

WELWYN HATFIELD BOROUGH COUNCIL
SOCIAL OVERVIEW AND SCRUTINY COMMITTEE – 11 OCTOBER 2017
REPORT OF EXECUTIVE DIRECTOR (HOUSING AND COMMUNITIES)

1 Executive Summary

- 1.1 The purpose of this report is to make recommendations under new legislative powers, in relation to tackling particular types of antisocial behaviour (ASB) in 'hot spot' areas.
- 1.2 The recommendation relates to the initiation of a consultation about the proposed introduction of a Public Space Protection Order (PSPO), which will replace the already existing Designated Public Place Order (DPPO) in Hatfield.
- 1.3 This report explores the options available and recommends the initiation of a consultation, to consider the introduction of a zoned PSPO as set out in Appendix A.

2 Recommendation(s)

- 2.1 That a consultation exercise be undertaken to gain opinions about the proposed introduction of a zoned PSPO for Welwyn Hatfield, as recommended by the local Community Safety Partnership Joint Action Group (JAG), to cover the areas of Hatfield Town Centre and Parkhouse Court commercial zone (See Appendix A)

3 Explanation

- 3.1 In October 2014 the Secretary of State enacted new powers according to the Anti-social Behaviour, Crime and Policing Act 2014 ("the Act") relevant to tackling ASB. These new powers make changes to some existing legislation and were part of a Government commitment to putting victims at the centre of approaches to tackling ASB.
- 3.2 The aims of the Act are as follows:
 - for local agencies to focus on the needs of victims
 - to support people and communities in establishing what is and what is not acceptable, and support them to hold local agencies to account
 - to ensure that professionals have the powers they need to tackle problems
 - to focus on long term solutions.
- 3.3 One of the provisions within the Act relates to PSPOs (Ch 2, Pt 4, ss59-75). A PSPO is intended to deal with behaviours and problems that are considered to be detrimental to the local community's quality of life. The orders are meant to be flexible and can be applied to a broad range of issues (not just alcohol related), with local authorities having the ability to design and implement their own prohibitions or requirements. These conditions centre on the impact on quality of life, persistence and prevalence of the ASB and whether the impact constitutes the behaviour as unreasonable.

- 3.4 Welwyn Hatfield Borough Council introduced the provision for a DPPO (in conjunction with Hertfordshire Constabulary), in Hatfield Town Centre. This has been in place since 31 March 2008. Due to the change in legislative powers, all DPPOs either come to an end in October 2017 or are replaced by a PSPO
- 3.5 The current DPPO allows a constable, where he reasonably believes consumption of the alcohol within the area will lead to alcohol-related disorder or nuisance being committed by the individual, to request forfeiture of any alcohol in the individual's possession. Failure to comply with the request is an offence. This is challenging to enforce due to the ambiguity of the requirement for foreknowledge of potential resultant behaviour. This can lead to complexities in enforcement and the power is therefore underutilised. This historic order has also been exclusively the domain of a police constable to enforce. As Police Community Support Officers (PCSOs) and other accredited persons do not have the power of arrest in these circumstances, a police officer will need to be called if someone fails to comply with the request to refrain from drinking
- 3.6 A PSPO can cover a range of antisocial behaviours, resulting in less paperwork, bureaucracy and delay.
- 3.7 Local authorities have the power to make PSPOs if satisfied on reasonable grounds that two conditions are met:
1. 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. 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.
- 3.8 A PSPO is an order that identifies the public place to which it applies ("the restricted area" within which the impact has or is likely to occur) and can make requirements, or prohibitions, or both within that area. This means that the local authority can require people to do specific things in a particular area or not to do specific things in a particular area provided that the prohibitions or requirements imposed are reasonable. The local authority can grant the Part I prohibitions / requirements in order to prevent or reduce the detrimental impact from continuing, occurring or recurring.
- 3.9 The proposed PSPO can be made to apply to specific people within an area, or to everybody within that area. It can also apply at all times, or within specified times and equally to all circumstances, or specific circumstances.
- 3.10 A failure to comply with either a prohibition or requirement of the order is an offence and carries criminal sanctions. Upon summary conviction (offences heard within the Magistrates Court) defendants can face a fine not exceeding level three on the standard scale (currently £1000). Breaches of the order can also be discharged by use of a fixed penalty notice (FPN).
- 3.11 In deciding if the local authority should make a PSPO the local authority must:-

- a) have particular regard for the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the European Convention on Human Rights (“ECHR”);
- b) carry out the necessary consultation;
- c) carry out the necessary notification; and
- d) carry out the necessary publicity.

3.12 Human Rights

Article 10 of the ECHR relates to freedom of expression. Article 11 of the ECHR relates to freedom of assembly and association. A PSPO may interfere with the rights granted under Articles 10-11 of the ECHR. Careful consideration needs to be given so that prohibitions and requirements under a PSPO do not unnecessarily interfere with what would otherwise be legitimate under the law. Local authorities must show that they have tried to use less restrictive methods to address the issues under the PSPO. In essence it is a balancing exercise between the competing interests of the individual, other individuals and the community at large.

3.13 Consultation

The necessary consultation means consulting, as a minimum, with the following:

- chief police officer of police, and the local policing body for the local area that includes the restricted area
- land owners or occupiers within the affected area
- any community representatives that the local authority feels appropriate

The local authority may also consult with Members of Parliament however this is not a requirement within section 72 of the Act.

3.14 Home Office Guidance states that it is good practice to consult with the county council as Highways Authority.

3.15 Subject to approval of this report, a comprehensive consultation plan has been developed. This includes consulting with the following:-

- Chief Constable of Herts Police
- Police and Crime Commissioner
- Herts County Council
- Hatfield Town Council
- Market Place Consortium
- Hatfield Town Forum
- Chamber of Commerce
- Welwyn Hatfield Community Safety Partnership Joint Agency Group members
- Homeless Prevention Partnership
- Local businesses
- Local residents
- Local schools
- Tenants Panel
- Ward councillors
- Relevant representative organisations such as Liberty

As well as writing directly and promoting face to face and via flyers, the consultation will also be available on the council’s website for local residents, visitors and businesses to complete.

- 3.16 There is no specific timescale requirement over which the consultation should take place. Six weeks is recommended as the minimum period required to allow for an open and transparent process, which seeks the views of members of the public. Public consultation is advisable if the PSPO is to be implemented in a way that mitigates the possibility of legal challenge. There is no duty to advertise in a local newspaper.
- 3.17 It is our intention to consult during period of 6 weeks (16 October 2017 to 26 November 2017). There will be a paper version of the consultation as well as an electronic version. Letters and emails will be sent to the above making them aware of the consultation and inviting them to participate. We will promote via social media, flyers at the Hatfield Housing Office/Community Hub and during town centre events such as Halloween Fest and the Christmas Light Switch On.
- 3.18 Notification; the necessary notification means notifying the following authorities of the proposed order, extension, variation or discharge:-
- the parish council or community council (if any) for the area that includes the restricted area
 - in the case of a public spaces protection order made or to be made by a district council in England, the county council (if any) for the area that includes the restricted area
- 3.19 Publicity; the necessary publicity means:-
- In the case of a proposed order or variation, publishing the text of it;
 - In the case of a proposed extension or discharge, publishing the proposal
- 3.20 The Act is not overly descriptive about the necessary process required for application of a PSPO. It has therefore been necessary to design a process that can be considered to be appropriate and suitably robust.
- 3.21 Support for the PSPO has been sought from the local Community Safety Partnership; local residents and businesses of Hatfield Town Centre at the Community Information Day (CID) held on 18 July 2016; business owners via the Town Team/Forum meetings and local councillors and the Portfolio Holder for Governance, Community Safety, PCC and Corporate Property.
- 3.22 The PSPO can apply for a maximum of three years, upon which a process of review and consultation must be repeated to ascertain if the issues are still occurring and that the order is having the required effect. Thereafter it can be extended for a further three years. It can be extended more than once for further periods of three years.
- 3.23 Although initiated by the local authority, guidance has been sought from members of the Community Safety Partnership (CSP), in order to consider the most effective ways to utilise the new powers and address current ASB issues. Through the Joint Agency Group (JAG) and other local engagement such as the CID, the following ASB issues were identified as the most problematic to tackle through alternative means:
- ASB in public places influenced by consumption of alcohol
 - ASB in public places caused by begging activity
 - Rough sleeping
 - Urinating and defecating in public

- 3.24 The behaviours listed are recommended on the basis that Hatfield Town Centre and Parkhouse Court has a long standing issue with street drinking, rough sleeping, begging associated anti-social behaviour; with the people involved in such activity, urinating or defecating in public spaces. These specific behaviours cause harassment, alarm and distress to members of the public, but are particularly difficult to deal with through other legal channels due to the burden of evidence required to pursue as a criminal act. In addition local residents who are affected by the behaviour are often unwilling to act as witnesses.
- 3.25 The Responsible Authorities Group (RAG) recommended that a PSPO should be considered, in order to effectively tackle these issues. Options considered by JAG included:

Preferred option - Create a 'zoned' area PSPO to target particular hot spots in Hatfield Town Centre and Parkhouse Curt. In considering this option, there may be a risk of displacing the problem to neighbourhood and residential areas. However, the PSPO can be varied (e.g. area extended or additional prohibitions) by the Council within its three year life span, provided that conditions in s59(2), (3) and (5) of the Act are met; and according to regulations set out by the Secretary of State. Further consultation is not required, but the variation could be open to legal challenge if not conducted within the parameters of the legislative framework.

Replace the DPPO with a simple alcohol related PSPO - this was disregarded by JAG due to the ambition and need to tackle begging and the associated ASB.

Create a whole borough PSPO mitigating against displacement. This option was discussed but disregarded due to the potential negative effect on perception of crime.

- 3.26 JAG understands that the requirements for a PSPO have been met based on evidence gathered by Hertfordshire Constabulary and the council in the form of anecdotal evidence, local residents' comments, police recorded crime and ASB statistics. Police records confirm that from 1 January 2017 to 25 July 2017 the ward of B2A, which includes Hatfield Town Centre, received 343 calls relating to ASB and disorder. Of the 343 call received 58 were specifically relating to disorder that the PSPO will seek to reduce.
- 3.27 JAG has agreed that the Town Centres and Parkhouse Court areas are the primary locations requiring a zoned PSPO, due to the prevalence of alcohol related ASB taking place. Maps of the proposed areas can be viewed in Appendix A.
- 3.28 This proposal has been developed to provide opportunities to impact on the issues detailed above through enforcement (ultimately backed by support and interventions). The recommendation is to seek a PSPO for targeted areas of the town. It is recommended that JAG reviews the PSPO on a regular basis in order to make provision for a varied order and further zoned areas if required, perhaps due to displacement of the issues.
- 3.29 It is proposed that the PSPO include the following prohibitions: Person(s) within this area will not:

- Consume alcohol in a public place
- Be in possession of an open vessel(s) of alcohol in a public place
- Approach another person either verbally or through action in order to beg from the other person
- Loiter at or within ten metres of any pay machine (including banks, supermarkets and car parks) unless waiting legitimately to use the machine for the purpose it is designed for
- Sit on the ground in a public place, street, highway or passage in a manner that may be perceived that you are inviting people to give you money
- Urinate or defecate in a public place
- Sleep in any public place which is or includes:
 - Open to the air
 - Within a vehicle for a sustained period
 - Within a car park
 - A non-fixed structure including a caravan or tent without the prior permission of the owner or occupier of the land.

3.30 A prohibition in a public spaces protection order on consuming alcohol does not apply to:-

- 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 be at the relevant time be used for the supply of alcohol or which, by virtue of that Part, could have been so used within the 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

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 the supply of alcohol.

For the purposes of the Act, premises are “council-operated licensed premises” if they are authorised by a premises licence to be used for the supply of alcohol and-

- a) the licence held by a local authority in whose area the premises (or part of the premises) are situated, or
- b) the licence is held by another person but the premises are occupied by a local authority or are managed by or on behalf of a local authority

Furthermore an offence will **only** be committed once an individual does not cease drinking or surrender a container with alcohol in, when challenged by the Police or an authorised person. The purpose of the Order is to tackle anti-social behaviour and when there is no threat of anti-social behaviour there will be no need to challenge an individual.

3.31 These prohibitions represent specific behaviours, exhibited by individuals and groups of people who either live within Welwyn Hatfield, or commute to the town

to undertake criminal activity. The PSPO will be utilised to prevent and disrupt their antisocial behaviour. This is deemed to be a reasonable approach based on the specified objectives within Section 59(5) of the Act

- 3.32 It is felt that a PSPO would provide officers with an opportunity to record breaches more effectively, which in turn will provide greater evidence for the courts. The Crown Prosecution Service (CPS) is more willing to issue Criminal Behaviour Orders (CBO) when a PSPO has been breached by offenders, as this demonstrates habitual ASB.
- 3.33 The justification for this PSPO is based on a similar premise to that of the original DPPO, in terms of alcohol consumption in public and the associated ASB. It is felt that the opportunity to initiate a PSPO should be maximised, in order to provide agencies with the additional chance to address and tackle the significant issue of street begging and associated ASB.
- 3.34 In relation to enforcement of these orders there are two fundamental differences to that of our abilities under DPPOs:
- police community support officers (PCSO) can enforce, if sanctioned by the Chief Constable (under s69 of the Act)
 - an authorised person, being a person authorised by the local authority under section 69 of the Act, can issue a fixed penalty notice
- 3.35 The PSPO can be enforced by authorised council officers, police officers and PCSOs. Implementation and enforcement of the PSPO will be included in the CSP action plan and will primarily be enforced by police officers and PCSOs without the need for additional resources. The Order allows for officers to use the powers where they witness someone in breach of the prohibitions within the specified zones. Subject to the results of the consultation and approval to introduce the order, a protocol will be agreed with the police regarding enforcement.
- 3.36 Only council officers with legal accreditation to issue Fixed Penalty Notices are authorised to enforce the PSPO. It should be noted that this will not be a reactive service by Council officers. Warnings and Orders could be issued if the breach is witnessed whilst officers are carrying out their normal day to day duties.
- 3.37 The Order allows for the possibility of joint (council and police) operations to target known offenders causing ASB within the zoned areas.
- 3.38 Enforcement will be made through various means:
- discretionary warning; or
 - fixed penalty notices payable to the Council (maximum of £100); or
 - prosecution through the courts for persistent offenders (liable to a fine of up to £1000 upon summary conviction).

4 Financial Implication(s)

- 4.1 Enforcement costs under this order will be met by existing police and Council staff. This is supported by the PSPO Procedure Guide which will be finalised, subject to implementation of the Order.
- 4.2 Any supplementary enforcement or back office work will form a part of the role of the police and Council's ASB officers.

- 4.3 There will be some costs associated with consultation, publicising of the order, stationery (FPN booklets) and signage. These costs can be met within existing budget.
- 4.4 Income from FPNs is expected to be small and could be used to cover some associated costs of implementing the proposal.
- 4.5 Home Office Guidance states that the council is liable for all court action undertaken by way of prosecution against the PSPO.

5 Legal Implications

- 5.1 A PSPO can be challenged by a person who lives or regularly works in the restricted area or visits that area under section 66(2) of the Act within six weeks beginning on the date when the PSPO is made or varied on the following grounds:-
- a) That the local authority did not have power to make the order or variation, or to include particular prohibitions or requirements imposed by the order (or by the order as varied);
 - b) That a requirement under Chapter 2 of Part 4 of the Act was not complied with in relation to the order or the variation.

In addition, a challenge may be made under section 67(3) as a defence to a charge that a PSPO has been breached (on the basis that the local authority did not have the power to include a particular prohibition or requirement in a PSPO).

6 Risk Management Implications

- 6.1 Legal challenge could present a financial and reputational risk to the council and wider Community Safety Partnership. The legislation states that “interested persons” may challenge the validity of the order within a period of six weeks. The High Court has the power to quash, amend or uphold the order. This risk will be mitigated by a comprehensive consultation process, which will include approaches to interested groups such as Liberty. Any views expressed during the consultation period will be considered and reported to this committee, prior to a decision about whether or not the proposed PSPO is implemented.
- 6.2 The penalty for breaches of this order relate to fines, and there is a risk that this may lead to non-payment. However, the suite of new powers available allows officers to utilise a range of measures for those identified as persistently breaching the order, for example:
- discretionary warnings
 - Community Protection Notices (CPN)
 - an Antisocial Behaviour Injunction (ASBI), which carries tougher sanctions
 - a Criminal Behaviour Order (CBO)

The proposed recommendations are in accordance with the Antisocial Behaviour, Crime and Policing Act 2014.

- 6.3 If the process to introduce a PSPO is not followed correctly this could lead to a legal challenge, which will mean the council could face legal costs and reputational damage. This will be mitigated by demonstrating a clear

understanding of the legislative scope through a comprehensive consultation process and subject to approval a targeted and specific PSPO.

- 6.4 There is a risk that expectations will be raised by this Order which agencies cannot meet, or that the order may not resolve the issues. This will be mitigated by clear communication during the consultation and subject to agreement, as part of the implementation of the Order.
- 6.5 Implementation of a zoned order could lead to displacement. The most likely area of displacement is towards Welwyn Hatfield parks and open green spaces. This will be mitigated by the oversight of the Joint Action Group. The PSPO will be reviewed by this group, and can be varied as set out in Paragraph 3.25.
- 6.6 As this Order requires the implementation of new legislation, it could be construed negatively by local media due to a lack of understanding. The CSP can mitigate this by producing a communications plan to run in tandem with the consultation process, thereby pre-empting and influencing the media's stance on implementation of the PSPO.
- 6.7 The order will be formally reviewed by the JAG six months after implementation, and annually thereafter in order to mitigate the prevalence of any of the associated risks.
- 6.8 Not taking action presents a reputational risk as businesses and residents have been complaining about these issues for some time and consider the police and the council to be passive.

7 Security & Terrorism Implication(s)

- 7.1 There are no known security and terrorism implications associated with this recommendation

8 Procurement Implication(s)

- 8.1 There are no procurement implications associated with this recommendation.

9 Climate Change Implication(s)

- 9.1 There are no climate change implications associated with this recommendation.

10 Link to Corporate Priorities

- 10.1 The subject of this report is linked to the Council's Corporate Priorities:
- Maintain a safe and healthy community
 - Protect and enhance the environment
 - Meet the borough's housing needs
 - Help build a strong local economy
- 10.2 In addition the PSPO will enhance the community safety partnership's ability to tackle ASB through a targeted but flexible approach; and help to deliver its objectives of:
- Prevent Antisocial Behaviour
 - Reduce the damage caused to neighbourhoods by drugs and alcohol misuse

11 Equality and Diversity

- 11.1 An initial Equality Impact Assessment (EIA) has been carried out to ensure that the consultation process is robust and ensures that all groups with protected characteristics where there could be a disproportionate impact have had an opportunity to provide a view. A further EIA will be done once the outcome of the consultation is known.

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Date	05 September 2017

BACKGROUND PAPERS

Antisocial Behaviour, Crime and Policing Act 2014

Antisocial Behaviour, Crime and Policing Act 2014: Reform of antisocial behaviour powers - statutory guidance for frontline professionals

Public and open spaces information note

Drunken behaviour in public places information note

The Antisocial Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014 (Statutory Instruments)

Appendix A – Proposed PSPO area map