

Crawley Borough Council

Report to Overview and Scrutiny Commission 28 September 2020

Report to Cabinet 30 September 2020

Public Spaces Protection Order – Alcohol Consumption

Report of the Head of Community Services, **HCS/23**

1. Purpose

- 1.1 To consider a proposal for the making of a Public Spaces Protection Order (PSPO) to prohibit the consumption of alcohol where that consumption contributes to, is linked to or is associated with nuisance or annoyance to members of the public or a section of the public, or to disorder.
- 1.2 An order has been in place in Crawley since 2006 to address alcohol related anti-social behaviour firstly as a Designated Public Places Order (Intoxicating Liquor) and more recently as a transitioned PSPO. The proposed new PSPO will replace the current alcohol PSPO when it expires on 19 October 2020.

2. Recommendations

- 2.1 To the Overview and Scrutiny Commission:

That the Commission consider the report and decide what comments, if any, it wishes to submit to the Cabinet.

- 2.2 To the Cabinet

The Cabinet is recommended to:

- a) Endorse and request that Full Council make a PSPO in the form of the draft (at Appendix A to this Report, HCS/23) having first considered the outcome of the consultation exercise and all other relevant matters, and provided that Full Council is satisfied on reasonable grounds that the 2 conditions in section 59(2) and (3) of the Anti-social Behaviour, Crime and Policing Act 2014 are met (as set out in paragraph 4.3 of this Report, HCS/23);
- b) Agree that the level for Fixed Penalty Notices which may be issued for a breach of the PSPO (in the event that Full Council makes the PSPO in the form of the draft at Appendix A of this Report, HCS/23) be set at £100.

3. Reasons for the Recommendations

- 3.1 PSPOs can target a range of behaviours and can prohibit specified activities or require certain things to be done by people engaged in certain activities. PSPOs can send a clear message that these behaviours will not be tolerated and help reassure residents and businesses that unreasonable conduct is being addressed. The proposed PSPO will not

restrict consumption of alcohol in a public place, but will be used to address anti-social and behaviour associated with alcohol consumption which has a detrimental effect on the town and community.

- 3.2 The proposed PSPO, if made by Full Council, will provide the Police and Local Authority with an additional powers to complement existing enforcement strategies and legislation. The proposed PSPO seeks to regulate specific activities in public places that have a detrimental effect on the local community and would be used as part of suite of options available to the council and police to enable a combined approach in tackling the problems associated with alcohol related nuisance, annoyance and disorder.

4. Background

- 4.1 PSPOs were introduced under the Anti-social Behaviour, Crime and Policing Act 2014 to deal with persistent anti-social behaviour in a local area that is detrimental to the community's quality of life. They do so by imposing conditions on the use of that area to ensure everyone can use and enjoy public spaces without experiencing nuisance or annoyance.
- 4.2 The Act gives local authorities the power to make PSPOs in respect of any public space within its own area, including any space to which the public has access as of right or by virtue of express or implied permission, provided the required test is met.
- 4.3 The Act 2014 sets out that a local authority can make a PSPO if satisfied, on reasonable grounds that the following two conditions are met:

Condition 1 is that—

- (a) that activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or
- (b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.

Condition 2 is that the effect, or likely effect, of the activities—

- (a) is, or is likely to be, of a persistent or continuing nature,
 - (b) is, or is likely to be, such as to make the activities unreasonable, and
 - (c) justifies the restrictions imposed by the notice.
- 4.4 A PSPO can last for up to 3 years, after which it will expire unless before then a decision is made to extend it for a further period of time. A PSPO can be extended more than once. PSPOs can be varied at any time to change the restricted area or to alter or remove a prohibition or requirement included in the PSPO, or to add a new one.
- 4.5 Where a PSPO includes a prohibition on the consumption of alcohol section 63 of the Act is engaged, and the following applies:
- (a) Where a constable or authorised local authority officer reasonably believes that a person is or has consumed alcohol in breach of a PSPO, or intends to do so, then they may require that person:
 - (i) not to consume, in breach of the order, alcohol or anything which the constable or authorised officer reasonably believes to be alcohol; or

- (ii) to surrender anything in the person's possession which is, or which the constable or authorised officer reasonably believes to be, alcohol or a container for alcohol.
 - (b) When imposing one of the above requirements, the officer must tell the person that failing without reasonable excuse to comply with the requirement is an offence.
 - (c) The imposition of a requirement will not be valid if the person asks the officer to show evidence of their authorisation and the officer does not do so.
 - (d) Consuming alcohol in breach of the PSPO will not in itself be an offence, however, it would be a criminal offence for a person to fail, without reasonable excuse, to comply with a requirement imposed on him/her. A person guilty of this offence is liable on conviction in a Magistrates' Court to a fine not exceeding level 2 on the standard scale.
 - (e) A constable or authorised officer may dispose of anything surrendered in compliance with a requirement however he or she thinks appropriate.
- 4.6 Within 6 weeks of a PSPO being made, an individual who lives in the restricted area or who regularly works in or visits that area can apply to the High Court to question the validity of the PSPO. This right of appeal also applies when a decision is made by a local authority to vary an existing PSPO.
- 4.7 Before a local authority decides whether to make, extend, vary or discharge a PSPO, there are requirements regarding consultation, publicity and notification. This includes consultation with the local chief officer of police, police and crime commissioner, owners and occupiers of the affected land, and appropriate community representatives. The requirement to consult with the owner or occupier of land within the proposed restricted area does not apply to land that is owned and occupied by the local authority, and applies only if, or to the extent that, it is reasonably practicable to consult the owner or occupier of the land. Any public consultation should be of duration that allows for meaningful engagement.
- 4.8 There is a requirement for a newly made PSPO to be published on the local authority's website and signage to be erected on or adjacent to the place the Order relates. Signage does not need to set out all the provisions of the PSPO but needs to clearly state where this information can be found.

5. Description of Issue to be resolved

- 5.1 Reports of alcohol related nuisance and anti-social behaviour in public spaces which impact on the quality of life of nearby residents and the enjoyment of the wider community in areas affected by this behaviour continue to be received. Numerous complaints and concerns have been raised by individuals who both reside, work or visit our borough, the behaviour is further evidenced by reports from key multi agency partnerships, such as Shop watch. The behaviour demonstrates an ongoing and continuous pattern of unacceptable nuisance behaviour that is at times threatening, often intimidating and of a nature that has led to an enduring and sustained negative impact on the wider community. This behaviour also impacts on the perception of Crawley and its economic stability. Although this behaviour is wide-spread throughout the borough particular neighbourhood hotspot areas include town centre, Tilgate Park, Goffs Park, Gossops Green Playing Field (Dormans), Dobbins Place, Three Bridges Playing Field and Jubilee Field. Having a borough wide PSPO (excluding Gatwick) enables the police and council to address this behaviour wherever it arises in a robust manner.

- 5.2 Alcohol related anti-social behaviour and disorder has been a long standing issue, the current PSPO and previous DPPO have been used to good effect and there is an expectation from the public that the council and police continue to utilise all the powers available to them to address this behaviour.

6. Information & Analysis Supporting Recommendation

- 6.1 The current alcohol PSPO came into effect in October 2017 when the former Designated Public Places Order (DPPO) transitioned into a PSPO under arrangements set out in the Anti-Social Behaviour, Crime and Policing Act 2014. The DPPO had been in place since 1st April 2006. The DPPO gave the police and authorised council officers the authority to 'require a person in a DPPO area not to drink alcohol' and to 'ask the person to surrender the alcohol and any opened or sealed containers in their possession'. The same prohibitions apply to the current alcohol PSPO.
- 6.2 Consuming alcohol would not be a breach of the proposed PSPO (if made). The PSPO would allow a constable or authorised person to impose the requirements (as described in 4.5 above) where they believed that the consumption of that alcohol contributes to, is linked to or is associated with nuisance, annoyance or disorder or that the person intends to consume alcohol in circumstances in which doing so would be in breach of the prohibitions. It would be the failure to comply with an imposed requirement that is an offence.
- 6.3 The proposed PSPO will not prevent an individual from enjoying an alcoholic beverage in a public place as long as the consumption does not contribute to, is linked to or associated with nuisance, annoyance or disorder.
- 6.4 If made, the PSPO would not restrict the consumption of alcohol in any premises which are licensed for the supply of alcohol including any outdoor area within the curtilage of such licensed premises (other than council operated licensed premises). This means, for example, the proposed PSPO would not apply to a beer garden of a pub where the beer garden is part of the licensed premises. If made, the PSPO would also not apply to premises where a temporary event notice has been given under Part 5 of the Licensing Act 2003, or where the sale or consumption of alcohol is permitted by virtue of permission granted under section 115E of the Highways Act 1980. These exclusions are set by statute. The intention of excluding such premises from a PSPO which includes prohibitions on consuming alcohol is that the licensing regime already includes safeguards and measures to address anti-social behaviour and disorder associated with alcohol consumption within such premises.
- 6.5 All of the other district and boroughs in West Sussex, with the exception of Mid Sussex, have PSPOs restricting alcohol consumption where it is associated with anti-social behaviour. This sends a clear message that this type of behaviour is not tolerated in West Sussex.
- 6.6 The current PSPO signage in the borough covers both the current alcohol PSPO and the car cruising PSPO. If this new alcohol PSPO is granted there will be no need to amend the current signage as the information about the current PSPO will apply to the proposed PSPO (if made). However if the PSPO is not granted, the current signage will need to be amended to remove any reference to the alcohol PSPO.
- 6.7 With regard to the use of FPNs, it is anticipated that there will be limited use of these in relation to the street community, as compliance from this group of individuals has not previously resulted in any further action to be taken. When asked to stop drinking and hand over a vessel believed to contain alcohol (under current powers), it is reported that

they have generally complied with these requirements. PSPOs are part of a suite of powers available to officers to address anti-social behaviour. Other powers contained within the Anti-Social Behaviour, Crime and Policing Act 2014 can and have been used to target specific unwanted behaviours. Community Protection Notices have been used with success. For some individuals, receiving a Community Protection Notice Warning has been sufficient. Criminal Behaviour Orders can also be applied for where a person is convicted of an offence such as breach of a Community Protection Notice. So far in 2020, nine Community Protection Notice Warnings have been issued to individuals from the street community, of which two have been progressed to the issue of a Community Protection Notice. The behaviours these warnings have been used for include: not congregating in groups of more than two, not being under the influence of alcohol and/or drugs and not entering premises they have been banned from.

- 6.8 The area to which the current PSPO (formerly the DPPO) applies is the borough of Crawley excluding Gatwick Airport. A borough wide DPPO was originally made to prevent any displacement of the problem from the hotspot areas identified at the time. This area became the restricted area under the current PSPO when the DPPO transitioned into a PSPO in 2017. It is the same area which would become the restricted area under the proposed PSPO (if made).
- 6.9 A suite of measures will be developed to monitor the use, compliance and impact of the PSPO, these will be monitored by the local strategic community safety board.
- 6.10 Police recorded data relating to alcohol related crime and alcohol related public place crime has shown an increase year on year for the last three years.

	Alcohol related crime	Alcohol related public place crime
2017/18	1257 (+1.9%)	462 (+2.9%)
2018/19	1525 (+21.3%)	588 (+27.3%)
2019/20	1554	605

- 6.11 Between 01/06/19 – 31/05/20 there were 76 ASB reports relating to street drinking compared to 69 for the previous 12 month period. The town centre received the most reports, 29 and 33 respectively. West Green and Three Bridges were the neighbourhood areas with the highest number of ASB reports. The table below shows the number of street drinking ASB reports to the police by neighbourhood.

	01/06/18 – 31/05/19	01/06/19 – 31/05/20
Bewbush	3	1
Broadfield	5	4
Crawley town centre	33	29
Furnace Green	2	1
Gossops Green	0	3
Ifield	2	2
Langley Green	2	3
Maidenbower	1	0
Northgate	1	8
Pound Hill	1	4
Southgate	0	3
Three Bridges	13	5
Tilgate	0	2
West Green	6	11
Total	69	76

Source: Sussex Police – Anti-Social Behaviour by neighbourhood

6.12 Records have been kept in relation to alcohol confiscation, figures for the last four years are shown below. Compliance is high when individuals are requested to stop consuming alcohol and surrender any vessels believed to contain alcohol.

- 2016/17 – 85
- 2017/18 – 21
- 2018/19 – 62
- 2019/20 - 3

6.13 In 2019 there was an increase in the use of Community Protection Notice Warnings in relation to the street community, 18 were issued compared to only two in 2018. Of the 18 issues in 2019 four were progressed to Community Protection Warnings and subsequently two of these were progressed to Criminal Behaviour Orders. Not being under the influence of alcohol was an element included in the majority of these.

6.14 Letters were sent via email to Sussex Police, via the local District Commander, the Police and Crime Commissioner and WSCC, regarding the proposal for a new PSPO when the current PSPO expires. No negative feedback was received. Chief Inspector Shane Baker, District Commander for Crawley and Mid Sussex was supportive of continuing to have an alcohol consumption PSPO for Crawley.

6.15 Public Consultation

- Consultation took place from the 13th July 2020 to 9th August 2020. A copy of the consultation questions is included in Appendix B. The consultation was made available online with paper copies on request. A copy of the draft order and details of the issue was made available on the Council website
- Promotion of the consultation was done through:-
 - Publicity via local press
 - Use of social media via promotion on the councils Facebook and Twitter
 - Awareness of the PSPO consultation circulated to chairs of Neighbourhood Forum Groups, Neighbourhood and Community Forums, Community Development Facebook pages, Residents Associations, Forum Facebook pages, Rivers for Women, Crawley Town Community Foundation, Crawley Community Youth Services, Sussex Oakleaf, Barnardos, Early Help WSCC, Love Your Neighbour Initiative, Crawley Interfaith Network, Crawley College, YMCA and abandofbrothers.
 - Awareness of the PSPO consultation was also aimed at the business community through the Town Centre Partnership, town centre business contacts and neighbourhood parade tenants.
 - The display of posters in all Neighbourhood notice boards, all three train stations, Tilgate Park, Goffs Park, Jubilee Fields/Three Bridges playing field, Church Walk, Memorial Gardens and High Street (near Brewery Shades) making people aware of the proposed PSPO and consultation process inviting them to express a view.
- Due to Covid19 we were unable to hold face to face consultation and utilise community facilities such as community centres and libraries to promote the consultation, due to these being closed to the public.

6.16 Analysis of the Consultation responses:

206 responses were received, the key finding were as follows:-

- 97% of all respondents agreed with the proposal to implement the PSPO.
- 100% of business owners and community group representatives agreed with the proposal to implement a PSPO
- An average of 95% stated that implementing the PSPO would have a positive impact for those either visiting or living and working within the town.

- 91% of all respondents thought alcohol related anti-social behaviour was either a big problem or somewhat of a problem in Crawley.
- Respondents emphasised the need to ensure the PSPO is enforced throughout its duration so that alcohol related anti-social behaviour is effectively and properly addressed.

7. Implications

7.1 Financial Implications

- Resources – no additional resources will be required.
- Signage –The current signage covers both the current alcohol PSPO and car cruising PSPO. The wording of the current signage will not need to be amended unless the proposed PSPO is not made. The cost of replacing the current signage would be £1,320 plus installation.
- Fixed Penalty Notice Books – there will be no need to produce new FPN books as the current FPN books already include a code for use regarding breach of PSPO.
- Training – training was provided on PSPO Enforcement and Fixed Penalty Notice Training for the car cruising PSPO. Further training will not be required.
- Legal Costs in the event of prosecutions

7.2 Legal and Risk Implications

The consultation process and making of PSPOs around the country to address some issues have received wide public criticism, particularly where they have sought to address behaviours linked to homelessness and begging. However Crawley has had an order prohibiting the consumption of alcohol when associated with nuisance, annoyance or disorder, or it believed it will lead to nuisance, annoyance or disorder since 2006 initially via the DPPO and as a PSPO since 2017, therefore the risk, if the proposed PSPO is made, is assessed to be low as it would not be a new provision for Crawley.

Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 gives local authorities the powers to make a PSPO. The procedure for making a PSPO is set out in section 72 of the 2014 Act and in the Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014 made under that Act.

Before making a PSPO the Council must publicise the text of the proposed order and:

- consult with the chief police officer and the local policing body
- consult with such community representatives as the Council thinks appropriate
- consult (as reasonably practicable) the owners or occupiers of land in the area of the proposed order
- consider any representations made

The Council has complied with the above requirements and in order to complete the process, the Council must take into account any consultation responses before making a decision whether to make the proposed PSPO. In order to make the proposed PSPO, the Council must also be satisfied that the legal test (see 4.3) is met.

The Cabinet is reminded of the requirement under the Public Sector Equality duty (Section 149 of the Equality Act 2010) to have due regard to the duty when making this decision.

7.3. Equality Implications

An Equalities Impact Assessment has been carried out and this is included as Appendix C.

8. Background Papers

None

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