



# B O S T O N

## B O R O U G H C O U N C I L

AGENDA ITEM NO: 1

REPORT TO:	Overview and Scrutiny <b>ENVIRONMENT AND PERFORMANCE COMMITTEE</b>
DATE:	21 <sup>st</sup> May, 2014
SUBJECT:	DPPO
PORTFOLIO HOLDER:	Councillor Stephen Woodliffe
REPORT AUTHOR:	Peter Hunn
EXEMPT REPORT?	No

### SUMMARY

1. HM GOV have recently published the document “**Putting Victims First – More Effective Responses to Anti-Social Behaviour**” as a consequence the DPPO will be replaced by a “**Community Protection Order (public spaces)**” which is intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community’s quality of life, by imposing conditions on the use of that which apply to everyone.
2. A key difference between this new draft legislation and that of the existing DPPO legislation is that if there is evidence of an impact or likely impact on the community for the local authority to grant this new order then the local authority can set what conditions that order is made in. For example, that could be a drinking of alcohol ban in a selected area.
3. Overview of findings from analytic review.

Analytic review commissioned with regard to current DPPO area and alcohol-related reported incidents:

- 3.1. A relatively high proportion of all police incidents in Boston are alcohol-related.
- 3.2. The proportion and number of alcohol-related ASB and concern for safety incidents that occur during daylight hours in Boston is higher than the long term average.

- 3.3. Daytime alcohol-related ASB and concern for safety incidents decreased in 2013 and show signs of reducing to pre2008 levels in both the Boston Borough and DPPO area.
- 3.4. The proportion of daytime alcohol-related ASB and concern for safety incidents that occur within the DPPO has remained relatively stable since 2006. This suggests that there has not been significant displacement of incidents outside of the DPPO area.
- 3.5. Hotspot mapping of daytime alcohol-related ASB and concern for safety incidents suggests that although the hotspots have changed over time, incidents continue to be concentrated within the boundary of the existing DPPO, with the exception of the lower High Street area.
- 3.6. Only a very small and decreasing proportion of daytime alcohol-related ASB and concern for safety incidents in Boston Borough occur outside of Boston Town.
- 3.7. There has been an increase in the number of off-licence premises in Boston since 2008. Half of the newly licensed premises can be found within a current daytime alcohol-related ASB and concern for safety hotspot. Current hotspots appear to have moved to areas where new off licences are concentrated.
- 3.8. A relatively high number of different individuals were stopped for street drinking during Operation Dakota in 2013. Street Drinking in Boston is therefore not solely driven by a small core of repeat offenders, but is an activity undertaken by a wide range of ages and a range of nationalities. Underage drinking does not seem to be major problem in the town.

## **RECOMMENDATIONS**

1. As soon as legislation and due process allows recommend to Cabinet and Full Council that they implement a Community Protection Order(Public Spaces) which prohibits the drinking of alcohol in a public space in the area defined by:
  - Option 1 – the current DPPO area with the addition of the lower high street areas as set out on Appendix D
2. That a further recommendation is made to Cabinet and Full Council that the police, the council and partners closely monitor alcohol-related problems, within the DPPO area, which might be linked to off-licence premises and report back as part of consideration by the licensing committee the concept of “cumulative impact zones”.
3. That a further recommendation is made to Cabinet and Full Council that the police and council encourage Public Health, NHS Lincolnshire, DART (Drugs and Alcohol Recovery Team), ADDACTION and other related partners to undertake an increased role in their engagement with the East Lincolnshire Community Safety Partnership in working with alcohol related ASB and harm.

## **REASONS FOR RECOMMENDATIONS**

- A relatively high proportion of all police incidents in Boston are alcohol-related.
- The proportion and number of alcohol-related ASB and concern for safety incidents that occur during daylight hours in Boston is higher than the long term average.
- Daytime alcohol-related ASB and concern for safety incidents decreased in 2013 and show signs of reducing to pre2008 levels in both the Boston Borough and DPPO area
- The proportion of daytime alcohol-related ASB and concern for safety incidents that occur within the DPPO has remained relatively stable since 2006. This suggests that there has not been significant displacement of incidents outside of the DPPO area.
- Hotspot mapping of daytime alcohol-related ASB and concern for safety incidents suggests that although the hotspots have changed over time, incidents continue to be concentrated within the boundary of the existing DPPO, with the exception of the lower High Street area.
- Only a very small and decreasing proportion of daytime alcohol-related ASB and concern for safety incidents in Boston Borough occur outside of Boston Town.
- There has been an increase in the number of off-licence premises in Boston since 2008. Half of the newly licensed premises can be found within a current daytime alcohol-related ASB and concern for safety hotspot. Current hotspots appear to have moved to areas where new off licences are concentrated.

## **ALTERNATIVES CONSIDERED**

As soon as legislation and due process allows recommend to Cabinet and Full Council that they implement a Community Protection Order(Public Spaces) which prohibits the drinking of alcohol in a public space in the area defined by:

- Option 2 – The current DPPO area as set out on Appendix A
- Option 3 – Borough wide.
- Do Nothing
- Repeal the order completely

## REPORT

1. In December 2007, after full public and member consultation, a “Designated Public Place Order” (DPPO) was implemented in Boston Town Centre (as shown in Appendix A). This order is outlined within legislation, namely section 12-16 of the Criminal Justice and Police Act 2001. There were amendments to this act within the Violent Crime Reduction Act, 2006, and the Local Authorities (Alcohol Consumption in Designated Places) Regulations 2007.
2. After auditing documentation in relation to the implementation process for the existing DPPO within Boston Borough; it can be concluded that the local authority has consulted, published and conformed accordingly to the legislative obligations within the 2001 and 2007 regulations.
3. It is also clearly identified through the original auditing documentation that the local authority had ascertained that the location (as shown in Appendix A) was suitable as a designated public place, as interpreted under the Crime and Justice Act 2001, which underpins the 2001 and 2007 regulations. Section 13 (2a) and (2b) of the Crime and Justice Act 2001 states that “A local authority may for the purpose of subsection (1) by order identify any public place in their area if they are satisfied that nuisance or annoyance to members of the public or a section of public; or disorder; has been associated with the consumption of intoxicating liquor in that place.”
4. HM GOV have recently published the document “**Putting Victims First – More Effective Responses to Anti-Social Behaviour**” as a consequence the DPPO will be replaced by a “**Community Protection Order (public spaces)**” which is intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community’s quality of life, by imposing conditions on the use of that which apply to everyone.
5. Section 53(2) and (3) of the Draft ASB Act sets out the conditions that need to be met to justify a Community Protection Order (public spaces). The legal implications section below sets out these conditions for members.
6. It must also be highlighted that a key difference between this new draft legislation and that of the existing DPPO legislation is that if there is evidence of an impact or likely impact on the community for the local authority to grant this new order then the local authority can set what conditions that order is made in. For example, that could be a drinking of alcohol ban in a selected area.
7. Only a local authority can issue the order, and before doing so, they must consult with the Chief Officer of Police, the Policing and Crime Commissioner, Elected / Ward Members for the affected area / borough and representatives of the local community they consider appropriate.

8. A breach of the new order would be a criminal offence with a maximum fine of £1000.
9. The test for issuing the order will be that the local authority reasonably believes that the behaviour is detrimental to the local community's quality of life, and the impact merits restrictions being put in place in a particular area. The behaviour must also be ongoing or persistent (or there must be reasonable belief that future behaviour will be ongoing or persistent).
10. The Government is committed to this change and implementation at the earliest opportunity. Recent contact with the Home Office has indicated that the current legislation will be repealed at the end of 2014 and the new legislation will come into force thereafter.
11. It was agreed at the **Environment and Performance Committee held on the 8<sup>th</sup> May, 2013**, that an extensive analytic review of the current area covered in the existing DPPO and the surrounding borough wide area would commence, for a minimum period of six months, this review would cover all reported alcohol and concern for welfare reports made to Lincolnshire Police.
12. It was also agreed at that same committee that the results were then brought back to this committee for consideration and recommendation.
13. A Lincolnshire Police Analyst has provided an overview of alcohol-related incidents reported to Lincolnshire Police within the Boston Borough Council area between 2006 and 2013. This has been designed to help place the current situation within a long term context. The report was also commissioned to provide further contextual information, where possible, making comparisons with the county picture. (Appendix B shows the review completed in full).
14. **Overview of findings from review:**

**14.1: A relatively high proportion of all police incidents in Boston are alcohol-related.**

In 2013 9.1% of all police incidents from the borough of Boston were alcohol-related. This was 37.9% higher than the Lincolnshire average, where only 6.6% of all callouts were alcohol-related.

Boston's proportionally high level of alcohol-related incidents is a relatively recent development. Prior to 2011, the proportion of all police callouts that were alcohol-related in Boston was broadly in line with the county average. However, since this time the proportion of alcohol-related incidents in Boston has been consistently higher than the county average.

**14.2: The proportion and number of alcohol-related ASB and concern for safety incidents that occur during daylight hours in Boston is higher than the long term average.**

Since 2011, the proportion of alcohol-related ASB and concern for safety incidents that occurred during daytime hours (07:00hours - 20.59hours) has increased by 5%. In total, since 2011, 54.9% of incidents now occur during these daytime hours. Increases were particularly noted between 08:00hours and 14.59hours, when the proportion of incidents increased by 7% compared to the 2006-10 period. It would therefore appear that over recent years daytime alcohol-related ASB has become proportionally more problematic in Boston, while night time issues have correspondingly eased.

The proportion of alcohol-related incidents that occur during daytime hours has increased in Boston since 2011. In total, the annual average number of alcohol-related ASB and concern for safety incidents that occurred in Boston between 07:00hours and 20:59hours increased from 392 in 2006-10 to 461 in 2011-13, an 18% increase.

**14.3: Daytime alcohol-related ASB and concern for safety incidents decreased in 2013 and show signs of reducing to pre2008 levels in both the Boston Borough and DPPO area. Although it is difficult to be certain, it is possible that last year's decrease was influenced by increased police and community safety activity in the DPPO area.**

The number of daytime alcohol-related ASB and concern for safety incidents in Boston decreased in 2013, bucking the long term increasing trend. The number of incidents inside and outside the DPPO appears to have returned to 2008 levels.

Alcohol-related ASB and concern for safety incidents follow a seasonal trend, which peaks in the summer months and decreases in the winter.

Although it is difficult to be certain, it is possible that last years' decrease was influenced by increased police and community safety activity in the DPPO area. Between June and November last year, Lincolnshire Police and the Community Safety Team ran a targeted proactive response to alcohol-related ASB in the Boston DPPO area, code named Operation Dakota. Records from the operation show that a total of 96 street drinkers were spoken to in 85 stops over 50 separate days. It is interesting to note that the operation was targeted within the DPPO, where incidents fell for the first time in 8 years, and at a faster rate than the rest of Boston Borough. While incidents in the rest of the borough fell by 15.6%, incidents in the DPPO fell by 23.4%, as such, it is possible that last year's increased police and community safety activity within the DPPO area contributed towards the decreased level of reported alcohol-related ASB and concern for safety incidents.

**14.4: The proportion of daytime alcohol-related ASB and concern for safety incidents that occur within the DPPO has remained relatively stable since 2006. This suggests that there has not been significant displacement of incidents outside of the DPPO area.**

On average 40% of Boston borough's daytime alcohol-related ASB and concern for safety incidents occurred within the boundary of the current DPPO. This has remained fairly consistent over the last eight years, although there was a decrease in 2009 and 2010. As such, it would appear that there has not been significant displacement of incidents from the DPPO to other areas of the borough.

In 2013 39.8% of all daytime alcohol-related ASB and concern for safety incidents occurred in the DPPO. This was slightly lower than 2012, when 42.1% of all incidents occurred in the DPPO. Although, therefore, there had been a slight displacement of incidents from the DPPO to the rest of the borough, this only equated to a displacement of 17 incidents over the course of the year.

**14.5: Hotspot mapping of daytime alcohol-related ASB and concern for safety incidents suggests that although the hotspots have changed over time, incidents continue to be concentrated within the boundary of the existing DPPO, with the exception of the lower High Street area.**

Daytime alcohol-related ASB and concern for safety incidents are concentrated in Boston each year between 2010 and 2013. There are certain areas of the town which suffer from a disproportionately high number of incidents. These areas include:

- The streets surrounding Red Lion Street.
- The Market Place and Town Bridge area.
- Central Park.
- West Street and the Bus Station.
- Lower High Street and Oxford Street area.

All of the above hotspots fall within the boundary of the existing DPPO with the exception of the lower High Street area. In 2013 an increasing proportion of daytime alcohol related ASB and concern for safety incidents occurred within the Market Place. It would therefore appear possible that there may have been some displacement of incidents away from the Market Place and towards these areas.

Operation Dakota patrols during 2013 frequently found people street drinking in the same hotspot areas. More than one in every five stops that occurred during the operation took place in Central Park. A similar number occurred in the area around the Ingram Memorial and St Botolph's Church, and a further 20% in the area of Red Lion Street.

**14.6: Only a very small and decreasing proportion of daytime alcohol-related ASB and concern for safety incidents in Boston Borough occur outside of Boston Town.**

The number and proportion of daytime alcohol-related ASB and concern for safety incidents that occur in the rural areas of Boston Borough is small and decreasing. This suggests that there has not been displacement of alcohol-related offending to the rural areas of the borough. (Appendix C – Table 1 refers).

**14.7: There has been an increase in the number of off-licence premises in Boston since 2008. Half of the newly licensed premises can be found within a current daytime alcohol-related ASB and concern for safety hotspot. Current hotspots appear to have moved to areas where new off licences are concentrated.**

Between 2008 and 2013 the number of shops, supermarkets and newsagents with an off-licence facility across Boston increased by two thirds (from 35 to 59, See Appendix E – Table 2)

Of the 24 newly licensed premises since 2008, 12 can be found either within or close proximity to a current 2013 hotspot area for daytime alcohol-related ASB and concern for safety incidents.

With respect to the possible link between off-licences and the occurrences of alcohol related incidents, the cumulative impact of licensed premises on the promotion of the licensing objectives is a matter for the authority to consider when revising its statement of licensing policy. A cumulative impact policy may be applied to zones where the number, type or density of premises selling alcohol is high and serious problems of nuisance and disorder are arising or have started to arise outside or close to these premises. Cumulative impact policies do not relate to “need” which is the commercial demand for premises.

A Cumulative Impact Policy which identifies a Cumulative Impact Zone does not prevent further licences to sell alcohol being granted within the identified area; the effect of such a policy is to create a rebuttable presumption that applications for the grant or variation of a premises licence, which is likely to add to the existing impact, will normally be refused or subject to certain limitations, unless the applicant can demonstrate that there will be no negative cumulative impact on one or more of the licensing objectives. In order for the application to be refused it is a requirement for representations regarding the impact of the licence, on the promotion of the licensing objectives, to be made.

**14.8: A relatively high number of different individuals were stopped for street drinking during Operation Dakota in 2013. Street Drinking in Boston is therefore not solely driven by a small core of repeat offenders, but is an activity undertaken by a wide range of ages and a range of nationalities. Underage drinking does not seem to be major problem in the town.**

In 2013 Lincolnshire Police and the Community Safety Team initiated Operation Dakota, an initiative designed to tackle street drinking and daytime alcohol-related ASB within the DPPO. Between June and November 2013, Officers took action against offenders on 85 occasions. 96 different offenders were identified, of which 24 were spoken to on more than one occasion. Thus, although there were a small number of repeat offenders for street drinking, there were a much larger number of non-repeat offenders, suggesting that the increase of street drinking in the town over recent years may be a cultural phenomenon and not the result of prolific offenders.

As part of Operation Dakota, officers were required to record information about the date of birth and nationality of those stopped. As such it has been possible to build up a picture of who engages in street drinking in Boston. Data has shown that street drinking is not confined to specific segments of the population. A wide range of ages and a range of nationalities appear to be involved, although it should be noted that as only 2% of the offenders were under the age of 18, underage drinking does not appear to be a significant problem in Boston. Approximately 70% of the offenders spoken to during the operation were from the migrant community.

On the advice and backing of our Police and Crime Commissioner towards the end of 2013, Boston Borough Council and partners submitted an application to become one of twenty Local Alcohol Actions (LAAAs) which are being created by the Home Office and health agency Public Health England to help areas with high levels of social problems related to drinking with co-ordinated initiatives over a 15 month period. It has just been announced by the Home office that our Boston application has been unsuccessful in its bid.

## **CONCLUSION**

1. A relatively high proportion of all police incidents in Boston are alcohol-related.
2. The proportion and number of alcohol-related ASB and concern for safety incidents that occur during daylight hours in Boston is higher than the long term average.
3. Daytime alcohol-related ASB and concern for safety incidents decreased in 2013 and show signs of reducing to pre2008 levels in both the Boston Borough and DPPO area.
4. The proportion of daytime alcohol-related ASB and concern for safety incidents that occur within the DPPO has remained relatively stable since 2006. This suggests that there has not been significant displacement of incidents outside of the DPPO area.
5. Hotspot mapping of daytime alcohol-related ASB and concern for safety incidents suggests that although the hotspots have changed over time, incidents continue to be concentrated within the boundary of the existing DPPO, with the exception of the lower High Street area.

6. Only a very small and decreasing proportion of daytime alcohol-related ASB and concern for safety incidents in Boston Borough occur outside of Boston Town.
7. There has been an increase in the number of off-licence premises in Boston since 2008. Half of the newly licensed premises can be found within a current daytime alcohol-related ASB and concern for safety hotspot. Current hotspots appear to have moved to areas where new off licences are concentrated.
8. A relatively high number of different individuals were stopped for street drinking during Operation Dakota in 2013. Street Drinking in Boston is therefore not solely driven by a small core of repeat offenders, but is an activity undertaken by a wide range of ages and a range of nationalities. Underage drinking does not seem to be major problem in the town.

### **FINANCIAL IMPLICATIONS**

1. There are no financial implications to continuing with the order in the current format. However, if a decision was made to adopt the new Community Protection Order (public spaces) legislation in the existing area or extend this area funding would be necessary as full consultation, public notices and signage would be required. This would be at a cost of approximately £6,000 to the council (per new area).

### **LEGAL IMPLICATIONS**

1. Draft ASB Act – Section 53(2) and (3) sets out conditions that need to be met to justify a Community Protection Order (public spaces). The activities have to have, or be likely to have, a detrimental effect on the quality of life in that area, and be persistent and unreasonable.
2. Applying for the CPO(ps) is similar to that of applying for the DPPO, a consultation & other community representatives.
3. The evidence to prove again is similar to that of the DPPO. What's the problem, Where is it happening, etc.
4. To prevent or reduce the detrimental effect.
5. It can apply to certain groups of people (i.e – Under 25yrs only) certain areas or certain times also.
6. Last for a period of 3 years and can be renewed.
7. Can be varied during its life.

8. Unlike the DPPO, Police Officers and Authorised Officers do not have to have the causing or likely to cause ASB/CRIME element to dispose/ confiscate containers of alcohol. They can request the containers open/closed from the persons if they have or they believe they will consume alcohol in prohibition of the order.
9. Failure to comply (without reasonable excuse) to the prohibition is an offence, liable for a summary conviction or FPN.
10. Legal Services Lincolnshire – Jo Furner (Senior Solicitor):

The Anti-Social Behaviour, Crime and Policing Act 2014 received Royal Assent on 13 March 2014, although only a few of the provisions have come into or will come into force in the imminent future; the remainder, including the provisions relating to Community Protection Orders (Public Spaces) CPOPS, will not come into force until such time that a Commencement Order is issued by the secretary of State. It is not uncommon for this to take some time, and is quite often so that other supporting legislation or guidance can be produced.

In light of this Act, Boston Borough Council has various options available to it in terms of dealing with alcohol related anti-social behaviour, namely drinking alcohol in public. Any existing DPPO's will remain in force for three years following enactment, negating any immediate need to amend existing provisions. However, in light of the additional powers afforded by a Community Protection Order (Public Spaces) which would serve to provide an absolute ban on drinking alcohol in public places, rather than the existing regime which simply provides powers for police officers to confiscate alcohol/prevent persons from drinking alcohol in a public place when they are causing a nuisance, it is easy to see the advantages of obtaining a CPOPS in response to alcohol related anti-social behaviour sooner rather than later.

However, aside from the obvious caution, that until the Act comes into force there is no legal authority for the Council to obtain a CPOPS, care should also be taken in terms of starting any consultation process in advance of this. Despite verbal suggestion from the Home Office that the consultation process may be started in advance of the Act coming into force, I have found nothing in writing which would support that view: without lawful authority to do so, any consultation would be ultra vires as would any CPOPS obtained as a result. An additional danger in doing this, is that the Act does not set out the consultation requirements (save for with whom the local authority must consult); usual practice will be for these to take the form of statutory guidance or secondary legislation which will be enacted once the Act has received Royal Assent, and should come into force with the relevant provisions of the Act. Any consultation which did take place may not meet these requirements, rendering any such consultation and consequently any CPOPS made upon reliance of it unlawful.

Furthermore, it is important to note that a CPOPS is a novel and untested measure, and as such its practical implication and testing in the Courts may well be protracted and potentially complicated in the event of challenge. Indeed, one of the major criticisms of this measure is the fact that the Act, once enacted, will give local authorities very broad and potentially unfettered powers to prohibit certain activities in certain areas; powers which may be subject to potential abuse.

Any use of these powers which might be deemed unnecessary or disproportionate will likely lead to challenge via the judicial review process. Accordingly, use of the new measures, once available, should be used with caution, and should be evidence based; i.e. there will need to be evidence of the need for a CPOPS to prevent or reduce detrimental effect, in this case of alcohol related anti-social behaviour. Accordingly, whilst they will almost certainly be a case for obtaining a CPOPS to cover the existing area covered by the DPPO, and potentially the additional area identified in the lower high street, it would be almost impossible to make out a case for a other areas, and certainly a Borough wide ban, where there is little evidence to support its need. To do otherwise would be disproportionate and unreasonable, and might render the Council subject to a successful judicial review.

### ANY OTHER IMPLICATIONS

1. Risk Management – This review has considered future risks and at this point it is not expected that continuation with the order in the current format should result in any risks to the council.

### CONSULTATION

Consultation is required with the following:

- Chief of Police (See Appendix F)
- Police and Crime Commissioner (See Appendix I)
- Elected Members (Portfolio Holder for Community Safety)
- Public Consultation – Members of Rotary Club of Boston St Botolphs on the evening of Wednesday 23<sup>rd</sup> April, 2014. (See Appendix G)
- Public Consultation (See Appendix H part 1 and 2)

### APPENDICES

Appendices are listed below and attached to the back of the report: -

APPENDIX A	<i>Current map of DPPO</i>
APPENDIX B	<i>Lincolnshire Police Analytic Review</i>
APPENDIX C	<i>Table 1</i>
APPENDIX D	<i>Proposed New CPO(ps) Map</i>
APPENDIX E	<i>Table 2</i>
APPENDIX F	Police Consultation comments
APPENDIX G	Public Consultation (Rotary Club) results and comments
APPENDIX H (PART 1)	Public Consultation results
APPENDIX H (PART 2)	Public Consultation comments: <b>hard copy only available in the Members Lounge and also on the web site.</b>
APPENDIX I	Police and Crime Commissioner Consultation comments

### BACKGROUND PAPERS

*(‘No background papers as defined in Section 100D of the Local Government Act 1972 were used in the production of this report.’)*

### CHRONOLOGICAL HISTORY OF THIS REPORT

*‘A report on this item has not been previously considered by a Council body’.*

**FINANCE PROFORMA**

**BOSTON BOROUGH COUNCIL**

**PROFORMA FOR EXECUTIVE APPROVAL OF THE RELEASE OF RESOURCES  
(CAPITAL AND REVENUE BUDGETS)**

FROM:

THIS PROFORMA PROVIDES THE FINANCIAL IMPLICATIONS  
IN RESPECT OF THE ATTACHED

REPORT:  
REPORT DATE:

<b>OPTION 1</b>	<b>£ Year 1 2013/14</b>	<b>£ Year 2 2014/15</b>	<b>£ Year 3 2015/16</b>	<b>£ Year 4 2016/17</b>	<b>£ Year 5 2017/18</b>
<b>Revenue</b>					
<b>Total Revenue</b>					
<b>Cost</b>					

<b>Funding required:</b>		<b>Considered by:</b>	<b>Date:</b>
Total capital cost	£	Enter committee here	
Revenue cost	£	Enter Council or Cabinet here	

**Financial Services Comments**

**Risk**

**Procurement**

**Value for Money Efficiency**

This FP is valid for 3 months from FP date	If this FP is no longer required please advise Finance	If there are changes to the original report it may invalidate this document, it must be reviewed by Finance.