



**REPORTS FOR DECISION BY THE
CABINET MEMBER FOR REGENERATION**

Date Issued: 03 February 2011

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Agenda Item 1

MAIDSTONE BOROUGH COUNCIL

CABINET MEMBER FOR REGENERATION

REPORT OF HEAD OF SPATIAL PLANNING

Report prepared by Deanne Cunningham

Date Issued: 3 February 2011

1. BOXLEY WARREN LNR BYELAWS

1.1 Key Issue for Decision

1.1.1 To consider the draft byelaws for the Boxley Warren Local Nature Reserve (LNR) which have been given provisional approval by the Secretary of State and are attached at **Appendix A** to this report.

1.2 Recommendation of Head of Spatial Planning

1.2.1 That the Cabinet Member for Regeneration:-

1. Endorses the byelaws for the Boxley Warren LNR, attached at **Appendix A** to this report.
2. Recommends to Council that it:-
 - i. resolves to adopt the byelaws
 - ii. gives delegated authority for the Head of Legal Services to seal and confirm the byelaws following completion of the necessary legal process including the placing of an advertisement in the local newspaper.

1.3 Reasons for Recommendation

1.3.1 Considerations

1.3.2 Boxley Warren forms part of the Wouldham to Detling Escarpment Site of Special Scientific Interest (SSSI), which extends for 10km along the chalk scarp of the North Downs east of the River Medway.

1.3.3 It was originally notified in 1951 under the National Parks and Access to the Countryside Act 1949 and subsequently re-notified under the Wildlife and Countryside Act 1981 in 1990. The SSSI is of special interest for its full range of downland habitats, supporting a great diversity of flora and fauna with many rare species, including the

nationally rare Box tree. The woodland part of the site is also situated within the North Downs Woods Special Area for Conservation (SAC), supporting two habitats listed under Annex 1 of the EC Habitats Directive 92/43/EEC, Yew woodland and Orchid-rich chalk grassland.

- 1.3.4 The site was listed on a European Register in 2001 and is part of a network of the most important nature conservation sites in Europe known as Natura 2000. Accessible from the North Downs Way above the escarpment and the Pilgrims Way at the bottom, Boxley Warren is an integral part of the Kent Downs Area of Outstanding Natural Beauty and a major landscape feature of the escarpment above Maidstone.
- 1.3.5 A plan of the area is attached at **Appendix B** to this report. The western boundary follows the district and ownership boundary but is not clearly defined on the ground by a physical feature such as a footpath.
- 1.3.6 In April 2005, the then Cabinet Member for Regeneration considered a report on the creation of the LNR at Boxley Warren. He authorised the Council to secure its provision, enter into a Land Management Agreement with the landowners, acquire planning permission and make a section 19 Declaration confirming Boxley Warren as a LNR. Planning permission for change of use of the site to a nature reserve was granted on 13 December 2007.
- 1.3.7 The Cabinet Member considered a further report in January 2008 and agreed to declare Boxley Warren as a LNR. He also agreed that an Advisory Committee be created with responsibility for managing the site (which currently meets at least every three months) and that, after declaration, officers procure byelaws from the Secretary of State.
- 1.3.8 The Land Management Agreement was completed on 15 February 2008 for a 21 year term and the section 19 Declaration was made on 27 February 2008. Since then officers have been negotiating out the contents of the byelaws with DEFRA, which department now agrees the contents attached at **Appendix A**.

1.4 Alternative Action and why not Recommended

- 1.4.1 It is recommended the byelaws be enacted as they will address behaviour within the Boxley Warren site which causes a nuisance or danger to others, such as flytipping and trail bike riding. If these restrictions are not put in place, the anti-social activities that the Boxley Warren LNR Advisory Committee is seeking to control could increase, potentially leading to the deterioration of this important landscape.

1.5 Impact on Corporate Objectives

1.5.1 Confirmation of the proposed byelaws will assist in meeting the Council's objectives for reducing crime, improving confidence and safety and for ensuring environmental excellence and dealing with climate change.

1.6 Risk Management

1.6.1 There are no risks which are likely to arise as a result of this decision.

1.7 Other Implications

1.7.1

1.	Financial	X
2.	Staffing	X
3.	Legal	X
4.	Equality Impact Needs Assessment	
5.	Environmental/Sustainable Development	X
6.	Community Safety	X
7.	Human Rights Act	
8.	Procurement	
9.	Asset Management	

1.7.2 Financial

If the Council has sufficient evidence of an offence and the identity of the offender, then prosecution proceedings could be commenced in the Magistrates Court. The maximum fine on conviction would be £500. The Legal Officer's expenses would be £200, possibly recoverable from the defendant. Other expenses incurred in gathering evidence are difficult to estimate but may also be recoverable from the defendant. However, all costs would have to be proportionate to the fine and, from past experience, it is highly unlikely that any costs award would ever exceed the amount of fine.

There are, however, currently no identified budgets within the business unit for these purposes.

1.7.3 Staffing

Staffing implications would only arise in relation to prosecutions for breaches of byelaws on a reactive basis. However, if there was a significant problem support would be provided by Regulatory Services.

1.7.4 Legal

Future breaches of the LNR bye-laws may result in the Council commencing prosecution proceedings.

1.7.5 Environmental/Sustainable Development

The main objective for the making of byelaws for Boxley Warren LNR is to help secure its long term future for public enjoyment and to optimise the site's habitat value.

1.7.6 Community Safety

The Management Plan includes an objective to maintain and enhance the current level of control of inappropriate access and misuse in all areas which will obviously help improve public safety generally.

1.8 Relevant Documents

1.8.1 Appendices

Appendix A: Copy of draft byelaws given provisional approval by the Secretary of State

Appendix B: Plan of Boxley Warren LNR

1.8.2 Background Documents

Legal file reference: H626

Report to Cabinet Member for Regeneration, 17 January 2008:
Boxley Warren Local Nature Reserve (file reference: 406/106/10A)

Report to Cabinet Member for Regeneration, 18 April 2005: Creation of
Boxley Warren Local Nature Reserve (file reference: 406/106/10A)

IS THIS A KEY DECISION REPORT?

Yes

No

If yes, when did it first appear in the Forward Plan?

.....

This is a Key Decision because:

.....

Wards/Parishes affected:

.....

How to Comment

Should you have any comments on the issue that is being considered please contact either the relevant Officer or the Member of the Executive who will be taking the decision.

Councillor Malcolm Greer

Cabinet Member for Regeneration
Telephone: 01634 862876
E-mail: malcolmgreer@maidstone.gov.uk

Deanne Cunningham

Team Leader, Heritage, Landscape and Design
Telephone: 01622 602721
E-mail: deannecunningham@maidstone.gov.uk



BYELAWS

RELATING TO

BOXLEY WARREN

LOCAL NATURE RESERVE

DATED: [TO BE CONFIRMED]

BOXLEY WARREN LOCAL NATURE RESERVE

The MAIDSTONE BOROUGH COUNCIL in exercise of the powers conferred upon it by sections 20¹, 21(4)² and 106³ of the National Parks and Access to the Countryside Act 1949 and in accordance with section 236(4) of the Local Government Act 1972 and the Environmental Protection Act 1990 hereby make the following byelaws for the protection of the Local Nature Reserve at Boxley Warren, Boxley, Maidstone, Kent in the Parish of Boxley in the County of Kent.

In these byelaws:

- 1(a) The "Reserve" shall mean the pieces or parcels of land containing in the whole 85 hectares or thereabouts and situated in the Parish of Boxley in the County of Kent declared to be managed as a Local Nature Reserve by the Declaration (Ref: No. 1 Declaration of 2008) dated 27 February 2008 made by the Maidstone Borough Council in pursuance of section 19 of the National Parks and Access to the Countryside Act 1949 and all other powers aforesaid, and the Reserve is for the purpose of identification shown as nearly as may be on the map annexed to these byelaws and thereon edged in red;
- 1(b) "The Council" shall mean the Maidstone Borough Council; and
- 1(c) "Firearm" shall have the same meaning as in Section 57 of the Firearms Act 1968.
- 1(d) Within the Reserve the following acts are hereby prohibited except insofar as they may be authorised by a permit issued by the Council in accordance with Byelaw 4, or as necessary to the proper execution of his or her duty by an officer of the Council or by any person, or servant of any person, employed or authorised by the Council.

¹ Section 20 was amended by section 109 of and paragraph 28 of Schedule 4 to the Telecommunications Act 1984 (c. 12); section 190 of and paragraph 13 of Schedule 25 to the Water Act 1989 (c. 15); section 406(1) of and paragraph 20(1) and (2)(a) to (c) of Schedule 17 to the Communications Act 2003 (c. 21); and section 105(1) of and paragraph 15(d) of Part 1 of Schedule 11 to the Natural Environment and Rural Communities Act 2006 (c. 16)

² Section 21(4) was amended by section 105(1) of and paragraph 19 of Part 1 of Schedule 11 to the Natural Environment and Rural Communities Act 2006

³ Section 106(1) was amended by section 132 of and paragraph 1(5) of Schedule 9 to the Environmental Protection Act 1990 (c. xx); and paragraph 15(h) of Part 1 of Schedule 11 to the Natural Environment and Rural Communities Act 2006

2. RESTRICTION OF ACCESS

- 2(i) Entering at any time those parts of the Reserve where notice to keep out (with or without notice) has been posted by order of the Council;

Damage To Or Disturbance Of Things In The Reserve

- 2(ii) Spreading or using any net, or setting or using any lamp or other instrument or snare or lure, for the taking injury or destruction of any living creature;
- 2(iii) Taking, molesting or intentionally disturbing, injuring or killing any living creature;
- 2(iv) Taking or intentionally disturbing or destroying the eggs, larvae, pupae or other immature stages, or the place used for the shelter or protection of any living creature;
- 2(v) Intentionally removing or displacing any tree, shrub, plant, fungus or part thereof, or any unfashioned mineral thing including water;
- 2(vi) Climbing or ascending any tree or climbing or placing a ladder or steps against any tree;

Bringing Animals Into The Reserve

- 2(vii) Intentionally bringing, or permitting to be brought, into the Reserve any living creature, or the egg, of any living creature, or any plant, or any seed or any other part of any plant, in such circumstances that it is likely that such creature or plant will reproduce or propagate itself, or such egg will hatch, or such seed will germinate;
- 2(viii) Bringing into, or permitting to remain within, the Reserve any dog unless it is kept either on a lead or under proper control, or any other animal unless it is kept under proper control, and is prevented from worrying or disturbing any animal or bird;
- 2(ix) Turning out any animal or poultry to feed or graze;
- 2(x) Bringing, or permitting to be brought, into the Reserve, except along designated rights of way, any horse, pony or beast of draught or burden;

Areas Of Water

- 2(xi) Committing any act which pollutes or is likely to cause pollution of any water;
- 2(xii) Obstructing the flow of any drain or watercourse;

Use Of Vehicles

- 2(xiii) Driving, riding, propelling or leaving any mechanically propelled vehicle (including hovercraft) elsewhere than on a highway or road, or in a place indicated by a notice as being available for the purpose;
- 2(xiv) Launching or landing, except in case of emergency, any aircraft, including hang glider, motorised glider or microlite craft;
- 2(xv) Operating any aircraft, including hang glider, motorised glider or microlite craft, at such a height that persons on the ground or in buildings maybe inconvenienced or annoyed or animals may be disturbed;

Use Of Certain Equipment

- 2(xvi) Using any camera or any apparatus for the transmission, reception, reproduction, or amplification of sound, speech or images by electrical or mechanical means, except apparatus designed and used as an aid to defective hearing and apparatus used in a vehicle so as not to produce sound audible by a person outside the vehicle;
- 2(xvii) Using any device designed or adapted for detecting or locating any metal or mineral;

Use Of Firearms Etc.

- 2(xviii) Being in possession of a firearm, with ammunition suitable for use in that firearm, or discharging a firearm or lighting a firearm;
- 2(xix) Projecting any missile manually or by artificial means (including any means of crossbow or catapult);

General Prohibitions

- 2(xx) Erecting, occupying or using any tent, shed, caravan or other structure for the purpose of camping;

- 2(xxi) Flying any kite or model aircraft;
- 2(xxii) Erecting any post, rail, fence, pole, stand, building or other structure;
- 2(xxiii) Neglecting to shut any gate or to fasten it if any means of doing so are provided;
- 2(xxiv) Posting or placing any notice or advertisement;
- 2(xxv) Selling or offering, or exposing for sale, or letting for hire or offering or exposing for letting for hire, any commodity or article, or selling or offering for sale any service;
- 2(xxvi) Engaging in any activity which is causing or likely to cause a disturbance or holding any show, performance, public meeting, exhibition or sports or the playing of any organised games;
- 2(xxvii) Intentionally or recklessly removing or displacing, any notice exhibited by order of the Council, apparatus, wall, boundary bank, fence, barrier, railing, post or hide;
- 2(xxviii) Roller skating, skiing, tobogganing or skate-boarding;
- 2(xxix) Lighting of any fire, stove, heater or other appliance capable of causing a fire;
- 2(xxx) Letting fall or throwing any lighted match or lighted substance in a manner likely to cause a fire;
- 2(xxxi) Intentionally leaving items in a place other than a receptacle provided by the Council for deposit of litter or refuse;

3. INTERFERENCE WITH DULY AUTHORISED OFFICER

- 3(i) Intentionally obstructing an officer of the Council or any person, or the servant of any person, employed or authorised by the Council in the execution of any works including research or scientific work connected with the laying out, maintenance or management of the Reserve.

4. PERMITS

- 4(i) The Council may issue permits authorising any person to do any act or class of acts within the Reserve or any part thereof which would otherwise be unlawful under these byelaws.

- 4(ii) Any such permit shall be issued subject to the following conditions:
- (a) That it must be carried whenever a visit is made to the reserve, and produced for inspection when required by a person duly authorised by the Council in that behalf; and
 - (b) That it may be revoked by the Council at any time.

5. BYELAWS

- 5(i) These byelaws shall not operate so as to interfere with the exercise:
- 5(ii) By any person of:
- (a) a right vested in him or her as owner, lessee or occupier of land in the Reserve;
 - (b) any easement or profit a prendre of which he is entitled; and
 - (c) any public right of way;
- 5(iii) Of any function of a local authority, statutory undertaker or water undertaking; and
- 5(iv) By a constable or a member of the armed forces or of any fire brigade or ambulance service of the performance of his or her duty.

6. PENALTY

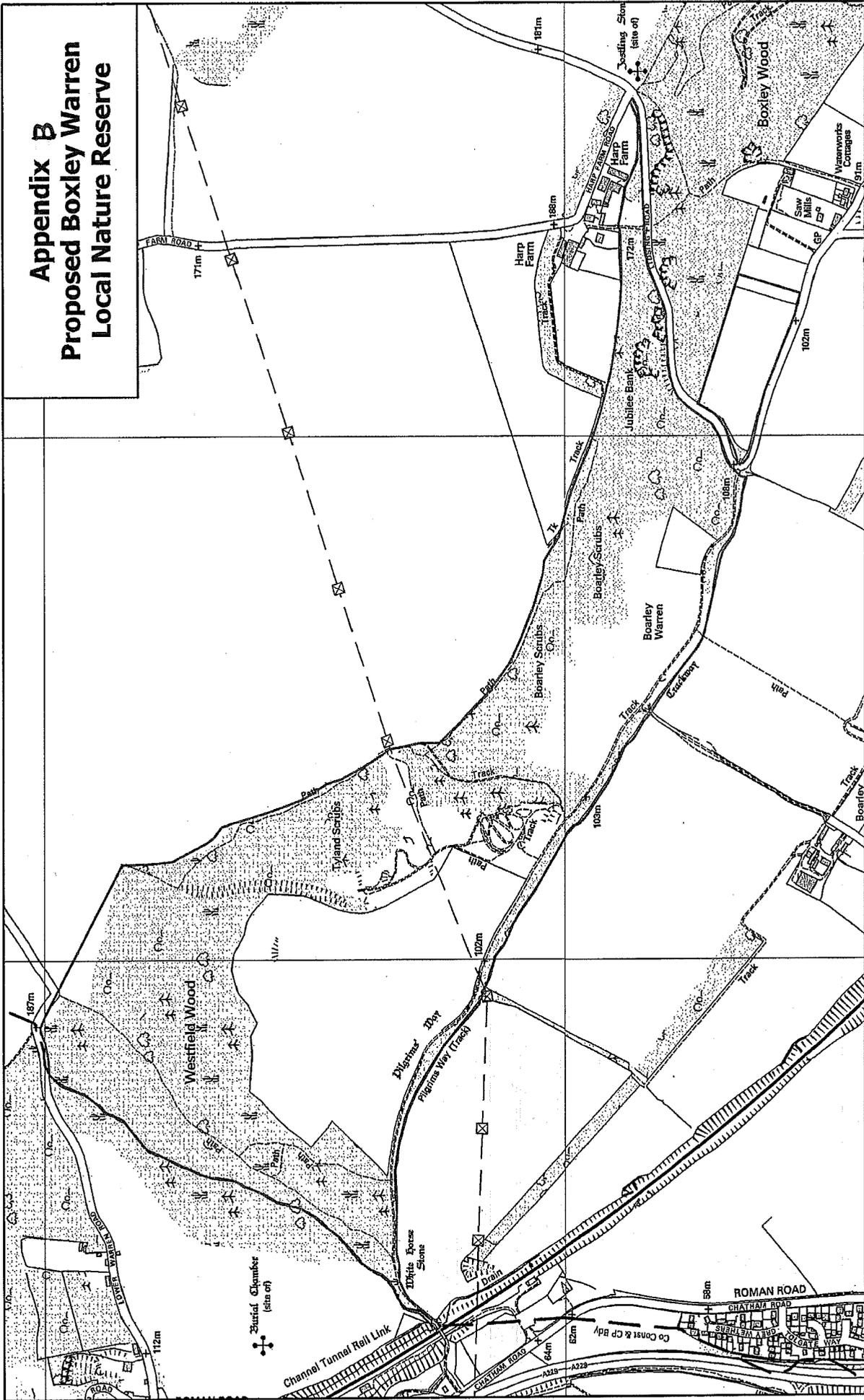
- 6(i) Any person who offends against any of these byelaws shall be liable on summary conviction to a **level two** fine as laid down in the Criminal Justice Act 1982 and in the case of a continuing offence to a further fine for each day during which the offence continues after the said conviction.

Dated: [to be confirmed]

The Common Seal of
MAIDSTONE BOROUGH
COUNCIL was hereunto
Affixed in the presence of:

Solicitor – Authorised Signatory

**Appendix B
Proposed Boxley Warren
Local Nature Reserve**



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THE MAIDSTONE BOROUGH COUNCIL