that are detrimental to the quality of life of people using those areas or living nearby.

The council was seeking to know;

- Which parks and open spaces were used most frequently
- If in the past 12 months people had witnessed any incidences of anti-social behaviour in a park or open space
- If people agreed or disagreed with the idea of PSPOs
- Of the behaviours that the PSPO will be used to manage which the council should prioritise

2. Methodology

A consultation document and on-line self-completion questionnaire were devised to inform and give an opportunity to comment on the proposals.

The questionnaire was available on the city's online Consultation Portal between 25 January 2016 and 27 April 2016 with the link distributed via the usual council channels with specific emphasis on social media linking through to the council webpages. Hard copies were also available if requested.

As a self-selecting questionnaire it is not possible to determine if the responses to the survey are representative of all residents in the city.

As part of the questionnaire, respondents were asked;

- If they were responding to the consultation as either a local resident, visitor or as a representative of a local community or voluntary organisation (CVS), local business or other stakeholder group
- To complete the council's standard equalities monitoring form
- For their postcode

3. Response and respondents profile

In total 1,109 responses were received including responses from;

- 977 local residents
- 66 visitors to the city
- 31 local community & voluntary sector (CVS) representatives
- 21 local business, stakeholder or partnership representatives
- 47 'other' responses

Notes:

- (i) Respondents are not mutually exclusive to one group.
- (ii) Seven responses were removed due to racist language/response.

Relatively high numbers of respondents (15 to 24 per cent depending on the question) did not complete the equalities and demographic questions. Therefore it is not possible to compare the respondents' profile with that of the city as whole.

Nearly two out of five respondents are regular users of Preston Park (42 per cent, 420 people) and Stanmer Park (40 per cent, 393 people) a quarter of respondents are regular users of open spaces along the seafront (25 per cent, 252 people) and more than one in ten use Wild Park (15 per cent, 149 people) and Rottingdean Recreation Ground (11 per cent, 108 people).

A full equalities and demographic profile can be found in section 5 of this report.

4. Results and findings

The responses to the consultation have been analysed by the following groups;

- Local residents
- Visitors to the city
- Local business, CVS, stakeholders and partnership representatives
- 'Other' respondents
- All usual equality groups

Responses from local residents and visitors to all closed questions have been analysed by the following demographics and equalities groups;

- Age
- Carers
- Connection to the Armed Forces
- Gender
- Ethnicity
- Health problem and disability
- Religion or belief
- Sexual orientation

Note: The relatively high numbers of respondents who did not provide complete equalities and demographic responses, combined with the small number of responses from some equalities groups, makes equalities and demographic analysis difficult. Therefore care needs to be taken when interpreting the results.

4.1 Experience of anti-social behaviour in parks

Respondents were asked if in the last 12 months, they had experienced an incident in a park or open space which they regard as anti-social.

- More than nine out of ten responded to this question (93 per cent, 1,026 people)

- More than a quarter of those responding (29 per cent, 298 people) said that they had not experienced an incident within a park/open space in the last twelve months that they considered anti-social.
- The most common incidents respondents said they had experienced (Table 1) were:
 - Vehicles / caravans / tents in the park / open space (38%)
 - Fly tipping / rubbish (27%)
 - People defecating / urinating (15%)
 - Vehicles driving or speeding over grass areas (15%) – of particular note were the use of quad bikes
 - Verbal abuse / intimidation or aggression (13%)

Table 1: Behaviours and people whom the behaviours were attributed						
	All respondents		Attributed to Gypsies and Travellers	Key Locations (most mentioned)		
	n = 1,026	%				
Vehicles / caravans / tents in the park/open space	392	38%	67%	Preston Park	Rottingdean Rec	Seafront
Fly tipping / rubbish	275	27%	54%	Preston Park	Seafront	Stanmer Park
People defecating/urinating	152	15%	58%	Preston Park	Rottingdean Rec	Seafront
Vehicles driving or speeding over grass areas	150	15%	57%	Preston Park	Stanmer Park	Wild Park
Verbal abuse / intimidation or aggression	137	13%	65%	Preston Park	Seafront	Stanmer Park
Felt intimidated by presence of Gypsies / Travellers or unable to use park / open space	116	11%	-	Preston Park	Seafront	Stanmer
Dogs (threatening / out of control)	102	10%	48%	Stanmer Park	Preston Park	Seafront
Damage to gates / fences / public property	69	7%	57%	Rottingdean Rec	Seafront	Stanmer Park
Owners not picking up after dogs	57	6%	14%	Stanmer Park	Seafront	-
Damage to grass / habitat	54	5%	59%	Preston Park	Sheepcote Valley	Stanmer Park

- Many respondents specified who had been responsible for the behaviour and these results are given in table 1 – for example 54% of incidents of fly tipping / litter were specifically attributed to Gypsies/Travellers but only 14% of incidents mentioning dog owners not picking up after their dogs was attributed to Gypsies/Travellers (the majority did not specify)

4.2 Public Space Protection Orders

Respondents were asked how much they agreed or disagreed that having PSPOs was a good idea.

Table 2 shows that respondents had strong views about whether PSPOs are a good idea or not. Nearly all respondents either strongly agreed or strongly disagreed with only a small number of respondents tending to agree, tending to disagree or saying neither.

- More than three quarters of residents (77 per cent, 748 people) agreed that PSPOs were a good idea with more than two thirds strongly agreeing (69 per cent, 674 people). A fifth of respondents (21 per cent, 203 people) disagreed with 16 per cent (158 people) strongly disagreeing.
- CVS, business and stakeholder representatives were most likely to agree that PSPOs were a good idea with 43 out of 50 representatives (86 per cent) doing so.
- Three out of five visitors to the city (60 per cent, 39 people) disagreed that PSPOs were a good idea.

Table 2: How much do you agree or disagree that having Public Spaces Protection Orders is a good idea?					
	Are you completing this survey as a...				All responses
	Brighton & Hove resident	Visitor to the city	CVS, Business, stakeholder or partnership representative	Other	
Strongly agree	674	22	40	23	735
	69%	34%	80%	52%	67%
Tend to agree	74	3	3	3	81
	8%	5%	6%	7%	7%
Neither agree nor disagree	15	0	0	1	16
	2%	0%	0%	2%	1%
Tend to disagree	45	5	1	2	52
	5%	8%	2%	5%	5%
Strongly disagree	158	34	6	15	204
	16%	52%	12%	34%	19%
Don't know / not sure	7	1	0	0	8
	1%	2%	0%	0%	1%
Total	973	65	50	44	1,096

More than nine out of ten respondents who agreed (92 per cent, 753 people) or disagreed (93 per cent, 238 people) that PSPOs are a good idea gave reasons why. Tables 3a and 3b summarises their reasons.

Table 3a: Respondents who agree that PSPOs are a good idea		
	Number	%
Enable everyone / residents / visitors to use parks	264	35%
Protect the parks/environment/wildlife	179	24%
Addresses anti-social behaviours	134	18%
Will reduce costs / save money	110	15%
Other routes have been ineffective / take too long – will speed up the process	94	12%
Improve safety	72	10%
Fairness – should be the same rules for all	55	7%
Addresses illegal activities	36	5%
Removal of health hazards	27	4%
As long as enforced	18	2%
But need safe spaces for Gypsies and Travellers	15	2%
But need safe spaces for homeless people	7	1%
Miscellaneous	62	8%
Base: All who strongly or tended to agree that PSPOs are a good idea and who shared their reasoning (n=753/92%)		

- The most common responses for those who agreed with having Public Spaces Protection Orders were that they would:
 - Enable everyone / residents / visitors to use parks (35 per cent)
 - Protect the parks / environment / wildlife (24 per cent)
 - Address anti-social behaviours (18 per cent)

- For those that disagreed with having the orders, the most common reasons cited were that they would:
 - Discriminate against / criminalises Gypsies and Travellers (35 per cent)
 - Discriminate against homeless people (23 per cent)
 - Be too punitive (21 per cent)

- Respondents who either agreed or disagreed that PSPOs are a good idea cited the importance of providing safe spaces for Gypsies and Travellers and homeless people.

Table 3b: Respondents who disagree that PSPOs are a good idea		
	Number	%
Discriminates against / criminalises Gypsies/Travellers	83	35%
Discriminates against homeless people	54	23%
Too punitive	51	21%
Infringement of civil liberties / People should have freedom of movement	44	18%
Public spaces should be for the use of all members of the public	36	15%
Need safe spaces for gypsies/travellers to stay	35	15%
Need safe spaces for homeless people to stay	23	10%
By enforce existing legislation on anti-social behaviour dog fouling / speeding etc. this would not be required	20	8%
Waste of money / the cost / resource to enforce	15	6%
Unnecessary e.g. there isn't anti-social behaviour	15	6%
Depends how it's enforced / could be misused	11	5%
Unenforceable	8	3%
People will use it to harass other park users for activities they consider anti-social	5	2%
Miscellaneous	4	2%
Base: All who tended to or strongly disagree the PSPOs are a good idea and who shared their reasoning (n=238/93%)		

Looking at responses by equality groups for local residents and visitors there a couple of notable differences (please refer to the note about the equalities analysis on page 4).

- **Younger respondents are less likely to agree that PSPOs are a good idea.** Only 35 out of 80 respondents (44 per cent) aged 18 to 34 agreed that PSPOs are a good idea compared to 65 per cent of respondents aged 35 to 54 and 92 per cent of respondents aged 55 and over.
- **Support for PSPOs varies by ethnicity.** Only 27 out of 49 respondents (55 per cent) of 'other' White ethnicity agreed that PSPOs are a good idea compare to 77 per cent of White UK/British respondents and 12 out of 16 (75 per cent) of non-white BME respondents.

4.3 Managing behaviour

From a list of behaviours, respondents were asked to rank them in order of priority and if there were any other behaviours which they think the PSPO could or should be used to manage. Table 4 summarises their responses.

Table 4: Which of these behaviours that Brighton & Hove City Council intends to manage using PSPO do you think should have the highest priority?

	Are you completing this survey as a...				Total
	Brighton & Hove resident	Visitor to the city	CVS, Business, stakeholder or partnership representative	Other	
Occupying any vehicle, caravan, tent or other structure	501 54%	10 17%	32 65%	16 41%	543 52%
Lighting or maintaining a fire	20 2%	0 0%	0 0%	1 3%	20 2%
Littering or fly tipping	210 23%	29 50%	7 14%	12 31%	249 24%
Driving any vehicle on grass	44 5%	2 3%	0 0%	1 3%	47 5%
Defecating or urinating	157 17%	17 29%	10 20%	9 23%	185 18%
Total	932	58	49	39	1044

For more than a half of residents (54 per cent, 501 people) occupying any vehicle, caravan, tent or other structure was the behaviour that the council should give the highest priority too. Less than one in twenty think driving any vehicle on the grass (5 per cent, 44 people) or lighting or maintaining a fire (2 per cent, 20 people) was the highest priority.

CVS, business and stakeholder representatives were more likely to want to prioritise occupying any vehicle, caravan, tent or other structures (65 per cent, 32 people) but for visitors the top priority was litter or fly tipping (50 per cent, 29 people).

Looking at responses by equality groups for local residents and visitors there are notable difference by age (please refer to the note about the equalities analysis on page 4).

- **The priority behaviour for the council to manage for people aged 18 to 34 is littering or fly-tipping.** Nearly a half of respondents aged 18 to 34 (47 per cent, 35 people) think that littering or fly tipping is the highest priority compared to only 28 per cent of 35 to 54 year olds and 14 per cent of respondents aged 55 or over.
- **Occupying any vehicle, caravan, tent or other structure is a lower priority for younger people.** Only 20 per cent of respondents (15 people) age 18 to 34 think that occupying any vehicle or structure should be given the highest priority compared to 45 per cent of 35 to 54 year olds and 64 per cent of respondents aged 55 and over.

In response to the question about what other behaviours PSPOs could or should manage 85 respondents (8 per cent) said none, while 433 respondents (39 per cent) made 44 suggestions. Table 5 summarises the behaviours mentioned by 10 or more people.

Table 5. Are there any other behaviours which you think the PSPOs could or should be used to manage?		
	Total	Percent
Abuse / intimidation / aggression including by children	91	21%
Dogs (threatening / out of control)	78	18%
Dogs defecating	56	13%
Alcohol consumption	48	11%
Noise including from generators, fireworks and or parties	47	11%
Vehicles / including taxing of vehicles	43	10%
Fly tipping / rubbish	41	9%
Damage to gates / fences / public property	41	9%
Drug use / dealing	27	6%
Damage to grass	24	6%
Animal cruelty / husbandry	22	5%
Driving / speeding	17	4%
Fires	14	3%
Humans defecating	11	3%
Intimidated by presence of G&T / unable to use park	11	3%
Professional Dog Walkers	11	3%
Thefts	11	3%
Base: All respondents who suggested behaviours (n=433)		

A quarter of respondents (21 per cent, 91 people) who suggested a behaviour that a PSPO could or should be used to manage, mentioned abuse, intimidation and aggression. More than one in ten also mentioned;

- Dogs threatening or out of control (18 per cent, 78 people)
- Dogs defecating (13 per cent, 56 people)
- Alcohol consumption (11 per cent, 48 people)
- Noise including from generators, fireworks and or parties (11 per cent, 47 people)
- Vehicles / including taxing of vehicles (10 per cent, 43 per cent)

4.4 Final comments

At the end of the questionnaire respondents were asked if they had any final comments with regards the use of PSPOs in Brighton and Hove.

Of the 1,109 respondents a third (34 per cent, 373 people) gave a response to this question. Responses were similar to those for the question asking if respondents agreed or disagreed with the idea of PSPOs.

- It is a bad idea (64 respondents)
- Discriminating against / criminalising Gypsies/travellers (54 respondents)
- Need for enforcement if put in place (46 respondents)
- Discriminating against homeless people (36 respondents)
- Too punitive (28 respondents)
- Need safe spaces for gypsies/travellers to stay (23 respondents)
- Protect the parks / environment / wildlife (17 respondents)
- Need safe spaces for homeless people to stay (17 respondents)
- Waste of money / the cost / resource to enforce (17 respondents)
- Enable everyone / residents / visitors to use parks (16 respondents)
- Depends how it's enforced / could be misused (15 respondents)
- Will reduce costs / save money (13 respondents)
- Improve safety (12 respondents)
- Address anti-social behaviour (11 respondent)

Respondents also said that PSPO should be extended to other parks;

- All parks and open spaces (34 respondents)
- Specific parks and open spaces (50 respondents), most mentioned was Beacon Hill Nature Reserve (18 respondents) and Salt dean Park (10 respondents)

5. Respondents profile

When asked what is your ethnicity? Six respondents identified as coming from the Gypsy/Traveller community. Two identified as White – Gypsy or Irish Traveller, two as White Other – New age traveller, one as White Other – Traveller and one as White Other – Scottish Tinker.

		Frequency	All respondents (%)	Who answered the question (%)
What age are you?				
Valid	18 to 24	18	2%	2%
	25 to 34	59	6%	7%
	35 to 44	188	18%	21%
	45 to 54	226	21%	25%
	55 to 64	201	19%	23%

	65 to 74	156	15%	18%
	75 and over	42	4%	5%
	Total	890	84%	100%
Missing	Not known	46	4%	
	Prefer not to say	123	12%	
	Total	169	16%	
Total		1059	100%	
What gender are you?				
Valid	Male	451	43%	48%
	Female	480	45%	51%
	Other	3	<0.5%	<0.5%
	Total	934	88%	100%
Missing	Not known	48	5%	
	Prefer not to say	77	7%	
	Total	125	12%	
Total		1059	100%	
Do you identify as the sex you were assigned at birth?				
Valid	Yes	856	81%	99%
	No	6	1%	1%
	Total	862	81%	100%
Missing	Unknown	87	8%	
	Prefer not to say	110	10%	
	Total	197	19%	
Total		1059	100%	
Which of the following best describes your sexual orientation?				
Valid	Heterosexual / Straight	738	70%	90%
	Lesbian / Gay woman	18	2%	2%
	Gay man	40	4%	5%
	Bisexual	21	2%	3%
	Other	5	<0.5%	1%
	Total	822	78%	100%
Missing	Not known	61	6%	
	Prefer not to say	176	17%	
	Total	237	22%	
Total		1059	100%	

		Frequency	All respondents (%)	Who answered the question (%)
What is your religion or belief?				
Valid	I have no particular religion	363	34%	42%
	Buddhist	18	2%	2%
	Christian	308	29%	35%
	Jain	1	<0.5%	<0.5%
	Jewish	9	1%	1%
	Pagan	14	1%	2%
	Agnostic	22	2%	3%
	Atheist	100	9%	12%
	Other	11	1%	1%
	Other philosophical belief	23	2%	3%

	Total	869	82%	100%
Missing	Not known	52	5%	
	Prefer not to say	138	13%	
	Total	190	18%	
Total		1059	100%	
Are your day to day activities limited because of a health problem or disability which has lasted, or is expected to last 12 months?				
Valid	Yes a little	106	10%	12%
	Yes a lot	60	6%	7%
	No	718	68%	81%
	Total	884	83%	100%
Missing	Not known	51	5%	
	Prefer not to say	124	12%	
	Total	175	17%	
Total		1059	100%	
What is your ethnicity?				
Valid	UK / British	836	79%	92
	Irish	13	1%	1
	Gypsy or Irish Traveller	2	<0.5%	<0.5%
	Any other White background	48	5%	5%
	Asian or Asian - Indian	1	<0.5%	<0.5%
	Any other Asian Background	1	<0.5%	<0.5%
	Black or Black British - Caribbean	2	<0.5%	<0.5%
	Mixed - Asian & White	2	<0.5%	<0.5%
	Mixed - Black Caribbean & White	2	<0.5%	<0.5%
	Any other mixed background	4	<0.5%	<0.5%
	Arab	1	<0.5%	<0.5%
	Any other ethnic group	2	<0.5%	<0.5%
	Total	913	86%	100%
	Missing	Not known	40	4%
Prefer not to say		106	10%	
Total		146	14%	
Total		1059	100%	

		Frequency	All respondents (%)	Who answered the question (%)
Are you a Carer?				
Valid	Yes	104	10%	12%
	No	792	75%	88%
	Total	896	85%	100%
Missing	Not known	59	6%	
	Prefer not to say	104	10%	
	Total	163	15%	
Total		1059	100%	
With a connection to the Armed Forces				
Valid	Yes	79	7%	10%
	No	730	69%	90%
	Total	809	76%	100%

Missing	No response	163	15%	
	Prefer not to say	87	8%	
	Total	250	24%	
Total		1059	100%	
Q1. Which park or open spaces do you use most regularly?				
Valid	Preston Park	418	39%	42%
	Stanmer Park	390	37%	40%
	Seafront Including Black Rock to Hove Lagoon	252	24%	26%
	Wild Park	149	14%	15%
	Rottingdean Recreation Ground	107	10%	11%
	Hollingbury Park	88	8%	9%
	Queens Park	67	6%	7%
	The Level	62	6%	6%
	East Brighton Park	61	6%	6%
	Hove Park	61	6%	6%
	Sheepcote Valley	60	6%	6%
	Waterhall	56	5%	6%
	Happy Valley	50	5%	5%
	Saltdean Oval	47	4%	5%
	Beacon Hill / Nature Reserve	39	4%	4%
	Withdean Park	38	4%	4%
	Surrenden Field	36	3%	4%
	Lawn Memorial and adjacent land (Woodingdean)	34	3%	3%
	St. Ann's Well Gardens	31	3%	3%
	Hove Lawns	23	2%	2%
Rottingdean	20	2%	2%	
Blakers Park	18	2%	2%	
Hollingbury	18	2%	2%	
East Brighton Park / Sheepcote Valley	14	1%	1%	

		Frequency	All respondents (%)	Who answered the question (%)
	Green Ridge / Coney Wood	12	1%	1%
	Dyke Road Park	11	1%	1%
	Greenway	11	1%	1%
	Wish Park	11	1%	1%
	Pavilion Gardens	8	1%	1%
	St. Helen's Green	8	1%	1%
	Rottingdean Park	7	1%	1%
	Kipling Gardens	6	1%	1%
	Rottingdean Windmill	6	1%	1%
	Victoria Park	6	%	1%
	Patcham Place Recreation Ground	5	1%	1%
	Carden Park	4	<0.5%	<0.5%
	Hollingdean Park	4	<0.5%	<0.5%

Hove Recreation Ground	4	<0.5%	<0.5%
Peacehaven	4	<0.5%	<0.5%
Race Hill / Course	4	<0.5%	<0.5%
William Clarke Park	4	<0.5%	<0.5%
Woodingdean	4	<0.5%	<0.5%
Woodingdean Bexhill Road	4	<0.5%	<0.5%
39 Acre	3	<0.5%	<0.5%
Devil's Dyke	3	<0.5%	<0.5%
Easthill Park	3	<0.5%	<0.5%
Ladies Miles Park	3	<0.5%	<0.5%
Peacock Park	3	<0.5%	<0.5%
Rottingdean Village Green	3	<0.5%	<0.5%
Vale Park	3	<0.5%	<0.5%
Benfield Valley	2	<0.5%	<0.5%
Chatsworth Park	2	<0.5%	<0.5%
Greenleas	2	<0.5%	<0.5%
Hollingbury Golf Course	2	<0.5%	<0.5%
Hollingbury woods	2	<0.5%	<0.5%
Horsdean Recreation Ground	2	<0.5%	<0.5%
Mile Oak Recreation Ground	2	<0.5%	<0.5%
Old Steine	2	<0.5%	<0.5%
Roedean / Cafe	2	<0.5%	<0.5%
Stoneham Park	2	<0.5%	<0.5%
Telscombe Tye	2	<0.5%	<0.5%
Valley Gardens	2	<0.5%	<0.5%
Victoria Recreation Ground	2	<0.5%	<0.5%
Woodindean Park	2	<0.5%	<0.5%
Adjacent to Ditchling Road reservoir	1	<0.5%	<0.5%
Barcombe Place	1	<0.5%	<0.5%
Barn Rise Green	1	<0.5%	<0.5%

	Frequency	All respondents (%)	Who answered the question (%)
Behind Nuffield Woodingdean	1	<0.5%	<0.5%
Benfield Hill Nature Reserve	1	<0.5%	<0.5%
Bevendean Down	1	<0.5%	<0.5%
Brighthelm	1	<0.5%	<0.5%
Brighton Marina Parade	1	<0.5%	<0.5%
Burstead Woods	1	<0.5%	<0.5%
Bypass to Devils Dyke	1	<0.5%	<0.5%
Castle Hill	1	<0.5%	<0.5%
Coldean Woods	1	<0.5%	<0.5%
Devil Dyke Road	1	<0.5%	<0.5%
Dorset Road	1	<0.5%	<0.5%
Downsman Pub	1	<0.5%	<0.5%
Dyke Railway track	1	<0.5%	<0.5%
Falter Hill	1	<0.5%	<0.5%
Hangleton Park	1	<0.5%	<0.5%

Hillingdean	1	<0.5%	<0.5%	
Hollingbury & Burstead Woods	1	<0.5%	<0.5%	
Hollingbury Fort	1	<0.5%	<0.5%	
Hove Museum Gardens	1	<0.5%	<0.5%	
Marina	1	<0.5%	<0.5%	
New Steine Gardens	1	<0.5%	<0.5%	
Old allotments	1	<0.5%	<0.5%	
Open land at the top of Woodingdean	1	<0.5%	<0.5%	
Park Traveller	1	<0.5%	<0.5%	
Patcham Place	1	<0.5%	<0.5%	
Peace Park, Peasehaven	1	<0.5%	<0.5%	
Saunders Park	1	<0.5%	<0.5%	
St Andrews Church	1	<0.5%	<0.5%	
St. Nic rest gardens	1	<0.5%	<0.5%	
Sweet Hill Laybys	1	<0.5%	<0.5%	
The cliff top from Saltdean to the Marina	1	<0.5%	<0.5%	
The Copse	1	<0.5%	<0.5%	
The Green - Westdene	1	<0.5%	<0.5%	
The Lilac Garden	1	<0.5%	<0.5%	
Westdene Park	1	<0.5%	<0.5%	
Whitehawk	1	<0.5%	<0.5%	
Whitehawk Hill	1	<0.5%	<0.5%	
Withdean Woods	1	<0.5%	<0.5%	
Woodingdean Windmill	1	<0.5%	<0.5%	
	Total	985	93%	100%
Missing	No response	74	7%	
	Total	1059		

Appendix Two: Written responses (x3)

(1 of 3)



Brighton and Hove City Council.

20 April 2016

Dear Sir or Madam,

Re: Public Spaces Protection Orders (PSPOs) in City Parks and Open Spaces.

Friends, Families and Travellers is a national charity working on behalf of all Gypsies, Travellers and Roma regardless of ethnicity, nationality, culture or background and we are pleased to offer our comments on the Council's proposals to implement Public Spaces Protection Orders in various locations throughout the City.

We are strongly opposed to the Council's proposals which in our view will, in addition to the impact on Travellers generally, adversely and unequally affect two of Brighton and Hove's ethnic minority communities, namely Romany Gypsies and Irish Travellers. As you will be aware the Council has a general equality duty, imposed by the Equality Act 2010 section 149, to have regard in the exercise of its functions to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Race Equality Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

It is not clear that the Council had proper regard to its Public Sector Equality Duty in advancing these proposals given that they will impact adversely and unequally on Romany Gypsies and Irish Travellers who are recognised as minority ethnic groups protected by the provisions of the Equality Act 2010.

Public Spaces Protection Orders are intended to deal with anti-social behaviour and we disagree profoundly with the assumption in the proposals that the mere presence on land of unauthorised encampments of homeless Gypsies and Travellers constitutes anti-social behaviour.

Such unauthorised encampments occur because there is a shortage of authorised sites for Gypsies and Travellers within the city, so that members of these communities with local connections have no choice but to encamp on sites which are not authorised. This in itself does not in our view constitute anti-social behaviour, but should any of the residents of the

encampments behave in an anti-social manner, there is already perfectly adequate legislation in place to deal with this.

The twelve locations covered by the proposed Public Space Protection Orders are very extensive in area and are those parts of the city where unauthorised encampments are most likely to occur. If Travellers were unable to stop within any of these locations this would mean unauthorised encampments would occur more frequently in other areas of the City and then the Council may consider introducing PSPOs in those locations. This could lead to a situation where there would be very few, if any, areas where Travellers could encamp, thus rendering Brighton & Hove effectively a no-go area for Gypsies and Travellers. This would be a regrettable position for a City that has historically celebrated its reputation for diversity.

As previously stated we do not consider that the mere presence of homeless people on land can possibly, in itself, constitute antisocial behaviour and we believe that there are genuine and worrying forms of antisocial behaviour that the Council should be devoting its resources towards tackling. For example the members of our staff team who live in Brighton & Hove have not themselves experienced anti-social behaviour from unauthorised encampments but have certainly witnessed dog faeces in the streets, amounting to a serious health hazard to children and adults, as well as drug abuse and dealing around the Level and elsewhere.

Under the proposals the mere existence of an unauthorised encampment in caravans is sufficient grounds for the activation of a PSPO, yet rough-sleeping on the streets of the City is not. This seems contradictory as both are manifestations of homelessness and a shortage of suitable accommodation.

These proposals would mark a reversal of the Council's current policy on unauthorised encampments which contains within it a 'toleration' policy of up to six weeks for encampments, and a legal requirement to carry out welfare enquiries.

We understand that Sussex Police are concerned about their capacity to enforce these proposals, and indeed they have adequate other legislation available to them to use on unauthorised encampments.

PSPOs were never designed to be used on unauthorised encampments. The guidance with regard to PSPOs is contained in 'Anti-social behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers: statutory guidance for frontline professionals' published by the Home Office in July 2014. The guidance contains reference to alcohol, dogs and noise, but no reference to unauthorised encampments.

It is recognised by a wide variety of organisations and by central government that the problem of unauthorised encampments is caused not through the fault of the Gypsies and Travellers concerned but due to the lack

of authorised permanent and transit pitches and emergency stopping places. It is difficult to see how the phenomenon of unauthorised encampments in itself could, therefore, be described as being 'unreasonable'.

We would also like to draw attention to the fact that BHCC's latest Gypsy and Traveller Accommodation Needs Assessment has identified a need for a further 32 pitches for the Gypsy and Traveller community in Brighton and Hove. It is completely disproportionate to introduce measures such as PSPOs in the absence of sufficient authorised pitch provision.

Article 8 of the European Convention on Human Rights, the right to respect for private and family life and home, is obviously relevant to unauthorised encampments. With regard to Article 8 it is important to apply the structured approach as explained by Lord Steyn in *R – v – Secretary of State for the Home Department ex parte Daly* (2001) 2 AC 532 at 27 and especially the question:

'Is the proposed measure the least restrictive means (in terms of the degree to which it interferes with a protected fundamental right) of accomplishing the relevant legitimate aim?'

Clearly there are ways in which such an extreme measure as a PSPO could be avoided e.g. by using existing possible methods of possession action such as Civil Procedure Rules Part 55 or Criminal Justice and Public Order Act 1994 Section 77.

We therefore conclude that the use of the PSPO as a mechanism for addressing the issue of unauthorised encampments in Brighton & Hove is inappropriate, unreasonable, unnecessary, contrary to Article 8 of the European Convention on Human Rights, and that its implementation would cause the Council to be in breach of its Public Sector Equality Duty.

Yours sincerely

Emma Nuttall
Advice and Policy Manager

Friends Families & Travellers **T: 01273 234 777**
Community Base, 113 Queens Road, Brighton, BN1 3XG **F: 01273 234 778**

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Registered charity no: 1112326 Company (non-profit voluntary organization) limited by guarantee – No. 3597515

Appendix Two: Written responses (x3)

(2 of 3)

Response of the Equality and Human Rights Commission to the Consultation:

Consultation details

Title:	Response of the Equality & Human Rights Commission to the Brighton & Hove City Council Consultation, <i>Public Spaces Protection Orders in City Parks and Open Spaces</i>
Source of consultation:	Brighton & Hove City Council
Date:	27 th April 2016

For more information please contact

Name of EHRC contact providing response and their office address:	
Rosemary Lloyd, Senior Solicitor, Equality and Human Rights Commission	
Telephone number:	0161 829 8432
Email address:	Rosemary.Lloyd@equalityhumanrights.com

Summary

1. The Equality and Human Rights Commission (“the Commission”) is Britain’s independent National Human Rights Institution. It has “A” status under the United Nations’ Paris Principles, and is under a statutory duty to encourage compliance with the UK’s obligations under human rights law. It is also responsible for promoting compliance with the Equality Act 2010. This response is limited to the issues within our remit, particularly concerning the impact of the proposal on Gypsies and Travellers.
2. The Commission acknowledges that balancing the rights of park users and those of ethnic Gypsies and Travellers can present a difficult situation for Councils to manage. The Council has to take into account its legal obligations in striking a balance between the rights of local residents to use public spaces and the interests of unauthorised campers. We are therefore grateful for the opportunity to put forward our views on this issue.
3. The consultation proposes to introduce a Public Spaces Protection Order (PSPO) in City Parks and Open Spaces which would prevent people occupying caravans, vehicles or tents in those areas or driving any vehicle on grass. The aims include increasing the ability of local communities to use the land without fear and concern. The proposed PSPO is also intended to address a number of linked problems, including damage to the land, human and domestic waste and criminal damage.
4. The consultation acknowledges that the persons most likely to occupy caravans in the open spaces targeted by the PSPO would be ethnically defined Gypsies and Travellers, and that these proposals would have a disproportionate impact on this group. The cause of unauthorised encampments is a shortage of authorised accommodation locally and nationally.
5. Gypsies and Travellers are an ethnic group protected under the Equality Act 2010. Equality and human rights law requires that the disparate impact on Gypsies and Travellers which

arises from the proposal should be justified and proportionate (as set out in more detail below).

6. The Commission's view is that this may be difficult to establish with the proposal as it is currently framed, in that it extends to using mere presence on the land as the basis for a criminal sanction. Where problems such as criminal damage arise a local authority will be justified in taking criminal or civil action to prevent them continuing but even that may not require immediate eviction, depending on the circumstances and the nature of the criminal act.
7. We would therefore ask the Council to give careful consideration to the points below in respect of:
 - The requirements of the public sector equality duty
 - Human rights obligations on public authorities
 - The need to justify differential impact on Gypsies and Travellers
 - Alternatives to the proposal that may be more proportionate
8. The Council could consider developing a revised, more limited proposal, that is capable of addressing these issues, see *Alternatives to the proposal below*. For example, local authorities can help Gypsies and Travellers to practice their travelling lifestyle - and save considerably on enforcement costs and harm to community cohesion - by introducing a 'negotiated stopping policy'.

Equality and human rights obligations

Public Sector Equality Duty

9. The public sector equality duty (PSED) requires public authorities, in the exercise of their functions, to have due regard to the need to:
 - (a) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not; and
 - (c) Foster good relations between people who share a protected characteristic and those who do not.
10. In paying due regard to these needs, the Council will need to take into account the extent of negative prejudices and racism amongst members of the public, and perpetuated in the media, in relation to Gypsies. The Commission's research has consistently demonstrated the extent of this problem (see annex 1). It will be important for the Council to fully differentiate between consultation responses that are genuinely motivated by reduced amenity or genuine fear and those motivated by prejudice or stereotyping.

11. Under the European Convention on Human Rights (Articles 8 and 14) and the Human Rights Act 1998, all public authorities owe a duty to facilitate the Gypsy and Traveller way of life. In *Chapman v UK* (2001) the European Court of Human Rights noted that:

“The vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in arriving at decisions in particular cases. To this extent there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the gypsy way of life”.

12. Facilitation of a way of life is a stronger obligation than merely protecting it. The European Framework Convention for the Protection of Minorities (to which the UK is a party) requires the UK and public authorities to take adequate measures to promote full and effective equality between persons belonging to a national minority and those belonging to the majority (in all areas of economic, social, political and cultural life). This includes promoting conditions that will enable the minority to maintain and develop their culture, and to preserve the essential elements of their identity, traditions and cultural heritage.¹
13. The Council therefore has duties under international law to protect and facilitate the Gypsy/Traveller way of life. These duties will be relevant to the issues of whether the Council has met its public sector equality duty in considering the PSPO proposal and whether the anticipated differential impact on Gypsies and Travellers can be justified.

The need to justify differential impact on Gypsies and Travellers

14. The harm that unauthorised encampments are likely to cause, especially in circumstances where there are no other related problems, such as anti-social behaviour, will be a relevant factor for the Council when considering justification. The Council will want to identify clearly the extent of any alleged nuisance said to originate from the mere fact of encampments, and the extent of evidence supporting the allegation, as opposed to anti-social behaviour (for which the council has other sanctions open to it).
15. The harm to the settled community has to be balanced against impact of the proposed PSPO on Gypsies and Travellers. The likely effect of the PSPO on the travelling community will be to render travelling in the Brighton and Hove area more difficult. The combination of a regional shortage of stopping places and the restrictions imposed by a PSPO are likely to lead Gypsies and Travellers to occupy more precarious and potentially dangerous roadside encampments.
16. Therefore a blanket prohibition on the emplacement of any caravan in any relevant open space in any circumstances is likely to be more difficult to justify than either:

¹ See also International Covenant on Civil and Political Rights (“ICCPR”), Article 27 and The Human Rights Committee General Comment no. 23

- (a) A more limited prohibition (whether or not achieved through a PSPO) that targets anti-social behaviour; or
- (b) A prohibition that applies to some parks or open spaces but not others, leaving some scope for Gypsies and Travellers to be moved on to more suitable locations.

Approach to unauthorised camping

17. This proposal appears to depart from central government *Guidance on managing unauthorised camping*. The Council is required to follow that guidance unless there is good reason not to.
18. The guidance says that:
- (a) Provision of and signposting to short-term stopping places is an essential component of any local strategy designed to deal with unauthorised camping: paras 4.2 and 4.4
 - (b) Local authorities should make proper inquiries to identify the needs of site residents: para 5.7. Case-law underlines the need to make inquiries and consider “the options” as an element of the “common humanity” required of local authorities.² The Council also has to take into account the best interests of any affected children.³
 - (c) Local authorities should draw up codes of expected behaviour for encampments, in consultation with the Gypsy/Traveller community, which are sensitive to cultural differences between the travelling and settled communities: paras 5.3, 7.3-75. The focus of any enforcement action should be on the specific problem or specific trouble maker and not the encampment as a whole.

Shortage of accommodation

19. The prevalence of unauthorised encampments in open spaces is a symptom of a shortage of appropriate accommodation for Gypsies and Travellers. The Council’s *Traveller Commissioning Strategy 2012* noted the nationwide and regional shortage of adequate and culturally suitable accommodation for Gypsies and Travellers: see sections 3.2 and 3.3. It accepted that the overriding reason for the increasingly high profile nature of Gypsies and Travellers within the City was because of a shortage of stopping places in the region. Nothing suggests that that analysis has altered in any way.
20. Whilst we welcome the Council’s progress to a new permanent site, there will remain a shortfall of transit site pitches and stopping places according to the Strategy document even following its completion.
21. The PSPO proposal will not therefore address the root causes of unauthorised encampments but will instead subject Gypsies and Travellers who wish to pursue a traditional, nomadic lifestyle to a criminal sanction.

² see *R v Lincolnshire CC, Ex p Atkinson & Ors* (1996) 8 Admin LR 529; and *R (Casey & Ors) v Crawley BC* [2006] EWHC 301 (Admin), para 77;

³ Section 11 of the Children Act 2004; and *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4

22. The application of a criminal sanction may be disproportionate where it is applied simply for the purpose of moving persons on given that:
- (a) It is good practice to tolerate unauthorised encampments in certain circumstances (as the Council's Strategy document accepts). Some occupants will be vulnerable or have needs that make immediate eviction inappropriate or disproportionate. While eviction may be appropriate for some encampments it is not appropriate for every encampment.
 - (b) The existing enforcement mechanisms for moving encampments on permit the decision maker a certain degree of discretion. However that would not appear to be the case with the proposed PSPO, because it will apply to any encampment regardless of the needs of its occupants.
 - (c) The Council has a range of other powers at its disposal for moving on encampments. Those powers are summarised in the Department for Communities and Local Government guidance *Dealing with illegal and unauthorised encampments* 2015. They include civil injunctions to prevent nuisance and annoyance (section 1 of the Anti-social Behaviour Crime and Policing Act 2014), civil injunctions to prevent trespass, claims for possession brought under CPR Part 55 and the power to direct unauthorised campers to leave land (section 77 of the Criminal Justice and Public Order Act 1994).
 - (d) These powers typically require a positive decision to be taken on the facts of each individual case that its use would be appropriate and proportionate. Each power is subject to its own set of safeguards, including the necessity of seeking a court order. The importance of using court orders for the purpose of eviction was acknowledged in the guidance. That is different to the process whereby a PSPO is adopted in respect of a larger area or a number of areas. In those circumstances no consideration needs to or will be systematically given to the circumstances of any individual case. It is not clear what forms of remedy an aggrieved person who is moved on by the Council or police may have.
 - (e) The absence of any discretion means no inquiries or consideration of the welfare needs of occupants such as disabled people; older people or children in encampments are likely to be made before seeking an eviction.⁴ Action to evict Gypsies and Travellers under the proposed PSPO could be taken without any consideration of the proportionality of the action.
23. In the Commission's view, in cases concerning a disadvantaged minority it is preferable for an individual and case-specific approach to be taken by the relevant local authority.⁵

Alternatives to the proposal that may be more proportionate

⁴ The Council has obligations to disabled people under the UNCRDP and to children under the Convention on the Rights of Child.

⁵ The Commission should also correct a misapprehension identified in the consultation document at para 4.2. It is not correct to say that the Council will need to know the names of occupants of caravans, vans or tents in order to be able to take civil action against them. The Civil Procedure Rules make provision for the initiation and prosecution of proceedings against "persons unknown". Indeed, in many trespasser possession claims the identity of the trespassers will not be known. There are also a number of examples of local authorities having sought injunctions against persons unknown: see for example Manchester City Council's injunction preventing the erection of tents for the purpose of protest within the City Centre; and the Black Country injunction restraining car racing. The ability of a local authority to bring proceedings against unnamed persons is addressed at para 6.18 of the *Guidance on managing unauthorised camping*.

24. Another viable alternative for the Council to consider - which was the recipient of a Lloyd's Bank Charity Achievement Award in 2015 - is the Negotiated Stopping Policy developed by Leeds City Council and the charity LeedsGATE. Leeds Council and Leeds Gypsy and Traveller Exchange created a new approach to managing temporary roadside encampment by Gypsy and Traveller people.
25. Instead of resorting to legal means to shift unauthorised camps, they now use dialogue and negotiation to enable travelling families to stay for limited periods of time, on ground where it is not causing great inconvenience to anyone. The families make an agreement with the authority about acceptable behaviour, waste disposal, and when the camp will leave, and the authority more or less leaves them alone. Trust is increased, conflict and exclusion are reduced, and Leeds Council calculates it makes a saving of £2000 a week on enforcement costs compared on expenditure before the policy was introduced. <http://leedsgate.co.uk/negotiated-stopping-wins-accolade>

Conclusion

26. We would therefore recommend the Council consider one of the more limited measures (which targets only anti-social behaviour or certain parks or open spaces) for consultation and adoption.

Research on the difficulties facing Gypsies and Travellers

England's most disadvantaged groups: Gypsies, Travellers and Roma (March 2016).
www.equalityhumanrights.com/sites/default/files/uploads/IEF%20Gypsies%20Travellers%20and%20Roma.pdf

Research published by the Traveller Movement and commissioned by the National Inclusion Health Board, on the *Impact of insecure accommodation and the living environment on Gypsies' and Travellers' health* (January 2016) (travellermovement.org.uk/wp-content/uploads/NIHB_-_Gypsy_and_Traveller_health_accs.pdf).

Gypsies & Travellers: Simple solutions for living together (March 2009).
www.equalityhumanrights.com/sites/default/files/documents/gypsies_and_travellers.pdf

Inequalities experienced by Gypsy and Traveller communities: A review (Winter 2009).
www.equalityhumanrights.com/sites/default/files/documents/research/12inequalities_experienced_by_gypsy_and_traveller_communities_a_review.pdf

Assessing local housing authorities' progress in meeting the accommodation needs of Gypsy and Traveller communities in England (Winter 2009).
www.equalityhumanrights.com/sites/default/files/documents/13assessing_local_housing_authorities_progress.pdf

Assessing local authorities' progress in meeting the accommodation needs of Gypsy and Traveller communities in England and Wales: 2010 update (Spring 2011).
www.equalityhumanrights.com/sites/default/files/documents/research/gt_research_report_68_exec_summary_english.pdf

Appendix Two: Written responses (x3)

(3 of 3)

27 April 2016

Dear Madam/Sir,

Proposed Public Spaces Protection Order

I write in relation to the Public Spaces Protection Order ('PSPO') proposed by Brighton and Hove City Council ('the Council') and outlined in the consultation which is due to close today ('the proposed PSPO'). The purpose of this letter is to express some of Liberty's concerns regarding the proposed PSPO. Of particular concern are the proposed prohibitions on "*occupying any vehicle, caravan, tent or other structure*" and "*driving any vehicle on grass*". Liberty is concerned that criminalising such activities will disproportionately affect some of the most vulnerable and marginalised people in the Brighton and Hove community.

1. Background to Liberty's concerns

Liberty has to date urged several local authorities considering PSPOs to reconsider their proposals. At the most fundamental level, we are concerned as to the way in which the enabling legislation appears to allow PSPOs to be very widely drawn with very little, if any, restriction on what activities can be criminalised. More specifically, however, we have been concerned at the way in which these powers are often being used in such a way as to disproportionately impact upon the most vulnerable – in particular, the homeless – and we have been campaigning on this issue for a number of months. Encouragingly, a number of local authorities have responded to concerns regarding such proposals by choosing to amend or withdraw them altogether. Repeatedly, the wisdom of using PSPOs as a means of punishing poverty-related issues has been brought into question.

By way of example:

- Hackney City Council withdrew such proposals after local uproar at their introduction;
- Liverpool City Council withdrew similar proposals, with one councillor publicly describing them as "*a bit daft*";
- Oxford City Council decided against including rough sleeping in a PSPO before even consulting on it, and significantly narrowed its provisions on begging following consultation;
- Newport City Council backed down on criminalising rough sleeping and significantly amended its begging proposals following local and national outcry;
- Cheshire West and Chester Council conducted a similar reversal on its highly controversial plans to criminalise rough sleepers; and
- Chelmsford City Council also dropped rough sleeping from its proposed PSPO wording and narrowed the proposed prohibition on begging.

It is clear that the wisdom of proposals which target the vulnerable is increasingly coming into question.

2. Gypsies and travellers

We understand from paragraph 3.2 of the “*Managing Anti-social Behaviour in City Parks and Open Spaces*” report (“the Report”) presented to the Policy and Resources Committee on 9 July 2015 that the proposed PSPO is targeted at the gypsy and traveller community. We urge the Council to consider the full and practical impact that the proposed PSPO will have on people within this demographic.

It is Liberty’s view that the proposed PSPO is not dissimilar to the PSPOs relating to rough sleeping. Given that the Brighton and Hove area is home to so many people whose primary place of residence, by virtue of belonging to the gypsy and traveller community, is a caravan or a vehicle of some description, the proposed PSPO will undoubtedly be felt most keenly by people in this group and have the *de facto* effect of rendering many within this community homeless – unless they stay permanently away from the area covered by the PSPO.

We urge the Council to consider whether the proposed PSPO is the most effective means by which to tackle these issues. When making this consideration we respectfully draw to your attention the fact that the gypsy and traveller community has been identified as one of the four most marginalised in the country by the Equality and Human Rights Commission in its report “*Is England Fairer?*”, dated March 2016. As such, the effect of this PSPO will be to target and potentially criminalise those who are already considered to be some of the most marginalised in our society, simply by virtue of pursuing their way of life. Such an approach may well be in breach of the Equality Act 2010.

3. Human rights implications

Moreover, we urge the Council to consider whether the proposed PSPO is lawful.

It is our view that the proposed PSPO could constitute an unlawful interference with Article 8 (right to respect for private life, which extends to the protection of personal autonomy, including in public spaces) of the European Convention on Human Rights.

We note that the Report makes no reference to Article 8, but only considers the effect that the PSPO could have on Article 10. We trust you are aware that the Council is, as a public authority, legally bound by section 6 of the Human Rights Act 1998 not to act in a way which is incompatible with any of the rights set out in the Convention. It is Liberty’s view that the proposed PSPO may amount to a disproportionate interference with Article 8 rights, and could be vulnerable to legal challenge by members of the gypsy and traveller community or others who are forced to sleep in a tent due to housing problems, who will likely be rendered homeless or be displaced as a result of its enactment.

Moreover, one of the statutory requirements which must be met before a PSPO can lawfully be passed is that the Council must be satisfied on reasonable grounds that two conditions are met. The first is that activities carried on in the local area have had, or are likely to have, a detrimental effect on the quality of life of those in the locality. The second condition is that the activities are, or are likely to be, of a persistent or continuing nature, that they are unreasonable, and that they justify the restrictions imposed by the notice.¹

¹ See s59 of the Anti-Social Behaviour, Crime and Policing Act 2014

We understand from the Report that, as no engagement or consultation had yet taken place (para. 5.1), concerns held by the Council at the time of the Report's publication were derived from undisclosed reports of "[people] *damaging land by driving on it, defecating nearby, leaving rubbish and criminal damage*". It also cites reports from "*settled local communities*" that "*occupation of the land and premises disrupts their ability to utilise that space as they feel intimidated by the presence of groups of people*".

In relation to each of these concerns, we would suggest that these can and should be tackled in a more considered and targeted manner, rather than with blanket criminalisation in the terms set out in the proposed PSPO. The proposed PSPO goes much further than targeting only those who damage land by driving on it, defecate or engage in criminal damage. Such activities are already covered by the existing criminal law. It is therefore difficult to see how they could justify the creation of new criminal offences through the proposed PSPO.

It must be remembered that the only power that a PSPO provides to Council officers and the police is the power of issuing a Fixed Penalty Notice or pursuing a criminal fine in the Magistrates' Court. As such, PSPOs are blunt instruments which do nothing to tackle the underlying causes of the behaviour at which they are targeted.

4. Displacement of the problem

Finally, Liberty is of the view that to adopt the proposed PSPO will not provide any sustainable solutions but will merely displace existing problems. As mentioned above, should those in the gypsy and traveller community find that their very presence while living in their current homes constitutes a criminal offence, they will be *de facto* homeless and most likely try to move to a neighbouring borough, as will any other homeless people who wish to use a tent to protect themselves from the elements.

Liberty is deeply concerned that this is likely to trigger a series of 'copycat' responses by adjacent local authorities, all seeking to displace – rather than solve – the apparent problems. As the Council is no doubt aware, following the Council's proposals Adur and Worthing Councils have considered adopting PSPOs prohibiting 'overnight camping'. Interestingly, Adur District Council withdrew its proposals following public consultation but Worthing Borough Council has approved a PSPO which prohibits overnight camping in eight specified locations. Although yet to be tested, the homes and way of life of those in the gypsy and traveller community are likely to fall within this prohibition, meaning they will have to move on again – and so the displacement will continue.

We understand and acknowledge that the Council is taking some steps to prevent the displacement described above through the erection of a permanent traveller site at Horsdean. However our concern is that the 12 permanent pitches and 21 transit pitches planned will not cater for the existing need and that anyone outside of the current sites will risk being penalised under the proposed PSPO.

5. Conclusion

In conclusion, we urge the Council to uphold the rights of the people of Brighton and Hove not to be subject to disproportionate, counter-productive and potentially unlawful criminalisation. We ask the Council to explore alternative solutions which address the root of the problems as opposed to targeting one of the most vulnerable and marginalised communities in the country with blunt and punitive criminal justice measures.

Liberty encourages the Council to follow the example of the growing number of local authorities which are withdrawing PSPO proposals that disproportionately affect the most vulnerable, in favour of a more targeted, cohesive and compassionate approach.

Yours faithfully,

Rosie Brighthouse
Solicitor
LIBERTY

