

REPORT TO THE MEETING OF THE EXECUTIVE 22 SEPTEMBER 2010

PORTFOLIO: ENVIRONMENT

REPORT FROM HEAD OF LEGAL, ESTATES AND MEMBER SERVICES AND HEAD OF ENVIRONMENTAL SERVICES

SUBJECT: REVIEW OF THE COUNCIL'S BYELAWS FOR THE DISTRICT'S PUBLIC OPEN SPACES AND WOODLANDS

1 DECISION BEING RECOMMENDED

- 1.1 That it be recommended to Council that an indicative revised byelaw for public open spaces and woodlands be approved for the purposes of consultation and that the process by which the proposed byelaw will be developed is noted.

2 REASONS FOR RECOMMENDATION

- 2.1 To update the existing byelaws that relates to public open spaces and Pleasure Grounds to ensure that they are enforceable and fit for purpose.

3 DISCUSSION

- 3.1 The previous government had proposed to make changes to the byelaw regime which would have made it simpler for Local Authorities to adopt new byelaws and give enforcement officers the power to issue fixed penalty notices. However, since the change of government it is unclear whether these proposed changes will go ahead.
- 3.2 The present procedure is that before any byelaws can come into force they must first be confirmed by the relevant Secretary of State. The rationale for this has been that, as byelaws create criminal offences, they should be subject to scrutiny by central government.
- 3.3 The Council's byelaws for the District's open spaces date back to 1976 for Pleasure Grounds and 1946 for Hockley Woods. A number of issues have arisen over the years which mean that the byelaws are not fit for purpose and, therefore, require a review.
- 3.4 Firstly, the Council currently has no power to enforce against activities, such as metal detecting, paramotoring, model aircrafts and the use of fire lanterns, which have become more popular over the years.
- 3.5 Secondly, in recent years the Council has acquired land to create new Public Open Space and these parcels are not included in the byelaws. These acquisitions include Cherry Orchard Jubilee Country Park and Sweyne POS.

Under the current byelaws officers are unable to effectively control or enforce measures to address any nuisance occurring in the open spaces.

3.6 The proposed byelaw is appended. It is proposed to undertake a consultation with local residents, Parish Councils and 'Friends of' groups in respect of these proposals over the next two months and subsequently report back with recommendations for the Executive to make to Council.

3.7 The Secretary of State expects local authorities to use and adapt a set of model byelaws when drafting new byelaws. If a local authority departs too much from the format of the model byelaw then either the byelaw may not be confirmed or considerable delay can be experienced in confirmation. However, if all the requirements on consultation and process satisfy the above points, DCLG notifies the local authority that it can proceed to make and seal the byelaws and to advertise in the local press the fact that the byelaws are to be sent to the Secretary of State for confirmation. The advertisement should also state that objections to the confirmation of the byelaws can be made to the Secretary of State. The byelaws must also be made available for public inspection by the local authority for at least one month before they are sent for confirmation.

4 ALTERNATIVE OPTIONS CONSIDERED

4.1 To continue with the existing byelaws and await proposed changes that might give the Council more control over the process.

4.2 The Local Government and Public Involvement in Health Act 2007 enacted an alternative procedure for byelaws which included powers to issue Fixed Penalty Notices. To date, however, there is no indication as to when these new powers may be available.

5 RISK IMPLICATIONS

5.1 The amendments to the byelaws are required for effective enforcement.

6 CRIME AND DISORDER IMPLICATIONS

6.1 The Byelaws provide measure to regulate activities within the Public Open Spaces of the district and address any problems of nuisance.

7 ENVIRONMENTAL IMPLICATIONS

7.1 This will provide an opportunity to introduce up to date and relevant byelaws for the parks and open spaces throughout the district. It will enable to the Council to have more control over the activities taking place within the parks and open spaces and allow for effective enforcement to deal with any problems or nuisance.

8 RESOURCE IMPLICATIONS

- 8.1 There will be costs arising out of the review and updating of the byelaws in terms of advertising and consultation, estimated to be in the region of £2,500. If confirmed, a resource implication will be associated with enforcement. Officer time will also be required in considering the evidence and progress in any subsequent action.
- 8.2 There will be costs arising from the provision and installation of new signs for each public open space. These are estimated at £16,000 and will be found from existing budgets and phased over the next two years.

9 LEGAL IMPLICATIONS

- 9.1 The byelaws have statutory force and the Council has a responsibility to exercise its powers in a responsible manner to ensure compliance.
- 9.2 The draft byelaw will have to be submitted to the DCLG for consideration and formal approval will be required from the Secretary of State.

I confirm that the above recommendation does not depart from Council policy and that appropriate consideration has been given to any budgetary and legal implications.

SMT Lead Officer Signature: _____

Head of Legal, Estates & Member Services

SMT Lead Officer Signature: _____

Head of Environmental Services

Background Papers:

None.

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ROCHFORD DISTRICT COUNCIL
BYELAWS FOR PLEASURE GROUNDS, PUBLIC
WALKS AND OPEN SPACES

ARRANGEMENT OF BYELAWS

PART [1]

GENERAL

1. General interpretation
2. Application

PART [2]

PROTECTION OF THE GROUND, ITS WILDLIFE AND THE PUBLIC

3. Protection of structures and plants
4. Unauthorised erection of structures
5. Climbing
6. Grazing
7. Protection of wildlife
8. Gates
9. Camping
10. Fires
11. Missiles
12. Interference with life-saving equipment

PART [3]
HORSES, CYCLES AND VEHICLES

- 13. Interpretation of Part [3]
- 14. Horses
- 15. Cycling
- 16. Motor vehicles
- 17. Overnight parking

PART [4]
PLAY AREAS, GAMES AND SPORTS

- 18. Interpretation of Part [4]
- 19. Children's play areas
- 20. Children's play apparatus
- 21. Skateboarding, etc
- 22. Ball games
- 23. Ball games - Rules
- 24. Cricket
- 25. Archery
- 26. Field sports
- 27. Golf

PART [5]
WATERWAYS

- 28. Interpretation of Part [5]
- 29. Bathing
- 30. Ice skating
- 31. Model boats
- 32. Boats
- 33. Fishing
- 34. Pollution
- 35. Blocking of watercourses

PART [6]
MODEL AIRCRAFT

- 36. Interpretation of Part [6]
- 37. Model aircraft [- General prohibition]

- 38. Model aircraft [- Model aircraft permitted in certain grounds [on specified days and at specified times]]
- 39. Model aircraft [- Model aircraft permitted in designated areas]
- 40. Model aircraft [- Model aircraft permitted if subject to certain control]
- 41. Model aircraft [- Some quieter types of model aircraft permitted]

PART [7]

OTHER REGULATED ACTIVITIES

- 42. Provision of services
- 43. Excessive noise
- 44. Public shows and performances
- 45. Aircraft, hang-gliders and hot air balloons
- 46. Kites
- 47. Metal detectors

PART [8]

MISCELLANEOUS

- 48. Obstruction
- 49. Savings
- 50. Removal of offenders
- 51. Penalty
- 52. Revocation

SCHEDULE [1] - Grounds to which byelaws apply generally

SCHEDULE [2] - Grounds referred to in certain byelaws

SCHEDULE [3] - Rules for playing ball games in designated areas

Byelaws made under section 164 of the Public Health Act 1875 and sections 12 and 15 of the Open Spaces Act 1906 by Rochford District Council with respect to pleasure grounds, public walks and open spaces.

[PART 1]

GENERAL

General Interpretation

1. In these byelaws:

Select from the following list only terms to be used in the byelaws which the Council proposes to adopt:

“the Council” means Rochford District Council;

“the ground” means any of the grounds listed in Schedule 1;

“designated area” means an area in the ground which is set aside for a specified purpose, that area and its purpose to be indicated by notices placed in a conspicuous position;

“invalid carriage” means a vehicle, whether mechanically propelled or not,

- (a) the unladen weight of which does not exceed 150 kilograms,
- (b) the width of which does not exceed 0.85 metres, and
- (c) which has been constructed or adapted for use for the carriage of a person suffering from a disability, and used solely by such a person.

Application

2. These byelaws apply to all of the grounds listed in Schedule 1.

PART [2]

PROTECTION OF THE GROUND, ITS WILDLIFE AND THE PUBLIC

Protection of structures and plants

3. (1) No person shall without reasonable excuse remove from or displace within the ground:
 - (a) any barrier, post, seat or implement, or any part of a structure or ornament provided for use in the laying out or maintenance of the ground; or
 - (b) any stone, soil or turf or the whole or any part of any plant, shrub or tree.
- (2) No person shall walk on or ride, drive or station a horse or any vehicle over:
 - (a) any flower bed, shrub or plant;
 - (b) any ground in the course of preparation as a flower bed or for the growth of any tree, shrub or plant; or
 - (c) any part of the ground set aside by the Council for the renovation of turf or for other landscaping purposes and indicated by a notice conspicuously displayed.

Unauthorised erection of structures

4. No person shall without the consent of the Council erect any barrier, post, ride or swing, building or any other structure.

Climbing

5. No person shall without reasonable excuse climb any wall or fence in or enclosing the ground, or any tree, or any barrier, railing, post or other structure.

Grazing

6. No person shall without the consent of the Council turn out or permit any animal for which he is responsible to graze in the ground.

Protection of wildlife

7. No person shall kill, injure, take or disturb any animal, or engage in hunting or shooting or the setting of traps or the laying of snares.

Gates

8. (1) No person shall leave open any gate to which this byelaw applies and which he has opened or caused to be opened.
(2) Byelaw 8(1) applies to any gate to which is attached, or near to which is displayed, a conspicuous notice stating that leaving the gate open is prohibited.

Camping

9. No person shall without the consent of the Council erect a tent or use a vehicle, caravan or any other structure for the purpose of camping [except in a designated area for camping].

Fires

10. No person shall light a fire or place, throw or drop a lighted match or any other thing likely to cause a fire.

Missiles

11. No person shall throw or use any device to propel or discharge in the ground any object which is liable to cause injury to any other person.

Interference with life-saving equipment

12. No person shall except in case of emergency remove from or displace within the ground or otherwise tamper with any life-saving appliance provided by the Council.

PART [3]

HORSES, CYCLES AND VEHICLES

Interpretation of Part [3]

13. In this Part:

“designated route” means a route in or through the ground which is set aside for a specified purpose, its route and that purpose to be indicated by notices placed in a conspicuous position;

“motor cycle” means a mechanically-propelled vehicle, not being an invalid carriage, with less than four wheels and the weight of which does not exceed 410 kilograms;

“motor vehicle” means any mechanically-propelled vehicle other than a motor cycle or an invalid carriage;

“trailer” means a vehicle drawn by a motor vehicle and includes a caravan.

Horses

14. (1) No person shall ride a horse except:
- (a) on a designated route for riding; or
 - (b) in the exercise of a lawful right or privilege.
- (2) Where horse-riding is permitted by virtue of byelaw 14(1)(a) or a lawful right or privilege, no person shall ride a horse in such a manner as to cause danger to any other person.

Cycling

15. No person shall without reasonable excuse ride a cycle in the ground except in any part of the ground where there is a right of way for cycles or on a designated route for cycling.

Motor vehicles

16. (1) No person shall without reasonable excuse bring into or drive in the ground a motor cycle, motor vehicle or trailer except in any part of the ground where there is a right of way or a designated route for that class of vehicle.
- (2) Where there is a designated route for motor cycles, motor vehicles or trailers, it shall not be an offence under this byelaw to bring into or drive in the ground a vehicle of that class for the sole purpose of transporting it to the route.

Overnight parking

17. No person shall without the consent of the Council leave or cause or permit to be left any motor vehicle in any of the grounds.

PART [4]

PLAY AREAS, GAMES AND SPORTS

Interpretation of Part [4]

18. In this Part:

“ball games” means any game involving throwing, catching, kicking, batting or running with any ball or other object designed for throwing and catching, but does not include cricket;

“golf course” means any area within the ground set aside for the purposes of playing golf and includes any golf driving range, golf practice area or putting course;

“self-propelled vehicle” means a vehicle other than a cycle, invalid carriage 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 persons pulling or pushing the vehicle.

Children’s play areas

19. No person aged 14 years or over shall enter or remain in a designated area which is a children’s play area unless in charge of a child under the age of 14 years.

Children’s play apparatus

20. No person aged 14 years or over shall use any apparatus stated to be for the exclusive use of persons under the age of 14 years by a notice conspicuously displayed on or near the apparatus.

Skateboarding, etc

21. (1) No person shall skate, slide or ride on rollers, skateboards or other self-propelled vehicles except in a designated area for such activities.
- (2) Where there is a designated area for skating, sliding or riding on rollers, skateboards or other self-propelled vehicles, no person shall engage in those activities in such a manner as to cause danger or give reasonable grounds for annoyance to other persons.

Ball games

22. No person shall play ball games in the ground except in a designated area for playing ball games.

23. It is an offence for any person using a designated area for playing ball games to break any of the rules set out in Schedule 3 and conspicuously displayed on a sign in the designated area when asked by any person to desist from breaking those rules.

Cricket

24. No person shall throw or strike a cricket ball with a bat except in a designated area for playing cricket.

Archery

25. No person shall engage in the sport of archery except in connection with an event organised by or held with the consent of the Council.

Field sports

26. No person shall throw or put any javelin, hammer, discus or shot except in connection with an event organised by or held with the consent of the Council

Golf

27. No person shall drive, chip or pitch a hard golf ball.

PART [5]
WATERWAYS

Interpretation of Part [5]

28. In this Part:

“boat” means any yacht, motor boat or similar craft but not a model or toy boat;

“power-driven” means driven by the combustion of petrol vapour or other combustible substances;

“waterway” means any river, lake, pool or other body of water and includes any fountain.

Bathing

29. No person shall without reasonable excuse bathe or swim in any waterway.

Ice skating

30. No person shall step onto or otherwise place their weight upon any frozen waterway.

Model boats

31. No person shall operate a power-driven model boat on any waterway.

Boats

32. No person shall sail or operate any boat, dinghy, canoe, sailboard or inflatable on any waterway without the consent of the Council.

Fishing

33. No person shall without the consent of the Council in any waterway cast a net or line for the purpose of catching fish or other animals except in a designated area for fishing.

Pollution

34. No person shall foul or pollute any waterway.

Blocking of watercourses

35. No person shall cause or permit the flow of any drain or watercourse in the ground to be obstructed, diverted, open or shut or otherwise move or operate any sluice or similar apparatus.

PART [6]
MODEL AIRCRAFT

Interpretation of Part [6]

36. In this Part:

“model aircraft” means an aircraft which weighs not more than 7 kilograms without its fuel;

“power-driven” means driven by:

- (a) the combustion of petrol vapour or other combustible substances;
- (b) jet propulsion or by means of a rocket, other than by means of a small reaction motor powered by a solid fuel pellet not exceeding 2.54 centimetres in length; or
- (c) one or more electric motors or by compressed gas.

“radio control” means control by a radio signal from a wireless transmitter or similar device.

General prohibition

37. No person shall cause any power-driven model aircraft to:

- (a) take off or otherwise be released for flight or control the flight of such an aircraft in the ground; or
- (b) land in the ground without reasonable excuse.

Model aircraft permitted in certain grounds [on specified days at specified times]

38. Byelaw 37 does not apply to the grounds listed in [Part [5] of Schedule 2] / [column 1 of the table in Part [6] of Schedule [2] on the days and times indicated for each ground in column 2 of that table].

Model aircraft permitted in designated areas

39. No person shall cause any power-driven model aircraft to:
- (a) take off or otherwise be released for flight or control the flight of such an aircraft; or
 - (b) land in the ground without reasonable excuse;
- other than in a designated area for flying model aircraft.

Model aircraft subject to certain control

40. Byelaw [37]/[39] does not apply to any model aircraft which is [attached to a control line]/[kept under effective radio control].

Quieter types of model aircraft permitted

41. Byelaw [37]/[39] does not apply to any model aircraft which:
- (a) gives a noise measurement of not more than 82 dB(A) when measured at a distance of 7 metres from the aircraft in accordance with the Code of Practice issued under the Control of Noise (Code of Practice on Noise from Model Aircraft) Order 1981; and
 - (b) where it is reasonably practicable to fit, fitted with an effectual silencer or similar device.

PART [7]

OTHER REGULATED ACTIVITIES

Provision of services

42. No person shall without the consent of the Council provide or offer to provide any service for which a charge is made.

Excessive noise

43. (1) No person shall, after being requested to desist by any other person in the ground, make or permit to be made any noise which is so loud or so continuous or repeated as to give reasonable cause for annoyance to other persons in the ground by:
- (a) shouting or singing;
 - (b) playing on a musical instrument; or

- (c) by operating or permitting to be operated any radio, amplifier, tape recorder or similar device.
- (2) Byelaw 43(1) does not apply to any person holding or taking part in any entertainment held with the consent of the Council.

Public shows and performances

- 44. No person shall without the consent of the Council hold or take part in any public show or performance.

Aircraft, hang gliders and hot air balloons

- 45. No person shall except in case of emergency or with the consent of the Council take off from or land in the ground in an aircraft, helicopter, hang glider or hot air balloon.

Kites

- 46. No person shall fly any kite in such a manner as to cause danger or give reasonable grounds for annoyance to any other person.

Metal detectors

- 47. (1) No person shall without the consent of the Council use any device designed or adapted for detecting or locating any metal or mineral in the ground.
- (2) Byelaw 47(1) shall not apply to *[insert name or description of land]*.

PART [8]

MISCELLANEOUS

Obstruction

- 48. No person shall obstruct:
 - (a) any officer of the Council in the proper execution of his duties;
 - (b) any person carrying out an act which is necessary to the proper execution of any contract with the Council; or
 - (c) any other person in the proper use of the ground.

Savings

- 49. (1) It shall not be an offence under these byelaws for an officer of the Council or any person acting in accordance with a contract with the Council to do anything necessary to the proper execution of his duty.
- (2) Nothing in or done under these byelaws shall in any respect prejudice or injuriously affect any public right of way through the ground, or the rights of any person acting lawfully by virtue of some estate, right or interest in, over or affecting the ground or any part of the ground.

Removal of offenders

50. Any person offending against any of these byelaws may be removed from the ground by an officer of the Council or a constable.

Penalty

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

Revocation

52. The byelaws made by Rochford District Council on 15th April 1947 and 24th June 1975 and confirmed by Secretary of State on 10th June 1947 and 14th November 1975 relating to the grounds are hereby revoked.

SCHEDULES

SCHEDULE [1]

GROUNDS TO WHICH BYELAWS APPLY

The grounds referred to in byelaw 2 are:

King George's Playing Field, Ashingdon Road, Ashingdon
Playstalls, Little Wakering Road, Little Wakering
The Playing Field, Althorne Way, Canewdon
The Village Green, Canewdon
Clements Hall Playing Field, Park Gardens, Hawkwell
Glencroft Nurseries, Hawkwell
Hawkwell Common, Main Road, Hawkwell
Magnolia Nature Park, Hawkwell
Rectory Road Playspace, Hawkwell
Spencers Park Public Open Space, Hawkwell
Betts Wood, Hockley
Broad Parade Open Space, Hockley
Buckingham Road Amenity Space, Hockley
Hockley Woods, Main Road, Hockley
Laburnum Grove Playspace, Hockley
Land at Malvern Road, Hockley
Marylands Avenue Public Open Space, Hockley
Playing Fields at Hockley Community Centre
Plumberow Mount, Plumberow Avenue, Hockley
Ferndale Open Space, Ferndale Road, Hullbridge
Kendal Park, Hullbridge
Playing Field at Lower Road, Hullbridge
The Playing Field, Pooles Lane, Hullbridge
Brooklands Gardens, Hockley Road, Rayleigh
Brocksford Green, Brocksford Avenue, Rayleigh
Fairview Playing Field, Victoria Road, Rayleigh
Grove Open Space, Katherine Close, Rayleigh
Grove Playing Field, Rayleigh
Hollytree Gardens Public Open Space, Rayleigh
King George's Field, Eastwood Road, Rayleigh
Lower Lambricks Open Space, Rayleigh
Nature Reserve and Open Space, North of Grove Road, Rayleigh
Playing Field North side of London Road, Rayleigh
The Playing Field, Rawreth Lane, Rawreth
St. John Fisher Playing Field and Open Space, Little Wheatley Chase, Rayleigh
Sweyne Park Public Open Space, Rayleigh
Turret House Farm Public Open Space, Rayleigh
Hambro Hill Open Space, Hambro Hill, Rayleigh
Kingley Wood Open Space, Arterial Road, Rayleigh
Grange Open Space, off Purleigh Road, Rayleigh
Woodlands Road Open Space and the Weir Buffer Strip, Richmond Drive, Rayleigh
Playing Fields at Rayleigh Leisure Centre, Rayleigh
Cherry Orchard Jubilee Country Park, Rochford
Doggetts Wildlife Area, St. Clare Meadows, Rochford
Millview Meadows Public Open Space, Rochford
The Recreation Ground, Stambridge Road, Rochford
Reservoir Open Space, Bradley Way, Rochford
Public Gardens, Southend Road, Rochford
The Playing Field, High Street, Great Wakering

Playspace, Seaview Drive, Great Waking
 Playspace, South of Morrins Close, Great Waking
 Play Space, Conway Avenue, Great Waking

SCHEDULE 2

GROUNDS REFERRED TO IN CERTAIN BYELAWS

USE OF MODEL AIRCRAFT PERMITTED ON SPECIFIED DAYS AT SPECIFIED TIMES (BYELAW [38])

<i>Name or description of ground</i>	<i>Days and times at which use of model aircraft is permitted</i>

SCHEDULE [3]

RULES FOR PLAYING BALL GAMES IN DESIGNATED AREAS (BYELAW [23])

Any person using a designated area for playing ball games is required by byelaw [23] to comply with the following rules:

- (1) No person shall play any game other than those ball games for which the designated area has been set aside.
- (2) No person shall obstruct any other person who is playing in accordance with these rules.
- (3) Where exclusive use of the designated area has been granted to a person or group of persons by the Council for a specified period, no other person shall play in that area during that period.
- (4) Subject to paragraph (5), where the designated area is already in use by any person, any other person wishing to play in that area must seek their permission to do so.
- (5) Except where they have been granted exclusive use of the designated area for more than two hours by the Council, any person using that area shall vacate it if they have played continuously for two hours or more and any other person wishes to use that area.
- (6) No person shall play in the designated area when a notice has been placed in a conspicuous position by the Council prohibiting play in that area.