

Cherwell District Council

Executive

7 November 2016

Banbury Town Centre Public Spaces Protection Order (PSPO)

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 making of a Public Space Protection Order in Banbury Town Centre (Appendix 1).
- 1.2 To delegate authority to the Public Protection Manager to take all necessary steps to enforce the Public Space Protection Order in Banbury including the necessary authorisation of individual officers to issue fixed penalty notices.

2.0 Introduction

- 2.1 At the 4 July 2016 Executive meeting, it was agreed to carry out a consultation to ascertain the support for a PSPO in Banbury town centre. This report was based upon factual evidence from police and public as to the rising concern of the issue of begging, drunkenness and rough sleeping in Banbury.
- 2.2 The relevant act and sections outlined below provide a proportionate remedy, subject to public and business consultation. Following the completion of the consultation, the salient findings are reported in point 5. In brief the outcomes were:
 - 90% of those responding supported a PSPO to stop anti-social drinking
 - 84% of those responding supported a PSPO to stop begging
 - 79% of those responding supported a PSPO to stop rough sleeping

- 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 The DPPO was originally made to deal with persons who used public places for the purpose of excessive drinking of intoxicants, escalating into disorderly behaviour and occasional violence.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 collated by Thames Valley Police was presented to Executive on 4 July as below:
- 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.
- 2.8 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.
- 2.9 In view of this information, a draft of the proposed order is inserted in Appendix 1. The area of prohibition is outlined in black 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 to 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.
- 3.4 Therefore the relevant sections as presented to the July Executive meeting are laid out in Appendix 5.

4.0 Prohibited Behaviours

- 4.1 The Banbury Town Centre PSPO is recommended to include prohibitions on the following:

Consuming Alcohol

- 4.2 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 a constable or authorised officer may, (emphasis added), subject to reasonable belief as to a breach, require a person to cease consuming alcohol and surrender the alcohol.

- 4.3 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 the PSPO will not affect markets, festivals or temporary events.

Begging

- 4.4 Begging is a criminal offence pursuant to section 3 or 4 of the Vagrancy Act 1824. Pursuant to section 70 (1) of the Criminal Justice Act 1982 the offence of begging is fineable only. Given the extent to which begging is a considered to be problem in the town centre, it is desirable that the Order seeks to restrict begging in general.

Rough Sleeping

- 4.5 The inclusion of a prohibition on sleeping rough may prove controversial. The enforcement of a prohibition on sleeping rough will require consideration of the specifics of each case such as whether the individual concerned has been offered but declined accommodation/ assistance etc. This will be necessary 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.

5.0 Penalties

- 5.1 Pursuant to Section 63 (6) of the Act it is an offence to fail to comply, without reasonable excuse, with the requirement of a constable or authorised officer, to cease consuming alcohol in breach of the Order; or to surrender anything which the constable or authorised officer reasonably believes to be alcohol or a container for alcohol. The penalty upon conviction is a fine not exceeding £500.
- 5.2 Pursuant to Section 67 (1) of the Act it is an offence, without reasonable excuse, to do anything prohibited by the Order, or to fail to comply with a requirement to which the person is subject under the Order. The penalty upon conviction is a fine not exceeding £1,000.

6.0 Fixed Penalty Notices

- 6.1 Section 68 of the Act provides for the issuing of a Fixed Penalty Notice (FPN) in respect of breaches of the Order under section 63 or section 67. Whilst the FPN provisions were not included in the draft Order, it is considered 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. See further ‘Enforcement’ below at 7.1.
- 6.2 Payment of a FPN discharges liability to conviction. If a FPN is not paid, a prosecution may be instituted.
- 6.3 Section 68 (7) provides for a FPN to specify two amounts and specify that if the lower amount is paid within a lesser period of time than that specified for the higher amount, the lower amount will be the amount of the penalty.
- 6.4 Pursuant to section 68 (6) the maximum amount of a FPN is £100. It is recommended that this amount is set with the lower amount of £50 for early payment.
- 6.5 Further provisions as to the requirements of a FPN are provided for by section 68 (3) to section 68 (11).

7.0 Enforcement

- 7.1 In accordance with the Council’s Enforcement Policy, the Regulators Code enforcement of the Order will usually be by way of a graduated approach. The circumstances of those to whom the Order is most likely to apply and as such those who may be most likely to breach the Order will be taken into consideration by enforcement officers. It is recognised that the Order may impact upon the homeless (be they genuine or otherwise), and others who may have mental health, substance and/ or alcohol misuse problems. The financial position of such individuals may impact upon their ability to pay Fixed Penalty Notices or, in the event of conviction, a fine imposed by the court. In the event of non-payment of a FPN, or as a result of multiple breaches of the Order, it may also be difficult to serve a summons by way of which to secure attendance at court for the purposes of prosecution. As such, the issuing of a FPN or instituting a prosecution will be measures of last resort when

attempts to ensure compliance with the Order through less formal means have repeatedly failed.

8.0 Authorised Officers

8.1 Enforcement of the Order will fall to both the Council and the police. It is recommended that the Public Protection Manager is given delegated authority to take all necessary steps to enforce the PSPO including the authorisation of individual officers to issue FPNs. FPNs issued or prosecutions brought in the absence of the requisite delegated authority are likely to be determined invalid.

9.0 Challenging the Order

9.1 Section 66 of the Act provides for an “interested person” to apply to the High Court to question the validity of the Order. An “interested person” is defined as an individual who lives in the restricted area or who regularly works in or visits the area.

9.2 An application to challenge the validity of the Order must be made to the High Court within the period of 6 weeks beginning with the date on which the Order (or a variation to the Order) is made. A challenge may only be made on the following grounds:-

- I. That the local authority did not have the power to make the Order or variation, or to include particular prohibitions or requirements imposed by the Order (or by the Order as varied);
- II. That a requirement under the Act was not complied with in the making or variation of the Order.

10.0 Consultation

10.1 It was agreed to use a social survey, when something is surveyed, it is ‘viewed comprehensively and in detail’. The survey which was open for 5 weeks from 18th July 2016 enabled wide coverage and the ability to take in the views of all those directly impacted upon by the issues covered by the Public Space Protection Order (PSPO). The detailed methodology can be found at Appendix 3a with the detailed results of the survey found at Appendix 3b

11.0 Timescale

11.1 If the Executive approve the proposal, the Order will need to be published on the Council’s website and by way of signage in a prominent place on the curtilage of the proposed prohibited zone.

12.0 Conclusion and Reasons for Recommendations

- 12.1 The evidence from the consultation supports the proposal for making the PSPO as laid out in Appendix 1. The full response to the consultation can be found in Annex 3b.
- 12.2 The key findings were:
- 95% of those responding had witnessed begging in the Town Centre
 - Of those, 83% believed it had become worse with 84% supporting a PSPO
 - 75% had witnessed rough sleeping
 - Of those, 78% thought it had become worse with 79% supporting a PSPO
 - 85% witnessed ASB associated with alcohol
 - Of those, 79% thought it had become worse with 90% supporting a PSPO
- 12.3 A total of 1,977 letters were sent out to residents of the Town and businesses to enable an electronic return or hard copy. In addition to this, the survey was posted on the Council's web site and social media. 378 responses were recorded on Survey Monkey
- 12.4 The inclusion of the Fixed Penalty Notice provisions is in line with the Council's Enforcement Policy and the Regulators Code. A Fixed Penalty Notice provides for an additional sanction as part of a stepped approach to enforcement and is a proportionate, cost effective means of seeking to ensure compliance with the Order.

13.0 Alternative Options and Reasons for Rejection

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

Option 1: Not to confirm the PSPO which will mean that without a PSPO, the local authority will continue to work with the police, within current legislation.

- 13.2 Reasons for rejection

The current legislation dates to the 1824 Vagrancy Act, and is only enforceable by a police officer. 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. As it is not a ban 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

14.0 Implications

Financial and Resource Implications

- 14.1 There will be some associated costs, if adopted, appropriate signage will be required. The costs for signage would be minimal.

- 14.2 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.

Comments checked by: Kelly Wheeler, Principal Accountant, 01327 322230, kelly.wheeler@cherwellandsouthnorthants.gov.uk

Legal Implications

- 14.3 A PSPO must comply with the requirements of section 59 – section 75 (Chapter 2) of the Anti-social Behaviour, Crime and Policing Act 2014 (the Act). Non-compliance with relevant sections of the Act may lead to the validity of the Order being challenged in the High Court pursuant to section 66 of the Act. Upon an application to challenge the Order, the High Court may suspend the operation of the Order or any of the prohibitions or requirements therein until such time as the proceedings have been determined. If the challenge is successful, the High Court may quash the Order or any of the prohibitions or requirements therein.
- 14.4 If the Order is approved, the delegated authority of the Public Protection Manager must include authority to enforce the provisions of the Act so that she can then authorise individual enforcement officer accordingly by sub-delegation. This would include authority to issue FPNs.
- 14.5 If authority to enforce the Act, and thereby issue a Fixed Penalty Notice is not delegated correctly, any enforcement action and/ or Fixed Penalty Notice issued are likely to be determined as invalid if challenged.
- 14.6 Section 60 of the Act provides that the Order may not have effect for a period of more than 3 years, and that the Order may be extended before expiry for a period of no more than 3 years.
- 14.7 Section 61 of the Act provides for the Order to varied and/ or discharged.
- 14.8 The extension, variation and discharge of the Order must comply with requirements of the Act.
- 14.9 If the Order is approved, it must be published in accordance with the requirements of the Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Order) Regulations 2014.

Comments checked by: Matt Marsh, Solicitor, 01295 221691, matt.marsh@cherwellandsouthnorthants.gov.uk

Risk

- 14.10 Risk to Organisational reputation

There is a risk that challenge from organisations that support human rights may challenge the proposal within this document. In mitigation to such a 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 and the results of that consultation in this document allows the Executive to make an informed decision on the further progress of this proposal.

14.11 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 adherence to the Councils enforcement policy with 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.

14.12 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.

Comments checked by: Louise Tustian, Senior Performance & Improvement Officer, 01295 221786, Louise.Tustian2@cherwellandsouthnorthants.gov.uk

Equalities

14.13 Implementation of the PSPO does not impact on the Council meeting its statutory duties under the Equality Act 2010. Monitoring of this order is built into the Council Equality Action Plan which is monitored and updated quarterly. This order will affect only those that breach the order specifically, begging which is a criminal offence, rough sleeping and drinking alcohol in the prohibited area.

14.14 The Council continues to meet its statutory duty to homeless individuals and the Council will continue to support individuals who are not owed statutory accommodation through the work of the Outreach Team. An Initial Screening Equality Impact Assessment is attached as Appendix 4.

Comments checked by: Caroline French, Corporate Policy Officer, 01295 221586, caroline.french@cherwellandsouthnorthants.gov.uk.

15.0 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, green, clean: Work with partners to help ensure the District remains a low crime area, reducing fear of crime, tackling anti- social behaviour and focusing on safeguarding our residents and businesses.

Lead Councillor

Councillor Tony Ilott, Lead Member for Public Protection

Document Information

Appendix No	Title
Appendix 1	Order
Appendix 2	Map
Appendix 3a and 3b	Survey and results
Appendix 4	Equalities Impact Assessment
Appendix 5	Relevant sections of the Act in detail
Background Papers	
None	
Report Author	Mike Grant, Safer Communities Manager
Contact Information	01295 227989 mike.grant@cherwellandsouthnorthants.gov.uk