

Birmingham City Council & West Midlands Police



PUBLIC SPACE PROTECTION ORDER (PSPO)

**SOHO ROAD / WAVERHILL ROAD PARK / BACCHUS ROAD
PARK & SURROUNDING AREA OF HANDSWORTH,
BIRMINGHAM**

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The Anti-Social Behaviour, Crime and Policing Act 2014

BIRMINGHAM CITY COUNCIL (^{Soho} [REDACTED] Road, Handsworth)
PUBLIC SPACE PROTECTION ORDER 2016

PUBLIC SPACE PROTECTION ORDER

The Order shall come into force on ^{Monday 29th} ~~day~~ of ^{February} ~~January~~
2016 at ¹⁰ ~~11~~ o'clock

If you do not obey the order you will be committing a criminal offence and may be prosecuted by the Council within a Magistrates' Court for an offence under Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014

THIS ORDER is made by Birmingham City Council ("the Council") under section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 (the Act), because the Council is satisfied on reasonable grounds that there are a number of activities, carried out or likely to be carried out in a public space, namely the area of Soho Road, Waverhill Road / Park, Bacchus Road / Park and surrounding area shown outlined on the map attached (the restricted area) that have had or are likely to have a detrimental effect on the quality of life of those in the locality. The effect or likely effect of these activities is of a persistent or continuing nature such as to make these activities unreasonable, and justifies the restrictions imposed by this order.

These activities include:

- **Anti-social behaviour caused by groups of young people and young adults and adults in public spaces;**
- **verbal abuse and / or intimidating behaviour;**
- **damage or destruction of property (including graffiti);**
- **littering;**
- **spitting in a public place;**
- **being under the influence of controlled drugs and/or other psychoactive substances and / or alcohol while in a public place;**
- **threatening or using violence.**

DEFINITIONS

- “Authorised Person”** means a **Police Constable, Police Community Support Officer or Council Officer**, and must be able to present their authority upon request.
- “Intoxicating Substances”** means substances with the capacity to stimulate or depress the central nervous system but does not include alcohol, tobacco or vaporisers.
- “Restricted Area”** shown outlined on the map attached (see figures 1 &2 in appendix)

PROHIBITIONS

THIS ORDER PROHIBITS the following things being done in any public space in the restricted area AND REQUIRES specified things to be done by persons carrying on specified activities in the Restricted Area.

(1) Within the area designated by the Public Space Protection Order it is prohibited for people to engage in activities that are likely to cause nuisance, annoyance, harassment, alarm or distress. Including, but not limited to: verbal abuse and / or intimidating behaviour; damage or destruction of property (including graffiti); littering; spitting in a public place; drug or alcohol related activity (including being under the influence of controlled drugs and/or other psychoactive substances and / or alcohol while in a public place); threatening or using violence.

- Groups
 - a. A person is prohibited from congregating in a group of three or more people within the Restricted Area after an Authorised Person has requested that the group disperse.
 - b. An Authorised Person may request that a group within the Restricted Area disperse where he reasonably suspects any person in that group to be causing or likely to cause nuisance, alarm, harassment or distress to any other person.
- Verbal abuse
 - a. A person is prohibited from being verbally abusive to any other person within the Restricted Area.
- Violence
 - a. A person is prohibited from using or threatening to use violence against any person or property within the Restricted Area.

- Alcohol
 - a. A person is prohibited from having in his/her possession open and/or unopened cans, bottles, or other sealed and unsealed containers of alcoholic beverages (even if empty) in the Restricted Area.
 - b. A person is required to surrender any alcohol in his possession when asked to by an Authorised Person in the Restricted Area.

- Intoxicating Substances
 - a. It is prohibited for any person to:
 - i. ingest, inhale, inject, smoke, possess or otherwise use Intoxicating Substances; or
 - ii. sell or supply Intoxicating Substances within the Restricted Area.
 - b. A person is required to surrender any Intoxicating Substance in his possession when asked to by an Authorised Person in the Restricted Area.
 - c. A person will not commit an offence under subsections (a)(i) or (b) where the substance is used for a valid and demonstrable medicinal use.

- Begging / Aggressive begging
 - a. It is prohibited for any person to
 - i. Beg in an open public space or aggressively beg within the Restricted Area after an Authorised Person has advised / stopped that individual from begging.
 - ii. If that individual continues begging and does not adhere under the subsection (a)(i) then that individual begging can be given one of the followings:

- Highways Act 1980 (section 137). If a person willfully obstructs the free passage along a highway they are guilty of an offence. This carries a level 2 fine (currently £500)
- Public Order Act 1986 (section 5). Causing harassment, alarm or distress. This carries a level 3 fine (£1000) or a penalty notice of £80
- A Vagrancy Act 1824 (section 3). Enables the arrest of an individual who is begging. It is a recordable offence and carries a level 3 fine (currently £1,000)

REQUIREMENTS

(1) It is prohibited to consume alcohol in a public place within the area designated by the Public Space Protection Order.

(1a) Any person aged 18 years or over who consumes alcohol in a public place within the area designated by the Public Space Protection Order will be required to attend a needs assessment with a police officer, PCSO and / or council officer and adhere to a number of conditions for a period not exceeding four months, including, but not limited to: an agreement not to consume alcohol in a public place within the area designated by the Public Space Protection Order and an agreement to participate in a restorative justice process if requested to do so by any individual affected by that person's behaviour.

(1b) Any person age under 18 years who consumes alcohol in a public place within the area designated by the Public Space Protection Order will be required to attend a needs assessment with the Youth Offending Service / Youth Crime Officer and adhere to a number of conditions for a period not exceeding four months, including, but not limited to: an agreement not to consume alcohol in a public place within the area designated by the Public Space Protection Order and an agreement to participate in a restorative justice process if requested to do so by any individual affected by that person's behaviour.

(1c) Any person who fails to attend an assessment when required to do so under section (1a) or section (1b) will be in breach of the Public Space Protection Order.

(1d) Any person who fails to adhere to any conditions when required to do so under section (1a) or section (1b) will be in breach of the Public Space Protection Order.

(2) It is prohibited to be in possession of an open container of alcohol in a public place within the area designated by the Public Space Protection Order.

(2a) It is prohibited to be in possession of an unopened container of alcohol in a public place within the area designated by the Public Space Protection Order in such circumstances that would lead a reasonable person to suspect that such a container is likely to be opened and consumed in a public place within the area designated by the Public Space Protection Order.

(2b) Any person in a public place within the area designated by the Public Space Protection Order may be required by a police officer, PCSO or council officer to surrender any container of alcohol to which section (2) and / or section (2a) apply.

(2c) Any person who refuses to comply with any request made under section (2b) will be in breach of the Public Space Protection Order.

(3) It is prohibited to congregate in a group of three or more people in a public place within the area designated by the Public Space Protection Order.

(3a) A police officer, PCSO or council officer may direct any person congregating in a group of three or more in a public place within the area designated by the Public Space Protection Order to leave the area designated by the Public Space Protection Order and not return for a specified period, up to 48 hours.

(3b) A direction given under section (3a) may be given verbally by a police officer, PCSO or council officer but any such direction must specify clearly the area to which it relates.

(3c) A police officer, PCSO or council officer may impose requirements as to the time by which the person must leave the area and the manner in which the person must do so (including the route).

(3d) Any person who fails to comply with a direction made under section (3a) and / or a requirement made under section (3c) will be in breach of the Public Space Protection Order.

THIS ORDER WILL BE IN FORCE FOR A PERIOD OF 36 MONTHS AND WILL EXPIRE ON THE
.....^{29th}.....DAY OF FEBRUARY 2019 AT O'CLOCK.

PENALTY ON BREACH (S67 OF THE ACT)

It is an offence for a person, without reasonable excuse, to:

- Do anything that the person is prohibited from doing by a PSPO (other than consume alcohol - see below); or
- Fail to comply with a requirement to which the person is subject under a PSPO.

A person does not commit an offence by failing to comply with a prohibition or requirement that the Council did not have power to include in the PSPO.

A person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Consuming alcohol in breach of a public space protection order is not an offence under s67 of the Act. However, under s63 of the Act it is an offence to fail to comply with a request by a constable or authorised person to cease drinking or surrender alcohol that a person is or has been or intends to drink in breach of

the prohibition in the PSPO. This is also liable on summary conviction to a fine not exceeding level 2 on the standard scale. If alcohol is confiscated, it can be disposed of by the person who confiscates it.

Depending on the behaviour in question, the enforcing officer could decide that a fixed penalty notice (FPN) would be the most appropriate sanction. The FPN can be issued by a police officer, or other authorised person. In making the decision to issue a FPN, the officer should consider that if issued, payment of the FPN would discharge any liability to conviction for the offence. However, where the FPN is not paid within the required timescale, court proceedings can be initiated (prosecution for the offence or failing to comply with the PSPO).

With reference to the above paragraph and in consultation with the BCC ASB Team, WMP Criminal Justice Team and Senior Leadership Team for Birmingham West & Central LPU the decision has been made to deal with the majority of breaches relating to this PSPO by way of a conditional disposal (see figure 3 for flow chart of enforcement).

The legislation covering PSPO's allows agencies to issue a fixed penalty notice (FPN) for persons breaching any prohibitive condition, however, evidence informs us that FPN's and fines administered at courts offer little in the way of justice for victims and nothing in the way of rehabilitation for offenders. The UK is quickly moving to a more sophisticated, evidence based approach in using conditional cautioning to provide offenders with a requirement to complete activities that will address identified criminogenic needs and divert them away from an ineffective criminal justice system for low level or first time offenders.

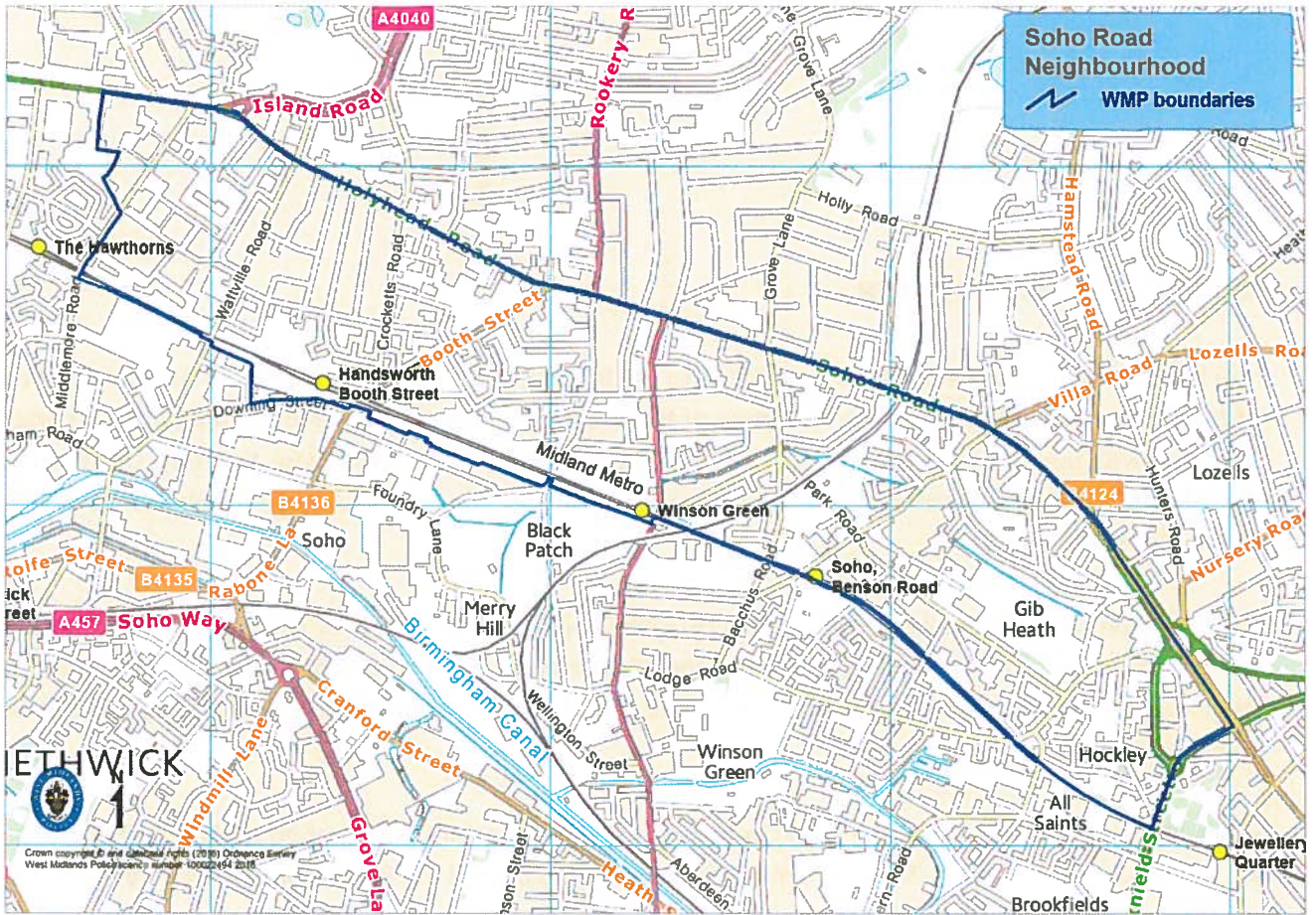
Although it is a criminal offence for a person to breach a prohibitive or positive condition of a PSPO, the prosecuting agency will be the council making that order. Therefore, should a breach of PSPO be made out there will be a need for WMP and BCC to work together to package any evidence and decide on the most appropriate outcome based on each individual breach. All breach cases will be managed and governed through the existing Safer Communities Group (SCG) monthly meeting.

WMP and BCC have agreed that in most instances a FPN **will not** be an appropriate disposal for breaches of this PSPO. Handsworth and the affected PSPO area is a particularly diverse area of Birmingham with many communities suffering disproportionately compared with other areas in respect of social deprivation. Given the evidence from police data and community consultation many of the issues present may be driven by alcohol misuse, use of controlled drugs, mental health and the absence of employment or education. It is unlikely that the targeted use of FPN's will provide the desired deterrent effect within this area.

Should a person breach one of the listed prohibitive conditions they will be required to attend an assessment (as described above). Should the person refuse to attend this assessment, agree to attend and subsequently fail to attend or following assessment fail to engage as directed or fail to complete agreed conditions this will be considered as a breach of PSPO and their case returned to SCG for a decision to summons to court. If a person is summonsed to court to appear for an offence of breaching a condition (prohibitive or positive) of a PSPO they are liable, on conviction to a fine not exceeding level 3 on the scale (£1000).

APPENDIX

Figure 1: The map below shows the SOHO ROAD Neighbourhood boundary



N.B. Those in breach of any of the conditions of this PSPO may also be dealt with by way of a warning or issues with a fixed penalty notice should this be deemed appropriate in the circumstances.

RIGHT TO APPEAL THIS ORDER

You have the right of appeal against this Notice to the Birmingham High Court as appropriate within a period of 6 weeks beginning with the date of service of the order by an interested person. 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 a PSPO 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 PSPO pending the verdict in part or in totality. The High Court has the ability to uphold the PSPO, quash it, or vary it.



SIGNED

DATED

29/2/2016.

Director, Housing
Birmingham City Council.



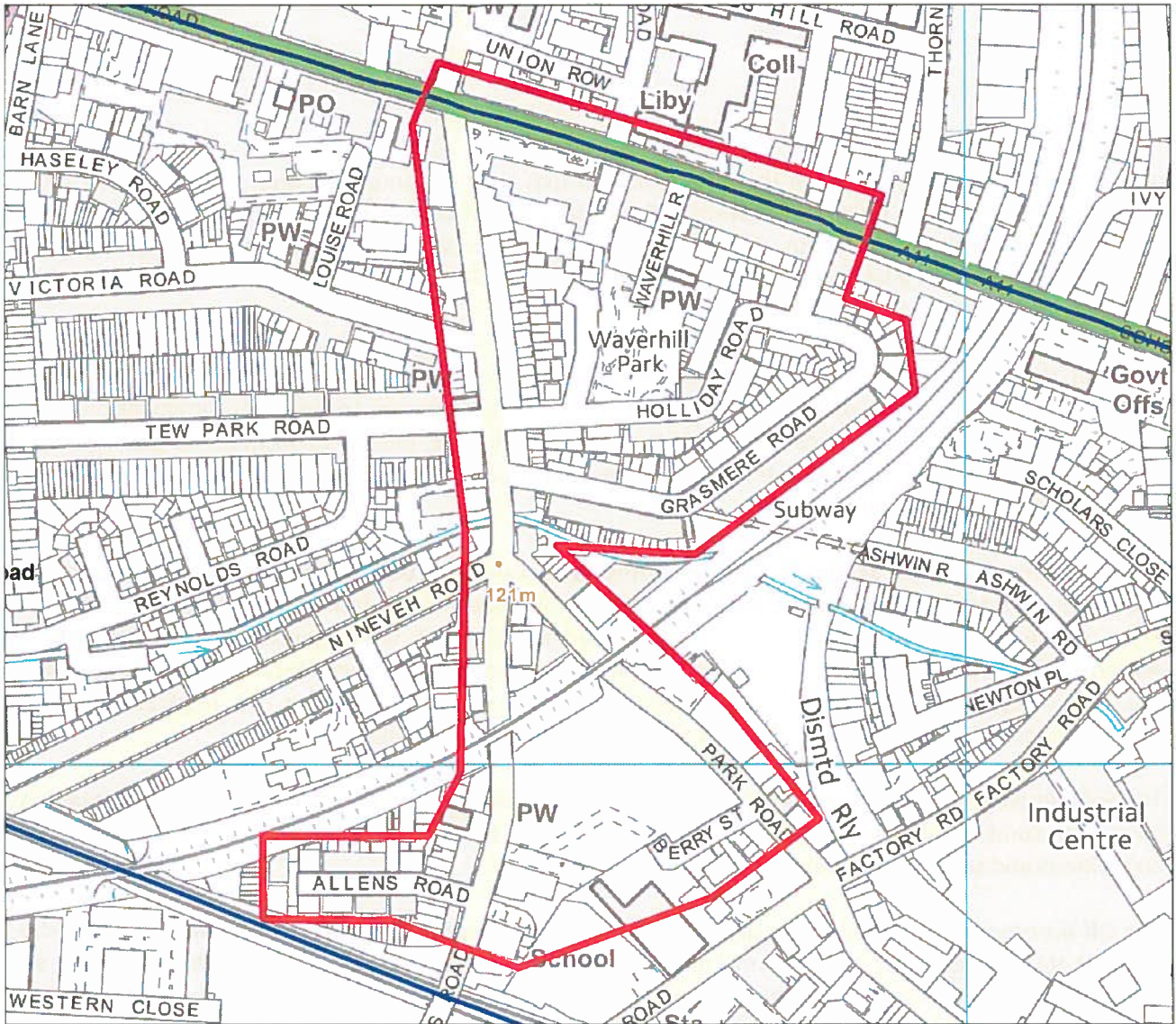
SIGNED

DATED

29/02/16

ANDY BEARD
POLICE SUPERINTENDENT 3172
WEST MIDLANDS POLICE

Figure 2: PSPO area (enlarged)



Affected Roads

Soho Road, Waverhill Road / Park, Bacchus Road / Park, Nineveh Road, Park Road, Allens Road, Grasmere Road, Holiday Road, Victoria Road, Tew Park Road, Marrowfat lane.

Summary

The Police have had reports from the local residents that they are and have been suffering ASB from the local drinkers within the vicinity of Waverhill Road Park / Bacchus Road Park and surrounding areas. These individuals consume alcohol, shout, sing, urinate and fight amongst themselves and have been causing a nuisance and have had a lasting detrimental effect on the quality of life of those in the locality.

During the summer and long days this sometimes continues till early hours of the morning which results in some of the local residents having sleepless nights. Local Neighbourhood teams have been carrying out regular high visibility foot patrols in the mentioned areas. If any persons are seen consuming alcohol in the mentioned area which also comes under the alcohol restricted zone, their alcohol container gets confiscated and then they are requested to leave the park. Some individuals are issued with fixed penalty notices for being drunk and disorderly in a public space.

Officers have also issued **Section 27 Violent Crime Reduction Act 2006, Section 30** and have also handed out dispersal orders under **Section 35 Dispersal Power – Anti Social Behaviour and Policing Act 2014**.

The Soho Road Neighbourhood have done joint partnership work with agencies such as **Sifa, SMART, Aquarius** along with a Polish interpreter to provide help and support to these local drinkers. Appointments are usually booked for them to attend a one to one session for further support. The feedback from these partner agencies is these individuals do not turn up to their appointments.

The Soho Road Neighbourhood Team have carried out ASB surveys along **Holliday Road, Marrowfat lane**. We have had some feedback from the local residents who have been affected. Some have remained anonymous and some have provided statements.

The Off licences in the locality have been spoken to and have been requested to support the local Neighbourhood Team in this matter. They have been informed it was known to the Police that some local drinkers were buying their alcohol from the off licences whilst under the influence of alcohol. A second warning letter was issued to all the off licences advising them and reminding them of their responsibilities and again advised not to serve alcohol to these individuals who were intoxicated and who are under the influence of alcohol.

Figure 3: Flowchart of enforcement plan

