

BARNSELY 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

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>

Office Contact: Adrian Phillips Telephone No 01226 787730 Date 2 September 2013

<p>Financial Implications / Consultation</p> <p><i>(To be signed by senior Financial Services officer where no financial implications)</i></p>
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Barnsley Metropolitan Borough Council

BYELAWS FOR GOOD RULE AND GOVERNMENT

ARRANGEMENT OF BYELAWS

1. Application and interpretation
2. Skateboarding etc.
3. Cycling etc.
4. Driving vehicles
5. Climbing upon sculpture, etc.
6. Polluting fountain
7. Penalty

Byelaws made under section 235 of the Local Government Act 1972 by Barnsley Metropolitan Borough Council for the good rule and government of Barnsley Metropolitan Borough and for the prevention and suppression of nuisances.

APPLICATION AND INTERPRETATION

1. (1) These byelaws apply to the Town Hall Square area of Barnsley Metropolitan Borough designated in the Schedule and delineated by blue shading on the plan attached to these byelaws.

- (2) In these byelaws:

“Town Hall Square” means:

The area of Barnsley enclosed by Sadler Gate, Church Street, Shambles Street and St Mary’s Place, which includes the Town Hall building and the cenotaph and the surrounding square and gardens, delineated by blue shading on the plan attached to these byelaws.

“the Plinth” (referred to in byelaw 5(2)) means:

The six-sided area near the south east corner of Town Hall Square, delineated (and arrowed “SCULPTURE”) on the plan attached to these byelaws, where there is currently a plinth.

“the Fountain Area” (referred to in byelaw 6) means:

The area within Town Hall Square delineated by a red line (with Key “Boundary of Wet Area”) on the plan attached to these byelaws.

SKATEBOARDING ETC

2. (1) No person shall skate, slid or ride on rollers, skateboards or other self-propelled vehicles in Town Hall Square.

- (2) "self-propelled vehicle" means a vehicle other than a cycle, wheelchair or pram which is propelled by the weight or force of one or more persons skating, sliding or riding on the vehicle or by one or more other persons pulling or pushing the vehicle.

CYCLING ETC

3. No person shall ride a bicycle, tricycle or other similar machine in Town Hall Square.

DRIVING VEHICLES

4. No person shall drive a mechanically propelled vehicle in Town Hall Square.

CLIMBING UPON SCULPTURE, ETC

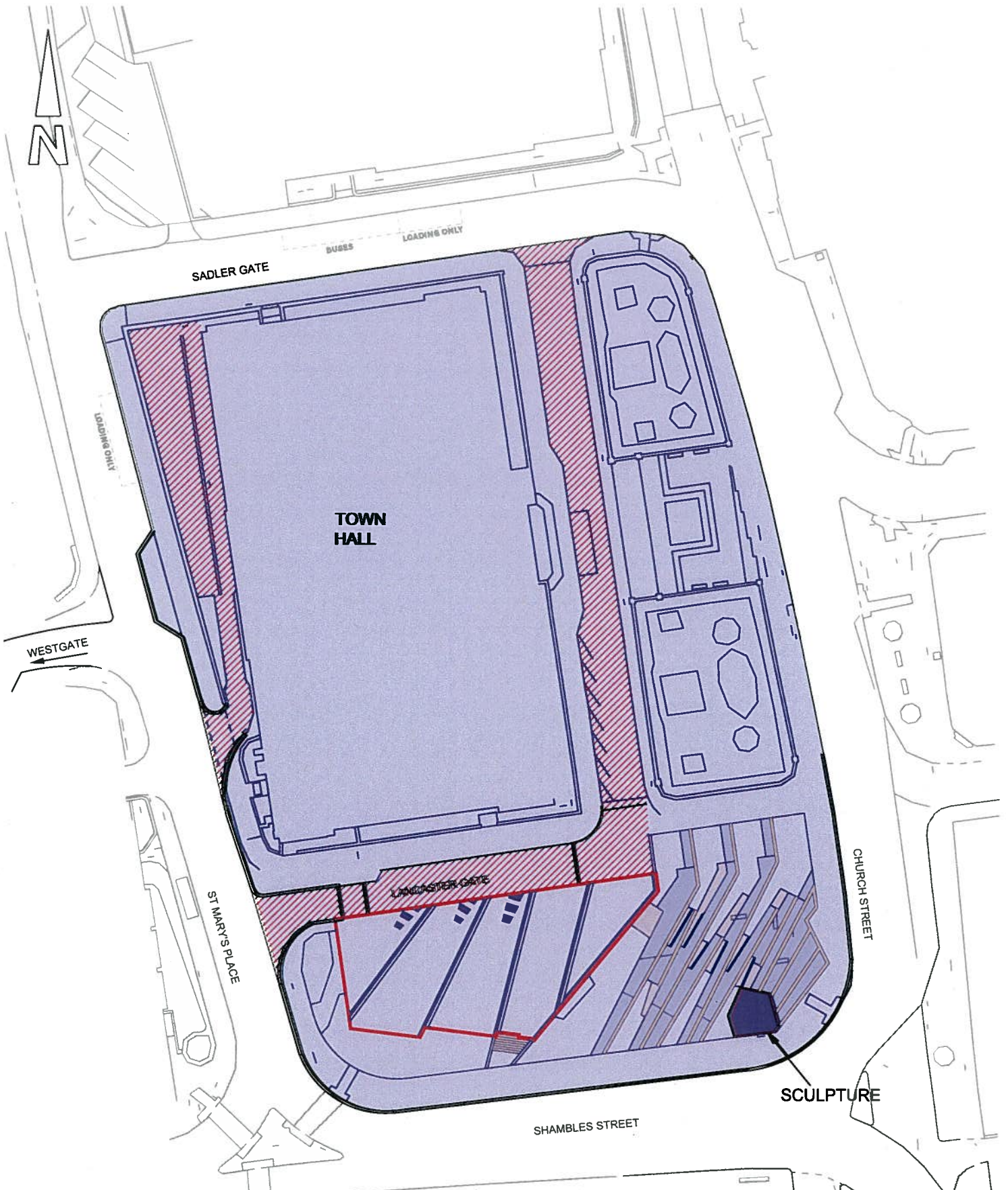
5. No person shall without reasonable excuse—
- (1) climb upon, or hang from, the sculpture *Crossing (Vertical)* by Nigel Hall in Town Hall Square; or
 - (2) climb upon, or hang from, any statue, sculpture or other artwork that may from time to time be erected by or on behalf of Barnsley Metropolitan Borough Council on the Plinth in Town Hall Square; or
 - (3) aid, abet, counsel or procure such an act ((1) or (2) above) by another.

POLLUTING FOUNTAIN




6. No person shall —
- (1) discharge or deposit any washing-up liquid, washing powder, bubble bath, bubble solution or any other detergent, foaming agent or surfactant substance (whether in liquid, gel, powder or other form) in the Fountain Area in Town Hall Square; or
 - (2) discharge or deposit any liquid sealant, clogging agent, dye or pollutant chemical in the Fountain Area in Town Hall Square.

PENALTY

7. Any person offending against these byelaws shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.



Key:

	Boundary of Wet Area
	Extent of By-Law
	Areas available for authorised motor vehicles

Proposed extent of Barnsley Town Hall By-Law



Department for
Communities and
Local Government

Application for Provisional Approval of Byelaws

PART A

To be completed by all applicants

1. Name of Applicant Authority: Barnsley Metropolitan Borough Council

Legislation under which byelaws are made (tick on the appropriate line).

- a) **Good rule and government** (s.235, Local Government Act 1972)
- b) **Pleasure fairs/Amusement premises** (s.75, Public Health Act 1961(as amended)) _____
- c) **Pleasure grounds, public walks and open spaces**
- s.164, Public Health Act 1875 _____
- ss.12 and 15, Open Spaces Act 1906 _____
- s.15, Open Spaces Act 1906 _____
- d) **Seashores** (s.82, Public Health Acts Amendments Act 1907) _____
- e) **Promenades** (s.83, Public Health Acts Amendments Act 1907) _____
- f) **Markets** (s.60 of Food Act 1984) _____
- g) **Other** (Please specify): _____

2. The draft byelaws sent with this proforma have been the subject of any consultation required by statute or recommended in the model; **Yes** (N/A) **No** _____

No consultation is required by statute. There is no named body with which consultation is recommended. Consultation has been conducted with South Yorkshire Police.

3. The Authority:

- (a) has followed any guidance issued with the model; **Yes** **No** _____
- (b) believes that the byelaws are necessary in the local context; **Yes** **No** _____
- (c) believes that this application is reasonable and that other means of addressing the situation at which the byelaws are directed are inappropriate or insufficient; **Yes** **No** _____

4. The Authority is content that:

- (a) the proposed byelaws do not duplicate or conflict with any existing local Act, national legislation, common law or central government policy; **Yes** **No** _____

(b) the proposed byelaws do not duplicate or conflict with existing byelaws /~~the Authority has included a byelaw revoking existing byelaws~~^[1] (delete as appropriate).

PART B

Complete this section only if variations or additions have been made to the model byelaws

Please insert answers in the spaces provided, continuing on a separate sheet if necessary.

1. Byelaws should not attempt to address in general terms issues which are essentially national rather than local. Please explain what the specific local problem is which the proposed byelaws are intended to directly address.

In Barnsley, the part of the extensive Town Hall Square and gardens redevelopment has recently been finished and the whole development will soon be complete, at a cost of approximately £1.9m. The improvement works involved re-paving with natural stone materials. This is a public open space and public amenity. The space and people's ability to benefit from it needs to be protected.

Unfortunately, already skateboarders and BMX cyclists have started to damage the stonework and benches (basically, anything with an edge they can grind along) and the bushes, and people have started to climb up the internationally significant sculpture (worth £1.5m) sited in the square. Photographic evidence of the problems is enclosed with this application.

This is not a national problem. It is specific to a particular very local area.

2. Please explain the nature, location, extent and incidence of the problem and the reasons why the Authority considers byelaws are necessary to combat the nuisance being addressed.

The problem is in Town Hall Square.

The draft byelaws preventing interference with the fountain are a protective and preventative measure (there has been no nuisance so far relating to the fountain as it has only just been completed).

3. What measures have been taken to address the nuisance?

An old Council sign saying "B.M.B.C. NO SKATEBOARDS OR CYCLING" has failed to prevent the nuisance. CCTV cameras have recently been installed, with appropriate warning signs. Liaison has been conducted with the local police.

4. Why is the Council satisfied that the nuisance is so great as to merit a criminal offence?

There is a genuine problem that needs to be addressed, to preserve this public space for the benefit of the community. Waiting until physical damage is done and then trying to sue for compensation in the civil courts would not be an effective deterrent and enforcement mechanism.

Barnsley MBC believes that a maximum fine of level 2 on the standard scale (£500) is a punishment proportionate to the nuisance and harm caused.

5. Please confirm that the aim of the byelaws is not solely to protect people from the consequences of their own actions.

They are not. The purpose of the draft byelaw against climbing a sculpture, etc. is only partially to prevent the risk to the climber of injury from falling from it.

6. If appropriate, please describe what consultation required by the legislation has been carried out both with individuals and groups likely to be affected by the byelaw.

No consultation is required by the legislation (sections 235-236 of the Local Government Act 1972).

7. Please describe what informal consultation has taken place, both with individuals and groups likely to be affected by the byelaws.

Discussion has taken place within the council including with elected members, who support the proposal for byelaws. Consultation has been conducted with South Yorkshire Police but not yet with external individuals or groups likely to be affected.

8. List any objections of which the authority is aware at this stage (i.e. before sealing and advertisement of the byelaws) and the authority's response to those objections. Copies of any letters of objection or other relevant documentation should be attached.

Barnsley MBC is not aware of any objections to the proposal at this stage.

9. Is the authority content that the byelaws are reasonable in how they will be applied in the particular local context (ie. they are not partial or unequal in their application, that they are not manifestly unjust, and that they do not involve oppressive or gratuitous interference with the rights of those whom they affect)? Please justify this view.

Yes.

The byelaws are very limited in scope in that they apply only to a very limited geographical area where there is a particular problem. The model byelaws have not been adopted en bloc; only those that are strictly relevant have been adopted or amended. From model byelaws set 8, byelaw 7 prohibiting skateboarding has been adopted and bylaw 16 (climbing upon and hanging from bridges) has been adapted for climbing on sculptures, etc.

Skaters and BMXers are not being targeted for their culture or lifestyle choice. The borough has a large, specially designed skate park (Penistone Skate Park) for skateboarders, etc. the funding for which was partly provided by Barnsley MBC Park Services. This floodlit facility was built following extensive consultation with local youngsters and is free of charge to use. It is not oppressive to expect skateboarders to use the facilities that have been provided for them (and many do), or find somewhere else suitable.

