

DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
HEAD OF ENVIRONMENTAL & HOUSING SERVICES	ENVIRONMENT, HEALTH & HOUSING COMMITTEE	7 MARCH 2023	8
PUBLIC SPACES PROTECTION ORDERS: ALCOHOL CONSUMPTION			

PUBLIC ITEM

This item is for consideration in the public part of the meeting.

SUMMARY

Parts of the Borough are presently covered by Public Spaces Protection Orders (PSPO's) which allow a Police Constable to require a person to stop drinking alcohol and surrender the alcohol to a Constable. These PSPO's are due to lapse during October 2023. They can be extended, but only if they remain necessary to prevent nuisance or annoyance to the public, or disorder associated with the consumption of alcohol in the area they cover.

The report asks the Committee to consider whether it is minded to extend all/any of these the PSPO's. Furthermore it proposes delegating the authority to do so to the Head of Environmental & Housing Services following the mandatory processes of consultation, to determine if the matters should be referred back to members for further consideration, or the Order/Orders confirmed.

The report also asks the Committee to consider whether the orders as extended should be varied to give authorised council officers the same powers as a constable.

RECOMMENDATIONS

1. That the committee is minded to extend the ten PSPO's as detailed within the report for a further three year period, and to vary the orders to allow authorised council officers the same powers as a police constable, i.e. to require a person to stop drinking and to require the surrender of alcohol. For clarity, it is recommended that the extended PSPOs should specifically refer to the ability of PCSOs to enforce the orders too.
2. In relation to each order that the Committee is minded to extend, to delegate authority to the Head of Environmental & Housing Services to carry out the necessary consultation, publicity and notification and then to extend the order, unless the he considers that the order ought not to be extended until a response to the consultation or publicity has been considered further by the committee.
3. That a prohibition of drinking alcohol within town centres be not pursued at this stage for the reasons explored within the covering report but should evidence come to light of increased drink related anti-social behaviour at a future date within Fylde the matter be re-considered.

SUMMARY OF PREVIOUS DECISIONS

Each of the orders will have been considered by the appropriate Committee at the time it was decided to make the order, and the committee must have decided that the statutory criteria for making the order, set out in paragraph 2 of the report, were fulfilled.

Environment, Health and Housing Committee, 1 September 2020:

Resolved:

1. That the Committee is minded to extend all of the public spaces protection orders described in the report for a further three years,
2. In relation to each order that authority is delegated to the Director of Resources to carry out the necessary consultation, publicity and notification and then to extend the order, unless the director considers that the order ought not to be extended until a response to the consultation or publicity has been considered by the committee at a special meeting.

Environment, Health and Housing Committee, 24th January 2023:

1. Deferred extending all the Public Space Protection orders to enable officers to explore the possibility of having a complete ban on street drinking in town centres.

CORPORATE PRIORITIES

Spending your money in the most efficient way to achieve excellent services (Value for Money)	
Delivering the services that customers expect of an excellent council (Clean and Green)	
Working with all partners (Vibrant Economy)	
To make sure Fylde continues to be one of the most desirable places to live (A Great Place to Live)	√
Promoting Fylde as a great destination to visit (A Great Place to Visit)	√

REPORT

THE TEN EXISTING ORDERS

1. Ten public spaces protection orders (PSPOs) are in force in different parts of the borough restricting the consumption of alcohol. The effect of each order is that an individual, when required by a constable, must not consume alcohol, and must surrender any alcohol to the constable. Individuals can be prosecuted or given a fixed penalty of up to £100 if they do not comply.
2. The ten orders cover the following areas of the borough:

Kirkham	Warton
Wesham	Inner Promenade and Fairhaven Lake
Freckleton	St Annes
Wrea Green	Kilnhouse
Lytham (town)	Lytham Green & Triangle

The precise coverage of each order is set out in the appendix to this report.

3. The ten PSPOs were originally made as designated public places orders (DPPOs) under superseded legislation. In originally deciding to designate the above places for the purposes of DPPOs, council members at the time

must have been satisfied that “*nuisance or annoyance to members of the public or a section of the public...or disorder had been associated with the consumption of alcohol in that place*”.

4. The original orders were due to lapse in October 2020, but were extended for three years following the decision of the committee in September 2020. They are now due to lapse on 14 October 2023.

CRITERIA FOR EXTENSION

5. PSPOs are not intended to remain in force indefinitely, but an order can be extended in duration for a further period of three years if it has not lapsed. A PSPO can be only extended if the authority is “*satisfied on reasonable grounds that doing so is necessary to prevent...occurrence or recurrence after that time of the activities identified in the order, or...an increase in the frequency or seriousness of those activities after that time*”. The activities identified in the ten orders must be taken to be nuisance or annoyance to members of the public, or a section of the public, or disorder, associated with the consumption of alcohol. Each extension can only be for three years. To extend each PSPO, the council must therefore be satisfied that allowing the order to lapse would lead, in the area covered by that order, to nuisance or annoyance to the public, or disorder, caused by the consumption of alcohol.
6. In deciding whether to extend a PSPO, the council is required to “*have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the [European] Convention [on Human Rights]*”. Those rights are:

ARTICLE 10 Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

ARTICLE 11 Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Officers don't consider that anything in the present orders engages any of the rights guaranteed by articles 10 or 11.

ENFORCEMENT BY THE COUNCIL

7. Under the orders as they stand at present, only a constable (Including a Police Community Support Officer if so designated by the Chief Constable) can require a person to stop drinking alcohol or surrender alcohol. However, it is possible under the legislation¹ for that authority to be given also to authorised council officers. This would allow council enforcement officers to intervene in situations where their only formal recourse would presently be to contact the police. The committee is asked to consider whether it is minded to vary the terms of the orders to include enforcement by authorised council officers.

¹ Anti-Social, Crime and Policing Act 2014, section 63.

8. It is understood that varying the PSPO to authorise officers to remove alcohol from the public could be perceived to put officers of the council at increased risk. Street drinkers have the potential to be intoxicated, aggressive and present a risk of violence or abuse to officers. Members should note that officers will be instructed not to put themselves at any risk whatsoever, as a part of the council's risk assessment, and should a street drinker seem (even from a distance) intoxicated or to present any other threat that they should not approach or engage with them, and the police must be called. Seeking authorising officers to remove alcohol from street drinkers is not expected to require any increase in resource as officers already deal with street beggars and these are usually the same individuals. The police will remain the main way of dealing with street drinkers, with Fylde Council assisting where it can, and it is expedient for it to do so. To ensure clarity in responsibilities a simple Memorandum of Understanding between the council and the police on dealing with street drinkers will be made and agreed as a part of any variation of the orders giving council officers the same powers as a constable to require a person to cease drinking and surrender alcohol.
9. Police community support officers can be given the powers of constables under the Police Reform Act 2002, which would mean that, if so designated, they could enforce the PSPOs in exactly the same way as a constable. However, for clarity, it is recommended that the extended PSPOs should specifically refer to the ability of PCSOs to enforce the orders.

PROCEDURE

10. Before extending a PSPO, or varying its terms, the authority must carry out "*the necessary consultation, the necessary publicity, and the necessary notification*". The "necessary consultation" means consulting with the police, the Police and Crime Commissioner, any community representatives that the council considers it appropriate to consult and (unless it is not reasonably practicable to do so) the owner of the affected land. The "necessary publicity" means publicising the proposal. The "necessary notification" means notifying the county council and any relevant parish council.
11. A decision to extend or vary any of the PSPOs can't be taken until any representations made as a result of the consultation and publicity have been taken into account.
12. If members consider that the criteria for extension and variation set out in paragraph 5 are met and are minded to extend or vary any of the ten PSPOs, it is recommended that authority be given to the Head of Environmental & Housing services to carry out the processes of consultation, publicity and notification, and extend the orders, if he considers it appropriate to do so after considering any responses received. If the consultation and publicity resulted in any matters being raised that the Head of Environmental & Housing Services felt should be referred to the committee, they would be referred to the committee to consider and to decide whether to go ahead with the relevant extension.

NUISANCE, ANNOYANCE OR DISORDER

13. The existence of the DPPOs and subsequent PSPOs have proved a successful deterrent against alcohol-related crime and disorder often associated with street drinkers who tend to drink in public places. While prohibiting the consumption of alcohol has an associated impact on reducing anti-social behaviour, allowing drinking in public can lead to an increase in public disorder.
14. This has been demonstrated during the recent Covid crisis once lockdown was eased and prior to the reopening of the hospitality sector. The warm weather and newfound freedom encourage many visitors and residents to congregate in popular tourist locations, parks and open spaces, consuming vast quantities of refreshments, including alcohol, in these public places. This was accompanied by an increased level of anti-social behaviour, often overwhelming available police resources and culminating in an 'illegal rave' on Lytham Green.
15. There has been an increase in rough sleepers and street beggars in the urban areas of the borough in recent years as this cohort of individuals move out of Blackpool and Preston. This is often associated with a greater prevalence of street drinking and anti-social behaviours such as urinating and spitting in public. Several Community Protection Notices have been issued, imposing conditions which deter such behaviours. This is quite time-consuming requiring resource intensive officer investigations and a robust evidence base to substantiate.

16. Local businesses in the urban areas of the Borough have expressed their frustration at some of the antisocial behaviour exhibited by street drinking, and the concern that this could cause a loss of business. Alcohol is often seen as the main fuel for Antisocial behaviour in the urban areas of the Borough.
17. These recent examples support local concerns that failing to extend the historical orders will result in public nuisance, annoyance or disorder in each of the areas covered by an existing order.
18. Allowing Council Officers the power to remove alcohol will increase the efficiency of enforcement in the urban areas of the Borough. It is important that the Council works well with other agencies, including Lancashire Constabulary. The area Inspector and Chief Inspector for Fylde has requested this amendment is made to the PSPO.

COMPLETE PROHIBITION ON STREET DRINKING

19. At the previous Environment, Health and Housing committee it was proposed that a further report is provided on widening the scope of PSPO's in relation to alcohol and prohibit any alcohol consumption in designated town centre areas (subject to certain exclusions like beer gardens etc.). The difference to the existing order would be that in the designated locations any person consuming alcohol would be committing an offence and liable to prosecution or a fixed penalty at the point of consuming the alcohol (whether they were aware of the prohibition or not), there would be no request to cease drinking and no option to confiscate the alcohol prior to issuing an FPN.

20. Issues for Consideration

PSPO's can only be made if the two conditions in the legislation (below) are met:

The first condition is that:

- (a) 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.

The second condition 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.

21. To introduce the restriction there must be evidence of persistent anti-social behaviour caused by the consumption of alcohol in the designated areas covered by a PSPO which persists notwithstanding the current restrictions, and which the additional restrictions would address.
22. Whilst there have been recent incidents attributed to a limited number of individuals in St Annes Square, there is limited evidence to support a ban in town centres, in the view of both officers of the council and the police. The council has not received any complaints from the public about individuals consuming alcohol on the street, and the recent incidents have been recorded as evidence by officers engaging with the known individuals as part of the process of issuing Community Protection Notices and / or Warnings.
23. A complete ban on alcohol in a location would create an expectation from the public that it is enforced when reported. Police resources to respond to such a change would be limited with priority given to other more serious incidents causing a threat to individuals and/or property. Equally council resources would be limited to respond specially to cover the periods when drinking in the prohibited areas was most likely e.g. evenings and weekends.
24. An important consideration when proposing a PSPO is also the intent and ability to enforce. Prohibition of alcohol that would result in an offence having been committed at the point of consumption in a designated area should only be introduced if the enforcement is available to keep the area alcohol free.
25. The existing PSPO related to alcohol consumption in town centres and on public open spaces provides discretion and allows target hardening of repeat offenders. The approach is consistent with the council's

enforcement strategy, to provide the opportunity to cease the behaviour (a warning) prior to enforcement through a FPN.

26. After discussion with the police and officers responsible for enforcement in the council, including the legal team, it is felt highly unlikely that there is the required evidence of existing and / or possible behaviour that has a detrimental effect on the quality of life in the locality to warrant banning the consumption of alcohol within town centre settings. It is also unlikely that evidence can be produced that the consumption of alcohol on designated streets is, or is likely to be, of a persistent or continuing nature given the limited number of incidents. Given this, both officers of the council, together with police colleagues, do not believe it will be possible to provide the necessary evidence to meet the two legislative requirements for a PSPO which would ban the consumption of alcohol within town centres aside from the concerns about the ability to respond to such a ban.
27. However, the extension of authorisation to council officers and PCSO's to enforce the existing PSPO's provides the ability to target offenders which would assist with the handful of persistent offenders being dealt with through CPN's and CPW's.
28. The feedback from the police (Chief Inspector Barton and his colleagues) is included below for completeness:
*"The current PSPO is an effective tool in tackling drink related ASB in Fylde and we have additional powers to tackle the most problematic offending (CPW, CPN, Injunction, CBO etc), without impacting on the wider community.
 The team discussed the issue this week and we feel that there is little or no evidence to justify this proposed change to a complete ban and that this change will place an additional and unnecessary burden on our joint resources.
 I would respectfully request that this proposal is not supported but should evidence come to light of increased drink related anti-social behaviour at a future date within Fylde we reconsider the issue."*

IMPLICATIONS	
Finance	No material impact
Legal	The powers to extend and vary the orders, and the considerations members need to take into account, are set out in the report.
Community Safety	The orders are intended to enhance community safety by making it possible for a police or authorised council officer to prevent or control drunken behaviour by stopping drinking in public places.
Human Rights and Equalities	Members should consider carefully the continuing need for the powers in each area. If they are not satisfied that problems of nuisance, annoyance or disorder associated with drinking of alcohol would recur or intensify if a particular order were to lapse, they should not extend that order.
Sustainability and Environmental Impact	No material impact
Health & Safety and Risk Management	No material impact

LEAD AUTHOR	CONTACT DETAILS	DATE
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BACKGROUND PAPERS		
Name of document	Date	Where available for inspection

Designated Public Places Protection orders referred to in paragraph 2 of the report	Various	Town Hall, Lytham St Annes
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Attached documents:

Appendix 1 - Schedule of areas covered by each PSPO