

Subject: **Review of Byelaws for Bancroft Gardens, Stratford-upon-Avon**

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**Lead Member/
Portfolio Holder:** **Councillor Mike Brain**

Summary

By resolution on 5 November 2018, The Cabinet requested that Council review the byelaws for the Bancroft Gardens (land owned by the District Council) with a view to organised motorcycle gatherings being permitted on the Gardens.

The creation, amendment, revocation and re-enactment of byelaws is within the remit of Council; however, due to the detailed nature of the process of amending and revoking byelaws, the Council may wish to delegate this function to Regulatory Committee (and amend the terms of reference accordingly).

Recommendation

That Council amends the terms of reference for the Regulatory Committee to allow it to make, amend, revoke, re-enact and enforce in relation to all byelaws and then delegates the review of byelaws for the Bancroft Gardens to the Regulatory Committee.

1 Background/Information

- 1.1 The background relating to the byelaw issue at Bancroft Gardens is contained in The Cabinet Report **(Appendix 1)**.
 - 1.2 The Cabinet has resolved that Council be asked to review the byelaws with a view to permitting organised motorcycle gatherings on the gardens (Minute 429 – 5 November) **(Appendix 2)**.
 - 1.3 The current Bancroft Gardens byelaws were implemented at the turn of the last century and the provisions relate to factors affecting the use of the Gardens around that particular period of time.
 - 1.4 It is therefore considered that the byelaws need to be reviewed, to include consideration of the motorcycle issue and the other byelaw provisions.
 - 1.5 The Ministry of Housing, Communities and Local Government (MHCLG) has responsibility for byelaws covering pleasure grounds and open spaces and good rule and government. These relate in the main to the peaceful enjoyment of parks and open spaces and the suppression of nuisances.
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- 1.6 MHCLG has produced model byelaws and related guidance covering pleasure grounds and open spaces which relate to present day issues that generally affect such areas.
- 1.7 The model byelaws contain sixty three separate clauses, divided into 8 separate parts. The review will therefore require a thorough examination of each clause. As part of the review it will also be necessary to adhere to the process set out in the associated guidance, if there is a desire to adopt the model byelaws.
- 1.8 In view of the complications described in paragraph 1.7 above, Council may consider that a Committee of the Council, is a more appropriate body to undertake the review, given the time required to attend to the detail required and the need to follow the model byelaw process. The Regulatory Committee might be considered to be the most appropriate body to consider these and any future byelaws, subject to Council expanding its terms of reference for that purpose.

2 Options available to Council

- 2.1 To amend the terms of reference for the Regulatory Committee to allow it to deal with all issues in relation to byelaws and to delegate the review of the Bancroft Gardens byelaws to that Committee;
- 2.2 To delegate the review of the Bancroft Gardens byelaws and any future byelaw issues to another committee of the Council;
- 2.3 To reserve the review of the Bancroft byelaws to Council and that a further report be produced to Council in due course to enable it to conduct the review.

3 Evidence Base

As set out in this report and associated appendices.

4 Members' Comments

Not applicable

5 Implications of the proposal

5.1 *Legal/Human Rights Implications*

- 5.1.1 Byelaws are local laws made by a local 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. They are accompanied by some sanction or penalty for non-observance.
 - 5.1.2 If validly made, byelaws have the force of law within the areas to which they apply. Generally byelaws are overseen by the relevant government department.
 - 5.1.3 MHCLG has responsibility for byelaws covering pleasure grounds and open spaces and good rule and government. These relate in the main to the peaceful enjoyment of parks and open spaces and the suppression of nuisances.
 - 5.1.4 Byelaws are enforced by the local authority through the Magistrates' Court and contravening a byelaw can result in a fine upon successful conviction. Byelaws should always be proportionate and reasonable.
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Where a byelaw is no longer necessary, it should be revoked.

- 5.1.5 The procedure covering the creation, amendment and revocation of byelaws that relate to pleasure grounds such as the Bancroft Gardens are contained within The Byelaws (Alternative Procedures) (England) Regulations 2016 ("the Regulations").
- 5.1.6 Under the Regulations, The Secretary of State will consider the draft byelaw (if new or an amendment), report and deregulatory statement provided by the local authority and will, within 30 days, either give leave to make the byelaw, or not give leave to make the byelaw. The Secretary of State may also choose to defer his decision to allow time for further consideration.
- 5.1.7 The arrangements allow the local authority to make only minor modifications to the proposed byelaws after leave has been given to make the byelaws.
- 5.1.8 If the byelaw is being completely revoked (and not being replaced by a new byelaw), the decision will be a matter entirely for this Council.
- 5.1.9 The creation and amendment of byelaws follow the same procedure under the Regulations, whilst the procedure on revoking a byelaw will depend whether the Council wishes to completely revoke the existing byelaw or replace it with a new byelaw (such as the model byelaws for pleasure grounds as provided by the MHLCG).

5.2 ***Financial***

- 5.2.1 There will be a modest cost in the exercise of reviewing the Bancroft Gardens byelaws however this is not expected to be significant.
- 5.2.2 When the review of the byelaws is complete, there may be resourcing issues with regard to the enforcement of the byelaws.

5.3 ***Environmental***

- 5.3.1 Damage to the land or deposits on it are possible which can be managed but with a cost implication.

5.4 ***Corporate Strategy***

- 5.4.1 There are no Corporate Strategy implications

5.5 ***Analysis of the effects on Equality***

- 5.5.1 There is the potential that alterations to the land to safely accommodate motorcycles may impact on the accessibility of the land. Such alterations are not the subject of this report.

5.6 ***Data Protection***

- 5.6.1 There are no data protection implications and a data protection impact assessment is not required.

6 **Risk Assessment**

- 6.1 The Bancroft Gardens byelaws need to be reviewed to ensure that its requirements are in step with modern society. Once the review has been completed the scope for potential enforcement (if any) in relation to the motorcycle issue can be clarified. In the absence of a review the motorcycle issue will remain outstanding.
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7 Conclusion

- 7.1 Members are invited to decide whether Council should conduct the review of the Bancroft Gardens byelaws, or whether a Committee of the Council should undertake this work, in which case its terms of reference will need to be amended accordingly.

Phil Grafton

HEAD OF GOVERNANCE AND DEMOCRACY

Background papers: None

Supporting documents: The Bancroft Bylaws Byelaws
The Model Bylaws
Secretary of State's Guidance on Bylaws

