

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

20 January 2016 Cabinet report

<u>Title:</u>	Public Space Protection Orders
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<u>Portfolios:</u>	Stronger, Safer Communities
<u>Ward(s) affected:</u>	All

Purpose of the Report

To seek approval to pursue the introduction of Public Space Protection Orders (PSPO's) in the Borough of Newcastle-under-Lyme.

Recommendations

- a. To approve the consultation with relevant partners and stakeholders on the potential coverage of PSPO's.
- b. To authorise Officers to pursue introduction of PSPO's for the indicative issues detailed in this report.

Reasons

The Criminal Justice and Police Act 2001 which encompasses Designated Public Place Orders (DPPO's) also known as Alcohol Prohibition Zones (APZ's) have been replaced by the Anti-Social Crime and Policing Act 2014 which governs PSPO's and other powers such as Response to Complaints, issuing Fixed Penalty Notices and Closure of Premises.

1. Background

- 1.1 The Anti-Social, Crime and Policing Act came into force on 20th October 2014. This Act contains the provisions for the Public Space Protection Orders (PSPO's), which were enacted by the Secretary of State.
- 1.2 Under the Anti-Social Behaviour, Crime and Policing Act 2014, there is provision for all Local Authorities to introduce measures to address anti-social behaviour in public spaces. The Act supersedes all current powers with one overarching power, the PSPO.

2. Public Space Protection Orders

- 2.1 A PSPO is an order that identifies a particular space or area to which it will be applied; and can make requirements, or prohibitions, or both within that space or area. This means that the Local Authority can, by virtue of the order, require people to do, or not to do specific things in that space or area. The Local Authority has the powers to grant the prohibitions/requirements where it believes that they are reasonable in order to reduce or prevent the unwanted issues. The order can be applied to specific people, or everyone within an area and can apply at all times or within specific times. The order can apply for a maximum of 3 years upon which the process of reviews and consultation must be repeated to check whether the issues are still occurring and the order is having the required effect. After the initial 3 years, the order can be extended

for a further 3 years, and upon further reviews and consultation, can be extended more than once for further periods of 3 years.

- 2.2 Failure to comply with either a prohibition, or requirement stated within the order is an offence. Upon summary conviction (offences heard within the Magistrates Court) defendants can face a fine up to £1,000. The defendant cannot be found guilty of an offence under a prohibition/requirement where the Local Authority did not have the power to include it in the order. Subsequent breaches of the order can also be discharged by use of a Fixed Penalty Notice (FPN). The authority has the option to either prosecute or issue an FPN to discharge liability to convict (s67 & 68 of the ASB, Crime and Policing act).
- 2.3 In time PSPO's will replace existing provisions such as Alcohol Prohibition Zones (APZ's), which are designed to stop the drinking of alcohol in public spaces and Dog Control Orders. Under the new legislation existing conditions will continue to be valid until October 2017.
- 2.4 PSPO's offer more flexibility and can be applied to a broader array of issues, granting Local Authorities the autonomy to create their own prohibitions and requirements dependent on whether particular conditions are met. These conditions centre on the degree of impact caused by those issues in the community.
- 2.5 A PSPO would enable an authorised person to issue a warning to any persons which if ignored could result in that person being issued with a Fixed Penalty Notice (FPN). As with all similar powers, there may be potential difficulty with obtaining personal identification/details from people which may limit the circumstances in which the Order can be used. It must be noted that it is intended that the use of fixed penalty notices will only be used in cases where offences persistently occur and where other preventative measures have failed to address the problem.
- 2.6 Any new PSPO would co-exist with the Borough wide Dog Control Order so therefore this proposal does not attempt to deal with issues covered by this regulation. At some point before October 2017, the Borough Council will need to consider how its Dog Control provisions can be maintained through the mechanism of a PSPO.

3. Issues

- 3.1 There are a number of issues across the Borough that could benefit from the use of PSPO's. These issues are most prevalent in Newcastle and Kidsgrove Town Centres both in the day and on Friday nights. Over the last 12 months there has been a total of 407 anti-social behaviour complaints over the 9 Locality Action Partnership areas. The vast majority of these complaints have been classified under general nuisance, which includes under age street drinking and public order issues.
- 3.2 The Borough of Newcastle-under-Lyme, much like other towns and cities nationally, experiences issues around street drinking both with young people under 18 years and adults who are categorised as 'dependent drinkers'. Whilst several initiatives and operations assist in managing the impact which this issue causes, there is a concern regarding loss of the ability to enforce provision relating to alcohol should APZ's be rescinded without an effective replacement.
- 3.3 New Psychoactive Substances (NPS) usually referred to as 'legal highs' have presented as a significant concern over the last few years. Two premises in Newcastle Town Centre have been flagged with agencies such as Staffordshire Police and Trading Standards in the last 12 months, leading to appropriate multi-agency responses. Anecdotally there is evidence to suggest that North Staffordshire is one of the areas across the County where 'legal highs' are prevalent.

- 3.4 There is a very small cluster of individuals who regularly beg for money in Newcastle Town Centre. The Police disperse these well-known individuals however they often return, usually in different locations. These individuals are classed as vulnerable and so the use of enforcement action in the form of fixed penalty notices shall only be pursued once all other early intervention and prevention- tactics have been explored and instigated. All individuals identified as vulnerable will be referred onto the Newcastle Partnerships Hub, which is a multi-agency information sharing forum used to identify issues and determine the most appropriate interventions for vulnerable and/or challenging individuals.
- 3.5 There are a number of rough sleepers, the majority of which seem to sleep rough in areas within and on the periphery of Newcastle Town Centre. Locations such as the Midway multi-storey car park, the derelict Maxims and Metropolis nightclubs and various subways are often used. These individuals are considered to be vulnerable and need support to gain suitable accommodation. The use of PSPO's on these individuals is not recommended unless the individuals are causing serious problems in the community which is adversely affecting the public and the relevant early intervention and prevention tactics have already been exhausted..
- 3.6 In the Midway car park there are issues around car cruisers who over-rev their engines, causing a noise nuisance and use the facility as a race circuit, which is a danger to both pedestrians and road users. There are also a number of skateboarders who frequently cause nuisance to those who are using the car park legitimately as paying customers.
- 3.7 The conditions that are currently being considered by Officers to be pursued for PSPO's are as follows:-
- a. Not to be in possession or utilise an aerosol and/or any item intended to cause defacement within the location.
 - b. Not to undertake repairs of vehicles within all local authority car parks other than for urgent breakdown repairs.
 - c. Not to use any local authority owned car parks as a place to congregate, cook or sleep and to only use the car park for parking.
 - d. Not to engage in behaviour likely to cause harassment, alarm or distress within designated areas.
 - e. Not to consume or be in possession of an open container of alcohol in the designated area excluding licensed premises or licensed events.
 - f. Not to ingest, inhale, inject, smoke or otherwise use intoxicating substances including Novel Psychoactive Substances (NPS) within the designated area.

4. **Options Considered**

- 4.1 There are 2 options for consideration:
- a. The first option is to authorise the consultation with relevant partners and stakeholders on the potential coverage of PSPO's and approve in principle the draft conditions to which a PSPO could be applied.
 - b. The second option is do nothing at this time and consider alternative options between now and October 2017.

5. Recommendations and reasons

- 5.1 The recommendation is to undertake the consultation with key partners on the potential coverage of PSPO's and approve in principle the draft conditions laid out in Section 3.7 above.
- 5.2 The reasons for our recommendation are as follows:-
- a. The majority of our existing powers under the Anti-Social Behaviour and Crime Act including Alcohol Prohibition Zones will expire in October 2017.
 - b. It will take a number of months to complete consultation and agree upon the finer points, terms and conditions of the PSPO's so it is prudent to commence this process as soon as possible.
 - c. Many other local authorities such as Cannock and Stafford have started to apply PSPO's to issues in their communities.
 - d. There are issues, detailed in this report that could be dealt with more effectively through the use of a PSPO. It is imperative therefore to introduce PSPO's as soon as possible.

6. Outcomes Linked to Corporate Priorities

- 6.1. The Council has a commitment to provide its residents with a clean, safe and sustainable borough and so the introduction of PSPO's will contribute to ensuring positive outcomes around these areas.
- 6.2. Another key priority for the Council is to foster a healthy and active community. The appropriate use of PSPO's will lessen or prevent issues around anti-social behaviour.

7. Legal and Statutory Implications

- 7.1 As with any new legislation, this is uncharted territory and the legislation will be further defined over the next few years by a process of appeals and High Court rulings. Any legal challenge represents a risk to the Council and it is worth noting that any "interested persons" may challenge the validity of any order in the High Courts. It is for this reason that undertaking a vigorous process, including a suitable consultation, is prudent when seeking to establish these powers. Potentially the Council could face challenges which could impede its ability to implement PSPO's if the process is not rigorous.
- 7.2 The use of PSPO's with individuals deemed as vulnerable, such as rough sleepers, dependent drinkers and beggars should be used with caution and under professional judgement in line with the current governing legislation.
- 7.3 The Council may also want to proceed with a certain degree of caution especially when gathering views and ensuring widespread support for these provisions before making a PSPO. However although these powers are new, several Local Authorities both locally and nationally are now in the process of utilising them.
- 7.4 In order to mitigate legal challenges, robust consultation will be undertaken with all relevant partners of the community, comprehensive research will be undertaken and legal advice sought as appropriate.

8. Equality Impact Assessment

- 8.1 An Equality Risk Assessment will need to be undertaken detailing how PSPO's will effect disadvantaged and vulnerable individuals such as dependent street drinkers, rough sleepers and beggars. Further legal advice will be sought on this as measures will need to be put in place to lessen the negative effects such powers will have on these individuals.

9. Financial and Resource Implications

- 9.1 This will be met through the existing resources of partnership agencies such as Staffordshire Police. For the Borough Council there will be some costs for consultation campaigns, publicity materials and signage which will be funded through the Responsible Bodies Group, Joint Operations Group and Office of the Police and Crime Commissioner.
- 9.2 It should also be noted that additional Borough Council Officer time in Partnerships, Central Services and Environmental Health will be required to support the orders. This requirement will be met using existing officer time, but these commitments are difficult to evaluate at this time as this is the first such experience with the new legislation and powers. However, this is considered to be a reasonable assessment based on the experience of councils which have already started to progress this matter.

10. Major Risks

- 10.1 There are no major risks, but as previously mentioned in this report there is the threat of legal action regarding how the Borough Council utilises these new powers; this needs careful consideration (see section 6).
- 10.2 The risks of not initiating action to enable the Council to utilise these powers before October 2017 because some of our current powers will become redundant by October 2017 and the Borough Council will therefore have no provisions in place to deal with some of the issues identified.
- 10.3 There is a risk of reputational damage to the Borough Council if it does not deliver its statutory duties lawfully and effectively.

11. Key Decision Information

- 11.1 This report can be considered key in the following ways.
- It requires the Borough Council to commit existing and additional resources for the function to which the decision relates and;
 - It impacts on communities living or working in an area comprising two or more electoral wards in the Borough.

12. Earlier Cabinet/Committee Resolutions

- 12.1 In September 2014 the report 'Update on the Anti-Social Behaviour, Crime and Disorder Act 2014' was submitted to EMT.

13. List of Appendices

- 13.1 The appendices which include reports from Staffordshire Police relating to Newcastle Town Centre, Terms of Reference for the Partnership Hub, update report on the Anti-Social Behaviour, Crime and Disorder Act 2014 EMT report and the Newcastle South LAP area profile can be made available on request from the Partnerships Team.
- 13.2 The Anti-Social Behaviour, Crime and Policing Act 2014

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final_2_.pdf

14. Background Papers

14.1 None