

Report of the Assistant Director, Neighbourhoods and Customer Services to the meeting of Regulatory and Appeals Committee to be held on the 18 July 2019.

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Subject:

The 2016 City Centre Public Space Protection Order (and others) (Variations and Extensions and discharges)

Summary statement:

This report outlines the proposals and seeks approval to begin the required public consultation exercise to implement variations and to extend or discharge the existing Public Space Protection Orders (PSPOs) for Bradford City Centre, Keighley, Shipley, Bingley and West Bowling and the PSPOs relating to dog control.

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Portfolio:

Neighbourhoods & Community Safety

Overview & Scrutiny Area:

Corporate

1. SUMMARY

- This report outlines proposals and seeks approval to begin the required public consultation exercise to vary, extend or discharge the existing Public Space Protection Orders (later referred to as a PSPOs) for Bradford City Centre, Keighley, Shipley, Bingley and West Bowling made under the provisions of the Antisocial Behaviour (Crime and Policing) Act 2014 (hereinafter referred to as 'the Act') and the existing PSPO relating to dog control.

2. BACKGROUND

- This report is submitted further to the decision of this Committee of the 14 May 2018.
 - 1) That no changes be made to the current Public Space Protection Order (PSPO) Bradford City Centre and Surrounding Area 2016.
 - 2) That the Strategic Director, Place be asked to give consideration to:
 - Increasing the number of officers patrolling this and other areas protected by PSPOs.
 - Enforcing the PSPOs during evenings and weekends.
 - 3) That referral to Alcohol Awareness Sessions be discontinued and signposting to Drug and Alcohol Services continue.
 - 4) That the impact of the use of Community Protection Notices (CPNs), Community Protection Warnings (CPWs) in conjunction with PSPOs be monitored.
 - 5) That the impact of the 'Bradford Cares' initiative be monitored.
 - 6) That the Strategic Director, Place be requested to undertake a further review of the effectiveness of the PSPOs with particular regard to the impact of the use of Community Protection Notices (CPNs), Community Protection Warnings (CPWs) and 'Bradford Cares' in 12 months time, and prior to September 2019 when the Council will be required to consider its renewal.
- The Councils PSPO No 1 of 2016 (applying to Bradford City Centre) took effect on the 6 October 2016 and unless it is extended it will end by operation of law on 6th October 2019.
- The Act also makes provision for :-
 - the suspension of the Councils existing byelaws where prohibitions in the byelaws are covered by prohibitions in a PSPO:
 - The Councils existing Dog Control orders (DCOs) becoming PSPOs in October 2017.
 - The Councils Drinking in Public Places (Designation) Orders (DPPOs) becoming PSPO's in October 2017.

- Unless the Dog Control and Drinking in Public Spaces PSPO mentioned above are extended they will expire in October 2020.
- It should be noted the Act improves enforcement powers as fixed penalties cannot be issued for offences under existing byelaws (**see Appendix 1** for a schedule of existing PSPOs and byelaws). Fixed penalties and fines for breaches of a PSPO under the Act stand at a maximum of £100 and fines in the magistrates court at level 2 and 3 accordingly (refer to section 8.4) on the standard scales of fines for summary offences.
- Following the Councils existing DPPOs becoming PSPOs breaches of the Councils existing DPPO's are enforceable by way of fixed penalty notices and if necessary (where notices are not paid) prosecution before the Magistrates Court for a fine.
- The continuation of the Councils 2016 PSPO (**see Appendix 2**) will continue to support the enforcement activity within the City Centre in relation to misuse of alcohol and legal highs if extended.
- PSPO can be varied or discharged OR extended under section 60 and 61 of the Act respectively.
- The Council is already aware that Psychoactive Substances (NPS), often referred to as 'legal highs', have become a major concern to local law enforcement agencies before and after the creation October 2016 PSPO i.e. the Council and the West Yorkshire Police.
- At times Bradford City Centre, like other city centres experiences anti-social behaviour linked to alcohol or other intoxicants but improvements have been made in tackling this type of antisocial behaviour due to the existence of the 2016 order and other crime legislation since the making of the order.
- Existing PSPOs allows an authorised officer, where they reasonably believe consumption of alcohol within the area will lead to anti-social behaviour being committed by an individual, to request surrender of any alcohol in the individual's possession. Failure to comply with the request is a criminal offence to which a fixed penalty notices and or a fine can be imposed.
- Since the introduction of the City Centre PSPO (relating to legal highs and alcohol misuse) in October 2016 the number of alcohol related incidents has fallen. There were approximately 1,190 alcohol incidents recorded by the Police in the two years since the introduction of the PSPO (1st April 17 – 31st Mar 19). This is a 43% reduction compared to 1st Apr 15 – 31st Mar 17. The reduction for the City centre at 54% is greater than the District as a whole. All areas in Bradford experienced a reduction since the introduction of the PSPO. See full report of evidence in **Appendix 3**

3. OTHER CONSIDERATIONS

Public Space Protection Orders

- A Public Space Protection Order is an order that identifies the space to which it applies and can make prohibitions and or requirements, 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 make a PSPO include certain prohibitions and or requirements where it believes that they are reasonable in order to prevent or reduce the detrimental impact of a person antisocial behavior The order can be made so as to apply to specific people within an area, or to every person 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 review relevant antisocial behavior which is still occurring and whether or not the order is having the required effect. Thereafter it can be varied and extended for a further three years and, upon the reviews and consultation taking place, can be varied and or extended more than once for further periods of three years under sections 60 and 61 of the Act.
- Failure to comply with the order is a criminal offence. Breaches of the order can also be discharged by use of a fixed penalty notice (FPN) £100.00.
- 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.
- 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.
- Local authorities have the power to make Public Spaces 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

The second that activities will be carried on in a public place within that area and that they will have such an effect.

- 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
 - c) Justifies the restrictions imposed by the notice.
- Consumption of alcohol, contrary to the terms of any order made, is a separate issue and is not in itself an offence; the offence is committed by failure to comply with a request to surrender the alcohol, from an authorised person.

- Following the consultation period the intention is to seek possible variations and an extension of the 2016 Public Space Protection Order.
- The 2016 PSPO the terms as set out below and for the area, as shown on the plan attached as **Appendix 4**.

Person(s) within restricted area will not:

- *Ingest, inhale, inject, smoke or otherwise use intoxicating substances.*

Intoxicating Substances is given the following definition (which includes Alcohol and what are commonly referred to as 'legal highs'): Substances with the capacity to stimulate or depress the central nervous system.

Exemptions shall apply in cases where the substances are used for a valid and demonstrable medicinal use, given to an animal as a medicinal remedy, are cigarettes (tobacco) or vaporisers or are food stuffs regulated by food health and safety legislation.

Persons within this area who breach this prohibition shall: surrender intoxicating substances in his/her possession to an authorised person

(An authorised person could be a Police Constable, Police Community Support Officer or Council Officer, and must be able to present their authority upon request)

- Evidence is available to support the need to extend the PSPO in the identified area

4. 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.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

- There are no risk management or governance issues apparent.

6. LEGAL APPRAISAL

- 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.
- 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 those they will have such an effect.

- 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
- 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.

- 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.
- 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.
 - 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.

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

7. OTHER IMPLICATIONS

7.1 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.

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 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.

7.5 HUMAN RIGHTS ACT

- 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.

7.6 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.

7.7 WARD IMPLICATIONS

- Ward members will be invited to comment on the proposals as part of the statutory consultation process

7.8 AREA COMMITTEE ACTION PLAN IMPLICATIONS (for reports to Area Committees only)

7.9 IMPLICATIONS FOR CORPORATE PARENTING

- There are no items that are not for publication.

7.10 ISSUES ARISING FROM PRIVACY IMPACT ASSESSMENT

- There are no issues arising from the Privacy Impact Assessment

8. NOT FOR PUBLICATION DOCUMENTS

- There are no items that are not for publication.

9. OPTIONS

- To allow the Council existing PSPOs to end by operation of law i.e. after three years from their coming into force
- To consult on the variation and extension of the Councils PSPO now in relation to the 2016 Public Space Protection Order (will end on the 6th October 2019) and the six Street Drinking Prohibition orders of 2017 (made initially in 2002 and 2003)
- To consult on the variation and extension of the Councils PSPOs in relation to the 2017 Public Space Protection Orders relating to dog control (which expire in October 2020)
- Report back to committee with any proposed variations, the period of proposed extension or discharge by operation of law.

10. RECOMMENDATIONS

- That the Assistant Director, Neighbourhoods be authorised to undertake the statutory consultation exercise in order to establish the evidence required to extend the following orders:

- (i) The 2016 Drinking City Centre Order;
- (ii) The 2002/03 City Centre Designated Public Places Order;
- (iii) The Street Drinking Orders for areas outside the City Centre; and
- (iv) The existing Dog Control Orders

- That a further report in relation to Drinking Orders be submitted to the Committee in September 2019 and Dog Control Orders during 2020.

11. APPENDICES

- Appendix 1 Schedule of the Councils existing PSPO's and byelaws.
- Appendix 2 the 2016 Order.
- Appendix 3 Evidence of the effectiveness the 2016 PSPO drinking etc. order.
- Appendix 4 Map of City Centre PSPO
- Appendix 5 Map of Keighley PSPO
- Appendix 6 Map of Bingley PSPO
- Appendix 7 Map of Shipley PSPO
- Appendix 8 Map of West Bowling PSPO
- Appendix 9 The Councils Dog Control orders

12. BACKGROUND DOCUMENTS

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