

To: Council
Date: 27 November 2023
Report of: Head of Community Services
Title of Report: New byelaws for parks and open spaces

| Summary and recommendations | |
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| Purpose of report: | To approve that the existing byelaws for parks and open spaces be updated and for full consultation on the proposed draft set of new byelaws |
| Key decision: | Yes |
| Cabinet Member with responsibility: | Chewe Munkonge, Deputy Leader and Cabinet Member for Leisure and Parks |
| Corporate Priority: | <ul style="list-style-type: none"> • Safer communities/crime and disorder • Meeting the city's housing need • Sustainability through protection of habitats and the wider environment • Promoting active lifestyles |
| Policy Framework: | Thriving Communities Strategy and Green Space Strategy |
| Recommendation(s): That Council resolves to: | |
| <ol style="list-style-type: none"> 1. Approve that the existing byelaws for parks and open spaces are updated with new byelaws as set out in the draft set of new byelaws. 2. Approve that Officers undertake a consultation with such persons as the Council considers may be affected by the proposed byelaws when carrying out the regulatory assessment. 3. Notes that a further report will be presented to Members with results of the public consultation and whether the Council should submit its application to the Secretary of State for approval. 4. Notes that upon the Secretary of State granting leave for the Council to make the proposed byelaws there will be a further period of consultation of not less than 28 days. | |

| Appendices | |
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| Appendix 1 | Draft set of new byelaws |
| Appendix 2 | Equality Impact Assessment |

Introduction and background

1. The Council is required to ensure that its existing byelaws on Parks and Open Spaces are fit for purpose.

Overview

2. Oxford City Council has not updated its Parks and Open Spaces byelaws for over twenty five years, and there is now a need to update the list of sites currently covered by the existing byelaws as well as new byelaws. This is also in line with the changes of land use set out in the 2040 Local Plan which are aimed to meet the Council's housing need. Additionally, updating the byelaws would provide the opportunity to:
 - Provide a more comprehensive, but simplified and focused set of byelaws for all of the Council's green spaces aimed at ensuring the safety and welling being of all users, and the protection of habitats and the wider environment
 - Correct/update names/descriptions of sites to remove ambiguity and repetition
 - Remove outdated byelaws such as those prohibiting playing ball games and climbing trees etc, which are inappropriately aimed at minors and conflict with the priority to promote healthy place shaping and more active lifestyles
 - Adopt new byelaws to better deal with specific issues such as unauthorised use of drones, the lighting of fires and releasing sky lanterns, interference with life-saving equipment and speeding E-scooters in park areas
 - Adopt new byelaws to provide a clear set of regulations around mooring on Council sites to maintain availability of temporary visitor mooring births and prevent damage to sensitive riverine environments
 - Revoke the separate set of byelaws in place for Shotover Country Park and include the site under the single, simplified set for all Council's green spaces and play facilities

Consultation

3. If approval is granted, the Council will consult such persons as it considers may be affected by the proposed byelaws – which may include persons who are not resident in the Council's area. In addition, there will be consultation with local disability groups to make sure that their opinions are taken into account. On the completion of the consultation there will be a further report to Council updating on the consultation results, approval to submit application to the Secretary of State and further consultation on the approved byelaws.

Regulatory Assessment

4. Officers will undertake a regulatory assessment of the proposed draft set of new byelaws to ensure that the proposed byelaws are proportionate. As part of the assessment officers have considered the objectives of the proposed byelaws and whether the objectives can be achieved in any other way, short of a byelaw. Officers have concluded that the absence of the proposed byelaws will have a number of implications:
 - There would be no clear, central point of reference for the public regarding what they can and can't do in the council's green spaces
 - This would greatly reduce the powers available to officers to tackle antisocial behaviour which can impact on the safety of the public and protection of habitats
 - Dealing with vehicle trespass would subsequently rely on application to the courts on a case by case basis with the delays around eviction and significant costs implications
 - PSPO's could be introduced to tackle certain forms of antisocial behaviour, but these require evidence of serious and on-going issues at a specified location and have to be renewed every three years, with the resource and costs implication involved
5. As part of the regulatory assessment, the Council will consult with those affected by the proposed byelaws, to include persons who are not local residents.
6. On completion of the consultation and having fully assessed the proportionality of the proposed byelaws, officers will prepare a statement of this assessment and which will be published on the Council's website.

Financial implications

7. On balance, the proposed approach to updating the byelaws is considered resource neutral and will be met from existing budgets. Most of the research into and documentation for submitting to the Secretary of State to consider the draft byelaws, report, deregulatory statement and equality assessment has already been completed.

Legal issues

8. The statutory guidance issued by Department for Levelling Up, Housing and Communities and Ministry of Housing, Communities & Local Government provides that byelaws should always be proportionate and reasonable. Where a byelaw is no longer necessary, it should be revoked. The Byelaws (Alternative Procedure) (England) Regulations 2016 introduce new arrangements for byelaws that decentralise the byelaw making process removing the need for the Secretary of State's confirmation.
9. The Council must prepare a draft of the proposed byelaw. It must then undertake a regulatory assessment of the proposed byelaw to ensure that the proposed byelaw is proportionate. In carrying out the regulatory assessment the Council must consult such persons as it considers may be affected by the proposed byelaw. Once the Council has assessed the proportionality of the proposed byelaw it must prepare a statement of this assessment and publish it on its website. Following consultation and assessment the Council must submit its application to the Secretary of State for

approval. The Secretary of State may give leave for the Council to make the proposed byelaw, or it may request minor technical and formatting changes when giving leave to make the byelaw.

10. Once the Secretary of State has given leave, the Council must give notice of the proposed byelaw in one or more local newspapers circulating in the area to which the byelaw applies and on its website. The notice must state the consultation period, of not less than 28 days, within which the public may inspect the draft byelaws. The notice must also state the address, and if necessary, the e-mail address, to which members of the public may send representations about the proposed byelaw. The Council must consider all representations received, including objections, before making any decision about whether or not to make the proposed byelaw.
11. The Council must consult upon the proposed byelaws. The legal requirements relating to public consultation are:
 1. consultation must be at a time when the Council's proposals are still at a formative stage;
 2. the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response;
 3. adequate time must be given for consideration and response; and
 4. the product of consultation must be conscientiously taken into account in finalising any proposals.
12. In terms of the fourth point, the decision maker must consider consultation responses with a 'receptive mind' and be prepared to change course if persuaded. But there is no duty to adopt the views of consultees.
13. The adoption of any byelaws, following consultation and assessment, must take into account the Council's equality duties. In summary these legal obligations require the Council, when exercising its functions, to have 'due regard' to the need to: (i) eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act; (ii) to advance equality of opportunity between people who share relevant protected characteristic and those who do not; and (iii) foster good relations between people who share a relevant protected characteristic and those who do not (which involves tackling prejudice and promoting understanding).
14. The proposed draft set of new byelaws will be subject to a full Equality Impact Assessment (EqIA) and public consultation.

Level of risk

15. There are minimal risks associated with the updating of the existing byelaws as well as new byelaws. The new arrangements for making byelaws transfer the accountability for making byelaws to local councils. The risks are mitigated by

the regulatory assessment of the proposed draft set of new byelaws to ensure that the proposed byelaws are proportionate. As set out at paragraph 5 above officers have considered the objectives of the proposed byelaws and whether the objectives can be achieved in any other way, short of a byelaw.

16. The main risk is that the Secretary of State could choose to defer his decision to allow time for further consideration. Considerable care has been taken when drafting the draft set of new byelaws as they include moorings, e-scooters and drones which are not included in the Model byelaws, which are considered useful in preparing the draft.

Equality impact

17. The adoption of the proposed draft set of new byelaws will be subject to consultation, appropriate approvals and equality impact assessments. The Equalities Impact assessment can be found at Appendix 3. The Council will continue to monitor equalities impact throughout the development of the proposed byelaws.

Carbon and Environmental Considerations

18. There are few environmental considerations arising directly from this report and no impact is anticipated on the environment. The proposed set of new byelaws will contribute positively to environmental improvements.

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Background Papers: None

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