

Committee:	Date:
Epping Forest and Commons	11 th May 2015
Subject: Promotion of a City of London Corporation (Open Spaces) Bill	Public
Report of: Remembrancer	For Decision

Summary

On 3rd November 2014, the Committee agreed that local consultation should be carried out with a view to the promotion of a private Bill in Parliament to make changes to the legislative framework governing the City Corporation's Open Spaces. In the light of that consultation and following further internal discussion, a number of provisions as described in the main body of this Report are now being put forward for the Committee's consideration. The principal aims of the changes would be to clarify and expand the management powers available to the Corporation, to increase opportunities to generate revenue for the benefit of the Open Spaces (consistently with their status as a public resource), and to strengthen enforcement powers.

Recommendation

The Committee is invited to approve a recommendation, subject to the concurrence of the Policy and Resources Committee and the Court of Common Council, that a City of London Corporation (Open Spaces) Bill be promoted to seek the legislative changes described in this Report.

Main Report

Introduction

1. The statutory Open Spaces managed by the City Corporation largely continue to be governed by nineteenth-century legislation, with only limited modifications since 1878 (most significantly in the 1930s and the 1970s). While this legislation has served its basic purpose of preserving the Open Spaces as valuable places of public recreation and enjoyment, there are a number of respects in which it is unclear or out of date. This can leave the City Corporation exercising management functions in reliance on its position as landowner, where it would be more appropriate to be able to draw on express statutory powers. The Open Spaces Department has also identified features of the current legislation which impede the ability to generate income for the Open Spaces, without compromising their essential function as a natural amenity and public recreational resource. A need for new powers to

deal effectively with anti-social behaviour and low-level crime has also been identified.

2. For these reasons the Committee was invited last year (3rd November) to approve an informal consultation to seek out local views about potential changes to the legislation. Following the approval of the Committee, a discussion paper was published and a number of responses received (as summarised below). Officers have considered these and further internal discussion has taken place about the legal and practical background. As a result, it has been decided to seek agreement to a number of legislative changes. These broadly follow the proposals canvassed in the discussion paper. If the Policy and Resources Committee and the Court of Common Council agree to the promotion of a Bill, the parliamentary process would offer a formal opportunity for interested parties to submit views about the detailed merits of the proposals.

Proposed provisions for inclusion in the Bill

3. The provisions described below would apply (so far as this Committee is concerned) to all land held under the Epping Forest Act 1878 and the Corporation of London (Open Spaces) Act 1878, with the enforcement powers also applying to the deer sanctuary adjoining Epping Forest (and regulated under the City of London (Various Powers) Act 1959). Land held solely in a private capacity and not under any statutory regime, such as the Epping Forest buffer land, would not be affected. In relation to Epping Forest and the deer sanctuary, powers would be exercised by the City Corporation acting as the Conservators of Epping Forest.

Management powers

4. An express power is proposed for the City Corporation to carry out husbandry and land management in the Open Spaces, including in particular the cutting, chipping, mulching, collecting, swaling (a method of controlled burning) or cultivation of vegetation, and the grazing of animals (whether directly by the City Corporation or by agreement with other persons). This power would have to be exercised consistently with the City Corporation's duty to preserve the natural aspect of the Open Spaces, and would also be subject to those rights of common which are still exercisable in Epping Forest and Ashted Common. It is not intended that the Open Spaces should be managed in a different way as a result of the power, but rather to provide greater legal clarity. At present the legislation contains an express power of management only in relation to trees, pollards and underwoods (shrubs in wooded areas), which does not reflect the full range of activities which need to be carried out in order to preserve the environment of the Open Spaces.

Leases

5. An extended power to let premises such as cafés is proposed, with the maximum period set at twenty-one years (as opposed to the current three-year maximum for refreshment facilities). Leases of longer length should attract greater private investment and thus improve the standard of facility on offer. The power of letting would be exercisable in connection with all services

and facilities which the City Corporation is able to provide through a third party. An express power is required for letting because of the inalienable status of the Open Spaces. The extended period would not prevent the Corporation from exercising contractual rights to terminate arrangements with providers early, for instance if the standard of provision were to prove unsatisfactory.

Agreements regarding utilities

6. A power is proposed to enter into agreement with utilities companies to lay infrastructure such as water-pipes and electricity-cables in the Open Spaces. A number of such agreements have been entered into in the past in reliance on the City Corporation's general powers as landowner. It is however desirable to remove any room for debate about the nature of such agreements by providing an express power in legislation, incorporating protective provisions. Infrastructure would have to be underground (enabling reinstatement of the surface after digging) unless overground installation would not harm the amenity of the Open Spaces.

Highways and traffic management

7. It is also proposed to empower the City Corporation to enter into formal agreements with local councils about highways and traffic management functions. These could cover, for instance, the installation or removal of cattle-grids, traffic controls, or the management of parts of the Open Spaces so as to complement road safety schemes. The provision would not expand the substantive powers of either party over the land under its control, but would provide a formal framework whereby the interests of users of the Open Spaces and users of the local roads network could both be taken into account.

Revenue-generating powers

8. It is proposed to seek an express power to enable events such as wedding receptions, recitals and exhibitions to take place in the Open Spaces in defined circumstances. The Open Spaces would offer attractive venues for a range of events such as these. Without compromising the essential purpose of the Open Spaces, the Open Spaces Department believes that significant revenue could be generated to support their running costs. Although some small-scale use of the Open Spaces for private events has already started in reliance on the City Corporation's position as landowner and charitable trustee, it is preferable to have an express power laid down in legislation to set out the circumstances in which such events may be allowed, particularly if it might be necessary to impose temporary restrictions on public access to limited areas in order to enable events to go ahead. The power would be subject to safeguards in order to ensure that it would only be used consistently with the main purposes of the Open Spaces and would not materially harm the amenity they provide for public recreation and enjoyment. In particular, policies would be produced in consultation with interested parties (including the consultative committees) as to the types and frequency of events which could be held.

9. There are a number of lodges and other buildings in the Open Spaces which are no longer required for management purposes. They represent a resource which could be deployed for the benefit of the Open Spaces, but under the present legislation there are only limited circumstances in which they can be used for purposes other than managing the Open Spaces. A power is therefore proposed to grant leases or licences for up to 21 years in order to enable such buildings to be used for residential, commercial, charitable or other purposes, provided that no material harm to the amenity the Open Spaces provide would result.
10. Recent years have seen an increase in the use of the Open Spaces for commercial activity, such as paid dog-walking and fitness instruction. A mechanism to obtain a contribution to the running costs of the Open Spaces from those who use them for private profit would appear consistent with the public recreational purposes for which they are maintained. A power is therefore proposed to introduce a licensing scheme for commercial use of the Open Spaces, to subject profit-making activities specified in the scheme to a requirement that a license is purchased and its conditions adhered to.

Enforcement powers

11. It is proposed to make clear that the standard scale of fines introduced in 1982 applies to offences under the byelaws applicable in the Open Spaces. Prior to the introduction of the standard scale (which provides five 'levels' of fine updated periodically by secondary legislation), amounts of fine were enshrined in primary legislation with no means of up-rating for inflation. The fines for the Open Spaces were last updated in 1977, when the maximum was set at £200. By way of comparison, most byelaws for open spaces operated by local authorities now make use of level 2 on the standard scale, which is currently set at £500 but is shortly to rise to £2,000. The courts in certain cases have been prepared to accept that the standard scale does apply to the City Corporation's Open Spaces, but the legislative position is not entirely clear. It is therefore desirable to settle the position. Although primarily relating to byelaw offences, the proposal also includes offences under section 9(5) of the Epping Forest Act 1878 (failing to comply with protective measures restricting horse-riding).
12. A power is proposed to be able to issue fixed penalty notices for certain offences committed in the Open Spaces. These would primarily be offences against the byelaws but would also include littering, offences under section 9(5) of the Epping Forest Act 1878, and, if the proposals in this report are taken forward, contraventions of licensing schemes for commercial activity. Fixed penalty notices offer suspected offenders the option to pay a lesser fine (of up to £100) in order to avoid criminal prosecution. They thus provide an intermediate option between an informal warning and full prosecution in the magistrates' court. They are now widely used by police forces and local authorities in relation to anti-social behaviour and other low-level criminality.
13. The public right of access to the Open Spaces means that there is limited scope to protect them, their users or the staff managing them from the small number of people who use them to engage in anti-social behaviour or other wrongdoing. A power is proposed (along the lines of those available to local

authorities under anti-social behaviour legislation) to take action against persons who behave in this way in the Open Spaces. In other public recreational resources, such as National Trust land and Forestry Commission forests, offenders against byelaws may be dealt with through removal or exclusion.

14. A power is proposed to require persons believed to have committed an offence in the Open Spaces to give their name and address. This power is now commonly conferred on bodies (such as London borough councils and TfL) which issue fixed penalty notices or carry out private prosecutions, and prevents offenders from (lawfully) evading enforcement by refusing to supply their details. At present in the Open Spaces police assistance has to be invoked where a suspected offender refuses to give his name or address voluntarily. Whilst the offence will not guarantee cooperation, it makes it more likely.
15. It is also proposed to clarify the City Corporation's powers with respect to objects abandoned or unlawfully deposited in the Open Spaces. These might range from placards and posters to camping equipment or motor vehicles. The Corporation's common-law powers and duties with respect to such objects are currently unclear. A formal procedure would require the Corporation to impound any object removed from the Open Spaces (apart from those manifestly without value) for a period of fourteen days during which the owner could pay storage fees and recover it. After that period the Corporation would be empowered to sell or dispose of the object. For abandoned motor vehicles special provision would be made to tie in with the existing regime used by local authorities.

Miscellaneous

16. The general powers of the City Corporation to provide services and facilities to visiting members of the public were obtained in relation to the City Commons in 1933 and 1977. As a result they do not currently apply to Ashstead Common or Stoke Common, which were acquired in 1991 and 2007 respectively. It is proposed to extend the ability to provide such services and facilities to Ashtead Common and Stoke Common, and also to ensure that any future acquisitions under the Corporation of London (Open Spaces) Act 1878 would be covered.
17. A power is proposed to enable the City Corporation to authorise officers to appear in magistrates' courts on behalf of the Corporation in connection with cases involving the Open Spaces. Such a power would achieve consistency with local government legislation by which officers of local authorities may be authorised to appear on behalf of the authority by which they are employed.

Consultation

18. The consultation attracted a large number of responses from individuals and organisations, particularly in relation to Epping Forest. The general tenor was positive, although a number of specific concerns were raised. Mostly these went to specific questions of practical implementation rather than to the general principle of the proposals. It is the view of Officers that they can be

satisfactorily addressed through appropriate management plans and policies and through local engagement in decisions taken about the exercise of the new powers.

19. The proposals with respect to management powers were largely supported, subject to the concern that they should not lead to the creation of an 'over-developed' environment. This view was particularly concentrated on the proposal to permit longer leases of refreshment facilities, with several respondents arguing that large, well-known commercial operators would not be suitable. Grazing attracted supporters and detractors in equal measure, again more in relation to local policy than to the power itself. The need to generate additional revenue was generally appreciated, and allowing a wider use of buildings was particularly well supported. Many respondents however stressed that public recreation must remain paramount, and a few accordingly expressed concern about allowing large-scale events, especially at times and places popular with ordinary visitors. The proposal to licence commercial activity saw views expressed on both sides, although with significantly more in support than against. The proposals for new enforcement powers were strongly supported across the piece, with criticisms focused almost entirely on the adequacy of resources devoted to enforcement rather than on the principle of additional enforcement tools.
20. The Discussion Paper was also presented by the Superintendent to the consultative committees for Ashted Common, the Coulsdon Commons and the West Wickham Commons. A number of points of clarification were sought and given but no substantial criticism of the proposals was made.

Strategic implications

21. The proposals described above would advance Key Policy Priorities 2 ("improving the value for money of our services within the constraints of reduced resources") and 6 ("increasing the outreach and impact of the City's cultural, heritage and leisure contribution to the life of London and the nation") in the Corporate Plan 2015–19. The proposals would facilitate efficiency savings and the delivery of the Service-Based Review (KPP2), enhance the potential for the City Corporation's leisure facilities to generate additional income in order to maintain quality of content in an era of reduced resource (KPP5), and assist in providing safe, secure and accessible Open Spaces (KPP5).
22. The Open Spaces Business Plan 2015/17–2017/18, as agreed by the Open Spaces and City Gardens Committee on 20th April 2015 and shortly due to be considered by other relevant committees, includes reference to legislative proposals as a key project on the Open Spaces Roadmap. The proposals would enable or facilitate a number of other projects set out in the Roadmap.

Financial and risk implications

23. The Bill would enable or facilitate the generation of revenue to be applied for the benefit of the Open Spaces. For example, it is estimated that the letting of residential lodges at Epping Forest would generate net income of £120,000 per annum.

24. The costs of promoting the Bill are estimated to be in the region of £75,000 (covering items such as parliamentary fees, printing and statutory notices), provided that the Bill were unopposed. If the Bill were to be opposed by petition, the costs would be significantly greater.
25. There is an element of non-financial risk in the form of reputational damage if the proposed management or revenue-generating powers were regarded as detracting from the central purpose of the Open Spaces as unspoilt places of free public resort, or if the proposed enforcement powers were perceived as excessive. Clear explanation of the content and background of the proposals, willingness to include appropriate safeguards in the legislation, and the development of policies to guide the implementation of the proposed powers will be needed to enable such risk to be dealt with effectively.

Next steps

26. Similar reports will be submitted to the other management committees seeking agreement to the proposed provisions to the extent that they apply to the Open Spaces within the remit of each committee. If the proposals are agreed by the management committees, the Policy and Resources Committee will be invited to submit a recommendation to the Court of Common Council that authority be given to promote a Bill. If authorised, the Bill would be deposited in Parliament in November this year. It is then likely to be in Parliament for two sessions.

Conclusion

27. The Open Spaces Department wishes to take this opportunity to amend and supplement the legislation governing the Open Spaces so as to provide a clear basis for a full range of appropriate management activities, to ensure continued financial sustainability, and to strengthen the ability of the City Corporation to protect against misuse in an effective and proportionate manner. These proposals are presented to the Committee to give effect to these objectives.

Appendices

(None.)

Background Papers

- Report of the Remembrancer and the Director of Open Spaces on Open Spaces Legislation, 3rd November 2015.
- Minutes of the meeting of the Coulsdon Commons Consultative Committee, 14th January 2015.
- Minutes of the meeting of the West Wickham Commons Consultative Committee, 20th January 2015.
- Minutes of the meeting of the Ashstead Common Consultative Committee, 27th January 2015.

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