

REPORT TO EXECUTIVE

Date of Meeting: 8 February 2022

REPORT TO COUNCIL

Date of Meeting: 22 February 2022

Report of: Director Net Zero Exeter & City Management

Title: Proposed variation of the Public Spaces Protection Order

Is this a Key Decision?

No

Is this an Executive or Council Function?

Council

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 support from Executive and that Council resolves to vary Prohibition E of the Public Spaces Protection Order and then seal a new order for the maximum of 3 Years.

2. Recommendations:

2.1 That the Executive supports and Council resolves

- a) to vary Prohibition E of the current order following a public consultation so that any individual whether or not in a group who is causing harassment, alarm and distress may be required to leave the area of the PSPO for a maximum of 24 hours (as laid out in Appendix A);
- b) that the remaining prohibitions of the Public Spaces Protection Order and the existing boundaries remain unchanged (a copy of the full varied order is laid out in Appendix B);
- c) that the order is extended for a further period of 3 years from the commencement date of 20 June 2022; and
- d) to continue the current policy of funding received by the Council from fixed penalty notices issued for a breach of any PSPO to be ring-fenced for initiatives to address anti-social behaviour and that this funding continue to be administered through the Exeter Community Safety Partnership

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, however 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. Further to this, responses to the consultation regarding the varying of Prohibition E give first hand testimony of the impact that ASB is having on people 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 is 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 for 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 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 be able to direct an individual breaching Prohibition D to leave the area of the PSPO would be an effective tool in tackling anti-social behaviour.

3.7 The current prohibition order allows an authorised officer to disperse two or more persons for up to 6 hours from all or part of the area 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 proposal seeks to vary the time period for up to 24 hours for either a direction to leave made to an individual and or a dispersal order for two or more persons.

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

4.1 Operationally, the Police will continue to be the principal agency enforcing the PSPO powers on the ground. The number of Fixed Penalty Notices (FPNs) issued and the

resultant income (estimated £5,200 to date) is expected to continue be small, and it is proposed that income from FPNs will continue to be ring-fenced for use by the Exeter Community Safety Partnership to support Community Safety initiatives within the City. Therefore, any intervention and enforcement costs in pursuit of breaches of the Order will continue to be met by existing Police and/or Council resources.

4.2 Should the Council decide to vary the Public Spaces Protection Order, 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, 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.

5. Section 151 Officer comments:

5.1 It is expected that the funding required will be covered from existing resources and potentially external contributions.

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 reasonable:

- 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.

6.5 Section 60 of the Act provides that a PSPO may be extended (section 60 (2)) 'if satisfied on reasonable grounds that doing so is necessary to:

- a) prevent occurrence or recurrence after that time of the activities identified in the order, or
- b) an increase in the frequency or seriousness of those activities after that time'.

6.6 The extension may only be for a maximum period of 3 years but Section 60 (4) provides that it may be extended under section 60 more than once.

6.7 Officers are satisfied that there are sufficient grounds to extend the PSPO for a further 3 years, to prevent occurrence and reoccurrence of the prohibitions outlined in the current order.

7. Monitoring Officer's comments:

7.1 The Monitoring Officer has no additional comments.

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 From the adoption of the PSPO until the end of 2021, the following uses of the powers have taken place:

- 49 Fixed Penalty Notices issued for street urination.
- 592 people have been dispersed using the powers.
- 34 prosecutions have been taken for breaches of the PSPO prohibitions.
- 5 caution was also issued for a breach of PSPO prohibition
- The powers of surrendering alcohol are used on a daily basis by officers, however records are not kept of the use of this prohibition as most people voluntarily surrender

8.5 The Police reported 2066 antisocial behaviour logs in the PSPO areas in 2017; 2036 in 2018; 1761 in 2019; 1867 in 2020 and 1024 in 2021 and whilst this shows a year on year reduction in logs not all concerns are logged with police. The Exeter Business Against Crime (EBAC) partnership recorded 1193 incidents of anti-social behaviour in 2017 within the PSPO area, 1320 in 2018, 1678 in 2019, 1410 in 2020 and 1817 in 2021. It should be noted that despite less footfall in the PSPO area due to Covid-19 restrictions, anti-social behaviour reports have not significantly decreased.

8.6 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.

8.8 This report seeks to vary Prohibition E with respect to dispersal powers.

8.9 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.

8.10 The report proposes to vary the prohibition to state:-

Person or persons within this area who breach Prohibition D shall when ordered to do so by an authorised person leave the area 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 leave the area and or persons to disperse from that area.

8.11 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. There is support from the Police and the Police and Crime Commissioner's Office for the variation and continuation of the PSPO (see Appendix D).

8.12 Responses to the consultation have also been received from the Chief Constable (Appendix E), Local Policing Commander (Appendix F), InExeter (Appendix G), Exeter Business Against Crime (Appendix H) and Public Health Devon (Appendix I).

8.13 In addition, 8 residents or business representatives also contributed to the consultation. Redacted responses can be found at Appendix J.

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 varying Prohibition E.

13.3 Consult on a new PSPO with changed prohibitions and / or boundaries - this option is not being recommended at this time as it would require extensive research and consultation that could not be completed prior to the 20 June 2022.

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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 and Guidance issued by the Home Office

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