



Report for:	Cabinet
Date of meeting:	24 January 2017
Part:	1
If Part II, reason:	

Title of report:	Byelaws for Selected Parks and Open Spaces within Dacorum
Contact:	<p>Cllr Janice Marshall, Portfolio Holder for Environmental, Sustainability and Regulatory Services</p> <p>Responsible Officer: David Austin (Assistant Director Neighbourhood Delivery)</p> <p>Author: Barbara Lisgarten (Legal Governance Team Leader)</p>
Purpose of report:	To consider new byelaws for selected parks and open spaces within the Borough and detail the steps required for them to be approved by the Secretary of State.
Recommendations	<p>That Cabinet recommends Council to:</p> <ol style="list-style-type: none"> (1) Approve the Draft Byelaw as attached as Appendix A for the Parks and Open Spaces in the Borough listed in paragraph 11 of the report. (2) Delegate authority to the Assistant Director (Neighbourhood Delivery) in consultation with the Portfolio Holder for Environmental, Sustainability and Regulatory Services to carry out the required impact assessment and agree the 'scheme' noted under paragraph 7 of the report. (3) Delegate authority to the Assistant Director (Neighbourhood Delivery) to determine which areas within the Parks and Open Spaces listed in paragraph 11 shall be permitted or designated for relevant activities (4) Delegate authority to the Assistant Director

	<p>(Neighbourhood Delivery) to authorise officers to issue fixed notices and/or commence prosecution proceedings to enforce breaches of the Byelaws.</p> <p>(5) Delegate authority to the Assistant Director (Neighbourhood Delivery) in consultation with the Assistant Director (Finance and Resources) to agree fee levels for any chargeable activity permissible by the Byelaws.</p> <p>(6) Approve the revocation of the byelaws listed in paragraph 13 of the report.</p>
	The Byelaws will help promote a Clean, Safe and Enjoyable Environment
Implications:	<p><u>Financial</u></p> <p>There will be costs associated with publicising the relevant notices for consultation but these will be contained within existing service budgets.</p> <p>An income is likely to be generated from those proposing to use the parks for a commercial purpose but it is difficult to estimate the level of that income at this stage. Fees to be charged will need to be agreed separately and do not form part of this report.</p> <p>Receipts from the issuing of Fixed Penalty Notices must be used for combatting nuisance (section 237D <i>Local Government Act 1972</i>)</p>
'Value For Money Implications'	<p><u>Value for Money</u></p> <p>The new Byelaws will ensure that those generating an income from the park will pay an appropriate licence fee.</p>
Risk Implications	The proposed Byelaws aim to regulate activity in the Council's parks and open spaces and to provide an effective enforcement mechanism. Failure to have appropriate Byelaws in place could lead to unregulated activity to the detriment of all users of the parks and open spaces.
Community Impact Assessment	A Community Impact Assessment will be carried out as part of the Scheme noted in paragraph 7 below.
Health And Safety Implications	None directly arising from this report.
Monitoring Officer / s151 Comments	<p>Monitoring Officer</p> <p>The draft byelaw, and the process by which the Council is seeking to bring it into force, is in accordance with The Byelaws (Alternative Procedure) (England) Regulations 2016 and sections 235-238 of the Local Government Act 1972 (as</p>

	<p>amended).</p> <p>There must be a full assessment of the impact on those persons affected by the proposed byelaw, and the council from a regulatory perspective, before the byelaw is submitted to the Secretary of State and this should include appropriate consultation.</p> <p>Deputy S151 Officer</p> <p>Any costs incurred will need to be contained within existing budgets. Any additional income generated will need to be factored into the budget setting framework once it can be known with a degree of certainty.</p>
Consultees:	<p>Adriana Livingstone - Valuation and Estates</p> <p>Robert Cassidy – Parks and Open Spaces</p> <p>Julie Still – Group Manager, Residents Services</p>
Background papers:	<ol style="list-style-type: none"> 1. Model Byelaw 2 2. Flowchart 1: enabling powers for pleasure ground and open spaces byelaws 3. Model Byelaw 2: guidance notes 4. DCLG Application for Provisional Approval of Byelaws 5. Local authority byelaws – Briefing Paper (Number 01817, 1 March 2016) 6. <i>The Byelaws (Alternative Procedure) (England) Regulations 2016</i> 7. Section 235-238 <i>Local Government Act 1972</i>
Glossary of acronyms and any other abbreviations used in this report:	<p>DCLG – Department for Communities and Local Government</p> <p>The Regulations - The Byelaws (Alternative Procedure) (England) Regulations 2016</p>

Background

1. Dacorum Borough Council boasts many beautiful parks and open spaces. We are proud to own these green assets, some of which have won much coveted Green Flag awards.
2. Our parks are used daily by the public for leisure purposes and, more recently, for commercial exercise classes such as fitness boot-camps. The

constant footfall brings with it instances of nuisance behaviour and damage to these areas.

3. The Council's existing byelaws date back to the 1899, and relate to the proper conduct in the borough's parks and open spaces. They allow the Council to deal with unacceptable behaviour which is not addressed through existing legislation, such as that which may cause distress or injury to other users of the parks or that might damage the park and detract from general enjoyment of it by others.
4. Officers have developed a set of proposed byelaws for the borough, based on Model Byelaws published by the Department for Communities and Local Government (DCLG). It is felt that these byelaws will improve understanding of their aims and help communication regarding acceptable behaviour in our parks, ensuring that residents and visitors are able to fully enjoy our parks and open spaces.

What are byelaws?

5. Local authorities and certain other bodies have powers under various Acts of Parliament to make byelaws, which are essentially local laws designed to deal with local issues. At present, byelaws must be approved by central government before they can be brought into force because they create criminal offences. They are enforced through the magistrates' courts on prosecution or by the issuing of fixed penalty notices.
6. Byelaws must:
 - a. Undergo any relevant action required by the legislation, such as consultation (see below);
 - b. Not duplicate or conflict with the general law, existing byelaws or any local Act, or common law. This means that our byelaws cannot address matters such as drinking, dog fouling, or traffic offences which are covered in other law;
 - c. Be reasonable and ensure that the nuisance they are created for address merits criminal sanctions and that, to a reasonable person, the penalty available is proportionate. The penalty for breach of a byelaw is a fine;
 - d. Directly address a genuine and specific local problem and do not attempt to deal in general terms with essentially national issues;
 - e. Not conflict with government policy.

The Process for making and confirming byelaws

7. There is a new process for making byelaws which apply from 11 February 2016. Under the new regulations, a local authority wishing to make a Byelaw must prepare a 'scheme', which must include a draft of the proposed Byelaw and an assessment of the regulatory burden which it would create. Matters which need to be considered within the 'scheme' are set out in Regulation 5, which states that in preparing a scheme an authority must:
 - a. prepare a draft of the proposed byelaw;
 - b. carry out an assessment of whether the regulatory burden imposed by the proposed byelaw is proportionate, which must include, but need not be limited to—

- (i) identification of the objective which the proposed byelaw is seeking to secure;
- (ii) whether the objective intended to be secured by the proposed byelaw could be satisfactorily secured by alternative means;
- (iii) the impact of the proposed byelaw on all persons identified by the authority as being potentially affected by it;
- (iv) whether the result of the proposed byelaw would increase or lessen the regulatory burden on persons potentially affected by the proposed byelaw, insofar as possible expressing that increase or reduction in monetised form;
- (v) how these alternative means and the proposed byelaw compare with carrying out no further action; and

c. prepare a statement of the assessment within which must record in the statement—

- (i) conclusions as to the impact of the proposed byelaw on persons potentially affected by the byelaw;
- (ii) conclusions as to whether the proposed byelaw results in an increase in the regulatory burden; and
- (iii) 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.

8. It must also consult with people who would be affected by the byelaw, and publish a statement of its assessment both locally and on its website.
9. It may then apply to the Secretary of State for approval, identifying what it intends to achieve with the byelaw, whether a model byelaw will be used, and summarising any responses to the consultation.
10. The Secretary of State must then decide whether to “give leave to the authority to make the byelaw”. If s/he does so, the local authority must then publish a notice on its website, and in at least one local newspaper, stating its intention to make the byelaw. A formal consultation period of at least 28 days runs from the publication of this notice. If the authority then makes the Decision to make the new byelaw (whether modified or not), it must do so no more than six months after the publication of this notice.

What areas in Dacorum require a byelaw?

11. The following areas have been identified as being in need for byelaw protection:

- Gadebridge Park (Hemel Town)
- Cupid Green Playing field (Cupid Green)
- Lagley Meadow (Berkhamsted)
- Leverstock Green Westwick Field
- Coronation Field (Bennetts End)
- Reith Fields (Adeyfield)
- Butts Meadow (Berkhamsted)
- Canal Fields (Berkhamsted)
- Chaulden Playing Fields
- Grovehill Playing Fields
- Heath Park (Hemel Town)
- Keens Field (Adeyfield)
- Northridge Park (Warners End)
- Bunkers Park (Nash Mills)
- Margaret Lloyd (Grovehill)
- Tring Memorial Garden (Tring)
- Miswell Lane (Tring)
- Mortimer Hill (Tring)
- Pound Meadow (Tring)
- Randalls Park (Highfield)
- Turners Hill (Adeyfield)
- Velvet Lawn (Berkhamsted)
- Water Gardens (Hemel Town)
- Warners End (Warners End)
- Woodhall Farm Open Space (Woodhall Farm)
- Durrants Lane (Apsley)
- Jocketts (Chaulden)
- Pennine Way (Highfield)
- The Moor (Berkhamsted)
- High Street Green (High Street Green)
- Chipperfield Common (Chipperfield)

12. The above list is indicative of the areas that may be eligible for protection if the assessment, detailed in paragraph 7(b) above, shows a need.

13. Currently there are parks and open space byelaws in place that cover the following areas:

- Gadebridge Park – made in 1952 and 1972
- Leverstock Green – made in 1899 and 1939
- Randalls Park – made in 1914
- Heath Park – made in 1934
- High Street Green – made in 1960
- Chipperfield Common

14. The Byelaws listed in paragraph 12 above are outdated and very few people within the Council know they exist, understand them, let alone use them as an enforcement tool. It is proposed that these should be revoked as they serve little purpose. The new Byelaws use a style of language that is simpler, clearer and easier to comprehend. They are also more relevant to a modern society and the modern use of parks and open spaces and no longer duplicate offences for which there are now powers granted by legislation.

Inclusions (taken from Model Byelaws)

15. The new Byelaws consist of a number of provisions which were not included in the existing byelaws, and aim to offer further protection to park and open space users:
 - (a) Preventing interference with lifesaving equipment
 - (b) Prohibition on overnight parking
 - (c) Permitting skateboarding and ball games
 - (d) Restriction of cricket to designated areas
 - (e) Restriction on archery and field sports
 - (f) Prohibition of golf
 - (g) Restriction on bathing
 - (h) Stricter requirements on model boats, boats and fishing
 - (i) General prohibition of power-driven model aircraft
 - (j) Restriction on the provision of any service for a charge without Council consent
 - (k) Restriction on excessive noise
 - (l) Restriction on public shows and performances
 - (m) Restrictions on the use of aircraft, helicopters, hang gliders or hot air balloons
 - (n) Restriction on kites
 - (o) Restriction on metal detectors
 - (p) Restriction of barbeques

16. By restriction it is meant that the Council is able to limit the relevant activities to certain circumstances or locations or by licence from (for free or for a charge). For example, we may wish to restrict the use of power-driven boats on its waterways by requiring users to be affiliated to boating clubs registered with the Council.

17. Byelaw 40 of the new Byelaws is a catch-all restriction applying to any person or enterprise offering any service for a charge. Therefore, those wishing to use our parks and open spaces to charge participants for organised events such as fitness boot-camps, sports, leisure and the like will need prior Council approval, in the form of a licence. This approval will be granted if the organiser makes a formal application for a licence and complies with any Council requirements. These requirements include, but are not limited to:
 - a. A risk assessment
 - b. Relevant public liability insurance
 - c. Site plan, if required
 - d. Traffic management plan, if required
 - e. payment of any fees and charges
 - f. First aid and emergency details

18. The above will be publicised on the Council website and include all necessary information relating to charges and forms.

19. The new Byelaws include an updated list of sites, parks and open spaces to which the new Byelaws apply (Schedule 1), and also an updated list of sites, parks and open spaces to which the new Byelaws apply (Schedule 2), in respect of opening times. There are also updated rules for playing ball games in designated areas (Schedule 3).

Not covered but could be included

20. Consideration may be given, following further assessment, to provisions that cover:

- Restricting the use of drones. Drones are currently regulated by the [Air Navigation Order 2016 and Regulations](#). A copy of the Dronecode (which provides a snapshot of the expected behaviour of those using them) can be found here - <https://www.caa.co.uk/Consumers/Model-aircraft-and-drones/The-Dronecode/>.
- Fundraising, and soliciting or gathering money
- Prohibiting the feeding of wildfowl.

21. The above are not included in Model Byelaw 2. DCLG will need proof of the justification for adding any provision that is not already contained in their Model Byelaws.

Enforcement

22. Any enforcement by the Council of the Byelaws will be in accordance with the Council's enforcement policy. The policy sets out the following clear principles for the Council's enforcement action:

- raising awareness of the law and its requirements;
- proportionality in applying the law and securing compliance;
- consistency of approach;
- transparency about the actions of the Council and its officers; and targeting of enforcement action.

23. Byelaws give the Magistrates' Courts the power to issue fines, following prosecution, of up to £500 against offenders who cause damage to Council property or breach the Byelaws. Additional legislation (under the *Clean Neighbourhood and Environmental Act 2005*), which allows the Council to issue Fixed Penalty Notices (FPNs) for breaches under litter control and dog fouling, is also applicable to parks and open spaces.

24. Agencies that can be deployed in enforcing and applying Byelaws include the Police, Anti-Social Behaviour Teams, Dacorum Borough Council Enforcement Officers, and Clean Safe and Green Supervisors.

Appendix A – Draft Byelaws.