

<b>Bath &amp; North East Somerset Council</b>		
MEETING	<b>Cabinet</b>	
MEETING	<b>9<sup>th</sup> September 2021</b>	EXECUTIVE FORWARD PLAN REFERENCE:
		E3315
TITLE:	Proposed Public Space Protection Order to restrict alcohol consumption in public spaces in Bath and Midsomer Norton	
WARD:	All wards in Bath; Midsomer Norton Redfield and Midsomer Norton North wards.	
<b>AN OPEN PUBLIC ITEM</b>		
<b>List of attachments to this report:</b>		
<ol style="list-style-type: none"> <li><b>1. Report on consultations on draft Public Space Protection Orders for Bath and for Midsomer Norton</b></li> <li><b>2. Proposed order: Bath proposed order: Midsomer Norton (maps attached)</b></li> <li><b>3. Equality Analysis</b></li> </ol>		

## **1 THE ISSUE**

1.1 The Public Spaces Protection Orders which restricts street drinking operating in Bath and Midsomer Norton expired in October 2020. Public Space Protection Orders (PSPOs) are implemented under the Anti-Social Behaviour Crime and Policing Act 2014 (“the Act”). This report invites the Council to determine whether to continue restrictions on street drinking in these areas as PSPOs, 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 and Midsomer Norton, as set out.
- 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 and Midsomer Norton Order as set out in Appendix 1 of the report
- 2.4 Request the Head of Legal Services or an authorised signatory on their behalf to sign and seal the Bath City Order and the Midsomer Norton Order.
- 2.5 Request the Director of People and Policy to undertake publicity relating to any agreed Order and ensure the impact of the PSPOs is kept under review
- 2.6 Request the Bath and North East Somerset Community Safety and Safeguarding Partnership to receive regular monitoring reports on the impact of the PSPOs, 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 including Midsomer Norton Town Council 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 and 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 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 Equality impacts were sought through the consultation process the outcomes of which are summarised in Appendix 2. An Equality 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 people have concerns about the way that the PSPO would be implemented and that there is potential for vulnerable people living a street-based lifestyle to be treated unfairly. 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 that the Police set out a process for monitoring data and such data be recorded for reporting purposes.
- 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 where a Designated Public Place Order is in force. Failure to comply with the Police request was made an arrestable offence and punishable by a fine. Councils were given the power to “designate” and make a Designate Public Place Order 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.

### **The Act**

5.2 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.

5.3 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.

5.4 A PSPO can be made where the Council is satisfied that the legal test is met in 4.1 above. In 2017 after a 12-week consultation, which demonstrated significant public support for the proposed orders within the areas identified in the consultation. the Council agreed to implement 2 PSPOs one for the whole of the City of Bath and a further Order for public spaces around the Midsomer Norton Town Centre.

## **6 Review and Consultation**

6.1 The proposal for both Bath and Midsomer Norton subject to consultation was to renew the lapsed 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 PSPO 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 previous PSPO – i.e., the whole of the City of Bath and a specific area of Midsomer Norton town centre. To reflect the 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.

## **6.2 City of Bath Proposed PSPO Consultation Feedback**

6.3 A 12-week formal PSPO consultation period was agreed to run from 18 December 2020 to 13<sup>th</sup> March 2021, however, because only 61 responses were recorded during that period the consultation was kept open for a further month, a single further reply was received.

6.4 62 replies were received in response to the consultation. A summary of responses is set in set out below:

- 88% of respondents (55 people) agreed that a PSPO to control drinking in Bath would be welcome, with 12 % (7 people) not.
- 85% of respondents agreed with the PSPO’s proposed area, with 12% not, and with no response from 3%
- 88% agreed with the wording of the proposed PSPO, with 12% not.
- The majority of respondents to the consultation were Bath residents and/or worked in the City with a nil response from only one person.
- 64% of respondents (40 people) have been affected by street drinking in the area, with 36% (22 people) not affected. This represents an increase of 7% as 29% said that they had not been affected in the 2017 consultation.

6.5 Of those who *agreed with* PSPO in Bath strong links were made with:

- Alcohol consumption in public spaces anti-social behaviour and threatening behaviour
- Littering, the danger of broken bottles and noise, street urination and vandalism
- Street violence and aggression

- Alcohol consumption should take place within regulated licensed premises and all drinking in unlicensed premises should be banned

6.6 Of those who disagreed with a PSPO in Bath, key points made against were:

- The PSPO as currently drafted is too restrictive or draconian - citing it could restrict (for example) consuming alcohol in a park as part of a picnic or other social gatherings. At least one person expressed the view that they had been targeted in this way under the PSPO.
- 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

6.7 Of those who disagreed with the specific area suggested for the PSPO, comment was made that the current PSPO is not policed in certain locations that all areas should be subject to the 'ban'. That the focus should be on 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).

6.8 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, it should not prevent people drinking in public places if there is no anti-social behaviour
- The Order should allow exceptions for reasonable consumption, and with food
- The Order relies too much on the judgment of the "authorised officer"

6.9 Other key points made by respondents included:

- The PSPO will only work if there is effective enforcement including for repeat offences
- Street drinkers and people who misuse alcohol need proper resources, support and help
- There needs to be effective publicity and signage for any Order

6.10 Of those who disagreed with the *specific area suggested* for the PSPO, the main alternative suggested was to focus on areas where the issue is seen as a bigger problem. One location was mentioned by 3 people who thought this neighbourhood was currently being 'neglected' in favour of areas in central Bath.

## 7 **Consultation feedback on the PSPO - Midsomer Norton**

7.1 A 12-week formal PSPO consultation period was agreed to run from 18 December 2020 to 13<sup>th</sup> March 2021, however, because only 15 responses were received during that period the consultation was kept open for a further month, a further single reply was received.

7.2 16 responses were received in reply to the Midsomer Norton PSPO consultation. A summary of key points is set out below:

- The majority i.e. 86% (14 people) of respondents agreed that a PSPO to control drinking in Midsomer Norton was a good idea, with 14% (2 people) disagreeing
- 80% of respondents agreed with the PSPO's proposed area, with 20% disagreeing
- 67% agreed with the wording of the proposed PSPO, with 15% not and no response from 8 %
- The overwhelming majority of respondents to the consultation were local residents and/or worked in the area
- 60% have been affected by street drinking in the area, with 40% not. In 2017 54% said that they had not been affected

7.3 Of those who agreed with the idea of a PSPO in Midsomer Norton the majority felt it would impact on antisocial behaviour, namely drunken noisy behaviour which clearly some felt threatened by. One person who agreed with the proposal did caution that there was potential for it to be used in a discriminatory manner.

7.4 As 14 out of the 16 people who commented on the proposal were in favour most of the comments recorded were positive, and as only 2 people explicitly disagreed with the proposal there is little variety of negative comments to record in this report.

7.5 Unlike the responses to the consultation on the PSPO proposal for Bath respondents did not mention street violence and aggression, littering, the danger of broken bottles and street urination or vandalism.

7.6 Of those who disagreed with the specific area suggested none gave a specific reason why they disagreed or suggested an alternative area, however, these respondents also disagreed with the question that a PSPO to control street drinking was a good idea.



7.7 Of the two people who disagreed with the proposal for MSN one person commented that existing powers should be enough.

## 8 Midsomer Norton Town Council

8.1 Midsomer Norton Town Council resolved to keep the PSPO at the Full Council Meeting on the 1st February 2021. In commenting on the proposal one Councillor advised 'As a (Town Council and B&NES) I was involved in the original effort to bring in the PSPO, and an active member of the Community Alcohol Partnership which also became part of the same effort to make Midsomer Norton a place where families could seek entertainment in the evening, especially at weekends, without being made to feel uncomfortable or intimidated by the then frequent anti-social behaviour of some drinkers. The Town Council continues to employ Marshals at weekends to the same purpose. The local police appreciate and value the existence of the order. So, I am very strongly in favour of renewing it.

## 9 Police response to both consultations

9.1 Avon & Somerset Police have responded to the consultation as summarised below:

- Broadly speaking the powers conferred under the existing PSPO are considered by officers as an essential tool to manage street crime and disorder. They provide an opportunity to engage with street drinkers, and people involved in Anti-Social Behaviour to intervene at an early stage. They are an important deterrent.
- 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 PSPOs makes it clear that this is a discretionary power, and not to be used to disrupt peaceful activities. The advice given is 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 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 wording is set out below. The 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-**

- Is or has been consuming alcohol in any Public Place in the Restricted Area, or**
- 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**

## 10 **Key Considerations (Bath)**

10.1 To make any Order, the Council needs to be satisfied on reasonable grounds that the conditions set out at 4.1 are met:

10.2 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 causing disturbance and verbal abuse specific locations include Kingsmead Square and streets near the square, also Milson Street, Manvers Street and Broad Street were mentioned.
- Reports from a small number of residents of avoiding the city centre because of feeling intimidated by behaviour and words of drinkers
- Intimidation caused by drunken fights and aggressive behaviour and aggressive language
- Noise and litter close to residential dwellings

10.3 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 and a number of locations around the City Centre were identified. However, other areas across the City are also referred to in the consultation responses as having been impacted by street drinking.

10.4 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.

10.5 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 – i.e., 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.

10.6 It should be noted that the response by the Police above, makes a number of similar points. It should also be noted that the Draft order reflects this wording

as recommended by the Police and as used by the Order that has now lapsed. It is therefore recommended that this wording would be used if the PSPO is implemented.

- 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

10.7 A draft Order reflecting this is attached at Appendix 1.

## 11 **Key Considerations (Midsomer Norton)**

11.1 To make any Order, the Council needs to be satisfied on reasonable grounds that the conditions set out at 4.1 are met:

11.2 Evidence from the consultation demonstrates that alcohol consumption has had a detrimental effect on the quality of life of people in Midsomer Norton:

- Although the numbers of responses to the consultation was relatively small 86% of people felt that the PSPO was a good idea. With most people who made a comment identifying drunken behaviour as their concern.
- 60% of respondents have been affected by street drinking in the area
- The Town Council resolved in favour of the Order and have a continuing investment in Street Marshals whose duties include dealing with alcohol related anti-social behaviour.

11.3 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 the specified area around the High Street in Midsomer Norton has been met.

11.4 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 the wording set out below for the prohibition in the PSPO in Midsomer Norton be adopted. 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 -

- iv. is or has been consuming alcohol in any Public Place in the Restricted Area, or
- v. intends to consume alcohol in any Public Place in the Restricted Area; and

is behaving in a way that is, or is likely to cause, harassment, alarm, distress, crime or disorder

A draft Order reflecting this is attached at Appendix 1.

## **12 RATIONALE**

**12.1** The outcomes of the consultation broadly supports 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.

## **13 OTHER OPTIONS CONSIDERED**

- A. Take no action. 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.

## **14 CONSULTATION**

**14.1** A 12-week formal consultation period ran from 18 December 2020 to 13<sup>th</sup> March 2021

- An online questionnaire including links to the proposal and background information
- Communications to specific organisations, including Midsomer Norton Town Council.
- A Press Release, circulated to a wide range of stakeholders, and subsequent press coverage.

## **15 RISK MANAGEMENT**

**15.1** 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	Samantha Jones
<b>Background papers</b>	Proposed Public Space Protection Order to restrict alcohol consumption in public spaces in Bath.
<b>Please contact the report author if you need to access this report in an alternative format</b>	