

Nottingham City Council Delegated Decision



Nottingham
City Council

Reference Number:	5036
Author:	Alex Cox
Department:	Communities, Environment and Resident Services
Contact:	Alex Cox (Job Title: Operations Manager, Email: alex.cox@nottinghamcity.gov.uk, Phone: 07983427888)
Subject:	Proposed Extension of the Public Spaces Protection Orders restricting public rights of way over specified highways in Nottingham City Council
Total Value:	Nil (Type: Nil)
Decision Being Taken:	<p>1. the portfolio Holder to note the results of the consolation on the proposal to extend the PSPO (orders 1-11) listed in the attached (PSPO list) for a further 3 years until 17 October 2026.2. That, being satisfied that the test in section 60(2) of the Anti- Social Behaviour, Crime and Policing Act is met, and having regard to the rights of freedom of expression and freedom of assembly, the Portfolio Holder authorises the extension of orders 1-11 (inclusive) referred to in recommendation 1 above for a further three years to expire on 17 October 2026.3. In the event that a decision is made to extend orders 1-11 under recommendation 2 above, the Portfolio Holder authorise the Director of Communities to carry out the necessary advertisements and arrange for the appropriate signage to be erected in accordance with the legislative requirements.</p>

Orders 1 and 2 were made under sections 59-75 of the Anti-Social Behaviour Crime and Policing Act 2014 ('the 2014 Act') and Orders 3 - 11 inclusive were made under section 129A of the Highways Act 1980 ('HA') and were originally known as 'Gating Orders'. However, section 129A HA has now been repealed and, pursuant to section 75(1)(A) of the 2014 Act, 'Gating Orders' made before 20 October 2014 remained in force as if the provisions of the Gating Order were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'. PSPOs (including those which were originally Gating Orders) may not have effect for a period of more than 3 years, unless extended under section 60 of 'the 2014 Act'. Orders 3-11, when they effectively became PSPOs, were initially extended in September and October 2020 depending on which Area Committee approved the extension. Orders 3-11 inclusive will expire on 18 October 2023.

Order 1 relating to Bentinck

Primary School will expire on 4 November 2023.

Order 2 relating to Beverley Square will expire on 4 November 2023.

The restrictions to public rights of way in Orders 1 - 11 inclusive set out in the table above are subject to limited exceptions, and Orders 1 - 11 inclusive also authorise the installation of barriers at the entrance to each 'Restricted Area' as shown on the plan attached to Orders 1-11 respectively. For the purposes of enforcing the restrictions, those barriers remain in situ at the time of writing this report. If Orders 1 - 11 inclusive are not extended before the respective Expiry Date detailed in the table above, the barriers referred to above will no longer be authorised and will be obstructions to the highway and must be removed. Since the Orders 1 - 11 inclusive were made there has been a significant reduction in the anti-social behaviour reported in the locality of the respective 'Restricted Areas'. However, if the Orders 1 - 11 inclusive are allowed to expire, which

would result in the above-mentioned barriers being removed, this may result in the recurrence of the identified anti-social behaviour in these locations.

It is proposed that Orders 1-11 inclusive, if extended expire on the same date ie 17 October 2026 regardless of their current expiry date to streamline the administration process if future extensions are considered. Currently Order 1 expires on 11 November 2023, Order 2 expires on 4 November 2023 and Orders 3-11 expire on 18 October 2023. Public consultation on the proposed extension of Orders 1-11 was approved by the Director of Community Protection on 3rd May 2023 and took place for a period of 28 days between 3 May 2023 to 31 May 2023. A Notice of Consultation was placed on the Council's website and Notices were hand delivered to all owners and occupiers of land within each restricted area. Notices were sent to the Chief Officer of Police for Nottingham City and the local policing body for the police area that includes each restricted area. Notices were also placed in prominent positions close to the restricted areas affected by each PSPO inviting representations/comments on the proposal to extend as well as community representatives such as Nottingham Local Access Forum. The following responses were received; "I am 100% fully supporting the extension of these PSPO gates" (resident, ref: Order 7), "We would like to maintain the closure of the alleyway in order to protect our children attending school" (Bentinck School, ref: Order 1).

Briefing notes documents: EIA.docx, Final Draft Consultation Report 2023.docx

Other Options Considered:
not extending the orders,
this would result in an increase in anti-social behaviour in the affected areas and a revenue cost to the Council to remove any structural furniture ie fencing/gating. Therefore this has been discounted

Background Papers:
PSPOs (ex-gating orders) located on the NCC website,

Published Works:
Anti-Social Behaviour, Crime and Policing Act 2014, Anti-Social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014, Home Office - Guidance on the Anti-Social Behaviour Crime and Policing Act 2014 December 2017

Affected Wards: Aspley, Basford, Bulwell, Bulwell Forest, Dales, Hyson Green and Arboretum, Mapperley, St Ann's

Colleague / Councillor Interests:

Consultations:

Date: 27/09/2023

Ward Councillors: David Mellen, Graham Chapman, Gul Khan, Liaqat Ali, Carole Mcculloch, Neghat Khan, Leslie Ayoola, Patience Ifediora, Corall Jenkins, Linda Woodings, Samuel Gardiner, Maria Joannau, Michael Savage, Sarita-Marie Rehman-Wall, Sana Nasir, Naim Salim, Kirsty L Jones, Anwar Khan, Devontay Okure, Cheryl Barnard, Nick Raine, Sajid Mohammed, Salma Mumtaz, Ethan Radford

supportive statements received. Happy to continue with Beverly Square Order. Cllr Corall Jenkins - St Anns Ward.

Mapperley Councillors are happy to approve.

Cllr Kirsty Lemara Jones Ref Smedley Close. I think this is a renewal of an existing order and I think I can speak on behalf of all three Aspley Councillors in agreeing with the extension of the order. Thank you. Cllr Graham Chapman

Those not consulted are not directly affected by the decision.

**Crime and Disorder
Implications:**

Section 17 of the Crime and Disorder Act 1998 places a duty on Councils to do all they reasonably can to prevent crime and disorder. The extended Orders will continue to provide tools to deal with the behaviour identified in the report including Fixed Penalty Notices.

Part 2.5 starting at page 47 of the Government Guidance updated in December 2017 states that the Local Authority will want to satisfy itself that these powers are not being used disproportionately or in an arbitrary fashion.

Equality:

Please login to the system to view the EIA document: EIA.docx

Decision Type:

Portfolio Holder

Subject to Call In:

Yes

Call In Expiry date:

23/10/2023

Advice Sought:

Legal, Finance, Equality and Diversity

Legal Advice:

It is noted that Orders 3-11 inclusive were authorised under section 129A of the Highways Act 1980 ('HA') and were originally known as 'Gating Orders.' However, section 129A 'HA' was repealed as explained in the body of the 'Decision' and effectively became Public Spaces Protection Orders ('PSPO's'), under the Anti Social Behaviour Crime and Policing Act 2014 ('the 2014 Act') the provisions remained in force as if the provisions of the Gating Order were provisions of a PSPO made under 'the 2014 Act.'

It is further noted that Orders 1 and 2 were authorised in 2017 under sections 59-57 of 'the 2014 Act'.

Under 'the 2014 Act', 'PSPO's' can be made for a maximum duration of three years. Under section 60(2) of 'the 2014 Act' PSPO's can be extended for up to three years, after which time they may be extended if, before they are due to expire, the Council is satisfied on reasonable grounds that doing so is necessary to prevent the 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.

Orders 3-11 as originally made would have expired on 19 October 2020, however, these were all extended prior to the date of expiry in accordance with the provisions of 'the 2014 Act' and Regulations made under it, when the various Area Committees authorised the extension of Orders 3-11 for a further three years, so they will now all expire on 18 October 2023 unless first extended. Orders 1 and 2 were also extended in 2020 by the relevant Area Committees at the time and will now expire on 11 November 2023 and 4 November 2023 respectively unless first extended.

The proposal aims to streamline the administration process going forward if extension of the 11 Orders is considered again so that all the Orders expire on the same date.

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 2014 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. In addition, as identified in the Decision, 'PSPO's' 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 the areas that the Orders apply to.

Consultation on the proposed extension of Orders 1-11 was authorised by the Director of Community Protection in accordance with the Council's Scheme of Delegations and carried out between 3 May 2023 and 31 May 2023.

Consultation and publication requirements were carried out in accordance with the legislative requirements under 'the 2014 Act.' Responses received following consultation and statistical evidence support the proposed extension of Orders 1-11 for a further three years in order to enable law enforcers to continue to control anti-social behaviour associated around public rights of way in the locality of the respective 'Restricted Areas'.

The recommendation is for the Portfolio Holder to agree to the extension of Orders 1-11 for a further period of three years up to 17 October 2026 in accordance with the Council's Scheme of Delegations.

As identified in the body of the Decision, if the extension of Orders 1-11 is approved, the Council must comply with publication and signage requirements, and the recommendation addresses these requirements.

Tahira Lee - Solicitor - 6/10/3023

Advice provided by Tahira Lee (Solicitor Planning & Environment) on 06/10/2023.

Finance Advice:

This decision seeks approval to extend the current Public Spaces Protection Order (PSPO) Policy for a further period of 3 years until 17th October 2026. There are minimal financial implications identified as a result of this decision or as a result of extending this order as the required signage is already in place and can easily be amended in relation to the dates shown on the notices as required.

There is no specific funding available for this work so any costs incurred for this continuation must be met from within the MTFP of the Communities Directorate.

Advice provided by Susan Turner (Senior Commercial Business Partner) on 09/10/2023.

Equality and Diversity Advice:

Comments have been provided on accompanying EIA. The EIA will need to be updated before approval can be granted from EDI perspective. Advice provided by Nasreen Miah (Equality & employability consultant) on 29/09/2023.

Signatures

Sajid Mohammed (PH - Neighbourhoods, Safety & Inclusion)
SIGNED and Dated: 16/10/2023
Colin Parr (Corporate Director, CERS)
SIGNED and Dated: 13/10/2023