

NONSUCH PARK BYELAWS REVIEW

Head of Service:	Ian Dyer, Head of Operational Services
Wards affected:	Nonsuch Ward;
Appendices (attached):	Appendix One – Current Byelaws Appendix Two - Model Byelaws Set 2 Draft

Summary

A report to discuss updating the current Byelaws for the Ministry of Housing, Communities and Local Government's Pleasure grounds, public walks and open spaces: model byelaw set 2 and the option to introduce a Public Space Protection Order for dog control in the Park.

Recommendation (s)

The Committee is asked to:

- (1) Note the contents of the report**
- (2) Advise whether they wish to pursue the introduction of Model Byelaws and a Public Space Protection Order to regulate dog walking in the Park, and if agreed, set up a small working party of officers and members to determine the exact wording of the new byelaws, the scope of the Public Space Protection Order, timeline for consultation and implementation. Upon completion a further report will be presented to the Joint Management Committee at the spring 2023 meeting.**

1 Reason for Recommendation

- 1.1 Whilst the Ministry of Housing, Communities and Local Government's Pleasure grounds, public walks and open spaces: model byelaw set 2 can be used to regulate the use Nonsuch Park with the aim of ensuring that everyone is able to use the space without unreasonably inconveniencing other users, these model byelaws do not cover regulations relating to dog control, which are now covered by section 59 of the Anti-social Behaviour, Crime and Policing Act 2014, Public Space Protection Order (PSPO).

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- 1.2 The recommendation above asks members to consider the Model Byelaws as set out in Appendix Two and set up a small working party comprising of members and officers to discuss the finer points of wording considering the uniqueness of the park, ambitions for the future and the needs of stakeholders and visitors. The working party will also explore how a PSPO may be introduced and the work and costs involved in conducting a consultation and the timeline for implementation.

2 Background

- 2.1 At the meeting of the Joint Management Committee on 24 January 2022, members received a report setting out the Committee Work Programme. One of the items marked as High Priority was to review the Nonsuch Park Byelaws.
- 2.2 The current Nonsuch Park Byelaws were introduced in 1951 and made under Section 164 of the Public Health Act, 1875 by both Epsom & Ewell Borough Council and the Borough of Sutton and Cheam.
- 2.3 Whilst the current Byelaws are comprehensive, they are outdated and do not reflect the way in which Nonsuch Park is used today.
- 2.4 A rough first draft of proposed byelaws is attached at Appendix Two and is based upon model wording published by the Ministry for Housing, Communities and Local Government (MHCLG).
- 2.5 There are several sections which need further discussion and consideration as it is important to account for eventualities and the need for the Joint Management Committee to respond to event requests which provide a source of income for the park.
- 2.6 Members will notice that regulations around dog control are conspicuously missing from the model byelaws.
- 2.7 These regulations have been removed and now form part of the section 59 of the Anti-social Behaviour, Crime and Policing Act 2014 which allows Councils to create PSPO to control dog walking activities.
- 2.8 Based on the data available from other council's who have introduced Public Space Protection Orders, successful implementation relies on a robust public consultation exercise and this will need to be carefully considered and factored into the timeline and cost of this piece of work.

3 Risk Assessment

Legal or other duties

- 3.1 Equality Impact Assessment

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- 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.
- Equality and Health Impact Assessments will be carried out prior to commencement of any public consultation. This will enable informed decisions when finalising the updated bylaws and a PSPO to regulate dog walking activities.

3.2 Crime & Disorder

- 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.
- However, 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. The difference between updating the Byelaws and introducing PSPO's was considered by Epsom & Ewell Borough Council's former Head of Legal and it was deemed at that time more appropriate to update the existing Byelaws.

3.3 Safeguarding

- There are no safeguarding issues to consider in this report.

3.4 Dependencies

- The successful implementation of updated byelaws and a PSPO will depend on carefully considered wording and on the strength of the public consultation exercise.

3.5 Other

- None

4 Financial Implications

- ### 4.1
- At this draft stage there are no significant financial implications, other than officer resource.

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- 4.2 At further stages, there will be significant officer resource required to conduct a consultation, collate the results and see the project through to completion.
- 4.3 Upon successful completion, there will be costs associated with updating signs and advertising the new regulations.
- 4.4 **Section 151 Officer's comments:** Officer resource/time should be quantified and recharged to the JMC budget accordingly.

5 Legal Implications

- 5.1 Byelaws are local laws made by the Council (JMC) 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 State's model byelaws.

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- 5.6 The new arrangements transfer the accountability for making byelaws to local councils. The Council (JMC) 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. The new arrangements allow the Council (JMC) to make only minor modifications to the proposed byelaws after leave has been given.
- 5.7 **Legal Officer's comments:** Under section 235 of the Local Government 1972 the Council (JMC) has the power to make byelaws for the good rule and government of the whole or any part of the boroughs, as the case may be and for the prevention and suppression of nuisances. Byelaws are subject to scrutiny by the courts and must be reasonable.
- 5.8 The Council (JMC) will not be able to make byelaw for dog control and would need to consider using a Public Protection Order to deal with dog control. Under section 59 of the Anti-social Behaviour, Crime and Policing Act 2014 a local authority may make a public spaces protection order if satisfied on reasonable grounds that (1) activities carried on in a public place within the authority's area have had detrimental effect on the quality of life of those in the locality or it is likely that activities will be carried on in a public place within that area and that they will have such an effect and (2) the effect, or likely effect, of the activities (a) is or likely to be of a persistent or continuing nature (b) is or likely to be such as to make the activities unreasonable and (c) justifies the restrictions imposed by the notice. The Council (JMC) would also need to carry out public consultation before deciding to proceed with a Public Protection Order.
- 5.9 Under section 236B of the Local Government Act 1972 the Council (JMC) has the power to make a byelaw to revoke existing byelaws. This power can be used to revoke the existing Nonsuch Park byelaws.

6 Policies, Plans & Partnerships

- 6.1 **Council's Key Priorities:** The following Key Priorities are engaged:
- Safe and Well
- 6.2 **Service Plans:** The matter is not included within the current Service Delivery Plan.
- 6.3 **Climate & Environmental Impact of recommendations:** None
- 6.4 **Sustainability Policy & Community Safety Implications:** Updated Byelaws contribute to community safety.
- 6.5 **Partnerships:** A consultation exercise will ensure that all partner organisations are considered.

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7 Background papers

7.1 The documents referred to in compiling this report are as follows:

Previous reports:

- 24 January 2022 – Committee Work Programme

Other papers:

- None