

## **Report – Byelaws in Great Yarmouth**

### ***Background***

1. At a Parish Council Liaison Meeting with Great Yarmouth Borough Council (“the Council”) on 15<sup>th</sup> September 2014, the implementation of Byelaws to assist Parish Councils in controlling common, open and public land for certain purposes was discussed.
2. Specifically, Martham Parish Council expressed the need for a byelaw which would prevent people from driving or parking on a village green or common land without the permission of the land owner.
3. Being generally supportive of this notion, the Council instructed nplaw to investigate the administrative and legal procedure for the implementation of such byelaws.

### ***ByeLaws***

4. Byelaw making powers are conferred to local authorities through a wide range of legislative provisions with each power pertaining to a different area of concern. When a local authority seeks to exercise its byelaw making power the local authority must liaise with the relevant governmental department. The relevant department will depend on the specific legislative provision being used.
5. Having examined the legislative byelaw making powers that relate to village greens and common-land nplaw determined that the Department for Environment Food and Rural Affairs (DEFRA) would be the most appropriate government department to liaise with for the purposes of implementing the desired byelaw.
6. DEFRA have produced a document which offers local authorities guidance when considering the creation of ByeLaws, entitled: *Confirmation of Byelaws Relating to Countryside Recreation: Guidance for Byelaw-Making Authorities* (“the Guidance”).
7. The Guidance sets out a model byelaw used by DEFRA. This model covers a wide range of common problems that pertain to village greens and common land.
8. The Guidance states that the model byelaw should be adhered to as closely as possible. Increased divergence from this model will result in a diminishing likelihood that the byelaw will be confirmed by DEFRA without challenge or scrutiny.

### ***Parish Consultation***

9. Having been originally instructed to investigating control of public spaces generally, nplaw invited the Parish Councils to complete a questionnaire (“the Questionnaire”) with the intention of determining those issues which were prevalent in each area. The Questionnaire comprised 13 questions with each being designed to provide nplaw the information necessary to take the Byelaw making process forward.
10. Question 11 set out those areas covered by DEFRA’s model byelaw and asked each Parish Council to identify the areas of concern within their Parish. An analysis of the responses to Question 11 can be found at Appendix 1 to this report.
11. The conclusion that nplaw has drawn from the response to the Questionnaire is that the Parish Councils do not share a sufficiently common goal for the implementation of a byelaw based on

the Defra model, particularly as the DEFRA model Byelaw contains no provision for driving and parking on Village Greens and Common Land.

12. The fact DEFRA would be the appropriate governmental depart to implement a byelaw for the control of village green and common land combined with the fact that the DEFRA model byelaw does not adequately meet the Parish Council's needs suggests that an alternative method of control is necessary.

#### ***Public Space Protection Orders***

13. Nplaw have explored Public Space Protection Orders ("PSPOs") as a viable alternative to exercising control over Village Greens and Common Land.
14. Pursuant to s59 of the Anti-social Behaviour, Crime and Policing Act 2014, Local Authorities have the power to enforce an order in relation to a public space within its boundary that either prohibits or compels a person to act with regards to a particular activity providing the 2 following conditions are met:
  - 14.1. The problem activity has or will likely have a detrimental effect on the quality of life in the locality, and
  - 14.2. The effect of the problem activity:
    - 14.2.1. is, or is likely to be persistent or continuing, and;
    - 14.2.2. is or is likely to be unreasonable, and;
    - 14.2.3. Justifies the particular restrictions imposed by the order.
15. PSPOs offer great flexibility insofar as they can be used to prescribe a wide range of sanctions in relation to a wide range of activities. Furthermore, "activity" for the purposes of this legislation is broadly defined and can readily be applied to those areas of concern raised in the Questionnaire.
16. PSPOs are issued and enforced by the Local Authority. In this instance that would be Great Yarmouth Borough Council. Therefore the viability of individual PSPOs would be a matter of consideration for the Council and each individual case would be dependent upon the specific facts and circumstances.
17. PSPOs cannot be used if they impose a sanction on an activity which is already established in UK law as a criminal offence.

#### ***Limitations on Control***

18. There are certain instances where the Parish Council's will not be able to control whether or not people drive on or over Village Greens or Common Land. The most common are set out below:
  - 18.1. *Consent of the owner* – Clearly a person will be able to drive over and park on a village green and common land contrary to a PSPO where they have the consent of the owner.
  - 18.2. *Designated Use* – a PSPO cannot prevent a person from driving over and parking on a village green and common land where such areas have been designated as spaces where such driving is legitimately permitted. This is significant as a PSPO cannot be used as tool to change the use of land without recourse to the proper channels.

18.3. *Lawful Right* – a PSPO cannot prevent a person from driving over and parking on a village green and common land where that person has a right to do so which is protected by the wider operation of UK law. Two common examples are set out below:

18.3.1 *Legal Easements* - An easement is a legally recognised interest in land which grants the beneficiary legal rights. Rights of access and passage are commonly contained in easement and would overrule the operation of a PSPO.

18.3.2 *s34 Road Traffic Act 1988* – section 34 of the RTA 1988 provides that it is not an offence to drive a vehicle over land within 15 yards of a road, where the sole purpose of such driving is to park on that land. A PSPO cannot be used if it is contrary to this legislation (This does not prevent the landowner from prohibiting such driving and parking, transgressions of which would be dealt with by civil action)

### **Conclusions**

19.1 There is not a general problem of misuse of common and public land in the Borough.

19.2 It would not therefore be appropriate to bring in a byelaw applicable to all such land.

19.3 Driving on a common, being a specific problem raised by Martham Parish Council, could be dealt with by a PSPO if a serious concern to parishioners, however, there are some restrictions (as set out in paragraph 18) on what could be controlled.

## **Appendix 1**

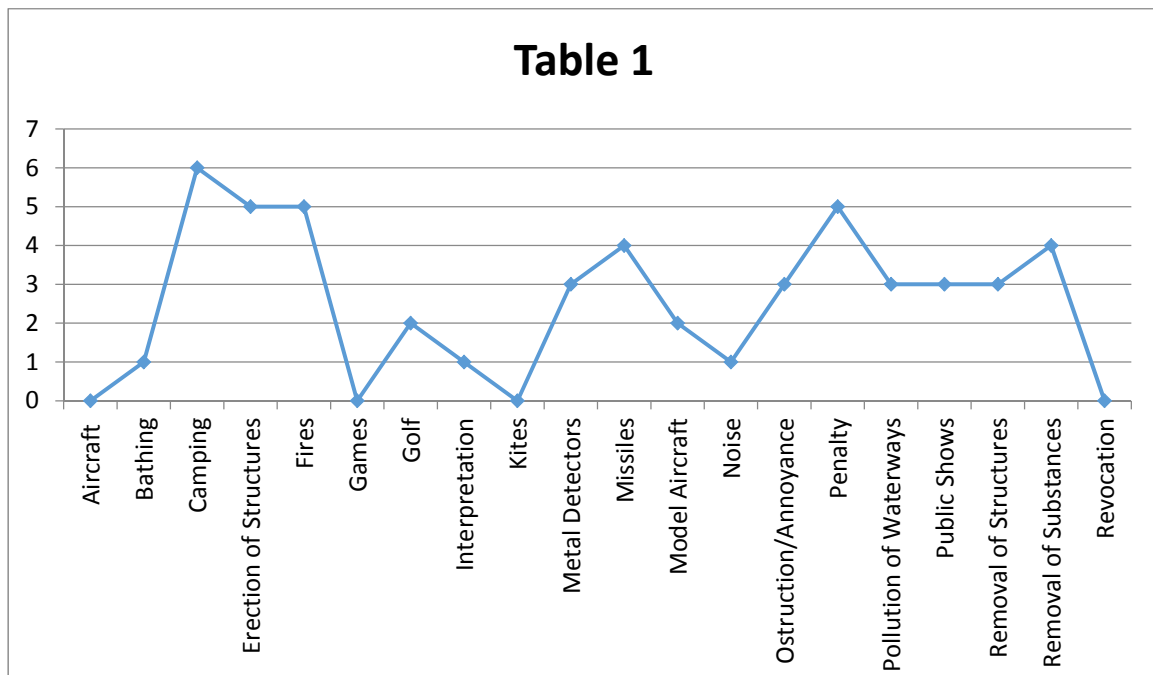


Table 1 – shows the number of parish councils that expressed a desire to control each area of concern with a bye law.

It should also be noted that:

- 11 Parish Councils responded to the questionnaire
- 3 Parish Councils expressed no desire to control any of the areas of concern identified by the DEFRA model byelaw.
  - Of those 3, 1 expressed no need for byelaws at all
  - The other 2 expressed the need to control activities not covered by the Defra model.
  - A further 3 councils also expressed the need to control activities not covered by the Defra model in addition to those they did identify in the Defra model (a total of 5)
- Of those 5 that required control for activities outside the scope of the Defra model, the areas of concern identified were:
  - 3 for parking restrictions
  - 1 for dog fouling
  - 1 for Drones