

Report of the Strategic Director Place to the meeting of Regulatory and Appeals Committee to be held on the 7 March 2019.

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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 provides a summary of the responses from the statutory consultation on the proposed Public Space Protection Order for Bradford District and submission of the proposed Order for this Committee's approval.

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Portfolio:

Neighbourhoods and Community Safety

Overview & Scrutiny Area:

Corporate

1.0 SUMMARY STATEMENT

- 1.1 This report provides a summary of the responses from the statutory consultation on the proposed Public Space Protection Order (PSPO) for Bradford District and submission of the proposed Order for this Committee's approval.

2. BACKGROUND

- 2.1 This report is submitted in compliance with the decision of this Committee of the 4 October 2018:

(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.

2.2 Consultation methodology

- 2.2.1 The consultation was carried out in accordance with legal requirements as described in section 72 Anti-Social Behaviour Act 2014 (later referred to as 'the Act')
- 2.2.2 Appendix A contains the list of statutory consultees.
- 2.2.3 Where possible representative bodies, such as the Bradford Chamber of Trade, were also contacted and encouraged to participate in the consultation. In accordance with legal requirements letters were also sent to West Yorkshire Police Service, West Yorkshire Police and Crime Commissioner and West Yorkshire Fire and Rescue Service. Appendix A contains copies of the consultation letters.
- 2.2.4 Information about the consultation and links to the consultation documents, including the online survey, were posted on the Council's website.
- 2.2.5 An article about the consultation was published in the local Telegraph and Argus. Appendix A contains this article.

2.3 Consultation summary findings

- 2.3.1 The summary of the findings are as follows:-

a) A total of 1,260 completed online surveys were submitted and 76% of respondents support the use of a Public Space Protection Order (PSPO) to stop motor vehicles being used anti socially by people in the district.

- b) Responses were received from across the district with the highest response rate coming from people living in BD1 (a rate of 9 responses per 1,000 residents aged 18+ based on 2011 census data). 88% of respondents live in the Bradford district, 25% work in the district and 6% were visitors to the district (respondents were asked to tick all that apply). 3% of respondents were representing a community group, a list of these groups can be found in the full data report.
- c) 70% of respondents said they feel 'very' or 'fairly' unsafe in Bradford in connection with vehicular nuisance and 75% said there are some parts of the district where they feel less safe than others. The five most common areas where people feel less safe are the City Centre (Leeds Road in particular), Manningham, Great Horton Road, BD3 (covering the neighbourhoods of Barkerend, Bradford Moor and Thornbury and Girlington).
- d) When asked if there are some times of the day or night that are worse for vehicular nuisance 64% of respondents said between 6pm-midnight. With 16% feeling unsafe between the times of 12.01am and 7am and 13% feeling unsafe between 12.01pm and 6pm. 6% of the respondents felt unsafe between the time of 07.01am and 12 noon.
- e) Respondents were asked to consider a list of several types of vehicular nuisance and state if they thought each was a problem in the Bradford district. Over half (55%) thought there was a problem across all categories however the category with the highest percentage was 'causing danger to other road users (including pedestrians)' with 78% of people reporting it to be a problem. Results for all eight types of vehicular nuisance can be found in the full report.
- f) In summary, the most common reasons for people being in support of the PSPO are:
- To provide additional enforcement powers
 - To send a clear message that this type of nuisance is unacceptable
 - To preserve the character of the city
 - To ensure the safety and well-being of everyone
 - More needs to be done to tackle this problem
 - To enable people to live in a safer place
 - Anti-social behaviour of any kind is not acceptable
 - Other methods used so far have failed
- g) In summary, the most common reasons for people not being in support of the PSPO are:
- There are enough powers already in place
 - The danger that it targets the wrong people e.g. motoring enthusiasts who gather as a hobby
 - Resources should be targeted at other crimes
 - It is an infringement of civil liberties
 - Fears that the PSPO wouldn't be enforceable

h) 56% of respondents were male, and 38% were female. The remainder did not state. The majority of respondents, 41%, were aged 40-59, with 26% aged 25-39 and 17% 60-69. 8% of respondents identified as being disabled. 72% of respondents were White British and 28% identified as BAME.

2.3.2 The report of findings from the online consultation is attached at Appendix B.

2.3.3 West Yorkshire Police and Crime Commissioner and John Grogan MP provided a written submission. Appendix B contains a copy of this response. These statutory consultees were supportive of the proposed PSPO.

2.3.4 Bradford Chamber of Trade provided a written submission. Appendix B contains a copy of the Chamber's response. The Chamber was fully supportive of the Council obtaining a PSPO to combat the use of vehicles in an anti social manner.

3. OVERVIEW AND SCRUTINY COMMITTEE CONSIDERATION

Not applicable.

4. OTHER CONSIDERATIONS

Public Space Protection Orders

4.1 A 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.

4.2 Failure to comply with the order is an offence. Breaches of the order can also be discharged by use of a fixed penalty notice (FPN) £100.00.

4.3 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 suitably robust.

4.4 The recommendation following the consultation period is to seek a Public Space Protection Order with the terms as set out below.

1. Person(s) (by definition includes the driver or registered keeper of the vehicle who at the time of the offence was in control of the vehicle or in a position to control its use within the restricted area) are prohibited from

a) *Engaging in, promoting, encouraging or assisting in the carrying out of any activity including but not limited to a 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 due to any of the following namely :-*

(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 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 of persons in or around one or more vehicles on any public road or land to which the public has access.*

4.5 The police are the only authority that has the power to stop moving vehicles. The police will enforce any breach of PSPO at the roadside if no criminal offences are being committed.

Members of public will be able to report an offence retrospectively to a designated department in Bradford Council, giving full details of the breach and where possible provide any evidence for investigation which requires appropriate actions.

Bradford Council will lead on all offences that progress to prosecution.

5. OPTIONS

5.1 This report provides a summary of the consultation responses and identifies the types of anti-social behaviour of main concern to those who submitted a response.

5.2 The Draft Public Space Protection Order has been amended to reflect some of the issues raised through the consultation process. Approval is now sought from this Committee to make the Order.

6. FINANCIAL & RESOURCE APPRAISAL

The cost of implementation of the proposed Order, including the cost of the public notices will be met from within existing resources.

7. RISK MANAGEMENT AND GOVERNANCE ISSUES

There are no risk management or governance issues apparent.

8. LEGAL APPRAISAL

8.1 The Anti-Social Behaviour, Crime and Policing Act came into force on 20th October 2014. This Act contains the provisions for the making of a Public Space Protection Order.

8.2 Under section 59 local authorities have the power to make Public Space Protection Orders 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 that they will have such an effect.

8.3 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) is, or is likely to be, such as to make the activities unreasonable, and
- b) Justifies the restrictions imposed by the notice.

8.4 Activities can include things that a person or a group does, has 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:

- 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)
- That a requirement under this element of the legislation not complied with in relation to the order or variation

- The High Court would have the power to quash, amend or uphold the order.

Section 63 of the act states

In this section “authorised person” means a person authorised for the purposes of this section by the local authority that made the public spaces protection order (or authorised by virtue of section 69(1)).

- (1) A constable or an authorised person who imposes a requirement under subsection (2) must tell the person that failing without reasonable excuse to comply with the requirement is an offence.
- (2) A requirement imposed by an authorised person under subsection (2) is not valid if the person—
 - a) is asked by the person to show evidence of his or her authorisation, and
 - b) fails to do so.
- (3) A constable or an authorised person may dispose of anything surrendered under subsection (2)(b) in whatever way he or she thinks appropriate.
- (4) A person who fails without reasonable excuse to comply with a requirement imposed on him or her under subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Section 67 creates a second offence of failing to comply with 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 spaces 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.

8.5 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:

- Community Protection Notices could be issued against the individuals

- An Anti-Social Behaviour Injunction (ASBI) could be sought against individuals, which carries tougher sanctions (and ultimately imprisonment)
 - A Criminal Behaviour Order could be sought. 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.
- 8.6 Consideration was also given by officers of the Council and the police as to whether or not to include in the draft PSPO prohibitions lifted from the Council's 1998 Good Rule and Government Byelaws e.g. prohibitions against the use of motor cycles and other vehicles, skateboarding, noise in streets and other public places, touting (selling), fireworks and urinating some of which appear to be supported by evidence from the police. Other prohibitions under consideration are begging, rough sleeping and busking but these issues do not appear to be identified specifically in current Police evidence.
- 8.7 Given the evidence provided to the Council by the police of current levels of ASB and following the consultation in respect of the additional prohibitions it is not recommended the matters referred to in Paragraph 8.6 are included by way of additional prohibitions in the PSPO. The existing Good Rule and Government Byelaws 1998 will continue in force under section 70 of the Act.
- 8.8 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.

8.9 Guidance relating to publication of PSPO's 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.

9. OTHER IMPLICATIONS

9.1 EQUALITY & DIVERSITY

Generally it is understood that anti social behaviour (ASB) has a disproportionate affect on the most vulnerable in our communities.

The Councils equality objectives for 2016 to 2020 are:

Community relations – to ensure that the people of the district get on well together.

1. Encouraging and celebrating good community relations and active citizenship
2. Tackling hate and street crime.

Employment and skills – to promote inclusive growth through ensuring those most disadvantaged in the labour market are able to get the skills they need and access good jobs.

1. Poverty and ethnicity employment and skills programme
2. Apprenticeship programme.

Organisational equalities culture – to make sure that the Council is well run, fit for business and is fair and inclusive in its approach.

1. Equalities competency and corporate approach
2. Workforce diversity
3. Accessible services

Equality data – to make sure our data better provides us with the right insight, evidence and intelligence to make well informed decisions that impact on our communities.

1. Equality monitoring
2. Use of the equality data and information.

The PSPO supports all of the equality objectives as set out above.

9.2 SUSTAINABILITY IMPLICATIONS

There are no sustainability implications apparent.

9.3 GREENHOUSE GAS EMISSIONS IMPACTS

There are no greenhouse gas emissions impacts apparent.

9.4 COMMUNITY SAFETY IMPLICATIONS

Anti-social behaviour can have an adverse impact on town and city centres. Any actions the authority can take to improve community safety and consequently the reputation of the District will be of benefit to residents, visitors and businesses.

Nuisance, anti social driving is a priority in the Community Safety Plan. The Community Safety Partnership has invested and is committed to tackling this type of behaviour across the District.

The PSPO is one part of a wider partnership response to tackle nuisance, anti social use of a vehicle, in order to improve community safety outcomes.

9.5 HUMAN RIGHTS ACT (HRA)

Individuals have rights established under the HRA some of which are absolute and some of which are qualified.

The Council is required under the HRA to balance the rights of those affected by the order, against the rights of the community to enjoy the area proposed to be included in the order without being subject to acts of anti-social behaviour as evidenced by complaints to the police and as prohibited by the draft order.

9.6 TRADE UNION

Consultation is taking place with Trade Unions where there will be possible changes made to roles, which is part of a wider review.

9.7 WARD IMPLICATIONS

9.7.1 The consultation demonstrates that nuisance driving is a problem for people across the district, although it has a higher impact in Manningham, Toller, City, Great Horton, Bradford Moor & Bowling and Bakerend wards.

10. NOT FOR PUBLICATION DOCUMENTS

There are no items that are not for publication.

11. RECOMMENDATIONS

11.1 That the proposed Public Space Protection Order (PSPO) be approved.

11.2 That the Strategic Director, Place be authorised to take all necessary actions to implement and make the PSPO operational.

12 APPENDICES

12.1 Appendix A – Consultation survey data, proposed Order and map of the District.

12.2 Appendix B - Written responses from the West Yorkshire Police and Crime Commissioner, John Grogan MP and Bradford Chamber of Trade.

13. OTHER BACKGROUND DOCUMENTS

13.1 Two schedules of supporting evidence in support of Public Space Protection Order and report presented to Regulatory and Appeals Committee on the 4th October 2018.