

CABINET
22 JUNE 2022

PUBLIC SPACE PROTECTION ORDER - DARLINGTON TOWN CENTRE

**Responsible Cabinet Member -
Councillor Mike Renton, Stronger Communities Portfolio**

**Responsible Director -
Dave Winstanley, Group Director of Services**

SUMMARY REPORT

Purpose of the Report

1. This report is to highlight the potential benefits from renewing the Public Space Protection Order (PSPO) in Darlington Town Centre.

Summary

2. In 2019 a PSPO was granted for Darlington Town Centre to assist in dealing with issues such as nuisance behaviour, begging and anti-social drinking. The order can be introduced for a period of 3 years and expired in February 2022 after which it must be reviewed to consider whether to renew or not. The PSPO has been effectively used over the last three years, however there are still ongoing issues that need to be addressed and the renewal of the PSPO can assist the Council, Police and partners in dealing with some of these issues.
3. A PSPO can place restrictions on behaviour and if individuals breach these conditions, they could be liable to punishment by a fine of up to £1,000 (or £500 in the case of consumption of alcohol) or a Fixed Penalty Notice (FPN) of up to £100.
4. Consultation on the renewal of the PSPO in Darlington Town Centre was undertaken from 7 March 2022 to 2 May 2022. There was only one public response which was received from Liberty. Further details of the responses are detailed in paragraphs 35, 36 and 37.
5. Upon review of the evidence and requirements for considering renewing the order it can be justified and it is recommended that the order is renewed for a further 3 years. However, it should be noted that the issue of dealing with obstructions to public buildings included in the original order is not considered to be required and therefore proposed to be removed from the new order.
6. The renewal of a PSPO potentially could have negative impacts on certain groups more than others. Consideration has been given to better understand the potential impacts and the appropriate steps that need to be taken to mitigate and ensure that the PSPO is used proportionately, reasonably and fairly. Members are asked to read the Equality Impact Assessment at **Appendix 1** before making a decision.

7. A copy of the draft PSPO is attached at **Appendix 2**.

Recommendation

8. It is recommended that Members:
 - (a) Note the consultation that has taken place and consider the feedback received.
 - (b) Approve the PSPO for Darlington Town Centre as set out in Appendix 2 to enable it to be formally made.

Reasons

9. The recommendations are supported by the following reasons:
 - (a) To enable officers, including Police, PCSOs and Civic Enforcement Officers, to effectively deal with various types of anti-social behaviour with an extended range of powers.
 - (b) To improve the quality of life of persons visiting and working in the area covered by the PSPO.

Dave Winstanley
Group Director of Services

Background Papers

- (i) ASB, Crime & Policing Act 2014
- (ii) ASB, Crime & Policing Act 2014 (Publication of Public Space Protection Orders) Regulations 2014 No 2591
- (iii) ASB, Crime & Policing Act 2014, Anti-Social Behaviour Powers, Statutory Guidance, updated December 2017
- (iv) Public Spaces Protection Orders, Guidance for Councils, Local Government Association 2018

S17 Crime and Disorder	A PSPO will have a positive effect on crime and disorder in the town centre.
Health and Wellbeing	Anti-social behaviour within the town centre can impact negatively on the health and well being of individuals.
Carbon Impact and Climate Change	There is no impact on carbon as a result of this report.
Diversity	No particular group is impacted differently as a result of this report.
Wards Affected	Park East
Groups Affected	No particular group will be impacted differently as a result of this report.
Budget and Policy Framework	No impact on the Budget or Policy Framework.
Key Decision	No
Urgent Decision	No
Council Plan	An attractive, vibrant, safe town centre is an important part of the Perfectly Placed agenda in the Sustainable Community Strategy.
Efficiency	There is no impact on the Council's Efficiency agenda as a result of this report.
Impact on Looked After Children and Care Leavers	This report has no impact on Looked After Children or Care Leavers.

MAIN REPORT

Information and Analysis

10. PSPOs are a key element of the Anti-Social Behaviour, Crime and Policing Act 2014 which came into force in October 2014.
11. PSPOs are intended to limit and restrict activities which cause nuisance or lead to problems for a community, and as such allow Councils to make restrictions on activities which are judged to have a detrimental effect on the quality of life in an area. By design the orders are planned to allow people to enjoy open public spaces free from nuisance and anti-social behaviour.
12. The responsibility for making a new PSPO rests with the Council. The Council must, prior to making an order, be satisfied, on reasonable grounds, that activities carried out in a public space have had or are likely to have a detrimental effect on the quality of life of those in the locality and that the effect or likely effect of the activities:
 - (a) Is or is likely to be persistent or continuing;
 - (b) Is or is likely to be such as to make the activities unreasonable; and
 - (c) Justifies the restrictions imposed.
13. Before making a PSPO, the Council must carry out consultation with the local Police, the Police and Crime Commissioner, the owners and occupiers of any land included in the PSPO which is not in Council ownership and wider consultation with representatives from

the local community. It must also publish the draft PSPO in accordance with Statutory Regulations.

14. Where a PSPO is in force, a Police Officer or Council Officer witnessing behaviour that breaches its conditions may challenge the individual(s) concerned and ask them to comply. If the individual does not comply with the request, an offence is committed.
15. An offence involving failure to comply with a PSPO is punishable by a fine of up to £1,000 (or £500 in the case of consumption of alcohol) or by a fixed penalty of up to £100.
16. In practice an offence is only committed if a person refuses to stop carrying out a prohibited activity when asked to do so by an authorised Council officer or police officer. If the person follows the instruction then no further action would be required. 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 rather than a court appearance.
17. A new PSPO if introduced would be for another 3-year period, at which time it must be renewed again, or it would cease. The Council would have the power to remove specific prohibitions or end a PSPO early, for example if an activity no longer existed. If significant new issues arose during the PSPO then the Council can modify prohibitions. The obstruction of public access to buildings was something that was included in the first order but from both the review and evidence this is no longer considered necessary and will not be included in the proposed order.
18. The draft order is attached at Appendix 2 and includes the following restrictions:
 - (a) Persons acting in an anti-social manner who continue to drink alcohol in public places, which are not licensed premises, after they have been asked to stop.
 - (b) Persons acting in an anti-social manner who fail to surrender any alcohol in their possession in public places, which are not licensed premises, when asked to do so.
 - (c) Begging.
 - (d) Threatening behaviour.

Local Intelligence

19. The Police figures for the Town Centre are documented at **Appendix 3**. Although Table 1 shows that Anti-Social Behaviour figures in Darlington Town Centre for 2021/2022 are lower than 2018/2019 (when the PSPO was obtained), all categories of anti-social behaviour are beginning to increase again following the lifting of restrictions after the pandemic, therefore supporting the need to renew the PSPO. The data covers the main period of the Covid 19 pandemic and therefore needs to be interpreted with this in mind. It is expected town centre footfall will return to previous levels as recovery from the pandemic continues, with an increased focus on events and leisure as town centres continue to adapt and change. It is important that the Police and Councils have a range of tools to manage and address anti-social behaviour.

20. The overall number of FPNs issued throughout the duration of the first PSPO was 95 for begging and 14 for alcohol related nuisance. Fines are used when all other engagement and warnings have failed to rectify behaviour.
21. Begging within the town centre has been tackled successfully by partners over recent years, the PSPO being a key part of this. Graph 1 shows the number of FPNs issued for begging and although the figures seem high, they were issued against persistent beggars when all other methods of warnings, support and engagement had been exhausted.

Youth Nuisance

22. Youth nuisance remains a concern in relation to groups of young people in the town centre who are disruptive, loud and have lack of respect for members of the public, officers, and business owners.
23. Although some good progress has been made across the types of anti-social behaviour, there remains a need for a PSPO renewal to ensure issues continue to be addressed.
24. In relation to issuing an FPN for breach of a PSPO, different arrangements will apply to those under 18 years of age who commit these offences. Those arrangements will be:

(a) 10-13 year olds

FPNs will not be issued to persons under the age of 14 where an offence is witnessed but they should still be requested to stop the activity and both the juvenile and their parent/guardian will be sent a formal warning so that the parent/guardian is aware of the situation.

(b) 14 and 15 year olds

If an offence is committed by a person who is 14 or 15, in the first instance they would be requested to stop the activity. If the request is complied with, a formal warning would be given, verbally at the time, and followed up in writing to both the juvenile and their parent.

If the activity is not stopped then an FPN would be issued to the individual and the parent/guardian informed.

Note: prior to the FPN being issued, consultation will take place with the Youth Offending Service as to whether this is an appropriate course of action. FPNs would only be issued if absolutely necessary and other more appropriate action would be sought.

(c) 16 and 17 year olds

If an individual who is 16 or 17 commits an offence then the individual will be issued with a FPN and the parent/guardian informed. Consultation again will take place with the Youth Offending Service as to whether this is an appropriate course of action, before the FPN is issued.

In every instance where a FPN is issued to an under 18, consideration can be given to reparation, such as a supervised litter pick, as an alternative to payment of the FPN. This option will be communicated to under 18s and their parent/guardian at the time of the FPN being sent out to them.

Threatening and Intimidating Behaviour

25. Table 3 at Appendix 3 shows the Police data for Violence Against the Person crimes and Public Order offences. As previously mentioned in the report, the figures recorded during lockdown are lower than in 2018/19 when the PSPO was implemented, however lockdown figures should not be relied on as a true picture. In current year 21/22, to date there have been 489 Violence Against the person crimes compared to 491 in 18/19 when the PSPO was implemented. Therefore, the evidence supports a renewal of the order inclusive of Threatening and Intimidating Behaviour.

Begging

26. A significant amount of good work has taken place over the last 3 years through the multi-agency begging group to address begging in the town centre providing advice and support to beggars prior to taking any formal action.
27. The PSPO has been an integral part of the multi agencies' response to manage begging in Darlington. Enforcement of begging does not work in isolation and in Darlington, agencies are working together to support individuals who feel the need to 'beg'. The Council have been working with a range of partners, including the 700 Club, NECA Drug & Alcohol Support Services and the Police, and have worked to the Begging Strategy over the last three to four years to deal with begging. The strategy is split into four sections: Empathy, Engagement, Education, and Enforcement. Empathy with the needs of those begging, Engagement with the offenders to offer services and support, Education to the public and then Enforcement only on those who persistently beg and refuse to engage with services. As a result, we have seen significant reductions in those begging by following the strategy. Issuing a fine to someone begging would only be used as a very last resort and only used when all other methods of engagement and support have been exhausted.
28. There is a significant amount of support in place for those individuals who unfortunately find themselves homeless and in need of help from a variety of agencies. The powers within the PSPO will allow the Police and authorised officers of the Council to deal with those individuals who beg simply for financial gain and must be noted that enforcement is used as a last resort.

Nuisance Drinking

29. Table 4 at Appendix 3 shows the number of alcohol related incidents in Darlington Town Centre. Again, as discussed for other offences and crimes within the report, the figures for 20/21 during lockdown are unreliable for reasons previously mentioned. The evidence within the document supports the need for the PSPO, figures for alcohol related incidents are 743 for 21/22 and incidents linked to licensed premises are 382. Although the figures are slightly lower than 18/19 when the PSPO was introduced they remain at a high level, therefore the PSPO is required to assist in dealing with these offences.

Benefits

30. The town centre PSPO was a positive 'tool' enabling the Police to deal with anti-social behaviour within a designated area. It has contributed to making Darlington a more attractive and safer place to live, work and visit and, like the previous PSPO, any new Order will enable the Police and other designated officers to deal more effectively with disorder, for example confiscating alcohol from adults. Darlington is a family-friendly market town and the PSPO will help preserve and encourage development. It can be justified based on the evidence of the review. However, it should be noted that once a PSPO is in place it still requires policing and that requires resources to which the Police give their full support. The Order can only be effective if breaches are acted upon.

Financial Implications

31. No financial implications as a result of introducing a PSPO in the town centre, other than diverting existing resources to the policing and monitoring of the Order.

Legal Implications

32. Under Section 66 of the Anti-Social Behaviour, Crime and Policing Act 2014 an individual who lives in the restricted area or who regularly works in or visits that area may apply to the High Court to question the validity of a PSPO. The grounds on which an application under this section may be made are either that the local authority did not have the power to make the order, or to include particular prohibitions or requirements imposed by the order; or that a requirement under the 2014 Act was not complied with.
33. If an application under this section the High Court is satisfied that (a) the local authority did not have power to make the PSPO, or to include particular prohibitions or requirements imposed by it, or (b) the interests of the applicant have been substantially prejudiced by a failure to comply with a requirement under the 2014 Act, the Court may quash the PSPO or any of the prohibitions or requirements imposed by it. It is therefore important that a thorough consultation exercise is carried out in order to mitigate the risk of such a challenge should a decision ultimately be made to introduce a town centre PSPO.

Consultation

34. An eight-week consultation exercise took place from 7 March 2022 to 2 May 2022. Consultation was undertaken as follows:
- (a) Council web pages
 - (b) Town Centre business consultation
 - (c) Social media
 - (d) Police
 - (e) 700 Club
35. The Police are in full support of a PSPO renewal. Similarly, the 700 Club are also in full support. As mentioned at paragraph 27, the Council have a 'Begging Group' which includes Police, 700 Club, Housing Services, Drug and Alcohol Support, who work collaboratively to address the issue of begging. The group members are in support of the PSPO renewal.

36. Communities and Local Services Scrutiny considered the report on the Public Space Protection Order – Darlington Town Centre, on Thursday 9 June 2022. Members of the committee resolved that:
 - (a) Cabinet be advised that the Communities and Local Services Scrutiny Committee support the renewal of the Public Space Protection Order (PSPO) for the Town Centre.
37. Some valid comments have been received from Liberty in relation to the obstruction element of the PSPO. They have expressed concern around peaceful protests and interference with Human Rights. Careful consideration has been given in relation to this and based on little supporting evidence and the lack of use in the previous three years, the decision has been taken to remove it from the proposed order.
38. No other responses have been received in relation to the consultation for the PSPO.

Equalities

39. The renewal of a PSPO potentially could have negative impacts on certain groups more than others. Consideration has been given to better understand the potential impacts and the appropriate steps that need to be taken to mitigate and ensure that the PSPO is used proportionately, reasonably and fairly. Members are asked to read the Equality Impact Assessment at Appendix 1 before making a decision.