

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

1. Purpose of Report

- 1.1 To brief Policy Scrutiny Committee members on the process and consideration given to date, to review an 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) relating to intoxicating substances, and the scope to vary this order in consultation with the public and relevant partners prior to its consideration by the Executive.

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 A map) the possession and consumption of alcohol and the consumption of so called 'legal highs' within the defined area.
- 2.4 In February 2018 the PSPO was reviewed and renewed with just a minor variation to the map.
- 2.5 A PSPO has a maximum duration of 3 years. It is therefore advisable to review the order after 3 years to determine whether it should be subject to extension or variation. As part of the review we have sought the views of both the public and relevant partner agencies by way of a public and partner consultation, this consultation has also been published on social media for greater reach. This

consultation period opened on Monday 2nd November 2020 and closed on Monday 30th November 2020.

- 2.6 We have also collated and considered data held by both the City of Lincoln Council and Lincolnshire Police.
- 2.7 The purpose of the review is to consider the following points;
1. Should the requirement not to consume alcohol remain as part of any new PSPO and is the current wording fit for purpose?
 2. Should the requirement not to ingest, inhale, smoke or otherwise use intoxicating substances remain as part of the PSPO and is the wording fit for purpose?
 3. Are there any other issues that you believe should be considered for inclusion in the PSPO? Please provide evidence of this issue. Evidence might include the number of reports, photos etc.
 4. Is the area designated by the PSPO still appropriate?
- 2.8 The City of Lincoln, much like other towns and cities nationally, has a recurring issue with street drinking and the taking of illicit substances, 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 Spaces Protection Orders

- 3.1 The relevant parts of 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 were 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.

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).

- 3.3 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.

- 3.4 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 We Are With You (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. This was renewed in February 2018, The current Order is shown in APPENDIX A, The PSPO is as follows
- 4.2 In the area defined by the attached map shown in APPENDIX A, 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

- 4.3 A PSPO may not last more than 3 years so should be reviewed after 3 years and may then 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 Monday 2nd November 2020 a public and a partnership consultation was launched. The consultation lasted 28 days and closed at 5pm on Monday 30th November 2020. As part of the consultation the public and partners were approached 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;
- 5.2
1. Should the requirement not to consume alcohol remain as part of the PSPO and is the wording fit for purpose?
 2. Should the requirement not to ingest, inhale, smoke or otherwise use intoxicating substances remain as part of the PSPO and is the wording fit for purpose?
 3. Are there any other issues that you believe should be considered for inclusion in the PSPO? Please provide evidence of this issue. Evidence might include the number of reports, photos etc.
 4. Is the area designated by the PSPO still appropriate
- 5.3 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.
 - YMCA
 - The Baptist church
 - The Neighbourhood Team
 - ARC
 - Public Health at LCC
- 5.4 The consultation has been available on our website and In addition to this City of Lincoln Communications team have put out information of the public consultation via social media to improve our reach.
- 5.5 In responses to the consultation we have received a total of five responses. Of the five responses four came from partners and one came from the public.
- 5.6 All five of the responses called for the existing PSPO to remain in place.
- 5.7 All four of the partner responses called for us to consider extending the geographical area of the PSPO to cover St Rumbolds street. The partner responses are shown in APPENDIX B.

- 5.8 In addition to the responses to the PSPO consultation the Citizens Panel has also returned comments relating specifically to drug users and drunks in the city centre and St Rumbolds area. The returned questionnaires contained 45 separate comments about drug and alcohol misuse in the city centre.
- 5.9 Given the low response rate from both the public and partners it is concluded that partners and the public are broadly happy with the PSPO in its current format.

6. The geographical area of the PSPO

- 6.1 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.

7. Evidence for the current Geographical area to remain

- 7.1 Feedback from partners including Lincolnshire Police and from the intervention team is that the PSPO remains a useful tool.
- 7.2 Statistics for City of Lincoln Council enforcement of the PSPO

Year	Surrenders	Breaches		FPN's	Prosecutions	
		alc	sub		alc	sub
2015	324	24	10	9	13	7
2016	74	29	9	4	3	-
2017	44	13	7	8	1	2
2018	18	8	16	16	2	4
2019	6	3	2	4	3	1
2020	4	1	2	2	1	1

- 7.3 The statistics above show a steady decline in enforcement however the PSPO is still being used as a useful tool. These figures also do not represent all of the surrenders that police deal with informally on a daily basis and so the true use of the PSPO is likely significantly under report here.

8. Evidence to support extending the geographical area to include St Rumbolds street area – Zone 3 shown in APPENDIX C

- 8.1 Statement from Police Inspector Hime

'In support of the proposal of the inclusion of Zone 3 on the attached map I would like to add that that area is currently the subject to two problem solving plans. ECINs case 362740 refers to repeat reports of drink and drug related antisocial behaviour in the Friars Lane and Rosemary Lane areas. ECINs case 312060 relates to drug supply and associated ASB in the St Rumbold's street area. These cases were raised due to the detrimental impact the ongoing incidents were having on the lives of residents and visitors in the area. As a result the area has been the focus of daily patrols by officers for many months, in addition to this a week of enforcement took

place in the area in July this year, during which 5 search warrants were executed and 14 arrests were made. Despite this antisocial behaviour linked to street drinking and substance misuse alcohol use in the area continued to rise throughout the summer months. As the Neighbourhood Policing Inspector, I support the inclusion of Zone 3 on the attached map. I believe that the additional powers that it would give to officers would increase our ability to tackle the ongoing issues of antisocial behaviour linked to street drinking and substance misuse and therefore assist us in taking enforcement action to improve the lives of the victims of ASB. Inspector 754 Claire Hime'

8.2 Incident Data for the area shown as Zone 3 on APPENDIX C

Over the past 12 months (November 2019 – October 2020) there have been 184 police incidents reported within the locality. A full breakdown of the incidents by street and by type is shown in APPENDIX D

8.3 Soft intelligence gathered by the intervention team and partners also suggests that the area of St Rumbolds street suffers from the misuse and overt consumption of alcohol and intoxicating substances. The council and our partners, particularly those in the area are working hard to address these issues and to sustainably address and reduce them. The PSPO would provide an additional tool to consider when dealing with such issues, although our primary focus with partners is to support and work with those who suffer addiction or other contributing issues.

9. The wording of the PSPO

9.1 Illicit substances

All feedback received concurred that the prohibition regarding intoxicating substances (where not legitimately exempt) within the defined area should remain, although the consensus was that the wording of the prohibition could be improved to make the offence clearer.

9.2 Alcohol

All feedback received concurred that the prohibition to have an open container of alcohol within the defined area should remain, although the consensus was that the wording of the prohibition could be improved to make the offence clearer.

9.3 Proposed wording

See APPENDIX E – draft order for the proposed wording.

10. The proposal

10.1 To extend the existing Public Space Protection Order varied with the addition of St Rumbolds street area. The proposed map is shown as APPENDIX F, to amend the wording of the prohibitions as proposed in the draft order shown as APPENDIX E for a further 3 years. With a clear focus on the council and its partners continuing to work collaboratively 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 an

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.

10.2 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 provided by Police, recording crime and ASB statistics for the area. Attached as APPENDIX D.
- Feedback from the consultation attached as APPENDIX B.

11. Implementation

11.1 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.

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

11.3 Whilst there is already signage within the area already defines should members elect to extend the map as suggested then it is recommended signage is placed in this area.

12. Enforcement

12.1 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.

12.3 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.

13. Implications

13.1 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.

13.2 The penalty for breaches of this order relate to fines alone, which may lead to significant levels of non-payment. The suite of 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
- A civil injunction may be sort which contains prohibition or positive requirements. The sanctions for breaching and Injunction can include a prison sentence in extreme cases.
- 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.

14. Strategic Priorities

14.1 Let's drive economic growth

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

14.2 Let's reduce inequality

The service seeks to reduce inequality through its work with individuals and communities, whilst the PSPO ultimately provides an enforcement too, this tool can be used to instigate and drive engagement with support services such as We Are With You or Mental Health.

14.3 Let's enhance our remarkable place

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

15. Organisational Impacts

15.1 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.

15.2 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.

Any prosecutions taken will have an impact upon the legal services team from a resource perspective.

15.3 Equality, Diversity and Human Rights

The Public Sector Equality Duty means that the Council must consider all individuals when carrying out their day-to-day work, in shaping policy, delivering services and in relation to their own employees.

It requires that public bodies have due regard to the need to:

- Eliminate discrimination
- Advance equality of opportunity
- Foster good relations between different people when carrying out their activities

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

An Equality Analysis has been undertaken and is attached. The proposal does not disproportionately affect any protected group and complies with legislation to have regard for Human Rights in developing procedures.

15.4 Human Resources

No current implications but should the intervention team cease at the end of 2021 then there may be enforcement implications

15.5 Land, Property and Accommodation

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

15.6 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.

15.7 Corporate Health and Safety implications

There are health and safety consideration regarding approaching potential perpetrators who are in breach of the PSPO however the teams involved, namely the intervention team, have risk assessments in place to manage and mitigate the

risk. There is also generally good CCTV coverage within the PSPO area however St Rumbolds street does not currently have good coverage.

16. Risk Implications

- 16.1 (i) Options Explored
1. Extend the existing PSPO
 2. Extend and vary the PSPO to reword the prohibitions and / or change the geographical area to include St Rumbolds Street area.
 3. Not extend the existing PSPO

- 16.2 (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.

17. Recommendation

- 17.1 To comment on the proposal to extend and vary the PSPO to include zone 3 shown in APPENDIX C and to amend the wording to that shown on the draft order shown in APPENDIX E and refer comments for the consideration of the Executive.

Is this a key decision? No

Do the exempt information categories apply? No

Does Rule 15 of the Scrutiny Procedure Rules (call-in and urgency) apply? No

How many appendices does the report contain? 6

APPENDIX A – Existing PSPO Inc. Map
APPENDIX B – Partner responses
APPENDIX C – PSPO Map showing ‘zone 3’
APPENDIX D – Police stats for ‘zone 3’
APPENDIX E – Draft PSPO Order 1B 2021
APPENDIX F – Proposed new Map

List of Background Papers: None

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