

Birmingham City Council

Report to Cabinet

18 January 2022



Subject: City Centre City Centre Public Space Protection Order

Report of: Rob James – Managing Director of City Operations

Relevant Cabinet Member: Councillor John Cotton, Cabinet Member Social Inclusion, Community Safety and Equalities

Relevant O &S Chair(s): Councillor Carl Rice, Co-Ordinating Overview and Scrutiny Committee

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Are specific wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s): Ladywood, Soho and Jewellery Quarter, Nechells and Bordesley and Highgate.		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference:		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential:		

1 Executive Summary

- 1.1 The Anti-social Behaviour, Crime and Policing Act 2014 introduced tools and powers for use by councils and their partners to address anti-social behaviour (ASB) in their local areas. These tools are to be used for tackling ASB, focussing on the impact such behaviour can have on both communities and individuals.
- 1.2 Public Space Protection Orders (PSPO) are one of the tools available under the Anti-social Behaviour Crime and Policing Act 2014. PSPOs are wide-ranging and flexible powers for local authorities, which recognise that councils are often best

placed to identify the type of activities which are having a detrimental effect upon the quality of life for those who live in, work in or visit the local authority area. A PSPO identifies these activities, sets out conditions which aim to prevent or reduce their detrimental effects and defines the public space to which these conditions apply by way of a map identifying 'the restricted area'. This proposed PSPO orders anyone entering any public space in the restricted area to comply with the conditions¹.

- 1.3 Together with partners, Birmingham City Council Community Safety Team has been consulting on proposals to introduce a PSPO for the city centre.
- 1.4 This report sets out the rationale behind the introduction of the proposed PSPO; the proposed conditions, the findings from the recent public consultation exercise, and evidence.
- 1.5 It asks Cabinet to make a Public Space Protection Order if it is satisfied on reasonable grounds that the legal tests are met.

2 Recommendations

- 2.1 To consider the grounds for a PSPO within the restricted area as defined by the map, the outcome of the formal consultation and evidence.
- 2.2 That Cabinet approves a PSPO with the proposed conditions and restricted area.

3 Background (including consultation under s72 stage 1)

- 3.1 On 03/02/2021 West Midlands Police tabled a discussion at the City Centre Local Partnership Delivery Group (LPDG) requesting that consideration be given to submitting a PSPO application for the City Centre.
- 3.2 Partners concluded that there was enough verbal evidence provided to move forward with producing an evidence pack to consider a PSPO for the City Centre.
- 3.3 Following the LPDG meeting on 07/04/2021 WM Police produced a profile that showed the criminal and ASB issues within the City Centre. Based upon this and further discussion at the LPDG a draft set of conditions and map of the proposed area was produced on 14/04/2021.
- 3.4 Following the LPDG meeting on 07/04/2021 a consultation process started involving the police, community representatives, owners and occupiers of land. This included the PSPO being discussed at every City Centre LPDG meeting between March 2021 and September 2021 and updates and actions added to the LPDG action tracker. Partners consulted have included WM Police, WM Fire, BCC Regulation & Enforcement, Trident Reach, residents living within the City Centre, BID managers, CGL, Aston University, Network Rail, Network Four - Birmingham Pastors, Big Issue, National Express/Safer Travel, Birmingham

¹ Draft Order Appendix 4

Children Trust, St Basils, British Transport Police and Councillors Hartley and Bore.

- 3.5 On 16/06/2021 a tabletop discussion took place at Lloyd House which included partners from Office of Police and Crime Commissioner (OPCC), Change Grow Live (CGL) the Council's commissioned drug and alcohol support service, Trident Reach, rough sleeper outreach service, West Midlands Police, British Transport Police, City Centre Residents and Councillor Hartley. On 23/06/2021 a consultation meeting took place with Public Health. On 02/08/2021 an email was sent to the chairs of the Homelessness Partnership Board, Adult Safeguarding Board, Children Safeguarding Board and the Domestic Abuse Partnership Board providing a copy of the draft conditions and asking for comments.
- 3.6 Following requests from local Councillors the map was amended and a further profile was requested from WM Police to share any evidence in relation to the extended area.
- 3.7 Following the consultation discussions amendments were made to the proposed draft conditions and the map. This was duly presented to BCC Legal Services with the Police official response document on 16/08/2021. BCC Legal reviewed and amended the proposed conditions to ensure that they were lawful. BCC Legal requested a copy of the evidence e.g. Witness statements, consultation responses in support of the proposed PSPO to review.

4 Consultation- Stage 2

- 4.1 Between March 2021 and September 2021, a number of partnership consultation events took place.
- 4.2 Cabinet Member approval to commence public consultation was given on 03 November 2021.
- 4.3 On 05/11/2021 a public consultation was launched on Birmingham City Council's BeHeard platform. Details were shared with all six of our Local Partnership Delivery Groups, the Councillors representing the four wards covered by the PSPO proposal, and with the Homelessness Partnership, Adult Safeguarding, Children's Safeguarding and the Birmingham Community Safety Partnership Boards.
- 4.4 Birmingham City Councils Communication team posted details of the consultation on various social media outlets. Birmingham City Council Community Safety Team posted on the CSP twitter account.
- 4.5 On 05/11/2021 the public consultation went live on BeHeard for six weeks, concluding on 17/12/2021.
- 4.6 Throughout the consultation period Community Safety, British Transport Police, Business Improvement District staff and West Midlands Police officers undertook a number of "pop- up" consultation events in different locations in the PSPO map area.

- 4.7 The consultation finished on 17/12/2021 with 751 responses. Of the 751 people who took part in the consultation 619 (82.42%) agreed with all the conditions, 25 (3.33%) did not agree with any of the conditions. 107 agreed with some but not all conditions.
- 4.8 Of the 107 who agreed with some but not all of the conditions, 96 had concerns around the potential impact of the alcohol conditions upon people dealing with addiction issues. These concerns focused upon the potential for such individuals being subject to unfair treatment. Some respondents also had concerns over the possible impact of the PSPO conditions upon rough sleepers.
- 4.9 The Community Safety Team have put in place a fortnightly partnership tasking group, together with West Midlands Police and Trident Reach to ensure that the needs and interests of vulnerable people, including those who may be sleeping rough or part of the wider street community, are properly addressed and supported. This partnership has been in place since October 2020 and the focus is to ensure that any person begging in Birmingham is offered access to support services. Under the PSPO breach process any person who is at risk or has breached the PSPO and is begging, a rough sleeper or has some form of addiction will be referred into this partnership. If a person has vulnerabilities and/or addictions breaches will only be escalated to enforcement action on approval from support services.
- 4.10 The consultation demonstrated broad support for the proposed order and the Council believes that the concerns raised by respondents in respect of people with vulnerabilities can be addressed by the mechanisms and partnerships already in place and referenced in 4.9, above.
- 4.11 Risk Management
- 4.12 Reputational risk. BCC Community Safety Team have been working with WM Police since February 2021 to develop an evidence package, WM Police have invested resources into this process. Partners have been consulted and support the introduction of a PSPO.
- 4.13 City Centre public place risks. The PSPO will be used to advise people coming into the City Centre that we will not tolerate anti-social behaviour
- 4.14 All risks will be managed through the City Centre Local Partnership Delivery Group and the BCC Community Safety Team. This includes monthly partnership meetings that will monitor and track all risks and put in place as appropriate extra resources and interventions.

5 Compliance Issues:

5.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

- Birmingham City Plan: the PSPO will support the delivery of five of the plan's size priorities- an entrepreneurial city to learn, work and invest in,

an aspirational city to grow up in, a fulfilling city to age well in, a great city to live in and residents gaining the maximum benefit from hosting the Commonwealth Games.

- Localism in Birmingham: The Public Space Protection Order has been requested by the local community and partners to support improvement within the City Centre neighbourhood.
- Public Space Protection Orders are a power within the Anti- social Behaviour, Crime and Policing Act 2014 which local authorities can use to reduce the impact of crime & disorder in accordance with the Crime & Disorder Act 1998

5.2 Legal Implications

- 5.2.1 The relevant statutory provisions are contained in The Anti-social Behaviour, Crime and Policing Act 2014, s59 - s75.
- 5.2.2 A local authority may make a PSPO if satisfied on reasonable grounds that two conditions are met (s59.1).
- 5.2.3 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 the area that they will have such an effect. (s59.2)
- 5.2.4 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.
- 5.2.5 The only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order:
- (a) to prevent the detrimental effect referred to (6.2.3 above) from continuing, occurring or recurring, or
 - (b) to reduce the detrimental effect or reduce the risk of its continuance, occurrence or recurrence.
- 5.2.6 The evidence needs to be considered and a decision made as to whether the statutory test is met. Councillors can consider the nature of the incidents and can reach the conclusion that such incidents are likely to have a detrimental effect on the quality of life of people who live in or work in the restricted area.
- 5.2.7 There should be careful consideration of whether the order and each condition is a proportionate and necessary response to what they understand the problems to be.

- 5.2.8 Failing to comply with the order without reasonable excuse is a criminal offence, penalty is a fine (s67).
- 5.2.9 Fixed penalty notices may be issued giving a person an opportunity of discharging any liability to conviction for an offence by payment of a fixed penalty to the Council (s68)².
- 5.2.10 Anyone who lives in or regularly works in or visits the area can appeal a PSPO in the High Court within 6 weeks of issue on the following grounds:
- (i) that the Council did not have the power to make the order or to include particular prohibitions or requirement.
 - (ii) that a requirement under this chapter (Chapter 2 Anti-social Behaviour Crime and Policing Act) was not complied with in relation to the order.
- 5.2.11 In deciding whether to make a PSPO under s59 and if so, what it should include:
- i) The Council must have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the Convention.
 - ii) The Council must carry out the necessary consultation, publicity, notification.
- 5.2.12 The council must consult with the police; this should be done formally through the chief officer of the police and the Police and Crime Commissioner.
- 5.2.13 Owners or occupier of land in the proposed restricted area must be consulted.
- 5.2.14 The council must also consult with whatever community representatives they think appropriate.
- 5.2.15 It is strongly recommended that the council engages in an open and public consultation to give users of the public space the opportunity to comment on whether the proposed restrictions are proportionate or needed at all.
- 5.2.16 The council should also ensure that specific groups likely to have a particular interest are consulted such as local residents' associations, regular users of the area, people who work in the area and visit the area³.
- 5.2.17 Consultation should be meaningful and effective.
- 5.2.16 The Council must publish the text of a proposed order.

5.3 **Financial Implications**

- 5.3.1 The cost is approximately £15,000. This will be paid for within Community Safety budget and is a one-off payment with no on-going costs.

5.4 **Procurement Implications (if required)**

² See Appendix 5

³

5.4.1 None

5.5 Human Resources Implications (if required)

5.5.1 None

5.6 Public Sector Equality Duty

5.6.1 The public sector equality duty drives the need for equality assessments (Initial and Full). An initial assessment should be prepared from the outset based upon available knowledge and information. The Community Safety Team and partners regularly receive reports of anti-social behaviour including street drinking, drug dealing and drug use, begging and rough sleeping from the public and from local business which has a detrimental effect on their quality of life.

5.6.2 The aim of the City Centre PSPO is to protect people in the city centre from anti-social behaviour (ASB). The PSPO will benefit all those who live in or visit the areas and those businesses and traders who operate in the areas affected by ASB and where the PSPO will be introduced.

5.6.3 People of all ages, faith, genders and ethnicity are impacted by ASB and its associated causes. Those with a disability, learning disability and who suffer mental ill health are often affected the most due to their vulnerabilities. The introduction of the PSPO will help reduce ASB in the City Centre making it a more welcoming and safer environment.

5.6.4 The Council is mindful of the concerns over any impact the PSPO may have upon socially excluded groups, including those dealing with addiction issues or rough sleeping. These were reflected in the responses to the public consultation. Therefore, the management of the PSPO will be based upon an approach of support and enforcement by partners to ensure vulnerable individuals are not impacted or treated unfairly. This support includes working with homeless and outreach services as well as drug and alcohol support services. The Community Safety Team have put in place a fortnightly partnership tasking group together with West Midlands Police and Trident Reach to ensure that the needs and interests of vulnerable people, including those who may be sleeping rough or part of the wider street community, are properly addressed and supported. We are committed to ensuring a compassionate and understanding approach to enforcement, closely allied to support from appropriate services.

6 Background Documents

6.1 Risk Assessment

6.2 Environmental and Sustainability assessment

List of appendices accompanying this report:

Appendix One – Final draft conditions

Appendix Two – Final draft map of restricted area.

Appendix Three – Public consultation outcomes

Appendix Four – Copy of the draft order

Appendix Five – Copy of the breach process.

Appendix Six – Equality Impact Assessment

Appendix Seven – Police profile

Appendix Eight – Aug – Nov 2021 data.