

# Report

## Council

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### Part 1

Date: 15 September 2023

**Subject** **Market Arcade PSPO Renewal**

**Purpose** To ask council to agree to the renewal of the Market Arcade Public Spaces Protection Order.

**Author** Public Protection Services Manager

**Ward** Stow Hill

**Summary** Council are asked to agree to the renewal of a Public Spaces Protection Order (PSPO) to close the Market Arcade at night to the public.

**Proposal** **To renew the Market Arcade Public Spaces Protection Order.**

**Action by** Head of Environment and Public Protection

**Timetable** Immediate

This report was prepared after consultation with:

- Community Protection Manager
- Public Protection Services Manager
- Head of Finance
- Head of Finance
- Head of Law and Standards
- Head of People Policy and Transformation
- Antisocial Behaviour Liaison Team

**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.

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

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

This report asks council to agree to 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.

## **Proposal**

Therefore, the proposed PSPO restriction that the council is asked to agree is:

- Closing the Market Arcade to the Public at night to be reopened in the morning.

## **Consultation**

Consultation with the public took place in September 2023 via direct discussion on a day of action and by social media messaging and website advertisement. The outcome of the consultation is as follows:

- 32 responses were received. (This is a significant increase compared to the previous consultation)
- 84% of respondents report witnessing or being affected by ASB in the area occasionally or frequently prior to the gates being in place.
- 87.5% of respondents state they never or rarely see ASB since the gates have been in place.
- 93% of respondents agree with the gating order.
- 50% of respondents remain concerned whilst 34% are less concerned (It is considered this may be due to the success of the measure).
- 87.5% of respondents expressed concern about the return of ASB if the gates were removed.
- 53% of respondents were businesses and the rest were members of the public.

The increased number of responses by members of the community was pleasing, it is suggested this engagement strongly supports the reinstatement of the PSPO.

The following other individuals/agencies were consulted:

- Elected members of the Stow Hill ward
- Gwent Police Local Officers and the Chief Constable

- Police and Crime Commissioner and Officers with the service
- Local businesses
- Members of the public
- City Centre Manager
- Arcade Management

As the PSPO seeks to restrict a right of way it is important to seek and consider the views of occupiers of premises adjacent to the highway and people in the locality. This was done on the day of action and by social media. The alternative route information was made available and clearly described.

### Financial Summary (Capital and Revenue)

There are no costs required beyond existing provision.

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

### Risks

<b>Risk Title / Description</b>	<b>Risk Impact score of Risk if it occurs* (H/M/L)</b>	<b>Risk Probability of risk occurring (H/M/L)</b>	<b>Risk Mitigation Action(s)</b> What is the Council doing or what has it done to avoid the risk or reduce its effect?	<b>Risk Owner</b> Officer(s) responsible for dealing with the risk?
ASB and crime returns to an area of importance in Newport.	H	H	Agree the PSPO.	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. Agree to the PSPO at Market Arcade as outlined in the appendices.
2. Refuse the PSPO renewal request.

### **Preferred Option and Why**

1. Agree to the PSPO at Market Arcade. 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 additional reported financial implications from continuing this PSPO, and any periodic costs of monitoring/applying the restrictions will be afforded from existing resources.

The cost of continuing to operate and maintain the gates will continue to be met by owners/tenants of the arcade.

### **Comments of Monitoring Officer**

As set out in the report, the Council has the power to make a PSPO provided it is satisfied that activities being carried on in a given location are having a detrimental effect on the quality of life of those in that locality or it is likely that such activities will occur. The effect or likely effect of the activities in question must be persistent or continuing, unreasonable in nature and of sufficient to justify any restrictions imposed by the PSPO. The Order may prohibit, or impose requirements upon, activities carried on in the area to which the Order applies, or both. Any prohibition or restriction must be reasonable to impose in order to prevent or reduce the detrimental effect referred to above.

In this case, the Council is seeking to make a PSPO which would restrict access to the highway (footpath) which runs through the Market between 8pm and 7am. The classification of this highway is such that it is within the Council's powers to do this, provided that the above criteria are satisfied. Before making the Order, the Council must consider the likely effects on the occupiers of premises adjoining or adjacent to the highway (footpath), the likely effect of making the Order on other persons in the locality and the availability of a suitable alternative route. Furthermore, before making the proposed Order, the Council must notify persons who would potentially be affected by the proposed order (i.e. persons with properties adjoining or adjacent to the highway or others in the locality), inform those persons how they can see a copy of the proposed order, provide an opportunity to make representations and consider any representations made. It is assumed that the consultation referred to above includes all of the persons in these categories.

A PSPO may not restrict access to a highway for the occupier of a premises adjacent to or adjoining the highway, may not restrict access to a highway which is the only or principal means of access to a dwelling and may not restrict access to premises used for business or recreational purposes during the hours when those premises are usually open for business. However, the Council may install barriers or gates to enable the enforcement of the PSPO. It is presumed that the above requirements would be complied with by providing a key or a code to enable those individuals who have a legitimate need to do so to access the footpath at night.

It is understood that the gates referred to in the report are already in place and therefore no further planning permission or listed building consent should be required, unless any changes to the gates are proposed.

A person who lives in an area subject to a PSPO or who regularly works in or visits that area may apply to the High Court to challenge the validity of the Order. Such challenge must be made within 6 weeks of the Order being made. It would appear, however, that the risk of challenge to the proposed order is low,

given that this is in effect an extension of an order that is already in place and that no strong objections appear to have been received during the consultation referred to above.

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

The report indicates that there have been high rates of anti-social behaviour recorded in the Market Arcade area. A PSPO is already in place in Market Arcade and provides the Police with additional enforcement powers to address key issues which concern local communities, and this report asks council to agree to the renewal of the PSPO.

As a PSPO is, by nature, restrictive it is appropriate to consult with the local community on the proposal and this report outlines the consultation undertaken. The consultation included local businesses, the public, members of the Public Services Board's Safer City Centre Group, Gwent Police, the Police and Crime Commissioner and Elected Members, Respondents supported the introduction of a PSPO to close the arcade to the public at night and have suggested that the order already in place is effective.

There are no HR related matters arising directly from this report.

## **Scrutiny Committees**

N/A

## **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.
- A consultation took place 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**

Consultation took place in August/September 2023.

## **Background Papers**

1. Proposed Renewed Order
2. Map of PSPO Proposed

**Dated: 20 September 2023**

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

### **ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014**

#### **SECTION 59**

#### **PUBLIC SPACES PROTECTION ORDER**

#### **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

