

# Report

Report of	Meeting	Date	Item No
Director of Legal Services and Head of Corporate Policy	General Purposes Committee	16/11/2005	

## **ALCOHOL CONSUMPTION IN DESIGNATED PUBLIC PLACES CRIMINAL JUSTICE AND POLICE ACT 2001**

### **PURPOSE OF REPORT**

1. To consider requests to make a designation order under section 13 of the Criminal Justice and Police Act 2001 in relation to specified areas in Astley Village and Whittle-le Woods.

### **CORPORATE PRIORITIES**

2. The report is relevant to further the following Key corporate priorities of the Council, ie making a safer Chorley by addressing nuisance, annoyance and /or disorder associated with the consumption of alcohol in a public place.
3. The issue raised and recommendations made in this report involve risk considerations in the following categories:

Strategy	Information	
Reputation	Regulatory/Legal	4
Financial	Operational	
People	Other	

4. A decision whether or not to make a Designation Order may be the subject of a challenge by way of Judicial Review.

### **REQUESTS FOR DESIGNATED AREAS**

5. Two requests have been received for the Council to make designation orders under the 2001 Act.

These are in relation to an area in Astley Village and also an area in Whittle le Woods. Copies of the requests are attached to this report in Appendix 1.

### **GENERAL EFFECT OF THE 2001 ACT**

6. From 1 September 2001 sections 12- 16 of the Criminal Justice and Police Act 2001 provide councils with an adoptive power to restrict the anti- social consumption of alcohol

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in designated public places and also provide the Police with the power to enforce such restrictions.

7. Section 12 of the Act provides that if a Police Officer reasonably believes that a person is, or has been consuming alcohol in a designated public place or intends to consume alcohol in such a place, he may require that person not to consume anything which is, or which he believes to be alcohol and to surrender any alcohol or any alcohol containers in that person's possession. The Licensing Act 2003 has amended the 2001 Act, the effect of which is that sealed containers can now be confiscated.
8. It is therefore **not** an offence to drink alcohol in a designated public place but failure to comply with a police officer's requirements in respect of public drinking or surrender of alcohol, without reasonable excuse, is an arrestable offence.
9. Councils may, with the agreement of the Police, allow public events like festivals to proceed without any restrictions on alcohol. Since the powers are only discretionary, these can be reviewed and exercised if local circumstances demand.

## **CONFISCATION OF ALCOHOL**

10. It is important for members to be aware that there are existing powers available to Lancashire Police to address the issue of under age drinking. The Confiscation of Alcohol (Young Persons) Act 1997 provides the police with the power of confiscation where young people are drinking on the street. This power is designed to allow the Police to deal with situations where drinking causes a nuisance to others or leads to further bad behaviour. It does not create an offence for a young person to have an alcoholic drink in a public place and the police are not under a duty to confiscate alcohol from under age drinkers.
11. Section 1 of the 1997 Act allows a police officer to confiscate alcohol where he reasonably suspects that a person under the age of 18 is in possession of it while in a public place, (other than licensed premises) or in a private place to which he has unlawfully gained access. A police officer also has the power to confiscate alcohol from a person aged 18 or over who is in such a place if the police officer reasonably believes that either he is likely to pass the alcohol to someone under 18 for consumption in such a place or that alcohol has recently been consumed in such a place by someone in his company who is under the age of 18. This allows a police officer to take action even though what he believes to be alcohol is contained in an innocuous container. A police officer may dispose of anything surrendered to him in such manner as he considers appropriate.
12. A police officer may also require the person suspected to be in possession of the alcohol to state his name and address. Where a person refuses either to surrender the alcoholic drink or to state his name and address when required to do so, he may be arrested by a police officer without warrant. Unless there is a reasonable excuse for the refusal, it constitutes an offence punishable by a fine of currently £500.
13. The Licensing Act 2003 removes the exemption in the 1997 Act relating to sealed containers. Therefore a police officer can now confiscate alcohol in sealed containers. However, there is now a new provision whereby a police officer may not require a person to surrender a sealed container unless that police officer reasonably believes that the person is, or has been consuming or intends to consume alcohol.

## **DESIGNATION ORDER**

14. Section 13 of the Act provides councils with the power to make a designation order. Areas may only be so designated where the Council is satisfied that nuisance or annoyance to the public, (or a section of the public) or disorder have been associated with public

drinking in that place. Accordingly, a universal drinking ban on drinking in public places would not be appropriate. Certain types of premises are not designated public place i.e. licensed premises.

15. It is for the Council to be satisfied that public nuisance, annoyance or disorder has been associated with public drinking in the area concerned and that a designation order is appropriate. The Regulations do not place a requirement on the Council to conduct a formal assessment over a given period, of the nature of the problem, as was the case with the byelaw procedure. Whether or not a designation order is appropriate is a matter for local judgement based on the circumstances applying.
16. The guidance states that a Council will have to satisfy itself that these powers are not being used disproportionately or in an arbitrary fashion. There should be evidence of a problem, with an assessment as to the likelihood that the problem will continue unless these powers are adopted. However, it is possible that a single serious incident may be sufficient to justify adoption of powers.
17. As the creation of designated areas may well lead to the anti social drinking or nuisance being displaced into areas that have not been designated for this purpose, the Council should also make an assessment, prior to designating an area, of all those areas that it reasonably believes that nuisance or disorder will be displaced, ensuring that all those affected are appropriately consulted.

## **FORMAL CONSULTATION**

18. Once the Council is satisfied with the assessment and evidence gathered on the proposed designation areas it is required to conduct a formal consultation process. This involves consulting with Lancashire Police, the parish council for the area proposed, licensee of any licensed premises who may be affected and the owner/occupier of any land proposed to be identified
19. The Council before making an Order must publish in a newspaper circulating in the area a notice identifying the proposed area, the effect of the designation order and invite representations. At least 28 days has to lapse between the publication of the Notice and the making of the Order. If any representations are received the Council is under a duty to consider those representations. One a designation order is made then notice of this must also be published.

## **ENFORCEMENT**

20. The responsibility for enforcing any designated areas rests with Lancashire Police and they will have to be in agreement with the designated areas as they will have to have the necessary resources to enforce any Order.

## **SIGNAGE**

21. The Regulations also require signs to be erected to ensure that the public are aware that restrictions on public drinking may apply. Whilst there are no prescribed signs, any signs erected should be clear, unambiguous, not conflict or obscure traffic signs. Signs must be placed at approaches to designated area and repeated within. Funding would therefore have to be found for the purchase, installation and maintenance of such signs. It is difficult to give an estimate for this cost as this will depend on the extent and nature of any area designated.

## **BACKGROUND EVIDENCE**

22. Information gathered by the Neighbourhood Warden scheme cannot be obtained any lower than ward level. This has caused difficulties in gathering background evidence.

Although many calls are received about trouble with youths, on attendance many of the 'youths' are over eighteen.

23. Information from Lancashire Police shows that 3 crimes occurring on Hallgate since April 2005 were alcohol related. There were 11 anti-social behaviour incidents out of 45, that were alcohol related. In the wider area of Astley village, there were 8 alcohol-related crimes. The feedback supports the information from the Neighbourhood Wardens that some incidents are reported as youths, but are in fact people over 18. If the order is introduced the issues around displacement would need to be considered. The recent dispersal notice caused problems within the residential areas of Astley Village. This factor would need to be considered when looking at the location of the order.
24. There are five incidents recorded from September by the CCTV camera specifically regarding alcohol, four mention youths.
25. There is no Information from the Neighbourhood Wardens around the area within Whittle and the problems being experienced there.
26. Information from Lancashire Police shows that since 1<sup>st</sup> April 2005 there were 4 crimes on Chorley Old Road, Whittle relating to alcohol. There were 36 anti-social behaviour incidents, of which 15 related directly to alcohol. Again there are issues with reporting, many of the 'youths' are actually over the age of 18. There are no figures available in connection to the canal. Displacement would definitely occur if the proposed sites where placed under an order as suggested. The area for consideration would need to cover a wider area.

#### **COMMENTS OF THE DIRECTOR OF FINANCE**

27. Financial implications include the cost of advertising any proposed and final designation order together with the purchase of the signage. The cost of the signage would depend on the extent of any area designated. There is no allocation in the budget for any such expenditure.

#### **COMMENTS OF THE HEAD OF HUMAN RESOURCES**

28. There are no resource implications associated with this report from an enforcement perspective. However, staff would be involved in the assessment exercise associated with seeking a designation order(s) and also the erection and maintenance of the signage which will be from existing resource.

#### **RECOMMENDED**

29. (1) That the report be noted  
(2) That an assessment be undertaken involving all relevant agencies in relation to the nuisance, annoyance or disorder to the public in the areas forming the subject of this report and a further report be submitted to this Committee after the assessment has been completed.

#### **REASONS FOR RECOMMENDATION**

30. The Council has to have evidence and have made an assessment on that evidence that existing problems of nuisance, annoyance or disorder are likely to continue unless a designation order is made. Therefore it is appropriate that officers prepare a detailed report after liaising with all relevant agencies.

## **ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

31. No alternative options considered because an assessment has to be carried out in order for it to be established whether it is appropriate means of addressing any existing problems in that area.

ROSEMARY A LYON  
DIRECTOR OF LEGAL SERVICES

<b>Background Papers</b>			
<b>Document</b>	<b>Date</b>	<b>File</b>	<b>Place of Inspection</b>
Letter from Councillor M Perks Letter from Whittle le Woods Parish Council	4/11/2005 & 16/09/2005	3059	Legal Services, The Coach House, Duxbury

<b>Report Author</b>	<b>Ext</b>	<b>Date</b>	<b>Doc ID</b>
C Hallwood	235809	9 November 2005	NEWREP