

Report of the Assistant Director Neighbourhoods and Customer Services to the meeting of Regulatory and Appeals Committee to be held on the 21st April 2022

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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 implement variations and to extend or discharge the existing Public Space Protection Orders (PSPO's) Public Space Protection Order for Bradford District relating to antisocial behaviour arising from misuse of vehicles.

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Overview & Scrutiny Area:

**Environment & Waste Management
Safer & Stronger Communities**

1.0 SUMMARY STATEMENT

- 1.1 This report outlines the proposals and seeks approval to implement variations and to extend or discharge the existing Public Space Protection Orders (PSPO's) Public Space Protection Order for Bradford District relating to antisocial behaviour arising from misuse of vehicles.
- 1.2 The report provides a summary of the responses from the statutory consultation on the proposed extension of the Public Space Protection Order for Bradford District and submission of the proposed Order for this Committee's approval.

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 £1000.00.
- 2.2 The power to create a Public Space Protection Order (PSPO) specifies an area where activities are taking place that are or may likely be detrimental to the local community's quality of life (in this case the whole district). A PSPO can impose conditions or restrictions on people using that area.
- 2.3 At its meeting in on 7th March 2019 the Regulations and Appeals Committee approved the Council to proceed with a PSPO to help reduce the levels of dangerous driving and anti-social use of vehicles.
- 2.4 Dangerous, inconsiderate and anti-social driving can have a significant effect on how safe people feel in the District and is regularly flagged as the key anti-social behaviour concern by our residents.
- 2.5 The PSPO Order was 'sealed' on 18th July 2019 and authorisation then given to West Yorkshire Police, with delegated powers to enforce any breaches of PSPO. Signage notifying the public was placed in each Council ward in the district including key arterial routes.
- 2.6 The majority of 'Notices of Offence' have been issued by Police partners and particularly the 'Steerside' Enforcement Team. A number of Fixed Penalty Notices (FPN's) have been issued retrospectively by the Council based on dash-cam evidence. Since the PSPO going live we have issued over 70 Fixed Penalty Notices. Out of these only, three did not pay the Fixed Penalty Notice and all three of these have been successfully prosecuted for non-payment each receiving a fine nearing £1000.

2.7 During the peak periods of the Pandemic the number of fines were low. However, over the course of 2021 and into 2022 the rate has accelerated and we expect this to continue.

2.8 It is proposed to extend the PSPO for a further three years to build on the measures taken thus far and a consultation of members of the public has taken place during March 2022.

2.9 Consultation methodology

2.9.1 The consultation was carried out in accordance with legal requirements as described in section 72 of the 2014 Act.

2.9.2 A technology glitch caused disruption in the survey going live in late February. Therefore, the statutory 4-week period for consultation ran slightly past the deadline for submitting this report. We are approaching 1500 hundred responses to the online survey. There may be a handful more to come but it is unlikely that this will substantively affect the data provided below. Any updated figures will be presented to the committee on the 21st of April.

2.9.3 In accordance with legal requirements a response was sought from the Mayoral Authority and District Chief Superintendent from West Yorkshire Police Service. **Appendix A** contains these responses.

2.10 Consultation summary findings

2.10.1 The summary of the findings are as follows:

- A total of 1471 completed online surveys were submitted and 95% of respondents support the extension of the Public Space Protection Order to stop motor vehicles being used anti-socially by people in the district.
- Responses were received from all postcode areas with the highest response rate coming from people living in BD10. 90% of respondents live in the Bradford district, 24% work in the district and 1.9% were visitors to the district (respondents were asked to tick all that apply).
- 70% of respondents said they feel 'very' or 'fairly' unsafe in Bradford in connection with vehicular nuisance and 82% said there are some parts of the district where they feel less safe than others. The six 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), Girdlington Buttershaw.
- When asked if there are some times of the day or night when you feel less safe than others in connection with anti-social use of vehicle. 58% said yes out of which 74% respondents said between 9pm-midnight and 71% of respondents said they feel less safe between the times of 5pm – 9pm.

- 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. A high proportion of people 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 63% of people reporting it to be a problem. Results for all eight types of vehicular nuisance can be found in the full report.
- 56% of respondents were female, and 39% were male with 4% preferred not to say and 0.5% were non binary or other.

An option was given to members of the public to have their say on problems they have encountered other than the ones mention in the consultation. Some of the problem are:

- People park up side-by-side in the road without care for other drivers around them
- Inconsiderate driving, speeding, driving on the wrong side of the road, car weaving, red lights, blocking street entrances
- Queue jumping in none merging single file traffic causing a danger to road users on the other side of the road and pedestrians crossing the road
- double parking, causing obstruction and poor view of junctions. parking near school entrances/on yellow zigzags
- Cars being used for selling illegal drugs

2.11 **Appendix B** shows a full summary of the results from the consultation

3. OVERVIEW AND SCRUTINY COMMITTEE CONSIDERATION

3.1 Not applicable.

4. OTHER CONSIDERATIONS

4.1. Public Space Protection Orders

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

The first condition is that:

- 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
- 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,
- 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).

- 4.1.2 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.
- 4.1.3 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.
- 4.1.4 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.
- 4.1.5 The recommendation following the consultation period is to seek to extend the current Public Space Protection Order with the following clarified wording as set out below.

In this Order “Persons” means at the time of the offence:

- the driver of the vehicle who was in control of the vehicle within the restricted area; and
- the registered keeper of the vehicle who permits or was in a position to permit its use within the restricted area.

Persons are prohibited from:

- Engaging in, promoting, encouraging, permitting or assisting in the carrying out of any activity 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
- Congregating or loitering as part of a group around (or in) one or more stationary vehicles at any time or as part of a group transiting on the highway or anywhere the public habitually has access to, where such activity causes or is likely to cause noise, harassment, alarm or distress

- Engaging in, promoting, encouraging or assisting in activities or other vehicle related nuisance causing or likely to cause danger to the public
- Causing or permitting excessive amplified music or other noise from vehicles such as to cause or be likely to cause alarm, harassment, or 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.

4.1.6 The police are the only authority that has the power to stop moving vehicles. Therefore, the police will enforce any breach of PSPO at the roadside.

4.1.7 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:

- The Council installed Dash-Cams in some of the fleet vehicles to identify breaches of PSPO and enforce it retrospectively.
- Bradford Council lead on all offences that progress to prosecution.

4.2 **Appendix C** shows a draft of the PSPO Order including the map.

4.3 The PSPO should apply for a maximum of three years from its date of enactment, after which, if deemed necessary, a further consultation and Order can be progressed.

4.3.1 The Draft Public Space Protection Order has had minor amendments to reflect some of the learning from the previous three years and issues raised through the consultation process. Approval is now sought from this Committee to progress the Order.

5. **OPTIONS**

5.1 Resolve to adopt the proposed Order as attached as **Appendix C** (this is the recommended option and will continue the current process as supported by 95% of the survey respondents)

5.2 Resolve to ask officers to make amendments to the proposed Order as attached.

5.3 Not to implement the Order and the current PSPO will terminate.

6. **FINANCIAL & RESOURCE APPRAISAL**

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

7. RISK MANAGEMENT AND GOVERNANCE ISSUES

- 7.1 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

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:

- 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
- 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:

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

9.1.1 Generally, it is understood that anti social behaviour (ASB) has a disproportionate affect on the most vulnerable in our communities. Enforcement of the PSPO is likely to benefit our most disadvantaged neighbourhoods the most.

9.1.2 The Public Sector Equality Duty, which is part of the Equality Act 2010, came into effect on 5 April 2011.

9.1.3 The Council must, in the exercise of its functions, have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act.
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

9.1.4 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

9.1.5 Implementation of the PSPO supports all of the equality objectives as set out above. Some of the feedback from consultation has highlighted inner city areas with key problems. We recognise that areas on key gateways and the City Centre are places where many people will witness anti-social driving and the PSPO should prioritise these. There are also less visible parts of the district where dangerous driving and anti-social use of vehicles is also a problem, such as a number of housing estates. Enforcement in these areas equally remains a priority.

9.2 SUSTAINABILITY IMPLICATIONS

9.2.1 There are no sustainability implications apparent.

9.3 GREENHOUSE GAS EMISSIONS IMPACTS

9.3.1 There are no greenhouse gas emissions impacts apparent.

9.4 COMMUNITY SAFETY IMPLICATIONS

9.4.1 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.

9.4.2 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.

9.4.3 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)

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

9.5.2 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

9.6.1 Consultation will take 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

10.1.1 There are no items that are not for publication.

11. RECOMMENDATIONS

The Committee approves:

- 11.1 To extend the proposed Public Space Protection Order against the anti-social use of vehicles across the district
- 11.2 The Strategic Director, Place, be authorised to take all necessary actions to implement and make the PSPO operational.

12 APPENDICES

- 12.1 Appendix A: Written responses from the West Yorkshire Deputy Mayor and Chief Superintendent.
- 12.2 Appendix B: Summary of the Consultation response
- 12.3 Appendix C: Draft Order with Map of the District

13. OTHER BACKGROUND DOCUMENTS