

Report



Cabinet Member for Licensing & Regulation

Part 1

Date: 16 January 2018

Subject Newport City Centre Market Arcade: Public Space Protection Order- Consultation

Purpose The Cabinet Member for Licensing & Regulation is asked to consider and agree to public consultation on the possible introduction of a Public Space Protection Order (PSPO) to close the Market Arcade at night to the public.

Author Public Protection Manager

Ward Stow Hill

Summary A Public Space Protection Order (PSPO) is designed to prevent individuals or groups committing antisocial behaviour in a public space where the behaviour is having, or is likely to have, a detrimental effect on the quality of life of those in the locality; and the behaviour is or likely to be persistent or continuing in nature and be unreasonable.

The city centre Market Arcade was built in 1869 and runs between the north end of High St and Market St (Map at Appendix A). Its use has declined substantially in recent decades although it is hoped that HLF Townscape Heritage Funding will enable the Arcade to be restored and brought back into use as a 21st century asset to the City.

Due the anti-social behaviour being experienced in the Arcade, it is timely for the Council to consider implementing a PSPO to close the Arcade at night to the public. There is a public right of way, a highway, running through the Arcade and therefore the arcade owners cannot simply close the Arcade whenever they wish.

This report asks the Cabinet Member to agree that public consultation takes place as to a possible PSPO to close the Arcade at night with the use of gates. Approval of a PSPO is reserved to Full Council. Therefore, if the Cabinet Member considers that a PSPO should be made, following consultation and in the light of representations received, then a Report will be presented to Council for consideration and agreement.

Proposal To approve public consultation on the proposed Newport Market Arcade Public Space Protection Order to close the Arcade at night to the public.

Action by: Head of Law & Regulation

Timetable: Immediate

This report was prepared after consultation with:

- Head of Law & Regulation
- Head of Finance
- Head of People and Business Change
- ASB Manager/ Community Safety Warden Service
- Gwent Police
- Ward Councillors

Signed

Background

1. What is a Public Space Protection Order?

The Antisocial Behaviour, Crime and Policing Act 2014, commenced in October 2014, and introduced the Public Spaces Protection Order (PSPO).

A PSPO is designed to prevent individuals or groups committing anti-social behaviour in a public space where the behaviour is having, or is likely to have, a detrimental effect on the quality of life of those in the locality; and the behaviour is or likely to be persistent or continuing in nature; and be unreasonable. The power to make an Order rests with local authorities, in consultation with the Police, Police and Crime Commissioner and other relevant bodies who may be impacted upon by the Order.

The Council can make a PSPO on any public space within its own area. The definition of public space is wide and includes any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, for example a shopping centre. The maximum length of a PSPO is three years, but it can be reviewed at any time.

When making a PSPO, the Council must have particular regard to the rights of freedom of expression and freedom of assembly and association set out in the Human Rights Act 1998.

2. Restrictions

Restrictions and requirements are set by the Local Authority and can be blanket restrictions or requirements, or can be targeted towards certain behaviour by certain groups at certain times. They can restrict access to public spaces (including certain types of highway) where that route is being used to commit anti-social behaviour.

A PSPO is intended to provide the Council and Police with additional powers to require individuals or groups from refraining from certain actions or to do certain things within specified times and within a clearly specified geographical location, to quote the Act "it can either be a blanket restriction or requirement or can be targeted against certain behaviours by certain groups at certain times".

Orders can be enforced by a Police Officer, Police Community Support Officer and delegated Council officers. A breach of the Order is a criminal offence and can be dealt with through the issuing of a Fixed Penalty Notice of up to £100 (to be fixed locally), or a Level 2 or 3 fine (£500 or £1,000 depending on the specific offence), on prosecution.

3. In deciding to make a PSPO, the Council will need to consider:

- Is there a specific problem caused by particular activities?
- If so, what needs to be done to regulate or control the problem?
- What is the least restrictive way of achieving this?

4. Appeals against the making of a PSPO

Anyone who lives in, or regularly works in or visits the area can appeal a PSPO in the High Court within six weeks of issue. Further appeal is available each time the PSPO is varied by the Council.

5. Enforcement of the PSPO

A PSPO can be enforced by a Police Officer, Police Community Support Officer and delegated Council officers e.g. a Community Safety Warden.

6. What to include in a possible Market Arcade PSPO?

The Market Arcade, originally known as Fennell's Arcade, was built in 1869, linking the newly built railway station (1850), Post Office (1844) and Provisions Market (1862). Map at Appendix A.

The arcade was well-used for over a century until shopping habits changed and Newport's retail centre shifted, particularly with the development of the Kingsway Centre in 1968. It runs between the north end of High St and Market St. Its use has declined substantially in recent decades although it is hoped that HLF Townscape Heritage Funding will enable the Arcade to be restored and brought back into use as a 21st century asset to the City.

Due the anti-social behaviour being experienced in the Arcade, we believe it is timely for the Council to consider implementing a PSPO to close the Arcade at night to the public. There is a public right of way, a highway, running through the Arcade and therefore the owners cannot simply close the Arcade whenever they wish.

The Police, Council officers and owners/tenants report that at night the Arcade suffers from anti-social behaviour. This takes the form of damage to property, graffiti, being used as a toilet, drug taking/ dealing, noise nuisance. Meetings have taken place to determine the most suitable way of alleviating this anti-social behaviour and the most appropriate way would appear to be by the council introducing a PSPO to close the arcade to the public at night by the installation and use of gates. Owners/tenants etc. would still have access to the Arcade whenever they wished, but the public would no longer be able to use it at night as a cut-through; but they would have an easy alternative route via High St and Market St.

Most arcades of this type e.g. the nearby Newport Arcade are closed to the public at night.

7. Therefore, the proposed PSPO restriction that we wish to consult on is:

Closing the Market Arcade to the Public at night

The Arcade would be closed by the use of gates in the evening and reopened in the morning. An alternative route exists along High St and Market St.

The owners/ tenants would have a means of accessing their properties when the gates (of the "push-out" design) were closed; whether by means of a key or coded access etc., as would the emergency services.

Relevant Considerations

1. Funding for, and the construction, of the proposed gates

Funding would need to be identified before the PSPO could be approved, as would any necessary permissions e.g. listed building consent: the Arcade is in a conservation area. The gates would have to be of the "push out" design to ensure anyone in the Arcade could escape in the event of an emergency.

2. Management of the gates

It will need to be determined who would manage the closing and opening of the gates as this will not be the Council and at what times.

8. Consultation

It is proposed that consultation takes place with all affected parties to see whether closing the Arcade at night because of anti-social behaviour is appropriate.

It is proposed that a public consultation be commenced for a 4 week period.

The public/ owners/ users will be invited to make comment on the proposed closure at night; whether they have experienced anti-social behaviour in the Arcade and whether they support the proposed Order.

Public Place Protection Order- Market Arcade- Consultation Plan

Consultee	Medium
COUNCIL Street Scene, Legal, Planning Regen, Community Safety- CCTV/ Wardens/ ASB. Strategic Director - Place. Env Health, Press Team, Street Scene	Emails/internal meetings
CM Streetscene Elected Members of NCC for Stow Hill Ward	
OTHER AGENCIES Gwent Police- Chief Officer for Newport and the Pillgwenlly Policing Team. South Wales Fire and Rescue. Members of the <i>One Newport</i> ASB Theme Group	Email/meeting
Police and Crime Commissioner	Email
Businesses in the Arcade and adjacent	Email/letter
THE PUBLIC	Press release/Twitter/Facebook Web Site "Have Your Say"

9. What is the Cabinet Member being asked to do?

1. To consider the gating restriction.
2. Approve the consultation plan.
3. Oversee the consultation process to ensure it is robust, and that the outcomes are taken into consideration in drafting an Order for consideration by Council that would have public support. He would be asked to recommend the PSPO to Council, if he considered this appropriate.

10. Approving the PSPO

The results of the consultation will be reviewed and a report and draft PSPO produced for consideration. Final approval will be by Full Council.

11. Financial Summary

Funding for the proposed gates has yet to be identified. Otherwise there is no financial impact from this report.

12. Risks

Risk	Impact of Risk if it occurs (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
Council puts in measures that are not supported	H	L	Consultation. Listen to all groups that are affected.	Head of Law and Regulation
Council puts in measures that are disproportionate to the problems experienced and are open to legal challenge	H	M	Ensure the evidence is robust and that the measures that are introduced are balanced against the antisocial behaviour experienced and the right level of restrictions to address it. Take legal advice.	Head of Law and Regulation

13. Links to Council Policies and Priorities

Ensuring that this work is completed as required will support the following Council Policies and Strategies:

The proposed PSPO has clear links to the aims and objectives of Newport City Council's Corporate Plan (relevant themes are "Resilient communities" and "A thriving city").

Newport's Community Strategy 2010-2020 "Feeling Good About Newport" (Relevant themes: "To be a prosperous and thriving city"; "To have a better quality of life"; "To have vibrant and safe communities").

The proposals also demonstrate that the service area is acting in accordance with the "Be Courageous" value outlined in the Corporate Plan: the proposal is ambitious in order to try and improve the situation for the local community.

14. Options Available and considered

- i) To approve the public consultation on the proposed Market Arcade Public Space Protection Order
- ii) Not to approve the public consultation on the proposed Market Arcade Public Space Protection Order.

15. Preferred Option and Why

To approve the public consultation on the proposed Market Arcade Public Space Protection Order to close the Arcade at night to the public.

This will allow the Council to consider the views of owners/tenants, users, the Police and the public, make amendments where necessary and progress a report to Full Council.

16. Comments of Chief Financial Officer

There are no financial implications as a result of this report as it is only seeking permission to begin public consultation on issuing a PSBO for the Market Arcade.

A funding solution to any investment, be it one-off or on-going, will need to be considered when the results of the consultation are known and a way forward agreed.

17. Comments of Monitoring Officer

The Council has a statutory power under the Anti-Social Behaviour, Crime and Policing Act 2014 to make Public Space Protection Orders in order to prevent types of anti-social behaviour which have, or are likely to have, a detrimental effect on the quality of life of those in the locality and the behaviour is or is likely to be persistent or continuing in nature. The nature and extent of the PSPO must be reasonable having regard to the type of behaviour and its impact on the public.

In accordance with the legislation and the statutory guidance, the Council is required to consult with the Police, the Police and Crime Commissioner and specific community groups, and to have regard to any observations made before deciding whether or not to introduce any PSPO. However, because of the potential impact of the closure of the Market Arcade to the public at night, it is suggested that a public engagement exercise should be undertaken. The final decision regarding the adoption of any PSPO is a matter for Full Council.

When considering the need for any PSPO, the Council must act reasonably and, in particular, it must have regard to the Human Rights Act 1998. However, the rights and freedoms set out in the Articles to the Human Rights Act are qualified rights and can lawfully be restricted or limited where this is a necessary and proportionate means of achieving a legitimate aim, including public safety and the prevention of crime and disorder. It is a question of balancing rights and freedoms of individuals against the needs of the wider

community. Therefore, the Council has to take a balanced decision regarding the need for a gating order restricting public access to the Arcade at night and its impact on the freedoms and rights of individuals. Any prohibition order must be a reasonable and proportionate means of preventing or reducing the detrimental impact of any specific type of anti-social behaviour associated with the Arcade.

Public support for a particular measure is not, of itself, sufficient grounds to make a PSPO. The Council needs to be satisfied that the proposed gating order PSPO is justified because of specific problems and a need to control the anti-social behaviour in order to protect the public. The Council also has to be satisfied that the extent of the controls or prohibitions is reasonable and that there are no alternatives, and less restrictive ways, of regulating the problems. In this case, a gating order would appear to be reasonable and proportionate, having regard to the anti-social behaviour within the Arcade at night. However, effective implementation of the PSPO would require the owners of the properties within the Arcade to take collective responsibility for opening and closing the gates at the appointed times. Because the Market Arcade is a listed building, within a conservation area, and the gates will have to be affixed to the structure, then planning and listed building consent will also be required for the installation of the security gates.

There is a statutory right of appeal to the High Court within 6 weeks if a PSPO is considered to be unreasonable.

18. Comments of Head of People and Business Change

The report indicates that there have been high rates of anti-social behaviour recorded in Market Arcade. PSPOs are already in place in Newport City Centre and more recently Pillwngwenly and provide the Police with additional enforcement powers to address key issues which concern local communities and it is believed that similar powers could be effective in Market Arcade. As a PSPO is, by nature, restrictive it is appropriate to consult with the local community on the specific conditions and this report sets out a framework for doing this.

19. Comments of Ward Councillors

The Stow Hill Ward councillors have been informed of the initiative and are supportive.

20. Comments from Non-Executive Members

Councillor G Berry:

I look forward to this action taking place and returning Market Place to full trading.

Councillor C Ferris:

Having attended the meetings trying to bring the arcade back to its former state it, it would be remiss of the Council to let that work become undone by leaving the arcade open and vulnerable to antisocial behaviour. Going on patrol with the Street Pastors we have seen, quite apart from the arcade being used as a urinal on a regular basis, drug dealing going on there. When P&O owned the Cambrian road arcade, there then property manager, Mr Mike Hine said that getting the closure of the arcade at night was the best thing that they ever did, enabling the company to invest in that arcade and bringing it up to the high standard that we hope the Market Arcade will be able to attain in the future.

Councillor M Al-Nuaimi:

I support a Public Space Protection Order in respect of Newport City Centre Market Arcade. Over the years I have received many complaints about the arcade and anti-social behaviour, especially during closing hours of the businesses operating in the Arcade. Members of the public are generally put off by the ASB and so they are deterred from exercising their public right of way through it.

Securing the arcade by means of gates during the night hours will help in dealing with the ASB. The PSPO will be beneficial also after regeneration that will be possible with a successful grant application.

Scrutiny Committees

No consultation with Scrutiny Committees has been undertaken.

Equalities Impact Assessment and the Equalities Act 2010

No Equalities Impact Assessment is necessary in this case.

The proposals set out in this report have no more impact on those with protected characteristics than any other group or individual.

Children and Families (Wales) Measure

The proposals set out in this report have no more impact on children or families than any other group or individual.

Wellbeing of Future Generations (Wales) Act 2015

The proposals set out in the report to be consulted on would contribute to a number of the Well-being Goals set out in the Wellbeing of Future Generations (Wales) Act 2015. Relevant goals are “A more equal Wales”, “A Wales of cohesive communities”, “A Wales of vibrant culture and thriving Welsh language”.

The proposal takes account of the sustainable development principle. The proposals would contribute by helping to prevent problems of antisocial behaviour blighting the area, which would help to build a cohesive and sustainable community.

The proposed consultation is in line with the requirement to involve people in decisions that affect them.

The proposal contributes towards the Council’s Well-being Objective “To build cohesive and sustainable communities” and, in particular, the step to prevent and tackle instances of anti-social behaviour impacting upon the residents and the business community.

Crime and Disorder Act 1998

The proposals set out in this report are designed to reduce Crime and Disorder and have been requested in part by the Police.

Consultation

Comments received from consultation on this report are detailed in this report.

Background Papers

Home Office Guidance on PSPOs

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/364851/Public_and_open_spaces_information_note.pdf

Dated: 16 January 2018

Appendix A

Map of the proposed PSPO coverage

