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Dear David,

Re: Description of the role of Byelaws and their use by Local Authorities

Local authorities have powers under various Acts of Parliament to make byelaws, which are essentially local laws designed to deal with local issues. The Act that the byelaw is made under, is the Act that relates to the particular area that the byelaw is meant to control.

Byelaws can be described as follows:

“Byelaws have the force of law in the area to which they apply. Byelaws are overseen by the relevant government department or confirming authority who has responsibility for the specific area. Byelaws generally require something to be done – or not to be done – in a particular location. They are accompanied by a sanction or penalty for non-observance. Offences against byelaws attract a penalty fine which can, at present, only be enforced through the Magistrates’ Courts.”

Source: www.gov.uk/guidance/local-government-legislation-byelaws

In England, most byelaws must be confirmed by the secretary of state of the relevant government department before they come into effect. The rationale for this is that byelaws create criminal offences and should therefore be subject to scrutiny by central government.

In the case of byelaws at country parks, the relevant government department is the Department for Environment, Food and Rural Affairs (DEFRA). A copy of the guidance issued by DEFRA for the making of byelaws is attached for information. The guidance makes it clear all the processes a local authority has to go through in order to have a byelaw enacted and agreed by the secretary of state.

Local authorities are given the power to make byelaws in country parks under Section 41 of the Countryside Act 1968. Under this section of the Act local councils, can enact byelaws that relate to the behaviour of the public in the countryside. These byelaws are limited to defined areas, and are made specifically to look after a particular area. Their aim is to ensure that there are measures in place to prevent anti-social behaviour in the park. This includes obliging motorists to drive on specific roads within the park and park in designated areas, and not in any area of the park they wish. The byelaws in place mean that if a motorist breaks these laws they can be penalised and the result can be a criminal conviction. The byelaws also apply to the parking fees, and if these are not paid, the penalty will result in a criminal offence being committed.

Local authorities have a responsibility to provide country parks, and to ensure that parking is provided for visitors within those parks. The provision of parking facilities was always envisaged by the government as shown by the Countryside Commission's guidance, "Policy on Country Parks and Picnic Sites", which was published in 1969, and gives a useful snapshot of the initial idea of country parks. It set out criteria for recognition as a country park, which included: being readily accessible for motor vehicles and pedestrians; providing an adequate range of facilities including, as a minimum, parking facilities, lavatories and a supervisory service. A copy of the relevant section of the document is attached for reference.

Local Authorities can levy reasonable charges for the use of facilities or services provided by them, in country parks, under Section 43(2) of the Countryside Act 1968. Subsection 43(3) provides that charges can be made for the use of parking places (www.legislation.gov.uk/ukpga/1968/41/section/43).

The authority has to assess what is reasonable and show that the aim is not to make a surplus. In order to set the charge the local authority can take into account all costs incurred in the running and maintenance of the country park. Any parking in the country parks is, therefore, implicitly covered by the byelaws and if a fee for parking is levied, then it needs to be paid, and if it is not paid, this non payment can be pursued as the byelaw has been breached. As mentioned before, the parking fee is enforceable in a magistrate's court. This differs from car parking provided by parking in commercial sites as this is based on contract law and is enforced in a civil court as a small claim.

Yours sincerely,

Mike Revis
Chair – CIPFA VAT Committee

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