

Darlaston Area Panel
24th March, 2015
Public Spaces Protection Order

Introduction

This report seeks to brief the **Darlaston** Area Panel on the future of the borough wide Designated Public Place Order and the transitional arrangements for this to become a Public Spaces Protection Order. The view of the panel on the timeframe and nature of the transition is also requested.

Report

1. Street Drinking Enforcement

- 1.1 The Anti-Social Behaviour Crime and Policing Act 2014 replaced the 19 existing powers to deal with ASB with 6 simpler, more effective powers designed to provide better protection for victims and communities. These include a number of powers that could be used to tackle street drinking and which should be considered when developing our continued approach to this on going issue. One of these powers is the power to make a Public Spaces Protection Order. (PSPO). One aspect of the PSPO is that it will displace the borough wide Designated Public Place Order (DPPO).
- 1.2 The Panel will be aware that since December 2008 the borough of Walsall has been subject to a borough wide DPPO. Although often wrongly described as a drinking ban this order makes it an offence for anyone to refuse to comply with a constable's request to refrain from drinking within a designated locality. It is also an offence to fail to surrender the alcohol including any opened or sealed containers within their possession. The orders provide the police with a power to deal with anti-social drinking and were intended for use in areas that have experienced alcohol related disorder or nuisance.
- 1.3 In November 2009 the Home Office up-dated it's Guidance on DPPOs. Previously the Guidance had not referred to borough wide orders. The Guidance issued in 2009 states;

"Borough-wide DPPOs are not specifically prohibited in the legislation; however, we would advise caution, as, in order for the DPPO to be proportionate, you need to ensure that there is evidence of alcohol-related anti-social behaviour in each and every part of the borough. Any local authority considering a borough-wide DPPO will need to satisfy themselves that they can justify their decision by pointing to evidence of alcohol-related nuisance or annoyance in each and every part of their borough."

The same considerations apply equally to any PSPOs which may in due course be made. In 2008 the Council was satisfied on the evidence then available that there was evidence of alcohol-related anti-social behaviour in each and every part of the borough.

- 1.4 The ASB Crime and Policing Act specifies the transitional arrangements for existing DPPOs (and a number of other orders), which unless revoked remain in force for three years from the commencement date of the new Act. Walsall's current DPPO can remain in force until 19th October 2017, at which time it will automatically become a PSPO.
- 1.5 The Guidance now produced by the Home Office for the Anti-Social Behaviour Crime and Policing Act 2014 states that Local Authorities need not wait for this to happen and could decide to review the need for their current orders ahead of that transition period and in doing so simplify the enforcement landscape. Having regard to the Guidance and the ordinary public law principles of making orders that are proportionate, necessary and justified on best evidence it is considered advisable to adopt best practice which means that the Local Authority should review now the need for a Borough wide DPPO in advance of the DPPO being converted automatically into a PSPO. This will involve in the first instance obtaining evidence as to the use of the powers under the current DPPO. If insufficient evidence is obtained of current alcohol-related anti-social behaviour in each and every part of the borough then a decision will have to be taken as to whether it is proportionate now to have a borough wide order. The revocation of the current DPPO would require a report to full Council.
- 1.6 The PSPO is an order made by the council and is designed to stop individuals or groups behaving anti-socially in a public space. The order allows both restrictions and requirements to be set (an order can contain a number of these) and these can be applied universally or targetted against certain groups at certain times. A PSPO can be used to restrict the consumption of alcohol in a public space (with a number of limitations) although like the current DPPO it is not an offence to drink alcohol in a "controlled drinking zone". An offence is committed when an individual fails to comply with a request to cease drinking or surrender alcohol within the zone. The order can be enforced by police officers, council officers and where designated by PCSOs.
- 1.7 Before the Council can make an order it is required to consult with police, the Police and Crime Commissioner, appropriate community representatives and the owner or occupier of the land to which the order will apply. The regulations also stipulate stringent publication requirements for the PSPO which include that:

"the local authority must cause to be erected on or adjacent to the public space to which the order relates such notice (notices) as it considers sufficient to draw the attention of any member of the public using that place....."

Although the Guidance does not mention a borough wide order the consultation and publication requirements when taken together with the Home Office Guidance in 2009 suggest that the PSPO is not best suited or likely intended for borough wide (or large geographic area) usage. Furthermore as in case of the DPPO any new borough wide order would require in order for the legal test to be met evidence of the anti-social behaviour it seeks to address in each and every part of the borough.

- 1.8 However whilst it appears that the PSPO is not intended for borough wide usage Walsall could potentially opt (as the current DPPO has not been challenged) not to revoke the DPPO and to allow it to revert to what would be a borough wide PSPO in October 2017. Before making the decision to do that it is recommended as set out above that the need for the order is reviewed. If the DPPO is to be allowed to become a PSPO we would need to consider signage, both in terms of wording and the number of signs required. The new Regulations contain more onerous obligations as to signage as set out above. The stringent signage requirements alone would require a considerable investment of time and money to increase the number of signs across the Borough. This makes this approach arguably both impracticable and unviable as a realistic option.
- 1.8 If after considering the current evidence the view is taken that allowing the DPPO to become a PSPO in October 2017 is not the preferred option a decision will need to be made at which time the current DPPO is to be revoked. With this in mind it is of note that the DPPO whilst in force does not prevent the making of PSPOs for other forms of anti-social behaviour. However if upon revocation of the current DPPO it is deemed that alcohol prohibitions are required in any PSPOs that have at that time been made then the council must follow due process to vary those orders. This includes consulting again as per the original order and varying signage accordingly. It is also of note that other areas are potentially considering the use of borough/area wide PSPOs for street drinking and other issues. The suggestion locally however and in the absence of case law is that would not at this time be a preferred or viable option and that targeted use of smaller scale PSPOs is the most appropriate way forward.
- 1.9 A draft PSPO process has been drawn up by the Community Safety Team who it is suggested will lead on obtaining these orders for the Council. We are also conferring with colleagues regionally to ensure best practice is shared and there is a level of consistency. The policy is based on a problem solving holistic approach in which all relevant partners/agencies will be brought together and consider/implement a range of options to deal with the issue or issues for which the order is sort. This will importantly include how an order is to be policed/enforced. This evidence based/problem solving approach supports focussing the orders on smaller clearly defined areas on which activity and resources can be targeted to have greatest impact. The process will of course need to consider potential displacement and the way in which this is addressed.
- 1.10 In terms of street drinking it is planned to use the new tools and powers in a

targeted, evidence based way focussing on key individuals and locations. This will include the current DPPO or any subsequent PSPO(s). Appropriate signage around the PSPO is currently being explored and as the regulations are less specific we may be able to be a little more creative with alcohol prohibition signage which could then be used to support a focussed blitz on a specific area and as such deter alcohol related ASB. At the other end of the spectrum current plans centre around the targeted use of enforcement powers including those held by the police around drunk and disorderly behaviour and also the new Community Protection Notices to get problematic individuals before a criminal court. At that time it should (subject to evidence) be possible to apply for a Criminal Behaviour Order to prohibit this and other ASB in which they are engaged, positive requirements to help them address their behaviour can also be applied. The issue will be tackled in a holistic way considering all options, this will include the more widespread use of the Vulnerability/Problem Solving forum as it is recognised that a number of our street drinkers will be vulnerable individuals with complex needs. It is envisaged that the proactive application of a planned approach, based on evidence and utilising all the tools and powers available should help us make significant in roads into this high profile issue.

Recommendation

The panel note the content of the report and express a view as to whether they would support the revocation of the current DPPO and its subsequent replacement with smaller focused PSOPs or the alternative which is to allow the DPPO to revert automatically to a PSPO on 19th October 2017.

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