

## **NEWCASTLE-UNDER-LYME BOROUGH COUNCIL**

### **July 2018 report for Cabinet**

<b><u>Title:</u></b>	Public Space Protection Orders variation
<b><u>Submitted by:</u></b>	Trevor Smith, Partnerships Interventions Officer
<b><u>Portfolios:</u></b>	Community Safety and Wellbeing
<b><u>Ward(s) affected:</u></b>	All

#### **Purpose of the Report**

This report is to;

- Provide an update regarding a review undertaken on the Public Space Protection Order (PSPO) for Newcastle Town Centre.
- Provide recommendations to vary the conditions of the existing PSPO for Newcastle Town Centre and seek approval for the proposals.

#### **Recommendations**

That Cabinet notes the content of this report and approves the two proposed variations to the PSPO in Newcastle Town Centre.

#### **Reasons**

Following a Review of the existing PSPO it is recognised that the enforcement process could be more proactive in dealing with incidents of anti-social behaviour on Newcastle Town Centre.

#### **1. Background**

- 1.1 The Criminal Justice and Police Act 2001, which encompasses Designated Public Place Orders (DPPO's) also known as Alcohol Prohibition Zones (APZ's), has been replaced by the Anti-Social Crime and Policing Act 2014. The Act governs PSPO's and other powers such as Response to Complaints, issuing Fixed Penalty Notices and Closure of Premises.
- 1.2 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. Under the Act there is provision for all Local Authorities to introduce measures to address anti-social behaviour in public spaces. The Act supersedes all previous powers, e.g. gating orders, dog control order, with one overarching power, the PSPO.
- 1.3 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.

- 1.4 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).
- 1.5 From October 2017 PSPO's fully replaced existing provisions such as Alcohol Prohibition Zones (APZ's), which are designed to stop the consumption of alcohol in public spaces and Dog Control Orders.
- 1.6 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.
- 1.7 The issues in Newcastle-under-Lyme Town Centre are, but not limited to, street drinking, drug taking, begging, general anti-social behaviour, car cruising (specifically on the Midway car park) and rough sleeping.
- 1.8 The existing conditions for the Town Centre PSPO are:
  - 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.

1.8 The PSPO is in force in the Town Centre as highlighted on the map below:



## 2. PSPO process

2.1 Currently, if an individual breaches one of more of the aforementioned PSPO conditions he/she will receive a PSPO warning notice prior to receiving an FPN should a further breach occur, as detailed below.

2.2 **Stage 1:** Police identify & evidences a breach via body-cam and CCTV. 1<sup>st</sup> warning notice issued. Details recorded on Police and NBC databases



**Stage 2:** Should a further breach occur an FPN is issued, co-ordinated through the Partnership Team via the Councils Enforcement Policy.

2.3 The PSPO enables an authorised person (as outlined in the Councils Scheme of Delegation) to issue a warning to any persons which if ignored could result in that person being issued with a FPN. The original intention that the use of FPNs would only be used in cases where offences persistently occur and where other preventative measures have failed to address the problems. However, the use of warning notices has not been as successful as originally anticipated leading to the proposed change in process.

2.4 Subject to the FPN being paid in full within 14 days, the recipient is not liable to prosecution by the Council for the relevant offence. If the FPN remains unpaid after the 14 days, the offender will normally be prosecuted by the Council in line with the council's adopted Enforcement Policy.

2.5 The maximum penalty that can be imposed is £100 and this must be paid within 14 days of service of the FPN. However, it is possible to impose a lesser penalty for early payment and it for each authority to decide their penalty in the absence of statutory guidance.

2.6 The Fixed Penalty amounts are as follows:

- Payment of FPN within 10 days of issue £75
- Payment of FPN between 10 and 14 days of issue £100

### 3.0 **Anti-Social Behaviour (ASB)**

3.1 Over the last 12 months the issue of begging has become more frequent and persistent in Newcastle Town Centre. The reasons for this increase are believed to be;

- There is a displacement of beggars from the City of Stoke-on-Trent due to a sustained period of enforcement from the Police and Safer City Partnership. Beggars have crossed the border into Newcastle-under-Lyme as we have not employed such enforcement tactics.
- Beggars understand that it is difficult for the Police and other enforcement agencies to detect their activity. There is a misconception that all beggars are rough sleepers but often this is not the case. A number of those who beg portray themselves as being homeless but there is evidence that very few of the persistent beggars in the Town Centre are actually homeless. These individuals are often referred to as 'professional beggars' and are often already in receipt of benefits and have stable accommodation either in Newcastle-under-Lyme or in other areas.
- Residents of Newcastle-under-Lyme are considered to be extremely generous and will often put their hands in their pockets and give money directly to beggars whether they are asked to or not. Whilst their generosity is admirable, it may be misguided as they are unaware of how their money is spent and what on.
- Begging is an extremely emotive subject and how to deal with the issue of begging polarises opinion. Prior to the launch of the PSPO Newcastle Borough Council's stance was one of caution given that beggars are often classed as vulnerable individuals. There are a proportion of individuals whom beg who are not in receipt of benefits and do not have accommodation but these are believed to be in the minority. It could also be argued that those individuals who beg are vulnerable due to substance misuse and mental health issues. However, given the frequency of beggars on Newcastle Town Centre (the majority of which are known to services) it could be argued that effective enforcement is the key to tackle this issue. Varying the PSPO to include a condition not to beg in Newcastle Town Centre would be one such way of tackling this issue.

3.2 As previously stated support will be continue to be offered in the first instance with enforcement activity being employed as a last resort to those persistently and aggressively begging and causing ASB in the Town Centre.

### 4.0 **Options considered**

4.1 The options are as follows;

- a. To support the Partnerships Team in streamlining the enforcement process by removing the warning notice stage and proceeding directly to Fixed Penalty Notices (recommended).

- b. To support the Partnerships Team in the variation of the PSPO conditions to include begging and ASB (recommended).
- c. To look at other ways to address the issues of begging and ASB without looking at enforcement (not recommended).
- d. To continue with the existing process by issuing warning notices followed by Fixed Penalty Notices should further breaches occur (not recommended).

## 5.0 **Recommendations and reasons**

5.1 The recommendation is to give the Partnerships Team a mandate to streamline the PSPO enforcement process to remove the warning notice stage and to include begging as a PSPO condition.

5.2 The reasons for our recommendation are as follows:-

- a. Over the past 12 months warning notices have not been as effective as first anticipated with a number of individuals repeat offending. NBCs Legal Team has recommended a zero tolerance approach, dispensing with warning notices and issuing FPNs as soon as a breach occurs.
- b. Over the last 12 months Newcastle Town Centre has seen an increase in persistent begging and associated ASB, which has caused complaints from both residents and businesses.

5.3 The proposed enforcement process is as follows;

- Issue an FPN as soon as a breach of any of the PSPO conditions, including begging are witnessed.

## 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 these variations to the PSPO will contribute to ensuring positive outcomes.

6.2. Another key priority for the Council is to foster a healthy and active community. The appropriate use of the PSPO will lessen or prevent issues around anti-social behaviour.

## 7. **Legal and Statutory Implications**

7.1 There may be legal implications for NBC in its discharge of legal duty under the ASB and Crime Act of 2014 and resource implications in the event of legal challenge.

7.2 The anticipated number of FPNs and prosecutions is unknown as this is still a relatively new area of work for the Council and will depend on the number of offences committed under the PSPO.

## 8. **Equality Impact Assessment**

8.1 An 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.

## **9. Financial and Resource Implications**

- 9.1 The administered PSPO will be managed under existing Council resources with assistance from partners such as the Police who will be identifying breaches of the PSPO, issuing FPNs and liaising with partners including the Council.
- 9.2 There may additional staffing resource required to support the management of FPN's, including income recording and links to the Legal team when non-payment occurs. This depends on how many FPNs are issued and how many occurrences there are of non-payments. Also, the level of resulting income cannot be accurately predicted but is not expected to be significant.

## **10. Key Decision Information**

- 10.1 This report can be considered key because it requires the Borough Council to commit existing and additional resources for the function to which the decision relates.

## **11. Earlier Cabinet/Committee Resolutions**

- 11.1 In September 2014 the report 'Update on the Anti-Social Behaviour, Crime and Disorder Act 2014' and 'Scheme of Delegation' were submitted to EMT.
- 11.2 In January 2016 the report 'Public Space Protection Orders' was submitted to EMT and Officers were given permission to undertake a formal public consultation
- 11.3 In November 2016 the report 'Public Space Protection Orders' was submitted to Cabinet and Officers were given permission to make a PSPO for Newcastle Town Centre.
- 11.4 In June 2018 the Anti-Social Behaviour Policy report was approved by Cabinet.

## **12. List of Appendices**

- 12.1 Appendix 1: PSPO implementation plan
- 12.2 Appendix 2: Scheme of delegation
- 12.3 Appendix 3: Newcastle Town Centre PSPO Review Report (2018)

## **13. Background Papers**

- 13.1 None