

**Aspley, Bilborough and Leen Valley Area Committee**  
**7 October 2020**

<b>Title of paper:</b>	Proposed extension to the Public Spaces Protection Order (PSPO) Nottingham City Council (Smedley Close, Aspley, Nottingham) Gating Order 2008 (GO5004)	
<b>Director(s)/ Corporate Director(s):</b>	Andrew Errington Director, Community Protection	<b>Wards affected:</b> Aspley
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<b>Date of consultation with Portfolio Holder(s) (if relevant)</b>	Not applicable	
<b>Relevant Council Plan Key Theme:</b>		
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"/>
<b>Summary of issues (including benefits to citizens/service users):</b>		
<p>The Order detailed in the title to this Report was made under section 129A of the Highways Act 1980 ('HA'). This Order was originally known as a 'Gating Order', and is now a Public Spaces Protection Order (PSPO).</p> <p>The above Order prohibits access to land as detailed in that Order and shown on the plan attached to the Order (Restricted Area). Each Order authorised the installation of barriers at each entrance to the Restricted Area to enforce the restrictions. Those barriers remain in situ at the time of writing this report.</p> <p>The Order will expire on 19 October 2020 and the barriers will need to be removed if they are not first extended. It is proposed that the Orders are extended for a further three years.</p>		

<b>Recommendation(s):</b>	
<b>1</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, the Area Committee authorise an extension to the Nottingham City Council (Smedley Close, Aspley) Public Spaces Protection Order 2008 for a further three years from 19 October 2020.</b>
<b>2.</b>	<b>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.</b>

## **1. Reasons for recommendations**

- 1.1 On 23 July 2008 the West Area Committee Aspley Ward approved the making of the Nottingham City Council (Smedley Close, Aspley Nottingham) Gating Order 2008 (GO 5004), a copy of which is attached as Appendix 1 ('the Order').
- 1.2 The Order was made under section 129A of the Highways Act 1980 ('HA') to address issues of anti-social behaviour identified in the Restricted Area. The Order is subject to limited exceptions, and also authorised the installation of barriers at each entrance to 'the Restricted Area' for the purposes of enforcing the restrictions. Those barriers remain in situ at the time of writing this report.
- 1.3 Section 129A Highways Act has now been repealed. Under section 75(1)(A) of the Anti-Social Behaviour, Crime and Policing Act 2014 ('the 2014 Act'), any orders made under section 129A HA before 20 October 2014 remained in force until 20 October 2017, after which, under section 75(3) of the 2014 Act, if still in force at that time they continued to remain in force as if the provisions of the order were provisions of a Public Spaces Protection Order ('PSPO') made under the 2014 Act with 'any necessary modifications'. Therefore, from 20 October 2017 the Order effectively became a PSPO.
- 1.4 However, unlike Gating Orders which were not time limited, a PSPO may not have effect for a period of more than 3 years, unless extended under section 60 of the 2014 Act. The Order will therefore expire on 19 October 2020, and the barriers at each entrance to the Restricted Area will no longer be authorised and will need to be removed, unless the Order is first extended.
- 1.5 Since the Order was made there has been a significant reduction in the anti-social behaviour reported in the locality of the Restricted Area. However, if the Order was allowed to expire, which would result in the above mentioned barriers being removed, this may result in the recurrence of the identified anti-social behaviours in this location.

- 1.6 Under section 60 (2) of the 2014 Act, the Orders can be extended for up to three years if, before the Orders are due to expire, the Council is satisfied on reasonable grounds that doing so is necessary to prevent the:
- (a) occurrence or recurrence after that time of the activities identified in the Order; or
  - (b) an increase in the frequency or seriousness of those activities after that time.
- 1.7 Section 72 of the 2014 Act also applies, which contains provisions relating to convention rights, consultation, publicity and notification requirements.
- 1.8 This report seeks authority for an extension to the Order for a further 3 years.

## **2. Background (including outcomes of consultation)**

- 2.1 When considering whether to extend 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. Under section 72(4) of the 2014 Act the Council must also consult with:
- (a) the Chief Officer of police and the local policing body for the police area that includes the restricted area;
  - (b) whatever community representatives the local authority thinks it appropriate to consult; and
  - (c) the owner or occupier of land within the restricted area.
- 2.2 On 12 February 2020, the Director of Community Protection authorised the formal consultation on the proposal to extend the Orders for a further three years from 19 October 2020.
- 2.3 The Council has consulted with the Chief Constable, Nottinghamshire Police, and the Nottinghamshire Police and Crime Commissioner.
- 2.4 The Council has made Neighbourhood Development Officers aware of the formal consultation and sought confirmation as to whether there are any relevant community representatives in any of the three localities of the Orders.
- 2.5 The Council has written to the occupier of each of the properties which abut the Restricted Area making them aware of the formal consultation. These are:
- Numbers: 1, 6, 7, 8, 9, 10, and 11 Smedley Close, Aspley
- Numbers: 65, 67, 69, 71, 73 and 75 Wendover Drive, Aspley
- 2.6 The Council must also publicise the extension proposals on the Council's website. The Council has published a copy of the Order on its website.
- 2.7 Evidence to date indicates that the Order have been effective in deterring anti-social behaviour.

- 2.8 Concerns have been raised with Nottingham City Council's Community Protection Service that if the Order was to lapse, the behaviours described above may restart and the problems may reoccur resulting in further anti-social behaviour once more in an area that has been provided respite as a result of the actions taken by the Council. It is therefore proposed that the Orders be extended for a further period of three years to provide a continuation of the respite.
- 2.9 Formal consultation on the proposed extension of the Order commenced on 24 February 2020 and concluded on 22 March 2020. An additional two weeks was allowed to take account of any late responses.
- 2.10 The consultation ended on 22 March 2020 and it is recognised that four months have passed since the formal consultation ended. I can confirm however that there have been no further comments received in relation to the proposal to extend the Order since the consultation ended and no other issues have been raised.
- 2.11 It had been intended to take this report to the June Area Committee but due to the Covid-19 pandemic and the resultant 'lockdown' resulting in June's Area Committee being cancelled, this report is being brought forward to the first 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.
- 2.12 As a result of evidence collated during the consultation period, there appears to be support for the proposed extension to the Order. No letters were received from residents. One email was received on behalf of an elderly resident. It stated they wish to add that they support the application for the extension of the PSPO as they fear the anti-social behaviour will return should it be allowed to run out this year.
- 2.13 It is considered that the restrictions/prohibitions being sought to continue are proportionate, necessary and reasonable.
- 2.14 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 1.6 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.
- 2.15 In addition, if the extension to the Order is made, the extended Order will be published on the Council's website and signage to confirm the extension will be placed in the Restricted Areas 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.
- 2.16 The cost of signage is estimated to be well under £100.00 and will be met from Community Protection budgets.

### **3. Other options considered in making recommendations**

- 3.1 If the Order is allowed to end, the gates that have been placed to prohibit access to the footpath would have to be removed. The Council and the Police would no longer have the powers to take enforcement action to tackle the behaviours described in the original Gating Order and the Council is of the opinion that it is likely that the behaviours will begin to reoccur and that users of the footpaths and those living in the vicinity will start to 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 will remain in place and will continue 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 a 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 Not applicable

**7. Equality Impact Assessment (EIA)**

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

7.2 The extension of the Order will not adversely affect any particular group of citizens. Under the Council's Fair and Just Nottingham Equity Scheme, the proposed extension of the Order comply with the underlying principles of the scheme and promotes fair and individual enforcement based on the Order. The extension of the Order may have originally impacted on those who are disabled through limiting their access to adjoining roads meaning that they may have had to travel longer distances. However, the Restricted Area has remained gated off for at least eight years and the Council has received no concerns from residents. Therefore there will be no additional adverse impact on disabled citizens that has not been in place for over eight years.

**8. List of background papers other than published works or those disclosing confidential or exempt information**

8.1 Decision of the Director of Community Protection dated 12 February 2020 to approve the formal consultation on the extension of the Order.

**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 West Area Committee dated 23 July 2008 approved the making of the Order.