

Agenda item 6

For decision – Bye-law on River Frome Nature Rights

Author: Cllr Peter Macfadyen

Summary

This report recommends that a draft bye-law on rights for the River Frome and Rodden Meadow is sent to DCLG for approval.

Background

This project was first brought to the Town Matters in July 2016 and it was agreed that a draft bye-law to provide rights to the River Frome should be progressed and brought back to this committee for approval. The thinking behind this project is best described in the report to that meeting at [Appendix 6.1](#).

Last May, I updated the committee on developments.

The case for and the wording of the bye-law has been discussed with the Friends of the River Frome, Sustainable Frome and legal experts on numerous occasions over the past two years. Formal online consultation for three months early this year led to widespread support.

Following this engagement, legal experts have drafted what we believe to be a suitable bye-law at [Appendix 6.2](#). It is now proposed to send this draft bye-law, the accompanying report at [Appendix 6.3](#) and the regulatory statement at [Appendix 6.4](#) to the Department of Community and Local Government (DCLG) for their consideration.

If DCLG approve the draft bye-law, the committee can decide whether to enact it.

Recommendation

The draft bye-law, the regulatory statement and the covering report on rights for the River Frome and Rodden Meadow is sent to DCLG's bye-law team for approval.

FROME TOWN COUNCIL

Rodden Meadow and River Frome Community Ecological Governance Byelaw

GENERAL INTERPRETATION

1. In this byelaw,

“the Council” means Frome Town Council.

“the Parish” means the area within the parish of Frome.

“natural communities” includes but is not limited to the non-human inhabitants of Frome such as wildlife, flora, fauna, soil-dwelling and aquatic organisms and ecosystems.

“the River” means the whole or part of the River Frome and connected streams, tributaries, watercourses and groundwater aquifers within the boundary of the Parish.

“Rodden Meadow” means the whole or part of Rodden Meadow, a community owned Meadow in the heart of Frome bordered by the River Frome.

the “Neighbourhood Plan” means the town plan drawn up by Frome Town Council under the Localism Act following wide stakeholder and District Council consultation.

APPLICATION

2. This byelaw shall apply throughout the Parish.

PREAMBLE

3. The Council notes as follows:

Whereas the River Frome has always been central to the cultural and economic life of the Parish;

Whereas like all communities, Frome's welfare is inextricably bound up with the health and welfare of its natural ecosystems and local ecological issues cannot be separated from their broader context;

Whereas many local groups and individuals have a strong record of commitment to protecting preserving and restoring the natural environment in the Parish, including the purchase of biodiverse meadows known as Rodden Meadow by the Council on behalf of the community;

Whereas the Town Council is committed to encouraging local residents to take a proactive role in protecting local ecosystems through community ecological governance;

Whereas preserving Rodden Meadow as a place of public recreation and enjoyment has to be done in a way that respects the ecology of the River and Meadow;

Whereas a healthy and thriving water cycle is the fundament of all life and a key indicator of the overall health of local and broader ecosystems, the River continues to be seriously polluted according to the recent assessments;

Whereas the Localism Act 2011 empowers local councils to identify and protect local green spaces and encourages individuals and community groups to get involved in solving local problems;

Whereas the Frome Neighbourhood Plan identifies the need to protect and enhance the local section of the River Frome as a public amenity and local green space for recreation and biodiversity of wildlife;

Whereas a Frome Citizens' Panel report identified as a high local priority addition to the public realm which incorporate and enhance the River Frome to improve access, recreation, education and wildlife opportunities along the length of the River Frome establishing it as a linear park;

Whereas the Council is committed to implementing the River Corridor Strategy produced by the Friends of the River Frome to maximise the potential for the River to provide a wide range of amenity activities whilst improving the health and biodiversity of the River;

Whereas the Council 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;

Whereas the Open Spaces Act 1906 allows a local authority to make byelaws for the regulation of, preservation of order and prevention of nuisances within any open space in or over which they have acquired any estate, interest, or control:

SUSTAINABILITY

4. The human and natural communities of Frome have the right to access a sustainable supply of clean and unpolluted water drawn from natural water cycles.
5. The River shall have the right to exist, the right to natural water supply, the right to natural flows and sustainable recharge sufficient to protect habitat for native flora and fauna, the right to maintain the functionality of the water cycle in the quantity and quality needed to sustain and restore a thriving healthy ecosystem in all its forms, the right to flourish and thrive and the right to timely and effective restoration.
6. Rodden Meadow shall have the right to exist, thrive, regenerate, and evolve, and the right to restoration to high or good ecological status. This includes, but is not limited to, the right to provide and protect flourishing habitat for native flora and fauna.
7. The Council and Friends of the River Frome shall be joint guardians of the interests of the River and Rodden Meadow who shall be deemed to be legal persons and shall balance these interests with the health and safety of local people.
8. The Council shall ensure that the provisions of this byelaw are integrated into all relevant policy areas and that the River and Rodden Meadow are represented in decision making processes that affect them as stakeholders in their own right.
9. The River and Rodden Meadow are owed a duty of care and it shall be unlawful for any natural person, company or other legal person or government to cause any pollution or nuisance to the River or Rodden Meadow or otherwise infringe the rights recognised in this byelaw.
10. The Council shall from time to time as necessary bring in additional measures to ensure that the rights created in this byelaw are respected through use of their statutory power to promote well-being of the area and through use of private law mechanisms and policies fostering community ecological governance.

ENFORCEMENT

11. The Council, Friends of the River Frome and anyone resident in the Parish may enforce and defend these rights to protect the natural communities or natural persons of Frome, Rodden Meadow, or the River itself.

NON-ADVERSARIAL DISPUTE RESOLUTION AND RESTORATIVE JUSTICE

12. If an action is commenced, the Council must in the first instance ask the party commencing proceedings to convene a stakeholder forum within 1 month from the date of the commencement of proceedings to facilitate dialogue and co-create solutions with the parties alleged to be infringing the aforementioned rights and any other interested parties and experts all acting in good faith. A restorative justice practitioner or other suitable conflict mediation professional may be engaged to facilitate the process.
13. All parties must be given reasonable opportunity to resolve the matter in good faith with a memorandum of understanding to be concluded no later than three months from the date of the first meeting.
14. A timed action plan for remedying the breach will be detailed in a practical resolution agreement which is signed by the relevant parties.
15. If the time specified in the practical resolution agreement has elapsed and the party who commenced proceedings observes that the action steps detailed in the practical resolution agreement have not been carried out as agreed and the aforementioned rights continue to be infringed, court proceedings may be reinstated.

PENALTY

16. Any natural person, company or other legal person or government offending against the rights in this byelaw shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
17. A restoration order may also be made to restore the River and or Meadow to high or good ecological status.
18. Injunctions may also be granted as appropriate.

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 LGSFRO004 but its habitat value is equally embodied in LGSFRO005 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.

Appendix 6.4. Regulatory statement - proposed Rodden Meadow and River Frome bye-law

The statement below is based on an assessment of whether the regulatory burden imposed by the proposed byelaw is proportionate.

1. What is the objective which the proposed byelaw is seeking to secure?

To improve the ecological sustainability of the River Frome and Rodden Meadow for future generations through a rights based approach that seeks to address the chronic pollution problem and nuisance at the local level.

2. Could the objective intended be satisfactorily secured by alternative means?

No - the approach is innovative. All existing measures have failed to achieve the objective.

3. What is the impact of the proposed byelaw on all persons identified by the authority as being potentially affected by it.

The impact of the byelaw is intended to be positive on all those potentially affected. The byelaw empowers concerned people to tackle the problem at the local level by convening stakeholder forums to increase mutual understanding and co-create an action plan to resolve the chronic pollution and nuisance issues non-adversarially in the first instance. Restorative justice and mediation are part of the process if needed and criminal sanctions are a last resort. The byelaw will foster an attitude of community ecological governance by empowering all residents of Frome to protect the rights of the meadow and river ecosystems.

4. Does the proposed byelaw increase or lessen the regulatory burden on persons potentially affected by the proposed byelaw, insofar as possible expressing that increase or reduction in monetised form?

Neutral. This bylaw does not create any regulatory burden. There is no requirement for issuing licences and no agencies are created by it.

By encouraging local groups to enter into stakeholder dialogues to resolve the problem proactively at a local level there could be cost savings for the regulator and other bodies and long-term preventative cost savings in terms of cost of restoration of damaged ecosystems and loss of biodiversity. The byelaw will also encourage a change in mindset towards the river and meadow and foster community ecological governance - communities taking greater responsibility for protecting ecology locally. Criminal sanctions are a last resort and a means of fostering collaborative problem solving. This is cheaper and more sustainable than adversarial means or persuading overburdened and underfunded agencies to take action on our behalf.

1. For further detailed information, Friends of the River Frome have done extensive research on the subject. Frome Town Council have consulted extensively with them and are satisfied that all existing measures have failed.

5. How these alternative means and the proposed byelaw compare with carrying out no further action?

If no action is taken the problem persists and gets progressively worse. The people who will suffer the most are the human and non-human inhabitants of Frome because the health of the river and meadow ecology are interlinked with the health and well-being of present and future generations.

1. For further detailed information, Friends of the River Frome have done extensive research on the subject. Frome Town Council have consulted extensively with them and are satisfied that all existing measures have failed.

Agenda item 6

For discussion and decision - Establishing a nature rights bye law for the River Frome

Author: Paul Wynne, Town Clerk and Sustainable Frome

Summary

Sustainable Frome has requested the Council make a new type of bye law which recognises the River Frome as a subject of the legal system, capable of bearing rights in the same manner as humans and companies. This report has been drafted by them and the recommendation from the Town Clerk is that FTC work with Sustainable Frome to develop the idea with a view to establishing a nature rights bye-law.

Benefits of nature rights:

- Local people are directly empowered by the law to protect their local environment, in this case the River Frome and its tributaries. Waiting for central government agencies to act to protect the environment is a top down approach which encourages passivity and ends in frustration.
- Rights of nature shifts focus away from the assertion of property rights and planning court technicalities towards solutions for the benefit of all. The current legal system is balanced in favour of the destruction of nature.
- It is the first step to establishing a holistic, ecological and balanced structure for law. By granting rights to nature, humans and companies are encouraged to relate to the nature in a way which recognises how a healthy and thriving nature benefits everyone. Rights of nature is a paradigm shift and not merely another environmental regulation.

Key elements of a nature rights bye-law for the River Frome:

- The River is granted river appropriate rights. These rights stem from the function of rivers within the wider whole of nature. They express the conditions necessary for a thriving river.
- The River, local people and the Council are granted the power to enforce these rights on behalf of the River. Anyone trying to defend nature currently has to show a sufficient (usually property based) interest in order to bring a case. This is a way of shutting out discussion of environmental concerns.
- The Rivers rights are not subordinated to the rights and interests of companies or natural persons, whose property claims must respect the rights of the River.
- These rights have been granted by many municipalities in the USA and are forming the basis for community legal actions in opposition to destructive mining interests. There are other precedents from around the world but not yet in the UK.

Steps to making a nature rights bye-law:

- Approve a River Frome nature rights bye-law drafted with help from Rights of Nature (Europe). Sustainable Frome have already asked for this.
- Adopt the bye-law under the ordinary procedure for agreeing public nuisance bye-laws under general powers contained in Local Government Act 1972.
- Adopted bye-law new bye-law advertised in a local paper, followed by submission to the Department for Communities and Local Government for approval.

Recommendation from the Town Clerk

FTC has created bye-laws for a small number of offences in the past, most recently related to open spaces and dogs. If the process that was used is similar to that proposed by Sustainable Frome it is cumbersome but easily achievable.

It is recommended that the proposal is explored in detail with Sustainable Frome and, if all goes well, progress to the stage where a draft bye-law is brought back to a suitable Council meeting for approval.