

# London Councils' Transport & Environment Committee

## Setting FPN levels for the City of Westminster's Byelaws

Item no: 13

**Report by:** Jennifer Sibley      **Job title:** Principal Policy Officer  
**Date:** 18 June 2015  
**Contact Officer:** Jennifer Sibley  
**Telephone:** 0207 934 9829      **Email:** [Jennifer.sibley@londoncouncils.gov.uk](mailto:Jennifer.sibley@londoncouncils.gov.uk)

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**Summary:** This report sets out the results of the public consultation into setting an FPN level for three of the City of Westminster's byelaws: 'noise in streets and other public places'; 'urinating etc.'; and 'feeding of birds prohibited'. It asks Members to set fixed penalty levels for breaching these byelaws.

**Recommendations:** The Committee is asked to:

- Note the consultation outcome.
- Set an FPN level of £80 for breaches to the City of Westminster's byelaws on 'noise in streets and other public places'; 'urinating etc.' and 'feeding of birds prohibited'.
- Set the level of reduction at £50 if the fixed penalty is paid within 14 days from the date of the notice.

## Setting Fixed Penalty Notice (FPN) levels for the City of Westminster's Byelaws

### Background

1. On 12 October 2001 the Secretary of State confirmed the City of Westminster's byelaws on 'noise in streets and other public places', and 'urinating etc.' under Section 235 of the Local Government Act 1972, and they came into force on 8 November 2001.

2. These byelaws prohibit:

#### Noise in streets and other public places

*No person in a street or other public place shall, after being requested to desist by a constable, or by any person annoyed or disturbed, or by any person acting on his behalf:*

- i. *By shouting or singing;*
- ii. *By playing a musical instrument;*
- iii. *By operating or permitting to be operated any radio, gramophone, amplifier, tape recorder or similar instrument*

*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 person in the neighbourhood.*

*This byelaw shall not apply to properly conducted religious services or to any person holding or taking part in any entertainment held with the consent of the council.*

#### Urinating, etc.

*No person shall urinate or defecate in any public place.*

Further information on these byelaws can be found here:

[http://transact.westminster.gov.uk/docstores/publications\\_store/Good%20Rule%20and%20Government%20No%202.pdf](http://transact.westminster.gov.uk/docstores/publications_store/Good%20Rule%20and%20Government%20No%202.pdf)

3. On 17 August 2007 the Secretary of State confirmed the City of Westminster's byelaw on 'feeding of birds prohibited' under Section 235 of the Local Government Act 1972 and it came into force on 3 September 2007.

#### Feeding of birds prohibited

*No person shall within any area in the City of Westminster identified in the Schedule to these Byelaws –*

- (1) *feed any bird (which shall include dropping or casting feeding stuff for birds); or*
- (2) *distribute any feeding stuff for birds.*

This byelaw applies to a specified area within the City of Westminster, which can be found in the papers relating to the byelaw, here:

[http://www3.westminster.gov.uk/docstores/publications\\_store/Byelaws%20to%20Prevent%20the%20Feeding%20of%20Birds.pdf](http://www3.westminster.gov.uk/docstores/publications_store/Byelaws%20to%20Prevent%20the%20Feeding%20of%20Birds.pdf)

4. Any person offending against a byelaw is liable on summary conviction to a fine not exceeding level 2 on the standard scale, currently £500.00. The City of Westminster wishes to introduce the option to discharge any liability to conviction by payment of a fixed penalty. Section 15 (1) (b) of the London Local Authorities Act 2004 (LLAA 2004) permits such an option.
5. Sections 15-18 of the London Local Authorities Act 2004 (LLAA 2004) establish the fixed penalty notices provisions for any byelaws made by borough councils.

6. By virtue of Section 17(6) of the LLAA 2004, the duty of borough councils to set the levels of fixed penalties payable must be discharged by the joint committee, London Councils' Transport and Environment Committee (TEC).

### **Process of setting the level of penalties under London Local Authority (LLA) legislation**

7. On 19 March 2015, TEC agreed to undertake a public consultation on the levels of fixed penalties for breaching the City of Westminster byelaws. It was proposed that penalty levels should be in line with penalties for similar types of local nuisance behaviour.
8. On 13 April 2015, London Councils launched a six-week public consultation on fixed penalty levels for these byelaws. London Councils invited comments from a range of stakeholders with an interest in the topic, including Directors of Environment, Heads of Community Safety and Anti-Social Behaviour Managers from local authorities; as well as national and regional organisations including TfL, the Metropolitan Police, GLA, Defra, DCLG and Keep Britain Tidy. The deadline for consultation responses from all respondents was Tuesday 26 May 2015.
9. The consultation questions were:
  1. What is your name?
  2. What is your email address?
  3. What is the name of your organisation? Please state N/A if you are responding as an individual member of the public.
  4. Which of the following best describes your organisation?
    - Local authority
    - Other public sector
    - Music industry/trade body
    - Member of the public
    - Other (please state)

*These questions relate to noise in streets. Do you wish to comment on these?*

5. Do you agree or disagree that the option of paying a fixed penalty notice for this offence, rather than a fine, should be possible?
6. Do you support or oppose the proposal that the level of fixed penalty for this offence should be £80, in line with other anti-social offences such as dog control orders, littering, graffiti and fly posting?
7. Legislation requires the fixed penalty to be reduced if paid early. Do you support or oppose the proposal that the level of fixed penalty should be reduced to £50 if paid within 14 days?
8. Do you have any other comments relating to the proposals for noise in streets in the City of Westminster?

*These questions relate to the feeding of birds. Do you wish to provide answers on these?*

9. Do you agree or disagree that the option of paying a fixed penalty notice for this offence, rather than a fine, should be possible?
10. Do you support or oppose the proposal that the level of fixed penalty for this offence should be £80, in line with other anti-social offences such as dog control orders, littering, graffiti and fly posting?
11. Legislation requires the fixed penalty be reduced if paid early. Do you support or oppose the proposal that the level of fixed penalty should be reduced to £50 if paid within 14 days?
12. Do you have any other comments relating to the proposals for bird feeding in the City of Westminster?

*These questions relate to public urination. Do you wish to comment on these?*

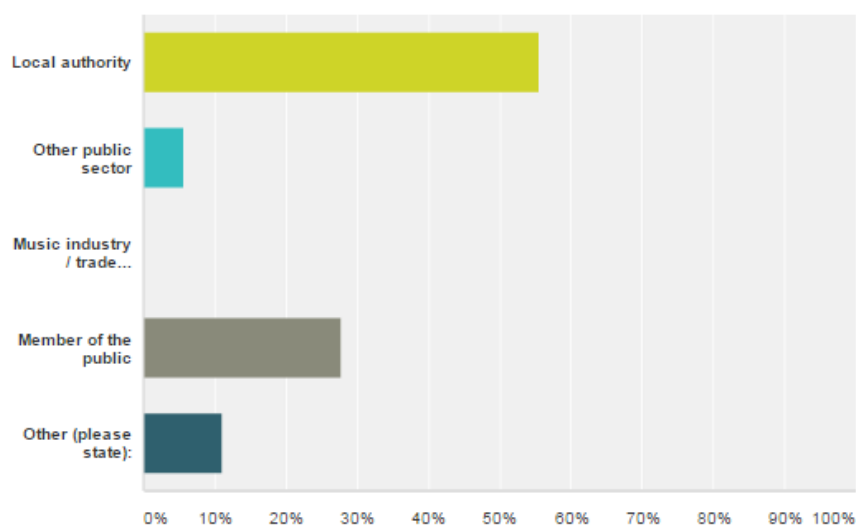
13. Do you agree or disagree that the option of paying a fixed penalty notice for this offence, rather than a fine, should be possible?
14. Do you support or oppose the proposal that the level of fixed penalty for this offence should be £80, in line with other anti-social offences such as dog control orders, littering, graffiti and fly posting?
15. Legislation requires the fixed penalty be reduced if paid early. Do you support or oppose the proposal that the level of fixed penalty should be reduced to £50 if paid within 14 days?
16. Do you have any other comments relating to the proposals for public urination in the City of Westminster?

## Consultation results summary

10. 18 responses to the consultation were received; ten from London boroughs and five from members of the public. The Metropolitan Police service, a residents association and a borough Community Safety Partnership also responded.

### Which of the following best describes your organisation?

Answered: 18 Skipped: 0



## Noise in streets and public places byelaw

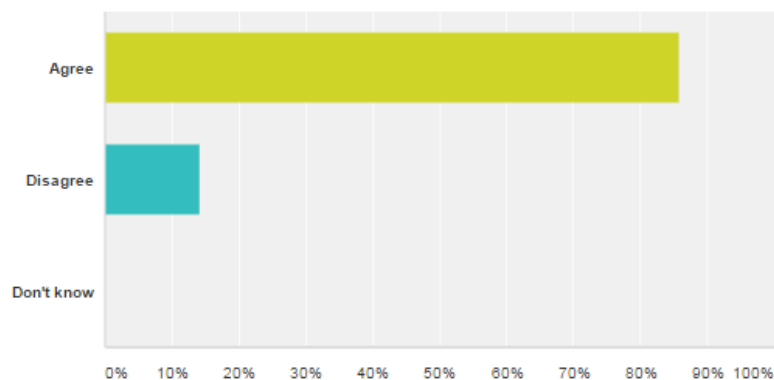
11. 14 people responded to these questions.

12. 86% supported offering an FPN for breaching this byelaw. 14% opposed this. Five comments were received, summarised below:

- The proportionality [of noise] should be considered.
- Offering an FPN would shorten the enforcement process.
- This is more proportionate than full prosecution.
- The FPN could be misused; not all noise is offensive.
- The final comment gave details of noise nuisance an individual had experienced.

**Do you agree or disagree that the option of paying a fixed penalty notice for this offence, rather than a fine, should be possible?**

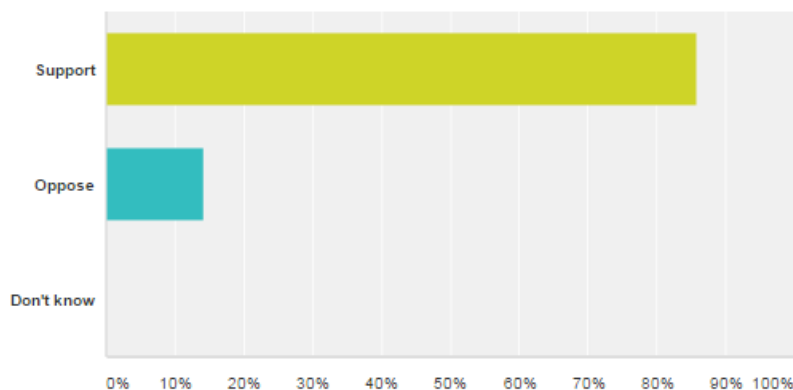
Answered: 14 Skipped: 4



13. 86% of respondents supported setting a fixed penalty level of £80, with 14% against. Four comments were received: the FPN level should be higher; that penalties should be increased when associated with a particular premises, especially in late evening; and that this level is consistent with other byelaws and similar offences (two comments).

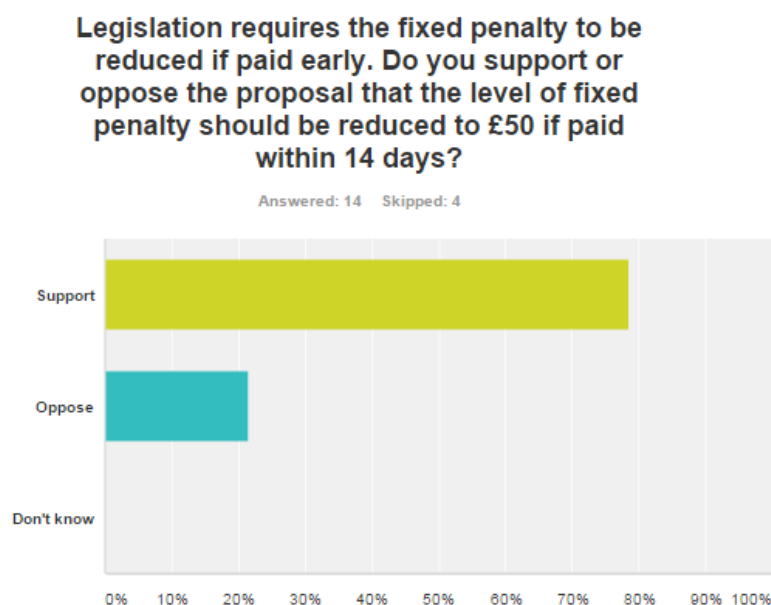
**Do you support or oppose the proposal that the level of fixed penalty for this offence should be £80, in line with other anti-social offences such as dog control orders, littering, graffiti and fly posting?**

Answered: 14 Skipped: 4



14. 79% of respondents supported reducing the penalty to £50 if paid within 14 days. 21% opposed this. Five comments were received:

- The FPN amount should be higher and so therefore the early payment amount should be higher.
- Publicise the FPN and increase it if unpaid.
- The early payment amount is too high.
- Two comments affirmed its consistency with other FPNs and that an early payment facility worked well at the respondent's council.



15. The final question on 'noise in streets and public places' included space for additional comments. Two were received: one queried how it would be enforced; another stated it conflicted with powers available to the police under public order offences.

**Recommendation: The Committee sets an FPN level of £80 for breaches to the 'noise in streets and other public places' byelaw; reduced to £50 if paid within 14 days.**

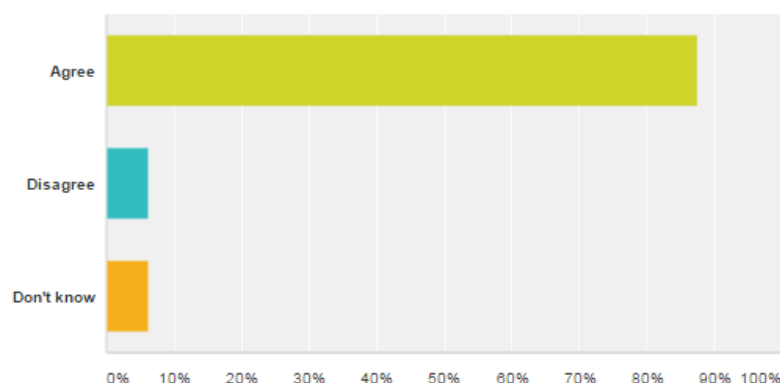
Urinating etc.

16. 17 people responded to these questions.

17. 87.5% supported the proposal to offer an FPN. 6.25% disagreed (1 person) and 6.25% did not know (1 person).

**Do you agree or disagree that the option of paying a fixed penalty notice for this offence, rather than a fine, should be possible?**

Answered: 16 Skipped: 2



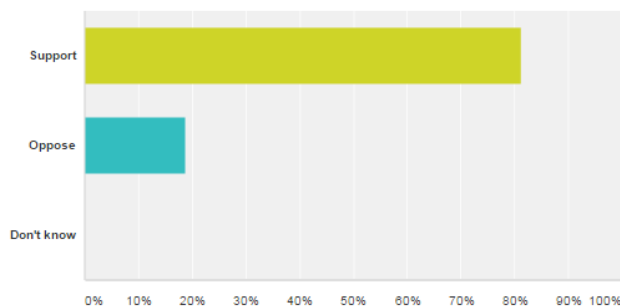
**18. Five comments were received:**

- One member of the public wanted to see this issue tackled across all of London's boroughs.
- One member of the public considered this behaviour disgusting.
- One member of the public felt it would be too difficult to enforce as in their view most people offending in this way would have consumed alcohol making enforcement inappropriate.
- One member of the public felt there was insufficient provision of public toilets in the City of Westminster and this needed to be addressed first.
- One borough supported the FPN approach as it could help shorten the enforcement process.

**19. 81% of respondents supported an £80 FPN level. 19% opposed this. Of the four comments received, two felt a higher FPN was more appropriate; one expressed support as this was consistent across London; the fourth expressed support as long as individuals who had consumed alcohol were not issued with FPNs.**

**Do you support or oppose the proposal that the level of fixed penalty for this offence should be £80, in line with other anti-social offences such as dog control orders, littering, graffiti and fly posting?**

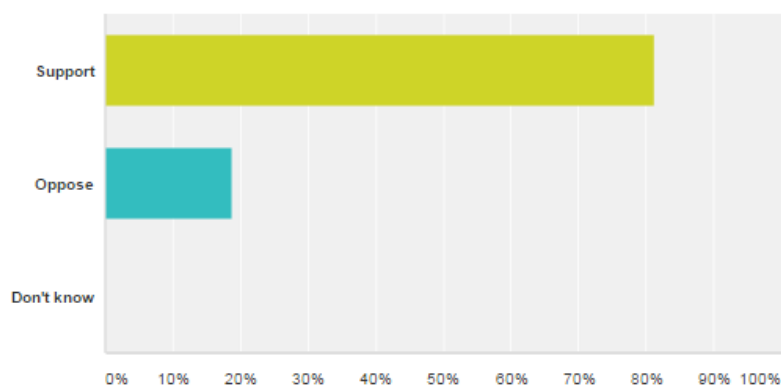
Answered: 16 Skipped: 2



20. 81% of respondents supported a reduction to £50 if the FPN was paid within 14 days. 19% opposed this.
21. The four comments received were in line with those given previously; two comments sought higher penalties; a third considered it consistent; the fourth expressed concern about issuing FPNs to people who had consumed alcohol.

**Legislation requires the fixed penalty be reduced if paid early. Do you support or oppose the proposal that the level of fixed penalty should be reduced to £50 if paid within 14 days?**

Answered: 16 Skipped: 2



22. The final question asked if respondents had any further comments. Seven people commented. Two stated it would be difficult to enforce; three felt businesses should be encouraged to provide access to their toilets and that more public toilets were needed; one stated their council enforced public urination as a litter FPN; the sixth stated that the FPN was a simple and efficient way to tackle these offences and was proportional to the costs involved and behaviour the FPN was intending to address.

**Recommendation: The Committee is asked to: set an FPN level of £80 for breaches to the 'urinating etc.' byelaw; reduced to £50 if paid within 14 days.**

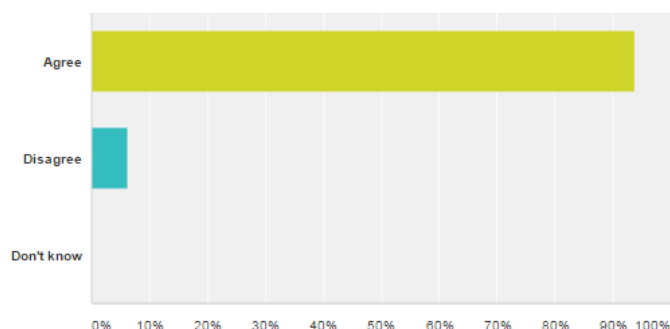
### Feeding of birds

23. 16 people responded to these questions.
24. 94% of respondents supported having the option of paying an FPN for this offence. 6% of respondents opposed this. Four comments were received:
- Support from one borough intending to tackle this using litter FPNs.
  - Two comments queried how it would be enforced, especially against foreign tourists.
  - Support from a member of public who considered feeding pigeons to be unacceptable.



**Do you agree or disagree that the option of paying a fixed penalty notice for this offence, rather than a fine, should be possible?**

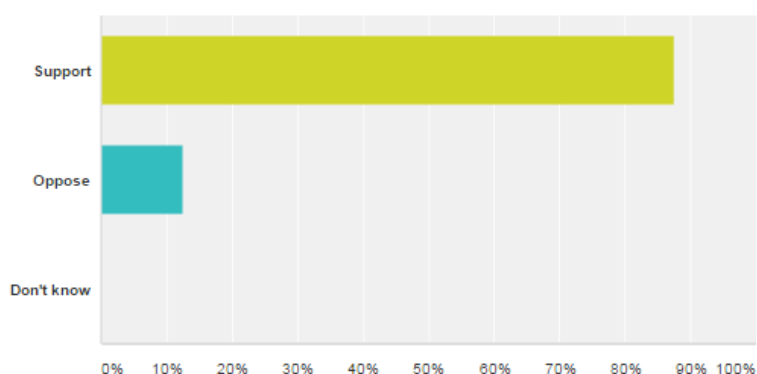
Answered: 16 Skipped: 2



25. 87.5% of respondents supported the proposal to set the FPN at £80. 12.5% opposed this. Of the three comments received, two expressed support for this level as consistent with other offences and a third stated a higher penalty would be more appropriate.

**Do you support or oppose the proposal that the level of fixed penalty for this offence should be £80, in line with other anti-social offences such as dog control orders, littering, graffiti and fly posting?**

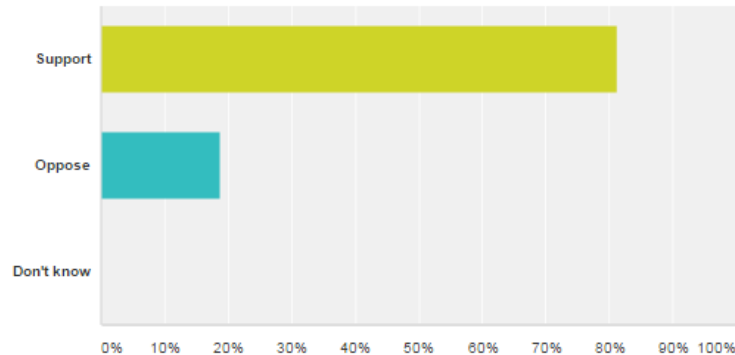
Answered: 16 Skipped: 2



26. 80% of respondents supported the proposal to reduce the FPN to £50 if paid within 14 days. 19% opposed this. Five comments were received, of which two supported the level for consistency; one felt the level was too high; one felt it was insufficiently high; and the fifth wanted the penalty level increased if it was not paid within 14 days.

**Legislation requires the fixed penalty be reduced if paid early. Do you support or oppose the proposal that the level of fixed penalty should be reduced to £50 if paid within 14 days?**

Answered: 16 Skipped: 2



27. The final question on 'feeding of birds' asked for any further comments, with three received. Two related to concerns about public health and animal safety. A third concerned enforcement against tourists and whether this would weaken the byelaw's effectiveness.

**Recommendation: The Committee is asked to: set an FPN level of £80 for breaches to the 'feeding to birds prohibited' byelaw; reduced to £50 if paid within 14 days.**

### Next steps

28. If TEC decides to set fixed penalty level and a discounted amount for early payment for the City of Westminster's byelaws, London Councils will communicate this to the Secretary of State, as required by the legislation.
29. The FPN levels for byelaws come into force one month after the day of the notice to the Secretary of State, unless before this period ends he objects to the level of penalty, in which case they do not come into force.
30. If the Secretary of State considers the level of penalty excessive, he can make regulations reducing the level of fixed penalty notice.
31. In the event that the Secretary of State did make regulations, TEC would not be able to set any further fixed penalty notices for 12 months.
32. London Councils will communicate to the City of Westminster whether the level of penalty comes into force or is objected to by the Secretary of State. London Councils will inform all other boroughs of the outcome in the Chair's Report at the next TEC meeting.

### Recommendations

33. The Committee is asked to:
  - Note the consultation outcome.
  - Set an FPN level of £80 for breaches to the City of Westminster's byelaws on 'noise in streets and other public places'; 'urinating etc.'; and the 'feeding of birds prohibited'.
  - Set the level of reduction at £50 if the fixed penalty is paid within 14 days from the date of the notice.

## **Financial Implications**

- 34. There are no financial implications to London Councils arising from this report.
- 35. The enforcing authority, the City of Westminster, will determine its own financial implications of enforcing these byelaws.

## **Legal Implications**

- 36. TEC is asked to set the level of FPN for breaches to the City of Westminster's byelaws, by virtue of its powers under s.17(6) of the LLAA 2004 (the duty of borough councils to set the levels of fixed penalties payable must be discharged by the joint committee).

## **Equalities Implications**

- 37. A Relevance Test for whether to carry out an Equalities Impact Assessment has been undertaken by London Councils officers (see Appendix A).
- 38. It is considered that the 'feeding of birds prohibited' byelaw could have a Low Adverse Impact on the grounds of race. International tourists or people whose first language is not English may not understand signs prohibiting the feeding of birds. These concerns were raised in the consultation. The City of Westminster is encouraged to ensure its signs are pictorial in nature, to ensure this does not occur.
- 39. It is considered there is No Adverse Impact caused by the 'noise in streets and public places' byelaw.
- 40. It is considered there is No Adverse Impact caused by the 'urinating etc.' byelaw.
- 41. Therefore in accordance with the Equalities Impact Assessment policy of London Councils, a Full Impact Assessment is not required for the introduction of these byelaws.

# Appendix A

## LONDON COUNCILS EQUALITIES IMPACT ASSESSMENT FORM A: Relevance Test

Name of policy, service or function being assessed:

**‘Feeding of birds prohibited’, City of Westminster byelaw**

Mark on the grid below whether the policy/function might have an adverse impact on any of the grounds indicated.

Equality Area	No adverse impact	Low adverse impact	Medium adverse impact	High adverse impact
Race		✓		
Gender	✓			
Disability	✓			
Religion/belief	✓			
Sexual orientation	✓			
Age	✓			

Relevance test completed by:

**NAME** Jennifer Sibley  
**DIVISION** Policy and Public Affairs  
**DATE** 1 June 2015

**If a medium or high adverse impact has been identified for any area then a full impact assessment must be undertaken using Form B.**

**LONDON COUNCILS EQUALITIES IMPACT ASSESSMENT**  
**FORM A: Relevance Test**

Name of policy, service or function being assessed:

**‘Noise in streets and public places’, City of Westminster byelaw**

Mark on the grid below whether the policy/function might have an adverse impact on any of the grounds indicated.

<b>Equality Area</b>	<b>No adverse impact</b>	<b>Low adverse impact</b>	<b>Medium adverse impact</b>	<b>High adverse impact</b>
<b>Race</b>	✓			
<b>Gender</b>	✓			
<b>Disability</b>	✓			
<b>Religion/belief</b>	✓			
<b>Sexual orientation</b>	✓			
<b>Age</b>	✓			

Relevance test completed by:

**NAME**                      **Jennifer Sibley**  
**DIVISION**                **Policy and Public Affairs**  
**DATE**                      **1 June 2015**

**If a medium or high adverse impact has been identified for any area then a full impact assessment must be undertaken using Form B.**

**LONDON COUNCILS EQUALITIES IMPACT ASSESSMENT**  
**FORM A: Relevance Test**

Name of policy, service or function being assessed:

**‘Urinating etc.’, City of Westminster byelaw**

Mark on the grid below whether the policy/function might have an adverse impact on any of the grounds indicated.

<b>Equality Area</b>	<b>No adverse impact</b>	<b>Low adverse impact</b>	<b>Medium adverse impact</b>	<b>High adverse impact</b>
<b>Race</b>	✓			
<b>Gender</b>	✓			
<b>Disability</b>	✓			
<b>Religion/belief</b>	✓			
<b>Sexual orientation</b>	✓			
<b>Age</b>	✓			

Relevance test completed by:

**NAME**                      **Jennifer Sibley**  
**DIVISION**                **Policy and Public Affairs**  
**DATE**                      **1 June 2015**

**If a medium or high adverse impact has been identified for any area then a full impact assessment must be undertaken using Form B.**