

Committee:	Date:
Open Spaces and City Gardens	8 th June 2015
Subject: Promotion of a City of London Corporation (Open Spaces) Bill	Public
Report of: Remembrancer	For Decision

Summary

On 13th October 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 public places of recreation and enjoyment), 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 (most significantly in the 1930s and 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Spaces as valuable places of public recreation and enjoyment, there are a number of respects in which it is unclear or out of date.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 (13th October) 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 produced by the Open Spaces Department 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.
3. Reports on the proposals set out below have already been submitted to the Epping Forest and Commons Committee (11th May) and the Hampstead Heath, Highgate Wood and Queen's Park Committee (18th May). Those Committees approved the proposals so far as they relate to the Open Spaces within their remit.

Proposed provisions for inclusion in the Bill

4. The provisions described below would apply to Epping Forest, Hampstead Heath, Highgate Wood, Queen's Park, and the various commons and other spaces managed under the Corporation of London (Open Spaces) Act 1878. Proposals to apply certain of the provisions to Bunhill Fields and the City Gardens are set out separately below (paragraph 19). Owing to special legal considerations affecting West Ham Park, the view has been reached that it would not be appropriate to include it within the scope of the proposals at the present time.

Management powers

5. 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 in order to promote their special characteristics. It is not intended that the Open Spaces should be managed in a different way as a result of the power, but rather to bring the legislation more clearly into line with the way in which the Corporation's duties have long been understood in practice. 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 for services and facilities

6. An extension of the power to let premises (such as those used as cafés) is proposed, with the maximum period set at twenty-one years. Existing powers are generally limited to three years (a limit which has also been adopted in practice in Hampstead Heath, where it is in any case desirable to clarify that the Hampstead Heath Order 1989 does not override the power of letting). Leases of greater 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 ordinary contractual rights, for instance to review rents or to terminate arrangements with providers early if the standard of provision were to prove unsatisfactory.

Agreements with utilities

7. A power is proposed to enter into agreement with utilities companies to lay infrastructure such as water-pipes and electric cables in the Open Spaces. A number of such agreements have been entered into in the past in reliance on the City Corporation's (or, in the case of Hampstead Heath, the Greater London Council'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

8. 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

9. It is proposed to seek an express power to enable events such as weddings, receptions, recitals and exhibitions to take place in the Open Spaces in defined circumstances. 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, it is anticipated that 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.

10. 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 of the Open Spaces would result.
11. 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 licence is purchased and its conditions adhered to. It is envisaged that the scheme would be subject to the same consultative arrangements as noted for income-generating activities referred to in paragraph 9 above.

Enforcement powers

12. 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 (except for Hampstead Heath which was then within the scope of local government legislation), 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.
13. 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 and (if the relevant proposals in this report are taken forward) contraventions of licensing

schemes for commercial activity and of anti-social behaviour measures against offenders. Fixed penalty notices offer suspected offenders the option to pay a fine smaller than that which a court could impose (usually around £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.

14. 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. That power is also currently available under the Hampstead Heath and Ashted Common byelaws, but it is considered preferable to have more detailed provision in primary legislation.
15. 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 or her name or address voluntarily. Whilst the offence will not guarantee cooperation, it makes it more likely.
16. 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

17. 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 Ashted Common and Stoke Common, and also to ensure

that any future acquisitions under the Corporation of London (Open Spaces) Act 1878 would be covered.

18. 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. The provision would also clarify the way in which the former power of the Greater London Council to take legal proceedings applies to the City Corporation as the successor body of the Council with respect to Hampstead Heath.

Application to Bunhill Fields and City Gardens

19. The provisions described above have been drawn up mainly with a view to the situation of the large Open Spaces outside of the City. The Superintendent has however identified some which could also usefully be applied to Bunhill Fields and the City Gardens. They are the power to enter into agreements about utilities (paragraph 7), the extended power to grant leases in connection with services and facilities (paragraph 6), the power to enable events (paragraph 9) and the power to introduce a licensing scheme for commercial activity (paragraph 11). It is accordingly proposed to extend these provisions to cover Bunhill Fields and the City Gardens, in addition to the Open Spaces identified in paragraph 4.

Consultation

20. Responses from individuals and organisations to the public consultation exercise largely focused on Epping Forest. 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.
21. Substantial discussion also took place at the meeting of the Hampstead Heath Consultative Committee on 9th March. The rationale behind the suggested powers was generally accepted. However, it was felt that more detail about the scope of the powers and their intended use was needed in

order to make a proper assessment of their suitability. In particular, it was considered that the powers should be considered in the light of policies indicating how they were to be exercised. This suggestion has been taken into account in formulating these proposals (see paragraphs 9 and 11 above) and will be further acted upon in the course of the parliamentary process (assuming a Bill is promoted). More detailed points were also made, for instance about the possibility of community use of redundant buildings and the potential effects of underground utilities installations on ecosystems and hydrology, and these will be taken into account in the drafting of the Bill.

22. The Discussion Paper has also been presented to the consultative committees or groups for Ashted Common, the Coulsdon Commons, the West Wickham Commons and Highgate Wood. These meetings gave the opportunity to offer examples of potential uses of the proposed powers, and to clarify various points in response to questions. The response was supportive and did not include any substantial criticism of the proposals.
23. The general tenor has therefore been positive. A number of specific concerns have been raised, but it is considered that these can be satisfactorily dealt with as matters of practical implementation rather than general principle. In particular, local concerns will be reflected in the detailed drafting of the Bill, through appropriate management plans and policies, and through local engagement in decisions taken about the exercise of the new powers.

Strategic implications

24. 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). They would also advance KPP 6 ("increasing the outreach and impact of the City's cultural, heritage and leisure contribution to the life of London and the nation").
25. The Open Spaces Business Plan 2015/17–2017/18 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

26. 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.
27. 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 could be significantly greater.

28. 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

29. If the proposals are agreed by this Committee, 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

30. 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 to the Hampstead Heath, Highgate Wood and Queen's Park Committee on Promotion a City of London Corporation (Open Spaces) Bill, 18th May 2015.
- Report of the Remembrancer to the Epping Forest and Commons Committee on Promotion a City of London Corporation (Open Spaces) Bill, 11th May 2015.
- Minutes of the meeting of the Highgate Wood Joint Consultative Committee, 22nd April 2015.
- Minutes of the meeting of the Hampstead Heath Consultative Committee, 9th March 2015.
- Minutes of the meeting of the Ashstead Common Consultative Committee, 27th January 2015.
- Minutes of the meeting of the West Wickham Commons Consultative Committee, 20th January 2015.
- Minutes of the meeting of the Coulsdon Commons Consultative Committee, 14th January 2015.

- Report of the Remembrancer and the Director of Open Spaces to the Open Spaces and City Gardens Committee on Open Spaces Legislation, 13th October 2014.

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