

BULWELL AND BULWELL FOREST (AREA 1 COMMITTEE)**12 December 2018**

Subject/ Title:	Merchant Street Public Spaces Protection Order Extension		
Corporate Director(s)/Director(s):	Mr Andrew Errington Mr Andrew Vaughan		
Portfolio Holder(s):	Councillor Toby Neal Portfolio Holder for Community and Customer Services		
Report author and contact details:	Suzanne Levers Email address suzanne.levers14067@nottinghamshire.pnn.police.uk Telephone 07342071192		
Subject to call-in:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Key Decision: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Criteria for Key Decision:			
(a) <input type="checkbox"/> Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings of £1,000,000 or more taking account of the overall impact of the decision			
and/or			
(b) Significant impact on communities living or working in two or more wards in the City <input type="checkbox"/> Yes <input type="checkbox"/> No			
Type of expenditure:	<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital		
Total value of the decision:	None		
Wards affected:	Bulwell		
Date of consultation with Portfolio Holder(s):	N/A		
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	<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 checked="" type="checkbox"/>		
Summary of issues (including benefits to citizens/service users):			
<p>A need was identified to control and reduce various problems associated with anti-social behaviour being perpetrated in and around the Merchant Street area in Bulwell in 2015. The problems were exclusively caused by groups of young people congregating in the area and causing a variety of persistent 'anti-social behaviour' which was considered unreasonable, including using the street furniture in the area and other structures as 'climbing frames' and being verbally abusive to local tenants and residents. For example, the groups were reported to often knock on residents doors for no good reason, play loud music, fire 'bb guns' in the street, play ball games which could damage resident's property and throw bottles and other objects, occasionally at resident's property.</p> <p>In order to deal with the behaviour a Public Spaces Protection Order ("PSPO") under the Anti-social Behaviour, Crime and Policing Act 2014 ("the 2014 Act") came into effect on 1 February 2016 and prohibits some of this identified behaviour outright, and prohibit some of this behaviour</p>			

where a warning has first been given by an authorised officer of the Council, a Police Constable or a PCSO.

The current PSPO will expire on 31 January 2019 and it is proposed that this Order is extended for a further three years.

Exempt information:

An appendix to the report is exempt from publication under paragraph 5 and 7 of Schedule 12A to the Local Government Act 1972 because it contains information relating to legal advice relating to the Proposed Public Spaces Protection Order and, having regard to all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. It is not in the public interest to disclose this information because this advice is professionally privileged and relates to potential proceedings which may arise from the proposed Order

Recommendation(s):

1 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 Area Committee authorise an extension to the Nottingham City Council Merchant Street Public Spaces Protection Order 2016 (“the Order”), a copy of which is attached at Appendix 1, to have effect for a further period of three years from the 31 January 2019.

2 In the event that a decision is made to extend the Order under recommendation (1) above, the Area Committee authorise the Director of Community Protection to carry out the necessary advertisements and arrange for appropriate signage to be erected where necessary in accordance with the legislative requirements.

1 REASONS FOR RECOMMENDATIONS

1.0 On 25th November 2015 the Bulwell and Bulwell Forest Area Committee approved the making of a Public Spaces Protection Order (“PSPO”) for Merchant Street (“the Order”) which came into force on 1st February 2016.

1.1 The Order (copy attached at Appendix 1) includes the following restrictions:

1. No persons shall play ball games in the restricted area
2. No person shall spit in, onto or from the restricted area
3. No person shall climb on any wall or fence in the restricted area, or any tree, or any barrier, railing, post or other structure within the restricted area
4. Groups of two or more persons are prohibited in the restricted area where one or more of the said group causes harassment, alarm or distress to any person in the restricted area by continued:
 - a) Use of Threatening, abusive or insulting words or behaviour; or
 - b) Disorderly behaviour

(For the purposes of restriction number 4 such behaviour is continued where an Authorised Person has: a) informed them that if the behaviour continues, that they will be deemed to

constitute a Prohibited Group and will commit an offence, and b) asked the relevant person(s) in the group to desist from such behaviour but they have refrained from doing so).

- 1.3 PSPOs can only be in effect for a maximum of three years, and the Order expires on 31st January 2019.
- 1.4 Under section 60(2) of the Anti-social Behaviour, Crime and Policing Act 2014 ('the 2014 Act') the Order can be extended for up to three years if, before the Order is due to expire, the local authority that made the Order is satisfied on reasonable grounds that doing so is necessary to prevent –
 - a) the occurrence or recurrence after that time of the activities identified in the Order; or
 - b) an increase in the frequency or seriousness of those activities after that time.
- 1.5 Section 60(3) of the 2014 Act confirms that an extension under section 60 of the 2014 Act may not be for a period of more than three years.
- 1.6 Section 72 of the 2014 Act also applies, which contains provisions relating to convention rights, consultation, publicity and notification requirements.
- 1.7 The Director of Community Protection authorised the formal consultation on the proposal to extend the effect of the Order for a further three years from 31 January 2019.
- 1.8 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.
- 1.9 In the event that a decision is made to extend the Order, it is proposed that fixed penalties for offences in breach of the Order will continue to be £100, with a reduction of £50 if paid within ten days, as previously approved by this Committee.
- 1.10 The proposed extension to the Order is not intended to interfere with responsible persons frequenting the area to use the shops available or to interfere with local tenants and residents using the area.

2 BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)

- 2.1 As stated above, problems with a variety of 'anti-social behaviour' were identified around the Merchant Street area of Bulwell 2015. The problems were exclusively caused by groups of young people congregating in the area and causing a variety of persistent 'anti-social behaviour' which was considered unreasonable, including using the street furniture in the area and other structures as 'climbing frames' and being verbally abusive to local tenants and residents. The groups were reported to often knock on residents doors for no good reason, play loud music, fire 'bb guns' in the street, play ball games which could damage resident's property and throw bottles and other objects, occasionally at resident's property.

- 2.2 The unreasonable conduct was reported to be persistent in its nature and was causing harassment, alarm and distress; evidence showed that these issues impacted greatly on the quality of life for the residents, visitors and businesses alike by intimidation to citizens, posing a danger to citizens and traffic control, and damage to street furniture, resident's property and buildings. This undoubtedly was having a detrimental effect on the quality of life of those in the locality.
- 2.3 Evidence to date indicates that the Order has been very effective in deterring the above behaviour.
- 2.4 Concerns have been raised with both Nottinghamshire Police and Nottingham City Council's Community Protection Service that if the Order were to lapse, the behaviours described above may restart and the problems may reoccur resulting in further anti-social behaviour once more in an area that has been provided respite as a result of the actions taken by the City Council. It is therefore proposed that the Order be extended for a further period of three years to provide a continuation of the respite.
- 2.5 In a further three years, it is likely that those persons causing the above behaviour will have grown up and may even have moved away from the area. It is likely that as a direct result of the implementation of the Order, those youths who previously behaved in the manner described above will have not encouraged their younger peers to behave in this manner due to the restrictions imposed and therefore the generational behaviours within this area will have a lasting legacy however in order to establish this further, an extension to the Order is considered to be necessary, reasonable and proportionate.
- 2.6 Before a PSPO can be made consultation must be undertaken in accordance with the 2014 Act, Regulations made under it and statutory guidance. The Council have formally consulted on the proposed extension to the Order so that it will remain in effect for a further three years following authorisation by Mr Andrew Errington, the Director of Community Protection.
- 2.7 The Council has consulted with:
- The Chief of Police, the local policing body, and the Police and Crime Commissioner for the police area that includes the restricted area. However, the Council have not received a response.
 - The owner or occupiers of land within the restricted area.
 - The Council published a copy of the Order on its website and explained that it proposed to extend the effect of the Order for a further three years.
 - Neighbourhood Development Officers have been made aware of the proposals.
 - A consultation letter and questionnaire in the form attached at Appendix 2 was discussed with all residents in the Restricted Area where possible, otherwise posted through their letterboxes.
- 2.8 Consultation on the proposed extension of the Order commenced during the 24 September 2018 and concluded on 22 October 2018.

Outcome

2.9 As a result of evidence collated during the Consultation period, there appears to be support for the proposed extension to the Order. A total of 100 letters and questionnaires were distributed, 14 of which were returned. 12 of the returned consultations are in favour an extension of the Merchant Street Public Spaces Protection Order. The other 2 did not complete the questions so no answers were given. Of the 12 returned consultations 4 households identified as someone in the household having a vulnerability. Below are all the comments received from residents of Merchant Street regarding their views, positive or negative, to the proposed extension of the Order

“It’s a great idea”

“Please keep doing it”

“Several motorbikes going frequently up/down the street from other areas”

“Gangs congregating near the walk-through causing unsocial behaviour”

“Young children kicking footballs about – sometimes hitting cars and windows on properties.”

“Need parking permit zone”

2.10 It is considered that the restrictions/prohibitions being sought to continue are proportionate, necessary and reasonable; indeed they are nothing more than how a reasonable person would choose to behave or conduct themselves.

2.11 The Council must be satisfied that the proposed extension to the Order meets the test contained in section 60(2) of the 2014 Act detailed at paragraph 1.4 above, 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.

2.12 In addition, if the extension to the current Order is made, the extended Order will be published on the Council’s website and signage to confirm the extension will be placed in the Restricted Area in accordance with the statutory provisions, together with the existing signage that advises of the prohibitions contained in the Order, and that breach of the Order is a criminal offence. These will continue to act as a deterrent.

2.13 If the Order is extended, in order to ensure a proportionate use of the powers it is proposed that all authorised persons, including Police Officers and PCSOs continue to be trained in these powers locally by the Community Protection North Enforcement Team which is currently in place. Contact was made with the Youth Offending Team, when the original order was implemented, to see if the Council would be able to work with them in relation to youths found breaching the extended Order who were already known to them, and, when the original order was implemented, secondary schools in the local area agreed to work with the Council where it was found that their students had breached the PSPO.

3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

3.1 If allowed to end, the Council and the Police would no longer have the powers to take enforcement action to tackle the behaviours described above under the Order and the Council is of the opinion that it is likely that the behaviours will begin to reoccur and Merchant Street will start to suffer anti-social behaviour again.

3.2 There is a Byelaw in place which currently covers Merchant Street (City of Nottingham Byelaws with respect to the spitting on footways dated 1953). While the Order remains in force this Byelaw cannot be enforced in the Restricted Area detailed in the Order, but if the Order was not extended, enforcement of this Byelaw for the behaviours covered may be an option. However, the Byelaw is very old, it only covers spitting, and there is no fixed penalty attached to it.

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

4.1 Once the extension to the Merchant Street Public Spaces Protection Order 2016 has been approved, there will be no on-going financial implications. The costs of enforcing the Order will be met within the existing roles of the Community Protection Officers, Police Officers and Police Community Support Officers.

4.2 The cost of any additional signage and advertisement in accordance with the legal requirements will be taken from Community Protection's Budget.

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

5.1 The power to extend the Order falls within the remit of this Area Committee and the proposal appears to be in accordance with the Council's Scheme of Delegations.

5.2 As identified in the main body of the Report, PSPOs 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 all of the areas that the Order applies to.

5.3 When deciding whether to extend the Order 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 Convention (as provided by section 72(1) of the 2014 Act).

5.4 As identified in the main body of the Report, the Council has undertaken a consultation exercise regarding the proposed extension to the Order, which appears to be in compliance with the requirements in the 2014 Act and Statutory Guidance.

5.5 The Report notes that there is a Byelaw in relation to spitting, which, pursuant to section 70 of the 2014 Act has no effect in relation to the restricted area at present while the Order remains in effect. If the Order is extended as proposed the Byelaw will continue to have no effect in the restricted area during the extended period that the Order remains in effect.

5.6 The Council should also consider how easy the Order, if extended, will be to enforce, since failure to properly enforce an Order could undermine the effect of an Order. Special procedures apply when dealing with enforcement against youths, these will need to continue to be addressed as and when breaches occur.

5.7 This is still a relatively new area of law, and the boundaries are yet to be tested. There is a potential risk of challenge, and the validity of PSPOs can be challenged in the High Court by interested persons, by way of Judicial Review, or raised as a possible defence to a prosecution.

5.8 It is proposed that, if extended, the Order will last for a further period of three years. 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 at the end of that extended period. There is no restriction on the number of times that a PSPO can be extended. As identified in the body of the report the Council must comply with publication and signage requirements if the Order is extended.

5.9 **Crime and Disorder Act Implications** - A key aim of the City Council is to reduce the risk of crime and disorder occurring in local neighbourhoods and the community in general. The proposed extension to the Order would continue to provide additional powers to deal with the behaviour identified in the report.

6 STRATEGIC ASSETS & PROPERTY COLLEAGUE COMMENTS (FOR DECISIONS RELATING TO ALL PROPERTY ASSETS AND ASSOCIATED INFRASTRUCTURE)

6.1 There is no requirement for colleagues from Strategic Assets and Property to comment on this report. This is due to any new signage which may be required to be installed should the current Order be granted, will simply replace the current signage that is in place on Merchant Street. It is anticipated that no signage will be required as the current signage has not dates upon them.

6.2 Should there be any cost implications will be taken from the Community Protection's Budget.

7 SOCIAL VALUE CONSIDERATIONS

7.1 If the extension of the current Order is granted, the social value of Merchant Street will continue as it currently stands. This is due to the Order ensuring that citizens are aware of the conditions in place which will prevent any anti-social behaviour occurring on Merchant Street.

7.2 If the current Order was not extended it is possible that the anti-social behaviour may return and this in turn will reduce the quality of life for those residents on Merchant Street.

8 REGARD TO THE NHS CONSTITUTION

8.1 If the current order is extended then there will be no negative impacts on the NHS Constitution.

8.2 If the current Order is extended its likely the Order extension will amplify the residents of Merchant Street health in terms of their physical, emotional and mental wellbeing. This is due if extending the Order preventing anti-social behaviour on Merchant Street returning.

9 EQUALITY IMPACT ASSESSMENT (EIA)

9.1 An equality impact assessment is attached as Appendix 2, and due regard will be given to any implications identified in it.

9.2 The extension of the Order will not adversely affect any particular group of citizens. Under the Council's Fair and Just Nottingham Equity Scheme, the proposed extension to the Order complies with the underlying principles of the scheme and promotes fair and individual enforcement based on the Order.

10 LIST OF BACKGROUND PAPERS RELIED UPON IN WRITING THIS REPORT (NOT INCLUDING PUBLISHED DOCUMENTS OR CONFIDENTIAL OR EXEMPT INFORMATION)

- 10.1 City of Nottingham Byelaws with respect to spitting on footways dated 1953
- 10.2 Decision of Andrew Errington dated 18 September 2018 to approve the formal consultation of the extension of the Merchant Street PSPO.

11 PUBLISHED DOCUMENTS REFERRED TO IN THIS REPORT

Crime and Disorder Act 1998

Anti-Social Behaviour, Crime and Policing Act 2014

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

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

Report of Bulwell and Bulwell Forest Area Committee dated 25 November 2015 to approve the making of the Order.