

Cabinet

18 September 2024

**Public Space Protection Order (PSPO)
to control instances of Anti-Social
Behaviour 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 Public Space Protection Order (PSPO) for begging, urinating, and defecating in public and the use of psychoactive substances in Durham City and make recommendation to Cabinet in respect of the introduction of a PSPO in Durham City.

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 outcome of the consultation exercise on begging, urinating and defecating in public and the use of psychoactive substances has produced

some strong results with those responders considering that the measures are necessary, and the activities considered are causing significant ongoing and persistent concern.

- 5 Consideration has been given to each relevant activity and the evidence available from crime and anti-social behaviour data as well as the consultation feedback as outlined in paras 51-55 within this report. Following further legal advice, it has been determined that there is sufficient evidence to satisfy on reasonable grounds, the conditions for making a PSPO.
- 6 Should Cabinet agree to introduce a PSPO for Durham City, it is proposed that the amount of the fixed penalty would be set at the maximum level of £100 without any reductions for early repayment.

Recommendation(s)

- 7 Cabinet is recommended to:
 - (a) note the contents of this report that there is sufficient evidence to warrant a PSPO for begging, urinating, and defecating in public and the use of psychoactive substances;
 - (b) agree to introduce a PSPO to control the activities listed in this report; and
 - (c) agree that the fixed penalty amount is set at the maximum of £100.

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 PSPOs. 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 PSPOs before October 2017 (3 years). A PSPO 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;
 - (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 A PSPO 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.
- 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 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.
- 14 There is a current PSPO in Durham City relating to the consumption of alcohol outside premises which was sealed on 29th June 2022, and this will be subject to further review in 2025.
- 15 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 an FPN.
- 16 The Antisocial Behaviour, Crime and Policing Act 2014 specifies that the amount of the fixed penalty must not exceed £100 and that no proceedings may be taken for the offence before the end of the period of 14 days following the date of the notice.

- 17 Whilst the legislation does allow for a lower amount to be specified if early payment is made within a specified period, it is proposed to set the level of the fixed penalty within Durham City at £100 with no early payment opportunity. This is consistent with approaches in other local authorities who have introduced PSPOs for similar activities as shown in Appendix 2.
- 18 In addition, for more serious breaches or repeat breaches of the PSPO the council may opt to escalate the matter for prosecution without issuing a FPN.

Consultation

- 19 In March 2024, Cabinet agreed there should be a consultation exercise to consider public views on whether a PSPO should be introduced to control the activities listed in the report.
- 20 A public consultation exercise was carried out between 10th May 2024 and 23rd June 2024 to seek and welcome views on this subject. Certain organisations such as Durham Constabulary, Durham Business Improvement District, Durham City Parish Council and Police and Crime Commissioner were specifically contacted as part of this exercise.
- 21 A meeting was held with the Homelessness team on 7th May 2024 which resulted in the webpage being changed to reflect the homelessness support services available in the city and also the team agreed to share details of the consultation with various homeless charities.
- 22 The consultation was also sent to board members of the Safe Durham Partnership, Better Together Forum and Churches Together. In terms of equalities, details of the consultation were also sent to Age UK and Disability Partnership representatives to respond and promote to their audiences
- 23 A presentation was made to the Durham City AAP on the subject area and the activities and behaviours being considered.
- 24 The questionnaire used as the public consultation is attached as Appendix 3 to this report and a summary of the responses is attached as Appendix 4. For ease of collation responses coding was used to group replies.
- 25 In total 419 responses to the questionnaires were received which were a mixture of businesses and members of the public. The highest percentage of respondents were in the age band 55-64 and in total 73.6% were over the age of 45 years old.
- 26 In addition to the public questionnaire responses there were written submissions received from the Business Improvement District (Appendix 5), The Police and Crime Commissioner (Appendix 6), the City Parish Council (Appendix 7), The Superintendent in charge of Neighbourhood Policing (Appendix 8) and the City Centre Inspector who also obtained victim impact statements from a number of businesses in the City that were repeatedly victims of Anti-Social Behaviour and crime (Appendix 9 including 9a and

9b). A copy of the response from Durham University is also attached (Appendix 10).

Consultation responses in relation to Begging.

- 27 When asked how many occasions the public had witnessed begging in the City over the last two years, 72% (306) of respondents stated that they had witnessed it on more than five occasions and a further 16% (66) stated that they had witnessed it between two and five times.
- 28 When asked which locations begging has been witnessed in, over 57% (442) stated that North Road and Market Place were the most prevalent which areas such as shop doorways and Saddler Street also being mentioned.
- 29 When asked about the impact was when witnessing begging or being approached by beggars had on the public, 35% (132) said it was negative with 43% (160) stating it was extremely negative.
- 30 When asked what elements begging had on their quality of life 36% (89) mentioned fear of their own safety, 16% (41) stated they had been subject to aggressive and abusive behaviour, 8% (20) mentioned public nuisance and disruption factors and a combined total of 26% (55) stated the negative affect it had on businesses and the overall image of Durham City.
- 31 When asked if they supported a PSPO to control begging, 68% (278) strongly supported and a further 15% (61) supported its introduction. 3% (14) opposed the suggestion and 4% (16) strongly opposed the introduction of a PSPO.
- 32 The reasons given for the introduction of a PSPO are grouped as general fear and personal safety 33% (80) as well as 10% (24) stating the negative and adverse effect it has on the businesses in the City. 30% (71) did mention that support should be provided to assist those most in need but 15% (37) also stated that it had a detrimental effect on the image of the City.

Consultation responses in relation to urinating and defecating in public

- 33 When asked how many occasions the public had witnessed urinating and defecating in public in the City over the last two years, 29% (120) of respondents stated that they had witnessed it on more than five occasions and a further 26% (108) stated that they had witnessed it between two and five times. 34% (141) said they had not witnessed those behaviours.
- 34 When asked which locations urinating and defecating has been witnessed in, 49% (133) stated that North Road and Market Place were the most prevalent which areas with various other locations such as shop doorways and open spaces being mentioned by 51% (138) of respondents.

- 35 When asked about the impact was when witnessing urinating and defecating in public had on the public, 68% (180) said it was extremely negative with 22% (59) stating it was negative. 2% (7) stated it was extremely positive.
- 36 When asked what elements of urinating and defecating in public had on their quality of life the respondents mentioned a range of reasons from hygiene, being offensive and disgusting, public decency, and the image it had on the city. Some respondents did comment on the lack of public toilets in the city as a factor.
- 37 When asked if they supported a PSPO to control urinating and defecating in public, 74% (311) strongly supported and a further 14% (60) supported its introduction. 2% (7) opposed the suggestion and 3% (13) strongly opposed the introduction of a PSPO.
- 38 The reasons given for the introduction of a PSPO are grouped as general public health concerns 30% (30), cleanliness 21% (21), social decency and respect 43% (44) and a negative impression of the city 6% (6).

Consultation responses in relation to the use of psychoactive substances in public

- 39 When asked how many occasions the public had witnessed the use of psychoactive substances in public in the city over the last two years, 53% (218) of respondents stated that they had witnessed it on more than five occasions and a further 23% (95) stated that they had witnessed it between two and five times. 21% (87) said they had not witnessed those behaviours.
- 40 When asked which locations the behaviour had been witnessed in, 26% (103) stated that North Road with 28% (109) stating in the Market Place. 38% (147) mentioned various other locations such as shop doorways and open spaces.
- 41 When asked about the impact was when witnessing the use of psychoactive substances in public had on the public, 62% (180) said it was extremely negative with 32% (94) stating it was negative. 2% (5) stated it was extremely positive.
- 42 When asked what elements of the use of psychoactive substances in public had on their quality of life the respondents mentioned a range of reasons from safety (39%), public nuisance (14%), a negative impact on the city (15%) and intimidation and aggression (14%). 6% also mentioned compassion for those who are using the substances and the need for support.
- 43 When asked if they supported a PSPO to control the use of psychoactive substances in public, 73% (300) strongly supported and a further 16% (64) supported its introduction. 1% (5) opposed the suggestion and 3% (13) strongly opposed the introduction of a PSPO.

- 44 The general reasons why they supported the introduction are grouped as public safety and intimidation concerns (23%), negative image and reputation of the city (24%), health and safety hazards (12%) and moral and legal grounds (25%).

Written responses received outside questionnaires.

- 45 All written responses broadly support the measures being considered. There is a general view that a cohort of individuals frequent the city with the intention of begging which then fuels other forms of anti-social behaviour and crime.
- 46 It is considered that begging is main motivation and if this was removed then it may mean there is less incentive to visit and stay in the city.
- 47 It is believed that many other activities stem from having a cohort in the city. This includes shoplifting and theft but also crimes such as assault, including sexual assault, and other violent crimes.
- 48 Wider concern exists also as to the reputation and image of the city and how that will have a wider impact on the residents, workers, and visitors.
- 49 Broadly all those agencies who have provided a written response support the introduction of a PSPO to control those behaviours being considered.
- 50 The Police have produced crime and anti-social behaviour statistics which evidences and supports their views that the introduction of a PSPO to control activities would provide them, and DCC, with another potential solution to the problems that are being faced.

Consideration of Evidence Against PSPO Criteria

- 51 Consideration has been given to each relevant activity using the evidence available from crime and anti-social behaviour data as well as the consultation feedback in determining whether the legal conditions for the introduction of a PSPO has been met.
- 52 Firstly, there is clear supporting evidence across all activities which demonstrates that 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 these activities will be carried on in a public place within that area and that they will have such an effect.
- 53 In particular, feedback from respondents stated that intimidation, abusive and aggressive behaviour, fear for personal safety, nuisance, and the general negative impact on the local environment and their surroundings amongst other reasons was having a detrimental impact on their quality of life
- 54 Secondly, there is clear supporting evidence across all activities 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.

- 55 The outcome of consultation showed that in relation to each activity, the majority of respondents had witnessed the activities on two or more occasions and that begging was the most persistent activity with a significant percentage of respondents having witnessed begging on 5 or more occasions over last two years.

Enforcement

- 56 In accordance with the Council's Corporate Enforcement Policy, it is our policy to maintain and enhance the amenity of the county and to protect the health, safety and wellbeing of its residents, as well as people working in, or visiting the area. In doing so we will take a graduated approach to enforcement and will take appropriate action that is fair, consistent, proportionate, transparent and targeted.
- 57 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.
- 58 Although PSPOs are made by the Council, enforcement can be undertaken by a range of authorised council officers, community safety accredited staff (Neighbourhood Wardens) as well as Police officers (including Police Community Support Officers (PCSOs).
- 59 In addition, both Police and Council officers can utilise Community Protection Warnings / Notices that were introduced under the same legislation as PSPOs.
- 60 A PSPO would allow a swift sanction in the form of a 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 failed to comply with the PSPO.
- 61 In practice, where an authorised officer witnesses behaviour that breaches the conditions of a PSPO the individual(s) concerned will be challenged and if the individual does not comply with that request, then an offence has been committed. Any failure to comply with the instruction to desist from the prohibited activity would generally in the first instance lead to a FPN being issued.
- 62 In relation to the issuing of FPNs in some instances different enforcement approaches may be adopted particularly if those committing these offences are under 18 years of age.
- 63 Comments were received as part of the consultation which questioned or queried the level of enforcement. Whilst the existing PSPO has been enforced some responders suggested that more enforcement is needed against all forms of ASB and crime.

Equalities

- 64 Prior to consultation an Equality Impact Screening (Appendix 10) was carried out and updated post-consultation, no adverse issues were identified for further consideration.
- 65 The issue of availability of public toilets was raised by a resident's group. They identified possible concerns as to the availability of public toilets, especially for individuals of a particular age and disposition. In response to that concern, it was considered, and Durham County Council displays a list of all public conveniences that are available in the city. Further consideration as to the availability of public toilets may be needed should the PSPO be introduced.

Main implications

- 66 The introduction of a PSPO for begging does bring potential risks to the local authority as it may be seen as introducing a financial punishment on vulnerable people.
- 67 The Council works with a variety of local partners and offers a range of effective and valued services to support the most vulnerable within our communities.
- 68 Additional help and support is also provided through the Drug and Alcohol Recovery Services (DARS) across County Durham. The DARS provide prevention and harm reduction support including needle exchange, one-to-one and group behavioural support, clinical prescribing, health checks, mutual aid, training and employment opportunities, and aftercare to help reintegrate individuals back into their local communities. The service continues to provide an immediate access offer into to 3 Recovery Centres including one of which is based in Durham City.
- 69 We will continue to work together to improve information sharing about the individuals who are present in the city so that appropriate interventions and support can be developed to assist those in need and to help determine what services could be offered and whether any further escalated intervention is necessary.
- 70 Local intelligence indicates that not all persons begging in the city centre are vulnerable however and quite often beggars are travelling into the city from the outside the area to retain a lifestyle of begging for cash.
- 71 The introduction of a PSPO can provide the Police and the Local Authority with a swift enforcement tool for those who breach the order as well as act as a deterrent to others wishing to engage in these activities when visiting the city.
- 72 A PSPO does have limitations and in itself will not generate a ban for those who currently engaged in those activities and behaviours in the city, but it's introduction may lead to escalated enforcement action if certain individuals persistently breach the order.

- 73 Alternative interventions may also be implemented through the provision of advice, education and information to achieve compliance and better outcomes, when necessary, e.g. advice to the public on how to donate directly to charities etc.
- 74 The introduction of a PSPO can be legally challenged so it is essential that processes are followed correctly, and that the evidence and findings are objectively assessed against the criteria.

Conclusion

- 75 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.
- 76 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.
- 77 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, the City Parish Council, the Police and Crime Commissioner and the Business Improvement District.
- 78 The responses from the public questionnaire does show there is strong support from those who responded and that the activities being considered are also having a detrimental effect on their lives.
- 79 Officers have considered the outcome of the consultation exercise and other evidence available against the legal conditions required to introduce a PSPO as outlined in paras 51-55 and have determined that there is sufficient evidence to satisfy on reasonable grounds, the conditions for making a PSPO.
- 80 Should a PSPO be introduced, it is considered still necessary for agencies to continue to work together to problem solve and co-ordinate responses to tackle issues as they arise. A PSPO will not be solution to all issues in the city but will be an additional “tool in the box” to control behaviours and improve the lives of residents and visitors to the city.

Background papers

None.

Other useful documents

None.

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Appendix 1: Implications

Legal Implications

PSPOs 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 be introduced, as it is considered there is sufficient evidence to introduce one to combat the activities and ASB in the city.

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 assessment (Appendix 11) was completed prior to consultation and did not highlight any areas of concern.

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: Benchmarking levels for Fixed Penalty Notices
(PSPOs) – North East Regional Local Authorities – see separate
document**

Appendix 3: Questionnaire – see separate document

Appendix 4: Summary of Responses – see separate document

**Appendix 5: Written Submission from Business Improvement
District – See separate document**

**Appendix 6: Response from Police and Crime Commissioner –
see separate document**

Appendix 7: Response from City of Durham Parish Council – see separate document

**Appendix 8: Response from Superintendent in charge of
Neighbourhood Policing – see separate document**

Appendix 9: Response from City Centre Inspector including Data Analysis (9a) and victim impact statements from Businesses – see separate documents (9b)

Appendix 10: Response from Durham University – see separate document

Appendix 11: Equalities and Impact Assessment – see separate document
