

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

December 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 make a Public Space Protection Order (PSPO) within the specified boundaries of Newcastle-under-Lyme Town Centre.

Recommendations

To authorise Officers to make a PSPO 'live' within the designated areas of the Town Centre 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Act 2001 which encompasses Designated Public Place Orders (DPPO's) also known as Alcohol Prohibition Zones (APZ's) have been replaced by the Anti-Social Crime and Policing Act 2014 which governs PSPO's and other powers such as Response to Complaints, issuing Fixed Penalty Notices and Closure of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.
- The Borough of Newcastle-under-Lyme, much like other towns and cities nationally, experiences a variety of issues such as street drinking, car cruising, drug use, rough sleeping, vandalism and other issues categorised as anti-social behaviour. Whilst several initiatives and operations assist in managing the impact which these issues cause, there is a concern regarding loss of the ability to enforce provision, especially around street drinking, should Alcohol Prohibition Zones be rescinded without an effective replacement.

1. Public Space Protections Orders (PSPO)

- 1.1 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.
- 1.2 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).

- 1.3 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.
- 1.4 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.
- 1.5 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.
- 1.6 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.
- 1.7 The issues in Town centre which are of most cause for concern are street drinking, drug taking, rough sleeping, general anti-social behaviour and car cruising (specifically on the Midway car park).

2. **Consultation period**

- 2.1 The six-week consultation period for the Town Centre PSPO commenced on Monday 19th September 2016 and ended on Monday 31st October 2016.
- 2.2 The proposed conditions for the Town centre PSPO include the following:
 - Not to be in possession or utilise an aerosol and/or any item intended to cause defacement within the location.
 - Not to undertake repairs of vehicles within all local authority car parks other than for urgent breakdown repairs.
 - 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.
 - Not to engage in behaviour likely to cause harassment, alarm or distress within designated areas.
 - Not to consume or be in possession of an open container of alcohol in the designated area excluding licensed premises or licensed events.
 - Not to ingest, inhale, inject, smoke or otherwise use intoxicating substances including Novel Psychoactive Substances (NPS) within the designated area.

3.0 **Consultation feedback**

- 3.1 The feedback came from a number of sources including the general public, businesses from the daytime and night-time economy and partnership agencies.
- 3.2 Two residents were concerned that the Queen Elizabeth Park was not covered by the proposed boundaries and that the park is used by people to commit anti-social behaviour. This area has now been included within the PSPO boundary (Please see Appendix 2 – PSPO boundary review).
- 3.3 There were a number of comments and views from survey responders regarding whether a PSPO is justified and should be made. Regarding the key questions relating to street drinking, drug taking, anti-social behaviour, vandalism and the misuse of car parks only the feedback relating to misuse of car park came back inconclusive. The feedback in general was heavily in favour of a PSPO being made to combat the negative issues experienced. (Please see Appendix 1 – Public Space Protection Orders consultation 2016)

4.0 **Options Considered**

- 4.1 Following the conclusion and feedback from the consultation there were 2 options for consideration.
 - a. The first option is to authorise the making of the PSPO within the designated areas of Newcastle Town Centre (recommended).
 - b. The second option is to do nothing at this time and consider alternative options between now and October 2017 (not recommended).

5.0 **Recommendations and reasons**

- 5.1 The recommendation is to make the PSPO for Newcastle Town Centre but reconfigure the boundary to include Queen Elizabeth Park, following the feedback from the consultation.
- 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. Given the issues in Newcastle Town Centre it is prudent to commence this process as soon as possible given that existing powers will expire in October 2017.
 - c. There are incidents of anti-social behaviour in Queen Elizabeth Park and the Newcastle Local Policing Team has recommended that it is included.

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 unchartered 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 Now that the views and comments from the consultation have been gathered (see Appendix 2) the Council is now in a position to proceed with the making of a PSPO. However although these powers are relatively new, several Local Authorities both locally and nationally have or are 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.

8.0 Equality Impact Assessment

- 8.1 A comprehensive equality risk assessment has been completed detailing how PSPO’s will affect disadvantaged and vulnerable individuals such as dependent street drinkers, rough sleepers and beggars. Further legal advice may or may not be considered to lessen any potential negative effects such powers will have on vulnerable 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 Although the Police (via their PCSO’s) will be identifying breaches of the PSPO and delivering the fixed penalty notices it should be noted that additional Borough Council Officer resources in Partnerships and Central Services will be required to enforce the orders and provide administrative support. Therefore there will be resource implications for NBC which will need to be discussed further.

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.

- a. It requires the Borough Council to commit existing and additional resources for the function to which the decision relates and;
- b. 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.

12.2 In January 2016 the report 'Public Space Protection Orders' was submitted to EMT and Officers were given permission to undertake a formal public consultation

13. List of Appendices

13.1 Public Space Protection Order consultation 2016

13.2 Public Space Protection Order Boundary Review Original Map and Amended Map

14. Background Papers

14.1 A plan will be on display at the meeting.