

Item

## PSPO (TOUTING) 2016: YEAR 2 REVIEW



**To:**

Councillor Anna Smith, Executive Councillor for Communities

Environment & Community Scrutiny Committee 04/10/2018

**Report by:**

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**Wards affected:**

All

### Not a Key Decision

#### 1. Executive Summary

- 1.1 An update report on the Public Spaces Protection Order (PSPO) (Touting) 2016 was taken to Strategy and Transformation committee in October 2017. This report reviews the actions taken since October last to deliver on the decisions of the Executive Councillor at that time.
- 1.2 It considers the outcomes from the employment of a dedicated enforcement officer and the current situation with regard to complaints and observations made relating to touting. It also looks at the outcomes from a multi-agency communications group set up to improve the information to the public regarding punting and touting. It looks at the potential to amend and expand the restricted area of the order and explains the implications of making changes to the order.
- 1.3 Further it considers the impact of the trespass Injunction which was sought independently from the PSPO. The injunction was granted by the High Court to ban commercial punt businesses from using Council land to access the River Cam without consent and this report looks at the impact of that injunction on the touting situation.

- 1.4 Finally the report looks at options available to the Council for the future of the PSPO (Touting) 2016, explaining the legal requirements of both extending the order beyond the statutory three year period or allowing the PSPO to lapse. The report makes recommendations on the next steps based on the current findings.

## **2. Recommendations**

The Executive Councillor is recommended to:

- 2.1 Continue the PSPO (Touting) 2016 in its current form.
- 2.2 Review the PSPO (Touting) 2016 in April/May 2019 in advance of the order reaching its 3 year maximum duration, in accordance with the legal requirements of the Anti-social Behaviour, Crime and Policing Act 2014.

## **3. Background**

- 3.1 Following a review of the impact of the PSPO (Touting) 2016 in October last year, the Executive Councillor for Strategy and Transformation decided that the PSPO should continue and:

- Agreed to increase and improve the levels of enforcement;
- Agreed to improve the communication to the public around successful prosecutions and further raise awareness around the purpose and intent of the PSPO;
- Agreed to look at the potential to amend and expand the restricted area; and
- Agreed to review the full impact of the increased enforcement in October 2018.

This report revisits the terms of the order and updates on the impact of the actions taken to date. It also considers the impact on touting of the injunction granted by the High Court to ban commercial punt businesses from using Council land to access the River Cam without consent.

## **Public Spaces Protection Order (Touting) 2016 – the terms of the order**

- 3.2 In seeking to address the issues presented by touts who sell punt tours, the Executive Councillor approved a Public Spaces Protection Order (Touting) 2016 on 4 July 2016 ( link at Appendix A). The order came into effect in September 2016.
- 3.3 The activities prohibited by the order are verbally:
- i) advertising or
  - ii) soliciting for custom or
  - iii) otherwise touting for
- a punt tour or the hire or use of punts boats or similar craft on the River Cam (including any walking tour which includes or involves, whether or not for consideration, a punt tour or hire or use of punts boats or similar craft on the River Cam). The PSPO applies within a restricted area as shown on the map labelled 'The Restricted Area' (Appendix A).
- 3.4 The PSPO does not apply to those cross-hatched shaded areas as identified on the attached map labelled 'Excepted Areas' (Appendix A), provided that the activities are carried out with the authority of, and by or on behalf of, a punt operator whose vessels are licensed for commercial purposes by the Conservators of the River Cam.
- 3.5 The PSPO was approved, following extensive public consultation, to address the issues presented by touts who sell punt tours. The details of both the consultation and the issues the PSPO is intended to address are contained in the report "Public Spaces Protection Order - Punt and Tour Touting" presented to the Strategy and Resources Committee in July 2016.

## **Levels of enforcement and the impact of increased enforcement**

- 3.6 A new post was created within the Public Realm Enforcement Team specifically to enforce the PSPO. The new officer, employed on a six-month fixed term contract which ended in September 2018, was available during peak times of touting, in particular at weekends. To the date of this report, **86** Fixed Penalty Notices (FPNs) have been issued for breaching the PSPO. Where a tout has breached the PSPO again, within a six-month period of being issued with a FPN, they have been prosecuted: this has resulted in **eight** touts being successfully prosecuted by Cambridge City Council.

- 3.7 The additional resource of a punt tout enforcement officer did not result in a significant increase in FPNs, as a number of touts and operators viewed receiving FPNs as an operating cost or occupational hazard and continued to operate as they had done previously. However, the number of FPNs does not reflect the amount of disruption caused to the touts and operators by having a dedicated officer patrolling the area every weekend.
- 3.8 We received 23 complaints and comments since the review in October last year (see Appendix C). Of those, 12 complaints related to the presence of touts in King's Parade and at the corner of John Lewis, two related to poor service from unauthorised operators, two related to punting-related littering on Garret Hostel Lane and the rest related to the presence of touts in various other locations in the city. This contrasts favourably with the 122 complaints and comments received about touting detailed in the October 2017 report.

### **Improved communications to the public**

- 3.9 A task and finish group was set up with representatives from City Council, Cambridge Business Against Crime (CAMBAC), Visit Cambridge and the Cambridge BID to deliver a communications plan.
- 3.10 As a result of this communications plan, an article was published in the Summer 2018 edition of "Cambridge Matters" which went to all households. The link to the article can be seen at Appendix B. This was well received by members of the public and gave a positive message about ways to enjoy punting with licenced operators. In summary the message was:
- 'By making sure you buy your tickets from a licensed punt operator you can be sure that your punt trip will be safe, enjoyable, value for money and with knowledgeable guides'.*
- 3.11 Additional activity under the communications plan included:
- The development of a standard form of words for all group members to use in publicity about punting;
  - Updating the Cambridge City Council website with a clearer pathway for members of the public to gain information about licenced punting and a link to Visit Cambridge punting webpage; and

- Publishing a number of press releases updating on enforcement, opportunities for punting and general information about touting.

3.12 The reduction in complaints as detailed in paragraph 3.8 also suggests that the work undertaken by the communications group to better inform the public has been successful in explaining the purpose and scope of the PSPO, particularly in communicating that the PSPO does not ban the actual presence of touts in the city but prohibits ‘verbally’ advertising, soliciting or touting, that is, the enforcement officer must hear what the tout is saying before enforcement action can be taken.

### **Potential to expand the Restricted Area**

3.13 Upon the introduction of the PSPO, some touts dispersed to areas not covered by the ‘Restricted Area’ and one of those places, which has continued to cause concern for members of the public and businesses, is at the corner of the Microsoft building near the railway station. The Executive Councillor asked that consideration be given to expanding the PSPO and officers have taken legal advice on whether or not this was possible.

3.14 The legislation allows for variations in the terms of a PSPO at any time, if a new issue arises in an area where a PSPO is in force. However, amendments to orders have not been tested in court and the Act is ambiguous on the issue with regard to what constitutes a significant change. Therefore the Council sought legal advice, that advice suggested that it is likely that an extension would be considered a significant change and therefore would be subject to the legal requirements of changing the terms of the PSPO.

3.15 Those legal requirements mean that the Council would have to undertake the necessary consultation on the proposed changes and meet the conditions in section 59(2)(3) of the Anti-social Behaviour, Crime and Policing Act 2014 with regard to activities in the area.

The first condition is that:

- (a) activities carried on in a public place within the Council’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 that area and that they will have such an effect.

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.

- 3.16 Although a variation of the PSPO is permitted under the Anti-social Behaviour, Crime and Policing Act 2014, if such a variation were to be made, an interested person may apply to the High Court to question the validity of the variation. If the Council were to seek a variation it would have to ensure that the conditions stated in 3.15 above have been met and would need to have the background evidence to support the variation.
- 3.17 The legal advice we received suggests that a variation that included a change of wording and/or the extension of the 'Restricted Area' could be considered to be a significant change to the order and therefore would involve a process of consultation and evidence gathering and would need to be considered by Committee. In effect, the process would be the same as that for introducing a new PSPO.

### **Injunction application to stop unlicensed punt activity on Council land**

- 3.18 Independently from the PSPO, the Council sought an Injunction from the High Court to ban commercial punt businesses from using its land to access the River Cam without its consent. The unauthorised use had escalated at Garret Hostel Lane and at times beyond to the City's open spaces at Laundress Green and Sheep's Green, with significant punting operations taking place in these locations. These locations are not authorised punt stations and do not have planning permission or approval from the Cam Conservators.
- 3.19 The Injunction was sought in order to stop the unauthorised use of these locations in the city centre area where unlicensed punt businesses were operating from. Unlicensed businesses were responsible for much of the indiscriminate touting away from the river in the city centre. The Injunction was granted, removing the unauthorised operators' ability to operate from the Council's land on the river, which has reduced the number of punt touts and levels of unnecessary touting.

3.20 That said, we are still receiving some complaints about touts on King's Parade and around the railway station area. One authorised punt operator does not have touting restrictions in their lease and has not signed the Voluntary Code of Conduct for Punt Operators, which would restrict their touting numbers and locations. They continue to tout and take referrals on King's Parade. They are still subject to the restrictions of the PSPO and will be issued FPNs should they breach this. Other touts on King's Parade are either continuing to operate from unapproved punt stations, without authorisation, or they are touting for walking tours. Where they are using Council land without consent, further legal action will be considered based on the previous successful Injunction and costs sought again.

### **Options for the future of the PSPO**

3.21 The officers have considered the current situation and given that there has been a significant decrease in the number of touts in the city and consequently in the number of complaints about anti-social behaviour related to touting, this suggests that our approach is working.

Therefore, it makes sense to continue the order in its current format. This will allow for the situation to be monitored for the next 6/7 months, at which time we will have a clearer indication if the actions taken to date and the impact of the trespass injunction continue to have the successful outcomes currently indicated, leaving the following options for the future;

3.22 The Council can leave the current PSPO in place until September 2019 when they can:

- extend the PSPO for up to a further three years; or
- extend the 'Restricted Area' or make any other significant amendments,

Both of the above options will require consultation and evidence to prove the legal conditions are being met.

3.23 The Council can allow the PSPO to lapse if it is believed that it is no longer required. If a decision is made to let the PSPO lapse, the Council will be required to remove the signage and publish the lapse.

- 3.24 All of the options above will need to be considered in advance of September 2019 when the three year life span of the order comes to an end.
- 3.25 Therefore the officers are recommending that the Executive Councillor continues the PSPO (Touting) 2016 in its current format with a review to take place in advance of September 2019.

## **4. Implications**

### **(a) Financial Implications**

Staffing costs related to ongoing enforcement.

### **(b) Staffing Implications**

See Financial Implications.

### **(c) Equality and Poverty Implications**

An Equality Impact Assessment (EqIA) was carried out during the consultation and implementation of the PSPO. A further EqIA would be needed if significant changes are made to the PSPO. Equality and poverty implications were addressed in detail in the report to Strategy and Resources Scrutiny Committee in July.

### **(d) Environmental Implications**

Climate change rating is not applicable, however, the impact on increased signage on the environment will need to be considered in the event of a change to the geographical area.

### **(e) Procurement Implications**

It is unlikely that the costs would reach procurement thresholds.

### **(f) Community Safety Implications**

As detailed in this report.

## **5. Consultation and communication considerations**

As detailed in this report.

## **6. Background papers**

Background papers used in the preparation of this report:

- (a) “Public Spaces Protection Order – Punt and Tour Touting” - report to Strategy and Resources Scrutiny Committee 4 July 2016
- (b) Notes of the Strategy and Resources Scrutiny Committee 4 July 2016
- (c) Notes of Strategy and Resources Scrutiny Committee 9 October 2017
- (d) Reform of anti-social behaviours powers – Home Office guidance for frontline professionals
- (e) Anti-social Behaviour Crime and Policing Act 2014

## **7. Appendices**

- (a) Public Spaces Protection Order (Touting) 2016 – Appendix A available at [https://www.cambridge.gov.uk/media/5484/491315\\_-\\_sealed\\_pspo\\_0.pdf](https://www.cambridge.gov.uk/media/5484/491315_-_sealed_pspo_0.pdf)
- (b) Cambridge Matters extract Summer 2018 – Appendix B available at [https://www.cambridge.gov.uk/media/3986/cambridge\\_proof\\_14.pdf](https://www.cambridge.gov.uk/media/3986/cambridge_proof_14.pdf)
- (c) Complaints report – Appendix C attached

## **8. Inspection of papers**

To inspect the background papers or if you have a query on the report please contact:

Lynda Kilkelly, Safer Communities Manager, tel: 01223 - 457045,  
email: [lynda.kilkelly@cambridge.gov.uk](mailto:lynda.kilkelly@cambridge.gov.uk).