

**To the Chair and Members of the  
ELECTIONS AND DEMOCRATIC SERVICES COMMITTEE**

**PROPOSED SPITTING BYELAW**

**EXECUTIVE SUMMARY**

1. This report reviews the public consultation exercise carried out to inform the Council's proposal to introduce a byelaw to prohibit spitting within the borough and asks the Committee to consider whether it should recommend to Full Council that an application for the byelaw is now made.

**EXEMPT REPORT**

2. Not applicable.

**RECOMMENDATION**

3. Subject to the Committee's consideration of this report, to recommend to Full Council that the Council make an application to the Secretary of State to introduce a byelaw to prohibit spitting within the Borough.

**BACKGROUND**

4. Following the approval by this committee at its meeting in March 2012 consultation was undertaken with the public which commenced on the 9th July 2012 and was concluded on the 9th September 2012.
5. Publicity for the consultation was delivered through using "free" or "low cost" facilities available to the Council. These included:
  - Use of Council internet pages – dedicated internet page for "spitting byelaw" with an eform for people to register their views online;
  - Use of Social Media – The Councils existing Twitter and Facebook presence were used to encourage people to register their views and / or to "snap" survey their views;
  - Customer Services promotion, asking people contacting the council services to also complete the survey;
  - Front line Services promotion, staff asking customers to complete the consultations during visits to deliver council services;
  - Public Promotion including local press releases, Radio Sheffield Interview and the erection of posters across the borough.
6. The consultation survey is attached at Appendix 1. It sought to establish public support for the initiative and an evidence base to support the application. In addition to the formal consultation response

social media was also used to obtain responses. These are attached at Appendix 1.

## **The Consultation**

7. An application for a byelaw has to be made to the Department of Communities and Local Government.(DCLG) The requirements are prescriptive and the consultation was designed so far as possible to satisfy the likely requirements of the DCLG in relation to any subsequent application for a byelaw. Key areas which are expected to be addressed within the application include:

- Need/demand
- Evidence of incidents
- Previous measures to address the nuisance
- Enforcement of the byelaw

A total of 506 responses were received with the majority of those who responded (87%) supporting the Council progressing a byelaw to prohibit spitting across the borough. We were pleased to receive more than 500 responses but that does represent less than 1% of the population and it is unclear at this stage whether DCLG will regard the number of responses as sufficient to indicate the requisite level of public support.

8. The majority of those that responded clearly regard spitting as a frequent and wide spread problem, with 58% recommending a boroughwide prohibition on spitting. There was a low level of support for the byelaw to also cover sports / park facilities ( 8%). Full numerical and percentage results are set out in the summary at Appendix 1.

## **Applying for a Byelaw**

9. As indicated in the previous report, the steps for making a new byelaw are prescriptive. The application process requires provisional approval of the byelaw together with the submission of evidence which supports the tests that the Council needs to meet. DCLG will scrutinise the application and will notify the Council as to whether it can proceed to make the byelaw. Once provisional approval of the byelaw has been given then the Council can formally resolve to make the byelaw. There is then a prescribed period when the byelaw is officially advertised and available for inspection during which objections to the byelaw can be made. Following this the Council can then submit the byelaw for confirmation to the Secretary of State. Where objections have been made to the byelaw the Secretary of State may order a public inquiry before confirming the byelaw. Once the byelaw has been approved then a date is fixed on which the byelaw will come into force, normally one month from confirmation.
10. In making an application to the relevant Secretary of State the Council needs to show that the byelaw “is necessary in the local context” and that the application “is reasonable and that other means of addressing the situation at which the byelaws are directed are inappropriate or

insufficient". In particular, the evidence in support of the application will need to incorporate the following:

- a. Details of the nature, extent and location of the problem;
  - b. The measures previously taken to address the problem;
  - c. Why the Council is satisfied that the nuisance is so great so as to merit a criminal offence; and
  - d. What consultation has taken place with groups and persons likely to be affected.
11. The evidence obtained from the consultation shows that there is public support for prohibiting spitting. The consultation responses and the Consultation itself will help inform the Council's consideration of the criteria at (a) and (d) above.

### **Details of a proposed Byelaw**

12. Consideration will need to be given to the potential scope of the byelaw and whether it should apply to the whole or parts of the borough, and if so where.
13. Only a small percentage of respondents favoured restricting the byelaw to the town centres with only a few more specifically wishing to see parks and public open spaces included. The majority of the respondents indicated that the byelaw should be applicable throughout the borough.
14. Committee may wish to reflect on the extent to which it is feasible and practical to enforce such a byelaw through the whole of the borough. However a borough wide approach gives certainty to the byelaw and removes any scope for anomalies over its application and it is believed that DCLG may favour this approach.
15. Byelaws are normally drafted based on a model byelaw produced by Government. There is no model byelaw to prohibit spitting so it is proposed to use the model byelaw made under the Environmental Protection Act for littering offences and to prohibit "spitting in, into or from any place which is open to the air ". As there is no model byelaw available in this instance the precise wording and scope of the byelaw may be subject to further scrutiny from DCLG.

### **Enforcement of the Proposed Byelaw.**

16. This byelaw will be enforced using the Council's existing enforcement staff who currently patrol areas of the Borough to deal with a range of antisocial behaviour and enviro-crime issues.
17. This will include:  
Enforcement Officers within Environmental Protection Service,  
Area Officers within the Communities Service ;and  
The Neighbourhood Response Team within Community Safety Service

Their work in enforcing this byelaw would be alongside their existing

work which includes litter fixed penalty notice offences , fly tipping investigations, car litter reports and other waste investigations.

18. The evidence obtained by these officers [if sufficient to prove an offence] will be brought before the Magistrates' Court and on conviction an appropriate penalty will be imposed. The current enforcement arrangements around byelaws do not allow the issue of a Fixed Penalty Notice although Ministers and others have mentioned the possibility and this may be something that is introduced in the future. For the moment, the only available option to the Council is a prosecution in the Magistrates Court.

### **OPTIONS CONSIDERED**

19. The option is to either to proceed with the application or not.

### **REASONS FOR RECOMMENDED OPTION**

20. The option recommended enables the present initiative to be taken forward to proceed to formal approval by the Council of an application to introduce a byelaw to prohibit spitting.

### **IMPACT ON THE COUNCIL'S KEY PRIORITIES**

21. The impact of the introduction of a Spitting byelaw versus the Council's key priorities is as follows.

| <b>Priority Theme</b>                                 | <b>Mayor's Priorities for 2011/12</b>   | <b>Implications of this initiative</b> |
|---|---|--|
| 1. Creating a strong, connected and inclusive economy | <ul style="list-style-type: none"> <li>• Drive forward the Doncaster economy</li> <li>• Get the balance of public and private transport right</li> <li>• Promote Doncaster as a tourist destination</li> <li>• Regenerate Doncaster's town centres</li> </ul> |  |
| 2. Developing stronger communities                    | <ul style="list-style-type: none"> <li>• Encourage community harmony and cohesion. Treat people as individuals, not by reference to labels and artificial groupings</li> </ul>  |  |
| 3. Increasing and improving housing                   | <ul style="list-style-type: none"> <li>• Raise housing standards and ensure that there are enough homes to suit all requirements</li> </ul>   |  |
| 4. Protecting and improving all our children's lives  | <ul style="list-style-type: none"> <li>• Continue to improve education and skills</li> <li>• Build on a strengthening Children's Service</li> </ul>   |  |
| 5. Improving health and support for independent lives | <ul style="list-style-type: none"> <li>• Encourage attitudes of self-reliance, self-improvement and mutual respect within Doncaster communities</li> </ul>  |  |

| Priority Theme                               | Mayor's Priorities for 2011/12   | Implications of this initiative  |
|--|--|--|
| 6. Tackling crime and anti-social behaviour  | <ul style="list-style-type: none"> <li>• Reduce crime and all forms of anti-social behaviour</li> </ul>                                    | Spitting is a form of anti social behaviour and the introduction of a byelaw will promote the reduction of such behaviour. |
| 7. Creating a cleaner and better environment | <ul style="list-style-type: none"> <li>• Continue to protect the environment from developers, decay and architectural vandalism</li> </ul> |  |
| 8. Internal Transformation                   | <ul style="list-style-type: none"> <li>• Ensure local people get value for money from council services</li> </ul>                          |  |

## RISKS AND ASSUMPTIONS

22. The proposal seeks to introduce a byelaw to prohibit spitting. The byelaw will require the approval of the Secretary of State. Following a change in stance from DCLG indications are now that a byelaw to prohibit spitting may be approved. This is a recent development and we are not aware of any successful application to date. It should be noted that Enfield LBC have made an application and are currently awaiting to hear from DCLG and officers hope to update committee on the progress of this application, together with any lessons to be learnt.

## LEGAL IMPLICATIONS

23. The Council has powers to make byelaws under the Local Government Act (1972). The byelaw will require both the provisional approval of the draft byelaw by the Council and subsequent confirmation of the byelaw by the Secretary of State.

## FINANCIAL IMPLICATIONS

24. There are no financial implications arising from this decision. It is proposed that the existing Enforcement Officers, Area Officers and Neighbourhood Response Teams will absorb the work associated with this issue. There will not be any income generated for DMBC as a result of this decision as any fine income received will be retained by the Court. There will be opportunity to request that any extra costs incurred are recovered through each particular Court process.

## CONSULTATION

25. Appropriate scoping and consultation has been undertaken as identified within this report.

This report has significant implications in terms of the following:

|                               |  |                              |   |
|-------------------------------|--|------------------------------|---|
| Procurement                   |  | Crime & Disorder             | x |
| Human Resources               |  | Human Rights & Equalities    |   |
| Buildings, Land and Occupiers |  | Environment & Sustainability | x |
| ICT                           |  | Capital Programme            |   |

## **BACKGROUND PAPERS**

26 Report to the Elections and Democratic Services Committee 20.3.12

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