

Nottingham City Council Delegated Decision



Nottingham
City Council

Reference Number:	3232
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Subject:	Proposed City Centre Public Spaces Protection Order
Total Value:	Nil (Type: Nil)
Decision Being Taken:	As required by the Anti-social Behaviour, Crime and Policing Act 2014 ("the 2014 Act"), regulations made thereunder and statutory guidance, to authorise formal consultation on a proposed Public Spaces Protection Order (PSPO) in respect of Nottingham City Centre, a draft of which is attached at Appendix 1.

1. Legislation

Section 59 of the 2014 Act gives Nottingham City Council ("the Council") the power to make a PSPO if satisfied on reasonable grounds that:

- a) activities carried on in a public place within the authority's area 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 that 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 restrictions imposed.

Where the test in Section 59 of the 2014 Act is met, a PSPO may prohibit specified things being done in the public place that is identified in the order, and/or require specified things to be done by persons carrying on specified activities in that area.

The only prohibitions or requirements that can be imposed are ones that are reasonable to impose in order to prevent or reduce the detrimental effect from the activities from continuing, occurring or recurring.

Before a PSPO can be made consultation must be undertaken in accordance with the 2014 Act, regulations made thereunder and statutory guidance. This includes consulting with:

- a) the Chief of 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;
- d) the owners and occupiers of land within the Restricted Area, so far as it is reasonably practicable.

When making a PSPO, the Council must also have particular regards to the rights of freedom of expression and freedom of assembly set out in Articles 10 and 11 of the Human Rights Convention.

If made, breach of a PSPO is an offence, and a fixed penalty notice is available as an alternative to prosecution.

2. Issues

Evidence from a number of sources, including the Crime and Drugs Partnership (CDP) Respect survey, social media surveys, customer service requests and complaints, and from front line staff involved in uniformed patrols and cleansing activity, indicates that there are a variety of on-going behaviours occurring within Nottingham City Centre ("the Restricted Area") that are having a detrimental effect on the quality of life of those living in, working in, or visiting the Restricted Area.

The proposed PSPO at Appendix 1, in respect of which this decision authorises the commencement of formal consultation, contains prohibitions and restrictions designed to address these issues.

3. Management of the Street Scene environment including behaviours obstructing other users off the Restricted Area or restricting access

Nottingham City Council wants to ensure that all those living in, working in or visiting the city centre enjoy safe, clean, vibrant and attractive public spaces and can enjoy those public spaces without unreasonable interference or infringement.

In the case of a number of activities identified, the Council recognises the positive impact that these activities can have on the City's street scene environment if properly managed. Accordingly, in such cases, the draft PSPO seeks to facilitate these activities within defined parameters. In the case of some other activities, where the potential is for harm, the draft PSPO proposes an outright ban.

Obstruction

Historically, Nottingham has been proud of its reputation as one of the cleanest big cities in the country. However, in the 2017 Respect survey, commissioned by the Nottingham CDP, 26% of those surveyed suggested that rubbish and litter lying around was a very or fairly big problem in the city centre.

Significant resources are invested in maintaining the cleanliness of the city centre, and for that cleansing activity to be effective, cleansing staff must be able to obtain unfettered access to all public areas. Obstructions will have a negative impact on cleanliness levels, and a consequent negative impact on the quality of life of those living or working in or visiting the city centre.

From a health and safety perspective, it is also imperative that emergency services have the ability to access all areas of the city, and that those living and working in or visiting the city centre can freely enter and exit, shops, businesses and residential properties.

The Council continues to receive regular complaints from businesses, residents of and visitors to the city centre regarding unreasonable obstructions and both cleansing staff and Community Protection Officers (CPO) continue to regularly report/deal with obstructions of various types.

To help tackle the issues outlined above the draft PSPO states:

"No person shall remain in the Restricted Area so as to:

- a) obstruct ingress to or egress from any building; or
- b) prevent or hinder the street cleansing activity of the Council; or
- c) hinder the free passage of pedestrians or vehicles along a highway."

Unauthorised Requests

In a social media poll conducted by Community Protection in November 2017, 79% of those responding stated that they wanted the City Council to take action against pushy charity collectors. In face to face surveys conducted with visitors to the city centre in December 2017, 28% stated that they were very or somewhat dissatisfied with charity collectors in the city centre.

These findings, along with customer complaints and anecdotal reports, suggest that those living in, working in or visiting the city centre do not enjoy being approached, whilst going about their lawful business, by those seeking charitable donations or making other unsolicited requests, and find such requests intrusive and capable of spoiling their quiet enjoyment of the city centre.

The proposed PSPO states that no person shall

"a) make an Unauthorised Request for money, personal items, charitable and/or other donations whether expressly or impliedly Requested by Conduct; or

b) stop or approach another person to make an Unauthorised Request with the intention:

i) to enter into any arrangements which involve that other person making any future payment for any charitable or other purposes; or

ii) for any information to assist that other person being contacted at another time with a view to making arrangements for that person to make any payment for any charitable or other purposes."

The proposed provision will, via the definition of the phrase Unauthorised Request, still allow the Council to give consent to a limited number of charitable collections in circumstances where this is deemed appropriate.

Big issue Magazine

Nottingham City Council works closely with the Big Issue Foundation to agree a number of locations (pitches) from which homeless individuals, who are properly licensed by the Big Issue Foundation, can offer for sale the Big Issue magazine as a means of earning an income.

The working relationship with the Big Issue Foundation, and the number and location of pitches agreed, allows a balance to be struck between supporting those who are genuinely homeless to gain an income and limiting the potential detrimental impact of having multiple vendors in close proximity to each other. This is a relationship that the Council is keen to continue.

Unfortunately, not all those offering the Big Issue in the city centre are authorised by the Big Issue Foundation, not all are homeless and not all attempt to sell from authorised pitches. Vendors who are not authorised by the Big Issue Foundation have an adverse impact on the sales, and often the reputation, of those who are legitimately authorised to sell. CPOs deal, on a daily basis, with unlicensed vendors, selling in unauthorised locations.

In a social media poll conducted by Community Protection in November 2017, 11% of those responding stated that they wanted the City Council to take action against rogue Big Issue sellers.

The proposed PSPO states that "no person shall sell, or offer for sale, the Big Issue Magazine unless they are

- a) located on an Authorised Big Issue Pitch; and
- b) wearing their Big Issue tabard issued by the Big Issue Foundation; and
- c) displaying their valid Big Issue identification badge issued by the Big Issue Foundation"

Busking/Street Entertainment

The Council welcomes busking and street entertainment on streets and open spaces within the city and acknowledges that busking and street entertainment can add vibrancy and culture to Nottingham's street. Whilst the Council are keen to foster a vibrant street culture they also wish to align this to the needs of local businesses, and residents of and visitors to the city centre.

The Council does receive complaints regarding various issues relating to busking and street entertainment including the locations in which it is taking place, excessive noise levels and amplification, and the repetitive nature of busking where a busker remains in the same place for a lengthy period of time.

The proposed PSPO seeks to strike an appropriate balance that allows good quality and responsible buskers and street entertainers to perform at appropriate, identified, locations throughout the city centre but also allows action to be taken against those whose acts would be seen as causing nuisance and annoyance to reasonable bystanders.

The proposed PSPO states that no person shall busk within the Restricted Area unless they are located in an Authorised Busking Location. Only one busker or a connected group of buskers would be allowed to busk at an Authorised Busking Location at any one time.

In addition, an Authorised Officer may ask those busking at an authorised busking location to cease busking forthwith if, in the opinion of that officer those busking are causing an unreasonable disturbance to persons in the locality. The officer must advise those busking that failing to comply with the request to cease busking without reasonable excuse is an offence and must produce evidence of their authorisation if asked to do so.

Distribution of Free Matter

A range of items are currently distributed without charge in Nottingham's city centre, often without any prior knowledge of the Council. Some distributions, such as those handing out free samples, cans, bottles, etc, are done on a commercial basis and bring with them vehicles and stands that cause unexpected obstruction of the public highway.

Distributions can often lead to increased littering, as items are discarded. Where this littering involves food waste, this has the potential to attract vermin and potentially cause health problems. The items distributed may also, by their very nature, give rise to health and safety risks.

Accordingly, the City Council wishes to put itself in a position to prevent the damage that can be caused to the local amenity, and to health and well-being, by requiring all those intending to distribute free matter in the Restricted Area to obtain the consent of the Council before doing so.

The proposed PSPO states that

"No person shall Distribute Free Matter in the Restricted Area to a person or persons not known to the Distributor unless they are authorised by law, permit, licence or the written consent of the Council for that Distribution."

Mobile Advertising

The Town and Country Planning Act 1990 ("TCPA") and the Town and Country Planning (Control of Advertisements)(England) Regulations 2007 ("TCPA Regs") regulate the display of advertisements and make it an offence to display advertisements which fall within the meaning of the TCPA Regs, without either the express consent of the local authority or deemed consent as provided by the TCPA Regs. This recognises the potential impact on the local amenity of unregulated advertisements.

However, for the purpose of the TCPA Regs advertisement does not include "a placard or other object borne by an individual or an animal". Accordingly, individuals holding placards or dressing as human A Boards to advertise, for example, a business, fall outside the TCPA Regs and there is no need for them to obtain express or deemed consent.

The lack of regulation of mobile advertising results in a number of businesses using mobile placard/A Board advertising from time to time within the city centre. This advertising tends to be used in areas of high footfall, such as Clumber Street, and causes additional congestion and obstruction on the highway and detriment to the visual amenity.

The proposed PSPO seeks to place mobile advertising on the same footing as any other advertisement and states that "no person shall display a Mobile Advertisement within the Restricted Area unless:

- a) they have the written consent of the Council for that Mobile Advertising; and
- b) they are operating in accordance with the terms of that consent."

4. Other Behaviours

Public Urination/Defecation

Urination and defecation in public places within the City Centre is a source of regular complaint, particularly from business owners. It is totally unacceptable when it happens, and can have a significant impact on those who witness it or who come into contact with it.

In the 2017 Respect for Nottingham survey, 35% of those responding identified people being drunk in public spaces as a very or fairly big problem in the city centre. Public urination is often an evident sign of drunken behaviour.

In 97 face to face surveys conducted by CPOs in the city centre in December 2017, 40% of those interviewed stated that they were very or somewhat dissatisfied with people urinating in public, which confirms that the issue is one that has an impact on those working in, living in or visiting the City Centre..

Public urination is unpleasant in the extreme and the Council believes that the public would support greater enforcement action being taken against those engaging in such behaviour.

Whilst a potential offence exists under a 1936 byelaw for "nuisances contrary to public decency" and possibly under the Public Order Act 1986, these are seldom used and the proposed PSPO would clearly define that public urination/defecation is a breach of the order and an offence, along with the potential consequences.

The proposed PSPO would allow the Council's uniformed services and other authorised officers, such as Police and Police Community Support Officers to issue fixed penalty notices for those caught offending.

Psychoactive Substances

CPOs, and other agencies such as the Police and the East Midlands Ambulance Service are dealing, on a daily basis, with individuals in the city centre who are believed to have taken drugs known popularly as "mamba" and "spice" but more correctly described as synthetic cannabinoid receptor agonists (SCRAs).

SCRAs are often termed "zombie" drugs as a result of the almost catatonic state induced in users. Those under the influence may collapse or may exhibit inappropriate behaviour, including inappropriate sexual behaviour, all of which have the potential to have a serious detrimental effect on those who witness, or are subjected to such behaviour.

In the 2017 Respect for Nottingham survey 21% of those surveyed highlighted people taking and dealing drugs as a very big or fairly big problem in the city centre. 35% of those surveyed also highlighted those being drunk or rowdy in public spaces as a very or fairly big problem. Whilst the Respect Survey did not specifically cover the issue, it is anticipated that some of what is perceived to be drunken and rowdy behaviour will actually be as the result of SCRAs.

In addition, in face to face surveys with 97 visitors to the city centre conducted by CPOs in the city centre in December 2017, 38% of those surveyed were very or somewhat dissatisfied with the use of mamba/spice within the city centre. Since April 2018 CPOs have attended more than 500 "mamba" first aid incidents in the city centre to deal with those suffering from the effects of SCRAs.

The impact of a person under the influence of a psychoactive substance is potentially significant and harmful. Introduction of a PSPO would provide the Council's uniformed service additional means of tackling the matter and successful prosecution for breach of the PSPO would allow Criminal Behaviour Orders to be sought against those causing harassment, alarm and distress. Such orders could, in turn, impose positive requirements upon offenders compelling them to engage with substance abuse services.

The proposed PSPO states that no person shall possess or ingest a Psychoactive Substance in the Restricted Area other than substances exempted by paragraphs 2-7 of Schedule 1 of the Psychoactive Substances Act 2016.

5. Consents

Where restrictions imposed by the proposed PSPO require the consent of the Council to be obtained before a specified activity may be undertaken, it is intended that application for such consent should be made, in writing, to the Council's Licensing Team at the following address:

Licensing Team
Community Protection
Byron House
Maid Marian Way
Nottingham
NG1 6HS

If a decision is ultimately taken to introduce a PSPO on the terms proposed, further details will be published on the Council's website regarding the process for dealing with applications for consent.

6. Consultation

Evidence currently available would suggest that the test set out in Section 59 of the 2014 Act may be met in respect of the behaviours outlined above and that the restrictions in the proposed PSPO attached are justified. However, the statutory requirement to consult on any proposed PSPO will allow the Council to collate further information about the impact of the behaviours and the opinions of persons living in, working in and visiting the city centre and potentially affected by the proposed restrictions and prohibitions, and help inform the Council's view as to whether the requirements under Section 59 of the 2014 Act have been fulfilled and the proposed PSPO made.

If approval to consult is given, the consultation process will include consultation with the Police, the Police and Crime Commissioner, city centre businesses, residents of and visitors to the city centre, the Big Issue Foundation, groups supporting street entertainers, those concerned with charity collections, groups regularly distributing free matter and other relevant partner and support agencies.

It is proposed that formal consultation will remain open for a period of six weeks.

Briefing notes documents: Appendix 1 City Centre PSPO July.docx, City Centre PSPO Plan.pdf

Other Options Considered: The Council could choose not to consult on a proposed PSPO. However evidence suggests that the issues that are subject to this report are causing, or have the ability to cause, detriment to those working and living in, or visiting, the city centre. Consultation will allow the Council to obtain further information on the impact of these behaviours.

Background Papers: None

Published Works: Anti - social Behaviour, Crime and Policing Act 2014
Anti-social Behaviour, Crime and Policing Act 2014: Anti-social Behaviour Powers - Statutory guidance for frontline professionals
Local Government Association - Public Spaces Protection Orders - Guidance for Councils

Affected Wards: Arboretum, Berridge, Bridge

Colleague / Councillor Interests: None

Any Information Exempt from publication: Yes

Exempt Information:

Description of what is exempt: Part of the legal advice

An appendix (or appendices) to this decision is exempt from publication under the following paragraph(s) of Schedule 12A of the Local Government Act 1972

5 - Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. The public interest in maintaining the exemption outweighs the public interest in disclosing the information because it contains legal advice relating to the Proposed Public Spaces Protection Order to be consulted upon

7 - Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

The public interest in maintaining the exemption outweighs the public interest in disclosing the information because the legal advice is professionally privileged and relates to potential proceedings which may arise from the proposed Order

Documents exempt from publication:

ExemptSummary300718.docx, UpdatedExemptAdvice300718.docx

Consultations:

Those not consulted are not directly affected by the decision. The decision is only to approve formal public consultation on a city centre PSPO, rather than to make the PSPO itself, and everyone will have the opportunity to respond to the formal consultation on the terms of the PSPO that is proposed.

Crime and Disorder Implications:

Section 17 of the Crime and Disorder Act 1988 places a duty on councils to do all they reasonably can to prevent crime and disorder. If introduced, a PSPO will give Nottingham City Council additional powers to tackle the behaviours that are the subject of the consultation approved by this decision.

Equality:

EIA not required. Reasons: The decision is only to approve consultation on the proposed PSPO, rather than to approve the PSPO itself. If, following the consultation, a recommendation is made to Executive Board to introduce a PSPO, an Equality Impact Assessment will be carried out at that point, based on the prohibitions and requirements contained in that proposed PSPO.

Decision Type:

Portfolio Holder

Subject to Call In:

Yes

Call In Expiry date:

21/08/2018

Advice Sought:

Legal, Finance

Legal Advice:

1.1 The decision whether or not to commence formal consultation in relation to the proposed PSPO at Appendix 1 ("the Proposed PSPO") appears to fall within the remit of the Portfolio Holder for Community Protection in accordance with the Council's Scheme of Delegations.

1.2 If consultation on the making of the Proposed PSPO is authorised, the 2014 Act and Regulations made under it set out the required procedure before any decision to consider making the Proposed PSPO can be taken. This includes consultation requirements and the advertisement of proposals as set out in the DDM. The Council should also have regard to the Home Office Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers Statutory guidance for frontline professionals ('the Statutory Guidance'). This strongly recommends that councils 'engage in an open and public consultation to give the users of the public space the opportunity to comment on whether the proposed restriction or restrictions are appropriate, proportionate, or needed at all'. The Statutory Guidance confirms that consultation should include national or local homelessness charities when considering restrictions or requirements which may impact on homeless persons.

1.3 There is no statutory minimum consultation period for proposed PSPOs, although the Council will need to comply with general consultation requirements and ensure that the consultation is meaningful and sufficiently long to allow persons likely to be affected to respond.

1.4 The results of the consultation (if authorised) and evidence gathered in relation to the Proposed PSPO will be reported to a future Executive Board meeting for a decision to be taken on whether the Proposed PSPO should be made.

1.5 As identified in the main body of the Decision, 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 all of the areas that it will apply to. The Council can only make prohibitions or requirements which are reasonable to impose in order to prevent or reduce the detrimental effect identified in a public place, or which is likely to be carried on in that place, and is likely will have such an effect. When deciding whether to make a PSPO the Council must give due regard to issues of proportionality, and also 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).

1.6 The Council should also consider how easy the Proposed PSPO would be to enforce, since failure to enforce a PSPO could undermine the effect of that PSPO.

1.7 The Statutory Guidance confirms that a PSPO can be drafted from scratch based on the 'individual and specific issues being faced in a particular public space', and that a 'single order can also include multiple restrictions and requirements'.

There is additional legal advice which is exempt from publication contained within an exempt appendix. Advice provided by Tamazin Wilson (Solicitor) on 08/03/2018.

Advice confirmed as still valid on 01/08/2018

Finance Advice:

There are no financial implications for this decision.

Should there be any costs associated with the survey, these will be funded from existing budgets within Community Protection. Advice provided by Michelle Pullen (Commercial Business Partner) on 01/03/2018.

Advice confirmed as still valid on 01/08/2018.

Signatures

Toby Neal (Portfolio Holder for Community Protection)

SIGNED and Dated: 14/08/2018

Andrew Errington (Director, Community Protection)

SIGNED and Dated: 02/08/2018