

	<h2 style="text-align: center;">ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER</h2>
Title	Authorisation for a Public Spaces Protection Order (PSPO) in Burnt Oak in relation to Alcohol related anti-social behaviour
Report of	Strategic Director - Environment
Wards	Burnt Oak
Status	Public
Enclosures	Appendix 1: Partnership Analysis of Street Drinking impact in Barnet Appendix 2: PSPO Consultation Summary Report Appendix 3: Initial EIA for Burnt Oak PSPO Appendix 4: DRAFT PSPO with map Appendix 5: Public consultation response tracking document
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Summary

This report seeks the authorisation of the Strategic Director – Environment for the implementation of a PSPO in the ward of Burnt Oak to tackle alcohol related anti social behaviour.

Decisions

1. The Strategic Director – Environment authorises the proposed Public Spaces Protection Order in the ward of Burnt Oak to tackle alcohol related anti-social behaviour.

1. WHY THIS REPORT IS NEEDED

1.1 The Community Safety Team has received reports of anti-social behaviour connected to street drinking in the Burnt Oak area. The area has been the focus of a multi-agency action plan to tackle anti-social behaviour (ASB), despite this the ASB associated with street drinking has persisted. The use of other tools and powers such as Community Protection Notices have not resulted in a cessation of the street drinking and associated anti-social behaviour issues. Following consultation with residents about the issue we are proposing to implement a Public Space Protection Order to tackle alcohol related anti-social behaviour in Burnt Oak.

1.2 This paper summarises the steps taken in order to consider whether a PSPO should be implemented and particularly requests the Strategic Director – Environment to consider the recommendations made in Section 2 of this report and make the decision whether or not to authorise a PSPO in the ward of Burnt Oak. This is one hotspot that has been identified by repeat caller complaints to the police and then processed through the Community Safety Multi-Agency Risk Assessment Case Conference.

1.3 Previous legislation – Review of the Designated Public Place Order

1.4.1 Section 13 of the Criminal Justice and Police Act 2001 and section 26 of the Violent Crime Reduction Act 2006 provided the power to local authorities in England and Wales to introduce Designated Public Place Orders (DPPOs).

1.4.2 On 1 September 2001, sections 12–16 of the Criminal Justice and Police Act 2001 came into force. DPPO powers enabled local authorities to designate places where restrictions on public drinking applied. However, they could only be used in areas that had experienced alcohol-related disorder or nuisance.

1.4.3 These powers were not intended to disrupt peaceful activities. Whilst police officers had the discretion to require an individual to refrain from drinking regardless of behaviour, the Home Office guidance issued at the time advised local authorities:

- That it would not be appropriate to challenge an individual consuming alcohol where that individual is not causing a problem.
- That bodies responsible for introducing and enforcing DPPOs must keep in mind section 13 of the Criminal Justice and Police Act 2001 which makes it clear that this power was to be used explicitly for addressing nuisance or annoyance associated with the consumption of alcohol in a public place.

1.4.4 It is important to note that these powers did not make it a criminal offence to

consume alcohol within a designated area.

1.4.5 Under this legislation an offence was committed if the individual refused to comply with a constables' request to refrain from drinking. Those enforcing the powers had to take care that they did not state (either verbally or via signage) that the consumption of alcohol in a designated area, in itself, constituted a criminal offence.

1.4.6 Barnet initially had four Designated Public Places Orders introduced to tackle anti-social behaviour and crime associated with discrete street drinking populations and nuisance related to the night time economy, the areas were:

- North Finchley Town Centre, introduced January 2004
- Finchley Town Centre introduced, January 2004
- Hendon Town Centre, introduced January 2004
- Cricklewood Town Centre, introduced May 2010

1.4.7 Additional Designated Public Place Orders to tackle street drinking were put in place in:

- Edgware Town Centre and environs
- Golders Green Town Centre and environs
- West Hendon Town Centre and environs
- Burnt Oak Town Centre and environs

1.4.8 An extension to the North Finchley zone was requested by the Police due to the displacement of street drinkers into the surrounding residential area. The Police requested a borough wide DPPO because of displacement into the surrounding areas. Other local authorities were also extending their existing zones to borough wide coverage because of this displacement trend. As a result Barnet Council agreed a borough wide DPPO on the 29th May 2012.

1.4.9 The DPPO power lapsed on 20th October 2017.

1.5 The Community Protection Notice – an early intervention

1.5.1 The Anti-Social Behaviour, Crime and Policing Act 2014 also introduced the Community Protection Notice (CPN). The Community Protection Notice is intended to deal with particular on-going problems or nuisances which negatively affect the community's quality of life targeting those responsible and can be issued by Council Officers with the delegated authority, police officers and Police Community Support officers and Social landlords if designated by the council.

1.5.2 The Community Protection Notice must be preceded by a written warning referred to as the Community Protection Notice Written Warning.

1.5.3 If the written warning is breached then the Community Protection Notice can be issued and this notice can have a requirement to stop doing specified things

and/or a requirement to do specified things and/or a requirement to take reasonable steps to achieve specified result.

1.5.4 Breach of a Community Protection Notice is a criminal offence and the penalty for breach of the Community Protection Notice can be a fixed penalty notice of £100 if appropriate; a court can impose a fine of up to level 4 for individuals, or £20,000 for businesses; or (upon conviction) an application for a Criminal Behaviour Order can be made as a result of the breach.

1.5.5 As part of the ongoing operations in the affected area interventions have been offered for the identified entrenched street drinkers by Westminster Drugs Project (WDP) as our substance misuse service provider. Many of the problem persons are already known to the service (WDP) and in some case the Probation and CRC services.

1.6 Partnership Analysis of Street Drinking impact in Barnet borough

1.6.1 The data below is extracted from Appendix 1 of this report from analysis undertaken by the comparison of the data available to the partnership for street drinking and alcohol related incidents captured on police and local authority IT systems for 01/11/2016 to 31/10/2017.

1.6.2 In total, during this period, there were 1,294 incidents dealt with by the police in relation to street drinkers, alcohol and/or intoxicants. 52 records relate to street drinking.

Chart 1: Police calls related to street drinkers recorded between November 2016 and October 2017

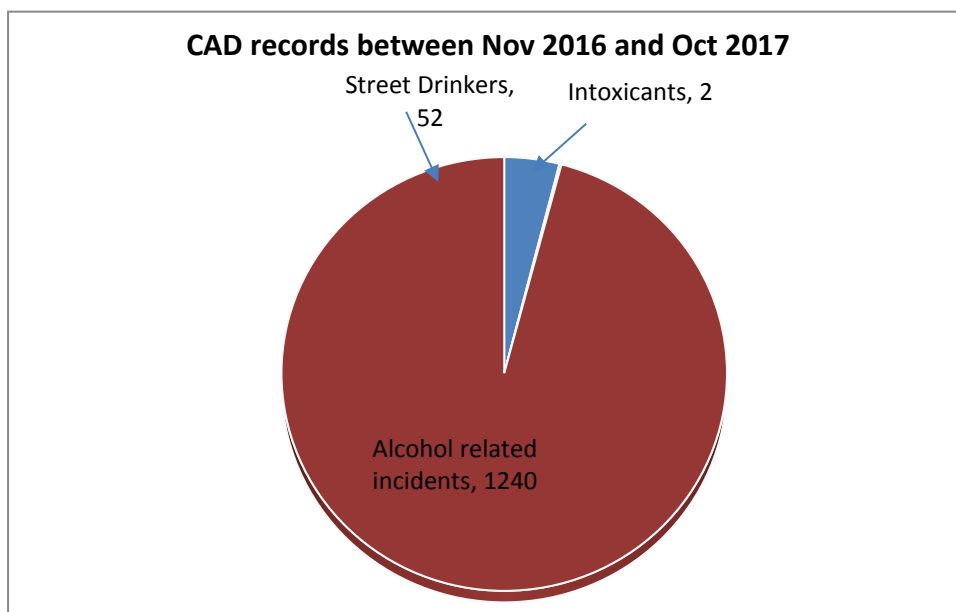


Chart 2: Levels of Police recorded incidents involving Street Drinkers in Barnet for the period November 2016 and October 2017

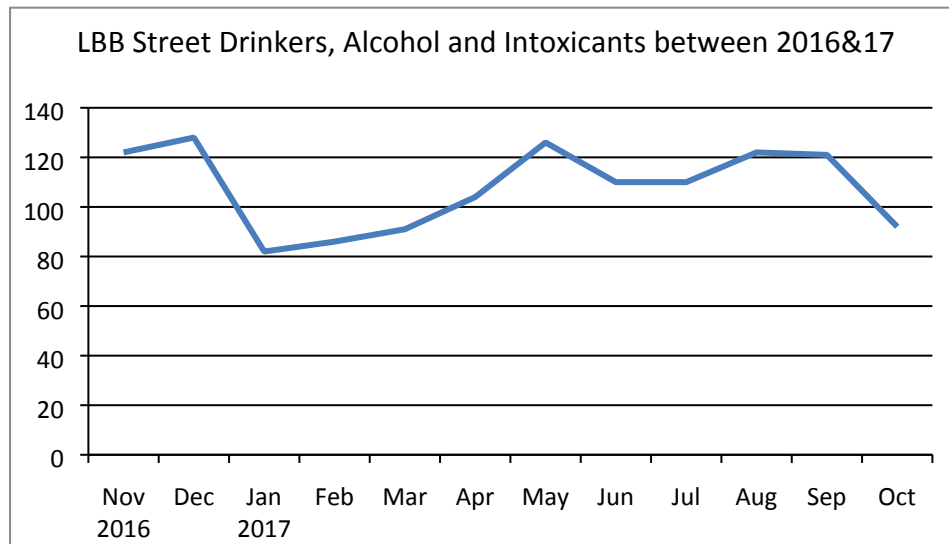
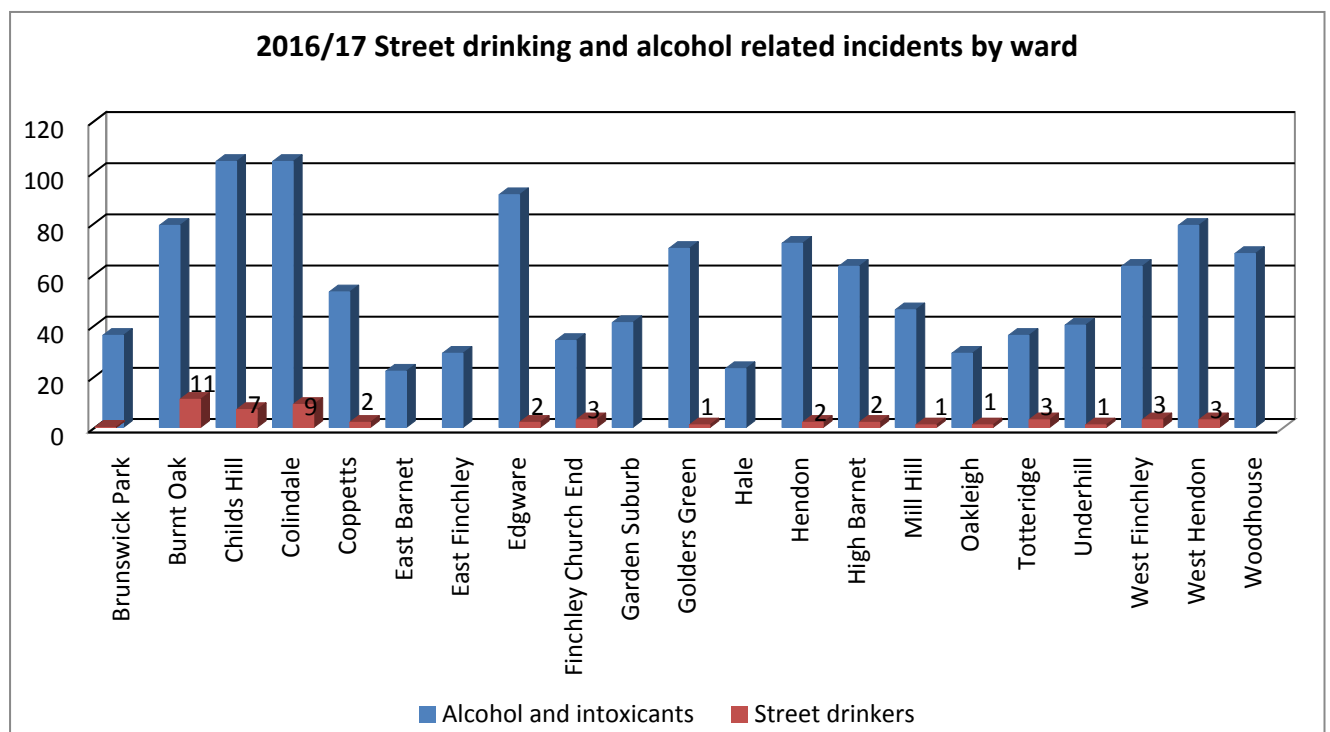


Chart 3: Police recorded incidents involving Street Drinkers by wards in Barnet for the period November 2016 and October 2017



1.7 The Council and Partnership's current response to the problems being reported.

1.7.1 The Burnt Oak area has been identified as one of the top three hotspot locations in Barnet borough for street drinking related anti-social behaviour. Within Burnt Oak, areas identified as particularly affected by street drinking are:

- a. Watling Avenue
- b. Back Lane
- c. Market Lane and adjacent parks

1.7.2 Officers continue operational deployments with joint Re Community Protection, Neighbourhood Policing Team and NSL Waste Enforcement (littering – alcohol container waste) Officer deployment in these specific areas.

1.7.3 The police Dispersal powers are timebound in that the police can implement a dispersal for up to 48 hours in a specific locality, given the daily frequency of street drinking the use of this power on a medium to long term basis is not appropriate. However the Policing Teams have continued the use of Community Protection Notices and Criminal Behaviour Orders to regulate the problem persons identified behaviour as an interim measure whilst a more sustainable and long term solution is implemented – this includes the implementation of a Public Space Protection order.

1.8 Public Spaces Protection Orders (PSPOs)

1.8.1 Public Spaces Protection Orders (PSPOs) are intended to deal with a particular nuisance or problems in a particular area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area. They are designed to ensure the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.

1.8.2 Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 states that:

A local authority may make a public spaces protection order if satisfied on reasonable grounds that two conditions are met.

The first condition is 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
- 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:

- is, or is likely to be, of a persistent or continuing nature
- is, or is likely to be, such as to make the activities unreasonable and
- justifies the restrictions imposed by the notice

- 1.8.3 In deciding to place restrictions on a particular public space, councils should consider the knock-on effects of that decision. Introducing a blanket ban on a particular activity may simply displace the behaviour and create victims elsewhere.
- 1.8.4 The council must also consult whatever community representatives they think appropriate. This could relate to a specific group, for instance the resident's association, an individual or group of individuals, for instance, regular users of a park or specific activities such as busking or other types of street entertainment
- 1.8.5 Before a PSPO is made, the council has to publish the draft order in accordance with regulations published by the Secretary of State.
- 1.8.6 The council can make a PSPO on any public space within its own area. The definition of public space is wide and includes any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.
- 1.8.7 A Public Spaces Protection Order can be used to restrict the consumption of alcohol in a public space where the relevant legal tests are met. However, such an Order cannot be used to restrict the consumption of alcohol where the premises or its curtilage (a beer garden or pavement seating area) is licensed for the supply of alcohol (other than council operated licenced premises).
- 1.8.8 Prohibitions and penalties: The proposed prohibitions and penalties are as follows:

PROHIBITIONS

This order applies to all public places within the 'Restricted Area':

Any person drinking alcohol, or in possession of any container (sealed or unsealed) reasonably believed to contain alcohol, must not refuse to stop drinking or must not refuse to hand over the container(s) when required to do so by a constable or an authorised person.

Exemptions: the order does not apply to locations within a licensed premise or to locations which fall under a relevant temporary event notice authorisation.

OFFENCE

Any person who, in the 'Restricted Area', without reasonable excuse, refuses to stop consuming alcohol or hand over any container(s) (sealed or unsealed where the Constable or authorised person has reasonable grounds to believe it contains alcohol) commits an offence.

PENALTIES

A person who commits an offence under this order shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale. A fixed penalty notice may be issued as an opportunity to discharging any liability to conviction for the offence.

1.8.9 The enforcing officer (a Police Constable or authorised person) will take into consideration the behaviour in question and apply the most appropriate sanction. This includes prosecution for the breach of the PSPO or issuing a fixed penalty notice (FPN). Payment of the FPN will discharge any liability to conviction for the offence. However, if payment by the individual is not made within the required timescale, the process will revert back to prosecuting the individual through the court for the offence of failing to comply with the Public Space Protection Order.

1.8.10 **Appeals:** Any challenge to a Public Spaces Protection Order must be made in the High Court by an interested person within six weeks of it being made. An interested person is someone who lives in, regularly works in, or visits the restricted area. This means that only those who are directly affected by the restrictions have the power to challenge. This right to challenge also exists where an order is varied by a council.

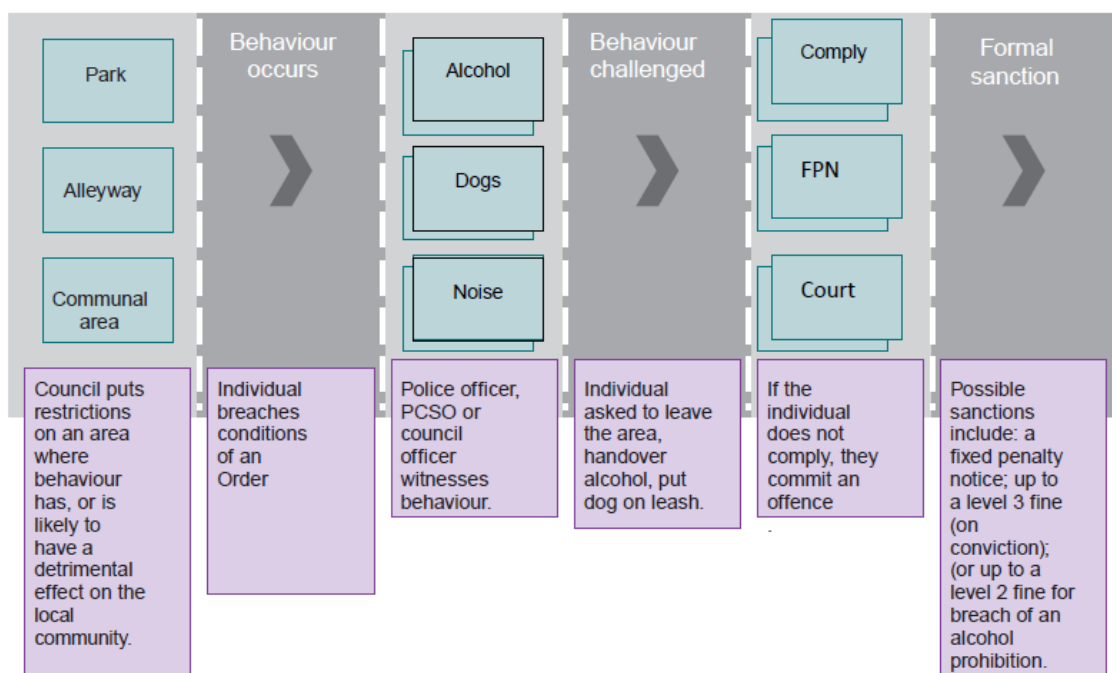
Interested persons can challenge the validity of an Order on two grounds. They could argue that the council did not have power to make the order, or to include particular prohibitions or requirements. In addition, the interested person could argue that one of the requirements (for instance, consultation) had not been complied with.

When the application is made, the High Court can decide to suspend the operation of the Public Spaces Protection Order pending the verdict in part or in totality. The High Court has the ability to uphold the Public Spaces Protection Order or to quash it (or any of the prohibitions or requirements imposed by it).

1.8.11 Figure 1 below is the flowchart process provided by the Home Office (updated December 2017) Guidance to Practitioners for the ASB, Crime and Policing Act 2014:

Figure 1:

Public Spaces Protection Order



2 REASONS FOR RECOMMENDATIONS

2.1 Evidence provided in this report and supporting documents indicate 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
- It is likely that activities will be carried on in a public place within that area and that they will have such an effect.

And ***that the effect, or likely effect, of the activities:***

- is, or is likely to be, of a persistent or continuing nature
- is, or is likely to be, such as to make the activities unreasonable and
- justifies the restrictions imposed by the notice

2.2 Therefore officers of Barnet Council are satisfied on reasonable grounds that the conditions set out in Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014, are met for the PSPO to be agreed.

2.3 Alternative interventions have been tried and put in place to address the issues being experienced in the proposed area, however a more long-term approach is required to prevent further ASB and nuisance as a result of street drinking,

prevent impact on the local community, and it is considered that a PSPO will be more effective – see below for alternative interventions/options.

3 ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 Alternative options for tackling the alcohol related anti-social behaviour in Burnt Oak have already been considered and implemented. These measures included increased police patrols, CCTV deployment, use of Community Protection Notices. Despite this the alcohol related ASB has continued, therefore it is considered that these measures require supplementing by the implementation of the PSPO as the measures above have been reactive as opposed to a more proactive preventative measure. The option of doing nothing is also not recommended as the community will continue to be adversely affected.

4 POST DECISION IMPLEMENTATION

- 4.1 If the PSPO is authorised the Burnt Oak Task and Finish Group will monitor the implementation and enforcement of the PSPO.
- 4.2 This PSPO will be publicised on the Council's website. The area affected will have signage to inform the public that a PSPO relating to alcohol is in the locality in force. The volume of signage is dictated by the area and natural entry exit points to the area. Signage production takes approximately 2 weeks and will be ordered if this DPR is authorised. Once delivered they can be erected within one working day by the Community Safety Team staff using plastic ties. The signs are designed/made of Correx (lightweight plastic) to prolong their use and endure weather conditions for the lifetime of the PSPO.
- 4.3 The officers of the Council's Community Safety Team and Re Community Protection Team, Neighbourhood Policing Team and NSL waste enforcement Team will agree the programme of operational deployments to patrol the area covered by the PSPO so that Partnership officers effect a consistent and sustained programme of interventions, monitoring and enforcement of the PSPO.
- 4.4 The PSPO will be reviewed every six weeks at the Community Safety MARAC meeting chaired by the Community Safety Team Manager and Area Police Inspector to ensure that the PSPO is being resourced and managed appropriately.
- 4.5 The PSPO will be subject to an interim 6-month review and a full review at 12 months post implementation to monitor its impact.

5 IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.1.1 The Council's Corporate Plan 2015-20 sets out the principles of Fairness, Responsibility and Opportunity. These principles are applied to the Corporate Plan priorities of :

- Delivering quality services
- Responsible growth, regeneration and investment
- Building Resilience in residents and managing demand
- Transforming local services
- Promoting community engagement, independence and capacity

The corporate priority of delivering quality services includes ensuring clean and safe places, keeping neighbourhoods and town centres clean, safe and healthy, maintaining our parks and open spaces. The proposed PSPO should also support the council in addressing the extreme levels of litter left as a result of street drinking in the locality associated with the anti-social behaviour linked to street drinking.

The corporate priority of promoting Community engagement, independence and capacity includes Safer Communities, where the council is committed to working with partners to provide a safe environment for residents and ensuring residents feel able to report incidents through increased confidence in the council being able to help.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.2.1 It is expected that the PSPO enforcement arrangements will be provided within the existing service staff resources and Neighbourhood Policing Team officers when necessary for public safety concerns therefore this deployment will be self-sufficient.

5.2.2 There are no property implications identified.

5.2.3 Apart from ongoing monitoring of the PSPO, if approved, there will be a full review of it after a 12-month period. The monitoring and review will assess the effectiveness of the PSPO and will help as a guide to whether a PSPO should be made in other wards or even a borough wide PSPO if appropriate.

5.2.4 There are no staffing implications at this stage.

5.2.5 All case management will be administered by the council and partnership through the Community Safety Team's IT system, ECINS.

5.2.6 Signage costs are quoted at £13.88 per sign. It is expected that each PSPO area will require between 30-50 signs to afford suitable coverage and this will be funded from the Environment Services budget.

5.3 Social Value

- 5.3.1 Not relevant for this report

5.4 Legal and Constitutional References

- 5.4.1 The Anti-Social Behaviour, Crime and Policing Act 2014 provides the power and process for implementing a PSPO.
- 5.4.2 As noted earlier in this report, there are certain conditions that have to be met in order for the authority to make a PSPO. A PSPO sets a restricted area within which doing specified things are prohibited, or are required, or both.
- 5.4.3 Before making an Order, the Council must consult with the chief officer of police, the Police and Crime Commissioner and any representatives of the local community it considers appropriate. Orders may last for a maximum of three years, after which they may be reconsidered for renewal or discontinued. There are also requirements to publicise, and notification requirements in relation to a proposed PSPO.
- 5.4.4 Under the Act an interested party can challenge the making of a PSPO, or its variation, by application to the High Court. The grounds for such a challenge are that the local authority did not have the power to make or vary the order or to include certain prohibitions/requirements, or that a requirement under the Act was not complied with. There is a 6-week time limit to make such an appeal from the date of the order or variation.
- 5.4.5 Where an Order has been made and has come into effect, it is an offence to fail to comply with its provisions. The Police are given additional powers in relation to the consumption of alcohol within the restricted area.
- 5.4.6 At their meeting on 9 March 2016, the Community Leadership Committee (CLC) delegated authority to the Commissioning Director for Environment (now Strategic Director – Environment) to approve PSPOs in certain circumstances.

The Committee approved that the Committee retain approval for those PSPOs that would impact more than 3 bordering wards or 2 or more separate wards and delegate the operational decision in relation to authorising a PSPO for up to 3 wards to the Commissioning Director for Environment (now Strategic Director – Environment) in line with scheme of delegation for officers and in consultation with the ward members and Chairman of SCPB.

5.5 Risk Management

- 5.5.1 Whilst the statutory process and guidance has been followed in the preparation of this proposed PSPO, there remains a possibility that the lawfulness of the PSPO could be challenged. It should be noted that local

residents have been consulted and that officers have taken the consultation responses into account in the preparation of this proposed PSPO.

- 5.5.2 The review process set out in Section 4 of this report summarises how the operational use of the PSPO powers will be managed and monitored in accordance with the established council process for managing anti-social behaviour.

5.6 Equalities and Diversity

- 5.6.1 An initial Equalities Impact Assessment (EIA) of the proposed PSPO has been carried out and this will be reviewed as part of the PSPO review process to ensure the approach does not have a disproportionate or adverse impact, or to try and mitigate such impact. The initial EIA for the Burnt Oak Area is at Appendix 3 of this report.

- 5.6.2 The initial EIA shows that some protected groups may be affected by the proposed PSPO but this will be monitored as noted above, and in addition, mitigating and support measures are proposed for persons likely to be the subject of breaching the PSPO. Some of those affected may be supported by provision of help from our substance misuse and outreach provider, Westminster Drugs Project to offer the maximum chance of engagement with those services whilst also ensuring that the PSPO is adhered to affording a consistent and sustained enforcement of the PSPO.

- 5.6.3 Being fair and giving equal chances to all our residents is central to Barnet's Corporate Plan 2016 -2020 and the council's strategic equalities objective, (SEO), that "Citizens will be treated equally, with understanding and respect, and will have equal access to quality services which provide value to the taxpayer". Barnet and organisations acting on its behalf are committed to fair treatment for all our citizens balancing their different needs and rights as we support our more vulnerable residents and incorporate the principles of equality into everything we do as a Council. The general duty on public bodies is set out in Section 149 of the Equality Act 2010.

- 5.6.4 A public authority must, in the exercise of its functions, have *due regard* to the need to:

(a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 5.6.5 The protected characteristics are:

- age

- disability
- gender reassignment
- pregnancy and maternity
- race / ethnicity
- religion or belief
- gender / sex
- sexual orientation
- marital status (including civil partnership)

5.6.6 The decision to take enforcement action will be decided on a case by case basis and dependent upon the assessment of the facts and evidence supporting each one.

5.7 Corporate Parenting

5.7.1 The decision to proceed with the proposed PSPO is not considered to have a direct or indirect impact on children in care and care leavers as the known problem persons are aged over 18 years.

5.7.2 Should any person under 18 years old or care leavers be identified involved directly or indirectly with street drinking in the PSPO area they will be referred to the MASH in accordance with standard protocols for vulnerable young people.

5.8 Consultation and Engagement

5.8.1 Public consultation took place for proposed Alcohol related PSPOs in Barnet between February and late March 2018 via the Engage Barnet website. There were over 300 responses submitted and the summary report at Appendix 5 to this report indicates that the community is in support of this proposal and in some of the areas asked the PSPO zone to be extended to areas adjacent to the proposed PSPO locations to assist in mitigating displacement.

5.8.2 In accordance with the council's process for community consultation all consultation responses have been considered and adjustments made in light of them where considered appropriate.

5.9 Insight data

5.9.1 Not relevant for this report

6 BACKGROUND PAPERS

Recent papers to various committees on enforcement and some examples of web links to the council's service specific enforcement actions are listed below.

Anti-Social Behaviour, Crime and Policing Act 2014 – Home Office Statutory Guidance for frontline professionals.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final_2_.pdf

CLC DPPO/PSPO paper dated 9th March 2016.

<https://barnet.moderngov.co.uk/documents/s30238/DPPO%20Committee%20Report.pdf>

ASB, Crime and Policing Act 2014 CLC paper dated 25th November 2015.

<https://barnet.moderngov.co.uk/documents/s27557/ASB%20Update%20CLC%2025NOV2015%20KV%20Final.pdf>

Barnet Council Corporate Enforcement and Prosecution Policy approved at the Policy and Resources Committee on 21st March 2017.

<https://barnet.moderngov.co.uk/documents/s38749/Appendix%203%20-%20Barnet%20Enforcement%20and%20Prosecution%20Policy.pdf>

7. DECISION TAKER'S STATEMENT

- 7.1 *I have the required powers to make the decision documented in this report. I am responsible for the report's content and am satisfied that all relevant advice has been sought in the preparation of this report and that it is compliant with the decision-making framework of the organisation which includes Constitution, Scheme of Delegation, Budget and Policy Framework and Legal issues including Equalities obligations. The decision is compliant with the principles of decision making in Article 10 of the constitution.*

Chief Officer:

Signed:

Dated: 03 October 2018