

## **Report to Council**

**Subject:** Council approval to consult on proposed draft set of Byelaws for Gedling Borough Council Parks and Open Spaces

**Date:** 22 January 2025

**Author:** Parks and Street Care Manager

### **Purpose**

To request approval to carry out community consultation on the proposed updated draft Byelaws for parks and open spaces within Gedling Borough.

### **Recommendation**

#### **THAT:**

Council provides approval to carry out community consultation on the revised draft byelaws for parks and open spaces within Gedling Borough and revocation of the existing 1996 byelaws.

## **1 Background**

The Council is responsible for public parks, open spaces and gardens in the Borough. The conduct of the public in these locations is currently regulated primarily by byelaws, which aim to ensure that everyone is safely and reasonably able to use the spaces without unreasonably inconveniencing other users.

Byelaws are made under section 164 of the Public Health Act 1875 and sections 12 and 15 of the Open Spaces Act 1906 by Gedling Borough Council with respect to pleasure grounds, public walks and open spaces. They are relevant to all sites owned and managed by Gedling Borough Council.

The current byelaws were introduced in 1996 and include all the relevant sites managed by Parks & Open Spaces and owned by the Council at that time. Over time the nature of park usage has altered as has the expectations of users. A copy of the current byelaws are attached as

## Appendix 1.

In addition, since the byelaws were introduced, some sites have changed their facilities available to the public and changed names, e.g. Haywood Road Recreation Ground used to be a bowling green with restricted access to just the bowling club, now it is a small recreation ground with a play area and green space open to the public and is now known as Haywood Road Green and new sites have been acquired or developed, e.g. Magenta Way Recreation Ground and Georgia Drive Open Space, the existing schedule of sites within the current Byelaws are out of date.

The Gedling Plan 2023-2027 includes several priorities which the proposed updated draft Byelaws will address, such as the protection of our environment, reducing crime so that residents feel safe and protected in their neighborhoods. The updated Byelaws are therefore required to reflect the way in which the Borough's parks and open spaces are used today and the reasonable expectations of users.

The Council is required to use the wording for individual Byelaws as set out in the model set of byelaws produced by the Ministry of Housing, Communities and Local Government and must make an assessment on a site by site basis to warrant the need for each individual Byelaw. When reviewing Byelaws the local authority should consider whether the Byelaw needs to be retained at all as it may no longer be required. For example, the issue the Byelaw addressed may now be addressed through national legislation.

A full review of the new model Byelaws, which were introduced by the Ministry of Housing, Communities and Local Government (MHCLG) on the 7 September 2018, has been undertaken by the Council with each byelaw assessed against the identified sites managed by the Council and these have been grouped into schedules to apply to specific byelaws.

Park Services undertook a workshop of key officers from Parks Management (development and maintenance staff) and Public Protection staff including the Public Protection Manager, Anti-social Behaviour co-ordinator and Neighbourhood Wardens. This workshop provided technical support to utilise their knowledge and first-hand experience of currently managing the borough's parks and open spaces. These officers have a wealth of knowledge in terms of each site's historic crime and anti-social behaviour issues. The workshop attendees reviewed a number of key points,

1. Updating the list of borough sites.
2. Identifying additional new sites.
3. Identifying and removing sites which no longer exist as a park or public open spaces.

4. Review existing byelaws that apply to each site and identify any that are no longer relevant.
5. To review the MHCLG model byelaws, identify the new byelaws available for adoption, discuss and agree which new byelaws are applicable to Gedling Borough's Parks and Open Spaces. This was based on officer knowledge, police and anti-social behaviour reports and statistics.
6. To produce an Assessment document identifying why each byelaw was proposed for adoption and implementation with Gedling Borough Council's Park & Open Spaces byelaws.

Please see 'Assessment of model set of byelaws and how the clauses apply to Gedling parks' – this rationale is based on the parks and public protection team members working knowledge' included in the Appendix 2.

The Assessment of model set of byelaws and how the clauses apply to Gedling Parks and open spaces also considered the following:

- 1) Objective of the proposed byelaw
- 2) Could the objective be achieved in any other way, short of a byelaw?
- 3) What will the impact be upon those affected by it?
- 4) Will the proposed byelaw increase, decrease the regulatory burden imposed upon those affected by it? Can the local authority express this increase or decrease as a financial cost or benefit?
- 5) How does making the proposed byelaw compare with taking no further action?

Based on the above process the draft byelaws were devised to meet the Council's requirements. A copy of the proposed updated draft byelaws are attached at Appendix 3, they include the updated schedule of sites.

## **PROPOSED CHANGES TO THE BYELAWS**

Byelaws are intended to be proportionate and reasonable and therefore, where they are no longer considered necessary should be revoked.

The key changes between the existing and the proposed draft byelaws are as below, this is in addition to the new sites and name of site changes:

Gates (previous byelaw 40)

This byelaw, which specifies the closing of gates, has been removed as it is not relevant to our sites and is more in keeping with sites with grazing stock.

Opening Times (new byelaw 3) The byelaws specifically covers Conway

Road Recreation Ground, King George V Recreation Ground, Onchan Park and KGV Standhill Road Play Area. These sites are locked overnight.

Fires (new byelaw 10) The byelaw prohibits the releasing of lighted Sky Lanterns into the environment atmosphere. This byelaw was not included in the existing byelaws.

Skateboarding (new byelaw 19)

This byelaw has been added to prohibit skateboarding other than in the permitted designated areas in parks, i.e., the skatepark. It is intended to prevent skateboarding in areas such as Arnot Hill Park in the paved area around the lake and Café, protecting customers of the Cafe from potential collision with skateboarders.

Ball Games (new byelaw 20)

This byelaw has been added to prohibit ball games from sites that are unsuitable, it specifically covers Carnarvon Grove Play Area, Edison Way Green Space and Valeside Gardens Play Area.

Ball Games (new byelaw 21)

This byelaw has been added to ensure ball games are played only in designated areas for Conway Road Recreation Ground and not on the Bowling Greens

Model aircraft (new byelaw 34)

This byelaw controls the flying of model aircraft which includes drones on the grounds of health and safety, privacy and data protection.

## **2 Proposal**

- 2.1 Following review of the 1996 existing Byelaws and the MCHLG model set of byelaws and the additional sites within the control of GBC the proposed new set of Byelaws will be widely consulted on with Parks community groups and specific interest groups, such as the Nottinghamshire Disability Group, the Civil Aviation Authority and all other known user groups.
- 2.2 The byelaws will improve the ability of the Council and police to tackle nuisance and anti-social behaviour in Gedling's parks and open spaces.
- 2.3 The wording of the proposed byelaws does not deviate from the model byelaws set 2 (2018) published by the Ministry of Housing, Communities and Local Government (MHCLG)

### **3 Alternative Options**

- 3.1 By doing nothing and continuing to use the existing byelaws, certain activities and behaviours cannot be effectively controlled and enforced, for example the use of drones and sky lanterns. Whilst the neighbourhood wardens are able to use persuasion in the absence of the necessary byelaws this is not always effective. Conway Park has suffered from various incidents of anti-social behaviour, including the playing of football on the bowling greens. Since this is not covered under the existing byelaws, limited or no enforcement action can be taken. This behaviour is costly to the Council in terms of repairing the surface of the bowling greens and harmful for the Council's relationship with several licensed user groups, e.g. the Bowling Clubs.

Under section 59 of the Anti-social Behaviour, Crime and Policing Act 2014 a Public Space Protection Order (PSPO) can be created if a local authority is satisfied, on reasonable grounds, that activities carried on in public in the local authority's area have had a detrimental effect on the quality of life of those in the locality (or such activities are likely to occur), and the effect of those activities is, or is likely to be, of a persistent and continuing nature, is such as to make the activities unreasonable, which justifies the restrictions imposed by the PSPO. There must be sufficient evidence gathered of complaints and nuisance etc. to justify such an Order and there is a requirement to consult with the relevant bodies and members of the public who would be affected. Although this can apply to parks and open spaces, the evidence must be of a high standard and an Order will only last for three years. In the circumstances, it has been considered an appropriate option is to update the existing byelaws.

### **4 Financial Implications**

- 4.1 Officer time to consult and prepare a regulatory assessment for adoption of the new byelaws. The regulatory assessment will be devised after the wider consultation feedback is received and appear as an Appendix in the future report.

### **5 Legal Implications**

- 5.1 Byelaws are local laws made by the Council under an enabling power contained in a public general act or a local act requiring something to be done or not done in a specified area. Apart from any general power to make byelaws the relevant legislation supporting the byelaws in this case are The Public Health Act 1875 and The Open Spaces Act 1906. These Acts enable local authorities to make byelaws for the regulation of public walks and pleasure grounds and of open spaces respectively.
- 5.2 Byelaws are enforced through the magistrates' court and upon successful conviction of contravening these particular byelaws (if adopted) could

result in a level 2 fine of up to £500.

- 5.3 Byelaws are generally considered a measure of last resort after alternative attempts to address the relevant issues has been unsuccessful. A byelaw cannot be made where alternative legislative measures already exist that could be used to address the problem. Byelaws should always be proportionate and reasonable. Where a byelaw is no longer necessary, it should be revoked.
- 5.4 The Byelaws (Alternative Procedure) (England) Regulations 2016 introduced new arrangements for byelaws. The regulations simplify the procedures for making new byelaws and amending byelaws, including replacing the Secretary of State for Communities and Local Government's role in confirming byelaws. This is now a matter for the Council, having taken account of any representations made about the proposed byelaw. The Secretary of State's role now is simply to consider an application to make byelaws, and then give leave to do so.
- 5.5 The regulations also give Council's powers to revoke byelaws under an entirely local process. The regulations do not give local authorities powers to create new categories of byelaws. Hence the need to follow the Secretary of States model byelaws.
- 5.6 The new arrangements transfer the accountability for making byelaws to local councils. The Council should ensure that a proposed byelaw is proportionate and necessary before making any new byelaw. Under these new arrangements, the Secretary of State now only considers the draft byelaws, report and deregulatory statement provided by the local authority, and will either give or refuse leave to proceed.

## **6 Equalities Implications**

- 6.1 The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:
- (i) The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
  - (ii) The need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
  - (iii) Foster good relations between those who have protected characteristics and those who do not.
- 6.2 Note: 'Protected characteristics' are age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy

and maternity and gender reassignment.

- 6.3 The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all residents in respect of socioeconomics and health determinants.

- 6.4 The Equality Impact Assessment at Appendix 4 indicates no immediate identified impact for protected characteristics, as this is just approval to consult. But it indicates identified affected areas at this stage and will be fully evidenced and complete following the consultation incorporating all comments.

## **7 Carbon Reduction/Environmental Sustainability Implications**

- 7.1 Many of the byelaws will compliment Carbon Reduction/Environmental Sustainability needs, for example the encouragement of Cycling within our open spaces and the protection of flora and fauna. The prohibition of Fires and BBQ's and the planting of trees and shrubs to help mitigate against current carbon emissions.

## **8 Appendices**

Appendix 1 – Existing 1996 Byelaws for parks and open spaces

Appendix 2 – Assessment of model set of byelaws for GBC parks

Appendix 3 – Updated byelaws

Appendix 4 – Equality Impact Assessment – This EIA shows identified affected areas at this stage, and will be fully evidence and complete following the consultation incorporating all comments

## **9 Background Papers**

- 9.1 None

### **Statutory Officer approval**

**Approved by:**

**Date:**

**On behalf of the Chief Financial Officer**

**Approved by:**

**Date:**

**On behalf of the Monitoring Officer**