



Committee and Date

Cabinet

21st June 2017

PUBLIC SPACES PROTECTION ORDER FOR SHREWSBURY TOWN CENTRE

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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** At the Cabinet meeting on the 21st December 2016 a report was considered which introduced a draft PSPO. Cabinet agreed for 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 necessary amendment/s.
- 1.3** This report sets out the results of the consultation along with the amendments proposed for the draft PSPO.
- 1.4** The PSPO has received significant support from respondents of the consultation along with suggested amendments and inclusions; however, the main body of the PSPO remains largely unaltered. It consists of two prohibitions covering urinating/defecating and leaving personal belongings in a public space along with the 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. Recommendations

- 2.1** That Cabinet agrees, with any necessary amendments, that the Local Authority implements the Public Spaces Protection Order as detailed in **Appendix A** with an effective commencement date of 1st August 2017.
- 2.2** That Cabinet agrees that the Authority use Fixed Penalty Notices, in appropriate circumstances, where there is reason to believe that an offence under the Public Space Protection Order has been committed by any person.
- 2.3** That Cabinet agrees that the level of the Fixed Penalty Notice for a breach of the Public Space Protection Order be set at £75.00 and that if paid within 10 days of the date of the Fixed Penalty Notice a reduced fee of £50.00 will be accepted.
- 2.4** That Cabinet instructs the Trading Standards and Licensing Operations Manager to publish the Public Spaces Protection Order as detailed in **Appendix A** and cause to

be erected notices in accordance with Regulations made under the Anti-social Behaviour and Policing Act 2014.

- 2.5** That Cabinet, for the purpose of discharging the Public Spaces Protection Order as detailed in Appendix A, instructs the Trading Standards and Licensing Operations Manager publish and cause to be erected notices in accordance with Regulations made under the Anti-social Behaviour and Policing Act 2014.

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** The Council is under a legal duty 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. A consultation was authorised by Cabinet at a meeting held on 21st December 2016 and this ran from the 9th January 2017 to 12th March 2017.
- 3.3** An Equality and Social Inclusion Impact Assessment (ESIIA) was presented at the Cabinet meeting on the 21st December and this has been updated to reflect the responses received from the consultation. The overall conclusions from the updated ESIIA have not changed with the impact on the 'Protected Characteristic groups and other groups in Shropshire' remaining in the 'low positive or negative impact' category. The revised ESIIA is set out at **Appendix B** to this report.
- 3.4** A challenge to 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 had been derived followed an assessment of the data retained by various agencies and businesses together with on-going consultation with key stakeholders prior to October 2016. This data has been updated with an additional report covering the period of October 2016 to March 2017 inclusive. This data again provides further evidence for the need for the PSPO whilst demonstrating the persistent and continuing nature of the issues being experienced. This additional data is set out at **Appendix C** to this report.
- 3.5** When making a PSPO a local authority must have particular regard to the rights of freedom of expression, freedom of assembly and protection of property set out in the European Convention on Human Rights and the Human Rights Act 1998. The recommendations in this report can be made by the Local Authority by virtue of the provisions of the Anti-social Behaviour, Crime and Policing Act 2014 ('the Act'). Having undertaken the consultation in accordance with the Act and by acquiring the evidence to satisfy the conditions necessary to implement a PSPO the recommendations are not at variance with the Human Rights Act 1998 and is unlikely to result in any adverse Human Rights Act implications.

- 3.6** The wording of the PSPO is intended to avoid any allegation that the Council is targeting any specific group or type of individuals and specifically 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.
- 3.7** Nevertheless, a letter was received from The National Council for Civil Liberties known as 'Liberty' that sought to challenge the introduction of the PSPO. This letter is attached to this report at **Appendix K** and the officer response at **Appendix L**.
- 3.8** In summary the submission from 'Liberty' raised the following concerns:
- The PSPO represents a significant and unjustified threat to civil liberties.
 - The inclusion of a dispersal power which is claimed to be unlawful.
 - The inclusion of a provision that will target and criminalise the homeless and rough sleepers for leaving their belongings in public spaces.
 - The inability of the homeless and rough sleepers to pay Fixed Penalty Notices or Magistrates' Court fines.
 - The PSPO is an attempt to mask the problems of homelessness and rough sleeping and will not address the causes.
- 3.9** Officers have fully considered the concerns raised by 'Liberty' in conjunction with the views expressed by other consultees. The main considerations relevant to the points raised in paragraph 3.11 are:
- In drafting the PSPO, officers and partners have been very conscious of the potential impact the PSPO may have on the homeless and rough sleepers. The focus was specifically on prohibitions that will address certain behaviours that have a detrimental effect on the quality of life of those in Shrewsbury Town Centre. This is as opposed to including specific prohibitions that would simply ban or criminalise rough sleeping.
 - Officers do not consider the request to leave the area and not to return within 48 hours, i.e. the 'specific thing to be done' to be an unreasonable 'thing' when and individuals behaviour causes nuisance, alarm, harassment or distress. Accordingly it is believed that this provision of the PSPO satisfies the wording of section 59(4) of the Act and is not considered unlawful.
 - The prohibition relating to the leaving of personal belonging will impact on anyone and not only those who are homeless and rough sleeping. Given the heightened security threat and the risk to the public it is considered that the prohibition is justified.
 - The PSPO will form part of the toolkit used by officers. FPNs will be issued in line with the Councils Better Regulation and Enforcement Policy which provides for an escalated enforcement approach. FPNs and legal action would only be used where help, assistance and guidance fails to address the unacceptable behaviour of an individual. A person's inability to pay a fine does not preclude them from the rule of law.
 - The complex issues associated with the homeless and rough sleepers are recognised and the Council already works in partnership to provide appropriate help and assistance to these vulnerable people. Measures, as identified in paragraph 5.16 below, are already in place and have reduced the number of people who are rough sleeping.

- 3.10** Despite the issues raised by 'Liberty', the evidence available to the Council together with the results of the consultation demonstrate (refer to paragraphs 5.6 to 5.13) that the test required by Section 59 of the Act, i.e. that 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, has been satisfied and that a strong case remains to justify and support the implementation of the PSPO as identified in **Appendix A** to this report.
- 3.11** There is an anticipated positive environmental impact associated with the recommendation in this report through a reduction in urinating / defecating in the street and the public not leaving their personal belongings in the town centre.

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 at Highway entrance points into the area and also within the town centre area itself. This is currently estimated to be in the region of £4000 to £5000 depending on the signage used.
- 4.3** 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. The use of FPNs for environmental crimes (e.g. littering and dog fouling) is set at £75.00 reduced to £50.00 if paid within 10 days. For consistency, it is suggested that the FPN process for the PSPO adopts similar fees and terms.
- 4.4** Utilising the FPN regime will require a system to be set up. Currently the Trading Standards and Licensing 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 should the PSPO is implemented. The costs associated with new recording books for officers and updates to the system would be relatively modest and will be incorporated within other updates to the system. There is the potential to recover such costs from FPN income although this is not expected to be significant and will not be relied upon for the delivery of services.
- 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.

4.6 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 At the Cabinet meeting on the 21st December 2016 a report for a proposed Public Spaces Protection Order for Shrewsbury Town centre was presented for consideration. The report and accompanying documentation is outlined on the Councils website with a link provided in the Background papers section below.

5.2 Cabinet agreed at this meeting for 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 necessary amendments.

5.3 The consultation period started on the 9th January 2017 and continued until the 12th March 2017.

5.4 The consultation consisted of an online survey accompanied by a copy of the proposed PSPO and a 'FAQ' document providing information on PSPO's, the process being undertaken and what the implications are. The Consultation was published on the Shropshire Councils website with notices posted on town council notice boards. In addition the Shropshire Council Community Hub at 1a Castle Gates, Shrewsbury assisted so that individuals visiting in person could make use of the facilities present at the Hub in order to complete the on-line survey.

5.5 A press release was issued when the consultation began and a media briefing held which resulted in press and radio coverage. Specific notice was provided to the Chief Inspector of Police, the Police and Crime Commissioner (PCC) and other relevant bodies in particular community representatives believed to have an interest in line with statutory requirements.

5.6 In total there were 108 respondents to the online survey and a single hard copy response to the survey received.

5.7 For the prohibition relating to urinating/defecating in a public place over 65% of online respondents stated it was a problem in the area with over 82% of respondents in support of this prohibition remaining in the PSPO. The results of this part of the survey including the comments from the respondents on the effects this particular behaviour has had on them is included at **Appendix D** to this report.

5.8 For the prohibition relating to leaving personal effects in a public area over 71% of online respondents stated it was a problem in the area with over 79% of respondents in support of this prohibition remaining in the PSPO. 50% of respondents had felt this behaviour had worsened over the last 12 months with a further 24% thinking it had remained the same and just over 4% believing the

behaviour had improved. The results of this part of the survey including the comments from the respondents on the effects this particular behaviour has had on them is included at **Appendix E** to this report.

- 5.9** For the prohibition relating to alcohol and stopping people drinking in a public place over 67% of online respondents stated excessive alcohol consumption in the area was a problem in the area with over 81% of respondents in support of this prohibition remaining in the PSPO. The results of this part of the survey including the comments from the respondents on the effects this particular behaviour has had on them is included at **Appendix F** to this report.
- 5.10** For the prohibition requiring individuals to disperse from a public area over 78% of online respondents stated there were behaviours that would be preventable with over 78% of respondents in support of this prohibition remaining in the PSPO. The results of this part of the survey including the comments from the respondents on the effects this particular behaviour has had on them is included at **Appendix G** to this report.
- 5.11** The single hard copy response to the consultation questions supported the proposal with some suggested alterations and is included at **Appendix H** to this report.
- 5.12** As part of the consultation respondents were also invited to provide any additional comments concerning each PSPO prohibition and whether there are any other matters that ought to be included in the PSPO. All these comments have been considered and compiled into one document with associated officer comments and observations and included at **Appendix I** to this report.
- 5.13** Having considered the comments received from the consultation, as set out in Appendix I, there are a number of common concerns and suggestions that consultees have proposed be included in the PSPO including provisions relating to:
- Charity collectors (chuggers).
 - Busking/Buskers
 - Littering
 - Rough Sleeping
 - Drug related matters
 - Vomiting, spitting and abusive language.
 - Parking on yellow lines and traffic speeds.
 - Alcohol related matters associated with the Licensing of premises.
- 5.14** Whilst there is evidence to support some of these matters there is no proposal at this time to include them in the proposed PSPO. This is because they are either already controlled by existing legislation/policies, e.g. those relating to littering, drugs, licensing controls, parking and traffic matters, or there are initiatives recently commenced or being proposed that are anticipated will help address some of these concerns. In particular the Site Management Agreement (SMA) with the Public Fundraising Association (PFRA) within Pride Hill to control charity collectors (chuggers) and the Evening and Night Time Economy Planning Guidance (ENTEPEG) together with the retention of the Purple Flag status for the town centre.
- 5.15** Whilst there were views for action to be taken against rough sleeping there was equally a number of comments received that demonstrated clear support for the continued efforts being made to help and assist rough sleepers. There was also

concern expressed that the PSPO should not specifically target this vulnerable group. The drafting of the PSPO was intended not to stop rough sleeping but it was recognised that a minority of people who may be rough sleeping undertake other actions/activities that should be curbed and these should be addressed by the PSPO.

- 5.16** Irrespective, there are measures in place to help vulnerable people who are homeless and rough sleeping from a variety of agencies including the Council, Shrewsbury Ark, Shropshire Recovery Partnership, Police and the medical profession. A recent initiative is the Homeless Outreach Street Triage (HOST) service which consists of a new outreach vehicle containing a combination of a plain clothes Police Officer, a mental health social worker from The Redwoods Centre, an Ark Outreach worker, Shropshire Recovery Partnership worker and a housing officer from Shropshire Council. The team seek out and visit Rough Sleepers on the street with the aim of fast-tracking the help and support available to them, working as a team to get Rough Sleepers accommodated quicker than ever before. The Council also provides support to the Alternative Giving Scheme which operates within the Town centre. This allows people to provide donations which are specifically used to assist homeless people.
- 5.17** In addition to the specific responses to the consultation questions, 3 emails and 2 letters were also received. The emails are included at **Appendix J** to this report and include the response from West Mercia Police to the proposal along with a response from the Churches Conservation Trust and Shrewsbury Town Council. A letter received from the National Council of Civil Liberties is included at **Appendix K** which raises a number of concerns with the proposed PSPO and a letter from the Police and Crime Commissioner is included at **Appendix M** to this report. Both the Police and the PCC have indicated their support for the implementation of the proposed PSPO.
- 5.18** Despite not including any further prohibitions suggested by consultees at this time the following amendments have been made to the proposed PSPO:
- The area defined by the map has been amended very slightly to take into account the area of land immediately in front of the University building to the river bank which is immediately adjacent to the Frankwell playing fields and car park which has experienced levels of ASB.
 - The removal from prohibition 3c and 3d of the words 'or to prevent public disorder'. It is accepted that this is not necessary as public disorder would fall into a higher level of inappropriate behaviour for which the police already have appropriate powers.

6. Additional Information

- 6.1** In the event that a breach of the PSPO requires the need for legal proceedings, the Director of Public Health and the Trading Standards and Licensing Operations Manager have delegated responsibility under the Constitution to undertake this action and so no further delegation is required.
- 6.2** 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 Memorandum of Understanding that was proposed as part of the report to Cabinet on 21st December 2016 was not subject to any comments as a result of the consultation and therefore remains in place as originally agreed.

- 6.3** 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 issue (under s66 of the Act). The grounds on which such a challenge can be made are that:
- a) The local authority did not have power to make the order or variation, or to include particular prohibitions or requirements imposed by the order; or
 - b) The interests of the applicant have been substantially prejudiced by a failure to comply with a requirement under the Act.

Further appeal can be made when a PSPO is varied by the local authority.

- 6.4** It should also be noted that national bodies may seek a judicial review and that this can be made at any time. Given the concerns expressed by 'Liberty', Members need to be mindful that despite the work undertaken to mitigate the risk of a legal challenge, the legislation is still relatively new and as such what is and is not permitted by a PSPO is ultimately a decision for the courts.

- 6.5** Online respondents to the consultation were also asked to confirm their relationship to Shrewsbury Town Centre in order to help assess the makeup of respondents. The results are included in **Appendix M** to this report. The highest number of respondents were local residents who lived outside the restricted area accounting for just over 64% and visitors which accounted for just over 29%. Residents in the area and local business owners accounted for just over 15% and 11% respectively whilst people working in the area accounted for just over 21%.

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. Evidence obtained shows that there are activities carried on in the proposed area that is affecting the quality of life of those in the locality and that these are unreasonable behaviours of a persistent or continuing nature which could be tackled through to implementation of the proposed PSPO.

- 7.2** The implementation of the PSPO should help ensure that the public can use and enjoy the public spaces in the area by reducing the risk that they will encounter incidents of antisocial behaviour. It is with this in mind and having considered the representations made to the Authority, the evidence available and the responses received to the public consultation that the proposed PSPO should be implemented.

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 report for the meeting on 21st December 2016

<http://shropshire.gov.uk/committee-services/ieListDocuments.aspx?CId=130&MId=3260&Ver=4>

Cabinet Member (Portfolio Holder)

Cllr Robert Macey

Local Member

Cllr Nathaniel Jacob Green (Coton Hill and Quarry)

Cllr Julian David Geoffrey Dean (Porthill)

Appendices

Appendix A – Proposed Public Spaces Protection Order

Appendix B – ESIA for proposed PSPO

Appendix C - PSPO Baseline Report Oct 16 - Mar 17

Appendix D – Online consultation results for questions 1-5 concerning the urinating / defecating prohibition including the effects this behaviour has had on respondents.

Appendix E – Online consultation results for questions 17-21 concerning the leaving of personal effects prohibition including the effects this behaviour has had on respondents.

Appendix F – Online consultation results for questions 7-11 concerning alcohol and stopping people drinking prohibition including the effects this behaviour has had on respondents.

Appendix G – Online consultation results for questions 12- 16 concerning the dispersal from the public area prohibition including the effects this behaviour has had on respondents.

Appendix H – Single hard copy response to consultation.

Appendix I – Additional comments received from all survey respondents including officer response and observation.

Appendix J – Emails received in response to the Consultation.

Appendix K – Letter from Liberty to Shropshire Council re Shrewsbury PSPO

Appendix L – Officer comments in response to points raised by Liberty.

Appendix M - Response from the PCC to the consultation.

Appendix N – Online respondent’s relationship to Shrewsbury Town Centre.