

# Cherwell District Council

## Executive

4 July 2016

### Banbury Town Centre Public Spaces Protection Order

#### Report of Public Protection Manager

This report is public

#### Purpose of report

To propose the making of a Public Space Protection Order (PSPO) in Banbury Town centre to prevent the detrimental effect of begging, drinking and sleeping rough on those who reside, work and visit the town centre.

#### 1.0 Recommendations

The meeting is recommended:

- 1.1 To approve the outline proposal for a Public Space Protection Order as laid out in Appendix 1.
- 1.2 To approve the commencement of a five week consultation process.

#### 2.0 Introduction

- 2.1 The issue of begging, drunkenness and rough sleeping in Banbury, has been the subject of increasing public complaint over the last two years. The areas around St Mary's Church have attracted late night drinkers and rough sleepers, resulting in complaints to parliamentary representatives, councillors and the local police. Drunken males are regularly seen in the area of the Yorkshire Bank, High Street in the day time.
- 2.2 The Anti-Social Behaviour, Crime and Policing Act 2014 ('the Act') outlined below provides a proportionate remedy, subject to public and business consultation. This report stresses that a rigorous and impartial consultation is essential to these proposals. Following the completion of the consultation, a detailed report will be prepared for further consideration. Should the responses indicate a reluctance to impose these conditions, then the proposals need not be pursued in their present format if at all.
- 2.3 Currently the town centre has in force a Designated Public Place Order (DPPO). The DPPO was originally made to deal with persons who used public places for the purpose of excessive drinking of intoxicants, escalating into disorderly behaviour and occasional violence.

- 2.4 The Order has often been perceived to constitute a drink banning order, which in fact it was not. Drinking was permitted in a safe and responsible manner. The effect therefore is that the existing DPPO does not prevent drinking, until it reaches a point where it is unacceptable to the public in terms of disorder and public safety.
- 2.5 The misunderstanding and public perception of the wording has caused some ambiguity and has led to difficulties in enforcement. A new PSPO provides an opportunity to address this and ensure that there is clear understanding of the effect of the order.
- 2.6 Before a PSPO can be made there must be credible evidence to support it and to satisfy the criteria set down in legislation. Evidence from figures collated by Thames Valley Police are as follows:
- Incidents reported to police from July 2014 to February 2016 (19 months)
- Begging 56 reports
  - Drinking and anti-social behaviour (ASB) 57 reports
  - Rough sleeping 6 reports (beggars also rough sleep)
- 2.7 There is evidence to suggest that drug abuse by rough sleepers, in the area of St Mary's church, Peoples Park and the Peoples Church, has led to substantial numbers of needle finds in those locations, posing a significant risk to the health and well-being of council staff and the public. The figures above are based on incidents where the police have recorded an incident; they do not include incidents where police officers interact with individuals and take no action or make a record in their day to day activities.
- 2.8 In view of this information a draft of the proposed order is inserted Appendix 1. The area of prohibition is outlined in red on the map in Appendix 2.

### **3.0 Report Details**

#### **Introduction to Public Spaces Protection Order**

- 3.1 The Anti-Social Behaviour, Crime and Policing Act 2014 ('the Act') gained Royal Assent in April 2014. The Public Spaces Protection Order provision has been in Operation since 20 October 2014. The Act is designed to put victims at the heart of the response to anti-social behaviour, and give professionals the flexibility needed to deal with any given situation.
- 3.2 In deciding to make a PSPO, the Antisocial Behaviour and Policing Act 2014 requires that the local authority must have regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the Convention. "Convention" has the meaning given by section 21(1) of the Human Rights Act 1998.
- 3.3 There are many PSPOs in place across the country, some have been challenged, and as yet none have been referred to the High Court. There have been a number of challenges, concerning the detail presented to members to allow an informed decision, transparent consultation and in depth equality impact assessments.

### **The Relevant Sections of the Act**

- 3.4 Public Spaces Protection Orders (PSPOs) are intended to provide the means of preventing individuals or groups committing anti-social behaviour in a public space where the behaviour is having, or likely to have, a detrimental effect on the quality of life of those in the locality; be persistent or continuing in nature; and be unreasonable.
- 3.5 PSPOs also create a framework that either replaces or updates existing public space restrictions such as alcohol Designated Public Place Orders and Dog Control Orders and permits local authorities to introduce new regulations. The power to make an Order rests with local authorities, in consultation with the police and other relevant bodies who may be affected.
- 3.6 A local authority can make a PSPO in respect of any public space within its administrative boundary. The definition of public space is wide and includes 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.
- 3.7 A PSPO can be in force for any period up to a maximum of three years.
- 3.8 Appeals against a draft PSPO can be made in the High Court within six weeks of issue by anyone who lives in, or regularly works in or visits the area. Further appeal can be made if a PSPO is varied by a local authority.
- 3.9 Section 59 of the Act sets out the basis on which local authorities may make a PSPO. It provides as follows –
- (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 PSPO 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 PSPO 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.

3.10 A PSPO must be published in accordance with regulations made by the Secretary of State.

3.11 The restrictions and requirements included in a PSPO may be comprehensive or targeted on specific behaviours by particular groups and/or at specified times.

3.12 Orders can be enforced by a police officer, a police community support officer, designated council officers and employees of other delegated organisations. The council's enforcement policy throughout describes the Council's approach to enforcement stating that all cases will be addressed fairly and proportionately. For further information see link below:

[http://www.cherwell.gov.uk/media/pdf/i/r/Enforcement\\_policy\\_\(final\).pdf](http://www.cherwell.gov.uk/media/pdf/i/r/Enforcement_policy_(final).pdf)

3.13 The policy is available on the council's website.

3.14 Subject to the above, a Breach of the PSPO can be dealt with through the issuing of a Fixed Penalty Notice of up to £100, a level 3 fine of up to £1000 on conviction, or £500 upon conviction for consuming alcohol in breach of the Order.

3.15 In establishing a PSPO, appropriate signage must be displayed in accordance with the requirements of the Act.

3.16 The Council is also bound by the terms of the Human Rights Act 1998 and must not act in a way which is incompatible with a Convention right. Human rights are enforced through existing rights of review and may therefore be taken as points in any challenge to the validity of any Order made by the Authority.

3.17 If Convention rights are engaged (as they are with the making of a PSPO) any interference with them must be:

- (a) In accordance with the law (in other words the Executive must be satisfied that the statutory conditions in S59 set out above are satisfied)
- (b) In pursuit of a legitimate aim (in this instance the control of activities which, if not controlled, would have a detrimental effect on the quality of life of those in the locality) and
- (c) A proportionate means of achieving the legitimate aim.

- 3.18 The two issues which must therefore be addressed for every proposed restriction in the PSPO are whether the statutory criteria are met and whether the restrictions proposed are proportionate having regard to the legitimate aim of preserving the quality of life for everyone who lives or works in or who visits the Town centre.
- 3.19 The Executive must also have regard to the public sector equality duty at s149 of the Equality Act 2010, which is as follows:
- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
    - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
    - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
    - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
  - (2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in (1) above.
  - (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
    - (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
    - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; and
    - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- 3.20 The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.
- 3.21 To mitigate challenge a detailed equalities impact assessment will be led by the Community Safety Manager, supported by the Corporate Policy Officer. The results will be published following the consultation.

## **4.0 Conclusion and Reasons for Recommendations**

- 4.1 In conclusion the evidence required to satisfy section 59 of the Act as far as begging, drinking and rough sleeping are concerned, appears to be sufficient to approve a consultation process for a PSPO.
- 4.2 If the Executive is minded to approve the outline proposals, the next step is to approve the commencement of the consultation within the parameters of section 72 of the same Act (see Appendix 5). And in accordance with the principles laid out below.

## 5.0 Consultation

- 5.1 If the Executive is satisfied that the requirements of sect 59 are met, a robust consultation will commence at the earliest opportunity for a five week period. This will include a series of questions to establish views on the PSPO. The consultation would include all businesses inside the Restricted Area, a wider community consultation and those whom are perceived as perpetrators. Following the consultation a review of responses would be undertaken to ascertain the level of support for such an Order.

## 6.0 Alternative Options and Reasons for Rejection

- 6.1 The following alternative option has been identified and rejected for the reasons as set out below.

Option 1: Without a PSPO the local authority will continue to work with the police, within current legislation. The current legislation dates to the 1824 Vagrancy Act, to enforce the police officer has to witness the act of begging and hear the words of request. This naturally is something the offenders are aware of and resist from doing when being observed.

The Council does not have any authority to prosecute begging, or enforce drink related disorderly behaviour. With regard to drinking this report has previously alluded to the fact that a drink banning order is limited to irresponsible drinking only, it is not a ban therefore the police will only react to problematic or disorderly drinkers. In choosing to continue within current legislation, this will be a missed opportunity to address what appears to be an escalating activity

## 7.0 Implications

### Financial and Resource Implications

- 7.1 There will be some associated costs initially with consultation and, if adopted, appropriate signage will be required. The costs for signage would be minimal.
- 7.2 Following enforcement of the proposal, there may be associated costs with subsequent court file procedures and court attendance. However the options to ask people to a) stop what they are doing or b) remove themselves from the area are options that should reduce the number of punitive actions taken. With regard to challenges in the higher courts, as yet it appears there have been none. All of the above costs, if incurred, would be met out of existing budgets.

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### Legal Implications

- 7.3 Statutory Requirements for the Imposition of a Public Spaces Protection Order  
Compliance with section 59 of the Act, as set out at 3.10 above is imperative. Prior to the statutory consultation stage, the Council must be satisfied on reasonable grounds that the activities which it seeks to prohibit by way of the Order are having, or are likely to have a detrimental effect on the quality of life of those in the locality,

and the effect, or likely effect of the activities is, or is likely to be, of a persistent or continuing nature; is, or is likely to be such as to make the activities unreasonable; and justifies the restrictions imposed by the Order. Sufficient evidence must therefore be adduced as to the nature, extent and impact of the activities for the council to be satisfied on reasonable grounds that the activities are sufficiently problematic and that a PSPO is necessary. The evidence must be adduced and the council satisfied on reasonable grounds that the Order is necessary before the statutory consultation is undertaken. Evidence obtained by way of the consultation may lend support to the imposition of the Order, but cannot be used retrospectively to satisfy the requirements of section 59.

The prohibitions included in the Order must be necessary to prevent or reduce the detrimental effect of the activities included in the Order from continuing, occurring or recurring, and the prohibitions must be reasonable for the purpose. Regard to, and compliance with, the Equality Act 2010 and the Human Rights Act 1998 is essential.

Prior to the imposition of the Order, the statutory consultation must be undertaken in the prescribed form.

Non-compliance with statutory requirements of the Act may result in a successful challenge to the High Court as to the lawfulness of the Order, and/ or subject the council to adverse criticism and reputational damage.

#### 7.4 Consuming Alcohol

Section 63 of the Anti-Social Behaviour Crime and Policing Act 2014 specifically provides for a prohibition on the consumption of alcohol in breach of a PSPO and provides that constable or authorised officer *may*, (emphasis added) subject to reasonable believe as to a breach, require a person to cease consuming alcohol and surrender the alcohol. As such it is considered that the power to enforce the prohibition on alcohol consumption is discretionary and those consuming alcohol responsibly would not necessarily face sanction as a consequence of PSPO which is intended to deal with problem drinkers and their associated anti-social behaviour.

Additionally, section 62 provides that the section 63 prohibition does not apply to:

- A licensed premises and the space within its curtilage;
- A place where the sale or consumption of alcohol is permitted at the relevant time pursuant to section 115E of the Highways Act 1980 (i.e. tables and chairs outside the curtilage of a business premises for the use of customers of the business);
- Permitted temporary activities (i.e. Temporary Event Notices issued pursuant to the Licensing Act 2003 as regards the sale and consumption of alcohol at festivals, street parties etc.);
- Council-operated licensed premises.

As such there ought to be no issues as regards the Order restricting markets, festivals, temporary events and such like.

#### 7.5 Begging

The offence of begging is provided for by way of section 3 or 4 of the Vagrancy Act 1824 and pursuant to section 70 (1) of the Criminal Justice Act 1982 is fineable only. So far as it has been possible to ascertain, 'aggressive begging' as yet to be legally defined, but is generally considered to be along the lines of begging in a manner which causes harassment, fear or alarm, or approaching or pursuing

people. Given the absence of a legal definition of aggressive begging and depending on the extent to which begging is a problem in the town centre, it may be desirable in the first instance that the Order seeks to restrict begging in general. Depending on consultation responses, the Order may be subsequently amended to 'aggressive begging' as is understood to have been the case in a number of other local authorities which have imposed PSPOs. If 'aggressive begging' is preferred over 'begging' the Order may need to include some form of definition.

#### 7.6 Sleeping Rough

This may prove controversial at consultation. Oxford City Council and a number of other local authorities have been criticised for seeking to 'criminalise' homelessness. The inclusion and enforcement of a prohibition on sleeping rough will likely necessitate caveats as to the offer and refusal of accommodation/ assistance etc. in an effort to ensure that the Order is directed at those who have accommodation but choose to sleep rough, or imply that they sleep rough as a means of begging, as opposed to the genuinely homeless.

#### 7.7 Fixed Penalty Notices

Section 68 of the Act provides for the issuing of a Fixed Penalty Notice (FPN) in respect of breaches of section 63 and section 67. It would likely be desirable to utilize this provision and include the same in the Order as a form of sanction – if FPNs are not included, save for cautions, warnings and less formal enforcement, the formal enforcement will be limited to prosecution with the incumbent financial and resource implications. However, see 'enforcement' 7.10 below.

#### 7.8 Authorised Officers

As is the intention of the Act and such legislation, it is likely that the enforcement of the Order will for the most part fall to the council rather than the police. The current Head of Community Services Scheme of Delegation refers to the Anti-Social Behaviour Act 2003 and "*any subsequent legislation falling within the service area...*" and as such would incorporate the Act. However, the sub-delegation appears directed towards Environmental Health and Anti-social Behaviour managers and as such it is unclear as to whether the Safer Communities team is included. Similarly, if the council is to utilize the power to issue FPNs for breaches of the Order, consideration will need to be given to which officers are authorised to issue the FPNs and their list of powers amended accordingly.

#### 7.9 Enforcement

If the Order is imposed, consideration will also need to be given to enforcement and a stepped approach to sanction as per the council's Enforcement Policy and the Regulators Code. Enforcement officers will need to be mindful of the circumstances of those to whom the Order is most likely to apply i.e. the homeless (be they genuine or otherwise); and others likely to have substance and/ or alcohol misuse problems and mental health issues. Given the precarious financial position of many, the effectiveness of issuing FPNs is likely to be of limited effect; similarly, endeavouring to institute a prosecution against such individuals, particularly if they are of no fixed abode for the purpose of serving a summons. Likely to be equally problematic will be securing the attendance of such individuals at court. Consideration will also need to be given to the perception of the courts and the public as regards enforcement action – whilst it may well be that some of those purporting to be homeless and without means are in fact not, and that the behaviour of some is problematic, the repeated and (ineffective) sanctioning/ prosecution of vulnerable individuals 'who the council should be helping' has the potential for criticism and reputational damage.



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## **Risk**

### **7.10 Risk to Organisational reputation**

There is a risk that challenge from organisations that support human rights such as 'Liberty' may challenge the proposal within this document. In mitigation to such challenge the proposal is based on factual evidence from Thames Valley Police, Council reports of ASB, physical evidence from community wardens and social media monitoring. In carrying out a fair and equitable consultation the Executive will be able to make an informed decision on the further progress of this proposal.

The risks associated with this report will be managed as part of the services operational risk register and escalated as and when necessary to the corporate risk register.

### **7.11 Risk to increased legal activity in enforcing the Order**

There is a potential for the order to create additional workload for Cherwell's legal team as enforcement would inevitably lead to some Court attendance. However, if the enforcing officers adhere to the Councils enforcement policy and resort to requiring offenders to desist or move out of the prohibited area, this could be minimal as opposed to prosecution. There will be those offenders who wish to test the agencies resolve, which may well lead to court appearances. However it would be hoped that after an initial period such behaviour if successfully prosecuted would lessen.

The risks associated with this report will be managed as part of the services operational risk register and escalated as and when necessary to the corporate risk register.

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## **8.0 Decision Information**

### **Key Decision**

**Financial Threshold Met: No**

**Community Impact Threshold Met: No**

### **Wards Affected**

Banbury Cross and Neithrop

### **Links to Corporate Plan and Policy Framework**

Cherwell: Safe, Clean and Green: Work with partners to ensure the District remains a low crime area reducing the fear of crime tackling anti- social behaviour and focusing on the safeguarding of our residents and businesses.

### **Lead Councillor**

Councillor Tony Ilott, Lead Member for Public Protection

### **Document Information**

<b>Appendix No</b>	<b>Title</b>
Appendix 1	Order
Appendix 2	Map
Appendix 3	Police Evidence
Appendix 4	Business Responses
<b>Background Papers</b>	
None	
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