

LONDON BOROUGH OF MERTON

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

LONDON BOROUGH OF MERTON (GATING No. 1) PUBLIC SPACE PROTECTION ORDER 2024

RECITALS

- A. The London Borough of Merton (“the Council”) is satisfied that the requirements set out in Chapter 2 of Part 4 of the Anti-social, Behaviour Crime and Policing Act 2014 (“the Act”) have been satisfied and that it is, in all circumstances, appropriate to make this Order.
- B. The Council is satisfied that activities have been and will continue to be carried out in the public places within the Restricted Area which have had and will continue to have a detrimental effect on the quality of life of those in the locality, such activities being the littering and fly-tipping, the consumption of alcohol and psychoactive substances, drug taking, urination and defecation.
- C. The Council, in making this Order is satisfied on reasonable grounds that activities have been carried out in the Restricted Area, and have had a detrimental effect on the quality of life of those in the locality and its likely that those activities will be carried in the Restricted Area and will have that effect.
- D. The Council is further satisfied that the effect, or likely effect of the activities –
- a. is, or is likely to be of a persistent and continuing nature;
 - b. is, or is likely to be such as to make the activities unreasonable; and
 - c. justifies the restrictions imposed by this Order.
- E. The Council is satisfied that the prohibitions and requirements imposed by this Order are ones that it is reasonable to impose, in order to prevent the detrimental effect from continuing, occurring, or recurring or to reduce the detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.
- F. The Council has had regard to the rights and freedoms set out in the Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (“the Convention”). In particular, the Council has had regard to the rights and freedoms set out in Article 10 (right of freedom of expression) and Article 11 (right of freedom of assembly) of the Convention and has concluded that, in so far as

this Order imposes restrictions on such rights and freedoms, those restrictions are lawful, necessary and proportionate.

The Council of the London Borough of Merton (the Council) in exercise of its powers under Sections 59 and 64 of the Anti-social Behaviour, Crime and Policing Act 2014 hereby makes the following Order:-

Citation

1. This Order may be cited as the London Borough of Merton (Gating No. 1) Public Spaces Protection Order 2024.

Commencement and Duration

2. This Order shall come into force at 00:01 hours on 14 March 2024 and will remain in force for 3 years thereafter, unless extended or discharged before that date.

Interpretation

3. In this Order –

“the Act” means the Anti-social Behaviour, Crime and Policing Act 2014;

“Authorised Person” means a constable, police community support officer, or other person authorised for the purposes of this Order by the Council;

“the Council” means the London Borough of Merton

“public place” means any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission;

“Restricted Area” means the public places identified in Article 4.

Public Space affected by this Order

4. This Order applies to the land described in Schedule to this Order and shown coloured blue on the attached Plan (“the Restricted Area”), being public places within the Council’s area where activities have been carried on which have had a detrimental effect on the quality of life of those in the locality, or it is likely that

those activities will be carried on in those public places and that they have will have such effect.

Restriction on access

5. Except as provided in Article 6, no person shall enter the Restricted Area at any time.

Exemptions from Restriction

6. (1) The restriction in Article 5 shall not apply to:-
 - a. owners or occupiers of premises adjoining or adjacent to the Restricted Area;
 - b. persons employed by the Council and its authorised contractors in the exercise of their powers and duties;
 - c. any Metropolitan Police Service, London Ambulance Service, NHS Trust or Foundation Trust, or London Fire Brigade, personnel acting in pursuance of their statutory powers or duties;
 - d. any statutory undertaker where access is required:-
 - i. in the interest of the safe operation of the undertaking;
 - ii. in connection with the inspection, repair or renewal of any sewers, mains, pipes cables or other of the statutory undertakers apparatus or network; or
 - iii. to enable the statutory undertaker to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 2015;
 - e. persons accessing the Restricted Area with the permission of, or at the direction of, a duly authorised Council officer.
- (2) In paragraph (1) “statutory undertaker” means any of the following—

- a. the holder of a licence under section 6 of the Electricity Act 1989 (licences authorising supply, etc);
- b. a gas transporter;
- c. an operator of an electronic communications code network (within the meaning given in paragraph 1(1) of Schedule 17 to the Communications Act 2003);
- d. a water or sewerage undertaker;

Barriers

- 7. The Council may install, operate and maintain barriers at the approximate locations marked **A** to **C** on the attached Plan for the purpose of enforcing the restriction over the Restricted Area.
- 8. Any person accessing or egressing the Restricted Area via any barriers installed pursuant to Article 7 shall ensure such barriers are closed and locked immediately after use.

Prohibited Activities and Imposition of Requirements

Unauthorised Obstruction

- 9. (1) No person shall, without lawful authority or excuse, obstruct any barriers installed pursuant to Article 7, or the passage of any motor vehicle, motorcycle or pedestrian lawfully accessing or egressing the Restricted Area.
- (2) For the purposes of this Article an obstruction includes parking, or causing or permitting any motor vehicle or motorcycle to be parked within the Restricted Area without lawful authority or excuse.
- (3) Where a person (P) is obstructing the Restricted Area in breach of the prohibition in paragraph (1), an authorised person may require P to remove forthwith from the Restricted Area the motor vehicle, motorcycle or, any other thing causing the obstruction.

- (4) An authorised person who imposes a requirement under paragraph (3) must tell P that failing without reasonable excuse to comply with the requirement is an offence.
- (5) A requirement imposed under paragraph (3), by an authorised person who is not a constable or police community support officer, is not valid if the person—
- (a) is asked by P to show evidence of his or her authorisation, and
 - (b) fails to do so.

Prohibition on Urination and Defecation

10. No person shall urinate or defecate without reasonable excuse for doing so on or within the Restricted Area.

Prohibition on anti-social behaviour

11. Without prejudice to the provisions of Articles 5 to 10, no person shall behave in the Restricted Area in such a manner so as to cause, or be likely to cause, nuisance or annoyance to any other person.

Requirement to provide Name and Address

12. (1) If an authorised person reasonably believes that a person (P) has breached any of prohibitions or requirements imposed by Articles 5 to 11 he or she may require P to give his or her name and address to the authorised person.
- (2) An authorised person who imposes a requirement under paragraph (1) must tell P that—
- (a) failing to give his or her name and address when required to do so under paragraph (1), or
 - (b) giving a false or inaccurate name or address in response to a requirement under that paragraph is an offence.

(3) A requirement imposed under paragraph (1), by an authorised person who is not a constable or police community support officer, is not valid if the person—

- (a) is asked by P to show evidence of his or her authorisation, and
- (b) fails to do so.

Failure to comply with the Order

Offence of failing to comply with the Order

13. By Section 67 of the Act it is a criminal offence for a person without reasonable excuse—
- (a) to do anything that the person is prohibited from doing by this Order, or
 - (b) to fail to comply with a requirement to which the person is subject under this Order.
14. A person guilty of an offence under Section 67 of the Act is liable on summary conviction in the magistrates' court to a fine not exceeding level 3 on the standard scale.

Fixed Penalty Notices

15. An authorised person may issue a fixed penalty notice (FPN) to anyone he or she has reason to believe has committed an offence under Section 67 of the Act. A person issued with a FPN must pay the fixed penalty of £100 within 14 days to discharge any liability to conviction for the offence.

SCHEDULE

Article 4

Land identified by Description

All land between Rialto Road, Priestley Road and Eastfields Road, Mitcham shown coloured blue on the attached plan.

Dated 12th day of February 2024

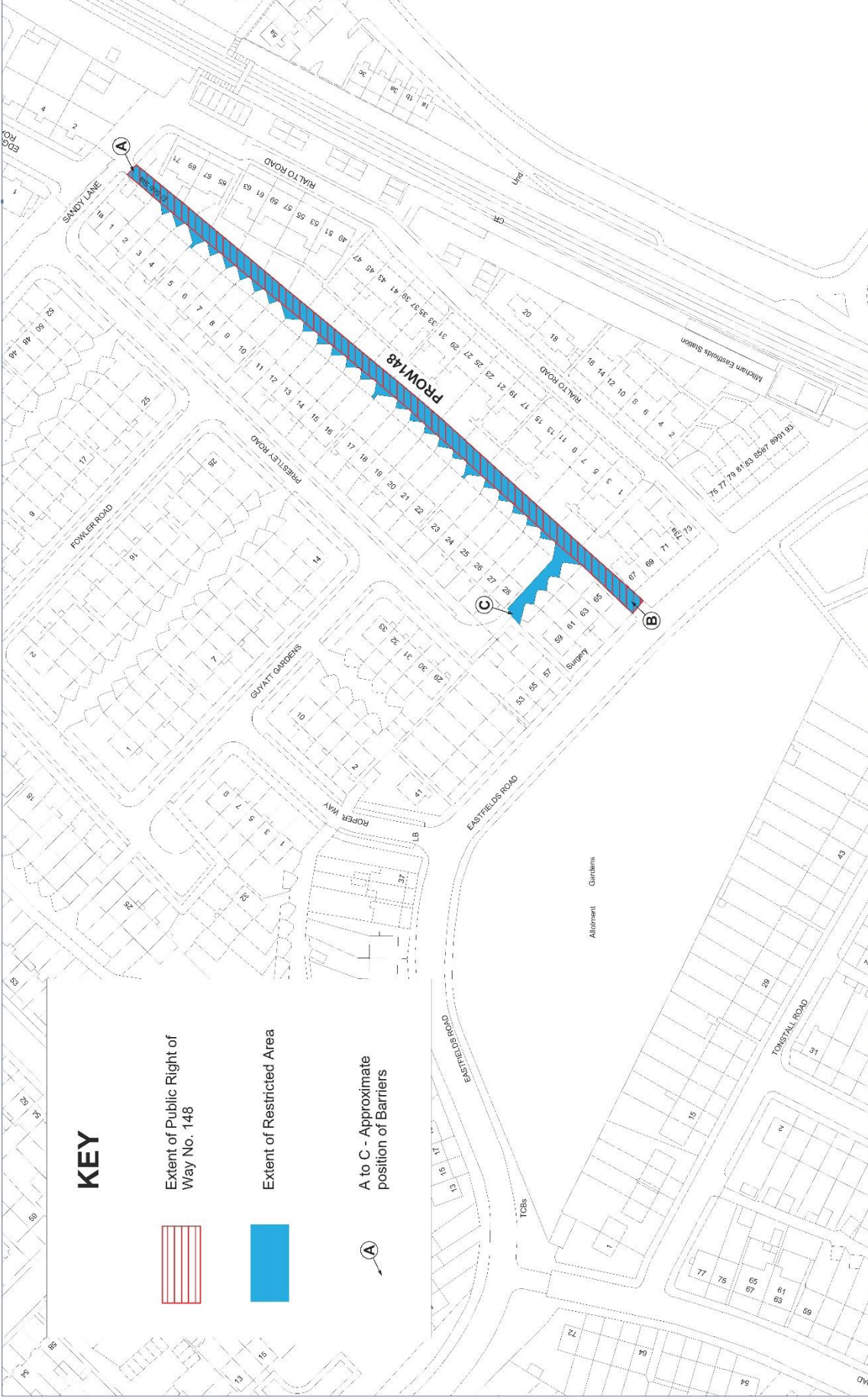
THE COMMON SEAL OF THE MAYOR)
AND BURGESSES OF THE LONDON)
BOROUGH OF MERTON was hereunto)
affixed in the presence of:)

Signature _____

Name **David George Fellows**

Authorised Signatory

Seal Register No. 524824



KEY

- Extent of Public Right of Way No. 148
- Extent of Restricted Area
- A to C - Approximate position of Barriers

NOTES
 1. Derived from this drawing

Drawn	Checked	Scale	Drawn	Checked	Scale

TRAFFIC & HIGHWAYS

Sustainable Communities
 environment & regeneration

PROJECT
 Merton Council Road
 London Borough of Merton (Gaining No. 1) Public
 Statutory Prohibition Order 2023 - Plan (Article 4)

TITLE
 Extent of Order and Approximate
 Position of Gates

DATE
 Date: N/A
 Author: Merton Council
 Designer: Merton Council
 Checker: Merton Council
 Scale: Merton Council
 www.merton.gov.uk

Notes for Information

Alternative Route

Alternative routes for pedestrians are available as indicated on the map at the end of this document, shown with dark grey broken lines.

Challenging the validity of the Order

Any challenge to this order must be made in the High Court by an interested person within 6 weeks of it being made. An interested person is someone who lives in the restricted area, or who regularly works in or visits that area. This means that only those who are directly affected by the restrictions have the power to challenge it.

Interested persons can challenge the validity of this Order on two grounds: -

- (a) that the Council did not have power to make the order, or to include particular prohibitions or requirements; or
- (b) that a requirement of the Act has not been complied with.

Where such an application is made, the High Court can decide to suspend the operation of the order pending the Court's decision, in part or in totality pending the final determination of the proceedings. The High Court may uphold the order, quash it, or vary it.

ANTI-SOCIAL BEHAVIOUR CRIME AND POLICING ACT 2014

Section 59 – Power to make public spaces protection orders

- (1) A local authority may make a public spaces protection order if satisfied on reasonable grounds that two conditions are met.
- (2) The first condition is that—
 - (a) activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or
 - (b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.
- (3) The second condition is that the effect, or likely effect, of the activities—
 - (a) is, or is likely to be, of a persistent or continuing nature,
 - (b) is, or is likely to be, such as to make the activities unreasonable, and
 - (c) justifies the restrictions imposed by the notice.
- (4) A public spaces protection order is an order that identifies the public place referred to in subsection (2) ("the restricted area") and—
 - (a) prohibits specified things being done in the restricted area,
 - (b) requires specified things to be done by persons carrying on specified activities in that area, or

(c) does both of those things.

(5) The only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order—

- (a) to prevent the detrimental effect referred to in subsection (2) from continuing, occurring or recurring, or
- (b) to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.

(6) A prohibition or requirement may be framed—

- (a) so as to apply to all persons, or only to persons in specified categories, or to all persons except those in specified categories;
- (b) so as to apply at all times, or only at specified times, or at all times except those specified;
- (c) so as to apply in all circumstances, or only in specified circumstances, or in all circumstances except those specified.

(7) A public spaces protection order must—

- (a) identify the activities referred to in subsection (2);
- (b) explain the effect of section 63 (where it applies) and section 67;
- (c) specify the period for which the order has effect.

(8) A public spaces protection order must be published in accordance with regulations made by the Secretary of State.

Section 64 Orders restricting public right of way over highway

(1) A local authority may not make a public spaces protection order..... that restricts the public right of way over a highway without considering—

- (a) the likely effect of making the order on the occupiers of premises adjoining or adjacent to the highway;
- (b) the likely effect of making the order on other persons in the locality;
- (c) in a case where the highway constitutes a through route, the availability of a reasonably convenient alternative route.

(1A) Before making a public spaces protection order that restricts the public right of way over a highway, a local authority must take the prior consultation steps (see subsection (2)).....

(2) To take the “prior consultation steps” in relation to an order means to—

- (a) notify potentially affected persons of the proposed order,
- (b) inform those persons how they can see a copy of the proposed order,
- (c) notify those persons of the period within which they may make representations about the proposed order, and

- (d) consider any representations made.

In this subsection “potentially affected persons” means occupiers of premises adjacent to or adjoining the highway, and any other persons in the locality who are likely to be affected by the proposed order.....

(3) Before a local authority makes a public spaces protection order restricting the public right of way over a highway that is also within the area of another local authority, it must consult that other authority if it thinks it appropriate to do so.....

(4) A public spaces protection order may not restrict the public right of way over a highway for the occupiers of premises adjoining or adjacent to the highway.

(5) A public spaces protection order..... may not restrict the public right of way over a highway that is the only or principal means of access to a dwelling.

(6) In relation to a highway that is the only or principal means of access to premises used for business or recreational purposes, a public spaces protection order....may not restrict the public right of way over the highway during periods when the premises are normally used for those purposes.

(7) A public spaces protection order.... that restricts the public right of way over a highway may authorise the installation, operation and maintenance of a barrier or barriers for enforcing the restriction.

(8) A local authority may install, operate and maintain barriers authorised under subsection (7).

(9) A highway over which the public right of way is restricted by a public spaces protection order....does not cease to be regarded as a highway by reason of the restriction (or by reason of any barrier authorised under subsection (7)).

(10) In this section—
“dwelling” means a building or part of a building occupied, or intended to be occupied, as a separate dwelling;
“highway” has the meaning given by section 328 of the Highways Act 1980.

Section 66 - Challenging the validity of orders

(1) An interested person may apply to the High Court to question the validity of—

- (a) a public spaces protection order...., or
- (b) a variation of a public spaces protection order.....

“Interested person” means an individual who lives in the restricted area or who regularly works in or visits that area.

(2) The grounds on which an application under this section may be made are—

- (a) that the local authority did not have power to make the order or variation, or to include particular prohibitions or requirements imposed by the order (or by the order as varied);
- (b) that a requirement under this Chapter was not complied with in relation to the order or variation.

(3) An application under this section must be made within the period of 6 weeks beginning with the date on which the order or variation is made.

(4) On an application under this section the High Court may by order suspend the operation of the order or variation, or any of the prohibitions or requirements imposed by the order (or by the order as varied), until the final determination of the proceedings.

(5) If on an application under this section the High Court is satisfied that—

- (a) the local authority did not have power to make the order or variation, or to include particular prohibitions or requirements imposed by the order (or by the order as varied), or
- (b) the interests of the applicant have been substantially prejudiced by a failure to comply with a requirement under this Chapter,

the Court may quash the order or variation, or any of the prohibitions or requirements imposed by the order (or by the order as varied).

(6) A public spaces protection order...., or any of the prohibitions or requirements imposed by the order (or by the order as varied), may be suspended under subsection (4) or quashed under subsection (5)—

- (a) generally, or
- (b) so far as necessary for the protection of the interests of the applicant.

(7) An interested person may not challenge the validity of a public spaces protection order, or of a variation of a public spaces protection order...., in any legal proceedings (either before or after it is made) except—

- (a) under this section, or
- (b) under subsection (3) of section 67 (where the interested person is charged with an offence under that section).

Section 67 – Offence of Failing Comply with order

(1) It is an offence for a person without reasonable excuse-

- (a) to do anything that the person is prohibited from doing by a public spaces protection order....., or
- (b) to fail to comply with a requirement to which a person is subject under a public spaces protection order.....

(2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) A person does not commit an offence under this section by failing to comply with a prohibition or requirement that the local authority did not have power to include in the public spaces protection order.....

(4) Consuming alcohol in breach of a public spaces protection order.... is not an offence under this section (but see section 63).

