

**AREA COMMITTEE EAST – DALES, MAPPERLEY AND ST ANNS – 12<sup>TH</sup> SEPTEMBER 2017**

<b>Title of paper:</b>	Proposed Public Spaces Protection Orders (PSPO's): Footpaths at Beverley Square, St Ann's	
<b>Director(s)/ Corporate Director(s):</b>	Andrew Errington Director, Community Protection	<b>Wards affected:</b> St Ann's
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<b>Date of consultation with Portfolio Holder(s) (if relevant)</b>	Not applicable	
<b>Relevant Council Plan Key Theme:</b>		
Strategic Regeneration and Development		<input type="checkbox"/>
Schools		<input type="checkbox"/>
Planning and Housing		<input type="checkbox"/>
Community Services		<input checked="" type="checkbox"/>
Energy, Sustainability and Customer		<input type="checkbox"/>
Jobs, Growth and Transport		<input type="checkbox"/>
Adults, Health and Community Sector		<input type="checkbox"/>
Children, Early Intervention and Early Years		<input type="checkbox"/>
Leisure and Culture		<input type="checkbox"/>
Resources and Neighbourhood Regeneration		<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 two footpaths, which are public rights of way, at Beverley Square, St Ann's. Concerns have been raised regarding persistent and on-going anti-social behaviour caused by youths congregating on Beverley Square which has had, and continues to have, a detrimental effect on the quality of life of local residents. The anti-social behaviour appears to be concentrated in and around two footpaths adjacent to numbers 11 and 12 Beverley Square and numbers 14 and 15 Beverley Square. A summary of problems associated with the footpaths is included in this report under Section 2. Collectively, this behaviour is having a negative impact on the local community and surrounding area.</p> <p>In order to deal with the behaviour it is proposed that a Public Spaces Protection Order ("PSPO") is made pursuant to the Anti-social Behaviour, Crime and Policing Act 2014 ("the 2014 Act") to prohibit access to the footpaths running between numbers 11 and 12 and numbers 14 and 15</p>		

Beverley Square (with some exceptions) and to install barriers at either end of the footpaths.	
<b>Recommendation(s):</b>	
<b>1</b>	<b>Area Committee note the evidence gathered and the results of the consultation on the proposal to introduce a PSPO to gate off the alleyways running between numbers 11 and 12 and numbers 14 and 15 Beverley Square, St Ann’s as indicated in the proposed PSPO attached at Appendix 1 for the areas outlined with solid black lines on the plan in the proposed PSPO.</b>
<b>2</b>	<b>That, being satisfied that the test in section 59 of the 2014 Act is met, having considered the objection received, the likely effect of making the proposed PSPO and the availability of an alternative route, and having regard to the rights of freedom of expression and freedom of assembly, Area Committee authorise the Director of Legal Services and Governance and or the Head of Legal and Governance to make a PSPO in the form indicated by the proposed PSPO attached at Appendix 1 over the land outlined with a solid black line on the plan attached to the proposed 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 proceed with the manufacture and installation of the barriers and gating detailed in the report at paragraph 2.15 and to carry out the necessary publication 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 note that the cost of the manufacture and installation of the barriers and gating detailed in the report at paragraph 2.15 will be met by the Public Realm budget of the St Ann’s Area Capital fund.</b>

## **1. REASONS FOR RECOMMENDATIONS**

- 1.1 The Anti-social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”) gives Nottingham City Council (“the Council”) the power to introduce a Public Spaces Protection Order (“PSPO”) 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.
- 1.2 The Director of Community Protection authorised the formal consultation on the potential introduction of a PSPO in the form of the proposed Order attached as Appendix 1 (“the proposed PSPO”) in respect of the land shown with a solid black line on the plan in the proposed PSPO being the footpaths running between 11 and 12 Beverley Square and 14 and 15 Beverley Square (“the Restricted Area”). The proposed PSPO contains the following restriction:
- No person shall proceed on foot, pedal cycle, horse or in a vehicle or cause any animal to proceed in the Restricted Area.
  - Access to the Restricted Area is prohibited at all times (subject to some exemptions detailed in the proposed PSPO including persons requiring access for maintenance and emergency services).

- 1.3 Breach of a requirement or restriction contained in a PSPO is an offence. 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 The fixed penalty amount for any offences committed contrary to the proposed PSPO has been set at £70, with a reduction to £35 if paid within ten days by a delegated decision of the Director of Community Protection dated 24 August 2017.
- 1.5 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, AND
  - b) The effect/likely effect, of the activities is/or is likely to be persistent/continuing in nature, is likely to be such as to make the activities unreasonable, and justifies the restriction imposed.
- 1.7 The Council's Rights of Way officer has confirmed that the Restricted Area is an unrecorded public right of way. Section 64(1) of the 2014 Act places additional requirements upon a local authority that is considering making a PSPO to restrict the public's right of way over a highway. In particular, the local authority may not make a PSPO without first considering:-
- (a) the likely effect of making the order on the occupiers of premises adjoining or adjacent to the highway;
  - (b) the likely effect of making the order on other persons in the locality;
  - (c) in a case where the highway constitutes a through route, the availability of a reasonably convenient alternative route
- It also requires occupiers of premises adjacent to or adjoining the highway, and any other persons in the locality who are likely to be affected by the proposed PSPO, to be consulted.
- 1.8 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.
- 1.9 No additional requirements can be included in the proposed PSPO 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.
- 1.10 On 13<sup>th</sup> June 2017, Area Committee delegated the decision to introduce PSPOs on Beverley Square or not to the Director of Community Protection, in consultation with the Chair of Area Committee and the Ward Councillors for St Ann's, after the completion and assessment of the formal consultation required by the 2014 Act.

1.11 The formal consultation has now been completed and it is recommended that the proposed PSPO is made. However, the proposed PSPO would authorise the installation of barriers and gating to block off access to the 2 alleyways that run between numbers 11 and 12 and 14 and 15 Beverley Square. The delegation from the 13<sup>th</sup> June 2017 Area Committee did not address the barriers, or confirm the responsibility for the cost of the barriers, their ongoing maintenance or provision of keys for the gating. The decision on whether or not to make the proposed PSPO has therefore been brought back to Area Committee, together with a recommendation on the proposed barriers should there be a decision to make the proposed PSPO.

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

2.1 For a number of years concerns have been raised by local residents regarding persistent and on-going anti-social behaviour around Beverley Square, which has had, and continues to have, a detrimental effect on the quality of life of local residents. From the evidence and other relevant information gathered from local residents and other sources, the anti-social behaviour appears to be concentrated in and around two footpaths running between numbers 11 and 12 Beverley Square and numbers 14 and 15 Beverley Square. The footpaths have “flying bedrooms” above them and these design characteristics mean the footpaths are sheltered from the weather, partly concealed from passive surveillance and are therefore an ideal environment for carrying out the anti-social behaviour and other reported incidents.

2.2 Residents have reported that youths often shout verbal abuse at each other and have seen them fighting amongst themselves. On occasions there have been as many six youths congregating in the alleyways causing a disturbance, nuisance and an annoyance to residents until 11pm. In addition, residents have alleged that people have been engaged in drug dealing in the vicinity of the footpaths. This consists of people meeting up exchanging packages with money changing hands. Residents have reported that on many occasions human urine and excrement, as well as dog excrement, have been discovered in the two footpaths and that damage has been caused to the fabric of the properties which directly adjoin the footpaths. Collectively, this behaviour is having a negative impact on the local community and surrounding area.

2.3 Residents have expressed their concerns and feel that it is pointless to keep reporting the behaviour as they can see no end to the issues highlighted above as this matter has been on-going for a number of years. Therefore, the number of incidents taking place is most likely much higher than those being reported.

2.4 Initial evidence gathered by officers within Community Protection and Neighbourhood Development suggests that the threshold for the introduction of PSPOs to gate off the footpaths running between numbers 11 and 12 and numbers 14 and 15 Beverley Square may be met. The two footpaths are shown on the plan in the proposed PSPO at Appendix 1 by the solid black lines between points AB and CD along with the alternative routes available to the public in the event that access is prohibited and the footpaths are gated.

2.5 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 now formally consulted on the proposed PSPO (in the draft form attached at Appendix 1) following authorisation by Mr Andrew Errington, the Director of Community Protection. The Council have undertaken a formal consultation with residents,

partner agencies and other interested parties such as the emergency services, utilities, and those organisations which have an interest in public rights of way.

2.6 The Council has consulted with:

- The Chief of Police and the local policing body, for the police area that includes the restricted area
- Police and Crime Commissioner
- The Council's Senior Community Protection Officer for the area
- The Council's Rights of Way Officer
- A consultation letter was hand delivered to all the properties on Beverley Square, Aster Road, Duncombe Close and Rushworth Close.
- The Council published a copy of the proposed PSPO on its website
- Neighbourhood Development Team.

2.7 The consultation commenced on 30<sup>th</sup> June 2017 and ended on 2<sup>nd</sup> August 2017.

2.8 The consultation included details of the effect of the proposed PSPO (i.e. to restrict the public's right of way over the two footpaths) and details of the alternative routes in the event that the proposed PSPO is made.

2.9 The legislation also requires that consultation is carried out with the owners or occupiers of land within the Restricted Area. The land within the Restricted Area is either owned by Nottingham City Council and managed by Nottingham City Homes, or by private owner/occupiers. The owners and occupiers of the land within the Restricted Area support the introduction of a PSPO. The land directly to the south of the Restricted Area comprises an adopted footpath.

### **OUTCOMES OF THE CONSULTATION**

2.10. Western Power Distribution (WPD) have confirmed that the proposed PSPO would affect access to their apparatus. "They have asked that in the event that the PSPO is implemented that they would wish the Council to be in a position to grant them access to the Restricted Area if necessary"

**"I note from section 6e that the order would not restrict WPD's rights to repair our apparatus in the footpaths concerned. However, if that were necessary how would we obtain access to those footpaths?"**

**WPD would prefer it if the council also had access to allow for:**

- **The residents being away from their properties when a fault repair is required**
- **The residents not co-operating when a fault repair is required; low voltage faults might only effect one phase so the residents with the keys might be unaffected"**

If the proposed PSPO is made the Council will have access and this is set out in the proposed PSPO at Appendix 1.

2.11 **On 10 July 2017 one objection was received on behalf of two elderly local residents which expressed concerns that should access to the alleyways running between numbers 11 and 12 Beverley Square and numbers 14 and 15**

**Beverley Square be restricted it would result in more people using the footpath at the Duncombe Close end of Beverley Square and that the anti-social behaviour currently happening in the alleyways would simply be displaced to that footpath and have a detrimental impact on the quality of life of nearby residents.**

Currently there is no evidence to suggest that incidents of anti-social behaviour occur on the thoroughfare that runs at the side of end property namely number 16 Beverley Square. Community Protection believe that due to the location of this thoroughfare there is less likelihood that incidents of anti-social behaviour, urinating, depositing of excrement and alleged drug dealing will occur. One of the main reasons why the Council believe that incidents of anti-social behaviour occur on the two alleyways is because as mentioned in 2.1 above they both have “flying bedrooms” above them. These design characteristics mean the alleyways are sheltered from the weather, partly concealed from passive surveillance and are therefore an ideal environment for carrying out the anti-social behaviour and other reported incidents.

2.12 The Councils Rights of Way Officer has provided the following comments on the proposed PSPO:-

The footpaths are un-adopted public rights of way, meaning they are not maintained by the Council as part of the adopted highway network, they are both around 17 metres long and 2 metres wide, have metalled surfaces, a single street light at their southern end and good natural surveillance. Although the footpaths are public paths, they are not recorded on the Council’s Definitive Map and Statement, which is the legal register of public rights of way in Nottingham.

Displacement of the problems onto other nearby areas: due to the nature of the problems, ideally, there should be an element of monitoring built into the process and an assessment made of whether the proposed PSPO has worked or simply moved the problems onto other nearby public rights of way, streets or areas.

Effect on occupiers of premises adjoining or adjacent to the footpath: There are 4 residential dwellings directly adjoining the footpaths although the footpaths are not used as a primary means of access to these dwellings.

Reasonably convenient alternative route: in the event that the proposed PSPO is implemented, and the footpaths gated, there are two alternative routes, which are shown by the bold black broken lines on the plan at Appendix 1.

2.13 It is considered that the restrictions being sought are proportionate, necessary and reasonable in the light of the anti-social behaviours.

2.14 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, consider the likely effect of making the proposed PSPO and the availability of an alternative route, 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.

2.15 Section 64(7) of the 2014 Act allows the Council to authorise the installation, operation and maintenance of a barrier or barriers to enforce the restrictions contained in a PSPO. It is proposed that lockable gates are installed at points marked A and C on the plan and permanent barriers are installed at points marked B and D

on the plan. It is proposed if the proposed PSPO is made, that the Neighbourhood Development Officer, Nottingham City Council's Neighbourhood Management team for St Anns will hold a key to the gates shown at points A and C on the Plan, It is also proposed that the responsibility for maintenance of the gates will remain with the Neighbourhood Development Officer. The proposed gating and barriers that are to be installed are known as the Heras Pallas Fencing system and the two single gates will each have the locinox locking system. The gating and barriers will be no more than 2m high and will be black in colour. A quotation of £ 2550.00 + VAT has been received for the proposed gating and barriers at the locations mentioned above in this paragraph.

- 2.16 In relation to Section 64 (1) (a) of the 2014 Act referred to in paragraph 1.7 above numbers 11 and 12 and numbers 14 and 15 are the only properties either side of the Restricted Area. In relation to Section 64(1) (b) of the 2014 Act people residing in the properties in the streets in close proximity to Beverley Square have been consulted. In relation to Section 64(1) (c) of the 2014 Act a reasonably convenient alternative route is available and is set out in the plan at Appendix 1.
- 2.17 In addition, if the proposed PSPO is made, signs will be placed at each end of the Restricted Area to advise of the prohibitions contained in the proposed PSPO, and that breach of the Order is a criminal offence. It is proposed that these signs will be paid for by Community Protection. The signs may act as a deterrent.
- 2.18 Under Article 6 of the proposed PSPO an Authorised Officer of the Authority can allow use of the Restricted Area, who must first be authorised in writing by the Council. If the proposed PSPO is made, the Director of Community Protection will be able to authorise employees of the Council for the purposes of Article 6 of that order, and to enforce it. Should the proposed PSPO be made, Community Protection Officers will be authorised to issue fixed penalty notices for breach of the Order. Police officers and Police Community Support Officers will also be able to issue fixed penalty notices for breach of the proposed PSPO. If the proposed PSPO is made training will be offered to officers authorised to enforce the Order.
- 2.19 If made, it is proposed that the proposed PSPO will last for three years, after which it may be reviewed to see if the restrictions are still required. If the proposed PSPO is no longer required at this time, any barriers or gates installed under the authority of the proposed PSPO will need to be removed.

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

- 3.1 An option would be not to make the proposed PSPO. This is not recommended as if the alleyways are not gated off it is anticipated that they will continue to be used by youths to congregate and cause anti-social behaviour.
- 3.2 Possible action that could be taken could include fixed penalty notices for littering offences. Taking Civil Legal action against the alleged perpetrators of the anti-social behaviour has been considered. However, without being able to identify the individuals perpetrating the anti-social behaviour, action against perpetrators cannot be taken.

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

- 4.1 This decision ultimately is to adopt the policy and has very little financial consideration/risk. It is unknown how many penalties would be issued in a financial year and so difficult to apply a financial comment. The costs of signage is less than £500 - a one off and therefore would be picked up by Community Protection within the existing budget. There are no additional costs in relation to staffing as this is an area already supported by Community Protection Officers and is business as usual.

Michelle Pullen – Commercial Business Partner 17<sup>th</sup> August 2017.

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

- 5.1 The making of Public Spaces Protection Orders (“PSPOs”) under the Anti-social Behaviour, Crime and Disorder Act 2014 (“the 2014 Act”) relating to local matters falls 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, PSPOs 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 expression and freedom of assembly set out in Articles 10 and 11 of the Convention of Human Rights (as provided by section 72(1) of the 2014 Act).
- 5.4 The proposed PSPO will restrict public rights of way over land identified as being public rights of way. As identified in the report, under section 64 of the 2014 Act there are additional considerations and steps which must be taken where it is proposed that rights of way are restricted. As required, the impact of the proposed restrictions have been considered, and the availability of reasonably convenient alternative routes. Under section 64 of the 2014 Act there are some rights of way which cannot be restricted due to their strategic value. The public rights of way the subject of the proposed PSPO do not fall within the types of rights of way which cannot be restricted.
- 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 relevant Statutory Guidance.
- 5.6 An objection to the proposed PSPO has been received. Under section 64(2)(c) of the 2014 Act the Council must consider any representations made. In addition, as stated in the body of the report the Council must consider the likely effect of making the proposed PSPO on other persons in the locality. The objection received refers to concerns of a displacement of the behaviour identified in the report. The making of a PSPO can be challenged by an application to the High Court by an ‘interested person’ as defined in section 66 of the 2014 Act.



- 5.7 If the proposed PSPO is made, it is proposed that barriers and gating will be installed as detailed in the body of the report. Under section 64(7) of the 2014 Act a PSPO may authorise the installation, operation and maintenance of a barrier or barriers for enforcing the restriction, and under section 64(8) of the 2014 Act the Council may install, operate and maintain barriers authorised under subsection (7) for the duration of the Order only.
- 5.8 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.
- 5.9 Crime and Disorder Act Implications – the proposed PSPO would provide an additional power to deal with the behaviour identified in the report.  
Tamazin Wilson, Solicitor, 23 August 2017

## **6 STRATEGIC ASSETS & PROPERTY COLLEAGUE COMMENTS (FOR DECISION RELATING TO ALL PROPERTY ASSETS AND ASSOCIATED INFRASTRUCTURE) (AREA COMMITTEE REPORTS ONLY)**

- 6.1 None needed at present.

## **7 EQUALITY IMPACT ASSESSMENT**

- 7.1 Has the equality impact of the proposals in this report been assessed?

Yes

Attached as Appendix 2, and due regard will be given to any implications identified in it.

- 7.2 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 PSPO complies with the underlying principles of the scheme and promotes fair and individual enforcement based on the Order. The introduction of the proposed PSPO may adversely impact on those who are disabled through limited mobility as they would be required to travel a longer distance via one of the alternative routes.

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

- 8.1 None.

## **9 PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT**

- 9.1 Anti-Social Behaviour, Crime and Policing Act 2014
- 9.2 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.

- 9.3 Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014
- 9.4 Local Government Association Public Spaces Protection Orders Guidance for Councils