



Report for:	Cabinet
Date of meeting:	25 <sup>th</sup> July 2017
Part:	1
If Part II, reason:	

Title of report:	<b>Public Spaces Protection Orders – Hemel Hempstead Town Centre</b>
Contact:	Councillor Neil Harden Portfolio Holder for Residents and Corporate Services Councillor Janice Marshall Portfolio Holder for Environmental, Sustainability and Regulatory Services  Author/Responsible Officer: Mark Brookes – Solicitor to the Council David Austin – Assistant Director (Neighbourhood Delivery)
Purpose of report:	To propose the introduction of a Public Spaces Protection Order to provide a means of controlling a number of activities having a detrimental effect on the quality of life for those living in, working in and visiting Hemel Hempstead town centre.
Recommendations	1.To commence a non-statutory consultation on a proposal to introduce a Public Spaces Protection Order, applying to the Hemel Hempstead Town Centre, Old Town and Water Gardens area as shown on the plan at Appendix A, to prohibit/regulate the following activities:  <p style="margin-left: 40px;">(a) <i>Behave in a way that causes or is likely to cause harassment, alarm or distress to any other person</i></p> <p style="margin-left: 40px;">(b) <i>Use, possess or supply to another person any intoxicating substance.</i></p> <p style="margin-left: 40px;">(c) <i>Continue to consume alcohol when required to stop doing so by any authorised officer</i></p> <p style="margin-left: 40px;">(d) <i>Create or reside in a street encampment</i></p> <p style="margin-left: 40px;">(e) <i>sit on the ground in a public place, street, highway or passage in a manner to be perceived that you are inviting people to give you money.</i></p>

	<p>(f) Spit (including discharge of chewing gum), urinate or defecate in a public place.</p> <p>(g) Cycle or skateboard.</p> <p>(h) Feeding birds/wildfowl in the water gardens area</p> <p>2. To report the outcomes of the consultation to Strategic Planning and Environment Overview and Scrutiny Committee and Cabinet to decide to whether to progress with the PSPO and specifically what to include within the PSPO.</p>
Corporate Objectives:	<p>Safe and Clean Environment</p> <ul style="list-style-type: none"> <li>• Maintain a clean and safe environment</li> </ul>
Implications:	<p><u>Financial</u></p> <p>In areas where an Order has effect, the local authority must arrange for the display of signage advising of the effect of the Order. There is no prescribed format nor size requirements for these signs, and costs will ultimately depend upon the number of signs required and the design/materials used. There will be ongoing maintenance costs to replace any damaged signage.</p> <p>There may be additional income from fixed penalty notices, which could partially defray the costs of enforcing the Order. No data is held that would allow an estimate for the likely income, as much would depend on the availability of resources to carry out enforcement activities.</p> <p>It is proposed that enforcement of the PSPO will be carried out within existing resources.</p>
'Value For Money Implications'	<p><u>Value for Money</u></p> <p>PSPO's are seen as a more cost-effective means of controlling the activities in question than under byelaws, also providing a wider range of enforcement options.</p>
Risk Implications	<p>Risk Assessment will be completed following the consultation period as it will be better informed at that stage.</p>
Community Impact Assessment	<p>Community Impact Assessment to be completed once the consultation responses are received.</p>
Health And Safety Implications	<p>Some H&amp;S implications may arise from the enforcement of orders, and will be incorporated within individual service risk assessments for authorised enforcing officers.</p>
Monitoring Officer/S.151 Officer Comments	<p><b>Monitoring Officer:</b></p> <p>The PSPO will assist with the prevention of anti-social behaviour in the town centre. There will need to be a proportionate approach to enforcement particularly where the order is being breached by young and vulnerable persons.</p>

	<b>Deputy S.151 Officer</b>  The costs of implementing and enforcing any order will need to be met from within existing approved budgets.
Consultees:	Corporate Management Team  Strategic Planning and Environment Overview and Scrutiny Committee (20 <sup>th</sup> June 2017)
Background papers:	<a href="#">Home Office – Reform of anti-social behaviour powers: Statutory guidance for frontline professionals (section 2.6)</a>
Glossary of acronyms and any other abbreviations used in this report:	PSPO – Public Spaces Protection Order  CSAS – Community Safety Accreditation Scheme  FPNs – Fixed Penalty Notices

## 1. Background

1.1. Under the Anti-social Behaviour, Crime and Policing Act 2014, local authorities may make orders to prohibit specified activities, and/or require specified activities to be carried on in accordance with certain requirements, within a designated area in the public domain, which may include public highways and footways, parks and open spaces, pedestrianised areas, or similar. Such orders are known as Public Spaces Protection Orders (PSPO).

1.2. PSPO's can be used by authorities to control a variety of problematic behaviours which satisfy two statutory conditions:

*“The first condition is that—*

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

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

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

1.3. Prohibitions or requirements on activities covered by a PSPO must be reasonable in order to:

- (a) prevent the detrimental effect from continuing, occurring or recurring, or
- (b) reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.

1.4. Where a PSPO is in force, it is a criminal offence to do anything which is prohibited under the Order, or to fail to comply with requirements of the Order. Persons guilty of such offences are liable, on summary conviction, to a fine not exceeding level 3 on the standard scale (currently up to £1,000).

Offences may also be disposed of by way of a fixed penalty notice of up to £100, payable to the local authority.

- 1.5. PSPOs may be enforced by a police officer, PCSO, or a person authorised by the local authority for that purpose. The Council will seek to agree an enforcement protocol with the Police to agree support for enforcement; however, it is expected that the local authority will lead on the enforcement of any Orders made.
- 1.6. A PSPO will be valid for a period of up to 3 years, at the end of which it may be extended. Orders may also be varied or discharged by the local authority at any time during their validity.
- 1.7. Prior to making, extending, varying or discharging a PSPO, a local authority must:
  - Consult the chief officer of police and the Policing and Crime Commissioner for the applicable area; any community representatives that it is thought appropriate to consult; and the owners/occupiers of land included within the restricted area;
  - Publish the draft Order (or details of variation/discharge proposal);
  - Notify any parish/town councils within the restricted area, and the County Council;

with regards to its proposals. The authority must also consider its proposed restrictions against the rights of freedom of expression and assembly under the European Convention on Human Rights. However, it will be noted that this report is seeking authority only for a non-statutory first stage of consultation to gain the views of the public before any formal PSPO is published for statutory consultation.
- 1.8. PSPO's may apply to all persons or only to persons in/not in specified categories; at all times or only within/not in specified times; and in all circumstances or only in/not in specified circumstances.
- 1.9. The power to make PSPO's replaced and consolidated several earlier area-control orders, including designated public place orders which have previously been used by the Council in respect of street drinking and are currently under review. Where a PSPO includes prohibitions on the consumption of alcohol in a public space, there are additional enforcement powers available to police and authorised officers, allowing them to require any person not to consume alcohol in breach of the Order, and to surrender any alcohol in their possession for disposal. Failing to comply with such a requirement constitutes a different offence, subject on summary conviction to a fine not exceeding level 2 on the standard scale (currently up to £500).
- 1.10 Prohibitions on alcohol consumption will not apply to any part of a licensed premises, including beer gardens and terraces, with the expectation that the management of those premises will control the consumption of alcohol within the curtilage of their premises, under threat of a licence review if they failed to do so. Public spaces which are licensed for the sale of alcohol (e.g. parks licensed for events) are also exempted at times when alcohol is being lawfully sold there.

1.11 PSPO's may be challenged in the High Court by any person who lives in, regularly works in or regularly visits a restricted area, within 6 weeks of an Order being made or varied.

## **2. Proposal**

2.1. Concerns exist around a number of activities currently occurring within Hemel Hempstead town centre, and the old town, which are considered detrimental to the quality of life for persons living in and using that area. It is also intended to include the Water Gardens within the PSPO as displacement from the town centre may move activity from the town centre into that area if it is not covered.

2.2. It is therefore proposed to introduce a PSPO covering this area, which would have the following effect:

To prohibit the following activities in public spaces within the restricted area:

- (a) Behave in a way that causes or is likely to cause harassment, alarm or distress to any other person*
- (b) Use, possess or supply to another person any intoxicating substance.*
- (c) Continue to consume alcohol when required to stop doing so by any authorised officer*
- (d) Create or reside in a street encampment*
- (e) sit on the ground in a public place, street, highway or passage in a manner to be perceived that you are inviting people to give you money.*
- (f) Spit (including discharge of chewing gum), urinate or defecate in a public place.*
- (g) Cycle or skateboard.*
- (h) Feeding of Birds/Wildfowl in the Water Gardens*

2.3 Littering is not included because littering is already an offence under the Environmental Protection Act 1990 for which the Council is authorised to serve fixed penalty notices.

2.4 The area in which it is proposed to apply such restrictions (the 'restricted area') is shown at Annex A.

## **3. Considerations**

3.1. Aside from ensuring that the statutory tests, particularly in respect of proportionality and justifiability, are satisfied, there are a number of considerations around the introduction of PSPO's which would also need to be considered.

Street Encampments

3.2 This may prove controversial at consultation. A number of local authorities have been criticised for seeking to 'criminalise' homelessness. The inclusion and enforcement of a prohibition on street encampments will likely necessitate caveats as to the offer and refusal of accommodation/ assistance etc. in an effort to ensure that the Order is directed at those who have accommodation but choose to sleep rough, or imply that they sleep rough as a means of begging, as opposed to the genuinely homeless.

3.3 There is a possibility that imposing an Order on the town centre may simply displace the issues to adjacent localities, and therefore enforcement will only be instigated when the procedures in the Council's NO Second Night Out Policy have been exhausted.

### Consuming Alcohol

3.4 Section 63 of the Anti-Social Behaviour Crime and Policing Act 2014 specifically provides for a prohibition on the consumption of alcohol in breach of a PSPO and provides that a constable or authorised officer *may*, (emphasis added) subject to reasonable belief as to a breach, require a person to cease consuming alcohol and surrender the alcohol. As such it is considered that the power to enforce the prohibition on alcohol consumption is discretionary and those consuming alcohol responsibly would not necessarily face sanction as a consequence of PSPO which is intended to deal with problem drinkers and their associated anti-social behaviour. As such there ought to be no issues as regards the Order restricting markets, festivals, temporary events and such like.

3.5 A PSPO to prohibit external drinking areas beyond the town centre, including Gadebridge Park and some other local centres is being considered separate to this PSPO.

### Begging

3.6 This has been a reported issue in the town centre which is particularly linked to rough sleepers. The offence of begging is provided for by way of section 3 or 4 of the Vagrancy Act 1824, and pursuant to section 70 (1) of the Criminal Justice Act 1982 is fineable only. There has also been issues of, 'aggressive begging' as yet to be legally defined, but is generally considered to be along the lines of begging in a manner which causes harassment, fear or alarm, or approaching or pursuing people.

3.7 Given the absence of a legal definition of aggressive begging and depending on the extent to which begging is a problem in the town centre, it may be desirable in the first instance that the Order seeks to restrict begging in general. Depending on consultation responses, the Order may be subsequently amended to 'aggressive begging' as is understood to have been the case in a number of other local authorities which have imposed PSPOs. If 'aggressive begging' is preferred over 'begging' the Order may need to include some form of definition.

Using, possessing or supplying to another person any intoxicating substance

- 3.7 There has been evidence of drug use in the town centre but due to the underlying causes of such use the PSPO is unlikely to act as an effective preventative measure or act as a deterrent; however, it will be another tool for enforcement which could be used in conjunction with other intervention measures and other enforcement agencies.

Cycling and Skateboarding

- 3.8. Frequent complaints from the public have been received regarding cycling and skateboarding in the town centre and damage has been caused to parts of the new play areas within the town which have received significant council investment.
- 3.9. Many of the perpetrators are under the age of 16 and therefore a proportionate approach will be taken to enforcement including warning letters before fixed penalty notices are issued.

Behaving in a way that causes or is likely to cause harassment, alarm or distress to any other person.

- 3.10 This is a wide prohibition which can be used to prohibit various types of anti-social behaviour and is recommended to add further protection for the public against behaviour which may not fall within any of the specific categories highlighted above, but still cause harassment, alarm or distress.

Spitting (including discharge of chewing gum), public defaecation or urination.

- 3.11. Spitting, particularly chewing gum, is a major issue in the town centre and is evidenced by significant areas of newly laid paving now being covered with chewing gum.
- 3.12 There have been reports of urinating/defaecation in public areas of the town centre and therefore it is also sensible to include this prohibition for completeness.

Feeding of Birds/Wildfowl

- 3.13 This has been a reported issue in respect of the Water Gardens, particularly with regards to the feeding of geese which have caused damage to the grass verges. This area has been newly planted and therefore it is worthy of protection.

Enforcement

- 3.14 If the Order is imposed, consideration will also need to be given to enforcement as there will be raised expectations from the public which will need to be managed. For example, a PSPO does not in its own right allow people to be moved on from a particular area. A stepped and proportionate approach to sanction will need to be developed.
- 3.15. Enforcement officers will need to be mindful of the circumstances of those to whom the Order is most likely to apply i.e. the homeless (be they genuine or otherwise); and others likely to have substance and/ or alcohol misuse problems and mental health issues. Given the precarious financial position of many, the effectiveness of issuing FPNs is likely to be of limited effect; similarly, endeavouring to institute a prosecution against such individuals, particularly if they are of no fixed abode for the purpose of serving a summons.
- 3.16 Likely to be equally problematic will be securing the attendance of such individuals at court. Consideration will also need to be given to the perception of the courts and the public as regards enforcement action – whilst it may well be that some of those purporting to be homeless and without means are in fact not, and that the behaviour of some is problematic, the repeated and (ineffective) sanctioning/ prosecution of vulnerable individuals ‘who the council should be helping’ has the potential for criticism and reputational damage.
- 3.17 Furthermore, there is currently no dedicated resource for town centre enforcement and enforcement sits across a numbers of different council services. Accordingly, a coordinated and targeted approach to enforcement, working together with other enforcement agencies, will need to be developed. Many of the behaviours which the PSPO seeks to prohibit occur outside of normal working hours and therefore enforcement will need to plan for these times.

#### **4. Consultation**

- 4.1 If Cabinet is satisfied that the relevant statutory requirements are met, a robust consultation will commence at the earliest opportunity for a six week period. This will include a series of questions to establish views on the PSPO. The consultation would include all businesses inside the Restricted Area, a wider community consultation and those whom are perceived as perpetrators. Following the consultation a review of responses would be undertaken to ascertain the level of support for such an Order and a further report brought back to Overview and Scrutiny Committee and Cabinet for consideration.

#### **5. Recommendations**

- 5.1 To consult on a draft Public Spaces Protection Order, applying to the restricted area as shown at Annex A, to prohibit/regulate the activities identified at para 2.2.



**Annex A**  
**Map of proposed restricted area**