

BIRMINGHAM CITY COUNCIL

**REPORT OF THE DIRECTOR OF
REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

18 JANUARY 2023
LADYWOOD

City Centre Noise Public Space Protection Order

1. **Summary**

- 1.1 This report provides Committee with an update on work being undertaken to address noise problems within two areas of the City Centre: New Street in the vicinity of Tesco's, and the junction of New Street and High Street by the Rotunda.

2. **Recommendations**

- 2.1. That the report is noted.

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3. Background

- 3.1 City Centre's are heavily used for commerce and entertainment and more recently for residential purposes. These are not always needs that can sit comfortably together. By and large the planning process is aimed at ensuring conforming uses are next to each other (industrial areas separate from residential areas). However, the newer mixed-use developments do lead to problems of noise (and other pollution) affecting residential properties.
- 3.2 The Councils Environmental Health Officers have a suite of powers to resolve or mitigate these issues mainly under the Environmental Protection Act 1990, but also under the control of Pollution Act 1974 and the Anti-social Behaviour, Crime and Policing Act 2014.
- 3.3 This report advises committee of the actions taken by its officers to protect residents within the Rotunda and 2 residential blocks on New Street around the New Street/Temple Street junction.

4. History

- 4.1 New Street (Around Tesco's and at the New Street/High Street junction) have become increasingly popular for people using amplification equipment and playing musical instruments on the street. Over the last decade there has been a noticeable increase in such activities on the street. Until recently it was common to find at least one if not more buskers and religious speakers operating in these areas which are situated outside residential properties.
- 4.2 These activities are legal and cannot, outside of London, be lawfully subject to licensing, permit schemes or other simple means of local government control - those engaged in them are exercising their rights to make a living, and their freedoms of conscience and expression.
- 4.3 Nationally over the last 20 years or so, there has been changes in national planning guidance, which actively supports more mixed use and in particular city centre living. From an Environmental Health (noise nuisance perspective) this is counter intuitive however we are now seeing more and more of this in Birmingham (both city centre and town centres). It is also true of other cities.
- 4.4 In 2015 in response to an increasing number of complaints about buskers the City Council considered using then-new powers under the Anti-Social Behaviour Crime and Policing Act 2014 to introduce a Public Space Protection Order banning the use of amplification in Birmingham City Centre. This was put to public consultation and 60% of respondents were **not** in favour of the order. Groups such as Liberty, Keep Streets Live and the Musicians' Union, advocated for a scheme of voluntary regulation of busking in place of the proposed more prescriptive order.

4.5 At that time, the majority of the complaints were solely around musical busking, so in due course a system of voluntary busking guidance, backed by the possibility of enforcement for problematic individuals (using Community Protection Notices) was produced, consulted upon and implemented. This approach has received considerable praise and has been used a benchmark by a variety of other local authorities. It certainly tackled inappropriate busking such as full bands that had set up and totally dominated the street scene (affecting people passing by and shops who could not hear customers). Several CPNs were served (<10).

4.6 Shortly after this guide, there was an escalation of noise on the street due to significant increases in numbers of buskers as well as street preaching. The commonality between the groups being amplification equipment. Officers, shops, the public began to complain about the “noise environment” and our officers noted groups competing to be heard using their amplification systems to drown one another out. In addition, we started to see excessive use of quite small amplifiers meaning some buskers and preachers were excessively loud at 50 to 75m from where they were operating. Police and our officers also reported altercations between some groups and amplification being increased to drown out others.

5.0 Actions Taken

5.1 Between August and December 2018 a survey was undertaken of businesses, residents and residents’ groups within the City Centre, 66% considered the noise levels on the streets from amplifiers to be unacceptable, 60% said amplified noise had affected their customers and had caused their customers to complain.

5.2 Several respondents subsequently provided BCC with victim impact statements:

- High St retailer: *“there have been Saturdays where I have not been able to hear and speak to customers or talk on the telephone. In fact I generally have to come downstairs to take important work phone calls”*
- Worker in a large office building: *“I also hear noise coming from New Street and High Street, This noise affects me personally because sometimes I have resorted to moving office”*
- Resident living on New St: *“There has been an unbelievable increase in buskers and street performers using “high calibre” amplification systems, the likes which are to be found in venues and festivals, not high streets.”*

5.3 Following this survey through the summer of 2019, we then began to receive more complaints from residents of noise affecting them both during the day and at night. Businesses by this stage had mostly given up complaining as we had engaged with them for over 4 years.

5.4 These Complaints from residential premises are a significant change.

- Under the Environmental Protection Act 1990 the Local Authority is under a duty to investigate complaints of statutory nuisance **and**
- Where it is satisfied a nuisance exists it has to serve notices and take measures to abate the nuisance.

In addition

1. Only residents can suffer a nuisance (you can't pass a chip shop and complain of the smell but you can complain about the same smell if you live next door)
2. Although businesses have been determined to "reside" in an area because they are there for long periods, they often can't reach the threshold of use and enjoyment. They don't have the same right to enjoy their property as you and I have and as far as use goes, we want noisy businesses together otherwise car repair places and heavy industry would be in isolated areas from neighbours.
3. To suffer a nuisance, you must show a detriment to the use or enjoyment of your property (it is more complicated as there is lots of case law but this is the basic level). Determining nuisance is likely to be intrusive for residents, requiring Officers to attend residents' properties on a number of occasions both to witness the nuisance for an abatement notice to be served and then subsequently to witness any alleged breaches of the notice. In addition, through the process it may be necessary for the individual who brought about the complaint to be made known.
4. The statutory nuisance process looks at individuals rather than the activity itself. As such each new busker, street preacher, or street entertainer would need to be treated as a separate case and if that individual moved to another location (for example from outside Tesco's to the Rotunda) then the investigation would need to be started again. It is simply too intrusive for the residents as you daily will have officers in your property to witness the noise levels. We have tried this it does not work.
- 5.5 From this you can see that the game changer is that residential premises are now being affected. Once our officers determined the residents were suffering a Statutory Nuisance due to noise, the Council must take steps to abate the nuisance. To not do so is ultra vires (acting or done beyond one's legal power or authority i.e. it's not in the council's power to ignore the nuisance).
- 5.6 There is no caveat on how many people are affected. Legally it would not matter if it was one person or 100 people, but there are numerous people in both the residential premises above Tesco's, another block on the corner of New Street and Corporation Street as well as the Rotunda.
- 5.7 Initially Environmental Health responded by advising people they were using speakers outside residential property, then asking people to move and or turn down their speakers and this worked for a short period.
- 5.8 There was no longevity to these interventions. Often the volume was reduced until the officer left and was then turned up again. People who were displaced were replaced by a new person or indeed people returned the same day or the next day causing the same problem. From the resident's viewpoint there was no improvement and in their opinion the Council are failing to abate the nuisance.
- 5.9 As a result, Environmental Health started to issue CPN warning letters as well as serving Abatement Notices on people on the street. Any action undertaken was bound by the agreement set out during the consultation in 2014 with the Musicians Union,

Equity and Keep Streets Live meaning that enforcement was a last resort and that there were a number of stages that need to be completed before any formal action was taken. Again, the process was intrusive for residents and required assessments to be made from residents properties and potentially made them identifiable to noise the sources that they were complaining about. The CPN warning is the precursor to a Community Protection Notice – these lead to an FPN or a prosecution. However, by this stage we had little co-operation on the street and were faced with officers being unable to get names and addresses.

- 5.10 The abatement notices are a stronger power in that there is no FPN but a prosecution can be brought and the noise generating equipment can be seized. Again, we were faced with the difficulty of not being able to get names and addresses but there is an alternative way of serving on the actual equipment. (Normally where nuisance arises on a property we serve on “the owner” or “the occupier” of the address. However, because individuals are on the street, we can’t use this option. Additionally in law you can only be required to give your name and address if you have committed a criminal offence.
- 5.11 By this stage officers were finding their interventions were leading to many amplification users abusing them and turning up the volume.
- 5.12 Having taken advice from Barrister’s the only solution left to us is to consider the declaration of a PSPO and or Injunctions. Injunctions are the ultimate tool, and we were advised to only use these where all lesser options have failed. Accordingly, we entered a process of consultation on a PSPO. We were clear to those that we engaged with that behind this was the fact the Council must take action to abate the nuisance. Therefore, unless someone could control the noise levels on the street, we were more than likely going to have to declare the PSPO. Bearing in mind the amplification users come from many groups, both talented buskers, singers, to people who use amplification to attract a crowd for a display (juggling, hanging on a bar etc.), car cruisers and multiple faith groups I was not hopeful of a solution.
- 5.13 By the completion of the consultation, we had seized two sets of amplification equipment from the street, we had served 12 abatement notices, at least 3 people had been arrested for behaviours towards our officers and accompanying Police officers.
- 5.14 PSPOs were declared for the 2 areas each contain an area where amplification equipment, musical instruments and items being used as musical instruments cannot be used day and night and a larger area that restricts night-time use.
- 5.15 A consequence of the PSPO is anyone playing in contravention of the PSPO is committing a criminal offence. As a result, we can now with the assistance of WM Police obtain their details. This in turn has reduced the same person breaching the PSPO but has not stopped the problem.

5.16 Many of the residents have contacted us following the declaration of the PSPO and initially were very pleased however there has not been a good level of compliance and often our officers are responding to complaints both day and evenings. This is costing the city a lot in resources. Below is the table of non-compliance. Although we have empathy for the street users, ultimately the legal duty is to protect those suffering a nuisance.

5.17 Since October 2022 Officers have moved from an education-based approach to serving FPN's after initial warnings have been given. PSPO's must be reviewed every 3 years and re-declared only where they are required. At this stage we would say we are moving more into enforcement and if this fails we would review looking for a greater exclusion or injunctive action (i.e. the PSPO failed).

6.0 On-Going action

6.1 Unfortunately, Officers have experienced hostility both from individuals who they have found breaching the PSPO and members of the public who have become embroiled in encounters. As a result, we are actively considering an application for an injunction to restrain one person who has repeatedly breached the PSPO and on 2 occasions threatened serious harm to our officers (the Police are processing these offences). The injunction could in part restrict behaviours towards officers but also prohibit that person entering the city centre. This as it gives an indication of the difficulties that Officers are encountering when trying to enforce the PSPOs. This is not an isolated incident as there have been other incidents where Officers have been verbally threatened or pushed. To protect our Officers safety, evening patrols are now undertaken with Police support at an additional cost to the City Council. Despite this, it has resulted in 4 individuals being arrested during encounters.

6.2 In another incident, a Police officer was dealing with a busker on Bennetts Hill and our Enforcement Officer had to remove a drinks bottle from the second person who picked it up and approached the Police officer from behind.

Residents have been targeted in social media and mainstream press which has led to them:

- refusing to give evidence,
- moving homes,
- affecting their health and employment.
- Landlords unable to let properties

- 6.3 In nuisance law we are not considering businesses but in ASB legislation we can
- There are hotels on New Street who cannot let rooms and conference facilities
 - Shops who cannot hear their customers
 - Office blocks who cannot use their office space
 - The BID has led in referring business complaints particularly customers saying they do not like the city centre
 - In the consultation, visitors reported they do not like the street noise and it makes them not want to visit the city centre.
 - Since the introduction of the PSPOs, Environmental Health have started to received complaints about noise levels in the street outside of the two PSPO areas. Complaints have come from both business and residents where noise levels are reported to be having a significant impact on the use of residential properties and running of a businesses. Similar complaints have also been reported to the BID. An example of this was on 03.11.22 – we had a steel drum with backing amplification who was outside the PSPO and requested numerous times to reduce his volume and officers reported he could be heard at around 0.5miles away. Such activity would actually lead to extension of the area rather than revocation of the existing PSPOs.

Interactions

Date	Location	POI	Name	Warning	FPN
15 August 2022	High Street	Opposite Primark	Preachers	15 August 2022	
15 August 2022	New Street	Opposite Watches of Switzland	Busker	15 August 2022	
15 August 2022	High Street	Outside Waterstones	Preacher	15 August 2022	
15 August 2022	High Street	Opposite Primark	Preachers	15 August 2022	
15 August 2022	New Street	Opposite Watches of Switzland	Busker	15 August 2022	
15 August 2022	High Street	Outside Waterstones	Preacher	15 August 2022	
17 August 2022	High Street	Opposite Barclays	Preacher	17 August 2022	
17 August 2022	High Street	Opposite Barclays	Preacher	17 August 2022	
18 August 2022	New Street	o/s Rotunda	Preacher	18 August 2022	
18 August 2022	New Street	o/s Rotunda	Preacher	18 August 2022	
19 August 2022	New Street	Opposite Rotunda	Busker	19 August 2022	
19 August 2022	High Street	Outside Metro Bank	Busker	19 August 2022	
19 August 2022	New Street	JD Sports Opposite Lush	Street entertainer	19 August 2022	
19 August 2022	New Street	Opposite Rotunda	Busker	19 August 2022	
19 August 2022	High Street	Outside Metro Bank	Busker	19 August 2022	
19 August 2022	New Street	JD Sports Opposite Lush	Street entertainer	19 August 2022	
20 August 2022	New Street	Outside Tesco	Protestor	20 August 2022	
20 August 2022	New Street	Outside Lloyds Bank	Preacher	20 August 2022	
20 August 2022	Rotunda	Opposite Metro bank	Street entertainer	20 August 2022	
20 August 2022	Lower Temple Street	Outside Tim Hortons	Busker	20 August 2022	
20 August 2022	New Street	Outisde Tescos	Preachers	20 August 2022	
20 August 2022	New Street	Outside Tesco	Protestor	20 August 2022	
21 August 2022	New Street	o/s JD Sports	Busker	21 August 2022	
21 August 2022	New Street	Outside Lloyds Bank	Preacher	21 August 2022	
21 August 2022	New Street	o/s JD Sports	Busker	21 August 2022	
22 August 2022	Rotunda	Opposite Metro bank	Street entertainer	22 August 2022	

23 August 2022	New Street	Outside Lloyds Bank	Busker	23 August 2022	
23 August 2022	New Street	Next to Pret	Busker	23 August 2022	
23 August 2022	New Street	Outside Lush	Busker	23 August 2022	
23 August 2022	Lower Temple Street	Outside Tim Hortons	Busker	23 August 2022	
23 August 2022	New Street	Outside Lloyds Bank	Busker	23 August 2022	
23 August 2022	New Street	Next to Pret	Busker	23 August 2022	
23 August 2022	New Street	Outside Lush	Busker	23 August 2022	
24 August 2022	New Street	Outside Tesco	Preachers	24 August 2022	
26 August 2022	New street	Outside Tesco	Preacher	26 August 2022	
26 August 2022	New street	Outside Tesco	Preacher	26 August 2022	
03 September 2022	High Street	opposite The Gym Group	Preacher	03 September 2022	
03 September 2022	High Street	opposite The Gym Group	Preacher	03 September 2022	
04 September 2022	Rotunda Square	Opposite Waterstones	Preacher	04 September 2022	
04 September 2022	New Street	outside Virgin Money	Preacher	04 September 2022	
04 September 2022	Rotunda Square	Opposite Waterstones	Preacher	04 September 2022	
05 September 2022	High street	Opposite Metro bank	Street entertainer	05 September 2022	
05 September 2022	New Street	Opposite TSB bank	Busker	05 September 2022	
05 September 2022	High street	Opposite Metro bank	Street entertainer	05 September 2022	
06 September 2022	High Street	Opposite Three Shop	Preacher	06 September 2022	
06 September 2022	New Street	Infront of Lloyds Bank	Preacher	06 September 2022	
06 September 2022	High Street	Opposite Three Shop	Preacher	06 September 2022	
07 September 2022	New Street	Opposite Lush	Busker	07 September 2022	
28 September 2022	High Street	Outside Waterstones	preacher	28 September 2022	
29 October 2022	New street	Near Lush	Preacher	29 October 2022	Yes
30 October 2022	New Stret	Rotunda square	Street entertainer	30 October 2022	Yes
04 November 2022	New street	Outside Watches of Switzland	Busker	04 November 2022	
04 November 2022	New street	Near Lush	Busker	04 November 2022	
04 November 2022	New Street	by Pret	Busker	04 November 2022	
10 November 2022	New Street		Busker	10 November 2022	Yes
10 November 2022	High Street	Opposite Waterstones	Preacher	10 November 2022	

11 November 2022	New Street	Outside Watches of Switzland	Busker	11 November 2022	
12 November 2022	New Street	Rotunda square	Street entertainer	12 November 2022	5 x to be served
12 November 2022	High street	outside monki	Preacher	12 November 2022	
18 November 2022	New Street	Near Wagamama	Buskers	18 November 2022	
26 November 2022	New Street	Outside Tesco	Buskers	26 November 2022	
28 November 2022	High Street	Outside Waterstones	Preacher	28 November 2022	
30 November 2022	New Street	Opposite Lush	Busker	30 November 2022	
01 December 2022	New Street	Outside Tesco	Busker	01 December 2022	
01 December 2022	New Street	outside Starbucks	Busker	01 December 2022	
01 December 2022	High Street	Near Rotunda	Busker	01 December 2022	
01 December 2022	New Street	outside Muji	Busker	01 December 2022	
03 December 2022	New Street	Outside Lloyds Bank	Busker	03 December 2022	
03 December 2022	Lower Temple Street	Opposite Size	Preacher	03 December 2022	
03 December 2022	New street	opposite Wok Walk	Busker	03 December 2022	

7.0 Consultation

- 7.1 The report is for information and, therefore, no wider consultation has been undertaken other than that specified below.

8.0 Implications for Resources

- 8.1 The cost of enforcement of the PSPO is proving to be costly. Currently we are using a mixture of patrols by your officers and enforcement patrols with off-duty Police officers purchased on their over-time to ensure Police resources are not depleted. The necessity for joint patrols is around obtaining identities and the level of aggression on the street.

9.0 Implications for Policy Priorities

- 9.1 This work is statutory work and supports the council's priority for Making the city safer (by tackling anti-social behaviour) and a great place to live.
- 9.2 This work supports the Regulation and Enforcement Division's mission statement to provide 'locally accountable and responsive fair regulation for all - achieving a safe, healthy, clean, green and fair trading city for residents, business and visitors'.

10.0 Public Sector Equality Duty

- 10.1 The regulation of statutory nuisances is a legal duty on the council. An equality impact Assessment was undertaken at the time of declaring the PSPO and this also assessed the human rights of "right to family life" and how it conflicted with "freedom of expression". In addition, the enforcement of the PSPO is governed by the Regulation and Enforcement policy and the necessity for proportionality principles to be used in all enforcement.

DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: Nil



