

**BULWELL AND BULWELL FOREST (AREA 1) COMMITTEE – 25 NOVEMBER 2015**

<b>Title of paper:</b>	<b>Merchant Street Public Spaces Protection Order (PSPO)</b>	
<b>Director(s)/ Corporate Director(s):</b>	Andrew Errington, Director of Community Safety Andrew Vaughan, Corporate Director of Commercial and Operations	<b>Wards affected:</b> Bulwell
<b>Report author(s) and contact details:</b>	Mrs Debbie Beal Email address <a href="mailto:Debbie.beal@nottinghamshire.pnn.police.uk">Debbie.beal@nottinghamshire.pnn.police.uk</a> Telephone 07958 795194 or 101 ext. 855 4968	
<b>Other colleagues who have provided input:</b>	Mrs Tamazin Wilson	
<b>Date of consultation with Portfolio Holder(s) (if relevant)</b>	n/a	
<b>Relevant Council Plan Strategic Priority:</b>		
Cutting unemployment by a quarter		<input type="checkbox"/>
Cut crime and anti-social behaviour		<input checked="" type="checkbox"/>
Ensure more school leavers get a job, training or further education than any other City		<input type="checkbox"/>
Your neighbourhood as clean as the City Centre		<input checked="" type="checkbox"/>
Help keep your energy bills down		<input type="checkbox"/>
Good access to public transport		<input type="checkbox"/>
Nottingham has a good mix of housing		<input type="checkbox"/>
Nottingham is a good place to do business, invest and create jobs		<input type="checkbox"/>
Nottingham offers a wide range of leisure activities, parks and sporting events		<input type="checkbox"/>
Support early intervention activities		<input type="checkbox"/>
Deliver effective, value for money services to our citizens		<input type="checkbox"/>
<b>Summary of issues (including benefits to citizens/service users):</b>		
<p>A need has been identified to control and reduce various problems associated with anti-social behaviour being perpetrated in and around the Merchant Street area in Bulwell. The problems are exclusively caused by groups of young people congregating in the area and causing a variety of persistent 'anti-social behaviour' which is considered unreasonable, including using the street furniture in the area and other structures as 'climbing frames' and being verbally abusive to local tenants and residents. For example, the groups are reported to often knock on residents doors for no good reason, play loud music, fire 'bb guns' in the street, play ball games which could damage resident's property and throw bottles and other objects, occasionally at resident's property.</p> <p>In order to deal with the behaviour it is proposed that a Public Spaces Protection Order ("PSPO") under the Anti-social Behaviour, Crime and Policing Act 2014 ("the 2014 Act") is made to prohibit some of this identified behaviour outright, and prohibit some of this behaviour where a warning has first been given by an authorised officer of the Council, a Police Constable or a PCSO. It is proposed that this Order only apply in the area where the problems have been identified, and would provide a new enforcement tool for officers to help tackle the problems identified.</p>		

<b>Recommendation(s):</b>	
<b>1</b>	<b>The Area Committee note the evidence gathered and the results of the consultation on the proposal to introduce a Public Space Protection Order (“PSPO”) in and around Merchant Street as indicated in the draft PSPO attached at Appendix 1 for the area outlined in red on the plan in the Order.</b>
<b>2</b>	<b>That, being satisfied that the test in section 59 of the 2014 Act is met, and having regard to the rights of freedom of expression and freedom of assembly, Area Committee authorise the Head of Legal Services to make a PSPO in the form indicated in the draft PSPO attached at Appendix 1 over the land outlined in red on the plan attached to the draft PSPO to last for a period of three years from the date that it comes into force.</b>
<b>3</b>	<b>In the event that a decision is made to make the PSPO under recommendation (2) above, the Area Committee authorise the Director of Community Protection to carry out the necessary advertisements and arrange for appropriate signage to be erected in accordance with the legislative requirements.</b>
<b>4</b>	<b>In the event that a decision is made to make the PSPO under recommendation (2) above, the Area Committee set the Fixed Penalty amount for offences committed contrary to the PSPO at £100 if paid within 14 days, reduced to £50 if paid within 10 days.</b>

## **1. REASONS FOR RECOMMENDATIONS**

- 1.1.1 The Anti-social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”) gives the Council the power to introduce a Public Spaces Protection Order which can be applied to any land to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.
- 1.1.2 The Director of Community Protection authorised the formal consultation on the potential introduction of a PSPO in the form of the draft Order attached as Appendix 1 in respect of the land outlined in red on the plan in the Order. The Order proposed the following restrictions:
- No persons shall play ball games in the Restricted Area
  - No person shall spit in, onto or from the Restricted Area
  - No person shall climb on any wall or fence in the Restricted Area, or any tree, or any barrier, railing, post or other structure within the Restricted Area
  - Groups of two or more persons are prohibited in the Restricted Area where one or more of the said group causes harassment, alarm or distress to any other person in the Restricted Area by continued:
    - (a) Use of threatening or abusive words or behaviour; or
    - (b) Disorderly Behaviour

Such behaviour is continued where an Authorised Person has informed them that if the behaviour continues, that they will be deemed to constitute a Prohibited Group and will commit an offence, and asked the relevant person(s) in the group to desist from such behaviour but they have refrained from doing so.

- 1.3 The penalty for committing an offence contained in a PSPO is a maximum fine of level 3 on the standard scale (currently £1,000) although the opportunity to pay a fixed penalty may be offered instead. The amount for the fixed penalty notice can be fixed locally to a maximum of £100.
- 1.4 In the event that a decision is made to make the Public Spaces Protection Order, it is recommended that the Area Committee agree to set the Fixed Penalty amount for offences committed contrary to the Public Spaces Protection Order at £100, with a reduction of £50 if paid within ten days.
- 1.5 The proposed PSPO is not intended to interfere with responsible persons frequenting the area to use the shops available or to interfere with local tenants and residents using the area.
- 1.6.1 Under section 59 of the 2014 Act, the proposed PSPO should only be made where the Council is satisfied that on reasonable grounds:
  - a) Activities in a public place have had a detrimental effect on the quality of life of those in the locality, or it is likely that activities will be carried on in the locality and they will have that effect, or
  - b) The effect/likely effect , of the activities is/or is likely to be persistent/continuing in nature,
  - c) Is likely to be such as to make the activities unreasonable, and
  - d) Justifies the restriction imposed.
- 1.6.2 Under section 72 of the 2014 Act the Council must have particular regard to the rights of freedom of expression and freedom of assembly set out in Articles 10 and 11 of the Human Rights Convention.
- 1.7 No additional requirements can be included without commencing the formal consultation stage again. If the Order is made, it will be kept under review. If any new behaviours are identified which meet the test in section 59 of the 2014 Act, the Council can consider a further formal consultation with a view to vary the Order if necessary.

## **2. BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)**

- 2.1 As stated above, problems with a variety of 'anti-social behaviour' have been identified around the Merchant Street area of Bulwell. The problems are exclusively caused by groups of young people congregating in the area and causing a variety of persistent

'anti-social behaviour' which is considered unreasonable, including using the street furniture in the area and other structures as 'climbing frames' and being verbally abusive to local tenants and residents. The groups are reported to often knock on residents doors for no good reason, play loud music, fire 'bb guns' in the street, play ball games which could damage resident's property and throw bottles and other objects, occasionally at resident's property.

- 2.2 The unreasonable conduct is reported to be persistent in its nature and is causing harassment, alarm and distress; evidence shows that these issues impact greatly on the quality of life for the residents, visitors and businesses alike by intimidation to citizens, posing a danger to citizens and traffic control, and damage to street furniture, resident's property and buildings. This undoubtedly is having a detrimental effect on the quality of life of those in the locality.
- 2.3 Residents have expressed that they feel it is pointless to keep reporting the behaviour as they can see no end to the issues experienced. A 'ward walk' of the street has taken place, together with discussions with local residents. Photographs of Merchant Street were taken recently, which illustrate some of the problems experienced. Please see the photographs attached at Appendix 2.
- 2.4 It is separately being proposed that a CCTV camera be installed in the area which may assist as a deterrent and also way of evidencing problems experienced. It is anticipated that breach of the proposed prohibitions can be evidenced by either authorised persons in the restricted area, or potentially CCTV footage, and that residents should not need to give witness statements.
- 2.5 The existing powers available to control these issues include Dispersal Orders made under the 2014 Act. Dispersal Orders have been issued by Nottinghamshire Police on 17 June 2015 and 5 July 2015, both Orders were for 48 hours duration. Both Orders led to Notices of 'Direction to leave' being issued to individuals who were identified as being persistent offenders of anti-social behaviour exclusively on Merchant Street and have no known family links to any address on Merchant Street.
- 2.6 Before a PSPO can be made consultation must be undertaken in accordance with the 2014 Act, Regulations made under it and statutory guidance. The Council have formally consulted on the proposed PSPO detailed above (in the draft form attached at Appendix 1) following authorisation by Mr Andrew Errington, the Director of Community Protection.
- 2.7 The Council has consulted with:
  - The Chief of Police and the local policing body, for the police area that includes the restricted area
  - The owner or occupiers of land within the restricted area (108 addresses including all of Merchant Street and some surrounding properties in the area directly affected).
  - The Council published a copy of the draft Order on its website
  - A copy of the draft Order was displayed on the Community Notice Board in Tesco Express on Jennison Street

- Neighbourhood Development have been made aware of the proposals.
- A consultation letter and questionnaire in the form attached at Appendix 3 was discussed with all residents in the Restricted Area where possible, otherwise posted through the letterbox.

2.8 Consultation commenced during the second week in October 2015 and concluded on 4 November 2015.

### Outcomes

2.9 As a result of evidence collated during the Consultation period, there appears to be support for the proposed Public Spaces Protection Order. A total of 108 letters and questionnaires were distributed, 39 of which were returned. A summary of the responses is attached as Appendix 4. All bar one of the returned questionnaires support the proposed Order, the one resident that did not support it, passed the anti-social behaviour off as just “*boys being boys*”. However, some really positive comments were as follows:

- ***“I think it will be fantastic as it would make it hard for gangs to hang around and intimidate the residents, it shall make it harder for them to hang around on the front all night causing grief for people with their behaviour and noise and bring down vandalism if they cannot gather in groups”***
- ***“I think having this proposed Order will make us feel safer in our homes and also protect our properties”***
- ***“Bloody Brilliant!”***

2.10 It is considered that the restrictions being sought are proportionate, necessary and reasonable; indeed the restrictions are nothing more than how a reasonable person would choose to behave or conduct themselves.

2.11 The Council must be satisfied that the proposed PSPO meets the test contained in section 59 of the 2014 Act detailed at paragraph 1.5 above, and they must have particular regard to the rights of freedom of expression and freedom of assembly set out in Articles 10 and 11 of the Human Rights Convention.

2.12 In addition, if the PSPO is made, signs will be placed at intervals throughout Merchant Street to advise of the prohibitions contained in the Order, and that breach of the Order is a criminal offence. These may act as a deterrent.

2.13 It is proposed that, should the Order be made, Community Protection Officers will be ‘authorised persons’ for the purpose of the proposed PSPO. Police officers and Police Community Support Officers will also be ‘authorised persons’ and able to enforce the proposed PSPO. If the proposed PSPO is made, in order to ensure a proportionate use of the powers it is proposed that an enforcement policy is agreed, and all authorised persons, including Police Officers and PCSOs are trained in these powers locally by the Community Protection North Enforcement Team. Contact has been

made with the Youth Offending Team to see if the Council would be able to work with them in relation to youths found breaching the proposed PSPO who may be already be known to them, and secondary schools in the local area have agreed to work with the Council where it is found that their students have breached the PSPO.

2.14 If made, it is proposed that the above PSPO will last for three years.

### **3. OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS**

3.1 Without being able to identify the individuals perpetrating the anti-social behaviour, together with the victims of the behaviour not willing to make statements or to attend court, Injunctions under the Anti-social Behaviour, Crime and Policing Act 2014 cannot be sought. Without arrests for disorderly behaviour, a Criminal Behaviour Order under the Anti-social Behaviour, Crime and Policing Act 2014 cannot be sought. However, if an individual breaches the Public Spaces Protection Order, under section 50 of the Police Reform Act 2002, a constable in uniform has reason to believe that a person has been acting, or is acting, in an anti-social manner (within the meaning of section 1 of the Crime and Disorder Act 1998), he may require that person to give his name and address to the constable. Should this occur, an Injunction could be sought against the individual, rather than serving them with a Fixed Penalty Notice. An Injunction can be sought for an individual aged 10 years or over.

3.2 Dispersal Powers under section 35 of the Anti-social Behaviour, Crime and Policing Act 2014 have to be authorised by a police officer of at least the rank of Inspector, however, this can only be during a specified period of not more than 48 hours (therefore needs continually renewing). If the Dispersal is authorised by the police, only a constable or PCSO in uniform may direct a person to leave the specified location and not to return within the specified time (not exceeding 48 hours). The PSPO would allow the Council's Community Protection Officers to enforce the Order as well as police staff. Dispersal Powers do not allow the police to deal with or remove residents from the area; however a PSPO would allow penalty or action to be taken.

3.3 A PSPO would give more scope to target all low level anti-social behaviour and would give much needed respite and quality of life to residents.

3.4 There is a Byelaw in place which currently covers Merchant Street (City of Nottingham Byelaws with respect to the spitting on footways dated 1953). The Byelaw is very old and it only covers spitting, there is no fixed penalty attached to it.

### **4. FINANCE COMMENTS (INCLUDING IMPLICATIONS AND VALUE FOR MONEY/VAT)**

4.1 Once the PSPO has been approved and the required signage erected, there will be no on-going financial implications. The costs of enforcing the Order will be met within the existing roles of the Community Protection Officers, Police Officers and Police Community Support Officers.

4.2 The cost of the signage and advertisement in accordance with the legal requirements will be taken from Community Protection's Budget.

5. **LEGAL AND PROCUREMENT COMMENTS (INCLUDING RISK MANAGEMENT ISSUES, AND LEGAL, CRIME AND DISORDER ACT AND PROCUREMENT IMPLICATIONS)**

- 5.1 The making of Public Space Protection Orders (“PSPOs”) under the Anti-social Behaviour, Crime and Disorder Act 2014 (“the 2014 Act”) relating to local matters appears to fall within the remit of Area Committee and the proposal appears to be in accordance with the Council’s Scheme of Delegations.
- 5.2 As identified in the main body of the Report, Public Spaces Protection Orders should only be made where the Council is satisfied on reasonable grounds, that the legal test in section 59 of the 2014 Act is met in relation to all of the areas that the proposed PSPO applies to. The Council can only make prohibitions or requirements which are reasonable to impose in order to prevent or reduce the detrimental effect identified.
- 5.3 When deciding whether to make a PSPO the Council must have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the Convention (as provided by section 72(1) of the 2014 Act).
- 5.4 The proposed PSPO includes a number of provisions, page 51 of the Government Guidance states that the new PSPOs can cover a number of different restrictions and requirements.
- 5.5 As identified in the main body of the Report, the Council has undertaken a consultation exercise regarding the proposed PSPO, which appears to be in compliance with the requirements in the 2014 Act and Guidance.
- 5.6 The Report notes that there is a Byelaw in force in relation to spitting, which would appear to apply to Merchant Street. If the proposed restriction regarding spitting is made, section 70 of the 2014 Act states that this Byelaw will have no effect in relation to the restricted area during the currency of the PSPO.
- 5.7 The Council should also consider how easy a PSPO would be to enforce, since failure to properly enforce an Order could undermine the effect of an Order. Special procedures apply when dealing with enforcement against youths, these will need to be addressed as and when breaches occur.
- 5.8 This is a new area of law, and the boundaries are yet to be tested. There is a potential risk of challenge, and the validity of PSPOs can be challenged by way of Judicial Review, or raised as a possible defence to a prosecution.
- 5.9 It is proposed that, if made, the PSPO will last for a period of three years. Under section 60(1) of the 2014 Act this is the maximum period that a PSPO can have effect for. However, under section 60(2) of the 2014 Act there is provision for the PSPO to be extended for a further period of up to three years. There is no restriction on the number of times that a PSPO can be extended.
- 5.10 **Crime and Disorder Act Implications** - A key aim of the City Council is to reduce the risk of crime and disorder occurring in local neighbourhoods and the community in

general. The proposed Order would provide an additional power to deal with the behaviour identified in the report.

## **6. EQUALITY IMPACT ASSESSMENT**

Has the equality impact been assessed?

Not needed (report does not contain proposals or financial decisions)

No

Yes – Equality Impact Assessment attached as Appendix 5 **X**

- 6.1 The introduction of the Public Spaces Protection Order will not adversely affect any particular group of citizens. Under the Council's Fair and Just Nottingham Equity Scheme, the proposed Public Spaces Protection Order complies with the underlying principles of the scheme and promotes fair and individual enforcement based on the Order.

## **7. LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION**

City of Nottingham Byelaws with respect to the spitting on footways dated 1953

## **8. PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT**

Crime and Disorder Act 1998

Anti-Social Behaviour, Crime and Policing Act 2014

Home Office Guidance 'Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers Statutory guidance for frontline professional dated July 2014.

Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014