

# Report

## Cabinet Member for Strategic Planning, Regulation and Housing

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### Part 1

Date: 31 August 2023

**Subject** Market Arcade PSPO Renewal Consultation

**Purpose** To seek approval from Cabinet Member to carry out public consultation on a proposed renewal of the Market Arcade Public Spaces Protection Order.

**Author** Public Protection Services Manager

**Ward** Stow Hill

**Summary** The Cabinet Member for Strategic Planning, Regulation and Housing is asked to consider and agree to public consultation on the proposed renewal of a Public Spaces Protection Order (PSPO) to close the Market Arcade at night to the public.

**Proposal** To carry out public consultation on a proposed renewal of the Market Arcade Public Spaces Protection Order.

**Action by** Public Protection Services Manager

**Timetable** Immediate

This report was prepared after consultation with:

- Community Protection Manager
- Head of Finance
- Head of Law and Standards
- Head of People Policy and Transformation
- Strategic Director
- Gwent Police
- Ward Councillors

**Signed**

## **Background**

### **Definitions**

A Public Spaces 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 powers to make an Order rest 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 regard to the rights of freedom of expression and freedom of assembly and association set out in the Human Rights Act 1998.

### **Restrictions**

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.

### **Considerations**

In deciding to make a PSPO, the Council will need to consider a number of questions including;

- 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?

### **Appeals**

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.

### **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). It runs between the north end of High Street and Market Street (Map at Appendix B). Its use declined over time but is now a key element of the regeneration of the market area and has received substantial investment. Businesses have returned and the arcade is once more a vital part of city centre life.

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.

In 2020 the council introduced a PSPO at the Market Arcade due to antisocial behaviour and a risk to development plans. The police, council officers and owners/tenants reported that at night the arcade

suffered from antisocial behaviour in the form of damage to property, graffiti, being used as a toilet, drug taking/dealing, and noise nuisance.

The 2020 order was very successful and due to the introduction of the gates during the evening and night, problems were eliminated. This has improved the experience of using the market during the day for members of the public and businesses.

Antisocial behaviour remains a risk within the city centre which has its own PSPO supporting efforts to reduce problems. It is considered that without the gates, the problems encountered previously that led to the introduction of PSPO/gates would return, and those problems that persist in the city centre in the evenings and at night, would extend into the arcade. It is expected that the proposed renewal of the PSPO would be supported by all stakeholders.

This report asks the Cabinet Member to agree that public consultation takes place for the renewal of the PSPO to close the arcade at night with the use of gates, as set out on the proposed order at Appendix A.

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.

Due to the antisocial behaviour risk, it is proposed to renew the restriction to close the arcade at night to the public using gates. 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.

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 Street and Market Street.

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

## **Proposal**

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

- Closing the Market Arcade to the Public at night to be 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. (All details are contained within the appendices).

## **Consultation**

It is proposed that consultation takes place with all affected parties to see whether closing the Arcade at night because of antisocial behaviour is appropriate. It is proposed that a public consultation be commenced for a 2-week period. The public/owners/users will be invited to make comment on the proposed closure at night; whether they have experienced antisocial behaviour in the Arcade and whether they support the proposed Order.

The following will be consulted:

- Elected Members of Stow Hill Ward
- Gwent Police
- Police and Crime Commissioner
- South Wales Fire and Rescue
- Chair of Safer Newport ASB Subgroup
- Local businesses, particularly those within and near the arcade
- Members of the public via social media messaging

- Officers from the following services within Newport City Council:
  - Infrastructure and Highways
  - Planning and Regeneration
  - Community Protection
  - Public Protection
  - Partnerships

### Financial Summary (Capital and Revenue)

There are no costs required beyond existing provision.

	Year 1 (Current) £	Year 2 £	Year 3 £	Ongoing £	Notes including budgets heads affected
Costs (Income)	0	0	0	0	
Net Costs (Savings)					
Net Impact on Budget					

### Risks

Risk Title / Description	Risk Impact score of Risk if it occurs* (H/M/L)	Risk Probability of risk occurring (H/M/L)	Risk Mitigation Action(s) What is the Council doing or what has it done to avoid the risk or reduce its effect?	Risk Owner Officer(s) responsible for dealing with the risk?
Council puts in measures that are unsupported.	M	L	The PSPO is a renewal of a successful and popular order; and a consultation exercise will have been completed.	Public Protection Services Manager
Council puts in measures that are disproportionate to the problems experienced and are open to legal challenge.	M	L	The existing order had restrictions that worked well and there was an alternative to the arcade via a very short detour.	Public Protection Services Manager

### Links to Council Policies and Priorities

The council's corporate plan shows a commitment to the economy, education, and skills within its well-being objective 1 delivering a Newport that is thriving and growing and aspiring to provide opportunities to all. There is a focus on re-vitalising the city centre. This PSPO fits well with this objective as it seeks to provide businesses in Newport with an improved trading environment free of antisocial behaviour.

The council's corporate plan shows a commitment to the environment and infrastructure within its well-being objective 2 delivering a Newport that seeks to protect and enhance our environment whilst reducing our carbon footprint and preparing for a sustainable and digital future. This PSPO fits well with this objective as it seeks protect such a historic arcade valued by the people of Newport as an important structure and an area that prompts civic pride.

The maintenance of such a PSPO in this key area also supports Safer Newport, the area's Community Safety Partnership, which has a commitment to reduced antisocial behaviour and crime in the city centre.

### **Options Available and considered.**

1. Require officers to seek views in a public consultation. This will allow the process of renewing the PSPO to progress.
2. Instruct officers to not consult, which will result in the PSPO ending with no renewal.

### **Preferred Option and Why**

1. Require officers to seek views in a public consultation. This will allow the process of renewing the PSPO to progress. The PSPO has been successful, and it seems a necessary and sensible protection to the arcade and the city centre and its visitors.

### **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.

### **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 to prevent types of antisocial 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 to introduce or renew any PSPO. The final decision regarding the adoption or renewal 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 must take a balanced decision regarding the continued 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 antisocial behaviour associated with the Arcade.

Public support for a particular measure is not, of itself, sufficient grounds to make or renew a PSPO. The Council needs to be satisfied that the continuation of the gating order PSPO is justified because of specific problems and a need to control the antisocial behaviour to protect the public. The Council also must 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 is considered to be reasonable and proportionate, having regard to past incidences of antisocial behaviour within the Arcade at night and the significant improvement in anti-social behaviour that has resulted from the 2020 PSPO.

Effective implementation of the PSPO requires the owners of the properties within the Arcade to take collective responsibility for opening and closing the gates at the appointed times.

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

## **Comments of Head of People, Policy, and Transformation**

The report seeks approval to carry out a public consultation on a proposed renewal of the PSPO in the Market Arcade. The report notes that a previous PSPO introduced in 2020 was successful in eliminating the antisocial behaviour problems that occurred during the evening and night, improving the experience of using the market during the day for members of the public and businesses, which links both to the objectives in the corporate plan and the work and ambition of Safer Newport and in addition is congruent with the Well-being of Future Generations Act.

It is proposed that the consultation will take place over a 2-week period with all affected parties to see whether closing the Market Arcade to the public at night because of antisocial behaviour is appropriate and whether they experienced issues in the Arcade. Following the consultation, a report will be presented to Council for consideration and agreement.

A Fairness and Equality Impact Assessment isn't deemed necessary in this case as the proposal has no more impact on those with protected characteristics than any other group or individual. While the proposed consultation will give people the opportunity to give their support or raise any objections.

There are also no direct human resource implications.

## **Fairness and Equality Impact Assessment:**

No Equalities Impact Assessment is necessary in this case as the proposals set out in this report have no more impact on those with protected characteristics than any other group or individual.

- The proposals set out in this report have no more impact on children or families than any other group or individual.
- The proposals set out in the report to be consulted on would contribute to several 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.

## **Crime and Disorder Act 1998**

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

This PSPO will enhance the work being done in the city to prevent, crime and disorder in the area.

## **Consultation**

The purpose of the report is to allow consultation. The responses from consultees will feature within a possible future report for Full Council.

## **Background Papers**

1. Proposed Renewed Order
2. Map of PSPO Proposed

**Dated: 31 August 2023**

## **Appendix A: Proposed Renewed Order**

### **ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014 SECTION 59 PUBLIC SPACES PROTECTION ORDER 2020 MARKET ARCADE, NEWPORT NP201FS**

NEWPORT CITY COUNCIL in exercise of its powers under Section 59, 64 and 72 of the Anti-Social Behaviour, Crime and Policing Act 2014 ("the Act") hereby makes this Order, being satisfied on reasonable grounds that activities in a public space, namely Market Arcade, Newport, have had or are likely to have a detrimental effect on the quality of life of those in the locality and that these activities involved or will involve various Anti-social behaviours. Further, Newport City Council believes that the effect, or likely effect, of the said activities is, or is likely to be, persistent or continuing in nature, such as to make the activities unreasonable and justifies the restriction imposed by this Order: -

1. This Order shall come into operation on ..... and shall have effect for a period of 3 years thereafter, unless extended by further Orders under the Council's statutory powers.
2. This Order relates to the public place as shown outlined in red on the Plan annexed to this Order ("the Restricted Area").
3. Except as provided in Articles (6) and (7) below, no person shall use the public right of way over the Restricted Area between the hours of 20:00 to 07:00 hours, 7 days a week.
4. Gates will be installed at both ends of the Restricted Area and the said gates will be opened and closed in accordance with Article (3) above.
5. Any person using the gates referred to in Article (4) to gain access to or from the Restricted Area shall ensure that the gates are closed and locked immediately after they are used.
6. The restriction in Article (3) of this Order shall not apply to any person who owns or occupies premises within or adjoining the Restricted Area.
7. The restrictions in Articles (3) and (5) of this Order shall not apply to any Police, Ambulance or Fire Service personnel acting in pursuance of statutory powers or duties or to any statutory undertakers, gas, electricity, water or communications provider requiring access to their apparatus situated in the Restricted Area.
8. The alternative route for pedestrians is via High Street and Market Street, Newport as shown by a yellow line on the Plan annexed to this Order.
9. If, without reasonable excuse, you breach the prohibition in Article (3) you may be prosecuted. If you are prosecuted and convicted the maximum penalty is a fine not exceeding level 3 on the standard scale (currently £1,000).
10. If any interested person desires to question the validity of this Order on the grounds that the Council had no power to make it or that any requirement of the Act has not been complied with in relation to this order, he or she may apply to the High Court within 6 weeks from the date on which this Order is made.

# Appendix B: Map of PSPO

