

Cherwell District Council

Executive

4 November 2019

Banbury Public Spaces Protection Order Renewal

Report of Chief Operating Officer (Deputy Chief Executive)

This report is public

Purpose of Report

The Banbury Public Spaces Protection Order (PSPO) will expire at the end of November 2019. It is possible to extend the PSPO for a further 3-year period before it expires. This report provides the background to the PSPO, an evaluation of its effectiveness and the outcomes of public consultation undertaken during the summer. It recommends renewing the PSPO with a variation in scope.

1.0 Recommendations

The meeting is recommended:

- 1.1 To approve the renewal of the Public Spaces Protection Order in Banbury Town Centre.
- 1.2 To agree that the prohibition on rough sleeping be removed from the Public Spaces Protection Order in Banbury Town Centre.

2.0 Introduction

- 3.1 In November 2016 the Council's Executive agreed to introduce a Public Spaces Protection Order (PSPO) for Banbury Town Centre. The decision to make this Order was reached after a public consultation on the proposal during summer 2016. The Order came into effect on 1 December 2016 and expires on 31 November 2019.
- 3.2 A PSPO may be renewed before it expires. If renewed the new Order can be extended for a further 3-year period. Earlier this year we commenced the process for determining whether the current PSPO should be renewed. This process included a review of the effectiveness of the Order and a public consultation seeking views on whether the Order should be renewed and on the scope of the Order if it is renewed.

3.0 Background

- 3.1 PSPOs are intended to provide a means of preventing individuals or groups committing anti-social behaviour in a public space where the behaviour is having, or is likely to have, a detrimental effect on the quality of life of those in the locality, is persistent or continuing in nature, and is unreasonable. The PSPO imposes conditions on the use of the area which apply to everyone.
- 3.2 A PSPO restricts what people can do in an area and how they behave. As such it is important to ensure that any such restrictions are focussed on problem behaviours, are proportionate to the detrimental impact that the behaviour is having or could cause and are considered necessary to prevent it continuing, occurring or reoccurring. The restrictions and requirements included in a PSPO may be comprehensive or targeted on specific behaviours by particular groups and/or at specified times.
- 3.3 A PSPO can be in force for any period up to a maximum of three years and can be extended for a further period of up to 3 years at any time before expiry. The PSPO can only be extended if it is considered necessary to prevent the original behaviour from occurring or reoccurring. Before extending a PSPO the original Order should be evaluated. To vary the Order, for example to introduce new restrictions on behaviour or to extend the area covered by the Order, the council is required to conduct further consultation with relevant parties on the proposed variation.

4.0 The Current Public Spaces Protection Order

- 4.1 The Banbury Town Centre PSPO introduced in 2016 contains 3 restrictions on behaviour.

- Consumption of alcohol or possession of an open container of alcohol in the open air in the restricted area.
- Begging in the restricted area.
- Sleeping rough (defined as sleeping in the open air or under a temporary structure) in the restricted area.

The full Order is included in appendix 1 to this paper and the map of the area covered by the Order is in appendix 2.

- 4.2 The PSPO was introduced following an increase in reported complaints and problems relating to begging, drunkenness and rough sleeping in Banbury. Prior to the introduction of the Order Thames Valley Police reported that between July 2014 to February 2016 (19 months) there were-

- 56 reports of begging in Banbury Town Centre.
- 57 reports of drinking and anti-social behaviour.
- 6 reports of rough sleeping.

These figures were based on reports where the police have recorded an incident; they do not include incidents where police officers interact with individuals and take no action or make no record as part of their normal day to day activities. The Executive decision paper at this time also highlighted that there was evidence to

suggest that drug abuse by rough sleepers in the area of St Mary's Church, Peoples Park and the Peoples Church had led to substantial numbers of needle finds in those locations.

- 4.3 A full public consultation was carried out prior to introducing the Order. The outcome of the consultation was:
- 86% of respondents reported seeing anti-social behaviour related to alcohol consumption in Banbury Town Centre in the previous 12 months and 90% supported a PSPO to stop anti-social drinking.
 - 96% of respondents reported seeing begging in Banbury Town Centre in the previous 12 months and 85% supported a PSPO to stop begging.
 - 76% of respondents reported seeing rough sleeping in Banbury Town Centre in the previous 12 months and 80% supported a PSPO to stop rough sleeping.

5.0 Evaluation of the Order

- 5.1 Following the commencement of the PSPO in 2016 an educational approach was adopted to advise people about the effect of the Order. During December 2016 31 people were spoken to regarding potential breaches of the Order over 3 days of joint operations with the Police. In 2017, a total of 83 people were warned regarding potential breaches of the Order and 14 persistent offenders were issued with fixed penalty notices (FPNs). In 2018 7 warnings and 1 FPN were issued for breaches of the Order.
- 5.2 During the time in which the Order has been in force, no FPN has been issued for rough sleeping.
- 5.3 To evaluate the Order and assist in determining whether the PSPO should be renewed a public consultation was launched in August and concluded on September 11. This consultation included seeking the specific views of key stakeholders including the Police, Town Council, Banbury BID and drug, alcohol and mental health support agencies. A mailshot was sent to all addresses within the geographic area covered by the Order. In addition, two engagement events were held in the town centre when members of the Community Safety team spoke with members of the public and local businesses in the area. The full analysis on the responses to this consultation is included in appendix 3 to this paper. However, the main headlines are-
- Street drinking: 71% of respondents think street drinking is still a problem in the town centre and 88% want the PSPO to continue to prohibit street drinking in the town centre.
 - Begging: 70% of respondents think begging is still a problem in the town centre and 84% want the PSPO to continue to prohibit begging in the town centre.
 - Rough sleeping: 57% of respondents rough sleeping is still a problem in the town centre (19% do not think it is a problem and 24% do not know) and 68% want the PSPO to continue to prohibit rough sleeping in the town centre.
- 5.4 Key stakeholders were also asked for a narrative comment on the potential renewal of the Order. Responses suggest that consideration needs to be given to extending the Order either in geographic coverage or in relation to the behaviours within the scope of the Order. In particular, the Police commented that they have seen an

increase in busking which falls outside the scope of the current Order. Banbury Town Council commented that they would like the Order extended to incorporate every group of shops in Banbury since they have seen a displacement of begging to these locations.

- 5.5 It is not possible to obtain directly comparable Police data to that collated in advance of introducing the Order. The Police incident data provided as background to the decision to introduce the Order was collected following rising concerns about the issues of begging, drunkenness and rough sleeping in Banbury. Similar data is not collected routinely. However, some data is available from which conclusions may be drawn about the scale of the current issues concerning anti-social behaviour, begging and rough sleeping in Banbury Town Centre.
- 5.6 Between April 2018 and September 2019 (17 months) there were 41 incidents of alcohol related anti-social behaviour recorded in Banbury Town Centre by Thames Valley Police. This compares with 57 reports for the period July 2014 to February 2016 (19 months) before the Order was introduced. In addition, following an increased focus on the areas covered by the PSPO, since May 2019 Thames Valley Police have issued 2 warnings and 7 FPNs relating to begging and 19 warnings and 9 FPNs concerning street drinking.
- 5.7 In addition to the recorded enforcement data summarised above the council's community safety team and the Police will have taken informal action on potential breaches of the Order which will not be recorded (e.g. asking someone to move when they are witnessed sitting on the ground in a known begging location but without any actual begging being witnessed).

6.0 Rough Sleeping

- 6.1 The inclusion of rough sleeping in a PSPO is controversial. The 2019 Cherwell District Council was named in an article in the Guardian which criticised local authorities for including rough sleeping in public spaces protection orders despite guidance advising local authorities not to use these Orders in relation to homelessness. Attempts to enforce the Order in relation to rough sleeping may result in legal challenge.
- 6.2 In December 2017 the statutory guidance¹ on anti-social behaviour powers was amended in relation to rough sleeping. This guidance now states- "Public Spaces Protection Orders should not be used to target people based solely on the fact that they are homeless or rough sleeping, as this in itself is unlikely to mean that their behaviour is having an unreasonably detrimental effect on the community's quality of life which justifies imposing restrictions using a PSPO. Councils may receive complaints about homeless people, but they should consider whether the use of a Public Spaces Protection Order is the appropriate response. These Orders should be used only to address any specific behaviour that is causing a detrimental effect on the community's quality of life which is within the control of the person concerned. Councils should therefore consider carefully the nature of

¹ Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers. Statutory guidance for frontline professionals; *Home Office*, August 2019

any potential Public Spaces Protection Order that may impact on homeless people and rough sleepers.”

- 6.3 The use of PSPO powers by local authorities to address rough sleeping has been challenged by organisations such as Crisis and Liberty. The statutory guidance places an emphasis on tackling problem behaviours that are having a detrimental impact on the local area and not using enforcement powers where the individual has little or no ability to change their circumstances.
- 6.4 In view of the changes to the Government guide on PSPOs, the public consultation on the renewal of the Order proposed that rough sleeping will be removed from the scope of the Order. The views of organisations involved in work related to homelessness and rough sleeping were sought as part of the consultation in order to inform the decision on this point. In general, the responses from organisations such as the Salvation Army, Oxford University Health Trust, Paradigm Housing and the Banbury Beacon Drop-in Centre have not expressed strong views on whether the restriction on rough sleeping should remain in the Order or not. None have reported that they see rough sleeping in the town centre to be a problem. They have, however, recognised that rough sleeping is different to problematic behaviours such as begging and street drinking and emphasised the importance of good support services and pathways for people affected by homelessness.
- 6.5 In terms of support for rough sleepers, the council currently commissions outreach and support services for rough sleepers from Connection Support, an Oxfordshire based voluntary sector organisation. This provides an outreach service 5 days per week to rough sleepers in order to assess needs and help people into supported accommodation that is commissioned by the council or its partners through the Adult Homeless Pathway. The council also grant funds the Beacon Centre in Banbury which provides a drop-in service 4 days per week to rough sleepers and people who are vulnerably housed.
- 6.6 The council also ensures that rough sleepers have accommodation under the Severe Weather Emergency Protocol and are working with providers to look at offering longer term winter beds with potential funding from the Ministry for Housing, Communities and Local Government.
- 6.7 A particularly strong view on the renewal of the PSPO was received from Connections Support. They commented that PSPO made the provision of support of homeless people harder since it moved genuine rough sleepers out of the town so that they had to search a wide area to find them and keep in contact with them. They feel that action against rough sleeping needs differentiate between the genuinely homeless and those who have housing options but choose not to take them or who give the impression of being homeless to support their begging. They also comment that the process of finding accommodation for homeless people can take time and keeping them out of the town centre creates difficulties since they can lose contact.

7.0 Views of the Overview and Scrutiny Committee

- 7.1 On 3 September the Overview and Scrutiny Committee were invited to comment on the potential renewal of the Order. The Committee were in favour of renewing the

Order. However, there was some disagreement as to whether begging should remain within the scope of the Order with the view being expressed by one committee member that this behaviour is not problematic and can be addressed by using powers under the Vagrancy Act. Committee members were also keen to hear the view of drug and alcohol and mental health support agencies in order to determine whether the Order is adversely impacting people with support needs.

- 7.2 Whilst the Vagrancy Act 1824 does still criminalise some behaviours such as begging and rough sleeping, there are some limitations to the use of these provisions. The sanction for breaching the Vagrancy Act 1824 is prosecution only, which may not be an effective deterrent to prevent rough sleeping or begging in Banbury town centre. It also relies on Police action (arrest and charging). Data from the Ministry of Justice shows that between 2007 and 2017 the number of convictions for offences under section 4 of this Act (which includes rough sleeping) fell from 692 to 158. In addition, the Government has committed to reviewing homelessness and rough sleeping legislation, including the Vagrancy Act 1824. This review is expected to report by March 2020².
- 7.3 Thames Valley Police have concerns about relying on the Vagrancy Act to address problematic and wilful rough sleeping or begging. It is frequently difficult to gather the required evidence of aggressive behaviour that would justify prosecution and prosecutions take time to conclude. The outcome, which is normally a small fine, is not an effective deterrent and does not justify the time commitment required to bring a prosecution.

8.0 Conclusions and Reasons for Recommendations

- 8.1 The Executive is recommended to extend the PSPO. The consultation shows a reduction in the proportion of people perceiving the behaviours addressed by the Order to be a problem in the Town Centre and support for continuing with the protection against anti-social behaviour provided by the Order. The decline in the number of warnings and FPNs issued during the period the Order has been in place shows a reduction in the frequency that the Community Wardens and Police are required to take action to address problem behaviours. However, the data also show continuing need for enforcement actions (formal and informal) under the PSPO and continuing reports of alcohol related anti-social behaviour. Based on the evaluation there is a risk that these behaviours escalate should the PSPO cease.
- 8.2 In reaching a decision on whether to renew the Order it will be important to consider the necessity of continuing with the Order and the proportionality of the restrictions it contains. An Equality Impact Assessment has been prepared as part of the decision papers and is included in annex 4.
- 8.3 As stated above, some of the responses to the consultation request that the scope of the Order is widened. This cannot happen as part of the current renewal process since we are required to consult on any proposal to change the Order. As such, in consideration of the responses, it is proposed that we will collate the evidence relating to possible extension of the Order for further review by the Executive at a

² UK Parliament Briefing Note. April 2019. <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7836>

later date so that the Executive can decide whether a consultation should be commenced on extending the Order.

- 8.4 Including rough sleeping within the scope of any renewed Order is likely to attract criticism in the media. It may also lead to legal challenge if we seek to prosecute someone for breaching this aspect of the Order. The public consultation generally supported the continued inclusion of restrictions on rough sleeping in the Order. However, the need to do so could be questioned given the lack of enforcement action under the Order relating to rough sleeping and the strong emphasis in the Government guidance. This is supported by views from stakeholders suggesting that the focus should be on support provision and addressing underlying needs rather than enforcement action against those found to be rough sleeping. Connection Support's response suggests that the provision of support is made harder by the PSPO, but it also suggests that removing rough sleeping from the Order could result in an increase in rough sleeping in the town centre.
- 8.5 Cherwell has good provision for the support of anyone rough sleeping but risks reputational damage if the renewed Order includes a further prohibition on rough sleeping. Therefore, it is recommended that the rough sleeping element is removed from the Order if it is renewed.

9.0 Alternative Options and Reasons for Rejection

- 9.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: Do nothing (not renew the Order).

This option is not preferred for two reasons. Firstly, the consultation on the potential renewal of the Order shows public support for it continuing and high levels of public perception that begging, street drinking and rough sleeping continue to be a problem in Banbury Town Centre. Secondly the evaluation of the Order shows that the enforcement options provided by the Order are still being utilised to address anti-social behaviour in the town centre. As such, allowing the Order to cease would be going against public opinion and is likely to result in increased problems of anti-social behaviour in the Town Centre.

Option 2: Renew the Order including the prohibition on rough sleeping.

This option is not preferred since Government Guidance produced since the Order was introduced states that PSPOs should not be used to tackle rough sleeping. In addition, the data on the use of the enforcement options provided by the PSPO shows that the Order is not being used to address rough sleeping in the Town Centre. Whilst the inclusion of rough sleeping in the Order may be a deterrent to rough sleeping in the Town Centre, our supportive approach to assisting rough sleepers provides options to address most rough sleeping problems in the Town Centre.

Option 3: Extend the Order to include new issues or behaviours.

This option is not legally possible at this time. We are required to consult on any increase in the scope of the Order. We have not carried out this consultation as part of the renewal process.

10.0 Implications

Financial Implications

10.1 There are no financial implications arising directly from this report.

Comments checked by: Dominic Oakeshott, Assistant Director Finance (Interim),
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Legal Implications

10.1 No additional comments to those set out in the report.

Comments checked by: Nick Graham, Director of Law and Governance,
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11.0 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

'Clean, green and safe' – Reduce Anti-Social Behaviour, Support Community Safety

Lead Councillor

Councillor Andrew McHugh, Lead Member for Health and Wellbeing

Document Information

| Appendix No | Title |
|---------------------|---|
| 1 | Public Spaces Protection Order |
| 2 | Public Spaces Protection Order Map |
| 3 | Consultation Outcomes Analysis |
| 4 | Equality Impact Assessment |
| Background Papers | |
| None | |
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