



DERBY CITY COUNCIL

**COUNCIL**  
**26 January 2005**

Report of the Director of Commercial Services

## **BYELAW FOR OPENING AND CLOSING OF ARBORETUM PARK**

### **RECOMMENDATION**

- 1 To approve the Byelaws set out in Appendix 2, to authorise the Director of Corporate Services and Deputy Chief Executive to fix the Council's seal to the Byelaws, to carry out all necessary procedures and, subject to no duly made objections to the byelaws being received by him, to apply for confirmation of the Byelaws to the Office of the Deputy Prime Minister, or such other Secretary of State as may at the time have responsibility for such.

### **REASONS FOR RECOMMENDATION**

- 2 Arboretum Park has been subject to major restoration which has included refurbishing listed buildings and the introduction of features such as urns and statues that are less robust than normal features in parks and which could attract anti-social behaviour when there is an absence of supervision by parks staff. Closing the historic section of the park, as shown outlined in black in Appendix 3, when there are no staff on duty will help to protect our investment in the park.

### **SUPPORTING INFORMATION**

- 3.1 In March 1997, CAG consultants undertook community consultation as part of our preparatory work for the application for grant aid from Heritage Lottery Fund. The consultation relating to the closure of the Park at night was based on consulting with selected focus groups. Based on this consultation it was concluded that most people, with the exception of younger men, would likely be in favour of the park being locked at night. In 2000 further consultation was undertaken which included workshops and a public exhibition. The exhibition was promoted in all the local media and was well attended. Representatives attended the workshop from the police who supported closing the Arboretum at night. At the public exhibition, attendees were invited to complete questionnaires. One of the questions asked if they supported locking the Arboretum at night. 99 people were in favour and 23 were against. The design for the restoration of the Park included the installation of fencing with lockable gates to enable the Park to be locked.

- 3.2 In 2004, the Arboretum Smiles Again Project undertook further consultation to determine when the Park should be locked. This involved issuing 1300 letters to homes immediately surrounding the park and all the friends group members (300). Posters were displayed in the Arboretum and in all the shops and businesses in the area. All the local Community centres, schools, religious establishments received details, along with medical centres, advisory groups and associations in the area.

The Police also received details and a press release was sent out resulting in a piece appearing in the Derby Evening Telegraph on 13 July 2004 and radio coverage by BBC Radio Derby.

The letters and posters/leaflets outlined 2 options:

Option 1 – opening times that remain the same throughout the year

8.00am – 8.00 pm

Option 2 – Summer Opening 8.00 am – 8.00 pm (April to October)

Winter Opening 8.00 am – 6.00 pm (November to March)

70 responses were received. Of these 53% voted in favour of the options presented, 4 responses were against closing the park altogether with the remaining responses having nothing to do with the opening or closing of the park.

Our intention is to implement option 2.

- 3.3 The historic section of Arboretum Park is now surrounded by walls and fencing with lockable gates. The Park Rangers will be responsible for opening and closing of the lockable gates. The area is surveyed by CCTV, which is linked to monitoring at Roman House. Notices advising the public when the park is closed will be prominently displayed. If people contravene the byelaw the police will be called and offenders will be liable on summary conviction to a fine.
- 3.4 The Arboretum Park is currently covered by Derby City Council pleasure ground byelaws that do not provide for the closure of the park. These will be unaffected.

<p><b>For more information contact:</b> John Winters e-mail <a href="mailto:John.Winters@derby.gov.uk">John.Winters@derby.gov.uk</a> <b>Background papers:</b> CCG consultation 1997, LDA consultation 2000 <b>List of appendices:</b> Appendix 1 – Implications</p>
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## Appendix 1

### IMPLICATIONS

#### Financial

- 1.1 There will be costs in advertising and making the byelaws, signs will be necessary and published copies need to be available for purchase by the Public. These costs will be contained within the budget for restoring the Arboretum.

#### Legal

- 2.1 Section 164 Public Health Act 1875 gives the Council the power to make the proposed byelaw, as the Arboretum is held and maintained by the Council under that Act.
- 2.2 Byelaws create criminal offences and as such require the approval of the appropriate Secretary of State before becoming operative.
- 2.3 The quickest process for introducing byelaws is under the 'fast track scheme'. This process is only available to a selective number of byelaws but is applicable to these proposed park byelaws. The 'fast track scheme' requires the adoption without any alteration of the model byelaw drafted by the Secretary of State.
- 2.4 Apart from being a faster process, the 'fast track scheme' is intended to leave the decision of whether a byelaw is needed and desirable to the Council proposing the byelaw. The Secretary of State generally will not interfere with the Council's decision in such cases, except in relation to legal issues or where a conflict exists with existing government guidance.
- 2.5 In deciding whether a byelaw should be introduced there must evidence of a genuine need. Usually this will arise due to an existing problem. In establishing the desirability of making the byelaw and whether there is a need the Council is expected to have carried out adequate and proper consultation.
- 2.6 Effective enforcement of the Byelaw is a relevant consideration in deciding whether to introduce a byelaw. The guidance issued by the Secretary of State advise that Byelaws restricting opening times in parks shall not be adopted unless the ground is enclosed on all sides and there are lockable gates.
- 2.7 Should Council approve adoption of the byelaw the following process will apply:
  - 2.7.1 the Byelaws are made and sealed by the Director of Corporate Services and Deputy Chief Executive and put on deposit;
  - 2.7.2 the making of the byelaws are advertised locally giving a minimum of one month for representations to be made;
  - 2.7.3 if no objections are received, then Secretary of State will in due course confirm the byelaws;

- 2.7.4 if duly made objections, namely objections received before the closing date specified in the advert, are received, then Council will be asked to consider in light of such representations whether it wishes to proceed with the confirmation process;
- 2.7.5 once confirmed, byelaws become operative one month from confirmation, unless the Secretary of State sets an alternative date.
- 2.8 The responsibility of confirmation of these byelaws currently rests with the Office of the Deputy Prime Minister.
- 2.9 The Byelaws give the Council the general power to close the park. They do not set specific times of opening and closing. The exact times of closure, under the Council's Constitution, will be for the Director of Commercial Services to determine.
- 2.10 Once operative the times of opening and closing will need to be clearly displayed on signs at all entrances to the park.
- 2.11 The fine for breaching such a byelaw is a level 2, currently set at a maximum of £500.00.

## **Personnel**

- 3.1 Monitoring when Park Rangers are not on duty will be undertaken by staff at Roman House using CCTV. The police will be called to deal with intruders.

## **Equalities impact**

- 4.1 Prior to the restoration of the Arboretum Park, people used to use the park as a shortcut. We have installed two new paths, one to the north and one to the south of the part of the park, which is to be locked at night. These paths are lit at night and covered by CCTV cameras so people can still cross the path at night but in greater safety. It also means that wheelchair users can also use this shortcut.

## **Corporate objectives**

- 5 The restoration of the park together with new paths, lighting and CCTV has created a safer and healthier environment.