



Committee and Date

Cabinet

25 July 2018

**REVIEW OF THE 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 Shrewsbury Town Centre Public Spaces Protection Order (No.1) 2017 ('the Order'), which is produced at **Appendix A**, was approved by Cabinet on 21 June 2017 with an effective commencement date of 1 August 2017. The Order was approved with a condition that an update on its use would be brought before Cabinet after an initial 12 month period of operation. This report sets out the required update and seeks Cabinet's approval for the Order to remain in effect.

1.2 The Order implemented four prohibitions relating to anti-social behaviours in a public space, specifically:

- (a) urinating/defecating;
- (b) leaving personal belongings;
- (c) consumption of alcohol; and
- (d) a wider enabling provision to require a person to leave an area if causing anti-social behaviour.

2. Recommendation

2.1 That Cabinet accepts the position as set out in the report and agrees that the Shrewsbury Town Centre Public Spaces Protection Order (No.1) 2017, as set out in **Appendix A**, will remain in effect in accordance with the provisions of the said Order.

REPORT

3. Risk Assessment and Opportunities Appraisal

3.1 The introduction of the Order was intended to help improve 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 and this remains at the heart of the purpose of the Order.

- 3.2** A legal challenge over the validity of the Order was possible for a period of up to six weeks after the Order was brought into effect; no such challenge was received.
- 3.3** There have been no complaints or representations received by the Council in relation to the implementation or use of the Order since its introduction.
- 3.4** There have been no representations received requesting any of the listed behaviours in the Order be removed or that additional behaviours ought to be considered for inclusion in the Order.
- 3.5** The use of the Order continues to be supported by West Mercia Police and the Police and Crime Commissioner. The Shrewsbury Business Improvement District (BID) continues to encourage and be involved in the sharing of data from the business community to help demonstrate the continued need for the Order.
- 3.6** The Order has been in operation for almost 12 months and, in accordance with the Council's Better Regulation and Enforcement Policy, it has primarily been used to successfully resolve anti-social behaviours that are controlled by the Order with the primary aim being to modify or change the behaviour of individuals using the lowest level of enforcement interventions. To date, it has not been necessary to bring criminal proceedings against any individuals under the Order; however, this remains the ultimate sanction and, where it is necessary and proportionate to do so, this level of enforcement will be taken forward.
- 3.7** Data of town centre incidents has continued to be collated, monitored and categorised following the introduction of the Order. There are 17 different categories to which incidents/reports or behaviours are assigned and these are monitored on a month by month basis with the Police and Shrewsbury Town Centre and other partners as part of Team Shrewsbury. The data collated is highlighted in reports accompanying this report and can be viewed at Appendices B to D. Whilst this data is discussed further in section 6 of this report, the data demonstrates that there still exists a need for the PSPO and it remains a tool which the police are actively using to address low level ASB.
- 3.8** Consideration has been given to formally issuing 3 Fixed Penalty Notices (FPN) for specific identified breaches involving an individual returning to the restricted area, an individual who was suspected of urinating in a public place and an individual who had left their belongings. These have either been cancelled or not issued following the decision by individuals to either voluntarily change their behaviour, a change in circumstances or where specific circumstances have led to alternative action.
- 3.9** Prior to the Order being implemented, an Equality and Social Inclusion Impact Assessment (ESIIA) was undertaken and this was fully informed by the consultation process and the comments received from the community and other interested parties. It is considered unnecessary for the ESIIA to be updated for the purposes of this report; however, should Cabinet support the Order remaining in force until 31 July 2020 (as currently provided for in the Order), an updated ESIIA will be produced in the event that it is considered appropriate for the Order to continue beyond this date.
- 3.10** The Order has the potential to adversely impact on human rights. However, Cabinet properly had 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 1998 during the process that led to the implementation of the Order. The fact that no human rights challenge or complaint has been lodged in the first 12 months of the Order's operation, gives a reasonable indication that the original decision to implement the Order and the recommendation in this report to continue with the Order is unlikely to be at variance with the Human Rights Act 1998 and is also unlikely to result in any adverse Human Rights Act implications.

- 3.11** The anticipated positive environmental impact associated with the original decision to implement the Order through a reduction in urinating/defecating in the street and the public not leaving their personal belongings in the town centre will be sustained.

4. Financial Implications

- 4.1** There are potential financial implications for the Council should the Order continue to be in force. However, this risk is relatively small and, given the way in which the Order has been used to date, it is anticipated that the financial risk continue to be managed within current service delivery budgets.
- 4.2** Enforcement can be undertaken by both the Police and authorised Council officers. However, the agreement that the main responsibility and resource for enforcement will rest with the Police will continue in accordance with the Memorandum of Understanding previously established.
- 4.3** An identified breach of the Order 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 FPN, which, if paid, would discharge an individual's liability to conviction for the offence. The amount of the FPN was set by Cabinet at £75, reduced to £50 if paid within 10 days. There are no proposals to amend the financial level of the FPN.
- 4.4** Where a FPN is not considered appropriate or where a FPN is not paid then consideration will be given to the commencement of legal proceedings. Only the Council may bring proceedings for a breach of the Order; the Police (Crown Prosecution Service) cannot commence legal proceedings for a breach of the Order even where enforcement is undertaken by police officers. Ultimately, the Council will need to consider any such breaches and, where appropriate, having taken into account the Council's Better Regulation and Enforcement Policy, 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 makes an Order... "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 Orders.
- 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 an Order 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** An Order 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 Order.
- 5.5** Appeals against a draft Order 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 an Order is varied by the local authority.
- 5.6** An Order 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 an Order 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 Order 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 an Order, 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** At the Cabinet meeting on the 21 June 2017, the Shrewsbury Town Centre Public Spaces Protection Order (No.1) 2017 was approved with a commencement date of 1 August 2017. The area covered by the order, known as the 'restricted area', is identified within the order by a map which covers the town centre area within the river loop and a part of Mountfields which includes Frankwell car park and the playing fields adjacent. The Order has four main restrictions and is intended to provide officers with options to enable them to address certain anti-social behaviour.
- 5.12** The first prohibition relates to urinating and defecating in the public area. Despite public belief prior to the introduction of the PSPO, neither would amount to a criminal offence and the police in dealing with this behaviour had to rely on gathering evidence to consider an indirect offence, e.g. 'exposure', which would often prove too difficult to pursue.

- 5.13** The second prohibition bans the leaving of personal belongings without reasonable excuse. Inadvertently or accidentally leaving behind personal items would not breach the Order as this could 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.
- 5.14** 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 allows 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 does a criminal breach occur.
- 5.15** The fourth and final prohibition again provides an indirect power for officers to intervene where a person's behaviour is causing nuisance, alarm, harassment or distress to any other person. Authorised Officers can require a 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. This prohibition provides 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. It allows for a broad range of ASB to be stopped without necessarily criminalising individuals.
- 5.16** The wording of the Order was specifically drafted in a way to avoid any allegation that the Council was 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.

6. Additional Information

- 6.1** Prior to the introduction of the Order, data was collated by Shropshire Council, the Police and Team Shrewsbury partners to demonstrate the need for the Order. This data collecting regime has continued. The data is monitored and a summary, prepared by the Intelligence Analyst from Shropshire Council's Regulatory Services, is set out at **Appendix B** for the period 2017/18 and at **Appendix C** for the period 1 April 2018 to 31 May 2018. These reports identify the behaviours and incidents that have been reported and matches them to the provisions of the current Order.
- 6.2** In addition, a summary of the actions taken under the provisions of the Order is set out at **Appendix D**.

- 6.3** The reports set out at **Appendices B, C and D**, clearly demonstrate the continuing nature of the behaviours and issues being witnessed and experienced within Shrewsbury town centre and also how the Order, since its introduction, has been utilised to address these behaviours.
- 6.4** Tackling these issues is difficult and it is not surprising that the need for the Order remains. The information in **Appendix D** clearly demonstrates that the Police have and are continuing to use the Order primarily as a tool for resolving incidents and it has not resulted in the Police, in conjunction with the Council, seeking to criminalise any particular groups in society or individuals. It can also be seen that the Order has not been used to specifically target homeless individuals.
- 6.5** The available data identifies that the Order has been used on numerous occasions to address behaviours and incidents involving individuals under the age of 18 (over half of all individuals dealt with were under 18). Where appropriate, such incidents are followed up with correspondence from the Police to parents or guardians.
- 6.5** In considering the action to be taken on receipt of information from the Police, Council Officers, in addition to taking into account the Council's Better Regulation and Enforcement Policy, have given specific consideration to a number of factors, including:
- (a) sufficiency and quality of evidence available,
 - (b) circumstances of each case,
 - (c) offender's personal circumstances,
 - (d) follow up action with individuals (or families), and
 - (e) whether the offender has previously breached the Order.
- 6.6** Monitoring of the data supplied by the Police will help assist identify persistent offenders although this does not currently appear to be an issue. The use of the Order to address anti-social behaviours exhibited by first time offenders would therefore appear to have an impact on an individual's behaviours given the relatively low number of persistent offenders being identified.

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. The specific Order to which this report relates was originally approved and introduced with this in mind and it continues to be the reason why the Order is still required given the level of anti-social behaviour that continues to be received.
- 7.2** The continuing nature of the behaviours being experienced within the restricted area in Shrewsbury continues to raise concerns. The actions taken under the Order have been used against a broad spectrum of individuals to effectively address these concerns and currently repeat offending on a significant scale is not evident. This indicates the action being taken under the Order is proportionate and effective and supports the need for the Order to remain in force to provide an additional enforcement tool that the Police can continue to use to resolve lower level anti-social behaviour in Shrewsbury town centre.

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/>

Respective cabinet papers for the consultation and introduction of the Order

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

<https://shropshire.gov.uk/committee-services/ieListDocuments.aspx?CId=130&MId=3417&Ver=4>

Cabinet Member (Portfolio Holder)

Cllr Joyce Barrow, Portfolio Holder for Communities, Waste and Regulatory Services

Local Member

Cllr Nat Green (Quarry and Coton Hill)

Cllr Julian Green (Porthill)

Appendices

Appendix A – Shrewsbury Town Centre Public Spaces Protection Order (No.1) 2017

Appendix B – Report on incident data 2017/18

Appendix C – Report on incident data 1 April 2018 to 31 May 2018

Appendix D – Summary of PSPO activities