

Report title

Agenda item

Local Democracy, Economic Development and Construction Bill - Proposed Amendments

15

Meeting

Date

Authority

22 January 2009

Report by

Document Number

Director of Corporate Services

FEP 1312

Summary

1. This report seeks the Authority's views on potential amendments to the new Local Democracy, Economic Development and Construction Bill, which was introduced into the House of Lords on 4 December 2008. The Bill was agreed more quickly than anticipated and means that, if the Authority does wish to pursue the matters concerned, it will need to act quickly.

Recommendations

2. That the Authority agrees the policy objectives proposed in this report be pursued.

Background

3. There are various deficits in regard to the application of some statutory powers and duties to the Authority. Research has not suggested that these omissions represent active policy decisions and so it can be concluded that they are oversights which it is proposed we should seek to be rectified. Officers have undertaken work to draft possible Bill amendments (available from the Head of Legal and Democratic Services) which would achieve the policy objectives concerned. The newly published Local Democracy, Economic Development and Construction Bill, which was introduced into the House of Lords on 4 December 2008, seems likely to provide an appropriate vehicle to pursue them.
4. Four issues have emerged, discussed below, on which it is proposed to seek amendments to the Bill, on the basis that it is certainly arguable that they are within its scope:

Members' Allowances

5. A paragraph of Schedule 28 to the Greater London Authority Act 1999 currently prohibits the payment of basic and special responsibility allowances to Assembly representatives on LFEPA. A recent legislative change has enabled the Metropolitan Police Authority (MPA) to pay allowances to Assembly representatives and the payments may differ between Assembly members and Independent members on the MPA. Repeal of para. 4 of Sch. 28 would remedy the disparity of the prohibition and would also remove the current disparity between the Authority's Assembly nominated and Borough Council/Mayoral nominated members. The anomaly of this position was partly recognised in the GLA Act 2007, when the bar on paying the Chairman and Vice Chairman of the Authority an allowance, even if Assembly representatives, was removed.
6. The rate at which all allowances are paid is generally the product of an independent review of members' allowances.

Pensionability of all Members' allowances

7. Members of the London borough councils may earn pension entitlement in respect of their allowances as members of those councils; and members of the London Assembly may similarly receive pensions in respect of their GLA salary. It is proposed to seek an amendment to enable the Authority (and potentially other FCDA's and CFAs) to pay pensions to any LFEPA member in respect of their basic and/or special responsibility allowances as a member or as Chairman or Vice-Chairman. In effect, this would give all LFEPA's allowances the same status, for pension purposes, as allowances payable by the London borough councils.

Overriding of covenants etc

8. Under ordinary land law, it is often the case that the owner of site A has the right to prevent some building on (or use of) site B – or may have another right, such as a right of way or a right to run water pipes, over or through site B. These legal rights are commonly referred to as restrictive covenants and easements. If the owner of site B proposes to interfere with the right in question, the owner of site A may normally obtain a Court injunction to prevent the interference.
9. Under Town and Country Planning legislation, local authorities which hold land for planning purposes may develop and use that land, provided that they have planning permission for whatever is proposed. Even if their proposals would conflict with restrictive covenants or easements, the authorities cannot be prevented from carrying out their proposals for the land by an injunction – although they do have to pay compensation to anyone whose rights are adversely affected. (There is statutory "machinery" for calculating that compensation, derived from compulsory purchase law.) If the authorities dispose of the land, their purchasers have the same freedom to develop and use the land.
10. This principle has already been applied in a number of other circumstances, for example to land held by development corporations, regional development agencies and local housing trusts. It is proposed to extend the freedom to develop/use land, so that it applies to land held by a FRA for the purpose of any of its functions – or to land held by someone to whom the FRA has disposed of it. As indicated earlier, if the proposals interfere with anyone's restrictive covenants or easements, the FRA would have to pay compensation; however, the removal of the right to stop the proposals by injunction should facilitate development of the Authority's properties.

11. This issue affects all fire and rescue services. The amendment therefore will be of general application. It is anticipated that other authorities will welcome the opportunity to exercise a power, available already to local authorities, which will be a helpful complement to their existing powers of compulsory purchase.

Employment of Political Assistants

12. The Local Government and Housing Act 1989 requires that all staff members of local authorities (including LFEPA) are appointed on merit. However, there is an exception allowing London borough councils (and the county & district councils) to appoint up to three staff, specifically taking into account their political affiliations to provide assistance to members of any political group. The 1989 Act also specifies the terms upon which such staff are to be appointed.
13. It is proposed to amend the 1989 Act, extending this exception to all Fire & Rescue Authorities, so that they too may appoint political assistants, if they wish. LFEPA's members are nominated specifically to represent party groups (within the London Assembly and the body of London borough councillors). The wide geographical responsibility of the Authority and the fact that all but two of the 17 members are necessarily members of at least one other authority together mean that there is a need for significant work to support the groups of members and facilitate their effective participation in the work of the authority.
14. The operation of the statutory requirement to appoint staff on merit means that it is not presently possible for the groups to take account of the political leanings of candidates when engaging support officers. The ability to appoint a political assistant would ensure that staff can be engaged who are known to support the aims and policies of a particular political group.
15. The draft amendment which LFEPA officers have had prepared proposes extending the statutory provision for the benefit of all fire services but no discussion on the subject has been held with other authorities.
16. If the power were established as being available to LFEPA, it would still then be for the Authority to decide whether or not it wished to use it. The Act currently requires authorities benefitting from this power to make formal decisions to do so.
17. The four issues proposed for legislative change have been identified as and when circumstances have arisen which have drawn attention to LFEPA's current statutory position. They are not the outcome of an overall review comparing the Authority and its functions with those of all other comparable bodies, i.e. other local authorities, fire and rescue authorities, the GLA or other functional bodies. Such a review might well identify other areas which could be the subject of legislative change, such as more closely aligning the Authority's decision making processes with the executive arrangements in place in local authorities, but would of necessity involve considerable work. Since the work involved in a comprehensive review would result in a delay in formulating and agreeing all proposals it is recommended that any decision to pursue such an approach should not involve any delay in proposing to Government the introduction of the four statutory changes which have already been identified.

Authority's Strategic Objectives

18. The policy objectives proposed in this report would assist the Authority in making better use of its

People (Aim 5). All proposals would, if implemented, better enable LFEPA to deliver the highest quality services and be equipped on the same basis as other public authorities. The proposals make an important contribution to the ability of LFEPA Members to carry out their functions with anomalies removed from their allowances scheme and support arrangements.

Head of Legal and Democratic Services comments

19. The Head of Legal and Democratic Services has been fully involved in the identification of the potential for new legislation to benefit LFEPA and in the development of the proposed amendments to the Bill as described in this report.

Head of Finance Comments

20. Subject to the detail of the members' allowances scheme being operated by the Authority, there is a potential additional annual cost of £106,900 associated with these proposals - £52,500 for the additional members allowances (based on the current scheme) and a further £52,500 as a result of making all members allowances pensionable. If the proposals were enacted and the Authority implemented them provision would therefore have to be made in the budget to cover this cost. This is currently not allowed for in the draft 2009/10 budget, although there is no realistic prospect of the matter being resolved in that timescale.

Environmental Implications

21. Overriding of covenants will aid the opportunities available to the Authority in the future to plan and manage use of its estate for optimum sustainably.

Equalities Implications

22. There are no direct strategic equality implications attached to the areas covered by this report.

List of Appendices to this report:

1. None

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985	
List of background documents	
2. None	
Proper officer	Keith Minear, Head of Legal & Democratic Services.
Contact officer	Rita Dexter
Telephone	30021
Email	rita.dexter@london-fire.gov.uk