



Committee and Date

Cabinet

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Item

Public

Proposed extension of Shrewsbury Town Centre Public Spaces Protection Order (No. 1) 2017

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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.
- 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) a wider enabling provision to require a person to stop drinking alcohol and/or hand over alcohol if causing anti-social behaviour; and
 - (d) a wider enabling provision to require a person to leave an area if causing anti-social behaviour.
- 1.3** All Public Spaces Protection Orders expire at the end of three years unless extended by the Council for a period of up to and no more than 3 years.
- 1.4** A public consultation on extending the Order has been undertaken by the Council to obtain comments from statutory consultees as well as any other interested parties and the public. Eight responses to the consultation were received, which broadly support the extension of the Order.

- 1.5** The Police, a statutory consultee and the main body responsible for undertaking enforcement of the Order in partnership with the Council, are in full support of an extension to the Order.

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 be extended from 1 August 2020 for a period not exceeding 3 years.

REPORT

3. Risk Assessment and Opportunities Appraisal

- 3.1** The Order was introduced 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; this remains the core purpose of the Order.
- 3.2** Under the Anti-Social Behaviour, Crime and Policing Act 2014 ('the Act'), 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. Further appeal can only be made when an Order is varied by the Council. There is no variation proposed for this Order; it is simply an extension to that which already exists and, as a consequence, the validity of the Order cannot be challenged.
- 3.3** An interim review of the Order was undertaken one year after its implementation and a report presented to Cabinet on 25 July 2018 for consideration. No issues were raised as a result of this review and Cabinet resolved that the Order remain in effect.

- 3.4** There have been no complaints or representations received by the Council in relation to the implementation or use of the Order whilst it has been in operation.
- 3.5** In line with the requirements of the Act, a public consultation was undertaken between 1 April 2020 and 15 May 2020 to seek views about extending the Order. The consultation set out the details of the proposal and took the form of a generic call for comments rather than seeking answers to specific questions. It was carried out through the Council's '*Get Involved*' web pages to seek responses from the public and in general. Individual emails, which included a direct link to the consultation details on the Council's website, were also sent to the statutory consultees, namely, the Chief Officer of West Mercia Police, the local policing body being the West Mercia Police and Crime Commissioner, community representatives that the Council thought appropriate to consult and the owner or occupier of land within the Shrewsbury town centre area.
- 3.6** The consultation details included enforcement statistics, which are available at **Appendix D**, and an evaluation report concerning Shrewsbury town centre ASB reported incidents obtained from Team Shrewsbury and the Police, which is available at **Appendix E**.
- 3.7** The Order, in accordance with the Council's Better Regulation and Enforcement Policy, has primarily been used to effectively resolve anti-social behaviour issues by modifying or changing the behaviour of individuals using the lowest level of enforcement intervention, rather than seeking to criminalise those acting inappropriately.
- 3.8** Over the first 31 months that the Order was in force, the reported enforcement statistics indicate that the Police and/or Authorised Council Officers took enforcement action in relation to 247 incidents to address breaches of all four prohibitions set out in the Order. Follow up action occurred on 64 occasions, which included Police and Council issued warnings, the issue of fixed penalty notices and the successful institution of legal proceedings. In adopting this approach, the Police and the Council have made best use of their resources to deal with lower level anti-social behaviour.

- 3.9** It is reported that between the 1 March 2017 and the 29 February 2020, the number of recorded anti-social behaviour incidents decreased in relation to only one of the four prohibitions contained in the Order. This relates to a 7% decrease with respect to leaving personal belongings, including anything that may be considered discarded or waste material, in a public place. However, when considering the number of recorded incidents relating to personal belongings being left in isolation from the additional categories associated with discarded or waste materials, then it can be seen that these reported incidents have also increased by 29%. The remaining three prohibitions, namely those relating to urinating/defecating, being required to leave the town centre area and drinking alcohol saw reported incidents increase by 145%, 32% and 10%, respectively.
- 3.10** The top five reported incident types were drug litter, drug misuse, alcohol related behaviour, damage/arson and alcohol litter. The incident types that have seen the greatest increases in reporting were nuisance busking, urinating/defecating and graffiti, and those with the most significant decreases related to aggressive begging, alcohol litter and dog control.
- 3.11** The overall feedback to the consultation has been low with eight responses received. This is not necessarily a negative position as it may be considered that the community at large is content with both the way in which the Order was implemented by the Council and the proportionate and appropriate enforcement approach that has been adopted. Equally, however, it does need to be acknowledged that COVID-19 led to limitations around the methods of consultation utilised and that this may have impacted the level of response.
- 3.12** Nevertheless, five of the responses were received from key stakeholders, these being West Mercia Police, Shrewsbury Town Council, Shrewsbury Business Improvement District (BID), Shropshire Fire and Rescue Service and Shrewsbury Colleges Group, as well as three members of the public. A summary of the responses, together with officer comments, are set out in **Appendix B** and **Appendix C**.

- 3.13** Given the overall increase in reported anti-social behaviour incidents, it is perhaps not surprising that there was unanimous support for the Order to be extended, in particular, with the Police stating it is '*an effective tool to manage the Anti-Social Behaviour committed within the restricted area*'. However, there was one significant proviso highlighted by a member of the public; specifically, that the Order should only be extended if there is a co-ordinated response in place to deal with the root causes of anti-social behaviour.
- 3.14** Equally, it is not unreasonable to conclude that the Order ought not to be extended on the basis that it has not adequately reduced anti-social behaviour in Shrewsbury town centre and, in fact, an alternative approach is required to deal with such incidents, particularly those relating to drug and alcohol use/misuse.
- 3.15** Nevertheless, based on the available data, it is reasonable to conclude that if the Order was not extended and, thereby, an enforcement tool that the Police and the Council can use to tackle anti-social behaviour incidents quickly and proportionately is removed, this may result in a recurrence of the behaviours that have reportedly decreased and/or a further increase in the frequency or seriousness of those behaviours where there is already an indication that increases have occurred.
- 3.16** It is also reasonable to acknowledge that the increase in the reported incidents will, in part, be due to improved awareness, easier reporting pathways and also as a result of enforcement actions taken under the Order. Furthermore, whilst all anti-social behaviour matters are recorded for wider intelligence and monitoring purposes to enable a properly co-ordinated response, it is not the intention that the Order addresses all behaviour categories (there are 17 in total); for example, of the top five reported incident types referred to in paragraph 3.7 above, four (drug litter, drug misuse, damage/arson and alcohol litter) have separate and specific legislation that enables alternative and more appropriate enforcement action to be taken by the Police and/or the Council.
- 3.17** The use of the Order continues to be strongly supported by West Mercia Police. The Shrewsbury Business Improvement District ('BID') remains committed and involved in the sharing of data from the business community with Team Shrewsbury to help capture intelligence and monitor impact. This multi-agency approach is key

to addressing anti-social behaviour in the town centre and it is recognised that such behaviour will continue to be a significant challenge. The Order, if extended, and its use is only one part of a wider co-ordinated response to deal with the root causes of anti-social behaviour in Shrewsbury town centre.

- 3.18** Prior to the Order being implemented in 2017, an Equality and Social Inclusion Impact Assessment ('ESIIA') was undertaken; this can be seen at **Appendix F**. This was fully informed by a consultation undertaken at the time utilising the comments received from the community and other interested parties. A further ESIIA, which is set out at **Appendix G**, has now been prepared reflecting the latest consultation, associated data and wider impacts.
- 3.19** Prior to the Order coming into effect, it was determined in the original ESIIA that its implementation would be considered to have an overall 'low positive impact' for the community and for Protected Characteristic groupings. It is anticipated that the overall impact for the community and Protected Characteristic groupings of the proposed extension to the Order will remain 'low positive'.
- 3.20** The Order, and any extension, has the potential to adversely impact 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 initial implementation of the existing Order. The Council has not received any human rights challenges or complaints since the Order was brought into effect. As a result, it is reasonable to conclude that the original decision to implement the Order has not led to adverse human rights breaches, and that an extension to the existing Order is also unlikely to be at variance with the Human Rights Act 1998 or result in any adverse human rights implications.
- 3.21** 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 remains a priority objective.

4. Financial Implications

- 4.1 Concerns initially held that there were potential financial implications for the Council regarding enforcement of the Order have not materialised and there are no reasons to suggest this position would change if the Order is extended. Whilst there is always a risk with any form of enforcement activity, the risk associated with enforcement of the Order is low and, given the approach that has been taken and will be maintained, it is anticipated that the financial risk will continue to be low and 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 ('the MoU') previously established. This has again been agreed and a copy of the refreshed MoU is provided for information at **Appendix H**.¹
- 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 a Fixed Penalty Notice (FPN), which, if paid, would discharge an individual's liability to conviction for the offence. The amount of the FPN was previously 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 if the Order is extended.
- 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 do so 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

¹ Council signatory to be added following Cabinet decision.

legal proceedings, which are not recovered, will be borne by the Council. Since the Order was implemented five cases have been the subject of legal proceedings and these costs have been borne by the Council within existing service budgets. Fixed penalties issued in these cases were not paid.

5. Background

- 5.1** The Anti-Social Behaviour, Crime and Policing Act 2014 ('the Act') 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 to extend the 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 only be made when an Order is varied by the local authority. There is no variation proposed with this Order.

- 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 behaviours.
- 5.12** The first prohibition relates to urinating and defecating in the public area. Despite public belief to the contrary and prior to the introduction of the Order, neither of these behaviours would amount to a criminal offence. The police in dealing with these behaviours 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 ordinarily breach the Order as this is likely to 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 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 authorised 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 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 anti-social behaviours 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 In order to extend the period for which an Order has effect, the local authority must be satisfied on reasonable grounds that doing so is necessary to prevent either:

- (a) occurrence or recurrence after that time of the activities identified in the order, or
- (b) an increase in the frequency or seriousness of those activities after that time.

6.2 Data prepared for the purposes of the original decision to implement the Order can be found with the report that was presented to Cabinet on 21 June 2017.

6.3 In determining appropriate follow up action 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.

7. Conclusions

7.1 The Order is intended to deal with specific anti-social behaviours within the restricted area that is detrimental to the local community's quality of life, by imposing conditions/restrictions on individuals in that area. The Order was designed to enable the public to use and enjoy public spaces without the fear of incidents of anti-social behaviour and it continues to be a key factor in considering whether to extend this Order given the continuing nature and, in some cases, the rising level of reports of certain types of anti-social behaviour.

7.2 The Order, since its introduction, has been utilised to address these behaviours in a proportionate and responsive manner taking into account the facts of each case. Improved awareness of the Order by the local community and local businesses

being encouraged to report anti-social behaviour may, in part, be a reason for the increased reported levels; however, this does not detract from the fact that lower level anti-social behaviour is continuing to affect the quality of life of individuals and that the Order is an effective tool which ought to remain available for use by the police and the Council when required.

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

Shropshire Council's Better Regulation and Enforcement Policy

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

Cabinet report and appendices relating to the introduction of the Order on 21 June 2017

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

Cabinet report and appendices relating to the review of the Order on 25 July 2018

<https://shropshire.gov.uk/committee-services/ieListDocuments.aspx?CId=130&MId=3677&Ver=4>

Cabinet Member (Portfolio Holder)

Cllr Gwilym Butler, Portfolio Holder for Communities, Place Planning 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 - Summary of responses from the consultation

Appendix C - Town Council response to consultation

Appendix D - PSPO Enforcement statistics

Appendix E - PSPO Evaluation report

Appendix F - Equality and Social Inclusion Impact Assessment (Proposed Public Spaces Protection Order Shrewsbury Town Centre)

Appendix G - Equality and Social Inclusion Impact Assessment (Proposed extension of Shrewsbury Town Centre Public Spaces Protection Order (No. 1) 2017)

Appendix H - Memorandum of Understanding between West Mercia Police and Shropshire Council