

<b>Appendices</b>  2
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**NORTHAMPTON**  
**BOROUGH COUNCIL**

**CABINET REPORT**

<b>Report Title</b>	<b>PUBLIC SPACES PROTECTION ORDER – MARBLE ARCH</b>
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**AGENDA STATUS: PUBLIC**

<b>Cabinet Meeting Date:</b>	10 <sup>th</sup> May 2017
<b>Key Decision:</b>	Yes
<b>Within Policy:</b>	Yes
<b>Policy Document:</b>	No
<b>Directorate:</b>	Customers & Communities
<b>Accountable Cabinet Member:</b>	Cllr Anna King
<b>Ward(s)</b>	Castle

**1. Purpose**

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- 1.1 To seek Cabinet authorisation to commence the consultation process on a Public Spaces Protection Order (PSPO) as set out in the Anti-Social Behaviour, Crime & Policing Act 2014, to gate the highway known as Marble Arch, which runs from Ash Street to Barrack Road.

**2. Recommendations**

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That Cabinet:

- 2.1 Grants approval to proceed to the consultation stage for a Public Spaces Protection Order (PSPO) to gate the public Highway known as Marble Arch, between Barrack Road and Ash Street (See Appendix 1 for Draft Order and location map).
- 2.2 Is presented with the outcome of the consultation, at a future Cabinet meeting to enable an informed decision to be made on the making of the PSPO.

### 3. Issues and Choices

#### 3.1 Report Background

- 3.1.1 On 20<sup>th</sup> October 2014 the Government implemented the Anti-Social Behaviour, Crime and Policing Act 2014. The purpose of the Act is to give local authorities and the Police more effective powers to tackle anti-social behaviour (ASB), providing better protection for victims.
- 3.1.2 Amongst these new tools and powers are Public Spaces Protection Orders (PSPO's), which are designed to stop all individuals or a specific class of persons committing anti-social behaviour in a public space. It is for each individual Council to determine what behaviour(s) they want to make the subject of a Public Space Protection Order however the overarching consideration when considering a Public Space Protection Order is whether the activity will have detrimental effect on the quality of life of those in the locality and that the activity is likely to be persistent or continuing in nature or that the activity is unreasonable and any restriction is justified.
- 3.1.3 There is a requirement to undertake a public consultation exercise, the statutory requirement is to consult with the chief officer of police, and the local policing body, for the area that includes the restricted area, whatever community representatives the local authority thinks it appropriate to consult and the owner or occupier of land within the restricted area. There is also a requirement to publish the text of the proposed Order and to notify the parish council or community council (if any) for the area that includes the restricted area. There is also a requirement to notify the County Council of the proposed Order.
- 3.1.4 PSPO's will provide Councils with a flexible power to implement local restrictions to address a range of anti-social behaviour issues in public places in order to prevent future problems.
- 3.1.5 It is important that PSPO's are used proportionately and that they are not seen to be targeting behaviour of the children/young people where there is a lack of tolerance and understanding by local people.
- 3.1.6 The following conditions have to be met before making an Order:
- Activities carried out in a public place within the local authority's area have a detrimental effect on the quality of life of those living in the locality OR
  - It is likely that activities will be carried out in a public place within the area that will have such an effect

The effect, or likely effect of the activities:

- Is, or is likely to be, of a persistent or continuing nature OR
- Is, or is likely to be, such as to make the activities unreasonable

- and that the activity justifies the making of an Order

3.1.7 A PSPO replaces existing provisions such as stopping up orders to gate areas of the highway. Under the new Act, if not reviewed earlier, these will continue to be valid for a period of three years from the commencement of the new provisions.

3.1.8 A Public Space Protection Order can be made for a maximum of three years. The legislation provides they can be extended at the end of the period, but only for a further period of up to three years. However, orders can be extended more than once. Local authorities can increase or reduce the restricted area of an existing order, amend or remove a prohibition or requirement, or add a new prohibition or requirement. They can also discharge an order but further consultation must take place for varying or discharging orders.

3.1.9 Enforcement will be shared between the Council and the police. Breach of a requirement to desist in a particular activity is a criminal offence which can result in the issuing of a Fixed Penalty Notice (FPN) or a prosecution resulting in a fine of up to £1,000 on conviction. Enforcement can be undertaken by Council Officers, Police and other designated groups, including officers under the Community Safety Accreditation Scheme.

3.1.10 Before making the order the local authority must notify potentially affected people of the proposed order, inform those persons of how they can see a copy of the proposed order, notify them of how long they have to make representation, and consider any representations made.

3.1.11 The consultation will be via the website on Survey Monkey. Adjacent properties, businesses and local residents groups will be directly contacted to raise awareness. Others will be notified via the Council's website, Facebook and Twitter. Posters will also be put up on site.

## **3.2 Issues**

3.2.1 Marble Arch has been a hotspot for street drinking, fly tipping and anti-social behaviour for many years. A Police Environmental Audit carried out in 2010 recommended gating this highway, however at that time it was not viable due to previous legislation making it cost prohibitive. However, the issues remain, the recommendation still stands and since the introduction of the Anti-Social Behaviour, Crime and Policing Act 2014 gating of a highway is now covered by a PSPO, simplifying the process and significantly reducing the financial outlay.

3.2.2 Police have difficulty with dealing with the street drinkers in the area due to the layout and with another route being available (Temple Bar) a few hundred yards away, making it easy for the drinkers to evade the police (see Appendix 1).

- 3.2.3 Marble Arch has easy access through Ash Street making it an ideal place for fly tippers.
- 3.2.4 In order to make a PSPO the legislation states that the Council needs to consult with anyone who could legitimately use that highway as well as those who live nearby.
- 3.2.5 A PSPO can only be made for a period of 3 years. At any time before expiry the Council can extend a PSPO by up to 3 years following consultation with the local Police and community representatives as the Council thinks appropriate.

## **3.2 Choices (Options)**

- 3.3.1 Do nothing - street drinkers are causing anti-social behaviour by drinking in the street and littering the area. The location enables them to hideaway and easily avoid police/wardens as there are several routes they can take. This is not an option that would meet the needs of the wider community and address the anti-social behaviour issues that are being experienced on a regular basis.
- 3.3.2 Implement a PSPO for the gating of this area. Gating the alley would take away a gathering and drinking place, an escape route for offenders, and a hot spot for litter & fly tipping. The gating will also enable more effective policing of the area. Legitimate users of this highway can use the alternative route of Temple Bar which is approximately 100 yards away.
- 3.3.3 Disadvantage of this option is the initial outlay for the installation of the gates.

## **4. Implications (including financial implications)**

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### **4.1 Policy**

- 4.1.1 The approach supports the multi-agency Countywide Anti-Social Behaviour Policy that Northampton Borough Council is signed up to.

### **4.2 Resources and Risk**

- 4.2.1 A PSPO can be enforced by both the Police and Council. The Council will be the agency to process the Fixed Penalty Notices (FPN's), regardless of which agency issues them. The approach to this will be agreed with the Police.
- 4.2.2 There is a financial implication for the gates and ongoing maintenance. A quote has been obtained for a fence and double vehicle access gate at the Ash Street end and a fence and pedestrian gate access at the Barrack Road end. This quote is for £2,700 + VAT. This cost will come from within existing budgets and the maintenance costs, which are anticipated to be minimal, from revenue from PSPO FPN's.

4.2.3 Any income generated by payment of FPN's must be directed back into management of the PSPO process.

### 4.3 Legal

4.3.1 A PSPO is in effect an enforceable form of byelaw with fixed penalty notice powers attached. A PSPO has the potential to enhance local control over a range of matters thus returning greater control to District Councils. PSPO'S replace previous gating orders. Such orders remain in place for 3 years following commencement and are then subject to renewal as if made as a PSPO.

4.3.2 A Public Spaces Protection Order can be made by a Local Authority (section 59) if satisfied on reasonable grounds that two conditions are met. Firstly, that

- (i) 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; and
- (ii) 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, of the activities is, or is likely to be of a persistent or continuing nature such as to make the activities unreasonable and therefore justifies the restrictions imposed by the notice.

4.3.3 Under the Act there is a requirement for a local authority to carry out necessary consultation and the necessary publicity and the necessary notification before the making of a PSPO.

Necessary consultation means consulting with –

- (a) The chief officer of police, and the local policing body for the police area that includes the restricted area
- (b) Whatever community representatives the local authority thinks it appropriate to consult
- (c) The owner or occupier of land within the restricted area

Necessary publicity means –

- (a) In the case of proposed or variation, publishing the text of it

Necessary notification means notifying the following authorities of the proposed order

- (a) The parish council or community council (if any) for the area that includes the restricted area
- (b) In the case of a public spaces protection order made or to be made by a district council in England, the county council (if any) for the area that includes the restricted area

- 4.3.4 The implementation of the PSPO can be challenged by any interested person within 6 weeks of the making of the Order, the challenge is made at the High Court. Anyone who is directly affected by the making of the PSPO can challenge the order.
- 4.3.5 A challenge can be made on the basis that the Council does not have the power to make the order, or that the particular prohibitions or requirements are unnecessary or that procedurally the order is defective.
- 4.3.6 When making a PSPO the Council must have particular regard to the rights of freedom of expression and freedom of assembly set out in the European Convention on Human Rights
- 4.3.7 Having due regard to the responses of the consultation exercises; Cabinet considers the recommendation that the Public Spaces Protection Order to gate the highway known as Marble Arch is implemented.
- 4.3.8 The text of the Order when made must be published.
- 4.3.9 The Order must be notified to
  - (a) In the case of a Public Spaces Protection Order made or to be made by a district council in England, the county council (if any) for the area that includes the restricted area.

#### **4.4 Equality and Health**

- 4.4.1 Incidents of ASB will continue to be dealt with in line with our equalities framework.
- 4.4.2 These legislative changes are designed to have a significant community impact in preventing and limiting anti-social behaviour.
- 4.4.3 An Equality Impact Assessment has been carried out, see Appendix 2

#### **4.5 Consultees (Internal and External)**

Director of Customers & Communities, NBC  
Legal Services  
Environmental Health & Licensing Manager, NBC  
Community Safety Partnership Manager  
Northants Police  
Cabinet Member for Community Safety, NBC  
Highways Authority/ KIER WSP

Initial consultation has been undertaken with the Highways Authority on the proposed PSPO, and they are supportive of the closing of Marble Arch, recognising that there is a suitable alternative route.

## **4.6 How the Proposals deliver Priority Outcomes**

4.6.1 One of the Council's priorities is "invest in safer, cleaner neighbourhoods" and the PSPO has the potential to contribute towards this priority.

## **4.7 Other Implications**

4.7.1 Information technology - use of the Council's website and social media channels to undertake part of the consultation.

## **5. Background Papers**

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5.1 Anti-Social Behaviour, Crime & Policing Act 2014

5.2 Anti-Social Behaviour, Crime and Policing Act 2014: Reform of Anti-Social Behaviour Powers Statutory Guidance for Frontline Professionals

**Julie Seddon**  
**Director of Customers & Communities**  
**Ext 7379**

## **APPENDIX 1**

### **DRAFT ORDER**

#### **NORTHAMPTON BOROUGH COUNCIL (Marble Arch) PUBLIC SPACES**

#### **PROTECTION ORDER**

Northampton Borough Council in exercise of its powers under Section 59, 64 and 72 of the Anti-Social Behaviour, Crime & Policing Act 2014 ('the Act') hereby makes the following Order:-

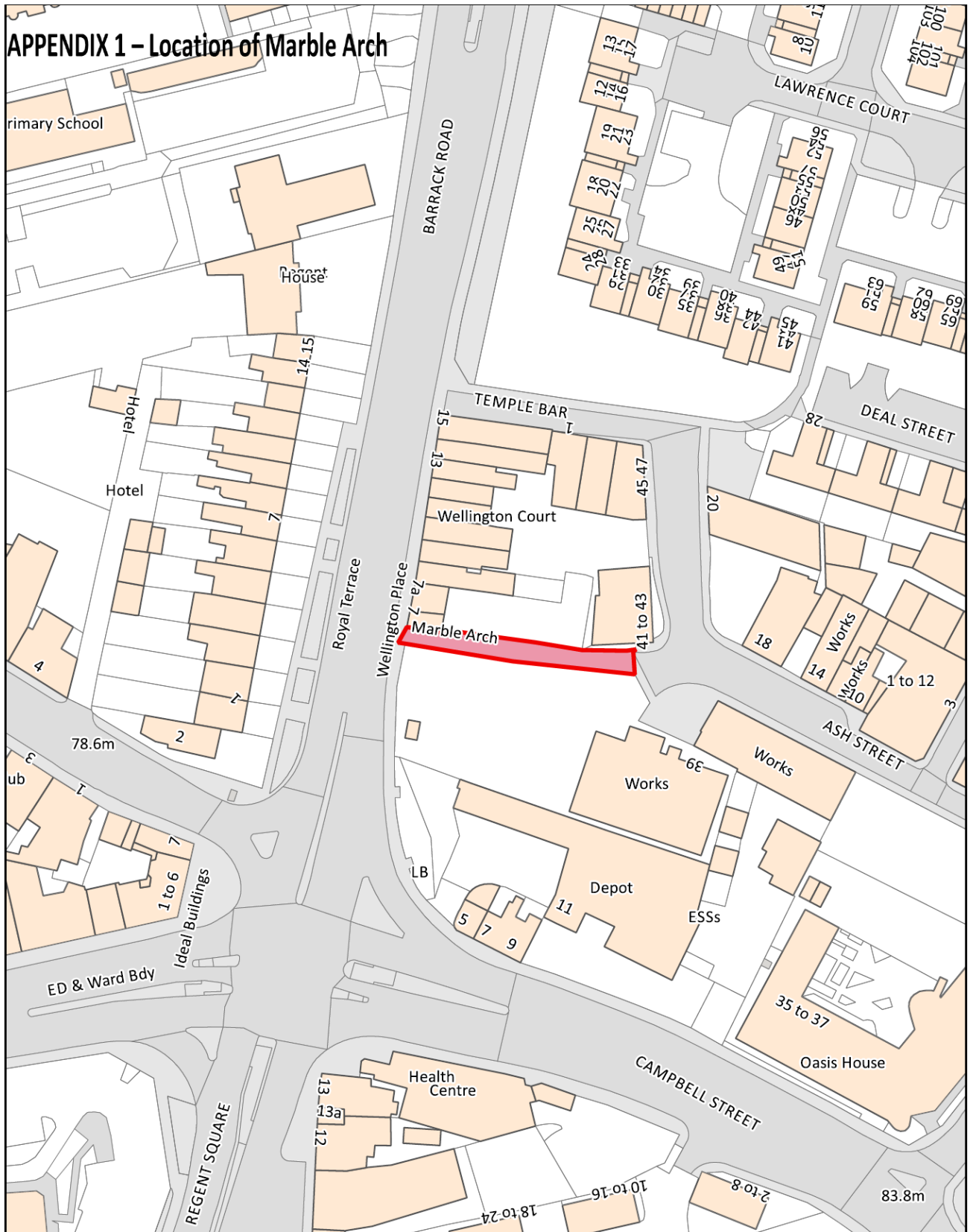
1. This Order shall come into operation on (...) and shall have effect for a period of 3 years thereafter, unless extended by further orders under the Council's statutory powers.
  
2. This Order relates to Marble Arch, which runs from Ash Street to Barrack Road as shown in the attached plan ('the Restricted Area').
  
3. The effect of this Order is to restrict the public right of way over the Restricted Area 24 hours, 7 days a week.
  
4. The alternative route for pedestrians will be along Temple Bar.
  
5. Responsibility for the maintenance of the gates will lie with Northampton Borough Council, The Guildhall, St Giles Square, Northampton, NN1 1DE.
  
6. Police, Fire and Ambulance emergency services, statutory undertakers with equipment situated under, over, along or in the highway, council officers and other persons authorised by the Council, including the business premises adjacent to the highway, shall be exempt from the provisions of this Order.
  
7. The Council is satisfied that the conditions set out in Sections 59, 64 and 72 of the Act have been satisfied and that it is in all the circumstances expedient to make this



Order for the purposes of reducing anti-social behaviour, specifically street drinking, drug taking and fly tipping in the restricted area. The Council makes the Order because the anti-social behaviour has had a detrimental effect on the quality of life of those in the locality. The effect or likely effect of this is of a persistent or continuing nature such as to make this unreasonable and justifies the restrictions imposed by the Order.

8. If any interested person desires to question the validity of this Order on the grounds that the Council had no power to make it or that any requirement of the Act has not been complied with in relation to this Order, he or she may apply to the High Court within six weeks from the date on this this Order is made.

# APPENDIX 1 – Location of Marble Arch



Title: **Marble Arch, Northampton**

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Date: 06-03-2017

Scale: 1:1,000 @A4

Drawn by: -----

## APPENDIX 2 – Equality Impact Assessment

### Equality Impact Assessment

#### Part 1: Screening

When reviewing, planning or providing services Northampton Borough Council needs to assess the impacts on people. Both residents and staff, of how it works - or is planning to – work (in relation to things like disability). It has to take steps to remove/minimise any harm it identifies. It has to help people to participate in its services and public life. “**Equality Impact Assessments**” (EIAs) prompt people to think things through, considering people’s different needs in relation to the law on equalities. The first stage of the process is known as ‘screening’ and is used to come to a decision about whether and why further analysis is – or is not – required. EIAs are published in line with transparency requirements.

A helpful guide to equalities law is available at: [www.northampton.gov.uk/equality](http://www.northampton.gov.uk/equality). A few notes about the laws that need to be considered are included at the end of this document. Helpful questions are provided as prompts throughout the form.

<b>1 Name of policy/activity/project/practice</b>	Public Places Protection Order – Marble Arch
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<b>2. Screening undertaken (please complete as appropriate)</b>	
Director of Service	Julie Seddon
Lead Officer for developing the policy/activity/practice	Debbie Ferguson
Other people involved in the screening (this may be people who work for NBC or a related service or people outside NBC)	Director of Customers & Communities, NBC  Legal Services  Finance, LGSS  Environmental Health & Licensing

	<p>Manager, NBC</p> <p>Environmental Services Manager, NBC</p> <p>Northants Police</p> <p>Cabinet Member for Community Safety, NBC</p> <p>Highways, KIER WSP</p>
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**3. Brief description of policy/activity/project/practice: including its main purpose, aims, objectives and projected outcomes, and how these fit in with the wider aims of the organisation.**

- A Public Spaces Protection Order (PSPO) allows a local authority to introduce a series of measures into a defined locality.
- The proposed PSPO will allow gating of the highway known as Marble Arch, a hotspot for anti-social behaviour for many years.
- Gating Marble Arch will make it more difficult for offenders to evade the police.
- This is a legal order that can last for up to three years and it will prohibit a number of anti-social behaviour activities in the area including street drinking and fly-tipping.
- If an element of this order is breached, the outcome could be that the individual is issued with a fixed penalty notice for £100 or fined up to a maximum of £1000 if at court.

**4 Relevance to Equality and Diversity Duties**

A Public Spaces Protection Order is designed to stop all individuals or a specific group of persons committing anti-social behaviour in a public space. This Order allows gating of a highway known as Marble Arch. This highway is currently for pedestrian through access only. There is a parallel pedestrian through access only highway, known as Temple Bar, 100 yards away.

If you have indicated there is a negative impact on any group, is that impact:

No – all individuals/sections of the community will be dealt with in the same manner. Incidents of ASB will continue to be dealt with in line with our equalities framework

**Legal?**

N/A

**Please explain:**

## **5 Evidence Base for Screening**

**Equality Human Rights Commission**

<http://www.equalityhumanrights.com/resources/case-studies-of-how-organisations-are-using-the-duties/case-studies-equality-impact-assessments/>

Section 72 of the Anti-Social Behaviour and Policing Act 2014 requires the Cabinet as decision maker to pay particular regard to rights of freedom of expression and freedom of assembly set out in articles 10 (the right to freedom of expression) and 11 (freedom of assembly and association) of the European Convention on Human Rights in considering the making any such order. The making of the said order is considered to be proportionate and will fulfil a legitimate aim of curbing anti-social behaviour in public places for the benefit of the law abiding majority and hence will not infringe article 11 ECHR.

## **6 Requirements of the equality duties:**

(remember there's a note to remind you what they are at the end of this form and

more detailed information at [www.northampton.gov.uk/equality](http://www.northampton.gov.uk/equality))

Will there be/has there been consultation with all interested parties?

- If Cabinet authorises the consultation period the following will be consulted:-
  - A 12 week online public consultation via an open access online survey using 'Survey Monkey' Councils social media accounts
  - Businesses adjacent to Marble Arch
  - Councillors
  - Businesses
  - Community Safety Partnership
  - Council Officers
  - Northamptonshire Office of Police & Crime Commissioner
  - Northamptonshire Police
  - Northamptonshire County Council
  - Community Forums
  - Residents Panel
  - Members of the public
  - Local press and media channels
  - Town Centre BID
  -

**Are proposed actions necessary and proportionate to the desired outcomes?**

**Yes/No** Public Spaces Protection Order is designed to stop all individuals or a specific group of persons committing anti-social behaviour in a public space

**Where appropriate, will there be scope for prompt, independent reviews and**

**appeals against decisions arising from the proposed policy/practice/activity?**

**Yes/No** The implementation of the PSPO can be challenged by any interested person within 6 weeks of the making of the Order, the challenge is made at the High Court. Anyone who is directly affected by the making of the PSPO can challenge the order

**Does the proposed policy/practice/activity have the ability to be tailored to fit different individual circumstances?**

**Yes/No** Public Spaces Protection Orders provide the opportunity to address specific problems in specific areas and create an 'Order' to enable appropriate and proportionate action to be taken.

Where appropriate, can the policy/practice/activity exceed the minimum legal equality and human rights requirements, rather than merely complying with them?

The making of the said order is considered to be proportionate and will fulfil a legitimate aim of curbing anti-social behaviour in public places for the benefit of the law abiding majority and hence will not infringe article 11 ECHR.

**From the evidence you have and strategic thinking**, what are the **key risks** (the harm or 'adverse impacts') **and opportunities** (benefits and opportunities to promote equality) this policy/practice/activity might present?

	Risks (Negative)	Opportunities (Positive)
Race		There is no evidence that the 'Order' will impact on any specific person based on their race
Disability	Mental Health issues and physical disability will be	The 'Order' may well have the opposite effect and

	<p>taken into account by officers.</p> <p>The restriction on the consumption of alcohol could also affect those that are alcohol dependant. The proposed 'Order' will not bring in any new powers in this area and will simply replace the existing Designated Public Spaces Protection Order.</p>	<p>encourage those that are drug/alcohol dependant to engage with the support that is available and this in turn will deliver health benefits.</p>
Gender or Gender Identity/Gender Assignment		<p>There is no evidence that the 'Order' will impact on any specific person based on their gender</p>
Pregnancy and Maternity (including breastfeeding)		<p>There is no evidence that the 'Order' will impact on any specific person based on pregnancy or maternity. If required pregnant women will be referred into safeguarding mechanisms</p>
Sexual Orientation		<p>There is no evidence that the 'Order' will impact on any specific person based on their sexual orientation</p>
Age (including children, youth, midlife and older people)		<p>Young people will be referred into safeguarding mechanisms. In some cases parent/guardian of under 16's will be spoken to</p>
Religion, Faith and Belief		<p>There is no evidence that the 'Order' will impact on any specific person based</p>



		on their beliefs or religion
Human Rights	Some people may feel The consultation process will provide the opportunity to capture their views.	The 'Order' has been proposed due to the volume of incidents that are occurring that are having a significant impact on the peoples quality of life. The introduction of this 'Order' will have a positive impact on residents, businesses, and visitors to the town.

## 7 Proportionality

All cases will be treated on an individual basis, and any decisions reached will be within existing legislative guidelines. Use of the PSPO powers and advice given will be recorded in pocket note books and on ECIN's data base. The information will be analysed to determine whether the implementation of the powers has had a disproportionate effect upon the equality factors.

Enforcement action will always be seen as a last resort. Through the multi-agency groups and individual case management, support and intervention will continue to be offered.

## 8 Decision

Set out the rationale for deciding whether or not to proceed to full impact assessment

Full Equality Impact Assessment is not required as all sections of the community are treated the same. The proposed restrictions will impact positively on people whose protective characteristics are impacted upon by the anti-social behaviour the order is

designed to address

**Date of Decision:**

**We judge that a full impact assessment is not necessary since there are no identified groups affected by these changes.**

## **1. Equality Duties to be taken into account in this screening include:**

### **Prohibited Conduct under The Equality Act 2010 including:**

*Direct discrimination (including by association and perception e.g. carers); Indirect discrimination; Pregnancy and maternity discrimination; Harassment; third party harassment; discrimination arising from disability.*

### **Public Sector Duties (Section 149) of the Equality Act 2010 for NBC and services provided on its behalf: (due to be effective from 4 April 2011)**

*NBC and services providing public functions must in providing services have due regard to the need to: **eliminate unlawful discrimination, harassment and victimisation; advance equality of opportunity and foster good relations between different groups.** 'Positive action' permits proportionate action to overcome disadvantage, meet needs and tackle under-representation.*

### **Rights apply to people in terms of their "Protected Characteristics":**

*Age; Gender; Gender Assignment; Sexual Orientation; Disability; Race; Religion and Belief; Pregnancy; Maternity. But Marriage and Civil Partnership do not apply to the public sector duties.*

### **Duty to "advance equality of opportunity":**

*The need, when reviewing, planning or providing services/policies/practices to assess the impacts of services on people in relation to their 'protected characteristics', take steps to remove/minimise any negative impacts identified and help everyone to participate in our services and public life.*

***Equality Impact Assessments** remain best practice to be used. Sometimes **people have particular needs** e.g. due to gender, race, faith or disability that need to be addressed, not ignored. NBC must have due regard to the **duty to make reasonable adjustments** for people with disabilities. NBC must **encourage people who share a protected characteristic to participate in public life** or any other activity in which their participation is too low.*

### **Duty to 'foster good relations between people'**

*This means having due regard to the need to **tackle prejudice** (e.g. where people are picked on or stereotyped by customers or colleagues because of their ethnicity, disability, sexual orientation, etc) and **promote understanding**.*

***Lawful Exceptions to general rules:** can happen where action is proportionate to achieve a legitimate aim and not otherwise prohibited by anything under the Equality Act 2010. There are some special situations (see Ch 12 and 13 of the Equality Act 2010 Statutory Code of Practice – Services, Public Functions and Associations).*

## **2. National Adult Autism Strategy (Autism Act 2009; statutory guidelines) including:**

*3. to improve how services identify and meet needs of adults with autism and their families.*

## **4. Human Rights include:**

5. *Rights under the European Convention include not to be subjected to degrading **treatment**; **right to a fair trial** (civil and criminal issues); **right to privacy** (subject to certain exceptions e.g. national security/public safety, or certain other specific situations); **freedom of conscience** (including religion and belief and rights to manifest these limited only by law and as necessary for public safety, public order, protection of rights of others and other specified situations); **freedom of expression** (subject to certain exceptions); **freedom of peaceful assembly and to join trade unions** (subject to certain exceptions); **right not to be subject to unlawful discrimination** (e.g. sex, race, colour, language, religion, political opinion, national or social origin); **right to peaceful enjoyment of own possessions** (subject to certain exceptions e.g. to secure payment of taxes or other contributions or penalties); **right to an education**; **right to hold free elections by secret ballot**. The European Convention is given effect in UK law by the Human Rights Act 1998.*