

Communities, Housing & Environment Committee

20 September 2016

Is the final decision on the recommendations in this report to be made at this meeting? **Yes**

Public Spaces Protection Order – Town Centre

Final Decision-Maker	Communities, Housing & Environment Committee
Lead Head of Service	John Littlemore, Head of Housing and Community Services
Lead Officer and Report Author	Matt Roberts, Community Partnerships & Resilience Manager
Classification	Non-exempt
Wards affected	High Street, Bridge, Fant, East, North.

This report makes the following recommendations to this Committee:

1. That a PSPO be enacted in the town centre area defined by Appendix IV including prohibitions for Drinking in a public place and Begging as set out in Section 5.2.
2. That the Committee delegate authority to the Head of Housing and Community Services to make any minor amendments or corrections to the Order before it is enacted.

This report relates to the following corporate priorities:

- **Keeping Maidstone Borough an attractive place for all:** The proposed Public Spaces Protection Order will assist with providing a clean and safe environment and enhance the appeal of the town centre for everyone by deterring anti-social behaviour and create new measures for enforcement against those persons who by their behaviour cause alarm and distress to other members of the community.
- **Securing a successful economy for Maidstone:** the Order would support the Purple Flag initiative and the ongoing policy to support and enhance the town centre through regeneration, investment and management.

Timetable

Meeting	Date
Committee (CHE)	20 September 2016

Public Spaces Protection Order – Town Centre

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 The purpose of this report is to update the Communities Housing and Environment Committee on the consultation responses received on proposals to implement a town centre Public Spaces Protection Order and recommend that an Order be made with the prohibitions as set out in section 4 of this report.
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2. INTRODUCTION AND BACKGROUND

- 2.1 The powers given to local authorities to introduce Designated Public Place Orders (DPPO) were contained under Section 13 of the Criminal Justice and Police Act 2001 and Section 26 of the Violent Crime Act 2006. These powers were repealed under the Anti-Social Behaviour, Crime and Policing Act 2014 and replaced with a new power, Public Spaces Protection Orders (PSPO).
- 2.2 A PSPO is an order designed to stop anti-social behaviour being committed in a public place. They can cover a wide range of behaviours and enable Local Authorities to deal with a particular nuisance or problem in a particular area that is detrimental to the local communities' quality of life.
- 2.3 On the 17 November 2015 a report was presented to this Committee which proposed that the public be consulted on the implementation of a PSPO incorporating areas of the town centre (High Street ward), Whatman Park (Bridge) and Riverside (Fant, South and Tovil). This report is included as Appendix I.
- 2.4 Four prohibitions were proposed in the draft PSPO on which the public were consulted;
 - 2.4.1 Begging;
 - 2.4.2 New emerging drugs (Legal Highs);
 - 2.4.3 Sleeping in a public space (rough sleeping) and;
 - 2.4.4 Drinking in a public space.
- 2.5 The consultation responses provided information on public opinion towards the four proposed prohibitions but also captured information on the feelings of safety of the consultation responders; that 86.4% of the 188 persons who completed the survey felt safe during the day, the same number also said they felt safe in the evening and 53.5% felt safe at night. In terms of public perception and feelings of safety this is encouraging and should be considered as positive feedback. Information on the consultation findings are included in section 2.7 and a summary of the consultation responses is contained in Appendix II.

- 2.6 Given the wide scope of the prohibitions set out in the consultation and the large area covered by the prospective order, the number of responses (188) is lower than expected. At least one other Local Authorities in Kent and others nationally that have consulted on a PSPO, especially where the order included a prohibition around rough sleepers, have had much higher response rates with groups such as Liberty or the homelessness charity Crisis, lobbying to challenge the Authority.
- 2.7 Following a petition of 72,000 signatures against the inclusion of prohibition around rough sleeping Oxford City Council felt compelled to change their PSPO. Gravesham Borough Council received 650 responses to their consultation, a high number of these came from members of the group Liberty. However Shepway Borough Council only received 30 responses when they consulted on their PSPO which included a 'rough sleepers' prohibition, this is possibly due to Shepway being amongst the first to make use of the new power before its use was higher profile in the local and national press.
- 2.8 MBC's PSPO consultation began on 30 November 2015 and was open for a period of 8 weeks. A total of 188 responses were received, a summary of the responses are as follows;
- 2.8.1 Responses showed that 61.6% were in favour of the drinking in a public place prohibition, however there were comments that the current DPPO is never enforced and some cross-over with responses for the sleeping in a public space prohibition with people feeling it would 'criminalise the homeless'. 26.7% were against and 11.6% who did not answer the question/didn't know. There may be some confusion due to a lack of clarity with the consultation questions with members of the public uncertain about whether the order will tackle nuisance street drinking or drunken/disorderly behaviour linked to the night time economy.
- 2.8.2 The responses for the prohibition on begging were split with 45.2% both in favour of and against. 9.6% who did not answer the question/didn't know. There was a feeling expressed that many of those who were begging in the town centre were polite and inoffensive with some genuine public concern expressed for the wellbeing of those who find themselves having to beg and who were homeless.
- 2.8.3 Responses on prohibition to prevent sleeping in a public space showed that 55.5% were against this condition, several comments capturing feelings that this would essentially be criminalising vulnerable people and was the wrong thing to do. 37.7% were in favour of the prohibition with 6.8% who did not answer the question/didn't know.
- 2.9 The full summary of consultation responses is provided in Appendix II.
- 2.10 The Act requires that the Council consults with the chief police officer/local policing body covered by the PSPO; a copy of the response from the Kent Police & Crime Commissioner is included as Appendix III.
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3. PROHIBITIONS RECOMMENDED FOR REMOVAL

- 3.1 As mentioned there were four prohibitions proposed in the consultation. Due to the following reasons; new legislation coming into effect; negative public opinion and; the availability of other powers, it is recommended that the prohibitions for new emerging drugs (legal highs) and; Sleeping in a public space are removed from the PSPO.
- 3.2 **New emerging drugs;** at the time the recommendations for the PSPO was being drawn up there was a great deal of focus on 'legal highs' and the nuisance associated with their use in and around the town centre. There were three 'head shops' in the town selling legal highs and other paraphernalia, two of these have now closed and it is unknown whether the one remaining shop is still in business following the introduction of the Psychoactive Substances Act 2016.
- 3.2.1 The Psychoactive Substances Act received Royal Assent on 28 January 2016 and came into force on 26 May 2016, the Act makes it an offence to produce, supply, offer to supply, possess with intent to supply, possess on custodial premises e.g. prisons, import or export psychoactive substances; that is, any substance intended for human consumption that is capable of producing a psychoactive effect. The maximum sentence is 7 years imprisonment.
- 3.2.2 The Act also includes provision for civil sanctions – prohibition notices, premises notices, prohibition orders and premises orders (breach of the 2 orders will be a criminal offence) – to enable the police and local authorities to adopt a graded response to the supply of psychoactive substances in appropriate cases as well as powers to stop and search persons, vehicles and vessels, enter and search premises in accordance with a warrant, and to seize and destroy psychoactive substances.
- 3.2.3 There has not been any statutory guidance released to assist in applying the powers granted by the Psychoactive Substances Act, however, with the Act now in place the need for a PSPO prohibition to tackle legal highs is now redundant.
- 3.3 **Sleeping in a public place;** the number of people who have presented as homeless and, to a lesser extent, those who are living on the street has increased over recent years, not just in Maidstone but across the County and indeed nationally. In Maidstone alone the number of people who presented as homeless increased from 593 in 2014 to 667 in 2015 and so far in 2016 the number has already reached 429.
- 3.3.1 Anecdotal information suggests that the PSPO introduced by Shepway Borough Council, which contains a prohibition on sleeping in a public place, has displaced rough sleepers from Folkestone to the nearby towns of Ashford and Canterbury. Rather than addressing the cause of homelessness or assisting those who are sleeping on the street the PSPO has merely moved it.
- 3.3.2 Maidstone has a number of hostels and Church based / voluntary sector groups which offer support to those who have found themselves

homeless, Maidstone Borough Council brought key stake holders together in 2014 to form the Maidstone Assertive Outreach project.

- 3.3.3 Not every person engaged with through the Assertive Outreach project is indeed homeless, they may be sofa surfing or even hold a tenancy but they choose to sleep rough, they often have chaotic lifestyles, mental health issues or substance dependency. A small number of these individuals (less than 10) are linked to anti-social behaviour or crime and disorder in the town centre.
- 3.3.4 PSPO's that have included prohibitions to address rough sleeping have garnered some very negative press nationally and locally the responses from our consultation show that public opinion is not in favour of these measures, with many feeling that it effectively criminalises those who are homeless. There is a potential risk to the Council's reputation if this prohibition is included and it is feasible that as only 37.7% of those who answered the consultation survey were in favour of this prohibition there could be a High Court challenge within the time period allowed which could see the PSPO overturned.
- 3.3.5 There is an alternative power which could be used, specifically with those individuals who do not engage with the Assertive Outreach project and when all other avenues have been exhausted. Community Protection Notices (CPN) under the Anti-Social Behaviour Crime and Policing Act 2014 provides an alternative power than use of a PSPO.
- 3.3.6 Once a Community Protection Warning is issued the person must comply with the direction set out in the warning, if they do not a formal Notice is issued. If the Notice is breached then the enforcement options are the same as they would be if the PSPO was in effect, i.e. a Fixed Penalty Notice or prosecution and possibly a Criminal Behaviour Order.
- 3.4 **Drinking in a public place;** curbing anti-social behaviour linked to the consumption of alcohol in a public place is one of the primary focuses for the PSPO and was supported by 61.6% of those who answered the consultation.
 - 3.4.1 The proposed PSPO is intended to tackle the nuisance caused by persons who consume alcohol in a public space and then act anti-socially, not to create new offences for being drunk in public or tackle nuisance caused by those who having been drinking in licensed premises as there are already powers to deal with this type of behaviour.
 - 3.4.2 Data used to support this prohibition was presented in the form of 'hot spot' maps showing incidents of rowdy/nuisance behaviour reported to the police between June 2014 and May 2015. However there was no temporal analysis of this data i.e. it was not broken down into time periods or day/days of the week. Therefore it is likely that this skewed the picture of day time nuisance street drinking towards incidents which took place during night time economy periods, particularly over the weekends, where people have been drinking in licensed premises, rather than incidents caused by the consumption of alcohol including 'super

strength' alcohol, which has been purchased from an off-license, in a public place.

- 3.4.3 The both the proposed area of the PSPO and the hot spot maps primarily covered High Street ward but overlapped with parts of North, East and Shepway North Wards and covered areas that were not included within the original town centre Designated Public Place Order (DPPO). It is likely that reports of rowdy/nuisance behaviour or drunkenness in those areas could be attributed to people drinking in their homes and then causing a disturbance rather than openly drinking in the street.
- 3.4.4 A small part of Mote Park was also covered by the proposed PSPO area and the hot spot maps. There is a DPPO currently in place which covers the entire park, and this could be the next area considered for a PSPO to replace the DPPO. On 17 October 2017 the DPPO will elapse and automatically become a PSPO with the same alcohol control conditions as the DPPO.

4. Enforcement following the implementation of a PSPO

- 4.1 In terms of enforcing the prohibitions set out in the PSPO we must consider the resources needed; i.e. the demand placed on both the Council's and Kent Police's officers. If action is not seen to be taken when breaches of the order occurs it is likely that the public will form the opinion that the PSPO is ineffective, this could result in reputational damage to the Council and to the Police.
- 4.2 Enforcement of breaches can be undertaken via two routes, a Fixed Penalty Notice (FPN) or taking the matter to Court to gain an Order to prevent further breaches such as; Injunctions, Criminal Behaviour Orders (CBO) or whichever Order the Court sees as necessary.
- 4.3 While issuing a FPN might be seen as the fastest way to deal with a breach, there is little to be gained from issuing one to a person who does not have the means to pay it, or has no intention of paying it. This is particularly relevant where it relates to a person who is alcohol dependant, is potentially homeless and yet causes a persistent nuisance. In this scenario it would be prudent to deal with the breach by way of a prosecution and seeking a CBO with conditions which prohibits the person being drunk in a public place and has a positive condition that they engage with an alcohol treatment service.
- 4.4 Due to these factors it is recommended that the PSPO area originally proposed be reduced to remove areas which are primarily residential, scaling the PSPO back to the area covered by the original DPPO.

5. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 5.1 There are three options for the Committee to debate and decide upon;

- 5.2 Option one; Do nothing. On the 20th October 2017 the Designated Public Place Order (DPPO) currently in place will cease. Under s 75 of the Anti-Social Behaviour Crime and Policing Act 2014 the authority could renew the DPPO, essentially by turning it in to a PSPO with the same conditions, i.e. requiring people to surrender alcohol when requested to do so. This is not recommended as it does not deal with those individuals who comply with the direction given to them at the time but then continue to drink in the area, purchasing single containers of alcohol at a time.
- 5.3 Option two; The Committee can choose to agree the implementation of a PSPO with the originally proposed prohibitions, covering a wider part of the town centre and surrounding area. This is not recommended as it would essentially ignore public opinion and the responses provided by the public during the consultation period and in doing so may provide a legitimate reason to challenge the PSPO through the High Court.
- 5.4 Option three; The preferred option is for the Committee to agree the implementation of a Public Spaces Protection Order containing the following prohibitions covering an area defined by the map provided as Appendix IV.

Prohibition One: Drinking in (the defined) Public Space

- 5.5 The current DPPO has a flaw in that it only requires a person to surrender open containers of alcohol if they are requested to do so by an authorised officer. It does not address the issue of persistent street drinking effectively as individuals can then purchase more containers of alcohol meaning that an authorised officer has to revisit the location to make the same request for the alcohol to be surrendered. This can often be repeated throughout the day and is a drain on resources for both Kent Police and Maidstone Borough Council. It also seen as ineffective by members of the public who continue to be subjected to the anti-social behaviour of those persistent street drinkers.
- 5.6 It is proposed that there be a two part direction introduced by the PSPO, firstly a direction to surrender the container of alcohol and a second direction for an individual to stop drinking in that location for a period of time if the officer has reason to believe that said individual will continue to drink alcohol and cause anti-social behaviour.
- 5.7 The prohibitions of the PSPO would require the following test be met, that;
- 5.7.1 As a result of consuming alcohol a person's behaviour has, or is likely to have, a detrimental effect on the quality of life of those in the locality;
- 5.7.2 That said behaviour is likely to be persistent or continuing and therefore be unreasonable and justify the restrictions under the PSPO.
- 5.8 An authorised officer reasonably believes that the test has been met whereby an individual;
- 5.8.1 Is or has been consuming alcohol in circumstances which would be a breach of this Order; or

- 5.8.2 Intends to consume alcohol in circumstances which would be a breach of this Order;
- 5.9 The authorised officer can then require the person to;
 - 5.9.1 Surrender anything in the person's possession which is, or which the authorised officer reasonably believes to be, alcohol or a container for alcohol and;
 - 5.10 If the authorised officer reasonably believes that the person will continue to consume alcohol in that location after surrendering any in their possession they can also request that the person;
 - 5.10.1 Not further consume alcohol or anything which the authorised officer reasonably believes is alcohol in breach of this Order in the area for a period of 24 hours;
 - 5.11 This provision would not apply to alcohol being consumed within premises licensed under the Licensing Act 2003 or S115e of the Highways Act 1980.
 - 5.12 Any open containers would need to be emptied and disposed of appropriately, i.e. pouring the contents away via a drain and disposing of the container in a litter bin.

Prohibition Two: Begging

- 6. The other key issue the originally proposed PSPO was intended to address was rough sleeping, however the anti-social behaviour at the heart of this can be refined to those persons who aggressively beg for money. To address this it is proposed that the PSPO contain the following prohibition.
 - 6.1 All persons are prohibited from sitting or loitering in the public space, where behaviour is clearly inappropriate, excessive, or harmful to the public in degree or kind and; lacking justification in fact or circumstance; or with any receptacle used to contain monies for the purpose of begging. This includes the use of signage, children or animals to solicit monies from another other person.
 - 6.2 These prohibitions do not apply to any authorised collections or activity made on behalf of a registered charity.
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Other activity which supports the PSPO

- 7. The Killing with Kindness and Assertive Outreach projects will continue to effectively to be able to offer another solution to tackling the begging and street homelessness problems in the Town Centre ward.
 - 7.1 There are seven other DPPO's currently in place in the Borough;

- Mote Park;
- Barming recreation ground;
- Cumberland green;
- Northumberland Court;
- Parkwood green;
- Parkwood parade;
- Snowdon parade.

7.2 Once this PSPO has been put into place in the town centre, if there is a perceived issue with anti-social behaviour linked to street drinking in these locations there will need to be some research and evidence found of the true level of nuisance street drinking before the DPPOs elapse in October 2017, at which point if there is sufficient evidence of alcohol related anti-social behaviour the DPPOs can be renewed as PSPOs. If new prohibitions are required to address other forms of anti-social behaviour then appropriate consultation will also need to be undertaken before a PSPO can be put into place.

8. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

8.1 A summary of the consultation findings has been included as Appendix II.

9. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

9.1 The Communities, Housing and Environment Committee approve the recommendations for the PSPO and permit the Chief Executive to sign the Order.

9.2 Notify the Chief Constable and Kent County Council that the order is to be implemented.

9.3 To comply with the requirements of the Act we will need to communicate the introduction of Order to the public. Appropriate signage will be needed to inform the public of the Order around the boundaries of the area covered and in key places, i.e. Jubilee Square, Brenchley Gardens, Whatman Park and around the town centre.

9.4 In order to enforce the prohibitions of the PSPO a process to allow the issuing and payment of Fixed Penalty Notices (FPNs) will need to be put into place. An agreement with Kent Police will need to be created if they are to enforce the PSPO via the issuing of penalty notices.

10. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<p>Keeping Maidstone Borough an attractive place for all.</p> <p>Securing a successful economy for Maidstone.</p> <p>Public Space Protection Orders provide Councils with a flexible power to implement local restrictions to address the effect on quality of life caused by a range of anti-social behaviour issues in public places in order to prevent future problems and ensure safe and attractive environment.</p>	Head of Housing and Community Services
Risk Management	The management of Public Space Protection Orders will be subject to the current performance management arrangements within the service, with performance benchmarking as part of the process.	Head of Housing and Community Services
Financial	<p>It is anticipated that implementation will be resourced from within existing budgets. There may also be additional legal costs and costs associated with the introduction of the PSPO. These will be looked at on a case by case basis as they occur. The payment of fixed penalty notices within the new regime could generate a small income for the council. This will be pooled with the existing FPN income from other enforcement activities and used to fund awareness campaigns and legal action as appropriate in the delivery of a cleaner, safer Maidstone.</p> <p>Additionally, there is a cost of signage and promotion which could reach £5,000 and require on-going maintenance budgets if the order is approved. These</p>	Head of Finance & Resources

	costs will need to be met from within the Housing and Community Services existing budget.	
Staffing	Authorised officers will need to have completed appropriate training in order to be able to issue fixed penalties and deal with prosecutions.	Head of HR Shared Service
Legal	As contained within the body of the report any enforcement by way of prosecution, or non-payment FPN and any other legal process will have resource implications for MKLS	Head of Legal Partnership
Equality Impact Needs Assessment	Incidents of ASB will continue to be dealt with in line with the emerging strategy and in line with our equalities framework. These legislative changes are designed to have a significant community impact in preventing and limiting anti-social behaviour. EQIA to support this report.	Policy & Information Manager
Environmental/Sustainable Development	None.	Head of Housing and Community Services
Community Safety	The introduction of Public Space Protection Orders will contribute to making Maidstone town centre a safer place by promoting the message and enforcement of appropriate standard of conduct and behaviour.	Head of Housing and Community Services
Human Rights Act	The council must ensure that all statutory conditions are satisfied before a PSPO can be adopted and ensure it complies with its duties under the Equality Act 2010. The council must consider if the proposed PSPO will breach of the council's code of conduct – including disproportionate	Head of Housing and Community Services

	interference with a number of fundamental rights protected by the Human Rights Act. The council must ensure it balanced the problems of anti-social behaviour in its town centre with the rights of individuals	
Procurement	Appropriate procurement methods will used to procure consultation, publicity and signage.	Head of Finance & Resources
Asset Management	None.	Head of Housing and Community Services

11. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- Appendix I: PSPO Committee Report, 17 November 2015
- Appendix II: PSPO Consultation responses summary
- Appendix III: PCC response letter on PSPO consultation
- Appendix IV: Map of proposed (revised) PSPO area

12. BACKGROUND PAPERS

- Home Office website Guidance
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final_2_.pdf
- Anti-social Behaviour Crime and Policing Act 2014
<http://www.legislation.gov.uk/ukpga/2014/12/contents>