



MINUTES OF THE CALL IN OVERVIEW AND SCRUTINY COMMITTEE

Thursday 17 May 2012 at 7.30 pm

PRESENT: Councillor Mitchell Murray (Chair) and Councillors Bacchus (alternate for Councillor Denselow) , Gladbaum, Lorber, HB Patel, RS Patel and Krupa Sheth

Also present: Councillors Chohan and S Choudhary

Apologies for absence were received from: Councillors Ashraf and Denselow.

1. Election of Chair

In the absence of both the Chair and Vice Chair, nominations were sought for Chair of the committee for this meeting. Councillor Mitchell Murray and Councillor Hopkins were nominated. Both nominations were put to the vote and Councillor Mitchell Murray was declared Chair for this meeting.

RESOLVED:-

that Councillor Mitchell Murray be elected as Chair of the committee for this meeting.

2. Declarations of personal and prejudicial interests

Councillor Hopkins declared an interest in that she had been approached by local residents and the Brent Trade Union in Council in respect of item five, 'Control of distribution of free literature on designated land'. However, she did not consider the interest prejudicial and remained present to consider this item.

3. Minutes of the last meeting held on 1 February 2012

RESOLVED:-

that the minutes of the last meeting held on 1 February 2012 be approved as an accurate record.

4. Matters Arising

None.

5. Call-in of Executive decisions from the meeting of the Executive held on 23 April 2012

Decisions made by the Executive on 23 April 2012 in respect of the following report were called in for consideration by the Call In Overview and Scrutiny Committee in accordance with Standing Orders 6 (b) and 18.

Control of distribution of free literature on designated land

The reasons for the call in were:-

- (1) The report does not quote the relevant passage of the act, nor explain that interpretation of the act would be a matter for the courts.
- (2) The report does not explain the evidence base for the problem. There should be a context paragraph explaining why they think the problem will get so much worse, why existing measures are inadequate and what action other London boroughs are taking.
- (3) The report should either time limit these powers or make explicit that they are being requested permanently. At the moment the report implies they are just for the Olympic period from the way it is worded.
- (4) The issue of enforcement, in particular the circumstances which would lead to action by council officers, is unclear.
- (5) Equalities issues are dealt with inadequately: for example many small businesses in Brent are owned by members of particular ethnic minorities and small non-commercial group which are not charities or political organisations may be disproportionately affected given the level of fees proposed.
- (6) The report does not sufficiently make clear whether small organisations which are not charities or political organisations and do not cause litter will be compelled to take out licenses and risk fines.

Suggested action for the Call In Overview and Scrutiny Committee to take:-

- (1) Clarify how the controls will be enforced and who they will affect.
- (2) Consider whether further information is needed about the equalities impacts of the decision.
- (3) Recommend that if the council goes ahead with the proposal it should consult on and adopt a code of practice for enforcement of the controls, including guidance as to how officers will use their discretion, particularly in the case of small unlicensed distributors (commercial and non-commercial) who are not causing littering.

The Chair invited Councillor Lorber, one of the councillors who had called in this item, to summarise the reasons for the call in. Councillor Lorber began by stating that the report that went to the Executive lacked clarity in a number of areas. He felt that the subsequent supplementary briefing that had been circulated to the committee had partially resolved this, however some outstanding issues remained. He then drew Members' attention to the reasons for call in and suggested action for the committee to take as set out in the agenda.

The Chair then invited members of the public who had requested to speak to address the committee. Peter Murray introduced himself as the Secretary of the

Brent Green Party, a campaigner against climate change and as a local resident. Peter Murray explained that he regularly leafleted on a number of issues, such as during elections, nuclear waste and publications on climate change. He felt that the proposals to charge for leafleting needed to be reconsidered as many organisations that leafleted did not enjoy media coverage and were dependent on leafleting to raise awareness of their cause. Such organisations were also likely to be lacking financial resources and licence fees may prevent them from being able to leaflet any longer. Peter Murray felt that most organisations who were distributing leaflets in support of causes behaved responsibly and discarded unused leaflets appropriately and felt that litter from leafleting was not a significant issue in Brent. He also sought clarification with regard to what fundraising and religious groups would be exempt from the charges.

Peter Firman introduced himself to Members as Chair of the Brent Trade Union Council and as a member of the Brent Fightback campaign. Peter Firman felt that it was not totally clear that the proposals were designed to address issues in respect of commercial leafleting and even if this was the case, the proposed fees would discriminate in favour of larger organisations. He asked whether events such as school fairs would be classified as exempt and felt that there were a number of grey areas in relation to exemptions, including whether the Brent Trade Union Council, which relied on leafleting to help gain support, would be classified as such. He asserted that organisations' rights to publish should be protected.

Councillor Powney (Lead Member for Environment and Neighbourhoods) then provided an initial response to the call in. Councillor Powney began by stating that the council had proposed to adopt new powers under Section 23 of the Clean Neighbourhoods and Environment Act 2005 (CNEA) as it allowed the council both more effective powers whilst also creating a wider range of exemptions. The previous powers available to the council under the London Local Authorities Act 1994 (LLAA) were stricter but also more difficult to enforce, costly and a considerable administrative burden. Councillor Powney advised that if the decisions were overturned, then the existing more stricter powers would remain in force. He set out the consultation timetable that would take place over a two week period which included a public notice and a newspaper advertisement on 22 May with a deadline of 7 June to respond to the consultation. Feedback from the consultation would contribute to any tweaking of the proposals needed with the new powers coming into force on 2 July, in time for the Olympics.

Councillor Powney advised that in practice enforcement was not a particularly serious issue in the borough and he referred to the guidelines of the Enforcement Policy relating to proportionality, accountability, consistency, transparency and targeting as set out in the supplementary report. Members noted the relevant passages of legislation contained in the supplementary report. He then drew Members' attention to the responses to the call in as set out in the supplementary report, adding that adopting the new powers was particularly necessary in view of the anticipated greater demand both in terms of leaflet distributing and visitors to the borough during the Olympics. Councillor Powney stressed that enforcement would be proportionate, occasional and would target larger organisations that were creating the most nuisance.

Michael Read (Assistant Director – Environment and Protection, Environment and Neighbourhoods) added that powers to deal with free literature nuisance were used

in particular to tackle problems on Wembley event days as this was when the most serious nuisance was caused and most complaints received. The powers had not been used to prevent distribution of literature by political organisations and enforcement was proportionate and dependent on whether a particular non-compliant activity was causing sufficient risk of harm. The council was accountable for any enforcement action taken and targeted where there was the most serious risk of harm. Michael Read advised that the new powers would not lead to action being taken against political organisations or faith groups or events such as school fairs. The new powers would also allow the council to issue fixed penalty notices (FPNs) to offenders rather than having to pursue lengthy and administrative-laden court action. Michael Read reassured the committee that proper consideration would be given to any representations submitted during the consultation.

David Thrale (Head of Service – Safer Streets, Environment and Neighbourhoods) advised that enforcement focused on public nuisance, such as on Wembley event days where often there were a number of opportunist distributors who would block pavements whilst advertising their products or services. Persistent offenders might for example include pay as you go mobile phone providers and pawn brokers. David Thrale informed Members that the last prosecution had been made in 2006 and there had been no formal action taken against charities, organisations promoting a cause and political organisations. Members heard that under the existing powers, the council faced a number of practical issues such as having to seize and store materials as well as the administrative action required to initiate court proceedings.

Yogini Patel (Senior Regulatory Service Manager – Safer Streets, Environment and Neighbourhoods) then addressed the committee. Yogini Patel cited some examples of public nuisance and harm caused by distribution of free literature on Wembley High Road which often occurred on Wembley event days. One such example included a betting shop promoting gambling activities to young people. She felt that under the new powers, issuing an FPN to an offender would act as an effective deterrence and this would be far preferable to having to take time-consuming court action and seizing material.

Members then discussed the call in. Councillor Hopkins commented that although assurances had been received that distributing literature for political causes would not lead to enforcement action, she asked for clarification as to whether this would also apply to literature pursuing other causes, many of which may be deemed good causes. She questioned the need to bring in the new powers in view that there had been no prosecutions since 2006 and asked whether enforcement action could be taken if the activity was taking place on the distributor's own property or doorway. Councillor Hopkins supported action to reduce litter, however she expressed concern that changes in staff could mean different interpretations of when to take enforcement action. She felt that more clarity and definition was needed as to what situations would be subject to enforcement action and this should be included in the enforcement guidance. She also asked if it was feasible to introduce a sliding scale of fees in respect of issuing licences to distributors to make it more affordable to smaller organisations.

Councillor Gladbaum felt that the supplementary report had clarified a number of issues, particularly in respect of bringing in the new powers in time for the Olympics and the need to make enforcement powers more effective and practical to apply.

She sought further details with regard to what constituted risk of harm and enquired whether more enforcement action would require the need for more staff to be employed. Councillor H B Patel acknowledged that powers to take enforcement action had been available for around 20 years but queried why it had been perceived that litter was more of a nuisance now. He sought further clarity in respect of exemptions and was it intended to increase the number of streets designated in respect of licensing and if so would it be even harder to enforce bearing in mind the problems experienced with the present number of streets. Councillor H B Patel also felt that the licensing fees may be prohibitive for some organisations and he requested that consideration be given as to how such organisations could be helped.

Councillor Lorber commented that more clarity was needed concerning the proposals and the key objectives. He felt that if the main objective was to provide additional powers in dealing with nuisance, then there would be no need to introduce licensing fees, which would disproportionately disadvantage small organisations. Councillor Lorber suggested that if it was made clear that enforcement would apply where unlicensed operators were distributing leaflets for commercial purposes, this would provide the clarity needed and enable the council to focus its attention on those operators most likely to cause nuisance. He also enquired if the finalised proposals after the consultation would be presented to the Executive for approval or delegated under the authority of officers.

The Chair welcomed the supplementary report and understood the concerns with regard to the potential of nuisance caused by leafleting during the Olympics. She commented that she was aware of an incident where betting coupons had been distributed in Ealing Road. The Chair also asked whether the council was aware of the concerns raised in respect of smaller organisations.

In response to the issues raised, Councillor Powney advised that the main advantage of the new powers was the ability to issue PCNs to offenders as a quick and effective way to deter future offending, as opposed to current powers which limited the council to pursuing long and expensive court proceedings. He acknowledged the need to provide greater clarity, however he warned that providing excessive detail of what was enforceable action would actually make it harder to be understood. He felt that providing general principles and using sound judgement acting proportionately with regard to enforcement action would strike the best balance in addressing this issue. Councillor Powney added that there could be some difficulties in defining what precisely constituted 'commercial purposes'. With regard to the suggestion of a sliding scale for licensing fees, Councillor Powney advised that legal and technical advice needed to be sought to see if this was feasible. Other than through a reference from this committee, the item would only be referred back to the Executive if there were changes to the proposed licensing fees.

Michael Read advised Members that with regard to risk of harm and enforcement, this could involve assessing a number of situations, such as how the leafleting was being conducted and this may include operators blocking a pathway or piling leaflets on the ground. Members noted that there was no legislation controls in place with regard to literature placed in letterboxes. Michael Read advised that introducing a licensing system allows the council to include conditions on the licence to regulate the behaviour of the operators which would help address situations such as that described by Yogini Patel with regard to a betting shop's

actions. He stated that more clarity would be provided on the website concerning enforcement action, however if organisations were still unsure, they could still apply for a licence.

David Thrale commented that the new powers would be both more effective and proportionate whilst also offering clearer and wider exemptions. The main intention was to curb excessive leafleting activities and the vast majority of operators acted responsibly. David Thrale confirmed that the expanded list of designated streets only applied to those listed in the report. The Olympics was an additional driver as to why implementing the new powers at this time was particularly timely in view of the prospect of there being more operators and visitors to the area. With regard to enforcement powers, he advised that these came into effect once an activity was within seven metres of a public highway.

The committee then decided against Councillor Lorber's suggestion that a report be presented to the Executive after the consultation to consider whether a sliding scale of license fees can be introduced, or if this is not possible, that the license fee be set at a level taking into account the financial limitations of smaller organisations.

RESOLVED:-

that upon considering the report from the Director of Environment and Neighbourhood Services, the decisions made by the Executive be noted.

6. The Executive list of decisions for the meeting that took place on 23 April 2012

RESOLVED:-

that the Executive list of decisions for the meeting that took place on 23 April 2012 be noted.

7. Date of next meeting

It was noted that the next meeting the Call In Overview and Scrutiny Committee was scheduled for Wednesday, 6 June 2012 and would only take place if there are any call ins from the Executive meeting held on 21 May 2012.

8. Any other urgent business

None.

The meeting closed at 8.55 pm

W Mitchell Murray
In the Chair