

SUBJECT:	PROPOSALS FOR THE REVIEW OF THE EXISTING PUBLIC SPACE PROTECTION ORDER
DIRECTORATE:	COMMUNITIES AND ENVIRONMENT
LEAD OFFICER:	FRANCESCA BELL, PUBLIC PROTECTION, ANTI-SOCIAL BEHAVIOUR AND LICENSING SERVICE MANAGER

1. Purpose of Report

- 1.1 To brief Members on the process and consideration given to date, to review the existing Public Space Protection Order in the City Centre area of Lincoln.
- 1.2 To seek the views of the Policy Scrutiny Committee on proposals regarding the reviewing the existing Public Space Protection Order (PSPO), and the scope to vary this order in consultation with the public and relevant partners.

2. Executive Summary

- 2.1 In October 2014 the Secretary of State enacted new powers from the Anti-Social Behaviour, Crime and Policing Act, relevant to tackling Anti-Social Behaviour. These new powers also make changes to some of the relevant existing legislation and the Council is required, within the period of three years, to reconsider its Designated Public Place Orders (DPPOs) and either withdraw or replace them with new Public Space Protection Orders (PSPOs).
- 2.2 The PSPO's are more flexible and can be applied to a much broader range of issues, with local authorities having the ability to design and implement their own prohibitions or requirements where certain conditions are met. These conditions centre on the impact to the quality of life in the locality, persistence, and whether the impact makes the behaviour unreasonable.
- 2.3 In April 2015 the Executive approved the implementation of a PSPO covering the city centre of Lincoln and prohibiting within the designated area (see appendix 1 map) the possession and consumption of alcohol and the consumption of so called 'legal highs' within the defined area.
- 2.4 It is a requirement of the PSPO that the order be reviewed after 3 years. As part of the review we have sought the views of both the public and relevant partner agencies by way of a public consultation. This consultation period opened on Tuesday 2nd January 2018 and closed on Tuesday 30th January 2018. We have also collated and considered data held by both the City of Lincoln Council and Lincolnshire Police.
- 2.5 The purpose of the review is to consider the following points;

1. Should the requirement not to consume alcohol remain as part of the PSPO.
2. Should the requirement not to ingest, inhale, smoke or otherwise use intoxicating substances remain as part of the PSPO intoxicating substances remain as part of the PSPO.
3. Are there any other issues that you believe should be considered for inclusion in the PSPO?
4. Is the area designated by the PSPO still appropriate?

2.6 The City of Lincoln, much like other towns and cities nationally, has a recurring issue with street drinking, in particular in the summer months. Whilst the council and its partners are working collaboratively to address the complex issues of individuals with a holistic approach, there remains a clear need for enforcement tools such as those offered by the PSPO.

3. Public Space Protection Orders

3.1 The Anti-Social Behaviour, Crime and Policing Act came into force on 20th October 2014. This Act contains the provisions for the Public Space Protection Order, which was enacted by order of the Secretary of State on the 20th October 2014

3.2 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.

3.3 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
- c) Justifies the restrictions imposed by the notice.

Activities can include things that a person or a group does, has done or should do (in order to reduce the detrimental effect).

3.4 A Public Space Protection Order is an order that identifies the space to which it applies ("the restricted area" within which the impact has or is likely to occur[ed]) and can make requirements, or prohibitions, or both within the area. This means that the local authority can, by virtue of the order, 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 are 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.

- 3.5 Failure to comply with either a prohibition, or requirement, within the order is an offence. Upon summary conviction (offences heard within the Magistrates Courts) defendants can face a fine not exceeding level three on the standard scale (currently £1000). The defendant cannot be found guilty of an offence under a prohibition/requirement where the local authority did not have the power to include it in the order. Breaches of the order can also be discharged by use of a fixed penalty notice (FPN). The fine attached to a FPN is £75 reduced to £50 if paid within two weeks and if the recipient attends Addaction the fine is reduced to £40.

4. The Current PSPO

- 4.1 In April 2015 the council enacted a Public Space Protection Order under the Anti-Social Behaviour Crime and Policing Act 2014. The PSPO is as follows

In the area defined by the attached map (Appendix 1), the following prohibition applies:

Person(s) within this 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)

It is a statutory requirement that the PSPO be reviewed after 3 years and may be extended for a further period of up to 3 years (the PSPO can be extended more than once) As part of the review the PSPO may be amended to add or remove prohibitions or requirements, the geographical area may be altered or the order may be discharged.

5. The consultation

- 5.1 On Tuesday 2nd January 2018 a public consultation was launched. The consultation lasted 28 days and closed at 5pm on Tuesday 30th January 2018. As part of the consultation partners were approached directly seeking their views and

any evidence they may hold regarding possible amendments to the PSPO. The consultation has been viewed as an opportunity for us to consider what has worked well and to reflect upon any areas we could improve or alter. In particular the consultation has looked at four areas. These have been;

1. Should the requirement not to consume alcohol remain as part of the PSPO.
2. Should the requirement not to ingest, inhale, smoke or otherwise use intoxicating substances remain as part of the PSPO.
3. Are there any other issues that you believe should be considered for inclusion in the PSPO?
4. Is the area designated by the PSPO still appropriate?

We have directly approached all members of the Lincolnshire Community Safety Partnership (Safer Lincolnshire Partnership) as well as approaching the following partners;

- Lincolnshire Police,
- Lincoln BIG,
- P3,
- Framework,
- Addaction.

- 5.2 In addition to this we have also advised all ward councillors of the consultation and City of Lincoln Communications team have put out information of the public consultation.

In responses to the consultation we have received a total of seven responses. Of the seven responses four came from partners and three came from the public.

- 5.3 Of the responses received all called for the existing PSPO to remain in place. A common theme in the responses was to increase support of individuals who display symptoms of substance misuse or vulnerabilities.

This is in keeping with current projects being undertaken in the city centre that focus around providing a multi-agency response to identifying and addressing an individual's needs. The focus of the approach is to offer support and help, with enforcement being a tool amongst many as supposed to being the only option. Ultimately the aim of this approach is to reduce offending long term by making positive changes to the individual's circumstances.

6. Evidence

6.1 Enforcement of the PSPO since 2015

2015													
	Jan	feb	mar	apr	may	jun	jul	aug	sep	oct	nov	dec	
surrender of alcohol				63	34	47	54	19	18	9	36	15	
use of NPS				4	4	2	1	1	1	0	0	0	
FPN's issued													
Prosecutions*													

2016													
	Jan	feb	mar	apr	may	jun	jul	aug	sep	oct	nov	dec	
surrender of alcohol	4	9	10	8	11	4	6	10	3	6	0	1	
use of NPS	0	0	0	1	0	1	0	0	0	0	0	0	
FPN's issued		1		2	1	6	1						
Prosecutions*							3	5	3	7			

2017													
	Jan	feb	mar	apr	may	jun	jul	aug	sep	oct	nov	dec	
surrender of alcohol	2	6	5	5	5	7	1	1	6	0	5	2	
use of NPS	0	0	0	0	0	0	0	0	1	0	1	0	
FPN's issued		1				2		3	2				
Prosecutions*		1							1				

2018													
	Jan	feb	mar	apr	may	jun	jul	aug	sep	oct	nov	dec	
surrender of alcohol	5												
use of NPS	0												
FPN's issued													
Prosecutions*													

* a prosecution will only take place where the individual has repeatedly failed to pay the FPN or has previously been given a FPN for this offence.

6.2 Police evidence

As part of our consultation, and in order to base our assessment of the current PSPO and determination of whether the order requires extension and/or amendment we enlisted the help of a police analyst to collate and review the data held by the police.

6.3 Methodology

The analysis is based on the policing areas known as NC13, NC14, NC15 and NC16 which all include part of the PSPO area. These areas will be used for the

extraction of data using the Business Objects software from the Force's crime and incident recording systems for the period 1st April 2014 to the 31st December 2017. The data has then been filtered using the Northgate XD mapping software to extract those incidents and offences which occurred inside the PSPO designated area.

- 6.4 Incidents and crimes were extracted based on the following criteria:
1. The incident was closed as street drinking.
 2. The incident was closed as begging/vagrancy. This information was not requested by the council but has been included by the analyst.
 3. All incidents which include the term 'legal high' in the initial information provided by the caller or in the incident log
 4. The incident included begging or homeless in the information provided by the caller or within the incident log
 5. The incident included legal high or psychoactive in the incident log.
- Due to time constraints and the volume of incidents individual incidents were not read or assessed individually. However Excel functions were used to identify incidents of begging which included 'bottle', 'drinking' 'drugs' or 'mamba'.

6.5 Results:
 The number of incidents in the NC13, NC14, NC15 and NC16 beat areas has decreased from 14,397 incidents in 2014/2015 to 13,605 incidents in 2016/17. During this period street drinking has fluctuated but an overall decrease from 52 incidents to 34 occurred in 2016/17 and 23 incidents in the first nine months of 2017/2018. A similar decrease has also been recorded for street drinking in the PSPO area falling from 46 to 27 incidents. In contrast the number of begging and vagrancy incidents decreased overall from 2014/2015 to 2016/2017 but in the last nine months has dramatically increased recording over 50% more incidents in the last nine months than in the whole of 2016/17. This is mirrored in the PSPO area as well as the city centre.

There is anecdotally thought to be a high level of street drinking and illegal high usage amongst those reported or seen on the street and a search of incidents containing any of the following: 'bottle', 'drinking' 'drugs' or 'mamba' in the source supplied information identified that this was the case. This is also shown in table one.

Incidents from 01/04/2014 to 31/12/2017	2014/15	2015/16	2016/17	2017	Grand Total
ASB- begging and vagrancy (PSPO)	206	211	165	390	972
ASB- begging and vagrancy (PSPO) drink/drugs	22	21	11	26	80
Percentage of ASB begging and vagrancy drink/drugs	10.7	10.0	6.7	6.7	8.2
ASB- street drinking (PSPO)	46	54	27	21	148

Table one: The number of incidents of ASB begging and vagrancy and street drinking in Lincoln city centre.

- 6.6 Data held shows that street drinking prior to the implementation of the designated PSPO area had four focal points: Bailgate, High Street/Cornhill, East of the Lower High Street and the Beaumont Fee area.
- 6.7 Two years on the data shows that the spread of street drinking incidents has a greater geographical spread (although still contained well within the PSPO boundary) after the implementation of the PSPO. Offences remaining focused along the lower High Street and across the city centre.
- 6.8 The data held shows that begging and vagrancy reports fall within the geographical area of the PSPO. Focusing around arterial routes, the Bailgate and the city centre High Street area.

The analysts full report can be viewed in Appendix 2

7. Begging and vagrancy

- 7.1 This is something that the Police analyst has picked up in terms of increased reports in the city centre. This did not feature in the responses received via the consultation however anecdotally we know that this is an issue of concern to the public and businesses and this is an issue that has become particularly prevalent over the past year.
- 7.2 In terms of begging and vagrancy, whilst the increase is a clear indicator that this should be considered for inclusion, we feel that to do so would be counter-productive. The term 'vagrancy' is very much linked to homelessness in the eyes of the public, and to be seen to be actively penalising someone for this would not reflect well on the council or its partners and would go against the principles put in place for managing the city centre issues, as led by Karen Lee MP.
- 7.3 Additionally the 'Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers Statutory guidance for frontline professionals Updated December 2017' Page 51, states;

Homeless people and rough sleepers

Public Spaces Protection Orders should not be used to target people based solely on the fact that someone is homeless or rough sleeping, as this in itself is unlikely to mean that such behaviour is having an unreasonably detrimental effect on the community's quality of life which justifies the restrictions imposed. Councils may receive complaints about homeless people, but they should consider whether the use of a Public Spaces Protection Order is the appropriate response. These Orders should be used only to address any specific behaviour that is causing a detrimental effect on the community's quality of life which is beyond the control of the person concerned.

Councils should therefore consider carefully the nature of any potential Public Spaces Protection Order that may impact on homeless people and rough sleepers. It is recommended that any Order defines precisely the specific activity or behaviour that is having the detrimental impact on the community. Councils should also consider measures that tackle the root causes of the behaviour, such as the provision of public toilets.

The council should also consider consulting with national or local homeless charities when considering restrictions or requirements which may impact on homeless people and rough sleepers.'

7.4 It is therefore recommended that begging and vagrancy should not be added for the following reasons:

- The Council and its partners have a well mapped enforcement plan in place already.
- Begging is a criminal offence and can be dealt with more appropriately in that way.
- Any inclusion in a PSPO sends a message that begging outside of that area is acceptable.
- All local authorities across the UK that have gone down this route have faced enormous public backlash around human rights.

8. The geographical map of the PSPO

8.1 The area covered by the PSPO was originally drawn up to reflect where the majority of drink and drug related incidents were happening within the City of Lincoln. It was also based upon the location of so called 'head shops' that were known to be selling legal highs at the time. Despite the 'head shops' having closed the geographic area would appear to still be relevant as incidents are still occurring within the defined area, albeit dispersed slightly when compared with data from 2015.

8.2 Police data has indicated that the map is still relevant. The police analyst has suggested that the area could be reduced slightly in the south of the city. It is important to note that whilst the southern area of the map has seen less incidents of street drinking there have still been some recorded incidents. To amend the map as suggested by the analyst would also see part of the Sincil Bank area removed from the order. This may have a detrimental impact on the Sincil bank area as it may cause the issues to migrate. This would not be supportive of the work being undertaken in the area as a whole.

8.3 From our consultation with the public and partners it was felt that the geographical map should remain the same. Although the boundary line should be drawn to more accurately reflect where the PSPO is in force and where it is not. It has been noted that the existing maps boundaries are unclear, appearing to suggest that there will not be a breach where an individual is on the opposite side of certain roads and cutting through a terrace of houses. We wish to address this ambiguity and believe that the new map makes the boundary clear which will be easier for the individual to identify and for enforcement purposes. The map has also been updated to incorporate the new road layout in respect of the Bus Station. The new Map can be seen in Appendix 3.

9. The Proposal

9.1 To renew the Public Space Protection Order in its current form for a further 3 years. With a clear focus on the council and its partners focus being to provide a holistic

approach to troublesome individuals displaying symptoms of substance misuse or other vulnerabilities. Enforcement of the PSPO will remain a useful enforcement tool that will be utilised where individual's behaviour is such that enforcement action is the most appropriate course of action i.e. in cases that lead/contribute to serious ASB or criminal behaviour or where the individual will not engage in support.

9.2 Members would need to be satisfied that the legal conditions, laid out above, have been met. Officers' view is that these requirements have been met based on:

- Evidence gathered by the Council itself, and from other associated agencies including the Police, recording crime and ASB statistics for the area. Attached as appendix D. Figures from the centre for social justice relating to legal highs attached as appendix E.
- Feedback from the consultation attached as appendix B. Full responses are available on request from Democratic Services.

10. Implementation

10.1 Implementation of this order, legally, would require a public notice to be published, This would be done through a formal notice in the local newspaper, notification on our website and press releases through media outlets.

10.2 Although not necessarily a statutory requirement, it is recommended that additional signage be clearly displayed in the PSPO area.

11. Enforcement

11.1 In relation to enforcement of the PSPO the following officer can enforce it;

- Lincolnshire police
- Authorised council officers

11.2 It has been accepted by both Council officers and Lincolnshire Police that whilst the local Authority may have the legal ability to enforce, it does not have the skills or the resources to do on-street enforcement of this nature. It is also accepted that enforcement of this order will present a heightened element of risk to personal safety, due to the nature of the problem, and therefore would not be appropriate for Council Officers with their current training and safety measures. Lincolnshire Police have committed therefore that should this order be made, they will accept responsibility for enforcement, with back office support conducted by the Council if required.

11.3 As discussed in 8.1 above the enforcement tools and powers afforded by the PSPO will form part of a broader tool kit to address the symptoms and complex root causes of individuals behaviours. Enforcement action, although available under the PSPO, may not always be the appropriate action. Each breach of the PSPO will be carefully considered on a case by case basis.

12. Implications

12.1 Any legal challenge presents a risk to the Authority. The legislation supporting implementation of the new Order 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.

12.2 The penalty for breaches of this order relate to 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 Order (ASBO) could be sought against individuals, which carries tougher sanctions (this will be replaced by the Civil Injunction next year)
- 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 requiring support for substance misuse issues.

13. Strategic Priorities

13.1 Let's reduce inequality

The service seeks to reduce inequality through its work with individuals and communities.

13.2 Let's enhance our remarkable place

Projects within the city centre to tackle anti-social behaviour serve to improve and enhance the city.

Let's drive economic growth

13.3 Projects within the city centre to tackle anti-social behaviour enhance our city making it a more attractive city for investment.

14. Organisational Impacts

14.1 Finance

Enforcement costs under this order will be met by existing Police staff. Any supplementary enforcement will form a part of the role of the Public Protection and Anti-Social Behaviour Officers. There were some internal costs for consultation and a small cost associated with the publication of the Order and stationary for FPNs along with signage. These will be met from within existing budgets.

Income from FPNs is expected to be small and will be used to cover the associated costs of implementing the proposal.

14.2 Legal Implications including Procurement Rules

This report recommends legal action be taken by the Authority in accordance with the legislation, and also involves subsequent legal enforcement relevant to that action. The legal parameters laid out within the Act will be considered carefully against the proposal for an Order.

14.3 Land, property and accommodation

All land owners within the area are required to be consulted, which has been satisfied through the consultation conducted.

14.4 Equality, Diversity & Human Rights (including the outcome of the EA attached, if required)

The Act requires that consideration is given to Human Rights in particular the rights to freedom of expression and freedom of assembly as set out in the Human Rights Act 1998.

14.5 Significant Community Impact

This report identifies a proposal that has the potential to deliver a significant positive community impact if used to its full potential.

15. Risk Implications

15.1 (i) Options Explored

1. Renew the existing PSPO relating to psychoactive substances and alcohol and the associated impact this has on those living, visiting and working within Lincoln City Centre.
2. Amend the PSPO to remain with the current conditions and to add the prohibition of begging and vagrancy.
3. To renew the PSPO in its current form with an amended geographical map.

15.2 (ii) Key risks associated with the preferred approach

There is a risk that expectations will be raised by this order which agencies cannot meet. The order may not resolve the issues.

16. Recommendation

16.1 To comment on the proposal to renew the PSPO in its current form and refer to Executive to be held of 26th February 2018 for approval.

Key Decision No

Do the Exempt Information Categories Apply? No

Call in and Urgency: Is the decision one to which Rule 15 of the Scrutiny Procedure Rules apply? No

How many appendices does the report contain? Appendix 1 – Map of area
Appendix 2 – Police annalist report
Appendix 3 – New Map

List of Background Papers: None

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