

*PART 1 – PUBLIC DOCUMENT	<p align="center"><b>AGENDA ITEM No.</b></p> <p align="center"><b>8</b></p>
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## **TITLE OF REPORT: REVIEW OF THE COUNCIL’S BYELAWS**

REPORT OF THE CORPORATE LEGAL MANAGER AND MONITORING OFFICER

### **1. SUMMARY**

- 1.1 This report is being presented in order to give consideration to the revocation of the Council’s byelaws that have been identified as no longer required.
- 1.2 The option to create new byelaws can be given further consideration at a later stage, although currently no such requirement has been identified.
- 1.3 The review of the Council’s byelaws identified approximately 51 byelaws of which the vast majority of these byelaws are obsolete or have been superseded by current legislation. Other byelaws which may still be useful are outdated which makes enforcement very difficult. Therefore in order to clarify matters and to provide certainty it is proposed to revoke all of the existing byelaws except for the one which relates to Acupuncture, Tattooing, Semi-Permanent Skin-Colouring, Cosmetic Piercing and Electrolysis, which was enacted in 2007.
- 1.4 New regulations changing the procedure for making and revoking byelaws in England was made on 11 February 2016 and came into force on 3 March 2016.

### **2. RECOMMENDATIONS**

That Full Council

- 2.1 Notes the Council’s byelaws that are currently in force and identified for proposed revocation as set out at Appendix A;
- 2.2 Agrees to consult the public on the proposed approach of revoking all of the existing byelaws except for the 2007 Acupuncture, Tattooing, Semi-Permanent Skin-Colouring, Cosmetic Piercing and Electrolysis byelaw;
- 2.3 Notes that any new byelaws must be current, relevant and specific to local issues.

### **3. REASONS FOR RECOMMENDATIONS**

- 3.1 To ensure that byelaws for North Hertfordshire District Council are usable and enforceable.

### **4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 Partial revocation of the sections of the existing byelaws which are outdated or superseded has been considered. This option was discounted as most of the byelaws

carry a maximum of fine of £2.00 per offence, which would not currently serve as a deterrent. Additionally a large number of byelaws contain language which is now antiquated and would be difficult for Officers to enforce and for the public to understand. Finally, the consultation undertaken with Council Officers and Executive Members did not identify a need for this piecemeal approach.

- 4.2 Consideration was given to whether new byelaws, based on the DCLG model byelaws, could be introduced as part of this process. However no problems were identified where byelaws were the most effective tool for addressing the issue. Creating new byelaws in the future remains an option, in particular if issues are identified as a result of the public consultation exercise which will be undertaken if Council approves the proposed approach.

## **5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS**

- 5.1 Enacting byelaws is one way that Councillors can champion the concerns of local people and tackle problems in their area. Accordingly it is for the local authority to decide the necessary and appropriate byelaws for its area as they are essentially local laws designed to deal with local issues.
- 5.2 Information Updates have been presented to the Political Liaison Board (PLB) on the 9 March 2015, 4 July 2016 and 20 March 2017. Executive Members liaised with Heads of Service regarding the need for any byelaws within their areas of responsibility. Two issues were highlighted which are explained in section 8 below.
- 5.3 Legislation requires the Council to consult with the people and interested parties who would be affected by the revoking of a byelaw and to publish a statement of its assessment both locally and on its website. The same consultation requirement applies to the making of any new byelaw.

## **6. FORWARD PLAN**

- 6.1 This report contains a recommendation that is not a key decision as it is not an executive decision.

## **7. BACKGROUND**

- 7.1 The Legal Team identified that the Council's byelaws were outdated and not held in one central area. Therefore in order to ensure that the byelaws held were fit for purpose, it was decided that a complete review would be undertaken.
- 7.2 Communication with the Department for Communities and Local Government was established in order to ensure that the Council adopted the correct approach with regards to the review.
- 7.3 The review commenced with locating the byelaws from archives and other areas of the Council's storage.
- 7.4 The review also included consultation with client departments in order to ascertain whether any byelaws were being used, contained or quoted within any literature together with any signage that is in the public domain.
- 7.5 It is clear from the work undertaken that:

- a) A number of the Council's existing byelaws are now either outdated or superseded by current legislation.
  - b) The current number of byelaws is too many and prevents the Council from publishing them on the Council website in a way which is accessible for the public; additionally due to their age the language used makes them difficult to understand for a lay person.
  - c) Any byelaws identified in the future as being necessary would be written so as to be clear, easy to understand and enforceable.
- 7.6 A list was compiled which notes the name of the byelaws currently in force; the date it was enacted; the purpose of the byelaw and information noting whether any current legislation can be used instead of the byelaw. Examples of the byelaws are attached at Appendix B, the remaining byelaws can be viewed by contacting the legal team.
- 7.7 The list of byelaws that are recommended to be revoked (except for the byelaw that was enacted in 2007 which relates to Acupuncture, Tattooing, Semi-Permanent Skin-Colouring, Cosmetic Piercing and Electrolysis) is attached at Appendix A.

## **8. PROPOSED APPROACH**

### **Potential current issues identified during consultation with Executive Members and Officers and alternative approaches to the use of byelaws**

- 8.1 The issue of vehicular parking on grass verges has been identified as a local issue that may be addressed by the introduction of a byelaw (note the current byelaw which *could possibly* apply is a Hertfordshire County Council byelaw, but enquiries have been unable to determine the status of this byelaw). In order to enforce a byelaw in relation to vehicular parking on grass verges, the driver would have to be witnessed in the act of driving and parking on the grass verge. Photographic evidence together with a witness statement would then have to be presented to the Magistrates Court by way of a summons in order to secure a conviction. This means that no action can be taken if the driver has not been observed committing the offence. Therefore it is not considered to be an effective or efficient solution to the issue raised.
- 8.2 Traffic Regulation Orders (TROs) enable the Council to limit or prohibit the movement of traffic on the highway. They can apply to the regulation of speed, weight, movement and parking of vehicles. Therefore it is considered that the use of TROs would be a better mechanism for the Council to use to address this issue as the enforcement can then be dealt with by the issue of a Fixed Penalty Notice which will be attached to the vehicle whilst it is in situ with no requirement to have seen the driver.
- 8.3 In order for this to be an effective deterrent, NHDC would have to consider the following:
- a) The severity of the parking act
  - b) The extent to which the local amenity is being affected e.g. damage to the verge or the pavement
  - c) Can some of the verge parking be tolerated, considering that the issue could be transferred to another area
  - d) The availability of dedicated staff to monitor the vehicles and grass verges
  - e) The financial impact

- 8.4 It is further noted that the Department of Transport has committed to put time and resources into researching a new approach to address verge/pavement parking. Therefore discussions with the Local Government Association are ongoing in order to ensure that the approach is practical and enforceable for local authorities.
- 8.5 The management of anti-social behaviour in open spaces has also been identified as being a potential issue that the Council may wish to consider with regards to making a new byelaw. It should be noted that the Council have powers available under Section 59 of the Anti-Social Behaviour Crime and Policing Act 2014 and can therefore use a Public Spaces Protection Order (PSPO) to address a particular nuisance or problem in an area that may be having a detrimental effect on the local community. A PSPO can impose conditions on the use of the particular area and the maximum duration of the PSPO is 3 years. Any breach of a PSPO will be a criminal offence that can be enforced by the Police or the Council. A breach can be dealt with by the issue of a Fixed Penalty Notice (FPN) or the issue of a summons
- 8.6 In addition to the above since October 2014, if a resident or a group of residents are experiencing anti-social behaviour and feel that appropriate action is not being taken, then they have the right to request a review of their case. This case review is called the Community Trigger and providing that they meet the trigger threshold a request can be made. The threshold is noted as follows:
- a) Three reports from an individual about separate incidents in 6 months or;
  - b) Three individuals have separately reported similar incidents in 6 months.

The relevant agencies, the Council, the Police and if appropriate the housing association will meet to review the case. A formal response will then be provided within 28 days of the request being made to explain what action has already been taken to resolve the issue and also the recommendations for further action if required.

- 8.7 Given these other powers available it is considered that there is not a need for a byelaw to address this potential issue.

### **Proposed Approach**

- 8.8 As stated it is proposed, subject to the agreement of Full Council and the outcome of the public consultation, that all existing byelaws are revoked with the exception of the most recent 2007 Byelaw. The aim is to ensure that any byelaws can be published and understood by the public and enforceable by the Council.
- 8.9 Byelaws cannot be used to overrule existing primary legislation. Unlike other primary legislation, they are open to challenge in the courts. They should not be used where legislative authority to address the matter in question already exists.
- 8.10 Section 235 of the Local Government Act 1972 (LGA 1972) provides local authorities with the general power to make byelaws for 'good rule and government' of the whole or any part of the district or borough and for the prevention and suppression of nuisances. Other powers to make byelaws on specific matters can be found in other Acts, such as the Public Health Acts Amendment Act 1907, the Public Health Act 1936 and the Public Health Act 1961.
- 8.11 The recent Byelaws (Alternative Procedure) (England) Regulations 2016/165 now provides a new procedure for making and revoking byelaws which apply to the classes of byelaws for which the Department for Communities and Local Government (DCLG) was previously the confirming authority.

- 8.12 The new procedure noted for a local authority wishing to make a new byelaw is to prepare a 'Scheme', which must include the follow detail:
- a) A draft of the proposed byelaw ensuring that it directly addresses a genuine and specific local problem and does not attempt to deal in general terms with essentially national issues and that they do not conflict with government policy
  - b) An assessment of the regulatory burden that the byelaw would create
  - c) Consultation with people and interested parties who would be affected by the byelaw
  - d) Summarise the responses received following the consultation
  - e) Publish a statement of the assessment both locally and on the Council website
  - f) Apply to the Secretary of State for approval, identifying what is intending to be achieved by the byelaw
  - g) Note whether a model byelaw has been used
- 8.13 Consideration must be given as to whether there is a particular need for a replacement/new byelaw to be made by the Council to resolve a local issue. Given the feedback received from officers during the review of current byelaws and the requirements set out in section 8.12 above, it is considered that it may be difficult to justify introducing new byelaws, particularly as the Council should be in a position to enforce any new byelaws.
- 8.14 The new procedure for a local authority wishing to revoke a byelaw notes that the steps to be taken are along the same lines as the procedure for making a new byelaw but without the involvement of the Secretary of State. A brief note of the steps is noted below:
- a) Prepare a Scheme as noted above in para. 8.12 (without the requirement of the Secretary of State's approval)
  - b) Publish the Scheme
  - c) Provide a 28 day formal public consultation period
  - d) Within 6 months of the publication of the scheme, the local authority may then revoke the byelaw. This would be by way of further report to Full Council to take a final decision to revoke.
- 8.15 A full step by step process is noted at Appendix C.
- 8.16 Following any final decision by Full Council to revoke existing byelaws, signage referring to byelaws which is currently in and around the NHDC area will need to be located, reviewed and where necessary removed or covered. Additionally any remaining literature which mentions any of the revoked byelaws will need to be discarded.

## **9. LEGAL IMPLICATIONS**

- 9.1 In accordance with the Council's constitution at Section 4, paragraph 4.4.1 (n) only the Full Council will exercise the following function; making, amending, revoking, re-enacting or adopting byelaws and promoting or opposing the making of local legislation or personal Bills. Area Committee's terms of reference include at 9.8.1(c) "to promote the introduction of local byelaws". Therefore area committees would be consulted on any new byelaws, but do not need to be consulted on the revocation of the existing ones.

- 9.2 There are 4 elements which are essential to the validity of a byelaw; it must be within the powers of the local authority which makes it; it must not be unacceptable to the law of England; it must be certain and positive in its terms and it must be reasonable.
- 9.3 Section 235 of the Local Government Act 1972 provides local authorities with the general power to make byelaws and Section 236B introduced by the Local Government and Public Involvement in Health Act 2007 now permits a local authority to revoke a byelaw.
- 9.4 As stated in the report the procedure for revoking (or creating) byelaws is set out in the Byelaws (Alternative Procedure) (England) Regulations 2016/165. The Council must comply with this procedure in order to revoke the byelaws identified.

## **10. FINANCIAL IMPLICATIONS**

- 10.1 Notice of Intention must be advertised in one or more of the local newspapers and should also be noted on the Council's website. There is a small cost to this advert.
- 10.2 The cost of removal or covering any signage relating to revoked byelaws is difficult to estimate at this stage. In any event there would be a cost in maintaining signage if the byelaws and therefore the signage was to remain.

## **11. RISK IMPLICATIONS**

- 11.1 If the Council does not update its byelaws there is a risk that the existing byelaws are unenforceable, or may be enforced incorrectly, exposing the Council to risk of challenge. Additionally there may be public expectation that the Council is in position to enforce something which it cannot, which may lead to complaint or challenge.
- 11.2 Due to the number of byelaws identified as still being potentially enforced the Council does not have the resources to enforce them all. There are also byelaws that are (or should be) enforced by other organisations so removing the byelaw may help make this clearer to all parties.

## **12. EQUALITIES IMPLICATIONS**

- 12.1 The Equality Act 2010 came into force on the 1<sup>st</sup> October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5<sup>th</sup> April 2011. There is a general duty, described in 12.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.
- 12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.3 Any new byelaws proposed will need to be subject to an Equalities Impact Assessment.

## **13. SOCIAL VALUE IMPLICATIONS**

- 13.1 As the recommendations made in this report do not constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act

2012 need not be applied, although equalities implications and opportunities are identified in the relevant section at paragraphs 12.

#### **14. HUMAN RESOURCE IMPLICATIONS**

- 14.1 Training with regards to the enforcement of any existing or new byelaws could be met from existing resources for in-house training and/or existing training budgets for the relevant Officers.

#### **15. APPENDICES**

Appendix A - List of NHDC byelaws – **TO FOLLOW**

Appendix B - Example of Old byelaws.

Appendix C - Steps required for the Revocation of a byelaw.

#### **16. CONTACT OFFICERS**

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#### **17. BACKGROUND PAPERS**

None.