

# Birmingham City Council

## Licensing and Public Protection Committee

14 May 2024



**Subject:** Update Report on the City Centre Noise Public Space Protection Orders

**Report of:** Sajeela Naseer, Director of Regulation and Enforcement

**Report author:** Russell Davey, Operations Manager, Environmental Health

Does the report contain confidential or exempt information?  Yes  No

If relevant, state which appendix is exempt, and provide exempt information paragraph number or reason if confidential :

### 1 Executive Summary

- 1.1 On 15<sup>th</sup> August 2022, the City Council declared two city centre noise PSPOs to control excessive noise levels from the street adversely effecting residential properties in two distinct areas.
- 1.2 This report provides and update on the progress of the PSPOs since their introduction.

### 2 Recommendation(s)

- 2.1 That the report be noted.

### 3 Background

- 3.1 Under the Environmental Protection Act 1990, the City Council have a statutory duty to investigate and, where necessary, take enforcement action with regards to complaints of alleged statutory noise nuisance under the Environmental Protection Act 1990.
- 3.2 Whilst the Council's powers under the Environmental Protection Act 1990 are recognised for dealing with complaints of domestic or even commercial noise nuisance they are not particularly effective in dealing with complaints of noise nuisance arising from the street, the sources of which are often quite transient.

3.3 On the 15<sup>th</sup> August 2022, following an increasing number of complaints from residents about excessive noise levels in the street, the City Council declared two Public Space Protection Orders aimed at controlling the noise. The two PSPOs are referred to as:

- Birmingham City Council displacement of noise from activities undertaken on the street in the vicinity of residential accommodation (New Street and High Street) Public Space Protection Order 2022.
- Birmingham City Council displacement of noise from activities undertaken on the street in the vicinity of residential accommodation (New Street and Temple Street) Public Space Protection Order 2022.

3.4 The areas were selected because of repeated complaints from residents living in apartment blocks near the junction of New Street and Temple Street and also in the Rotunda and adjoining buildings around noise.

3.5 Under the terms of the PSPOs the use of amplification equipment, musical instruments and items being used as musical instruments are restricted. Full details of the PSPOs can be found in Appendix 1.

3.6 The existing Public Space Protection Orders are in force for a period of 3 years after which period the Orders will lapse if they are not renewed. The expiry date for the two PSPOs is the 14<sup>th</sup> August 2025.

#### **4 Requests for assistance in relation to noise on the street in the PSPO areas.**

4.1 Since the PSPOs were introduced. A total of 82 complaints have been formally recorded on the City Council's computer system about excessive noise level in and around the two PSPO areas. This is likely to be a significant under reporting of the overall number of complaints as there is a wide range of reporting mechanisms available into the City Council for example emails, telephone calls, speaking to Officers on the street and indirectly through Members, BIDs etc. It is likely that some complaints have not been properly passed to the Environmental Health team and therefore potentially not been recorded.

A breakdown of the requests for assistance can be seen below:

Total number of complaints received via area:

Vicinity of New Street/High Street	Vicinity of New Street and Temple Street
56	26

Breakdown of complaints received in the vicinity of New Street and High Street

Busker			Preacher			Unknown / not defined
Business	Resident	Visitor/ Other	Business	Resident	Visitor/ Other	
5	9	3	1	30	5	3

Breakdown of complaints received in the vicinity of New Street and Temple Street

Busker			Preacher			Unknown / Not defined
Business	Resident	Visitor/ Other	Business	Resident	Visitor/ Other	
11	10	1	0	2	0	2

- 4.2 A number of the incidents reported above relate to the same individuals, some of whom have been subject to enforcement action by the City Council. As such it is anticipated that the number of complaints being received should drop further.
- 4.3 As a comparison, in the 20 months leading up to the introduction of the City Centre Noise PSPOs (01/12/2020 – 31/07/2022), Environmental Health received 130 complaints about noise levels in the street in the vicinity of the two PSPO areas. It should be noted that during this period, the country was subject to COVID restriction which meant that the first complaint received during this period was not actually received until 16<sup>th</sup> June 2021. It is therefore likely that the number of complaints received would have been significantly higher should the pandemic not have taken place.
- 4.4 As can be seen from the data above, the number of complaints received in relation to noise from street-based activities within the PSPOs has reduced showing the positive impact that the PSPOs have been having on the quality of life of residents.

## **5. Enforcement Interventions**

- 5.1 Since their introduction, the PSPOs have acted as an opening for Officers to approach buskers, street preachers and street entertainers about the noise that they are creating and the impact that it is having on nearby residents. On many occasions, street users had not considered the impact that their activities can have on nearby residents and respectfully agree to relocate away from residential properties. This has enabled officers to resolve the potential risk of complaints from residents before they have been made.
- 5.2 A total of 14 fixed penalty notices have been issued since the PSPOs came into force. The service of which has been distributed evenly with 7 FPNs being issued in each of the PSPO areas. Of the FPNs issued, 6 were paid within the within the accepted time frame, 3 were paid as a result of legal proceedings and the remaining 5 were withdrawn or cancelled for a range of reasons.
- 5.3 It is appreciated that breaches of the PSPOs can occur at any time. Whilst efforts are made to provide resources on the street at the time when incidents are most likely, it is not possible to respond to all requests for assistance at the point when the noise is occurring. Where possible these are followed up afterwards with suitable enforcement action.
- 5.4 Whilst on the whole Council Officers are able to respond to complaints on their own, there are some circumstances where additional support is required from Officers from West Midlands Police to help protect Officer safety and prevent breaches of the peace. As such the City Council have an arrangement in place to buy in "Off Duty" support from West Midlands Police to assist with the patrols. These patrols typically take place in the evening where there has been seen to be an increased levels of aggression towards Officers and where there is an increased risk of bystanders becoming involved in interactions. Despite this additional Police resource, there have been a number of instances where Officers have been assaulted or have had abusive and/or threatening language used against them. Where these instances have occurred, the matters have been progressed by West Midlands Police through the Magistrates Court.
- 5.5 Whilst every effort is made to resolve incidents of the PSPO being breached either through education or enforcement, there have been several instances this is where large scale protests have entered the city centre and Officers have encountered difficulties seeking compliance.

## **6 Displacement**

- 6.1 Whilst the PSPO has been successful in reducing noise levels on the street near to residential properties, there has been a small degree of displacement into the wider city centre. Where noise complaints are received, Environmental Health,

have been working with residents and businesses to resolve complaints through a range of education and enforcement where necessary.

## **7. Feedback from external bodies.**

7.1 Whilst overall the feedback around the PSPOs has been positive, a number of organisations within the busking community have expressed concern over the impact of the scheme on its members through the removal of key busking locations. The Council is continuing to work with these organisations with regards to a solution which meets the best interests of both residents and members.

7.2 Similarly, feedback has been received from the Business Improvement District and businesses that the noise from buskers and preachers continues to be very intrusive due to the fact they are operating on the fringes of the PSPO areas and areas not covered by a PSPO.

7.3 There has been positive feedback from residents within the two PSPO areas. The notices have mostly met their objective of reducing amplified noise at the residential accommodation in both areas. As stated in 3.6 above, the existing PSPOs lapse after 3 years. Residents are currently expressing concern as to what will happen when the notices lapse as stating they would like to see them extended.

## **8. Options considered and Recommended Proposal**

8.1 None. This report is for noting.

## **9. Legal Implications**

9.1 The PSPOs assist the City Council in discharging its statutory duty under the Environmental Protection Act 1990 with regards to noise nuisance.

## **10. Financial Implications**

10.1 The cost of enforcing the scheme is currently being met from the existing Environmental Health budget.

## **11. Public Sector Equality Duty**

11.1 An equalities impact assessment was undertaken as part of the process of declaring the PSPOs.

## **12. Other Implications**

12.1 The introduction and enforcement of the PSPOs helps support the Council's priorities around support inclusive economic growth, attracting inward investment and infrastructure, make the city safer and increasing affordable, safe, green housing.

## **13. Background Papers**

13.1 None

## **14. Appendices**

14.1 Appendix One – copies of the two Public Space Protection Orders

## Appendix 1

**ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014**  
**BIRMINGHAM CITY COUNCIL DISPLACEMENT OF NOISE FROM**  
**ACTIVITIES UNDERTAKEN ON THE STREET IN THE VICINITY OF**  
**RESIDENTIAL ACCOMMODATION**  
**(NEW STREET AND HIGH STREET)**  
**PUBLIC SPACE PROTECTION ORDER 2022**

This Order shall come into force on 15<sup>th</sup> August 2022 at 00:01 hrs and for a period of three (3) years and will expire on the 14<sup>th</sup> August 2025 at 23.59 hrs.

THIS ORDER is made by Birmingham City Council (“the Council”) under section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 (the Act), because the Council is satisfied on reasonable grounds that there are a number of activities, carried out or likely to be carried out in a public space, within the Restricted Area that have had, or are likely to have, a detrimental effect on the quality of life of those in the locality. The effect or likely effect of these activities is of a persistent or continuing nature such as to make these activities unreasonable, and justifies the restrictions imposed by this order.

### **These activities include:**

- 1) The use of amplified speakers for musical instruments and the playing of music and
- 2) The use of equipment for public address; unamplified musical instruments; other items used as musical instruments; noise associated with busking; entertaining and public speaking

affecting residential dwellings in the restricted area:

- At an unreasonable noise level during the day, or
- At anti-social hours (after 20:00hrs and before 08:00hrs), and
- In a repetitive, recurring and static nature and/or
- By an individual or separately by individuals leading to an adverse cumulative noise impact on the residential properties.

## **5 Definitions:**

**“Authorised Person”** means a Police Constable, Police Community Support Officer, Council Officer or an Officer working on behalf of the City Council, and must be able to present their authority upon request.

**“Restricted Area”** any public place within the areas outlined in blue on the attached map.

**“Amplification Equipment”** microphones, speakers, loudspeakers, megaphones, loudhailers public address systems or any other similar equipment used for the amplification of voice, music or pre-recorded audio-tracks, but not apparatus designed and used as an aid to defective hearing, as an aid for speech or speech replacement, or apparatus used where the sound is received through headphones, or apparatus whilst being used to undertake personal private communication.

**THIS ORDER PROHIBITS the following things being done in the Restricted Area:**

**Amplification equipment, musical instruments or other items used as musical instruments**

- a) A person is prohibited at all times from using amplification equipment to broadcast sound to third parties, musical instruments or other items used as musical instruments within the areas marked in green on the map of the restricted area.
  
- b) A person is prohibited between the hours of 20.00 hrs and 08.00 hrs from using amplification equipment to broadcast sound to third parties, musical instruments or other items used as musical instruments within the areas marked in yellow on the map of the restricted area.

**The above prohibitions do not apply to:**

- i. anyone who holds a current street trading consent or written authorisation from The Council.
  
- ii. Emergency Response e.g. Police, Fire and Rescue Authority, Ambulance Services or Statutory Undertakers for the purpose of public safety and/or the prevention of crime and disorder.
  
- iii. warning or alarm sounds associated with vehicles and machinery to keep the public safe on the shared highway e.g. reversing signals.
  
- iv. Organised public processions in accordance with Public Order Act 1986.
  
- v. A political demonstration or a demonstration supporting or opposing a cause or campaign associated with a shop or business within the restricted area.



## **Penalty on breach (s67 of the Act)**

It is an offence for a person, without reasonable excuse:

- to do anything that the person is prohibited from doing by the PSPO, or
- to fail to comply with a requirement to which the person is subject under the PSPO

A person does not commit an offence by failing to comply with a prohibition or requirement that the Council did not have power to include in the PSPO.

A person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

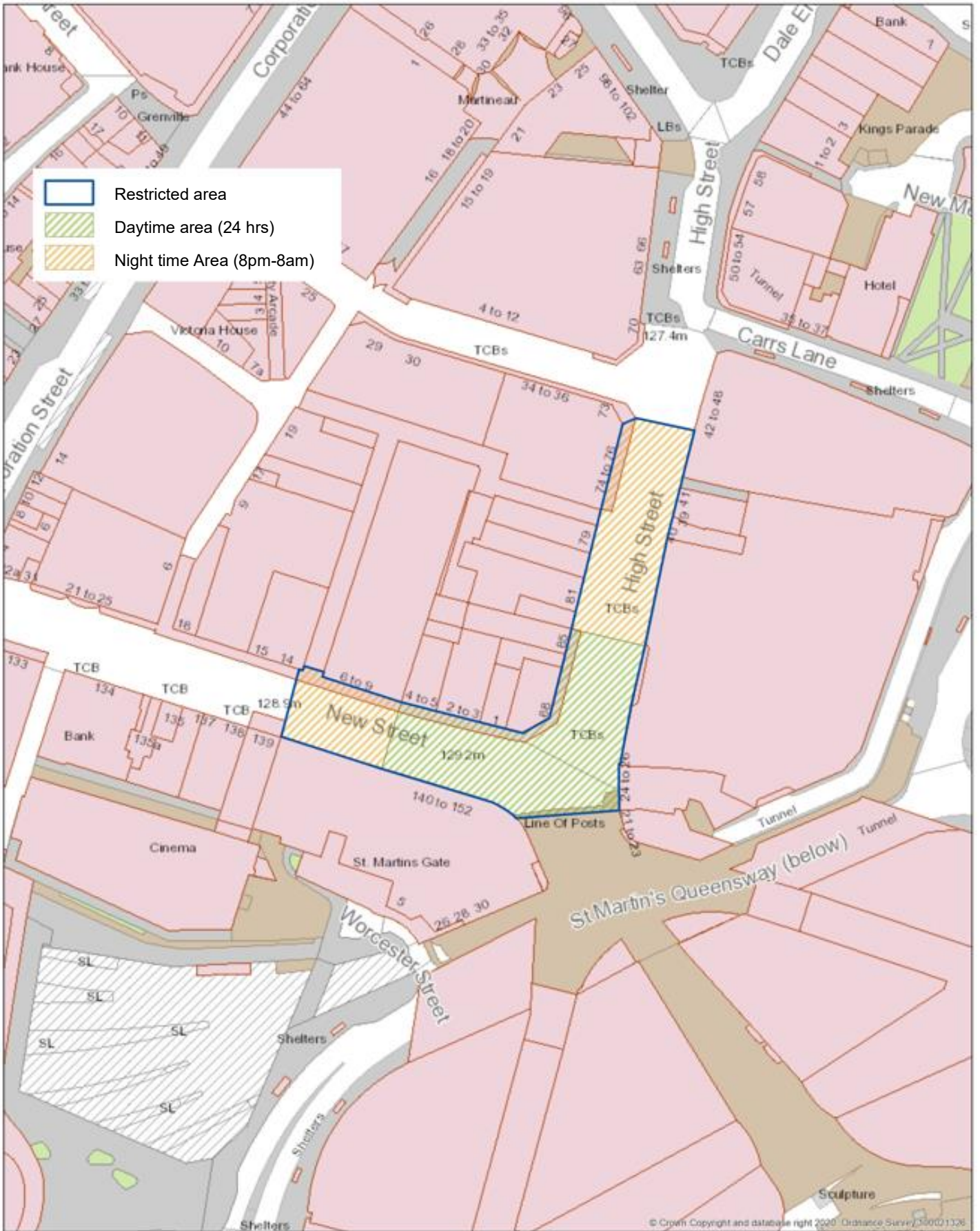
Depending on the behaviour in question, the enforcing officer could decide that a fixed penalty notice (FPN) would be the most appropriate sanction. The FPN can be issued by a police officer, or other authorised person. In making the decision to issue a FPN, the officer should consider that if issued, payment of the FPN would discharge any liability to conviction for the offence. However, where the FPN is not paid within the required timescale, court proceedings can be initiated (prosecution for the offence or failing to comply with the PSPO).

Given under the COMMON SEAL of BIRMINGHAM CITY COUNCIL the 2nd day of August two thousand and twenty two.

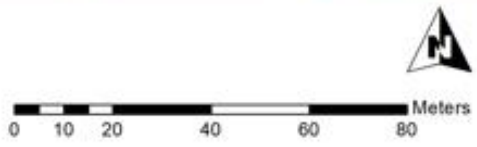
The COMMON SEAL of BIRMINGHAM CITY COUNCIL was hereunto affixed to this Order in the presence of:

Robert James  
Authorised signatory

POLICE  
Authorised signatory



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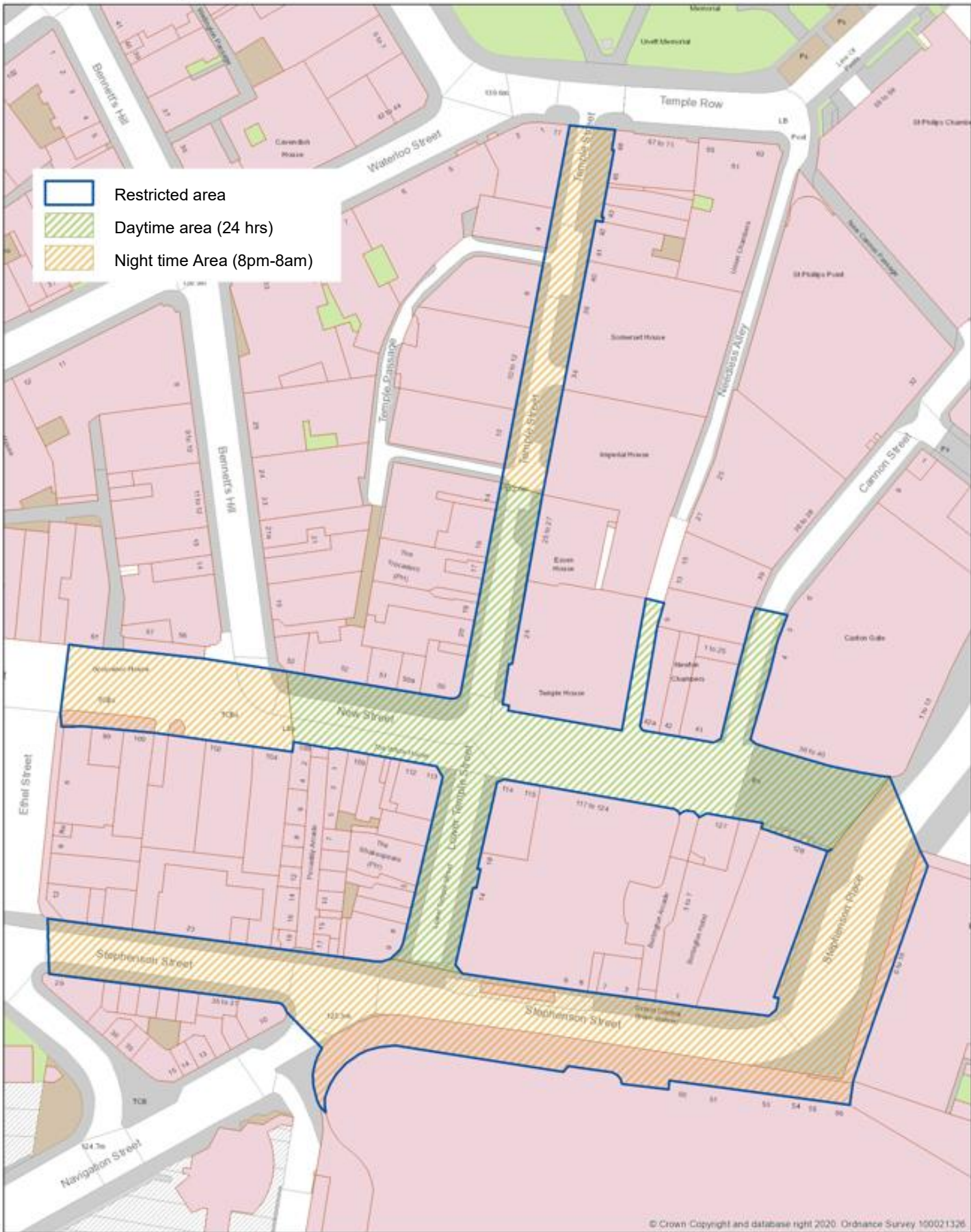
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