



CABINET

Subject Heading:

Updating Parks and Open Spaces
Byelaws

Cabinet Member:

Councillor Dervish

SLT Lead:

Barry Francis

Report Author and contact details:

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Policy context:

As part of the Havering Plan 2019 to 2020
within the Places theme:

*Making sure that our neighbourhoods are
a great place to live by investing in them
and **keeping them clean, green and safe**
with access to quality parks and leisure
facilities*

Within this priority an outcome for parks is:

*Havering has excellent leisure facilities
and **award winning parks***

Financial summary:

The cost of adopting the new byelaws is
limited to the cost of consultation and
signage which is anticipated to be in the
region of £5,000. This will be contained
within the Public Realm revenue budget.

Is this a Key Decision?

This will have an effect on every ward in
the borough.

When should this matter be reviewed?

Annually

Reviewing OSC:

Environment

**The subject matter of this report deals with the following Council
Objectives**

Communities making Havering
Places making Havering
Opportunities making Havering
Connections making Havering

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SUMMARY

The Council is responsible for various parks, open spaces and public gardens in the Borough. The conduct of the public in these locations is regulated by byelaws, which aim to ensure that everyone is reasonably able to use the spaces without unreasonably inconveniencing other users. The byelaws were last updated in 1983 and over time the nature of park usage has altered and the expectations of park users have also changed. The updated byelaws reflect the way in which the Borough's parks and open spaces are used today and the reasonable expectations of users. The updating also ensures that they are easier for park users to understand. Once approved by Cabinet, full Council will formally decide on whether to adopt the updated byelaws, as set out in Part 1 Paragraph 4.01 (j) of the Constitution.

RECOMMENDATIONS

Cabinet recommends to full Council:

- a) the making of new byelaws to regulate the borough's pleasure grounds, public walks and open spaces, substantially in the form set out in Appendices' 1 and 2; and
- b) the commencement of public consultation on the proposed changes to the borough's byelaws set out in recommendation (a) above; and
- c) that If, following consultation, no objections are received to the proposals they should be submitted to the relevant Secretary of State for consideration; and
- d) that if, the proposals are submitted to the Secretary of State, any recommendation of the Secretary of State is considered by Cabinet in a further report; or
- e) that if, following consultation, any objections are received to the proposals they are considered by Cabinet in a further report prior to submission to the relevant Secretary of State.



REPORT DETAIL

1. Background

1.1 The Council is responsible for public parks, open spaces and gardens in the Borough. The conduct of the public in these locations is currently regulated primarily by byelaws, which aim to ensure that everyone is reasonably able to use the spaces without unreasonably inconveniencing other users.

1.2 The Council's byelaws were last updated in 1983 but were based on the Victorian model where much of the content is now irrelevant. A copy of the existing byelaws is attached as Appendix 3, these will need to be revoked as part of this process. Over time the nature of park usage has altered as has the expectations of users. In addition, the penalties which may be imposed in serious cases of a breach are insufficient to act as a deterrent.

1.3 A key theme in The Havering Plan 2019-20 is to keep our neighbourhoods safe and clean. The updated byelaws are therefore required to reflect the way in which the Borough's parks and open spaces are used today and the responsible expectations of users.

1.4 The updated byelaws which are based upon model wording published by the Department for Communities and Local Government (DCLG) now The Ministry for Housing, Communities and Local Government (MHCLG), also ensures that they are easier for park users to understand. Officers from Parks, Legal and Enforcement have been working together to produce draft byelaws using the DCLG model. A copy of the 1st draft is in Appendix 1 and a 1st draft of the schedule listing the grounds to which the byelaws will apply is attached as Appendix 2.

1.5 Since the model byelaws have been amended to address specific issues within the London Borough of Havering, the Ministry for Housing, Communities and Local Government (MHCLG), formally DCLG, will need to approve these changes as part of the consultation process.

1.6 In addition to modernising the existing clauses the following new bylaws are proposed:

Temporary Accommodation

This is more specific to prohibiting the use of green spaces for unauthorised accommodation with tents, caravans or any other structure or vehicle.

Overnight Parking

This prohibits leaving vehicles in car parks when the sites are closed.

Children's Play Areas

This prohibits older children (over 14) using play areas. This is already on signage but it is not enforceable.

Public shows, performances, events and organised activities

This prohibits unauthorised events or activities.

1.7 The following bylaw has been significantly amended:

Cycling

The existing bylaw makes it an offence to cycle in any other areas except designated routes in certain sites.

The proposed amendment only makes it an offence to cause annoyance or risk to any others (including rider). Therefore, as long as people cycle responsibly then it will not be a bylaw offence to use any of the sites, unless specifically stated by official signage, e.g. in children's play areas.

1.8 The schedule of sites to which the bylaws apply (Appendix 2) will also be updated to include spaces left out of the existing byelaws. This includes Bretons Outdoor Recreation Centre which has suffered from multiple incidents of anti-social behaviour. The inclusion of all the sites within this schedule will help improve the management and protection of these areas, however it will not prevent future changes of use of the land in question.

1.9 The updated schedule will in addition to parks and open spaces also include all green spaces that the public have access to that are managed by Housing and Highways. This will ensure that these areas can also have any potential anti-social behaviour managed.

1.10 The adoption of the new byelaws is clearly set out and will assist with the enforcement of these rules and regulations but will also give other stakeholders, e.g. Friends Groups, a better understanding and assurances around community safety.

1.11 Should a decision be made to proceed with updating the byelaws the process will take approximately 12-18 months. This will involve a public consultation using the corporate platform for a period of 8 weeks and will be undertaken by Council Officers or their agents. The Council is required to consult with members of the public and other bodies and organisations who have any interest or are users of the areas which will be the subject of the new Byelaws. The organisations who will be consulted are key stakeholders including friend's groups, sports and recreation groups and equal access groups. A detailed table of the process is in Appendix 5.

1.12 Should the Cabinet and then full Council decide to proceed with the process to update the bylaws, a Communications plan to emphasise the positive impact of the new bylaws on improving the management and protection of the boroughs parks and open spaces will be prepared.

1.13 Enforcement of the Byelaws will be undertaken by the Council's Tactical Enforcement Team who will have the relevant authority to ensure they are being adhered to.

1.14 Attachments to the report:

Appendix 1 - (1st Draft of updated Byelaws)

Appendix 2 - (1st Draft of schedule of sites)

Appendix 3 - (Existing Byelaws)

Appendix 4 - (Existing schedule of sites)

Appendix 5 - (Project Timeline)

REASONS AND OPTIONS

2. Reasons for the decision:

2.1 The existing byelaws are significantly out of date, in some cases irrelevant, unclear to the public and without sufficient clauses to enable effective enforcement in our parks and open spaces to ensure they meet the objectives of the Council.

2.2 It is essential that the Council is able to effectively control activities within the parks and open spaces and when necessary take enforcement action to prevent damage and nuisance to other users and local residents. Therefore the byelaws need to be up to date and cover all sites.

3. Other options considered:

3.1 By continuing to use the existing byelaws certain activities and behaviours cannot be effectively controlled and enforced. Whilst the Tactical Enforcement Team are able to use persuasion in the absence of the necessary byelaws this is not always effective. Bretons Outdoor Recreation Centre has suffered from various incidents of anti-social behaviour, including the frequent and high profile fly-grazing and cart riding. Since this is not covered under the existing byelaws limited or no enforcement action can be taken. This is both harmful for the Council's relationship with the several user groups but also any long-term strategic plans for the site.

3.2 The current bylaws are not fit for purpose and do not reflect how our parks are used. For example it is currently an offence to cycle in parks other than on certain designated routes. Responsible cycling is something that should be encouraged and not prohibited in our open spaces.

3.3 Under section 59 of the Anti-social Behavior, Crime and Policing Act 2014 a Public Space Protection Order (PSPO) can be created if a local authority is satisfied, on reasonable grounds, that activities carried on in public in the local authority's area have had a detrimental effect on the quality of life of those in the locality (or such activities are likely to occur), and the effect of those activities is, or is likely to be, of a persistent and continuing nature, is such as to make the activities unreasonable, which justifies the restrictions imposed by the PSPO. There must be sufficient evidence gathered of complaints and nuisance etc. to justify such an Order and there is a requirement to consult with the relevant bodies and members of the public who would be affected. Although this can apply to parks and open spaces, the evidence must be of a high standard and an Order will only last for three years. In the circumstances, it has been considered the most appropriate option is to update the existing Byelaws.

IMPLICATIONS AND RISKS

4. Financial implications and risks:

4.1 Consultation and the necessary advertising, including signage, will require funding and although exact costs are not known at this stage it is anticipated that they will not be significant so will be contained within the existing Public Realm budget.

5. Legal implications and risks:

5.1 Byelaws are local laws made by the Council under an enabling power contained in a public general act or a local act requiring something to be done or not done in a specified area. Apart from any general power to make byelaws the relevant legislation supporting the byelaws in this case are The Public Health Act 1875 and The Open Spaces Act 1906. These Acts enable local authorities to make byelaws for the regulation of public walks and pleasure grounds and of open spaces respectively.

5.2 Byelaws are enforced through the magistrates' court and upon successful conviction of contravening these particular byelaws (if adopted) could result in a level 2 fine of up to £500.

5.3 Byelaws are generally considered a measure of last resort after alternative attempts to address the relevant issues has been unsuccessful. . A byelaw cannot

be made where alternative legislative measures already exist that could be used to address the problem. Byelaws should always be proportionate and reasonable. Where a byelaw is no longer necessary, it should be revoked.

5.4 The Byelaws (Alternative Procedure) (England) Regulations 2016 introduced new arrangements for byelaws. The regulations simplify the procedures for making new byelaws and amending byelaws, including replacing the Secretary of State for Communities and Local Government's role in confirming byelaws. This is now a matter for the Council, having taken account of any representations made about the proposed byelaw. The Secretary of State's role now is simply to consider an application to make byelaws, and then give leave to do so.

5.5 The regulations also give councils powers to revoke byelaws under an entirely local process. The regulations do not give local authorities powers to create new categories of byelaws. Hence the need to follow the Secretary of States model byelaws.

5.6 The new arrangements transfer the accountability for making byelaws to local councils. The Council should ensure that a proposed byelaw is proportionate and necessary before making any new byelaw. Under these new arrangements, the Secretary of State now only considers the draft byelaws, report and deregulatory statement provided by the local authority, and will either give or refuse leave to proceed. In this case leave has been given. The new arrangements allow the Council to make only minor modifications to the proposed byelaws after leave has been given.

6. Human Resources implications and risks:

6.1 There will be the need for the Tactical Enforcement Team and Parks Officers to be briefed by their managers on the new byelaws so that they fully understand the new clauses however this is not considered to have any effect on the services.

6.2 There are sufficient resources within the current team to undertake the consultation required and to update signage where necessary.

7 Equalities implications and risks:

7.1 The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- (i) The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) The need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) Foster good relations between those who have protected characteristics and

those who do not.

7.2 Note: 'Protected characteristics' are age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

7.3 The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

7.4 The adoption of the new byelaws will clearly set out rules and regulations, which aim to ensure that all members of the community are able to use parks without unreasonably inconveniencing other users.

7.5 A EeqHIAs (Equality and Health Impact Assessments) will be carried out prior to commencement of the public consultation. This will enable informed decision-making when finalising the updated bylaws.

7.6 The consultation will include those individuals and groups with protected characteristics. The appropriate EeqHIAs will be undertaken in line with the timescales set out in appendix 5.

8 Health and Wellbeing implications and Risks

8.1 The adoption of fit for purpose bylaws will contribute to the effective management of our Parks and Open Spaces. These assist with users mental and physical health, e.g. socialising, reflection, access to nature, informal and formal recreation.

BACKGROUND PAPERS

None