

Report to: Scrutiny Committee

Date: 15 July 2024

Title: Review of EBC Byelaws – enforcement, amendment and revocation

Report of: Robert Cottrill, Chief Executive

Ward(s): All

Purpose of report: To provide an overview of byelaw governance

Officer recommendation(s): That Scrutiny Committee –

- (1) note the byelaw overview; and
- (2) set up a focus group tasked with making recommendations to Full Council on revocation, amendments and enforcement

Reasons for recommendations: This report gives effect to a byelaw motion passed at Full Council on 15.11.23

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1 Introduction

- 1.1 On 15.11.23, Full Council passed the following motion: 'EBC is to continue to enforce its byelaws. Scrutiny Committee is to consider current byelaws and make recommendations for repeal [revocation], amendments and enforcement to Full Council'.
- 1.2 This report covers:
- (a) What a byelaw is and how it differs from a public spaces protection order (PSPO)
 - (b) The scope of EBC's current byelaws and PSPOs
 - (c) A comparison with neighbouring authorities
 - (d) Enforcement, amendment and revocation
 - (e) Appointing a focus group to make recommendations to Full Council on amendments considered necessary

2 What is a byelaw and how it differs from a PSPO?

- 2.1 Byelaws are local laws made by a unitary, district or borough council under an enabling power contained in a public general act, requiring something to be done – or not done – in the council's area. They are enforced by the local authority through the magistrates' court, and contravening a byelaw can result in a fine upon successful conviction.
- 2.2 As an example, byelaws relating to the regulation of hairdressers and barbers are enabled by the Public Health Act 1961.
- 2.3 In 2016, the Government introduced streamlined arrangements for making most categories of byelaw. The procedure is now decentralised, permitting local authorities to introduce a new byelaw with minimal reference to the Secretary of State. Full details are provided in government guidance.
- 2.4 Byelaws are considered measures of last resort after a council has tried to address the local issue through other means. A byelaw cannot be made where alternative legislative measures already exist that could be used to address the problem. Byelaws should always be proportionate and reasonable. Where a byelaw is no longer necessary, it should be revoked.
- 2.5 PSPOs are one of several community protection measures created by the Anti-social Behaviour, Crime and Policing Act 2014. They target anti-social behaviour in particular locations and are quicker and simpler to make than byelaws.
- 2.6 A PSPO may only be made where the behaviour is having a detrimental effect on the quality of life of those in the community, is persistent or continuing, and unreasonable. Most PSPOs stem from community safety partnerships, with the police often involved in enforcement (e.g. with orders relating to alcohol consumption in town centres).
- 2.7 An order lasts for three years. It will then cease unless renewed for a further three year term if the test on detrimental effect is met. It can be revoked or amended at any time.
- 2.8 Enforcement of PSPOs is more flexible than for byelaws, in that enforcement officers can issue a fixed penalty notice (FPN) of up to £100 if appropriate – which is not available with byelaws.
- 2.9 If an FPN is not considered appropriate, the local authority can bring a prosecution. On conviction, the fine is up to £1000 (as opposed to £500 on conviction for breaching a byelaw). In both cases, enforcement may be informal (advisory and warnings) or formal (prosecution).
- 2.10 Any existing byelaw that prohibits activity now addressed by a PSPO is of no effect during the term of the PSPO.

3 Scope of EBC's current byelaws and PSPOs

3.1 The Council currently has fifteen byelaws and five PSPOs.

3.2 A full list is given in Appendix 1.

4 Comparison with Neighbouring Authorities

4.1 For comparison, a summary of byelaws and PSPOs in force across neighbouring authorities (LDC, Mid Sussex, Wealden and Brighton & Hove) is given in Appendix 2.

5 Byelaw Enforcement

5.1 Each set of byelaws includes enforcement provisions detailing who may enforce and what sanction or penalty may be imposed.

5.2 Neighbourhood First Advisors are delegated to carry out enforcement for a number of the byelaws and PSPOs within Eastbourne Borough, mainly those relating to environmental or anti-social behaviour type activities, for example dog fouling and dog control, littering and fly posting.

Advisors would be mindful of any potential breaches whilst going about their day-to-day work, for example carrying out a park inspection and witnessing someone not picking up after their dog; officers then take appropriate action. We also receive complaints from residents and can identify hotspot areas where we could organise more dedicated patrols based on evidence that we receive. We have an enforcement policy which takes a graduated approach by giving advice and guidance in the first instance, followed by a more formal stance through serving of an FPN or prosecution as mentioned previously in this report.

Officer enforcement can be restrained by a number of factors such as –

- We can't be everywhere. In order to take any action, the offence has to be witnessed. Whilst we can ask complainants to complete a witness statement having witnessed an offence, people are often reluctant to become involved, particularly when advised that this may lead to them attending the Magistrates Court in the event of a prosecution.
- Any surveillance of individuals has to be appropriate for the offence and, if performed covertly, in line with our RIPA obligations.
- People who are aware they are being observed often do the right thing/don't commit the offence or do so outside of normal working hours. For example, dog fouling is particularly difficult to enforce during the darker winter months.
- Whilst advisors have authority to take action against byelaw offences, they do not have the power to make people stop for them to do so. An example of this difficulty is enforcement of the no cycling rule along areas of the seafront.

6 Byelaw Amendment and/or Revocation

- 6.1 In response to any request for amendment, the council would need to consider the need for the amendment, consult, and produce a report before seeking the approval of the Secretary of State to make the amendment. Once approval is given, the local authority must undertake formal consultation and consider any representations before deciding whether or not to make the amending byelaw or whether to make it with minor modification.
- 6.2 Before amending a byelaw, the council should consider whether it needs to be retained at all, as it may no longer be required, e.g. where national legislation now addresses the local issue. Further details on revocation procedure are covered in government guidance, including a model revocation byelaw.

7 Appointment of Focus Group

- 7.1 To consider byelaw enforcement, amendment and revocation in more detail, it is recommended that Scrutiny Committee establish a focus group. This should comprise two councillors (one from each of the controlling group and the main opposition group) and nominated by the lead Scrutiny councillor for each of these respective groups. No member of the executive may be involved.
- 7.2 With officer support, they should operate on a 'task and finish' basis, drafting any proposed amendments, revocations, and enforcement arrangements. Their report, findings and recommendations should be made public. These should be referred to Scrutiny Committee, followed by the Committee's recommendations to Full Council.

8 Financial appraisal

- 8.1 Whilst there are no direct financial implications arising from this report, members should be aware that increases to the level and frequency of byelaw enforcement will result in a financial pressure where there is currently no budgeted provision. There is also no clear indication at the time of this report of what that cost will be.

9 Legal implications

- 9.1 Certain Acts of Parliament permit local authorities to make and enforce byelaws. For example, section 235 of the Local Government Act 1972 permits district councils to make byelaws for the "the good rule and government of the whole or any part of the district, and for the prevention and suppression of nuisances therein". These seek to address dangers, nuisances and annoyance in locations such as parks, burial grounds, marketplaces and promenades.
- 9.2 Section 236 sets out the procedure for making such byelaws and has been amended by the Byelaws (Alternative Procedure) (England) Regulations 2016, which introduced more streamlined arrangements. Revocation of byelaws is governed by section 236B. Section 237 specifies the level of fines payable on conviction for breaching a byelaw.

- 9.3 Making, amending and revoking byelaws in EBC is a function reserved to Full Council (under Part F of Schedule 1 to the Local Authorities (Functions and Responsibilities) Regulations 2000), subject in certain cases to statutory consultation with the relevant Secretary of State.

Legal input dated 02.07.24

Legal ref: 012875-EBC-OD

10 Appendices

Appendix 1 – List of EBC current byelaws and PSPOs

Appendix 2 – Summary of byelaws and PSPOs in force across neighbouring authorities

11 Background papers

The background papers used in compiling this report were as follows:

- Government guidance – Local Government Legislation: Byelaws (2016)
[Local government legislation: byelaws - GOV.UK \(www.gov.uk\)](http://www.gov.uk)
- DCLG letter of 1 March 2016 to local authority chief executives on making and revoking byelaws
[Letter from DCLG to local authority chief executives about the new arrangements.pdf \(publishing.service.gov.uk\)](http://publishing.service.gov.uk)
- The Byelaws (Alternative Procedure) (England) Regulations 2016
[The Byelaws \(Alternative Procedure\) \(England\) Regulations 2016 \(legislation.gov.uk\)](http://legislation.gov.uk)