

Westminster City Council: Proposed New Byelaws for Good Rule and Government

Report on Consultation Responses

1 Introduction

- 1.1 On 8th December 2011, Westminster City Council (“the Council”) opened a consultation exercise on a proposal to make new byelaws for good rule and government.
- 1.2 The proposed byelaws would have the following effects:
- 1.2.1 In defined areas near Parliament Square and Whitehall, they would enable constables and authorised officers of the Council to direct persons to cease or not start:
 - (a) erecting or keeping erected tents or similar structures
 - (b) using a tent or similar structure for sleeping or staying in the areas
 - (c) placing or keeping in place any sleeping equipment with a view to its use for the purposes of sleeping overnight;
 - (d) using any sleeping equipment for the purposes of sleeping overnight
 - 1.2.2 In those areas, they would make it an offence, without reasonable excuse, to fail to comply with a direction of the type mentioned above;
 - 1.2.3 In those areas, they would enable constables and authorised officers of the Council to seize tents or other structures or sleeping equipment if it appeared to them that they were being or had been used in connection with the commission of an offence under the Byelaws;
 - 1.2.4 They would enable the court to forfeit a seized item on conviction for an offence under the Byelaws;
 - 1.2.5 They would also amend the Council's existing Byelaws for Good Rule and Government so as to enable constables and authorised officers of the Council to seize noise equipment if it appeared to them that it was being or had been used in connection with the commission of an offence under those Byelaws of causing, permitting or making a noise which gives reasonable cause for annoyance. This power would apply throughout the City.

2 The consultation

- 2.1 The Council prepared a consultation document that explained the effect of the proposed byelaws, the reasons for the proposals, and an explanation of why other options were not pursued. A copy of the proposed byelaws and plan was appended to it, together with a questionnaire which could be completed by consultees.
- 2.2 The consultation document was sent to a large number of bodies and individuals under cover of a letter from the Strategic Director of City Management, and it was also published on the Council's website. In the letter

and consultation document, a request was made for written responses to be sent to Sharpe Pritchard, the Council's solicitors retained to draft the byelaws and assist with the consultation process, by Friday 13th January 2012. This gave a period of just over 5 weeks for responses to be sent.

- 2.3 A copy of the letter and the consultation document is attached to the body of the main report to the Sub-Committee (as Appendix 4 to that report).
- 2.4 It is clear that the existence of the consultation exercise was spread widely, probably by social networking. The Occupy LSX Twitter page tweeted encouragement for responses to the consultation to be submitted by the deadline.

3 The consultees

- 3.1 A full list of those who were sent the consultation document is attached as **Annex A** to this report. The consultees included:

Residents

- 3.1.1 Residents on Marsham Street (including Romney House)
- 3.1.2 Residents of Monck Street (including Vestry Court)
- 3.1.3 Residents of Medway Street
- 3.1.4 Residents of Whitehall Court, Whitehall Place

Businesses

- 3.1.5 Businesses in the Sanctuary, Horseferry Road, Great Peter Street, Marsham Street and Great College Street
- 3.1.6 Hotels and clubs in Whitehall Place
- 3.1.7 Businesses on Parliament Street and Bridge Street (including street traders).

Others

- 3.1.8 Protesters in Parliament Square
- 3.1.9 The authorities at the Palace of Westminster
- 3.1.10 Various Government Departments
- 3.1.11 The Greater London Authority
- 3.1.12 The Metropolitan Police
- 3.1.13 The Equality and Human Rights Commission
- 3.1.14 The Dean and Chapter of Westminster Abbey
- 3.1.15 Justice, Liberty and Amnesty International
- 3.1.16 Westminster Crown Prosecution Service

- 3.1.17 Westminster School, Church House, the QEII Conference Centre, the Supreme Court and the RICS
- 3.1.18 English Heritage (in respect of the Jewel Tower) and Historic Royal Palaces (in respect of Banqueting House)
- 3.1.19 Various organisations who assist homeless people
- 3.1.20 The Covent Garden Street Performers' Association.
- 3.2 Overall, approximately 1400 copies of the consultation papers were distributed either in paper or electronic copy.

4 Summary of consultation responses

General

- 4.1 In total there were 114 responses to the consultation before the deadline expired.
- 4.2 94 (83%) of the responses were submitted by email and 19 (17%) by post.
- 4.3 All of the responses were submitted by single individuals or organisations – there were no petitions or joint responses.
- 4.4 There were no standardised or “cut and paste” responses – each one was different from the other.
- 4.5 Of the responses received, 28 (25%) were from those to whom it is known the consultation document was sent or given. Of those, 21 were generally in favour of the proposals, 5 were generally against them and 1 expressed no views.
- 4.6 It was apparent that almost all respondents were either generally in favour of all of the proposals or generally against all of them. There were a few respondents who were against the tents provisions but in favour of or sympathetic to the noise provisions.

Type of respondent

- 4.7 **Table 1** sets out a breakdown of the type of respondent, together with a general assessment of whether they were in favour or against the proposals. It does not include the one respondent who expressed no views.

Geographical Spread of Respondents

- 4.8 Of the 55 non-Westminster individual residents, approximately half were from other parts of Greater London. The breakdown by county or former county is as follows:
 - 4.8.1 28 responses from Greater London
 - 4.8.2 4 responses from Oxfordshire
 - 4.8.3 3 responses each from Hampshire and Sussex

- 4.8.4 2 responses each from Bristol, Scotland, Cornwall and Essex
- 4.8.5 1 response each from Surrey, Berkshire, Kent, Buckinghamshire, Wales and Leicestershire.
- 4.9 Of the 20 Westminster individual residents, 18 were local to the designated area, and two from the W2 postcode.

Table 1: Breakdown of responses by type who expressed views

Type of Respondent	Total no.	Generally in favour of proposals		Generally against proposals	
		No.	% of group	No.	% of group
Individual: Westminster Resident ¹	20	17	85%	3	15%
Individuals: Non-Westminster resident	55	0	0%	55	100%
Individuals: address unknown or incomplete	13	0	0%	13	100%
Known existing protesters at Parliament Sq ²	3	0	0%	3	100%
Local businesses and other organisations ³	3	3	100%	0	0%
Local public bodies ⁴	1	1	100%	0	0%
Other organisations ⁵	4	0	0%	4	100%
Anonymous	14	3	21%	11	79%
Total	113	24	21%	89	79%

4.10 The respondents who were not individuals were as follows:

- 4.10.1 Crisis – were opposed to the proposals - see later for explanation
- 4.10.2 Department for Work and Pensions – expressed no comments

¹ ie those who gave a known Westminster address or postcode. It does not include the 2 known Parliament Square protesters who responded

² Babs Tucker, Maria Gallestegui and Mark Williams

³ Royal Horseguards Hotel, Westminster Abbey and Westminster School

⁴ The Home Office. One public body expressed no views (DWP), which is why the total shown is 113 not 114.

⁵ Liberty, Crisis, Global Women's Strike, RMT Finsbury Park Branch. One came from an individual at the Occupy London Stock Exchange site, but it was not clear if it was representative of a group of the protesters so was counted as an individual.

- 4.10.3 Global Women's Strike – were opposed to the proposals
- 4.10.4 Home Office – were in favour of the proposals – see later for explanation
- 4.10.5 Liberty – were opposed to the proposals see later for explanation
- 4.10.6 RMT Finsbury Park Branch – were opposed to the proposals
- 4.10.7 Royal Horseguards Hotel – were in favour of the proposals
- 4.10.8 The Dean and Chapter of Westminster Abbey – were in favour of the proposals
- 4.10.9 Westminster School – were in favour of the proposals.

5 Contents of Responses: Introduction

- 5.1 As mentioned above, the consultation document sought written responses, and to assist consultees, a questionnaire was attached.
- 5.2 84 (74%) of the responses were in the form of completed questionnaires. The rest were in the form of general comments made in emails or emailed letters.
- 5.3 At **Annex B** is a table setting out the comments made by those who were generally in support of the proposals, and **Annex C** is a similar table setting out the comments of those who were generally against them. The tables set out the specific questions asked in the questionnaire and the responses to them, and also set out comments made by those who chose to respond other than by using the questionnaire. The comments of Liberty and of Crisis and the Home Office are not contained in these appendices but instead are summarised below and annexed to the report.

6 Questionnaire responses: Designated area

- 6.1 Set out below are tables showing how the questions in the questionnaires relating to the designated area were answered.

Table 2: Questionnaire: Designated Area

Do you have any comments on the extent of the designated area within which the byelaws relating to tents, etc and sleeping equipment (and their seizure) would apply?	
No answer given	26
Agree the area	8
Area too small	4
Area too large	3
General comment made in opposition to the byelaws	46

- 6.2 All those who said the area was too small were local residents near to the designated area. One suggested it should extend to Whitehall near Downing Street, one had a general concern about displacement, one suggested it be extended to the gardens between the Embankment and Whitehall Court and one suggested it should extend to the whole of London.
- 6.3 In the table above under “Area too large” we have only counted those who made specific suggestions about reducing the size of the area. We have not included those who said that they disagreed with the idea of a designated area in principle or who generally said the area should be smaller because they were against the proposals in principle. Those respondents are counted under “General comment made in opposition to the byelaws”.
- 6.4 Of those who suggested the area should be smaller, one suggested it should not include areas that are free for public access, one suggested that it should be “the whole of Parliament Square Green, ie the roundabout where the existing Peace Camp is situated” and the other said it should not include the immediate area surrounding the Houses of Parliament and Parliament Square.
- 6.5 Of those who completed questionnaires and who made general comments in opposition to the byelaws and who mentioned the designated area, the following themes were prevalent:
- 6.5.1 Because it is the centre of government and democracy, the designated area is where protest should be allowed, not be prevented (some 23 respondents)
- 6.5.2 The area includes public areas and thoroughfares where there should be no restrictions (some 3 respondents)
- 6.5.3 The council should carry out a risk assessment (1 respondent)
- 6.5.4 Infringement of human rights (1 respondent)

7 Questionnaire responses: Directions prohibiting use of tents, etc

- 7.1 Set out below are tables showing how the questions in the questionnaires relating to the prohibition on using tents etc and sleeping equipment were answered.
- 7.2 **Table 3** summarises the responses to the question about directions prohibiting the use of tents etc, asking whether the respondent agreed with them.

Table 3: Questionnaire - Directions prohibiting use of tents, etc

Do you agree with the proposals relating to the giving of directions prohibiting the use of tents, etc and sleeping equipment in the designated areas?	
No answer given	0
Yes	21
No	62

7.3 All 21 of the respondents who said they agreed the proposals were Westminster residents living near to the designated area.

7.4 **Table 4** sets out summaries of the main reasons why respondents said they agreed with the proposals and **Table 5** sets out summaries of the main reasons why respondents said they were against the proposals.

Table 4: Questionnaire - Directions prohibiting use of tents, etc – reasons for agreement

If you agree with the proposals relating to directions prohibiting the use of tents and sleeping equipment in the designated areas, please tell us why in the box below.	
Summary of reason	No.
Visual impact/spoil the amenity or environment of area	7
Obstruction of public access/inappropriate use of public land/clutter	7
Beyond/abuse of legitimate protest	5
Gives warning/prevents problems starting	3
Unsanitary/public health reasons	3
Nature of protesters:/antisocial behaviour/intimidation/representation of anarchy	3
Security risk	1
No reasons given	1

Table 5: Questionnaire - Directions prohibiting use of tents, etc – reasons for disagreement

If you disagree with the proposals relating to the use of tents and sleeping equipment in the designated areas, please tell us why in the box below.	
Summary of reason	No.
Objection to the restriction on or criminalisation of protests/long term protest	58
No harm or safety risk caused by protesters	8
Infringes human rights	6
Tents needed for protection from elements/public health	6
Proposals will encourage more protest	5
Effect on the homeless	3
Public support for the protesters	3
Byelaws too extensive/open to interpretation	2

Bypasses due legal process	1
Existing law sufficient	1
Council could have dealt with earlier protests better	1

8 Questionnaire responses: Seizure and Forfeiture of tents, etc

8.1 Set out below are tables showing how the questions in the questionnaires relating to the seizure and forfeiture of tents were answered.

8.2 **Table 6** summarises the responses to the question about the seizure and forfeiture of tents, etc, asking whether the respondent agreed with them.

Table 6: Questionnaire - Seizure and forfeiture of tents, etc

Do you agree with the proposals to allow for the seizure and forfeiture of tents, etc and sleeping equipment?	
Yes	21
No	62

8.3 All 21 of the respondents who said they agreed the proposals were Westminster residents living near to the designated area.

8.4 **Table 7** sets out summaries of the main reasons why respondents said they agreed with the proposals and **Table 8** sets out summaries of the main reasons why respondents said they were against the proposals.

Table 7: Questionnaire - Seizure and forfeiture of tents, etc – reasons for agreement

If you agree with the proposals relating to seizure and forfeiture of tents, etc and sleeping equipment please tell us why in the box below.	
Summary of reason	No.
Enables proper enforcement	10
Suitable deterrent	3
Prevention of displacement	3
Tents are unsightly	2
Should apply more widely: eg caravans	1
Seized tents should be made available for collection	1
Power should only be exercised if tent unoccupied and causing obstruction to public	1
No reason given	1

Table 8: Questionnaire - Seizure and forfeiture of tents, etc – reasons for disagreement

If you disagree with the proposals relating to seizure and forfeiture of tents, etc and sleeping equipment please tell us why in the box below.	
Summary of reason	No.
Objection to the restriction on or criminalisation of protests/long term protest	44
Too draconian/avoids due legal process/legal costs	15
Legitimised theft	8
No harm caused by tents	6
Health and safety of protesters	5
Should not interfere with people's private property	3
Infringes human rights	3
Risks to existing homeless/would render protesters homeless	2
Existing law sufficient	1
Seizure should only be exercised by the police	1

9 Questionnaire responses: Seizure and Forfeiture of amplified noise equipment

9.1 Set out below are tables showing how the questions in the questionnaires relating to the seizure and forfeiture of amplified noise equipment were answered.

9.2 **Table 9** summarises the responses to the question about the seizure and forfeiture of amplified noise equipment, asking whether the respondent agreed with them.

Table 9: Questionnaire - Seizure and forfeiture of amplified noise equipment

Do you agree with the proposals to allow for the seizure and forfeiture of amplified noise equipment in cases where it appears that there has been a breach of the Council's existing noise byelaws?	No. of responses
Yes	22
No	55
Agree but with conditions/sympathetic to the proposal	4
No answer given	3

9.3 All 22 of the respondents who said they agreed the proposals were Westminster residents living near to the designated area.

Table 10 sets out summaries of the main reasons why respondents said they agreed with the proposals and **Table 11** sets out summaries of the main reasons why respondents said they were against the proposals.

Table 10: Questionnaire - Seizure and forfeiture of amplified noise equipment – reasons for agreement

If you agree with the proposals relating to seizure and forfeiture of amplified noise equipment please tell us why in the box below.	
Summary of reason	No.
Quality of environment/noise is anti-social/public nuisance	10
Enables proper enforcement	5
Right balance between right to protest and protection of environment	3
Suitable deterrent	4
Displacement	1
No reason given	1

Table 11: Questionnaire: Seizure and forfeiture of amplified noise equipment – reasons for disagreement

If you disagree with the proposals relating to seizure and forfeiture of amplified noise equipment please tell us why in the box below.	
Summary of reason	No.
Objection to the restriction on or criminalisation of protests/long term protest	21
Needed to enable safety and other information to be heard	8
No harm caused/background traffic noise	8
Existing law sufficient	7
Needed to enable speeches to be heard	7
Legitimised theft	5
Infringes human rights	3
Should only be allowed during day	2
Should not interfere with people's private property	2
Should be enforced only by police	1
Inconvenience outweighed by free speech	1

10 Non-Questionnaire Responses

- 10.1 A number of respondents did not complete the questionnaire but instead sent an email or a letter. These responses are of course of equal validity as responses which comprised completed questionnaires.
- 10.2 Of those responses, summaries of points made are set out in **Table 12 and Table 13**.. They do not include points made by Liberty and Crisis or the one government department who responded (the Home Office), all of whom are dealt with separately later in this report.

Table 12: Non questionnaire responses – summary reasons of those in favour of proposals

Summary of reason	No. of responses
Right to protest involves corresponding obligations	1
No right to pitch tents in public places – suggest Speakers Corner would be more appropriate	1

Table 13: Non questionnaire responses – summary reasons of those against proposals

Summary of reason	No. of responses
Objection to the restriction on or criminalisation of protests/long term protest	20
Because it is the centre of government and democracy, the designated area is where protest should be allowed, not be prevented	2
Police Reform and Social Responsibility Act has not been tested yet/proposals subvert Parliament's decision on that Act	2
Provisions will encourage more protest	2
Cost to public purse	1
Tents needed for protection from elements/public health	1
Effect on the disabled	1
Confusion will be caused with both byelaws and Police Reform Act in place	1
Effect on the homeless	1
Unsightliness of the tents is not a valid issue	1
Concerned about right to dance in streets	1
Existing law sufficient	1

- 10.3 The representative of the Dean and Chapter of Westminster Abbey responded by saying that their co-operation in respect of the byelaws hitherto demonstrated that they approved and agreed them.
- 10.4 Of those who responded without completing a questionnaire (including those mentioned in paragraph 10.2 above), 3 respondents were generally in favour of the proposals and 26 were generally against them.
- 10.5 One respondent alleged that the consultation was invalid. The reason given was that the email address given for responses was invalid. But the vast majority of responses were received via that address and it was tested.

11 Liberty

- 11.1 Liberty's response concentrated on compatibility with human rights. A full copy is at **Annex D**. Points raised included:
 - 11.1.1 The Council is required to act compatibly with ECHR rights
 - 11.1.2 The byelaws (and the Police Reform Act) constitute a substantial interference with rights under ECHR Article 10 (freedom of expression) and Article 11 (right to freedom of peaceful assembly and freedom of association).
 - 11.1.3 There is a clear distinction between the "essence" of a protest and the "manner and form" of its exercise (citing the case of *Tabernacle v Secretary of State for the Defence*).
 - 11.1.4 On judicial review, the byelaws would be held unlawful unless the Council can demonstrate that they are proportionate to meet a pressing social need directed to one of the aims set out in Articles 10(2) and 11(2) such as the prevention of crime and disorder or the protection of the rights of others.
 - 11.1.5 Seizure of tents, etc or noise equipment would amount to deprivation of property within the meaning of Article 1 of the First Protocol to the ECHR. As such it can only be justified if it is done in the public interest and subject to the conditions provided for by law. Hence the interference must be proportionate and the relevant law must be sufficiently precise and foreseeable.
 - 11.1.6 Powerful justification is required for any restrictions on the right to peaceful protest at the geographical heart of power. Liberty suggests that none of the reasons given in the explanatory note accompanying the consultation amounts to sufficient justification to outlaw the use of tents etc.
 - 11.1.7 Existing law is available to deal with potentially harmful protests.
 - 11.1.8 No proper explanation as to the reason behind the noise equipment seizure provisions. No harm identified that a power of confiscation would address.
 - 11.1.9 The direction not to use a tent etc acts as an on the spot injunction, breach of which is a criminal offence, and there is no requirement for the activity to be causing or likely to cause a crime etc or even spoil the vista. Directions can be given orally and recipients may not know they have been given one.

- 11.1.10 There are concerns about the arbitrary or discriminatory use of the powers. They would apply to the homeless and people who sleep overnight for jubilee celebrations. One type of person may receive directions, others not.
- 11.2 In summary Liberty opposes the proposals on the basis that they are wrong in principle, unnecessary and incompatible with Articles 10 and 11 and Article 1 of the First Protocol to the ECHR.
- 12 Crisis**
- 12.1 Crisis are concerned that the byelaws may have an impact on rough sleepers in the area and could be counter-productive in the effort to end rough sleeping. A full copy of their response is at **Annex E**.
- 12.2 Enforcement of the tents directions byelaw could result in rough sleepers being moved elsewhere with no support away from services.
- 12.3 Enforcement of the seizure provisions could lead to rough sleepers losing their sleeping equipment with no guarantee of getting it back, leaving them without shelter from the cold.
- 12.4 Rough sleepers would be unlikely to be able to pay any fines arising and a criminal record would add a further barrier to breaking out of homelessness.
- 12.5 The council's continued participation in positive joint working to end rough sleeping is essential. Crisis recognises that it is not the intention to target homeless people but the byelaws may have unintended consequences. Crisis urges the council to consider how best to ensure the byelaws do not affect rough sleepers.
- 13 The Home Office**
- 13.1 The Home Office supports the inclusion of the area around its building at Marsham Street within the scope of the byelaws. A full copy of their response is at **Annex F**.
- 13.2 The concern is the risk of encampments or other incursions. The Home Office may be a target because it put forward the legislation to deal with the problem at Parliament Square, ministers have made it clear that they consider the right to protest extends to the right to set up encampments, and the area around the building may attract those wishing to set up an encampment.
- 13.3 Public walkways were included between the Home Office Buildings and are a valuable amenity for the area. It is important they be kept open for public use.
- 13.4 It is important that there be continuity of uninterrupted use of the building. It is in the essential national interest that business continuity is maintained which could be put at serious risk if an encampment or similar intrusion were to appear close to the building.
- 13.5 The Home Office do not wish to prevent legitimate demonstrations or protests.

Sharpe Pritchard

16 January 2012