

Bath & North East Somerset Council		
MEETING	Cabinet	
MEETING	11 October 2017	EXECUTIVE FORWARD PLAN REFERENCE:
		E 3009
TITLE:	Proposed Public Space Protection Orders to restrict alcohol consumption in public spaces in Midsomer Norton	
WARD:	Midsomer Norton Redfield and Midsomer Norton North wards	
AN OPEN PUBLIC ITEM		
List of attachments to this report:		
1. Report on consultation on draft Public Space Protection Order for Midsomer Norton		
2. Proposed Order, Midsomer Norton (map attached)		

1 THE ISSUE

- 1.1 The current Designated Public Place Order (“DPPO”) which restricts street drinking in Midsomer Norton 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 the Public Space Protection Order to restrict street drinking in Midsomer Norton, as set out in Appendix 1
- 2.2 Consider the legal criteria for adopting a PSPO, 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 Midsomer Norton 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 Midsomer Norton Order
- 2.5 Request the Divisional Director for Strategy and Performance to undertake further work to update signage and other publicity relating to any agreed Order and ensure the impact of the PSPO 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 available for people with alcohol problems including street drinkers
- 2.7 Thank those who were involved in the consultation process, and in particular Midsomer Norton Town Council, and publicise the outcomes of the consultation
- 2.8 Undertake consultation under Section 72 of the Anti-social Behaviour Crime and Policing Act 2014 on extending the PSPO recommended in 2.3 to the areas identified in paragraph 5.11, and prepare a report to Cabinet with recommendations following this 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 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. Signage for the existing DPPO has been funded from Midsomer Norton Town Council.

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 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 In 2013 a Designated Public Places Order was agreed which “designated” specific areas within Midsomer Norton town centre under this legislation. This followed consultation and was linked to a wider initiative to reduce the impact of street drinking within the town centre, working with the town council through a Community Alcohol Partnership.
- 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 Midsomer Norton DPPO took place to assess whether to consult on extending it as a PSPO with approximately equivalent effect under the new legislation, and potentially meet the new legal test. This highlighted that the Community Alcohol Partnership in Midsomer Norton, which saw the introduction of both a DPPO and street marshals, saw a 13% reduction in crime and a 17% fall in anti-social behaviour.

5.7 It was clear from this review that the DPPO had been seen as successful and there was an appetite for its provisions to be continued through a PSPO. There also remained significant concerns in Midsomer Norton relating to street drinking and consequential anti-social behaviour. 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 Bath, as reported elsewhere on this agenda. The proposal for Midsomer Norton subject to consultation was to replace the existing DPPO with a PSPOs as far as possible on a 'like-for-like' basis, in the following way:

- 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 (ie, a specific area of Midsomer Norton town centre) but with the addition, following a proposal from Midsomer Norton Town Council, of the Midsomer Norton Town Park. To reflect the new Act, the PSPOs 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 13 responses were received in response to the consultation. A full breakdown is set out in Appendix 1 of the report. A summary of key points is set out below:

- 75% of respondents agreed that a PSPO to control drinking in Midsomer Norton was a good idea, with 25% disagreeing
- 50% of respondents agreed with the PSPO's proposed area, with 50% disagreeing
- 67% agreed with the wording of the proposed PSPO, with 25% not and no response from 15%
- The overwhelming majority of respondents to the consultation were local residents and/or worked in the area
- 58% have been affected by street drinking in the area, with 42% not

5.9 Of those who agreed with the idea of a PSPO in Midsomer Norton the key points made in favour was that the existing DPPO has significantly improved the centre of Midsomer Norton, particularly in the evenings.

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

- The DPPO and street marshals have been over restrictive and removing these restrictions will drive up trade
- These restrictions only push problems further out from the centre
- The focus should be on underage drinking.

5.11 Of those who disagreed with the specific area suggested, the following suggestions were made:

- The boundary of the restricted area should follow the line of St Chad's Avenue taking in the Chad's well area, left along Ivy walk and left down the footpath into Primrose Lane and Excelsior Terrace
- The restricted area should include the area around the Crossways and Midsomer Norton Cricket club as both of these venues regularly contribute to the problems of anti social behaviour in the community by their customers
- Silver Street Nature reserve should be added to the restricted area as there have been alcohol-related issues including anti social behaviour and litter
- The lower part of the Pit Road should be included within the restricted area.

5.12 The Street Pastors in a written response note the addition of the town park into the PSPO area and state that they would not currently patrol this area as it is remote from where alcohol is mainly consumed.

5.13 No respondents made any suggestions to the specific wording in the PSPO but there was an additional suggestion made that street marshals should also be authorised to enforce the PSPO. A clear theme from the consultation is that the focus on street drinking in Midsomer Norton has been the night time economy, and this has been tackled through partnership working with groups such as the street pastors and street marshals.

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 DPPOs 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 the Police's 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 It is clear from the consultation that tests (1) and (2) (a) and (b) are met. 62% of respondents have been affected by street drinking in the area and the Street Pastors report that, despite the reductions in street drinking as a result of the DPPO, there continues to be alcohol-related anti social behaviour adjacent to or at places where retail alcohol can be consumed within the PSPO area.

5.17 However, as with the Bath consultation, a key question raised by the consultation is whether Test 2 (c) is met and whether the proposed restrictions subject to the consultation are justified in relation to the impacts on the community identified in the previous tests. Given the Police response above, it is recommended that revised wording for the prohibition in the PSPO in Midsomer Norton 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

5.18 This revised wording draws on the Police response above and reflects both consultation feedback and that the purpose of the PSPO is to restrict behaviour which is detrimental to the local quality of life. A revised draft Order reflecting this is attached at Appendix 2.

5.19 A number of issues have been raised about the proposed boundaries of the PSPO, as set out in 5.11 above. In relation to the proposal to extend the restricted area to include the Town Park, included within the consultation proposal, the Street Pastors highlighted that they would not currently patrol the area as it is remote from areas where alcohol is consumed. However, Midsomer Norton Town Council have highlighted that they wish to see the inclusion of the town park area within the PSPO for the following reasons:

- a) There have been numerous issues with anti-social behaviour in Gullock Tynning including alcohol related issues and that;
- b) The area within the Park is intended for recreational use as part of the “recreation strip” along Gullock Tynning, which would see future events etc. being held

5.20 Given this response from the Town Council, it is recommended that the Town Park area be included in the restricted area, as set out in the consultation proposal.

5.21 In relation to the proposals for additional areas to be included in the PSPO, these were not included in the consultation proposal and it is therefore recommended that a consultation be carried out as required under the Act as to whether these should be added to the recommended restricted area. A further report with recommendations will be prepared for Cabinet following this consultation.

6 RATIONALE

6.1 The outcomes of the consultation broadly support the continuation of restrictions on street drinking in the areas as set out, (and with the addition of the areas specified), but also reflect concern that the powers used must be to 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 and recommends that consultation take place on suggested additions to the PSPO restricted area.

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 they would lapse. This would result in reduced enforcement powers for Avon and Somerset Police.
- B. Extend the scope of the PSPOs 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 23rd May 2017 to 15th August 2017. It included:

- An online questionnaire including links to the proposal and background information
- Communications to specific organisations, including Midsomer Norton Town Council who also passed on invitations to respond to the consultation
- A Press Release and subsequent press coverage
- 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.

Contact person	<i>Andy Thomas, 01224 394322</i> Andy_thomas@bathnes.gov.uk
Background papers	<u>Existing Designated Public Place Order, Midsomer Norton and Map</u> Prohibitions on the consumption of alcohol in public places in Bath and Midsomer Norton and the implications of the Anti Social Behaviour, Crime & Policing Act 2014 (E 2918)
Please contact the report author if you need to access this report in an alternative format	