

**Cabinet**

**16 March 2022**

**Public Space Protection Order – Durham City**

**Ordinary Decision**



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**Report of Alan Patrickson, Corporate Director of Neighbourhoods and Climate Change**

**Councillor John Shuttleworth, Cabinet Portfolio Holder for Rural Communities and Highways**

**Electoral division(s) affected:**

Durham City

**Purpose of the Report**

1. To provide an overview of the powers, benefits and risks available under a Public Space Protection Order (PSPO).
2. To consider consulting on a proposed new behaviours and actions to be included in the existing Public Space Protection Order (PSPO) to help control:
  - begging, more specifically aggressive/anti-social type begging in Durham City

**Executive summary**

3. A PSPO can be an effective tool to tackle anti-social type behaviour in areas where it has been evidenced that there is a persistent and ongoing problem that is having an adverse impact on residents, businesses, and visitors.
4. Introducing a PSPO for specific activities does not guarantee that the problem will be completely eradicated and should only be used along with a range of other intervention methods including education and, consideration should also be given to the resources to enforce such an order.
5. Some types of activities can generate negative reputational concerns for both the Local Authority and the local areas where the PSPOs are proposed/in force.

6. There is a PSPO currently for the centre of Durham City for the consumption of alcohol outside premises which is due to run until July 2022 and requires a review.

### **Recommendation(s)**

7. Cabinet is recommended to:
  - (a) agree that a full consultation exercise is undertaken to gauge the level of public support and to gather evidence on the merits of introducing a new activity to control aggressive begging which could be introduced as a new Public Space Protection order in Durham City;
  - (b) agree to a consultation exercise which will allow for a full review of the existing PSPO in Durham City which limits the consumption of alcohol.

## Background

- 8 The Antisocial Behaviour, Crime and Policing Act 2014 was introduced in October 2014 which, amongst other things, brought in a range of powers that included Public Space Protection Orders (PSPO). The PSPO replaced dog control orders, designated public place order (DPPO) and gating orders, and create area-based restrictions on quality-of-life issues with the penalty for not complying being a Fixed Penalty Notice (FPN) or prosecution.
- 9 With the legislation came a requirement to review the existing controls including the Dog Control Orders and Designated Public Space Protection Orders before October 2017 (3years). A public spaces protection order is made by a Local Authority if satisfied on reasonable grounds that two conditions are met. Firstly, 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; and
  - (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.
- 10 The second condition is that the effect, or likely effect, of the activities is, or is likely to be of a persistent or continuing nature, such as to make the activities unreasonable, and therefore justifies the restrictions imposed by the notice.
- 11 Since the introduction of the Act, there has been a PSPO introduced in Durham City which was last updated in July 2019. The order restricts the consumption of alcohol in public places within the defined area of Durham City and can require the surrender of such alcohol for immediate disposal. Any person who fails to comply without reasonable excuse commits a criminal offence but in practice the sanctions for breaches of the order are dealt with by fixed penalty notice which can be issued by "authorised officers" of the local authority, or any person authorised by Durham Constabulary. A county wide PSPO for dog fouling also exists.
- 12 An advantage of a PSPO over other forms of byelaw is the instant and proportionate availability of enforcement by way of out of court disposal through a Fixed Penalty Notice.
- 13 A public spaces protection order is an order that identifies the public place and prohibits specified things being done in the restricted area and/or requires specified things to be done by persons carrying on specified activities in that area. It can make normally legal behaviours and actions illegal.
- 14 The order may have effect for up to 3 years and the Local Authority must consult with the chief officer of the police, the local policing body, and local communities before issuing the order.

- 15 A "public place" is defined at section 74 of the Anti-Social Behaviour Crime and Policing Act as: "any place to which the public or any section of the public has access, on payment or otherwise, as of right **or by virtue of express or implied permission**. Accordingly, land used by the public as a matter of custom and practice but not by virtue of any right or express permission will still count as a public place.
- 16 A PSPO needs to be advertised and adopted in accordance with regulations, but challenge is restricted to High Court review and such review must be applied for within 6 weeks of the Order.
- 17 Prior to the latest review of the PSPO in Durham City, there were considerations as to whether to extend its scope to include other activities including begging and rough sleeping. There had been requests from Durham Constabulary, Durham BID and from the City of Durham Parish Council for these to be considered.
- 18 At that time, the decision was not to progress these other matters as part of the PSPO. However, the desire to include activities such as rough sleeping and particularly begging is still very much in the minds of Durham Constabulary and the City Parish Council.
- 19 Although they are often considered together and may appear to be linked it is considered that rough sleeping and, more likely, aggressive begging are two separate matters. The Homeless provision in Durham is good and effective service but it is known that those who may be begging, possibly in an aggressive manner, are not actually homeless and have accommodation in Durham but chose to frequent the City to generate an income from those residents and visitors who choose to give money.

### **Considerations for a PSPO to control aggressive/anti-social begging in Durham City**

- 20 Begging in Durham City centre is seen as a persistent and continuing issue and there has been a reported increase in the severity and volume of this problem. Persistent beggars who deploy aggressive begging techniques have been identified in the city centre area by partners (including the Council, Durham Constabulary, and City Parish Council).
- 21 There is a concern begging is contributing to anti-social behaviour and is detrimental to quality of life of those in the locality. If this trend continues to grow, begging, in particular aggressive begging, will become unmanageable and damage the reputation of the city centre, including loss of trade and attractiveness to new businesses. It is therefore unreasonable to allow this persistent issue to grow and does justify action.
- 22 It is understood that the Police do not record reports of begging. They have information which suggests that daily their staff are approached by members of the public advising that individuals in the city are asking for

money. Some of these occasions involve an element of aggressive or anti-social behaviour.

- 23 Existing legislation has and can be used to act against those who are begging, but sanctions seem more proportionate and necessary if the begging is of an aggressive nature. Community Protection Warnings (CPWs) and Notices (CPNs) can and have been used. It is also an offence under the Vagrancy Act which states that anyone found to be sleeping in a public place or trying to beg for money can be arrested. In addition to those sanctions, it is also possible to obtain injunctions against individuals as well as Criminal Behaviour Orders, which the Warden service have secured against several individuals in the city over the period.
- 24 There is anecdotal information that suggests those who beg in the City are travelling from neighbouring authority areas as it is seen as a lucrative opportunity in Durham City. It is known that at one individual has travelled from Middlesbrough however his reasons to frequent Durham have not been fully established. Most of those begging do have somewhere to live in County Durham.
- 25 It is known that most individuals who are regularly visible in prominent locations, and perhaps give the appearance or perception of being homeless, are not and do have fixed accommodation in other parts of the County. Currently there are between 2 and 5 individuals begging in Durham City, this varies daily and is impacted on things like the weather.
- 26 This issue nationally has created some controversy as for some areas as it links to sleeping rough and is seen by some, including many charities, that the introduction of a financial penalty linked to begging would be punishing some of the more vulnerable individuals in our society. Indeed, the government guidance has been updated to reflect this consideration.
- 27 If this were to progress to consultation, then the PSPO would need to be carefully worded. It would not be proposed to simply prohibit begging but would need to make more of a link to the activities around begging such as aggressive, intimidating, or threatening behaviour. The following conditions could be considered:
- (a) all persons are prohibited from approaching another person either in person or verbally or using signage to beg from another person;
  - (b) all persons are prohibited from sitting or loitering in the public space for an unreasonable time, where behaviour is clearly inappropriate, excessive, or harmful to the public in degree or kind and lacking justification in fact or circumstance; or with any receptacle used to contain monies for the purpose of begging.

### **Regional Comparison (Begging)**

- 28 Three north east authorities have introduced a PSPO to control/tackle forms of begging.

- 29 Middlesbrough Council's states "No person shall continue to beg or persistently beg in the restricted area following a request by an authorised person to stop".
- 30 Sunderland City Council's states "No person shall engage in aggressive or assertive behaviour, or any other behaviour which may be regarded anti-social or nuisance in nature, in the course of begging".
- 31 Gateshead Council's states "Persons begging by sitting in pedestrian areas with items in front of them for accepting money".

## **Enforcement**

- 32 For the issues tackled by this report there is existing legislation that regulates some of the activities that are being considered.
- 33 Police and Council officers can utilise Community Protection Warning/ Notices that were introduced under the same legislation as PSPO's. A PSPO would allow a swift sanction in the form of an FPN, however it still relies on either the offence being witnessed, or sufficient evidence being provided which could identify an offender. It should be noted that the sanction would not necessarily lead to the individual to leave the vicinity if they comply with the PSPO.
- 34 Although PSPOs are made by the Council, enforcement is available to Council officers, community safety accredited staff and police officers (including PCSOs).
- 35 Resources across all these enforcing agencies are reducing and consideration should also be given to the enforceability of the issues outlined under a new PSPO and their priority when compared to other demands.
- 36 Although a PSPO may be used to tackle aggressive or anti-social begging in Durham City it may not completely eradicate the problem as it would not result in those individuals who currently frequent the city from being there.
- 37 A SWOT analysis on the issue of begging in Durham City is attached as Appendix 2.

## **Consideration of Evidence Against PSPO Criteria**

- 38 As outlined above, the legislation requires the satisfaction of several things, namely:
- (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; and it is likely that activities will be carried on in a public place within that area and that they will have such an effect;
  - (b) the second condition is that the effect, or likely effect, of the activities is, or is likely to be of a persistent or continuing nature, such as to

make the activities unreasonable, and therefore justifies the restrictions imposed by the notice.

- 39 Against these criteria certainly the issues do affect the quality of life and have done so for some years and are persistently occurring in public places.

### **Consultation/Publicity**

- 40 To meet the consultation, notification, and publicity requirements in making a PSPO, it would be proposed to develop a full consultation and implementation publicity plan which will include:
- (a) launch a minimum 8-week consultation on the proposals;
  - (b) It is proposed to consult on the existing restrictions (i.e. alcohol) and a separate consultation for any new matters being considered (e.g. aggressive begging);
  - (c) report back the findings and subject to the relevant conditions and considerations being satisfied, confirm the conditions of the PSPO;
  - (d) should a PSPO be introduced, publicise the new order on the website in line with the government guidance;
  - (e) should a PSPO be introduced, launch a publicity campaign to raise awareness of the new order and offences it creates;
  - (f) if a PSPO is introduced, implement enforcement across all the PSPO conditions.
  - (g) The area considered relevant for this type of activity will be set out in the consultation exercise. It is proposed that the area covered by the existing PSPO would be appropriate

### **Main implications**

- 41 The decision to consult on a PSPO would likely be considered a positive step to the City of Durham Parish Council, the Police, and some residents.
- 42 The introduction of a PSPO for begging does bring potential risks to the local authority as it could be seen as introducing a financial punishment to those most vulnerable in our communities.
- 43 The introduction of a PSPO can provide the Police and the Local Authority with a swift enforcement tool to those who breach the order and could act as a deterrent to others from trying and may deter those who currently engage in this activity from visiting the City.
- 44 However, it does not generate a ban for those who currently beg in Durham, and it may not prevent those individuals from being present and visible in Durham City.
- 45 The homeless and rough sleeper provision in DCC is considered an effective and valued service and this work will continue to support those

individuals affected. Durham County Council and its partners work tirelessly in providing an excellent homelessness provision, but the control of aggressive begging would be a separate issue

- 46 Other areas affected by some form of apparent anti-social behaviour may see the application of a PSPO to be relevant for their area. Although this does not present too much in the way of a challenge, providing the issue can be evidenced, it may raise expectations and put extra demands on the enforcement capability.

### **Other matters for consideration**

- 47 Although the main focus of this report is seeking to consult on the existing PSPO and the possible introduction of a new PSPO to control aggressive begging, it may be an opportunity to consult on other matters which could be introduced in the City.
- 48 Some neighbouring authorities have added several other controls to their PSPO and although that could be relevant to that locality it does not always follow that similar measures would be necessary in other areas. The more items covered in a PSPO could lead to negative feedback and challenge.
- 49 As consultation on possible controls in Durham City is likely to take place, it would be an opportune time to include other matters that may be introduced. This would give the public the opportunity to give their views should other matters rather than just aggressive begging and alcohol.

### **Conclusion**

- 50 A PSPO can be introduced to provide a swift and effective tool to tackle persistent and ongoing matters that are affecting the lives of residents, businesses, and visitors.
- 51 The problems should be evidenced and a PSPO should be considered part of a suite of measures, including support and education, as generally it is not possible to resolve the matters by enforcement alone.
- 52 Consultation on issues can be used the gauge the level of public support or otherwise to introducing a PSPO although it is known that the introduction of a PSPO in Durham City will be welcomed by both the Police and the City Parish Council.

### **Background papers**

None.

### **Other useful documents**

None.



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## **Appendix 1: Implications**

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### **Legal Implications**

Public Space Protection Orders are provided for under the Antisocial Behaviour, Crime and Policing Act 2014. The report sets out the conditions to be met for a local authority to make a PSPO. The proposed consultation forms an important part of the process to be followed when a local authority is considering making a PSPO.

### **Finance**

None.

### **Consultation**

A full consultation exercise must be carried out in determining the need/demand for a PSPO. If it is decided to publicly consult on any of the issues contained in this report, there will be a consultation process lasting at least 8 weeks. All comments will be collated and assessed before a decision is made to introduce any of the matters in this report.

### **Equality and Diversity / Public Sector Equality Duty**

An EQIA screening will be completed prior to any final reporting.

### **Climate Change**

None.

### **Human Rights**

None.

### **Crime and Disorder**

The introduction of a PSPO could have a positive impact on crime and disorder issues in the areas affected.

### **Staffing**

Should PSPOs be introduced it will generally lead to an increase in enforcement activities and legal services creating additional pressures on those services.

### **Accommodation**

None.

## **Risk**

There is a reputational risk from some partner agencies should a decision be made not to consider either consulting or introducing a PSPO as detailed in this report. Should consultation take place on the issue of begging, it may bring negative national media attention to DCC as well as other comments and concerns from charity providers, faith groups and homelessness services.

## **Procurement**

None.

## Appendix 2: SWOT Analysis – Begging

### SWOT Analysis re Begging PSPO

Strengths	Weaknesses
<ul style="list-style-type: none"> <li>• Begging legislation does not include sitting for many hours in high-footfall public areas with a receptacle without asking anyone for money.</li> <li>• The Council has a good track record working with homeless people.</li> <li>• Targeted use will send a clear message to those who beg, to other rough sleepers.</li> <li>• Leniency at the time of contact towards rough sleepers who are engaging with services will strengthen its justifiable use on those who do not.</li> <li>• BiD survey, businesses would like us to tackle begging.</li> <li>• This summer saw a greater impact with higher numbers of disruptive rough sleepers who also beg.</li> <li>• Improvement in working relationships and reputation with some key partners</li> <li>• Sanction is swift but could result in non-payment which would require court action</li> </ul>	<ul style="list-style-type: none"> <li>• The sanction is a fixed penalty notice</li> <li>• Unpaid FPNs will result in a summons (£1000 fine) – strong well-evidenced case required.</li> <li>• It does not provide lawful grounds to demand the person move so may not immediately solve the problem.</li> <li>• The person begging may not provide their details – partnership working may resolve this.</li> <li>• Police may not be issuing FPNs – may not be a weakness if police attend or assist with difficult risk-assessed cases.</li> </ul>
Opportunities	Threats
<ul style="list-style-type: none"> <li>• Provides a legal basis to engage with rough sleepers as many also beg.</li> <li>• Greater public awareness of how the issue affects the public (businesses would like us to tackle), businesses and the work of the Council.</li> <li>• Opportunity to change public opinion to favour giving money to local homeless charities.</li> <li>• Through engaging with people who beg in Durham City the Council can highlight the dangers and detriments of homelessness and rough sleeping, which is also an issue in the town.</li> </ul>	<ul style="list-style-type: none"> <li>• Local reputational damage / Regular FOIs and negative publicity.</li> <li>• Reprisals.</li> <li>• Photo opportunities for negative social media attacks on the Council.</li> <li>• Additional confrontational situations for enforcement staff.</li> <li>• Impact on working relationships with Student population</li> <li>• Perception that the problem would be eradicated and very quickly</li> <li>• Council staff may not be available at key times i.e., Saturday and Sunday and after 10pm</li> </ul>