

The Anti-Social Behaviour, Crime and Policing Act 2014

BIRMINGHAM CITY COUNCIL (The Moseley Village / Kings Heath High Street) PUBLIC SPACE PROTECTION ORDER 2016

Public Space Protection Order

**The Order shall come into force on Monday 26th
of September 2016 at 00:00hrs**

**If you do not obey the order you will be
committing a criminal offence and may be
prosecuted by the Council within a Magistrates'
Court for an offence under Section 59 of the
Anti-Social Behaviour, Crime and Policing Act
2014**

THIS ORDER is made by Birmingham City Council ("the Council") under section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 (the Act), because the Council is satisfied on reasonable grounds that there are a number of activities, carried out or likely to be carried out in a public space, namely the area of Moseley Village/Kings Heath High Street, Birmingham shown outlined on the map attached (the restricted area) that have had, or are likely to have, a detrimental effect on the quality of life of those in the locality. The effect or likely effect of these activities is of a persistent or continuing nature such as to make these activities unreasonable, and justifies the restrictions imposed by this order.

These activities include:

- **Anti-social behaviour caused by groups of people or individuals in public spaces;**
- **Verbal abuse;**
- **Threats of or use of violence;**
- **Unlicensed drinking;**
- **Possession or use of intoxicating substances;**
- **Possession of goods, items or materials used for unauthorised graffiti;**

THIS ORDER PROHIBITS the following things being done in any public space in the restricted area AND REQUIRES specified things to be done by persons carrying on specified activities in the Restricted Area,

Definitions

“Authorised Person” means a Police Constable, Police Community Support Officer or Council Officer, and must be able to present their authority upon request.

“Intoxicating Substances” means substances with the capacity to stimulate or depress the central nervous system but does not include alcohol, tobacco or vaporisers.

“Restricted Area” shown outlined on the map attached.

1. Groups

- a. An Authorised Person may request that an individual, or a group, within the Restricted Area disperse, where they reasonably suspect any person in that group is causing, or is likely to cause nuisance, alarm, harassment or distress to any other person.
- b. An adult (over 18) is prohibited from remaining (either individually or in a group of two or more people) within the Restricted Area after an Authorised Person has requested that the group disperse.
- c. This prohibition does not restrict an individual’s right to freedom of association and speech.

2. Verbal abuse

- a. A person is prohibited from being verbally abusive to any other person within the Restricted Area.

3. Violence

- a. A person is prohibited from using or threatening to use violence against any person within the Restricted Area.

4. Alcohol

- a. An Authorised Officer may request that a person stops drinking alcohol where they reasonably suspect a person is causing, or is likely to cause, nuisance and/or disorder.
- b. An adult (over 18) is prohibited from refusing to stop drinking alcohol when asked to do so by an Authorised Officer in the Restricted Area.
- c. An adult (over 18) is required to hand over any open/unopened or sealed containers believed to contain alcohol (even if empty) when asked to do so by an Authorised Officer in the Restricted Area.
- d. An Authorised Officer may request that a person hands over any open/unopened or sealed containers believed to contain alcohol (even if empty) where they reasonably suspect a person is causing, or is likely to cause, nuisance and/or disorder.
- e. The Restricted Area does not include frontages of licensed premises which are covered by licensing legislation.

5. Intoxicating Substances

- a. It is prohibited for any person to:
 - i. ingest, inhale, inject, smoke, possess or otherwise use, Intoxicating Substances; or
 - ii. sell or supply Intoxicating Substances within the Restricted Area.
- b. A person is required to surrender any Intoxicating Substance in their possession when asked to by an Authorised Person in the Restricted Area.
- c. A person will not commit an offence under subsections (a)(i) or (b) where the substance is used for a valid and demonstrable medicinal use.

6. Graffiti

- a. A person is required to surrender any goods, items and materials to an Authorised Person where that Authorised Person reasonably suspects that any goods, items or materials are being used, or are likely to be used, to engage in unauthorised graffiti related activity within the Restricted Area.

REQUIREMENTS

1. Alcohol and Intoxicating Substances

- a. Any person aged 18 years or over who is subject to this Order under section 4 and/or 5 and where deemed appropriate, must attend an assessment with Change, Grow, Live (CGL).
- b. Any person aged under the age of 18 years who is subject of this Order under section 4 and/or 5 and where deemed appropriate, must attend an assessment with Aquarius.

2. Verbal Abuse, Violence & Graffiti

- a. Any young person under the age of 18 years made subject of this order under sections 2, 3 & 6 must attend an assessment with the Youth Offending Service .

Any person who fails to attend an assessment when required to do so under section 1 & 2 of the requirements will be in breach of the Public Space Protection Order

THIS ORDER WILL BE IN FORCE FOR A PERIOD OF 12 MONTHS AND WILL EXPIRE ON SUNDAY 24th September 2017 AT 23:59 Hrs.

Penalty on breach (s67 of the Act)

It is an offence for a person, without reasonable excuse, to:

- Do anything that the person is prohibited from doing by a PSPO (other than consume alcohol - see below); or
- Fail to comply with a requirement to which the person is subject under a PSPO.

A person does not commit an offence by failing to comply with a prohibition or requirement that the Council did not have power to include in the PSPO. A person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Consuming alcohol in breach of a public space protection order is not an offence under s67 of the Act. However, under s63 of the Act it is an offence to fail to comply with a request by a constable or authorised person to cease drinking or surrender alcohol that a person is, or has been, or intends to, drink in breach of the prohibition in the PSPO. This is also liable on summary conviction to a fine not exceeding level 2 on the standard scale. If alcohol is confiscated, it can be disposed of by the person who confiscates it.

Depending on the behaviour in question, the enforcing officer could decide that a fixed penalty notice (FPN) would be the most appropriate sanction. The FPN can be issued by a police officer, or other authorised person. In making the decision to issue a FPN, the officer should consider that if issued, payment of the FPN would discharge any liability to conviction for the offence. However, where the FPN is not paid within the required timescale, court proceedings can be initiated (prosecution for the offence or failing to comply with the PSPO).

Right to appeal this order

You have the right of appeal against this Notice to the Birmingham High Court as appropriate within a period of 6 weeks beginning with the date of service of the order by an interested person. An interested person is someone who lives in, regularly works in, or visits the restricted area. This means that only those who are directly affected by the restrictions have the power to challenge. This right to challenge also exists where an order is varied by a council.

Interested persons can challenge the validity of a PSPO on two grounds. They could argue that the council did not have power to make the order, or to include particular prohibitions or requirements. In addition, the interested person could argue that one of the requirements (for instance consultation) had not been complied with.

When the application is made, the High Court can decide to suspend the operation of the PSPO pending the verdict in part or in totality. The High Court has the ability to uphold the PSPO, quash it, or vary it.

Robert James (Director of Housing) Birmingham City Council

SIGNED



DATED

23/6/2016.

Basit Javid (Superintendent) West Midlands Police

SIGNED

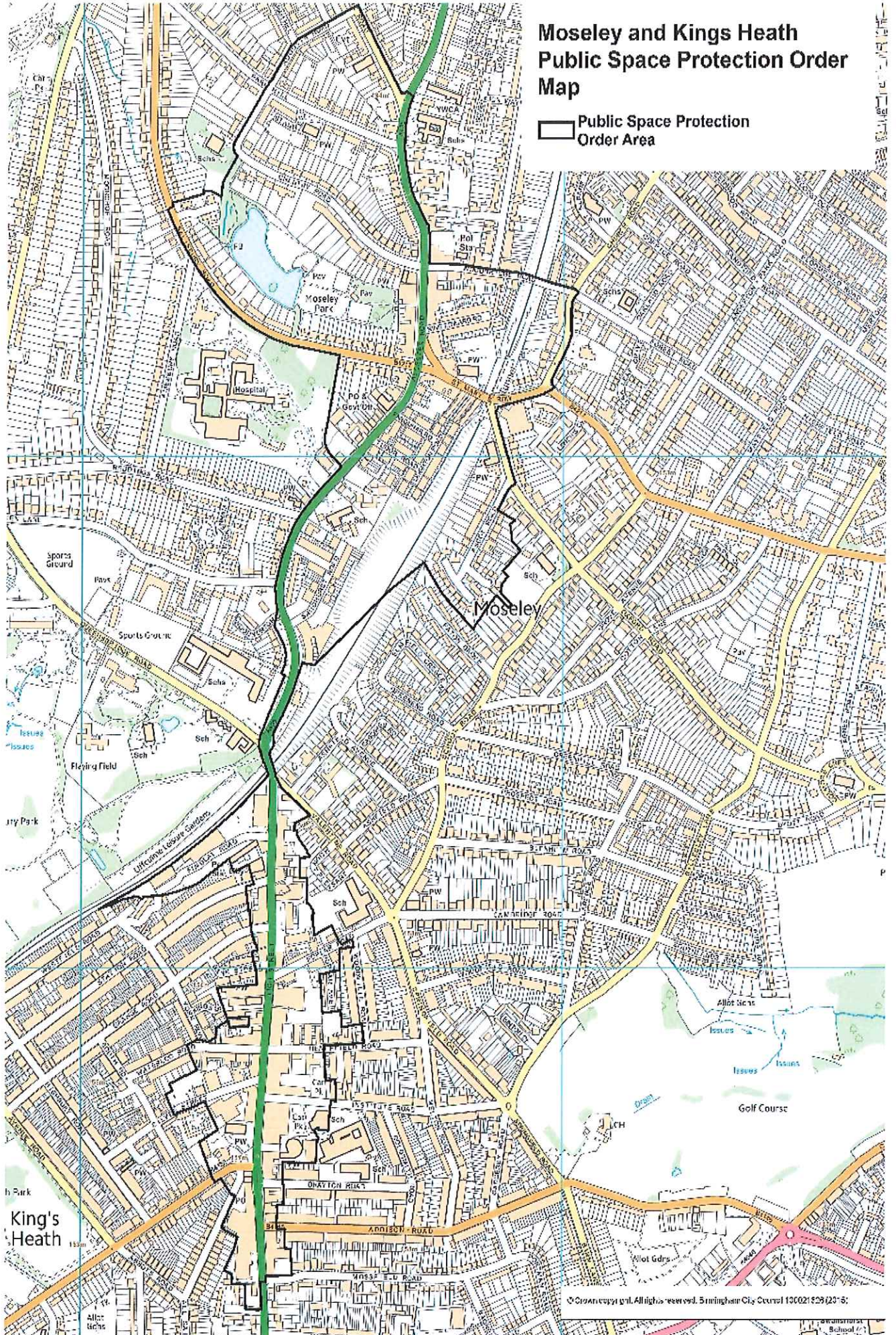


DATED

23/06/2016.

Moseley and Kings Heath Public Space Protection Order Map

Public Space Protection
Order Area



© Crown copyright. All rights reserved. Birmingham City Council 13/0021529 (23/8)

Enforcement and Breach of Public Space Protection Orders in Birmingham

Memorandum of Understanding

This Memorandum of Understanding has been written to clarify for staff within West Midlands Police, Birmingham City Council and any other interested partners the legal and procedural limits that apply to the enforcement of Public Space Protection Orders.

It seeks to inform staff and provide clear and unambiguous guidance with regards to local processes and enforcement methods following a breach of a PSPO, as well as to protect the respective partner from litigation.

This document is intended to complement the Home Office Statutory Guidance for Frontline Professionals under the Anti-Social Behaviour, Crime and Policing Act 2014.

In this Memorandum of Understanding, the following expressions have the following meanings:

MOU – this Memorandum of Understanding

PSPO – Public Space Protection Order

BCC – Birmingham City Council

WMP – West Midlands Police

PCSO – Police Community Support Officer

FPN – Fixed Penalty Notice

- The lead agency for prosecuting breaches of PSPO's in Birmingham is the City Council
- PSPO's can be enforced by police officers, designated PCSO's and council officers
- Any alleged breach of the PSPO will be explained to the suspect at the time outlining:
 - the activity that constitutes the breach
 - the powers used (S63 or S67 of the ASB, Crime and Policing Act 2014)
 - possible outcomes – FPN- £100 fine or court summons – up to level 3 fine on prosecution
- Any breach of a PSPO must be supported by an evidential witness statement covering the points to prove for the offence
- The enforcing officer will provide any evidence along with name, date of birth, address and supporting statements to the Quadrant ASB Manager within Birmingham City Council
- Birmingham City Council will issue either the FPN or summons file for prosecution