

**Report of the Strategic Director - Place to the meeting of
Regulatory and Appeals Committee to be held on 4 October
2018.**

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Subject:

Public Space Protection Order for Bradford District relating to antisocial behaviour arising from misuse of vehicles.

Summary statement:

This report outlines the proposals and seeks approval to begin the required public consultation exercise to implement a Public Space Protection Order for Bradford District relating to antisocial behaviour arising from misuse of vehicles.

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Portfolio:

Neighbourhoods and Community Safety

Overview & Scrutiny Area:

Corporate

1. SUMMARY

- 1.1 This report outlines proposals and seeks approval to begin the required public consultation exercise to implement a Public Space Protection Order ('PSPO') for Bradford District relating to antisocial behaviour (ASB) arising from misuse of vehicles.

2. BACKGROUND

- 2.1 In March 2014 the Government enacted new powers contained in the Anti-Social Behaviour, Crime and Policing Act 2014 (later referred to as 'the Act') relating to tackling anti-social behaviour including the making by local authorities of PSPOs which can prohibit certain types of antisocial behaviour and make breaches of such subject to fixed penalties and prosecution before the Magistrates Court subject to a fine not exceeding £2000.00.
- 2.2 The majority of the Act including these powers came into force in October 2014. Where a PSPO makes arrangements to deal with matters already enforceable under existing local legislation it makes/made provision for the:-
- (i) the temporary suspension of the Councils existing byelaws where prohibitions in the byelaws are covered in a PSPO:
 - (ii) The Council's existing Dog Control orders (DCO's) in October 2017 becoming PSPO's.
 - (iii) The Councils Drinking in Public Places (Designation) Orders (DPPOs) becoming PSPO's in October 2017.
- 2.3 The making of a PSPO will improve enforcement powers. Fixed penalties and fines for breaches of a PSPO under the Act stand at a maximum of £100
- 2.4 The power to create a Public Space Protection Order (PSPO) could specify an area where activities are taking place that are or may likely be detrimental to the local community's quality of life. A PSPO can impose conditions or restrictions on people using that area. A PSPO can support the enforcement activity within the District.
- 2.5 Bradford would like to consider a District wide PSPO with prohibitions relating to anti social driving/nuisance/driving/vehicles with the intentions of authorising West Yorkshire Police, with delegated powers to enforce any breaches of the PSPO.
- 2.6 Dangerous, inconsiderate and anti social driving can have a significant effect on how safe people feel in the District. Recent data suggest that nuisance car/van incidents have increased from 597 incidents in March 2015 to 866 incidents recorded in March 2018 full details in appendix A and B.
- 2.7 Other Local Authorities have experienced positive outcomes using this legislation for this type of behaviour. This provides joint partnership enforcement powers which strengthen operational options to tackle nuisance/ASB use of vehicle.

3. OTHER CONSIDERATIONS

- 3.1 Local Authorities have the power to make a PSPO if satisfied on reasonable grounds that two conditions are met.

The first condition is 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, or
- b) It is likely that activities will be carried on in a public place within that area and those they will have such an effect.

The second condition is that the effect, or likely effect, of the activities:

- a) is, or is likely to be, of a persistent or continuing nature,
- b) is, or is likely to be, such as to make the activities unreasonable, and justifies the restrictions imposed by the notice. Activities can include things that a person or a group does, have done or should do in order to reduce the detrimental effect.

- 3.2 Public Space Protection Order is an order that identifies the space to which it applies and can make requirements, or prohibitions within the area. This means that the local authority can, require people to do specific things in a particular area or not to do specific things in a particular area. The local authority can grant the prohibitions/requirements where it believes that they are reasonable in order to prevent or reduce the detrimental impact. The order can be made so as to apply to specific people within an area, or to everybody within that area. It can also apply at all times, or within specified times and equally to all circumstances, or specific circumstances. The order can apply for a maximum of three years upon which the process of reviews and consultation must be repeated to ensure the issues is still occurring and the order is having the required effect. Thereafter it can be extended for a further three years and, upon the reviews and consultation taking place, can be extended more than once for further periods of three years.

- 3.3 The Act is not overly prescriptive about the necessary process required for application of these powers. It has, therefore, been necessary to design a process that is considered to be appropriate and legally robust.

- 3.4 The recommendation following the consultation period is to make a PSPO with the terms as set out below namely the prohibition of:

- a) Engaging in, promoting, encouraging or assisting in the carrying out of any car cruising event* (see definition below) in or on a public highway, car park and any other land to which the public has access in the Bradford Metropolitan District area and which causes or is likely to cause harassment, alarm or distress:-
 - (i) Excessive noise.
 - (ii) Danger to other road users (including pedestrians);
 - (iii) Damage or risk of damage to private property;
 - (iv) shouting or swearing at, or abusing, threatening or otherwise intimidating (including by the use of sexual language or making sexual suggestions) another person;
 - (v) Any public nuisance to another person

** A congregation of the drivers of 2 or more motor vehicles (including motor cycles and Quad bikes) on the public highway or at any place to which the public has access*

- b) Congregating or loitering as part of a group around (or in) one or more stationary vehicles at any time where such activity causes or is likely to cause noise, harassment, alarm or distress
- c) Engaging in, promoting, encouraging or assisting in activities of, drifting or other vehicle related nuisance causing or likely to cause danger to the public
- d) Causing or permitting excessive amplified music or other noise from vehicles such as to cause or be likely to cause alarm, harassment, distress as a result of a gathering in or around one or more vehicles on any public road or land to which the public has access in Bradford

3.5 Evidence is available to support the need for the introduction of a PSPO in the identified area. Evidence was gathered from:

- (i) Nuisance Vehicle Research Report 29.07.16 **Appendix 1**
- (ii) Nuisance Vehicle Research Report 13.07.18 **Appendix 2**

4. FINANCIAL & RESOURCE APPRAISAL

4.1 The costs of consultation on the implementation of the PSPO will be met from within existing revenue resources.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

5.1 There are no risk management or governance issues apparent. That this has been considered and is an approved approach of the Bradford District Safer Communities Partnership.

6. LEGAL APPRAISAL

6.1 The Act contains the provisions for the making of a PSPO.

6.2 Under section 59 of the Anti Social Behaviour Crime Policing Act 2014 Local Authorities have the power to make a PSPO if satisfied on reasonable grounds that two conditions are met.

(i) The first condition is 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, or

b) It is likely that activities will be carried on in a public place within that area and those they will have such an effect.

(ii) 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,

a) or is likely to be, such as to make the activities unreasonable, and

b) justifies the restrictions imposed by the notice.

6.3 Activities can include things that a person or a group does, have done or should do (in order to reduce the detrimental effect). As with any new legislation of its type, this is untested ground and the legislation will be further defined in years to come by a process of appeals and High Court rulings. Any legal challenge presents a risk to the Authority. The legislation supporting implementation of the new Orders states that “interested persons” may challenge the validity of any order in the High Courts. This means that the Council could face a challenge against its ability to implement the Order. An application of this nature must be made within six weeks; beginning on the day the Order is made or varied. There are three grounds upon which a challenge could be made, these are:

- (i) That the local authority did not have the power to make the order or variation, or to include particular prohibitions or requirements imposed by the order (or by the order as varied)
- (ii) That a requirement under this element of the legislation not complied with in relation to the order or variation.
- (iii) The High Court would have the power to quash, amend or uphold the order.

6.4 Section 67 creates a second offence of failing to comply with the order

(1) It is an offence for a person without reasonable excuse—

(a) To do anything that the person is prohibited from doing by a public space protection order, or

(b) To fail to comply with a requirement to which the person is subject under a public spaces protection order.

(2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) A person does not commit an offence under this section by failing to comply with a prohibition or requirement that the local authority did not have power to include in the public spaces protection order.

6.5 The penalty for breaches of a PSPO relate to fixed penalty notices and fines alone, which may lead to significant levels of non-payment. The suite of new powers available however would allow officers to utilise a range of measures for those identified as persistently breaching the order, for example:

- (i) Community Protection Notices could be issued against individuals
- (ii) An Anti-Social Behaviour Injunction (ASBI) could be sought against individuals, which carries tougher sanctions and ultimately imprisonment
- (iii) A Criminal Behaviour Order could be sought.
- (iv) A Breach of the PSPO is an offence and upon conviction, individuals could be made subject to a Criminal Behaviour Order. This carries both tougher sanctions, along with the ability to implement positive conditions requiring support for substance misuse issues.

6.6 In order to implement a PSPO the procedure under section 72 of the Act must be followed. Section 72 states

Convention rights, consultation, publicity and notification

(1) A local authority, in deciding—

(a) whether to make a public spaces protection order (under section 59) and if so what it should include,

(b) whether to extend the period for which a public spaces protection order has effect (under section 60) and if so for how long,

- (c) whether to vary a public spaces protection order (under section 61) and if so how, or
 - (d) whether to discharge a public spaces protection order (under section 61), must have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the Convention.
- (2) In subsection (1) “Convention” has the meaning given by section 21(1) of the Human Rights Act 1998.
- (3) A local authority must carry out the necessary consultation and the necessary publicity, and the necessary notification (if any), before—
- (a) making a public spaces protection order,
 - (b) extending the period for which a public spaces protection order has effect, or
 - (c) Varying or discharging a public spaces protection order.
- (4) In subsection (3) —
- “the necessary consultation” means consulting with—
- (a) the chief officer of police, and the local policing body, for the police area that includes the restricted area;
 - (b) whatever community representatives the local authority thinks it appropriate to consult;
 - (c) the owner or occupier of land within the restricted area;
- “the necessary publicity” means—
- (a) in the case of a proposed order or variation, publishing the text of it;
 - (b) in the case of a proposed extension or discharge, publicising the proposal;
- “the necessary notification” means notifying the following authorities of the proposed order, extension, variation or discharge—
- (a) the parish council or community council (if any) for the area that includes the restricted area;
 - (b) in the case of a public spaces protection order made or to be made by a district Council in England, the county council (if any) for the area that includes the restricted area.
- (5) The requirement to consult with the owner or occupier of land within the restricted area—
- (a) does not apply to land that is owned and occupied by the local authority;
 - (b) Applies only if, or to the extent that, it is reasonably practicable to consult the owner or occupier of the land.
- (6) In the case of a person or body designated under section 71, the necessary consultation also includes consultation with the local authority which (ignoring subsection (2) of that section) is the authority for the area that includes the restricted area.
- (7) In relation to a variation of a public spaces protection order that would increase the restricted area, the restricted area for the purposes of this section is the increased area.

6.7 Guidance relating to publication of a PSPO is set out in the Anti-Social Behaviour Crime and Policing Act 2014 (Publication of PSPO’s) Regulations 2014. There is also the July 2014 Home Office guidance which will assist in the legal formalities in creating an order.

6.8 In any event a PSPO last for 3 years only and requires review every three years which is an expensive and time consuming process. Such a review and consultation process will in any event be required every 3 years to keep an existing PSPO in force.

6.9 The local authority must consult with the following groups to before seeking to make a PSPO.

- Chief Officer of Police for the local area
- Police and Crime Commissioner
- Land Owners in the area
- Any Community Representatives the local authority feels appropriate.
- Member of Parliament

6.10 The 2014 Act requires that landowners within the area are consulted; due to the vast population of Bradford it makes direct individual contact unviable. A press publicity campaign would be launched to invite responses, involving local newspapers and radios.

6.11 In relation to enforcement of these orders there are two fundamental differences to those under the Designated Public Place Orders (now PSPO's), these are:

- Police Community Support Officers can enforce
- Council Officers can enforce.

7. OTHER IMPLICATIONS

None

7.1 EQUALITY & DIVERSITY

Generally it is understood anti-social behaviour has a disproportionate affect on those most vulnerable in our communities.

7.2 SUSTAINABILITY IMPLICATIONS

There are no sustainability implications apparent.

7.3 GREENHOUSE GAS EMISSIONS IMPACTS

There are no greenhouse gas emissions impacts apparent.

7.4 COMMUNITY SAFETY IMPLICATIONS

Anti-social behaviour can have an adverse impact on the district. Any actions the authority can take to improve community safety and consequently the reputation of the District will be of benefit to resident, visitors and businesses. Again this has been considered and approved by the Safer Communities Partnership

7.5 HUMAN RIGHTS ACT

The Act requires that consideration is given to both Human Rights and Rights to Assembly. As a part of the report to the Committee a full assessment will be completed. The consultation with the public will address the Human Rights Act 1998 implications.

7.6 TRADE UNION

There are no trade union implications apparent

7.7 WARD IMPLICATIONS

Nuisance and dangerous driving is a district wide issue, although it is more prevalent in some wards. Ward Councillors will be invited to comment on the proposals as part of the statutory consultation process.

7.8 AREA COMMITTEE ACTION PLAN IMPLICATIONS

If obtained the PSPO will be a District wide order.

7.9 IMPLICATIONS FOR CORPORATE PARENTING

None

7.10 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT

None

8. NOT FOR PUBLICATION DOCUMENTS

There are no items that are not for publication

9. OPTIONS

None

10. RECOMMENDATIONS

1. That the Strategic Director, Place be authorised to undertake the required (minimum 6 week) consultation exercise to implement a Public Space Protection Order for Bradford District.
2. That further to the completion of the necessary consultation process, the proposed Order be submitted to this Committee for approval.

11. APPENDICES

Nuisance Vehicle Research 29.07.16 – Appendix 1
Nuisance Car Van Research 13.07.18 – Appendix 2

12. BACKGROUND DOCUMENTS

None required