

Temporary Play Street Orders

Advice on Legality and Procedure

Introduction

Since Bristol City Council introduced the UK's first 'Temporary Play Street Order' in 2012, at least 38 other local authorities have implemented similar policies, allowing residents to make a one-off (usually annual or biannual) application to open their street for children to play out freely on a regular basis (usually up to weekly). Most streets are doing this following the resident-led 'playing out' model, where through traffic is diverted but residents still have car access. Along with official 'Road Closed' signage and barriers, volunteer stewards redirect traffic and escort vehicles in and out at walking pace.

Many local authorities have shown an interest in supporting this model of resident-led street play as it has been shown to be 'do-able', sustainable, low risk and low-cost. However, there has been some confusion over the legal basis for implementing a 'TPSO' or similar policy and this briefing aims to clarify this. It also sets out some guidance on best procedural practice based on the experience of councils and residents around the country.

The Playing Out website contains detailed film and written guidance for residents wanting to follow this model as well as evidence of the health and wellbeing impact for children and communities.

Legal framework

There are currently three different pieces of legislation being used by councils to enable play streets. These are listed below, with some pros and cons under each one.

1847 Town Police Clauses Act

<http://www.legislation.gov.uk/ukpga/Vict/10-11/89/contents>

This Act is used by many local authorities in England to enable events and street parties. More recently used by Bristol, Oxford, Adur & Worthing and Brighton & Hove to allow 'Temporary Play Street Orders' (TPSO).

Positives:

- Minimal bureaucracy, no requirement for permanent signage.
- Flexible: Enables councils to make order to close street "whenever it is thronged...or likely to be obstructed" i.e. not just for special events.
- No advertising costs.
- No limit on number or length of closures.
- Already being successfully used by a number of local authorities for this purpose.

Issues/questions:

- Power is officially given to police authority (though most have delegated this to local highway authority)
- Not applicable in London (replaced by Metropolitan Police Act)
- Predates motor vehicles and may be rescinded at some point

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1984 Road Traffic Regulation Act chapter 27

Part II, section 16

<http://www.legislation.gov.uk/ukpga/1984/27/section/16A>

The 1984 Act is used by many local authorities (including in London) to enable events and street parties. Some councils have used it to pilot a Temporary Play Street Order or similar e.g. Enfield, Hertfordshire.

Positives:

- More up to date than TPCA and universally applicable across England, Wales & Scotland
- May allow for regular closures on one street under a single annual order (see section 16B, 6)

Issues/questions:

- Requirement for councils to advertise orders in local press (at up to £2,000).
- Order may only last 3 days unless agreed by Secretary of State
- Not clear whether informal street play constitutes a “relevant event”
- If only one order allowed per year, could prevent streets from having annual street party *and* TPSO, unless applied for under same order

1984 Road Traffic Regulation Act chapter 27

Part III, sections 29 & 31

The Street Playgrounds clause gives councils the power to temporarily prohibit traffic on roads to be used as playgrounds (‘Play Streets’) and to make bylaws pertaining to this. In the 1950’s and 60’s there were nearly 700 play streets in London. Most ‘Play Streets’ have fallen out of use due to the volume of traffic although some signs are still in place.

Some London boroughs (including Hackney, Waltham Forest, Islington, Lambeth) are now using this to allow for resident-led temporary ‘play streets’ using similar procedure to the ‘playing out’ model (i.e. with resident stewards and barriers to ensure safety).

Positives:

- Clear piece of legislation unequivocally allowing restriction of traffic for children’s play
- Long history and tradition
- Official ‘Play Street’ signage may help increase awareness amongst drivers (though DfT have confirmed that temporary signage alone can be used)
- Gives residents flexibility to decide the frequency the street will be closed for play (e.g. 2-6pm weekends, April-Sept or 4-7pm, Tuesday and Thursday).
- Universally applicable across the UK.
- Period of order can be limited (e.g. to one year) - not necessarily permanent (ensuring continuous resident support).

Issues/questions:

- Permanent ‘Play Street’ signage alone no longer sufficient to ensure driver compliance and safety for children.
- Requirement to advertise in press at cost to LA as above - single annual advert may be only cost-effective option, meaning less flexibility for streets. (Hackney currently sets four deadlines per year).

Link to Road Traffic Regulation Act 1984, permanent Play Streets:

<http://www.legislation.gov.uk/ukpga/1984/27/section/29>

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Localism Act 2011

This is another possible route currently being explored in Bristol that could potentially provide a way for councils to enact policy which more accurately supports the 'Temporary Play Street' model and avoids the need for highways law altogether. University of Bristol Law Professor Antonia Layard has said, "since the introduction of the Localism Act in 2011 (in England only) it may well be that a local authority is now entitled to draw up its own road closure scheme. This introduced a 'general power of competence' [which] has replaced the power to promote wellbeing (in s2 of the Local Government Act 2000). This provided (and still does in Wales, where it has not been abolished) that every local authority had "power to do anything which they consider is likely to achieve ... the promotion or improvement of the social well-being of their area". It seems highly likely that street closures for playing out would have been covered by this provision.

FFI on this contact alice@playingout.net for a full copy of the legalities briefing by Antonia Layard.

Best Practice for Temporary Play Streets

If councils wish to support residents to follow the 'playing out' model using the guidance and resources freely available on the Playing Out website, we strongly recommend the following considerations when drafting a local play street policy and procedure, based on best practice from Bristol and elsewhere. It is also well worthwhile to look at other councils' application forms and guidance so as not to entirely reinvent the wheel.

1. Do not charge residents for processing applications. The public health benefits for children alone far outweigh the minimal administrative costs to the council.
2. Offer residents personalised advice on road closure layout, correct signage etc.
3. Signage and barrier requirements should ensure safety without being too onerous or difficult to store. Some councils provide residents with simple signage and barriers for duration of their Order.
4. A formal consultation letter to all households within the closure area is good practice (i.e. not just a petition or verbal report) to ensure any concerns can be addressed.
5. Only 'material' objections should be considered, not those based on a disagreement with the general principle of street play.
6. Where possible, such objections should be resolved between neighbours but the council can lend support and, where necessary, mediate or offer practical solutions (e.g. having a one-off 'trial' session or moving the road closure to another part of the street).
7. Applications should only be refused where there is a legitimate concern about safety or where objections outweigh support on the street.
8. Residents should be required to follow standard procedure for placing signage, cones etc. in the street and to ensure two stewards are at each road closure point at all times.

9. The Order should be clear that all through-traffic is prohibited and vehicles may enter or leave the road *only at walking speed and under supervision, once the road is clear of children playing*.
10. It should be clear in guidance notes that *parents are responsible for their own children* at all times.
11. Allow residents to make more than one application during a year, so that they can trial the idea or change the day/time if it becomes unworkable.
12. Ask residents to sign a (reasonable!) indemnity clause rather than insist on public liability insurance (which could prove a major barrier for many streets)
13. Make it clear to residents that there is no obligation to close the road every time they have permission to do so and should only go ahead if there are sufficient stewards and it is safe to do so.
14. Establish a Street Play Steering Group (or similar), including council officers, police, key residents and those supporting them to monitor the policy and practice and address any issues arising.
15. Clearly signpost residents to Playing Out and other local sources of support.

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