

## APPLICATION FOR THE CONFIRMATION OF BYELAWS

*This proforma is to accompany:*

*(i) Byelaws submitted for confirmation under the Fast Track Scheme. Please complete parts A and B and submit with two original copies of the sealed byelaws (three copies if directed in the model) after the byelaws have completed one month on deposit.*

*(ii) Draft byelaws submitted for provisional approval under the Standard Scheme. Please complete parts A and C and submit with the first draft of the byelaws when applying for provisional approval.*

### PART A

Name of Applicant Authority **Westminster City Council**

Year of application **2006**

Number of application (1 for first of year, 2 for second) **1**

### LEGISLATION UNDER WHICH BYELAWS ARE MADE

Please tick on the appropriate line.

#### **- Good rule and government and the prevention and suppression of nuisances**

s. 235, Local Government Act 1972 **Yes**

#### **- Pleasure fairs/Amusement premises**

s.75, Public Health Act 1961 (as amended)

#### **- Pleasure grounds, public walks and open spaces**

**(See flow charts 1 and 2 to identify the correct byelaw-making power for each ground the Council wish to regulate)**

s-.164, Public Health Act 1875

ss. 12 and 15, Open Spaces Act 1906

s. 15, Open Spaces Act 1906

#### **Seashores**

s. 82, Public Health Acts Amendments Act 1907

#### **Promenades**

s. 83, Public Health Acts Amendments Act 1907

#### **Markets**

Section 60 of Food Act 1984

#### **Other (applications under standard scheme only)**

Please specify:

**[This section is not applicable to the proposed Byelaw]**

**PART B**

**APPLICATION FOR CONFIRMATION OF BYELAWS BASED ON DCLG MODELS (FAST TRACK SCHEME)**

Please note: applications for confirmation under the fast track scheme must follow exactly the wording of the DCLG model. If any variations or additions to the model are included, the application will be returned for resubmission under the standard scheme.

Please confirm the following, deleting as appropriate

1. The copies of the sealed byelaws sent to DCLG with this proforma

follow exactly the wording of the DCLG model, Yes/No

have been the subject of any consultation required by statute or recommended in the model, Yes/No

have been advertised in the prescribed form for one month after being sealed. Yes/No

2. The Authority:

has followed any guidance issued with the model, Yes/No

believes that the byelaws are necessary in the local context, Yes/No

believes that this application is reasonable and that other means of addressing the situation at which the byelaws are directed are inappropriate or insufficient. Yes/No

3. The Authority is content that: (delete as appropriate)

(a) the proposed byelaws do not duplicate or conflict with existing byelaws, or

(b) the Authority has included a byelaw revoking existing byelaws. <sup>[1]</sup>

4. The Authority is content that the proposed byelaws do not duplicate or conflict with any existing local Act Yes/No

<sup>[1]</sup> i) Byelaws made under section 8 (1) (d) of the Local Government Act 1894 cannot be revoked by byelaws made under any other enactment. They must be revoked by an Order under section 262 (8) (d) of the Local Government Act 1972. Please consult DCLG if you think that this applies.

ii) Byelaws relating to dogs are now the responsibility of the Department of Food & Rural Affairs, to which separate application should be made for the revocation of existing dog byelaws, including when such byelaws are part of a set which is otherwise the responsibility of DCLG.

**5. The byelaws will come into effect one month after confirmation** unless there are special circumstances which make it desirable for the byelaws to operate at an earlier date. If an alternative date is preferred, please state here \_\_\_\_\_ and explain why this date would be preferable.

The proforma should be signed by the Chief Executive, Secretary or other proper officer of the authority, as designated by the authority.

I submit the byelaws for confirmation in accordance with the fast track scheme set out in paragraphs 6 - 12 of the DCLG Guidance.

Signature \_\_\_\_\_

Name \_\_\_\_\_

Position \_\_\_\_\_

Date \_\_\_\_\_

## **PART C**

### **APPLICATION FOR PROVISIONAL APPROVAL OF BYELAWS WHICH VARY, OR ARE NOT COVERED BY AN DCLG MODEL (STANDARD SCHEME)**

Applications made under the standard scheme **should be submitted in draft form for DCLG consideration before sealing and advertising.**

Please insert answers in the spaces provided, continuing on a separate sheet if necessary.

1. Byelaws should not attempt to address in general terms issues which are essentially national rather than local. Please explain what the specific local problem is which the proposed byelaws are intended to directly address.

**A byelaw prohibiting the feeding of birds applies to the part of Trafalgar Square administered by the Greater London Authority (GLA), but not to the North Terrace administered by the City Council, or areas contiguous to the Square. People opposed to the feeding ban on the GLA-administered area of the Square are exploiting the anomaly by regularly depositing substantial quantities of feed on the North Terrace and causing significant fouling of the Square and areas contiguous to it.**

2. Please explain the nature, location, extent and incidence of the problem and the reasons why the Authority considers byelaws are necessary to combat the nuisance being addressed.

**There are incidents of tourists feeding pigeons on the North Terrace (administered by the City Council) but these are occasional and the feed rarely amounts to more than a handful of bread. Systematic, industrial-scale feeding though has also been taking place on almost daily basis and this has led to defacement of footways, parapets, statues, street furniture and buildings by pigeon fouling. A byelaw prohibiting the feeding is required to provide for consistency of regulation within Trafalgar Square as a whole, and because existing legislation regarding litter is inadequate. A byelaw needs to be applicable to the North Terrace because it is an area that is physically integral to Trafalgar Square, most of which is already covered by a similar byelaw. Also pressure groups ('Save the Trafalgar Square Pigeons' and 'Pigeon Action Group') have actively advocated the feeding of pigeons there. The byelaw needs to be applicable as well to areas contiguous to the Square because a spokesperson for the 'Pigeon Action Group' has referred to them as "...parts of the precinct.." where feeding can be carried out (specifically citing for instance "...an area just south of Nelson's Column.." and observing that people will "...be perfectly within the law to feed pigeons in those areas.". The vicar of St Martins-in-the-Fields has expressed his concerns to the City Council that a byelaw applicable only to the North Terrace would merely displace feeders to grounds in front of and around the church.**

3. What measures have been taken to address the nuisance?

**Street cleansing operations have been amended to provide for an operative equipped with a vacuuming machine to be on standby on the North Terrace, together with a street sweeper with handbarrow, between 1200 and 1400 Monday to Friday when the feeders used to visit. The intention was for the operatives to remove feed immediately it was deposited on the ground. A Council officer is also usually in attendance. Since these resources were deployed feeders have varied the times of their visits. There was only one occasion (1230, 3 February 2006) when officers encountered the feeders - one man and one woman. When asked to stop scooping feed from a carrier bag onto the ground the man said "It is only illegal in the Square". However the feeding has continued to take place after the operatives and officers have left and it is clear that the feeders will not readily refrain from depositing bird feed in the absence of byelaw prohibiting the act.**

4. Why is the Council satisfied that the nuisance is so great as to merit a criminal offence?

**The level of feeding is deliberately excessive to compensate for the ban on the main area of the Square so the lack of a byelaw on the North Terrace is defeating the object of the existing byelaw. The North Terrace is physically integral to an area where the nature and extent of the nuisance has already been established by the granting of a byelaw. It would be absurd to suggest that within an area of 10,000m<sup>2</sup> there is a case for the application of two different legal frameworks. Either both authorities should**

**have a byelaw or neither should have one; the case having been made for the greater part of the Square applies equally to the lesser part and areas contiguous to both.**

5. Please confirm that the aim of the byelaws is not solely to protect people from the consequences of their own actions.

**Confirmed.**

6. If appropriate, please describe what consultation required by the legislation has been carried out.

**None is required.**

7. Please describe what informal consultation has taken place, both with individuals and groups likely to be affected by the byelaw.

**There have been exchanges of correspondence with the Mayor of London, Ken Livingstone, and officers of the GLA, and between neighbours of Trafalgar Square (e.g. St Martins-in-the-Fields, National Gallery). The Mayor of London has also sought support for the Westminster byelaw from the Rt.Hon.Margaret Beckett, MP. The aforementioned have all been supportive of action by the City Council to prevent the feeding of birds in the areas around the Square but there has been no correspondence with likely objectors. The 'Pigeon Action Group' did write to the Rt.Hon.Mark Field, MP, in February (to complain that City Council officers had asked members of their group to stop depositing feed on the North Terrace) and he asked the City Council for its comments. The City Council responded on 21 February, explaining the anomaly of a bird feeding prohibition applicable solely to part of the Square and advising that action was in process to correct the anomaly. The objections of the 'Save the Trafalgar Square Pigeons' and 'Pigeon Action Group' are well-known having been fully aired when the GLA was seeking a byelaw for the part of the Square they administer. The City Council proposes to invite comments for a period of one month following advertisement of the byelaw and will write directly to the STSP and PAG for their views.**

8. Is the authority content that the byelaws are reasonable in how they will be applied in the particular local context (ie. that they are not partial or unequal in their application, that they are not manifestly unjust, and that they do not involve oppressive or gratuitous interference with the rights of those whom they affect)? Please justify this view.

**Yes. They would mirror those already in place on the GLA area of the Square.**

Please confirm the following, deleting as appropriate

9. The Authority:

believes that the byelaws are necessary in the local context Yes/~~No~~

believes that this application is reasonable and that other means of addressing the situation at which the proposed byelaws are directed are inappropriate or insufficient. Yes/~~No~~

is content that the proposed byelaws do not duplicate or conflict with national legislation or common law. Yes/~~No~~

is satisfied that the proposed byelaws do not conflict with any central government policy of which they are aware Yes/~~No~~

is content that the byelaws are certain in their terms (i.e. that they contain adequate information about the duties of those whom they might affect, are positive and avoid ambiguity) Yes/~~No~~

10. The Authority is content that: (delete as appropriate)

(a) the proposed byelaws do not duplicate or conflict with existing byelaws, or

~~(b) the Authority has included a byelaw revoking existing byelaws.~~

i) Byelaws made under section 8 (1) (d) of the Local Government Act 1894 cannot be revoked by byelaws made under any other enactment. They must be revoked by an Order

under section 262 (8) (d) of the Local Government Act 1972. Please consult DCLG if you think that this applies.

ii) Byelaws relating to dogs are now the responsibility of the Department of Food & Rural Affairs to which a separate application should be made for the revocation of existing dog byelaws, including when such byelaws are part of a set which is otherwise the responsibility of DCLG.

11. List any objections of which the authority is aware at this stage (i.e. before sealing and advertisement of the byelaws) and the **authority's response to those objections**. Copies of any letters of objection or other relevant documentation should be attached.

**Two groups - 'Save the Trafalgar Square Pigeons' and 'Pigeon Action Group' - are known to object to the prohibition of feeding of birds in and around Trafalgar Square. Their objections were made known at the time the GLA were seeking a byelaw applicable to the part of the Square under their administration. The granting of the byelaw set a precedent by determining that the objections were outweighed by the benefits of a prohibition on feeding of birds such as higher standards of hygiene and cleanliness, and a reduction in damage to the historic fabric of the Square and surrounding buildings. Objections by the aforementioned groups to the proposed Byelaws can be expected to include protest at the designation of areas to which the Byelaws would apply - i.e. areas contiguous to the Square rather than just the North Terrace (as illustrated in the map appended). It is essential that the Byelaws are applicable to these areas because by their feeding of pigeons on the North Terrace, and by encouraging others via their websites to do the same, the groups have demonstrated their determination to undermine the existing byelaw. When the GLA byelaw came into force the STSP advertised on their website that pigeons could still be fed "...legally on the large paved area outside the National Gallery.". In a BBC news interview a PAG spokesperson encouraged the feeding of pigeons in areas to which the GLA byelaw did not apply, advising that "There are parts of the precinct and an area just south of Nelson's Column that do not come under Trafalgar Square. So people will therefore be perfectly within the law to feed pigeons in those areas."**

12. The byelaws will come into effect one month after confirmation unless there are special circumstances which make it desirable for the byelaws to operate at an earlier date. If an alternative date is preferred, please state here \_\_\_\_\_ and explain why this date would be preferable.

**The City Council would like the Byelaws to become operative as soon as possible so as to put an end to the nuisance being caused by the feeding of pigeons at the earliest opportunity.**

The proforma should be signed by the Chief Executive, Secretary or other proper officer of the authority, as designated by the authority.

The attached draft byelaws do not follow exactly an DCLG model. I submit the draft byelaws for provisional approval prior to sealing and advertisement in accordance with the standard scheme set out in the DCLG Guidance of October 2005.

Signature \_\_\_\_\_

Name **Dr Leith Penny**

Position **Director of Environment and Leisure**

Date \_\_\_\_\_