

Committee: General Purposes Committee	Date: 13 th October 2011	Classification: Unrestricted	Report No:	Agenda Item:
Report of: Corporate Director Communities, Localities and Culture: Stephen Halsey		Title: New Byelaws for Parks and Open Spaces		
Originating officer: Heather Bonfield Head of Culture, Learning and Leisure, Communities Localities and Culture		Wards Affected: All		

1. SUMMARY

- 1.1 Byelaws are local laws designed to address potential problem behaviours in a way that complements rather than duplicates existing legislation. The Existing Byelaws relating to Parks and Open Spaces date back to the early 20th century and now require updating in order to cover modern activities and offences, and clear up any inconsistencies arising from wording.
- 1.2 The Council's constitution requires that the General Purposes Committee (GPC) recommends to Full Council any proposed changes to the Byelaws. At a previous meeting, GPC deferred a decision, asking officers to consult with the Mayor and his Cabinet. These discussions are reflected in this paper.
- 1.3 Officers have developed a set of proposed New Byelaws for the borough, based on Model Byelaws published by the Department for Communities and Local Government (DCLG). It is felt that these New Byelaws will improve understanding of their aims and help communication regarding acceptable behaviour in our parks, ensuring that residents and visitors are able to fully enjoy our parks and open spaces.

2. RECOMMENDATIONS

- 2.1 General Purposes Committee is asked to

Recommend to Full Council that:

- 2.1.1 New Byelaws for the borough's Parks and Open Spaces be made as shown in Appendix 1 ('New Byelaws'), and the Existing Byelaws are revoked once the New Byelaws are confirmed.
- 2.1.2 The New Byelaws are applied to the parks and open space areas listed within Schedule 1 & 2 contained within Appendix 1 of this report.

Note that:

- 2.1.3 There are a range of issues and offences already covered by primary legislation which are therefore excluded from the New Byelaws (as outlined in Appendix 3).
- 2.1.4 The New Byelaws will need to be approved by the Secretary of State, so officers are in ongoing discussions with DCLG on their suitability. Some changes have been made to the DCLG's Model Byelaws, as set out in paragraphs 4.2.6 to 4.2.9 of the report. Should DCLG indicate that these changes might jeopardise approval by the Secretary of State, officers will amend the New Byelaws as appropriate, prior to submission to Full Council.

3. BACKGROUND

- 3.1 This paper makes reference to three different sets of Byelaws. These are:
- Existing Byelaws – Byelaws currently applying to LBTH parks and open spaces
 - Model Byelaws – a standard set of Byelaws, developed by DCLG
 - New Byelaws – proposed new Byelaws for LBTH, based on the Model Byelaws
- 3.2 The Council's Existing Byelaws date back to the 1930s, and relate to proper conduct in the borough's parks and open spaces. They allow the Council to deal with unacceptable behaviour which is not addressed through existing legislation, such as that which may cause distress or injury to other users of the parks or that might damage the park and detract from general enjoyment of it by others. As the Existing Byelaws were established on a London-wide basis they cannot be revoked, nor new ones created locally, without recourse to Parliament. However, DCLG are introducing new regulations in the new year to make this process easier for local authorities. The New Byelaws outlined in this report will be adopted through these new regulations.
- 3.3 In order to ensure that the New Byelaws capture all relevant offences that may take place in our parks and open spaces, a gap analysis has been carried out (see Appendix 3). This analysis has identified whether the offences are addressed by the New Byelaws or through primary legislation.
- 3.4 An earlier draft of the New Byelaws was presented to GPC on 19th January 2011. It was resolved that the report be deferred to allow officers to consult with the Mayor and Cabinet members. The Mayor and Cabinet members have requested that the New Byelaws require the organisers of political rallies and religious meetings to seek permission from the Council. They also requested that the New Byelaws prohibit activities relating to organised fundraising in parks and open spaces. As these additional inclusions are not part of the original Model Byelaws, DCLG agreement will be required.

- 3.5 With the projected increase in visitor numbers and activities taking place in parks and open spaces, it is vital that the New Byelaws are adopted prior to the Olympic and Paralympic Games period. Section 6 outlines the potential timetables for adoption of the New Byelaws. If DCLG reject the New Byelaws, the Council will not be able to adopt them prior to the games period. Therefore, officers are in ongoing consultation with DCLG, and will make amendments to individual Byelaws on DCLG guidance.

4. BODY OF REPORT

4.1 Reasons New Byelaws are required

- 4.1.1 The Existing Byelaws are not easily understandable and have not been subject to community consultation for many years. The New Byelaws use a style of language that is simpler, clearer and easier to comprehend. They are also more relevant to a modern society and the modern use of parks and open spaces and no longer duplicate offences for which there are now powers granted by legislation.

4.2 Summary of Changes: New Byelaws Compared to Existing Byelaws

- 4.2.1 Appendix 4 provides a detailed comparison between the New and Existing Byelaws. The major differences are summarised below:

Exclusions

- 4.2.2 Activities or offences not reported to date or only occurring at a very infrequent level. This includes reference to activities such as drying and bleaching of clothes, mending chairs, and shaking or beating carpet.
- 4.2.3 Specific reference to dog related issues are not included in the proposed model byelaws as they are covered by other primary legislation such as the Clean Neighbourhoods and Environment Act 2005. For similar reasons drinking and drug related issues are not included.

Inclusions (taken from Model Byelaws)

- 4.2.4 The New Byelaws consist of a number of provisions which were not included in the Existing Byelaws, and aim to offer further protection to park users.
- (a) Preventing interference with life saving equipment (Byelaw 13)
 - (b) Prohibition on overnight parking (Byelaw 18)
 - (c) Permitting skateboarding (Byelaw 22) and ball games (Byelaws 23-24)
 - (d) Restriction of cricket to designated areas (Byelaw 26)
 - (e) Restriction on archery and field sports (Byelaws 27, 28),
 - (f) Prohibition of golf (Byelaw 29)
 - (g) Restriction on bathing (Byelaw 30)

- (h) Stricter requirements on model boats (Byelaw 32), boats (Byelaw 33) and fishing (Byelaw 34)
- (i) General prohibition of power-driven model aircraft (Byelaws 37-38)
- (j) Restriction on excessive noise (Byelaw 40)
- (k) Restriction on public shows and performances (Byelaw 41)
- (l) Restrictions on the use of aircraft, helicopters, hang gliders or hot air balloons (Byelaw 42)
- (m) Restriction on kites (Byelaw 43)
- (n) Restriction on metal detectors (Byelaw 44)
- (o) Restriction of barbeques (amended Byelaw 11)

By restriction it is meant that the Council is able to limit the relevant activities under certain circumstances.

4.2.5 Following feedback from the GPC in January 2011 barbeques have been included in the new set. The New Byelaws include an updated list of sites, parks and open spaces to which the New Byelaws apply (schedule 1), and also an updated list of sites, parks and open spaces to which Byelaw 3 applies, in respect of opening times (schedule 2). There are also updated rules for playing ball games in designated areas (schedule 3).

Inclusions (not taken from Model Byelaws)

4.2.6 The New Byelaws contain some provisions that were not covered in the Model Byelaws. It should be noted that officers are engaged in ongoing discussions with DCLG on these provisions. If DCLG deem that there is not sufficient justification to include them, officers will engage in further discussion with them prior to the submission of the New Byelaws to DCLG.

4.2.7 These provisions cover:

- Protection of wildlife (Byelaw 8)
- Filming, video-recording and taking of photographs (Byelaw 39)
- Fundraising, and soliciting or gathering money (Byelaw 44)

4.2.8 The New Byelaws also contain a number of provisions where the wording has been slightly amended from the Model Byelaws. This is so that the Byelaws are as relevant as possible to local circumstances within Tower Hamlets, and in order to make enforcement clearer and offer greater protection and enjoyment for park users. Again, as these changes depart slightly from the Model Byelaws, DCLG approval is required and is currently being sought. If it cannot be guaranteed then officers will amend the Byelaws in accordance with DCLG guidance.

4.2.9 The changes cover:

- Prohibition of horse riding (subject to bridleway) (Byelaw 15)
- Cycling (Byelaw 16)
- Fishing (Byelaw 34)
- Public shows and performances (Byelaw 40)

5. BYELAW ENFORCEMENT

5.1 The Council has recently reviewed and improved the effectiveness of its enforcement capability, based on key Safer Community principles. Any enforcement by the Council of the Byelaws would be in accordance with the Council's enforcement policy, adopted by Cabinet on 8 September 2010. The policy sets out the following clear principles for the Council's enforcement action:

- raising awareness of the law and its requirements;
- proportionality in applying the law and securing compliance;
- consistency of approach;
- transparency about the actions of the Council and its officers; and
- targeting of enforcement action.

5.2 Currently the pattern of ASB occurrence in parks and open spaces is both inconsistent and intermittent. The frequency of offences in problem areas tends to increase at certain times of the year (such as school holidays) and in warm, dry weather conditions. Equally the problem is mobile and the pattern can be of short term disturbances based on a small group of people rather than a widespread problem within a locality.

5.3 Byelaws give the Council the power to issue fines of up to £500 against offenders who cause damage to Council property or breach the Byelaws. Additional legislation (under the Clean Neighbourhood and Environmental Act 2005) which allows the Council to issue Fixed Penalty Notices (FPNs) for breaches under litter control and dog fouling is also applicable to parks and open spaces.

5.4 The Joint Tasking approach currently deployed is considered to be the most effective method of tackling discontinuous issues such as these. This approach will allow ASB hotspots and new problem areas to be addressed as they arise, providing a quick and adequate response which is highly visible and responsive within the local community to reduce fear of crime. This also has the benefit of ensuring that resources are deployed as and when they are most required rather than tying up a high level of fixed resource to cover every eventuality.

5.5 The localisation process – which is aiming to deliver more locally targeted services on a paired LAP basis – will also assist in identifying priority areas for enforcement activities at a more local level than is currently possible. This will

have the benefit of being more immediately responsive to local needs and will increase community confidence in the services and reduce fear of crime.

- 5.6 Agencies deployed in enforcing and applying Byelaws include the Police, Safer Neighbourhood Teams, Joint Enforcement Teams, Tower Hamlets Enforcement Officers and Streetcare Teams.

6. Process and Timetable for Adopting New Byelaws

- 6.1 The New Byelaws must be recommended by the GPC to Full Council for formal adoption. If, as in our case, the New Byelaws adhere closely to the Model Byelaws then following formal adoption by full Council, they can be passed through the confirmation process. This is as follows:

- Once formally adopted by Council the New Byelaws will be sealed by the Council and then sent to DCLG for sealing and provisional approval.
- After the Byelaws have been sealed the Council will publicly advertise the New Byelaws and a one month community consultation period would take place for any representations or objections by the public. Such representations would be sent directly to the Secretary of State, rather than to the Council. The New Byelaws will be held on deposit at the Council offices for inspection by the public at all reasonable hours.
- These Byelaws will then be submitted to the Secretary of the State for confirmation, provided that no objections have been received.
- Once confirmed, the Existing Byelaws will be revoked and the New Byelaws will come into force.

- 6.2 *Proposed timeline if no objections received during consultation process*

Activity	Date
Consideration by GPC	28th Sept 2011
Approval of Full Council	30th Nov 2011
New Byelaws submitted to DCLG for provisional approval/sealing	Dec 2011/Jan 2012
Once provisional approval has given by DCLG, Council publicly advertise New Byelaws (1 month public consultation)	Jan/Feb 2012
Submission to Secretary of State for confirmation of New Byelaws	March 2012
New Byelaws are confirmed, provided that no objections have been received. Formal adoption of New Byelaw comes into force.	By early Summer 2012

6.3 *Proposed timelines if objections are received*

- 6.3.1 If objections are received, the confirmation process is likely to be extended. Where objections have been received by the Secretary of State, copies will be forwarded to the Council for comments before a decision is taken. If minor amendments to the New Byelaws are required, then the Director of Communities, Localities and Culture will be able to use delegated powers to effect the amendments. Any major amendments will need to be brought before Full Council again via the General Purposes Committee.
- 6.3.2 In contentious cases, particularly those where the arguments are finely balanced, it is open to the Secretary of State to order a public inquiry to be held. Such inquiries are rare and, in the normal course, the Secretary of State would hope that the issues - and any scope for compromise - might be determined locally between the council and objectors.

Proposed timeline for amendments received through consultation process:

Proposed timeline if Byelaws are rejected by DCLG:

Activity	Date
Council comments on the objections received by Secretary of State	March 2012
Minor amendments made are approved by Director of CLC through delegated powers	March/April 2012
Submission to Secretary of State for confirmation of New Byelaws	May 2012
New Byelaws confirmed. Formal adoption of New Byelaw comes into force.	July 2012

Activity	Date
Council comments on the objections received by Secretary of State	March 2012
Major amendments made are taken before GPC.	21st March 2012
Approval of Full Council	18th April/16th May 2012
New Byelaws submitted to DCLG for provisional approval/sealing	May 2012
Once provisional approval has given by DCLG, Council publicly advertise New Byelaws (1 month public consultation)	June/July 2012
Submission to Secretary of State for confirmation of New Byelaws	Aug 2012
New Byelaws confirmed. Formal adoption of New Byelaw comes into force.	Oct 2012

7. CONSULTATION

- 7.1 Prior to the making of the New Byelaws the Council is required to consult with bodies and organisations where there is a joint interest in any park or open space. Consultation with stakeholders is still ongoing. A list of groups so far consulted is included in Appendix 2. Following approval of the draft changes by the DCLG and by Full Council a full public consultation will be conducted in Jan/Feb 2011.

8. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 8.1 There are no financial implications emanating within these proposals. The proposed New Byelaws seek to make the process more efficient by removing ambiguity and uncertainty about which activities are permitted within parks & open spaces. The adoption of the New Byelaws will be included in the normal duties of the parks and open spaces existing budgets.

9. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL)

- 9.1 Section 164 of the Public Health Act 1875 and section 15 of the Open Spaces Act 1906 enable local authorities to make byelaws for the regulation of public walks and pleasure grounds and of open spaces and burial grounds respectively. Byelaws, once lawfully made, have the force of law within the areas to which they apply and, currently, offences against byelaws are summary criminal offences punishable by fine.
- 9.2 The Secretary of State for Communities and Local Government has produced model sets of byelaws, which Local Authorities are encouraged to use when considering making byelaws. However, as the Council should only make byelaws where they are required to address an existing problem, the Council is required to edit these model byelaws so that only those byelaws that are required to deal with a particular problem are made. In that regard, the proposed Byelaws in Appendix 1 have been edited as indicated in the report.
- 9.3 Section 236 of the Local Government Act 1972 sets out the current procedure for making byelaws. As the Council is proposing to make changes to the wording of the model byelaws proposed (including the imposition of new Byelaws) to be adopted, there is a pre-approval stage that the Council must go through. It should also be noted that where such changes are made approval will not be given unless the Council can –
- (a) demonstrate there is a specific local problem;
 - (b) demonstrate the nature, location, extent and incidence of the problem and the reason why the byelaw is necessary to deal with the nuisance;

- (c) demonstrate what measures have been taken to address the nuisance;
- (d) explain why is the Council satisfied that the nuisance is so great as to merit a criminal offence;
- (e) confirm that the aim of the byelaws is not solely to protect people from the consequences of their own actions;
- (f) where appropriate, describe what consultation required by the legislation has been carried out both with individuals and groups likely to be affected by the byelaw;
- (g) specify what informal consultation has taken place, both with individuals and groups likely to be affected by the byelaw;
- (h) list any objections of which the authority is aware at this stage (i.e. before sealing and advertisement of the byelaws) and the authority's response to those objections (copy correspondence will need to be attached);
- (i) justify the Council's view that it is content that the byelaws are reasonable in how they will be applied in the particular local context (i.e. they are not partial or unequal in their application, that they are not manifestly unjust, and that they do not involve oppressive or gratuitous interference with the rights of those whom they affect).

9.4 Ultimately, the Secretary will not give consent to changes to wording where it is considered that to do so would be disproportionate. Proportionality is about balancing the size and scope of the proposed activity which is to be addressed against the gravity and extent of the perceived mischief and considering whether alternative means of dealing with the matter are more appropriate rather than criminalise the activity. Therefore, where the Byelaw is being proposed on say one isolated incident in one park, then there is a possibility that approval will be withheld on proportionality grounds.

9.5 The making and revoking of byelaws is a matter for full Council. This is confirmed in Article 4.02(j) of the Council's constitution and therefore all General Purpose Committee is being asked to do is to refer the report on to Council with a recommendation that the Council makes and seals the byelaws.

9.6 Before making the byelaws, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't. Some initial equality analysis is set out in the One Tower Hamlets section of the report and further analysis will be carried out before presentation of the report to Full Council.

10. ONE TOWER HAMLETS CONSIDERATIONS

10.1 Recent studies by the Commission for Architecture and the Built Environment (CABE) suggested that providing good quality local green space is a very effective way to tackle inequality. People living in deprived urban areas view

green space as a key service and one of the essentials in making a neighbourhood liveable.

- 10.2 When people were asked if they experienced any barriers to using their local green spaces, the biggest single barrier to accessing urban green space was safety. This was expressed both in terms of the physical environment and the perceived threat of others. Around a third of people reported they would use urban green space more if safety were improved.
- 10.3 Therefore, effective enforcement of Byelaws and other supporting legislation within the borough's parks and open spaces has the potential to improve the experience of park users and increase use by the community. An equalities impact assessment will be prepared in relation to the New Byelaws prior to submission to Full Council.

11. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 11.1 Byelaws are designed to protect parks and open spaces and the plants and wildlife within them. Effective implementation of the Byelaws will help to ensure access to nature for everyone in the borough.

12. RISK MANAGEMENT IMPLICATIONS

- 12.1 The principal risk would be ensuring that the New Byelaws are publicised and enforced effectively from date of implementation. This risk will be minimised by the effective use of the joint tasking approach and processes currently in place. ASB tracking and monitoring of frequency through data capture and analysis systems will provide evidence based decision making.

13. CRIME AND DISORDER REDUCTION IMPLICATIONS/ EFFICIENCY STATEMENT

- 13.1 The New Byelaws will support improved enforcement and community engagement specific to behaviour in our parks and open spaces. For this reason they will play their part in helping to drive down crime, littering and vandalism which in turn will help to reduce the costs of maintaining the public realm and dealing with crime. They will also help to increase the use of parks by reducing fear of crime and ASB levels helping to promote a healthier, happier and more cohesive community. Again this will have efficiency benefits for adult social care and public health costs by keeping people healthier and more active for longer.

Local Government Act, 1972 Section 100D (As amended)
List of “Background Papers” used in the preparation of this report

Brief description of “back ground papers”	Name and telephone number of holder and address where open to inspection.
None	N/A

14. APPENDICES

Appendix 1 – Copy of the New Byelaws

Appendix 2 – Consultation

Appendix 3 – Gap analysis of New Byelaws and Primary Legislation

Appendix 4 – Table showing comparison of New Byelaws with the Existing
Byelaws, included details of suggested alterations

Appendix 5 – Existing Byelaws