

For publication
The Anti-social Behaviour Crime and Policing Act 2014
Designation of Public Spaces Protection Orders ([HW1140](#))

Meeting: Cabinet

Date: 10th October 2017

Cabinet portfolio: Health and Wellbeing

Report by: Martin Key, Health and Wellbeing Manager

For publication

1.0 Purpose of report

- 1.1 To inform Members of the outcome of the public consultation on proposals for the implementation of Public Spaces Protection Orders (PSPOs) to control street drinking and other anti-social behaviour.
- 1.2 To ask Members to implement the proposed PSPOs to provide new controls relating to street drinking and other anti-social behaviour.
- 1.3 To ask Members to permit the two existing Designated Public Place Orders (DPPO) to automatically transfer to become PSPOs on 20 October 2017 and then revoke the 2004 order and amend the plan attached to the 2011 order.

2.0 Recommendations

- 2.1 That Members acknowledge the formal consultation responses received on the Public Spaces Protection Order Chesterfield (No1)

(relating to restricting alcohol consumption) and the Public Spaces Protection Order Chesterfield (No2) (relating to other anti-social behaviour controls) and related issues.

- 2.2 That Members agree to the implementation of the Public Spaces Protection Order Chesterfield (No1) (relating to restricting alcohol consumption) and the Public Spaces Protection Order Chesterfield (No2) (relating to other anti-social behaviour controls) as attached in Appendix 4 and 5.
- 2.3 That Members agree to allow the 2004 DPPO to automatically transfer to become a PSPO on 20 October 2017 as provided for in the Anti-Social Behaviour, Crime and Policing Act 2014 and then discharge the 2004 DPPO.
- 2.4 That Members agree to allow the 2011 DPPO to automatically transfer to become a PSPO on 20 October 2017 as provided for in the Anti-Social Behaviour, Crime and Policing Act 2014 and then vary the plan attached to the Order to exclude the areas now included in the Public Spaces Protection Order Chesterfield (No1).
- 2.5 That Members agree that the implementation of the PSPOs and the necessary changes and discharge of the DPPOs will be undertaken once the necessary preliminary steps have been completed and agree to delegate this decision to the Local Government and Regulatory Law Manager in consultation with the Portfolio Holder for Health and Wellbeing.
- 2.6 That Members consider a review of the evidence relating to the area covered by the 2011 DPPO in respect of alcohol consumption in a public place by November 2018 to assess whether the evidence supports the continuation of the controls.
- 2.7 That Members request a further report to consider the impact and effectiveness of the PSPOs once they have been in effect for 12 months.
- 3.0 **Background**
- 3.1 A report was considered by Cabinet on 25 July 2017 outlining the legislative background, the evidence that supports the proposed restrictions and the proposed scope of two new PSPOs to restrict

alcohol consumption and other anti-social behaviour (ASB) in Chesterfield town centre.

- 3.2 PSPO's are designed to ensure the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour. A PSPO can be made by the local authority if they are satisfied on reasonable grounds that the activities carried out or likely to be carried out, in a public place:
 - Have had, or are likely to have a detrimental effect on the quality of life of those in the locality.
 - Is, or likely to be of a persistent or continuing in nature.
 - Is, or is likely to be unreasonable.
 - Justifies the restrictions imposed.
- 3.3 Breaching a PSPO is a criminal offence. Orders can be enforced by an officer authorised by the local authority (including police community support officers) and a police constable. A breach of the PSPO may be dealt with either through the issuing of a Fixed Penalty Notice (FPN) of up to £100 or by prosecution. It is important to recognise that a FPN is not a fine but an alternative to prosecution whereby an individual accepts payment of a sum of money to discharge their liability for conviction. Failure to pay a FPN may result in the case being progressed to a prosecution.
- 3.4 In cases where an individual is convicted the maximum fine is a level 2 fine (max £500) for alcohol consumption breaches or a level 3 fine (max £1000) for other breaches.
- 3.5 Appeals against a PSPO can be lodged by anyone who lives in, or regularly works in or visits the area in the High Court within six weeks of the date of issue. Further appeal can be made when a PSPO is varied by the local authority.
- 3.6 The PSPO can be in place for a maximum of three years and is designed to be flexible and responsive to need. There is no limit on the number of times that Orders can be renewed, as long as the need is still present. Variation of a PSPO can be done at any time to respond to the changing needs based on evidence of the effects on the quality of life of those in the locality.

4.0 **Data and evidence supporting the proposed PSPOs controls**

4.1 The report considered by Cabinet on 25 July 2017 included extensive evidence and data to support the proposed PSPO controls. The data recorded between 5 December 2016 and 9 July 2017 indicated that there were 444 incidents within the proposed area of the PSPO and of these 186 were recorded as being alcohol-related.

4.2 Further analysis of the individual reports for this period was carried out to identify the key words used to identify the type of ASB in the reports. Some of the reports have multiple key words and have therefore been considered under each of the activities reported. The table below summarises the basis of these ASB reports.

Rough Sleepers/homeless	63
Begging	27
Alcohol or drugs	218
Fighting, threatening behaviour, assault	256
Damage	42
Congregating and causing distress	45
Urination/defecation	24
Leaving belongings on the street	15

4.3 It is considered that the evidence clearly provides reasonable grounds to consider that the controls proposed in the PSPOs are necessary to ensure that activities within the proposed areas do not have a detrimental effect on the quality of life of those in the locality and proportionally justify the restrictions imposed.

5.0 **Consultation Outcome**

5.1 The Anti-Social Behaviour Crime & Policing Act 2014 requires that local authorities carry out public consultation on any proposed PSPOs. This consultation was carried out between 31 July 2017 and 25 September 2017.

5.2 The consultation asked for feedback from the public on the two proposed PSPOs . The consultation was available to complete

on-line and in addition paper copies were available in the following locations:

- Chesterfield Town Hall, Rose Hill
- Customer Service Centre, New Square
- Queen’s Park Sports Centre
- The Healthy Living Centre, Staveley
- Chesterfield Library.

5.3 There was specific consultation with the Chief Officer of the Police, the Police and Crime Commissioner (PCC) and the Highways Authority.

5.4 There were 57 paper responses and 254 via the web making a total of 311. In addition a letter was received on behalf of 27 town centre businesses and 68 members of the public (attached as Appendix 2) and responses were also received from Derbyshire Constabulary and the Police and Crime Commissioner.

5.5 The detailed report on the questionnaire responses and the associated full comment list is attached as Appendix 1. The following table summarises the high level responses expressed as percentages of the total response.

Proposed Prohibition	Agree it is a problem	Has had an impact	Worsened over last 12 months	Agree to the proposed PSPO controls	Agree to £100 fine
Street drinking	91.6	82.0	77.5	95.1	83.7
Positioning or occupying any tent or temporary structure	70.1	60.3	57.6	89.3	76.9
Activity or behaviour causing nuisance, alarm, harassment or distress	91.2	79.4	80.8	93.4	78.8
Loitering for the purposes of begging	88.6	74.9	74.3	90.2	75.4
Urinating or defecating	75.2	65.0	58.7	95.4	86.4
Leaving unattended material or paraphernalia	76.9	65.4	67.0	87.5	75.4
Use or supply of any intoxicating substance	91.0	82.6	79.5	96.1	82.4

5.6 These responses show significant support for the proposed controls and also confirm that the issues identified do pose a

problem in the town centre area included in the map attached to the PSPO.

5.7 In addition to the metrics, the consultation sought comments and additional information from respondents. The following table is based on an analysis of the key words and issues included in full comment list attached as Appendix 1.

Proposed Prohibition	Common comments on impact	Comments on concerns
Street drinking	Intimidating, unsafe, threatening, uncomfortable, abusive and aggressive, makes town hostile and unwelcoming, deters visitors	Enforcement needs to be resourced, Fixed Penalty Notices (FPN) may not deter those who have no money, risk of dispersal to other areas, should consider community service for offenders
Positioning or occupying any tent or temporary structure	Intimidating, unsafe, uncomfortable, nervous, unsightly, concerns about traveller communities	Enforcement needs to be resourced, FPN may not deter those who have no money, focus on helping those forced to live in tents
Activity or behaviour causing nuisance, alarm, harassment or distress	Intimidating, scared, threatening, uncomfortable, unsafe, people with dogs, 48 hours dispersal is not long enough, spoiled enjoyment of public spaces	Enforcement needs to be resourced, FPN may not deter those who have no money, be tougher on repeat offenders
Loitering for the purposes of begging	Intimidating, threatening, uncomfortable, abusive and aggressive, sympathy with those genuinely in need but not those funding drug and alcohol issues, some won't accept help only money	Enforcement needs to be resourced, FPN may not deter those who have no money, don't include buskers, money should be collected centrally and distributed to local homeless charities, more homeless support, address the root causes of poverty
Urinating or defecating	Disgusting, health risks, unsightly, offensive, vulgar and vile, unclean, smells, puts visitors off the town	Enforcement needs to be resourced, FPN may not deter those who have no money, there needs to be an adequate public toilet provision
Leaving unattended material or paraphernalia	Litter, unsightly, offensive, unclean, smells, puts visitors off the town	Enforcement needs to be resourced, FPN may not deter those who have no money, needs to address the homeless issue, where are homeless people expected to store their belongings?
Use or supply of any intoxicating substance	Intimidating, unsafe, threatening, uncomfortable, abusive and aggressive, makes town hostile and unwelcoming, deters visitors and residents, drugs are the cause of much of the ASB issues in town, zombies on the streets	Enforcement needs to be resourced, FPN may not deter those who have no money, confiscate any materials found, ensure offenders are rehabilitated, needs to wider social causes

5.8 In respect of the locations that were identified in the consultation responses as 'hot spots' for ASB these were generally spread

across the proposed area of the PSPO. The locations that were mentioned most often were:-

- West Bars
- New Square
- Beetwell Street
- Market Place
- Low Pavement
- The old Courthouse
- Car parks – Saltergate Multi-storey and Holywell Cross
- Elder Way
- Knifesmithgate
- The Crooked Spire Churchyard
- Around the Town Hall
- Around the Customer Service Centre
- The old Co-operative Building

5.9 The Derbyshire Police and Crime Commissioner submitted a response (attached as Appendix 3). The Commissioner is supportive of the proposed PSPOs and following the recent Town Centre Summit is aware of the issues around ASB and welcomes the Council's commitment to providing resources to support the enforcement of the Orders. There were some comments with a request for a larger scale map, ensuring that the area designated excludes residential properties and an amendment to the wording of control around tents and other temporary structures. These comments are reflected in the revised PSPOs in Appendix 4 and 5.

5.10 The Derbyshire Constabulary have submitted a response and the key issues are as follows:-

- a) Derbyshire Constabulary supports working in partnership to ensure the community is a safe place to work, live and visit
- b) The conversion of the DPPO into a PSPO with some broader conditions is generally supported
- c) The proposed PSPO map provided within the consultation is unclear and a more accurate one with street names should be supplied
- d) The area of the PSPO is considered to be extremely wide and is therefore very difficult to enforce
- e) The restricted area effectively covers business premises and private areas

- f) The proposal in the PSPO to amend the existing controls on alcohol in the town centre to require the surrender of open and closed alcohol containers when required would be beneficial to help address the issues in Chesterfield Town centre both in the daytime and night time economies
- g) Concern over extension of these controls more widely across the borough where there is little evidence of alcohol related ASB and there is therefore the question of necessity, proportionality and justification as well as potential resource implications
- h) The concerns in respect of enforcement in respect of the homeless and tents have been discussed on a number of occasions - there have been no reported issues with tents since November 2016. There is also the question of enforcement in respect of Gypsy and Traveller groups.
- i) There are issues with enforcing the range of controls over such a wide area.
- j) The police would like to develop a Memorandum of Understanding around enforcement with partners

6.0 **Response to Issues Raised by the Consultation**

- 6.1 Based on the consultation comments there are a number of issues that have been clarified in the proposed PSPOs:-
- A revised larger scale map has been produced which excludes the largely residential areas in the consultation version
 - The wording around the tents prohibition has been slightly adjusted
 - An exemption has been included for the tents prohibition to exclude travellers and gypsies as a protected group under the Equality Act 2010 from that restriction as there are existing powers to address these issues
- 6.2 The final PSPOs are attached as Appendix 4 and 5. The PSPOs must be published in accordance with the regulations made by the Secretary of State and appropriate signage placed within areas affected by the restrictions. In addition, as outlined in Section 8 below, the proposed Memorandum of Understanding with the police and the provision of additional resource needs to be finalised. It is therefore proposed that following the cabinet decision there will need to be additional preparation work before

the PSPOs can be fully implemented. It is proposed that once these steps have been progressed the PSPOs will be adopted and the necessary changes made to the DPPOs and that this decision is delegated to the Local Government and Regulatory Law Manager in consultation with the Portfolio Holder for Health and Wellbeing. Prior to the full implementation the interim period will be used to further communicate the extent and impacts of the new controls.

- 6.3 There have been many points raised by the consultation and the following summarises the responses to the key concerns
- a) **The area should be extended** – there were suggestions that the area should be enlarged for example to include Chatsworth Road, Morrisons, Queens Park Sports Centre and Tapton Terrace. There is no recorded significant evidence of issues in these locations at this time that would support extension of the area. This will continue to be monitored and if evidence suggest the need for such an extension this can be considered further
 - b) **The existing area is too large** – the evidence available and the public consultation responses (particularly the areas seen as 'hot spots' summarised in section 5.8 of this report) support the need and justification to include the restrictions in the area selected. In addition there needs to consideration of the risk of relocation of the behaviours and therefore the area needs to be designed around current intelligence and where the behaviours are seen as likely to occur.
 - c) **Other issues that should be considered** – there were many suggestions of behaviour that could be included. There were a number around charity collectors which will be addressed by the Site Management Agreement detailed in the July cabinet report.
 - d) **There needs to be more enforcement** - this has already been addressed. It is proposed to finalise the Memorandum of Understanding with the police to clarify enforcement roles (further information is included in Section 8 below). It is also proposed to provide additional resource within the Council for enforcement activity.
 - e) **The Council should be supporting vulnerable people not criminalising their behaviour** - there were a number of concerns raised around the enforcement

approach proposed to be taken against homeless people. This is further addressed in Section 12 below and the Equalities Impact Assessment attached as Appendix 6.

7.0 **DPPOs**

- 7.1 The Anti-Social Behaviour, Crime and Policing Act 2014 provides that any DPPO existing on 19 October 2017 will automatically become a PSPO on 20 October 2017. The Council has previously adopted two separate DPPOs in 2004 and 2011. The 2004 DPPO related to an area of Chesterfield town centre and this will fully covered by the Public Spaces Protection Order Chesterfield (No1). It is therefore proposed to allow the 2004 DPPO to convert to a PSPO on 20 October 2017 and then discharge it once the Public Spaces Protection Order Chesterfield (No1) has been fully implemented.
- 7.2 In respect of the 2011 DPPO which covers a larger area south of the town centre covering Boythorpe, St Augustines and Birdholme, there have been issues raised as to whether there is evidence to support the restrictions over such a large area. Some of the area currently covered by the 2011 DPPO is included in the Public Spaces Protection Order Chesterfield (No1). It is therefore proposed to allow the 2011 DPPO to automatically become a PSPO on 20 October 2017. It is proposed to monitor and evaluate the level of complaint and incident in this area over the next 9 months to determine whether the evidence supports continuation of the controls in this area.
- 7.3 Furthermore it will be necessary to amend the map attached to the 2011 DPPO once it transfers to a PSPO to exclude the areas included in the Public Spaces Protection Order Chesterfield (No1) once fully implemented.

8.0 **Human resources/people management implications**

- 8.1 There is already a range of enforcement activities undertaken in the areas proposed to be included within the PSPOs. There is a good working relationship with the police and the enforcement is currently targeted based on intelligence received and service demands. There is enforcement activity undertaken by staff from the Community Safety Team, Licensing, Environmental health and

supported by other town centre staff in CCTV, street cleaning, markets and parking.

- 8.2 The officers within the Environmental Protection team already lead on enforcement for environmental issues and have delegated powers to serve Fixed Penalty Notices for dog fouling, litter, anti-social behaviour etc..
- 8.3 It is proposed that as part of the Memorandum of Understanding with the police enforcement for criminal breach of a PSPO will be led by the Council unless the police have a wider criminal action in hand when they will take primacy. The police will deal with complaints they receive, support and provide evidence of potential breaches of the PSPOs.
- 8.4 Where the police issue Council Fixed Penalty Notices (FPNs), the administration of these will be undertaken using the existing FPN processes by officers within the Environmental Protection team. Any income from these will be used to support activities around ASB within the borough.
- 8.5 There is a review of enforcement across the health and well-being service underway (including Licensing and Community Safety teams) with a view to redesign to provide additional resource for supporting enforcement of the PSPOs in collaboration with the police. This will be reported to cabinet later in the year.

9.0 **Financial implications**

- 9.1 Should the Orders be approved, the PSPOs must be published in accordance with the regulations made by the Secretary of State and appropriate signage placed within areas where there are restrictions in place. Costs associated with this are provided for in the Community Safety budget.

10.0 **Legal and data protection implications**

- 10.1 The legal and data protection implications have been addressed in the body of the report.

11.0 Risk management

11.1 The following risks associated with this report have been identified as:

Description of the Risk	Impact	Likelihood	Mitigating Action	Impact	Likelihood
Challenge of the PSPO at High Court by an interested party.	High	Medium	Consultation has been undertaken and the PSPOs are based on evidence	High	Low
Increase in complaints about non-compliance with the PSPO	High	Medium	Draw upon enforcement resource within the Council and partners. Ensure enforcement resource available out of hours.	Medium	Low
Adverse reaction by press and public to proposals	High	Medium	Full media campaign to explain evidence and alternate approaches to support vulnerable persons	Medium	Low

12.0 Equalities Impact Assessment (EIA)

12.1 When making a PSPO a local authority must have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the European Convention on Human Rights and the Human Rights Act.

12.2 The wording of the PSPO has been specifically drafted in a way to avoid targeting any specific group or type of individuals and only targets the behaviours that cause nuisance, alarm, harassment or distress to others. However it is inevitable that some groups may be more impacted by the controls due to their behaviours.

- 12.3 The potential equality impacts of the PSPOs have been assessed. A copy of the EIA is available in Appendix 6. There have been a number of key issues raised in respect of potential equality impacts and other vulnerabilities which are addressed below.
- 12.4 **More support for homeless people** - There are support services available to people who sleep rough, but some choose not to access this support. Sleeping rough can place someone in a very vulnerable situation and it is not beneficial to their health and wellbeing. Officers enforcing the Order will be briefed to signpost rough sleepers to appropriate support services. The Council currently has a broad partnership approach to supporting homeless people including a Homelessness Strategy and associated plan, a joint Homelessness Forum with neighbouring Councils, delivers an active homelessness service and effective partnerships with local charities and faith groups offering support. In addition following the Police and Crime Commissioners Summit in July 2017 a sub-group has been established to focus on treatment and support for homeless and those who are drug or alcohol dependent.
- 12.5 **Inability to pay the FPN** - if it is clear that an individual had no source of income, a positive requirement for them to attend a support service eg rehabilitation via a court order could be an alternative outcome to a FPN. This would require the case progressing through a prosecution but there does not necessarily need to be a fine or custodial sentence issued by the court.
- 12.6 **How can homeless people or beggars pay a FPN** - The PSPO is not a tool to tackle homelessness, it has been brought in to deal with anti-social behaviour. Some of these may be associated with street drinking and rough sleeping such as urinating and defecating in public areas, littering, violence, aggressive or intimidating behaviour. The evidence we have of problems do not link these behaviours directly to homeless people but rather to groups of individuals who refuse support and have made a choice to behave antisocially. There is also often a causal link to alcohol and drug misuse.

12.7 **How will the PSPO help homeless people that display anti-social behaviour?** - The PSPO is not intended to target the homeless. Any homeless person that was acting in breach of the PSPO would be encouraged to voluntarily engage with support services. If however, they refused and continued with the antisocial behaviour, we would consider enforcement action, with the intention to seek a positive outcome for the individual via a court imposed order to engage with support services, rather than suggest any financial penalty which would not be appropriate in the circumstances.

12.8 **Fear and Intimidation of Older people, children and females walking alone** – this has been identified from the consultation responses as a key impact of the behaviours proposed to be addressed in the PSPO. The desired outcome of the PSPO is to make the town centre an attractive place where residents, visitors and those at work can feel safe and protected.

13.0 **Alternative options and reasons for rejection**

13.1 The proposals have been subject to wide consultation. There were many suggestions of alternate options and additional controls included in the full consultation responses in Appendix 1. Many of these have been addressed in this report but there remains insufficient evidence to add new areas or controls at this time. The behaviours which the PSPOs are addressing are causing a significant impact within the town centre and the alternative options would be not to adopt the PSPOs, reduce the geographical extent or remove some of the prohibitions. The proposed PSPOs have been subject to much review and consultation and it is suggested that any reduction in their scope would undermine the potential for addressing these unacceptable behaviours.

14.0 **Recommendations**

14.1 That Members acknowledge the formal consultation responses received on the Public Spaces Protection Order Chesterfield (No1) (relating to restricting alcohol consumption) and the Public Spaces Protection Order Chesterfield (No2) (relating to other anti-social behaviour controls) and related issues.

- 14.2 That Members agree to the implementation of the Public Spaces Protection Order Chesterfield (No1) (relating to restricting alcohol consumption) and the Public Spaces Protection Order Chesterfield (No2) (relating to other anti-social behaviour controls) as attached in Appendix 4 and 5.
- 14.3 That Members agree to allow the 2004 DPPO to automatically transfer to become a PSPO on 20 October 2017 as provided for in the Anti-Social Behaviour, Crime and Policing Act 2014 and then discharge the 2004 DPPO.
- 14.4 That Members agree to allow the 2011 DPPO to automatically transfer to become a PSPO on 20 October 2017 as provided for in the Anti-Social Behaviour, Crime and Policing Act 2014 and then vary the plan attached to the Order to exclude the areas now included in the Public Spaces Protection Order Chesterfield (No1).
- 14.5 That Members agree that the implementation of the PSPOs and the necessary changes and discharge of the DPPOs will be undertaken once the necessary preliminary steps have been completed and agree to delegate this decision to the Local Government and Regulatory Law Manager in consultation with the Portfolio Holder for Health and Wellbeing.
- 14.6 That Members consider a review of the evidence relating to the area covered by the 2011 DPPO in respect of alcohol consumption in a public place by November 2018 to assess whether the evidence supports the continuation of the controls.
- 14.7 That Members request a further report to consider the impact and effectiveness of the PSPOs once they have been in effect for 12 months.
- 15.0 **Reasons for recommendations**
- 15.1 PSPO's are intended to deal with a particular nuisance or problem in a particular geographical area that is detrimental to the local communities 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.

- 15.2 The proposals included in the PSPOs are proportionate, based on evidence, consultation responses and analysis and are necessary to address the issues of ASB within the specified designated locations.

Glossary of Terms <i>(delete table if not relevant)</i>	
<i>ASB</i>	<i>Anti-social behaviour</i>
<i>DPPO</i>	<i>Designated Public Place Order</i>
<i>PSPO</i>	<i>Public Spaces Protection Order</i>
<i>FPN</i>	<i>Fixed Penalty Notice</i>

Decision information

Key decision number	747
Wards affected	Brockwell, Hasland, Holmebrook, Rother, St Leonards, Walton
Links to Council Plan priorities	To develop our great town centre To increase the quality of public space for which the council has responsibility through targeted improvement programmes To improve the health and well-being of people in Chesterfield Borough To reduce inequality and support the more vulnerable members of our communities

Document information

Report author	Contact number/email
Martin Key	01246 345337 Martin.key@chesterfield.gov.uk
Background documents	
These are unpublished works which have been relied on to a material extent when the report was prepared.	
N/A	

Appendices to the report	
Appendix 1	Public Spaces Protection Order Questionnaire Report and Appendix
Appendix 2	Letter submitted by West Bars News on behalf of Resident and Businesses
Appendix 3	Derbyshire Police and Crime Commissioner Consultation Response
Appendix 4	Public Spaces Protection Order Chesterfield (No1)
Appendix 5	Public Spaces Protection Order Chesterfield (No2)
Appendix 6	Equalities Impact Assessment