



Item

EXTENSION OF PUBLIC SPACES PROTECTION ORDER PSPO (TOUTING) 2016

To:

Councillor Nicky Massey, Executive Councillor for Transport and
Community Safety
Environment & Community Scrutiny Committee 27/06/2019

Report by:

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Wards affected:

All

Not a Key Decision

1. Executive Summary

- 1.1 The Public Spaces Protection Order (Touting) 2016 (“**Order**”) is due to expire on the 14 September 2016. At Environment and Communities Scrutiny Committee in October 2018 the Executive Councillor made the decision to review the Order in 2019 in advance of the Order reaching its three year maximum duration.
- 1.2 At any point before expiry of the Order, the Council can extend it by up to three years if they consider it is necessary to prevent the original behaviour from occurring or recurring. They should consult with the local police and any other community representatives they think appropriate before doing so.
- 1.3 This report revisits the terms of the Order (Appendix A), reviews its impact, considers the results of the consultation carried out with police, community leaders and interested parties and, considers the case for extending the Order for a further three years.

- 1.4 The responses to consultations are examined and recommendations are made for the Executive Councillor regarding the extension of the Order and other issues raised during the consultation process.

2. Recommendations

The Executive Councillor is recommended to:

- 2.1 Approve the extension of the Order, in its current form as set out in Appendix A, for a further duration of three years to 15 September 2022.
- 2.2 Address the issues raised through the consultation process by:
- Continuing to enforce breaches of the Order.
 - Monitoring the situation with regard to how walking tours are being sold.
 - Reviewing the situation with regard to touting outside the restricted area in 2022 when considering the next stages of the Order in the event of an extension being agreed.
 - Asking partners to consider improving the information and signposting to direct visitors to authorised punting stations and updating the voluntary code of practice.

3. Background

- 3.1 Following a review of the impact of the Order in October last year, the Executive Councillor for Communities decided that the Order should continue in its current form and that it should be reviewed in advance of it reaching its three year maximum duration, in accordance with the legal requirements of the Anti-social Behaviour, Crime and Policing Act 2014 (“**Act**”).
- 3.2 This report revisits the terms of the Order, reviews its impact and considers the case for extending it for a further three years, as permitted by the Act.

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

- 3.3 Prior to the current Order, punt and tour touting in the Cambridge city had been the focus of complaint for many years. The complaints were related to the number of touts in certain areas of the city and the behaviour of the touts.

- 3.4 In seeking to address the issues presented by touts who sell punt tours, the Executive Councillor approved a Public Spaces Protection Order (Touting) 2016 which came into effect on 15 September 2016.
- 3.5 The Activities prohibited by the Order are verbally:
- i. advertising or
 - ii. soliciting for custom or
 - iii. otherwise touting for a punt 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 a punts boats or similar craft on the River Cam).
- 3.6 The Order applies within a restricted area as shown on the map labeled 'The Restricted Area' (Appendix B). The Order does not apply to those cross-hatched shaded areas as identified on the attached map labeled 'Excepted Areas' (Appendix B), 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.
- 3.7 The Order was approved, following extensive public consultation. Further details of the current Order are outlined in the sealed copy provided in Appendix A.

Consultation

- 3.8 At any point before expiry of the Order, the Council can extend it by up to three years if they consider it is necessary to prevent the original behavior from occurring or recurring. They should consult with the local police and any other community representatives they think appropriate before doing so.
- 3.9 Before considering extending the current Order, which is due to lapse on 14 September 2019, the Council has consulted with the Police and Crime Commissioner, the local policing body, relevant community representatives, Ward Councillors and other interested parties within the restricted area. Consultation responses were received from the following:
- The Police and Crime Commissioner;
 - Inspector Paul Rogerson, Southern Partnership Manager;
 - Property Services, City Council;

- Environmental Services, Engagement and Enforcement, City Council;
 - Great St Mary's Church;
 - College representatives;
 - CAMBAC and Traders operating within the restricted area;
 - Ward Councillors; and
 - Punt Operators.
- 3.10 The Police and Crime Commissioner said "I fully support Cambridge City Council's proposal for an extension to the existing PSPO".
- 3.11 Inspector Paul Rogerson, Manager Southern Partnership, said "I confirm that following consultation with my senior officer team we have no objections to your proposal to extend the PSPO".
- 3.12 The Head of Property Services supports the extension of the Order and said "Given the historical difficulty in addressing punting related issues, be it touting or use of the Council's land, leading to the need to seek a High Court injunction, it would seem unwise to cease the PSPO at this stage. An extension would allow the Council to see over a longer period of time whether or not the issues have been resolved".
- 3.13 The Engagement and Enforcement Team Lead, City Council, supports an extension of the Order and said "Since the introduction of the PSPO in 2016, ninety two fixed penalty notices have been issued to persons caught verbally touting for punt tours, during this time nine individuals were successfully prosecuted for repeat offences within a six month period, it is the opinion of the officers of this department that if the PSPO was allowed to lapse, it would not be long before Kings Parade and the other usual haunts would be flooded with touts".
- 3.14 All the consulted Ward Councillors who responded to the consultation supported the extension of the Order.
- 3.15 Great St Mary's Church expressed their support for extending the Order, noting that "We find touting a great concern to our visitors and staff who can feel threatened and hectored by the touts".
- 3.16 All the consulted Colleges that responded to the consultation expressed their support for extending the Order. One of the colleges said that it "would overwhelmingly support the extension to this PSPO". "The College has seen a marked improvement to Garret Hostel Lane since

the PSPO and an even greater one since the High Court injunction of May 2018”.

- 3.17 Traders operating within the restricted area who responded to the consultation in the majority supported an extension to the Order.
- 3.18 One respondent said that “from my perspective as a guide the current Order has been an unqualified success”.
- 3.19 Another trader operating in the area expressed that they “believe that letting the order lapse would be a mistake and would lead to a large increase in the number of touts both in the city centre and the routes leading from the rail station to the city centre. Although the ban is still in force, punt tickets are regularly sold by touts along King’s Parade and further work should be done to stop this practice rather than removing one of the tools to prevent it”.
- 3.20 Two respondents did not feel that the Order was effective, saying that nothing had changed since the Order was put in place and that the Order was of little value unless it was enforced.
- 3.21 All the responses to the consultation are presented in Appendix C.
- 3.22 The Council has notified the County Council of the proposal to extend the Order and the proposal has been published on the City Council website.

Other suggestions arising from the consultation

- 3.23 A number of respondents while supporting the extension also made suggestions for amendments to the Order.
- 3.24 Respondents suggested that the Order be revised to include non-verbal touting and touting for walking tours. Another respondent suggested the Order should cover all touting.
- 3.25 It was also recommend that further measures to include visible non-verbal promotion of unlicensed punt tours or walking tours, namely using pop up stands or bicycle based promotion carrying a placard or other such material be added to the Order as an offence.

- 3.26 Geographical extensions of the Order were suggested to include other areas such as around the railway station and to cover the whole town centre.
- 3.27 A respondent suggested better enforcement of the Order. Another respondent said that the enforcement currently lacks teeth.
- 3.28 It was suggested that something stronger than a PSPO will be required from 2022 since the projected growth of casual tourism suggests touting will become even more of a nuisance.
- 3.29 Some respondents felt that indications for visitors of where to look for registered punt venues were poorly provided and that this could be improved.

Evidence

- 3.30 The Committee report of 4 October 2018, detailed the second year of activity around the Order. Since then the Injunction banning commercial punt business from using Council land to access the River Cam without consent, has been in place and the number of anti-social touting complaints has dropped significantly. In 2018, there were 20 complaints, compared with 76 complaints in 2017. So far in 2019 there have been no complaints but two noted “observations”.
- 3.31 The decrease in complaints demonstrates the success of the Order and the Injunction in addressing the issues of anti-social behavior related to touting for punt tours.
- 3.32 Officers believe that the removal of the Order would result in an increase of touts within the restricted area and consequently an increase in the related anti-social behavior.
- 3.33 This is borne out by the comments received in the recent consultation where a significant number of respondents strongly expressed the view that allowing the Order to lapse would result in the return of the anti-social behavior linked to touting in the past.
- 3.34 The consultation results have indicated that some touting activity which breaches the Order is still taking place. One respondent said “I believe that this PSPO has had a strong positive impact on the problem of punt touting in the areas it covers. However there are continuing reports of

occasional touting within the area some of them relating to touts offering punting under the initial guise of offering walking tours". Similarly, another respondent said that "we still receive reports of punt touts being active in some parts of the city, despite this PSPO and the subsequent high court injunction from last year that restricted access to the river".

- 3.35 The Council is not aware of any current unauthorised punting activity and associated touting. As noted in paragraph 3.30 we have not received any complaints so far in 2019. Granta Punts is continuing taking referrals from touting in the Restricted Area however; they state that they are complying with the Order.
- 3.36 The Council includes touting provisions in the leases to Scudamore's at Quayside, Cambridge Chauffeur Punts at Silver Street and the operators at La Mimosa. It will seek to include touting provisions in the lease renewal in connection with Granta Punts in 2019. This will be in line with the voluntary code of practice currently complied with by the majority of punt operators.
- 3.37 The consultation responses, the experience of the Enforcement Team and the opportunity to include all Council renewed leases in the Code of Practice suggests that it would not make sense to allow the Order to lapse at this time. The evidence indicates that if the current Order was to lapse, the activities prohibited therein would return.

Addressing the other suggestions arising from the consultation

- 3.38 The PSPO (Touting) 2016 was made to address the issues presented by the anti-social behavior of touts who sell punt tours. Although the legislation allows for variations in the terms of the Order at any time, the Act is ambiguous on the issue with regard to what constitutes a significant change. Based on previous legal advice documented in the report to Environment and Community Scrutiny Committee in October 2018 many of the suggested amendments in paragraphs 3.23 to 3.28 would constitute a significant change and therefore would be required to meet the conditions in section 59(2)(3) of the Act.
- 3.39 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 Act with regard to activities in the area.

- 3.40 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.
- 3.41 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.
- 3.42 Although a variation of the Order is permitted under the Act, 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 3.40 and 3.41 above have been met and would need to have the background evidence to support the variation.
- 3.43 Based on the legal advice the Council received in the past, it is suggested that variations to the Order to include the suggestions in paragraphs 3.23 to 3.28 would be considered to be significant changes 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.
- 3.44 It is recommended instead that we should address these issues by:
- Continuing to enforce breaches of the Order.
 - Monitoring the situation with regard to how walking tours are being sold.
 - Reviewing the situation with regard to touting outside the restricted area in 2022 when considering the next stages of the Order in the event of an extension being agreed.
 - Asking partners to consider improving the information and signposting to direct visitors to authorised punting stations and updating the voluntary code of practice.

Proposal

- 3.45 According to section 60(2) of the Act, before the time when a PSPO is due to expire, the local authority that made the PSPO may extend the period for which it has effect if satisfied on reasonable grounds that doing so is necessary to prevent-
- (a) Occurrence or recurrence after that time of the activities identified in the Order, or
 - (b) An increase in the frequency or seriousness of those activities after that time.
- 3.46 If the Order is to be extended this must be done before the time when the Order is due to expire, on 14 September 2019, and must satisfy the reasonable grounds as set out in section 60(2) of the Act as described above in 3.45.
- 3.47 Considering the evidence, the overall picture indicates that extending the current Order in its current form as shown in Appendix A, fits the criteria as set down in the Act. It is reasonable in these circumstances to expect that the problems would return to these open spaces if the Order was to expire.
- 3.48 In the event of the Order not being extended, it will lapse on 14 September 2019. Officers consider it reasonable to assume that anti-social behaviour in respect of punt and tour touting in the restricted areas would reoccur and/or increase in the frequency and/or seriousness if the Order is not extended.
- 3.49 It is therefore recommended that the Order be extended for a further 3 years as allowed under the Act.

4. Implications

a) Financial Implications

If an extension to the Order is agreed the Council must 'cause to be erected on or adjacent to the land in relation to which the public spaces protection order has been made such notice or notices as it considers sufficient to draw the attention of any member of the public using that land to –

- (i) the fact that a public spaces protection order has been made; and
- (ii) and the effect of that order being made.'

The current signs can remain in place and the City Council will be required to publicise the extension which can be done through press release and publication on our website.

If the extension is not approved, the Council would be required to replace the existing signs with signs stating that the Order is no longer in force, to which there will be a cost.

b) Staffing Implications

The staffing implications for the Enforcement and Safer Communities teams will remain the same as they are currently if the Order is extended.

c) Equality and Poverty Implications

If the Order is extended, the impact on residents, visitors and businesses is expected to be positive, as it should continue to act as a deterrent to anti-social behaviour in relation to punt and tour touting within the relevant area.

d) Environmental Implications

Nil: to indicate that the proposal has no climate change impact.

e) Procurement Implications

Costs are highly unlikely to fall within the procurement criteria.

f) Community Safety Implications

The extension of the Order will continue to have a positive effect on community safety in the concerned areas.

Human Rights

When deciding whether to extend the period for which a PSPO has effect and if so for how long 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 European Convention on Human Rights. The restrictions imposed by the Order are considered proportionate for the prevention of crime and disorder.

5. Consultation and communication considerations

Consultation was carried out as detailed in the report.

6. Background papers

Background papers used in the preparation of this report:

- a) [Anti-social Behaviour, Crime and Policing Act 2014](#)
- b) [Anti-social behaviour powers: Statutory guidance for frontline professionals](#)
- c) [PSPO \(Touting\) 2016 - Sealed Order](#)
- d) [PSPO \(Touting\) 2016: Year 2 Review](#)
- e) [Environment and Community Scrutiny Committee: Decisions 4 October 2018](#)

7. Appendices

- A. Sealed Public Spaces Protection Order (Touting) 2016
- B. Map of restricted area
- C. Consultation responses

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.