

REPORT TO SCRUTINY COMMUNITY

Date of Meeting: 8 September 2015

REPORT TO EXECUTIVE

Date of Meeting: 15 September 2015

Report of: Assistant Director Environment

Title: Proposals for the Implementation of a Public Spaces Protection Order

Is this a Key Decision?

Yes

Is this an Executive or Council Function?

Council

1. What is the report about?

- 1.1 To advise Scrutiny Community Members on the process and consideration given to date, to the implementation of a Public Spaces Protection Order in the City Centre area of Exeter.
- 1.2 To seek agreement of Executive to enter into consultation with the public and relevant stakeholders on the draft proposals for a Public Spaces Protection Order (PSPO); and
- 1.3 To bring a report back to Scrutiny Community, Executive and Council at the end of this year, with recommendations as to the implementation or otherwise of a Public Spaces Protection Order.

2. Recommendations:

- 2.1 That Scrutiny Community notes and Executive approves:
 - a) the content of the draft Public Space Protection Orders, in the area defined by the attached map (Appendix I), with the prohibitions and actions (contained in Appendix II); and
 - b) that officers seek the views of the public and other stakeholders through public consultation, with a view to reporting back to Scrutiny Community, Executive and Council at the end of 2015; and
 - c) that officers make recommendations in that report on the adoption or otherwise of a Public Spaces Protection Order for approval by Council.

3. Reasons for the recommendation:

- 3.1 The justification for this area is based on intelligence from Devon & Cornwall Police and the Council's Control Room, together with public views canvassed from complaints to the Council and from a recent survey. From this intelligence it is clear that the prevalence of anti-social behaviour from the issues that the proposed PSPO seeks to control, is relatively high in comparison with other parts of the city, and at a level where the control mechanisms offered by the proposed PSPO will enable either

a control method where one does not exist at present, or a more effective control measure that is more easily used by agencies, and one that does not necessarily criminalise a perpetrator in breach of the PSPO.

- 3.2 From complaints to the Police and Council, together with views collated through a recent survey, there is evidence that these anti-social behaviours are having a detrimental impact on the quality of life of those residents, workers and visitors situated within the proposed PSPO area.
- 3.3 The anti-social behaviours that the proposed PSPO would seek to control within the defined area of public space include:
- the taking of intoxicants (alcohol, legal highs and other stimulants);
 - groups causing anti-social behaviour;
 - begging;
 - urinating in the street; and
 - bivouacs, bedding and encampments in the street.

4. What are the resource implications including non-financial resources.

- 4.1 It is anticipated that the Police will be the principal agency making use of the PSPO powers, and in most instances will allow a more efficient intervention than their existing powers, and avoid the need for arrest and prosecution (e.g. in controlling begging). Any enforcement costs in pursuit of breaches of this Order will be met by existing Police and/or Council resources. Currently both the Assistant Directors Environment and Public Realm can authorise officers to act under this Order.
- 4.2 There were some internal costs for consultation and a small cost associated with the publication of the Order and stationary for fixed penalty notices (FPNs), along with the installation of appropriate signage. These will be met from within existing budgets.
- 4.3 Income derived from FPNs is expected to be small but may be used to help cover the associated costs of implementing the Order.
- 4.4 At present it is unknown what legal resource may be needed to deal with matters requiring pursuance through the courts.

5. Section 151 Officer comments:

- 5.1 There are no significant financial implications contained within this report.

6. What are the legal aspects?

- 6.1 The Anti-Social Behaviour, Crime and Policing Act came into force on 20 October 2014. This Act contains the provisions for the Public Space Protection Order, which was enacted by order of the Secretary of State on the 20 October 2014.
- 6.2 Local authorities have the power to make Public Spaces Protection Orders if satisfied on reasonable grounds that two conditions are met. 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.

6.3 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.

Activities can include things that a person or a group does, has done or should do (in order to reduce the detrimental effect).

6.4 A Public Space Protection Order is an order that identifies the space to which it applies (“the restricted area” within which the impact has or is likely to occur[ed]) and can make requirements, or prohibitions, or both within the area. This means that the local authority can, by virtue of the order, require people to do specific things in a particular area or not to do specific things in a particular area. The local authority can grant the prohibitions/requirements where it believes that they are reasonable in order to prevent or reduce the detrimental impact. The order can be made so as to apply to specific people within an area, or to everybody within that area. It can also apply at all times, or within specified times and equally to all circumstances, or specific circumstances. The order can apply for a maximum of three years upon which the process of reviews and consultation must be repeated to ensure the issues is still occurring and the order is having the required effect. Thereafter it can be extended for a further three years and, upon the reviews and consultation taking place, can be extended more than once for further periods of three years.

6.5 Failure to comply with either a prohibition, or requirement, within the order is an offence. Upon summary conviction (offences heard within the Magistrates Courts) defendants can face a fine not exceeding level three on the standard scale (currently £1000). 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. Breaches of the order can also be discharged by use of a fixed penalty notice (FPN).

6.6 Consumption of alcohol, contrary to the terms of any order made, is a separate issue and is not in itself an offence, the offence is committed by failure to comply with a request to surrender the alcohol, from an authorised person.

6.7 The Act is not overly descriptive about the necessary process required for application of these powers. It has therefore been necessary to design a process that is considered to be appropriate and suitably robust.

6.8 Implementation of this order, legally, would require a public notice to be published. This would be done through a formal notice in the local newspaper, notification on our website and press releases through media outlets.

6.9 Although not necessarily a statutory requirement, signage would normally be required in the area explaining the order in plain English and what it means in practical terms. This is to provide support for the enforcement and prevent risks of mitigation pleas from those found to be in breach. Such signage would be small and concise, and would ordinarily be on all major access points to the prescribed area

covered by the Order, replacing the existing 'Designated Public Place Order (DPPO) signage.

6.10 As with any new legislation of its type, this is untested ground and the legislation will be further defined in years to come by a process of appeals and High Court rulings. Any legal challenge presents a risk to the Authority. The legislation supporting implementation of the new Orders states that "interested persons" may challenge the validity of any order in the High Court. This means that the Council could face a challenge against its ability to implement the Order. An application of this nature must be made within six weeks, beginning on the day the Order is made or varied. There are grounds upon which a challenge could be made, these are:

- 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);
- that a requirement under this part of the legislation was not complied with in relation to the order or variation.

The High Court has the power to suspend, quash, amend or uphold the order.

6.11 The penalty for breaches of this Order relate to fines alone, which may lead to significant levels of non-payment. The suite of new powers available however would allow officers to utilise a range of measures for those identified as persistently breaching the Order, for example:

- Community Protection Notices could be issued against the individuals;
- a Civil Injunction could be sought against individuals, which carries tougher sanctions;
- a Criminal Behaviour Order could be sought; (breach of the PSPO is an offence and upon conviction, individuals could be made subject to a Criminal Behaviour Order. This carries both tougher sanctions, along with the ability to implement positive conditions such as requiring support for substance misuse issues).

7. Monitoring Officer's comments:

7.1 The MO has no issues concerning the need to make an order. However, she is concerned about the lack of capacity in her team to support any enforcement action. No provision has been made for this additional work load. The legal team is currently working at full capacity and has no resource to be able to support this worthwhile initiative.

8. Report details:

8.1 In October 2014 the Secretary of State enacted new powers from the Anti-Social Behaviour, Crime and Policing Act, relevant to tackling Anti-Social Behaviour. These new powers also make changes to some of the relevant existing legislation and the Council is required, within the period of three years, to reconsider its Designated Public Place Orders (DPPOs) and either withdraw or replace them with new Public Space Protection Orders (PSPOs).

8.2 The new orders are more flexible and can be applied to a much broader range of issues, with local authorities having the ability to design and implement their own prohibitions or requirements where certain conditions are met. These conditions centre on the impact to the quality of life in the locality, persistence, and whether

the impact makes the behaviour unreasonable.

- 8.3 Exeter, much like other towns and cities nationally, has a recurring issue with street drinking, in particular in the summer months. Whilst a number of initiatives have helped to reduce the impact and prevalence of this behaviour, along with having a positive impact on reporting, there is concern about loss of the ability to enforce provision relating to alcohol should the DPPO be withdrawn without replacement.
- 8.4 New Psychoactive Substances (NPS), often referred to as 'legal highs', have become a major concern to local agencies over the last three years. Two shops within the City attracted significant attention, leading to numerous Police and multi-agency actions. These issues in particular had an impact in the City Centre. The lower section of the High Street, South Street, Cathedral Green and Fore Street suffered increases in Anti-Social Behaviour directly related to the prevalence of these two shops selling these substances. Although one shop has since been closed following Police action and another has ceased selling NPS's over the counter, sales of NPS's are still taking place from other outlets, leading to consumption in public spaces.
- 8.6 Officers from a range of local agencies, but in particular Devon and Cornwall Police and Exeter City Council, have considered the potential use of the new powers to address the current issues within the City Centre. Based upon the model adopted by the City of Lincoln, they have developed a proposal designed to provide opportunities to significantly impact, through enforcement (ultimately backed by support and interventions), the issues caused by use of intoxicating substances, in public, in the City Centre area.
- 8.7 In order to make the Public Space Protection Order, members would need to be satisfied that the legal conditions, laid out above, have been met. Officers' view is that these requirements have been met based on:
- Evidence gathered by the Council itself, and from other associated agencies including the Police, recording crime and ASB statistics for the area attached as Appendix III
 - Figures from the police relating to legal highs.
 - Complaints received from the public.
- 8.8 In relation to enforcement of these orders there are two fundamental differences compared with enforcement conducted under the Designated Public Place Orders. These differences are that both Police Community Support Officers and Council Officers can enforce the Order and not just Police Officers.

9. How does the decision contribute to the Council's Corporate Plan?

- 9.1 The main contribution of the designation of a Public Spaces Protection Order is to support the purpose of Keep me / my environment safe and healthy and building a stronger City. In achieving this, it is necessary to work with partners who make up the Community Safety Partnership to ensure that this is effectively implemented.

10. What risks are there and how can they be reduced?

- 10.1 If the correct process to introduce a PSPO is not followed this could lead to a challenge which will mean the Authority could face legal costs and reputational damage.

- 10.2 There is also a risk that public expectations will be raised by this Order that agencies cannot fully meet; the Order is unlikely to remove the issues in total.
- 10.3 Implementation of this Order could lead to displacement. Officers have considered this and think that the area of the proposed Order is sufficiently large to reduce any problems arising from displacement.
- 10.4 The order will be reviewed by the Community Safety Partnership 6 months after implementation, and annually thereafter in order to mitigate the prevalence of any of the associated risks.
- 11. What is the impact of the decision on equality and diversity; health and wellbeing; safeguarding children, young people and vulnerable adults, community safety and the environment?**
- 11.1 This report identifies a proposal that has the potential to deliver a significant positive community impact if 'policed' and enforced to its full potential.
- 12. Are there any other options?**
- 12.1 **Maintain the status quo** – the current Designated Public Place Order could be left unchanged for a further period of three years. This option was disregarded due to both the ambiguity of the Act and the associated issues, along with the clear need to tackle issues relating to use of new psychoactive substances and other anti-social behaviours.
- 12.2 **Replace the DPPO** with a simple alcohol related PSPO. This was again disregarded due to the ambition and need to tackle new psychoactive substances, and the linked anti-social behaviour around street drinking and intoxication in a public place.

Assistant Director Environment

Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

- Home Office (October 2014) New Psychoactive Substances Review: Report of the Expert Panel
- Lincoln City Council (January 2015) Executive Report Proposals for the Implementation of a Public Space Protection Order
- Highways Act 1980

Contact for enquires:
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Appendix II

Prohibitions and requirements contained in Public Spaces Protection Order

Person(s) within this area, whilst situated in the street or other public space where the public have access without payment shall:

- 1) Surrender any intoxicating substance in their possession to an authorised person on request, if they are found to be ingesting, inhaling, injecting, smoking or otherwise using intoxicating substances, or are in possession of such intoxicating substances with the intent of using such intoxicating substances within this area, where the authorised person has reasonable grounds to believe that such person is using or intends to use the intoxicating substance within the said area.**

Intoxicating Substances is given the following definition (which includes Alcohol and what are commonly referred to as 'legal highs'): Substances with the capacity to stimulate or depress the central nervous system.

Exemptions shall apply in cases where the substances are used for a valid and demonstrable medicinal use, given to an animal as a medicinal remedy, are cigarettes or vaporisers (tobacco products), or are food stuffs regulated by food safety legislation, or where the use of the intoxicating substances fall within the curtilage of a premises licenced for the sale and consumption of alcohol, and within the operating hours of such.

An authorised person shall be a Police Constable, Police Community Support Officer or Exeter City Council Officer, who must be able to present their authority upon request.

- 2) Not urinate in a street or public open space**

The term 'street' includes any road, footway, beach or other area to which the public have access without payment. It also includes a service area as defined in Section 329 of the Highways Act 1980. Other areas will include parks and retail car parks to which the public have access to without payment.

Exemptions shall apply where authorised temporary public urinals/toilets have been provided in accordance with any specification issued by Exeter City Council, and with its agreement.

- 3) To the satisfaction of an authorised person, clear away and remove from this area without delay, any unauthorised bivouac, bedding or encampment formed in a street together with any associated paraphernalia, when requested to do so by an authorised person. An authorised person may confiscate and dispose of any unauthorised bivouac, bedding or encampment found within this area, with or without the permission of its owner.**

For these purposes, bivouac, bedding and encampment mean any portable shelter used for camping or outdoor sleeping, and include materials used for shelter against the elements, weather or ground.

For this purpose 'unauthorised' means by without the express written consent of any owner or person having control or interest in the land in question.

- 4) Not make unsolicited and or unauthorised request(s) (whether expressly requested or impliedly requested by conduct), in a public place, for money from persons not known to the perpetrator.**

For this purpose 'unauthorised' means by without the express written consent of any owner or person having control or interest in the land in question.

- 5) Not form in groups of two or more persons and behave in a manner that has or is likely to result in any member of the public being intimidated, harassed, alarmed or distressed by that behaviour.**
- 6) Persons within this area who breach this prohibition (Prohibition 5) shall, where a Police Officer or Police Community Support Officer, or Exeter City Council Officer, has reasonable grounds for believing that the presence or behaviour of a group of two or more persons in any public place in this area has resulted or is likely to result in any member of the public being intimidated, harassed alarmed or distressed, the officer may require the persons in the group to disperse either immediately; or by such time as may be specified; and in such way as may be specified.**

Appendix III - Evidence gathered by the Council itself, and from other associated agencies including the Police, recording crime and ASB statistics for the area

Date	Incident Type	Road
05-Jul-14	Causing Disturbance / Nuisance	Sidwell Street
05-Jul-14	Violence - Fighting	Fore Street
07-Jul-14	Drug related	Guinea Street
10-Jul-14	Drink related	Sidwell Street
12-Jul-14	Drug dealing suspected	Not listed – City Centre
12-Jul-14	Violence - Fighting	Fore Street
13-Jul-14	Criminal Damage	Longbrook Street
13-Jul-14	Violence - Fighting	High Street
15-Jul-14	Suspicious Behaviour	Sidwell Street
16-Jul-14	Causing Disturbance / Nuisance	Sidwell Street
16-Jul-14	Drug related	Fore Street
19-Jul-14	Drug related	North Street
22-Jul-14	Drink related	Sidwell Street
07-Aug-14	Drink related	Cathedral Yard
11-Aug-14	Anti Social Behaviour	Fore Street
12-Aug-14	Drug related	Rougemont Gardens
12-Aug-14	Causing Disturbance / Nuisance	High Street
16-Aug-14	Drug related	Fore Street
21-Aug-14	Drug related	Cathedral Yard
26-Aug-14	Causing Disturbance / Nuisance	Guildhall Shopping Centre
03-Sep-14	Begging	Queen Street
05-Sep-14	Misc / Other	Sidwell Street
07-Sep-14	Drug related	Bear Street
07-Sep-14	Violence - Assault	Fore Street
11-Sep-14	Anti Social Behaviour	Cathedral Yard
12-Sep-14	Anti Social Behaviour	Cathedral Yard
12-Sep-14	Anti Social Behaviour	Cathedral Yard
19-Sep-14	Drug related	Fore Street
23-Sep-14	Drug related	Rougemont Gardens
23-Sep-14	Violence - Fighting	Fore Street
25-Sep-14	Violence - Threatening Behaviour	Longbrook Street
25-Sep-14	Anti Social Behaviour	High Street
06-Oct-14	Drug related	Cathedral Yard
10-Oct-14	Misc / Other	Sidwell Street
13-Oct-14	Anti Social Behaviour	King William Street
13-Oct-14	Anti Social Behaviour	King William Street
19-Oct-14	Begging	High Street

20-Oct-14	Anti Social Behaviour	St Thomas PG
21-Oct-14	Anti Social Behaviour	King William Street
24-Oct-14	Drug related	Paris Street
25-Oct-14	Violence - Fighting	Summerland Street
25-Oct-14	Violence - Fighting	Fore Street
25-Oct-14	Violence - Fighting	Fore Street
25-Oct-14	Violence - Fighting	George Street
25-Oct-14	Violence - Fighting	Fore Street
27-Oct-14	Anti Social Behaviour	Paris Street
28-Oct-14	Dog nuisance	St Thomas PG
30-Oct-14	Anti Social Behaviour	High Street
31-Oct-14	Anti Social Behaviour	King William Street
31-Oct-14	Causing Disturbance / Nuisance	High Street
01-Nov-14	Violence - Assault	Fore Street
01-Nov-14	Violence - Fighting	York Road
03-Nov-14	Anti Social Behaviour	High Street
05-Nov-14	Missing Person Hi-Risk	High Street
06-Nov-14	Violence - Threatening Behaviour	George Street
08-Nov-14	Anti Social Behaviour	Gandy Street
09-Nov-14	Violence - Fighting	Fore Street
18-Nov-14	Causing Disturbance / Nuisance	Guildhall Car Park
19-Nov-14	Causing Disturbance / Nuisance	Paul Street
20-Nov-14	Drink related	High Street
23-Nov-14	Violence - Assault	High Street
27-Nov-14	Drug related	Paul Street
27-Nov-14	Drug related	King William Street Car Park
27-Nov-14	Drug related	Paul Street
28-Nov-14	Anti Social Behaviour	Western Way
28-Nov-14	Anti Social Behaviour	Western Way
28-Nov-14	Anti Social Behaviour	Paul Street
28-Nov-14	Anti Social Behaviour	High Street
29-Nov-14	Anti Social Behaviour	Cathedral Yard
06-Dec-14	Criminal Damage	Paris Street
06-Dec-14	Violence - Fighting	High Street
13-Dec-14	Indecent Exposure	Market Street
19-Dec-14	Anti Social Behaviour	George Street
20-Dec-14	Drug dealing suspected	Cathedral Yard
20-Dec-14	Violence - Abusive Behaviour	Fore Street
25-Dec-14	Drug related	Martins Lane
03-Jan-15	Drug dealing suspected	Smythen Street
08-Jan-15	Drug related	Fore Street
08-Jan-15	Drug related	Fore Street

17-Jan-15	Anti Social Behaviour	Sidwell Street
18-Jan-15	Collapsed Person	Cathedral Yard
19-Jan-15	Drug dealing suspected	Cathedral Yard
20-Jan-15	Drug dealing suspected	Longbrook Street
02-Feb-15	Causing Disturbance / Nuisance	Smythen Street
02-Feb-15	Drug related	Paul Street
03-Feb-15	Drink related	Sidwell Street
03-Feb-15	Drug dealing suspected	Queen Street
03-Feb-15	Drink related	Sidwell Street
04-Feb-15	Drug related	Fore Street
11-Feb-15	Drug related	Bedford Street
17-Feb-15	Drug related	George Street
17-Feb-15	Drug dealing suspected	Gandy Street
03-Mar-15	Causing Disturbance / Nuisance	Cathedral Yard
18-Mar-15	Misc / Other	Sidwell Street
24-Mar-15	Drug related	Bampfylde Street
31-Mar-15	Drug related	King William Street Car Park
11-Apr-15	Drug related	Smythen Street
13-Apr-15	Drink related	Cathedral Yard
15-Apr-15	Drug dealing suspected	Sidwell Street
22-Apr-15	Drug dealing suspected	Musgrave Row
23-Apr-15	Drug dealing suspected	Coombe Street
26-Apr-15	Drink related	Cathedral Yard
12-May-15	Drink related	Quay Hill
13-May-15	Anti Social Behaviour	High Street
14-May-15	Drink related	High Street
14-May-15	Drug dealing suspected	Gandy Street
15-May-15	Anti Social Behaviour	South Street
22-May-15	Drug dealing suspected	Smythen Street
04-Jun-15	Anti Social Behaviour	Fore Street
05-Jun-15	Drug dealing suspected	Market Street
08-Jun-15	Drug dealing suspected	Cathedral Yard
08-Jun-15	Drug dealing suspected	Cathedral Yard
11-Jun-15	Drug dealing suspected	Cathedral Yard
19-Jun-15	Anti Social Behaviour	Sidwell Street
20-Jun-15	Drug related	High Street
21-Jun-15	Drink related	Cathedral Yard
24-Jun-15	Drink related	Cathedral Yard
24-Jun-15	Drink related	Princesshay
24-Jun-15	Drink related	Cathedral Yard
24-Jun-15	Drink related	Cathedral Yard
24-Jun-15	Collapsed Person	High Street

24-Jun-15	Drug related	Cathedral Yard
24-Jun-15	Anti Social Behaviour	North Street
26-Jun-15	Anti Social Behaviour	Cathedral Yard
27-Jun-15	Anti Social Behaviour	Cathedral Yard
27-Jun-15	Drug related	Smythen Street
27-Jun-15	Drug related	Cathedral Yard
02-Jul-15	Anti Social Behaviour	Market Street
02-Jul-15	Anti Social Behaviour	Cathedral Yard
02-Jul-15	Anti Social Behaviour	Cathedral Yard
02-Jul-15	Anti Social Behaviour	Smythen Street
02-Jul-15	Drug dealing suspected	High Street
02-Jul-15	Drug dealing suspected	Fore Street
02-Jul-15	Drug related	Sidwell Street
02-Jul-15	Anti Social Behaviour	Cathedral Yard
03-Jul-15	Collapsed Person	Bampfylde Street
03-Jul-15	Anti Social Behaviour	Cathedral Yard
03-Jul-15	Anti Social Behaviour	High Street
06-Jul-15	Drug related	Cathedral Yard
06-Jul-15	Drug related	Mary Arches Street
06-Jul-15	Drug related	North Street
06-Jul-15	Drug related	St Thomas PG
06-Jul-15	Drug related	Cathedral Yard
06-Jul-15	Drug related	St Thomas PG
08-Jul-15	Drug related	High Street
10-Jul-15	Anti Social Behaviour	Cathedral Yard
11-Jul-15	Anti Social Behaviour	Cathedral Yard
12-Jul-15	Drug dealing suspected	Guinea Street
12-Jul-15	Violence - Threatening Behaviour	Fore Street
13-Jul-15	Drug related	Guinea Street
18-Jul-15	Anti Social Behaviour	Sidwell Street
18-Jul-15	Traffic - Possible DIC	George Street
18-Jul-15	Anti Social Behaviour	High Street
18-Jul-15	Anti Social Behaviour	High Street
18-Jul-15	Causing Disturbance / Nuisance	Gandy Street
19-Jul-15	Causing Disturbance / Nuisance	Queen Street
20-Jul-15	Obs for individual	Sidwell Street
21-Jul-15	Drug related	High Street