

AGENDA ITEM No. 8

CABINET

HEAD OF ENVIRONMENTAL HEALTH AND HOUSING

7TH FEBRUARY 2017

REPORT NO. EHH1706

KEY DECISION: NO

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014 – DRAFT PUBLIC SPACES PROTECTION ORDERS

SUMMARY:

The Anti-Social Behaviour, Crime and Policing Act 2014 (the Act) received Royal Assent on 13 March 2014. An overview of the Act was provided to Cabinet on the 4 November 2014 (report number EH1417).

Part 4 of the Act introduced a number of new powers to deal with community protection and makes provision for both Community Protection Notices and Public Spaces Protection Orders (PSPOs).

PSPOs replace a number of existing orders including Designated Public Place Orders (DPPOs), Gating Orders and Dog Control Orders and are intended to streamline arrangements for dealing with a variety of types of anti-social behaviour.

The Act provides transitional arrangements for current orders to remain in place for three years following the commencement of the Act. These transitional arrangements end on the 19th October 2017 and we are therefore looking to introduce PSPOs to control a range of anti-social behaviour we are currently experiencing in our town centres.

There are also provisions in the Act in relation to existing DPPOs, which are still in force and were made before October 2014 to convert to PSPOs. To avoid duplication of controls, we are recommending that these DPPOs be discharged when they convert to PSPOs in October. A separate process would apply at that time.

The Act provides guidance on the process for introducing PSPOs. As part of this there is a statutory requirement to consult formally on draft PSPOs. This report seeks approval to commence consultation on draft PSPOs for both Farnborough and Aldershot town centres.

1. BACKGROUND

- 1.1. The Anti-Social Behaviour, Crime and Policing Act 2014 (the Act) introduced simpler, more effective powers to tackle anti-social behaviour that provides better protection for victims and communities.
- 1.2. This includes the introduction of Public Spaces Protection Orders (PSPOs) to control individuals or groups committing anti-social behaviour in a public space.
- 1.3. PSPOs replace existing Orders, including DPPOs, made under the Criminal Justice and Police Act 2001. Within Rushmoor, we currently have two DPPOs as follows:
 - Alcohol Consumption in Designated Public Places (Princes Gardens and Municipal Gardens, Aldershot) Order 2005
 - Alcohol Consumption in Designated Public Places (Various Places in Aldershot and Farnborough) Order 2006
- 1.4. Under saving provisions included in the Act, the DPPOs will convert to PSPOs in October 2017. We are therefore proposing to discharge these later in the year when they convert to PSPOs. The proposed PSPOs, one for Farnborough and the second for Aldershot town centres, include restrictions to control a wider range of anti-social behaviour and are in response to the problems we are currently experiencing. Although there will be a period when both controls remain in place, it is anticipated that this will be addressed in the future.
- 1.5. Whilst the proposed draft PSPOs do not exactly replicate the areas covered by the existing DPPOs, it is worth noting that the DPPOs were originally put in place to control young people gathering and drinking, which led to anti-social behaviour. This is no longer considered an issue and current problems affecting Rushmoor are concentrated in the areas covered by the draft PSPOs.
- 1.6. If at any time in the future this changes, we will be able to either amend existing orders to include additional restrictions, or introduce new orders in areas where problems occur.
- 1.7. There are no other Orders in place affected by these changes.
- 1.8. Councils can issue PSPOs after consultation with the police, Police and Crime Commissioner and other relevant groups.
- 1.9. More than one restriction can be added to the same PSPO, meaning that a single PSPO can deal with a wider range of behaviours than the orders it replaces.

1.10. The controls included and coverage of the draft PSPOs reflects the current problems in our town centres. Once introduced, a PSPO can last for up to three years.

2. PSPOs

2.1 Government guidance on the procedures to be followed, before a council can make a PSPO is being followed.

2.2 This includes ensuring that the behaviour being restricted passes 'the test' as outlined below:

A PSPO can be made by the council if they are satisfied on reasonable grounds that the activities carried out or likely to be carried out, in a public space:

- have had, or are likely to have, a detrimental effect on the quality of life of those in the locality
- is, or is likely to be persistent or continuing in nature
- is, or is likely to be, unreasonable: and
- justifies the restrictions imposed.

2.3 We have worked closely with the police to ensure that the controls proposed and the areas covered are necessary and proportionate.

2.4 The restrictions proposed cover:

- Drinking in a Public Place
- Use of Psychoactive Substances in a Public Place
- Urinating and Defecating in a Public Place
- Loitering in a Public Place
- Begging in a Public Place
- Sleeping in a Public Place

Public Place under section 74(1) of the Act means any place to which the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.

2.5 The draft PSPOs for both Aldershot and Farnborough are attached and we welcome comments on these.

2.6 Before making a PSPO, we must consult on our draft Orders with both the local Police and the Police and Crime Commissioner. Details can however be agreed at a local level. In addition, it is recommended that we consult the owners or occupiers of land included within the PSPOs, this includes Hampshire County Council as the Highways Authority.

2.7 We are therefore seeking Member approval to commence formal consultation.

2.8 We are also proposing to consult with the following as appropriate:

- Borough Services
- Ward Councillors for those wards covered by the draft PSPOs
- Pub Watch/Shop Watch
- The MOD
- Shopping Centres
- Inclusion
- The Aldershot Regeneration Group
- Farnborough Society
- Aldershot Civic Society

The list of consultees will vary for the two draft PSPOs.

2.9 There is a requirement to publicise the draft PSPOs in accordance with regulations published by the Secretary of State. There is no duty to advertise in local newspapers. We are therefore planning to publicise the draft PSPOs through our website.

2.10 Once agreed, the consultation will run for four weeks and the results of the consultation will be reported to Cabinet on 2nd or 30th May 2017 when it is likely that we will be seeking Member approval for the final PSPOs to come into force on a date to be agreed. Although we are hoping to make the earlier date this will be dependent on the level of response we receive.

2.11 At this stage, there will be a requirement to publish the agreed PSPOs on our website.

2.12 We will also be required to erect on or adjacent to the land in relation to which the PSPOs have been made such notice(or notices) sufficient to draw the attention of any member of the public using the land to:

- The fact that the PSPO has been made and
- The effect of the Order

2.13 Any challenge to the PSPO must be made in the High Court, by an interested person, within six weeks of it being made. If a challenge is made, the High Court can suspend the PSPO pending the verdict in part, or in totality. The High Court has the ability to uphold the PSPO, quash or vary it. This does not preclude others (such as national bodies) from seeking Judicial Review.

3. EXISTING DPPOs

3.1 These can be found at appendices 3 and 4; the controls offered by these are as follows:

Any person who consumes alcohol in a designated public place after being warned by a constable not to do so shall be guilty of an offence and shall be

liable on summary conviction to a fine not exceeding level 2 on the standard scale.

- 3.2 The proposed PSPOs go further by allowing the seizure of intoxicating liquor by authorised officers.
- 3.3 We are recommending that the DPPOs be discharged as outlined above. This would occur following the conversion of the DPPOs to PSPOs. This should help to avoid confusion that could arise, should they remain in place. It should be noted that the current DPPOs cover North Camp and Farnborough Park; Mayfield/Totland, Farnborough; Southwood Village Centre, Farnborough; Southwood Playing Fields, Farnborough; Cove Green, Farnborough; Pinewood Park and Irvine Drive, Farnborough. It is not proposed to include any of these areas in a new PSPO. It will be necessary at the appropriate time to consult on the discharge of the converted PSPOs.

4. THE FUTURE

- 4.1 The maximum duration of a PSPO is three years. It is recommended that the final PSPOs, if agreed, would be in place for this period subject to any challenge.
- 4.2 There is provision that allows councils to extend PSPOs by up to a further three years if they consider that it is necessary to prevent the original behaviour from occurring or recurring.
- 4.3 If new issues arise within the area where a PSPO is in force we may vary the terms of the Order at any time providing that we follow the procedures as set out in statutory guidance.
- 4.4 It is an offence for a person, without reasonable excuse, to:
- Do anything that the person is prohibited from doing by a PSPO or
 - Fail to comply with a requirement to which the person is subject under a PSPO
- 4.5 Breaches may result in the service of a Fixed Penalty Notice (FPN); failure to pay the FPN may result in prosecution.
- 4.6 It is proposed that officers authorised to enforce these restrictions will include both police and council officers, and it is likely that we will be required to work closely with the police to help to ensure appropriate controls.
- 4.7 Further details of the above will be provided when we update Cabinet on the outcome of the consultation process if this is agreed.

5. IMPLICATIONS

Risks

- 5.1 There are a number of risks associated with the proposal to introduce PSPOs, including the risk of Challenge through the High Court or Judicial Review.

Legal Implications

- 5.2 PSPOs are subject to challenge through the High Court or Judicial Review as outlined above. It is important therefore that we get it right as any challenge could have costly implications for the Council. This would be in both resource and financial terms.
- 5.3 It should be noted that the powers restricting a range of activity would only be used where the evidence is present to support their use.
- 5.4 In addition, the use of FPNs may result in an increased burden on our Legal services where any FPN remains unpaid. Those rough sleeping or begging are unlikely to be able to pay fines.
- 5.5 Consideration should also be given to the need to use other powers to help in the control of individuals who refuse to comply with the restrictions this could include the need to apply for Civil Injunctions, in some circumstances. This would also require resourcing. The Council will also need to continue with the various measures it has in place to support and assist the most vulnerable in society who find themselves on the street.

Financial and Resource Implications

- 5.6 Any costs associated with this work will be identified and set aside, recognising that this is a key priority for the council. This includes the costs of providing suitable signage.

Equalities Impact Implications

- 5.7 Careful consideration must be given to ensure that vulnerable groups and individuals are not targeted unfairly because of the introduction of PSPOs.

6. CONCLUSIONS AND RECOMMENDATIONS

- 6.1 As part of the transitional arrangements in the Act, our current DPPOs will convert to PSPOs in October 2017. Whilst we do not appear to be experiencing the same problems that led to the introduction of the DPPOs, it is important that we respond to current and ongoing problems in our town centres. It is proposed that these overlapping powers be discharged at a later date.

- 6.2 There are clear benefits in introducing PSPOs to assist in controlling the range of anti-social behaviour we are experiencing in Aldershot and Farnborough.
- 6.3 We are therefore seeking Member comments on the draft PSPOs, together with permission to start the formal consultation process, as outlined in this report.
- 6.4 If approved the results of the consultation will be reported to Cabinet on 2nd or 30th May 2017.

QAMER YASIN
HEAD OF ENVIRONMENTAL HEALTH AND HOUSING

PETER AMIES
HEAD OF COMMUNITY AND ENVIRONMENTAL SERVICES

Appendices:

Appendix 1: Draft PSPO- Aldershot

Appendix 2: Draft PSPO – Farnborough

Appendix 3: Alcohol Consumption in Designated Public Places (Princes Gardens and Municipal Gardens Aldershot) Order 2005

Appendix 4: Alcohol Consumption in Designated Public Places (Various Places in Aldershot and Farnborough) Order 2006

BACKGROUND DOCUMENTS:

Anti-Social Behaviour, Crime and Policing Act 2014- Cabinet report EHH 1417

Anti-Social Behaviour, Crime and Policing Act 2014

Anti-Social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers. Statutory Guidance for frontline professionals (July 2014)

Anti-Social Behaviour, Crime and Policing Act 2014(Publication of PSPOs Regulations 2014)

CONTACT DETAILS:

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ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

SECTION 59

RUSHMOOR BOROUGH COUNCIL

ALDERSHOT PUBLIC SPACES PROTECTION ORDER

Rushmoor Borough Council (“the Council”) in exercise of its powers under section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 (“the Act”) hereby makes the following order:-

1. The Order **will come into force on XXX** and shall have effect for a period of 3 years until xxx, unless extended by further Orders under the Council’s statutory powers.
2. The Order relates to all public places in that part of Aldershot shown edged red on the attached plan (“the Restricted Area”).
3. The effect of the Order is to restrict persons from engaging at all times in particular behaviour that has a detrimental effect on the quality of life of those in the locality.
4. The Council is satisfied that the conditions set out in Section 59 of the Act namely that certain activities carried on within the restricted area have had a detrimental effect on the quality of life of those in the locality **or** will have such an effect and that the effect or likely effect of those activities will be of a persistent or continuing nature such as to make those activities unreasonable and justifies the restrictions imposed by this Order.
5. Any challenge to this Order must be made in the High Court by an interested person within six weeks of it being made.

Definitions

‘public place’ under S74(1) of the Act means any place to which the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.

‘interested person’ means an individual who lives in the restricted area or who regularly works in or visits that area.

‘Authorised Persons’ includes Police Constables, Police Community Support Officers or other persons authorised by the Council.

‘psychoactive substance’ any substance which is capable of producing a psychoactive effect in a person if by stimulating or depressing the person’s central nervous system it affects the person’s mental functioning or emotional state and is not included in the list of exempted substances.

‘exempted substances’ are those listed in schedule 1 of the Psychoactive Substances Act 2016 or its successor. (controlled drugs, medicinal products, alcohol, nicotine and tobacco products, caffeine/caffeine products and food)

‘loitering’ to remain in any one place with no apparent purpose.

SCHEDULE

Prohibited Activities

1. Drinking in a public place

- Any person who continues drinking intoxicating liquor when asked to stop by an authorised person

OR

- Fails to surrender any intoxicating liquor in their possession when asked to do so by an authorised person.

2. Use of Psychoactive Substances in a public place

- Any person who continues to ingest, inhale, inject, smoke or otherwise use a psychoactive substance when asked to stop by an authorised person

OR

- Fails to surrender any psychoactive substance in their possession, when asked to do so by an authorised person.

3. Urinating and defecating in a public place

- Any person who defecates or urinates except within toilets provided for that purpose.

4. Loitering in a public place

- Any person who fails to leave the area when asked to do so by an authorised person

OR

- Returns to the area within 24 hours of being asked to leave by an authorised person.

5. Begging in a public place

- Any person who loiters for the purpose of begging or asking members of the public for money.

6. Sleeping in a public place

- All persons are prohibited from sleeping in any public space, which is open to the air.

PENALTY

Any person who, without reasonable excuse, fails to comply with the requirements of paragraph 1 of Schedule 1 commits an offence under S63 of the Act and is liable on summary conviction to a **fine not exceeding level 2 (£500)** on the standard scale or a fixed penalty notice of £100.

Any person who, without reasonable excuse, fails to comply with the requirements of paragraphs 2 to 5 of Schedule 1 commits an offence under S67 of the Act and shall be liable on summary conviction to a **fine not exceeding level 3 (£1000)** on the standard scale or a fixed penalty notice of £100.



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Public Spaces Protection Order: Aldershot

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

SECTION 59

RUSHMOOR BOROUGH COUNCIL

FARNBOROUGH PUBLIC SPACES PROTECTION ORDER

Rushmoor Borough Council (“the Council”) in exercise of its powers under section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 (“the Act”) hereby makes the following order:-

1. The Order **will come into force on XXX** and shall have effect for a period of 3 years until xxx, unless extended by further Orders under the Council’s statutory powers.
2. The Order relates to all public places in that part of Farnborough shown edged red on the attached plan (“the Restricted Area”).
3. The effect of the Order is to restrict persons from engaging at all times in particular behaviour that has a detrimental effect on the quality of life of those in the locality.
4. The Council is satisfied that the conditions set out in Section 59 of the Act namely that certain activities carried on within the restricted area have had a detrimental effect on the quality of life of those in the locality **or** will have such an effect and that the effect or likely effect of those activities will be of a persistent or continuing nature such as to make those activities unreasonable and justifies the restrictions imposed by this Order.
5. Any challenge to this Order must be made in the High Court by an interested person within six weeks of it being made.

Definitions

‘public place’ under S74(1) of the Act means any place to which the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.

‘interested person’ means an individual who lives in the restricted area or who regularly works in or visits that area.

‘Authorised Persons’ includes Police Constables , Police Community Support Officers or other persons authorised by the Council.

‘psychoactive substance’ any substance which is capable of producing a psychoactive effect in a person if by stimulating or depressing the person’s central nervous system it affects the person’s mental functioning or emotional state and is not included in the list of exempted substances.

‘exempted substances’ are those listed in schedule 1 of the Psychoactive Substances Act 2016 or its successor (controlled drugs, medicinal products, alcohol, nicotine and tobacco products, caffeine/caffeine products and food).

‘loitering’ to remain in any one place with no apparent purpose.

SCHEDULE

Prohibited Activities

1. Drinking in a public place

- Any person who continues drinking intoxicating liquor when asked to stop by an authorised person

OR

- Fails to surrender any intoxicating liquor in their possession when asked to do so by an authorised person.

2. Use of Psychoactive Substances in a public place

- Any person who continues to ingest, inhale, inject, smoke or otherwise use a psychoactive substance when asked to stop by an authorised person

OR

- Fails to surrender any psychoactive substance in their possession, when asked to do so by an authorised person.

3. Urinating and defecating in a public place

- Any person who defecates or urinates except within toilets provided for that purpose.

4. Loitering in a public place

- Any person who fails to leave the area when asked to do so by an authorised person

OR

- Returns to the area within 24 hours of being asked to leave by an authorised person.

5. Begging in a public place

- Any person who loiters for the purpose of begging or asking members of the public for money.

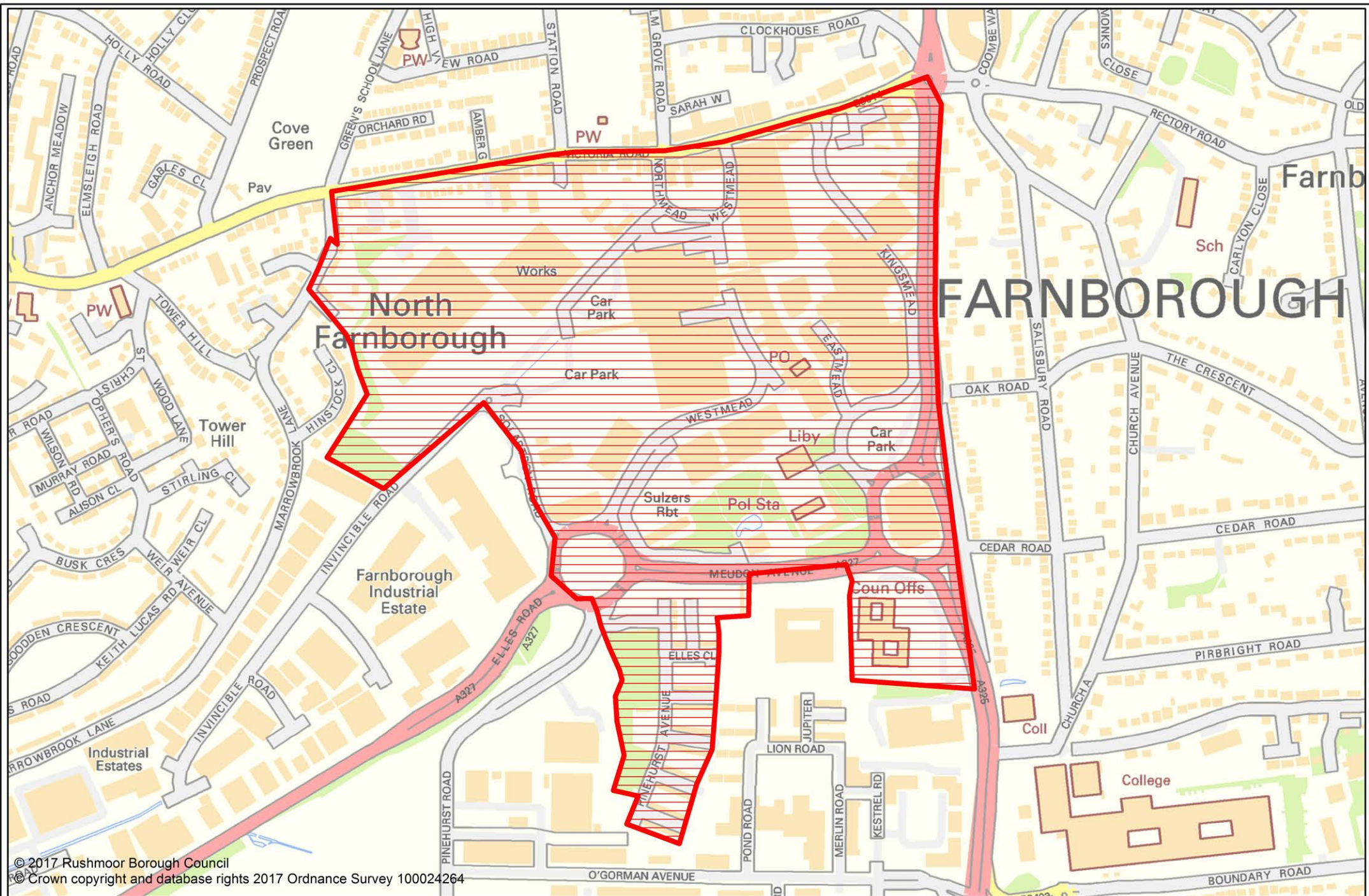
6. Sleeping in a public place

- All persons are prohibited from sleeping in any public space, which is open to the air.

PENALTY

Any person who, without reasonable excuse, fails to comply with the requirements of paragraph 1 of Schedule 1 commits an offence under S63 of the Act and is liable on summary conviction to a **fine not exceeding level 2 (£500)** on the standard scale or a fixed penalty notice of £100.

Any person who, without reasonable excuse, fails to comply with the requirements of paragraphs 2 to 5 of Schedule 1 commits an offence under S67 of the Act and shall be liable on summary conviction to a **fine not exceeding level 3 (£1000)** on the standard scale or a fixed penalty notice of £100.



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Public Spaces Protection Order: Farnborough

**RUSHMOOR BOROUGH COUNCIL
CRIMINAL JUSTICE AND POLICE ACT 2001**

**ALCOHOL CONSUMPTION IN DESIGNATED PUBLIC PLACES (PRINCES
GARDENS AND MUNICIPAL GARDENS ALDERSHOT) ORDER 2005**

Rushmoor Borough Council (in this Order called "the Council") hereby make the following Order under Section 13(2) of the said Act:

1. The public places described in the Schedule below, being land within the area of the Council which is land to which the Criminal Justice and Police Act 2001 applies, is hereby designated for the purposes of that Act.
2. This Order may be cited as the Alcohol Consumption in Designated Public Places (Municipal Gardens and Princes Gardens Aldershot) Order 2005 and shall come into force on 24 November 2005.
3. Any person who consumes alcohol in a designated public place after being warned by a constable not to do so shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.
4. The byelaws made by Rushmoor Borough Council on 8 July 1991 and confirmed by the Secretary of State on 28 November 1991 relating to the consumption of intoxicating liquor in Princes Gardens and Municipal Gardens Aldershot are hereby revoked.

Dated:

The Common Seal of Rushmoor Borough Council was hereunto affixed in the presence of:

Leader of the Council

Solicitor to the Council

SCHEDULE

Designated public places

Municipal Gardens, Aldershot

Princes Gardens, Aldershot

**RUSHMOOR BOROUGH COUNCIL
CRIMINAL JUSTICE AND POLICE ACT 2001**

**ALCOHOL CONSUMPTION IN DESIGNATED PUBLIC PLACES
(VARIOUS PLACES IN ALDERSHOT AND FARNBOROUGH) ORDER 2006**

Rushmoor Borough Council (in this Order called "the Council") hereby makes the following Order under Section 13(2) of the said Act:

1. The public places described in the Schedule below, being land within the area of the Council which is land to which the Criminal Justice and Police Act 2001 applies, are hereby designated for the purposes of that Act.
2. This Order may be cited as the Alcohol Consumption in Designated Public Places (Various Places in Aldershot and Farnborough) Order 2006 and shall come into force on 6 November 2006
3. Any person who consumes alcohol in a designated public place after being warned by a constable not to do so shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.
4. The byelaws made by Rushmoor Borough Council relating to the consumption of intoxicating liquor in these places are hereby revoked.

Dated: 6 October 2006

The Common Seal of Rushmoor Borough Council was hereunto affixed in the presence of:

Leader of the Council

Solicitor to the Council

**SCHEDULE
Designated public places**

Town Centre Aldershot, Manor Park Aldershot, Queensmead Farnborough, North Camp and Farnborough Park Farnborough, Mayfield /Totland Farnborough, Southwood Village Centre Farnborough, Southwood Playing Fields Farnborough, Cove Green Farnborough, Pinewood Park and Irvine Drive Farnborough