

Chichester District Council

CABINET

7 April 2015

Byelaw Enforcement

1. Contacts

Cabinet Member:

Heather Caird, Leader of the Council

Tel: 01243 811667 E-mail: hcaird@chichester.gov.uk

Report Author:

David Stewart, Legal Service Manager

Tel: 01243 534663 E-mail: dstewart@chichester.gov.uk

2. Recommendation

- 2.1. That the Council be recommended to make the following addition to the powers granted to any Chief Officer and Heads of Service under the Constitution:**

“To authorise any action under Council Byelaws including prosecution.”

3. Background

- 3.1. The Council’s legal service has undertaken a review of the operation of byelaws in the District in the context of considering enforcement powers by front line officers generally as well as in a particular case.
- 3.2. Byelaws are laws created by a District or Borough Council which are enforceable only in their area. They are useful to supplement national and statutory powers of the Council to deal with relatively minor issues which may cause significant concern to a particular group in the area, or reflect local concerns not covered by national laws.
- 3.3. Byelaws follow the same rules and requirements as national statutes, and decisions whether to enforce have to be carried out in the same way as a prosecution for a planning or environmental health breach for example. Departments will adopt operational positions on particular areas of byelaw enforcement and issue advice on how byelaws are likely to be enforced by the Council. The use of Byelaw powers is discretionary to the facts of each case, and if taken to Court the powers and authority to use the Byelaw will need to be demonstrated along with the factors which the Council took into account in deciding whether or not to prosecute that individual matter. Consistency and clarity is therefore of benefit to the Council.
- 3.4. It has become clear that the authority to use local byelaws has become somewhat fragmented with different levels of authority and different procedural steps required for the various byelaws in force within the

District. This increases complexity of the legal case and might even put the ability to prosecute some cases at risk.

4. Outcomes to be achieved

- 4.1. That there is a clear delegated authority for decisions to take action, including enforcement and prosecution, under the Council's byelaws.

5. Proposal

- 5.1. That a clear and straightforward authority to use all byelaws is granted to Heads of Service under the Constitution to improve the ability of the Council to effectively enforce when necessary.

6. Alternatives that have been considered

- 6.1. Leaving the authorisation processes for byelaws as they are. This would add to the likelihood of challenge and also lead to some additional legal case preparation costs for each case.

7. Resource and legal implications

- 7.1. The cost to the Council of undertaking enforcement under the byelaws will be reduced by simpler processes. They will also be stronger from a public law perspective in that they are demonstrably clearer.

8. Consultation

- 8.1. These are administrative changes to ensure the swift and efficient use of existing powers which have already been the subject of consultation and approval by the relevant Secretary of State as required. As such, further consultation is not considered relevant.

9. Community impact and corporate risks

- 9.1. The Council has already decided certain issues have a negative community impact by introducing Byelaws to control that conduct. The introduction of simpler approval processes will ensure swifter decision making and effective local enforcement on those matters. The risk of failing to ensure these things will expose the Council to direct legal challenge and potential criticisms of poor practices.

10. Other Implications

Crime & Disorder:	None
Climate Change:	None
Human Rights and Equality Impact:	None
Safeguarding:	None

11. Background Papers

- 11.1. None