



Cabinet Meeting

22 February 2017

Report title	Public Space Protection Order (Review of Designated Public Place Order)		
Decision designation	AMBER		
Cabinet member with lead responsibility	Councillor Paul Sweet Public Health and Wellbeing		
Key decision	Yes		
In forward plan	Yes		
Wards affected	All		
Accountable director	Linda Sanders		
Originating service	Community Safety, Public Health and Well Being		
Accountable employee(s)	Karen Samuels	Head of Community Safety	
	Tel	01902 551341	
	Email	Karen.samuels@wolverhampton.gov.uk	
Report to be/has been considered by	Strategic Executive Board – 20 December 2016 Adults and Safer City Scrutiny Panel – 31 January 2017 Licensing Committee – 8 February 2017		

Recommendation(s) for action or decision:

The Cabinet is recommended to:

1. Consider the review findings on use of the existing city-wide Designated Public Place Order (DPPO).
2. Approve recommendations for a city-wide Public Space Protection Order, subject to the mandatory six week legal challenge period allowed, which includes proposals to extend prohibitions on public drinking within Park and St Peter's wards, (to include the City Centre).

1.0 Purpose

- 1.1 To present findings from a review of the existing city-wide Designated Public Place Order (DPPO), in force since April 2013.
- 1.2 To seek approval for a Public Space Protection Order (PSPO) to replace the DPPO following a change in tools and powers introduced in the Anti-social Behaviour, Police and Crime Act 2014.

2.0 Background

- 2.1 At its meeting on 5 March 2013, Cabinet authorisation was granted for the introduction of a city-wide DPPO from 8 April 2013; this gives Police the power to require any person drinking in a public place to stop drinking and to surrender alcohol if they are causing or are likely to cause anti-social behaviour. Failure to comply with such a request can lead to arrest and/or prosecution. This city-wide DPPO revoked a number of existing DPPOs in place covering town centre locations and parks where public drinking was linked to Anti-social Behaviour (ASB).
- 2.2 The Anti-Social Behaviour, Police and Crime Act 2014 came into force in October 2014 and introduced streamlined tools and powers to address ASB. Cabinet were briefed on local implementation of the legislation on 12 November 2014 and a multi-agency ASB Steering Group was established to oversee the changes. Wolverhampton has been instrumental in trialling these revised approaches and has shared practice across the West Midlands.
- 2.3 On 22 July 2015, Cabinet approved a trial of the first two PSPOs for the city; one in Low Hill to address long standing traveller encampment incursions and a second in Park Village to address entrenched ASB. The PSPOs came into force in September 2015, and a review of their use has shown that whilst both locations have required focussed deployment of staff resource and significant coordination of enforcement activity between partner agencies, there has been a marked reduction in the associated ASB linked to these locations. It was agreed that no further PSPOs would be issued across the city until the review of these two PSPOs was concluded and any associated difficulties regarding implementation addressed.
- 2.4 The legislation made provision for existing DPPOs to automatically become PSPOs within three years of the legislation coming into force. However, given the length of time that the DPPO has been in place, it is appropriate that a review of its use is undertaken to inform the decision about the need for continuation of these powers. The existing DPPO therefore remains in force until October 2017 or until such time as it is revoked by a replacement PSPO.
- 2.5 The proposals directly support the following Corporate Plan objectives:
 - Keeping the City Clean – by reducing the prevalence of alcohol-associated litter within designated locations.

- Supporting Businesses, Encouraging Enterprise and Investment – improving city image by targeting hotspot locations where public drinkers congregate.
- Keeping the City Safe – creative use of new legal powers to tackle ASB.

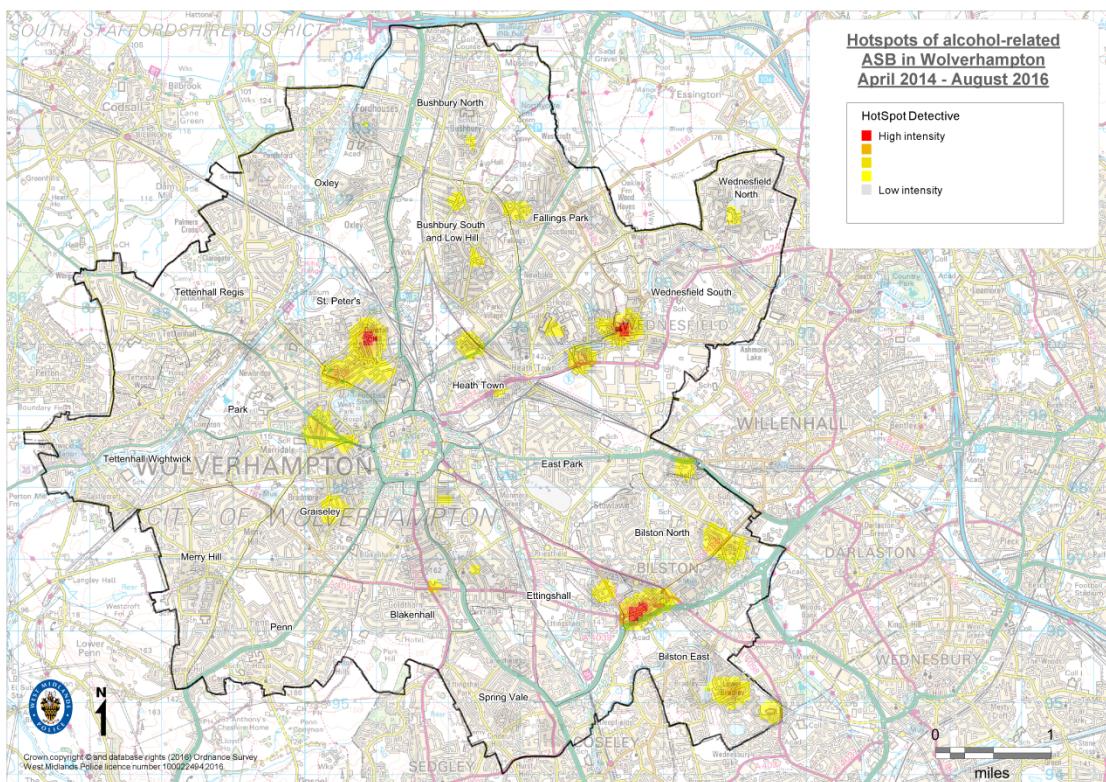
3.0 Review of Existing DPPO Arrangements

- 3.1 The current DPPO is not a public drinking ban, so does not, on its own prevent people from drinking alcohol in public. It provides a Police Officer with the discretion to determine whether ASB was being caused or was likely to be caused as a result of a person's public consumption of alcohol.
- 3.2 A change in Police recording arrangements to capture use of the DPPO was not in place until 2014, so data relating to its use has only been available from that period. The data captured to inform the review therefore covers the period April 2014 – August 2016.
- 3.3 During this period, a total of 695 incidents were reviewed. Of these, 390 related to the use of DPPO powers to seize alcohol. The remaining 305 involved reports to Police of known street drinkers or occasions where alcohol was disposed of prior to seizure.
- 3.4 From the 390 occasions where DPPO powers were used, seizures were conducted from 637 individuals; whilst the majority were from individuals some involved groups of between two and ten people.
- 3.5 The table below details the locations of DPPO use across the city by Police which is broken down by Neighbourhood Police Team. It must be stressed that the disparity of use across the city can be largely attributed to Police patrolling strategies in the locations (St Peter's and Park) where public drinking has been highlighted as a local priority.

Neighbourhood	Count	% of total
Wolverhampton City Centre	248	64%
Park	90	23%
St. Peter's	31	8%
Wednesfield South	5	1%
Bilston East	3	<1%
Graiseley	3	<1%
Heath Town	3	<1%
Tettenhall Regis	2	<1%
Blakenhall	1	<1%
Bushbury South and Low Hill	1	<1%
East Park	1	<1%
Ettingshall	1	<1%
Oxley	1	<1%

- 3.6 The review also considered ongoing reports of alcohol-related ASB and where these are occurring across the city. The map below details the geographic spread of these reports between April 2014 – August 2016. The City Centre (453 reports), and the locations

which include Bilston Town Centre (316 reports) and Wednesfield Town Centre (178 reports) feature as the main hotspots for alcohol-related ASB; with these areas linked directly to the night time economy. However, outside of these locations, every neighbourhood Police Team across the city received reports of alcohol-related ASB ranging from 188 incidents in St Peter's to 34 in Penn and provides evidence of the need for continuation of existing police powers to confiscate alcohol where alcohol-related ASB is occurring.



4.0 Multi-Agency Responses to tackling alcohol-related ASB

- 4.1 A PSPO to restrict the nuisance caused by alcohol-related ASB will not on its own achieve the desired impact of curbing this nuisance behaviour. It will, however, be used in conjunction with a wide range of multi-agency initiatives, which together, are used to reduce the risk of this source of ASB occurring, provide the necessary powers for relevant agencies to act when it does occur and take a stronger enforcement line against perpetrators. A summary of supporting initiatives are detailed below:
- 4.2 Wolverhampton ASB team has led a partnership response to address reports of alcohol-related ASB which has included initial engagement/advice given to perpetrators including:
 - Signposting to support agencies
 - Advice/liaison with housing providers where perpetrators live
 - Advice to off-licences selling alcohol
 - Targeted outreach with Recovery Near You, the city's drug and alcohol provider

- Enforcement action against perpetrators including warning letters, and civil action such as civil injunctions and tenancy enforcement
- 4.3 The most recent high profile case relating to public drinking was in August 2013 when nine people received anti-social behaviour orders banning them from the City Centre. Since then, whilst the ASB team has continued to deal with complaints relating to public drinking, the informal measures detailed above have been utilised with some success meaning formal enforcement action has not been necessary.
- 4.4 Similarly, the Council's Licensing team has led on work to restrict the sale of alcohol in areas deemed to be particularly vulnerable to alcohol-related ASB. The introduction of a Cumulative Impact Policy initially within the City Centre, and extended in 2015 to include Bilston High Street, Wednesfield High Street, the Avion Centre, Whitmore Reans and Dudley Road (including Phoenix Park) creates a presumption that a licence for the sale of alcohol within these designated locations will be refused unless, at the very least, additional steps/controls are put in place. Further ongoing work is undertaken to review licenced premises where potential breaches are reported and work with businesses to encourage and promote responsible practice.
- 4.5 As a responsible authority under the Licensing Act, the Licensing Authority is consulted on applications for premises licences and regularly make comments on this to attached enhanced conditions to licences including "no single can sales of alcohol of 6.5%". A responsible authorities forum has been developed where all parties collectively meet to address alcohol-related issues and lead on joint operations.
- 4.6 The Police have also reviewed their patrolling strategies for the City Centre particularly with regard to the Night Time Economy where they adopt an early intervention approach during the earlier part of the evening, by patrolling and engaging with partners and members of the public to prevent alcohol-related ASB occurring. The shift cross-over later in the evening provides additional policing resources to conduct high-visibility patrols to reassure the public and respond to any escalation of ASB or disorder.
- 4.7 Multi-agency delivery across the various enforcement agencies is coordinated through multi-agency forums and underpinned by a commitment to joint and shared enforcement.

5.0 Proposals for a city-wide PSPO

- 5.1 The volume and geographic spread of alcohol-related ASB reports over the period would suggest there is a need to retain the existing powers by Police to request the surrender of alcohol where ASB is occurring or is likely to occur as a result of alcohol consumption on a city-wide basis.

5.1.1 Recommended Proposal:

- i) A continuation of existing DPPO powers on a city-wide basis authorising Police to require a person to stop drinking and surrender alcohol where ASB is occurring or is likely to occur.
- 5.2 The level of DPPO use within St Peter's, Park and City Centre neighbourhoods, however, is a reflection of the ongoing nuisance caused by public drinking within these locations. This is supported by ongoing reports through PACT and Tasking meetings that public drinking remains a priority for these areas.
- 5.3 In addition to the city-wide discretionary Police powers, a public drinking ban in St Peter's and Park wards (to include the City Centre) is therefore proposed to enable swifter action to be taken by Police on the confiscation of alcohol where public drinking is occurring and for fixed penalty notices to be issued by Police or officers authorised by the Council where a breach of the PSPO has occurred.

5.3.1 Recommended Proposal:

- ii) Inclusion of a public drinking ban in St Peter's and Park Wards, which includes the City Centre (as designated on Appendix A). A number of exclusions would apply to the introduction of this prohibition which are detailed in section 6 of this report.
- 5.4 West Midlands Police are lending full support to the inclusion of the City Centre within prohibitions for a public drinking ban as this would aid ongoing positive working relations between Police and the business sector, supporting a range of joint initiatives such as Pubwatch, Facewatch and existing partnership working with the Business Improvement District. Police have highlighted that the current DPPO powers are insufficient to effectively respond to pockets of public drinkers congregating in hotspot city centre locations which can have a negative impact on trade and city image.
- 5.5 Police are confident, however, that the discretionary confiscation powers currently in place, if continued, would be sufficient to respond to alcohol-related ASB covering the night time economy within Wednesfield and Bilston town centres; the use of which will be actively promoted within those Neighbourhood Policing Teams.
- 5.6 Monitoring of compliance would fall to a range of officers such as Police, designated Council staff and Wolverhampton Homes ASB team. Enforcement responsibilities would be undertaken by West Midlands Police officers (authorisation to request a person to stop drinking and confiscation of alcohol) and authorised Council Officers or other persons designated by the Council for issuing of fixed penalty notices where a breach has occurred.

6.0 Exclusions

- 6.1 The proposed prohibitions would include a waiving option to allow for public drinking at organised events within these locations, such as City Centre and West Park when applications are made for temporary event notices through the Council's Licensing Team. With the exception of this requirement to apply for a waiver, there would be an outright

public drinking ban within these designated locations with no discretion applied regarding its enforcement. The designated geographic boundaries relating to the PSPO is detailed on **Appendix A** attached.

- 6.2 There are limitations within the legislation of using a PSPO to restrict the consumption of alcohol where a premises or its curtilage (a beer garden or pavement seating area) is licensed for the supply of alcohol or where licensing or Highways legislation already exists to control alcohol-related ASB; the proposals within the PSPO would therefore not be used to impede legitimate business functions or to undermine existing safeguards in place to monitor and regulate licensed premises.

7.0 Consultation

- 7.1 The process for seeking authorisation of a PSPO requires consultation to be undertaken with Police and with communities impacted by the order. Consultation with West Midlands Police has taken place at a multi-agency ASB meeting held on 8 November 2016; Police are in support of the introduction of a PSPO to retain the existing city-wide discretion of officers to seek surrender of alcohol and for a public drinking ban to be applied to St Peter's and Park wards, in line with the proposals detailed in section 5 of this report.
- 7.2 A six week public consultation on the proposals supported by the City Council's communications Team has been undertaken between 6 January and 17 February 2017. Consultation has comprised direct communications to councillors, which includes briefings with ward councillors for St Peter's and Park wards, the business sector including the City Centre BID, Wolves Football Club, designated service leads within the City Council and external partners such as Police and Wolverhampton Homes.
- 7.3 Opportunities to feed in to the consultation have been widely advertised through council communications, websites, via partner organisations, community networks and social media. The consultation included discussion at the St Peter's and Park PACT meeting held on 3 January 2017 and a community 'drop-in' provision. A report has been taken to Adults and Safer City Scrutiny Panel meeting held on 31 January and Licensing Committee on 8 February 2017 where comments on the proposals were received.
- 7.4 From the 199 responses received up to 13 February 2017, there was widespread support for continuation of the existing city-wide Police powers to confiscate alcohol where it was a feature of ASB; whilst there was also support and an understanding of the rationale for proposals to introduce an outright public drinking ban in St Peter's, Park and City Centre, some reservations expressed, especially at Scrutiny Panel around the restrictions of law abiding individuals to enjoy the park for responsible drinking and potential displacement of nuisance drinkers. A summary of feedback to date is attached at **Appendix B**.

8.0 Suggested PSPO Revisions in Response to Consultation Feedback

- 8.1 A number of concerns queried the capacity of Police to follow through with enforcement of an public drinking ban in St Peters and Park wards, including the City Centre. As this forms an essential element of the proposals, an attached statement of support has been provided by Wolverhampton Neighbourhood Policing Unit to provide this assurance. Attached as **Appendix C**.
- 8.2 Other feedback received, highlighted concerns about potential displacement, and the unfair restrictions that will be placed on responsible drinkers or families who may want to make use the West Park (e.g. picknickers). Although it was acknowledged that the intimidation of anti-social drinkers currently using the park may well prevent such use from families or responsible drinkers, a revision to the original proposals is suggested to include a review of the outright public drinking ban within the designated locations to assess impact, identify any issues with displacement and to vary the terms of the order if needed.

8.2.1 Recommended Proposal:

- iii) That the outright public drinking ban covering St Peter's, Park and City Centre is reviewed after 12 months to assess impact and that any required variations to the PSPO are made in response.

9.0 Implementation

- 9.1 Subject to Cabinet authorisation of the PSPO, the proposals must be publicised and will be subject to a six week period during which an appeal against the proposals can be made to the High Court before coming into force. This will include communications through partner and community networks, social media, the Council and SWP websites and an advertisement in the local press.
- 9.2 Subject to Cabinet approval and assuming no appeal against the proposals is lodged with the High Court within the six week timeframe, the PSPO would come into force on 6 April 2017.
- 9.3 The conditions of the PSPO would be in place for a period of three years; revisions to the drinking ban prohibitions relating to St Peter's and Park wards, including the City Centre can be incorporated following a 12 month review capturing the impact of the restriction. Further revisions to the PSPO are not proposed within the three year period, however, the impact of the order will be closely monitored to allow for any operational variations across partners to be built in as required. The PSPO will be subject to review before its expiry in April 2020.

10.0 Summary of Recommendations

- 10.1 In light of review findings of existing DPPO use, reported incidents of alcohol-related ASB across the city, and consultation responses, Cabinet is requested to approve:

- i) A three year city-wide PSPO, revoking the existing DPPO, authorising Police to require a person to stop drinking and surrender alcohol where ASB is occurring or is likely to occur.
- ii) Inclusion of an outright public drinking ban for St Peter's and Park wards, which includes the City Centre (as designated on **Appendix A** attached) within the PSPO, subject to the application of exclusions detailed in section 6.0 of this report.
- iii) A review of the public drinking ban covering St Peter's, Park and City Centre after 12 months, to assess impact and allow any required variations to the PSPO to be made in response.
- iv) A full review of the PSPO to be undertaken prior to its expiry in April 2020.

11.0 Financial implications

- 11.1 The cost of the statutory notice, consultation and signage will be met from existing budgets within the Community Safety Team.
- 11.2 Breach of PSPO prohibitions can result in fixed penalty notices being issued by authorised Council Officers or other persons designated by the Council. A penalty charge of £80 will be applicable in these circumstances, though it is not expected that the PSPO will generate any notable income as the main focus is to deter ASB or follow through with enforcement against perpetrators of ASB. [GS/14122016/W]

12.0 Legal implications

- 12.1 The Anti-social Behaviour, Crime and Policing Act 2014 ("the Act") came into effect on 20 October 2014.
- 12.2 Section 59 of The Act gives local authorities the power to make PSPOs which are intended to deal with ASB and nuisance in a particular area that is detrimental to the local community's quality of life by imposing conditions on the use of that area.
- 12.3 The Act places limitations on how a PSPO can be used to restrict the consumption of alcohol in a public space where the test has been met. 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. There are also limitations where either Part 5 of the Licensing Act 2003 or section 115E of the Highways Act 1980 applies, as these already provide safeguards against ASB.
- 12.4 Before making a PSPO, councils must consult with the local police (section 72(3) and 72(4) of the Act). Formal consultation was held with West Midlands Police on this matter on 8 November 2016 where support for these proposals were recorded.
- 12.5 The Act also stipulates that councils must consult with the local community on any proposed PSPO. Consultation opportunities have been widely publicised across the city within communities, councillors, business sector and partner agencies.
- 12.6 Anyone who lives in or regularly works or visits the area can appeal a PSPO in the High Court within six weeks of issue. The PSPO will be publicised locally. Signage will not be

erected until after the six week period or, if an appeal is lodged, after any High Court ruling.

- 12.7 Section 61 of the Act makes provision to review a PSPO which is in force and to vary the terms of the order which can be based upon the review findings. Furthermore, the maximum duration of a PSPO is three years, so proposals to undertake a full review prior to its expiry in April 2020 would be appropriate. The recommendations in section 10.1 (iii) and (iv) can therefore be accommodated within the legal framework.
[AS/14122016/O]

13.0 Equalities implications

- 13.1 An equalities screening has been carried out. There is no evidence to suggest that the proposal may be directly or indirectly discriminatory. Data relating to use of the existing DPPO and the proposed PSPO is reliant on Police recording systems which will not capture data concerning the individuals concerned unless a crime has been committed; anecdotal reports regarding the use of the existing DPPO indicate no identified disproportionality regarding its use.
- 13.2 The proposed public drinking ban covering St Peter's, Park Wards and the City Centre would be applied universally to avoid the potential for discriminatory practice.
- 13.3 The proposals have been subject to a six week public consultation where over 199 responses have been received as of 13.02.2017. The responses received indicate majority support for the proposals and a variation of the order has been made in response to the small number of concerns received regarding the public drinking ban proposals within the designated areas.

14.0 Environmental implications

- 14.1 The proposals would have a positive environmental impact by reducing the litter associated with public drinking within St Peter's and Park wards.

15.0 Human resources implications

- 15.1 There are no human resource implications associated with this proposal.

16.0 Corporate landlord implications

- 16.1 There are no corporate landlord implications associated with this proposal.

17.0 Schedule of background papers

- 17.1 Adults and Safer City Scrutiny Panel 31 January 2017.
- 17.2 Licensing Committee 8 February 2017