



**Haringey** Council

**The Council**

**On**

**21 January 2008**

Report Title: **Confirming Participation in the London Local Authorities Bills**

Forward Plan reference number (if applicable): **N/A**

Report of: **The Director of Corporate Resources**

Wards(s) affected: **All**

Report for: **Resolution by Full Council**

**1. Purpose (That is, the decision required)**

1.1 To confirm Haringey Council's continued participation in the three London Local Authorities' Bills recently deposited in Parliament.

**2. Recommendation**

2.1 That Members pass the resolution below:

CONFIRMING RESOLUTION OF LONDON BOROUGH COUNCIL  
LONDON BOROUGH OF HARINGEY

**RESOLVED** that the resolution of this Council passed at a meeting of the Council held on 15 October 2007 to promote a Bill or Bills in the last session of Parliament, pursuant to which the Bills intituled "A Bill to confer further powers upon local authorities in London; and for related purposes"; "A Bill to introduce in London a prohibition on the supply of certain bags by retailers, to confer powers upon the local authorities in London to enforce the prohibition; and for related purposes" and "A Bill to confer further powers upon local authorities in London and upon Transport for London; and for related purposes" have been deposited in Parliament, be and the same is hereby confirmed.

Report Authorised by: **The Director of Corporate Resources**

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**3. Executive Summary**

3.1 The full Council resolved to participate in promoting the London Local Authorities Bills at its meeting on 15 October. A second resolution of the Council is now required to confirm Haringey's participation.

#### **4. Chief Finance Officer's Comments**

4.1 London Councils are asking for an immediate contribution of £10,000 from each Borough which should cover most of the costs of promoting the three Bills but a smaller additional contribution may be required later. The cost will need to be met by the Directorate promoting the measures.

#### **5. Head of Legal Services' Comments**

5.1 The legal and constitutional implications are incorporated into the main report.

#### **6. Local Government (Access to Information) Act 1985**

6.1 Background papers:

The London Local Authorities Bill

The London Local Authorities and Transport for London (No.2) Bill

The London Local Authorities (Shopping Bags) Bill

Requests to view the background papers should be made to the Contact Officer

### **7. Background**

7.1 This matter was previously reported to the General Purposes Committee on 11 September 2007 and then to full Council on 15 October when Members passed the first standard form resolution that Haringey should participate in the promotion of the proposed local legislation.

7.2 All the Boroughs, except Hounslow, passed this first resolution. The final decision to proceed with the legislation was agreed by the Leaders' Committee of London Councils meeting on 13 November. The Bills were deposited in Parliament on 27 November.

7.3 A second resolution by each of the Boroughs is now legally necessary to confirm their participation following the deposit of the Bills in Parliament.

### **8. The Three Bills**

8.1 The Leaders' Committee meeting on 13 November decided to make the proposed restrictions on throw-away shopping bags into a separate Bill because of the complex and controversial nature of this item. This is now the London Local Authorities (Shopping Bags) Bill ("the Bags Bill"). It is described in more detail in section 12 below.

- 8.2 As stated in the report to Council on 15 October, the traffic and highways measures have to be progressed as a separate joint Bill, promoted both by the Boroughs and by Transport for London, because the legislation would affect both the roads controlled by the Boroughs and those controlled by Transport for London. This is now the London Local Authorities and Transport for London (No. 2) Bill (“the joint Bill”). Its proposals are described in Appendix 1 attached to this report.
- 8.3 The remaining measures, which would be operated or enforced primarily by the Boroughs, are to be progressed as the Tenth London Local Authorities Bill (“the 10<sup>th</sup> LLA Bill”). Its proposals are described in Appendix 2 attached to this report.
- 8.4 There are now three Bills, rather than the two Bills described in the report to Council on 15 October. However, the restrictions on shopping bags were included in the lengthy first resolution passed by the participating Councils.

## **9. Items Deleted from the Bills**

- 9.1 Since the previous report to Council, 8 items have been deleted from the Bills for the reasons set out below:
- (i) ENV 3 – levy on chewing gum – deleted after discussion with DEFRA for lack of political support,
  - (ii) ENV 5 – pigeon control areas – deleted because adequate powers are now in the Local Government and Public Involvement in Health Act 2007,
  - (iii) ENV 11 – depositing refuse containers on the highway – deleted because adequate powers are now in the Clean Neighbourhoods & Environment Act 2005,
  - (iv) ENV 12 – removal of placards and posters – deleted because Richmond agreed not to pursue the issue of recovering costs where the removal of adverts from phone kiosks necessitated repainting or repair,
  - (v) PPR 3 – controls on social clubs – deleted because of Leading Counsel’s advice that they would not be compliant with human rights law (see section 10 below),
  - (vi) STT 4 – controls on providing free food in street – deleted because of lack of support and because Westminster, on its own, will pursue this issue,
  - (vii) TRN 11 – enforcement by PCN against using mobile phones while driving – deleted because of advice that endorseable offences should continue to be prosecuted by criminal procedure,
  - (viii) TRN 16 – decriminalised enforcement of abnormal loads regulations – TfL have concluded that these powers are not needed.

## **10. Social Clubs Controls**

- 10.1 This item was initiated by Haringey Members and officers. Unfortunately, it was dropped from the Bills at a late stage because of advice to London Councils from James Goudie QC that the proposed measures would be in breach of human rights law.
- 10.2 The proposal had been to require social clubs to register with the Council with certain exceptions. Any owner or manager of an unregistered social club was to be liable on conviction to a £1,000 fine. Most of the recorded “problems” associated with social clubs in the Borough had been related to drug dealing, the unlawful use of gaming machines and to unlawful sales of alcohol by persons not licensed under the Licensing Act 2003.
- 10.3 Counsel has advised that the proposed local legislation would amount to a wide-ranging interference with the “right to private life” in Article 8 and the “right of free association” in Article 11 of the European Convention on Human Rights. There were already existing statutory powers to deal with the problems most commonly recorded in Haringey. New powers proposed in Government Bills already before Parliament, such as the Criminal Justice & Immigration Bill, which would go some way to address problems of disorder in social clubs. Therefore, Haringey’s proposed controls were not proportionate and went further than was necessary in the circumstances.
- 10.4 In addition most of the proposed reasons for the Council being able to refuse to register a social club had to do with health and safety, including fire safety, which were not rationally connected with the problems recorded by Haringey officers.
- 10.5 There were no obvious ways to amend the proposed social clubs legislation to make it human rights law compliant and so the item had to be dropped from the Bills.

## **11. Item added to the Bills**

- 11.1 The meeting of the Leaders’ Committee on 13 November agreed to a request from Camden that a late item conferring new Housing powers be included within the 10<sup>th</sup> LLA Bill. This is now item HSE 3 and contained in clauses 21 and 22 of the Bill.
- 11.2 The main point is to remove the requirement that 24 hours notice must be given in every case to owners and occupiers before Council officers can exercise powers of entry under the Housing Act 2004. The Bill would remove the need for notice where there were imminent risks to health or safety and in cases where the officers were invited to enter premises by the occupier.
- 11.3 An additional problem under the Housing Act 2004 is that each exercise of a power of entry into premises must be individually authorised by an officer at Chief Officer or Deputy Chief Officer level. The Bill would allow authorisations to be given below Deputy Chief Officer level but the power to authorise entry would be restricted to

officers reporting directly to the relevant Deputy Chief Officer.

## **12. Restrictions on Shopping Bags**

- 12.1 The Leaders' Committee on 13 November considered whether the restrictions on throwaway shopping bags should be in the form of an outright ban on their use or in the form of a levy. Although a ban would be more likely to give rise to opposition and concerns from central government, the levy would be more complicated to administer and difficult to enforce. Furthermore, responses to the on-line public consultation carried out by London Councils from mid-September to late October showed 58.2 % of respondents favouring a ban while 34.4 % favoured a levy and only 7.4% preferring to do nothing (the total number of respondents was 1,752).
- 12.2 The Leaders' Committee decided to promote a ban rather than a levy. This would send a public message appropriate to the scale of the problem. At least 1.6 billion throwaway shopping bags are distributed by shops in London each year. The great majority are used only once before being sent to landfill waste disposal sites. Only about 1 in 200 bags are being recycled. Plastic bags can take over 400 years to break down in landfill. Increasingly, other cities from San Francisco to Zanzibar are taking some form of action to address the problem.
- 12.3 The Bill will ban throwaway bags supplied by a retailer to a customer for the purpose of transporting goods just purchased from that retailer. The ban will not apply to "long-life" shopping bags designed to be used for a large number of shopping trips to different retailers. Nor will it apply to packaging which is sealed before the goods are offered for sale on the shelves. Some other bags will be exempt from the ban, such as those to be used primarily for waste disposal (e.g. bin-liners) and small bags used to contain unpackaged food. London Councils will be given powers to amend the categories of "exempt bags" by future resolution.
- 12.4 The ban will be enforced through penalty charges payable to the Borough Council where the offending retailer is located. Only the retailer who supplies a bag in breach of the ban, or the retailer who permits or causes a bag to be supplied to its customers by another person, will be liable to pay the penalty. The customer cannot be penalised for receiving or using a throwaway bag.
- 12.5 The ban will apply to any throwaway bag and not simply to plastic or paper bags. There are likely to be legal obstacles to defining the banned bags simply on the basis of the material, for example, trying to ban plastic bags specifically. As a matter of practical reality, bags made of more durable materials are more likely to be treated as long-life bags exempt from the ban. Achieving a workable definition that clearly distinguishes between throwaway and long-life bags is a problem aspect of the Bill.

### **13. Progress of the Bills**

- 13.1 The three Bills have been given leave to proceed and first readings are expected soon. The Bags Bill will be introduced into the House of Commons and the other two Bills will be introduced into the House of Lords.
- 13.2 London Councils carried out public consultations on all three Bills in the autumn of 2007. There have also been consultation with specific interest groups. Discussions are continuing with DEFRA, DCLG and the Government Office for London.
- 13.3 Objections to the Bills have been invited by way of petition. The deadline for lodging them is the end of January 2008. At the time of drafting this report no petitions had been received but it is highly likely that some petitions will be lodged probably near to the deadline. If there is news of a petition before full Council meets, this will be conveyed to Members.

### **14. The Second Resolution**

- 14.1 In order to comply with the legal requirements for local legislation, all the promoting Boroughs must now pass a second resolution to confirm their continuing participation. The resolution set out at paragraph 2.1 must be passed without amendment by a majority of the whole membership of the Council at the meeting of the full Council on 21 January. All the participating Boroughs are being asked to pass the same resolution, in formal legal wording, at meetings in January or February.
- 14.2 The full Council meeting on 21 January is the advertised date for Haringey as given in a statutory notice placed in the Evening Standard by London Councils. It will not be possible to defer a decision. If Members do not pass the resolution as it stands, then Haringey will not participate in the Bills and none of the proposed legislation will apply in Haringey.
- 14.3 If Members do have reservations or concerns about specific items in the Bills, the best course would be to discuss the issues with officers. A further report could then be submitted to a future full Council and Members could resolve to ask London Councils to make any items that Haringey did not support into adoptive provisions in the relevant Bill. These provisions would not become law in Haringey unless full Council eventually resolved to adopt them at some future time.

### **15. Recommendation**

- 15.1 That Members pass the resolution below:

CONFIRMING RESOLUTION OF LONDON BOROUGH COUNCIL  
LONDON BOROUGH OF HARINGEY

**RESOLVED** that the resolution of this Council passed at a meeting of the Council held on 15 October 2007 to promote a Bill or Bills in the last session of Parliament, pursuant to which the Bills intituled “A Bill to confer further powers upon local authorities in London; and for related purposes”; “A Bill to introduce in London a prohibition on the supply of certain bags by retailers, to confer powers upon the local authorities in London to enforce the prohibition; and for related purposes” and “A Bill to confer further powers upon local authorities in London and upon Transport for London; and for related purposes” have been deposited in Parliament, be and the same is hereby confirmed.

**16. Financial Implications**

16.1 London Councils are asking for an immediate contribution of £10,000 from each Borough which should cover most of the costs of promoting the three Bills but a smaller additional contribution may be required later. The cost will need to be met by the Directorate promoting the measures.

**17. Legal Implications**

17.1 The legal and constitutional implications are incorporated into the main report.

**18. Appendices**

18.1 Appendix 1 summarises the provisions of the London Local Authorities and Transport for London (No. 2) Bill (“the joint Bill”).

18.2 Appendix 2 summarises the provisions of the Tenth London Local Authorities Bill.