

Committee Name and Date of Committee Meeting

Cabinet – 20 June 2022

Report Title

Fitzwilliam Road Public Spaces Protection Order, June 2022

Is this a Key Decision and has it been included on the Forward Plan?

No, but it has been included on the Forward Plan

Strategic Director Approving Submission of the Report

Paul Woodcock, Strategic Director for Regeneration and Environment

Report Author(s)

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Ward(s) Affected

Rotherham East

Boston Castle Ward

Report Summary

In 2019, the Council introduced a Public Spaces Protection Order (PSPO) in the Fitzwilliam Road area of Rotherham which expires in June 2022, with the maximum duration of PSPOs being limited to three years. This report details a review of the existing PSPO, outcomes of the targeted public consultation on renewing the order, along with a recommendation to renew the Order upon expiry, with a proposed new condition relating to bins on the street.

This report provides an overview of the Anti-social Behaviour, Crime and Policing Act 2014 which provides a broad legal framework within which PSPOs can be implemented. Orders can be introduced in a specific public area where the local authority is satisfied, on reasonable grounds, that certain conditions have been met.

Recommendations

1. That Cabinet approve the designation of the new Public Space Protection Order, set out at Appendix 2, in the Fitzwilliam Road area.

List of Appendices Included

- Appendix 1 Copy of Current PSPO notice, June 2019
- Appendix 2 New Draft Order
- Appendix 3 Equalities Screening Assessment
- Appendix 4 Carbon and Climate Change Assessment

Background Papers

Rotherham Metropolitan Borough Council ASB Policy

[Public spaces protection orders: guidance for councils \(local.gov.uk\)](#)

Consideration by any other Council Committee, Scrutiny or Advisory Panel

None

Council Approval Required

No

Exempt from the Press and Public

No

Fitzwilliam Road Public Spaces Protection Order

1. Background

1.1 The Anti-social Behaviour, Crime and Policing Act 2014 provides a broad legal framework within which Public Space Protection Orders (PSPOs) can be implemented. Orders can be introduced in a specific public area where the local authority is satisfied on reasonable grounds that certain conditions have been met.

1.2 Specifically, the conditions are that:

- activities that have taken place have had a detrimental effect on the quality of life of those in the locality, or it is likely that activities will take place and that they will have a detrimental effect
- the effect or likely effect of these activities:
 - is, or is likely to be, persistent or continuing in nature
 - is, or is likely to be, unreasonable
 - justifies the restrictions being imposed

1.3 In June 2019, a PSPO was implemented in the Fitzwilliam Road area of Rotherham. A copy of this designation and associated clauses can be found in Appendix 1. This designation will expire in June 2022, as the legislation allows for Orders to be made for a maximum of three years.

1.4 From 25 April to 15 May 2022 a public and stakeholder consultation process was carried out. This included:

- Key partners and stakeholder letters issued to South Yorkshire Police, South Yorkshire Fire and Rescue, Local Voluntary and Third Sector Groups and Ward Councillors
- A public consultation on the website with social media sign posting and links
- Engagement with local residents who have English as a second language at Clifton Learning Partnership with translation support

2. Key Issues

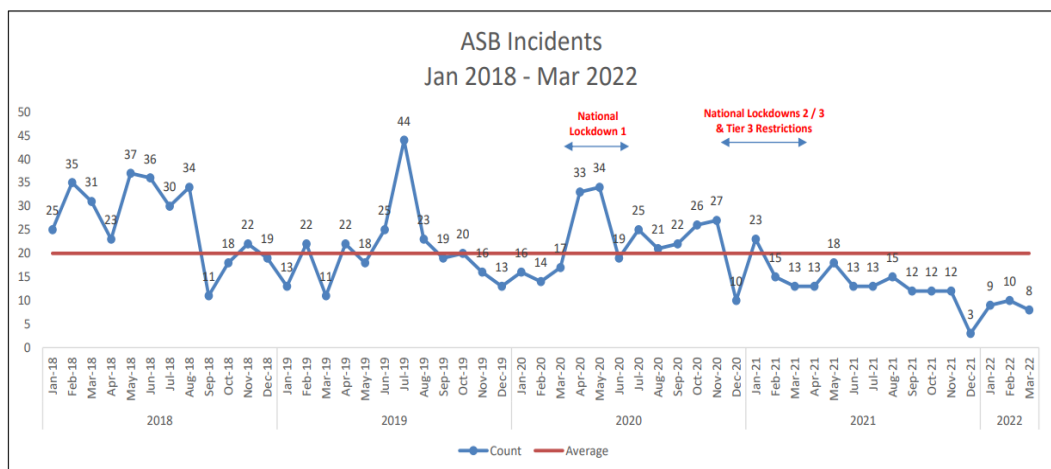
2.1 Current Order

2.1.1 In considering the next steps in relation to the PSPO, it is important to consider the effectiveness of the current Order and the evidence available to support a further order and each condition within the order.

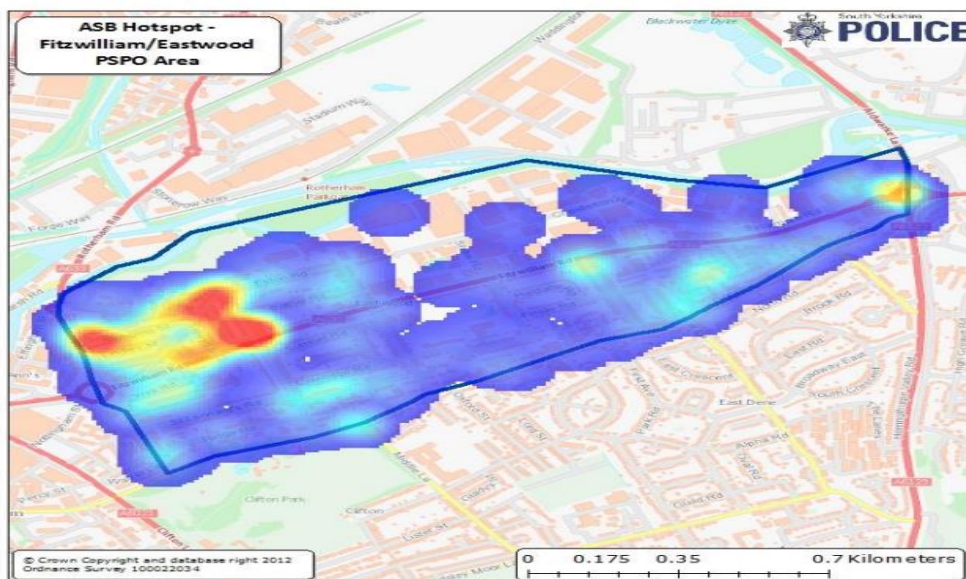
2.1.2 The PSPO was introduced in June 2019 and has been in force since this date. The PSPO is due to expire in June 2022, therefore, Anti-Social Behaviour (ASB) incidents between 1 January 2018 to 31 March 2022 have been extracted for analysis to determine its effectiveness. Since 1 January 2018, there have been 1,020 ASB incidents in the Fitzwilliam-Eastwood PSPO area, showing an average 20 incidents per month. This period covers the COVID-19 pandemic where there were notable changes in anti-social behaviour across the country. This has been further impacted by the enforcement of the 'stay home' policies implemented by the

government during Covid, with notable increases seen in ASB. Of note, 12% (50) of all ASB incidents in this period (from 23 March 2020 to date) were tagged as COVID-19 related. Therefore, the impact of COVID-19 should be considered when considering any changes in ASB volumes, particularly in the periods highlighted below when national lockdowns and Tier 3 restrictions were in place across South Yorkshire. Despite these short-term increases, the overall trend is positive as can be seen from the chart in section 2.1.3, which could be attributed to the existence of the order however this is difficult to conclusively demonstrate due to varying activities taking place in the area which may of contributed to the reducing trend.

2.1.3 The period just prior to the implementation of the scheme in June 2019, and post national lockdowns beyond April 2021, have been periods where complaints have tracked below this average. The final few months show a sustained reduction of ASB Incidents reported as can be seen below.



2.1.4 As with previous data provided in June 2019 to supplement the original designation, the hotspots for ASB in the locality remain on and around Grosvenor Road, Milton Road and Selborne Street, and part of Fitzwilliam Road, as shown by the map below.



2.1.5 The below table shows a 2-year comparison of ASB incident types. The most notable decreases were for Rowdy/Inconsiderate Behaviour (-70 or -49%), which is in line with changes seen across the South Yorkshire area, and Begging/Vagrancy (-22 or -67%) where a smaller decrease was experienced compared to the below PSPO area volumes. When compared to all ASB incidents recorded in the Rotherham Central NPT area, there were no notable differences when reviewed against the PSPO area.

ASB Incident	2020	2021	Change	% Change
ABND VEH NOT STOLEN	12	16	4	33%
ANIMAL PROBLEM	3	3	0	0%
BEGGING/VAGRANCY	33	11	-22	-67%
FIREWORKS	8	11	3	38%
LITTER/DRUGS TRAPPINGS	2	4	2	100%
NOISE	23	11	-12	-52%
NUISANCE NEIGHBOUR	23	17	-6	-26%
OFF ROAD BIKE/QUAD	4	4	0	0%
PROSTITUTION RELATED	0	3	3	100%
ROWDY/INCONSID	142	72	-70	-49%
TRESPASS	0	1	1	100%
VEH NUISANCE/INAPP USE	14	9	-5	-36%
Total	264	162	-102	-39%

2.1.6 The below table shows a 4-year comparison of the top ASB incident types by year, with each incident type highlighting the lowest volumes (green) to highest volumes (red). Peak volumes were spread throughout this period with 2020 recording the most with four peaks for categorised ASB in the locality in the period. However, consideration must be given to the Disturbance/Fighting and Nuisance incidents which are no longer recorded for ASB on Police Systems as they are now recorded as crimes.

Top ASB Incidents	2018	2019	2020	2021
ROWDY/INCONSID	114	120	142	72
NUISANCE NEIGHBOUR	33	33	23	17
VEH NUISANCE/INAPP USE	53	27	14	9
NOISE	19	22	23	11
ABND VEH NOT STOLEN	15	13	12	16
BEGGING/VAGRANCY	0	4	33	11
FIREWORKS	5	4	8	11
DISTURBANCE/FIGHTING	18	0	0	0
NUISANCE	5	9	0	0
ANIMAL PROBLEM	3	5	3	3
OFF ROAD BIKE/QUAD	1	3	4	4

2.1.7 Since 1 January 2018 the Council's Community Protection Unit received 645 reported complaints regarding wheely bins. Of these complaints, which relate to various issues of contamination, abandonment or bins being left on the street, 165 (26%) have been received in the Fitzwilliam Road Area. The street scene in the area, anecdotally from residents, Councillors, partners and officers is suffering as a consequence. The failure to responsibly manage waste and waste receptacles is a known contributor to pests, alongside contributing to waste accumulation and fly-tipping issues.

2.2 Enforcement of the Order

2.2.1 The Order is jointly enforced by authorised officers from the Council's Regulation and Enforcement service and South Yorkshire Police staff. Since June 2019, 64 Fixed Penalty Notices (FPNs) have been issued in the locality to individuals breaching the Order. 65% of FPNs have been issued in relation to the consumption of alcohol. There are several challenges with enforcement including competing priorities and interpretation of offences. For example, the condition relating to alcohol bans the consumption of alcohol and gives officers the power to require individuals to surrender any alcohol in their possession, if they do so, no offence is committed however importantly, removal of the alcohol should prevent further offences which the order aims to tackle such as rowdy or nuisance behaviour. In addition, informal enforcement has been applied at officers' discretion on occasion which does not generate a penalty however does resolve the immediate issue or breach.

2.2.2 As can be seen from the data provided, throughout the three years in which the PSPO has been in place, there has been around 600 reported incidents of anti-social behaviour and just over 60 fixed penalty notices issued, showing a rate of around 10%. It should be acknowledged that not all instances of reported anti-social behaviour would be addressed by a relevant power within the PSPO and in some instances, sufficient evidence may not be available. The power also tends to be utilised based on officers witnessing behaviour and further consideration needs to be given to evidencing and addressing offences within the PSPO by other means, such as the gathering of witness evidence or utilisation of CCTV and this will be further explored in the review of enforcement procedures.

2.3 Public and Stakeholder Consultation

2.3.1 From 25 April to 15 May 2022 a public and stakeholder consultation process has taken place. This consultation focussed on:

- The effectiveness of the original designation
- Views on the effectiveness of any future designations
- An intention to vary the current order to add positive requirements around the storage of waste receptacles outside of waste collection times. The current prohibitions on certain behaviours and the same geographical area would be applied.

- 2.3.2 Responses could be submitted via post or via an online questionnaire. Leaflets were delivered to the target area with almost 1,000 leaflets delivered, social media posts signposted to the online survey, bespoke letters were sent to key partners and statutory agencies, 310 emails sent to all licensed private Landlords and Managing Agents from the Selective Licensing database and drop-in clinics and translation support was available at Clifton Learning Partnership. 42 responses were received in total.
- 2.3.3 While there were mixed views on the effectiveness of the current designation, there was a strong support across all respondents that a new designation was supported (90% of respondents). Supportive comments were received in relation to the new requirements to store bins within premises outside of collection times. 88% of respondents were positive that the additional requirements around waste receptacle storage would be effective however it is acknowledged that on occasion bins may be missed for collection or collections may be delayed. It is important to note that the requirement to remove bins from the street is only applicable following the actual collection of the waste, subject to that waste being presented correctly (without contamination etc). The condition has been designed in this way to ensure enforcement does not take place in the circumstances outside of the control of the resident in question.
- 2.3.4 In relation to responses from key partners and statutory agencies, there was a renewed commitment from South Yorkshire Police. Training on the use of PSPOs was delivered in partnership training in April 2022. Discussions during the training centred on the strengths, weaknesses and opportunities brought about by such designations both specifically in the Eastwood area and also throughout the Borough in other ASB and Crime hotspots.
- 2.3.5 A number of the respondents highlighted risks around the resourcing of such designations. Whilst this remains a challenge, it is felt the additional power to enforce issues consistently and efficiently under the PSPO is an advantage to the Council and its partners. As an example, the power to tackle the persistent bins on street issues is a more efficient alternative to the protracted established legislation under the Environmental Protection Act 1990.
- 2.3.6 Concern was raised around reputational risk from both an over-zealous enforcement regime and heightened resident expectation. In order to counter this, management and senior leaders from both agencies will be required to review and ensure enforcement processes remain fit for purpose. As an example, a warning system is suggested in relation to bins being left on the street to allow for communication of the terms of the order to encourage compliance. Verbal warnings can also act as a tool to intervene early, before the order is breached, preventing the behaviour from occurring in the first place.
- 2.3.7 Anecdotally via the partnership workshops, it became clear that data had not been captured where the PSPO had been enforced more informally

(i.e., with verbal warnings) and this should be addressed in the revision of the Enforcement approach.

3. Options considered and recommended proposal

3.1 Consideration has been given to allowing the order to lapse and to revoke the Order in place.

3.2 Following public and stakeholder consultation, the recommended option is to renew the Order, using the same conditions and geographical area however introducing a positive requirement around the management of waste receptacles by residents, Landlords and Managing Agents. The rationale for this is set out below.

3.3

Condition	In Current Order?	Recommendation	Rationale
In this area any person carries out acts from which they are prohibited, commits an offence, namely:			
Consuming alcohol other than on a licensed premises or at licensed event	Yes	Proceed to Final Order	This has been the largest single clause which has been enforced on using the current Order. While recording of such crime/ASB data is not broken down at such a level to support this, the proportion of Violence Against Person reported crime alongside levels of rowdy and nuisance behaviour may be driven by underlying factors such as alcohol misuse.
Behaving in such a way or using language that causes, or is likely to cause, harassment, alarm or distress to another person	Yes	Proceed to Final Order	There is no specific offence category but similarly, the high levels of rowdy and inconsiderate behaviour suggests that further power to control foul and abusive language may assist officers in addressing ASB.
Causing noise (in public spaces) that is likely to have a detrimental impact on a	Yes	Proceed to Final Order	As above, the levels of rowdy and inconsiderate behaviour is highly likely to emanate from noise created by on-street activity. Statutory

person(s) quality of life			nuisance powers are not able to be used to tackle this behaviour.
In this area individuals commit an offence if they fail to:			
Each relevant person must ensure that the wheelie bin for their property or waste presented for collection in a manner specified for their property is not situated outside the boundary of their premises other than between 6pm on the day before collection is due, and 9pm on the day of collection unless the wheelie bin is in an identifiable bin storage area or yard for wheelie bins of their property.	No	Proceed to Final Order	There is clear evidence that the reporting of abandoned, contaminated and actively used household waste receptacles are left in the street within Eastwood more prominently than other areas. Although there is some primary legislation to allow for the enforcement of this issue, this statute (S46 of the Environmental Protection Act 1990) has been de-criminalised to the extent that the Council's powers in relation to this matter are ineffective. The con

4. Consultation on proposal

- 4.1 Stakeholders and statutory agencies have been consulted between 25 April 2022 and 15 May 2022, the results of which have been reviewed and responded to above. This consultation is also a requirement of the relevant legislation, and the Service is satisfied the requirements have been met.

5. Timetable and Accountability for Implementing this Decision

- 5.1 If approved, the PSPO will be designated following the Cabinet decision, subject to call-in.

5.2 The Assistant Director of Community Safety and Street Scene alongside the Head of Community Safety and Regulatory Services are accountable for implementing the decision.

6. Financial and Procurement Advice and Implications

6.1 The costs of utilising these powers, including officer time and associated legal costs, will be contained within the approved revenue budget for this Service.

7. Legal Advice and Implications

7.1 The power to introduce a Public Spaces Protection Order is set out in the Anti-Social Behaviour, Crime and Policing Act 2014. The Act gives the Council the authority to draft and implement a Public Spaces Protection Order in response to particular issues affecting the community, provided it is satisfied on reasonable grounds that two conditions are met.

7.2 The first condition is that:

- (a) activities carried on in a public place within the authority'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.

7.3 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.

7.4 The Council will need to weigh up all of the evidence and consider consultation responses, in order to assess whether it is satisfied that the above conditions are met and to assess whether it is satisfied that the Public Spaces Protection Order is necessary and proportionate in the circumstances.

7.5 The Act sets out the ability to challenge the validity of any Order and so it is vital the Council follows the correct process in terms of the implementation of the Order and this includes the requirement to consult. The Council must carry out the necessary consultation, the necessary publicity and the necessary notification (if any), before:

- (a) making a public spaces protection order,
- (b) extending the period for which a public spaces protection order has effect, or
- (c) varying or discharging a public spaces protection order.

- 7.6 The Council must consult with:
- (a) the chief officer of police, and the local policing body, for the police area that includes the restricted area;
 - (b) whatever community representatives the local authority thinks it appropriate to consult;
 - (c) the owner or occupier of land within the restricted area (this does not apply to land that is owned and occupied by the local authority and applies only if, or to the extent that, it is reasonably practicable to consult the owner or occupier of the land.
- 7.7 Proper consideration needs to be given to all consultation responses, when considering the test for the implementation of a Public Spaces Protection Order.
- 7.8 The Council must also comply with the necessary publicity and notification requirements set out in the Act.
- 7.9 The necessary publicity means:
- (a) in the case of a proposed order or variation, publishing the text of it;
 - (b) in the case of a proposed extension or discharge, publicising the proposal.
- 7.10 The necessary notification requirements means notifying the following authorities of the proposed order, extension, variation or discharge:
- (a) the parish council or community council (if any) for the area that includes the restricted area;
 - (b) in the case of a public spaces protection order made or to be made by a district council in England, the county council (if any) for the area that includes the restricted area.
- 7.11 Any Order can last for a maximum of 3 years, unless extended under the provisions of the Act and any such Order can be varied and/or discharged at any time.

8. Human Resources Advice and Implications

- 8.1 As detailed elsewhere within the report the PSPO will be enforced by Police Officer and the Council's Community Protection Officers. Competing demands will need to be effectively managed in order to ensure adequate enforcement of the order. Refreshed training should also be put in place for relevant officers.

9. Implications for Children and Young People and Vulnerable Adults

- 9.1 Enforcement of the Policy would be in line with the Council's General Enforcement Policy and ASB Policy which seeks to improve the health and wellbeing of the residents in the Borough by considering each matter on a case-by-case basis. In the case of young people under the age of 18, the

Council's general enforcement Policy excludes the use of fines and instead, parents or carers will be engaged. Any application of the Order would seek to protect Children and Young People and Vulnerable Adults.

10. Equalities and Human Rights Advice and Implications

- 10.1 A screening assessment has been carried out in Appendix 3 and no further assessment is required. This is primarily a recognition of the proposed continuing nature of the order alongside the statutory nature of the powers.

11. Implications for CO2 Emissions and Climate Change

- 11.1 An assessment has been carried out in Appendix 4 and recognises that an increase in patrols may contribute to emissions. The reduction in carbon as a result of vehicle usage will form part of the Council's Fleet renewal strategy which is captured in the Council's Year Ahead Plan for 2022-23.

12. Implications for Partners

- 12.1 The Policy is likely to place some demands on partners where information might be required in relation to engagement and enforcement of the Order, which primarily relates to law enforcement agencies such as the Police. The legislation requires the Council to specifically consult with the local Police Commander to ensure the implications are considered. This has been completed.
- 12.2 In response to the consultation a response was received from Chief Superintendent Stephen Chapman. An extract of that response is as below:

"We fully support the application for the refreshed Public Space Protection Order in relation to Fitzwilliam Road. Numerous complaints are regularly received from within the community which relate to noise nuisance, drunken behaviour, including associated Anti-Social Behaviour, and environmental issues including waste management.

There have been 34 reports to South Yorkshire Police within the area for these incident categories so far this year to date, this is in addition to issues that will have been dealt with by officer intervention without an incident being created, or ASB that would be linked to other recorded matters.

The refreshed PSPO would afford SYP and partner agencies the powers and tools to deal with such complaints in a robust manner, whilst also raising awareness to those that may behave in such a way that this conduct is not acceptable. The additional powers afforded under the PSPO would serve to reassure the community that SYP and partners are taking their concerns seriously and seeking to take appropriate action."

13. Risks and Mitigation

- 13.1 Choosing not to renew the Order may reduce the tools available to the Council and partners to combat ASB in the neighbourhood. It may also

decrease community confidence around the perceptions of crime and ASB.

- 13.2 In order to allow a more versatile resolution of ASB and crime the Council and partners should also consider the application of other remedies from the ASB Toolkit under the same legislation. These tools can include Acceptable Behaviour Contracts (ABCs), Civil Injunctions and Community Protection Notices. Statutory nuisance law (where it can be applied and this is generally premises based behaviour) and Housing Act 2004 powers such as those associated with Selective Licensing can also be considered.
- 13.3 The capacity of partners to effectively enforce the provisions of the designation as been an issue during the current designation. Any future designation must have the commitment of all partners to undertake effective enforcement of its powers. Otherwise, the designation will raise residents' expectations and risks reputational damage of all partners
- 13.4 More broadly, failure to effectively meet key responsibilities and obligations will negatively impact on the Council's image whilst failing to deliver national and local priorities.

14. Accountable Officers

Sam Barstow, Acting Assistant Director Community Safety and Street Scene

Lewis Coates, Service Manager Regulation and Enforcement

Approvals obtained on behalf of Statutory Officers: -

	Named Officer	Date
Chief Executive	Sharon Kemp	06/06/22
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	25/05/22
Assistant Director of Legal Services (Monitoring Officer)	Phil Horsfield	25/05/22

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