

Report subject	Public Spaces Protection Order
Meeting date	23 June 2021
Status	Public Report
Executive summary	<p>This report outlines a proposal to make a new Public Spaces Protection Order (PSPO) to tackle alcohol related anti-social behaviour in public spaces across much of the Bournemouth, Christchurch and Poole area.</p> <p>In the previous Cabinet reports in March and September 2020, it was agreed to adopt a harmonised approach to tackling street based anti-social behaviour and to consult on new a Public Spaces Protection Order to fit with this approach.</p> <p>Public Spaces Protection Orders can only be implemented to tackle behaviours that are persistent or of a continuing nature and have a detrimental effect on the quality of life. Tackling alcohol related anti-social behaviour has consistently been one of the main uses of PSPO's by local authorities.</p> <p>There is evidence to confirm that much of the Bournemouth, Christchurch and Poole areas does suffer from persistent alcohol related anti-social behaviour. As such it is proposed to implement a PSPO, which gives designated Officers powers to confiscate alcohol from anyone behaving in an anti-social manner, across 29 of the 33 BCP Council wards.</p> <p>A public consultation took place on this proposal, during March and April 2021. Of the 294 responses, 89% strongly agree or agree, only 8% disagree.</p>
Recommendations	<p>It is RECOMMENDED that:</p> <p>Cabinet approves the proposed Public Spaces Protection Order to tackle alcohol related anti-social behaviour in public places</p>
Reason for recommendations	<p>In order to give Officers the powers to tackle alcohol related anti-social behaviour in public spaces where there is evidence that this is a persistent or continuing nuisance which has or is likely to have a detrimental effect on the quality of the life of those in the locality.</p>

Portfolio Holder(s):	Councillor May Haines, Portfolio Holder for Community Safety
Corporate Director	Kate Ryan, Chief Operations Officer
Report Authors	Andrew Williams, Head of Safer Communities
Wards	All Wards
Classification	For Decision

Background

1. The effects of street based anti-social behaviour can have a visible impact on the appearance of, and feelings of safety in our communities.
2. Across the preceding councils prior to the formation of BCP, different approaches to tackling street-based anti-social behaviour by adults had been developed.
3. At the beginning of 2020 a review was undertaken to harmonise BCP Council's approach to dealing with street-based anti-social behaviour (ASB), in light of the Community Safety Accredited Scheme (CSAS) being extended to Poole town centre and the CSAS powers delegated to BCP being extended across the whole BCP Council geography. The findings of this review were reported to Cabinet on 18 March 2020.
4. At this meeting Cabinet agreed to adopt a more harmonised approach to tackling street based anti-social behaviour which focused on;
 - targeting individuals who cause the most problems, using CSAS Officers to gather evidence that can be dealt with swiftly by the ASB Team, through formal action such as ASB Injunctions or Community Protection Notices where necessary.
 - CSAS Officers making appropriate referrals into support agencies for homelessness, mental health outreach and addiction support and conduct joint visits to engage those seen regularly in the town centres.
 - A uniformed presence both deters behaviours and allows officers to collate evidence for formal anti-social behaviour actions. Officers are also able to issue formal anti-social behaviour warnings where behaviour is persistent and detrimental. The approach of being assertive, persistent and consistent in challenging behaviours, whilst supporting individuals is seen as key to the progress being made
5. On 9 September 2020 Cabinet resolved to vary the PSPO covering Poole Town Centre and Holes Bay to remove certain clauses. Cabinet also agreed to further consultation on a broader PSPO to cover areas where anti-social behaviour is a significant issue.
6. Subsequent to a more consistent approach being adopted, focusing on the uniformed CSAS presence, the Council has allocated a further £240,000 for six additional CSAS Officers, enhancing the resources available in tackling street based anti-social behaviour.

Public Spaces Protection Orders

7. Public Spaces Protection Orders are intended to deal with a particular nuisance or problem in a specific 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 and in some circumstances categories of persons where relevant. They are intended to help ensure that the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.
8. Prior to either making a PSPO, extending a PSPO or varying or discharging a PSPO the Council must carry out the necessary consultation and publicity. This means consulting with the Chief Officer of Police and the local policing body, for the relevant police area and appropriate community representatives.
9. The maximum duration of a PSPO is 3 years. The Council can at any time prior to the expiry of the Order extend it for a further 3 years, if they consider it is necessary to prevent the original behaviour from occurring or recurring. In addition the Council can at any time prior to the expiry of the Order vary the terms of the Order by increasing or reducing the restricted areas and/or by altering or removing a prohibition or requirement , or adding a new one.
10. It was also recognised that with the introduction of the Anti-Social Behaviour, Crime and Policing Act 2014, previous Designated Public Protection Orders (DPPOs) were converted to PSPOs for a transitional period which ended in October 2020. This meant that in order for the provisions of any DPPO (transitional PSPO) to continue a new PSPO would have needed to be considered and implemented before October 2020.
11. This was acknowledged as part of the Poole Town Centre and Holes Bay PSPO review and agreement was granted to consult on a new BCP PSPO at Cabinet on 9 September 2020. At this meeting Cabinet agreed that "The Director of Communities is authorised to undertake consultation on a BCP wide Public Spaces Protection Order and is authorised to finalise the precise terms of the wording of the conditions on which the consultation will be undertaken, such wording to be agreed in consultation with the Monitoring Officer."

Options Appraisal

12. A number of options have been discussed in relation to a new PSPO tackling street based anti-social behaviour and other detrimental activities.
13. The first was to expand the existing Poole Town and Holes Bay PSPO to other areas suffering from street based anti-social behaviour. This would place restrictions on:
 - Drinking alcohol and being anti-social
 - Possession, supply or use of intoxicating substances.
 - Behaviour which causes or is likely to cause nuisance, harassment, alarm or distress to another person.
14. Advice from Legal Services however, suggests that PSPO's should not usually be used where there is other relevant legislation covering activities, so that issues such

as possession of illegal drugs, which is a crime, or littering where there is specific legislation, should not normally be included in Public Spaces Protection Orders. The use or possession of drugs is a criminal offence dealt with by Police. CSAS Officers have no powers to stop and search people and so have no ability to enforce this under a PSPO.

15. Similarly, it was advised that the restrictions within a PSPO need to be specific to types of behaviour which is having a detrimental effect and that wide-ranging clauses within a PSPO such as “behaviour which causes harassment, alarm or distress” are too broad to be included in Orders.
16. Another option considered was to look at some of the anti-social behaviour seen across BCP, mainly at the seafront, during the summer of 2020. It has previously been suggested that other forms of anti-social behaviour could be included in a PSPO, such as camping on the beaches and disposable barbecues in public spaces. However, these are covered by separate byelaws and a separate enforcement plan is in place to cover such issues.
17. As these are seasonal issues, they are not felt to meet the test of being persistent or of a continuing nature, but will be addressed through summer planning work to tackle a range of issues that might be expected as the current lockdown eases and visitors return to the conurbation. This includes the development of detailed tactical plans featuring increased security provision and the agreed uplift in the numbers of CSAS staff.
18. Given the factors described above, it was concluded that the most impactful PSPO conditions relate to the ability to confiscate alcohol from those behaving in an anti-social manner in all areas of Bournemouth, Christchurch and Poole where this is seen to be a persistent problem. Not implementing such an Order removes a powerful tool for CSAS and Police Officers in tackling street-based anti-social behaviour, and so this option has been discounted.
19. The options therefore relate to the geographical area to cover with such a PSPO. From the legal framework, there needs to be evidence that the problem we are trying to tackle with the order is persistent and continuing in nature. When looking at data and information to determine the scope of the PSPO a number of factors need to be taken into consideration.
20. Information has been gathered from a number of sources including Dorset Police, Parks & Open Spaces, Seafront Services, CSAS Officers and complaints to the ASB team to demonstrate that there is evidence to show that much of the BCP area is impacted in a persistent manner by adults behaving in an anti-social manner in public spaces, whilst consuming alcohol.
21. In deciding what area to cover within a PSPO, the question of enforcement has to be addressed. Alcohol related PSPO’s are in the main enforced by CSAS Officers, Police Officers and PCSOs. By mapping a potential Order to ward boundaries, which in the main are co-terminus with neighbourhood policing areas, gives some certainty to where the order can be enforced.
22. Whilst the current guidance on PSPO’s does not specifically mention the issue of displacement, it is a factor that we have seen previously across the preceding local authorities, where small areas were subject to alcohol restrictions in relation to a PSPO, which did lead to displacement. This was the case in the former Bournemouth Borough Council area where DPPOs were in place in Bournemouth

Town Centre, Boscombe and Charminster. Street drinkers would migrate to areas known not to be covered by the order, making the problem more difficult to deal with.

23. Currently we are receiving complaints about street drinking from areas such as Ashley Road in Poole or Charminster Road in Bournemouth, these roads cross over ward boundaries. In order to have a clear enforcement strategy officers need to be clear where the PSPO actually covers. Hence there is a need to consider including all of these wards identified below in the area for an order.
24. Given that the response to dealing with street-based ASB has now been harmonised across BCP and with CSAS Schemes working effectively in Bournemouth, Poole and Boscombe. A PSPO covering the majority of the BCP area is being recommended. The proposed area will cover 29 of the 33 wards of BCP Council, as shown on the map attached in Appendix 1. This will give officers the powers to pro-actively tackle those consuming alcohol and acting in an anti-social manner in public open spaces. For many areas this can present a very visible form of behaviours which are of a significant concern to members of the public.
25. The wards excluded from the current proposal would be Broadstone, Bearwood & Merley, Commons and Highcliffe & Walkford, as in these areas there is insufficient evidence to demonstrate that there are persistent problems with adults consuming alcohol and behaving anti-socially in public spaces. For a 12-month period between 2019 & 2020, where Police data was analysed, these wards all saw fewer than 10 reports each of alcohol related anti-social behaviour over that period. This compares to Central Bournemouth, which saw 20 reports per month or Poole Town which saw 10 reports per month. As the areas excluded from the proposed PSPO are mainly residential areas, it is not anticipated that displacement to these areas would take place.
26. If agreed the proposed PSPO could be in place for 1st July 2021, which will greatly assist with our approach to summer planning, particularly around the coastal areas.
27. In order to prevent any confusion, it should be noted that if a PSPO is granted it is not an alcohol ban and it does not make it an offence to drink alcohol in the area covered by the Order. However, it is an offence to fail to comply with a request from an officer to cease drinking or surrender alcohol in the area covered by the Order, if the individual is or is likely to cause anti-social behaviour. If alcohol is confiscated, it can be disposed of by the person who confiscates it.
28. PSPOs are a tool to deal with adults causing alcohol related anti-social behaviour, the police and CSAS have existing powers to deal with those consuming alcohol underage.
29. With regards to licensed premises, a PSPO cannot be used to restrict the consumption of alcohol where the premises or its curtilage (a beer garden or pavement seating area) is licensed for the supply of alcohol (other than council operated licenced premises). There are also limitations where a temporary event notice has been given under Part 5 of the Licensing Act 2003, or where the sale or consumption of alcohol is permitted by virtue of permission granted under section 115E of the Highways Act 1980. This is because the licensing system already includes safeguards against premises becoming centres for anti-social behaviour.

Consultation

30. The proposed PSPO was subject to a formal public consultation between 16th March 2021 and 13th April 2021. There were 294 responses to the survey. 248 responses were from residents who live within the PSPO area.
31. 74% of respondents strongly agree that a PSPO should be made by BCP Council to deal with anti-social behaviour linked to the consumption of alcohol in public open spaces, while a further 15% agree.
32. Respondents who agreed with the proposal did so because they felt that anti-social behaviour associated with the consumption of alcohol in public spaces has become an increasing problem, makes the area an unpleasant place to live and harms the image of the local area. Respondents want to be able to use and enjoy public open spaces in peace, while the consumption of alcohol causes a variety of associated anti-social behaviour. It also leads to increased litter and vandalism, and residents feel intimidated and fear for their safety.
33. Respondents who disagreed with the proposal did so because they felt it was draconian and the offences were already covered by existing laws. These respondents also felt that it will not reduce anti-social behaviour and will move the problem elsewhere rather than prevent it. Respondents also felt that it targeted the vulnerable and that money should be spent on provision of appropriate support services rather than punishment.
34. 30% of respondents felt that Highcliffe and Walkford should be included in the PSPO, 28% felt that Broadstone should be, 26% felt that Commons should be included and 23% felt that Bearwood and Merley should be included. 57% of respondents felt that none of these areas should be included in the PSPO.
35. The Chief Constable and Office of the Police and Crime Commissioner were also consulted, as required by the Guidance. The response from Superintendent Gavin Dudfield stated:

“The PSPO is an appropriate and lawful method to address Anti-Social Behaviour but it should not be used in isolation. Often Anti-Social Behaviour can manifest due to a gap in other services. I would welcome the PSPO being introduced alongside a Public Health problem solving approach to reduce Anti-Social Behaviour.

The PSPO proposal and the response from Acting Chief Inspector Thompson provide data to support the requirement for a PSPO. I note that within the Local Authority area there are acute ‘hot spots’ where there is evidence of high volumes of disorder, yet the PSPO application is for a broad area. The feedback that I have from operational staff is that this broad approach is welcomed, as previously, individuals have found areas where there is no PSPO in place, whereupon they have then caused further Anti-Social Behaviour.”

Summary of legal implications

36. The legal test is set out in Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014. A Public Spaces Protection Order can be made by the Council if they are satisfied on reasonable grounds that two conditions are met. These are:

First Condition

- 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.

- It is likely that activities will be carried on in a public place within hat areas and that they will have such an effect.

AND Second Condition

- The activity/activities is, or is likely to be, persistent or continuing in nature;
- is, or is likely to be, such as to make the activities unreasonable; and
- justifies the restrictions imposed.

Summary of financial implications

37. The only cost of implementing the PSPO, other than staff time, would be the required signage that would need to be put in place. Quotes for this are currently being obtained, but this is likely to be less than £10,000 and can be found from existing resources.

Summary of sustainability impact

38. The positive impact from a sustainability perspective from adopting the proposed PSPO would be a reduction in alcohol related litter in prominent public open spaces.

Summary of public health implications

39. Some of those who cause anti-social behaviour and drink alcohol in public will be dependent drinkers.

Summary of equality implications

40. An Equalities impact Assessment has been completed and can be found in the Appendices to this report
41. No specific concerns have been identified around the proposal for a BCP PSPO to tackle issues of anti-social behaviour related to the consumption of alcohol. A balanced approach is taken to enforcement and support, enforcement of the PSPOs will only take place if an individual is/or is likely to be causing anti-social behaviour (harassment, alarm or distress). There is a community of 'Street drinkers' in some area where the PSPO will cover, they will not be adversely affected unless they are behaving in manner to cause anti-social behaviour. In general, the street drinking community is a mix of some who may be rough sleeping at the time and those with accommodation but who are still street attached. Many will be dependent alcoholics, for whom removing their drinks may be a medical risk. Again, a balanced approach is taken where drinkers will be signposted to support services to address problematic drinking. Enforcement action regarding breaches of the PSPO will be monitored and should this identify trends or concerns that certain groups of people are being adversely affected work will be undertaken to understand why.
42. The consultation identified some members of the public feel their human rights are affected by those causing anti-social behaviour, therefore, the Order will provide a tool to help protect the community.
43. The proposed order is to deal with alcohol related ASB caused by adults. Anecdotal information from front line officers identifies the majority of those who might be identified as being part of the street drinking community are male. It has been identified that in some circumstances different cultural backgrounds can mean there are differing perceptions about the consumption of alcohol in a public place. This

Order is not an alcohol ban and action will only be taken if an individual is acting in an anti-social manner.

Summary of risk assessment

44. A PSPO can be challenged by way of an application to the High Court by an interested person within six weeks of it being made. An “interested person” is someone who lives in, regularly works in, or visits the restricted area.
45. Interested persons can challenge the validity of an Order on two grounds. They could argue that the council did not have power to make the order, or to include particular prohibitions or requirements imposed by the order. In addition, the interested person could argue that one of the requirements (for instance, consultation) had not been complied with.
46. It is considered that this in this matter the risk is minimal, as the correct procedure for making the Order has been followed and it is believed that the Order is proportionate and justified

Background papers

Consultation Summary

Consultation Report

Appendices

Appendix 1 – Proposed PSPO

Appendix 2 - EQIA

BCP Council
The Anti-Social Behaviour, Crime and Policing Act 2014
Public Spaces Protection Order

Identified areas in BCP as highlighted in yellow on the map attached.

1 THIS IS A FORMAL ORDER issued by BCP Council in exercise of its powers under section 59 of the Anti-social Behaviour, Crime and Policing Act 2014 because it is satisfied on reasonable grounds that;

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- a. Activities carried out in a public space 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 out in any public place within that area and that they will have such an effect.

In addition, the effect, or likely effect, of the activities;

- a. Is, or is likely to be, of a persistent or continuing nature;
- b. is, or likely to be, such as to make the activities unreasonable and;
- c. justifies the restrictions imposed by the Order.

2. Identified activities

- Consuming alcohol and behaving or likely to behave in a manner so as to cause nuisance, harassment, alarm or distress to another person.

3. Restrictions placed on you

3a No person, without a reasonable excuse, shall refuse to stop drinking alcohol or surrender any containers (sealed or unsealed) which are believed to contain alcohol, when required to do so by a Police Constable or Authorised Person.

4. Requirement placed on you

4a If a Police Constable or Authorised Person reasonably believes that you have acted, or likely to act, contrary to the restrictions placed upon you by this Order, you must leave the designated area or specified location forthwith and not return within a specified period up to a maximum of 48 hours when instructed to do so by a Police Constable or Authorised Person.

The Council requires that you terminate the activities described in section 3 and comply with requirement 4 if requested to do so within the restricted area detailed yellow on the attached map.

5. What happens if you fail to comply with restriction 3a?

If without reasonable excuse you fail to comply with restriction 3a you will be liable on summary conviction to a fine not exceeding level 2 (£500).

7. Fixed Penalty Notices

Alternatively, a Constable or Authorised Person may issue a Fixed Penalty Notice (FPN) to anyone he or she believes has committed an offence. You will have 14 days to pay the initial FPN of £100. No further proceedings will be taken against you for this offence before the expiration of 14 days following the date of the FPN. You will not be liable for prosecution if you pay the FPN during the said period of 14 days.

Order dated the 2021

This Order ends on the 2021

Signed

Date: .

Note: Any further information regarding this Notice may be obtained upon application to the Anti-Social Behaviour Manger, BCP Council

