

COUNCIL
18 JANUARY 2018

***PART 1 – PUBLIC DOCUMENT**

AGENDA ITEM No.

9

TITLE OF REPORT: REVIEW OF THE COUNCIL'S BYELAWS – CONSULTATION OUTCOMES AND PROPOSED REVOCATIONS

REPORT OF ACTING CORPORATE LEGAL MANAGER

EXECUTIVE MEMBER : Non executive decision

COUNCIL PRIORITY : RESPONSIVE AND EFFICIENT

1. EXECUTIVE SUMMARY

1.1. This report set out the recommendation on revocation of byelaws following public consultations.

2. RECOMMENDATIONS

That Full Council:

2.1. Notes the outcome from the public consultations and gives consideration to the representations received prior to any resolutions.

2.2. Makes the Revocation Byelaw at **Appendix A**.

2.3. Makes the Revocation Byelaws at **Appendix B, C and D** (*which are subject to statutory confirmation from the appropriate Secretary of State before coming into force*).

2.4. Authorises the Acting Corporate Legal Manager to undertake any necessary/ consequently steps following any resolutions under 2.2 and 2.3.

3. REASONS FOR RECOMMENDATIONS

3.1 To ensure that byelaws for North Hertfordshire District Council are current, reflect modern society and are 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4.1 Partial revocation of the sections of the existing byelaws which are outdated or superseded has been considered.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 a number of the byelaws carry a maximum fine of between £2.00 and £5.00 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 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.
- 4.3 Consideration was given to whether the Council should create new byelaws to regulate matters, based on the Department for Communities and Local Government (DCLG) model byelaw. However no problems were identified where a new byelaw was considered to be the most effective tool for addressing the issue. Creating new byelaws in the future remains an option. It should be noted that the making of any new byelaw must not duplicate current national legislation.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 Information Updates were presented to the Political Liaison Board (PLB) on the 9 March 2015, 4 July 2016 and 20 March 2017. Executive Members also liaised with Heads of Service regarding the need for any byelaws within their areas of responsibility.
- 5.2 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 (this would be called a 'scheme'). There is also a statutory requirement to consult on the proposed draft Revocation Byelaw(s) – which are required to revoke the old byelaws. Both of these consultations have been undertaken.
- 5.3 The public was notified of the commencement of the public consultations via a Public Notice which was placed in The Comet and The Royston Crow together with media coverage, a notice on the Council's website, social media and notices placed in the Council's reception area. A dedicated email address was also set up in order to receive comments.
- 5.4 The first public consultation on the proposed scheme of revocation commenced on the 11 July 2017 and following an extended close date, ended on the 22 September 2017. The outcome was noted (thirty four responses) as 79.41% in favour of the proposal to revoke the byelaws (see **Appendix E** for comments and proposed action responses)¹.
- 5.5 A second public consultation was then commenced on the 20 November 2017 for a period in excess of 28 days for the public to comment on the draft Revocation Byelaws. The statutory consultation was open to the public on the Council's website until 22 December 2017. This, as indicated above, followed the placing of a Public Notice in The Comet and The Royston Crow, the Council's website and social media. Copies of the draft Revocation Byelaws with the schedule of byelaws to be revoked were placed in the Council's reception area for general inspection. The outcome of this public consultation (two responses) on the draft Revocation Byelaws resulted in one in favour and one against the Revocation Byelaws.
- 5.6 Note that following Full Council's consideration of the issues on 11 April 2017, all Members were notified of the consultations regarding the byelaws via MIS on 11 July 2017, 11 August 2017 and 24 November 2017.

¹ One further comment was received after the close of the consultation from St Paul's Walden Parish Council and this was in favour of revocation, but has not been included in the figures.

6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.

7. BACKGROUND

- 7.1 The background to the review of the byelaws (including reasons for the proposals and any relevant legislation which has effectively superseded them) was set out in the report to Full Council on 11 April 2017.
- 7.2 The review highlighted approximately 50 existing byelaws which were either outdated or superseded by current legislation. This prevented the Council from publishing them on the Council website in a way that would be accessible for the public. In addition, due to the age of the byelaws, the language used made them difficult for a lay person to understand.
- 7.3 The list of byelaws also noted that they were being recommended for revocation (except for the byelaw that was enacted in 2007 which relates to Acupuncture, Tattooing, Semi-Permanent Skin-Colouring, Cosmetic Piercing and Electrolysis which is current).
- 7.4 The resolution passed by Full Council on the 11 April 2017, Minute 103, notes that the Council's byelaws that are currently in force and identified for proposed revocation. It was agreed at that time that the consultation process should commence in order to seek the views of the public and any other interested parties with regards to the approach of revoking all of the existing byelaws (again, except for the 2007 Acupuncture, Tattooing, Semi-Permanent Skin-Colouring, Cosmetic Piercing and Electrolysis byelaw).
- 7.5 Accordingly the first public consultation process on the scheme of byelaws to be revoked was commenced on the 11 July 2017 in accordance with the legislation and following an extended close date, ended on the 22 September 2017.
- 7.6 As the outcome of that consultation was overwhelmingly positive, then as per the statutory requirements (in order to make the Revocation Byelaws), a further consultation commenced with the placing of a Public Notice in The Comet and The Royston Crow on 16 November 2017, the Council's website and social media about the draft Revocation Byelaws. This notified a consultation commencement of 20 November 2017 for a period of at least 28 days. This resulted in two responses as per paragraph 5.5.

8. RELEVANT CONSIDERATIONS

Consultation outcomes:

- 8.1 The initial statutory consultation on the scheme of revocation commenced on the 11 July 2017 and was originally scheduled to end on 10th August 2017. This was extended after a few Parish Councils made contact to advise that they were not aware of the consultation. The byelaws review was not a time sensitive project, therefore it was agreed to extend the close of the consultation period by a further 28 days to the 22 September 2017.
- 8.2 Accordingly the Parish Councils were all contacted individually via email to notify them of the extension. The Council's website was updated to note the extension date together with messages placed on the Council's Twitter feed and notices placed within the Council's reception area.

- 8.3 The first consultation led to thirty four responses in total, with 79.41% agreeing to the Council's proposal to revoke all of the specified byelaws. A summary of the comments received is attached at **Appendix E**, and question data briefly described below:
- 8.3.1 Question 1 of the consultation was a request to note who the consultation was being completed by. The answers provided were from twenty seven residents; zero businesses; one community organisation and six noted as Parish Councils.
 - 8.3.2 Question 2 of the consultation asked whether you agree with the Council's proposal to revoke all of the byelaws in the schedule. This question was answered with twenty seven responses of 'yes' which represents 79.41% and seven responses of 'no' which represents 20.59%.
 - 8.3.3 Question 3 asked if you answered 'no' to Question 2, which byelaws do you have an objection to being revoked and why. Detail noted within **Appendix E**.
 - 8.3.4 Question 4 asked whether you have any other comments you would like NHDC to take into consideration as part of the public consultation. Detail noted within **Appendix E**.
- 8.4 The second statutory consultation was commenced in order for the public to consider the draft Revocation Byelaws which included the DCLG byelaws and also the byelaws that require confirmation from the Secretaries of State (see below requirements). The notice was published on 16 November 2017 and consultation commenced on the 20 November 2017 for a period of at least 28 days and remained live on the Council's website until 22 December 2017. A summary of the comments received is attached at **Appendix E**, and question data briefly described below:
- 8.4.1 Question 1 of the consultation asked whether you agree with the Council's proposal to revoke all of the byelaws as noted in the proposed Revocation Byelaws and lists as attached on the consultation webpage. One response was in favour and one against the Revocation Byelaws.
 - 8.4.2 Question 2 asked if you do not agree with the proposed Revocation Byelaws please indicate your reasons below. There were no noted responses to this question.
 - 8.4.3 Question 3 of the consultation was a request to note who the consultation was being completed by. Both responses were noted as being completed by visitors.
- Revocation requirements:***
- 8.5 The initial statutory consultation resulted in a larger response (thirty four including six Parish Councils) and was overwhelmingly in favour (79.41%) of revocation of the byelaws. The recommendation, therefore, is that the Council proceeds with revocation.
 - 8.6 There are two separate procedures for revoking byelaws; firstly an alternative (shorter) process for those byelaws that fall under the responsibility of the DCLG. In that situation Full Council can make the Revocation Byelaw at **Appendix A**, and if made it will come into force on the 30th day following the resolution (which would be Saturday 17 February 2018).
 - 8.7 The second procedure applies to byelaws that would fall under other central government departments. Following the making of the Revocation Byelaws in **Appendices B-D** there is a requirement to refer those to the relevant Secretary of State for confirmation. This will depend on whose remit a relevant byelaw will now fall.

These have been identified as falling under the Departments of: Health (B), Transport (C) and Environment, Food & Rural Affairs (D). Accordingly the relevant government departments were notified of the Council's intention to request confirmation of the Revocation Byelaws via telephone contact, followed by contact forms which were completed online on the 17 November 2017 and then via letter on the 20 November 2017.

- 8.8 Following the Council's notice of intention to the various Secretaries of State and at least 1 month prior to the formal request for confirmation is made, a copy of the Revocation Byelaws need to be placed on deposit at the Council offices for public inspection (which they were as part of the second DCLG and other Revocation Byelaws consultation). Following Full Council's decision, the Secretaries of State may then confirm or refuse to confirm the Revocation Byelaws.

Revocation Byelaw **Appendix A** (DCLG – remit byelaws):

- 8.9 The Council has six months from the (second) Public Notice deadline to consider the responses and decide whether to make the Revocation Byelaw that fall within the responsibility of the DCLG. This can be with or without modifications.
- 8.10 If Full Council decides to make the Revocation Byelaw (**Appendix A**), it will then have the Common Seal of the Council applied and comes into force on the 30th day after it has been made by Full Council (which would be Saturday 17 February 2018).
- 8.11 Note that following the making of the Byelaw and not less than seven days before it comes into force the Council must:-
- deposit a copy of the Revocation Byelaw at its principal office, for inspection and copies (the latter on payment of reasonable charges);
 - where practicable, remove all signs which summarise the effect of the byelaws that have been revoked;
 - publish on its website a notice, stating that the Byelaw has been made and date it comes into force (as in 8.10, on 17 February 2018);
 - specify the place at which it may be inspected and copies obtained;
 - publicise the Byelaw in such manner as it considers fit;
 - send a copy of the Byelaw to the proper officer of the County Council and every Parish Council that includes land in respect of which the byelaw applies or, where a parish does not have a parish council, to the chairman of the parish meeting.

Revocation Byelaw **Appendices B-D** (other departmental byelaws):

- 8.12 If Full Council makes the Revocation Byelaws at **Appendices B-D**, then as they fall within the responsibility of other Secretaries of State, they will need to be confirmed by those Secretaries of State before coming in to force, as per sections 236B/ 236 of the Local Government Act 1972. If confirmed, they shall be sealed and similarly deposited at the offices of the Council for public inspection. Copies shall also be sent to the proper officer of the County Council and every Parish Council that includes land in respect of which the byelaw applies or, where a parish does not have a parish council, to the chairman of the parish meeting.

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.

- 9.2 Section 235 and 236 of the Local Government Act (LGA) 1972 provides local authorities with the general power to make byelaws.
- 9.3 Section 236A of the LGA 1972 provides an alternative procedure for revocation of byelaws that fall within the responsibility of the DCLG, as specified under Regulation 3 and Schedule 1 to The Byelaws (Alternative Procedure) (England) Regulations 2016/165. This applies to Revocation Byelaw **Appendix A**.
- 9.4 Sections 236B and 236 of the LGA 1972 permits a local authority to revoke a byelaw following the procedure set out under sections 236B/ 236 of the LGA 1972. This procedure relates to the byelaws that require confirmation from Secretaries of State. This applies to Revocation Byelaws **Appendices B-D**.

10. FINANCIAL IMPLICATIONS

- 10.1 The Council has already placed Public Notices for two consultations during 2017 (costing in the regime of £400 each). No further Public Notice is required for Revocation Byelaw **Appendix A**. It is not anticipated that it will be required for Revocation Byelaws **Appendices B-D**. In the event that the Secretaries of State require further Public Notices, however, then the costs will be in the same/ similar region of £400.
- 10.2 The cost of removal or covering any signage relating to revoked byelaws is difficult to estimate at this stage. However, in any event there would be a cost in maintaining signage if the byelaws remained in force, for clarity and safety purposes.

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. Revocation creates greater certainty.

12. EQUALITIES IMPLICATIONS

- 12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their 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.
- 12.2 Any new byelaws proposed in the future will need to be subject to an Equalities Impact Assessment.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 The Social Value Act and “go local” policy do not apply to this report.

14. HUMAN RESOURCE IMPLICATIONS

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 – Revocation Byelaw – DCLG;
Appendix B – Revocation Byelaw - Department of Health;
Appendix C - Revocation Byelaw – Department of Transport;
Appendix D – Revocation Byelaw – Department of Environment, Food & Rural Affairs;
Appendix E – Public Consultations Comments and responses.

16. CONTACT OFFICERS

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17. BACKGROUND PAPERS

- 17.1 Full Council report of 11 April 2017
<http://web.north-herts.gov.uk/aksnherts/images/att12315.docx>
- 17.2 List of NHDC byelaws presented to Council 11 April 2017
<http://web.north-herts.gov.uk/aksnherts/images/att12325.doc>