

Note on the relationship between the Hampstead Heath Management Committee and the Hampstead Heath Consultative Committee

Under article 5 of the London Government Reorganisation (Hampstead Heath) Order 1989 (“the Order”) the functions that were exercisable by the Greater London Council prior to 1 April 1986 in respect of, or in connection with, the Heath lands shall be exercisable by the Common Council of the City of London (“the City”).

Under article 8 of the Order the City shall appoint a committee to be known as the Hampstead Heath Management Committee (“the Management Committee”) for the purposes of giving advice on, and implementing, the City’s policies and programmes of work in relation to the Heath lands; and in fulfilling those purposes, the Management Committee shall have regard to any representations made to it by the Consultative Committee appointed in accordance with article 9.

Under article 9 of the Order the City shall appoint a committee to be known as the Hampstead Heath Consultative Committee (“the Consultative Committee”) for the purposes of making representations to the Management Committee about any matter which, in the opinion of the Consultative Committee, affects or is likely to affect the Heath lands.

The Consultative Committee therefore exists for the purposes of making submissions to the Management Committee. The Consultative Committee does have the final say on whether a matter affects or is likely to affect the Heath lands, in terms of its ability to make representations, and the Management Committee must give due consideration to any comments received from the Consultative Committee on those matters.

The legal requirements for a proper consultation exercise are known as the Sedley requirements. These state that consultation must take place when proposals are still at a formative stage, and capable of change. Sufficient reasons for the proposals must be given to allow intelligent consideration and response. Adequate time must also be given for a response. Finally, the product of the consultation must be conscientiously taken into account in finalising the proposals.

However, the final determination of any item of business rests with the Management Committee, which is the decision-making body. I made the point at a recent meeting that if the Management Committee was “duty bound” to follow the recommendations of the Consultative Committee, as had been asserted, then there would be no need for the Management Committee to exist at all.

General public law principles would also prevent the Management Committee from fettering its discretion by adopting a policy that it would always follow the recommendations of the Consultative Committee, irrespective of its own assessment, or from exercising its powers under the real or imagined direction or dictation of another body, unless legislation gives such powers to that body.

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