

Report



Newport City Council

Part 1

Date: 24 July 2018

Subject **Maesglas Public Spaces Protection Order**

Purpose To inform Council of the result of a public consultation on the proposed Public Spaces Protection Order for part of the Maesglas area of Newport.

To ask Council to consider the officer recommendations and to approve the draft Order.

Author Head of Law and Regulation

Ward Gaer

Summary A Public Spaces Protection Order (PSPO) is designed to prevent individuals or groups committing anti-social 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 Maesglas area includes a collection of shops situated on Cardiff Road. To the rear of these shops there is a public path used by residents and others to gain access to the shops, a community centre and houses. There are two other routes of access readily available to these locations.

The Police and local Ward Members have asked for the introduction of a PSPO to implement the gating of the path and other appropriate measures, following a prolonged period of high levels of complaints from members of the public regarding crime and anti-social behaviour close to the shops, the path to the rear of the shops and residential streets nearby.

Included with this report is evidence of the antisocial behaviour from Gwent Police, Newport City Homes and officers from the Council's Community Safety Warden Service, along with the results of a public consultation on three possible restrictions that could be included in a PSPO for the area, in addition to the closure of the path. The public consultation was approved by the Cabinet Member for Licensing & Regulation following consideration of a Cabinet Member report.

Following the consultation and officer recommendations, Council lawyers have drafted the PSPO – Appendix D.

Proposal That Council approves the Maesglas Public Spaces Protection Order, as detailed in Appendix D.

Action by Head of Law and Regulation

Timetable Immediate

This report was prepared after consultation with:

- Head of Finance
- Head of People and Business Change
- Cabinet Member for Licensing and Regulation

1. Background

1 What is a Public Spaces Protection Order?

- 1.1 A PSPO is designed to prevent individuals or groups committing anti-social 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 nature; and be unreasonable. The power to make an Order rests with local authorities, in consultation with the Police, Police and Crime Commissioner and other relevant bodies who may be impacted.
- 1.2 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. There are particular considerations for registered common land, town or village greens and open access land.
- 1.3 The maximum length of a PSPO is three years.
- 1.4 When making a PSPO, the Council must have particular regard to the rights of freedom of expression and freedom of assembly set out in the Human Rights Act 1998. Consideration of a PSPO will take place where there is material evidence of anti-social behaviour. Assessments will commonly include reports to the police, and various Council teams and partner agencies.

2 What kind of restrictions can be in a PSPO?

- 2.1 Restrictions and requirements are set by the local authority and can be blanket restrictions or requirements, or can be targeted towards certain behaviour by certain groups at certain times. They can restrict access to public spaces (including certain types of highway) where that route is being used to commit Anti-social behaviour.
- 2.2 Section 59 of the ASB etc. Act sets out the basis on which local authorities may make a PSPO.
It provides as follows -
 - (1) A local authority may make a public spaces protection order if satisfied on reasonable grounds that two conditions are met.
 - (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.
 - (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.
 - (4) A public spaces protection order is an order that identifies the public place referred to in subsection (2) ("the restricted area") and—
 - (a) prohibits specified things being done in the restricted area,
 - (b) requires specified things to be done by persons carrying on specified activities in that area, or (c) does both of those things.
 - (5) The only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order—
 - (a) to prevent the detrimental effect referred to in subsection (2) from continuing, occurring or recurring, or

(b) to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.

- 2.3 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 or a level 3 fine of up to £1000, on prosecution.

3 Approving the Maesglas PSPO

This is matter for full Council to decide.

Essentially the Council needs to consider:

- Is there a specific problem caused by particular on-going activities?
- If so, what needs to be done to regulate or control the problem?
- What is the least restrictive way of achieving this?

Appeals against the setting up of a PSPO

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.

1. What to include in a possible Maesglas PSPO?

- 4.1 The Police and local Ward Members have asked that Newport City Council considers implementing a PSPO within the Maesglas area of the Gaer Ward. The area proposed to become a PSPO is shown on the map included at **Appendix D** as part of the draft Order.

Evidence of problems in the area and provided in support of a PSPO is included in the Appendices to this report:

Appendix A from Gwent Police

Appendix B from Newport City Council Community Safety Warden Service

Appendix C from Newport City Homes

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".

- 1.2 The proposed restrictions that were the subject of the public consultation were:

A. Gating of the path to the rear of Maesglas shops

To the rear of the Maesglas Shops there is a path which allows the public to gain access to the shops, a community centre and houses. Unfortunately it is also used frequently by groups of people to congregate, with drug possession/abuse taking place together with other forms of antisocial behaviour, including intimidation of nearby residents. The path is also used by groups of youths to disperse after causing problems on surrounding streets. The path allows foot access by some of the retailers located at the Maesglas Avenue end of the row of shops, into the rear of their businesses. The remainder of the area behind the

shops was fenced off some years ago and those premises can only be accessed from Bideford Road. It is proposed to gate the path and for the gates to be closed at all times unless required for access.

The positions of the proposed gates are shown in red on the draft PSPO at Appendix D.

An alternative route exists around the front of the shops on Cardiff Road, or along Maesglas Avenue and into the lane at the rear of Maesglas Avenue, accessed by turning into the road between 71 and 73 Maesglas Avenue.

Each of the retailers affected would be provided with a key to allow them legitimate access to the path, should this be required.

B. Not to loiter or congregate in a street

'Not to loiter or congregate in a street or public place and use intimidating or threatening behaviour towards members of the public, cause a nuisance or other antisocial behaviour.'

Within this report there is evidence from the Police which shows that groups gather in the street or residential areas using offensive or threatening behaviour towards residents, shop keepers or visitors, that is clearly intimidating and at times a criminal offence. There is also evidence of people being subjected to intimidation and threats to themselves and their property. The Police evidence covers the period from September 2016 until August 2017 and shows a diverse type of misbehaviour by groups and individuals.

The evidence by Newport City Homes focuses upon the impact on their tenants, whilst the evidence of the Community Safety Warden Service mirrors that of the Police.

The Police have stated that the benefit of the PSPO is where persons are engaging in this activity, or suspected thereof, even where the evidence might not be sufficient to meet the criminal standard of proof, the Police will be able to require them to leave the area. This power is not available elsewhere in law; a "Dispersal Order" requires the authority of a senior officer to be put in place, which does not allow for immediate action to resolve the anti-social behaviour taking place, and in any case, only lasts up to 48 hours.

The wording of the proposed restriction which was consulted on has been amended following legal advice but will have the same impact.

C. Drinking in a public place being restricted

'No person shall within the Restricted Area refuse to stop drinking alcohol or hand over any containers (sealed or unsealed) which are believed to contain alcohol, when required to do so by an authorised officer to prevent public nuisance or disorder.'

The Police have also requested that this PSPO includes a public space drinking of alcohol banning order in order to reduce antisocial behaviour in the area.

D. Possession of controlled substances

'A person is prohibited from having in their possession, selling or supplying any intoxicating substance namely any substance with the capacity to stimulate or depress the central nervous system but does not include alcohol, tobacco or vaporisers; a person is required to surrender any such intoxicating substance in his/her possession when asked to do so by an

authorised officer in the Restricted Area. A person does not commit an offence under this Order where the said substance is used for a valid medicinal use.'

This restriction has been requested to prevent the possession and/or supply of drugs and other substances commonly known as “new psychoactive substances” or NLPs. It copies the constraint currently in place in Pill where a PSPO was enacted last year. There is evidence of drug misuse in this area too.

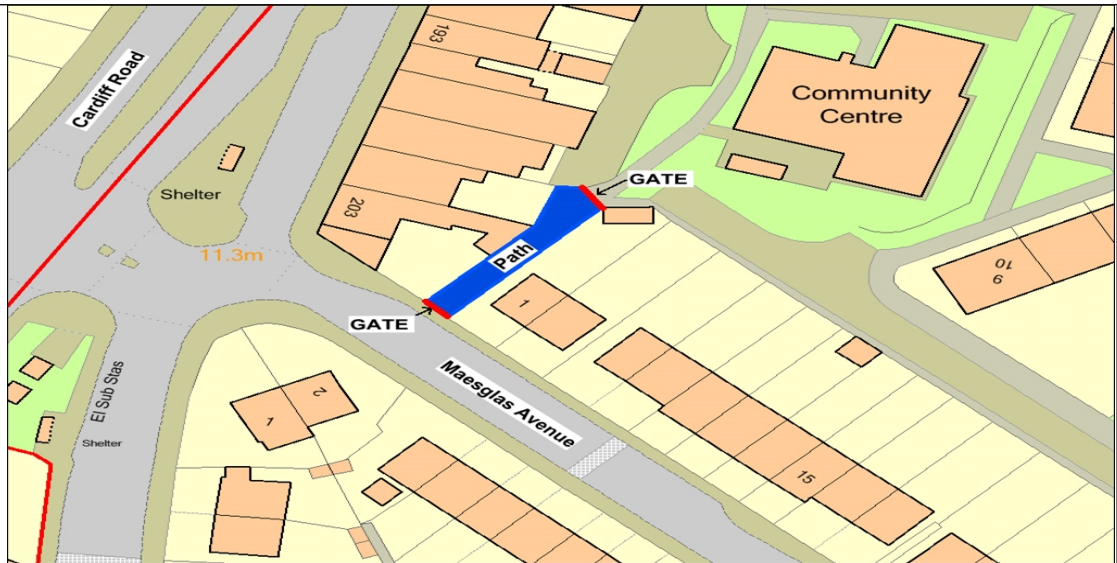
The wording of the proposed restriction which was consulted on has been amended to duplicate the restriction in the Pillgwenlly PSPO following legal advice but will have the same impact.

2. Consultation

5.1 Public consultation ran from 14 February 2018 until 12 March 2018.

5.2 In summary, the results of the public consultation are shown below. 79 people responded to the consultation.

Are you a.....?			
85.14%	Resident of Maesglas	2.7%	Worker in Maesglas
5.4%	Visitor	6.76%	Other
Have you experienced Anti-Social Behaviour in Maesglas in the past 12 months?			
7.89% (6)	Never	6.58% (5)	Rarely
22.37% (17)	Occasionally	63.16%	Frequently (48)
3 no reply			
Proposed Control Measures- Consultation outcome			
Control Measure 1			
Do you agree with the proposed gating Order?			
83.10% (59)	Agree	16.90% (12)	Disagree
If you disagree, why?			8 no reply
Concern was expressed by some participants that this would impact upon their foot travel around that particular area and prevent access to some services such as the bus stop/ shops and community centre. In contrast those in favour (majority) expressed real concern about crime in that lane taking place regularly.			



Have you been affected by / witness to this type of behaviour in Maesglas recently?

79.75% (63)	Yes	20.25% (16)	No
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Control Measure 2

A person is not to loiter or congregate in a street or public place and use intimidating or threatening behaviour towards members of the public, cause a nuisance or other antisocial behaviour.

97.33% (73)	Yes	2.6% (2)	No
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4 no reply

It can be seen that there is very strong support for this proposed restriction.

Have you been affected by / witness to this type of behaviour in Maesglas recently?

65.79% (50)	Yes	34.21% (26)	No
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no reply

Control Measure 3

Drinking in a public place being restricted - No person shall within the Restricted Area refuse to stop drinking alcohol or hand over any containers (sealed or unsealed) which are believed to contain alcohol, when required to do so by an authorised officer to prevent public nuisance or disorder.

96.05% (73)	Yes	No 3.95% (3)
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3 no reply

Again there is strong support shown for this restriction to be included in the PSPO.

Have you been affected by / witness to this type of behaviour in Maesglas recently?			
69.33% (52)	Yes	30.67% (23)	No

4 no reply

Control Measure 4

Possession of controlled substances - A person is prohibited from having in their possession, selling or supplying any intoxicating substance namely any substance with the capacity to stimulate or depress the central nervous system but does not include alcohol, tobacco or vaporisers; a person is required to surrender any such intoxicating substances in his/her possession when asked to do so by an authorised officer in the Restricted Area. A person does not commit an offence under this Order where the said substance is used for a valid medicinal use.			
97.33% (73)	Yes	2.67% (2)	No

4 no reply

Have you been affected by / witness to this type of behaviour in Maesglas recently?			
76.00% (57)	Yes	24.00% (18)	No

4 no reply

Boundary of the proposed Order

The below image shows the boundary that is covered by the PSPO. What do you think we should do (tick your preference)?			
54.05% (40)	Remain the same	44.59% (33)	Make bigger
1.35% (1)	Make smaller		
If you have ticked 'make bigger' or 'make smaller', please give details.			

5 no reply

There were a total of 74 responses to this question and these are largely split in respect of remaining as proposed or increased, a slight tilt towards remaining the same.

Officers recommend extending the proposed area to cover Cardiff Road and houses across from the shops to avoid perpetrators simply moving to the other side of Cardiff Road.

Also the proposed area is recommended to be enlarged from that consulted on in such a way that makes the operation enforcement of it more credible and practical as it doesn't now cross property boundaries. This recommendation is justifiable and is supported by a credible percentage of respondents (44.59%) saying the area should be increased.

3. Financial Summary

- 6.1 The cost of procuring and installing the gates to the path will be £6,398. Newport City Homes have agreed to contribute 50% of the cost. Otherwise the PSPO will be funded through existing budgets.

4. Risks

Risk	Impact of Risk if it occurs (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
Council puts in measures that are not supported	H	L	Listen to all groups that are affected.	Head of Law and Regulation
Council puts in measures that are disproportionate to the problems experienced / open to legal challenge	H	L	Ensure the measures that are introduced are balanced against the anti-social behaviour experienced and the right level of restrictions to address it.	Head of Law and Regulation

5. Links to Council Policies and Priorities

- 8.1 Ensuring that this work is completed as required will support the following Council Policies and Strategies:

The proposed PSPO has clear links to the aims and objectives of Newport City Council's Corporate Plan (relevant themes are "Resilient communities" and "A thriving city").

Newport's Community Strategy 2010-2020 "Feeling Good About Newport" (Relevant themes: "To be a prosperous and thriving city"; "To have a better quality of life"; "To have vibrant and safe communities").

The proposals also demonstrate that the service area is acting in accordance with the "Be Courageous" value outlined in the Corporate Plan: the proposal is ambitious in order to try and improve the situation in this area for the local community.

6. Options Available and considered

Option 1

Approve the proposed Maesglas Public Spaces Protection Order at Appendix D.

Option 2

Not to approve the proposed Order.

7. Preferred Option and Reasons

Option 1 - Approve the proposed Maesglas Public Spaces Protection Order as set out at Appendix D. This is supported by Gwent Police and is felt by Council Officers to be a proportionate response to the on-going anti-social behaviour being experienced in the area and a reasonable response to the public consultation undertaken.

8. Comments of Chief Financial Officer

- 11.1 The proposal to implement this PSPO will be met through a combination of external contribution and existing budget, therefore will not require any pressure on the medium term financial plan.

9. Legal Comments - Comments of the Monitoring Officer

- 12.1 The Council has a statutory power under the Anti-Social Behaviour, Crime and Policing Act 2014 to make Public Spaces Protection Orders in order to prevent types of anti-social 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.
- 12.2 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 or not to extend and/or vary any PSPO. The results of the engagement with key stakeholders and the public responses to the consultation are summarised within this Report.
- 12.3 When considering the need to make a 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 has to take a balanced decision regarding the need for a gating order restricting public access to the path at the rear of the shops and the other proposed restrictions and their impact on the freedoms and rights of individuals. Any order must be a reasonable and proportionate means of preventing or reducing the detrimental impact of any specific type of anti-social behaviour within the Maesglas area. When considering the need for and the impact of any PSPO, the Council also has to have regard to its public sector equality duty under Section 149 of the Equality Act 2010 and a full Fairness and Equalities Impact Assessment is attached to this Report.
- 12.6 Public support for a particular measure is not, of itself, sufficient grounds to make a PSPO. The Council needs to be satisfied that the proposed controls are justified because of a specific problem and a need to control the anti-social behaviour in order to protect the public. The Council also has to be satisfied that the extent of the controls or prohibitions is reasonable and that there are no alternative, and less restrictive ways, of regulating the problems. In this case, a gating order would appear to be reasonable and proportionate, as there is clear evidence that the path has become a focal point for anti-social behaviour in the area. Alternative public routes are available and keys can be given to those shop-owners with rear access off the path. Therefore, the path can be closed to the public at all times during the day, to avoid the need for the gates to be opened and closed at permitted times. The other controls are based on similar measures in the existing PSPO's in the City Centre and Pill and, again, can be regarded as a proportionate response to the particular anti-social behaviour problems identified in the immediate area.
- 12.7 There is a statutory right of appeal to the High Court within 6 weeks if a PSPO is considered to be unreasonable.

10. Comments from Head of People and Business Change

- 13.1 Evidence from Gwent Police, Community Safety Wardens and Newport City Homes indicates that there have been significant rates of anti-social behaviour recorded in the Maesglas area. Public consultation with local residents has also shown a high level of concern about crime and anti-social behaviour and has indicated support for the proposed PSPO measures. PSPO's are already in place in Newport City Centre and more recently Pillgwenlly and provide the Police with additional enforcement powers to address key issues which concern communities and it is believed that similar powers could be effective in Maesglas. As PSPO powers are restrictive it is vital that decisions are based on sound evidence, public consultation and a robust Fairness and Equalities Impact Assessment.
- 13.2 There are no HR related matters arising directly from this report.

11. Comments of the Cabinet Member for Licensing and Regulation

- 14.1 I fully support the proposed Maesglas Public Spaces Protection Order. There is clearly a need for these measures and the proposed controls are a reasonable and proportionate way of regulating the anti-social behaviour being reported by the community.

12. Local Issues - Comments of Ward Councillors

- 15.1 Public Spaces Protection Orders are intended to deal with a particular nuisance or problem in a specific area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area which apply to everyone. They are intended to help ensure that the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.
- 15.2 Given that these orders can restrict what people can do and how they behave in public spaces, it is important that the restrictions imposed are focused on specific behaviours and are proportionate to the detrimental effect that the behaviour is causing or can cause, and are necessary to prevent it from continuing, occurring or recurring.
- 15.3 The Gaer Ward Councillors would therefore wish to support the introduction of a PSPO in Maesglas which would restrict the behaviours by the minority of residents that are having a detrimental effect upon the majority of the community particularly but not exclusively groups of youths roaming outside the shopping area and acting in an intimidatory manner. People openly dealing drugs on the streets and smoking drugs in a public place. Young people riding motorbikes in a dangerous and reckless manner without wearing crash helmets and speeding in a residential area.
- 15.4 Our concern is the security and safety of residents and their right to quiet enjoyment of the community environment. We believe that this measure will improve the prospects of achieving that.

13. Scrutiny Committees

No consultation with Scrutiny Committees has been undertaken.

14. Equalities Impact Assessment and the Equalities Act 2010

An Equalities Impact Assessment has been completed and is included at Appendix E.

15. Children and Families (Wales) Measure

The proposals set out in this report are not relevant to the aims of the Children and Families (Wales) Measure.

16. Wellbeing of Future Generations (Wales) Act 2015

The proposed PSPO would contribute to a number of 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 proposals would contribute by helping to prevent problems of anti-social behaviour blighting the area, which would help to build a cohesive and sustainable community.

17. Crime and Disorder Act 1998

The proposals set out in this report are designed to reduce Crime and Disorder and have been requested in part by the Police.

Consultation

A summary of the results of the consultation undertaken is included previously in this report.

Background Papers

Home Office Guidance on PSPOs

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/364851/Public_and_open_spaces_information_note.pdf

List of Appendices

Appendix A

Gwent Police - evidence of anti-social behaviour incidents

Appendix B

Newport City Council Community Safety Warden Service- evidence of anti-social behaviour incidents

Appendix C

Newport City Homes- evidence of anti-social behaviour incidents

Appendix D

Draft Maesglas Public Spaces Protection Order

Appendix E

Fairness & Equalities Impact Assessment (FEIA)