

## REGULATORY AND APPEALS COMMITTEE - 8 October 2018

<b>Title of paper:</b>	Nottingham City Act 2013 – control of street trading – formal consultation feedback	
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### **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 type="checkbox"/>
Energy, Sustainability and Customer	<input type="checkbox"/>
Jobs, Growth and Transport	x
Adults, Health and Community Sector	<input type="checkbox"/>
Children, Early Intervention and Early Years	<input type="checkbox"/>
Leisure and Culture	x
Resources and Neighbourhood Regeneration	<input type="checkbox"/>

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

The purpose of the report is to enable the Committee to consider representations made following the advertisement of this Committee's resolution of 21st May 2018 indicating the Council's intention to designate an area within the city centre for the purpose of controlling illegal street trading pursuant to the Nottingham City Council Act 2013 (the 2013 Act).

The report also seeks authority to implement aspects of the 2013 Act to bring it fully into force. The committee is also asked to consider the response from the Secretary of State after notifying them in writing on 14 August 2018 of the intention to set the Fixed Penalty Notice at £150.00.

<b>Recommendations:</b>	
<b>1</b>	<p>It is recommended that, being satisfied that it is necessary to ensure road safety or prevent obstruction of the highway, pursuant to paragraph 2 of the Schedule 4 of the Local Government (Miscellaneous Provision) Act 1982 as amended by section 5 of the Nottingham City Council Act 2013, with effect from 3 December 2018 to designate for the purposes of the sections 5(1) of the 2013 Act the area outlined with a bold red line on the plan attached, bounded by and including the following:</p> <p>from a point at the junction of South Sherwood Street, the designated area runs east and is bounded by the back of the footway on the north side of Shakespeare Street, south along the back of the footway on the east side of Milton Street, then east and then south along the back of the footway on the north, east and south sides of Lower Parliament Street to the junction of Canal Street and London Road. It then runs south, then west, then north around the traffic roundabout on London Road (at its junction with Canal Street and Parliament Street), then west along the back of the footway on the south side of Canal Street, north along the back of the footway on the west side of Castle Road (including the whole of Lenton Road to the junction of the Nottingham Park Estate) then runs north west along the back of the footway on the north side of Friar Lane. It then runs north west and is bounded by the back of the footway on the west side of Main Marian Way, continuing over Wollaton Street to Talbot Street, east along the back of the footway on the north side of Talbot Street, north along the back of the footway on the west side of South Sherwood Street to the point at the junction of South Sherwood Street, such designation to have effect at all times. ('the Designated Area').</p>
<b>2</b>	<p>The Director for Sport and Culture be authorised to advertise the above resolution in accordance with paragraph 2 of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 5 of the 2013 Act.</p>
<b>3</b>	<p>To Authorise the Director of Community Protection to comply with the duties in section 10 of the 2013 Act relating to financial provisions.</p>

## **1 REASONS FOR RECOMMENDATIONS**

- 1.1 The Council introduced a Bill to Parliament in 2007 to amend the Local Government (Miscellaneous Provisions) Act 1982 (the 1982 Act) to allow the Council to better regulate street trading, alter the exemptions for pedlars and to serve fixed penalty notices. Similar Bills were promoted by Canterbury City Council, Leeds City Council and Reading Borough Council. Pedlars had become a significant problem for a number of cities as the number of pedlars and illegal street traders increased.
- 1.2 This had a detrimental effect on the street scene, the experience of shoppers and importantly caused health and safety issues as highways and footpaths were blocked or congested due to the number and inappropriate placement of street trading or pedlars.
- 1.3 The main areas for illegal street trading activity has been around the central shopping area of the city centre including Clumber Street, Smithy Row, High Street, Bridlesmith Gate, Albert Street and Lister Gate. These streets are mainly pedestrianised but the trolleys still cause an obstruction, particularly when taking

account of street furniture, and other users of the streets. Due to the high density of footfall in the central core area of the city centre there is a potential for obstruction on all the streets and there are road safety issues in streets that carry vehicular traffic.

- 1.4 It was therefore recommended that the central core area of the city centre be established as a designated area for the purposes of section 5 of the 2013 Act, extended slightly to include the major entertainment venues that attract high footfall during performances and events; Nottingham Playhouse, the Albert Hall, Theatre Royal, Royal Concert Hall, Nottingham Arena/Ice Centre and Nottingham Castle.
- 1.5 When introduced it will mean that in the Designated Area there is an amended definition of 'pedlar' so that all articles must be either carried without any means of support or carried in a single, wheeled trolley which is pushed or pulled by the holder of the pedlar's certificate. The pedlar's trolley, excluding handle and display, is restricted to 0.75m width, 0.5m depth and 1.25m height, or including handle and display, is restricted to 0.88m width, 0.83m depth and 1.63m height. This will therefore allow better management of pedlars and street trading and help to ensure road safety and prevent obstruction of the highway.
- 1.6 At the meeting on 21 May 2018 Committee authorised the Head of City Centre Management and Regulation to comply with the duties in section 10 of the 2013 Act relating to financial provisions. Since that meeting there has been a reorganisation of the Community Protection Directorate, and it is therefore now recommended that the Interim City Centre Manager Community Protection be authorised to comply with these duties.

## **2 BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)**

- 2.1 At the meeting on the 21 May 2018 the Regulatory and Appeals Committee indicated its intention to pass a resolution to implement aspects of the 2013 Act to bring it fully into force so that illegal street trading can be managed better within the city centre. This included a recommendation that a resolution be passed to designate the Designated Area for the purposes of section 5(1) of the 2013 Act.
- 2.2 In accordance with paragraph 2 of schedule of the 1982 Act as amended by section 5 of the 2013 Act, all appropriate notices were served and the councils intention to pass the resolution to designate the Designated Area subject to consideration of any representations received in writing within the relevant period was advertised.
- 2.3 At the meeting on the 21 May 2018 the Regulatory and Appeals Committee set the level of fixed penalty payable under section 8 of the 2013 Act at £150 and authorised the Director of Sports and Culture to publish notice of this in the local press and notify the Secretary of State.
- 2.4 All relevant notices were served in the local press on 20 June 2018. No representations have been made in respect of the proposed designation so it is recommended that the Designated Area be designated for the purposes of section 5(1) of the 2013 Act with effect from 3 December 2018, such designation to have effect at all times.
- 2.5 To comply with the legislation the designation shall take effect not less than one month after the resolution has been passed and the resolution must be advertised

in a local newspaper for two consecutive weeks; the first publication shall not be less than 28 days before the date specified in the resolution.

- 2.6 The Secretary of State was notified of this Committee's decision to set the Fixed Penalty Notice level at £150 by post on 10 August 2018, and no representations have been received from the Secretary of State in relation to this. The level of Fixed Penalty payable under section 8 of the 2013 Act for a relevant offence as defined in section 2 of the 2013 Act set by this Committee has therefore now come into force in Nottingham.

### **3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS**

- 3.1 Not bringing the 2013 Act fully into effect. However, this would mean that the amended definition of pedlar would not apply if an area is not designated.
- 3.2 A Public Spaces Protection Order may be an option; however, the 2013 Act is primary legislation available to address the issues identified above. Guidance under the Anti-social Behaviour, Crime and Policing Act 2014 confirms that it remains a principle of law that a specific power should be used in preference to a general one.

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

- 4.1 As a result of this decision, the expectation is that there will be minimal impact on the Medium Term Financial Plan, based on current levels of illegal street trading. The Council will be able to enforce against unlicensed street trading, and may impose fixed penalty notices for violations. The income received from the fixed penalty notices will be required to cover the expenditure incurred by the Council in enforcement measures. There is an obligation for the Council to account for the income and expenditure in respect of the administration and enforcement of fixed penalties under the 2013 Act, with annual reporting to the Secretary of State each financial year. The Head of City Centre Management & Regulation will undertake this reporting.

*Maria Balchin, Senior Commercial Business Partner. 13 September 2018*

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

- 5.1 Under paragraph 10 (1) of the 1982 Act a person who (a) engages in 'street trading' in a prohibited street; or (b) engages in 'street trading' in a licence street or a consent street without being authorised to do so under schedule 4 of the 1982 Act commits an offence.
- 5.2 Trading by a pedlar acting under the authority of a pedlar's certificate is not classed as engaging in 'street trading' under the 1982 Act. The 2013 Act amends the definition of 'pedlar' (restricting the size of trolley used and prohibiting the trading in tickets) in an area which is a 'designated area' under the 2013 Act. This does not prevent a pedlar from trading lawfully anywhere within the city provided they trade in accordance with the 1982 Act as amended.
- 5.3 The Committee may only designate an area under section 5 of the 2013 Act if it has reason to believe that it is necessary to designate an area to ensure road safety or

prevent obstruction of the highway. The proposed designated area is shown outlined with a bold red line on the plan attached to the report and detailed in recommendation 1.

- 5.4 To designate an area pursuant to section 5 of the 2013 Act, the Council must follow the process for designation contained in sub-paragraphs (2) to (10) and (13) of paragraph 2 of Schedule 4 of the 1982 Act (as amended by the 2013 Act). The recommendations follow the required procedure.

*Tamazin Wilson, Solicitor. 7 September 2018*

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

- 6.1 N/A

**7 EQUALITY IMPACT ASSESSMENT**

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

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

- 8.1 None.

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

- 9.1 The Nottingham City Council Act 2013.  
9.2 The local Government (miscellaneous Provisions) Act 1982.  
9.3 City Council, 14 April 2014 report – Nottingham City Council Act 2013.