

Area Committee East (A.C.E) Dales, St Ann's & Mapperley meeting
12th June 2018

Title of paper:	Proposed Public Spaces Protection Order (PSPO): Nottingham City Council Restriction of Public Right of Way (Dane Court, Dane Close, St Anns) Public Spaces Protection Order	
Director(s)/ Corporate Director(s):	Andrew Errington Director, Community Protection	Wards affected: St Anns
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Date of consultation with Portfolio Holder(s) (if relevant)	Not applicable	
Relevant Council Plan Key Theme:		
Strategic Regeneration and Development		<input type="checkbox"/>
Schools		<input type="checkbox"/>
Planning and Housing		<input type="checkbox"/>
Community Services		<input checked="" type="checkbox"/>
Energy, Sustainability and Customer		<input type="checkbox"/>
Jobs, Growth and Transport		<input type="checkbox"/>
Adults, Health and Community Sector		<input type="checkbox"/>
Children, Early Intervention and Early Years		<input type="checkbox"/>
Leisure and Culture		<input type="checkbox"/>
Resources and Neighbourhood Regeneration		<input type="checkbox"/>
Summary of issues (including benefits to citizens/service users):		
<p>Concerns have historically been raised regarding anti-social behaviour caused by youths congregating on Dane Court which previously has had a detrimental effect on the quality of life of local residents.</p> <p>In order to deal with the behaviour identified it is proposed that a Public Spaces Protection Order (“PSPO”) is made pursuant to the Anti-social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”) to retain the permanent barrier located at the southern of the Dane Court footpath. This prevents access to the Dane Court footpath from the southern end for members of the public. If made, the PSPO would provide a new enforcement tool for officers to help tackle the problems identified.</p>		

Recommendation(s):	
1	Area Committee note the evidence gathered and the results of the consultation on the proposal to introduce a PSPO as indicated in the draft attached at Appendix 1 for the area shown with a solid red line on the plan (the proposed PSPO) attached.
2	That, being satisfied that the test in section 59 of the 2014 Act is met, having considered the likely effect of making the proposed PSPO and the availability of an alternative route, and having regard to the rights of freedom of expression and freedom of assembly, Area Committee authorise the Director of Legal and Democratic Services and or the Head of Legal Services to make a PSPO in the form indicated in the proposed PSPO attached at Appendix 1 over the land shown with a solid red line on the plan attached to the proposed PSPO to last for a period of three years from the date that it comes into force.
3.	In the event that a decision is made to make the PSPO under recommendation (2) above, the Area Committee authorise the Director of Community Protection to carry out the necessary publication and arrange for appropriate signage to be erected in accordance with the legislative requirements.

1. REASONS FOR RECOMMENDATIONS

- 1.1 The Anti-social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”) gives Nottingham City Council (“the Council”) the power to introduce a Public Spaces Protection Order (“PSPO”) which can be applied to any land to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.
- 1.2 The Director of Community Protection authorised the formal consultation on the potential introduction of a PSPO in the form of the proposed Order attached as Appendix 1 (“the proposed PSPO”) in respect of the land shown with a solid red line on the plan attached to the proposed PSPO. The proposed PSPO restricts access to the footpath to the south of Dane Court, off Dane Close, St Ann’s, Nottingham where it joins the footpath from Abbotsford Drive which runs in a south-easterly direction towards Alison Walk and authorises the permanent barrier which is in this location. The formal consultation has now taken place and the recommendations, if approved will authorise the making of the proposed PSPO, and other steps required.
- 1.3 Breach of a requirement or restriction contained in a PSPO is an offence. The penalty for committing an offence contained in a PSPO is a maximum fine of level 3 on the standard scale (currently £1,000) although the opportunity to pay a fixed penalty may be offered instead. The amount for the fixed penalty notice can be fixed locally to a maximum of £100.
- 1.4 The fixed penalty amount for any offences committed contrary to the proposed PSPO has been set at £70, with a reduction to £35 if paid within ten days by a delegated decision of the Director of Community Protection dated 24 August 2017.
- 1.5 Under section 59 of the 2014 Act, the proposed PSPO should only be made where the Council is 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, 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 restriction imposed.

1.6 The Council's Rights of Way officer has confirmed that the Restricted Area is an unrecorded public right of way. Section 64(1) of the 2014 Act places additional requirements upon a local authority that is considering making a PSPO to restrict the public's right of way over a highway. In particular, the local authority may not make a PSPO without first considering:-

(a) the likely effect of making the order on the occupiers of premises adjoining or adjacent to the highway;

(b) the likely effect of making the order on other persons in the locality;

(c) in a case where the highway constitutes a through route, the availability of a reasonably convenient alternative route

It also requires occupiers of premises adjacent to or adjoining the highway, and any other persons in the locality who are likely to be affected by the proposed PSPO, to be consulted.

1.7 Under section 72 of the 2014 Act the Council must have particular regard to the Right of freedom of expression and freedom of assembly set out in Articles 10 and 11 of the Human Rights Convention.

1.8 Section 64(7) of the 2014 Act allows the Council to authorise the installation, operation and maintenance of a barrier or barriers to enforce the restrictions contained in a PSPO. It is also proposed that the responsibility for maintenance of the permanent barrier will remain with the Nottingham City Homes, who currently maintain the barrier.

2. BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)

2.1 Residents have reported historical problems at Dane Court, which describe the anti-social behaviour of individuals causing a nuisance, annoyance and disturbance to other residents of Dane Court and Dane Close. The anti-social behaviour was concentrated in and around the Dane Court footpath which is believed to have previously had a detrimental effect on the quality of life of local residents. Residents complained about individuals riding mini motors /scooters at high speeds in this location, and groups gathering causing disturbances. A number of youths were reported to have been seen congregating on the Dane Court footpath causing disturbances to the local residents by shouting and swearing at each other, playing football on of the lawn on Dane Court and fighting amongst themselves. On numerous occasions residents alleged that the youths congregating on Dane Court have engaged in drug dealing, and at the time this was reported to the local Police team in St Anns. Since the barrier was installed the evidence shows that the problems reported significantly reduced. Currently there are no issues regarding anti-social behaviour occurring in and around Dane Court and Dane Close. However, should the barrier be removed there is reason to believe that the problems reported may return, and therefore the test for a PSPO appears to have been met.

2.2 If approved the proposed PSPO would authorise the retainment of the permanent

barrier that is located at the southern end of the Dane Court footpath.

- 2.3 The Council must be satisfied that the proposed PSPO meets the test contained in section 59 of the 2014 Act detailed at paragraph 1.5 above, consider the likely effect of making the proposed PSPO and the availability of an alternative route, and they must 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.
- 2.4 Under section 72 of the 2014 Act 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 Human Rights Convention.
- 2.5 The Council has consulted with:
- The Chief of Police and the local policing body, for the police area that includes the restricted area
 - Police and Crime Commissioner
 - The Council Senior Community Protection Officer for the area
 - The Council's Rights of Way Officer
 - A consultation letter was hand delivered to all the properties on Dane Court and neighbouring properties on Dane Close, Abbotsford Drive, Trueman Close, Abbotsford Drive and Alison Walk
 - The Council published a copy of the proposed PSPO on its website
 - Neighbourhood Development Team.
- 2.6 The consultation commenced on 19th March 2018 and ended on 23rd April 2018.
- 2.7 The consultation included details of the effect of the PSPO (i.e. to restrict the public's right of way over the footpath on Dane Court) and details of the alternative routes in the event that a PSPO is made.
- 2.8 The legislation also requires that consultation is carried out with the owners or occupiers of land within the Restricted Area. The land and properties within the locality of Dane Court and the restricted Area are either owned or managed by Nottingham City Council and Nottingham City Homes of the adjoining properties who are being directly affected by the ongoing anti-social behaviour and other reported incidents. The land directly to the south of the restricted Area comprises an adopted footpath.
- 2.9 In addition, if the proposed PSPO is made, signs will be placed and attached to the Permanent barrier (fence) being the Restricted Area to advise of the prohibitions contained in the Order, and that breach of the Order is a criminal offence. It is proposed that these signs will be paid for by Community Protection. The signs may act as a deterrent.
- 2.10 It is proposed that, should the proposed PSPO be made, Community Protection Officers will be authorised to issue fixed penalty notices for breach of the Order. Police officers and Police Community Support Officers will also be able to issue fixed penalty notices for breach of the proposed PSPO. If the proposed PSPO is made training will be offered to officers authorised to enforce the Order.
- 2.11 If made, it is proposed that the above PSPO will last for three years, after which it

may be reviewed to see if the restrictions are still required.

3. **OUTCOMES OF THE CONSULTATION**

3.1 There were no objections received from residents and members of the public.

3.2 Two responses were received from partners and they are as follows:

i.) **“I have read the proposal and in my view is a lawful, proportionate and legitimate response to the issues that are highlighted.”**

Chief Insp Alan PEARSON, City South / City North, St Anns Police Station

ii.) **“On behalf of the Commissioner I can say that we support this PSPO order as the Commissioner has an objective to reduce crime and disorder and the documentation suggest that this will help reduce ASB in the area and improve the quality of life for local residents affected.”**

Phil Gilbert, HEAD OF STRATEGY AND ASSURANCE, Nottinghamshire Office of the Police and Crime Commissioner

3.3 It is considered that the restrictions being sought are proportionate, necessary and reasonable.

3.4 In relation to Section 64 (1) (a) above properties on streets in close proximity to Dane Court have been consulted. In relation to Section 64(1) (c) a reasonably convenient alternative route is available and is set out in the plan at Appendix 1.

4 **OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS**

4.1 One option would be to remove the permanent barrier. However, there is a risk that incidents of anti-social may occur and this would have a detrimental effect on the lives of the residents of Dane Court and people living in close proximity to this location.

5 **FINANCE COLLEAGUE COMMENTS (INCLUDING IMPLICATIONS AND VALUE FOR MONEY/VAT)**

5.1 This proposal has no financial implications apart from the cost of providing signage. This has been estimated to be no more than £200 and will be paid from existing budgets from within Community Protection.

Michelle Pullen – Commercial Business Partner May 9th 2018.

6 **LEGAL AND PROCUREMENT COLLEAGUE COMMENTS (INCLUDING RISK MANAGEMENT ISSUES, AND LEGAL, CRIME AND DISORDER ACT AND PROCUREMENT IMPLICATIONS)**

6.1 The making of Public Spaces Protection Orders ('PSPOs') under the Anti-social Behaviour, Crime and Disorder Act 2014 ('the 2014 Act') relating to local matters fall within the remit of Area Committee.

- 6.2 As identified in the report, PSPOs should only be made where the Council is satisfied on reasonable grounds that the legal test in section 59 of the 2014 Act is met in relation to the land that it is proposed that the PSPO will apply to. The Council can only make prohibitions or requirements that are reasonable to impose in order to prevent or reduce the detrimental effect identified.
- 6.3 When deciding whether to make a PSPO the Council must have particular regard to the rights of expression and freedom of assembly set out in Articles 10 and 11 of the Convention of Human Rights (as provided by section 72(1) of the 2014 Act).
- 6.4 The proposed PSPO will restrict public rights of way over land identified as being a right of way. As stated in paragraph 2.1 of the report the right of way is restricted by an existing barrier. It is not clear who installed this barrier, when, or under what authority. The proposed PSPO, if Committee are satisfied that the test for the making of a PSPO is met, would provide authorisation for the barrier. As identified in the report, under section 64 of the 2014 Act there are additional considerations and steps required where it is proposed that a right of way be restricted by a PSPO. The impact of the restrictions in the proposed PSPO have been considered, and the availability of a reasonably convenient alternative route. However, as the existing barrier has been there for some time, the evidence is historical. Under section 64 of the 2014 Act there are some rights of way which cannot be restricted due to their strategic value. The right of way the subject of the proposed PSPO does not fall within a type that cannot be restricted.
- 6.5 As identified in the report, the Council has undertaken a consultation exercise regarding the proposed PSPO which appears to be in compliance with the requirements of the 2014 Act and relevant Statutory Guidance.
- 6.6 The making of a PSPO can be challenged in the High Court in accordance with section 66 of the 2014 Act.
- 6.7 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 for. 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.

Tamazin Wilson, Solicitor 10 May 2018.

7 STRATEGIC ASSETS & PROPERTY COLLEAGUE COMMENTS (FOR DECISION RELATING TO ALL PROPERTY ASSETS AND ASSOCIATED INFRASTRUCTURE) (AREA COMMITTEE REPORTS ONLY)

7.1 None needed at present.

8 EQUALITY IMPACT ASSESSMENT

8.1 Has the equality impact of the proposals in this report been assessed?

Yes

Attached as Appendix 2, and due regard will be given to any implications identified in it.

8.2 The introduction of the Public Spaces Protection Order will not adversely affect any particular group of citizens. Under the Council's Fair and Just Nottingham Equity Scheme, the proposed Public Spaces Protection Order complies with the underlying principles of the scheme and promotes fair and individual enforcement based on the Order. The introduction of the PSPO may adversely impact on those who are disabled through limited mobility as they would be required to travel a longer distance via one of the alternative routes.

9 **LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION**

9.1 None.

10 **PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT**

10.1 Anti-Social Behaviour, Crime and Policing Act 2014

10.2 Home Office Guidance 'Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers. Statutory guidance for frontline professional dated July 2014 and was updated in December 2017.

10.3 Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulations 2014