

Report to Council

Subject: Updating Parks and Open Spaces Byelaws

Date: 23 July 2025

Author: Director of Operations

Purpose

To request approval for the regulatory assessment to be published in line with the Byelaws (Alternative Procedure) (England) Regulations 2016/165 (“the 2016 Regulations”), and for the proposed updated byelaws for parks and open spaces within Gedling Borough (the ‘Scheme’) be sent to the Secretary of State (“SoS”) for approval.

Recommendation

THAT:

- 1) Council notes the content of the Regulatory Assessment at **Appendix 4** and the Consultation Report at **Appendix 5**.
- 2) Council approves the publishing of the statement of regulatory assessment at **Appendix 6** in line with the 2016 Regulations.
- 3) Council delegates authority to the Director of Operations to make any minor amendments to any documents prior to advertising.
- 4) Council approves that the proposed Scheme be sent to the SoS for approval with the supporting documentation in line with the 2016 Regulations.
- 5) Council authorises officers to undertake the necessary publication requirements (publication for a period of at least 28 days) in line with the 2016 Regulations should approval be granted by the SoS

1 Background

Members will recall that at the meeting of the 22 January 2025 approval was given 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, a copy of which can be found at **Appendix 1**.

This consultation took place for a period of 4 weeks from 7 February until 7 March via Gedling Borough Council website, social media channels and direct communication with park stakeholders and organisations that would be directly affected by the new and proposed byelaws along with the police and staff from parks and public protection teams. A copy of the consultation report is attached at **Appendix 5**. The initial Assessment of model set of byelaws for GBC parks is attached at **Appendix 2**.

In summary there were 17 responses received, apart from amending an administrative error and removing reference to Onchan Park opening times, no changes are required to the proposed byelaws and there are no overwhelming objections or identification of needs identified. A copy of the proposed Byelaws can be found at **Appendix 3**.

The next step in the process was to prepare a Regulatory Assessment of the proposed Byelaws looking at:

- 1) The Objective of the proposed byelaw
- 2) Whether that objective could be satisfactorily achieved by another means
- 3) The impact of the proposed byelaw on anyone identified by the council as being potentially affected by it
- 4) Whether the proposed byelaw would increase or lessen the regulatory burden on those persons (assessed in money terms)
- 5) How any alternative means and the proposed byelaw compare with carrying out no further action

This assessment can be found at **Appendix 4**.

The Assessment Statement produced following the preparation of the Regulatory Assessment gives the Council's conclusions about the impact of the proposed byelaw on anyone potentially affected by it; conclusions as to whether the proposed byelaw results in an increase in the regulatory burden; and in the event that the proposed byelaw results in an increase in the regulatory burden, the reasons why such an increase is considered to be proportionate and necessary. A copy of the statement can be found at **Appendix 6**.

2 Proposal

- 2.1 It is proposed in accordance with statutory process that the Council publish the regulatory assessment statement on the Council website; and publicise it in such a manner as to bring the statement to the attention of persons who live in its area or may otherwise be affected for example through display at relevant parks.
- 2.2 It is proposed in accordance with statutory process that an application is made to the SoS for approval of the Byelaws Scheme and, should approval be granted that the Council comply with the relevant publicising requirements, which includes publishing a notice of the proposed byelaws allowing a period of at least 28 days for any response.
- 2.3 It is proposed that the matter be brought back to members for a decision on the making of the byelaws within 6 months of the publicising requirements ending and with any written representations received.

3 Alternative Options

- 3.1 Council could decide not to approve the amended byelaws to be sent for approval to the SoS but this would mean that the current byelaws would remain in force which do not offer the protection to all of the Councils parks and open spaces. 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 police and 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.
- 3.2 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, there are a number of protections offered by the Byelaws that would not meet the required test for a PSPO, it has been considered appropriate option is to update the existing byelaws.

4 Financial Implications

- 4.1 The publicising costs arising out of this report will be met by existing budgets.
- 4.2 If approved, further advertising and new signage at the sites will require funding, this is anticipated to cost no more than £1000, the costs are not significant so and can be met from existing parks budgets. The signage project will be determined once a detailed specification has been prepared.

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. Where byelaw making power is listed in Schedule 1 of the Byelaws (Alternative Procedure) (England) Regulations 2016/165 ("the 2016 Regulations"), which the Public Health Act 1875 and the Open Spaces Act 1906 both are, then a local authority may adopt the alternative procedure.
- 5.2 The alternative procedure has therefore been used during this process. The regulations simplify the procedures for making new byelaws and amending byelaws, including replacing the SoS role in confirming byelaws. This is now a matter for local authorities having taken account of any representations made about the proposed byelaw. The SoS's role now is simply to consider an application to make byelaws and then give leave to do so.
- 5.3 The regulations also give local authorities powers to revoke byelaws under an entirely local process. The regulations do not give local authorities powers to create new categories of byelaws.
- 5.4 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 the 2016 Regulations once a regulatory assessment has been prepared a statement regarding the assessment this must be published on its website; and publicised in such manner as it considers is likely to bring the statement to the attention of persons who live in its area or may otherwise be affected. The Council also applies to the SoS who will consider the draft byelaws, the regulatory assessment statement and a report setting out various matters provided by the local authority.

- 5.5 The SoS must respond within 30 days of the application being made and either allow the byelaw to be made, advise a substantive response will be issued as soon as practicable or refuse permission. The proposed byelaw must then be advertised with any written representations received being taken into account before the amended byelaws can then made.
- 5.6 Breach of a byelaw is a summary offence and can result in a fine. Non-payment of the fine can result in prosecution at the magistrate's court. Upon successful conviction the penalty fine may be either:
- the maximum which is specified by the legislation under which the byelaw is made; or
 - if there is no maximum stated within the legislation, could result in a level 2 fine of up to £500.
- 5.7 Enforcement of 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.
- 5.8 Failure to follow the correct procedure to amend the byelaws would result in the Council being unable to enforce them.

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 adoption of the new byelaws will clearly set out rules and regulations, which aim to ensure that all members of the community are able to use parks without unreasonably inconveniencing other users.
- 6.5 An Equality Impact Assessment has been carried out based on the responses to the community consultation on the draft proposed updated byelaws which included consultation with those individuals with protected characteristics. The report is attached at **Appendix 7**. No comments were received from persons with protected characteristics.

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. **Appendix 8** contains the Climate Impact Assessment regarding the Byelaws.

8 Appendices

Appendix 1 – Existing 1996 Byelaws for GBC parks and open spaces

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

Appendix 3 – Updated GBC Byelaws

Appendix 4 – Regulatory Assessment

Appendix 5 – GBC Park Byelaws Consultation Report

Appendix 6 – Statement of Regulatory Assessment

Appendix 7 – Equality Impact Assessment

Appendix 8 – Climate Impact Assessment

9 Background Papers

- 9.1 Report to Council 22 January 2025
<https://democracy.gedling.gov.uk/ieListDocuments.aspx?CIId=129&MeetingId=3367>

Statutory Officer approval

Approved by:

Date:

On behalf of the Chief Financial Officer

Approved by:

Date:

On behalf of the Monitoring Officer