



Committee and Date

Cabinet

21st December 2016

Proposed Consultation on a Public Spaces Protection Order for Shrewsbury Town Centre

Responsible Officer Rod Thomson

e-mail: Rod.thomson@shropshire.gov.uk Tel: 01743 251739

1. Summary

- 1.1 A Public Spaces Protection Order (PSPO) is being proposed in response to growing concern and evidence that anti-social behaviour (ASB) within Shrewsbury Town Centre is affecting local businesses, residents, visitors and local agencies.
- 1.2 West Mercia Police in conjunction with Team Shrewsbury (a partnership of organisations operating within Shrewsbury) have requested Shropshire Council to consider the use of a PSPO to help them and other agencies affected to better tackle the problems being experienced.
- 1.2 Data received from the police and other agencies demonstrates the ASB currently being experienced. Significant efforts on the part of the police and other agencies have not resolved the issues to a satisfactory level. It is anticipated that a PSPO will be a further tool to assist the police and the Authority in tackling these behaviours.
- 1.3 This report sets out the proposed PSPO, the evidence available to support its consideration, proposed consultation paperwork and the financial implications that a PSPO would pose for the Council.
- 1.4 In summary the PSPO has two prohibitions covering urinating/defecating and leaving personal belongings in a public space with a condition that controls the consumption of alcohol in certain circumstances and a wider enabling provision to require a person to leave an area if causing ASB.

2. Recommendation

- 2.1 That Cabinet agrees, with any necessary amendments, the proposed Public Spaces Protection Order as detailed in **Appendix A** and the accompanying consultation documentation as detailed in **Appendix B** and to instruct the Trading Standards and Licensing Operations Manager to initiate an eight week period of consultation and to arrange for the results to be brought back to Cabinet for further consideration and any further necessary amendment.

REPORT

3. Risk Assessment and Opportunities Appraisal

- 3.1** The proposed introduction of the PSPO is part of a series of measures aimed at improving the commercial nature of the town (including the evening and night time economy and visitor experience) whilst ensuring that public spaces are enjoyed by the majority and not spoiled by the actions of the minority.
- 3.2** There is a legal duty on the Council to consult on any proposed PSPO with the Chief Inspector of Police, the Police and Crime Commissioner (PCC) and any other relevant bodies in particular any community representatives within the local authority and the owner or occupier of land. The Police and the Shrewsbury Business Improvement District (BID) are fully supportive of the initiative and have been involved with the development of the PSPO including the sharing of data to help demonstrate that the conditions required for implementing the PSPO are met.
- 3.3** The consultation will be published on the Councils web site with notice provided to relevant bodies believed to have an interest.
- 3.4** An Equality and Social Inclusion Impact Assessment (ESIIA) has commenced with the current draft set out at **Appendix C** to this report. This will benefit from the comments and views of the community and other interested parties received as part of the consultation process and an updated ESIIA will be presented back to Cabinet.
- 3.5** To encourage a focused response to the consultation and to further inform the ESIIA a number of documents will be published in addition to the draft PSPO. This includes a questionnaire focussing on each of the prohibitions specified in the proposed PSPO and a FAQ document providing basic information on the PSPO and the implementation process. The proposed consultation documents are set out at **Appendix B**.
- 3.6** A challenge over the validity of a PSPO can be made up to 6 weeks after an order or any variation to an order is made. The basis upon which the draft PSPO has been derived follows an assessment of the data retained by various agencies and businesses together with on-going consultation with key stakeholders. The totality of information received to date supports the arguments for a PSPO. The method by which we are proposing to undertake the consultation will allow the concerns and views of the community, land owners and any interested parties to be considered, thereby reducing the risk of a challenge.
- 3.7** 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 the European Convention on Human Rights and the Human Rights Act. Whilst the PSPO itself has the potential to impact human rights, the specific recommendation in this report is not at variance with the Human Rights Act 1998 and is unlikely to result in any adverse Human Rights Act implications.
- 3.8** As stated at paragraph 1.4 above the PSPO has two prohibitions covering urinating/defecating and leaving personal belongings in a public space with a

condition that controls the consumption of alcohol in certain circumstances and a wider enabling provision to require a person to leave an area if causing ASB.

3.9 The wording of the PSPO has been specifically drafted in a way to avoid any allegation that the Council is targeting any specific group or type of individuals and particularly does not prohibit begging or rough sleeping. It is recognised that these individuals are vulnerable with complex needs and it is inappropriate to prohibit these activities where the infrastructure and support is not sufficiently available to prevent individuals resorting to these measures.

3.10 The PSPO is fundamentally aimed at providing an additional tool for agencies, in particular the Police, to address ASB where it is causing nuisance, alarm harassment or distress to any other person and provides a mechanism to stop ASB and remove it without resorting to criminal action through the courts unless absolutely necessary.

3.11 There is no anticipated environmental impact associated with the recommendation in this report.

4. Financial Implications

4.1 There are a number of financial implications that members need to be aware of in the event that a proposed PSPO is implemented.

4.2 Regulations made under the Anti-Social Behaviour, Crime and Policing Act 2014 (the Act) require that where a PSPO is made, extended or varied, the PSPO is published on the Councils website and also that sufficient signage is erected on or adjacent to the public area to which the order relates. Given the size of the area in question there will be a financial implication for the Council in respect of erecting adequate signs on any entrance points to the area and also within Shrewsbury town centre. This is currently estimated to be in the region of £4000 to £5000; however the final cost is dependent on the prohibitions agreed as these will need to be included in the signs.

4.3 Enforcement can be undertaken by both the Police and authorised Local Authority officers. In the event that the PSPO is approved it has been agreed that the main responsibility for enforcement will rest with the police. As such in anticipation of this decision, a Memorandum of Understanding has been established and is set out at Appendix D.

4.4 An identified breach of a PSPO is a criminal offence and a person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 (maximum £1000). However, the legislation enables such offences to be dealt with, where appropriate, by way of a fixed penalty notice (FPN) which if paid would discharge an individual's liability to conviction for the offence. The amount of any FPN can be set by the Council to a maximum of £100 with the option of a reduction in the event of early payment.

4.5 Where a FPN is not considered appropriate or where a FPN is not paid then consideration will need to be given to the commencement of legal proceedings. Only the Council may bring proceedings for a breach of the PSPO; the Police (CPS)

will not be able to commence legal proceedings for a breach of a PSPO even where enforcement was undertaken by police officers. Ultimately, the Council will need to consider any such breaches and where appropriate having taken into account the Councils Better Regulation and Enforcement Policy (adopted by the Council on 27 February 2014) pursue matters through the courts. Any costs associated with legal proceedings, which are not recovered, will be borne by the Council.

5. Background

- 5.1** The Anti-Social Behaviour, Crime and Policing Act 2014 introduced Public Spaces Protection Orders (PSPOs) which are intended to provide the means of preventing individuals or groups committing anti-social behaviour in a public space. Section 59 of the Act sets out the test which must be satisfied before a local authority make a PSPO...where the behaviour is having, or likely to have, a detrimental effect on the quality of life of those in the locality; be persistent or continuing in nature; and be unreasonable.
- 5.2** PSPOs create a framework that either replaces or updates existing public space restrictions such as alcohol Designated Public Place Orders and Dog Control Orders and permits local authorities to introduce new regulations.
- 5.3** The power to make an Order rests with local authorities, in consultation with the police and other relevant bodies who may be affected. A local authority can make a PSPO in respect of any public space within its administrative boundary. The definition of public space is wide and includes any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.
- 5.4** A PSPO can be in force for any period up to a maximum of three years after which time the Local Authority must consider whether or not to put in place another PSPO.
- 5.5** Appeals against a draft 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 issue. Further appeal can be made when a PSPO is varied by the local authority.
- 5.6** A PSPO may be applied wherever there is material evidence of anti-social behaviour, for example, in reports to the police, local authorities or partner agencies.
- 5.7** The restrictions and requirements included in a PSPO may be comprehensive or targeted on specific behaviours by particular groups and/or at specified times.
- 5.8** Orders can be enforced by a police officer, a police community support officer, authorised council officers and employees of other delegated organisations.
- 5.9** A breach of the PSPO can be dealt with through the issuing of a Fixed Penalty Notice of up to £100, or a level 3 fine (max £1000) on prosecution.
- 5.10** In establishing a PSPO, appropriate signage must be displayed in accordance with the requirements of the Act on entry points to the public area and within the said area.

- 5.11** A request has been made by West Mercia Police in conjunction with Team Shrewsbury for Shropshire Council to look at establishing a PSPO in the area of Shrewsbury Town Centre. In support of this request Team Shrewsbury and the Police have made available relevant data which has been recorded over a twelve month period which demonstrates the issues being encountered and the effects this ASB is having on a wide range of individuals.
- 5.12** A report of the data available has been prepared by an Analyst from the Public Protection service who has focused on a 12 month period. This report can be viewed at **Appendix E**. Further a map showing police (alcohol) incidents and data from Team Shrewsbury (All ASB) are provided at **Appendix F**.
- 5.13** The report is also supported by a statement from a PC Karen Evans who has been actively involved with local policing within Shrewsbury town centre over this time and in particular PC Evans has been directly involved with dealing with the ASB. PC Evans statement can be viewed at **Appendix G**.
- 5.14** The proposed PSPO has been drafted to address those behaviours identified by the available information/evidence and to also provide a mechanism which will enable authorised officers to actively stop any form of behaviour which is causing or likely to cause nuisance, alarm, harassment or distress to any other person without the need to criminalise that behaviour or that individual.
- 5.15** The first prohibition relates to urinating and defecating in the public area. Despite public belief neither is a criminal offence and the police in dealing with this behaviour must rely on gathering evidence to consider an indirect offence, e.g. 'exposure', which will often prove difficult to pursue. Inclusion within the PSPO will make this behaviour a criminal act and enable more effective enforcement against this behaviour. In addition to the data evidence provided, statements from three police officers, two employees at the old Market Hall in the Square in Shrewsbury, a town council gardener, a representative of the Shrewsbury BID and three representatives of the business community also highlight the issues they have and are continuing to experience with individuals urinating and defecating in the town centre. These statements can be viewed at **Appendix G** through to **Appendix L**. Further, an image of a male urinating in Church Street as captured by the Town CCTV in October 2016 is included at **Appendix M**.
- 5.16** The second prohibition bans the leaving of personal belongings without reasonable excuse. Inadvertently or accidentally leaving behind personal items would not breach the PSPO as this would be considered a reasonable excuse. As a result this prohibition is clearly aimed at those individuals intentionally leaving their possessions in the public area. Leaving behind personal belongings, given the current national security risk, is simply unacceptable. Further, there is strong evidence of discarded drug paraphernalia in the town centre which provides an indication as to the possible or likely contents of the possessions being left behind potentially exposing members of the public in particular children to unnecessary risk.
- 5.17** The third prohibition has an impact on behaviours linked to the consumption of alcohol in the public area. Whilst drinking is currently permitted and will remain so, the prohibition will allow intervention by an authorised officer where a person's

behaviour as a result of continued alcohol consumption is causing nuisance, alarm, harassment or distress to any other person or public disorder. Only if that person fails to stop drinking and/or hand over the alcohol will a criminal breach occur.

- 5.18** The fourth and final prohibition again provides an indirect power for officers to intervene where a person's behaviour is again causing nuisance, alarm, harassment or distress to any other person. Authorised Officers can require that person to stop the behaviour and if necessary to leave the area and not to return within a 48 hour period. Only if that person refuses, without good reason, to leave the area would that person commit an offence. It is anticipated that this will provide flexibility and a degree of discretion to the enforcement process to enable the immediate cessation of the offending behaviour without the need to resort to legal action. Removal from the area for a 48 hour period provides a practical and immediate penalty and an incentive to improve future behaviour. This time period aligns with provisions currently available to the police using dispersal powers under section 34 of the Anti-Social Behaviour, Crime and Policing Act 2014. It also allows for a broad range of ASB to be stopped without necessarily criminalising individuals.

6. Additional Information

- 6.1** The Act provides that Fixed Penalty Notices (FPNs) can be used to address a breach of the PSPO. In the event that the consultation process supports the need for a PSPO there will be a need for Cabinet to consider and decide on where the Authority wishes to utilise the FPN regime and to determine the applicable penalty up to a maximum of £100. In addition the Council may choose to reduce the penalty providing it is paid within a given period.
- 6.2** Utilising the FPN regime will require a system to be set up. Currently the Public Protection Service administers and manages the system of FPNs issued for a variety of environmental crimes such as littering and dog fouling in conjunction with Shropshire Council's Environmental Maintenance Service. It is anticipated that this system would be further developed to include FPNs for breaches of a PSPO.
- 6.3** For any breach of the PSPO, Shropshire Council will, where appropriate, issue any FPN having reviewed the necessary evidence. To do this, a reporting mechanism will be developed with the Police so that they are able to provide the Authority with the necessary information/evidence in a timely fashion. Further, for any FPN issued the Authority is responsible for the collection of the penalty. The draft 'Memorandum of Understanding for Enforcement' agreed in principal with the police and set out at **Appendix D** addresses these requirements.
- 6.4** In the event that a breach of the PSPO leads to the need for legal proceedings, the Public Protection Service has the relevant expertise to undertake this action and is in a position to work with the police on such cases. Cabinet will be asked to agree that the Public Protection Service takes on this responsibility in the event that the PSPO is implemented.
- 6.5** Any enforcement action including consideration of legal proceedings by officers of the Council will be undertaken in line with the Councils Better Regulation and Enforcement Policy. The police will be required to have due regard to this policy whilst undertaking any enforcement activity under the PSPO. The draft

'Memorandum of Understanding for Enforcement' agreed with the police and set out at **Appendix D** addresses this requirement.

- 6.6** The PSPO is part of a series of measures aimed at taking an holistic approach to improving Shrewsbury town centre for the benefit of all. This includes the introduction of a Site Management Agreement (SMA) with the Public Fundraising Association (PFRA) within Pride Hill and Evening and Night Time Economy Planning Guidance (ENTEPEG) together with the retention of the Purple Flag status for the town centre.
- 6.7** The SMA together with its code of practice provides a self-regulating mechanism to address the issues arising from charity collectors seeking collections by means of 'Direct Debit' or 'Standing Order' payments (commonly referred to as 'Chuggers'). This will address the frequency, timing and numbers of collectors permitted in the area and address any behavioural concerns of the individual collectors. As a result there is no plan at this time to introduce specific provisions within the proposed PSPO to tackle issues associated with these organisations although this is always an option available to the Authority in the future.
- 6.8** The ENTEPEG is being developed to establish a guidance framework for planning decisions relating to premises associated with the evening and night time economy within Shrewsbury whilst taking into account licensing provisions.
- 6.9** Purple Flag is an accreditation process similar to the Green Flag award for parks and the Blue Flag for beaches. It leads to Purple Flag status for town and city centres that meet or surpass the standards of excellence in managing the evening and night time economy.

7. Conclusions

- 7.1** PSPOs are intended to deal with nuisance/s or problem/s in a particular area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area. They are designed to ensure that the public can use and enjoy public spaces and do not face incidents of antisocial behaviour. It is with this in mind and having considered the representations made to the Authority and the evidence available that the proposed PSPO has been drafted.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers. Statutory guidance for frontline professionals.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final_2_.pdf

Better Regulation and Enforcement Policy

<https://www.shropshire.gov.uk/shropshire-council/policies/better-regulation-and-enforcement-policy/>

Cabinet Member (Portfolio Holder)

Cllr Mal Price

Local Member

Cllr Andrew Bannerman (Coton Hill and Quarry)

Cllr Anne Chebsey (Porthill)

Appendices

Appendix A – Proposed Public Spaces Protection Order

Appendix B – PSPO Consultation survey and FAQs

Appendix C – ESIIA for proposed PSPO

Appendix D – Memorandum of Understanding between West Mercia Police and Shropshire Council

Appendix E – Intel Analyst report on incident data

Appendix F – Data maps

Appendix G – Statement of PC Evans

Appendix H – Statements of PS Coles and PC Scimia

Appendix I – Statements of representatives of the old Market Hall (redacted)

Appendix J – Statements of Town Council Gardener (redacted)

Appendix K – Statement of a representative of the BID (redacted)

Appendix L – Statements of three town centre businesses (redacted)

Appendix M – CCTV Image capture of Male urinating in Church Street (Oct 16)