

Cabinet

24th November 2015

Name of Cabinet Member:

Cabinet Member for Culture, Leisure, Sports and Parks – Councillor A Khan

Director Approving Submission of the report:

Executive Director of Place

Ward(s) affected:

All

Title:

Use of Public Space Protection Orders in Coventry

Is this a key decision?

No – whilst this decision covers the whole city its impact is not considered as significant.

Executive Summary:

The purpose of this report is to seek Cabinet approval for the adoption of a process for making Public Space Protection Orders (PSPO's) in the City.

Before the Council can make a PSPO they are required to undertake consultation, which must include consultation with the Police and the Police and Crime Commissioner.

It is intended that the use of PSPO's in the City will be transparent, co-ordinated and overseen by a multi-agency group. There will be wide consultation and full consideration of any consultation responses before a decision is made whether to make a PSPO in a particular case.

It is proposed that a final decision whether to make a PSPO in a particular case will be made by a Cabinet Member where only one ward is affected, or by Cabinet where it affects more than one ward or a significant area of the City, such as the City Centre or War Memorial Park.

Recommendations:

Cabinet is recommended to approve the adoption of the Public Space Protection Order standard process as outlined in Appendix A

List of Appendices included:

Appendix A – Public Space Protection Orders – Process and Approach

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

No

Report title: Use of Public Space Protection Orders in Coventry

1. Context (or Background)

- 1.1 Public Space Protection Orders (PSPO's) were introduced along with other measures in the 2014 Anti-Social Behaviour and Policing Act which primarily came into effect in October 2014. PSPO's allow for measures to be taken to stop individuals or groups committing nuisance/anti social behaviour in a public space. Public space has a wide definition and includes any place where the public have access to on payment or otherwise.
- 1.2 Only Councils can make PSPO's but they must do so in consultation with the Police, the Police and Crime Commissioner (PCC) and any other relevant bodies.
- 1.3 In order to satisfy the test as to whether it is appropriate to make a PSPO the behaviour that the Council is looking to restrict must ;
 - Be having, or likely to have, a detrimental effect on the quality of life of those in the locality
 - Be persistent, or continuing, in nature
 - Is, or is likely to be unreasonable and ;
 - Justifies the restrictions imposed
- 1.4 The order can be put in place on any public space within the Council's boundaries. It usually applies to public land but can include land not within the Council's ownership but gives an implied invitation to the general public, a shopping centre, for example.
- 1.5 Any justifiable restriction or requirement can be included in a PSPO. These can be blanket requirements applying to all, or they can be targeted against certain activities or groups at certain times. For example, there could be a ban on playing golf in a public park, but not other sports, or there could be a ban on congregations of groups bigger than a given number after 7pm if night time gatherings were causing issues. The orders are very flexible and more than one condition can be included on a single order. They effectively impose byelaw type conditions in a given area (and will suspend the operation of any relevant existing byelaw).
- 1.6 PSPO's can restrict access to land or property where that route has been a source of anti social behaviour or the route has been used to commit crimes or evade Police and others. PSPO's have replaced gating orders that were used previously and they are intended to be as flexible as possible.
- 1.7 The Council does not have to apply to Court to make a PSPO. Providing the Council is satisfied that it has followed correct procedure then it can make the order and it becomes effective. Legal Services would oversee the process to ensure they are satisfied that correct procedure is being followed.
- 1.8 Once made, a PSPO can be enforced by Police Officers, Council Officers or officers from any organisation that has been designated powers to do so. The legislation allows that once the offence has been committed by not complying with an officer's order, for officers to issue a Fixed Penalty Notice of up to £100, or for the courts to impose a fine of up to level 3 (£1000) where a person is convicted of breaching a PSPO

- 1.9 A PSPO can last for a maximum of 3 years. An order can also be made for a shorter period or can be rescinded by the Council at any time. At any time during the length of the order it can be extended for another 3 years following the prescribed process.
- 1.10 A PSPO can be amended or varied at any time. Prior to new conditions being attached or existing conditions varied the prescribed process must be followed.

2. Options considered and recommended proposal

- 2.1 The City Council has been given the powers to implement PSPO's by the nature of national legislation. In order to widely use PSPO's, and to reduce risk of legal challenge to any future orders it is considered best practice to adopt a policy / process for their use.
- 2.2 To widely implement PSPO's without a policy / process has therefore been discounted in favour of recommended proposal to adopt the attached policy.
- 2.3 The proposed process is outlined in appendix A at the rear of this report.

3. Results of consultation undertaken

- 3.1 Consultation regarding PSPO's has taken place between officers in Community Safety, Legal and West Midlands Police.
- 3.2 Each new PSPO will require its own public consultation exercise. The size and nature of this will need to be commensurate to the size or local importance of the area being affected.

4. Timetable for implementing this decision

City Tasking and Coordination is already established and legislation is already in place.

5. Comments from Executive Director, Resources

5.1 Financial implications

There are no specific financial implications arising from this report, other than standard costs for legal services or signage for each successful order.

5.2 Legal implications

It is essential that the correct legal process is followed when making a PSPO as an order can be legally challenged by way of judicial review in the High Court. A legal challenge can be made by an interested person (defined in the legislation as a person who lives in the restricted area or who regularly works or visits that area).

Any challenge must be made within 6 weeks of the making of the order (or, where an interested person is charged with an offence of breaching an order, within those proceedings).

The key grounds for challenge are that the Council had no power to make the order (or to include a particular prohibition or prohibitions in an order) or that during the order making process a procedural requirement (for example, publication and/or consultation) had not been complied with in part or at all.

If an order is found to have been incorrectly made (or a particular prohibition or prohibitions improperly included in an order) this is likely to result in the Council incurring legal and other costs.

The process for considering the making of a PSPO in a particular case should have a clear consultation plan in place to ensure that the consultation undertaken is adequate having regard to the nature of the specific proposal. The views of those consulted must be considered before an order is made.

The Act sets certain requirements including consultation and publicity in the order making process. The requirements include the publication of the proposed text of a PSPO (and by implication considering any representations made in response).

The Act also requires the Council, in considering the making of and contents of a PSPO, to have particular regard to certain human rights, namely, freedom of expression and freedom of assembly.

6. Other implications

6.1 How will this contribute to the Council's priorities?

<http://www.coventry.gov.uk/councilplan>

The proposed use of orders will help contribute to the priorities identified in the Council Plan related to safer communities and working towards having active citizens with strong, involved communities.

6.2 How is risk being managed?

As the process will be overseen by the City Tasking and Coordination group, this will help minimise any risks because of the range of agencies involved and their operational capacity to address any issues arising from the implementation of the order.

6.3 What is the impact on the organisation?

The implementation of PSPOs will help the City Council and partner organisation tackle a range of low level environmental crime, anti-social behaviour, and wider community concerns. However, the implementation of an order will need to be considered alongside the resources available within the City Council and partner organisation to enforce order.

6.4 Equalities / EIA

Given the individual nature of PSPOs, it will be necessary to consider equality impacts on each order and as part of the consultation process for each order.

6.5 Implications for (or impact on) the environment

None identified.

6.6 Implications for partner organisations?

Partner organisations will be involved throughout the process through both the City Tasking and Coordination group and also the consultation process that most orders should follow.

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Legal: David Joy	Licensing and regulatory solicitor	Resources	14 th Oct	23 rd Oct
Finance: Nicola David	Lead Accountant, partnerships	Resources	14 th Oct	14 th Oct
Director: Martin Yardley	Strategic Director of Place	Place	3 rd Nov	4 th Nov
Members: Cllr Abdul Khan	Cabinet Member		3 rd Nov	4 th Nov

This report is published on the council's website:

www.coventry.gov.uk/councilmeetings

Appendix A – Public Space Protection Orders – Process and Approach

Procedure for applying for a Public Space Protection Order (PSPO)

Matters to consider

PSPO's in isolation will often not solve all issues and should be used in conjunction with other measures. Consideration should also be given to what effect the order will have in terms of displacing an issue. Unless there is sufficient evidence of an existing problem it is unlikely a PSPO would be seen as reasonable if it imposes conditions on an area with no problems just because it is thought likely problems will move there.

All agencies should be satisfied that the area is being disproportionately affected by groups or individuals carrying out acts that are causing nuisance and annoyance to others trying to have reasonable enjoyment of an area for its intended purpose. Activities in an area need to be persistent and continuing and have a detrimental effect on the quality of life of people in the local community.

Agencies should be satisfied that the granting of the order is reasonable and proportionate and that it is not being caused only by the actions of individuals who are identifiable. In cases such as these there should be targeted enforcement against the known individuals rather than a blanket ban.

Background

The following document outlines the approach to be used to determine how to progress the making of a PSPO.

Overview of the process

A new group City Tasking and Coordination to coordinate intelligence on location based issues for Community Safety was established in the summer of 2015. This group will meet every month. It is this group which will recommend locations where a PSPO may be used and sufficient reliable evidence exists.

Detailed Steps

Step 1 – City Tasking & Coordination Meeting

We would expect any problematic area to have a considerable number of reports or intelligence outlining the issues occurring and reports received. At each monthly meeting a data / intelligence summary will be created. This will be discussed by the agencies represented in the group. As part of the holistic approach when problem solving, agencies should give consideration as to whether a PSPO is appropriate for a specific part of a problematic area.

If any agency believes that an area is problematic and would benefit from a PSPO but it isn't being discussed at City Tasking then officers should refer their issue in. Once City Tasking has come to a decision where they believe it is appropriate to pursue a PSPO then they will allocate a Council officer to lead on the application process.

Step 2 – Specific Meeting

The lead officer will then convene a meeting with officers from the Police as well as any other appropriate agencies or Council departments including Legal Services. The purpose of that meeting would be to understand the prohibitions and measures it is thought should be put into place to address matters and the officer resource available to police the order. An order should only be sought if all agencies are satisfied that it can be appropriately resourced. In addition any practical solutions to the problems such as removing seating or repairing fences should also be discussed.

If the order includes the closing of a public right of way, either permanently or limiting access between specific times then there are extra considerations that should be made due to the increased likelihood of a High Court challenge from the Ramblers Association or similar. Consideration should also be given as to whether the area includes any common land or village green.

In advance of this meeting a request should be sent to the insight team from Coventry City Council who will identify potential community and faith groups that may need to be consulted on any order. It will be agreed at this initial meeting which groups it is appropriate to consult with.

Step 3 – Consultation

The guidance states that there has to be consultation between the Local Authority, the Police and the Police and Crime Commissioner and if relevant the land owner or occupier as an absolute minimum. The Council must also consult whatever community representatives they think appropriate but other than that it is recommended that consultation should be carried out as felt appropriate for the issue and the area. For example anything that affects the City Centre is likely to need much more consultation than something that is specific to a defined part of a single ward. Lack of proper consultation, or insufficient consultation could be a key challenge to any appeal against a PSPO and as such careful consideration should be given to the amount of consultation undertaken. City Tasking group should offer guidance in this matter.

When it has been agreed what conditions need to be attached to the order the lead officer should arrange a further meeting with appropriate officers and representatives of any community groups felt appropriate. This meeting should outline the reason why the order is being sought, what measures are potentially being introduced to address the matter and whether there are any reasonable adjustments that might need to be made to ensure any parties aren't disproportionately affected.

Step 3a (only where relevant) – Where the Community is opposed

If the community groups are totally against the order in its entirety, it's not the case that the order shouldn't be sought, but the matter should be referred back to the City Tasking group for them to make a decision on whether it is appropriate to go ahead with the order.

Step 4 – Implementation of the order

Once approved by City Tasking the notice, and conditions and prohibitions contained within will be drafted by Legal Services

There is not a formal requirement to provide advance notice of a PSPO being brought into effect in an area, there is only the need to publicise its existence via appropriate signage at the location as well as publication on the appropriate section of the Council website. Unless the matter to be addressed is considered too sensitive in terms of compromising Police operations or because of Community tensions or similar, then advance notification of the intended order, in draft format should be placed at the proposed locations along with contact details of the appropriate officer to pass any comments to.

Orders will be approved by the Cabinet Member (Policing and Equalities) in most circumstances.

In the event of the order needing to be created and implemented in a quicker timescale than the frequency of the City Tasking meetings would allow, and where it can be shown there is an increased risk to the health and welfare of the community, then this can only be done at the discretion of a Council Officer of no lower grade than Assistant Director and a Police Officer of no lower rank than Superintendent and the agreement of the Police and Crime Commissioner. They would liaise with Legal Services at Coventry City Council to progress and ensure compliance with guidance regarding publication of the order and appropriate signage at affected areas.

Amendments revocations and extensions

Should it be decided that it is necessary to amend or extend an order then it may be necessary to recommence the process. However if the amendment to the order is relatively soon after the granting of the initial order then it may not be necessary to carry out a full consultation if it's felt the suggested amendment is relatively minor and the suggested amendment is still in keeping with the findings of the most recent consultation.

The view of legal services should be sought when dealing with such matters. To end, or revoke an order, this can be done at any time, it should be discussed, and agreed at City Tasking group before such a decision is made. All signage should be removed from the location in question.