

REPORT TO EXECUTIVE

Date of Meeting: 2 November 2021

Report of: Director Net Zero Exeter & City Management

Title: Proposed consultation on varying the Public Spaces Protection Order

Is this a Key Decision?

No

Is this an Executive or Council Function?

Executive for agreement of the consultation

Council for implementation of the Order following consultation

1. What is the report about?

1.1 The current Public Spaces Protection Order 2017 (“PSPO”) is due to expire on the 20 June 2022. This report seeks approval from Executive to enter into consultation with the public and relevant stakeholders on the draft proposals for varying Prohibition E of the Public Spaces Protection Order.

1.2 This is a particularly good time to undertake a public consultation on the future use of the PSPO as one of several complimentary approaches being considered as a result of the strategic partnership work launched by the Leader in 2020 through the Urban Anti-Social Behaviour Summit.

1.3 Following consultation, a report will be brought back to Executive and Council with recommendations regarding the Public Spaces Protection Order when the current order lapses on 20 June 2022.

2. Recommendations:

2.1 That the Executive approves:

- 1) the contents of the proposed variation of Prohibition E (contained in Appendix A);
- 2) that consultation takes place between 2 November and 31 December 2021 which seeks the views of the public and other stakeholders; and
- 3) that a report making recommendations on the whether to amend or seek continuance of the current Public Spaces Protection Order is presented to Executive on 8 February 2022 and Council on 22 February 2022.

3. Reasons for the recommendation:

3.1 There is continued justification for the Order based using data and 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. From this information it is clear that whilst the PSPO has had an impact since its introduction in

2017, the prevalence of persistent and problematic anti-social behaviour continues to be relatively high in the area of the Order.

3.2 Data from Police logs and from the Exeter Business Against Crime Partnership provides evidence that anti-social behaviour complaints are of such a volume that they continue to have or are likely to have a detrimental effect on the quality of life of those in the locality, i.e. residents, workers and visitors within the PSPO area. These anti-social activities are continuing at a level that is unreasonable and justifies the continuing restrictions of the Order.

3.3 Under the PSPO control measures are used which address the anti-social behaviour without necessarily criminalising a perpetrator in breach of the Order. This could not be easily achieved without the PSPO and there are no known alternative or more effective control measures currently available. Since the introduction of the PSPO in 2017 the order has been applied in conjunction with other interventions, so it can be used to engender positive behaviour change by offering the option of a restorative or positive alternative to a penalty fine such as an Acceptable Behaviour Contract (ABC).

3.4 Where the PSPO control measures fail to improve behaviour it is used to demonstrate to the courts that every opportunity has been given to modify behaviour before resorting to other tools under the Anti-Social Behaviour, Crime and Policing Act 2014 such as Injunctions and Criminal Behaviour Orders.

3.5 When the PSPO was originally adopted it was originally anticipated that dispersal powers would only be needed where there were groups of two or more people behaving in a manner that has caused or is likely to cause a member of the public to suffer harassment, alarm or distress by that behaviour.

3.6 Over the last 18 months, it has become increasingly apparent that there has been a significant increase in individuals acting in such a way that has caused or is likely to cause a member of public to suffer harassment, alarm or distress by that behaviour. However authorised officers have been hampered in using the dispersal powers contained within prohibition E of the current order because the individual is not acting in a group. It is felt that amending the current order to enable authorised officers to use dispersal tools on individuals breaching Prohibition D, would be an effective tool in tackling anti-social behaviour.

3.7 The current prohibition order allows for an authorised officer to disperse for up to 6 hours from all or part of the Public Spaces Protection Order. Whilst this has proved an effective time period for some cases, there have been a significant number of cases where 6 hours has unfortunately not been effective and subsequent breaches have occurred. The consultation seeks the views on whether the time period should be extended to 24 hours.

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

4.1 The consultation will be met from existing resources.

4.2 Should the Council decide to amend the Public Spaces Protection Order on 22 February 2022 following consultation, then there would be additional financial resource needed in meeting the legal requirements set down under the Anti-Social Behaviour,

Crime and Policing Act 2014. These costs would include the necessary legal steps in sealing an order, the removal and replacement of all signage in the PSPO area and the amendment of necessary paperwork used in the dispersal process. This cost is estimated to be around £5,000 to £6,000, however more detailed costs will be presented following consultation.

5. Section 151 Officer comments:

This specific report seeks no additional funding and therefore has no financial implications for Council to consider. Members should however be mindful of a small potential additional cost subject to the outcome of the consultation. This would require an additional report to Council unless it can be found from existing, approved budgets.

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.

6.2 Section 61 of the Act provides that where a public spaces protection order is in force, the local authority that made the order may vary it by altering or removing a prohibition or requirement included in the order, or adding a new one.

6.3 Section 61 also states that a local authority may make a variation that makes a prohibition or requirement more extensive, or adds a new one, only if the prohibitions and requirements imposed by the order as varied are ones:

- a) to prevent the detrimental effect from continuing, occurring or recurring, or
- b) to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.

6.4 Where an order is varied, the order as varied must be published in accordance with regulations made by the Secretary of State.

7. Monitoring Officer's comments:

7.1 This report raises no issues for the Monitoring Officer.

8. Report details:

8.1 The Anti-Social Behaviour, Crime and Policing Act 2014 introduced powers to tackle 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 The Exeter PSPO was introduced in from 20 June 2017, with one year extensions being granted in 2020 and 2021.

8.4 Exeter, much like other towns and cities nationally, has a persistent and recurring issue of anti-social behaviour in the City centre, particularly in the summer months.

8.5 Under the Act, in deciding upon the making, varying or extending 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 joint protocol on enforcement and positive/restorative pathways for the PSPO, and the training that takes place, the importance of these two freedoms is made explicit. In addition, both the protocol and training 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.

8.7 In practical terms, this means that the application of the PSPO is not used to restrict a lawful Trade Union picket, an organised peaceful protest, a religious assembly, or someone preaching in a public space. Nor is it 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.

8.7 The consultation is only seeking the views on varying Prohibition E with respect to dispersal powers.

8.8 The current prohibition states:

Persons within this area who breach Prohibition D while in a group shall when ordered to do so by an authorised person disperse either immediately or by such time as may be specified and in such a manner as may be specified.

The manner specified by the authorised person may include a requirement not to re-enter a defined zone within the PSPO area until a certain time, which shall be no later than 6 hours from the time that an authorised person orders persons in a group to disperse.

8.9 The consultation seek views on varying the prohibition to state

Persons within this area who breach Prohibition D shall when ordered to do so by an authorised person disperse either immediately or by such time as may be specified and in such a manner as may be specified.

The manner specified by the authorised person may include a requirement not to re-enter a defined zone within the PSPO area until a certain time, which shall be no later than 24 hours from the time that an authorised person orders a person to disperse.

8.10 Those wishing to participate in the consultation may do so in writing between 2 November and 31 December 2021 either by email at community.safety@exeter.gov.uk or via by post addressed to Environmental Health and Community Safety, Civic Centre, Paris Street, Exeter EX1 1RQ. Any responses we receive after this date will not be included in the analysis.

8.11 We will not be responding individually to responses. After the consultation has closed we will include a summary of the responses received as part of our report to be present to Executive and Council in February 2022. We will not publish names of individuals who respond but we may publish the name of the organisation for those responses made on behalf of organisations.

8.12 In accordance with the Freedom of Information Act 2000, we may be required to publish response to this consultation, but will not include any personal information. Even if an individual has requested for a response to be kept confidential, we may still be required to provide a summary of it.

8.13 Information regarding the consultation will be available on the Council's website in line with the Council's Consultation Policy.

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

9.1 The main contribution of the designation of a PSPO is to reduce problematic anti-social behaviour in the City Centre, and in so doing it supports the corporate priorities of 'promoting active and healthy lifestyles' and 'building great neighbourhoods'.

9.2 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 Continuation of this Order could lead to problem-displacement. Officers from the Council, Police, and other agencies have continually reviewed this and believe that the area of the proposed Order is sufficiently large to minimise any acute problems arising from any displacement.

11. Equality Act 2010 (The Act)

11.1 Under the Act's Public Sector Equalities Duty, decision makers are required to consider the need to:

- eliminate discrimination, harassment, victimisation and any other prohibited conduct;
- advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
- foster good relations between people by tackling prejudice and promoting understanding.

11.2 In order to comply with the general duty authorities must assess the impact on equality of decisions, policies and practices. These duties do not prevent the authority from reducing services where necessary, but they offer a way of developing proposals that consider the impacts on all members of the community.

11.3 In making decisions the authority must take into account the potential impact of that decision in relation to age, disability, race/ethnicity (includes Gypsies and Travellers), sex and gender, gender identity, religion and belief, sexual orientation, pregnant women and new and breastfeeding mothers, marriage and civil partnership status in coming to a decision.

11.4 In recommending this proposal potential impact has been identified on people with protected characteristics as determined by the Act and an Equalities Impact Assessment has been included in the background papers for Member's attention.

12. Carbon Footprint (Environmental) Implications:

12.1 No direct carbon/environmental impacts arising from the recommendations.

13. Are there any other options?

13.1 Not renewing the current PSPO – the current PSPO could be left unchanged for a period ending 20 June 2022.

13.2 Renewing the current PSPO prohibitions for a period of up to 3 years and not consulting on revising Prohibition E.

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

Background papers used in compiling this report:-

- 1) Highways Act 1980
- 2) Anti-Social Behaviour, Crime & Policing Act 2014

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