

Sustainable Development Select Committee			
Title	Byelaws for Blackheath (Lewisham section)		
Key decision	No	Item no	7b
Wards	Blackheath		
Contributors	Head of Law; Service Group Manager Green Scene		
Class	Part 1	30 June 2015	

1. Summary

- 1.1 The Council is responsible for the section of Blackheath that lies within the borough boundary, that is the land to the south of the A2 trunk road. The conduct of the public in this location is regulated by byelaws, which aim to ensure that everyone is reasonably able to use the space without unreasonably inconveniencing other users. The byelaws, were made in 1932 by the London County Council 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 Blackheath is used today and the reasonable expectations of users. The updating also ensures that they are easier for users of the Heath to understand.

2. Policy Context

- 2.1 Shaping the Future – the Councils Sustainable Community Strategy sets out the broad themes that describe a ‘sense of place’ that all Council services aspire to. It has six priority areas to which open space contributes to:
- Ambitious and Achieving – where people are inspired and supported to fulfill their potential
Celebrate local achievement so people feel proud of their area and eager to be a part of its success
 - Safer – where people feel safe and live free from crime, anti-social behaviour and abuse
Tackle antisocial behavior and ensure that people feel confident and safe throughout the borough
Keep our children and young people safe from harm, abuse and criminal activity
 - Empowered and responsible - where people are actively involved in their local area and contribute to supportive communities
-Empower citizens to be involved in their local area and responsive to the needs of those who live there.
-Champion diversity and the contribution everyone makes to the borough’s quality of life

- Clean, green and livable – where people live in high quality housing and care for and enjoy their environment
- protect and enhance our parks, open spaces and local biodiversity
- Healthy, active and enjoyable – where people can actively participate in maintaining and improving their health and well-being
-improving the well-being of our citizens by increasing participation in healthy and active lifestyles

2.2 Alongside the above the Corporate Strategy sets out the specific contribution of the Council to the delivery of Shaping our future. The strategy has 10 corporate priorities including “clean green and liveable” which has a commitment to “maximise access to and use of our open spaces by all communities and organisations, making them feel safe and open to all”.

2.3 The Council’s Open Space Strategy 2012-17 sets out as one of its key themes to promote a safe and secure environment.

3. Recommendation

3.1 That the Committee considers the proposed byelaws and provides comments they may have to Mayor and Cabinet.

4. Purpose

4.1 To agree referral to Mayor and Cabinet of the new set of Byelaws for Blackheath, and the revocation of the existing set which were made in 1932.

5. Narrative

5.1 The Council is responsible for the management and maintenance of Blackheath that lies to the south of the A2 trunk road. The section to the north of the A2 is managed and maintained by the Royal Borough of Greenwich who have their own set of byelaws. Officers attempted on numerous occasions to try to make joint byelaws with Greenwich but they chose to go their own way. The conduct of the public in this location is currently regulated by byelaws, which aim to ensure that everyone is reasonably able to use the space without unreasonably inconveniencing other users.

5.2 The byelaws were made in 1932 and 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 breach are insufficient to act as a deterrent.

5.3 The Open Space Strategy 2012-17 sets out as a key theme to promote a safe and secure environment and has an objective (6.1) to tackle antisocial behaviour and reduce fear of crime. The updated byelaws therefore are required to reflect the way in which the Borough’s parks and open spaces are used today and the responsible expectations of users. The updated byelaws,

which are based upon a model set published by the Department for Environment, Food and Rural Affairs (DEFRA), also ensures that they are easier for users of the Heath to understand. Because certain of the model byelaws were amended to address specific Lewisham requirements, provisional approval had to be sought from DEFRA, who have now given their provisional approval for the byelaws to be made in the form attached to this report.

- 5.4 Officers from Green Scene have liaised with the Blackheath Joint Working Party, made up of members of amenity groups, local interest groups and ward councillors, to garner their views and take comments. Responses are available in the Background paper attached.
- 5.5 The adoption of clearly set out and updated byelaws will assist the agencies involved with policing Blackheath (Glendale, Community Safety team, Police, Environment Enforcement officers etc), to enforce these rules and regulations, principally through persuasion. These groups will help co-ordinate future enforcement of the byelaws and other associated Acts of Parliament which apply to the parks environment, for example the Environmental Protection Act 1990 and Clean Neighbourhood and Environment Act 2005 (Dog Control Order). Enforcement is likely to take place at targeted enforcement sessions rather than on an ad-hoc basis. Members of the public who contravene a byelaw will be given a written caution for a first offence. However, any person offending against any of these byelaws shall be liable on conviction at the Magistrates Court to a fine not exceeding level 2 on the standard scale (currently up to £500.) An effective deterrent will therefore exist to deal with serious contraventions of the byelaws.
- 5.6 The draft set of byelaws attached to this report has been subject to discussion with the Blackheath Joint Working Party. As a result of that process a number of points were raised including the removal of pond planting etc. in relation to the Hare and Billet Pond where this practice is allowed with the approval of the Council in order to maintain the pond environment. The new byelaws would not affect maintenance by approved volunteer groups in relation to the nature site. Other concerns were raised about the ability of the Council to impose fines for breaches the response to which is set out in section 5.5. It was also explained to the BJWP that where the existing criminal law deals with a problem, the Council is unable to duplicate that in a byelaw. The existing criminal law covers issues such as dog fouling, littering and fly-tipping and in most cases imposes a higher maximum penalty than would apply under the byelaws.
- 5.7 A certain amount of training will be required for Glendale's parks services team, to carry out informal enforcement duties. This will be undertaken within the terms of the current parks contract.
- 5.8 The new byelaws must be displayed and or be available for the public to read and a number of signs highlighting specific clauses must be erected. The cost of signage, or amendments to signage is anticipated to be in the region of £500.

6 Financial implications

- 6.1 The cost of adopting the new byelaws is limited to the cost of signage, or amendments to signage which is anticipated to be in the region of £500. This will be contained within the Green Scene budget.
- 6.2 The training required for Glendale's parks services team to carry out informal enforcement duties will be undertaken within the terms of the current parks contract, at no additional cost to the Council.

7 Legal implications

- 7.1 The Council maintains Blackheath Common under a management scheme pursuant to the Metropolitan Commons Act 1866 and confirmed by the Metropolitan Commons Supplemental Act 1871. That scheme requires the Council to make byelaws for the regulation and preservation of the common. Section 15 of the Open Spaces Act 1906 enable local authorities to make byelaws for the regulation of an open space for whose management they are responsible.
- 7.2 The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 provides that the **power to make, amend, revoke, re-enact or enforce byelaws shall not be the responsibility of the Council's executive. Furthermore the Council's constitution reserves the making altering and revoking of byelaws to full council.**
- 7.3 The procedure for making the byelaws is set out in Section 236 of the Local Government Act 1972. That section provides that byelaws must be made under the common seal of the authority making them. The authority must then apply to the relevant Secretary of State, which in this case is the Secretary of State for Environment Food and Rural Affairs, (DEFRA), for confirmation. At least a month before seeking such confirmation the Council must publish a notice in a local newspaper indicating its intention to do so. During this month a copy of the byelaws must be made available at all reasonable hours at the Council's offices for public inspection. There is no legal requirement for a formal consultation process for new byelaws.
- 7.4 Any objections to the byelaws should be sent to the Secretary of State for DEFRA. The Secretary of State may confirm, or refuse to confirm, any byelaw submitted for confirmation, and may fix the date on which the byelaws are to come into operation and if no date is so fixed the byelaw shall come into operation at the expiration of one month from the date of its confirmation.

8 Crime and disorder implications

8.1 The byelaws will facilitate and enhance reasonable use Blackheath while at the same time providing a more effective deterrent to serious instances of park misuse.

9 Equalities implications

9.1 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 Blackheath without unreasonably inconveniencing other users.

10 Environmental implications

10.1 A number of byelaws specifically set out to protect the environment, for example protection of trees and grassland and the protection of lakes and water courses. Byelaws also include for the protection of fish and other wildlife.

11 Conclusion

11.1 The adoption of the new set of byelaws will provide the community with clearly set out rules and regulations as to how members of the public should conduct themselves at Blackheath.

12 Background documents and originator

Blackheath Joint Working Party comments on the draft set of byelaws – Martin Hyde, Green Space Regeneration Manager

Draft Byelaws

THE LONDON BOROUGH OF LEWISHAM BLACKHEATH OPEN SPACE, LONDON SE3

Byelaws made by THE LONDON BOROUGH OF LEWISHAM under paragraph 5 of the Scheme for Blackheath confirmed by the Metropolitan Commons Supplemental Act 1871 and section 15 of the Open Spaces Act 1906, with respect to the Blackheath open space.

Interpretation

1. In these byelaws:

"the Council" means the London Borough of Lewisham or where the context requires it its nominated contractor;

"the ground" means the Blackheath open space, Blackheath, London SE3 (including any new name subsequently given to it) as shown edged red on the plan attached to these byelaws;

"Schedule" followed by a number, or a number and a letter, means the Schedule to these byelaws bearing that number, or that number and letter

Words implying the singular shall include the plural and vice versa

Application

- 2 These byelaws shall apply to the ground

Motor Vehicles

3. (1) No person shall without reasonable excuse bring onto or drive in the ground a motor cycle, motor vehicle, trailer except in any part of the ground where there is a right of way for that class of vehicle.
(2) In these byelaws:

"cycle" means a unicycle, bicycle, a tricycle, or a cycle having four or more wheels, not being in any case a motor cycle or motor vehicle;

"motor cycle" means a mechanically propelled vehicle, whether or not intended or adapted for use on roads, not being an invalid carriage, with less than four wheels and the weight of which unladen does not exceed 410 kilograms;

"motor vehicle" means a mechanically propelled vehicle, whether or not intended or adapted for use on roads, not being an invalid carriage.

"trailer" means a vehicle drawn by a motor vehicle, and includes a caravan.

Cycling

4. No person shall without reasonable excuse ride a cycle in the ground except in any part of the ground where there is a right of way for cycles or on a designated route for cycling

Overnight parking

5. No person shall without the consent of the Council leave or cause or permit to be left any vehicle in the ground between the hours of 10 pm and 6 a.m.

Horses

6. (1) No person shall ride a horse except in the exercise of any lawful right or privilege.
(2) Where horse-riding is permitted by virtue of a lawful right or privilege no person shall ride a horse in such a manner as to cause danger to any other person .

Climbing

7. No person shall without reasonable excuse climb any wall or fence in or enclosing the ground, or any tree, or any barrier, railing, post or other structure.

Removal of structures

8. No person shall, without reasonable excuse, remove from or displace on the ground any barrier, railing, post or seat, or any part of any structure or ornament, or any implement provided for use in the laying out or maintenance of the ground.

Erection of structures

9. No person shall in the ground, without the consent of the Council, erect any post, rail, fence, pole, tent, booth, stand, building or other structure.

Camping

10. No person shall in the ground, without the consent of the Council, erect a tent or use any vehicle, including a caravan, or any other structure for the purpose of camping.

Fires

11. (1) No person shall in the ground intentionally light a fire, or place, throw or let fall a lighted match or any other thing so as to be likely to cause a fire.
- (2) Byelaw 11(1) shall not apply to any event held with the prior written consent of the Council.

Games

12. (1) Where the Council has, by a notice placed in a conspicuous position in the ground, set apart an area in the ground for the playing of such games as may be specified in the notice, no person shall:
- (a) play in such an area any game other than the game for which it has been set apart;
 - (b) use any such area so as to give reasonable grounds for annoyance to any person already using that area for any purpose for which it has been set apart; or
 - (c) play any game so specified in any other part of the ground in such a manner as to exclude any person not playing the game from the use of that part.
- (2) No person shall, in any area of the ground which may have been set apart by the Council for any game, play any game when the state of the ground or other cause makes it unfit for use and a notice is placed in a conspicuous position prohibiting play in that area of the ground.
- (3) (i) No person shall in the ground play any game:

- (a) so as to give reasonable grounds for annoyance to any other person in the ground; or
 - (b) which is likely to cause damage to any tree, shrub or plant in the ground.
- (ii) This Byelaw shall not extend to any area set apart by the Council for the playing of any game.

Trading

13. No person shall in the ground, without the consent of the Council, sell, or offer or expose for sale, or let to hire, or offer or expose for letting to hire, any service commodity or article.

Grazing

14. No person shall without the consent of the Council turn out or permit any animal for which he is responsible to graze in the ground.

Protection of flower beds, trees, grass, etc

15. No person shall walk on or ride drive or station a horse or any vehicle over:
- (a) any flower bed, shrub or plant
 - (b) any ground in the course of preparation as a flower bed or for the growth of any tree, shrub or plant; or
 - (c) any part of the ground set aside by the Council for the renovation of turf or for other landscaping purposes indicated, by a notice conspicuously displayed.

Removal of substances

16. No person shall remove from or displace in the ground any stone, soil or turf, or the whole or any part of any plant, shrub or tree.

Archery

17. No person shall engage in the sport of archery except in connection with an event organised by or held with the consent of the Council.

Field Sports

18. No person shall throw or put any javelin, hammer, discus or shot except in connection with an event organised by or held with the consent of the Council,

Golf

19. No person shall in the ground drive, chip or pitch a hard golf ball except in connection with an event organised by or held with the consent of the Council

Cricket

20. No person shall throw or strike a cricket ball with a bat except in a designated area for playing cricket.

Skateboarding and roller skating

21. No person shall in the ground skate, slide or ride on rollers, skateboards or other self-propelled vehicles, wheels, mechanical contrivances or other equipment in such a manner as to cause danger or give reasonable grounds for annoyance to other persons .

Missiles

22. No person shall in the ground, to the danger or annoyance of any other person in the ground, throw or discharge any missile.

Bathing

23. No person shall without reasonable excuse, bathe or swim in any waterway comprised in the ground except in an area where a notice exhibited by the Council permits bathing and swimming

Watercourses

24. No person shall knowingly cause or permit the flow of any drain or watercourse in the ground to be obstructed or diverted, or open, shut or otherwise work or operate any sluice or similar apparatus in the ground.

Ice Skating

25. No person shall step onto or otherwise place their weight upon any frozen waterway.

Boats

Model boats

26. (1) No person shall operate a power-driven model boat on any waterway.
- (2) No person shall operate a non power-driven model boat on any waterway except in a designated area for non power-driven model boats.
- (3) In byelaw 26(1), "power-driven" means driven by the combustion of petrol vapour or other combustible vapour or other combustible substances.

Boats

27. No person shall sail or operate a boat dingy canoe sailboard or inflatable in any waterway without the consent of the Council except in a designated area for the sailing or operation of boats

Interference with life-saving equipment

28. No person shall, except in case of emergency, remove from or displace in the ground or otherwise tamper with any life-saving appliance provided by the Council.

Aircraft

29. No person shall, except in case of emergency or with the consent of the Council, take off from or land in the ground in an aircraft, helicopter, hang-glider, hot-air balloon, helium or hydrogen filled airships and balloons.

Power-driven model aircraft

30. (1) In these Byelaws
- (i) "model aircraft" means
 - (a) a power-driven aircraft which either weighs between 500 grams and 7 kilograms without its fuel or
 - (b) a power-driven aircraft which weighs more than 7 kilograms and up to 20 kilograms without its fuel and is regulated by the Air Navigation Order Clause 87 or
 - (c) a power-driven aircraft which weights over 20 kilogram without it fuel and which is exempt from the Air Navigation Order
 - (ii) "power-driven" means driven by the combustion of petrol vapour or other combustible vapour or other combustible substances and subject to the Code of Practice on Noise from Model Aircraft 1982
 - (iii) The "Noise Code" means the Code of Practice issued by the Department of the Environment in pursuance of the approval given by the Control of Noise (Code of Practice on Noise from Model Aircraft) Order 1981

- (2) No person shall
 - (i) in the ground release any power-driven model aircraft for flight or control the flight of such an aircraft.
 - (ii) cause any power-driven model aircraft to take off or land in the ground.

Kites

- 31. No person shall in the ground fly any kite or cause or permit to be flown or ride or drive any vehicle powered by a kite in such a manner as to cause danger, nuisance or annoyance to any other person in the ground.

Metal detectors

- 32. No person shall on the land without the consent of the Council use any device designed or adapted for detecting or locating any metal or mineral in the ground.

Protection of Wildlife

- 33. (1) No person shall in the ground intentionally kill, injure, take or disturb any animal or fish or engage in hunting, shooting or fishing, or the setting of traps or nets or the laying of snares.
- (2) This byelaw shall not prohibit any fishing which may be authorised by the Council.

Noise

- 34. (1) No person shall in the ground, after being requested to desist by an officer of the Council, or by any person annoyed or disturbed, or by any person acting on his behalf:
 - (a) by shouting or singing;
 - (b) by playing on a musical instrument; or
 - (c) by operating or permitting to be operated any radio, CD player or other device capable of emitting sound

cause or permit to be made any noise which is so loud or so continuous or repeated as to give reasonable cause for annoyance to other persons in the ground.

- (2) This byelaw shall not apply to any person holding or taking part in any entertainment held with the consent of the Council.

Public Shows, Exhibitions and Structures

35. No person shall in the ground, without the consent of the Council, place or take part in any public show or exhibition or set up any swing roundabout or other like thing.

Children's play areas

36. No person aged 13 years or over shall enter or remain in a designated area which is a children's play area unless in charge of a child under the age of 13 years.

Children's play apparatus

37. No person aged 13 years or over shall use any apparatus stated to be for the exclusive use of persons under the age of 13 years by a notice conspicuously displayed on or near the apparatus."

Obstruction

38. No person shall in the ground:
- (a) intentionally obstruct any officer of the Council in the proper execution of his duties; or
 - (b) intentionally obstruct any person carrying out an act which is necessary to the proper execution of any contract with the Council; or of the ground

Savings

39. (1) An act necessary to the proper execution of his duty in the ground by an officer of the Council, or any act which is necessary to the

proper execution of any contract with the Council, shall not be an offence under these byelaws.

- (2) Nothing in or done under any of the provisions of these byelaws shall in any respect prejudice or injuriously affect any public right of way through the ground, or the rights of any person acting legally by virtue of some estate, right or interest in, over or affecting the ground or any part thereof.

Removal of offenders

40. Any person offending against any of these byelaws may be removed from the ground by an officer of the Council or a constable.

Penalty

41. Any person offending against any of these byelaws shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Revocation

42. The byelaws referred to in Schedule 1 are hereby revoked.

SCHEDULE 1

Existing byelaws to be revoked

The following byelaws relating to the ground made by:

1. the London County Council on 1 November 1932 as confirmed by the Secretary of State for the Home Department on 14 December 1932 (insofar as they apply to that part of the ground within the Borough of Lewisham); are hereby revoked.