

<b>Decision maker:</b>	<b>Director for economy, communities and corporate</b>
<b>Decision date:</b>	<b>Monday 16<sup>th</sup> April 2018</b>
<b>Title of report:</b>	<b>Public spaces protection order alcohol control</b>
<b>Report by:</b>	<b>Trading standards service manager</b>

## **Classification**

Open

## **Decision type**

Non-key

## **Wards affected**

Bromyard and Bringsty, Bromyard West, Hereford Central, Greyfriars, Ledbury North, Ledbury South, Leominster East, Leominster North & Rural, Leominster South, Ross East, Ross North, Ross West.

## **Purpose and summary**

This report seeks authority to introduce the public spaces protection order (PSPO) for alcohol consumption under the Anti-Social Behaviour Crime and Policing Act 2014 to replace the previous Alcohol Consumption in Designated Public Places orders made under the Criminal Justice and Police Act 2001, which has now been repealed.

The public protection order will apply, in the designated areas within Bromyard, Hereford, Ledbury, Leominster and Ross on Wye, to a person consuming or intending to consume alcohol in a designated public place and when a person is likely to cause or has caused disorder. In such cases this person can be required to stop and have the alcohol confiscated whether the drinking vessel is opened or not.

## **Recommendation(s)**

**That:**

**(a) the public spaces protection order for alcohol consumption (at appendix 2) for application in the areas designated in appendices 3 to 7 be adopted and approved.**

## **Alternative options**

1. That no order is put in place which would lead to enforcement agencies not being able to address the anti-social behaviour.

## **Key considerations**

1. Public spaces protection orders 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. They are designed to ensure the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.
2. The council's policy regarding public spaces protection orders lays out the requirements for implementation of a public spaces protection order. See Appendix 1.
3. Evidence demonstrates that alcohol can be a factor in anti-social behaviour and violent crime, making people fearful of using certain areas or enjoying the night time economy. Therefore it is important to ensure that the council uses the legislation it has available. The council takes the health and well-being of the residents very seriously and seeks to promote a healthy and safe environment for all residents, protecting them from anti-social behaviour.
4. This order will replace the now repealed Designated Public Places Order that already applies to certain designated areas within Herefordshire because the act under which they were established has been repealed and they are now unenforceable. The orders being:
  - The Herefordshire (Alcohol Consumption in Designated Public Places) Order No.1 2001
  - The Herefordshire (Alcohol Consumption in Designated Public Places) Order No.2 2002
  - The Herefordshire (Alcohol Consumption in Designated Public Places) Order No.3 2005
  - The Herefordshire (Alcohol Consumption in Designated Public Places) Order No.4 2006
  - The Herefordshire (Alcohol Consumption in Designated Public Places) Order No.5 2006
  - The Herefordshire (Alcohol Consumption in Designated Public Places) Order No.6 2007
  - The Herefordshire (Alcohol Consumption in Designated Public Places) Order No.7 2009

5. The order means that if Police Community Support Officers, Police Officers, council officers or their authorised representative believe a person is consuming or intends to consume alcohol in a public place and is likely to, or has caused disorder, then these authorised officers can require such a person to stop and confiscate their alcohol whether the drinking vessel is opened or not. Anyone failing to comply with this request could be subject to a Fixed Penalty Notice or a fine up to £1000. See Appendix 2
6. The order covers certain areas designated by the purple line on the maps for the following areas Bromyard, Hereford, Ledbury, Leominster and Ross on Wye. Appendix 3,4,5,6,7 respectively.
7. The previous alcohol restriction orders provided suitable controls and this public spaces protection order seeks to continue the similar controls to ensure that there is no detrimental effect to the quality of life for those in the area.
8. The council has carried out a statutory consultation. For detail see consultation section.
9. This public spaces protection order will continue to allow the council to reduce anti-social behaviour and protect the environment.

## **Community impact**

10. This public spaces protection order supports the corporate plan priority to secure better services, quality of life and value for money by applying appropriate regulatory controls in that it tackles particular nuisance or problems that are detrimental to the local community's quality of life by imposing conditions on the use of an area. It will allow the law-abiding majority to use and enjoy public spaces, safe from anti-social behaviour.
11. In line with the council's Corporate Plan for 2016 – 2020 and priorities to enable residents to live safe, healthy and independent lives and to keep children and young people safe and give them a great start in life, the council is committed to providing a healthy and safe environment for all individuals impacted by the council's activities. The council endeavours to ensure that the work they undertake, contributes to the aims of ensuring the health, safety and welfare of staff and members of the public. The introduction of a PSPO for alcohol control will continue this ethos to have a positive effect on community safety.
12. Regard must be given to the freedoms permitted under articles 10 and 11 of the Human Rights Act 1998 when drafting, extending, varying or discharging a Public Spaces Protection Order. These cover freedom of expression, and freedom of assembly and association respectively. Wherever proposals for an Order have the potential to impinge on the rights under Articles 10 and 11, consideration must be given as to how to demonstrate that they satisfy the requirements of paragraph 2 in each of the articles.
13. Consideration should also be given to local affected community groups regarding their usage of the area in respect of articles 10 and 11 and the Council should be satisfied that any restrictions on such rights and freedoms imposed by an Order are lawful, necessary and proportionate.

## **Equality duty**

14. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

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Further information on the subject of this report is available from  
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A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
15. The Equality Act 2010 established a positive obligation on local authorities to promote equality and to reduce discrimination in relation to any of the nine 'protected characteristics' (age; disability; gender reassignment; pregnancy and maternity; marriage and civil partnership; race; religion or belief; sex; and sexual orientation). In particular, the council must have 'due regard' to the public sector equality duty when taking any decisions on service changes. The order does not have a detrimental impact on the nine protected characteristics.

## Resource implications

16.

- i. The costs for this order will be for the production of signs for the area, and fixed penalty notice documents estimated at £1,000. These will be procured in accordance with the council's contract procedure rules.
- ii. The revenue will initially come from the Community Protection Team budget but a proportion will be offset when fixed penalty notices are issued.
- iii. There is a potential income stream from the issuing of the fixed penalty notices by council officers, police officers and police community support officers, the income coming to the local authority for the administration of this order.

## Legal implications

2. A local authority may make a public spaces protection order under section 59 of the Anti-Social Behaviour Crime and Policing Act 2014 ("the Act") which provides the power to make the order in appendix 10 provided the council is satisfied on reasonable grounds that two conditions are met.

The first condition is that -

- (a) activities carried on in a public place within the council's area had had a detrimental effect on the quality of life of those in the locality, or
- (b) it is likely that the activities will be carried on in a public place within that area and that they will have such an effect.

The second condition is that the effect, or likely effect, of the activities

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

The policy in appendix 1 evidences the reasonable grounds for this power to be used.

Appendix 2 contains the terms of the Order and this complies with the requirements of the Act.

The tests to be met in making the order are set out in the report and the Council is satisfied that the tests and conditions enshrined within the legislation are met for the reasons set out above.

Section 72 of the Act requires necessary consultation and this has been complied with as set out in consultees section below. Once adopted, the order must be published in accordance with regulations made by the Secretary of State and must:

- identify the activities having the detrimental effect;
- explain the potential sanctions available on breach; and
- specify the period for which the Order has effect.

The council must have regard to Articles 10 and 11 of the European Convention on Human Rights, which provide for the right for lawful freedom of expression and freedom of assembly, ensuring that the making of a public spaces protection order is not used to stop reasonable activities where no anti-social behaviour is being committed.

17. Section 66 of the Act does allow an 'interested person' to apply to the High Court to question the validity of a PSPO on the grounds that either: the local authority did not have the power to make the order; or there was failure to meet a requirement set out in Chapter 2 of the Act. Any such action must be made by a person who regularly lives or works in the area covered by an order and must be made within six weeks of the order being made

## **Risk management**

18. If no order is made people will be able to freely drink in public places which may lead them to cause anti-social behaviour preventing other people from enjoying the use of a public space and having a suitable quality of life.
19. The anti-social behaviour police and crime act 2014 provides an appeal period website where anyone who lives in, or regularly works in or visits the area can appeal a PSPO in the High Court within six weeks of issue. Additionally, as with all orders and powers, the making of a PSPO can be challenged by judicial review on public law grounds within three months of the decision or action subject to challenge. 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. In addition, the interested person could argue that one of the requirements (for instance, consultation) had not been complied with. When the application is made, the High Court can decide to suspend the operation of the Public Spaces Protection Order pending the verdict in part or in totality. The High Court has the ability to uphold the Public Spaces Protection Order, quash it, or vary it.

## **Consultees**

20. As per the requirements of Section 72 of the Anti-Social Behaviour Crime and Policing Act 2014 a consultation has taken place for 6 weeks ending on 11<sup>th</sup> October 2017.
21. Persons consulted were:
  - Police and Crime commissioner (via email)

- Chief Police Officer West Mercia Police Hereford (via email)
- Local Policing Teams (via email)
- Affected Parish/ Town Councils (via email)
- All Herefordshire Council Ward Members (via email)
- The members of the public (via social media and council website)

22. Feedback came from a number of means via the electronic survey and email. The result of the survey showed that the majority were in favour of the public spaces protection order for alcohol control. For a detailed report and comments see appendices 8 and 9. There is no significant objection to the issuing of the order therefore there is no reason not to proceed.

## **Appendices**

Appendix 1 Public spaces protection policy

Appendix 2 Public spaces protection order for alcohol control

Appendix 3 Bromyard Map

Appendix 4 Hereford Map

Appendix 5 Ledbury Map

Appendix 6 Leominster Map

Appendix 7 Ross on wye Map

Appendix 8 Electronic survey report

Appendix 9 Electronic survey comments

## **Background papers**

None identified