

Appendix 6.3. Report to DCLG establishing a nature rights bye-law for the River Frome

REPORT

This application for the River Frome and Rodden Meadow Byelaw has been made under the Byelaws (Alternative Procedure) (England) Regulations 2015. The byelaw is made under the Open Spaces Act 1906. We attach the draft Byelaw and regulatory statement which has been published on the Frome Town Council (“FTC”) website.

1. Purpose and Need for Byelaw

1.1. Objective the Byelaw is intended to address

To improve the ecological sustainability of the River Frome and Rodden Meadow for future generations through a local level rights-based approach that seeks to address the problem of deterioration of the river ecology caused by chronic pollution and over-abstraction. To empower the FTC and the local community to tackle the problem proactively at a local level and to take responsibility and co-create solutions.

1.2. The extent of objective, including geographical extent

The byelaw extends to those parts of the River Frome (Somerset) and Rodden Meadow under the ownership or management of FTC.

The objective aims to address real, current and ongoing practices which affect the river banks in the defined area and the quality of the water or the life it supports. The river is in a poor state largely owing to impacts from agriculture (diffuse and point source pollution) and over-abstraction. There are also other issues, including barriers (weirs), sewage leaks from septic tanks and combined sewer overflows. Pollution of the River Frome is chronic and so is nuisance - which also impacts the ecology of the meadow which the council wants to protect for the health, wellbeing and amenity of future generations.

This byelaw is the result of being approached by local sustainability and conservation groups to do something that empowers people legally to take action at a local level to protect the river and meadow ecology. The FTC believes that the future sustainability of our ecology lies in reframing our relationship as part of nature and in local residents getting pro-actively involved in protecting our ecology through community ecological governance. The byelaw seeks to address these issues as well.

1.3. Measures FTC has already taken to address the objective

Rodden Meadow was purchased by FTC in order to protect its ecology for the local community. Within the constraints of its resources, FTC works closely with local sustainability and river groups.

1.4. How does the proposed byelaw fulfil the objective?

Recognising the ecosystem's rights and enabling local residents to enforce them will mean that for the first time the FTC and residents of Frome will be able to protect the river and meadow empowered at a local level by law. The main aim is to foster local responsibility. Criminal sanctions are a deterrent and only imposed if the parties concerned are unable to come up with a satisfactory solution through the stakeholder process outlined in the byelaw. The stakeholder process also involves mediation and restorative justice and is progressive in its approach to the application of law in society to foster better understanding and relationships.

While current protections are piecemeal and implementation responsibility is given to large underfunded agencies that have no knowledge of local issues or capacity to do the investigatory work to understand them in detail, this byelaw establishes a new framework to tackle the pollution through empowering the local community to take action and co-create solutions at a local level. This harnesses the energy that exists with the local community to work for a healthy ecosystem for the benefit of all and so is a more sustainable approach.

The River Frome is not classified as a Nitrate Vulnerable Zone - although the Upper Frome was classified as a Priority Catchment Area when this regime existed. There is currently no funded initiative for tackling the pollution of the River and the Meadow and no national or local legislation that empowers the FTC and the residents to take proactive action to resolve the problem at a local level.

1.5. Is this Byelaw solely intended to protect persons from the consequences of their own action?

No. It is intended to protect the ecosystems concerned for the benefit of the inhabitants of Frome, present and future, and the inhabitants of the ecosystem itself.

2. Reasonableness of Byelaw and sanctions necessary and proportionate.

The Town owes its location and existence to the River. The River and Rodden Meadow are important for recreation, including for activities taking place on the water (angling, canoeing) as well as informal recreation (e.g. walking) in the river corridor. These activities have to be balanced with the health and viability of the ecosystems concerned and the wellbeing of the non-human as well as human inhabitants of Frome.

It is important for the health, safety, wellbeing and amenity of the residents to establish good governance of the ecosystems concerned. The possibility of a criminal conviction is likely to change behaviour and encourage dialogue between the various stakeholders. Civil penalties are unlikely have such a deterrent effect.

The threat of criminal sanctions are a final resort - the byelaw aims to foster local responsibility and collaboration by setting out a process whereby stakeholders are invited in the first instance to resolve alleged breaches and co-create solutions. The process also includes a progressive model of law that uses restorative justice and mediation before criminal sanctions are imposed, promoting understanding and collaborative problem solving rather than only punitive measures.

The FTC, in consultation with relevant experts and stakeholders, believe that the sanctions are proportionate and necessary to produce the desired outcome. Existing measures have had no effect on the behaviour that causes the chronic pollution issues and do nothing to empower locals to address the issue proactively, which has led the FTC to look into making this byelaw.

2.1. Do any other enactments fulfil the purpose? If there are, why do FTC think there is a need for the byelaw?

Much ongoing chronic pollution of the river and meadow is not covered by existing legislation which only deals with direct discharge into a water course.

Non-legislative initiatives, such as Priority Catchments, are no longer in place or are poorly funded and monitored. The Upper Frome Catchment has had minimal (and now no) funding to help manage negative effects of farming and pollution connected to septic tank overflows. Adequate water abstraction regulations have not been brought forward by the government.

In general, such policy & legislation as there is for rivers and water is currently driven by the EU Water Framework Directive, which will no longer be part of UK law after Brexit. The River Frome is not a protected site at national or European level.

None of the existing legislation directly empowers communities to tackle the problem at a local level and co-create solutions appropriate to the local circumstances. No existing laws take a rights-based approach. Notwithstanding any law that does apply, the chronic pollution issue is still not being addressed and the ecological sustainability of the river and meadow continues to deteriorate.

2.2. Does the byelaw conflict with any existing enactments?

No. All existing laws would continue to be applicable as before. Empowering the FTC and Frome residents to deal with issues as they arise through the mechanism of this byelaw will be complimentary to existing legislation and support their key objectives rather than being in conflict.

2.3. Has or is FTC revoking any byelaw?

No.

2.4. Is FTC using a model byelaw?

No.

2.5. The land to which the byelaw, if made, will apply:

The byelaw extends to those parts of the River Frome (Somerset) and Rodden Meadow under the ownership or management of Frome Town Council ("FTC").

3. Consultation undertaken and the results.

The law is proposed against a widespread recognition of the importance of a healthy River and ecosystems in Frome's Neighbourhood Plan and River Corridor Strategy. The proposal has been widely discussed with relevant stakeholders over the past two years. It was formally discussed at stakeholder gatherings convened jointly by the FTC and Friends of the River Frome at the public meeting, One Planet Sunday, held in Frome, and at meetings of Friends of the River Frome and Sustainable Frome, as well as discussed informally at other Frome group meetings and at public meetings at the Town Hall.

The matter was open to formal online consultation for three months between March-May 2018. The consultation was advertised on the FTC website and through the local organisations Sustainable Frome, Friends of the River Frome and other local websites. Local disability and other special interest groups were notified and invited to participate in the consultation.

At the beginning of the consultation period, tweets were sent out advertising the bylaw consultation to @flatpackdemoc, @Ethicalution, @Campfire_Circle, @adventureFrome, @GaiaFoundation, @morethanamarket, @FairtradeFrome, @fromefm, and @NaturesRights. Separate emails were sent to FromeFrogs, Somerset Wildlife Trust and Open Storytellers.

In summary, there were 81 responses were received. 88% of respondents said they lived in Frome or visited Frome sometimes.

- 98% thought it was important to protect local ecology for present and future generations.
- 96% felt their health and happiness was connected to the health of the river and local ecosystems.
- 96% thought it was important for the local community to be empowered to protect the river and the meadow.
- 92% thought local citizens should be empowered by law at a local level.
- 94% thought the council should do more to protect endangered wildlife locally.
- 94% of respondents thought that nonhuman beings and ecosystems have a right to exist.

Supportive positive comments received were as follows:

"I wholeheartedly support this proposal."

"I wish more local councils would seek to make such by laws"

"Important work thank you"

"The "green" River Frome Corridor is critical to the encouragement and protection of biodiversity and the "Local Green Spaces" as designated must be protected at all costs from any intrusion/habitat loss arising from development. Rodden Meadow is designated LGSFR0004 but its habitat value is equally embodied in LGSFR0005 to the

south side of the River Frome which has no public access and is therefore crucial to the vast number of species of flora and fauna which currently thrive there.”

“We wholeheartedly support and commend your actions to recognise the legal rights of the river to exist, thrive and evolve. Well done!”

“A potentially very important change.”

“We must do all we can to protect our beautiful planet from any harmful non-sustainable ways”

“Nature needs legal representation as she cannot stand up for herself in court.”

“Swimming in the river Frome is one of the greatest pleasures of my life. The health of the river and the environment surrounding is vital for wildlife AND humans. We must preserve and nurture its rights to health at all cost.”

“The river is the life blood of the town and all local life, so needs to be protected and treasured!

“I thoroughly support this idea.”

“I need to read the proposed law in detail to ensure I understand fully what I am agreeing to, but if it is as it has been outlined and there are no hidden loopholes for potential damage to the environment later then I am absolutely behind it”

“No objections whatsoever”

“I support law to protect natural environment”

“I think it is vital to protect nature and the environment”

“Great work, well done for raising this point!”

“One of the reasons we chose to live here was the river and the surrounding meadows. The nature that we enjoy here is vital to our wellbeing and to protect that nature is vital to its wellbeing. We must encourage fair rights for that nature to coexist with the humans here. Too many areas are destroyed and the accountability of that destruction made in the language of progress. I want to be able to enjoy the reasons I bought property and contribute to the community to remain.”

“Littering rubbish at Rodden Meadow & River Frome .I am always picking rubbish up .I think biggest problem for wildlife”

“Fantastic initiative. I really hope we make the case for it. I'll be very proud and happy about this.”

“It is refreshing to see a consultation such as this. The River Frome is beautiful and I hope that the ecosystems in both Rodden Meadow and the river can be preserved for future generations.”

“Excellent project - please extend it to other areas!”

- 3.1. Were there any objections made in response to the consultation and what was FTC’s response to such objections.

“Yet another daft idea from a spendthrift overmanned Council!”

“Waste of time and money! Existed fine for hundreds of years.”

“I don’t disagree with the analysis of the problem but I think a byelaw is not the solution. It is just a gesture, a diversion and won’t bring any real results.”

Objections received verbally at the meetings were discussed directly in open forum and where appropriate the draft byelaw amended to take into account any valid concerns. People who voiced objections on the formal online consultation were contacted directly by the FTC or their advisors (in cases where contact details were available) and the objection was discussed individually. In most cases it involved explaining the byelaw and its objectives better and answering questions.

Due to the overwhelmingly positive consultation response in tandem with the positive opinion and recommendation of the special interest and conservation groups consulted, the FTC have decided to go ahead with the byelaw.