

Bath & North East Somerset Council		
MEETING	Cabinet	
MEETING	11 October 2017	EXECUTIVE FORWARD PLAN REFERENCE:
		E 3008
TITLE:	Proposed Public Space Protection Order to restrict alcohol consumption in public spaces in Bath	
WARD:	All wards in Bath	
AN OPEN PUBLIC ITEM		
List of attachments to this report: 1. Report on consultation on draft Public Space Protection Order for Bath 2. Proposed Order, Bath (map attached)		

## **1 THE ISSUE**

- 1.1 The current Designated Public Place Order (DPPO) which restricts street drinking in Bath is due to expire in October 2017. This is as a result of the introduction of Public Space Protection Orders (PSPOs) under the Anti-social Behaviour Crime and Policing Act 2014 ("the Act"). This report invites the Cabinet to determine whether, and if so in what way, to continue restrictions on street drinking in this area as a PSPO, following a consultation as required by the legislation.

## **2 RECOMMENDATION**

The Cabinet is asked to:

- 2.1 Consider the outcomes of the consultation on a Public Space Protection Order to restrict street drinking in Bath, as set out in Appendix 1
- 2.2 Consider the legal criteria for adopting PSPOs, as set out in Paragraph 4 of this report, and particularly the test set out in paragraph 4.1
- 2.3 In the light of 2.1. and 2.2 above make the Bath City Order as set out in Appendix 2 of the report
- 2.4 Request the Head of Legal Services or an authorised signatory on her behalf to sign and seal the Bath City Order

- 2.5 Request the Divisional Director for Strategy and Performance to undertake further work to update signage and other statutory publicity relating to any agreed Order and ensure the impact of the PSPOs is kept under review
- 2.6 Request the Community Safety Partnership to receive regular monitoring reports on the impact of the PSPO, including equalities impacts, and updates on support and treatment available for people who misuse alcohol including street drinkers
- 2.7 Thank those who were involved in the consultation process and publicise the outcomes of the consultation.

### **3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)**

- 3.1 The legal costs of preparing any agreed Order will be met from within existing budgets. Subject to Cabinet agreeing any Order, further work will be undertaken on updating any required statutory signage and additional publicity relating to the Order. Wherever possible this will be sought from within existing budgets with funds also sought from external sources and partners.

### **4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL**

#### **The Legal Test**

- 4.1 The legal test which must be satisfied in order for a PSPO to be made can be found at section 59 of the Act. The Council needs to be satisfied on reasonable grounds that two conditions are met:

(1) 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.

(2) 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.

- 4.2 "Public place" is defined in section 74(1) of the Act as "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."

- 4.3 A legal challenge to a PSPO must be made to the High Court within 6 weeks of being made and can only be made by an individual who lives in, regularly works in or visits the restricted area. A PSPO can remain in force for up to a maximum of three years and should be reviewed before expiry in order to determine whether or not it should be extended.

#### **Premises to which an alcohol prohibition does not apply**

- 4.4 Section 62 of the Act prescribes premises to which alcohol prohibition does not apply as:

- (1)(a) premises (other than council-operated licensed premises) authorised by a premises licence to be used for the supply of alcohol;
- (b) premises authorised by a club premises certificate to be used by the club for the supply of alcohol;
- (c) a place within the curtilage of premises within paragraph (a) or (b);
- (d) premises which by virtue of Part 5 of the Licensing Act 2003 may at the relevant time be used for the supply of alcohol or which, by virtue of that Part, could have been so used within 30 minutes before that time;
- (e) a place where facilities or activities relating to the sale or consumption of alcohol are at the relevant time permitted by virtue of a permission granted under section 115E of the Highways Act 1980 (highway-related uses).

- 4.5 A prohibition in a public spaces protection order on consuming alcohol also does not apply to council-operated licensed premises –

- (a) when the premises are being used for the supply of alcohol, or
- (b) within 30 minutes after the end of a period during which the premises have been used for supply of alcohol.

#### **Consultation requirements**

- 4.6 Under Section 72 of the Act, Councils must consult with the Chief Officer of Police, local policing body (in this case the PCC), community representatives it thinks appropriate to consult and the owner or occupier of the land within the restricted area.
- 4.7 The requirement to consult with the owner or occupier of land within the proposed restricted area 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.

## **Equalities and convention rights**

- 4.8 Equalities impacts were sought through the consultation process the outcomes of which are summarised in Appendix One. An Equalities Analysis has been prepared. A number of positive impacts for equalities groups were identified as arising from a PSPO, particularly where this reduces the fear of crime and anti-social behaviour. The Analysis also identified the potential for differential impacts from the use of discretionary powers for enforcement of the PSPO. Through the consultation, it was identified that some young people have concerns about the way that the PSPO would be implemented. To address this, it is proposed that more information be provided about the PSPO and how it will be applied, and that appropriate training be provided to those responsible for enforcing the PSPO, noting that equality and diversity is a core part of training for Police officers. It is recommended also that monitoring data be recorded and reported.
- 4.9 The Council must have particular regard to the rights of freedom of expression and freedom of assembly and association set out in articles 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms when deciding whether to make, extend, vary or discharge a PSPO and what it should include, if appropriate.
- 4.10 Article 10 protects the right to freedom of expression but this is a qualified right which may be interfered with if such interference is in accordance with the law and necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority or impartiality.
- 4.11 Article 11 protects the right to freedom of assembly and association but this is a qualified right which may be interfered with if such interference is in accordance with the law and is necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or the administration of the State.
- 4.12 It is considered that any infringement of these Convention rights through the making of the proposed PSPO would be properly regulated by the law including the Act and is necessary in a democratic society. Any such infringement would be in the promotion of a legitimate aim namely, for the prevention or disorder or crime, for the protection of the rights and freedoms of others.

## **5 THE REPORT**

### **Background**

- 5.1 The Criminal Justice and Police Act 2001 gave the Police the power to seize and dispose of alcohol if they believed someone is, has or is about to consume it in a designated public place. Failure to comply with the Police request was made an arrestable offence and punishable by a fine. Councils were given the power to “designate” areas where they were satisfied that nuisance or annoyance to members of the public or a section of the public, or disorder, had been associated with consumption of alcohol in that place.
- 5.2 The Council in 2004 agreed the Alcohol Consumption in Designated Public Places (Bath) Order under the 2001 Act. This came into effect on 23<sup>rd</sup> April 2004 and “designated” the whole of the City of Bath (i.e., all “public places” in the unparished area). The introduction of the DPPO followed public consultation and use of information and data provided by the Police and was designed in particular to avoid displacement from just focusing on one location. At this stage, the Council did not agree to designate any additional public places outside of the City. It should be noted that the 2004 DPPO applies to the City as a whole with the intention of reducing the potential for displacement, following responses to consultation and the views of the Police.
- 5.3 DPPO powers do not apply to any premises which are licensed for the consumption of alcohol. This includes areas outside licensed premises where permission has been given under the Highways Act for consumption of alcohol purchased in that premises. The Police also have separate powers to deal with misuse of alcohol involving under-18s and to take action when an offence is committed which may be alcohol related.

### **The Act**

- 5.4 The Anti-social Behaviour, Crime and Policing Act 2014 made a number of changes to the law on anti-social behaviour. A key change was the introduction of Public Space Protection Orders (PSPOs) to replace Designated Public Place Orders.
- 5.5 Statutory Guidance states that PSPOs are intended to deal with a particular nuisance or problem in an 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. Under the transitional arrangements for the Act, the existing DPPOs continue to be valid for a period of three years and are treated as if they are PSPOs. However, they will lapse on October 20th 2017 unless extended as PSPOs under the Act. A PSPO can be made where the Council is satisfied that the legal test is met in 4.1 above.

## **Review and Consultation**

5.6 In the light of the Act, an initial review of the operation of the Bath DPPO took place to assess whether to consult on extending it as a PSPO with approximately equivalent effect under the new legislation. This initial assessment included whether the new legal test could potentially be met. This highlighted that:

- A first-year review of the Bath DPPO carried out in 2005 identified a reduction in the amount of street drinking in Bath City Centre which could be attributed to the introduction of the DPPO. A report to the Council's Housing and Community Safety Overview and Scrutiny Panel highlighted that prior to the Order being introduced there were high levels of street drinking in Bath city centre, with street drinkers congregating particularly in public areas such as car parks. Police reported that the introduction of the Order had been successful both during the daytime and night-time, with daytime "hotspot" areas dramatically reduced. The Order also had a positive impact on the night-time economy reducing the level of street drinking particularly at the central taxi rank at Orange Grove. The Panel also heard that the introduction of Taxi Marshals assisted in this. Subsequently, the Taxi Marshals have been incorporated into the BID's co-ordinated night marshalling system. Reports confirm that these benefits continue to accrue from the Order, with members of the public being informed about the DPPO and voluntarily handing over bottles and glasses of alcohol.
- Whilst comparable data over the full lifetime of the Bath DPPO are not available from the Police, there continued to be support from the Police for restrictions on street drinking in Bath through the new PSPO process.

5.7 It was clear from this review that there remained significant concerns relating to street drinking and consequential anti-social behaviour and these issues continue to be raised by local businesses and residents. Given this and the legal requirements to consult under the Act set out in 4.6 and 4.7 above, a single member decision was made (E2918) to undertake a consultation process on extending and continuing the existing DPPO, in effect, as a PSPO. The decision also incorporated a consultation on a PSPO to continue to restrict street drinking in Midsomer Norton, as reported elsewhere on this agenda. The proposal for Bath subject to consultation was to replace the existing DPPO with a PSPO as far as possible on a 'like-for-like' basis, with regard to both the geographical scope of the areas and the framing of the orders themselves. In summary the formal consultation proposals were:

- To "mirror" the previous DPPO regime, following national guidance, by only making it an offence to fail to comply with a request to cease drinking or surrender alcohol in a restricted area. This contrasts with other PSPOs where generally the offence is triggered by a person doing anything that is prohibited by the PSPO without reasonable excuse. In addition, a person guilty of an

offence arising from breach of a PSPO would normally be liable on summary conviction to a fine not exceeding level 3 (£1000) on the standard scale. However, breaches relating to alcohol consumption are liable on summary conviction to a fine not exceeding level 2 (£500) on the standard scale. Depending on the behaviour in question, the enforcing officer could decide that a fixed penalty notice (FPN) would be the most appropriate sanction.

- To “mirror” the previous geographical scope of the existing DPPO – i.e., the whole of the City of Bath. To reflect the new Act, the PSPO would apply to all “public spaces” within the boundary line set out in the proposals. Public spaces are defined in the legislation as those 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”. This means the proposed PSPO would include public car parks and public parks as well as other public spaces such as streets.

### **Consultation Feedback**

5.8 114 responses were received in response to the consultation. A breakdown of responses is contained in Appendix 1 of the report and a summary of key points is set out below:

- 59% of respondents agreed that a PSPO to control drinking in Bath was a good idea, with 40% not, and with no response from 1%
- 56% of respondents agreed with the PSPO’s proposed area, with 40% not, and with no response from 4%
- 54% agreed with the wording of the proposed PSPO, with 43% not and no response from 3%
- The overwhelming majority of respondents to the consultation were Bath residents and/or worked in the City.
- 59% of respondents have been affected by street drinking in the area, with 39% not and with no response from 2%

5.9 Of those who *agreed with the idea* of a PSPO in Bath, key points made in favour were:

- Alcohol consumption in public spaces can lead to anti-social behaviour and can be perceived as threatening
- The restrictions would reduce issues such as littering, the danger of broken bottles and noise, street urination and vandalism
- Alcohol consumption should take place within regulated licensed premises
- It would encourage a more measured approach to alcohol consumption

- It would discourage people from taking alcohol across venues

5.10 Of those who *disagreed with the idea* of a PSPO in Bath, key points made against were:

- The PSPO as currently drafted is too restrictive- it would restrict (for example) consuming alcohol in a park as part of a picnic or other social gatherings
- Existing legislation is sufficient to deal with issues of drunkenness in a public place and anti-social behaviour: the problem is one of enforcement of existing laws, not the need for new rules
- Those who are causing the nuisance will not abide by the PSPO
- This is an intrusion into personal freedom: we should trust people to consume alcohol responsibly
- Street drinking is not an important area of concern in the City

5.11 Of those who disagreed with the *specific area suggested* for the PSPO, the main alternative suggested was to focus on the city centre, or to areas where the issue is seen as a bigger problem rather than the City as a whole, which was seen as too large and area. Some respondents proposed that specific types of public space (e.g. “parks” or “social gathering spaces” be specifically excluded). It was also put forward that the University grounds be excluded.

5.12 Of those who disagreed with the *specific wording* of the proposed PSPO, key points made were:

- The Order should be clearer as to what precisely is illegal
- The Order is too restrictive and should be a discretionary power which only applies where there is unruly behaviour, noise or other nuisance
- The Order should allow exceptions for reasonable consumption, and with food
- The Order relies too much on the judgment of the “authorised officer”
- The Order should include also outside licensed spaces including pubs and restaurants (although other responses support alcohol consumption outside licensed premises)

5.13 Other key points made by respondents included:

- The PSPO will only work if there is effective enforcement including for repeat offences
- Persons other than police officers should be authorised to enforce any PSPO



- Street drinkers and people who misuse alcohol need proper resources, support and help
- There needs to be effective publicity and signage for any Order
- Much of the disorder caused by alcohol consumption is as a result of those entering licensed premises

### **Police response to consultation**

5.14 The Police have responded to the consultation and this response is summarised below:

- Broadly the powers conferred under the existing DPPO are used on a daily basis by the Police and are considered by officers as an essential tool in which street crime and disorder can be managed. They provide a daily opportunity to engage with street drinkers, and to intervene at an early stage.
- The Police acknowledge concerns raised that these powers would potentially have a wider community impact, particularly on those consuming alcohol in outside areas such as parks. National Guidance issued in support of the implementation of DPPOs made it clear that this was a discretionary power, and not to be used to disrupt peaceful activities. The advice given was not to challenge those persons consuming alcohol where that individual is not causing a problem, or likely to cause a problem.
- The Police therefore suggest that any future PSPOs relating to alcohol consumption in public spaces should make it clear to both officers and members of the public the intentions of the orders. The Police's suggested revised wording, as set out below with their proposed additions to the current draft Order in bold, would prohibit:

Any person from having in their possession, care or control in any Public Place within the restricted area alcohol where that person-

- i. Is or has been consuming alcohol in any Public Place in the Restricted Area, or
- ii. Intends to consume alcohol in any Public Place in the Restricted Area, and
- iii. **Is behaving in a way likely to cause, or where the authorised officer reasonably suspects will lead to, harassment, alarm or distress, or crime or disorder in the Restricted Area**

### **Key Considerations**

5.15 To make any Order, the Council needs to be satisfied on reasonable grounds that the following two conditions are met:

(1) 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.

(2) 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.

5.16 Evidence from the consultation demonstrates that alcohol consumption has had a detrimental effect on the quality of life of people in the City. These have included:

- Congregations of street drinking in the city centre, particularly Kingsmead Square, causing disturbance and verbal abuse.
- Loud and aggressive behaviour at the Westgate buildings bus stop
- Drunken fights and foul language
- Rowdy groups moving from bar to bar, being noisy and intimidating
- Empty beer cans thrown into hedges and littering of glass bottles
- Noise and litter close to residential dwellings

5.17 A number of respondents have made the case for a PSPO that is more restricted to specific areas of the city, for example the city centre. However, other areas across the City are also referred to in the consultation responses as having been impacted by street drinking, including the river footpath, the canal towpath, the London Road, the Green between Crescent Lane, and Oldfield Park.

5.18 Even where there have not been reported incidents and impacts, the potential for “displacement” means that it is likely that such activities may take place in public spaces (such as parks) outside of the city centre, however defined. This was the rationale for the initial Bath City DPPO.

5.19 It is also clear that these activities are likely to be persistent and continuing. Of the 39% of respondents affected by street drinking in the area, 14% have been affected once a month, 17% once a week and 6% daily.

5.20 It is considered, therefore, that the findings of the consultation and other evidence provide reasonable grounds for the Council to be satisfied that the Legal Test in section 59 of the Act for a PSPO covering Bath City has been met.

5.21 A key question raised by the consultation is whether section 59(2) (c) of the Act referring to the need to justify “the restrictions imposed by the notice” is met – ie, whether the proposed restrictions subject to the consultation are justified in relation to the impacts on the community identified in the previous tests. A number of consultees who opposed the PSPO proposal have set out their reasons as being that the wording is too restrictive, that there should not be a “blanket ban”, and that this should provide a discretionary power for Police only to use where there is unruly behaviour, or where this is impacting on others.

5.22 Given the Police response above, which makes a number of similar points, it is therefore recommended that revised wording for the prohibition in the PSPO in Bath be adopted, when compared to the proposal set out in the consultation. This would prohibit any person from having in their possession, care or control in any Public Place within the Restricted Area alcohol where that person-

- i. is or has been consuming alcohol in any Public Place in the Restricted Area,  
or
- ii. intends to consume alcohol in any Public Place in the Restricted Area; and
- iii. is behaving in a way that is, or is likely to cause, harassment, alarm, distress,  
crime or disorder

5.23 This revised wording draws on the Police response above and reflects both consultation feedback and that the purpose of any PSPO should be to restrict behaviour which is detrimental to the local quality of life rather than restrict alcohol consumption which is not having such an impact. A revised draft Order reflecting this is attached at Appendix 2.

## **6 RATIONALE**

6.1 The outcomes of the consultation broadly support the continuation of restrictions on street drinking in the areas as set out, but also reflect concern that the powers used must be proportionate and used to address to alcohol consumption which causes, or is likely to cause, harassment, alarm or distress. This is reflected in the recommendation and allows Avon and Somerset Police to have continuity of enforcement powers with regard to street drinking. The report sets out how the recommendations meet the legal tests required.

## 7 OTHER OPTIONS CONSIDERED

- A. Take no action. This option would mean that the existing DPPO would not be replaced by a PSPO in October 2017, and would lapse. This would result in reduced enforcement powers for Avon and Somerset Police to tackle anti-social behaviour.
- B. Extend the scope of the PSPO to include new activities and/or wholly new geographical areas. This is not currently proposed. Any further proposals would be considered on their merits and would be subject to statutory tests and consultation.

## 8 CONSULTATION

8.1 A 12 week formal consultation period ran from 23<sup>rd</sup> May 2017 to 15<sup>th</sup> August 2017. It included:

- An online questionnaire including links to the proposal and background information
- A Press Release, circulated to a wide range of stakeholders, and subsequent press coverage
- Communications targeting specific organisations including the Business Improvement District and residents associations
- Bringing the consultation to the attention of Bath City Forum at its meeting of 24<sup>th</sup> July 2017
- Publicity about the consultation in *Together* magazine, which is circulated to all households in Bath and North East Somerset.

## 9 RISK MANAGEMENT

9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

<b>Contact person</b>	<i>Andy Thomas 01225 394322</i> <i>Andy_thomas@bathnes.gov.uk</i>
<b>Background papers</b>	<a href="#"><u>Existing Designated Public Places Order, Bath</u></a> <b>Prohibitions on the consumption of alcohol in public places in Bath and Midsomer Norton and the implications of the Anti Social Behaviour, Crime &amp; Policing Act 2014 (E 2918).</b>
<b>Please contact the report author if you need to access this report in an alternative format</b>	

