

Subject: **Motorcycle Parking on land owned by the Council at Bancroft Gardens, Waterside, Stratford-upon-Avon**

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**Lead Member/
Portfolio Holder:** **Councillor L Organ**

Summary

This report has been produced following a recent complaint relating to the gathering of motorcycles on land owned by the Council at Bancroft Gardens, Waterside, Stratford-upon-Avon. The Cabinet are requested for a decision on the options identified within this report.

Recommendation

That an option identified in Section 2 of the report be agreed.

1 Background/Information

- 1.1 Bancroft Gardens is land owned by the Council over which the public is granted access. For the purposes of this report "Waterside" is an area within of Bancroft Gardens directly adjacent to the road also called "Waterside".
 - 1.2 The purpose of this report relates to a recent complaint that was upheld through the Council's complaint process relating to the gathering of motorcycles on Waterside.
 - 1.3 In order to manage Bancroft Gardens land as pleasure gardens in 1901 Byelaws were established by the Mayor, Aldermen and Burgesses of the Borough of Stratford-upon-Avon. These Byelaws are wide ranging about the activities that may be permitted on Bancroft Gardens. The Byelaws are now dated and in need of review, however, they remain valid. The Byelaws are explicit in stating that vehicles may not go onto the land. The Byelaws do not differentiate on vehicles and therefore all vehicles including motorcycles, and in would be argued, mobility scooters are prohibited.
 - 1.4 Historically motorbikes have parked on Waterside until in 2002 when Warwickshire County Council created a parking area dedicated to motorbikes on highway land (beside Bridgeway car park). Motorbikes are also allowed to park free of charge on street or in District Council car parks.
 - 1.5 Bancroft Gardens were closed for renovation from 2008 to 2009 and following these improvements an enforcement contract was put in place
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with UK Parking Services Ltd to prevent motorcycles parking on the Bancroft paving. Through this arrangement UK Parking Services were able to record registration numbers of the vehicles concerned and issue them with penalty charge notices through the post.

- 1.6 Because the land at Bancroft Gardens is privately owned (i.e. is not part of the highway) and falls outside the off-street parking places order, it is not covered by parking regulations enforcement and the Council's parking officers are unable to control it through their role as Civil Enforcement Officers, hence the need to involve a company experienced in managing this kind of issue.
- 1.7 The remodeled area of Bancroft Gardens adjacent to Waterside has been designed to provide an open space for use by the public as well as for small scale events. Use of the area by vehicles inevitably causes conflict with the intended uses and there are potential safety issues where vehicles can conflict with pedestrians.
- 1.8 In October 2009 the Council received a petition from representatives of the motorcycle community seeking permission to gather and park and display their motorcycles on the Waterside paved area. In December 2009 The Cabinet considered a report, triggered by the petition, and determined that the Byelaws should remain unchanged, therefore denying the request. It was noted at the time that the process involved in amending a Byelaws would need to be researched but subject to a legal opinion this may well be extensive and complicated to achieve.
- 1.9 Having reviewed the situation, whilst the decision of The Cabinet was made in good faith, it is not clear that The Cabinet had the authority to make this decision as it was not an executive function and, under our Constitution, this is matter reserved for Council.
- 1.10 Since 2009, due to the initial success of the enforcement action identified in paragraph 1.3 it has not been cost effective to continue with any on-going enforcement arrangements on Bancroft Gardens. It has now come to our attention that significant numbers of motorcyclists are gathering on Wednesday evenings on the Council's land at Waterside.
- 1.11 A formal complaint has been raised through the Council's Corporate Complaint system. The complaint against the Council has been upheld on the basis that there is an existing decision by The Cabinet in relation to the issue and the lack of current enforcement arrangements.

Position in relation to Byelaws

- 1.12 The position in relation to the implementation, amendment and enforcement of Byelaws is a Council function and not one that The Cabinet can consider. It is clear that the Byelaws which are in place are historic and require updating. As stated above the strict interpretation of the Byelaws would prohibit mobility scooters from being used anywhere on Bancroft Gardens.
 - 1.13 The Cabinet does not have a formal role in the consideration of Byelaws. It should therefore be acknowledged that it was inappropriate for The Cabinet to consider the matter on 21 December 2009.
 - 1.14 In order to address the inadequacies of the existing Byelaws a report will be produced for Council to consider on how the process under which a review should be undertaken. It is likely that the role will be delegated to
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either Audit and Standards Committee or the Regulatory Committee. The Government have published "model" Byelaws which should enable a relatively swift review and result in Byelaws appropriate to the current environment.

- 1.15 Whilst acknowledging this is a Council function, however, it is possible for The Cabinet to express its view in a consultative position in relation to such as review. It would therefore be appropriate for a view from The Cabinet on the future gathering of motorcycles.
- 1.16 When the Council's review is complete, it would then be appropriate for The Cabinet to consider the resourcing requirements of enforcing the revised Byelaws.

2 Options available to The Cabinet

- 2.1 The options to The Cabinet in relation to this matter are limited. To help inform the Council review of Byelaws, The Cabinet are permitted to express a view as to whether they would like to permit the future motorcycle gathering on Waterside.

3 Members' Comments

- 3.1 Councillors L Organ and M Brain noted the report.
- 3.2 Councillor J Fradgley (Ward Member – Guildhall): "I have spoken to a number of residents who have expressed a liking for the motorcyclists parking their cycles here on Wednesday evenings. They have spoken of the friendliness of the bikers and the enjoyment of looking at the bikes. These are much loved and cared for bikes and make quite a spectacle. However, some have expressed a concern to keep a wide space to allow people to pass safely when going to the theatre, when there can be quite a crowd. Sufficient pavement space must be clear to allow buggies, motorised buggies etc space to flow along with pedestrians in safety. I have not seen oil deposits on the paving stones but if there were to be an oil spillage the biker concerned should make a contribution, if not pay for, the clean-up. Are the bikers members of a club? If so rules could be drawn up for the bikers to enforce in order to allow this spectacle on Wednesday evenings. The display should be restricted to only one day a week. There is a concern that if there are too many bikes on display the pavement can become congested. I have not spoken to or been approached by any resident opposed to the bikers but some I have spoken to would like some rules to make sure both bikers and other pavement users are safe. Perhaps a consultation could take place to gain a wider view?"

4 Implications of the proposal

4.1 *Legal/Human Rights Implications*

- 4.1.1 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 their non-observance.
 - 4.1.2 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 or confirming authority who has policy responsibility for the subject matter.
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- 4.1.3 The Ministry of Housing, Communities & Local Government 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.
- 4.1.4 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. Where a byelaw is no longer necessary, it should be revoked.
- 4.1.5 The Secretary of State will consider the draft Byelaws, report and deregulatory statement provided by the local authority and will, within 30 days, either give leave to make the Byelaws, or not give leave to make the Byelaws. The Secretary of State may also choose to defer his decision to allow time for further consideration.
- 4.1.6 The arrangements allow the local authority to make only minor modifications to the proposed Byelaws after leave has been given to make the Byelaws.
- 4.1.7 The revocation of the existing Byelaws would be made under s236B of the Local Government Act 1972, whereas any replacement Byelaws in relation to Bancroft Gardens would be made under s75 of the Public Health Act 1961.

4.2 ***Financial***

- 4.2.1 There will be a modest cost in the exercise of reviewing the Byelaws, however, this is not expected to be significant and it is hoped that the "model" Byelaws will be used to ensure costs are low.
- 4.2.2 When the review of Byelaws is complete, there may be resourcing issues for enforcement that The Cabinet will need to consider.

4.3 ***Environmental***

- 4.3.1 Damage to the land or deposits on it are possible which can be managed but with a cost implication (currently not known).

4.4 ***Corporate Strategy***

- 4.4.1 There are no Corporate Strategy implications.

4.5 ***Equality Impact Assessment***

- 4.5.1 There is the potential that alterations to the land to safely accommodate motorcycles may impact on the accessibility of the land.

4.6 ***Data Protection***

- 4.6.1 There are no data protection implications to this report.

5 Risk Assessment

- 5.1 Allowing motorcycles to park on the land would need to be the subject of a risk assessment.

6 Conclusion

- 6.1 It is considered that the existing provision of a dedicated parking area for motorcycles, provided by Warwickshire County Council, the availability of free parking on the highway and in the District Council car parks in the town is more than adequate to meet the needs of visiting motorcycles.
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- 6.2 Given the responsibility for the consideration of Byelaws is a Council function. The only decision for The Cabinet is whether they wish to express a view on a consultative basis.

David Buckland
EXECUTIVE DIRECTOR

Background:

None.

