

# Nottingham City Council Delegated Decision



**Nottingham**  
**City Council**

Reference Number:

4328

Author:

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Department:

Resident Services

Contact:

Nicky Burns

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Subject:

Public Spaces Protection Order - Control of access to specified Nottingham City car parks

Total Value:

£3,000 (Type: Revenue)

Decision Being Taken:

1. Note the evidence gathered, and the results of the formal consultation on the proposal to introduce a Public Spaces Protection Order (PSPO) to control access to city centre car parks.
2. Being satisfied that the test in section 59 of the Anti-social Behaviour, Crime and Policing Act 2014 Act is met, and having regard to the rights of freedom of expression and freedom of assembly, to authorise the Director of Legal and Governance and/or the Head of Legal and Governance to make a PSPO in the form indicated at Appendix 1 to last for a period of three years from the date that it comes in to force.
3. In the event that the decision is made to make the Proposed PSPO pursuant to decision 2 above, to authorise the Director of Community Protection to carry out the necessary publication and arrange for appropriate signage to be erected in accordance with legislative requirements.

**1. Summary of Issues**

Nottingham City Council ("the Council") wants all those living in, working in or visiting the city centre to enjoy safe, clean, vibrant and attractive public spaces.

The Council has previously introduced some specific measures that help tackle detrimental behaviours within the city centre, such as the Management of Nottingham City Centre Public Spaces Protection Order that allows authorised officers to deal with a variety of behaviours that are having a detrimental effect on the quality of the lives of those living in, working in or visiting the city centre.

However, following evidence and complaints from a number of sources, the Council has identified a number of activities and behaviours that are taking place in some city centre car parks including thefts in/from motor vehicles, drug use activity including discarded drug paraphernalia, urination and defecation and other anti-social behaviour and or begging which are set out in more detail in the Background and Issues at section 3 below and Appendix 2 and Appendix 3, and in respect of which evidence suggests that the test for a Public Spaces Protection Order ("PSPO") set out in section 59 of the Anti-social Behaviour, Crime and Policing Act 2014 ("2014 Act") is met.

Evidence of crime and anti-social behaviour recorded in the identified city centre car parks, including an analysis produced by Community Protection's Crime and Intelligence Team, reports from front line staff involved in uniformed patrols of the car parks and security staff that are operating and conducting mobile patrols within the car parks, indicate that there are a variety of on-going behaviours occurring in those car parks that are having a detrimental effect on the quality of life of those living in, working in or visiting the city centre and using those car parks.

· With a view to preventing and or reducing the detrimental effects reported at those identified city centre car parks, formal consultation has been undertaken on a proposal to introduce a PSPO to control access to the following ten city centre car parks: NCP Mount Street car park, Mount Street, Nottingham, NG1 6HG

· NCP St James Street car park and NCP St James Street car park 2, 5 St James' Street, Nottingham, NG1 6EY

· NCP Maid Marian Way car park (previously known as Arndale Centre car park), Maid Marian Way, Nottingham, NG1 6AE

· Lace Market car park (previously known as Fletcher Gate car park), Pilcher Gate, Nottingham, NG1 1QE

· NCP Stoney Street car park, Stoney Street, Nottingham, NG1 1LSTrinity Square car park, North Church Street, Nottingham, NG1 4AF

· Trinity Square car park, North Church Street, Nottingham, NG1 4AF

· NCP Huntingdon Street car park, Union Road, Nottingham, NG3 1FG

· Crowne Plaza car park, Wollaton Street, Nottingham, NG1 5RH

· Euro car park, Upper Parliament Street, Nottingham, NG1 6LD

SIP car park (Avalon Court), 5 Kent Street, Nottingham, NG1 3LS

This report details the outcome of that formal consultation, and recommends that a PSPO to restrict access to the above ten city centre car parks ("the Proposed Restricted Car Parks") is made. A draft PSPO to restrict access to the Proposed Restricted Car Parks was consulted upon ("First Draft PSPO") but following the consultation minor amendments were made to the First Draft PSPO to correct typing errors, and the PSPO which it is proposed should be made is attached at Appendix 1 ("the Proposed PSPO"). The changes from the First Draft PSPO are explained in more detail at Appendix 4.

Any breaches of the prohibitions and restrictions contained within the Proposed PSPO will be determined by an authorised officer of Nottingham City Council or Nottinghamshire Police, and breach of a PSPO is an offence.

There are no additional staffing costs anticipated with the policing of the Proposed PSPO.

## 2. Legislation

Section 59 of the 2014 Act gives the Council the power to make a PSPO if satisfied on reasonable grounds that

- a) activities carried on in a public place within the authority's area 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 that 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 restrictions imposed.

Where the test in Section 59 of the 2014 Act is met, a PSPO may prohibit specified things being done in the public place that is identified in the order, and/or require specified things to be done by persons carrying on specified activities in that area.

The only prohibitions or requirements that can be imposed in a PSPO are ones that are reasonable to impose in order to prevent or reduce the detrimental effect from the activities from continuing, occurring or recurring.

Before a PSPO can be made, consultation must be undertaken in accordance with the 2014 Act, regulations made thereunder and statutory guidance. This includes consulting with

- a) the Chief of Police and the local policing body for the police area that includes the restricted area;
- b) the Police and Crime Commissioner;
- c) whatever community representatives the local authority thinks it appropriate to consult;
- d) the owners and occupiers of land within the restricted area, so far as is reasonably practicable;

When making a PSPO, the Council must also 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.

Breach of a requirement or restriction contained in a PSPO, without reasonable excuse, is an offence. The penalty for committing an offence contained in a PSPO is a fine of Level 3 on the standard scale (current maximum fine £1,000) although the opportunity to pay a fixed penalty notice ("FPN") may be offered instead.

The current Statutory Guidance in respect of the 2014 Act was issued by the Government in August 2019.

This guidance states that when considering whether to make a PSPO

"..the council should give due regard to issues of proportionality: is the restriction proposed proportionate to the specific harm or nuisance that is being caused? Councils should ensure that the restrictions being introduced are reasonable and will prevent or reduce the detrimental effect continuing, occurring or recurring".

With regards to PSPOs, that guidance also states that

"Public Spaces Protection Orders should not be used to target people based solely on the fact that someone is homeless or rough sleeping, as this in itself is unlikely to mean that such behaviour is having an unreasonably detrimental effect on the community's quality of life which justifies imposing restrictions using a PSPO. Councils may receive complaints about homeless people, but they should consider whether the use of a Public Spaces Protection Order is the appropriate response. These Orders should be used only to address any specific behaviour that is causing a detrimental effect on the community's quality of life which is within the control of the person concerned.

Councils should therefore consider carefully the nature of any potential Public Spaces Protection Order that may impact on homeless people and rough sleepers. It is recommended that any Order defines precisely the specific activity or behaviour that is having the detrimental impact on the community".

As indicated above, and throughout this report, the Council has identified a number of activities and behaviours taking place in city centre car parks, in respect of which evidence suggests that the test set out in section 59 of the Anti-social Behaviour, Crime and Policing 2014 Act is met.

### **3. Background and Issues.**

Evidence from a number of sources indicates that there are a variety of behaviours occurring within the Proposed Restricted Car Parks that are potentially having a detrimental effect on bona fide users of those car parks and thus those living in, working in or visiting the city centre.

Evidence include reports written by Community Protection's Crime and Intelligence Team analysing crime and anti-social behaviour incidents across Nottingham city centre car parks covering a number of car parks situated within the city centre between an extensive period from October 2017 to July 2020, online surveys undertaken as part of the consultation on Nottingham City Council's website, customer service requests and complaints.

The reports break down the number and nature of incidents in Nottingham city centre car parks called into the Police control room via the 999 or 101 numbers, and covers four main incident categories namely Theft from Motor Vehicle, Theft of Motor Vehicle, Drugs and ASB/Begging, as these contribute to the greatest level of harassment, alarm and distress to the public. A copy of the full report dated 01/11/2019, is attached at Appendix 2 and full report Car Park Analysis August 2020 in Appendix 3.

In addition to responding to reports from members of the public, Community Protection Officers and Police also undertake regular, pro-active, patrols of City Centre car parks, both Council and privately managed, that are identified as suffering high levels of anti-social behaviour and crime.

In the course of those patrols, between January 2019 and November 2019, Community Protection Officers and Police Officers removed 626 individuals who have been within the Proposed Restricted car parks without valid reason, and potentially causing bona fide users of those car parks harassment, alarm and distress.

In relation to the Proposed Restricted Car Parks; CCTV of the Lace Market car park stairwells is monitored via the Woodlands Control Centre, as is CCTV of the entrance and payment hall to Trinity Square Car Park. However, this is the extent of CCTV monitoring by Council staff that is currently available.

Two of the Proposed Restricted Car Parks that are managed by the City Council (Lace Market and Trinity Square) are also visited throughout the day and night by mobile patrol officers from the Security and Logistics team, with 271 individuals being identified via these patrols as being present in the Lace Market car park without legitimate reason, and 193 individuals in Trinity Square car park without legitimate reason, between January 2019 and November 2019.

An article was published on the 24 October 2019 by the Nottingham Post newspaper detailing problems experienced by users of the NCP managed city centre car park at Stoney Street (which is included within the Proposed Restricted Car Parks).

The article highlights issues with regards discarded needles, passed out drug addicts and gangs of intimidating youths and states that motorists are feeling uncomfortable returning to their cars at night. Individual customers are quoted within the article, giving details of their personal experiences.

In the article NCP confirm their awareness of an increase in anti-social behaviour at both their Stoney Street and St James' Street car parks (both of which are included within the Proposed Restricted Car Parks).

Anti-social behaviour in privately operated car parks is highlighted to the operators of those car parks with a view to those operators taking responsibility for tackling issues on their own premises and enforcement action will be considered against operators who do not act to tackle high levels of anti-social behaviour and criminality on their premises.

A three month Closure Order, pursuant to Section 80 of the 2014 Act was granted by the Court on the application of Community Protection's Anti-social Behaviour Team, in respect of the Avalon Court city centre car park in March 2019 (another car park included within the Proposed Restricted Car Parks).

Having reviewed all evidence available it is proposed that the Proposed Restricted Car Parks all fall within the definition of a public place pursuant to the 2014 Act, and have recorded high numbers of incidents which meet the test for a PSPO under section 59 of the 2014 Act.

The analysis provided in Appendix 2 and Appendix 3 indicates that the Proposed Restricted Car Parks are the most problematic, with an array of different issues within each one of them. These issues include drug taking and dealing, the leaving behind of drug paraphernalia, urination and defecation, begging, theft of and theft from vehicles and vehicle damage. The behaviours pose risks to health and property, intimidate lawful users of the car parks, and reduce feelings of safety and well-being amongst those lawful users.

The Proposed PSPO will only apply to the Proposed Restricted Car Parks. Car parks that are not listed in the Proposed PSPO will not be affected by the proposed restrictions in the Proposed PSPO. The Broadmarsh car park is currently being rebuilt and Nottingham Station car park is already subjected to controls under Train Byelaws. Neither of the aforementioned car parks can be able to be added to the Proposed PSPO without evidence that behaviour at those car parks meets the test for a PSPO in section 59 of the 2014 Act, and a further formal consultation on such a proposal will be required.

#### **4. Consultation**

Consultation was due to start at the end of March 2020, but due to Covid-19 and the global pandemic that was deemed inappropriate. As restrictions due to the pandemic started to lift, consultation on the First Draft PSPO was authorised by the Director of Community Protection, Andrew Errington, on Wednesday 16th of September 2020. The consultation period began on Monday 21st of September 2020 lasting for a total of a 6 week period, ending Sunday 1st of November 2020.

A brief summary of the consultation shows that 100% of the people that took the time to complete the survey were in favour of the restrictions set out in the First Draft PSPO being implemented in relation to the Proposed Restricted Car Parks. 78% of those people had indeed experienced Anti-Social Behaviour within city centre car parks during the last 12 months. External companies that manage some of the Proposed Restricted Car Parks were also in favour of the introduction with NCP, SIP and the Crowne Plaza also in favour of the restrictions set out in the First Draft PSPO being implemented. NCP have since been in contact in May 2021 asking for the extra measures and support to be provided in their car parks because on continuing ASB.

Full support was also provided by the Police Crime Commissioner and Nottinghamshire Police. Nottinghamshire Police did ask additional questions that have been answered, and highlighted some minor typing errors in the First Draft PSPO, details of which are included in the full formal consultation results in Appendix 4. As indicated above, the minor errors identified in the First Draft PSPO have been amended in the Proposed PSPO.

Results from the formal public consultation at Appendix 4, together with the evidence gathered in support detailed in Appendices 2 and 3 indicate that the Proposed PSPO is a reasonable and proportionate means of addressing the behaviours identified therein.

It is also considered that the test in section 59 of the 2014 Act is met in respect of the behaviours that it is proposed will be prohibited or restricted by the Proposed PSPO. There has been particular regard to rights of freedom of expression and freedom of assembly.

#### **5. Convention Rights**

As required by the 2014 Act the Council must have particular regards to the Rights of Freedom of Expression and Freedom of Assembly set out in Articles 10 and 11 of European Convention on Human Rights, as well as having regard to other freedoms and rights contained within the Convention.

Human rights contained in the Convention can often conflict and need to be balanced to protect both individuals and the wider society. There is an expectation that those asserting rights will behave responsibly and to respect the rights of others.

The terms of the Proposed PSPO attempt to balance those competing human rights and impose only reasonable and proportionate restrictions on individual behaviours so as to safeguard the rights of other individuals and the wider society.

#### **6. Fixed Penalty Notices (FPNS)**

By virtue of Section 68 of the 2014 Act, an authorised person may offer a FPN to any person that they believe has breached a PSPO. A FPN provides the person to whom it is issued the opportunity of discharging liability to conviction for the offence by payment of a fixed penalty to the local authority.

The level of FPN can be fixed locally at an amount not exceeding £100. By virtue of a delegated decision of the Director of Community Protection, dated 24 August 2017, the amount of the FPN for breach of a PSPO has been set at £70, reduced to £35 if paid within 10 days, and this would apply to FPNs for breach of the Proposed PSPO in Appendix 1, if made.

#### **7. Signage**

By virtue of regulations made pursuant to the 2014 Act, namely the Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014, the Council is required to cause to be erected on, or adjacent to the public place to which the PSPO relates, signage to draw attention to members of the public of the existence of the order.

Signage will be installed at all of the Proposed Restricted Car Parks, there will be four signs per car park covering all of the entrances to each individual car park so will be clearly visible when citizens are entering the car parks. The cost for the signage is estimated to be around £2500.00. This decision for this proposal will not require additional funding as the amount will be funded by existing in year budget of Community Protection.

**Briefing notes documents:** Appendix 1- Final Draft PSPO110320.docx, Appendix 4 - Consultation Responses (002).docx, Strategic Director Sign off.pdf, Boundary Map Euro Car Park.pdf, Boundary Map NCP Maid Marian Way.pdf, Boundary Map NCP St James Street.pdf, Crowne Plaza Car Park.pdf, Lace Market Multi Storey Car Park boundary.pdf, NCP Huntingdon Street boundary.pdf, Trinity Square Car Park boundary.pdf, SIP Car Park- Avalon Court boundary.pdf, NCP Stoney Street boundary.pdf, NCP Mount Street boundary.pdf

**Other Options Considered:** Other Enforcement Powers currently available to tackle issues identified in the Proposed Restricted Car Parks. The provisions of the Management of Nottingham City Centre PSPO, introduced in March 2019, apply to all car parks within the city centre that fall within the definition of a public place contained in Section 74 (1) of the 2014 Act. Provisions contained within that PSPO give Community Protection Officers and Police Officers the power to tackle issues of obstruction to the ingress to, or the egress from car parks, urination/defecation therein, and the possession or ingestion of psychoactive substances. Criminal sanctions are also available for offences that may occur within car parks including criminal damage, theft off/from vehicles, and drug related offences. However, neither the Management of Nottingham City Centre PSPO, nor the other criminal sanctions available, prohibit access to car parks by anyone other than bona fide customers or those with other legitimate reason to do so. The council could choose not to implement the proposed PSPO for car parks in the city centre - this option was rejected as evidence suggests that the behaviours in those specific car parks will continue causing ASB that is to the detriment of those using the car parks for the purpose it was designed for. The consultation results provided in this DDM shows full support of implementation from those that completed the survey.

**Background Papers:** The background papers included are evidential reports displaying the current issues that exist in all of the car parks completed and the original sign off for the proposed PSPO to go to formal consultation.

**Unpublished background papers:** Appendix 2- Nottingham City Centre Car Parks Report Update 2019.docx, Appendix 3- Car Park Analysis 2020.pdf, Strategic Director Sign off.pdf

**Published Works:** None.

**Affected Wards:** Castle

**Colleague / Councillor Interests:** None

**Any Information Exempt from publication:** Yes

**Exempt Information:**

Description of what is exempt:

Legal advice appendix.

An appendix (or appendices) to this decision is exempt from publication under the following paragraph(s) of Schedule 12A of the Local Government Act 1972

5 - Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

The public interest in maintaining the exemption outweighs the public interest in disclosing the information because it contains legal advice relating to the proposed PSPO and, having regard to all of the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information because the advice is professionally privileged and relates to potential proceedings which may arise from the proposed Order..

7 - Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

The public interest in maintaining the exemption outweighs the public interest in disclosing the information because the advice is professionally privileged and relates to potential proceedings which may arise from the proposed Order.

Documents exempt from publication:

ExemptLegalAdvice (1).docx

Consultations:

Date: 01/02/2021

Ward Councillors: Sam Webster, Angharad Roberts

Cllrs Webster and Roberts supported the decision to proceed with the implementation of the proposed PSPO.

Date: 25/09/2020

Other: Spoke with car park providers listed within the document

All providers were supportive in the implementation of the proposed PSPO

Those not consulted are not directly affected by the decision.

Crime and Disorder Implications:

Section 17 of the Crime and Disorder Act 1988 places duty on councils to do all they reasonably can to prevent crime and disorder. If introduced, a PSPO will give Nottingham City Council additional powers to tackle the behaviours that have been evidenced within our city centre car parks.

Equality:

Please login to the system to view the EIA document: Proposed Car Park PSPO - EAI (1) (002).docx

Decision Type:

Portfolio Holder

**Subject to Call In:**

**Yes**

**Call In Expiry date:**

**16/08/2021**

**Advice Sought:**

**Legal, Finance, Equality and Diversity**

**Legal Advice:**

**As identified in the main body of the Decision, PSPOs should only be made where the Council are satisfied on reasonable grounds that the legal tests in section 59 of the 2014 Act are met in relation to all of the areas that it is proposed the PSPO will apply to. The Council can only make prohibitions or requirements which are reasonable to impose in order to prevent or reduce the detrimental effect identified in a public place, or which is likely to be carried on in that place, and which it is likely will have such an effect.**

**The Council should also consider how easy the Proposed PSPO would be to enforce, since failure to enforce a PSPO could undermine the effect of that Order.**

**When deciding whether to make a PSPO the Council must give due regard to human rights issues and ensure it is acting proportionately.**

**As a general principle, the Proposed PSPO provisions should not be inconsistent with existing laws, not regulate an activity which is already regulated, and the contents should be consistent with other provisions, proportionate and clear. It is noted that there are existing offences that cover much of the anti-social behaviour referred to in the Decision, and the Council and or the Police already have a number of powers at their disposal to control such behaviour, for example Civil Injunctions, Community Protection Notices under the 2014 Act, and powers in the existing City Centre Management PSPO referred to in the Decision.**

**While the car parks included in the Proposed PSPO fall within the definition of a 'public place', most are on private land, so their use may already be subject to rules and conditions.**

**The Statutory Guidance made under section 73 of the 2014 Act confirms that a PSPO can be drafted from scratch based on the 'individual and specific issues being faced in a particular public space.'**

**The 2014 Act and Regulations made under it specify requirements for consultation and the consultation undertaken appears to comply with those requirements.**

**It is noted that some minor amendments to the First Draft PSPO have been made to the Proposed PSPO following the consultation. The 2014 Act and Statutory Guidance do not specifically address whether it is possible to amend a draft PSPO that has been through a formal consultation process. However, general principles relating to consultations apply, and it will be a matter of fact and degree in a particular case whether a further formal consultation is required.**

**The amendments contained in the Proposed PSPO are all relatively minor, either adding further detail why the Proposed PSPO meets the test set out in the 2014 Act, or correcting minor typographical errors, and the amendments do not materially amend the restrictions or the extent of land which is included within the proposed restricted area, and therefore a further formal consultation does not appear to be required.**

**The validity of a PSPO may be challenged by an interested person in the High Court by way of Judicial Review, or, in some circumstances, as a possible defence to a relevant prosecution.**

**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. 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.**

**Where a PSPO is made the Council must also comply with requirements as to signage and publication under the 2014 Act, the Regulations made under it, and the Statutory Guidance.**

**The maximum penalty for committing an offence contained in a PSPO is a level 3 fine, currently £1,000, although the opportunity to pay a fixed penalty notice may be offered as an alternative to prosecution.**

Please note that there is an additional exempt legal advice uploaded with this decision. Advice provided by Tamazin Wilson (Solicitor) on 12/07/2021.

**Finance Advice:**

This decision seeks approval to implement a new Public Spaces Protection Order Policy directly relating to Car Park access for a period of 3 years with possible extensions. There are minimal financial implications identified as a result of this decision or as a result of implementing the new Order. The required signage at each location and publication as required under the 2014 Act will be met as part of this decision value of £3,000.

There is no specific funding available for this work and so any costs for implementing the order must be met from within the MTFP of the Community Protection Directorate.

Advice provided by Susan Turner (Senior Commercial Business Partner) on 19/07/2021.

**Equality and Diversity Advice:**

Responded to the author off-line with some minor queries. There are no impacts to any of the protected characteristics and therefore happy to sign off.

Advice provided by Rosey Donovan (Equality and Employability Consultant) on 29/07/2021.

**Signatures**

<b>Neghat Khan (PH Neighbourhoods, Safety and Inclusion)</b>
<b>SIGNED and Dated: 06/08/2021</b>
<b>Andrew Errington (Director of Community Protection)</b>
<b>SIGNED and Dated: 02/08/2021</b>