

Cabinet

8 February 2023

**Public Space Protection Order –
Aggressive begging in Durham City**

Ordinary Decision



Report of Corporate Management Team

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 the outcome of the consultation exercise which was carried out in relation to a potentially new PSPO for aggressive begging in Durham City and to make a recommendation in respect of the proposed next steps.

Executive summary

- 2 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.
- 3 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 however, 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.
- 4 The current PSPO in Durham City for the consumption of alcohol outside premises was reinstated but the consultation on “aggressive begging” produced some mixed results and there is a split of opinion as to whether this measure is necessary. Officers have considered the legal tests and the evidence available and do not consider that, at this time, there is sufficient

evidence to warrant the introduction of a PSPO for the reasons outlined in this report.

Recommendation(s)

5 Cabinet is recommended to:

- (a) note the contents of this report that there is insufficient evidence to warrant a PSPO for aggressive or non-aggressive begging currently;
- (b) agree for relevant teams and agencies to adopt a problem solving approach for matters that are occurring in the City as set out in this report.

Background

- 6 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.
- 7 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.
- 8 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.
- 9 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.
- 10 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.
- 11 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.
- 12 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.
- 13 On 16 March 2022 Cabinet agreed there should a consultation exercise to consider public views on whether a PSPO should be introduced to control aggressive begging.

- 14 A public consultation exercise was carried out between 18 March 2022 and 29 April 2022 to seek and welcome views on this subject. Certain organisations such as Durham Constabulary, Durham Business Improvement District, Durham City Parish Council and Sanctuary 21 were specifically contacted as part of this exercise.
- 15 In addition, presentations were made to the Durham City AAP and the Rough Sleeper Action Group on both subjects.
- 16 A summary of the consultation responses is attached as Appendix 2 to this report. Appendix 3 is the full response on behalf of Durham Constabulary and Appendix 4 is a response from the Neville's Cross Residents Association.

Consultation responses in relation to Aggressive Begging

- 17 When asked whether a PSPO would be an effective way to control aggressive begging in the City, 59.2% either agreed or strongly agreed. This is compared to 29.3% that disagreed or strongly disagreed.
- 18 When asked why that would be the case, 36 out of the 90 responders said it would have a positive impact. This is compared to 50 who expressed concern over a range of matters such as enforcement, thought a PSPO would have little impact and that more support should be given to prevent homelessness and dependencies. However, it should be noted that rough sleeping is not synonymous with aggressive begging, and whilst support is provided to help people move off the street, this in itself will not prevent people who choose to beg aggressively.
- 19 Although almost 60% believed that the introduction of a PSPO for begging would have an either extremely positive or positive impact should it be introduced, there are clearly mixed views on the subject with some inconsistencies in the responses. The public's response is important but in order to introduce a PSPO, it would need further evidence that the activity being consulted on is of a persistent and ongoing nature and that it was having a detrimental effect on the residents and visitors to the City.
- 20 There seems to be more mixed view on whether the introduction of a PSPO for begging would be effective or necessary. There are concerns highlighted that it would make little difference or whether one should be introduced at all given that it may lead to punishing some of the most vulnerable members of our community.
- 21 The Police are clear in their thoughts on the matter and believe that it could and should be introduced (Appendix 3).
- 22 A residents' group had an opposite view however (Appendix 4).
- 23 What has failed to emerge from the consultation however is any firm and direct evidence of the actual problem that a PSPO could remedy. While the consultation process quite properly proceeded on the basis that there appeared to be a problem through the available information and anecdotal

comments, the size, scale, and nature of the problem has not been confirmed or fully identified.

Enforcement

- 24 A PSPO without enforcement is largely ineffective. It is therefore crucial to have the full commitment of all agencies involved in the enforcement of any measures should they be introduced.
- 25 Police and Council officers can utilise Community Protection Warning/ Notices that were introduced under the same legislation as PSPOs. 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.
- 26 Although PSPOs are made by the Council, enforcement can be undertaken by Council officers, community safety accredited staff (Neighbourhood Wardens) and police officers (including PCSOs).
- 27 Comments were received as part of the consultation which questioned or queried the level of enforcement. The existing PSPO has been enforced although some responders suggested that this had not been effective.
- 28 If a PSPO is to be introduced for begging it must be clear and unambiguous enough to be enforceable. Comments were made during the consultation that “aggressive begging” could be just that and what is meant by “aggressive”.

Consideration of Evidence Against PSPO Criteria

- 29 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.
- 30 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

- 31 Prior to consultation an EQIA was carried out on this matter and another PSPO for Durham City.

- 32 As part of the consultation, feedback was received which suggested “aggressive begging” was not clear enough in terms of what could or may constitute “aggressive”.
- 33 Further clarification was provided on the website to give some more guidance on what could be construed as “aggressive”.

Main implications

- 34 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.
- 35 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.
- 36 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.
- 37 It is an often misconception that aggressive beggars are homeless people living on the streets. This is not always the case, and aggressive beggars can often commute into city and town centres from the outside the area. The Council offers an effective and valued service working with rough sleepers to help get them off the street and provide them with the support they need. This service will continue; however, it is unlikely to impact on the propensity of aggressive begging on the streets.
- 38 Partners can work together to improve the information sharing about the individuals who are present in the City so the appropriate plans can be developed to assist those in need and take action where able and necessary.
- 38 As well as considering alternative interventions to tackle issues in the City it is important to consider additional support and education measures. These can include referrals to drug and alcohol or mental health services as well as educational messages, for example, advising the public how to donate directly to charities.
- 39 An introduction of a PSPOs can be legally challenged so it is essential that processes are followed correctly, and the evidence and findings are objectively assessed against the criteria.

Conclusion

- 40 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.

- 41 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.
- 42 Consultation on the relevant issues has been used to gauge the level of public support or otherwise for introducing a PSPO. The introduction of a PSPO in Durham City has been supported by the Police but did not prove to be universally popular with other consultees questioning on the need or priority for such a measure.
- 43 It is clear from feedback that there are anecdotally individuals in the city whose behaviour can cause concern. Some may give the impression of being homeless when this is not the case, and some may well engage in a form of persistent or aggressive begging.
- 44 It is also accepted that begging does take place in the City and that there may be, on occasions, that the begging is associated with more aggressive or antisocial behaviour. However, when considering the requirements needed to satisfy the introduction of an order, at this stage there is insufficient evidence to demonstrate that a PSPO would contribute to solving the problem. Further considerations will be made in the future when there is demonstratable evidence of need for a PSPO
- 45 Officers have considered the legal tests and all of the evidence available and consider that at this time, the Council does not currently have sufficient evidence to justify the granting of the PSPO.
- 46 To address these, a multi-agency group will be convened to assess the nature and scale of the problems, consider what solutions may exist and to implement measures to tackle the issues. Whilst this is ongoing, all agencies will be engaged to consider the need to record, and evidence matters that could be needed to inform any future actions.

Background papers

None.

Other useful documents

None.

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Appendix 1: Implications

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 consultation forms an important part of the process to be followed when a local authority is considering making a PSPO. The issuing of a PSPO has the potential for legal challenge. Officers consider that a PSPO should not be introduced and the Council may encounter difficulty in defending any legal challenge should a PSPO be introduced at this stage.

Finance

None.

Consultation

A full consultation exercise has been carried out to determine the need/demand for a PSPO.

Equality and Diversity / Public Sector Equality Duty

An EQIA screening was completed prior to consultation.

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 introduce a PSPO as detailed in this report.

Procurement

None.

Appendix 2: Summary of responses

Do you agree or disagree that the introduction of a PSPO in Durham City will be an effective way to control aggressive begging in the city?

	Frequency	Percent
Strongly agree	41	31.5%
Agree	36	27.7%
Neither agree nor disagree	15	11.5%
Disagree	11	8.5%
Strongly disagree	27	20.8%
Total	130	100.0%

Why do you think this?

	Frequency
Agree/positive impact	36
More support to prevent homelessness/alcohol dependencies	28
PSPO enforcement concerns	12
Disagree	9
Unknown/no direct answer to question	4
PSPO had no impact/no change	1
Total	90

Why thinking this is the case by respondent type.

	A local resident	A visitor to Durham City centre	A local employee	A business, club or organisation
Agree/positive impact	20	2	10	3
More support to prevent homelessness/alcohol dependencies	23	2	2	1
PSPO enforcement concerns	5	1	6	0
Disagree	6	3	0	0
Unknown/no direct answer to question	4	0	0	0
PSPO had no impact/no change	0	0	1	0
Total	58	8	19	4

Agreement levels that the introduction of a PSPO in Durham City will be an effective way to control aggressive begging by respondent type.

Respondent type	Agree	Not 'agree'	Responses
A local resident	51.9%	48.1%	81
A visitor to Durham City centre	63.2%	36.8%	19
A local employee	73.9%	26.1%	23
A business, club or organisation	83.3%	16.7%	6
Total	58.9%	41.1%	129

Do you think introducing a PSPO for begging in Durham City will have a positive or negative effect upon you, your business or organisation?

	Frequency	Percent
Extremely positive	42	32.3%
Positive	35	26.9%

Neither positive nor negative	26	20.0%
Negative	10	7.7%
Extremely negative	17	13.1%
Total	130	100.0%

Impact of introducing a PSPO for begging by respondent type.

Respondent type	Positive impact	Not 'positive' impact	Responses
A local resident	47.5%	52.5%	80
A visitor to Durham City centre	68.4%	31.6%	19
A local employee	83.3%	16.7%	24
A business, club or organisation	83.3%	16.7%	6
Total	58.9%	41.1%	129

Please explain why you believe this to be the case.

	Frequency
Agree/positive impact	38
Unknown/no direct answer to question	15
More support to prevent homelessness/alcohol dependencies	14
Disagree	9
PSPO enforcement concerns	5
Total	81

Why thinking this is the case by respondent type.

	A local resident	A visitor to Durham City centre	A local employee	A business, club or organisation
Agree/positive impact	20	3	11	3
Unknown/no direct answer to question	12	0	2	1
More support to prevent homelessness/alcohol dependencies	10	3	1	0
Disagree	7	1	1	0
PSPO enforcement concerns	3	0	2	0
Total	52	7	17	4

Do you have any further comments to make about the PSPO proposals?

	Frequency
PSPO mixed comments including student behaviour/youths/ASB/alcohol	28
PSPO enforcement concerns	13
More support to prevent homelessness/alcohol dependencies	7
Agree/positive impact	4
Disagree	1
PSPO had no impact/no change	1
Total	54

Further comments by respondent type.

	A local resident	A visitor to Durham City centre	A local employee	A business, club or organisation
PSPO mixed comments including student behaviour/youths/ASB/alcohol	18	3	5	2
PSPO enforcement concerns	7	1	4	1
More support to prevent homelessness/alcohol dependencies	5	1	0	1
Agree/positive impact	4	0	0	0
Disagree	1	0	0	0
PSPO had no impact/no change	1	0	0	0
Total	36	5	9	4

Are you responding to this proposal as:

	Frequency	Percent
A local resident	81	61.4%
A local employee	24	18.2%
A visitor to Durham City centre	19	14.4%
A business, club or organisation	8	6.1%
Total	132	100.0%

If a club, business or organisation, please provide the name of the club, business or organisation.

	Frequency	Percent
Response	6	75.0%
No response	2	25.0%
Total	8	100.0%

Are you:

	Frequency	Percent
Male	53	58.2%
Female	38	41.8%
Total	91	100.0%

What is your age?

	Frequency	Percent
18-24	9	9.8%
25-34	10	10.9%
35-44	17	18.5%
45-54	14	15.2%
55-64	23	25.0%
65-74	16	17.4%
75+	3	3.3%
Total	92	100.0%

Do you consider yourself to be a disabled person?

	Frequency	Percent
Yes	17	18.9%
No	73	81.1%
Total	90	100.0%

What is your religion or belief?

	Frequency	Percent
None	47	53.4%
Christian	38	43.2%
Atheist	1	1.1%
Baha'i	1	1.1%
Hindu	1	1.1%
Total	88	100.0%

How would you describe your sexual orientation?

	Frequency	Percent
Heterosexual/straight	71	86.6%
Bisexual	4	4.9%
Gay man	4	4.9%
Gay woman/lesbian	3	3.7%
Total	82	100.0%

What is your ethnicity?

	Frequency	Percent
White British	83	96.5%
White Non-British	3	3.5%
Total	86	100.0%

Appendix 3: Response from Durham Constabulary

Durham City Police Office,
New Elvet,
Durham.
DH1 3AQ.

Wednesday, 27 April 2022

Re. Durham City PSPO Consultation

Dear Consultations Officer,

I write in my capacity as Police Superintendent responsible for local policing and ASB in County Durham in relation to the open PSPO consultation regarding making drinking alcohol in public and aggressive begging in Durham City an offence (article 27164). Please consider the following representations as being the consensus view of the Constabulary rather than an individual reply, and I would ask that due weight be afforded accordingly. I would further ask these views be considered in tandem with the recent presentations to cabinet by Chief Inspector Emma Kay, Chief Constable Farrell and PCC Joy Allen on the same.

Durham Constabulary fully supports the public consultation into the current PSPO serving Durham City, and further, the Constabulary supports the introduction of a new order to make begging in the Durham City centre an offence. However, the Constabulary are of the opinion that the new order is limited in considering the single aspect of aggressive begging, and the Constabulary would contend that it would be an opportunity missed if the next PSPO does not consider or consult on begging more generally. For clarity, the Constabulary are committed to the principles of procedural justice, and policing with consent, and the ask is simply one of ensuring the public are given an opportunity to give their opinions on all forms of begging.

Durham City is a relatively affluent location, generally utilised by shoppers, local residents, and revellers taking advantage of the night-time economy or students from Durham University. While Durham does see people begging in the city, most often in the high footfall areas such as the Market Place, Saddler Street and Silver Street, it does not have a significant problem with homelessness.

While the transitory nature of the people who come to the city for the purpose of begging make it almost impossible to quantify accurately, evidence would suggest that it is a very small percentage of homeless people begging.

By way of example, at the time of writing this document there are three persons sitting in the city providing the appearance of homelessness, never asking for money but being provided with cash by generous members of the public. All three individuals have accommodation across the northeast and have travelled into the city. Of the three persons currently sitting in the city all are known to have significant issues with alcohol and substance misuse and have stated that this lifestyle is how they fund those problems. By contrast, data suggests there are currently two persons verified as homeless in the city, neither of whom beg.

The city, and consequently the constabulary, has had numerous issues with people who are begging drinking and taking drugs, leaving drugs paraphernalia, broken bottles, faeces and urine in shop doorways and alleyways. This has been a particular concern from local businesses. Confrontations between individuals in the city have on occasion led to violent confrontations, causing intimidation to members of the public and injury to each other. Many of these issues result in calls for service to police, though the Constabulary contend much of this demand is entirely avoidable and diverts activity from other important areas of policing as well as impacting on public confidence.

As an example, one regular rough sleeper in the city has been arrested 143 times, and has a total of 92 convictions from 157 offences committed, he has 71 theft and kindred offences, 22 offences against the person, 13 public disorder offences and 31 offences against police/courts/prisons resulting in 67 previous convictions. He was first convicted in 1997 and his last conviction was March 2022. This person has been provided with accommodation on numerous occasions but has walked out of them choosing to sleep rough and beg in the city.

Local neighbourhood policing teams work closely with partner agencies such as council wardens and the rough sleeper group to combat the issues faced by these individuals. One current initiative is a trial project with Humankind to reach out to vulnerable people and understand the issues they are having and ensure the right levels of support are in place.

PSPO's are utilised in towns and cities across the country and can provide a bespoke response to the problems faced by those communities. If done appropriately, through consultation, a properly applied PSPO can provide a proportionate and legitimate addition to the tool kit of both the police and the local authority.

The use of a PSPO would not be utilised as a blanket power to clear the streets of Durham but could be utilised as a preventative tool and to address issues early, providing diversionary schemes and deterrents prior to setting out on a path towards criminality. The Constabulary accepts that the PSPO label of 'Aggressive Begging' would assist in filling the gap which will be left by the repeal of the Vagrancy Act, but contend limiting the PSPO consultation only to 'aggressive' begging will not resolve the core issues, and further matters of public concern are not limited to the narrowly defined 'aggressive begging' – to delineate so prescriptively risks failing to address public concern and causes foreseeable and avoidable issues in relation to definitions and subsequent enforcement.

I would conclude by adding the Constabulary, via myself, wish to be closely involved with the future drafting of the PSPO after the formal consultation has ended, and I would be grateful for inclusion on any forums to discuss the same.

Yours faithfully,

N BICKFORD.

T/Supt. 2431 N. Bickford, MSc.

Local Policing Command,

Durham Constabulary.

Appendix 4: response from Neville's Cross Residents Association

NEVILLE'S CROSS RESIDENTS ASSOCIATION [NXCA]

Public Space Protection Order consultation

Dear Sir/Madam

I am responding on behalf of the NXCA to the current consultation on making drinking alcohol in public and aggressive begging in Durham City an offence.

The NXCA is a community association that covers the Neville's Cross area; it also manages a Facebook group and together they cover some 1500 active residents. Since our most recent meeting was a few weeks ago, this response has been drafted by the NXCA Trustees and will be reported back to the next meeting.

We are aware of the current PSPO which we consider is achieving its purpose and we would like to see it continued for another three years. We thought that the procedure is proportionate, because drinking in public is not automatically an offence, but continuing to do so after being asked to stop constitutes the offence.

While obviously being aware of begging, none of our members had encountered aggressive begging in area. Consequently we do not regard aggressive begging to be something that needs to be addressed by a PSPO. On the other hand, aggressive door-to-door selling is common in this area where the population is often older and more likely to vulnerable. The experiences have largely been negative, complaints have been made and the police have leafleted the area within the last year. We would welcome it if this behaviour could be controlled as far as it can be and more protection advice provided to those who need it.

Generally, the area does not suffer as yet from significant or sustained late night anti-social behaviour in the streets, other than transient noise, but we have experienced ASB in terms of noise and parties from the increasing number of HMOs that are now appearing as developers and landlords are expanding out of the more traditional areas. We are keen that action is taken now so that such conduct is not normalised and that action is taken promptly against perpetrators.

Finally, the consultation asks if the language is clear, but as we have not seen the text of the proposed order we are unable to comment. Where we have asked for measures to be introduced or continued, this is because it would make a positive difference to our members.

Tony Cleaver

Secretary, NXCA, for the NXCA Trustees