

**ROTHERHAM BOROUGH COUNCIL – REPORT TO CABINET MEMBER FOR
SAFE AND ATTRACTIVE NEIGHBOURHOODS**

1.	Meeting:-	Cabinet Member for Safe and Attractive Neighbourhoods
2.	Date:-	4TH July 2011
3.	Title:-	Borough Wide Designated Public Places Order
4.	Directorate:-	Neighbourhood & Adult Services

5. Summary

Following recommendation from the Safer Rotherham Partnership's Violent Crime Priority Group the Joint Action Group (JAG) is considering the need for a Borough wide Designated Public Places Order (DPPO).

This report reviews the need for a Borough wide DPPO and will be utilised to enable an informed decision to be reached by the Joint Action Group (delegated to the Chairs of the Group) on whether the Council be requested to progress the introduction of a Borough wide DPPO.

Such orders are made under discretionary powers given to local authorities by the Criminal Justice and Police Act 2001 (CJPA) to deal with the problems of anti-social alcohol drinking in public places where alcohol-related anti-social behaviour has been experienced. Once a DPPO is adopted, it remains permanently in force for the designated area.

In such designated areas it is not an offence to consume alcohol, but where such drinking is causing anti social behaviour a police officer, police community support officer or special constable has the power to confiscate the alcohol, including any unopened containers. Failure to comply with an officer's requests to stop drinking and surrender alcohol without reasonable excuse can lead to arrest.

The reason for consideration being given to a borough wide order is in response to several areas across the borough considering individual orders.

6. Recommendations

It is recommended that Cabinet Member given consideration of current national guidance and lack of evidential support agree that;

6.1 A Borough-wide Designated Public Places Order is not an proportionate approach for Rotherham , and

6.2 A report reflecting this position be presented to the Joint Action Group of the Safer Rotherham Partnership

7. Proposals and Details

7.1 Legal Position

Section 13 of the CIPA gives the local authority the power to make an order designating any public place within their area if they are satisfied that nuisance, annoyance or disorder has been associated with the consumption of alcohol in that place.

The Council power to determine and review in line with Government Guidance any Designated Public Places Orders is delegated to the Licensing Board. There is a regulated process to be followed in the adoption of a DPPO; this is summarised together with the subsequent enforcement powers at Appendix 1.

7.2 Requirements for making a DPPO

There is no doubt that alcohol is a contributory factor in anti-social behaviour, criminal damage, nuisance and public place violent crime. It also increases the fear of crime and further deterioration of public areas and acts as a catalyst for an increase in the incidents of alcohol and drug abuse and more serious crimes.

In order, however, to include any public place in a DPPO the local authority must be **"satisfied that nuisance or annoyance to members of the public or disorder has been associated with the consumption of alcohol in that place"**.

The current Home Office Guidance makes the point that the historic/statistical data required in order to support the designation of a public place is not as detailed as that which was previously required in order to justify the making of bye-laws. However, the local authority must go through a process of satisfying itself that the DPPO is justified in relation to any particular public place by reference to past problems of alcohol related crime or disorder or antisocial behaviour in that place.

7.3 Evidential Position

Consultation with Legal Services has confirmed that from a legal perspective the key issue in reaching the decision for any DPPO is the evidence supplied by the Police and, if due process is followed, and the Police evidence is sufficient then any decision in favour is unlikely to be challenged successfully in the Courts.

Although data recording issues make it difficult to establish a true picture of the influence of alcohol on recorded crime and disorder in the borough, previous analysis, from 2009 data (Temporal Analysis(see reference) identified that, in nearly a quarter of all currently detected crime, the accused person was classified as under the influence of drink or drugs. Only 8% of Anti-social Behaviour incidents, however, recorded by SYP could be considered to be alcohol related.

The Temporal Analysis highlighted that the role of alcohol in crime and disorder stretches both beyond the Town Centre and beyond night-time economy violence offences. Other key areas feature across the borough for both alcohol-related crime and ASB. These areas include Wath, Swinton, Brinsworth, Maltby, East Dene and Rawmarsh.

The final Place Survey for Rotherham (2008) did identify that 33% of residents perceived drunk or rowdy behaviour as a problem and at that time perceptions of anti-social behaviour as being a very or fairly big problem was reported at 29%. The latest British Crime Survey (BCS) results show this perception level for Rotherham now standing at c.

14%. The BCS survey is now used as the main survey on which the SRP will gauge performance in this area.

Anecdotally residents would suggest that street drinking is a 'youth' problem but evidence suggests that our street drinking population varies from young disorderly drinkers through to older street drinkers who congregate at venues within the borough to drink together. As such it is unlikely that the enforcement of such a zone will adversely impact on any particular age group.

Action to deal with the harmful effects of alcohol, of which a DPPO is only one element, safeguards children. This proposal aims to encourage responsible drinking and reduce disorder, both of which should positively impact on children. The making of the Order should be seen in the context of the Council's wider Licensing Policy where protecting children from harm is a key objective under the Licensing Act.

From the current evidential base, whilst recognising the link between alcohol and ASB & other crimes, it is difficult to prove that it is the actual drinking of alcohol in public places that is the main cause of anti social behaviour compared to home and licensed premises consumption. That being said, however, there are pockets in the Borough where incidents and perceptions of ASB shown to be linked to the drinking of alcohol in public areas where targeted action is, and has been taken eg DPPOs in the Town Centre and Wath. Given the mixed urban and rural make up of the Borough differences in alcohol misuse can be expected.

It will never be the case that a local authority will have evidence of a history of alcohol related crime/disorder/anti-social behaviour in every single public place included in a borough wide order, however a borough wide order would address the problems of alcohol related crime and anti-social behaviour and identified displacement activity. This is part of the considerations of other local authority areas that have adopted local authority wide DPPOs (research listing Appendix 2)

7.4 Assessment

The Act itself, the regulations governing the making of Orders and the associated Home Office Guidance are all written around the premise that a local authority making a DPPO will identify and include in the Order as designated places, specific localised "trouble spots" within their area.

It is, in practice, never going to be the case that a local authority will have evidence of a history of alcohol related crime/disorder/anti-social behaviour in every single public place included in a borough wide Order, however a borough wide Order is being considered in order to address the problems of alcohol related crime and anti-social behaviour and identified displacement activity.

Borough wide DPPO's are not specifically prohibited by the legislation however the following extract from the Home Office guidance provides advice;

'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 the borough' (Guidance on Designated Public Place Orders for Local Authorities in England and Wales. (Home Office)

As part of the consideration it should be noted that the proportionality of a Borough-wide DPPO could be the subject of a legal challenge by an individual whereby it would be necessary for the Council to provide justification for the order. Legal Services, based on the summation that there will be parts of the Borough that have never had ASB (let alone it being alcohol related) eg rural areas and smaller villages, have expressed their view that the designating of a Borough wide DPPO would seem highly unlikely.

Describing borough wide orders as not being 'in the spirit of the act' and disproportionate was applicable when the legislation was first introduced and remains the case however, since that time there are now many examples across the country where they are in place.

Recorded alcohol related crime and anti-social behaviour incidents alone cannot in themselves justify the need for a borough wide order. That being said the same has been acknowledged in areas where such orders are already in place. The experience in these areas is that the public are very strongly in favour of such borough wide orders, in that they send out a clear message of the intent of the Police, Council and partners to tackle alcohol related crime and disorder and are less confusing than having a number of individual areas where an order is in force.

A degree of 'professional judgement' is required at this stage of the process, balancing the pros and cons of a borough wide application and Home Office caution in respect of the proportionality of borough wide orders. Following consideration of the issues raised determination is required as to whether progress the matter to RMBC Licensing Board to seek approval of the formal consultation process required to introduce a DPPO.

8. Finance

Costs will be incurred for consultation, legal fees and signage and it is estimated that overall costs will be in the region of £10,000. Consideration could be given to these costs being met through the Safer Rotherham Partnership Community Safety Fund rather than imposing an unbudgeted cost onto the revenue budget of the Licensing service.

9. Risks and Uncertainties

A summary of assessment is provided at Appendix 3.

10. Policy and Performance Agenda Implications

Policy/Strategic Position

RMBC Corporate Strategy – Helping to create safe and healthy communities/Improving the environment

- People feel safe where they live
- ASB and crime is reduced
- People enjoy parks, green spaces, sports, leisure and cultural activities
- Clean streets

The 2009/10 Joint Strategic Intelligence Assessment (JSIA) identified Anti-Social Behaviour, Domestic Abuse, Domestic Burglary and Offender Management as priorities for the Safer Rotherham Partnership with Alcohol, Drug Misuse and Vulnerable Victims as 'cross cutting' themes that would benefit from continued partnership attention.

Crime & ASB position

Crime statistics for the Rotherham area for the year 2010/11 reveal that recorded crime figures totalled 17,325 of which 3,979 were criminal damage and 2,775 violent crimes. As in most other places in the country, Rotherham has seen significant reductions in recorded crime and anti-social behaviour in recent years. Indeed over the last 12 months Rotherham has seen considerable reductions in recorded ASB, with only the town centre showing an increase. In terms of comparison with other South Yorkshire districts Rotherham's ASB rate of 88 incidents/1000 population is 2nd only to Sheffield, with Barnsley being the lowest at 80/1000 population. Across the 21 comparator local authority areas Rotherham is ranked 11th in terms of alcohol related recorded crime.

Based on a number of different alcohol indicators, Rotherham's position is showing improvement, as measured by the Yorkshire and Humber Public Health Observatory (YHPHO).

Alcohol Impact in Rotherham

The JSIA indicates that the misuse of alcohol is not confined to a specific demographic or drinking locations, it is a borough-wide issue. Using the Rush Model, Rotherham's adult population can be estimated to have around 7,000 dependent alcohol users, 10,400 drinking at harmful levels and 51,500 drinking above low risk levels. This does not include any misuse of alcohol by young people.

Misuse of alcohol in Rotherham and the costs incurred through it is an area of concern for the wider partnership. The anti social behaviour that arises from it contributes to the fear of crime, as well as creating areas that are no longer used by the general public. The effect in itself can be a catalyst for further deterioration of an area and for an increasing incidence of serious crime.

There is clear evidence of the impact that alcohol abuse is having on the quality of life of Rotherham residents and the resultant financial demands it is making on the Police, Primary Care Trust, Fire and Rescue Services and Rotherham Borough Council. There is also evidence of displacement of drinking in public places to areas outside of the area covered by the current Designation Orders. (Town centre drinkers moving just outside the current DPPO boundary into Fitzwilliam Road)

11. Background Papers and Consultation

- Criminal Justice & Police Act 2001
- Local Authorities (Alcohol Consumption in Designated Public Places) Regulations 2007
- Guidance on Designated Public Place Orders for Local Authorities in England and Wales. (Home Office), November 2009
- Designated Public Place Orders; House of Commons Library SN/HA/4606, December 2009
- Rotherham Borough Alcohol Related Crime & Disorder Temporal Analysis 2009.
- Safer Rotherham Partnership Joint Strategic Intelligence Assessment.
- Local Authority Profiles for England – Profile for Alcohol Related Harm for Rotherham; Yorkshire and Humber Public Health Observatory www.nwph.net/alcohol/lape

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DPPO Process & Enforcement

Regulatory Process to Establish a DPPO

Full consultation would need to be undertaken with the public and premises effected by the proposal and the results of this consultation considered prior to making a final decision on the implementation of a borough wide DPPO.

The process to be followed is detailed within specific regulations. The prescriptive process including:-

- consultation with;
 - the Police (who support a Borough wide approach) and potential impact of a DPPO on any minority community/group
 - Licensees of any licensed premises in the proposed Designated Public Place
 - the owners or occupiers of any land identified which may be affected;
- advertising via a legal notice in a local newspaper, identifying specifically the area that the Order will cover, setting out the effect of the Order and inviting representation with 28 days for representations;
- following the making of the Order a further Notice must be placed in a local newspaper identifying the place, setting out the effect and the date of commencement;
- sufficient signs for the public to draw their attention to the place covered by the Order must be displayed by the Council (eg on lamp posts)
- A copy of the Order must be sent to the Secretary of State and Police Commander for the area.

Enforcement

Under section 12, if a Police Constable reasonably believes that a person is, or has been, consuming alcohol in a designated public place or intends to do so, the Constable may require such a person:-

- Not to consume alcohol in that place;
- To surrender to the Police Constable any alcohol or container for alcohol in his possession.

Failure by that person, without reasonable excuse, to comply with the Police Constable's requirement is a criminal offence. Penalties for this offence include:

- Penalty Notice for Disorder (PND) £50.00; or
- Arrest and prosecution for a level 2 fine, maximum of £500

Borough/City –Wide Designated Public Place Orders

Blackburn & Darwin Borough Council

Burnley Borough Council

Calderdale Council

Camden

Coventry City Council

Erewash Borough Council

Fareham Borough Council

Harrow

Havant Borough Council

Hammersmith & Fulham

Islington

Lambeth

Lewisham

Newham

Northampton Borough Council

Nuneaton & Bedworth Borough Council

Portsmouth City Council

Rugby Borough Council

Sandwell Borough Council

Southampton City Council

City of Westminster

Wigan

Worthing Borough Council

Assessment/Risk of the Introduction of a Borough-wide DPPO

Pro's	Con's
<p><u>In relation to ASB on which a DPPO is based:</u></p> <ul style="list-style-type: none"> • Provides additional powers to police (key partners in the Safer Rotherham Partnership) to deal with those who persistently drink in public places and alcohol related anti-social behaviour. • Overcomes within Borough displacement of public place drinking • Avoids the need for future individual DPPO applications with associated costs and potential confusion over which areas are covered • Provides a consistent approach • Reducing alcohol related litter • The existence of separate orders could lead to. <p><u>Opportunity for communication</u></p> <ul style="list-style-type: none"> • Give a clear message about the unacceptability of anti-social behaviour, consistent with the priorities of the Safer Rotherham Partnership • Provides a simpler communication message with the public including expectations in terms of enforcement activity. <p><u>Links to other non ASB aspects</u></p> <ul style="list-style-type: none"> • Contribute to the range of actions which are being delivered to reduce alcohol misuse. Including reducing; <ul style="list-style-type: none"> ○ disturbances in public places ○ drunkenness in public places ○ the number of street drinkers ○ violent crime in public places ○ fear of crime • Promote a sensible drinking culture within the Borough • Improving the quality of life for residents and visitors to Rotherham. • Combining tactical actions on enforcement with outreach support services 	<p><u>Legal & Guidance</u></p> <ul style="list-style-type: none"> • Lack evidence to satisfy that nuisance or annoyance to members of the public or disorder has been associated with the consumption of alcohol in that place (ie across the Borough) • Home Office guidance recommends a proportionate response • A person prosecuted under the legislation could claim that a Borough wide order was not proportionate. <p><u>Reputation & Communication</u></p> <ul style="list-style-type: none"> • Potential negative perception and reputation of Rotherham via media • There is a risk that the community will perceive the powers as a 'ban' and that this will raise an expectation that public drinking is illegal. This could have a negative impact where this was the expectation and the community did not see a response they deemed relevant. • There is a risk that the powers may be used inappropriately, eg where alcohol is confiscated from those who are not causing, or are unlikely to cause, public disorder and hence lead to dissatisfaction with the police. <p><u>Financial Impact</u></p> <ul style="list-style-type: none"> • The costs of providing signage for individual orders could prove prohibitive