

## Bath & North East Somerset Council

DECISION MAKER:	<b>Cllr Paul Crossley, Cabinet Member for Communities</b>	
DECISION DATE:	<b>On or after 5<sup>th</sup> December 2020</b>	EXECUTIVE FORWARD PLAN REFERENCE:
		<b>E 3240</b>
TITLE:	<b>Public Spaces Protection Order</b>	
WARD:	<b>All</b>	
<b>AN OPEN PUBLIC ITEM</b>		
<b>List of attachments to this report:</b>		

### 1 THE ISSUE

- 1.1 The Anti-Social Behaviour, Crime and Policing Act 2014 ('the Act') introduced Public Space Protection Orders (PSPOs) in 2017.
- 1.2 Public Space Protection Orders (PSPOs) are intended to deal with a particular nuisance or problem in a specified area, where that problem is detrimental to the local community's quality of life, by imposing conditions on the use of that area which apply to everyone.
- 1.3 They are designed to ensure that the majority of the community can use and enjoy public spaces and are safe from being subject to anti-social behaviour. PSPOs can be based on the specific issues being faced in a particular public space, and can include multiple restrictions and requirements in one order.
- 1.4 The two existing PSPOs (Bath and Midsomer Norton) prohibit people from having alcohol "in their possession, care or control in any public place within the restricted area" where they:
  - a Are, have been, or intend to consume alcohol in any Public Place in the restricted area and

- b Are behaving in a way that is, or it likely to cause, harassment, alarm, distress, crime or disorder.

1.5 The PSPO requires people not to consume alcohol or anything which the Authorised Officer reasonably believes to be alcohol, in breach of the Prohibition above. People must surrender to an Authorised Officer on request anything in their possession which is (or which the Authorised Officer reasonably believes to be) alcohol or a container for alcohol.

## 2 **RECOMMENDATION**

The Cabinet Member for Community Services is asked to:

- 2.1 Launch consultation on the application for the Public Spaces Protection Orders for Bath and Midsomer Norton.
- 2.2 Agree for officers to prepare a consultation feedback report for further consideration by the Cabinet member.
- 2.3 Note that in order to comply with statutory guidance any tri annual extensions should be a Cabinet decision unless or until Cabinet decides otherwise.

## 3 **THE REPORT**

- 3.1 It is the view of officers and Avon & Somerset Police (Bath) that it would be imprudent to revoke any PSPOs at this time without clear evidence that they are no longer effective at deterring alcohol-related crime. Whilst crime levels are, on average low in this area, PSPOs and the enforcement powers thereunder are an important deterrent in managing anti-social behaviour.
- 3.2 Avon & Somerset Police note they are unable to quantify the number of interventions that have prevented anti-social behaviour, thus not necessitating the full powers of the PSPO. Anecdotal information has assured council officers that the PSPOs are an active deterrent to anti-social behaviour and are an important addition to A&S Police powers.
- 3.3 A PSPO can be made where the council is satisfied that the activity or activities, carried out in a public place, it proposes to restrict:

- Have had, or are likely to have, a detrimental effect on the quality of life of those in the locality;
- Is, or is likely to be, persistent or continuing in nature;
- Is, or is likely to be, unreasonable; and
- Justifies the restrictions imposed.

3.4 The detail and location of the PSPOs are provided on the Council's website at <https://www.bathnes.gov.uk/services/neighbourhoods-and-community-safety/crime-prevention-and-community-safety/public-spaces>

3.5 S179 of the Explanatory Notes attached to the Act states *“An order prohibiting the consumption of alcohol cannot be used against licensed premises (section 62). Sections 63(2) and 67(4) provide that breach of an order prohibiting the consumption of alcohol is only an offence when an individual does not cease drinking or surrender alcoholic drinks when challenged by an enforcement officer. This could be a police officer, PCSO or local authority officer. This ensures that officers can exercise discretion in each situation. Where there is no threat of anti-social behaviour, they need not challenge the individuals, for example a family picnic with a bottle of wine.”*

3.7 Enforcement of PSPOs depends on the nature of the PSPO. An alcohol incident related PSPO would usually be enforced by police officers or Police Accredited Officers.

#### 4 **STATUTORY CONSIDERATIONS**

4.1 Before an Order is made, under s71, it must have had regard to the Rights of Freedom of Expression and of Assembly under the Human Rights Act 1998, before making the Order. European Human Rights considerations are covered below.

4.2 Having considered the relevant articles there is nothing to suggest these are unreasonably or disproportionately interfered with by the PSPO.

##### **Article 10 – Freedom of expression**

- Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without

interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

- The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are 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 and impartiality of the judiciary.

#### 4.2 **Article 11 – Freedom of assembly and association**

- Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
- No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are 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 of the administration of the State.

4.4 Section 66 of the Anti-Social Behaviour, Crime and Policing Act allows that an interested person, i.e. ‘an individual who lives in the restricted area or who regularly works in or visits that area’, may challenge the validity of a PSPO by application to the High Court where a local authority did not have power to make the order; or that a requirement under the legislation was not complied with.

4.5 Once made, the Council can extend (s60) vary or discharge (s61) an Order. An Order can be extended where there are reasonable grounds that doing so is necessary to prevent an occurrence or recurrence of the activities identified in the Order or an increase in the frequency or seriousness of those activities.

4.6 An Order can only be varied to include a wider area and / or impose more extensive prohibitions or requirements only if the original statutory criteria under s59 are met.

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

5.1 PSPOs have the potential to reduce long-term anti-social behaviour costs in terms of resourcing e.g. Police and council officer time, allowing these resources to be deployed elsewhere.

## 6 **RISK MANAGEMENT**

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

6.2 Legal challenge to the validity of the PSPO process.

6.3 Potential court costs

## 7 **EQUALITY**

7.1 The Equality Analysis is currently in draft and will be published completed in light of consultation responses. Iterations of the draft will be shared with the Member for Communities.

## 8 **CLIMATE CHANGE**

8.1 Not applicable

## 9 **OTHER OPTIONS CONSIDERED**

### 9.1 **Take no action**

This option would mean that the PSPOs would have lapsed, be of no effect and result in reduced enforcement powers for A&S Police and Council authorised officers.

## 10 **CONSULTATION**

10.1 S151 Officer and Monitoring Officer have approved this report, as has Steve Kendall, Chief Inspector, Avon and Somerset Police.

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<b>Background papers</b>	N/A
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