



Hampstead Heath Consultative Committee

Date: TUESDAY, 29 SEPTEMBER 2015
Time: 7.00 pm
Venue: PARLIAMENT HILL CONFERENCE ROOM, PARLIAMENT HILL STAFF YARD, PARLIAMENT HILL FIELDS, HAMPSTEAD HEATH, NW5 1QR

4. **CITY OF LONDON CORPORATION (OPEN SPACES) BILL**
Report of the Remembrancer.

For Discussion
(Pages 1 - 10)

Item received too late for circulation in conjunction with the Agenda.

John Barradell
Town Clerk and Chief Executive

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B I L L

To make provision relating to the public open spaces under the management and control of the City of London Corporation; and for related purposes.

WHEREAS—

- (1) A number of open spaces outside of the City of London are vested in the City of London Corporation (“the Corporation”) for the public benefit as places of recreation and enjoyment, and under various Acts the Corporation have powers of management over those open spaces:
- (2) It is expedient to provide certain further powers of management in relation to those open spaces, with a view to clarifying in various respects the powers and duties of the Corporation, more effectually promoting and securing the objects for which the open spaces are held, and providing further opportunity to raise revenue to be applied to those objects:
- (3) It is expedient to provide more effective powers of enforcement against persons who may act unlawfully in them:
- (4) It is expedient that certain of the provisions also be applied to open spaces within the City of London under the management of the Corporation:
- (5) It is expedient that the related provisions in this Act be enacted:
- (6) The objects of this Act cannot be attained without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Preliminary

1 Citation

This Act may be cited as the City of London Corporation (Open Spaces) Act 2016.

2 Interpretation

- (1) In this Act—
 - “authorised officer” means an officer or employee of the Corporation, or other person acting in relation to an open space, who is authorised in writing by the Corporation for the purposes of the provision concerned;
 - “the Corporation” means the Mayor and Commonalty and Citizens of the City of London, acting by the Common Council;
 - a reference to an “open space” is a reference to any of the open spaces to which, by virtue of section 3, the provision concerned applies; and
 - “right of common” means any right of common within the meaning of the Commons Act 2006 or any right referred to in section 5 or 6 of the Epping Forest Act 1878.
- (2) In the application of this Act to Epping Forest, any reference to the Corporation is to be taken as a reference to the Corporation in their capacity as the Conservators of Epping Forest.
- (3) In the application of this Act to any other open space outside the City of London, any reference to the Corporation is a reference to the Corporation acting other than in their capacity as a local authority.

3 Application

- (1) The subsequent provisions of this Act apply to the following open spaces—
 - Epping Forest, being the land subject to the Epping Forest Act 1878 and vested in the Corporation;
 - Highgate Wood and Queen’s Park, together being the land vested in the Corporation by the Highgate and Kilburn Open Spaces Act 1886;
 - Hampstead Heath, being the land vested in the Corporation by the London Government Reorganisation (Hampstead Heath) Order 1989; and
 - the commons, commonable land and open spaces vested in the Corporation by the Corporation of London (Open Spaces) Act 1878 (which at the time of the passing of this Act are Ashted Common, Burnham Beeches, Coulsdon Common, Farthing Downs, Kenley Common, Riddlesdown, Spring Park and Stoke Common).
- (2) Sections 6, 7, 8 and 10 (together with section 4 as it has effect in relation to those sections) also apply to the following open spaces—
 - Bunhill Fields, being the land vested in the Corporation by Part III of the City of London (Various Powers) Act 1960; and
 - any garden, ornamental ground or churchyard in the City of London which is managed by the Corporation for purposes of public recreation under the Open Spaces Act 1906 or any local enactment.
- (3) Sections 11 to 14 (together with section 4 as it has effect in relation to those sections) also apply to any land comprising a deer sanctuary to which section 17 of the City of London (Various Powers) Act 1959 applies (which land is accordingly to be regarded as an open space for the purposes of section 2(1)).

4 General provision

- (1) The sections of the Acts referred to in the following paragraphs of this subsection apply to this Act as they apply to the Acts referred to in those paragraphs—
 - (a) sections 12 and 16 of the Hampstead Heath Act 1871 (which provide for the preservation of the Heath as an unenclosed public open space and its natural aspect);
 - (b) sections 7 and 9 of the Epping Forest Act 1878 (which provide for the preservation of Epping Forest as an unenclosed public open space);
 - (c) sections 6 and 7 of the Corporation of London (Open Spaces) Act 1878 (which provide for the preservation of the natural aspect of the open spaces to which that Act applies and their continued maintenance as unenclosed for the benefit of the public); and
 - (d) section 2 of the Highgate and Kilburn Open Spaces Act 1886 (which provides for the maintenance and preservation of the lands to which that Act applies).
- (2) In relation to land falling within the second sub-paragraph in section 3(2) but not vested in the Corporation, the powers in in sections 6, 7, 8, and 10—
 - (a) may only be exercised with the consent of the landowner; and
 - (b) do not include the power to grant a lease.
- (3) Nothing in this Act—
 - (a) affects any power of the Corporation other than under this Act;
 - (b) affects any private right to enforce a trust, covenant, or other restriction affecting an open space;
 - (c) derogates from section 57(1) of the Town and Country Planning Act 1990, or constitutes authority for development for the purposes of any order under section 59(2)(a) of that Act.

General powers

5 Land management

- (1) The Corporation may take any steps in an open space which appear to them necessary or expedient for the proper management or husbandry of the land forming part of an open space and its flora and fauna.
- (2) For the purposes of paragraph (1) the Corporation may undertake—
 - (a) the cutting, felling, lopping, chipping, mulching, swaling, cultivation or collection of any trees, pollards, gorse, heather, turf, grass or other shrubs, crops or herbage; and
 - (b) the grazing of cattle or other animals.
- (3) Subject to subsection (4), subsection (1) does not authorise any interference with a right of common.
- (4) The Corporation, in exercising their power under subsection (1) or any other right or power in relation to an open space over which a right of common subsists, are

obliged to preserve a sufficiency of common in a given year so far as appears to them to be necessary to satisfy that right to the extent that they reasonably expect it to be exercised in that year.

6 Letting of premises

- (1) Where the Corporation have entered into arrangements for the provision by another person of a service or facility in, or in connection with, an open space, the Corporation may let to that person or permit that person to occupy any building which the Corporation would have been able to use for that purpose.
- (2) Any building held by the Corporation for purposes connected with the management of an open space or its enjoyment by the public which is in their opinion no longer required for those purposes may be let to, or used by, another person for the purpose of any use provided that use will not cause material injury to the amenity (including the visual appearance) of the open space.
- (3) A lease or licence granted under subsection (1) or (2) may be for any term not exceeding [X] years.
- (4) In exercising the power in subsection (1) the Corporation must have regard to the desirability of ensuring that the service or facility to which the lease or licence relates is provided to a satisfactory standard throughout the duration of the lease or licence.
- (5) Before granting a lease or licence under subsection (1), the Corporation must consult on the steps which they propose to take in connection with the duty laid down in subsection (4) with such persons or bodies as they think appropriate (which must include any committee or group established by statute for the purpose of consulting on the management of the open space).
- (6) Part II of the Landlord and Tenant Act 1954 and section 5 of the Housing Act 1988 do not apply to a lease granted under subsection (1) or (2).
- (7) In this section, “building” includes the curtilage of a building.

7 Facilities for events

- (1) The Corporation may—
 - (a) temporarily use or permit others to use land (including buildings) forming part of an open space for the purposes of a celebration, ceremony, entertainment, exhibition, conference or similar event;
 - (b) provide, or arrange for another person to provide, equipment, facilities or services for the purposes of such an event;
 - (c) so far as appears to them to be necessary in connection with such an event, restrict or authorise others temporarily to restrict access to an area of land forming part of the open space; and
 - (d) charge or authorise others to charge for admission to an area to which access is so restricted.
- (2) The Corporation must exercise the powers in subsection (1) having regard to a policy concerning the exercise of the powers prepared by them in consultation with

such persons or bodies as they think appropriate (which must include any committee or group established by statute for the purpose of consulting on the management of the open space).

8 Grant of rights for utilities

- (1) The Corporation may grant easements or licences in relation to land forming part of an open space in connection with the provision of services relating to water, electricity, gas, oil, electronic communications, drainage or sewerage.
- (2) A grant under subsection (1) is to be made on such terms and conditions as appear to the Corporation to be necessary in order to avoid material injury to the amenity (including the visual appearance) of the open space.

9 Agreements with highway authorities and traffic authorities

- (1) The Corporation may enter into an agreement with a highway authority or traffic authority about the exercise of their respective functions.
- (2) An agreement under subsection (1) may include agreement for—
 - (a) the provision, installation or maintenance of signs, fences, gates, cattle-grids, road-humps, traffic-calming works, or any other works or equipment;
 - (b) the restriction or regulation of traffic; or
 - (c) the making, or dedication to the public, of a road or path.
- (3) In exercising the power in subsection (1), the Corporation must have regard to the amenity (including the visual appearance) of the open space and the interests of persons resorting to it, and to the interests of inhabitants of the locality of the open space and other persons using the highways in that locality.

10 Control of commercial activity

- (1) The Corporation may make a scheme (“a licensing scheme”) for the purposes of controlling any activity in an open space carried on for commercial gain.
- (2) A licensing scheme may provide for the issue of a licence in respect of any such activity carried on by any person.
- (3) A licence issued under subsection (2) is subject to such terms and conditions as may be required by the licensing scheme.
- (4) The Schedule to this Act makes provision in connection with the contents and operation of a licensing scheme.
- (5) The Corporation may vary or revoke a licensing scheme from such date as they may specify.
- (6) A person commits an offence and is liable on summary conviction to a fine of an amount not exceeding level 2 on the standard scale if that person carries on an activity to which subsection (2) applies without a licence or in contravention of its terms or conditions.

- (7) Nothing contained in this section is to be taken as conferring a right of access to an open space for the purpose of carrying on an activity for commercial gain.
- (8) Before making, varying or revoking a licensing scheme the Corporation must consult with such persons or bodies as they think appropriate (which must include any committee or group established by statute for the purpose of consulting on the management of the open space).

Enforcement

11 Fixed penalty notices

- (1) An authorised officer may issue a fixed penalty notice to anyone who he has reason to believe has committed an offence in an open space under—
 - (a) a byelaw having effect in relation to the open space;
 - (b) section 10(6) of this Act;
 - (c) section 9(5) of the City of London (Various Powers) Act 1971;
 - (d) section 7(6) of the City of London (Various Powers) Act 1977; or
 - (e) section 87 of the Environmental Protection Act 1990.
- (2) A fixed penalty notice is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to the Corporation.
- (3) A fixed penalty notice must be in writing and state—
 - (a) the particulars of the circumstances alleged to constitute the offence;
 - (b) the amount of the fixed penalty;
 - (c) the effect of subsection (6);
 - (d) the name and address of the person to whom payment of the fixed penalty may be sent;
 - (e) the permissible methods of payment (which include the method laid down by subsection (8)); and
 - (f) the effect of subsection (9).
- (4) A fixed penalty notice may be issued in person or by post, and shall identify by name the person to whom it is issued unless the authorised officer cannot reasonably ascertain his name.
- (5) Where a fixed penalty notice is issued by post, it is regarded as having been issued at the time at which it would be delivered in the ordinary course of post.
- (6) Where a person is issued with a fixed penalty notice—
 - (a) no proceedings may be taken in respect of the alleged offence in relation to which the notice was issued before the end of the period of 14 days following the date on which the notice was issued; and
 - (b) the person may not be convicted of that offence if he pays the fixed penalty to the Corporation before the end of that period.
- (7) The amount specified under subsection (2)(b) shall be an amount prescribed by the Corporation, which—

- (a) may prescribe different amounts in relation to different classes of case; but
 - (b) may not prescribe an amount exceeding £100.
- (8) Payment of a fixed penalty may be made by pre-paying and posting to the person whose name is stated under subsection (3)(d), at the stated address, a letter containing the amount of the penalty (in cash or otherwise).
- (9) Where a letter is sent in accordance with subsection (8), payment is regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.
- (10) In any proceedings, a certificate that—
- (a) purports to be signed by or on behalf of the officer responsible for the Corporation’s financial affairs; and
 - (b) states that payment of a fixed penalty was, or was not, received by the date specified in the certificate,
- is evidence of the facts stated.

12 Community protection notices

For the purposes of Chapter 1 of Part 4 of the Anti-social Behaviour, Crime and Policing Act 2014 (community protection notices)—

- (a) references to an authorised person or a person designated by the relevant local authority include an authorised officer in respect of an open space; and
- (b) references to the relevant local authority include the Corporation.

13 Power to require name and address

- (1) An authorised officer may, if he has reason to believe that a person has committed an offence in an open space, require that person to give his name and address with a view to—
- (a) the service of a summons on that person;
 - (b) the issuing of a fixed penalty notice to that person under section 11; or
 - (c) the issuing of a notice to that person under section 12,
- in relation to that offence.
- (2) A person who, in response to a request under subsection (1), fails to give his true name or address commits an offence and is liable on summary conviction to a fine of an amount not exceeding level 3 on the standard scale.

14 Removal and disposal of trespassory articles

- (1) The Corporation may remove any article or object placed or left in an open space without their permission or otherwise without lawful authority.
- (2) If a person appearing to be in control of an article or object is present, that person must be given reasonable opportunity to remove the article or object before it is removed under subsection (1).

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- (3) On removing an article or object under subsection (1), the Corporation shall store it in a convenient place unless it appears to them that the article or object—
- (a) has been abandoned;
 - (b) is unlikely to be of any continuing value to its owner; or
 - (c) is not reasonably capable of being stored.
- (4) If an article or object removed under subsection (1)—
- (a) has been stored under subsection (3), and no person appearing to be the owner has within a period of 14 days beginning with the day of removal claimed it and paid all expenses incurred by reason of its removal and storage; or
 - (b) is not one which the Corporation have to store under subsection (3), the Corporation may dispose of it in such a manner as they think fit.
- (5) The preceding provisions of this section do not apply to motor vehicles as defined by section 136 of the Road Traffic Regulation Act 1984.

Miscellaneous

15 Open spaces in which services and facilities may be provided

In section 9(1) of the City of London Various Powers Act 1977, for the words from “following” to the end substitute the words “commons, commonable lands and open spaces from time to time held by the Corporation under the Corporation of London (Open Spaces) Act 1878.”

16 Representation in legal proceedings

Section 223 of the Local Government Act 1972 (appearance of local authorities in legal proceedings) applies to an officer of the Corporation authorised to prosecute, defend or appear in proceedings on behalf of the Corporation before a magistrates’ court in connection with an open space.

SCHEDULE

Section 10

A LICENSING SCHEME FOR THE CONTROL OF COMMERCIAL ACTIVITY

- 1 A licensing scheme must specify—
 - (a) the date on which it takes effect;
 - (b) the activities to which it applies; and
 - (c) the fee payable for, and the duration of, a licence.
- 2 The licensing scheme must be advertised, for a period beginning no fewer than twenty-one days before the first day on which the scheme takes effect and continuing for so long as the scheme remains in force, both on—
 - (a) the web-site of the Corporation; and
 - (b) notices posted in the open space, such as the Corporation reasonably think sufficient to bring the scheme to the general attention of persons resorting to the open space.
- 3 Advertisement under paragraph 2 must include the following information—
 - (a) the matters specified under paragraph 1; and
 - (b) the manner in which an application for a licence may be made.
- 4 On receipt of an application made in the manner advertised in accordance with paragraph 3(b), the Corporation may issue to the applicant a licence permitting that person to carry on in the open space the activity to which the application relates.
- 5 No licence issued under paragraph 4 takes effect until any fee specified under paragraph 1(c) has been paid to the Corporation.
- 6 A licence issued under paragraph 4 must be in writing and state—
 - (a) the name of the person to whom it is issued;
 - (b) the open space and activity to which it relates;
 - (c) the terms and conditions to which it is subject; and
 - (d) the date on which it expires.
- 7 Where the Corporation vary the licensing scheme—
 - (a) the variation must be advertised in the manner specified in paragraph 2 for a period beginning no fewer than twenty-one days before the first day on which the variation takes effect and continuing until that day; and
 - (b) thereafter the licensing scheme must be advertised under paragraph 2 in its varied form.
- 8 Where the Corporation revoke the licensing scheme, the revocation must be advertised in the manner specified in paragraph 2 for a period ending no fewer than twenty-one days after the day on which the revocation takes effect.

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