

Nottingham City Council Delegated Decision



Nottingham
City Council

Reference Number:

4894

Author:

Alex Cox

Department:

Communities, Environment and Resident Services

Contact:

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Subject:

Approval to consult on extending the Public Space Protection Orders in respect of alcohol

Total Value:

Nil (Type: Nil)

Decision Being Taken:

To authorise the Director of Community Protection to publish notification of, and undertake, consultation in respect of the proposed extensions to the Public Spaces Protection Orders referred to as Orders 1 - 8 detailed in the attached Appendices 1 to 8 for a further three years from 18 October 2023.

If Orders 1 - 8 are not first extended, they will all expire on 18

October 2023. Before a decision can be taken by the Council whether or not to extend one or more of these Orders the Council must formally consult in accordance with the relevant legislative provisions. This Decision is therefore to authorise the commencement of formal consultation in relation to the proposed extension of Orders 1 - 8 for a further 3 year period.

Orders 1 - 8 were made under the Criminal Justice and Police Act 2001 ("the 2001 Act"), which introduced Designated Public Place Orders ("DPPOs") and allowed local authorities to designate public areas where the consumption of alcohol was restricted.

Nottingham City Council made eight separate DPPOs between 2005 and 2014, which between them designate public areas across the whole of the Nottingham City Council administrative area, subject to some exemptions as specified in the 2001 Act. The plan / Map at Appendix 9 shows the areas of Nottingham that are covered by Orders 1 - 8 as follows:

Order 1 (Nottingham City Centre) - red

Order 2 (Sneinton 1) - green, and (part of Arboretum) - light blue

Order 3 (Sneinton 2) - yellow

Order 4 (Hyson Green) - rose

Order 5 (St Ann's) - sand

Order 6 (Vernon Park) - olive

Order 7 (Radford, Arboretum and parts of Leen Valley) - dark blue

Order 8 (City Wide - covering areas not included in Orders 1 - 7) - shown in white

The provisions of the 2001 Act relating to DPPOs have now been repealed, but under section 75 of the Anti-social Behaviour, Crime and Policing Act 2014 ("the 2014 Act") any DPPOs made under the 2001 Act before 20 October 2014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 Orders 1 - 8 effectively became PSPOs, and, unlike DPPOs alcohol consumption is prohibited in the areas that the Orders apply.

Sections 62 and 63 of the 2014 Apply to Orders 1 - 8, which require a warning to be given before an offence is committed (maximum fine on conviction is £500), and a fixed penalty notice is available as an alternative to prosecution for such an offence. In addition, unlike DPPOs 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.

In 2020, Nottingham City Council authorised the extension of Orders 1-8 and these Orders now expire on 18 October 2023 unless they are all first extended.

Orders 1 - 8 do not apply at any time to:

Premises holding a Premises Licence or Club Premises Certificate authorising the sale or supply of alcohol under the Licensing Act 2003 and places within the curtilage of such premises.

Places where the sale or consumption of alcohol is authorised under Section 115E of the Highways Act 1980.

Where:

The City Council holds a Premises Licence authorising the sale or supply of alcohol or the premises are occupied or managed on behalf of the City Council then the Order does not apply to those premises at those times when the Licence or Certificate is actually being used for the sale or supply of alcohol and for 30 minutes thereafter.

Premises are the subject of a Temporary Event Notice authorising the sale or supply of alcohol under Part 5 of the Licensing Act 2003 then the Order does not apply to those premises but only for the period of the Temporary Event Notice and for 30 minutes thereafter.

Under section 60(2) of the 2014 Act, Orders 1 - 8 can be extended for up to three years if, before they are due to expire, the Council is satisfied on reasonable grounds that doing so is necessary to prevent -

Occurrence or recurrence after that time of the activities identified in the PSPO,

An increase in the frequency or seriousness of those activities after that time.

Section 72 of the 2014 Act also applies, which contains provisions relating to convention rights, consultation, publicity and notification requirements.

Under Section 72(4) of the 2014 Act the Council must also consult with:

The Chief Officer of Police and the local Policing body for the public area that includes the restricted area;

**Whatever community representatives the local authority thinks it appropriate to consult with and;
The owner or occupier of land within the restricted area.**

The Council must also publicise the proposed extensions on the Council's website.

If approval to consult is given, the decision will authorise Community Protection to commence the required consultation in accordance with the legislative requirements, which includes publicising the proposals on the Council's website. It should be noted that as consultation is only in relation to the extension of the Orders, at the end of the consultation no change other than the extension may be made.

Relevant representations in relation to whether or not to extend Orders 1 - 8 will be invited. Any representations received at the expiry of the consultation period will be reported back to the Council's Executive Board in July 2023 for a decision to be made on the proposed extension of Orders 1 - 8 in accordance with the Council's Scheme of Delegations. A consultation period of 28 days is proposed.

Since Orders 1 - 8 were transferred into PSPOs in 2017, information obtained from the Council's files confirm that they are still a very necessary tool in dealing with alcohol related anti-social behaviour.

Between 1st September 2017 and 10th January 2022, 715 breaches of Public Spaces Protection Orders were recorded by Nottingham City Council. Unfortunately, due to reporting methods during that period, I am unable to confirm how many of those breaches are in respect of alcohol related anti-social behaviour, however; in 2022, the Council introduced a system with greater statistical analysis. Between 11/1/2022 and 24/10/2022, 26 Fixed Penalty Notices were issued solely in respect of alcohol out of the 69 Fixed Penalties issued across the city. Using this statistic, I can calculate that 38% of all Fixed Penalty Notices were issued in respect of alcohol. Turning back to the 715 Notices issued between 2017 and the start of 2022, I can therefore indicate that approximately 38% of those are likely to have been for alcohol which equates to approximately 218 Notices issued during that period for alcohol related anti-social behaviour.

Appendix 10 to this report is a detailed analysis of incidents reported through to the non-emergency 101 number which has those tagged as alcohol related alongside. As can be seen in this analysis, alcohol related anti-social behaviour is still very prevalent and it is clear that the PSPO is still a very necessary tool to support the Council and the Police in dealing with these issues.

Turning to the statistical data produced by the Council, the table at Appendix 11 shows the figures for alcohol confiscations made by the Community Protection Officers across the city.

When considering whether to extend a PSPO the Council must have particular regard to Rights of Freedom of Expression and Freedom of Assembly set out in Articles 10 and 11 of the Convention.

Evidence has and continues to be collated by Community Protection and Police colleagues. This evidence will be reviewed and considered before being made available to view prior to seeking an extension of Orders 1 - 8. A copy of all evidence will be made available in the Committee meeting room immediately before the Council's Executive Board meeting in July 2023

Briefing notes documents: Appendix 5.pdf, Appendix 6.pdf, Appendix 7.pdf, Appendix 8.pdf, Appendix 9.pdf, Appendix 10.docx, Appendix 11 Alcohol confiscations.docx, Appendix 2.pdf, Appendix 1.pdf, Appendix 3.pdf, Appendix 4.pdf, track change SLT Briefing Note on PSPOs as respects alcohol.docx

Other Options Considered: Not consulting on extending Orders 1 - 8 - REJECTED as Orders 1 - 8 expire on 18 October 2023 and restrictions contained in Orders 1 - 8 would no longer be available.

Background Papers: SLT briefing notehealth & wellbeing strategysselective licensing guild (refer to ASB and Anti-social drinking)

Unpublished background papers: nottingham-city-joint-health-and-wellbeing-strategy-2022-25.pdf, Selective licensing in the private rent...a guide for local authorities - GOV.pdf, track change SLT Briefing Note on PSPOs as respects alcohol.docx

Published Works: Anti-Social Behaviour, Crime and Policing Act 2014Anti-Social Behaviour, Crime and Policing Act 2014 (Publication of PSPOs) Regulations 2014Home Office - Guidance on the Anti-Social Behaviour Crime and Policing Act 2014 December 2017Executive Board Report and minutes 21/7/2020'Delegated decision number 3790'

Affected Wards: Citywide

Colleague / Councillor Interests:

None.

Consultations:

Those not consulted are not directly affected by the decision.

Crime and Disorder Implications:

Under Section 60(2) of the Act, PSPOs can be extended for up to three years if, before the Orders are due to expire, the local authority that made the Order is satisfied on reasonable grounds that doing so is necessary to prevent:
Occurrence or recurrence after that time of the activities identified in the Order,

or
An increase in the frequency or seriousness of those activities after that time.
Section 67 of the Anti-Social Behaviour, Crime and Policing Act 2014 provides the Police and accredited officers with the power to deal with anti-social behaviour, nuisance and disorder in areas that have been included by the local authority as restricted areas under Section 59 of the Act as a PSPO. Section 67 of the Act makes it an offence for a person without reasonable excuse to do anything that the PSPO prohibits them from doing, or fail to comply with a requirement. Failure to comply with the officer's request becomes an offence that can result in a fixed penalty notice or a fine. In order to ensure a proportionate use of the powers all accredited officers are trained in these powers fully before commencing their role and/or dealing with breaches of the PSPO.

Equality:

EIA.docx

Decision Type:

Portfolio Holder

Subject to Call In:

Yes

Call In Expiry date:

24/03/2023

Advice Sought:

Legal, Finance, Equality and Diversity

Legal Advice:

Under the Anti-Social Behaviour Crime and Policing Act 2014 (the Act), Public Spaces Protection Orders (PSPO's) can be made for a maximum duration of three years. Under section 60(2) of the Act, PSPO's can be extended for up to three years if, before they are due to expire, the Council is satisfied on reasonable grounds that doing so is necessary to prevent activity recurring, or there has been an increase in frequency or seriousness of the activity. Extensions can be repeated, with each lasting for a maximum of three years.

As explained in the body of the decision, Orders 1-8 will expire on 18 October 2023 if not first extended.

Before a decision whether or not to extend the Orders can be taken the Council is required to carry out the 'necessary consultation' and 'necessary publicity' as defined in the Act.

In deciding whether or not to extend the period for which a PSPO has effect, and if so for how long, the Council must also have particular regard to the Rights of Freedom of Expression and Freedom of Assembly and Association set out in Articles 10 and 11 of the Human Rights Act 1998.

PSPO's can be challenged under the Act on grounds that the Council did not have the power to make the Order or include particular prohibitions/requirements, or that proper processes have not been followed as prescribed by the legislation. Any challenge must be made to the High Court within six weeks of the Order being made. The making of a PSPO can also be challenged by Judicial Review on public law grounds within three months of the Order being made.

This Decision proposes that consultation on the proposed extension of Orders 1 - 8 for the maximum period of a further three years by the Portfolio Holder.

Control of Street drinking and associated anti-social behaviour appears to fall within the remit of the Portfolio Holder, and the proposed decision is in accordance with the Council's Scheme of Delegations.

The consultation and publication proposed in the Decision would appear to comply with the legislative requirements.

It should also be noted that, if the consultation is authorised, the results of the consultation and any other evidence gathered in support of the proposed extension of Orders 1 - 8 will then be taken to the Council's Executive Board for a decision on whether or not to extend Orders 1 - 8 in accordance with the Council's Scheme of Delegations.

Tahira Lee
Solicitor
12/03/2023

Advice provided by Tahira Lee (Solicitor Planning & Environment) on 13/03/2023.

Finance Advice:

This decision seeks approval to consult on extending Public Space Protection orders in respect of alcohol. This continues the same activity approved under delegated decision number 3790 in February 2020. Any costs incurred as part of the consultation are expected to be minimal (less than £1k) and can be contained within approved resources in the medium term financial plan.

Advice provided by Maria Balchin (Finance Analyst) on 13/03/2023.

Equality and Diversity Advice:

EIA was completed and approved to authorise the Director of Community Protection to publish notification of, and undertake, consultation in respect of the proposed extensions to the Public Spaces Protection Orders. EIA will need to be updated to reflect feedback from consultation. An additional EIA may be required if any changes to the protection orders are required following consultation. Advice provided by Nasreen Miah (Equality & employability consultant) on 22/02/2023.

Signatures

Neghat Khan (PH Neighbourhoods, Safety and Inclusion)
SIGNED and Dated: 16/03/2023
Andrew Errington (Director of Community Protection)
SIGNED and Dated: 16/03/2023