

**Executive Board
22 February 2022**

Subject:	City Centre Management of Public Spaces Protection Order
Corporate Director(s)/Director(s):	Frank Jordan, Corporate Director for Resident Services Andrew Errington, Director of Community Protection
Portfolio Holder(s):	Councillor Neghat Khan, Portfolio Holder for Neighbourhoods, Safety and Inclusion
Report author and contact details:	Nick Burns, City Centre Manager – Community Protection nick.burns@nottinghamcity.gov.uk
Other colleagues who have provided input:	
Subject to call-in: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Key Decision: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Criteria for Key Decision:	
(a) <input type="checkbox"/> Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings of £750,000 or more taking account of the overall impact of the decision	
and/or	
(b) Significant impact on communities living or working in two or more wards in the City	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Type of expenditure: <input type="checkbox"/> Revenue <input type="checkbox"/> Capital	
Total value of the decision: Nil	
Wards affected: Castle; Hyson Green and Arboretum; and Meadows	
Date of consultation with Portfolio Holder(s): 26 October 2021	
Relevant Council Plan Key Outcome:	
Clean and Connected Communities	<input type="checkbox"/>
Keeping Nottingham Working	<input type="checkbox"/>
Carbon Neutral by 2028	<input type="checkbox"/>
Safer Nottingham	<input checked="" type="checkbox"/>
Child-Friendly Nottingham	<input type="checkbox"/>
Healthy and Inclusive	<input type="checkbox"/>
Keeping Nottingham Moving	<input type="checkbox"/>
Improve the City Centre	<input type="checkbox"/>
Better Housing	<input type="checkbox"/>
Financial Stability	<input type="checkbox"/>
Serving People Well	<input type="checkbox"/>

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

The Council's ambition is for all those living in, working in, or visiting the City Centre to enjoy safe, clean, vibrant, and attractive public spaces. In 2018, evidence and complaints from a number of sources indicated that there were a variety of on-going behaviours occurring within the City Centre that were having a detrimental effect on the quality of life of those living in, working in or visiting it. This included the following sources:

- the Nottingham Crime and Drugs Partnership (CDP) Respect Survey;
- a review of social media;
- face-to-face surveys;
- customer service requests;
- complaints; and
- feedback from front-line staff.

To address the behaviour identified the Nottingham City Council Management of Nottingham City Centre Public Spaces Protection Order 2019 (PSPO), pursuant to the Anti-Social Behaviour, Crime and Policing Act 2014 came into effect on 18 March 2018.

The PSPO came in to force on the 18 March 2019 and is due to expire on 17 March 2022. A consultation on the proposed extension of the PSPO was conducted between 12 November and 24 December 2021. This highlighted that the proposed extension to the PSPO is supported. This report therefore recommends that the PSPO is extended for a further three years.

Does this report contain any information that is exempt from publication?

No

Recommendation(s):

1. To note the evidence gathered, and the results of the formal consultation on the proposal to extend the Nottingham City Council Management of Nottingham City Centre Public Spaces Protection Order, as outlined in Section 3 of the report.
2. To authorise the extension of the Public Spaces Protection Order so that it remains in effect for a further period of three years from 17 March 2022, being satisfied that the test in Section 60 of the Anti-Social Behaviour, Crime and Policing Act 2014 is met, and having regard to the rights of freedom of expression and freedom of assembly.
3. To delegate authority the Director of Community Protection to carry out the necessary publication and arrange for current signage to be amended in accordance with legislative requirements.

1 Reasons for recommendations

- 1.1 On 18 December 2018 the Executive Board approved the making of the PSPO, which came into force on 18 March 2019.
- 1.2 The PSPO (Appendix 1) includes the following restrictions and requirements within the area of the City Centre. This is the area that is open to the air and is a public place. It is outlined in blue on the plan attached to the PSPO ('the Restricted Area'):

Within the Restricted Area persons shall not,

 - (1) Obstruct the entrance to or exit from any building, hinder street cleansing activity or block the highway.
 - (2) Offer for sale the Big Issue magazine unless on an authorised sale pitch and wearing appropriate identification. Locations are marked on a map within Appendix 3.
 - (3) Display a mobile advertisement without consent.
 - (4) Busk from a prohibited location or cause an unreasonable disturbance whilst busking.
 - (5) Distribute free matter without consent or lawful authority.
 - (6) Make requests for money, personal items, charitable or other donations without consent or lawful authority.
 - (7) Urinate or Defecate in a public place.
 - (8) Possess or ingest a Psychoactive Substance.
- 1.3 PSPOs can only be in effect for a maximum of three years, and the PSPO will expire on 17 March 2022 if it is not first extended.
- 1.4 Under Section 60(2) of the Anti-Social Behaviour, Crime and Policing Act 2014 ('the 2014 Act'), the PSPO can be extended for up to three years if, before it is due to expire, the Council 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 PSPO; or
 - (b) an increase in the frequency or seriousness of those activities after that time.
- 1.5 Section 60(3) 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.
- 1.6 Before a PSPO can be extended, consultation must be undertaken in accordance with the 2014 Act, regulations made thereunder and statutory guidance. This includes consulting with:
 - a) the Chief Officer of the 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; and
 - d) the owners and occupiers of land within the restricted area, so far as is reasonably practicable.
- 1.7 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.
- 1.8 On 26 October 2021 the Portfolio Holder for Neighbourhoods, Safety and Inclusion authorised that formal consultation be undertaken on the proposal to extend the effect of the PSPO for a further three years from 17 March 2022. Further details regarding the consultation are outlined in Section 3 of the report.
- 1.9 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.
- 1.10 Having undertaken formal public consultation, it is considered that the restrictions and requirements contained in the PSPO, as shown at Appendix 1, are and continue to be a reasonable and proportionate means of addressing the behaviours identified therein. It is also considered that the test in Section 60 of the 2014 Act is met in respect of the proposed extension and having regard to the rights of Freedom of expression and Freedom of Assembly.
- 1.11 If the PSPO was allowed to expire, the above described behaviours are likely to increase to the detriment of City Centre residents, businesses and tourists, with Nottinghamshire Police Officers and Nottingham City Council Officers no longer being able to tackle the behaviours using the powers contained in the PSPO.
- 1.12 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 and any extension.
- 1.13 When the PSPO was made, the Director of Community Protection published guidance on the Council's website to clarify the policy and procedural framework within which the PSPO sat, to provide additional safeguards for vulnerable individuals, and to make clear when action would not be appropriate under the PSPO. If the PSPO is extended it is proposed that this guidance, updated as appropriate by the Director of Community Protection, will continue to be provided.

2 Background (including outcomes of consultation)

- 2.1 In 2018 evidence and complaints from a number of sources, including the Nottingham CDP Respect Survey, review of social media, face-to-face surveys, customer service requests, complaints and feedback from front line staff, indicated that there were a variety of ongoing behaviours occurring within the City Centre that were having a detrimental

effect on the quality of life of those living in, working in or visiting it. The PSPO came in to force on the 18 March 2019 and is due to expire on 17 March 2022 if it is not first extended. Once the PSPO was implemented on the 18 March 2019 the Council did not receive any form of challenge to the PSPO.

Consultation Process

- 2.2 Formal consultation on the extension of the PSPO for a further three years was authorised through a delegated decision by the Portfolio Holder for Neighbourhoods, Safety and Inclusion, dated 26 October 2021. Consultation was undertaken over a period of six weeks, commencing on 12 November 2021 and ending at midnight on 24 December 2021.
- 2.3 As part of the consultation process the Council sought the views of:
- The Chief Officer of the Police
 - The Police and Crime Commissioner
 - Institute of Fundraising
 - Big Issue Company
 - Nottingham Business Improvement District (Nottingham BID)
 - Nottingham Creative Quarter
 - Keep Streets Live
 - Equity
 - Nottingham Community and Voluntary Service
 - Nottingham City Homes
 - University of Nottingham/Nottingham Trent University
 - Others whose land was potentially affected (Churches/Public Car Park providers)
- 2.4 The PSPO, a Frequently Asked Questions document, and associated documentation were placed on the Council's website, to allow wider public comment on the proposed extension of the PSPO for a further three years.

Consultation Responses

- 2.5 Nine responses were received to the consultation from all the organisations that were written to and asked for comment, no public consultation comments were received and all responses were from the following organisations
- Nottinghamshire Police
 - Police and Crime Commissioner
 - Nottingham BID
 - Framework Housing
 - Nottingham Trent University
 - University of Nottingham
 - University of Nottingham Students Union
 - Nottingham Crowne Plaza
 - Institute of Fundraising
- 2.6 Responses from the Nottinghamshire Police, Police and Crime Commissioner, Nottingham BID and the Nottingham Crowne Plaza are supportive of the proposals to extend the City Centre Management PSPO and there were no concerns raised by

any other of the organisations. The report at Appendix 4 contains the detailed excerpts from all of the organisations that provided comment to the consultation.

Convention Rights

- 2.7 As required by the 2014 Act the Council has had 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.
- 2.8 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.
- 2.9 The terms of the City Centre Management 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.

Signage

- 2.10 Current signage will be amended accordingly inclusive on the new expiry date should the extension be approved.

3. Review of Enforcement Activity (18 March 2019 to 15 December 2021)

3.1 Obstruction

- 3.1.1 PSPO prohibits any person from obstructing the ingress to or egress from any building, or preventing or hindering street cleansing activity, or hindering the free passage of pedestrians or vehicles along a highway.
- 3.1.2 PSPO came into effect, 135 FPNs have been issued by Community Protection Officers (CPOs), to a total of 81 individuals, for breach of the obstruction provision. All bar three have been issued in respect of the obstruction of access to fire exits/buildings.
- 3.1.3 In addition, a further 260 verbal warnings have been given to individuals for breach of the obstruction provision, with those verbal warnings proving sufficient, to ensure that the obstruction ceases, thus helping to ensure the free passage and safety of those using buildings within the city centre.
- 3.1.4 Almost all enforcement interactions in respect of the obstruction provision have been with individuals who are homeless and rough sleeping, or who have accommodation available to them but choose to sleep rough, or who are housed but seek to obstruct access to buildings with a view to seeking financial gain.
- 3.1.5 Before taking enforcement action against any person for obstruction, CPOs ensure that the safeguards are observed, with the intention of ensuring that those who are

genuinely homeless and vulnerable, do not breach the terms of the PSPO by the simple act of rough sleeping.

- 3.1.6 In doing so, CPOs will ensure that, before any action is taken against anyone who appears to them to be homeless, they will first make an offer to that person to refer them to appropriate support services with a view to securing them accommodation. In addition, they will also first ask any person causing an obstruction to cease that obstruction, explain to them the reason for that request and warn them of the consequences of failing to comply with the request.

3.2 Big Issue Sales

- 3.2.1 The PSPO states that no person shall sell a Big Issue Magazine unless they are located on an authorised sales pitch and are displaying their valid Big Issue identification badge. Fifteen authorised pitches have been agreed with the Big Issue Company Limited and can be seen on the Council's website.
- 3.2.2 Since the PSPO came into effect, 17 FPNs have been issued to a total of 11 individuals for attempting to sell the Big Issue magazine without displaying a valid Big Issue vendor identification badge. In the cases in question none of the vendors were authorised to sell the magazine by the Big Issue Company Limited.
- 3.2.3 As part of the review of activity since the inception of the PSPO, the Big Issue Company have been approached for their views, and has confirmed that neither they, nor their authorised vendors, have experienced any problems. The Big Issue Company continue to be supportive of the PSPO and the protection it gives to their brand and to bona fide vendors.

3.3 Mobile Advertisements

- 3.3.1 PSPO prevents any person from displaying a mobile advertisement without the consent of the Council.
- 3.3.2 Since the order came into force, 21 organisations have had applications to display mobile advertisements approved, although in 2 of those cases the initial application was refused and amended applications subsequently approved.
- 3.3.3 8 warnings have been issued in respect of unauthorised advertising, one of which prompted an application for consent and the remainder of which saw the activity cease. 3 FPNs have been issued to date in respect of unauthorised mobile advertising.

3.4 Busking/Street Entertainment

- 3.4.1 The PSPO gives authorised officers the power to ask buskers/street entertainers who, in their opinion, are causing an unreasonable disturbance, to cease their performance forthwith. As stated above the order also introduces two 'no busking' areas, one on either side of the Council House.

- 3.4.2 Since the PSPO came into force, 3 FPN has been issued to a busker who refused to cease a performance in the no busking area. 9 warnings have also been issued to buskers who have been performing in the no busking areas. Those warnings have been sufficient to persuade buskers to cease their performance and move to another location.
- 3.4.3 Council House Management have confirmed that the introduction of the no busking areas adjacent to the building has had a significant positive impact on business within the Coroner's Court and Registry Office.
- 3.4.4 No cases have been recorded where buskers have been asked to cease their performance due to unreasonable disturbance.

3.5 Distribution of Free Matter

- 3.5.1 The PSPO prohibits the distribution of free matter unless authorised by law, permit, licence or the written consent of the Council.
- 3.5.2 In response to concerns raised by a number of organisations regarding the potential impact of an over-zealous application of this requirement in the original consultation in 2018, the additional guidance document makes it clear that this definition is not intended to prevent individual gifts or acts of kindness, such as the giving of a cup of coffee or a sandwich to a homeless person. However, those intending to give free food out, on a wider scale, to the homeless are required to apply for consent.
- 3.5.3 Since the PSPO came into force, 42 applications for consent to distribute free matter have been received, and all have been approved. 13 of the applications made have been in respect of the distribution of free food to the homeless.
- 3.5.4 4 warnings have been issued to businesses who were distributing free matter without the appropriate consent and these have been suffice to stop the behaviour. No FPNs have been issued to date for breach of this requirement.

3.6 Unauthorised Requests

- 3.6.1 The PSPO prohibits the making of requests for money, personal items, charitable or other donations unless authorised by law, permit, licence or the written consent or authority of the Council.
- 3.6.2 The order also prohibits a person from approaching another, without consent, with the intention of asking that person to enter into arrangements which involve that person making future payments for charitable or other purposes.
- 3.6.3 As a consequence of responses received in the initial consultation process in 2018 via the PSPO consultation process, which indicated a desire on the part of those living in, working in or visiting the city centre for a reduction in the number of on-street charity collectors, the voluntary SMA with the IoF has been reviewed and re-negotiated. The impact of this re-negotiation is to:
- reduce the number of locations where on street charity collection is permitted from 4 to 3;

- reduce the size of 2 of the 3 remaining locations;
- reduce the number of days on which collections are permitted at 2 of the 3 locations, and exclude weekend collections;
- reduce the number of collectors who can operate at 1 of the 3 locations; and
- reduce the maximum number of charity collectors operating on city centre streets over the course of a week from 60 to 31 – a 48% reduction,

This will remain the same with the extension of the PSPO for a further 3 years to March 2025.

3.6.4 Since the PSPO came into effect, 8 consents have been granted, outside the SMA, to allow businesses to approach members of the public for donations, etcetera.

3.6.5 97 FPNs and 163 warnings have been issued in respect of unauthorised approaches to members of the public that breach this requirement of the PSPO.

3.7 Public Urination/Defecation

3.7.1 PSPO prohibits public urination and/or defecation.

3.7.2 Since the PSPO came into force, a total of 161 FPNs have been issued in respect of public urination. No FPNs have been issued for defecation. 1 student has received 2 FPNs for separate offences, an issue that has been followed up with their university.

3.7.3 With the exception of 5 FPNs, the remainder were all issued within the NTE between the hours of 8pm to 4am. 127 of those issued FPNs were aged between 18-25 years.

3.8 Psychoactive Substances

3.8.1 The PSPO prohibits a person from possessing or ingesting a psychoactive substance within the city centre.

3.8.2 13 FPNs have, to date, been issued by CPOs for the admitted use of psychoactive substances in the city centre.

3.9 Summary of Enforcement Activity

Enforcement Activity	FPN (no of individuals)	Verbal	Applications (refusals)
Obstructions	135 (81)	260	n/a
Big Issue sales	8 (5)	13	n/a
Mobile Advertisements	3 (3)	8	21 (2)
Busking/Street Entertainment	3 (3)	12	n/a
Distribution of Free Matter	0	4	42 (0)
Unauthorised Requests	97 (74)	245	4 (0)
Public Urination/ Defecation	161 (155)	1	n/a
Psychoactive substances	13 (11)	27	n/a

4 Other options considered in making recommendations

- 4.1 To not to proceed with the proposed extension of the PSPO and allow it to expire: this option is rejected because there is strong evidence that the PSPO has been effective in reducing anti-social behaviour incidents across the area. PSPO creates valuable enforcement powers for the Police and Council without which there are limited tools available to achieve the same impact. Relinquishing the current enforcement powers available is likely to result in an increased level of anti-social behaviour incidents in the City Centre.
- 4.2 The Council has undertaken consultation in relation to the proposed extension to the expiry date of the City Centre PSPO only. Any other potential amendment(s) to the PSPO would first require formal consultation, publicity and notification in accordance with the 2014 Act and such consultation must be authorised in accordance with the Council's Constitution. The PSPO will expire on 17 March 2022 if not first extended.

5 Consideration of Risk

- 5.1 Not applicable.

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

- 6.1 This report recommends the extension of the current City Centre Public Spaces Protection Order Policy (in line with approved Delegated Decision 4414) for a further period of 3 years (17 March 2022 through to 16 March 2025).
- 6.2 There are minimal financial implications identified as a result of this decision or as a result of extending this order as the required signage as required under the 2014 Act is already in place and can easily be amended in relation to the dates shown on the notices.

- 6.3 There is no specific funding available for this work so any costs that are incurred for this continuation must be met from within the Medium Term Financial Plan of the Community Protection Directorate.

Comments provided by Susan Turner, Senior Commercial Business Partner, on 16 December 2021.

7 Legal colleague comments

- 7.1 The City Centre Management PSPO will expire on 17 March 2022 if it is not first extended.
- 7.2 Before an extension can be considered the Council must first consult on the proposal in accordance with the requirements in section 72 of the 2014 Act.
- 7.3 The Portfolio Holder for Neighbourhoods, Safety and Inclusion authorised the consultation on the proposed extension to the City Centre Management PSPO on 26 October 2021 and the Council's Scheme of Delegation confirms that where the consultation was authorised by Portfolio Holder, the Executive Board is responsible for deciding whether to approve the making of the extension following consultation.
- 7.4 Extensions to Public Spaces Protection Orders (PSPOs) should only be made where the Council is satisfied on reasonable grounds that the legal test specified in section 60(2) of the 2014 Act is met, namely that doing so is necessary to prevent:
(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.
- 7.5 When deciding whether to extend a PSPO, and if so for how long, 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).
- 7.6 Article 8 of the Convention provides a Right to respect for private and family life, home and correspondence. Article 10 of the Convention provides the Right to freedom of expression and information, including the freedom to hold opinions and to receive and impart information and ideas. Article 11 of the Convention protects the Right to freedom of assembly and association. All of these Rights are qualified and subject to certain restrictions that are in accordance with the law and necessary in a democratic society for a stated aim. The stated aim in respect of an interference with any of the above Convention Rights would be either in the interests of national security, public safety or the economic well-being of the country, for the protection of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. There are additional stated aims that apply in respect of an interference with an Article 10 Convention Right, namely: territorial integrity, the protection of the reputation or rights of others, and for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. The stated aims in respect of an interference with an Article 11 Convention Right are also subject to some additional exemptions applicable to the armed forces, police or of the administration of the State.

- 7.7 The City Centre Management PSPO does contain restrictions which may have an impact on the above Rights in some circumstances. Executive Board is reminded that where a PSPO may interfere with Human Rights the interference must be 'necessary' in order to achieve a 'stated aim'. As detailed above, a 'stated aim' is for the protection of the rights and freedoms of others. Executive Board have to consider whether this objective is sufficiently important to justify a potential interference with fundamental rights.
- 7.8 It is noted that the Council consulted on the proposed extension, and that consultation ended on 24 December 2021. When deciding whether to extend the City Centre Management PSPO the Executive Board should also consider any representations received during the consultation period. The consultation responses are summarised in the Report.
- 7.9 It is proposed that, if made, the extension to the City Centre Management PSPO will last for a further period of three years. Under section 60 of the 2014 Act this is the maximum period that a PSPO can have effect for. However, under section 60 of the 2014 Act there is provision for PSPOs to be extended for a further period of up to three years. There is no restriction on the number of times that PSPOs can be extended.
- 7.10 As identified in the report, the Council must comply with publication and signage requirements if the City Centre Management PSPO is extended.

Comments provided by Tamazin Wilson, Senior Solicitor, on 17 January 2021.

8 Equality Impact Assessment (EIA)

- 8.1 An EIA is attached as Appendix 6, and due regard will be given to any implications identified in it.

9 Data Protection Impact Assessment (DPIA)

- 9.1 Not applicable.

10 Carbon Impact Assessment (CIA)

- 10.1 Not applicable.

11 List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)

- 11.1 None.

12 Published documents referred to in this report

- 12.1 Anti-Social Behaviour Crime and Policing Act 2014

- 12.2 Home Office Guidance – Anti-Social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers – Statutory guidance for frontline professionals – Updated December 2107
- 12.3 Anti-Social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014
- 12.4 Delegated Decision of the Portfolio Holder for Neighbourhoods, Safety and Inclusion dated 26 October 2021 authorising public consultation
- 12.5 Delegated decision of the Director of Community Protection, dated 24 August 2017 setting the amount of the FPN for breach of PSPOs.