

# Report

## Council

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### Part 1

Date: 10 September 2019

### **Subject** Newport City Centre Market Arcade: Public Spaces Protection Order

**Purpose** To inform Council of the result of the public consultations on the proposed Public Spaces Protection Order for Market Arcade in Newport City Centre.

To ask Council to consider the proposal that a Public Spaces Protection Order be made following a recommendation from the Cabinet Member for Licensing & Regulation to Council to make the Order.

**Author** Regulatory Services Manager (Environment & Community)

**Ward** Stow Hill

**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 city centre Market Arcade was built in 1869 and runs between the north end of High Street and Market Street. Its use has declined substantially in recent decades although it is hoped that HLF Townscape Heritage Funding will enable the Arcade to be restored and brought back into use as a 21<sup>st</sup> century asset to the City.

Due the anti-social behaviour being experienced in the Arcade, it is timely for the Council to implement a PSPO to close the Arcade at night to the public. 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.

Public consultation has taken place and there is general support for a PSPO to allow the closure of the Arcade at night. Approval of a PSPO is reserved to Full Council. Therefore, this report asks Council to make a PSPO to close the Market Arcade to the public from 20:00 hours to 07:00 hours, 7 days a week, following a recommendation to do so by the Cabinet Member for Licensing & Regulation. This closure would be achieved by the use of gates, which would be opened and closed by an appointed management company, paid for by means of a service charge paid by participating owners/tenants of the Market Arcade. The PSPO would remain in place for three years, but could be reviewed at any time in the interim.

**Proposal** That Council makes a Public Spaces Protection Order for Market Arcade.

**Action by:** Head of Law & Regulation

**Timetable:** Immediate

**This report was prepared after consultation with:**

- Cabinet Member for Licensing & Regulation
- Head of Law & Regulation
- Head of Finance
- Head of People and Business Change
- Gwent Police
- Ward Members
- Owners and tenants of Market Arcade
- The general public

**Signed**

## **Background**

### **1. What is a Public Spaces Protection Order?**

The Antisocial Behaviour, Crime and Policing Act 2014, commenced in October 2014, and introduced Public Spaces Protection Orders (PSPOs).

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 in 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 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 particular regard to the rights of freedom of expression and freedom of assembly and association set out in the Human Rights Act 1998.

### **2. Restrictions**

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.

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.

### **3. Approving the Market Arcade 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.

#### **4. What to include in a 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).

The arcade was well-used for over a century until shopping habits changed and Newport's retail centre shifted, particularly with the development of the Kingsway Centre in 1968. It runs between the north end of High Street and Market Street. Its use has declined substantially in recent decades although it is hoped that HLF Townscape Heritage Funding will enable the Arcade to be restored and brought back into use as a 21<sup>st</sup> century asset to the City.

Due the anti-social behaviour being experienced in the Arcade, officers believe it is timely for the Council to implement a PSPO to close the Arcade at night to the public. There is a public right of way, a highway, running through the Arcade and therefore the owners cannot simply close the Arcade whenever they wish.

The Police, Council officers and owners/tenants report that at night the Arcade suffers from anti-social behaviour. This takes the form of damage to property, graffiti, being used as a toilet, drug taking/ dealing, noise nuisance. Meetings have taken place to determine the most suitable way of alleviating this anti-social behaviour and the most appropriate way would appear to be by the Council introducing a PSPO to close the arcade to the public at night by the installation and use of gates. Owners/ tenants would have keyed or push pad entry to their properties when the gates were closed, as would the emergency services, 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. The design incorporates a push pad mechanism for egress to meet fire safety requirements. The proposal has Planning and Listed Building consent.

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

#### **5. Relevant Considerations**

##### **a. Funding for, and the construction, of the proposed gates**

Funding for the gates has been identified as part of improvements planned under the Market Arcade Townscape Heritage Scheme. The Scheme is funded by the National Lottery Heritage Fund, Cadw, the Council and Owner contributions. Manufacture and installation of the gates forms part of an ongoing Tender exercise for all project works. The successful contractor will be in place by 10<sup>th</sup> October 2019 and works are anticipated to commence shortly after that appointment. Construction commencement remains subject to National Lottery Heritage Fund approval.

##### **b. Management of the gates**

The Gates will be managed and maintained by an appointed agency in return for a Service Charge payable by owners/tenants participating in the grant Scheme, for a period of 10 years. The appointment of the management company will be subject to a future tender exercise, and the term of this appointment will commence upon completion of the refurbishment contract. The grant terms allow for the owners and tenants to take over responsibility for the opening and maintenance of the gates subject to receipt and approval of credible proposals by the Funding partners – including NCC.

## 6. Public Consultation

Public consultation ran from 16 January until 11 March 2018 and included:

<b>COUNCIL:</b> Street Scene, Legal, Planning Regen, Community Safety- CCTV/ Wardens/ ASB. Strategic Director –Place. Env Health, Press Team, Street Scene
Elected Members of the Council for Stow Hill Ward
<b>OTHER AGENCIES-</b> Gwent Police- City Centre Inspector South Wales Fire and Rescue. Members of the <i>Safer City Centre Group</i>
Police and Crime Commissioner
Businesses in the Arcade and adjacent
General public

The public/ owners/ users were invited to make comment on the proposed closure at night; whether they had experienced anti-social behaviour in the Arcade and whether they supported the proposed Order.

Notices, inviting comments, were also affixed at either end of the Arcade.

A further short public consultation was also undertaken between 12<sup>th</sup> February and 27<sup>th</sup> February 2019 in order to gather any further comments by members of the public were gathered.

## 7. Results of the consultations

There were two responses received as part of the first consultation, other than the support for the proposal from the Ward elected members. Both responses were in support of the measure to close the Arcade at night to the public.

There were two responses to the 2019 consultation; one was from a business fully supporting the proposal but asking if the gates could be closed earlier and the other was from an individual expressing their support for the proposal in the hope that it would reduce anti-social incidents in the city centre at night.

The Project Manager for this proposal and associated grant application for the renovation of Market Arcade, has been liaising closely with the owners and businesses in the arcade in order to ensure there is full support for the scheme before a PSPO is made. It is not possible to close the gates earlier because of the operational requirements of certain businesses in the arcade.

The Cabinet Member for Licensing & Regulation has been consulted on the proposal to make a PSPO for Market Arcade. The Cabinet Member supports the proposal and has made a recommendation to Council that the Order be made.

## Financial Summary

Funding for the proposed gates requires the Council to secure sufficient external capital. If the relevant funding bids are successful, there is no financial impact.

## 8. 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	Consultation. Listen to all groups that are affected.	Head of Law and Regulation
Council puts in measures that are disproportionate to the problems experienced and are open to legal challenge	H	M	Ensure the evidence is robust and that the measures that are introduced are balanced against the antisocial behaviour experienced and the right level of restrictions to address it. Take legal advice.	Head of Law and Regulation

## 9. Links to Council Policies and Priorities

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 for the local community.

## 10. Options Available and considered

- i) To note the proposed Public Spaces Protection Order for Market Arcade and the result of the public consultations and Cabinet Member recommendation, and to agree to make the Order;
- ii) Not to agree to make a Public Spaces Protection Order to close the Arcade at night to the public.

## 11. Preferred Option and Why

10(i) –above

To note the proposed Public Spaces Protection Order for Market Arcade and the result of the public consultations and Cabinet Member recommendation, and to agree to make the Order to close the Arcade at night (20:00 hours to 07:00 hours) to the public. This is considered an

appropriate measure to prevent and deter anti-social behaviour from occurring at night in the arcade.

## **12. Comments of Chief Financial Officer**

There will be no budgetary impact in implementing this proposal, the gates will be purchased with external capital funding and the ongoing revenue costs of operating/maintaining the gates will be met by owners/tenants. The maintenance agreement runs for 10 years so a new agreement will need to be made at that point to prevent any budgetary impact at that point.

## **13. Legal Comments - Comments of Monitoring Officer**

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. In this case, the PSPO would take the form of a Gating Order, restricting public access to the Newport Arcade between the hours of 8.00 pm and 7.00 am. There is no requirement to include any other measures to deal with anti-social behaviour at any other times as this is already covered by the City Centre PSPO.

In accordance with the legislation and the statutory guidance, the Council has consulted with the business owners in the Arcade, the Police, the Police and Crime Commissioner and the general public. The responses to the consultation have all been supportive and there have been no objections to the proposed Gating Order.

When considering the need for any 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 Arcade at night and its impact on the freedoms and rights of individuals. Any prohibition order must be a reasonable and proportionate means of preventing or reducing the detrimental impact of any specific type of anti-social behaviour associated with the Arcade.

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 gating order PSPO is justified because of specific problems 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 alternatives, and less restrictive ways, of regulating the problems. In this case, a gating order would appear to be reasonable and proportionate, having regard to the anti-social behaviour within the Arcade at night. The time restrictions have been agreed with the owners and do not interfere with business or trade within the Arcade. Out of hours access will also be available for the emergency services.

Because the Market Arcade is a listed building, within a conservation area, and the gates will have to be affixed to the structure, then planning and listed building consent is required for the installation of the security gates. The gates will be installed as part of the grant-funded refurbishment works, once the contractors have been appointed and the owners have committed to the scheme. It will be a condition of the grant funding that the owners agree to pay a service charge to the Council to engage an agent to open and close the gates and maintain the common parts within the arcade for the 10-year grant period.

There is a statutory right of appeal to the High Court within 6 weeks if a PSPO is considered to be unreasonable.

#### **14. Comments of Head of People and Business Change**

The report indicates that there have been high rates of anti-social behaviour recorded in Market Arcade. A PSPO is already in place in Newport City Centre and provides the Police with additional enforcement powers to address key issues which concern local communities. With regard to Market Arcade, the most suitable way of alleviating this anti-social behaviour would appear to be a PSPO to close the arcade to the public at night by the use of gates. 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 general public, members of the Public Services Board's Safer City Centre Group, Gwent Police, the Police and Crime Commissioner and South Wales Fire and Rescue Service. Respondents to the consultation supported the introduction of a PSPO to close the arcade to the public at night.

The proposal is in line with the Newport Offer intervention in the Public Services Board's Well-being Plan, which includes the Step "Work in partnership and develop preventative approaches to ensure effective city centre management".

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

#### **15. Local issues - Comments of Ward Councillors**

The Stow Hill Ward councillors are supportive of the Order.

#### **16. Equalities Impact Assessment and the Equalities Act 2010**

No Equalities Impact Assessment is considered necessary in this case.

The proposals set out in this report have no more impact on those with protected characteristics than any other group or individual.

#### **17. Children and Families (Wales) Measure**

The proposals set out in this report have no more impact on children or families than any other group or individual.

#### **18. Wellbeing of Future Generations (Wales) Act 2015**

The proposals set out in the report to be consulted on 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 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.

#### **19. 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**

This is covered earlier in the body of this report.

#### **Background Papers**

Home Office Statutory Guidance on PSPOs

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/679712/2017-12-13\\_ASB\\_Revised\\_Statutory\\_Guidance\\_V2.1\\_Final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/679712/2017-12-13_ASB_Revised_Statutory_Guidance_V2.1_Final.pdf)

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