



## CABINET

**Subject Heading:**

Application to the Secretary of State to amend the Parks Bylaws

**Cabinet Member:**

Cllr Barry Mugglestone

**SLT Lead:**

Neil Stubbings

**Report Author and contact details:**

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**Policy context:**

***The Havering Vision***

*Place Outcome – Havering is a Green Borough*

- *Investing in our parks*

**Financial summary:**

There are no financial implications relating to the revision of the Parks Bylaws, all resource costs, i.e. staff time, will be contained within existing budgets.

**Is this a Key Decision?**

To be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority.

**When should this matter be reviewed?**

NA

**Reviewing OSC:**

Environment OSSC

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

People - Things that matter for residents

**Place - A great place to live, work and enjoy X**

Resources - A well run Council that delivers for People and Place.

**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 the 1980's and over time the nature of park usage has altered and the expectations of park users have also changed. The proposed updated byelaws reflect the way in which the Borough's parks and open spaces are used today and the reasonable expectations of users.

A Cabinet decision was made in October 2020 to progress the process of updating the byelaws

Following a public consultation, the next step in the process is to apply to the Secretary of State (SoS) who will need to approve any amendments to DLUHC's model bylaw clauses. The Cabinet will need to agree for this application to be made.

**RECOMMENDATIONS**

It is recommended that Cabinet:

Approve the amended draft Parks Byelaws (Appendix 1) for submission to the Secretary of State for approval;

Delegate authority to the Director of Environment to take all necessary legislative and procedural steps enabling submission of the amended Parks Byelaws to the Secretary of State for approval;

Note that following approval of the amended Parks Byelaws by the Secretary of State a report will be taken to Full Council for its approval on implementation of the Draft Byelaws.

**REPORT DETAIL**

1. A public consultation was carried out in the summer which surveyed opinion on the proposed amendments to the current model bylaw clauses. These included the following:

Temporary Accommodation

This is to stop the use of green spaces for people to set up tents, caravans or any other structure or vehicle that have not received permission from the Council.

There is currently no bylaw at present which prevents people using our sites for unauthorised temporary accommodation.

**Overnight Parking**

This stops vehicles being left in car parks when the sites are closed. This can cause problems where members of the public request access to car parks after they are closed to retrieve their vehicles or, using our sites for private use.

There is currently no bylaw at present which prevents people leaving their vehicles in our car parks overnight.

**Public shows, performances, events and organised activities**

This stops events or activities taking place which have not received permission from the Council. This will assist with the management of sporting activities and unsuitable events.

There is currently no bylaw at present which prevents unauthorised events or activities.

**Cycling**

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

The proposed change only makes it an offence if it annoys or creates a risk to any others (including rider). Therefore, as long as people cycle responsibly, then it is planned this does not become a bylaw offence to cycle in any part of a park or open space, unless specifically stated by official signage, e.g. in children's play areas.

2. Over a 2-month period, 903 people completed the survey with the majority of responses supporting the proposed amendments. The details are as follows:

**Temporary Accommodation**

Agree - 88%  
Neutral - 5%  
Disagree - 7%  
Not Answered - 0.22%

**Overnight Parking**

Agree - 75%  
Neutral - 12%  
Disagree - 13%  
Not Answered - 0.44%

**Public shows, performances, events and organised activities**

Agree - 75%  
Neutral - 11%

Disagree - 14%  
Not Answered - 0.11%

Cycling

Agree - 58%  
Neutral - 11%  
Disagree - 30%  
Not Answered - 0.44%

3. A comparison of the existing bylaws and the proposed updated bylaws including the potential enforcement action can be seen in Appendix 2.
4. The next step is to make an application to the Secretary of State to approve the amendments as they vary from DLUHC's model bylaw clauses.
5. The SoS must respond in writing to an application made within 30 days of submission date and can either:
  - Give leave to make bylaw
  - Send an acknowledgement stating it will issue a substantive response as soon as practicable
  - Refuse to give leave to make bylaw
6. If SoS grants leave to make the bylaws, we then need to publicise notice on the Councils website and in one or more of the local papers circulating in the area in which land is situated in respect of which bylaws will apply. Also publicise notices in a manner Council thinks fit, i.e. site notices.
7. After a period of 2 months where the public can submit written representations responding to the notices, these would be considered before producing a final draft of the bylaws.
8. A final report will go to full Council who will decide to either:
  - Make the bylaws without modification
  - Make the bylaws with minor modification
  - Not make the proposed bylaws

**REASONS AND OPTIONS**

**Reasons for the decision:**

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. 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. To be able to continue the process of updating the bylaws, an application must be made to the Secretary of State.

**Other options considered:**

1. By continuing to use the existing bylaws 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 bylaws 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 bylaws 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.

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. 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**

**Financial implications and risks:**

There are no financial implications relating to the revision of the Parks Bylaws, all resource costs, i.e. staff time, will be contained within existing budgets.

It should be noted however, following the adoption of the Bylaws if an application to London Councils for the introduction of enforcement action via Fixed Penalty Notices (FPN's) is approved, the issuance of such FPN's would result in income to the council (the value of which is not known at this time).

**Legal implications and risks:**

Bylaws 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.

Bylaws 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.

Bylaws 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.

The Bylaws (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.

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.

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.

**Human Resources implications and risks:**

None

**Equalities implications and risks:**

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.

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

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.

### **Health and Wellbeing implications and Risks**

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.

### **Environmental and Climate Change Implications and Risks**

None

**BACKGROUND PAPERS**

None