

*Part 1 – PUBLIC DOCUMENT	AGENDA ITEM NO. 11
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TITLE: CONSIDERATION OF AN APPLICATION FOR A DISPERSAL ORDER FROM HERTFORDSHIRE CONSTABULARY AS REGARDS SOMEWHERE

REPORT OF THE HEAD OF HOUSING AND PUBLIC PROTECTION

1. SUMMARY

- 1.1 This report seeks to establish the views of the Royston Area Committee on an application for a Dispersal Order under Part IV of the Anti-social Behaviour Act 2003 by Hertfordshire Constabulary as regards Somewhere.

2. FORWARD PLAN

- 2.1 This report does not contain a recommendation on a key decision and therefore has not been referred to in the Forward Plan.

3. BACKGROUND

- 3.1 Part IV (Sections 30-35) of the Anti-social Behaviour Act 2003 contains provisions relating to the designation of a Dispersal Order. Specifically, Section 30 gives the police power in designate an area so as to facilitate the dispersal of groups of two or more persons where their presence or behaviour has resulted, or is likely to result, in a member of the public being harassed, intimidated, alarmed or distressed.
- 3.2 Dispersal Orders have two main objectives: a) the co-ordinated management of local crime, disorder and anti-social behaviour, and b) the protection of young people. The latter is an often overlooked aspect of an Order; the removal of young persons from troubled neighbourhoods or locations is aimed at preventing them from being exposed to harmful influences such as the use of illegal drugs, underage consumption of alcohol, and participation in gang behaviour.
- 3.3 A Dispersal Order may last for up to 6 months without renewal by the Police. However, it can be renewed, modified or terminated at any time upon application.
- 3.4 The implementation of a Dispersal Order cannot proceed without the explicit consent of the pertinent local authority, i.e. North Hertfordshire District Council. Similarly, the Council must be *consulted* if an Order is to be withdrawn before its natural expiry date (NB: this provision does not extend to the police securing the local authority's consent).
- 3.5 A person does not commit an offence because a police officer (or Police Community Support Officer or Special Constable) has chosen to use the power to disperse, but failure to follow the officer's direction to leave a designated area is an offence. The latter is punishable with a fine, upon conviction, of up to £2500 (level 4 on the

standard scale) and/or imprisonment of up to 3 months. Failure to comply with a direction from a police officer is also an arrestable offence.

The 2003 Act also creates a power to remove, to their home, any young person under 16 who is out on the streets in a dispersal zone between 9pm and 6am and not accompanied by an adult; this power to remove has to be authorised separately by a Police Superintendent. Where this power is exercised by the Police this Council must be subsequently notified.

Beyond the specific sanctions provided within the Act, a Dispersal Order can be seen as giving effect to a community's expectations regarding the conduct of residents and visitors to the area. This may, in some way, help to foster a sense of local community identity, responsibility and civic pride.

- 3.6 The Act specifies the publicity arrangements associated with a Dispersal Order before it can come in to effect. Strictly speaking, this is a matter for the Police although this Council will, no doubt, wish to be involved in this process.
- 3.7 Dispersal Orders have received a degree of adverse national media coverage in the past due to the perception that they are only put in place to deal with *young people* or that they are applied rigorously to *any* group of two, or more, people. These are both misconceptions. It is clear from the Act that the application of these powers, whilst at the discretion of the police, are in no way deemed to prevent groups of people (irrespective of their age) acting within the law from gathering in an area, socialising and enjoying themselves.
- 3.8 A number of Dispersal Orders have been granted within the administrative boundaries of this Council in recent years. They have been, generally, considered to be effective with relatively little crime and disorder being geographically displaced as a consequence of their existence.

4. THE DISPERSAL ORDER APPLICATION

- 4.1 The evidence base for a Dispersal Order is attached to this report in Appendix A. The case submitted by Hertfordshire Constabulary has been reviewed by both the Author and the Community Safety Manager to ensure that it contains sufficient information to justify active consideration by Members.
- 4.2 A representative of Hertfordshire Constabulary will be present at the Committee to explain the evidence base and also to answer specific questions on the Dispersal Order application.
- 4.3 Appendix A also contains a map of the proposed boundaries of the Order.

5. LEGAL IMPLICATIONS

- 5.1 The powers available to the police in connection with Part IV of the Anti-social Behaviour Act 2003 supplement their existing provisions, and those available to local authorities, to deal with crime and disorder. Accordingly, Dispersal Orders should be seen as being complimentary to the existing regulatory landscape. By way of illustration, the following powers are available to Herts Police or this Council as regards local crime and disorder:

- The Confiscation of Alcohol (Young Persons) Act 1997, as amended, enables police officers to remove alcohol from persons suspected of being underage
- The Licensing Act 2003 creates an offence for licensed premises to sell alcohol to, or on behalf of, children
- The Violent Crime Reduction Act 2006 enables police officers to issue a direction to an individual requiring him/her to leave a locality for up to 48 hours if s/he is likely to cause, or contribute to, alcohol related crime or disorder
- The police have existing powers to issue on-the-spot penalties for persons being drunk on the highway or other public place by virtue of the Licensing Act 1872 and for exhibiting disorderly conduct whilst drunk in a public place (Criminal Justice Act 1967)
- Premises Licences can be reviewed by this Council if they do not meet one or more of the objectives contained within the Licensing Act 2003, such as the *prevention of public nuisance* or the *prevention of crime and disorder*

5.2 The Human Rights Act 1998 came into full force on October 2000 with the objective of ensuring that a set of basic human rights, which are listed in the Act, are respected and enforced in the United Kingdom. The Act applies to all public bodies within the United Kingdom, including central government, local authorities, the police, and bodies exercising public functions.

The Act gives effect to the European Convention on Human rights which recognises that not all rights are absolute and unconditional. Often, one person's rights will have to be balanced against another's. Therefore, to ensure effective application of human rights standards it may be necessary, in the interests of the community, to limit or qualify certain types of rights. The most pertinent human right associated with the declaration of a Dispersal Order is right to freedom of association and assembly (Article 11). Article 11 is a qualified right, that is to say that the state can infringe upon it so long as it has good reason to do so:

“There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of the rights and freedoms of others.”

(Human Rights Act 1998)

Accordingly, it is appropriate for this Council to consider the evidence submitted by Hertfordshire Constabulary, *et al*, and to determine whether the proposed potential infringement of Article 11 rights (that is likely to be occasioned by a Dispersal Order, if granted) is lawful, i.e. that it is necessary in terms of local crime management and the protection of public safety. The Anti-social Behaviour Act 2003 is fundamentally compatible with the Human Rights Act 1998 in that it provides a mechanism for qualified Article rights to be considered; the Council's consideration of this point should be independent from Hertfordshire Constabulary's deliberations as both bodies have their own duties associated with the Human Rights Act 1998.

5.3 As mentioned above, the Council has a key role in the Dispersal Order declaration process:

"An authorisation may not be given without the consent of the local authority or each local authority whose area includes the whole or part of the relevant locality."

(Section 31(2), Anti-social Behaviour Act 2003)

The consideration of a Dispersal Order application by the Council should reflect the obligations placed on it, as outlined above, but be done so in a timely fashion to allow the police an opportunity to instigate this crime control provision without undue delay. Section 31(2) of the Act, above, makes no reference as to the mechanism that local authorities could employ to fully consider Dispersal Order applications, and how they may be responded to in practice. However, the Association of Chief Police Officers (ACPO) has published relevant guidance on this point. It does not dwell on the role of local councils, but Section 2.2 ("Local Authority Involvement") does provide the following insight:

"Chief [Police] Officers are required to work with local authorities in their area to establish a point of contact and to identify a person in their police area who is empowered by the local authority for agreeing that authorisation. This person may differ between local authorities. It is suggested that each local authority take the matter before elected councillors and obtain their authority to delegate the power to consult and respond on behalf of the council to a certain officer and/or elected members by role, rather than name.

While the legislation neither requires nor mandates it, following the identification of a location that may benefit from such an authorisation [Dispersal Order], the authorising officer may consider using a community consultation process where consideration to the suitability of such action can be given from a wider perspective." (the Author's brackets)

This issue was considered at the inaugural Partnerships Scrutiny Sub-Committee meeting on 8 July 2010. It was decided that Area Committees were ideally suited to the consideration of Dispersal Order applications as they were comprised of Members with not only a full understanding of local issues at the heart of an application, but were also well placed to consult with communities likely to be affected by such an Order. However, mindful that Area Committees are not delegated with powers to enter in to correspondence with the police on this subject, on behalf of the Council as a whole, it was agreed that a senior officer be delegated with appropriate powers so do so: Minute 9(1) confirms *"That the Head of Housing and Public Protection Service be requested to consult with relevant Area Committees prior to the implementation, renewal or cessation of Dispersal Orders or Designated Public Place Orders."*

This delegation is consistent with the Council's Constitution as matters relating to community safety are already assigned to the Strategic Director for Planning, Housing and Enterprise by virtue of Table 12.1 (page 22), as reaffirmed by the stated responsibilities of the aforementioned Director on page 62. To expedite matters, the Strategic Director for Planning, Housing and Enterprise has further sub-delegated, to the Head of the Housing and Public Protection Service, the power to comment (on behalf of North Hertfordshire District Council) as the suitability of specific Dispersal Order applications.

6. FINANCIAL AND RISK IMPLICATIONS

- 6.1 The implementation of a Dispersal Order is relatively low cost since it is instigated and enforced by the Police. Unlike a Designated Public Places Order (alcohol free zone) the area covered by a Dispersal Order, should one be granted, does not require this Council to erect new street signage – this reduces costs considerably as compared with a DPPO.
- 6.2 There is a risk, however, that the declaration of a Dispersal Order will elevate perceptions locally that there is a problem with crime and disorder, generally, and youth delinquency, in particular. However, the Council has experienced a generally positive response from the community in connection with previous Dispersal Orders and there is, in any event, continuing local concern in connection with crime and disorder as outlined in Appendix A.

7. HUMAN RESOURCES AND EQUALITIES IMPLICATIONS

- 7.1 The Council recognises the changing nature of equality legislation and incorporates national legislation and regulations into its scheme and services as appropriate, as set out in the Corporate Equality Strategy. The Race Relations (Amendment) Act 2000 marked a very significant innovation in the legal framework. It placed much of what was previously only advisory and voluntary on to a statutory footing. The Act extends the provisions of the Race Relations Act 1976 to cover all the activities of all public authorities. It makes important extensions to public authority duties. Equivalent statutory duties have been created for disability by the Disability Discrimination Act 2005 and for gender by the Equality Act 2006. These duties divide into a general duty and specific duties.
- 7.2 Any activity undertaken to implement the Dispersal Order, as proposed in Appendix A, must therefore take full account of the Race Relations Act 1976, as amended. There is no data contained within the case put forward by Herts Police that suggests either public body will be in breach of its statutory obligations regard equalities legislation by supporting the appended Dispersal Order application.
- 7.3 As with 7.2, above, the Council is obliged to consider the potential impact of any Dispersal Order as regards the Human Rights Act 1998. The evidence submitted in support of this application suggests that a Dispersal Order, should one be declared, is necessary and proportionate as regards Article 11 rights.
- 7.3 The policing of the geographical area bounded by any Dispersal Order is a matter solely for Herts Police. Any additional police resources or reallocation of duties is therefore subject to consideration by, and agreement of, the Superintendent supporting any Order.
- 7.4 Officers of this Council will notify Members of any proposed extension or variation to an existing Dispersal Order by Herts Police. Likewise, should the police elect not to renew an existing Dispersal Order at the end of its life then a report on its effectiveness will be presented to the Committee shortly thereafter.

8 RECOMMENDATIONS

- 8.1 That Members comment on the suitability, or otherwise, of the Dispersal Order as proposed by Hertfordshire Constabulary in Appendix A.

9 REASONS FOR RECOMMENDATIONS

- 9.1 A thorough discussion as to the utility of the proposed Dispersal Order will enable the officer with delegated powers as regards Section 31(2) of the Anti-social Behaviour Act 2003 to respond appropriately, on behalf of the Council, to Hertfordshire Constabulary.

10 CONSULTATION

- 10.1 Consultation with the community and other stakeholders has been undertaken by Hertfordshire Constabulary as part of their responsibilities associated with the declaration of a Dispersal Order. The outcome of this dialogue is contained within Appendix A.
- 10.2 Members of this Committee have been afforded an opportunity to consult with those who are likely to be effected by any Dispersal Order and will therefore be able to draw upon this information when considering this matter.
- 10.3 The Portfolio Holder for Community Engagement and Rural Affairs has also been consulted as her responsibilities include community safety matters.
- 10.4 As Dispersal Orders aim, beyond the protection of public safety, to secure a degree of protection for children, the officer that has overall responsibility for the Council's approach to child protection, the Head of Community & Cultural Services, has been notified of the application for an Order and her views have been sought.

11. APPENDICES

- 11.1 Appendix A – Evidence provided by Hertfordshire Constabulary in support of a Dispersal Order

12. CONTACT OFFICERS

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13. BACKGROUND PAPERS

- 13.1 Part IV (Sections 30-35) of the Anti-social Behaviour Act 2003
- 13.2 Housing and Public Protection Service *Statement of Enforcement Policy Practice*
- 13.3 Association of Chief Police Officers (ACPO) Code of Practice on the use of Dispersal Orders

APPENDIX A

Suggested content:

- Crime stats
- Proposed geographical boundaries of the DO
- The possibility of displacement
- The outcome of consultation undertaken by the Police
- A consideration of the Human Rights Act by the Police
- A comment as to the support of a Superintendent for the DO
- How the DO, if agreed, will be communicated