

Bath & North East Somerset Council		
MEETING/ DECISION MAKER:	Cllr Martin Veal, Cabinet Member for Community Services	
MEETING/ DECISION DATE:	On or after 10th April 2017	EXECUTIVE FORWARD PLAN REFERENCE:
		E 2918
TITLE:	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	
WARD:	All wards in Bath Midsomer Norton Redfield and Midsomer Norton North wards	
AN OPEN PUBLIC ITEM		
List of attachments to this report:		
<ol style="list-style-type: none"> 1. Appendix 1: Alcohol Consumption in Designated Public Places (Bath) Order 2004 2. Appendix 2: Alcohol Consumption in Designated Public Places (Midsomer Norton) Order 2013 3. Appendix 3: Draft Public Spaces Protection Order (Bath) for consultation 4. Appendix 4: Draft Public Spaces Protection Order (Midsomer Norton) for consultation 5. Appendix 5: Draft proposed consultation questions for Bath 6. Appendix 6: Draft proposed consultation questions for Midsomer Norton 		

1 THE ISSUE

1.1 The current Designated Public Place Orders (“DPPOs”) operating in Bath and Midsomer Norton are due to expire in October 2017 as a result of the introduction of Public Space Protection Orders (PSPOs) under the Anti-social Behaviour Crime and Policing Act 2014 (“the Act”).

1.2 When considering whether or not to extend the existing DPPOs in the form of Public Space Protection Orders, the authority is required to consult with the Police and Crime Commissioner (“PCC”), Chief of Police and community representatives it thinks appropriate to consult and the owner or occupier of the land within the restricted area.

- 1.3 This report therefore proposes that consultation begin on whether or not to extend the DPPOs as PSPOs to address the consumption of alcohol in public places where the legal test is met (see 4.2 below)

2 RECOMMENDATION

The Cabinet member is requested to approve:

- 2.1 That a 12-week consultation take place to gain views as to whether or not to extend the DPPO for the City of Bath as a PSPO. The proposed draft Order is set out in Appendix 3 and the draft consultation questions are set out at Appendix 5.
- 2.2 That a 12-week consultation period take place to gain views as to whether or not to extend the DPPO for Midsomer Norton as a PSPO. The proposed draft Order is set out in Appendix 4 and the draft consultation questions are set out at Appendix 6.

3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 The consultation will be carried out within existing budgets, using staffing from within the Council's Strategy and Performance Team, the Council's online consultation tool, local newsletters, media releases, briefings and other methods.
- 3.2 Any implementation as a result of the consultation will be subject to a formal decision making process following the consultation and any costs of implementation will be outlined in that report. These costs will include any legal costs to prepare the Order and the costs of any signage required.

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

- 4.1 The powers given to authorities in the Act in relation to PSPOs are contained within Chapter 2 of the Act.

The legal test

- 4.2 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 would have 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.

4.3 “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.”

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).
- (2) A prohibition in a public spaces protection order on consuming alcohol 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

4.5 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.

Equalities and convention rights

- 4.6 The Council is committed to equality of opportunity and believes that the diversity of the community is a major strength which contributes to the social and economic prosperity of the area. An initial Equalities analysis has been undertaken for the consultation process and a full Analysis will be prepared as part of the decision-making process.
- 4.7 The Council must have particular regard to the rights of freedom of expression and freedom of assembly 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.

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 is an arrestable offence and is 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 23rd April 2004 and “designates” the whole of the City of Bath (i.e., all “public places” in the unparished area, as set out in schedules to Appendix 1). The introduction of the DPPO followed public consultation and use of information and data provided by the Police. 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 Subsequently, in 2013 a further DPPO to “designate” specific areas within Midsomer Norton town centre was approved. Again, 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. This DPPO is contained in Appendix 2.
- 5.4 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

5.5 The Anti-Social Behaviour, Crime and Policing Act 2014 came into effect on 20 October 2014 and 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.

5.6 Statutory Guidance states that PSPOs are intended to deal with a particular nuisance or problem in a particular 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 4.2 above.

5.8 An initial review of the operation of the two existing DPPOs has therefore taken place to assess whether their benefits are sufficient to warrant consulting to extend them as PSPOs with approximately equivalent effect under the new legislation, and can meet the new test. This has highlighted that:

- The Police have seen DPPOs and the enforcement powers thereunder as important precautionary and early intervention tools in managing anti-social behaviour.
- A first-year review of the Bath DPPO carried out in 2005 highlighted 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 Marshalls 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 figures over the full lifetime of the Bath DPPO are not available from the Police, there continues to be support from the Police to continue the powers available to them to control street drinking in Bath through the new PSPO process.

- The Community Alcohol Partnership in Midsomer Norton saw the introduction of both a DPPO and street marshals. Midsomer Norton has seen a 13% reduction in crime and a 17% fall in anti-social behaviour since the introduction of the scheme.

5.9 It is clear that there remain significant concerns relating to street drinking and anti-social behaviour and these issues continue to be raised by local businesses and residents. Given this and the issues identified above, it is considered appropriate to begin consultation on extending the existing DPPOs as PSPOs which would have a broadly similar regulatory effect, in order to ensure continuity and to continue to meet the need to control consumption of alcohol in the areas currently subject to DPPOs. In effect this would replace both existing DPPOs with PSPOs as far as possible on a 'like-for-like' basis, subject to the outcome of consultation. Current draft proposed orders for consultation are set out in Appendices 3 and 4.

5.10 Under the Act it is generally an offence for a person, without reasonable excuse, to do anything that the person is prohibited from doing by a PSPO. However, mirroring the previous DPPO regime, slightly different provisions apply for PSPO prohibitions relating to the consumption of alcohol. The Guidance states that:

"It is not an offence to drink alcohol in a controlled drinking zone. However, it is an offence to fail to comply with a request to cease drinking or surrender alcohol in a controlled drinking zone."

5.11 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.

5.12 The Act also requires proposed PSPOs to be subject to consultation with the Chief Officer of Police, local policing body, community representatives the local authority thinks appropriate to consult, and the owner or occupier of the land within the restricted area. This will take place through a variety of means, based on the questions set out in Appendices 5 and 6. Midsomer Norton Town Council and other local stakeholders will be consulted on the proposed PSPO for Midsomer Norton town centre. Bath City Forum will be consulted on the Bath area. The consultation will be made available online and in a range of accessible formats and languages, in large print, as Braille and on tape, on request. Following the completion of the consultation, officers will report on the outcome and make a recommendation on whether the Authority should proceed with the extension of each of the DPPOs as PSPOs, and, whether

any amendments to the original Designated Public Place Protection Orders should be made.

5.13 The ultimate decision to extend and/or vary each of the DPPOs as PSPOs would go to Full Council. Under the Act, PSPOs have to be reviewed every 3 years and the Guidance suggests new PSPOs should be reviewed after the first year of operation.

6 RATIONALE

6.1 The recommendation begins the process of consultation required in accordance with the Act, which could allow for the extension of the DPPOs as PSPOs in time to ensure continuity of enforcement powers with regard to street drinking, in the light of legislative changes. It also ensures that local views are sought to inform a decision by Council on this matter.

7 OPTIONS:

A. TAKE NO ACTION

This option would mean that the existing DPPOs would not be replaced by PSPOs in October 2017, and they would lapse. This would result in reduced enforcement powers for Avon and Somerset Police.

B. REPLACE BOTH EXISTING DPPOS WITH PSPOS ON A 'LIKE-FOR-LIKE' BASIS

This option maintains continuity between the previous and current legislative regimes; there would be no loss of enforcement power to deal with consumption of alcohol in prescribed public places. The areas proposed to be covered by the PSPOs are the areas outlined in red in the maps in Appendices 3 and 4, which cover the same geographical areas as in the existing DPPOs. These Appendices also set out draft wording for the PSPOs for consultation. PSPOs cover spaces "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". As well as streets, the proposed PSPOs would also include public spaces such as car parks and public parks and any new public spaces created since the initial DPPOs were made. The draft proposals mirror as far as possible the wording within Sections 62 and 63 of the Act (*Prohibition on Consuming Alcohol*) which sets out where prohibitions do not apply and the requirements which Authorised Officers may impose where an order has been breached, respectively.

C. EXTEND THE SCOPE OF THE PSPOS TO INCLUDE NEW ACTIVITIES AND/OR WHOLLY NEW GEOGRAPHICAL AREAS.

This is not included in the current proposed consultation. Any proposals along these lines that arise from the consultation will be considered on their merits.

8 CONSULTATION

8.1 In preparing this report the author has consulted a number of partners both individually and as members of the Responsible Authorities Group (RAG). The RAG is constituted under the Crime and Disorder Act 1998 and involves statutory representatives as prescribed by that Act. A Single Member Decision is sought to begin public consultation on whether the Council should extend the existing DPPOs as PSPOs in specific areas of Bath City Centre and Midsomer Norton.

8.2 As PSPOs create criminal liability, a 12-week consultation period is considered appropriate.

9 RISK MANAGEMENT

9.1 A risk assessment related to the issue and recommendations will be undertaken, in compliance with the Council's decision making risk management guidance. As this report is only to seek approval to carry out consultation, a risk assessment has not been undertaken at this stage.

Contact person	<i>Samantha Jones 01225 396364</i>
Background papers	<i>List here any background papers not included with this report, and where/how they are available for inspection.</i> <i>Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers Statutory guidance for frontline professionals, July 2014</i> <i>Anti-social Behaviour Crime and Policing Act 2014</i>
Please contact the report author if you need to access this report in an alternative format	

APPENDIX 1

BATH AND NORTH EAST SOMERSET COUNCIL

ALCOHOL CONSUMPTION IN DESIGNATED PUBLIC PLACES (BATH) ORDER 2004

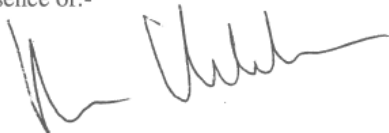
Bath and North East Somerset Council (hereinafter referred to as "the Council") is satisfied that nuisance or annoyance to members of the public, or a section of the public, or disorder have been associated with the consumption of intoxicating liquor in the places identified in the Schedule to this Order and shown more particularly within the blue line on the plan referred to as plan 1 (scale 1:8500) and attached hereto. A further plan referred to as plan 2 is also attached, for identification purposes only, (scale 1:30000) which shows the places identified in the Schedule to this Order within the blue line.

The Council is pursuant of the powers conferred by section 13 of the Criminal Justice and Police Act 2001 and the Local Authorities (Alcohol Consumption in Designated Public Places) Regulations 2001 hereby makes the following Order:

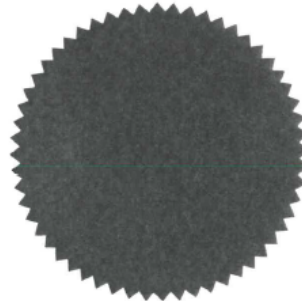
- 1, The places identified in the Schedule to this Order and shown encircled blue on plan 1 attached hereto shall be a "designated public place" for the purposes of section 12 - 16 of the Criminal Justice and Police Act 2001.
- 2, This Order shall come into effect on 23 April 2004 and may be cited as the Bath and North East Somerset Council Alcohol Consumption in Designated Public Places (Bath) Order 2004.

Given under the Common Seal of Bath and North East Somerset Council the 21st day of April 2004.

THE COMMON SEAL of
BATH AND NORTH EAST
SOMERSET COUNCIL
was hereunto affixed in the
presence of:-



Authorised signatory



Bath & North East Somerset Council
Riverside, Temple Street,
Keynsham,
Bristol, BS31 1LA
Tel 01225 477000

Scale 1:30000

Compiled by GJH on 9 January 2004

Bath Boundary

THIS IS THE PLAN REFERRED TO AS PLAN 2 IN THE BATH AND NORTH EAST SOMERSET COUNCIL ALCOHOL CONSUMPTION IN DESIGNATED PUBLIC PLACES (BATH) ORDER 2004



THE COMMON SEAL of BATH AND NORTH EAST
SOMERSET COUNCIL was hereunto affixed in the
presence of:

Authorised signator

License number LA 1993SL

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Appendix 2

BATH AND NORTH EAST SOMERSET COUNCIL
ALCOHOL CONSUMPTION IN DESIGNATED PUBLIC PLACES (MIDSOMER
NORTON) ORDER 2013

Bath and North East Somerset Council ("the Council") is satisfied that nuisance or annoyance to members of the public, or a section of the public, or disorder have been associated with the consumption of alcohol in the places shown within the boundary edged red on the attached plan.

The Council in pursuance of the powers conferred by section 13 of the Criminal Justice and Police Act 2001 hereby makes the following Order:

1. The places shown within the boundary edged red on the attached plan will be a "designated public place" for the purposes of sections 12-16 of the Criminal Justice and Police Act 2001.
2. This Order shall come into effect on 29th March 2013 and may be cited as the Bath and North East Somerset Council Alcohol Consumption in Designated Public Places (Midsomer Norton) Order 2013.

Given under the Common Seal of Bath and North East Somerset Council the 20th day of March 2013.

THE COMMON SEAL of
BATH AND NORTH EAST
SOMERSET COUNCIL
was hereunto affixed in the
presence of:-



Authorised signatory



Midsomer Norton Designated Public Place

