

**BARNSELEY METROPOLITAN BOROUGH COUNCIL**

This matter is not a Key Decision within the council's definition and has not been included in the relevant Forward Plan

**Report of the Assistant Chief Executive (ACE) Legal and Governance, joint with Development, Environment and Culture (DEC)**

**Proposed byelaws for Town Hall Square**

**1. Purpose of report**

- 1.1 To bring to the Council a decision to make: whether to enact byelaws covering Town Hall Square.  
And to give the Council the information it needs to consider when making its decision.

**2. Recommendations**

- 2.1 That the ACE Legal and Governance be authorised to negotiate with the Department for Communities and Local Government (DCLG) to procure provisional approval for draft byelaws, making any representations and concessions, and amendments to the drafting of the byelaws annexed to this report that he sees fit.
- 2.2 That (the Cabinet recommends that) the Council, using its power under section 235 of the Local Government Act 1972, makes byelaws in the form annexed to this report, or in such form as they are in after having been amended by the ACE Legal and Governance in accordance with paragraph 2.1 of this report.
- 2.3 That the ACE Legal and Governance be authorised to complete the procedure for enacting the byelaws, by sealing and advertising the byelaws and submitting them to the Secretary of State for Communities and Local Government for confirmation.
- 2.4 That the ACE Legal and Governance be authorised to make representations to the DCLG about any responses received to the advertisement of the byelaws or any other consultations, without further recourse to the Cabinet or full Council.

**3. Introduction**

- 3.1 As part of the Experience Barnsley redevelopment, works around Barnsley Town Hall have been conducted including the placing of a sculpture, *Crossing (Vertical)*, on a plinth and the creation of a fountain and landscaped stone steps.
- 3.2 A map of the area is attached to the byelaws annexed to this report.

- 3.3 Whilst many people are enjoying using the new facilities, unfortunately a few have already started to misuse them. Damage has been caused to stonework, benches and plants by BMX cyclists and skateboarders treating the area as a skate park. The sculpture has been seen by some as a climbing challenge, perhaps exacerbated by the sculpture's proximity to Barnsley's lively 'night time economy'.
- 3.4 The general criminal law is ineffective to prevent such abuse, because of the difficulty of attributing specific damage to a particular individual. Local police have confirmed their difficulty in trying to use their existing powers to tackle the problem.
- 3.5 The proposal is for the Council to make byelaws against conduct liable to degrade the amenity of the area.

#### **4. Consideration of alternative approaches**

- 4.1 The making of byelaws is not an alternative to all other approaches to tackling the problem.
- 4.2 Other measures that could be taken regardless of whether byelaws are made include:
  - CCTV surveillance
  - the erection of warning signs
  - patrols of the area including engagement with users of the facility
  - work by a Town Centre Ambassador
  - working with partner agencies, including South Yorkshire Police
  - completion of provision of suitable alternative facilities for skateboarding etc. at Hoyle Mill (see report "Dearne Valley Park Proposed New Skate Park and Play Area Improvement Scheme" dated 4 July 2011)
- 4.3 With byelaws, these other measures would be bolstered.
- 4.4 *Crossing (Vertical)* is on loan on terms, but even if the Council owned it, due to its international significance the application of anti-climb paint to the artwork would be inappropriate.
- 4.5 The main alternative to making all the byelaws proposed would be to make only some of them or to redraft them. The justification for each byelaw can be considered separately.

#### **5. Proposal and justification**

- 5.1 The proposal is for the Council to make the byelaws annexed to this report.
- 5.2 Breach of a byelaw is a criminal offence punishable in the magistrates' court by a fine of up to £500.
- 5.3 In accordance with DCLG guidance, Barnsley MBC has submitted to the DCLG's Byelaws Section an Application for Provisional Approval of Byelaws (copy annexed to this report).

- 5.4 The application explains the justification for the byelaws.
- 5.5 Negotiations with DCLG were still ongoing at the time this report was finalised. Cabinet will be updated with the latest position at its meeting.

## **6. Implications for local people / service users**

- 6.1 The intention of the proposal is to protect the facility for the benefit of all Barnsley residents and other visitors to the site.
- 6.2 Experience Barnsley is intended to attract visitors from far afield. There is no "Friends of Town Hall Square" or other easily identifiable group of service users to consult.

## **7. Financial implications**

- 7.1 Beyond the cost of a notice in the *Barnsley Chronicle*, there are no direct financial implications of making the byelaws.
- 7.2 There is no legal obligation to enforce byelaws so the level of enforcement activity by Barnsley MBC staff will be under the Council's control.

## **8. Employee implications**

- 8.1 There are no implications for staffing structures. The byelaws would be enforced by existing staff.

## **9. Communications implications**

- 9.1 Experience Barnsley has attracted significant media coverage. The issue about some people climbing *Crossing (Vertical)* has been mentioned in the *Barnsley Chronicle* and on website [wearebarnsley.com](http://wearebarnsley.com)

## **10. Consultations**

- 10.1 Consultations have been had with Cabinet members and local police about the byelaws in outline. No objections have been received.
- 10.2 The statutory procedure for making byelaws (section 236 of the Local Government Act 1972) requires a notice to be placed in a local newspaper after the Council makes the byelaws. In the following month members of the public may send responses to the DCLG who will forward a copy to the Council. Then the Council applies to the Secretary of State for confirmation of the byelaws.
- 10.3 When planning permission for the sculpture *Crossing (Vertical)* was applied for (reference: 2013/0291) "Civic Trust", "Conservation", "English Heritage" and "SYP ALO" were consulted. They may wish to make representations about the proposed byelaws.

**11. Risk management issues**

11.1 If the decision-making process (in particular, consultations) is not managed carefully, there is a risk that the Secretary of State will direct a public inquiry to be held on the issue under section 250 of the Local Government Act 1972, which would be very time consuming.

11.2 The risk in doing nothing (in other words, the risk in rejecting the proposal outright) is the risk that the amenity of the area will be degraded and the benefits less long-lasting than previously hoped for.

**12. Health & safety issues**

12.1 A byelaw against climbing on sculptures would reduce the risk of injury from falling. Although the DCLG believes it inappropriate to make a byelaw solely to protect people from the consequences of their own actions, a byelaw would also protect others from the risk of someone falling on them as well as prevent damage to the sculpture.

12.2 Enforcing the law against offenders, who might be drunk (at night or at other times) involves confrontations and naturally entails risk.

**13. Compatibility with the European Convention on Human Rights**

13.1 Anyone prosecuted for breaching a byelaw would have the right to a fair trial (Article 6).

**14. Reduction of crime & disorder**

14.1 A byelaw creates new criminal offences and so, technically, increases the number of crimes committed.

14.2 The purpose of the byelaws is to reduce nuisance, anti-social behaviour and criminal damage.

**15. Conservation of biodiversity**

15.1 The byelaws against bicycles, etc. should help prevent damage to the plants in Town Hall Square. Even formal gardens such as those in Town Hall Square make a contribution to biodiversity.

**16. Legal implications**

16.1 The entire procedure is a legal process.

**17. Implications for Other Services**

17.1 There will be various previous reports about Experience Barnsley covering, amongst other things, property management.

**18. List of appendices**

18.1 Draft byelaws, including plan.

18.2 Application for Provisional Approval of Byelaws

**19. Background papers**

19.1 DCLG webpage "Local government legislation: byelaws - Arrangements and procedures for the confirmation of local authority byelaws, including model sets."  
<https://www.gov.uk/local-government-legislation-byelaws>

19.2 DCLG publication "Model byelaw 8: guidance notes", available at  
<https://www.gov.uk/government/publications/good-rule-and-government-model-byelaw-8>

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Financial Implications / Consultation .....
<i>(To be signed by senior Financial Services officer where no financial implications)</i>

