

Report of Head of Land & Property

Report to Director of City Development

Date: October 2020

**Subject: Proposal to amend the schedule of sites governed by the Council's
Byelaws for Pleasure Grounds, Public Walks and Open Spaces**

Are specific electoral wards affected?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If yes, name(s) of ward(s): Chapel Allerton, Killingbeck & Seacroft, Middleton Park, Temple Newsam, Crossgates & Whinmoor, Gipton & Harehills, Burmantofts & Richmond Hill, Otley & Yeadon	
Has consultation been carried out?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Will the decision be open for call-in?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If relevant, access to information procedure rule number:	
Appendix number:	

Summary

1. Main issues

- The Council has implemented Byelaws to regulate and govern the use of many of the public open spaces managed by the Council.
- A comprehensive review of the sites governed by the Byelaws has been carried out to ensure the list is up to date and accurate and the byelaws are only imposed where still necessary.
- The review indicated that nine of the sites listed in the schedule to the Byelaws were either no longer used as public open space or the public open space had been reconfigured, or approval had been given to a future disposal or for an alternative use.
- The Director of City Development considered a list of affected sites, the reasons for the proposed amendments and gave approval on 9 October 2020 for officers to undertake a consultation, a regulatory assessment and seek the approval of the Secretary of State to the proposed amendments to the Byelaws in order that a report can be taken to the General Purposes Committee and subsequently to Full Council.

- A period of public consultation has been undertaken and a number of comments were received. This report details those comments, together with officers' responses, and recommends the Director of City Development the content of this report detailing the statutory assessment undertaken by officers and authorises the application to the Secretary of State now be submitted for the proposed amendments to the Byelaws.

2. Best Council Plan Implications (click [here](#) for the latest version of the Best Council Plan)

- This review will enable the implementation of decisions taken to support prudent asset management and the generation of capital receipts supporting a range of Best Council Plans policy objectives. Specifically it will assist with the provision of new housing including affordable housing of varied types and tenures.

3. Resource Implications

- There are no resource implications however reconfiguration of some existing greenspace and removal of the byelaws as outlined and for the purposes detailed will enable some sites to be disposed of at financial value generating capital receipts to the Council.

4. Recommendations

- The Director of City Development is recommended to:
 - a. Approve the statutory assessment undertaken by officers, and
 - b. Authorise officers to submit an application to the Secretary of State for the proposed amendments to the Byelaws.

1. Purpose of this report

- 1.1 The purpose of this report is to advise the Director of City Development of the outcome of the public consultation undertaken as part of the process to amend the Council's Byelaws. The Director of City Development is recommended to agree the statutory assessment undertaken by officers and authorise officers to submit an application to the Secretary of State for the proposed amendments to the Byelaws.

2. Background information

- 2.1 On 9 October 2020 the Director of City Development authorised officers undertake a consultation, a regulatory assessment and seek the approval of the Secretary of State to the proposed amendments to the Council's Byelaws in order that a report can be taken to the General Purposes Committee and subsequently to Full Council.

3. Main issues

- 3.1 A copy of the approved report is attached for information. At paragraph 3.2 a table details nine sites no longer used as public open space or on which the public open space will be reconfigured, or approval has already been given to a future disposal

or for an alternative use or development in accordance with both the SAP housing allocation and the approved Council Housing Growth Programme. The proposal to amend the Byelaws was advertised in respect of those nine sites.

- 3.2 The period of public consultation has expired and comments have been received. The Council must then undertake a Regulatory Assessment of the proposed Byelaw to ensure that the proposed Byelaw is proportionate. The Regulations require that the assessment must include at least the following considerations:
- a) What is the objective of the proposed byelaw?
 - b) Could the objective be achieved in any other way, short of a byelaw?
 - c) What will be the impact of the byelaw upon those affected by it?
 - d) Will the proposed byelaw increase, or decrease, the regulatory burden imposed upon those affected by it, and can the local authority express this increase or decrease as a financial cost or benefit?
 - e) How does making the proposed byelaw compare with taking no further action?
- 3.3 The Regulations require a period of consultation be carried out before undertaking the assessment. There is no statutory period for this consultation period. Given the nature of the proposed amendments it was considered reasonable that this first consultation be for a short duration. The second period of consultation is to be a longer 28 days.
- 3.4 The results of the consultation, and the responses of the officers, are set out in Table 1 below:

TABLE 1

Site - Redhall		
Representation	Response	Notes
<p>Objection to the disposal of the site, concern about loss of protection for wildlife. Request that byelaws are not removed whilst site is subject to greenbelt SAP challenge. Query regarding length of consultation period (14 days and not 28 days). Reinstatement of Byelaws over new green space once designated is optional only.</p>	<p>Confirmed that an area of equivalent size will be retained as public green space. Byelaws can be reinstated over this POS</p> <p>Consultee has been advised there will be a second 28 day consultation period.</p>	<p>The site was allocated in the 2006 UDP for employment and residential uses. The current SAP challenge has not returned the site to a greenbelt allocation.</p>
<p>1. The notice put up to the southern edge of the playing fields is and was wholly inadequate, in the following respects:</p> <ol style="list-style-type: none"> i) It is in a tiny font, and attached above head height. ii) It has a 14-day notice period, rather than 28 days. iii) There is no mention of revocation, only 	<p>There is no statutory length specified for the first consultation. There will be a second statutory consultation period of 28 days.</p> <p>Information about the proposals were supplied to the consultee as requested. This clearly stated that the intention was to remove some sites from the Byelaws altogether, and to amend the extent of other sites.</p>	<p>The objection has been acknowledged and a full response has been issued.</p>

<p>amendment which is misleading.</p> <p>iv) Notices attached to lampposts to the east of the playing fields have been removed during the consultation period along with the lampposts themselves due to ELOR works.</p> <p>2. The revocation of the byelaws opens the land up to (for example) quad biking, golfing, horse riding and camping, and removes protection for damage to vegetation for an indeterminate period of time until the location and size of the new proportion of public-accessible private land is identified.</p> <p>3. The site has recently been returned to the green belt after judicial review. This provides an administrative barrier to determining the location and size of the new public-accessible private land. Without knowing which land is to be protected from misuse (and that return of protection to private land being itself discretionary), it is premature to revoke the byelaws until these issues have been resolved, as the period of time that any publicly-accessible land will be subject to potential misuse will be lengthened.</p> <p>We cannot afford uncertainty around public access and legality of activities as we edge towards a second national lockdown which may – as in other countries – have</p>	<p>2) The land is always at risk of being used in unacceptable ways. The byelaws are unlikely to stop these types of use, but provide one method by which the Council can take action to stop the use. Other legal remedies are available to the Council to stop unacceptable use. The Council in its capacity as landowner would deal with unlawful traveller encampments in compliance with its policy, applying for an injunction through the courts if necessary. Anti-social behaviour would be dealt with as it is now under the relevant anti-social behaviour legislation, by for example Public Space Protection Orders</p> <p>3. A small part of the site was in the greenbelt. The SAP allocation will no longer be adopted but will revert to the status in the 2006 adopted UDP in which the site was allocated for employment and residential use until it has been re-examined. A planning application for residential use of the site would be processed even if the site did not have a residential allocation as it is not in the greenbelt.</p> <p>The proposed amendment to the byelaws does not in itself prevent public use of the site.</p>	
---	--	--

a radius for exercise attached. As residents we have already had access to Red Hall Woods removed from us during the first lockdown. We would ask that any such decision over revocation is deferred until such time as we have more certainty over the return of byelaws to the leased publicly-accessible portion, preferably after any winter lockdown has passed.		
Site - Scott Hall Drive		
Concern raised over footpath crossing site.	PROW not affected by byelaws or amendment of byelaws.	Query forwarded to Council House New Build Team to address more fully.
Site - Harehills Park Cottages		
Objection to disposal of cottages, concern raised about disabled vehicular access and continuation of bowling club.	Objection/concerns do not relate to byelaws. There is no formal disabled vehicle access to the park, and no access will be changed as a result of the amendment to the byelaws, or in the event of any disposal.	Query forwarded to Parks & Countryside and Asset Management & Regeneration to address more fully.
Request that cottages be retained for community use, concern raised about disabled vehicular access.	Objection/concerns do not relate to Byelaws. There is no formal disabled vehicle access to the park, and no access will be changed as a result of the amendment to the byelaws, or in the event of any disposal.	Query forwarded to Parks & Countryside and Asset Management & Regeneration to address more fully.
Objection to disposal of cottages, concern raised about disabled vehicular access and continuation of bowling club.	Objection/concerns do not relate to Byelaws. There is no formal disabled vehicle access to the park, and no access will be changed as a result of the amendment to the byelaws, or in the event of any disposal.	Query forwarded to Parks & Countryside and Asset Management & Regeneration to address more fully.
All Sites		
Request for information about proposed changes and sites affected.	Site plans forwarded with explanation of changes.	No objections raised.
Request for information about proposed changes and sites affected.	Site plans forwarded with explanation of changes.	No objections raised.

- 3.5 Ten persons responded to the consultation, together raising 15 identifiable responses. Of the 15 responses, 6 were enquiries for more details, 2 related to questions about the process and consultation period and 6 were responses relating to issues which did not relate to the Byelaws. These issues, such as land use and designation, are themselves subject to regulation and consultation requirements separate to this assessment.
- 3.6 One response related to enforcement powers available to combat Anti-Social Behaviour should the Byelaws be removed from certain sites. The Byelaws function is to regulate the use of its identified sites by visitors to them. More serious Anti-

Social Behaviour has its own enforcement legislation in the Environmental Protection Act 1990 and the Antisocial Behaviour Crime and Policing Act 2014. The combating of Anti-Social Behaviour is therefore not a function of these Byelaws.

- 3.7 Of the 15 responses, none related specifically to the proposed amendment of these Byelaws.

4. Assessment

4.1 Objective

- 4.1.1 The Byelaws were created in 2008 and the list of sites they relate to has never been amended. The objective of the proposal is to amend the list of sites so it accurately reflects those which remain the subject of these Byelaws. An accurate site list will inform the public and those charged with enforcement of the Byelaws as to which sites are the subject of restrictions.

4.2 Alternative means available

- 4.2.1 Enforcement of the Byelaw is subject to the Council and proper signage at its sites. The Council could choose not to enforce on certain sites instead of removing them from the Byelaws. This however would unfairly restrict the site use of persons who were respecting the signage in place or the restrictions known to have been in place since 2008. Much of the enforcement of the Byelaws relies on the public reporting issues, a process assisted by the publication of the Byelaws on the Council website. This requires an accurate site list to be available to the public.

- 4.2.2 The simple revocation of the Byelaws would leave much parkland and leisure spaces unprotected and increase the burden on the Council to maintain it for the availability and use of the public.

- 4.2.3 The amendment of the Byelaws is only possible through the process as set out in the Regulations.

- 4.2.4 For the reasons set out above, there are no identified alternative means available.

4.3 Impact of proposed byelaw amendment on all persons identified

- 4.3.1 Although the consultation responses has identified the people are interested in preserving their open spaces, the points raised do not relate to these Byelaws or their proposed amendment. The proposed amendments to the Byelaw does not itself restrict or remove access to any site it lists or removes from its site list. There is no identifiable impact of the proposed byelaw amendment on people identified.

4.4 Regulatory burden

- 4.4.1 There is no additional regulatory burden identified by this proposed Byelaw amendment. The regulatory burden may actually reduce with public/enforcement queries relating to sites not covered by the Byelaws being avoided.

4.5 Taking no action

- 4.5.1 For the reasons set out in 4.1.1, 4.2.1 and 4.4.1 above it is preferable that the proposed action be taken rather than no action and leaving the site list inaccurate.

4.6 Equality Act

- 4.6.1 Although not a specified requirement of the Regulations, it is a requirement for every decision the Council makes that its public sector equality duties are considered when a decision of proportionality is to be made. The proposal does not affect access to any of its sites. No sites are being added to the Byelaws and as a result the use of the sites are not being restricted by these proposals.

Consequently no Equality Act issues have been identified arising from this proposal or its consultation responses.

5.0 Regulatory Assessment Conclusion

- 5.1 The Byelaws were created in 2008 and the list of sites they relate to has never been amended. The objective of the proposal is to amend the list of sites so it accurately reflects those which remain the subject of these Byelaws. The proposal deletes, but does not add any sites to the list. The proposal therefore makes no additional restrictions or impositions on how people can use open spaces in the Leeds area. There is therefore no identifiable impact on the public arising from the proposed amendments to the Byelaws.
- 5.2 The proposed amendment to the Byelaws is necessary for the understanding of the public of which sites are so governed, and also important for the efficient enforcement of the Byelaws. The proposed amendment is therefore preferable to no action being taken.
- 5.3 The proposed amendment to the Byelaws adds no additional regulatory burden as the Byelaw restrictions remain unchanged and the sites that remain subject to them significant in number.
- 5.4 Given proposal adds no additional regulatory burden, has no identifiable impact on the public and no Equality Act issues, are preferable to no action being taken, it is concluded that the decision to proceed to the Secretary of State for approval is both desirable and proportionate.
- 5.5 The conclusion set out in this section 5 will form the basis of the Statement of Assessment to be published on the Council website.
- 5.6 This report and the Statement of Assessment will be supplied to the Secretary of State as part of the package of documents required when seeking approval.

6.0 Corporate considerations

6.1 Consultation and engagement

- 6.1.1 The attached report approved by the Director of City Development on 9 October 2020 details the consultation undertaken prior to the report being approved.
- 6.1.2 Subsequently, the first period of public consultation has been undertaken, which is the subject of this report.

6.2 Equality and diversity / cohesion and integration

- 6.2.1 None in relation to this proposal. An Equality, Diversity, Cohesion and Integration screening has been undertaken for the Council Housing Growth Programme (CHGP) and has determined that the proposals have a positive impact in terms of Equality and Diversity and that a full assessment is not required.

6.3 Council policies and the Best Council Plan

- 6.3.1 The development of new council housing will address priorities within the City Priority Plan to provide additional affordable housing and support housing growth.

Climate Emergency

6.3.2 The CHGP update submitted to Executive Board in June 2019 set out the activity being taken through the programme to respond to the climate emergency. The proposed new housing will be built to the Leeds Standard which primarily focusses on cutting carbon, improving air quality and tackling fuel poverty, and central to this is the well-being of tenants.

6.4 Resources, procurement and value for money

6.4.1 There are no implications.

6.5 Legal implications, access to information, and call-in

6.5.1 The Byelaws (Alternative Procedure)(England) Regulations 2016 enables a Council to revoke or amend byelaws using a streamlined process.

6.5.2 The power to make, amend, revoke or re-enact byelaws is reserved to Full Council in accordance with Paragraph F of Schedule 1 to the Functions and Responsibilities Regulations.

6.5.3 The proposal constitutes a Significant Operational Decision and is therefore not subject to call in.

4.6 Regulatory Assessment Conclusion

4.6.1 The Byelaws were created in 2008 and the list of sites they relate to has never been amended. The objective of the proposal is to amend the list of sites so it accurately reflects those which remain the subject of these Byelaws. The proposal deletes, but does not add any sites to the list. The proposal therefore makes no additional restrictions or impositions on how people can use open spaces in the Leeds area. There is therefore no identifiable impact on the public arising from the proposed amendments to the Byelaws.

4.6.2 The proposed amendment to the Byelaws is necessary for the understanding of the public of which sites are so governed, and also important for the efficient enforcement of the Byelaws. The proposed amendment is therefore preferable to no action being taken.

4.6.3 The proposed amendment to the Byelaws adds no additional regulatory burden as the Byelaw restrictions remain unchanged and the sites that remain subject to them significant in number.

4.6.4 Given proposal adds no additional regulatory burden, has no identifiable impact on the public and no Equality Act issues, are preferable to no action being taken, it is concluded that the decision to proceed to the Secretary of State for approval is both desirable and proportionate.

4.7 Risk management

4.7.1 This recommendation to now submit an application to the Secretary of State is considered to be low risk. Proposals for the long term future use of sites, or the disposal of sites is subject to consultation and a separate decision making process, and the provision of alternative greenspace will be considered as part of the planning process.

5. Conclusions

- 5.1 It can be concluded the comments received from the first period of public consultation are considered not be to valid objections to the proposal to amend the Council's Byelaws. The schedule of sites to the Byelaws is out of date and no longer accurate and it is therefore necessary to initiate the process to amend the Byelaws to ensure they are up to date and relevant to the future use of each site in question. The process to amend the Byelaws should now be moved to the next stage with an application being submitted to the Secretary of State.

6 Recommendations

- 6.1 The Director of City Development is recommended to:
- a) Approves the statutory assessment undertaken by officers, and
 - b) Authorise offices to submit an application to the Secretary of State for the proposed amendments to the Byelaws.

7 Background documents¹

- 7.1 There are none.

¹ The background documents listed in this section are available to download from the council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.