

Advice Note

Scrutiny Powers: NLWA & AP&P

1. Advise is sought by Cllr Bull on whether Overview and Scrutiny Committee (OSC) have the legal powers to review and scrutinise the North London Waste Authority (NLWA), a body corporate, established under The Local Government Act 1985 and Waste Regulation and Disposal (Authorities) Order 1985 and responsible for the disposal of waste on behalf of member authorities. Also, whether there are powers to scrutinise Alexandra Palace and Park (AP&P) which is held on trust by the Council and registered as charity¹. For the purpose of this advice, I have briefly set out the nature and extent of OSC powers and then considered whether they apply at all to NLWA and AP&P.

OSC Powers

2. The legal powers of OSC were consolidated by the Localism Act 2011² but are still formally located in the Local Government Act 2000 under sections 9F to 9FI. They provide that local authority executive arrangements must include provision for OSC and with powers to:
 - a) review or scrutinise “decisions made, or other action taken, in connection with the discharge of any functions”³ of the executive or council;
 - b) make reports or recommendations to the executive or the council with respect to the discharge of any of their respective functions;
 - c) review or scrutinise executive decisions made but not implemented and to recommend that the decision be reconsidered by the person who made it;
 - d) make reports or recommendations to the executive or the council “on matters which affect the authority’s area or the inhabitants of that area”,

¹ See The Charities (Alexandra Park and Palace) Order 2004 and the following “Whereas the Charity known as Alexandra Park and Palace (“the Charity”) is now regulated by the “Alexandra Park and Palace Acts and Orders 1990 to 1985” : And whereas the Council of the London Borough of Haringey being the Trustees of the Charity....”

² This incorporates powers originally brought in through measures such as the Health and Social Care Act 2001, Local Government and Public Involvement in Health Act 2007 and the Local Democracy, Economic Development and Construction Act 2009.

³ In *Hazell v Hammersmith & Fulham LBC* [1996] Woolf LF considered the definition of “functions” under the LGA 1972. “functions refers to the multiplicity of specific statutory activities the council is expressly or impliedly under a duty to perform or has power to perform under the other provisions of the Act of 1972 or other relevant legislation..”

- e) give notice in writing requiring the executive or council to consider OSC published report or recommendations and to respond indicating what (if any) action the council, or the executive, proposes to take. The notice must require the council or executive to comply with it within two months;
 - f) to review and scrutinise matters relating to the health service in the authority's area, and to make reports and recommendations;
 - g) to review and scrutinise matters relating to crime and disorder in the authority's area, and to make reports and recommendations;
 - h) to require members of the executive, and officers of the authority, to attend before it to answer questions and they have a duty to comply with the request to attend;
 - i) to invite other persons to attend meetings of the committee;
 - j) to give notice in writing to relevant partner authority requiring the relevant partner authority to have regard to the report or recommendations that relates to the exercise of its functions in the Council's area or the inhabitants of that area. The notice must be accompanied by a copy of the report or recommendations. It is the duty of a relevant partner authority to which a notice is given to comply with the requirement specified in the notice⁴; and
 - k) to request information from a relevant partner authority that is required in order for OSC to discharge its functions.⁵
4. The Council's Constitution gives effect to these scrutiny arrangement and powers. Where the Constitution is silent on these powers, reference can be made to the legislative provision as a source of authority.
5. OSC substantive powers i.e. to review and scrutinise, require attendance of persons, and make reports and recommendations (Paragraph 2 a) – h) above) can only be exercised in respect of the following bodies: the executive and council (including senior officers), health and police and in respect of the discharge of their functions. For other bodies, the residual or minor powers i.e. to invite to attend meetings, give notice to have regards to reports or recommendations and to request for information (Paragraph 2 i) – k) above) may apply.

⁴ Section 9FF. Partner authorities are defined in the Local Government and Public Involvement in Health Act 2007 Act, Chapter 1 and Part 5. There is an exemption for health service bodies.

⁵ Section 9FI. Local Authorities (Overview and Scrutiny Committees) (England) Regulations 2012 (SI 1021) (LAR 2012)

NLWA

6. As indicated above, NLWA is a body corporate created in 1986 by statute. OSC do not have the substantive powers described above in respect of NLWA and similar to those exercised in respect of the Police and Health.
7. However, OSC has the residual powers referred to in 2(i) and (k) above. NLWA can be invited to attend OSC meeting but they are not obliged to attend and can lawfully decline the invitation. NLWA falls within the definition of partner authority.⁶ Where OSC prepares a report or makes any recommendation to the executive or the council that relates to the exercise of NLWA waste disposal function in Haringey and/or that affects residents, OSC can serve a notice on NLWA to have regard to the report or recommendations. NLWA are obliged to comply with the Notice.
8. Implied within Paragraph 7 above is that although OSC substantive powers cannot be exercised in respect of NLWA, they can be in respect of the executive's discharge of its waste management functions or on matters relating to NLWA that affects the authority's area or residents.

AP&P

9. The functions and responsibilities in respect of AP&P are discharged by council who hold the Palace and Park as a trustee and "under a statutory duty to uphold, maintain and repair the Palace and to maintain the Park and Palace as a place of public resort and recreation and for other public purposes".⁷ The trusts arrangement constitutes a charity and was registered under the Charities Act 1960⁸. The AP&P Charitable Trust principal activity is the maintenance as an open space and provision of the Park and Palace for the free use and recreation of the public forever.⁹
10. To discharge its statutory functions in respect of the Park and Palace, council established the following decision making committees: a) Alexandra Palace and Park Board; and b) Alexandra Palace and Park Panel; and the following advisory committees: c) Alexandra Palace and Park Consultative Committee; d) Alexandra Palace and Park Consultative Forum.

⁶ Section 104 Local Government and Public Involvement in Health Act 2007

⁷ Alexander Park and Palace (Public Purposes) Act 1990 and Alexander Park and Palace Act 1985.

⁸ Recital (8) to the Alexandra Park and Palace Act 1985

⁹ The Charity Commission website

11. There are also other bodies (that are not part of or established by council) exercising some function in respect of the Palace and Park. The Alexandra Park and Palace Statutory Advisory Committee an external body established under the terms of the Alexandra Park and Palace Act 1985 to assist and advise council as trustee to discharge its duties. Alexander Palace and Park Trading Co Ltd (APTL) is a trading arm also exercising a role in respect of the Park and Place. There is also external accountability and regulation through Auditors and the Charity Commission.
12. The substantive OSC powers to review and scrutinise decision or other action, require the attendance of members of the executive or officers to account, make reports and recommendations (in 2 a) - b) and d) - e) and h) above) apply only in respect of the discharge of the council's Palace and Park functions and to the decision making committees created for this purpose.
13. The fact that there are established council committee, sub-committee and advisory committee with delegated function and oversight of the Palace and Park function is something OSC should consider before engaging its review and scrutiny powers. The 2006 Guidance to the new Executive Arrangement produced by the then Department of Communities and Local Government (DCLG) "New council constitution: guidance to English Authorities" provides that:

Overview and scrutiny arrangements

- 3.15 To achieve enhanced accountability and transparency of the decision making process, effective overview and scrutiny is essential. Overview and scrutiny committees are the key element of executive arrangements. Their roles should, therefore, include both:
 - developing and reviewing policy; and
 - holding the executive to account.
- 3.16 Where an overview and scrutiny committee is reviewing the work of another committee of the local authority it should not normally scrutinise individual decisions made by such committees, particularly decisions in respect of development control, licensing, registration, consents and other permissions. In particular a local authority will need to ensure such scrutiny is not an alternative to normal appeals procedures. However, overview and scrutiny committees do have the power to make reports and recommendations on functions which are not the responsibility of the executive and the Secretary of State recommends that this should normally be used as part of wider policy reviews.
14. The advice that OSC should engage its powers to review other committees (exercising council functions) as part of a wider policy review should be considered. Further, any such review and scrutiny, will require (as is always the case) prior discussion and consultation with the committees concerned.

15. The substantive and residual scrutiny powers (save the power to invite to a meeting) would not apply to Alexandra Park and Palace Statutory Advisory Committee and Alexander Palace and Park Trading Co Ltd (APTL) as they are external bodies and not council committees.

Conclusion

16. There are no substantive OSC powers in respect of NLWA and such that exist in respect of the executive, council, police and health. OSC scrutiny powers over NLWA are very limited.
17. The substantive OSC powers do apply to the council's AP&P functions. There are established committees currently discharging the council's function. Any proposed review and scrutiny may overlap with the work of these committees and the external bodies such as the Statutory Advisory Committee and Charity Commission. Therefore, some clarity will be required of the nature and scope of any OSC review and the outcome sought. This will require discussion and consultation between OSC and the committees and senior officers with responsibility for AP&P.
18. Further, the unique nature of council's function as a charity trustee of AP&P that is regulated by the Charity Commission, and its obligation to consult with and have due and proper regard to the advice from the Statutory Advisory Committee¹⁰, requires thoughtful consideration to be given to the additional benefits of engaging OSC powers.

Stephen Lawrence-Orumwense
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15th July 2012

¹⁰ Section 9 Alexandra Park and Palace Act 1985