

REPORT TO THE PORTFOLIO HOLDER FOLLOWING CONSULTATION ON PROPOSAL TO VARY NOTTINGHAM CITY COUNCIL (HOVENDEN GARDENS, HYSON GREEN, NOTTINGHAM) GATING ORDER 2012 (GO5010)

NOTTINGHAM CITY COUNCIL, ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014 – PUBLIC SPACES PROTECTION ORDER

NOTTINGHAM CITY COUNCIL (HOVENDEN GARDENS, HYSON GREEN, NOTTINGHAM) VARIATION ORDER 2023

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

The above Order detailed in the title to this Report was made under section 129A of the Highways Act 1980 ('HA') and was originally known as a 'Gating Order', now known as a Public Spaces Protection Order (PSPO).

The Order prohibits access to land between Number 12 and Number 6 Hovenden Gardens as detailed in the Order and shown on the plan attached to the Order (the "Restricted Area"). The Order authorised the installation of barriers at each entrance to the Restricted Area to close off a small area of Hovenden Gardens situated directly under one of the flats following a large amount of anti-social behaviour including drug activities and environmental issues caused by individuals visiting this particular sheltered location to enforce the restrictions. Those barriers remain in situ at the time of writing this report.

On 24 November 2011 the Arboretum, Berridge, Radford and Park Area Committee approved the making of the Nottingham City Council (Hovenden Gardens, Hyson Green, Nottingham) Gating Order 2012 (GO 5010).

In 2014, the Anti-Social Behaviour, Crime and Policing Act 2014 ("the Act") replaced Gating Orders with Public Spaces Protection Orders (PSPO) which are in place for a maximum period of three years. All 'Gating Orders' effectively became PSPO's pursuant to section 75(1)(A) of the 2014 Act, 'Gating Orders' made before 20 October 2014 remained in force as if the provisions of the Gating Order were provisions of a PSPO made under the 2014 Act subject to 'any necessary modifications'.

On 3rd October 2020 the Council approved the making of an extension to the above PSPO meaning that it is now in force until 18 October 2023. A copy of the PSPO is attached at Appendix 1 alongside a photograph showing the gates in situ to give a visual understand of the existing PSPO (Appendix 2).

The Order will expire on 18 October 2023 and the barriers will need to be removed if the Order is not first extended.

The making of the Gating Order in 2012 (and subsequent PSPO) was successful in removing the problems caused by people gathering in this area and causing significant anti-social behaviour to local residents.

By 2016, however, there had been a resurgence of anti-social behaviour in the area with visitors no longer gathering under the flat but instead, they had begun to gather

in the small alleyway that runs from Brushfield Street up through Hovenden Gardens. Within this alleyway is a small set of steps where individuals have begun to sit to deal and take drugs, carry out sexual acts, drink alcohol and discard their empty bottles and cause anti-social behaviour. Near these steps is a small, recessed area that accesses a resident's property, and this area allows individuals to hide from view. A map of this location is now shown as Appendix 3 with the alleyway in question, highlighted in red. As can be seen by this map, the small, recessed area is at the centre junction of the alleyway on the top left.

This report seeks authority to vary the Order so as to extend the area where the public right of way is restricted by the Order as shown on the Map attached at Appendix 4.

Recommendation(s):

The Portfolio Holder note the results of the consultation on the proposal to vary the PSPO relating to Hovenden Gardens to extend the area where the public right of way is restricted by the Order as shown on the Map attached as Appendix 4 ("the Varied Order Map").

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 Portfolio Holder authorise a variation to the Nottingham City Council (Hovenden Gardens, Hyson Green, Nottingham) 2012 Gating Order (GO5010).

In the event that a decision is made to vary the Order under recommendation 1 above, the Portfolio Holder authorise the Interim Director of Communities to carry out the necessary advertisements and arrange for gates to be installed and appropriate signage to be erected where necessary in accordance with legislative requirements for the Order as varied.

The Order as varied to be known as the Nottingham City Council (Hovenden Gardens, Hyson Green, Nottingham) Variation Order 2023.

REASONS FOR RECOMMENDATIONS

There is a need to prohibit anti-social behaviour within communities in Nottingham and in particular, to prohibit drug dealing, drug taking, overt sexual activities and public urination/defecation.

The variation of the PSPO would provide an additional tool to be used in the prevention and detection of crime, the prevention of anti-social behaviour and the reduction of environmental crime.

The variation would remedy the problems caused by anti-social individuals causing nuisance and disorder within the alleyway on Hovenden Gardens. By closing off this area, individuals would no longer be able to congregate in this secluded spot to take/deal drugs, to carry out sexual acts or to behave in an anti-social manner. This will support those individuals in rehabilitating and provide a much needed respite for those living in the vicinity.

It is an offence to fail to comply with the restrictions imposed by a PSPO without a reasonable excuse, with an authorised officer's request, or enter the alleyway without authority to do so. Penalties include a Fixed Penalty Notice being issued of £100 (with a £50 reduction if paid within 10 days) or a fine of up to £1000 following prosecution.

The City Council, in conjunction with Nottinghamshire Police already utilise various intervention techniques to help prevent anti-social behaviour, nuisance and annoyance occurring. The proposed variation will assist and strengthen the approach taken by these agencies against those who choose to continue to act in an irresponsible manner in this area, by prohibiting them access to the secluded hidden section of the alleyway.

BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)

Under Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014, local authorities may make an Order if satisfied that on reasonable grounds:-

- a) Activities in a public place 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 and they will have that effect.
- b) The effect or likely effect, of the activities is, or is likely to be persistent or continuing in nature,
- c) Is, or is likely to be unreasonable,
- d) And justifies the restrictions being imposed.

A PSPO can prohibit certain things being done in the restricted area and/or require certain things to be done by persons carrying on specified activities in that area.

The prohibitions or requirements must be reasonable, to prevent the detrimental effect from occurring, continuing, or recurring, or to reduce that detrimental effect or to reduce the risk of it occurring, continuing, or recurring.

A prohibition or requirement may apply:

- a) To all persons, persons in specified categories, all persons except those in specified categories;
- b) At all times, at specified times, or at all times except those specified
- c) In all circumstances, in specified circumstances, or in all circumstances except those specified

A PSPO must identify the activities and specify the period for which the order has effect. It must be published in accordance with Regulations made by the Secretary of State.

A PSPO can last for up to 3 years, and must be reviewed before it expires and extended (if need be) before expiry or it will lapse. If the review supports an extension and other requirements are satisfied, a PSPO may be extended for up to a further 3 years. There is no limit on the number of times an Order may be reviewed and renewed.

The Council can also vary an Order to alter the area covered by the prohibitions in the PSPO and also vary an Order to include additional prohibitions/requirements.

The Legislation sets out a number of additional requirements for the consultation and communication before an Order is introduced, once it is implemented and where it is extended, varied or discharged. PSPO's can be legally challenged under the 2014 Act on certain grounds. ----

Section 67 of the Act provides the Police and authorised officers (namely Community Protection Officers) with the power to deal with anti-social behaviour, nuisance and disorder in areas where PSPO's have been introduced under section 59 of the Act.

Section 67 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 arrestable offence that can result in a fixed penalty notice or a fine.

To aid citizens in complying with the proposed Order, it is proposed that the alleyway will be closed off to members of the public by use of locked gates at either entrance. Affixed to the gate will be a sign clearly depicting the Order and consequences for breaching the Order. A copy of the proposed sign is attached at Appendix 6.

In order for the alleyway to be maintained properly, residents who have direct access to properties adjoining the alleyway will have keys and be able to use the alleyway for the moving of bins and household waste for collection, for maintaining boundaries, shrubs and bushes and for maintaining fences.

Nottingham City Council has 13 Gating Orders at Bentinck School, Beverley Square, Botany Avenue, Camomile Gardens, Candle Meadow, Dane Court, Haswell Road, Holland Street, Hovenden Gardens (as detailed above), Kilnwood Close, Neston Drive, Portland Road and Smedley Close, all of which became PSPOs under the Act and extended in 2020 to last a further three years to October 2023. These are currently undergoing consultation on a proposal to extend for a further three-year period to October 2026. If the Hovenden Gardens Order is varied, then it too will need to be extended following a similar process to that of the other 12 Orders listed above before it expires in October 2023.

Consultation on the proposed variation was approved by the Director of Communities on 2 March 2023 and consultation began on 17 March 2023 ending on 21 April 2023.

Relevant representations in relation to whether or not the PSPO should be varied were invited. Statutory consultees were consulted together with all residents of Hovenden Gardens, Brushfield Street, Birkin Avenue and Hazelwood Road were formally

consulted with letters and questionnaires posted through the letterbox which were hand delivered by the local Community Protection Officers. Notification was also posted on the relevant lampposts, at all entrances to the alleyway and adjoining alleyways and details of the proposals were uploaded to the Council's website.

A total of five responses were received over the consultation period in support of the proposed variation. One from Nottingham City Homes who had no comments to add. Three representations from residents of Brushfield Street reporting continued incidents of drug dealing, fly tipping and street drinking from within the alleyway which was clearly affecting their daily lives. One resident from Birkin Avenue reported criminal damage and that the alleyway is a hiding place for drug users. He expressed his concerns over his children being brought up in such an environment.

It is considered that the variation being sought is proportionate, necessary and reasonable.

If the variation to the Order is made, the Order (as varied) will be published on the Council's website and signage to confirm the variation will be placed in the Restricted Areas in accordance with the statutory provisions and the existing signage that advises of the prohibitions contained in the existing Order will be amended to refer to the variation. This will continue to act as a deterrent.

The cost of updating existing signage to reflect the Order as varied and the purchase and structural installation of two additional gates will be met from the Council's General Fund.

OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

Doing nothing would leave the situation in the same state as currently. 'Nothing' is what residents feel has been done over the previous year or so and the behaviours have continued, and increased in terms of seriousness, shocking in nature and detrimental to both citizens and the environment.

As the alleyway is a "right of way" for the public, the Council cannot install gates to restrict access to this alleyway without the powers conferred under the Act.

20/7/2023