

PUBLIC SPACES PROTECTION ORDER DARLINGTON TOWN CENTRE

**Responsible Cabinet Member - Councillor Helen Crumbie
Community Safety Portfolio Councillor**

**Responsible Director - Ian Williams
Director of Economic Growth and Neighbourhood Services**

SUMMARY REPORT

Purpose of the Report

1. This report gives details of the responses to the consultation on the introduction of a Public Spaces Protection Order (PSPO) in Darlington Town Centre (Designated Area) and other relevant supporting information.
2. Cabinet is invited after giving due consideration to formally make the Public Spaces Protection Order in the terms set out in this report.

Summary

3. In July 2018 a report went to Cabinet highlighting the potential benefits of introducing a Public Spaces Protection Order (PSPO) in Darlington town centre.
4. The PSPO aims to address certain types of anti-social behaviour in the town centre which has a detrimental impact on the public and businesses.
5. The Council have worked closely with partners, particularly the Police over an extensive period and implemented a series of actions, initiatives and activities to tackle anti-social behaviour, ranging from preventative measures and early intervention to enforcement.
6. The range of activities undertaken by the multi-agency partnership is vast and have focused on the problem areas around anti-social behaviour, begging and alcohol related nuisance which are detailed later in the report.
7. Extensive work has been carried out with the Youth Offending Team in relation to a 'scaled approach' resulting in the development and introduction of an escalation process when dealing with anti-social behaviour.

8. The stages include advice, guidance and signposting, referral and support, warnings, acceptable behaviour agreements, early intervention programmes inclusive of reparation, education and diversionary activities which have proved to be very successful, however in some cases further actions are required using the powers provided under the provisions of the PSPO.
9. Officers will only utilise the powers of a PSPO when necessary. A PSPO is only one of many tools available to officers but effective use of the legislation is required following concerns that remain despite work undertaken to tackle town centre anti-social behaviour. We will continue with a proportionate approach in which we aim to influence and persuade behaviour change and we will continue to work alongside partner agencies to reduce and dissuade inappropriate behaviour.
10. Some concerns have been expressed about the implications that a PSPO may have on people begging. It is intended that the provisions in the PSPO dealing with begging will only be used in a proportionate way. Interventions other than enforcement will be attempted to deal with this behaviour, but it is considered important to be able to resort to PSPO powers when necessary.
11. Members should note that the Council has been working with partners, including the 700 Club, NECA Drug & Alcohol Support Services and the Police, in developing a strategy to deal with begging and wider issues surrounding homelessness. The strategy is split into four sections: Empathy, Engagement, Education, and Enforcement and is supported by an action plan which aims to actively support vulnerable members of society.
12. On 14 December, 2018, the 'Have a Heart Give Smart' campaign was launched. The campaign aims to educate and inform members of the public against giving cash to an individual who is begging as they could be contributing to the person's challenging issues. Further details are set out in paragraphs 56 and 57.
13. In relation to those involved in alcohol related nuisance, similar measures are adopted ranging from intervention, support and signposting, involving specialist services to enforcement.
14. A PSPO enables the Police and the Council's Civic Enforcement Officers to deal with anti-social behaviour within a designated area. It 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 of up to £100.
15. Consultation on the introduction of a Public Spaces Protection Order (PSPO) in Darlington Town Centre was undertaken from the 1 September to 1 December 2018. There were 16 responses received in total, 10 in support, and 6 against the making of a PSPO. Further details including analysis of the responses is set out in paragraph 49 to 58.

16. The introduction of the PSPO potentially could have negative impacts on certain groups more than others. These groups include people who are young, male, disabled, or who have a low income. 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 in full before making a decision.
17. A copy of the draft PSPO is set out at **Appendix 2**.

Recommendations

18. It is recommended that :-
- (a) Members consider the consultation feedback following the initial Cabinet report in July 2018.
 - (b) Members approve and formally make the Public Spaces Protection Order as set out in **Appendix 2**.

Reason

19. The recommendation is supported by the following reason :-
- (a) To enable officers, including Police, PCSO's 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

Ian Williams
Director of Economic Growth and Neighbourhood Services

Background Papers

Anti-Social Behaviour, Crime and Policing Act 2014
Anti-Social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014 No 2591
Anti-Social Behaviour, Crime and Policing Act 2014, Anti-Social Behaviour Powers, Statutory Guidance, updated December 2017
Public Spaces Protection Orders, Guidance for Councils, Local Government Association. 2018

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S17 Crime and Disorder	A PSPO will have a positive effect on crime and disorder in the town centre.
Health and Well Being	Anti-social behaviour within the town centre can impact negatively on the health and well-being of individuals.
Carbon Impact	There is no impact as a result of this report.
Diversity	An Equalities Impact Assessment has been undertaken. There may be negative impacts on people who are young, male, disabled or who have a low income.
Wards Affected	Park East
Groups Affected	All groups, but with the potential for greater impacts for people who are young, male, disabled or who have a low income.
Budget and Policy Framework	No impact on the Budget or Policy Framework.
Key Decision	No
Urgent Decision	No
One Darlington: Perfectly Placed	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	There is no impact on Looked After Children and Care Leavers as a result of this report.

MAIN REPORT

Background

20. PSPOs are a key element of the Anti-Social Behaviour, Crime and Policing Act 2014 which came into force in October 2014.
21. 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. They are to replace current controls on the drinking of alcohol in public places and matters such as dog fouling and the keeping of dogs on leads as a result of the phasing out of existing Designated Public Places Orders (DPPOs) and Dog Control Orders (DCOs) but a range of other activities can also be addressed, depending upon particular local issues. By design the Orders are planned to allow people to enjoy open public spaces free from nuisance and anti-social behaviour.

22. 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.
23. 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.
24. Where a PSPO is in force, a Police Officer, Police Community Support 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.
25. 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.
26. 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.
27. Any failure to comply with the instruction to desist from the prohibited activity would generally in the first instance lead to a Fixed Penalty Notice being issued rather than arrest or court appearance.
28. The Anti-Social Behaviour, Crime and Policing Act 2014 provides that the maximum period that a PSPO can be made for is three years. The duration of the order can be extended or revoked or amended prior to expiry. The Council could therefore 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 term suggested for the Order is three years.
29. It is a requirement that the introduction of a PSPO is a Cabinet decision.

Local Intelligence

30. Attached at **Appendix 3** is a report entitled Darlington PSPO Data, produced by Durham Constabulary setting out data and analysis of anti-social behaviour in proposed PSPO area.
31. Overall there were 1880 reported incidents to the Police in the PSPO area between 1 June and 26 November 2018. 495 of these incidents (26%) were alcohol related, 184 (10%) were linked to young people and 22 (1%) associated with both alcohol and young people.
32. During the same period there have been 768 reported crimes of which 56 are public order offences in the PSPO area. 16 of these incidents were recorded as harassment, alarm or distress which has a detrimental impact on those affected. Other crimes include; violence with injury (99 in the period), violence without injury (175), vehicle offences (7), shoplifting (150) and criminal damage (60).
33. Anti-social behaviour in Darlington Town Centre remains a concern despite best efforts to tackle it. During the above period there was a total of 274 reported incidents of anti-social behaviour incidents of which 218 were recorded as 'nuisance'.
34. Nuisance is defined as 'something offensive or annoying to individuals or the community'.
35. Also of note is that 64% of these incidents required an immediate or priority deployment of Police resources reflecting the severity of the reported incidents.
36. Of the 274 reported incidents, 110 (40%) were linked to young people, 87 (32%) of the calls related to alcohol misuse and 16 (6%) were associated with young people and alcohol misuse.
37. The range of anti-social behaviour includes alcohol related incidents, youth nuisance and begging.

Alcohol Related Incidents

38. A considerable amount of the alcohol related incidents are associated with the seating area adjacent to the Boot & Shoe/St Cuthbert's Churchyard. These are a particular concern as the area is highly visible with individuals collecting around the seating, drinking alcohol, being loud, disruptive and abusive towards other individuals using the town. This type of behaviour can portray a negative image of the town, making people feel intimidated and unsafe. The Police and Council have taken action to address this particular problem with some success, however, it is an area where anti-social behaviour continues, particularly in the summer months.

39. Under the PSPO, Police and authorised officers have the power to confiscate alcohol in a public space excluding licensed premises where they believe it is causing or is likely to cause anti-social behaviour.

Youth Nuisance

40. Youth nuisance is also to be included in the PSPO. One of the main concerns is the loud and abusive behaviour from some groups of young people in the town centre who have lack of respect for members of the public, officers and business owners. Youth nuisance has increased slightly over the past couple of months in town, particularly in and around the Cornmill Centre area. Behaviour includes threats towards staff, verbal abuse, barging people on the escalators, fighting and stone throwing, the list is not exhaustive. The level of aggression shown in some groups of young people is concerning and extremely intimidating for members of the public. A range of interventions with young people causing anti-social behaviour have taken place, such as positive activity and education packages, however a minority core group of individuals remain persistent.
41. In relation to issuing a fixed penalty notice 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. FPN's 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 fixed penalty notice 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 fixed penalty notice. This option will be communicated to under 18s and their parent/guardian at the time of the fixed penalty notice being sent out to them.

Begging

42. In the same period there were 18 reports of begging in the PSPO area, these were mostly reported in relation to anti-social behaviour. Members of the public have reported feeling very intimidated and vulnerable whilst attempting to withdraw cash from machines when a beggar is sat in close proximity.
43. Begging in the town centre has increased within the last 12 months. Whilst it is recognised that some individuals may need long term help and support, others can be intimidating to the public and particularly detrimental to businesses where they congregate. Indeed, some shoppers have been known to divert from attending certain premises due to an individual begging in the vicinity. It has also been found that some of those begging in the town centre are from out of the area and seem to have been displaced from other Local Authority areas where action has been taken against them.
44. Police have taken action against a few individuals who have been persistent and aggressive to visitors within the town centre after numerous warnings.
45. 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 also been working with a range of partners, including the 700 Club, NECA Drug & Alcohol Support Services and the Police, and have developed a strategy to deal with begging which is now in place. The strategy is split into four sections: Empathy, Engagement, Education, and Enforcement. The agreed strategy is attached at **Appendix 4**.
46. A multi-agency Street Support initiative commenced on Friday 21 December 2018 where key agencies "walk the town" and engage vulnerable individuals and offer support, information and guidance. The group consists of representatives from the Police, Darlington Borough Council's Civic Enforcement and Housing Options teams and the 700 Club.
47. Begging is an offence under the Vagrancy Act 1824 and can be enforced by the Police by way of arrest. The inclusion of additional controls on aggressive/pestering behaviour by beggars within the Order will provide the Police and other staff with an additional tool to regulate this behaviour and provide an

updated legal remedy, including the use of Fixed Penalty Notices. This is likely to prove a more cost effective and proportionate approach to controlling this activity and allow the partnership to ensure that proportionate action is taken against those persistent offenders whilst balancing the genuine needs of any vulnerable individuals.

Benefits

48. A Public Spaces Protection Order is a positive 'tool' enabling the Police and the Council's Civic Enforcement Officers to deal with anti-social behaviour within a designated area. This will contribute to making Darlington a more attractive and safer place to live, work and visit. Darlington is a family friendly market town to which the PSPO will help preserve and encourage development. PSPO publicity will stress the positive approach enabling the Police and other designated officers to deal more effectively with disorder, for example confiscating alcohol from adults. It must be noted however that once a PSPO is in place it still requires policing which requires resources to which the Police have given full support. The Order can only be effective if breaches are acted upon.
49. The PSPO will provide powers in addition to the criminal powers already available. The additional powers are required to give officers a timely and effective intervention rather than revert to the criminal justice system, which can be lengthy. Also, Civic Enforcement Officers do not have the option of arrest, therefore the PSPO will equip them with the alternative powers they require to effectively deal with nuisance. Through the implementation of a PSPO, behaviour can hopefully be modified rather than criminalising individuals. In effect the additional powers are preventative rather than punitive.

The Draft Order

50. The draft Order is attached in full at **Appendix 2**. This imposes restrictions on particular behaviour occurring in the Darlington town centre. The activities and behaviour which becomes an offence, is as follows:
- (a) Any person who continues drinking alcohol in the designated area when asked to stop by a Police Officer, Police Community Support Officer or Authorised Person from the Council commits an offence.
 - (b) Any person who fails to surrender any alcohol in his possession when asked to do so by a Police Officer, Police Community Support Officer or Authorised Person from the Council commits an offence.
 - (c) No person shall sit or loiter on the highway or any pedestrian area for the purpose of begging or asking members of the public for money whether by placing an item before them for receipt of money or otherwise.
 - (d) No person shall use threatening or intimidating behaviour towards any other person.

- (e) No person shall loiter so as to cause an obstruction on a public highway, either moving or stationary.

Consultation

- 51. Following agreement from Cabinet in July, 2018, a three-month consultation exercise took place from 1 September to 1 December 2018. Consultation was undertaken as follows:
 - (a) Council web pages
 - (b) Town Centre business consultation
 - (c) Social Media
 - (d) One Darlington Magazine
 - (e) Police, Crime & Victims Commissioner (PCVC)
 - (f) Police
 - (g) The 700 Club
- 52. Generally the responses to the consultation have been supportive of the Order. There were 16 responses in total, 10 in support, and 6 against. There was no opposition in relation to the drinking and youth elements, members of the public and businesses were very supportive as they felt they were having a detrimental impact on the town. It has to be noted that not all consultation feedback was against the begging element and in fact some was very much in support.
- 53. The main opposition has been in relation to the begging element of the PSPO. Members of the public have expressed concern around the criminalisation of the vulnerable. This however isn't the case, as enforcement of begging in Darlington Town Centre will only be considered when all other methods have been exhausted. **Consultation responses are attached at Appendix 5.**
- 54. The Council have also been working with a range of partners, including the 700 Club, NECA Drug & Alcohol Support Services and the Police, in developing a strategy to deal with begging (see paragraphs 45 and 46 above).
- 55. There is a significant amount of support in place for those individuals who unfortunately find themselves homeless and need 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 simply beg for financial gain as opposed to those who are genuinely homeless.
- 56. In addition to the above approach, the 'Have a Heart Give Smart' campaign was launched on Friday 14 December, 2018. The campaign aims to educate and inform members of the public against giving cash to an individual who is begging as they could be contributing to the person's challenging issues. Alternatively

members of the public are advised to donate to the 700 Club who fund specialist workers to engage and support these individuals.

57. The initiative seeks to raise awareness by encouraging conversations around the issues of homelessness, rough sleeping and street begging, and educating the public about public safety and security as well as the role of local service providers.
58. As the issues are complex it requires a multi-dimensional approach which includes educational, health, business, police, local authorities (various departments) as well as other community responses.
59. The Police Crime & Victims Commissioner has been separately consulted in relation to the introduction of the PSPO and is fully supportive.
60. The Police fully support the elements of the proposed PSPO and its introduction.

Monitoring and Evaluation

61. Continued monitoring of the PSPO will be undertaken by the Community Safety Management Team. The PSPO will initially be evaluated at six months. A report will be taken to Cabinet after the six month's evaluation and at twelve months thereafter annually. Information gathered to assist with the monitoring will include:
 - (a) The number of FPN's issued as a result of PSPO breaches.
 - (b) The use of the powers
 - (c) Complaints/community feedback
 - (d) Number of ASB incidents in the town centre.

Financial Implications

62. There are 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

63. The making of a PSPO by the Council needs to be carefully considered and balance the rights of public to enjoy and use open spaces without anti-social behaviour with the civil liberties of individuals and groups who may be affected by any restrictions imposed.
64. Regard must be had to the freedoms permitted by the Human Rights Act 1998 (freedom of expression, freedom of assembly and association). It is not considered that the draft order limits freedom of expression or assembly or association, its aim is to place restrictions on certain behaviours that are

considered to be anti-social and detrimental to others using the town centre. In as much as there may be a possible interference with freedoms by the provisions of the order that restrict certain behaviour (for instance begging), any interference is considered to be potentially lawful, proportionate and justifiable. This is in order to protect public safety, prevent disorder or crime and to take account of the rights and freedoms of others. One of the key issues in ensuring that the powers are used proportionately and fairly will be to develop operational guidance and adequately train staff who enforce the order.

65. 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 can apply to the High Court to challenge 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.

Equalities

66. Consideration must be given by members to the potential impact of a PSPO on different sections of the community. The Council has a duty under the Equality Act 2010 to have due regard to equality considerations.
67. The introduction of the PSPO potentially could have negative impacts on certain groups more than others. These groups include people who are young, male, disabled, or who have a low income. 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 in full before making a decision.
68. It is important to stress that the use of enforcement will be based on the anti-social behaviour that is occurring rather than targeted at particular social groups. The use of the powers will be evidence driven, proportionate and reasonable so that any impact on any persons by the use of the powers will be fully justifiable. Additionally the use will be subject to a process that is regulated by law with the ability to challenge the evidence and the use of the powers at a court hearing.