

Full Council

14th March 2017



Report of: Alison Comley, Strategic Director Neighbourhoods

Title: New Byelaws for Parks and Green Spaces

Ward: Citywide

Member Presenting Report: Councillor Asher Craig

Recommendation:

Full Council resolves to:

1. Adopt a new set of byelaws for parks and green spaces as set out at Appendix 1 and in doing so agree to revoke existing Victorian parks byelaws;
2. Authorises the affixing of the common seal to the byelaws and that they be made to come in to force on 28th April 2017.
3. Approves the recommendations given in paragraph 18 following the regulatory notice period.
4. Delegate to the Strategic Director Neighbourhoods authority to manage the byelaws, including (i) designating routes for the purpose of byelaws 12 and 13; (ii) designating areas for the purpose of byelaws 9, 22 and 25; (iii) issuing consents in respect of byelaws 5, 6, 8, 9, 16, 18, 19, 26, 27, 28 and 29.

Summary:

Bristol City Council, the police and local communities and other agencies want everyone to enjoy the city's parks and green spaces. To ensure everyone's enjoyment and safety, there is sometimes a need to proactively tackle anti-social and nuisance behaviours that adversely affect the enjoyment of park users and affect our communities.

The Council has explored the use of new byelaws as a common, tried and tested mechanism to do this. Consultation on proposals in 2013 revealed 77% of respondents were in favour of revised parks byelaws. A further public consultation in 2016 demonstrated continuing support amongst the majority of respondents.

After considering reported evidence of nuisance, public consultation results and examination by Neighbourhoods Scrutiny Commission, new byelaws are proposed for 364 publicly accessible green spaces in Bristol which will benefit park users and encourage responsible and safe use of this important, local and shared recreational resource.



The significant issues in this report are:

- A proposal to adopt a new set of 24 byelaws to a schedule of 357 of the city’s public green spaces;
- The revocation of the city’s existing Victorian parks byelaws;
- The Secretary for State for the Department of Communities and Local Government gave leave to Bristol City Council to make the byelaws on 24th November 2016.
- The adoption of designated areas within which some activities regulated by the new byelaws can take place;
- The need for byelaws to be applied through a new process involving police resources, Neighbourhood Enforcement Officers and Parks Officers.

Policy

1. The report makes recommendations about the development of byelaws for 357 of the 432 parks and green spaces defined in the Council’s Parks and Green Spaces Strategy which was adopted in 2008.

The byelaws would be used proportionately and with regard to the council’s Enforcement Policy For Regulatory Services.

Consultation

2. Internal

The principle of a new set of byelaws for Bristol has been comprehensively examined by Neighbourhoods Scrutiny Commission initially at meetings in December 2013 and April 2014, at a Scrutiny Inquiry Day held in November 2014 and at meetings throughout 2015 and 2016.

The Inquiry Day was held to consider the Council’s approach to dealing with nuisance and anti-social behaviour in parks and green spaces, and to examine the nature of any objection to original byelaw proposals and how byelaws may relate to the provisions of the ASB, Crime and Policing Act 2014.

As a result a Working Group of the police and council officers covering a range of disciplines was established to actively respond to Scrutiny recommendations and propose a clear approach to enforcement and communications.

The outcome is that the Commission supports and proposes a revised set of byelaws from those initially proposed in 2013 together with the use of other powers where appropriate.

3. External

A full public consultation took place between 7th June and 13th September 2013 on a proposed adoption of 29 model byelaws designed to tackle known, reported nuisance and other anti-social

behaviour. Nearly 1000 people responded to an online and paper survey. The full results are attached as a report in Appendix 4.

The majority of respondents, 77% (727), said they were in favour of new byelaws for parks and green spaces, giving a clear message that the public expect the council to actively manage nuisance behaviour in its parks and green spaces. Of these, 85% thought they would make parks better for everyone, 79% thought they will make them safer and 72% thought they would make them more family friendly.

Of those that did not support byelaws, 43% (95) did not feel there were any problems in parks and 40% (88) thought they would put people off from using parks. Others felt that the proposed byelaws were too restrictive and difficult to enforce.

A number of special interest groups, including equalities groups and Neighbourhood Partnerships also responded through face to face consultation. The report's equalities impact assessment highlights that byelaws should act to ameliorate fears for personal safety (NOTE: the key recommendation of the equalities assessment for the Council's parks strategy was that "improving the perception of safety and security in all different types of green spaces will have a greater positive impact on disabled people, ethnic groups, women, young people and older people").

A further public consultation took place between 18th January and 20th March 2016. The full results are attached as a report in Appendix 5.

This consultation asked for comments on the council's proposals for designated areas where activities regulated by four of the new byelaws can take place. These activities are fishing, flying model aircraft, horse-riding and barbecues. The Council's approach in each case received general support and the areas designated for each activity are given in Appendix 3.

Other consultation outcomes were:

- 58% of respondents agreed that byelaws would help them to enjoy Bristol green spaces;
- 28% felt that byelaws would encourage them to use green spaces that they currently avoid;
- We asked 'Should we adopt conditions to regulate people carrying out some of the activities covered by the byelaws; for example those set out for flying model aircraft and barbecues?' 61% of respondents said yes. 19% said no;
- We asked 'Should we apply general consent to activities relevant to any of the byelaws? For example the use of gazebos erected temporarily to provide shade, act as a gathering point – when permanent installations are not permitted?' 63% said yes, 18% said no;
- 53% thought that byelaws would not stop them doing some of the things they currently do now. 39% thought they would. The majority of comments giving reasons why some thought that the byelaws would stop them doing things were related to blackberry picking and foraging following media interest. The byelaws do not prevent the general public doing this and clarification has been provided on this point (See Appendix 8).
- The consultation also asked whether byelaws should be extended to more green spaces than previously proposed. 50% felt they should, 41% felt they should be restricted to

sites where nuisance behaviour has been reported.

To comply with the relevant regulations the Council published a notice of its intent to make new byelaws both online and in the Bristol Post. The notice period was for 28 days and provided a final opportunity for any comments or objections to be heard by the Council. The notice period ended on 22nd February 2017. Comments received and the Council's responses are set out in Appendix 6.

Avon and Somerset Constabulary has been consulted and support the City Council's endeavours to tackle ASB and promote good conduct in its parks and green spaces which reflect the priorities of the Police & Crime Commissioner. The Police remain committed to using all powers at their disposal to enforce the law.

Representatives of The Police, the Bristol Parks Forum, the Stoke Park Steering Group and Leeds City Council (who had recently introduced parks byelaws) attended the Neighbourhoods Scrutiny Inquiry Day (Nov, 2014). A number of national and local organisations were contacted and encouraged to respond to the 2016 byelaws consultation proposals and to the Notice.

Context

4. Bristol City Council, the police and local communities and other agencies want everyone to enjoy the city's parks and green spaces. To ensure everyone's enjoyment and safety, there is sometimes a need to proactively tackle anti-social and nuisance behaviours that adversely affect the enjoyment of park users and affect our communities. Byelaws are a common, tried and tested mechanism to do this.
5. Byelaws are a form of local legislation made using powers conferred under Act of Parliament. Under new procedures they no longer need to be approved by the Secretary of State for the Department for Communities and Local Government (DCLG). However he/she does need to give leave to make new byelaws. DCLG gave Bristol City Council leave to make the new byelaws on 24th November 2016.
6. Bristol has a set of Victorian parks byelaws that apply to 25 of its parks. These have not been enforced for some considerable time and do not cover all types of anti-social and nuisance behaviours that are reported nowadays. A new, more useful, set of byelaws would replace these and apply to many more parks in the city.
7. Since 2012, the Council and other partner agencies have been looking at how to tackle the issues raised by local residents and park users regarding anti-social behaviour in a number of parks and green spaces. Police advice at the time was that they could not take effective enforcement action in many cases because of the lack of comprehensive byelaws.
8. The Council and police then considered the appropriateness of 'model byelaws' set out by DCLG and local evidence for anti-social and nuisance behaviours in relation to these.
9. Considering the two-year period from April 2011 to March 2013 a total of 3,157 complaints about nuisance in parks were reported which were specifically about issues that could be covered by the initial, larger set of 29 proposed byelaws. A total of 222 identifiable sites were affected (of the 432 recognised by the Council's Parks and Green Space Strategy).

- 10.** Therefore a significant body of evidence exists of low-level antisocial behaviour that byelaws could help tackle.
- 11.** Work took place to check whether the relevant power to promote the model parks byelaws covered these sites. Excluding sites that are covered by other local legislation, including sites under the Docks (2009) byelaws and The Downs byelaws, a total of 357 sites are recommended to be scheduled and included.
- 12.** Following the 2013 public consultation on the original byelaws proposal, the Council's Neighbourhoods Scrutiny Commission examined the issues raised. It further examined the current rationale for byelaws following the Council's adoption of the provisions of the ASB, Crime and Policing Act 2014.
- 13.** As a result of its Inquiry Day (Nov, 2014), the Commission made a number of recommendations which included:
 - a. a review of the original (2013) byelaws proposal;
 - b. a consideration of the use of other ASB legislation to tackle problems where this is more appropriate than the use of byelaws;
 - c. the clarification and promotion of measures to tackle issues around dogs and dog fouling;
 - d. the development of a communications strategy so the public are clear about the Council's intentions regarding the use of byelaws and other legislation to tackle nuisance and anti-social behaviours in parks.

The full Inquiry Day report can be seen in Appendix 7.

- 14.** At its meeting of April 2015 and subsequently, the Commission agreed and recommended a revised set of byelaws be progressed and considered by Full Council. The revised proposals continue to be based on the model byelaws that have been drafted by the DCLG and are in use in other Authorities, but omits byelaws relating to:
 - a. Climbing;
 - b. Children's play areas;
 - c. Children's play apparatus;
 - d. Skateboarding; and
 - e. Ball games.

As a result the number of byelaws proposed has reduced from 29 to 24.

- 15.** The powers in the ASB, Crime and Policing Act 2014 can work alongside byelaws to enable the police, the Council and others to deal with people who behave anti-socially. Crucially, the powers of the Act provide maximum flexibility, allowing local agencies to work together to develop reasonable, proportionate and necessary responses to deal with anti-social behaviour.
 - i. Community protection notice:

The community protection notice can provide a quick and effective response to those who persistently act in a way that has a detrimental effect on the quality of life of those

in the locality. Available to councils and the police, this out-of-court notice can place restrictions on their behaviour (in the case of an individual, as long as they are aged 16 or over) and, if necessary, force them to take steps to rectify the issue. In deciding whether the behaviour is having a detrimental effect on the quality of life of those in the locality, issuing officers should consider speaking to victims and potential victims to understand the wider harm to individuals and the community.

ii. Dispersal power:

The dispersal power can be used by police officers in uniform. Police community support officers can also use this power if designated by their chief constable. The authorising officer can sanction use of the power in a specified locality for a period of up to 48 hours making each decision on a case-by-case basis.

iii. Public Spaces Protection Order (PSPO):

The PSPO is designed to deal with a particular nuisance or problem in an area. It should prove to be an effective tool to tackle locally identified issues. The behaviour must be having a detrimental effect on the quality of life of those in the community, it must be persistent or continuing and it must be unreasonable. The PSPO can impose restrictions on the use of that area which apply to everyone who is carrying out that activity. The council can make a PSPO on any public space within its own area where certain statutory grounds are met, but before doing so it must engage in necessary consultation, which always includes the police. The council must also consult whatever community representatives it thinks appropriate. This could relate to a specific group, or an individual or group of individuals, (for instance, regular users of a park). Before making a PSPO, the council also has to publish the draft order in accordance with regulations made by the Secretary of State.

NOTE: In October 2017, PSPOs will replace dog control orders as the relevant power of enforcement. The relevant PSPO is being developed now and is envisaged to encompass existing dog control powers with an extension to these being considered – to cover professional dog walkers using parks for example.

Pros/cons of any given approach:

- i. Byelaws can be enforced immediately whereas other interventions may require evidence of a persistent nuisance to be built up over time. Equally anybody breaching a byelaw can be immediately removed by the council or police.
- ii. Byelaws can empower communities where in some instances members of the public can issue instruction to others to cease their anti-social behaviour, rather than rely on an enforcement agency to act.
- iii. The very fact byelaws are in place may lead to expectations by some members of the public that enforcement agency activity will increase or be more responsive that cannot always be satisfied, whether because resources are scarce or due to the response sought being considered to be excessive in the particular circumstances of the case or for some other reasonable cause.

- 16.** All warranted police officers can enforce byelaws. The Chief Constable of Avon & Somerset Constabulary has also designated the power to enforce byelaws to Police Community Support Officers.

Proposal

- 17.** Following public consultation and examination by Neighbourhoods Scrutiny, it is proposed that Bristol adopts a set of 24 byelaws; a revision of the original proposal in 2013.

(NOTE: The full set of byelaws and schedule of sites recommended for adoption are given in Appendix 1. Maps identifying the boundaries and location of scheduled sites are given in Appendix 2. Sites not included in the byelaws are listed in Appendix 11.)

The byelaws will improve the ability of the Council and police to tackle nuisance and anti-social behaviours in 357 of the city's parks and meet the expectations of the majority of residents as determined by public consultation.

The wording of the proposed byelaws does not deviate from the model byelaws Set 2 (2006) published on the Department for Communities and Local Government (DCLG) website.

- 18.** Full Council is advised of the representations made during the 28-day statutory Notice period and the Council's response in Appendix 6. As a result of these representations, and from an ongoing assessment of the accuracy of byelaws data, the following amendments to the byelaws, including the site schedule, and designations are recommended for Full Council approval:

Removals from the Byelaws Schedule:

- a) Removal of 'Highridge Common, Access to Grove House' from Byelaws Schedule 1. The site is subject to separate Commons byelaws. No intention to replace these byelaws was given in the Notice and so new byelaws cannot be made here. The status of the existing byelaws is unclear and may require further investigation.
- b) Remove 'A-Bond Open Space, Smeaton Rd' from Byelaws Schedule 1 and 2. This site is within the Docks byelaws.
- c) Remove the 'Chocolate Path S/O Cumberland Road' from Byelaws Schedule 1 and 2. This site is within the Docks byelaws.
- d) Remove 'Bonnington Walk Playing Fields' from Byelaws Schedule 1 and 2. This site is subject to significant redevelopment and it is not clear whether the site, or parts of the site, will be subject to enabling powers.
- e) Remove 'Bower Ashton Playing Field' from Byelaws Schedule 1 and 2. This responds to a representation received during the Notice period. The site is wholly leased to Bedminster Cricket Club and is solely used for organised sports purposes.
- f) Remove Kingsweston Sports Ground from Byelaws Schedule 1. The site is wholly leased to Kingsweston Sports and Social Club and is solely used for organised sports purposes.

- g) Remove ‘Shirehampton Sportsground’ from Byelaws Schedule 1 and 2. The site is wholly leased to Twyford House Cricket Club and is solely used for organised sports purposes.

Boundary amendments of sites within the Byelaws Schedule:

- h) Removal of land within the curtilage of ‘Eastwood Farm, Access to Eastwood Farm, in Byelaws Schedule 1. This is in the process of being sold by the Council;
- i) Amend the boundary of ‘Dorian Rd Playing Field’ in Byelaws Schedule 1 and 2 to accurately respect the land interests of Horfield Sports Centre.
- j) Amend the boundary of ‘Salcombe Rd Recreation Ground’ in Byelaws Schedule 1 and 2 to accurately respect the area still held as public open space.
- k) Amend the boundary of ‘Meg Thatcher’s Gardens’ in Byelaws Schedule 1 and 2 to omit areas held for Housing purposes where byelaws enabling powers cannot apply.
- l) Amend the boundary of ‘Bristol Cathedral’ in Byelaws Schedule 1 and 2 to respect the area leased to Bristol City Council.

Amendments to designated areas:

- m) Sturdon Road (Withers Green Courts) not to be designated for barbecues as the whole site is a children’s play area.
- n) Richmond Terrace O/S not to be designated for barbecues as the whole site is a children’s play area.
- o) Kingsweston Estate – small pond to be added to designated fishing area,
- p) East Park Housing children’s play area not to be designated for barbecues.
- q) Dundridge Farm children’s play area – boundary updated for designation of barbecues.
- r) Ashley Down Green / Muller House Open Space – children’s play area not to be designated for barbecues.
- s) Willmott Park - children’s play area not to be designated for barbecues.

19. As a result of the 24 byelaws proposed, 8 activities will not be permitted in all 357 sites in the Schedule. These relate to:

- i. Site opening times
- ii. Protection of structures and plants
- iii. Throwing of ‘missiles’
- iv. Interference with life-saving equipment
- v. Cycling to cause danger or reasonable fear of injury
- vi. (Driving of) Motor vehicles
- vii. Blocking of watercourses
- viii. Obstruction of officers carrying out their work

The byelaws will result in 12 further activities requiring Council consent upon application. These relate to:

- i. Erection of structures
- ii. Grazing
- iii. Protection of wildlife
- iv. Lighting of fires
- v. Overnight parking
- vi. Archery
- vii. Camping
- viii. Field sports
- ix. Provision of (chargeable) services
- x. Excessive noise
- xi. Public shows and performance
- xii. (Take-off and landing of) Aircraft, balloon, helicopter, hang glider

20. For four of the byelaws, designated areas where an activity can be permitted have been proposed. Please refer to Appendix 3 for maps of designated areas. These relate to:

BBQs (part of 'lighting of fires' byelaw)

The approach is to designate as many sites as possible for barbecues. One site, Troopers Hill Local Nature Reserve is proposed not to be designated because its dry heathland vegetation makes it particularly at risk of fire. Following persistent local complaints, Brandon Hill Park is proposed to have a designated area for barbecues and an area that is not designated. The Council consulted about not designating meadow or woodland areas because of the increased fire risk. However, in the main, these are areas located within larger sites and ensuring the designated area boundaries are communicated effectively will be costly. It is common that park users find areas of amenity grassland to have barbecues rather than woodland and meadow areas and so these areas will now be included in the designated area. The impact of this approach will be monitored and should any issues arise the designation of woodland and meadow areas will be reviewed. This is in line with the permissive and proportionate approach the council is committed to.

Barbecues will also not be permitted in children's play areas.

Horse riding

The byelaw will prevent horse riding on the majority of spaces under 4ha in size. For comparison, the Council's Parks and Green Space Strategy (2008) recognises 1500 hectares of accessible green space and 1370 hectares will remain available for horse-riding, or 91%.

Consultation identified two green spaces contiguous with larger spaces where a designated route to permit horse-riding would allow longer, circular routes. The spaces are Meadowsweet Open Space and Wickham Glen Open Space and this designation is proposed.

Fishing

The byelaw will prevent fishing taking place at St George Park which will not be designated for that activity. For comparison, within the byelaws schedule there are 67 spaces with a watercourse that will be designated for fishing; including the River Avon and River Frome where these flow through relevant green space. Note the byelaw refers to fishing by ‘net or line’ so any watercourse where, for example, a child may fish with a net has been included.

Council permission to fish under the byelaws does not obviate the need to get any required licences e.g. a rod licence from the Environment Agency.

Model aircraft

The designated areas proposed are parts of Hengrove Park, Blaise Castle Estate and Dundry Farm Playing Fields. The sites will be available to persons flying model aircraft who are members of the British Model Flying Association, or a club affiliated to it, which offers insurance for model aircraft flyers. The byelaw prevents the flying of drones.

- 21.** The byelaw relating to golf means that golf is permitted “only on the golf course” rather than in a space that is designated.
- 22.** It is proposed that the appropriateness of the designated areas is monitored and reviewed after 12 months.
- 23.** For or two of the byelaws, relating to vehicles and horse-riding, the activity is able to take place where any lawful rights or privileges exist. Where these are known to the Council they will be identified, or information signposted, as part of the online communication material on byelaws – for example ‘public bridleways’, ‘restricted byways’ and ‘byways open to all traffic’ all permit horse-riding. However, establishing lawful rights (which might include private rights) can be complex and may be addressed as part of enforcement work, where relevant and necessary.
- 24.** Within a short period after the Full Council decision, if approved, it is the intention to designate some routes for motor cycles, motor vehicles and trailers where it is prudent to do so – as permitted under byelaw 15 (1). “Designated route” means a route in or through the ground which is set aside by the Council from time to time for a specified purpose (Byelaws, Part 3, 12, P5).
- 25.** In addition to the identification of designated routes, a number of byelaws permit activities provided they have the consent of the Council (listed below), or permit activities in designated areas (Byelaws 9 – barbecues; Byelaw 22 – fishing; Byelaw 13 – Horse riding; Byelaw 25 – model aircraft). It is proposed that the Strategic Director Neighbourhoods be delegated authority to (a) designate any additional routes for the purpose of Byelaw 12 (b) and Byelaw 13(1)(a); designate areas for the purpose of byelaws 9, 22 and 25; (c) issue consents in respect of each of the following.

Byelaw 5 – erection of barrier, post, ride or swing, building or any other structure

Byelaw 6 – animal grazing

Byelaw 8 – camping

Byelaw 9(2)(a) - fires

Byelaw 16 – overnight parking

Byelaw 18 – archery

Byelaw 19 - field sports (hammer, javelin, discus, shot)

Byelaw 26 – provision of chargeable services

Byelaw 27(2) – entertainments

Byelaw 28 – public show or performance

Byelaw 29 – aircraft landing

- 26.** New byelaws would give the police and authorised council officers the power to take enforcement action against people who contravene the byelaws. They would be used proportionately and with regard to the council’s Enforcement Policy For Regulatory Services.

The principles set out in the current policy are that:

- i. Regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;
- ii. Regulatory activities should be targeted only at cases in which action is needed.

The enforcement policy predicated a proportionate, incremental approach. The overwhelming majority of issues reported to the authority are dealt with through early, informal interventions and words of advice. It remains our approach that issues affecting users of our parks and green spaces will be tackled in this way but where more robust enforcement is appropriate there are a range of tools and powers at our disposal to tackle the negative effects of anti-social conduct.

Byelaws will complement other interventions available to the council and are compatible with the enforcement approach set out in the Council’s policy.

The Council’s enforcement policy can be found online at <https://www.bristol.gov.uk/benefits-financial-help/regulatory-services>.

- 27.** For byelaws, enforcement has two parts: 1) first on-site contact role, communication, education and evidence gathering; 2) case investigation and prosecution role. The police and the Council have agreed that for the first 12 months after byelaws have been adopted, part 1 will be carried out by Parks officers and Police Community Support Officers (PCSOs). Investigation of offences would be undertaken by Neighbourhood Enforcement Officers and should they recommend prosecution these cases would be conducted by a member of the Council’s in-house legal team. Byelaws will always be available for police officers to use if appropriate on a case by case basis.

After 12 months this will be reviewed.

28. A simple model has been developed with the police to manage the enforcement approach, powers and reporting processes – refer to Appendix 9. A training module will be run for officers and PCSOs involved in enforcement.
29. Neighbourhood Delivery Teams will work within the process to advise on which powers may be appropriate to tackle different types of anti-social behaviour and target local priorities.
30. Neighbourhoods Scrutiny Commission set out the need for a clear communications strategy to accompany new byelaws and their relationship with other legislation to tackle nuisance and anti-social behaviour in parks.

Communications should clearly set out:

- i. Positive messages about public enjoying the city's open spaces responsibly and considerately
- ii. which sites byelaws do and don't apply to and why;
- iii. how byelaws will be enforced including the principle of proportionality, links to local priorities, consistency of approach and community / stakeholder engagement;
- iv. notification to park users of new byelaws for green spaces;
- v. how, rather than byelaws, other existing legislation will come into play in respect of certain nuisance and anti-social behaviours. In particular, how byelaws will work alongside the provisions of the ASB, Crime and Policing Act 2014;

The proposed Communications Strategy that responds to this need is given in Appendix 8.

31. The recent reforming of the procedure for making some byelaws in England means that the Full Council's decision on the byelaws proposal is final. The stages following include work to ensure that the making and purpose of the byelaws are communicated to park users and the public and that enforcement officers are properly trained and informed about the byelaws and the approach to enforcement.
32. Clifton and Durdham Downs are not covered by this proposal. This space is covered by The Downs Act and has site-specific byelaws agreed by the Downs Committee in 1998 and 2003.
33. A number of spaces close to the city docks are not covered by this proposal. These are covered by byelaws relating to Bristol docks. These can be found on line on the Council's website at: <https://www.bristol.gov.uk/documents/20182/33656/city-docks-byelaws.pdf>.

Other Options Considered

34. A previous proposal included five more byelaws and was the subject of consultation in 2013 followed by examination by the Neighbourhoods Scrutiny Commission.
35. The proposal generated widespread public and media interest. Although the proposal drew broad support in the public consultation with 77% in favour, there were significant concerns raised about byelaws that covered climbing trees, use of children's play areas by young people over 14 years, skate-boarding and lighting fires (including barbecues).

- 36.** After further examination, officers and Scrutiny accepted that, although these byelaws would have been applied in line with the Council’s enforcement policy, satisfactorily communicating this was difficult and potentially harmful to the progress of other byelaws that were less controversial. As a result they were removed. In addition, the ASB, Crime and Policing Act 2014 provides powers that may be used to tackle persistent nuisance and anti-social behaviour for a temporary period if and when appropriate.
- 37.** An option not to carry forward byelaws was also indirectly a consideration, particularly of the Scrutiny Inquiry Day (Nov, 2014). However the benefits of having byelaws as a primary or secondary mechanism to deal with nuisance issues became clearer, with delegates noting the relatively higher resourcing needed to apply new powers provided by the 2014 Act, which are relatively untested. The success Leeds City Council feels it has had managing nuisance issues since adopting byelaws was also noted.
- 38.** The Council communicated at length with the Department for Communities and Local Government on its draft parks byelaws proposals prior to formal submission to the Secretary of State. Guidance was clear that the precise wording of the DCLG model parks byelaws needed to be used and the regulatory burden placed on persons affected by the byelaws must be minimised. The Council was further advised to make best use of the Council’s enforcement policy and other means to communicate to park users and others the approach to enforcement and interpretation of the byelaws if relevant – that is, rather than seek to deviate from model byelaws. In this way known concerns raised during consultation, for example the impact of the byelaws on the practice of foraging, should be addressed.

Risk Assessment

39. Risks of proceeding with the recommendation:

- i. Further public concern that byelaws may criminalise people for what may be perceived as low level misdemeanours.
- ii. Harm to reputation of Bristol City Council that park users are being unfairly targeted.

Mitigation:

- a. The Council has engaged in extensive consultation and scrutiny of the proposals. It has taken great care to ensure that its proposals are necessary, proportionate and directed to dealing with issues of legitimate public concern.
- b. Only eight activities are not permitted outright which clearly focus on dangerous and/or unarguably anti-social activities.
- c. Clear communications strategy focussing on the public enjoying shared green spaces responsibly and considerately. Programmed communications with stakeholders regarding intention of byelaws, demonstrating general level of public support and the benefits of their being in place.
- d. Appropriate enforcement process and protocol agreed with police and others.
- e. The Secretary of State for the Department for Communities and Local Government has approved the byelaws and any requirements have been adopted in the proposal.
- f. A thorough public consultation process is evident indicating support for byelaws.

- g. An evidence base to identify and demonstrate nuisance and antisocial behaviours in Bristol is in place.

40. Risk of not proceeding:

- i. Continued public complaints to the Council about nuisance and antisocial behaviours that the police and Council officers find difficult to act upon. Particularly, short term issues where significant disruption or harm is caused.
- ii. Council resources will need to be deployed to explore the use of other powers to tackle the issues that could have been addressed via a byelaw. This could prove resources intensive and where Orders are made for particular places these require review every three years if they are to continue in place.
- iii. The current byelaws, which are not considered to be fit for purpose and have not been enforced, will remain in place.

Mitigation:

- a. Resourcing education, prevention and landscaping measures for continuous or chronic issues and complaints.
- b. The Council will need to reconsider its approach to controlling nuisance behaviours with greater emphasis on supporting and implementing the ASB, Crime and Policing Act 2014 with regard to parks and green spaces.
- c. The earlier byelaws proposals received public support demonstrated through consultation. The Council will need to be clear of its approach to deterring and tackling nuisance and anti-social behaviour using existing powers.

Public Sector Equality Duties

41. Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:

- i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
- ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to:
 - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
 - encourage persons who share a protected characteristic to participate in public life or in

any other activity in which participation by such persons is disproportionately low.

- iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
 - tackle prejudice; and
 - promote understanding.

42. Equalities issues were raised by consultees. These have been captured in the full equalities impact assessment at Appendix 10 with actions that will ensure effective communication of the byelaws and monitoring to ensure that they are used effectively and without adverse impact on specific equalities groups.

Legal and Resource Implications

Legal

- 43.** 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.
- 44.** Byelaws have the force of law within the areas to which they apply. They are accompanied by some sanction or penalty for their non-observance. They are enforced through the magistrates' court and contravening a byelaw can result in a fine upon successful conviction.
- 45.** Byelaws are generally considered measures of last resort after a council has tried to address the local issue the byelaw applies to through other means. 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.
- 46.** 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.
- 47.** 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 DCLG model.
- 48.** The new arrangements transfer the accountability for making byelaws to local councils. Local councils 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.
- 49.** It should be noted that before resolving to adopt 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 do not.

50. Enforcement of byelaws is already delegated under the Councils existing scheme to Strategic Directors. In order to avoid all consents requested under the byelaws being referred to full council, it is proposed that authority to do so be delegated to the Strategic Director, together with establishing any further designated areas or designated routes..

(Legal advice provided by: *Eric Andrews, Solicitor, Team Leader*)

Financial

(a) Revenue

51. This report seeks Council approval to amend a number of bye-laws in the City's parks and open spaces, as set out in Appendix 1. If agreed, the measure will require installation of new signage at an estimated cost of some £14,000. These costs will need to be funded from appropriate S106 receipts, from planning agreements, relating to parks maintenance. Utilisation of available S106 receipts will reduce the scope for other improvement works to parks.
52. There would be a cost to the Council to prosecute contravention of the byelaws if cases were deemed serious enough to do so. These costs must be met from existing Neighbourhood Enforcement Team budgets. Other costs, including additional officer time and marketing and communications, estimated to be some £3,000, will need to be contained within the agreed parks budget in the Neighbourhoods Directorate. Members should note therefore that there is an opportunity cost of implementing the proposed measures.

(Financial advice provided by: *Chris Holme, Interim Head of Corporate Finance*)

Land

53. The proposed new parks byelaws apply to 357 public open spaces (see appendices 2 and 3) and act to regulate activities in the ways already set out in the report and the byelaws.
54. The proposed byelaws will not apply to open spaces covered by the Docks and Downs byelaws nor do they apply to other green spaces not held or managed by the Council in such a way that the Open Spaces Act 1906 or the Public Health Act 1875 set out.
55. The byelaws do not act to change the appropriation of any site, that is the reason it is held by the Council, and do not in themselves prevent or hinder any future change of use or declaration of surplus.

Personnel

56. There do not appear to be any additional resourcing requirements in terms of staffing. It is understood that there will be a likely increase in staff time to apply the byelaws but assurance has been provided that this can be accommodated within existing resources.
57. It is understood that there will be a need for parks staff to be trained to apply the early stages of byelaws enforcement – inform, educate, monitor, record. This would be an additional element to their role. Any staff that are asked to take this on will need to be of sufficient grade and HR advice should be sought to ascertain whether this requires a re-evaluation of roles, or whether it is reasonable for this to be incorporated within the scope of existing roles at either

BG8 or BG10.

(Personnel advice provided by: *Alex Holly, HR Business Partner*)

Appendices:

APPENDIX 1: Proposed byelaws for parks and open spaces including list of sites to be covered

APPENDIX 2(a): Site schedule maps – Sites A - F

APPENDIX 2(b): Site schedule maps – Sites G - O

APPENDIX 2(c): Site schedule maps – Sites P - W

APPENDIX 3: Designated areas and designated routes

- (a) Designated sites for fishing
- (b) Designated sites for flying model aircraft
- (c) (i) Designated sites for barbecues – Sites A - D
- (c)(ii) Designated sites for barbecues – Sites E - M
- (c)(iii) Designated sites for barbecues – Sites N - R
- (c)(iv) Designated sites for barbecues – Sites S - W
- (d) Location of ‘golf course’
- (e) Designated routes for horse riding

APPENDIX 4: Results of public consultation on initial byelaws proposal (2013)

APPENDIX 5: Results of public consultation on byelaws proposals (2016)

APPENDIX 6: Comments received following Notice publication

APPENDIX 7: Report of the Neighbourhoods Scrutiny Inquiry day

APPENDIX 8 (a): Frequently Asked Questions

APPENDIX 8 (b): Communications Strategy

APPENDIX 9: Enforcement process diagram

APPENDIX 10: Equalities Impact Assessment

APPENDIX 11: Sites excluded from byelaws

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers:

Department for Communities and Local Government (DCLG) model byelaws Set 2 (2006).

Bristol Victorian parks byelaws.

Scoping Profile. Anti-Social Behaviour in Bristol’s Parks and Green Spaces.

Avon and Somerset Constabulary – incident reporting records parks and open spaces
01/04/2011 – 31/03/2013.

Equalities Impact Assessment – Parks and Green Space Strategy 2008

Bristol City Docks Byelaws (2009)

Downs byelaws (2003)

Highridge Common: Form of scheme for the management and regulation of the Common, under the Commons Act, 1899.

Neighbourhoods Scrutiny Commission minutes: December 2013; April 2014; April 2015; September 2015; October 2015; November 2015; April 2016.

Open Spaces Act 1906.

Public Health Act 1875.

Bristol City Council Enforcement Policy for Regulatory Services.