

**Area Committee – Castle, Hyson Green & Arboretum and Radford
16 September 2020**

Title of paper:	Proposed Extension, in the vicinity of Bentinck Primary School, to the Nottingham City Council Restriction of Public Right of Way Public Spaces Protection Order 2017	
Director:	Andrew Errington Director, Community Protection	Wards affected: Hyson Green & Arboretum
Report author and contact details:	David Scothern, Principal Enforcement Officer, Community Protection Email: david.scothern2@nottinghamcity.gov.uk Telephone: 101 Ext: 3110036 or 07790 499036	
Other colleagues who have provided input:	<p>Tamazin Wilson, Solicitor, Legal Services Email: tamazin.wilson@nottinghamcity.gov.uk Telephone: 0115 8764417</p> <p>Maria Balchin, Commercial Business Partner Email: maria.balchin@nottinghamcity.gov.uk Telephone: 0115 8763720</p>	
Date of consultation with Portfolio Holder	Not applicable	

Relevant Council Plan Key Theme:

Nottingham People	<input type="checkbox"/>
Living in Nottingham	<input checked="" type="checkbox"/>
Growing Nottingham	<input type="checkbox"/>
Respect for Nottingham	<input checked="" type="checkbox"/>
Serving Nottingham Better	<input type="checkbox"/>

Summary of issues (including benefits to citizens/service users):

In 2017 a need was identified to control and reduce various problems associated with anti-social behaviour being perpetrated in and around a footpath at the rear of the Bentinck Primary school, which is a public right of way, namely the footpath leading from Caulton Street, off Alfreton Road, to Birkin Avenue. Concerns were raised regarding persistent and on-going unreasonable anti-social behaviour caused by persons unknown using the footpath which had a detrimental effect on the quality of life of local residents, and parents and carers, and their children who used the footpath to access the school at the beginning and end of the school day. The anti-social behaviour was concentrated in and around the footpath, the behaviour including littering, broken glass, used condoms, leaving dog fouling un-cleared and verbal abuse to service users and the school's staff.

The extent of the detritus resulted in an additional workload for both the school staff and Nottingham City Council Waste Management in clearing the footpath.

In order to deal with the behaviour a Public Spaces Protection Order ("PSPO") pursuant to the Anti-social Behaviour, Crime and Policing Act 2014 ("the 2014 Act") came into effect on 13th November 2017 which prohibits access to the footpath running from Caulton Street, off Alfreton Road to Birkin Avenue ("the restricted area") 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 School is open to the daily admission of pupils and authorised barriers at three access points to the footpath, these being off Caulton Street, Alfreton Road and from a footpath originating off Cope Street.

The current PSPO will expire on 12 November 2020 if it is not first extended and it is proposed that the PSPO is extended for a further three years.

Recommendations:

- | | |
|----|--|
| 1. | 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, the Area Committee authorise an extension to the Nottingham City Council in the vicinity of Bentinck Primary School Restriction of Public Rights of Way Public Spaces Protection Order 2017 for a further three years from 12 November 2020. |
| 2. | In the event that a decision is made to extend the Order under recommendation (1) above, the Area Committee authorise the Director of Community Protection to carry out the necessary advertisements and arrange for appropriate signage to be erected where necessary in accordance with the legislative requirements. |

1. Reasons for recommendations

- 1.1 On 20 September 2017 the Arboretum, Dunkirk and Lenton, Radford and Park Area Committee approved the making of a Public Spaces Protection Order (“PSPO”) for the Bentinck school (“the Order”) which came into force on 13 November 2017
- 1.2 The Order (copy attached at Appendix 1) includes the following restrictions:
- No person shall proceed on foot, pedal cycle, horse or in a vehicle or cause any animal to proceed in the restricted area (namely the footpath running from Caulton Street off Alfreton Road to Birkin Avenue) 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 school is open to the daily admission of pupils.
- 1.3 PSPOs can only remain in effect for a maximum of three years, and the Order expires on 12 November 2020.
- 1.4 Under section 60(2) of the Anti-social Behaviour, Crime and Policing Act 2014 (the 2014 Act) the Order can be extended for up to three years if, before the Order is due to expire, the local authority that made the Order is satisfied on reasonable grounds that doing so is necessary to prevent –
- a) The occurrence or recurrence after that time of activities identified in the Order;
 - or
 - b) An increase in the frequency or seriousness of those activities after that time.
- 1.5 Section 60(2) of the 2014 Act confirms that an extension under section 60 of the 2014 Act may not be for a period of more than three years, and it is proposed that the Order be extended for a further three years.
- 1.6 There will be no changes to the Fixed Penalty Notice which is currently set at £70 (with a £35 reduction if paid within 10 days) or a fine of up to £1,000 following prosecution.

- 1.7 The Council has undertaken consultation in relation to the proposed extension to the expiry date of the Order only. Any other potential amendments to the Order would first require formal consultation, publicity and notification authorised in accordance with the Council's Constitution.
- 1.8 When considering an extension to 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 Human Rights Convention. The purpose of the proposed extension to the Order is to ensure a continuation of the restrictions detailed above, and to extend the authorisation of the gates at each of the entry points to the restricted area, indicated on the Plan attached to the Order. Those going about their business in a peaceful and lawful manner are not unreasonably affected by the prohibitions in the Order.
- 1.9 There are no limitations as to the number of times that the Council can extend a PSPO once made.

2 Background (including outcomes of consultation)

- 2.1 For a number of years prior to the making of the Order concerns had been raised by the Bentinck school staff regarding persistent and on-going anti-social behaviour around the rear of the school, which had a detrimental effect on the quality of life of local residents and parents and carers, and their children, frequenting the school. From the evidence and other relevant information gathered from the school staff, the anti-social behaviour appeared to be concentrated in and around the restricted area and from Cope Street to the intersection with the footpath running from Caulton Street to Birkin Avenue.
- 2.2 However, the footpath accessed from Cope Street allowed access to a Multi-Use Games Area (MUGA) which is used by the school and also by the general public and is not restricted by the Order. The problems reported by the school relating to and in the vicinity of the restricted area in the past, include broken glass on grassed areas at the rear of the school, litter, and dog faeces being left in and around the restricted area. Some of the detritus reported found were used condoms. Prior to the Order coming into force fencing works were carried out by the school in an attempt to prevent unauthorised access to the grassed areas at the rear of the school.
- 2.3 Evidence to date indicates that the Order has been effective in deterring the above behaviour, but not completely eradicating it. It is noted that the restricted area is, by necessity, open for a period of time each morning and afternoon that Bentinck school is open for the daily admission of pupils, and there is no suggestion that this arrangement should change.
- 2.4 Concerns have been raised with Nottingham City Council's Community Protection Service that if the Order were to lapse, the behaviours described above and associated problems for the school and those lawfully using the restricted area may increase to a level similar to that experienced before the restriction on access to the restricted area was put in place, resulting in further anti-social behaviour in and around the restricted area. It is therefore proposed that the Order be extended for a further period of three years to provide a continuation of the respite.
- 2.5 On 12 February 2020 the Director of Community Protection authorised the formal consultation on the proposal to extend the effect of the Order for a further three

years from 12 November 2020. The consultation commenced on 24 February 2020 and ended on 23 March 2020.

2.6 The consultation ended on 23 March 2020. There has been one comment received from the Bentinck School in relation to the proposal to extend the Order since the consultation ended and no other issues have been raised.

2.7 It had been intended to take this report to the June Area Committee but due to the Covid-19 situation and June's Area Committee being cancelled that this report is being taken to the next available committee. Since the consultation period ended the Council has not received any further communications regarding the proposed extension, or the PSPO generally and therefore the recommendations remain unchanged.

2.8 The Council has consulted with:

- The Chief of Police and the Police and Crime Commissioner for the police area that includes the restricted area. However, the Council have not received a response.
- The Bentick Primary school. However, the Council have not received a response during the period of the consultation.
- The Council published a copy of the Order on its website and explained that it proposed to extend the effect of the Order for a further three years.
- The Neighbourhood Development Officer has been made aware of the proposals.
- Ward Members have been made aware of the proposals.

2.9 There has been no response during the consultation period to the proposed extension to the Order. The restricted area forms part of land that is owned by Nottinghamshire County Council but occupied by the school. The report author has spoken with a representative of the school prior to the start of the consultation who told him that there were still problems with dog fouling and litter on the alleyway and wished the PSPO to continue. This was followed by an e-mail from the school stating that they wished the Order to continue. There are no domestic premises abutting the restricted area with the school site on one side and the MUGA and grassed areas maintained by the school on the other.

2.10 The consultation formally ended on 23 March 2020. During the period of the consultation there was mounting concern over the impact of the Covid-19 virus on the United Kingdom. On 18 March 2020 the UK government announced that schools would close on 20 March until further notice. On 17 March a Latest News item was posted on the Bentinck school website stating that they were already preparing for the possibility of the school closing. It is not known what impact the Covid-19 virus situation may have had on the lack of a formal response, especially any towards the end of the consultation period.

2.11 Since the consultation ended an e-mail has been received from the Bentink school stating that "the Head teacher has asked me to add that due to a history of unsocial behaviour and still occasions of dog fouling and rubbish being spread directly and with the help of the wind, that with the pandemic it has been a hazard for all concerned. The impact of the closure is that the area is a much safer space for the children's outdoor education, this is key for pupils return to school following the pandemic. Parents have expressed their relief on drop off and pick up of how safe they feel and that the space is now safe for their children"

- 2.12 It is considered that the restrictions/prohibitions being sought to continue are proportionate, necessary and reasonable.
- 2.13 The Council must be satisfied that the proposed extension to the Order meets the test contained in section 60(2) of the 2014 Act detailed at paragraph 1.4 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.
- 2.14 In addition, if the extension to the current Order is made, the Order as extended will be published on the Council's website and signage to confirm the extension will be placed in the restricted area in accordance with the statutory provisions, together with the existing signage that advises of the prohibitions contained in the Order, and that breach of the Order is a criminal offence. These will continue to act as a deterrent.
- 2.15 Once the extension to the PSPO in the vicinity of Bentick Primary school has been approved, 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.
- 2.16 The cost of any additional signage and advertisement in accordance with the legal requirements will be taken from Community Protection's budget. The cost for the additional signage to be produced and erected is estimated to be well under £100.

3 Other options considered in making recommendations

- 3.1 If allowed to end, the gates that have been placed at all of the entrances to the restricted area to prohibit access at the times specified by the Order would have to be removed. The Council and the Police would no longer have the powers to take enforcement action against unauthorised persons accessing the restricted area when such access is prohibited under the Order, and the Council is of the opinion that it is likely that the behaviours will intensify and that users of the footpath to access the Bentinck Primary school will suffer increased anti-social behaviour again.

4 Finance colleague comments (including implications and value for money/VAT)

- 4.1 The financial implications in respect of this decision are minimal. There will a cost in relation to new signage following this decision (estimated to be less than £100). This cost can be contained within approved resources within the Community Protection Directorate.

5 Legal and Procurement colleague comments (including risk management issues, and legal, Crime and Disorder Act and procurement implications)

- 5.1 The power to extend the Order falls within the remit of this 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 extended where the Council is satisfied on reasonable grounds, that the legal test in section 60(2) of the 2014 Act is met in relation to all of the areas that the Order applies to.

- 5.3 When deciding whether to extend the Order 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 As identified in the main body of the Report, the Council has undertaken a consultation exercise regarding the proposed extension to the Order, which appears to be in compliance with the requirements in the 2014 Act and Statutory Guidance.
- 5.5 The Council should also consider how easy the Order, if extended, will be to enforce, since failure to properly enforce an Order could undermine the effect of an Order. The gates, currently in place to prohibit access to the restricted area during the times specified in the Order will remain in place and will continue to be locked and unlocked by the School in accordance with the Order to support the Order's enforcement.
- 5.6 It is proposed that, if extended, the Order will last for a further period of three years. 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 at the end of that extended period. There is no restriction on the number of times that a PSPO can be extended. As identified in the body of the report the Council must comply with publication and signage requirements

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 Attached as Appendix 2, and due regard will be given to any implications identified in it.
- 7.2 The extension 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 extension of the current 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 Decision of Andrew Errington dated 12 February 2020 to approve the formal consultation on the extension of the In the vicinity of Bentinck Primary school PSPO.

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 August 2019.

- 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.
- 9.5 Report of the Arboretum, Dunkirk and Lenton, Radford and Park Area Committee dated 20 September 2017, to approve the making of the Order.