

Report to Council

29 JUNE 2011

LEADER

*Councillor Stephen
Greenhalgh*

***Cabinet Member for
Residents Services***

Councillor Greg Smith

**NEW BYELAWS FOR PLEASURE GROUNDS,
PUBLIC WALKS AND OPEN SPACES**

All Wards

The Council has been seeking to update its open space byelaws. The Office of the Deputy Prime Minister (now Department of Communities and Local Government) has recommended that the Council should do so in line with that Department's set of Model Byelaws for Parks and Open Spaces.

The report seeks a resolution by Full Council to adopt a new set of byelaws based on the 'Model Set 2'.

CONTRIBUTORS

RSD - Parks and
Culture
FCS- Legal Services

RECOMMENDATIONS:

That Council resolves to:

- (1) adopt the new byelaws for pleasure grounds, public walks and open spaces (as set out in Appendix 1);
- (2) authorise the Assistant Director (Legal and Democratic Services) to apply for confirmation of the byelaws by the Secretary of State upon the expiry of at least one month following the publication of a notice in a local newspaper of the Council's intention to do so; and
- (3) upon the new byelaws coming into effect to revoke the existing byelaws made by the Council on 20 April 2000 and confirmed by the Secretary of State for the Home Office on 29 June 2000.

1. BACKGROUND

- 1.1 The current set of general byelaws for the borough's parks and open spaces were approved and adopted by the Council in 2000. However, due to the unenforceable nature of many of the byelaws, and also omissions of a number of sites, the Council's current byelaws are becoming increasingly more obsolete and unenforceable.
- 1.2 Since 2004 the Council has been reviewing the appropriateness of other byelaws and in 2005 following internal consultation with community safety, legal and environment services it was concluded that the Office of the Deputy Prime Minister (ODPM) (now the Department of Communities and Local Government (DCLG)) model set 2 (relating to Parks and Open Spaces) would meet the needs of the Council and address the local issues in the borough.
- 1.3 These draft byelaws were the subject of a public consultation in 2010. The draft byelaws were taken to the full Council in January 2011 for a resolution to apply to the SoS for provisional approval. Approval has now been obtained from the SoS subject to the deletion of one byelaw, details for which see paragraph 6.6 below. A decision by full Council is now required to adopt the byelaws in their current form and to apply for confirmation by the SoS after the statutory one month period of advertising of the Council's intention to do so.

2. PROCEDURE FOR ADOPTING MODEL SET OF BYELAWS

- 2.1 The Local Government White Paper "Strong and Prosperous Communities" (October 2006), states that it is the Government's intention to end the Secretary of State's role in confirming byelaws. In the meantime, however, progress on amending or approving new byelaws still remains with the Secretary of State.
- 2.2 Therefore, until authority has been passed to local councils the following procedure for approval applies:
 - Council amends model set byelaws where appropriate with consent from DCLG,
 - Council to consult relevant impacted stakeholders to evidence the need for proposed byelaws to be adopted
 - Full Council resolves to approve draft byelaws and apply for provisional approval from the Secretary of State for Communities and Local Government
 - Council seeks provisional approval from the Secretary of State (SOS) for Communities and Local Government
 - Following approval from SOS, a Full Council is required to seek a resolution to adopt the byelaws, under common seal
 - A formal notice will then be advertised for at least another month. A copy of the byelaws must be held on deposit at the offices of the Council for inspection by the public.
 - Following this deposit period an application to DCLG is forwarded with the sealed byelaws for confirmation. The Secretary of State will then fix a date when the byelaws come into force.

Throughout the process the DCLG does expect that the Council continues to consult its residents and objections received by them will be sent to officers for comment.

Appropriate signage will be commissioned at all sites to enable enforcement of byelaws.

3. SCOPE OF DCLG MODEL BYELAWS

- 3.1 The model byelaws can only be applied to parks and open spaces managed by the local authority and disused burial grounds. This therefore excludes active cemeteries (Fulham Cemetery) as well as local nature reserves (e.g. part of Wormwood Scrubs is a designated Local Nature Reserve).
- 3.2 Specific reference to dog related issues is not included in the byelaws. This is because the byelaws should not replicate existing primary legislations such as Dog Control Orders or Environmental Protection Act which already provide sufficient legislation for addressing many dog related issues.
- 3.3 The DCLG model set byelaws are restrictive regarding the extent of amendments possible with all changes requiring approval by DCLG. If extensive changes are made it is most likely that these would not be accommodated by DCLG and a more bespoke set of byelaws would need to be developed.
- 3.4 The Local Government and Public Involvement in Health Act 2007 introduced new provisions in the Local Government Act 1972 in respect of byelaws. One of those related to the issue of Fixed Penalty Notices (FPNs). The provision enables the Council to issue FPNs in respect of offences under certain byelaws prescribed by regulations made by the Secretary of State. The provision (section 130 of the 2007 Act) came into force on 27 January 2010. The regulations are yet to be made and until they are, FPNs cannot be issued by authorised Council officers or police officers for offences against byelaws

4. WHY USE MODEL BYELAWS

- 4.1 The process of adopting model byelaws is effectively a 'fast track' approval process that minimises the potential challenges that bespoke byelaws may raise. The legality and applicability of each byelaw have already been reviewed by DCLG.
- 4.2 Where there are specific local issues, Local Authorities should consider devising more locally specific byelaws. It should be noted that the current Model Set of Byelaws is a product of national consultation and has taken into account many of the issues councils had difficulty addressing that fall outside primary legislation. This has resulted in the extension of the byelaws from No.33 to 47.

5. PROPOSED CHANGES AND ADDITIONS

5.1 The proposed changes to the byelaws may have an impact on how the public are able to use the sites covered under the proposed new byelaws. The following details the key changes proposed:

- **New Byelaws in relation to the protection of wildlife, gates, camping, fires, missiles, interference with life-saving equipment, horses, overnight parking, cricket, archery, golf, bathing, ice skating, model boats, fishing, kites, metal detectors, and public shows and performances (respectively byelaws numbered 4 -8, 9, 10, 11, 12, 13, 15, 18, 26, 27, 28, 30, 31, 32, 33, 41, 42, and 43)**
- **Updated list of areas to which the new byelaws apply (Schedule 1):** As per the existing byelaws, plus inclusion of the following additional open spaces to be covered by new byelaws:
Bayonne Road, Godolphin Road, Loris Gardens, Mitre Bridge Public Open Space, Norland North Park, Old Oak Sidings Birch Woodland and White City play area.
- **Updated list of areas to which byelaw number 3 in respect of opening times apply (Schedule 2 Part 1. Opening Times for Parks):**, as per the existing byelaws, plus additional open spaces: All Saints' Church Gardens, Brook Green children's play area, Maxwell Road play area, Norland North Park, Ravenscourt Park, St Paul's Church (Hammersmith Road) and White City play area.
- **New Schedule 2 Part 2. No Ball Games:** This refers to Byelaw 23 (1). Although ball games were prohibited in existing byelaws for certain sites, there is a further additional open space, Frank Banfield Park, where balls are to be prohibited in the proposed byelaw.
- **Updating byelaws (numbered 35-37) in respect of model aircraft and New Schedule 2 Part 3. Model aircraft:** a more restrictive regime of flying hours is now proposed for Wormwood Scrubs to reduce noise pollution at that sensitive time for local residents and to reduce the risks to the adjacent football pitches.
- **New Schedule 3: This refers to Byelaw 25,** updates rules for Ball games in designated areas.

6. CONSULTATION AND REVIEWS

- 6.1 The adoption of the model byelaws has been subject of a number of reviews since 2004. The Cleaner and Greener Scrutiny Committee meeting on 4 September 2006 resolved that Full Council should approve the adoption of the proposed byelaws subject to a number of recommendations that have now been incorporated into the byelaws, where permissible by DCLG.
- 6.2 Parks Development has been working closely with Parks Constabulary section to ensure the appropriateness of the new model byelaws.

6.3 The Council has consulted key park stakeholders and conducted a borough wide public consultation in the Autumn of 2010. The following main concerns were raised:

- Flying kites and land kite boarding – new byelaws considered too restrictive on types of flying aircraft or kites permitted and the hours of flying allowed – Proposed byelaws are more comprehensive to include previously excluded airborne objects and to limit their risk to the public.
- Absence of Dog controls and management in new byelaws – Proposed byelaws does not duplicate primary legislation which already provide measures for addressing dog related issues.
- Cycling in parks remains contentious as to whether more or less restrictions should apply – The proposed byelaws only permit cycling in designated areas and routes but are flexible to be able to change them according to need and circumstances according to designation.

6.4 A summary of all the main comments received are provided in Appendix 2 and the Council's response to issues raised and actions to resolve them where possible.

6.5 Consent has also been acquired from land owners for sites managed by the Council as part of the consultation process.

6.6 In March 2011, the Council submitted its application to the DCLG for provisional approval of its draft set of byelaws. Provisional approval has now been obtained, subject to the deletion of one byelaw which related to the fouling or polluting of waterways. The DCLG has stated that this byelaw is not necessary as it duplicates existing legislation (The Water Act 2003), something which byelaws must not do. This requirement is now reflected in the present set of byelaws to be adopted by the Council.

7. COMMENTS OF THE CLEANER AND GREENER SCRUTINY COMMITTEE

7.1 The Cleaner and Greener Scrutiny Committee at its meeting on 4 September 2006 resolved that Council be recommended to approve the proposed byelaws subject to:

- Standardising the times that model aircraft may be flown on a small part of Wormwood Scrubs;
- The specified times for flying model aircraft being strongly enforced;
- Due consideration being given to the noise pollution impact on the areas for flying relative to local housing;
- Consideration being given to encouraging club involvement in flying model aircraft on Wormwood Scrubs to help improve management;
- Brook Green listed in Schedule 1 ('Grounds to which byelaws apply generally') also includes Little Brook Green.

7.2 The current byelaws retain the permitted hours for flying model aircraft on part of Wormwood Scrubs. There are potential conflicts with other uses on the Scrubs (especially football and training by the Ministry of Defence's Kings Troop). However, Royal Society Of Prevention of Accidents, who conducted a risk

assessment, recommended that the schedule of permitted hours is satisfactory and also proposed that only members of flying clubs authorised by the Council and with adequate public liability insurance should be permitted to fly planes. These additional conditions have been reviewed and the Council has begun discussion to establish a flying club on the scrubs but consider that membership of the club is not mandatory

8. RISK MANAGEMENT IMPLICATIONS

- 8.1 The adoption of the byelaws will reduce many of the risks involved in managing and enforcing anti-social behaviour (ASB) and crime in parks and open spaces. Clearer and enforceable restrictions can be applied which have developed through national consultation. It should be recognised that the model byelaws does not address all present or foreseeable issues relating to ASB. These will need to be addressed on a local basis and proportionately within either existing legal framework or by locally developed byelaws where necessary.

9. CONCLUSION

- 9.1 The current byelaws are in need of an update: Primary legislation has changed making some of the byelaws obsolete, a number of new sites are now managed by the Council, and they also do not provide adequate provisions to safeguard our public open spaces and users. Although the model set byelaws may not comprehensively address all issues they provide the 'best fit' solution.
- 9.2 The model byelaws takes into consideration recent changes to primary legislation that affect environmental protection and other related open space regulatory matters. It provides a practical set of governance which all agencies tasked with enforcing them can apply. Therefore it is recommended that the new byelaws are approved and adopted by Full Council.

10. COMMENTS OF THE DIRECTOR OF FINANCE AND CORPORATE SERVICES

- 10.1 Should the proposals outlined in this report be agreed, appropriate signage will need to be commissioned at all sites to enable enforcement of these byelaws. The cost of replacing and installing the byelaws signage has been included in the parks signage replacement project totalling £136k across all parks in the borough. This has been fully provided for within the overall existing parks capital programme, for which there is £0.5m funding available for each of the years 2010/11 – 2014/15.
- 10.2 No other financial liability is anticipated.

11. COMMENTS OF THE ASSISTANT DIRECTOR (LEGAL AND DEMOCRATIC SERVICES)

- 11.1. The decision to adopt new and revoke existing byelaws must be made by full Council. The procedure is set out at paragraph 2.2 of the report. Provisional approval by the Secretary of State for the Department of Communities and Local

Government has been sought and obtained. The Council now needs to make a resolution to adopt the byelaws before the Council can apply to the Secretary of State for confirmation.

- 11.2. The Council is empowered to make these byelaws for the regulation of and admission to the open spaces and burial grounds and for the preservation of order and prevention of nuisances. Government guidance advises that byelaws should only be made to address an existing problem.

LOCAL GOVERNMENT ACT 2000
LIST OF BACKGROUND PAPERS

No.	Description of Background Papers	Name/Ext. of Holder of File/Copy	Department/ Location
1.	LBHF Model Pleasure ground, Public Walks, and open spaces byelaws	Paul Bassi xtn 2599	Parks and Culture

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