

**BIRMINGHAM CITY COUNCIL**

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

**16 NOVEMBER 2016**  
**ALL WARDS**

**PUBLIC PLACE NUISANCE VOLUNTARY GUIDES PROJECT:  
BUSKER AND STREET ENTERTAINMENT VOLUNTARY GUIDE**

1. Summary

- 1.1. To inform Committee of a project to reduce public place nuisance. This includes the production of a number of good practice voluntary guides for activities undertaken within the public space. These guides will contribute in tackling adverse impacts and behaviors from public place nuisance within the city centre and town centres associated with particular street scene related activities. There will be five guides; buskers and street entertainment; street speaking; distribution of free literature; events; and street trading.
- 1.2. To report to Committee on the outcome of the public consultation on the introduction of the first guide: A Busking and Street Entertainment Guide for Birmingham.

2. Recommendation

- 2.1 That Committee approves the final version of the Guide to Busking and Street Entertainment in Birmingham.
- 2.2 That Committee endorses the approach used within the public place nuisance project and the future direction of subsequent guides.
- 2.3 That the Chair of Licensing and Public Protection Committee refer this report to the Cabinet Member for Housing and Homes for information.
- 2.4 That implementation of this guide occurs after the Cabinet Member for Housing and Homes meeting.

Contact Officer: Janet Bradley Environmental Health Operations Manager  
Telephone: 0121 303 5435  
E-mail: [janet.bradley@birmingham.gov.uk](mailto:janet.bradley@birmingham.gov.uk)

### 3. Background – The Public Place Nuisance Project

- 3.1 An increase in the number of public place nuisance complaints, with regard to noise and anti-social behaviours from a number of activities within the City Centre received by sections of Birmingham City Council and West Midlands Police during 2013/2014 and 2014/2015, was the impetus behind the project to reduce the impacts described by the complainants. These complaints were received from residents, businesses and visitors and continue to this day.
- 3.2 An initial response was to consider the introduction of a Public Space Protection Order (PSPO) under the Anti-Social Behaviour, Crime and Police Act 2014 (ASBCP Act 2014) to prohibit the use of amplification units and intrusive noise from buskers, street entertainers and street speakers that is so loud that it has, or is likely to have a detrimental effect on the quality of life of people in the vicinity in a defined area of Birmingham City Centre.
- 3.3 In May 2015 a public consultation occurred on the introduction of a PSPO. The analysis of the responses showed a majority (60%) were against the introduction of the PSPO. This was reported to the Cabinet Members for; Health and Wellbeing and Social Cohesion and Equalities and Community Safety in July 2015. Further, it was reported to Full Council that the PSPO would not go forward.
- 3.4 In response to this, a multi-agency task and finish team was set up to consider alternative approaches to reduce the detrimental effects from activities within the city centre public space, particularly those causing noise impacts. Appendix 1 subsection (1) details those that have been involved in this project.
- 3.5 An approach chosen was to use the basis of the ASBCP Act 2014 and tackle individuals causing the detrimental impact rather than undertake action against all those that undertake the activity. Voluntary guides are being produced which determine the expected behaviours and practical ways for those undertaking a particular activity to reduce their potential to cause nuisance or similar detrimental impact to businesses and residents.
- 3.6 Each guide is produced in collaboration with the representatives or trade organisations of the particular activity to increase the 'buy in' and support for the guide and to ensure that the guide will work in practice. Each guide includes a pathway of hierarchy of interventions from education to enforcement and sanctions should these behaviours not be met and on-going detrimental impacts are determined. In addition, each guide will go through a public consultation through the City Councils BeHeard consultation process.

### 4. The First Guide – Busking and Street Entertainment in Birmingham

- 4.1 The guides are being introduced incrementally to ensure that each guide receives the extensive public consultation required and lessons learnt from the initial guides are used subsequently.

- 4.2 The busking and street entertainment guide (Appendix 2 draft copy) is for activities that include music, dance, street theatre, performance and art offered live in public spaces for the purpose of entertainment. It does not include street speakers who used amplification units. This will be covered in a subsequent guide.
- 4.3 Working with the Musicians Union, Keep Streets Live Campaign, Equity and other stakeholders as detailed in Appendix 1 subsection (2) the attached busker's guide (Appendix 2) was produced and has been publically consulted on. The results of which are summarised in this report and in Appendix 3.
- 4.4 The guide as drafted is based on the guides to busking produced by Liverpool and York City Councils. These are based on good practice, promoting self-regulation by all buskers and requiring them to work together within the public space so that they do not cause problems to visitors, shoppers or businesses.
- 4.5 To use any powers it is necessary to be clear (to public place users, residents and businesses) what behaviours are expected and what is deemed reasonable behaviour. The voluntary guides provide exactly that. If someone wishes to perform / busk they should clearly understand what is likely to be deemed acceptable within the public space to reduce any negative impacts to those living and working within it. It also, therefore, indicates what is unacceptable but does not define this.
- 4.6 If public space users stray from these guidelines and investigations of complaints demonstrate a negative impact, then there is an overt, clear and fair hierarchy of interventions, from informally asking a performer to make a reasonable change to their act all the way through to prosecution. This approach is proposed for all the subsequent guides and the model is consistent with Regulation and Enforcements Enforcement Policy.
- 4.7 The Guide includes a pathway to resolve issues and complaints from busking and entertainment activities. This incorporates the use of Community Protection Notices (CPN) provisions of the ASBCP Act 2014 which are deemed the most effective and suitable legal provisions to deal with the issues faced. A dispute resolution panel has been included within the pathway should the busker feel they are not at fault from the complaint. This panel will include representatives from the Musicians Union or Equity.
- 4.8 City Council Legal Services have been sighted on the guide and hierarchy of interventions and agree with contents and direction

## 5 Current Status

- 5.1 The CPN procedure and powers have successfully been used on a number of occasions since December 2015 to reduce the negative impacts from busker noise related complaints received within the City Centre by Regulation and Enforcement officers.

- 5.2 It has been found that following interventions of council officers, BID officers and occasionally the Musicians Union, it has been necessary to issue CPN warning letters. All of this backed with discussions based on the principles in the guide has resulted in buskers either modifying their behaviour or the buskers have not returned to the city for a considerable period of time as they do not wish or can't be compliant.
- 5.3 Anecdotally, your officers and others from City Centre Operations are reporting they are starting to see better quality buskers within the city on a more frequent basis than before, albeit the noise levels may be as high. Conversing with these buskers and talking to them about the Busker guide has found more buy-in from this community and on the whole, and loud individuals / acts have reduced their volume when requested.

## 6. Powers to Deal with Public Space Behavioral Impacts

- 6.1 Part 4 chapter 1 of the Anti-Social Behaviour, Crime and Policing Act 2014 provides the statutory authority for the implementation of Community Protection Notices (CPN's).
- 6.2 These powers are delegated to both Local Authority and West Midlands Police. Within the Local Authority, both Regulation and Enforcement and Housing are authorised.

## 7. Consultation

- 7.1 In May 2016 a BeHeard public consultation on the Busker and Entertainment guide was launched. The document was also distributed via email to the Council's list of Buskers; to the shopping centres; to all BID's throughout the city; West Midlands Police; City Council Place managers; to complainants and to all relevant internal employees and departments. Council officers also carried out street walks within the retail area of the City Centre delivering the consultation document to businesses by hand.
- 7.2 In June 2016 Officers from Environmental Health visited businesses within the city centre to ensure all businesses directly affected by buskers within the city centre were fully aware of the draft document and the public consultation. Following these visits it was decided to extend the period of public consultation via BeHeard until 1st July 2016 to ensure that these businesses had ample opportunity to respond with their views and comments.
- 7.3 37 responses were logged via the website (appendix 3). Two responses were duplicates, therefore, 35 responses were received. Three of the responses were focused on street speaking activities and, therefore, were not included within the response analysis but will be retained for the street speaking guide consultation proposed for the future.

- 7.4 The participants came from a variety of backgrounds including council employees, residents, visitors, BID's and business. The BID's provided extensive responses within the consultation and they will be provided with a tailored written response to specific concerns and issues raised.
- 7.5 The analysis of the responses showed an overall 65% for the introduction of the guide and 14% against and 20% neither against nor for. There were a number of genuine concerns and questions regarding the implementation and resourcing of the guides, several sections of the guide have been be updated as a result, in particular a number of additional behaviours to reduce impacts have been be added. However, there is more support for this approach than for the PSPO.
- 7.6 Many respondents liked the voluntary aspect of the guide though a number felt stronger enforcement was required. One response suggested a licensing scheme not unlike those within London (this is not possible as London has its own London powers to tackle buskers, which is not open to any other LA).
- 7.7 A number of operational challenges have been raised through the consultation, ranging from proactive interventions, out of hours resource including weekends; promotion and distribution of the guide, cumulative impact of numbers of buskers in one area, to the relationship of businesses with buskers and entertainers. The BID's were particularly concerned with regard to available resource to deal with the impacts, out of hour resource and the relationship between businesses in their areas and these activities. Further discussion with the BID's will be needed to ensure their buy-in to the scheme.

## 8. Implications for Resources

- 8.1 The guides have been produced and consulted on within existing budgets.
- 8.2 The further production and distribution of the guides (electronically) will be met within existing budgets.
- 8.3 It is initially hoped that the guides will promote self-regulation and management. The guides are being produced so that those authorised under the Anti-Social Behaviour, Crime and Policing Act 2014 will be able to use these interventions to deal with the impacts of the activities.
- 8.4 No specific resource has been identified for this work.

## 9. Implications for Policy Priorities

- 9.1 The guides are consistent with the Councils six key strategic outcomes: a strong economy: safety and opportunity for all children, a great future for young people, thriving local communities, a healthy, happy population and a modern council in that all the guides have the underlying principles:

- **Thriving and Vibrant** - our streets and squares should be high quality welcoming places for everyone where our citizens' talent, richness of culture and entrepreneurial spirit flourish.
- **Respectful of others** - Our streets are home to tens of thousands of residents, businesses, local people and visitors - anyone using our streets should anticipate the needs of others and take all reasonable steps to minimise any negative effects of their activity.
- **Safe and Lawful** - anyone wishing to use these spaces must do so in a way that is safe, within the law and in compliance with any required permits and licences where required.
- **Fair** - we will foster a culture of community on our streets. We will empower our citizens to share our public space and resolve disputes quickly and informally wherever possible. Fair and effective enforcement will be available if someone is persistently acting unreasonably.
- **Inclusive and Family Friendly** - anyone using our streets and squares should take steps to ensure their activity is as inclusive as possible and that the content is suitable for the audience - which in nearly all cases will be a family audience. The Councils vision of prosperity, fairness and democracy underpins the suite of Public Space guides.

## 10. Public Sector Equality Duty

10.1. An Equality Analysis has been undertaken (Appendix 4). The results of the analysis indicate:

- It is envisaged that the outcomes from the plan will have a positive impact on all service users and stakeholders.
- Entertainers who disregard the guides and choose to behave in a way that negatively affects others will be affected by the plan depending on the degree that they chose not to adhere i.e. after informal interventions, formal interventions may include enforcement.
- A characteristic that may be adversely affected are those buskers and entertainers who have a mental health condition (disability). Should this be apparent through interventions of officers with any such persons then appropriate agencies will be contacted
- Buskers and street entertainers come from diverse backgrounds including those from the protected characteristics; however, there is no protected characteristic that is as associated with busking and street entertaining.

- Consultation of the policy will hopefully highlight any negative impacts, particularly on protected characteristics. Approximately 50% of buskers and street entertainers are from a minority ethnic background in Birmingham; the impact on uncooperative people would not be a consequence of their ethnicity, but as a consequence of them not adhering to the voluntary guide and potentially committing ASB. Interpretation services will be used for those whose first language is not English to ensure the entertainer understands firstly the behaviours to adhere to and secondly the action to be taken should their behaviour cause negative impacts.
- Those that chose to entertain within the public space and produce a negative impact within the community will be subjected to the hierarchy of interventions to reduce the impact. To minimise any potential bias of enforcement against entertainers a sector dispute resolution panel is in place which is independent of the enforcement procedures and will help to regulate the regulator.

## **ACTING DIRECTOR OF REGULATION AND ENFORCEMENT**

Background Papers: Nil

**STAKEHOLDERS INVOLVED IN THE PUBLIC SPACE VOLUNTARY GUIDES PROJECT**

1. The proposal to consider the introduction of a suite of guides (which includes buskers and street entertainment; street speaking; street trading; leafleting; and events) has been raised with the following:
  - City Centre Strategic Board.
  - The Community Safety Partnership's Day and Night time economy group.
  - Chairs of City Centre BID's (Retail; Colmore; Southside; Jewellery Quarter and Westside).
  - Equality.
  - Antisocial behaviour (Housing transformation team).
  - Acting Strategic Director of Place.
  - Legal Services.
  - The Prevent Team.
  - City Centre Residents Association.
  - Events.
  - Street Trading.
  - Licensing.
  - Head of Culture and Economy.
  - City Centre Operations.

All of the above have been part of the Buskers and Entertainment Guide production and consultation.

2. Council officers have engaged with the following in production and consultation of the Busker and street entertainment guide:
  - Musicians union.
  - Keep street live campaign.
  - West Midlands Police.
  - Equity.
  - Buskers in the city.
  - Residents in the City Centre.
  - Traders and businesses in the City Centre (including Retail and Colmore BID and Shopping Centres).
  - Public consultation (BeHeard; Web; written communication; Email).