

Arboretum, Dunkirk and Lenton, Radford and Park Area Committee
20th September 2017

Title of paper:	Public Spaces Protection Order in the vicinity of Bentinck Primary school		
Director(s)/ Corporate Director(s):	Andrew Errington, Director of Community Protection	Wards affected: Arboretum	
Report author(s) and contact details:	David Scothern, Community Protection david.scothern@nottinghamshire.pnn.police.uk 07790499036		
Other colleagues who have provided input:	Mrs Tamazin Wilson Mr John Lee, Rights of Way Officer, Traffic and Safety		
Date of consultation with Portfolio Holder(s) (if relevant)	N/A		
Relevant Council Plan Key Theme:			
Strategic Regeneration and Development			<input type="checkbox"/>
Schools			<input type="checkbox"/>
Planning and Housing			<input type="checkbox"/>
Community Services			X
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"/>
Summary of issues (including benefits to citizens/service users):			
<p>A need has been identified to control and reduce various problems associated with anti-social behaviour being perpetrated on a public footpath, which is a public right of way, at the rear of the Bentinck Primary and Nursery school ("the School"). The right of way runs from Caulton Street, off Alfreton Road to Birkin Avenue. The problems have been caused by persons unknown using the right of way and causing a variety of persistent 'anti-social behaviour' which is considered unreasonable, including using the public footpath area to litter, urinate, leave dog fouling uncleared and being verbally abusive to service users and the school's staff. Litter has included broken glass and used condoms. The extent of the detritus has resulted in an additional workload for both the school staff and Nottingham City Council Waste Management in clearing the footpath.</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 restrict access to the problem area to control and reduce the identified problems. 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>			
Recommendation(s):			
1	<p>The Area Committee note the evidence gathered and the results of the consultation on the proposal to introduce a Public Spaces Protection Order ("PSPO") to restrict the use of the right of way running from Caulton Street, off Alfreton Road, Nottingham to Birkin Avenue, Nottingham as indicated in the proposed PSPO attached at Appendix 1 for the area shown with a solid black line on the plan in the proposed PSPO.</p>		

2	That, being satisfied that the test in section 59 of the Anti-social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”) is met, having considered 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 and Democratic Services to make a PSPO in the form indicated in the proposed PSPO attached at Appendix 1 over the land shown 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.
3	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 publication and arrange for appropriate signage to be erected in accordance with the legislative requirements.
4	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 £70 if paid within 14 days, reduced to £35 if paid within 10 days.

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 draft Order attached as Appendix 1 (“the proposed PSPO”) in respect of the land shown with a solid black line on the plan in the draft Order (“the Restricted Area”). The proposed PSPO contains the following proposed restrictions:
 - 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 on all days EXCEPT between the hours of 08:45 to 09:10 and between 15:00 and 15:30 on any day when the Bentinck Primary and Nursery School is open to the daily admission of pupils.
- 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 In the event that a decision is made to make the proposed PSPO, it is recommended that the Area Committee agree to set the Fixed Penalty amount for offences committed contrary to the PSPO at £70, with a reduction of £35 if paid within ten days.
- 1.5 The proposed PSPO is not intended to interfere with responsible persons frequenting the area to drop off or pick up their children from the School, or personnel from

bodies lawfully carrying out their duties. Examples are personnel of the Ambulance/National Health Services, Fire and Rescue Services and police who require access to or egress from such premises.

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, 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.

1.6.2 The Council's Rights of Way officer has confirmed that the Restricted Area is an unrecorded public right of way. Under section 64(1) of the 2014 Act the Council may not make a PSPO that restricts a public right of way without also 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.

1.6.3 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 in the proposed PSPO without commencing the formal consultation stage again. If the proposed PSPO 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 or extend the Order if necessary.

2 BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)

2.1 The Restricted Area is a footpath situated to the rear of the Bentinck Primary and Nursery School leading from Caulton Street, off Alfreton Road to Birkin Avenue marked Gate A to Gate C on the plan attached to the proposed PSPO in Appendix 1 ("the Plan"). There is also access to the Restricted Area from the footpath adjacent to the Multi Use Games Area (MUGA) at the South-eastern end of Cope Street (marked Gate B on the Plan).

2.2 While issues connected to use of the MUGA have also been mentioned by the School, there is no proposal to restrict access to the MUGA at present. The School have indicated that problems with anti-social behaviour on the MUGA have been similar to that on the proposed Restricted Area. These have included litter, broken glass, dog faeces, graffiti, sexual activity and racist language.

2.3 The unreasonable conduct has been persistent in its nature and has caused harassment, alarm and distress to the School staff and to service users. The Restricted Area is used by parents and carers bringing their children to the School at the beginning of the day, and collecting them at the end of the school day. The

evidence shows that these issues impacted on those accessing the School and posed a potential health risk. This undoubtedly has a detrimental effect on young children and their parents / carers as they start and end the school day. There is no CCTV coverage of the Restricted Area and therefore outside of school hours it has not been possible to identify perpetrators.

- 2.4 The issues with waste and detritus have been ongoing for some years. The Head Teacher of the School has provided evidence of attempts to deal with the issues. These include a letter to Parents and Carers dated 06 October 2011 and a Health and Safety Notice from the Head Teacher and Chair of the School Governing Body dated 26 April 2012. The Head Teacher has confirmed that the issues go back to at least 2006. It is clear that issues such as litter, dog mess, broken glass on grassed areas, human waste such as urine, faeces and vomit have been a feature of the area.
- 2.5 In October 2011 a grassed area used by the School was closed to school children during the day and a decision made that play times and PE lessons would only take place in the playground and school hall for safety reasons. In April 2012 the School closed the grassed area at the end of the School day due to the anti-social problems. This area does not form part of the proposed PSPO.
- 2.6 As the tools available to deal with perpetrators were either not appropriate or there was insufficient evidence, the School took the decision to close the Restricted Area off. This has been via gates at the three entrance points on Caulton Street off Alfreton Road, Birkin Avenue and Cope Street. Since the gates have been closed since at least January 2016 the school have reported that the problems have virtually ceased. Individuals are reported to have got onto the Restricted Area, primarily via forcing an entrance in the fence pales fronting Cope Street in order to play on the MUGA, but this also has abated following repairs to the fencing.
- 2.7 Whilst this action has mainly resolved the problems, the School have blocked off a right of way. The School is opening the gates to the three access points in order to allow parents / carers to bring and collect their children, but the Restricted Area, which is a public right of way, remains closed to the general public outside school hours and during school hours except for drop off and collection of children. A fencing scheme was completed in February 2017 which provided a new gate at the intersection of the Restricted Area and the footpaths running from Cope Street and short runs of fencing attached to existing fencing at the point marked 'Gate B' on the Plan so the MUGA could be available to the community at all times without the community having access to the Restricted Area.
- 2.8 The evidence shows that problems experienced at the rear of the School were a serious nuisance and persistent and the identity of the perpetrators is unknown. The Council is therefore seeking a more long term solution to the problem identified.
- 2.9 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 previously undertaken an informal consultation in relation to a possible PSPO in July 2016 with partner agencies and other interested parties such as the emergency services, utilities, and those organisations which have an interest in rights of way. Three replies were received, these being from Western Power, Virgin Media and Notts police. Western Power and Virgin Media had no objections to the proposal as

they could have access to effect repairs and service their equipment. Notts Police were supportive of the proposal. The Council have also 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.

2.10 The Council has consulted with:

- The Chief of Police and the local policing body, for the police area that includes the restricted area
- the School
- Police and Crime Commissioner
- The Council Operations Manager responsible for Cleansing
- The Council Senior Community Protection Officer for the area
- The Council's Rights of Way officer
- A consultation letter was delivered to 145 addresses in the locality
- The Council published a copy of the proposed PSPO on its website
- The School published a copy of the draft Order on its website.
- A copy of the proposed PSPO was exhibited at entrances to the School
- Neighbourhood Development were made aware of the proposals.

The legislation requires that consultation is carried out with the owner or occupiers of land within the Restricted Area. The Restricted Area is surrounded by land owned by the Council and occupied by the School.

2.11 Consultation commenced 21 June 2017 and concluded on 25 July 2017.

2.12 The consultation included detail of the alternative routes should the proposed PSPO be made.

2.13 There were three responses to the consultation: from the Chief Constable, Head Teacher of the School and a local resident. All three were supportive of the proposed PSPO.

The local resident made the comment that ***"I believe that this measure should be temporary, applied only as long as fly-tipping and anti-social behaviour remain an issue."***

2.14 The Councils Rights of Way Officer has provided the following comments:-

The footpath is an un-adopted public right of way, is 70 metres long with a variable width of between 2.0 and 2.5 metres. It has a metalled surface, 2 street lights and reasonably good natural surveillance. The footpath is not recorded onto the Councils 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 PSPO has worked or simply moved the problems onto other streets.

Effect on occupiers of premises adjoining or adjacent to the footpath: Apart from the school, there are no premises directly adjoining or adjacent to the footpath and it is not used as a primary means of access to a dwelling.

Reasonably convenient alternative route: in the event that Area Committee authorise the making of the PSPO, there are two alternative routes. The one running along the footways of Birkin Avenue, Bentinck Road and Alfreton Road is around 205 metres long, has street lights and no steep gradients or other disability access implications. The other runs along the footways of Birkin Avenue, Palin Street and Alfreton Road and is around 350 metres long, no steep gradients or other disability access implications and has street lighting. The notable difference between the footpath and the alternative routes is the footpath is traffic free, the additional distance that pedestrians and other footpath users would have to travel and the alternative routes are along trafficked streets. However, because the footpath has been gated without causing any specific issues for pedestrians and citizens with limited mobility, it is unlikely that the PSPO will affect persons living in the locality.

Overall, the problems occurring near and on the footpath are well documented to which the school has been seeking a resolution for a number of years. The gates are already in situ so regularising them through a PSPO is unlikely to make any noticeable difference on the ground, to pedestrians or others in the locality.

- 2.15 It is considered that the restrictions being sought are proportionate, necessary and reasonable in the light of the anti-social behaviours.
- 2.16 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.
- 2.17 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, if the proposed Order is made, the School will hold the key to the gates shown at points A B and C on the Plan, as at present and provide replacement keys. It is also proposed that the responsibility for maintenance of the gates will remain with the School and that the School be responsible for opening and closing of the gates in accordance with the terms of the proposed Order.
- 2.18 In relation to 64 (1) (a) above there are no premises adjoining the highway except for the School. In relation to 64(1) (b) above the Restricted Area has been closed off since at least January 2016. There are no premises, except for the School, which are adjacent to the Restricted Area.
- 2.19 In relation to 64(1)(c) above the closure of the Restricted Area would require an additional short walk via Bentinck Road. For those coming from Cope Street this would mean a longer walk along Cope Street onto Palin Street and then either along Alfreton Road or Birkin Avenue. The consultation has not raised any concerns regarding this additional travel.

- 2.20 In addition, if the proposed PSPO is made, signs will be placed at the three entrance points to the Restricted Area to advise of the prohibitions contained in the Order, 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.
- 2.21 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 Authority. 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. It is proposed that, 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.
- 2.22 If made, it is proposed that the above PSPO will last for three years, after which it may be reviewed to see if the restrictions are still required.

3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

- 3.1 An option would be not to make the proposed PSPO. This would mean that the gates at points marked A, B and C on the Plan should be open at all times, and given the evidence gathered above, is likely to result in a return to the problems identified in the Background section of this report.
- 3.2 Possible action that could be taken could include Fixed Penalty Notices for littering offences and prosecution for fly-tipping. However, without being able to identify the individuals perpetrating the anti-social behaviour, action against perpetrators cannot be taken.
- 3.3 Where anti-social behaviour caused harassment, alarm or distress, a Civil Injunction under the Anti-social Behaviour, Crime and Policing Act 2014 could be sought. An Injunction can be sought for an individual aged 10 years or over.
- 3.4 The proposed PSPO would give parents / carers and their children a safer route to and from the School, reducing the risk of injury from broken glass. The proposed PSPO would improve the amenity of the area by the lack of litter and detritus and make going to and from the School a more enjoyable, safer experience.

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. Based on the assumption that likely breaches would only be 2 a year and assuming the FPN would be paid within 10 days, the amount is £70 per year. 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 17th August 2017

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

- 5.1 Procurement not required.
- 5.2 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 appears to fall within the remit of Area Committee and the proposal appears to be in accordance with the Council’s Scheme of Delegations.
- 5.3 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.
- 5.4 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).
- 5.5 The proposed PSPO will restrict public rights of way over land which is identified as being rights of way, which may be restricted at present without lawful authority. As identified in the report, under section 64 of the 2014 Act there are additional considerations and steps which must be taken where rights of way are restricted. As required, the impact of the proposed restrictions have been considered, and the availability of reasonably convenient alternative routes. It should also be noted that it is proposed that the rights of way in question will be available between 08:45 to 09:10 and between 15:00 to 15:30 on each day that the School is open to the daily admission of pupils so they can be taken to and collected from the School. Under section 64 of the 2014 Act there are some rights of way which cannot be restricted due to their strategic value. The rights of way the subject of the proposed PSPO do not fall within the types of rights of way which cannot be restricted.
- 5.6 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.
- 5.7 The making of a PSPO can be challenged by way of Judicial Review.
- 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.

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

6.1 Not required.

7 EQUALITY IMPACT ASSESSMENT

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

No

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An EIA is not required because:

(Please explain why an EIA is not necessary)

Yes

X

Attached as Appendix 3, 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 Public Spaces Protection Order complies with the underlying principles of the scheme and promotes fair and individual enforcement based on the Order. The introduction of the 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