

REPORT TO PLACE SCRUTINY
Date of Meeting: 12 January 2017

REPORT TO EXECUTIVE
Date of Meeting: 14 February 2017

REPORT TO COUNCIL
Date of Meeting: 21 February 2017

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 Members on the consultation responses and subsequent consideration given to the implementation of a Public Spaces Protection Order (PSPO or Order) in the City Centre area of Exeter.
- 1.2. To make recommendations on the implementation of a Public Spaces Protection Order.

2. Recommendations:

- 2.1 That Scrutiny Place and Executive supports and Council approves:
 - a) the implementation of a Public Space Protection Order, in the area defined by the attached map (Appendix 1A), with the restrictions (contained in Appendix 1B), for a period of 3 years from the commencement date of 1 June 2017;
 - b) this Order to replace the Designated Public Places Order that currently exists in the City Centre to control the problematic consumption of alcohol within public places, and which is contained within the boundary of the proposed Public Spaces Protection Order;
 - c) that officers work with the Police and Exeter Community Safety Partnership in the development of an enforcement and positive/restorative pathway protocol for the Public Spaces Protection Order, together with a supporting training programme. The purpose of this is to provide clear guidance on what action is deemed appropriate, proportionate, reasonable and compassionate, with particular regard given to the rights of freedom of expression and freedom of assembly as set out in articles 10 and 11 of the Convention on Human Rights;

- d) the adoption of a zero penalty fee where a recipient of a fixed penalty notice issued for a breach or the PSPO commits to the option of an Acceptable Behaviour Contract contained within and offered by the respective fixed penalty notice;
- e) that any funding received by the Council from fixed penalty notices issued for a breach of any PSPO will be ring-fenced for programmes to address anti-social behaviour and the funding administered by the Exeter Community Safety Partnership; and
- f) that officers bring back a report to Scrutiny Place after 6 months of any Order being implemented as to its operation and effectiveness in reducing the problematic anti-social behaviour it seeks to manage together with any negative or unforeseen impacts that it may develop, and any recommendations for varying or discharging the Order.

3. Reasons for the recommendations:

- 3.1 There is justification for the Order based on intelligence from Devon & Cornwall Police, the Council, and the Exeter Community Safety Partnership, together with information from complaints made by the public to the Council, a survey carried out amongst members of the Business Improvement District (BID) in the Autumn of 2015 (Appendix 3D), from the four months of substantive public consultation about the proposed PSPO, ending 29 February 2016 (Appendix 2A), and from more recent feedback from residents and businesses in open public meetings held in December 2016 (Appendix 3E). From this information it is clear that the prevalence of persistent and problematic anti-social behaviour from the issues that the proposed Order seeks to control, is relatively high in the proposed area of the Order when compared with other parts of Exeter.
- 3.2 Data from complaints to the Police and Council, Control Room CCTV data (Appendix 3A) and Police data (Appendix 3B & 3C), together with views collated through a survey of retailers in the Business Improvement District (Appendix 3D), responses made to the PSPO public consultation (Appendix 2A, 2C, & 2D), and feedback for open public meetings in December 2016 (Appendix 3E) show there is evidence that these anti-social behaviours are having or are likely to have a detrimental impact on the quality of life of those in the locality, i.e. residents, workers and visitors situated within the proposed Order area. These anti-social activities have persisted over many months and are continuing at a level that is unreasonable and justifies the restrictions proposed in the Order.
- 3.3 The control mechanisms offered by the proposed Order will either introduce a control measure where one does not exist at present, or provide an alternative, more effective control measure than currently exists, and one that does not necessarily criminalise a perpetrator in breach of the Order. Furthermore, when applied in conjunction with other interventions, it can be used to engender positive behaviour change by offering the option of a restorative or positive alternative to a penalty fine (e.g. Lincoln Council have crafted a much reduced fixed penalty fee for those users of new psychoactive substances (NPS's) who actively take up the offer of addiction services). In this regard the option of agreeing to a positive pathway by means of signing an Acceptable Behaviour Contract (ABC), will normally be included within the fixed penalty notice (FPN), so that there is a positive/restorative option alongside the punitive option of a penalty.

- 3.4 Following the extensive public consultation from November 2015 to February 2016, the anti-social behaviours that the proposed Order would seek to control within the defined area of public space include:
- the taking of intoxicants (alcohol, new psychoactive substances commonly known as ‘legal highs’ and other stimulants);
 - individuals or groups causing anti-social behaviour;
 - urinating in the street; and
 - aggressive begging
- 3.5 Whilst there is also evidence of problematic anti-social behaviour associated with street encampments, it is clear from the public consultation that currently there is insufficient public support for the inclusion of powers to control such within any Order, with only 17% of responses in favour of restrictions on street encampments. Whilst the original restrictions were deliberately crafted to distinguish between those that are sleeping rough (which in itself is not anti-social) and instead attempted to focus on the anti-social manifestations of encampments when they interfere with the lawful use of a public space by other members of the public or property owners (e.g. obstructing access to a building or deterring use of part of a park), it is apparent that many respondents felt that this was specifically aimed at members of the street community as a means of removing them from the streets, rather than dealing with the anti-social behaviour that can manifest when other lawful users seek to use that space. It is important that there is general public support for the introduction and implementation of any PSPO, therefore, the prohibitions and restrictions regarding street encampments that were originally included in the proposed Order for consultation, have now been removed from the set of controls recommended in this report.
- 3.6 In relation to the proposed control over begging in general, there was insufficient public support for this proposal to be included in its entirety. However, on further examination, it is accepted by officers and partners of the Community Safety Partnership that there is a distinction between ‘passive begging’ (e.g. where someone is sat at a shop entrance collecting money from a hat), and someone who purposefully places themselves beside a pay-point or cash-point, where members of the public have to take out their money or bank cards in order to use the facility, or someone who proactively walks up to a person to demand money in an intimidating manner; these latter two examples may be described as ‘aggressive begging’ due to their intimidating nature and higher likelihood to cause fear, alarm or distress to a member of the public so approached.
- 3.7 The Act also make changes to some of the existing legislation and the Council is required, within the period of three years from the implementation of the Act (i.e. by October 2017), to reconsider its Designated Public Place Order (DPPO) and either withdraw or replace it with a new Public Spaces Protection Order (PSPO). As there is evidence of ongoing anti-social behaviour with street drinking both in the DPPO area and immediately beyond that area, it is prudent to replace the current DPPO at this stage, and include the nearby locations where problematical street drinking occurs, (e.g. St. Thomas Pleasure Gardens and Belmont Park) within a PSPO.
- 3.8 In operational terms, the Police will provide the primary front-line resource managing the respective anti-social behaviours within the PSPO area, whilst the Council will assist the Police in the administration of the Order by working with them in crafting

any Acceptable Behaviour Contract (where this gives an alternative option to the penalty), issuing fixed penalty notices retrospectively based on Police evidence, (e.g. issuing an FPN by post to a late night reveller who has been caught urinating against a shop front) and pursuing breaches of the Order where liability has not been discharged by the perpetrator through payment of the FPN to the Council, or their agreement to commit and adhere to an ABC.

- 3.9 The Council will set the FPN fee, and in appropriate circumstances can require a reduced or zero fee (preferred) where this is linked to a positive action by the perpetrator of the anti-social behaviour (e.g. agreeing to an assessment of need at Co-Lab, which may then lead to accessing other support services such as addiction services). Formulation of a fee structure and guidance around the content of an ABC will take place alongside the development of an enforcement and positive/restorative pathway protocol by the Exeter Community Safety Partnership (CSP). It is intended that any penalty payment will be ring-fenced for use by the CSP to help fund projects specifically aimed at reducing anti-social behaviour, (e.g. the CSP funds youth activity diversion programmes aimed at encouraging positive behaviour during school holiday periods, or responsible graffiti art programmes aimed at channelling latent artistic talent in a positive direction).
- 3.10 It will be prudent to monitor the operation of the Order via the Exeter Community Safety Partnership, and report back to Members through Scrutiny Committee – Place to advise them of progress along with any recommendations for necessary modifications to the Order. It is intended that this will be initially be 6 months after the introduction of any PSPO and annually thereafter, should the PSPO be continued.

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

- 4.1. Operationally, the Police will be the principal agency using the PSPO powers on the ground, and in many instances these will allow a more efficient and effective intervention than their existing powers allow (e.g. in controlling the injection/taking of new psychoactive substances, or dispersing anti-social groups), and give a positive/restorative pathway option (through use of ABC's embodied in fixed penalty notices). In addition, it is anticipated that the Order will have a useful deterrent effect, in many cases allowing the Police to resolve any issues of anti-social behaviour without the need to escalate the intervention with formal enforcement. The initial experience of Lincoln's PSPO, which has a focus on prohibiting the public use of new psychoactive substances (NPS), is a notable reduction in the number of referrals for NPS users to the drug treatment charity Addaction, and a reduction of people using them at its needle exchange, indicating a reduction in the use of NPS's. One of the problems with NPS use is that, unlike illicit drugs such as heroin or cocaine where the resultant behaviour and effects on the body are well documented and predictable, this is not the case with the myriad of chemically manufactured psychoactive substances, resulting in alarming and unpredictable behaviour by those taking NPS's in public areas.
- 4.2. Any intervention and enforcement costs in pursuit of breaches of this Order will be met by existing Police and/or Council resources. Front-line Council officers will not be deployed to use the PSPO powers, and in the main, FPN's will not be dynamically served on-the-spot, but instead will be served retrospectively after liaison between senior Council and Police, which may include input from another appropriate lead agency (for the Council this will be at Service Lead or Principal level). However, the Council will support the Police in the use of powers under the Order, which include

the crafting of ABC's together and the processing of fixed penalty notices (FPN). For example, the Council could issue a FPN by post for someone caught urinating in the street by a Police Officer; in such cases there would be joint consideration of the appropriateness of an ABC, and FPN would be issued on receipt of appropriate evidence from that Police Officer, and processed by the Council in much the same way as FPN's for litter or dog fouling.

- 4.3. The experience of other Councils that have introduced PSPO's is that the number of breaches being pursued through the Magistrates Court is relatively low, which is likely to be mirrored in Exeter. The introduction of the alternative option of an ABC contained within the FPN, will further mitigate the likelihood of non-compliance with the terms of the FPN. However, should that not be the case and numbers are found to be far higher than expected, then there is the potential risk that this will place a strain on existing Council resources within Environment and Legal Services, but it should be emphasised that this risk is considered low.
- 4.4. The number of FPNs issued and the resultant income derived is expected to be small, and any income derived from FPN's will be ring-fenced for use by Exeter Community Safety Partnership to support programmes tackling anti-social behaviour within the City.
- 4.5. There will be some costs for the publication of the Order, and the installation of appropriate signage (estimated at £1000). There will also be officer resources needed to develop an enforcement and positive/restorative pathway protocol with the Police and other agencies, together with training. These will be met from within existing budgets.

5. Section 151 Officer comments:

There are no additional financial implications for the Council contained within this report.

6. What are the legal aspects?

- 6.1. The provisions relating to PSPO powers fall under the Anti-Social Behaviour, Crime and Policing Act 2014 (detailed in a previous report to Scrutiny and Executive on 8 and 15 September 2015, respectively).
- 6.2. The Council has the power to make a Public Spaces Protection Order 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.

Officers are satisfied that this condition has been met by the intelligence data, and survey information gathered about anti-social behaviour associated with the taking of intoxicants, urinating in the street, aggressive begging and anti-social behaviour by individuals and groups in the proposed PSPO area (detailed in Appendix 3).

- 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.

From the evidence contained in the Appendices, officers are satisfied that the activities in question are persistent and continuing, that their detrimental impacts are unreasonable, and that the restrictions proposed in the Order are reasonable and justified to either prevent or reduce the detrimental effect of the activities. Furthermore, the introduction of the ABC option as an inherent part of fixed penalty notices, will give a positive pathway for behaviour change for the better, which is predominantly absent within the legislative tools existing before the introduction of the Act.

- 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) and can make requirements, or prohibitions, or both within the area. This means that the Council 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.
- 6.5. 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 are still occurring and the Order is having the required effect. Thereafter it can be extended for a further three years and, upon review and consultation taking place, be extended more than once for further periods of three years.
- 6.6. Failure to comply with either a prohibition, or requirement within the Order, without reasonable excuse, is a criminal offence. Upon summary conviction (offences heard within the Magistrates Courts) defendants can face a fine not exceeding level 2 (in the case of breaches relating to alcohol) or level 3 on the standard scale for all other breaches (currently £500 and £1000 respectively). Breaches of an Order can also be discharged by use of a fixed penalty notice (FPN) that can be set at no more than £100. Payment of a FPN must be made within 14 days of issue to discharge liability, and is paid to the Council. However, the FPN can be further modified to allow a reduced or zero fee to apply when the recipient undertakes an alternative option offered within the FPN; this is akin to a fixed penalty to speeding in a vehicle when the option is to pay a penalty and lose points on a driving licence (a punitive action) or attend a driver awareness course (a positive/restorative action). It is the intention to include a positive/restorative alternative within any FPN in order to encourage positive and sustained changes in behaviour, and if that alternative is taken then the preferred fee-setting will be zero.
- 6.7. 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.

- 6.8. Notices are required to be erected on or adjacent to the land to which the PSPO applies, essentially explaining the Order in plain English and what it means in practical terms. This is primarily to inform the public within the PSPO area, but it will also provide a visible support for the application and enforcement of the Order and lessen the risk of mitigation pleas from those found to be in breach. Such notices would be of modest size 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 signage.
- 6.9. As with any new legislation of its type, this is largely untested ground and the legislation will no doubt be further defined in years to come by a process of appeals and High Court rulings; however, it is worth noting that Lincoln Council has carried out a small number of prosecutions of users of NPS's within the area of their city centre PSPO, who have failed to discharge their liability following the issuing of a FPN; all of these prosecutions have been successful.
- 6.10. The Council, (in this context this means Full Council) has the power to vary or discharge the Order once implemented; therefore once an Order is in place, it is able to extend or reduce the geographical area, remove or amend existing prohibitions or restrictions, and include additional prohibitions or restrictions, where there is evidence to support this. It may also end the Order at an earlier date than originally designated, for example where circumstances have improved considerably, or where the intended mitigation is not working. Any such modifications or termination would require a report through Scrutiny Place, Executive and ultimately Full Council for the decision to be made. In such circumstances, the Council would again need to have regard to section 72 of the Act in respect of Convention rights, consultation, publicity and notification.

7. Monitoring Officer's comments:

Members should note that there is a mechanism to allow an Interested Person to challenge the validity of the Order made by way of appeal to the High Court.

8. Report details:

- 8.1. The Anti-Social Behaviour, Crime and Policing Act 2014 introduced new powers relevant to tackling anti-social behaviour, including Public Spaces Protection Orders. Public spaces protection orders (PSPOs) are intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area which apply to everyone. They are designed to ensure the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.
- 8.2. These orders are 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 problem behaviour unreasonable.
- 8.3. Exeter, much like other towns and cities nationally, has a persistent and recurring issue with street drinking in the City Centre, particularly in the summer months. There is support from the Police and the Police and Crime Commissioner's Office for the

continuation of a geographically-based mechanism for controlling the anti-social consumption of alcohol in public places within the City Centre.

- 8.4. New Psychoactive Substances (NPS), often referred to as 'legal highs', have become a major concern to local agencies in Exeter over the last three years or so. Whilst previous concerted Police action has resulted in over-the counter sales of NPS's being constrained in Exeter, up until May 2016 sales were still being taking place from other outlets including shops outside of Exeter, mobile traders, and internet sales.
- 8.5. Nationally, in an effort to reduce the supply of NPS's, new legislation in the form of the Psychoactive Substances Act 2016 came into force on 26 May 2016, making it an offence to supply NPS's, but it is not yet an offence to consume them. Supply, whilst constrained, has gone 'underground', leading to continued consumption in public spaces, with all the associated anti-social behaviour remaining. Restriction A of the proposed Order would enable an intervention in respect of someone in possession of NPS's for the purpose of consumption in a public place.
- 8.6. In order to make the Public Space Protection Order, Members would need to be satisfied that the legal conditions, laid out above in paragraphs 6.2 and 6.3, 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, recorded crime and ASB data for the area attached as Appendix 3
 - Feedback from a 2015 survey of BID members - summary attached as Appendix 3D
 - Representations from the PSPO public consultation, Appendix 2A, 2C, & 2D
 - Feedback from Open Public and Business Meetings survey held in December 2016 (Appendix 3E)
- 8.7. **Results of Public Consultation**
- 8.8. The Council consulted on a proposed Order for an extended period of approximately 4 months running from 6 November 2015 to 29 February 2016. Details of the proposed Order were published on the Council's website with a headline link on the front page for the majority of time during that 4 months; the details included a map of the proposed area, the proposed prohibitions and restrictions (6 in total), and explanation of the operation of these restrictions, a 'frequently asked questions' document, a draft Equality Impact Assessment and a survey feed-back form. Interested parties could either carry out the survey online, or download the feed-back form to complete and return as a hardcopy. In addition, people could submit their responses in the form of a letter, if they so wished.
- 8.9. This consultation did not restrict who could make representations and did not differentiate between residents of Exeter, or people living outside of Exeter who visit for work, retail, and entertainment purposes. Nor did it prevent people who had no connection with Exeter from making representations; for example the impact of the Change.org petition (see paragraph 8.15) that sought to prevent the introduction of a PSPO in Exeter and encouraged people to respond to the Council's consultation is not known, but as around 12000 people supported the petition, it is likely that a sizeable number of them were sufficiently motivated to complete our online

consultation to disagree with the proposals. Officers therefore have concerns that the genuine voice of Exeter citizens and businesses, particularly those from communities in the proposed PSPO area that have suffered from anti-social behaviour, may have been diluted by a wider audience who have no experience of the local situation.

- 8.10. Whilst there is some evidence of the same detailed wording being used multiple times (one example was 15 times), it is not known whether this was a result of one person making multiple entries, or a person sharing the wording with 14 others who then copied it for their submissions. Generally, officers feel that attempts to influence the outcome of the consultation by an individual making multiple submissions was limited, and did not skew the overall results substantially.
- 8.11. A total of 1,237 completed survey responses were received during the consultation period, which is a substantial number, with another 19 public responses received in letter format. In a minority of cases, not all of the proposed Restrictions from 1 to 6 were responded to. Three responses were received shortly after the consultation period had ended, and whilst these have not been included in the statistics presented in this report, they have been included for information only in Appendix 2D.
- 8.12. An analysis of the responses formulated from the 1,237 survey responses (which exclude 'necessary consultees' such as the Chief Constable and Police and Crime Commissioner) show a for and against split as follows:

- Restriction 1 (intoxicants) 46% for, 54% against
- Restriction 2 (urinating) 49% for, 51% against
- Restriction 3 (encampments) 17% for, 83% against
- Restriction 4 (begging) 26% for, 74% against
- Restriction 5 (anti-social persons/groups) 49% for, 51% against
- Restriction 6 (dispersal) 45% for, 55% against

It should be remembered that consultation is not a referendum; for the purpose of this report it is an exercise in seeking the views of interested parties, stakeholders and the public in order to assist in the formulation of policy on the implementation of a PSPO, and the restrictions contained within it. The methodology used for the PSPO consultation could not prevent multiple responses by one person, nor could it limit the geographical area from which respondents were drawn, so in that regard it is distinctly different from a local or general election, or national referendum. As discussed in paragraphs 8.8 and 8.20, the Change.org organiser encouraged petitioners to respond to the Council's PSPO consultation survey, using the emotive title of, '*Exeter City Council: Don't Criminalise Exeter's rough sleepers or destroy their belongings*'. Officers are concerned that many petitioners who were not necessarily citizens of Exeter, nor had a connection with Exeter, followed this advice, with their responses likely to be based upon that emotive title and the petition organiser's own agenda that underpinned it. Bearing in mind the Cabinet Office General Principles of Consultation 2016 issued by central government and paragraphs F and G in particular it is appropriate for Members to give a higher weighting to the responses from the 'necessary consultees' demanded by the Act, as well as taking into consideration the responses from the Business Improvement District members survey of Autumn 2015.

- 8.13. A great deal of views were expressed on both sides of the argument, but can be broadly grouped into the following themes:

Not in support of an Order

- Sufficient powers already exist, negating the need for an Order
- The street community would be victimised by the Order, instead the Council should provide services to assist them
- Human rights will be violated by confiscation of belongings or substances that are lawful to possess
- The right to free assembly would be threatened, and placed at the discretion of the Police
- The powers could be abused by over-zealous application, criminalising activities that are not anti-social
- Fixed penalty notices would not be a useful tool when applied to those with no income and unable to afford paying the fee

In support of an Order

- The powers do not go far enough
- The area of the PSPO should be extended to cover a wider area in Exeter

The Council's response to the representations made in the consultation is contained in Appendix 2E, to be read in conjunction with Appendix 1D.

8.14. Convention Rights

Under the Act, in deciding upon the making of a PSPO the Council must have particular regard to the rights of freedom of expression and freedom of assembly set out in Articles 10 and 11 of the Convention under section 21(1) of the Human Rights Act 1998. In terms of the development of a joint protocol on enforcement and positive/restorative pathways for the PSPO, and the training that will follow from that, the importance of these two freedoms will be made explicit. In addition, both the protocol and training will have regard to Article 1 of the First Protocol of the Human Rights Act 1998 (protection of property) in relation to the surrendering of intoxicants to authorised persons, contained within the PSPO.

In practical terms, this would mean that the application of the PSPO would not be used to restrict a lawful trade union picket, an organised peaceful protest, a religious assembly, or someone preaching in a public space. Nor would it be used to confiscate alcohol from someone who had just made a purchase from an off-licence with the intention of taking that purchase home for consumption.

8.15. Necessary Consultation, Publicity and Notification

In addition, under S.72 of the Act, there is necessary consultation, publicity and notification to take place with the Chief Constable, the Police & Crime Commissioner, County Council, any community representatives the Council thinks appropriate, and

the owner or occupier of land within the restricted area of the Order. This was duly carried out, together with representative bodies for the community and business being consulted. In relation to relevant owners and occupiers of land that the public may have access to without payment which includes business premises with forecourts open to the public, all were consulted by letter and encouraged to either submit a response via the survey document, or by letter or email. The relevant responses from these are contained in Appendix 2.

The draft Order was published on the Council's website during this consultation period, satisfying the publicity criterion contained in section 72(4) of the Act. The County Council was notified of the proposal, satisfying the necessary notification criterion under section 72(4) of the Act.

Given that the substantive consultation ended on February 29th 2016, and as a result of that consultation that the proposed PSPO has been revised to the current recommendations contained in this report, the revised draft Order has been further published on the Council's website (December 2016), together with the original draft Order and an explanation given for the revisions that have taken place. Furthermore, the named necessary consultees have been written to again with details of the revised draft PSPO, and the County Council duly notified (in December 2016) in accordance with section 72(4) of the Act.

- 8.16. In terms of the consultation exercise, officers feel that the views of the Chief Constable, Police and Crime Commissioner and Chief Executive of Devon County Council, are particularly relevant, and would invite Members to give due weighting to those views. These views, together with those of representative bodies, are summarised below:

8.17. **Police**

On behalf of Chief Constable Sawyer, Russ Middleton, Assistant Chief Constable welcomed the proposals for an Order and was fully supportive of it. He referred to an increase in anti-social behaviour in Exeter City Centre over previous months including drinking and drug taking in the streets, large and threatening groups congregating, and businesses highlighting urinating in public places as an escalating problem, in particular around shop fronts and doorways. He acknowledge the multi-agency work being carried out by the Street Attachment Group, and the importance of its approach of engagement, support and, where necessary, the use of enforcement. He ended by noting that the prohibitions were crafted as to be both proportionate and enforceable, and would equip Police officers with a range of powers appropriately tailored to deal with the anti-social behaviours occurring, which due to their current ongoing impact on the community, made the Order restrictions justified.

8.18. **Police & Crime Commissioner**

Tony Hogg, the PCC at the time of consultation, supported the introduction of the proposed Order as a valuable tool to assist the Police and partners in keeping communities safe. He was particularly pleased to see controls over NPS's, which he viewed as highly dangerous, with a strong link between use in the public arena and anti-social behaviour within town centres. He also highlighted the need to monitor the potential for displacement, and to take appropriate action where necessary.

8.19. **Devon County Council**

Phil Norrey, Chief Executive of Devon County Council, supported the principle of the proposed Order, but highlighted the need to give consideration to the complex and chaotic life experiences of members of the street community, and the need to link in with and augment support services. Like the PCC, he raised the issue of displacement, and the potential impact that could have on quieter residential areas. He also specifically mentioned the Human Rights Act Article 1 in relation to removal of bedding, etc. (this was in relation to the proposed Restriction 3, which has not been recommended for inclusion in the Order for this report). Importantly he ended by offering support in assisting the development of the proposals into implementation, linking it to existing work streams of Integrated Care in Exeter (ICE) and Wat Tyler House (Co-Lab).

8.20. **St. David's Neighbourhood Partnership**

The Partnership's committee discussed and supported the proposed Order at its meeting on 19 January 2016.

8.21. **Exeter Business Against Crime (EBAC)**

The Chairman of EBAC, Andrew McNeilly, reported that members did not express dissent over the proposals relating to, 'beggars, street drinkers and anti-social individuals/teenage groups', which one can take as tacit support for the respective restriction/prohibitions in the proposed PSPO, however, he did state that Restriction 3 (street encampments), which is no longer included in the proposals contained in this report, evoked strong feelings on both sides, mirroring the feedback from the public consultation survey.

8.22. **Change.org online petition**

As has been the case with other local authorities considering the implementation of a PSPO, an online petition was initiated by the campaigner Jonathon Walker of 'The Keep Streets Live Campaign' against the Council's PSPO proposal. He titled the petition, '*Exeter City Council: Don't Criminalise Exeter's rough sleepers or destroy their belongings*', and attracted 12,441 supporters from many part of the UK. It has yet to be presented to the Council for consideration. The petitioner encouraged people to engage with the Council's public consultation and provided a web-link to the relevant Council web-page. A letter from Cllr. Bull that explained the rationale for the proposed PSPO and outlined the breadth of support for homelessness and the street community that the Council provided along with partner agencies was posted on the Change.org petition site, in an attempt to give some balance to the issue. However, it is likely that this organised campaign was influential in motivating a wider audience beyond Exeter to comment against the proposals on our online consultation, particularly in relation to the two proposals more closely associated with rough sleepers, that of begging and street encampments.

8.23. **Liberty**

A letter from Rosie Brighthouse, Solicitor for the National Council for Civil Liberties, 'Liberty', was received expressing concerns about the proposals contained in the proposed Order, and citing the large number of supporters of the Chang.org online petition opposing the Order. The letter was critical of the proposals, namely 3, 4, 5

and 6, and questioned the evidence base for its introduction. The Council's response to the points made in the letter are encapsulated in Appendices 2e and 1d, although it should be noted by Members that this report does not recommend inclusion of Restriction 3 (encampments) and further recommends a revision of Restriction 4 (from begging to aggressive begging) in the proposed Order.

8.24. Street Community Deputation

On 29 February 2016, the Assistant Director Environment received the leaders of a deputation of over 40 people, most of whom were members of the street community. Following a lengthy discussion and clarification on the proposed Order, the deputation was given sufficient hard copies of the survey form to make their representations, and 41 completed forms were handed in later that day. Interestingly, whilst the majority of responses (26) were wholeheartedly against the Order, a minority (15) were supportive of some of the proposed restrictions, predominantly those controlling street urination and anti-social individuals/groups, but also intoxicants and begging.

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 reduce problematic anti-social behaviour in the City Centre, and in so doing it supports the purpose of 'Keep me / my environment safe & 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 any Order is effectively implemented alongside other interventions.

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

- 10.1. 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 decision to make the Order. An application of this nature must be made within six weeks beginning on the day the Order is made or varied. The grounds upon which a challenge could be made 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.

- 10.2. This risk has been mitigated by the Council adhering to the provisions of the Act with regard to the formulation, consultation and implementation process of an order, in response to evidence of continuing and unreasonable anti-social behaviours occurring in the City Centre area encapsulated within the proposed PSPO boundary.

- 10.3. There is also a risk that public expectations will be raised by this Order that agency resources cannot fully meet; the Order is unlikely to remove the issues in total, but can act to support and augment other initiatives. The inclusion of a positive/restorative option in the crafting of a fixed penalty notice will be an innovative use of the legislation by the Council in helping to change negative behaviours, reduce re-offending and help readily engage the support of partner agencies.
- 10.4. Implementation of this Order could lead to problem-displacement. Officers have considered this and think that the area of the proposed Order is sufficiently large to minimise any acute problems arising from any displacement, however, the situation will need to be closely monitored by the Council, Police, and other agencies, and action taken accordingly in response to any such displacement.
- 10.5. The Order will be reviewed by the Exeter Community Safety Partnership (CSP), and by Members of Scrutiny Committee – Place, six months after implementation, and annually thereafter in order to mitigate the prevalence of any of the associated risks, and to identify any unforeseen or negative impacts. In this regard, the Street Attachment Group (StAG), which acts under the auspices of the CSP, will play a critical role in this review, and will also help inform the enforcement protocol for the PSPO.
- 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. The Order is designed to reduce problematic anti-social behaviour occurring in the public arena, and is not intended to victimise individuals or groups of people; in particular it is not aimed at members of the street community, also referred to as the street homeless.
 - 11.2. It has the potential to deliver a significant positive community impact, in terms of reducing the anti-social behaviours associated with people taking intoxicants in public spaces, urinating in the street, aggressively begging and causing anti-social behaviour as an individual or group; in turn this will encourage greater use of public spaces in the City Centre by citizens and help reduce any perception that parts of Exeter are unsafe. When operated alongside other targeted interventions and work-streams currently available and being developed by the Exeter Community Partnership and through its task groups, (the Alcohol Violence Evening & Night Time Economy Group, and Street Attachment Group (StAG)) and Integrated Care in Exeter (ICE), the Order can be part of a positive tool to change behaviour. For example, it could assist in weakening the 'attachment' that some members of the street community have, and help them on the pathway to sustainable accommodation and assistance with health and addiction issues. The use of Acceptable Behaviour Contracts as a positive option within a fixed penalty notice, will have a significant role to play in this regard, especially when the formulation of the ABC involves engagement of other partners in the CSP, StAG and ICE programmes.
 - 11.3. The attached Equality Impact Assessment (Appendix 1C) provides more detail, but no significant negative impact has been identified against any diversity groups.
- 12. Are there any other options?**

- 12.1. **Maintain the status quo** – the current Designated Public Place Order could be left unchanged for a period ending October 2017 and either replaced with a PSPO at that juncture or ended. This option was considered and dismissed due to the clear need to tackle issues relating to use of new psychoactive substances that are not covered by the DPPO, the recognition that anti-social behaviours are taking place outside the boundaries of the smaller DPPO, and that other anti-social behaviours are occurring that are linked to intoxication, but are not able to be controlled by the DPPO.
- 12.2. **Replace the DPPO with a simple alcohol-related PSPO** - this was again considered and dismissed due to the need to tackle the problems associated with new psychoactive substances, which are unlikely to be significantly curtailed by the Psychoactive Substances Act 2016, and the linked anti-social behaviours around street drinking and intoxication in a public place, problems with street urination linked with the night-time economy, aggressive begging and anti-social individuals and groups during the day and night.

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
- Psychoactive Substances Act 2016
- Anti-Social Behaviour, Crime & Policing Act 2014
- PSPOs: A Busybodies' Charter (Manifesto Club 17-01-16)

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