

Draft Public London Charter - consultation response



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Consultation details

This is my response to the consultation on the draft Public London Charter, published in October 2020, intended to be used as guidance alongside Policy D8 Public realm part H, and paragraph 3.8.9, in the Mayor's new London Plan.¹

The deadline for responses is currently 15 January 2021.²

Recommendations for changes

- **The process for changing any agreed rules governing new public spaces should be strengthened to bring it into existing local authority democratic processes. The London Borough of Camden has already done this in a satisfactory way within its planning guidance on public spaces published in March 2018, and there is no reason not to require this within the Public London Charter.**
- **In order to ensure proper public scrutiny, detailed draft maps and management plans for new public open spaces, along with details of how the rules governing the spaces have been developed in consultation with local citizens, should be required to be submitted alongside planning applications, not left for agreement later only by planning officers.**
- **The initial enforcement of these new planning conditions should not be left only to boroughs, and the GLA should commit resources to supporting the drawing up of legal agreements, and to the monitoring of compliance for applications that are referable to the Mayor, at least for the first years of this policy being in force.**
- **The GLA should also commit to supporting the provisions for transparency within this guidance, with summary data and a searchable database with links to applications, maps, consultations, and planning agreements on the GLA website.**
- **Guidance on the provision of information on site in new public spaces should be strengthened, including a requirement for clearly visible signage as well as accessible information online.**
- **Policies controlling the extent to which public spaces can be closed off to the general public for ticketed events should be stronger, requiring that planning agreements specify a maximum number of times this can happen each year, not just that these events should be notified to the public in advance.**
- **The policy should prohibit the installation and use of intrusive biometric surveillance technologies (including live facial recognition) within CCTV systems for public spaces covered by this policy.**



Detailed responses to the proposals

Overall, this guidance represents a big step forwards for protecting Londoners' rights, freedoms and wellbeing when new public spaces are created in London, particularly where these spaces are owned and managed by private developers and companies.

Since 2016, I have worked alongside campaigners to tackle the increasingly undemocratic privatisation of public space, and pushed for the rules and management of these spaces to be brought into accountable democratic frameworks.

In 2017, I co-proposed a motion to the Assembly, which passed with 14 votes for and 7 against, asking for a strong policy, not just to maximise access and minimise restrictions in initial agreements, but with a clear process to control changes to management rules throughout the lifetime of developments.³

In December 2017, the draft new London Plan was published and included a policy in the Design chapter requiring that new public spaces followed principles set out in an upcoming Public London Charter that would be published alongside the final London Plan.

However, despite Assembly Members like me pushing for more urgency several times during the intervening years, it was not until October 2020 – eight months after the London Assembly approved the Intent to Publish Draft of the new London Plan – that Londoners and local planning authorities were able to see draft guidance setting out the detail of these principles.

In contrast Camden Council took up the principles of improving the management of privately owned public spaces early on and have had final guidance in place for nearly three years now. The Council was the main authority responsible for the King's Cross Railwaylands redevelopment, where the lack of clear policies has led to many of the most well-known issues with arbitrary rules and over-zealous management of public behaviour, and this is likely to explain the Council's enthusiasm for developing new policies.⁴

The authority drafted and consulted upon new planning guidance based on the initial outline of the Public London Charter principles in the London Plan and published this in March 2018.⁵

As of November 2018, planning officers were able to confirm that a total of 12,053 sqm of new public open space had been secured that was governed by this new guidance, along with £463,991 towards the delivery of new public open space off-site or improvements to existing public open space.⁶

There is no data available telling us how much new private public space has been created across London in the time it has taken for the detail in the Public London Charter to be revealed and to gain weight in planning decisions. The Mayor has recently agreed to explore providing this information to me.⁷



However, the Camden experience suggests that many tens of thousands of square metres of new public space may have been affected by this delay.

A. Good provisions in the guidance that should be maintained

Overall, I believe that the goals and principles expressed in the draft Public London Charter are excellent.

The clear statement that any restrictions: “are limited to those essential for the safe management of the space” is particularly welcome and will help to prevent the unnecessary restriction of new cultural and recreational activities that may emerge in future.

In the details given, I am particularly pleased to see so many different groups of Londoners and potential uses of public space specifically named as things that should not be prevented by any management plans or rules. These aspects of the Charter should all be maintained in the final draft, and include:

- The expression of all the Healthy Streets principles as part of the guidance.
- The encouragement of meanwhile uses during the construction phase of developments.
- A positive attitude towards citizen-led and informal events and activities, including ‘celebrating their community’.
- A default presumption towards 24-hour opening.
- Acknowledgement of homeless people as a group who must not be excluded, in contrast to the all-too-common situation of public authorities regarding visible homelessness as ‘anti-social behaviour’.

- The call for landowners to ‘anticipate and allow’ a range of means of political expression including protest, public speech, canvassing, rallies and single event/day demonstrations.
- Recognition of the needs of young people, and specifically that ‘hanging out’ in groups is not an activity that should be prevented.
- Support for informal children’s play, and preventing its restriction to designated areas.
- The naming of the following additional activities as ‘allowable uses’:
 - Busking
 - Dog walking
 - Safe cycling
 - Skateboarding
 - Roller-skating/rollerblading
 - Consuming food and drink, including that which users bring into the space themselves.

These are all very positive and inclusive policies which I commend and which must not be removed in the final draft of the Charter.

B. Aspects that must be improved

I believe that on a number of specific points, the Public London Charter must be strengthened and improved before it is finalised.

Democratic processes for changing public space management plans are needed

The Assembly motion, passed in September 2017, said the following:

“This Assembly welcomes the Mayor’s comments in response to revelations about the extent of privately owned public space in London and the non-transparent way private owners of public squares and parks set rules for the public.

“The Deputy Mayor for Planning, Regeneration and Skills told the Guardian newspaper the Mayor’s new London Plan would seek to “maximise access and minimise restrictions, as well as enabling planners to establish potential restrictions at the application stage for new developments”.

“This Assembly believes that the next London Plan should go further and establish real public transparency and accountability for setting rules to govern these spaces through the lifetime of developments, not just at the application stage.

“The Assembly therefore calls upon the Mayor to ensure that the aspirations set out in his Public London initiative are enshrined in the London Plan so that transparent, accountable and uniform guidance can be provided across London.”

Therefore, I am very disappointed to see that the draft Public London Charter does not attempt to say how any changes to public space rules and management plans that are agreed at the planning stage will be governed democratically after initial planning approval of a suitable management plan.

Instead, within section 5.7.5, the draft simply notes:

“there is no formal process for variations after the space opens.”

And then the language of section 5.7.6 is that of making suggestions, rather than requiring steps to be taken by developers and planning authorities (my emphasis):

*“5.7.6 **There are ways** to reinforce the voice of users in the process of managing public spaces - whether publicly or privately-owned. Innovative projects **such as** the Yellow Charter by the Blueprint Collective, Quintain and the London School of Economics, which puts the needs of young people at the heart of public space design and management in Wembley. **It shows how** specific groups **can be** meaningfully involved in order to establish meaningful collaborative processes that apply to the setting of the initial regulatory framework as well as to any later proposed changes.”*

In contrast, Camden Council’s planning guidance has found a suitable way to include change management in its provisions. In this guidance, any changes to the management plan that are ‘significant’ need to go back to the Planning Committee for approval, which will necessarily involve a period for public comments and notifications to the local community:

“1.44 The Council will expect the owner/management company (and their successors) to abide by the provisions of the management plan for the life of the development. If there are any changes, then the Council will need to be notified in writing. If there are any significant changes to the management plan, these may need to be referred to the Council’s Planning Committee for consideration.”

Camden’s planning guidance also clearly sets out circumstances in which changes to the management plan will be refused:

“1.46. ... We will apply the principle of minimal restrictions on public access where there are proposals to vary an agreed management plan. Where this would compromise the overall function and purpose of public open space, as set out in this Guidance, the Council will refuse to vary the Plan.”

Recommendation:

- The process for changing any agreed rules governing new public spaces should be strengthened to bring it into existing local authority democratic processes: either those for bye-laws or for further planning approval. The London Borough of Camden has already done this in a satisfactory way within its planning guidance on public spaces published in March 2018, and there is no reason not to require this within the Public London Charter.

Details of the space, its proposed management plan, and of consultation that has been undertaken, must be given alongside applications not later

A number of paragraphs covering what must be submitted at the stage of public scrutiny of applications must be strengthened and made clearer in the final document.

Paragraph 3.0.2 of the draft Public London Charter appears to allow for the physical parameters and mapping of the publicly accessible areas of the new development to be left out of the information to be provided at the planning application stage.

Allowing this level of detail to be left out of the public process of applying for planning permission would be a serious problem for the democratic scrutiny of proposals.

Although this paragraph does give the example of an outline planning permission as a potential reason for this lack of detail being provided with the application, the language is not clear enough, and does not say that for any full planning application (or application to discharge reserved matters after outline permission), full details of the parameters of new public spaces should be given as part of the application documents.

The final Public London Charter must correct this and include a clear provision that maps of the proposed new public space must be included with applications.

Similarly, paragraph 3.0.5 requires a management plan setting out how the Charter's principles would be met to be produced. It says this would be agreed by borough officers and 'appended to the legal agreement', but it does not say that a draft management plan should be submitted as part of the application, where it would be available for public scrutiny and comments.

In Camden Council's planning guidance on public open space, this requirement is much clearer. It says:

"the Council will expect applicants to submit a draft management plan that can be secured through the S106 agreement."

In addition, the draft does not include requirements for public consultation on potential management rules ahead of planning applications being made.

Paragraph 5.3.3 says:

"All rules should be developed in consultation, be based on robust evidence demonstrating their need, and be weighed against the impact on individuals, groups and the public generally."

However, section 3 on the implementation of the Charter, again falls short in defining how this should be documented and assessed, and does not mention any requirement to show that the proposed management plan has been developed in consultation with anyone other than borough officers:

“3.0.5 Applicants should demonstrate how a proposed scheme that includes public space (as defined here) will meet the requirements of the charter principles through a management plan or design and access statement, or other such document that Borough officers deem a suitable mechanism to help ensure and monitor compliance with the charter. This should be appended to the legal agreement.”

Again, the draft needs to include more clarity on the public involvement and consultation process required ahead of submitting a draft management plan.

Recommendation:

- In order to ensure proper public scrutiny, detailed draft maps and management plans for new public open spaces, along with details of how the rules governing the spaces have been developed in consultation with local citizens, should be required to be submitted alongside planning applications, not left for agreement later only by planning officers.

GLA resources should be put into monitoring, enforcement and transparency issues related to this guidance

In my work on planning issues across London, I have noted a number of issues with borough planning teams struggling to enforce agreed planning conditions where the Mayor has decided applications, and to ensure that construction management plans are followed.

My view is that these problems are mainly related to the limits on resources at borough level, and the inability of local teams to draw upon GLA resources to support enforcement once referable applications have been decided.

It is important that this innovative policy and the implementation of this guidance is given a suitable priority by boroughs, both in the translation of its provisions into local planning guidance and in the follow up and enforcement of agreed provisions.

It is also important that the impact of the policy is monitored and that citizens are able to easily find out about the history of consultation and approval, as well as the agreed conditions on local public spaces that they use every day.

Therefore, I would like to see the GLA put resources into support for boroughs while this policy is introduced, and to continue to provide data and information about public spaces in London through its own online resources.

The only area where this kind of service is currently proposed is within section 5.6 on privacy and data, which promises further guidance and to publish all Data Protection Impact Assessments on the London Datastore, but a similar service should be provided for all aspects of this new policy.

The resources I propose include:

- Dedicated officers within the GLA to assist boroughs in writing local guidance.
- Additional officer support for the drawing up of legal agreements (both for referable and local applications) until the policy beds in and the provisions of this guidance are more routinely applied.
- For major schemes, support for monitoring the implementation and enforcement of planning conditions, through the construction phase to occupation.
- Space on the GLA planning website given to a central hub of information about all new private public spaces agreed under this policy, including summary data and a searchable database with links to applications, maps, consultations, planning agreements and all the ongoing transparency and management information required by the Charter.

Recommendations:

- The initial enforcement of these new planning conditions should not be left only to boroughs, and the GLA should commit resources to supporting the drawing up of local guidance, legal agreements, and to the monitoring of compliance for applications that are referable to the Mayor, at least for the first years of this policy being in force.
- The GLA should also commit to supporting the provisions for transparency within this guidance, with summary data and a searchable database with links to applications, maps, consultations, and planning agreements on the GLA website.

Policies on the provision of information on site should be strengthened

In section 5.7 on transparency, the draft says that details of any restrictions agreed and the managers of the space should be: “clearly communicated in an accessible format and manner and be kept up to date.”

However, this would be stronger with a specific requirement for visible on-site signage and notices to be displayed. Camden Council’s planning guidance says this about signage in its list of expectations from management plans, which is a useful model form of words for inclusion in the final draft:

“Clear and up-to-date signage (indicating opening times, the management body, any rules or restrictions, and contact details for enquiries/reports)”

Recommendation:

- Guidance on the provision of information on site in new public spaces should be strengthened, including a requirement for clearly visible signage as well as accessible information online.

Specific limits on the use of public space for ticketed events should be agreed in planning conditions

Section 5.5 of the draft covers principles to limit the impact of commercial events in public spaces, which may close off areas of the space and come at a cost. There are good principles here that ask for any such events to minimise the impact on the space, either through frequency or size, and for these to be announced in advance.

However, the guidance would be stronger if it required the inclusion of specific limits on the number of days each year that a space could be closed off for ticketed events in all management plans and planning agreements where this use is proposed.

Recommendation:

- Policies controlling the extent to which public spaces can be closed off to the general public for ticketed events should be stronger, requiring that planning agreements specify a maximum number of times this can happen each year, not just that these events should be notified to the public in advance.

The use of facial recognition technology within CCTV should be banned in these spaces

The draft Charter's language around privacy and human rights is unduly complacent, and the Mayor should take this opportunity to make a strong policy, within his powers, against the use of live facial recognition (LFR) by private landowners and managers of new public spaces.

I recently asked about this in a written Mayor's Question and the Mayor confirmed in his reply that biometric information, under the Data Protection Act 2018, falls into a special category with even more protection, but he stopped short of pledging to introduce this requirement.⁸

The Data Protection Act 2018 clearly covers the making of this policy and any new public spaces agreed with the Mayor, and the draft also asks that compliance with the Surveillance Camera Commissioners Code of Practice is mandated as part of planning agreements.

This is an important step since, although private managers of public spaces are not relevant public authorities to which the Code applies, the Mayor in drawing up this guidance is a relevant authority. It is the responsibility of the GLA not to interfere with human rights and to positively promote support for these rights in any policy it produces.

The Surveillance Camera Code of Practice is itself clear that it is desirable for private operators of CCTV systems to be brought into its scope when it says:⁹

"However, the government fully recognises that many surveillance camera systems within public places are operated by the private sector, by the third sector or by other public authorities (for example, shops and shopping centres, sports grounds and other sports

venues, schools, transport systems and hospitals). Informed by advice from the Surveillance Camera Commissioner, the government will keep the code under review and may in due course consider adding others to the list of relevant authorities pursuant to section 33(5)(k) of the 2012 Act.”

The outgoing Surveillance Camera Commissioner has been vocal about the need for new and specific legislation to govern facial recognition and other smart technologies, and has also expressed concerns about its use by private operators.^{10,11}

Furthermore, since the publication of the draft Charter, the Surveillance Camera Commissioner has published new guidance, specific to police forces, which draws on recent court cases and gives new clarity on the Commissioner’s judgement as to the limits to apply to the use of facial recognition technology as part of police work.¹²

The new guidance is very clear about the high level of risk to human rights from facial recognition systems, and the need for a very high test of necessity:

“3.2 In the context of the overt operation of surveillance camera systems in public places, Article 8 (respect for private and family life) is a key consideration for system operators to address, but is by no means the only Convention right which is engaged. There is also potential impact on other article rights including (but not restricted to):

- the right to freedom of assembly*
- freedom of thought, belief and religion*
- freedom of expression*
- freedom of association*
- the protection from discrimination in respect of those rights and freedoms”*

The guidance is also very clear that the grave ethical and human rights considerations at stake with these new technologies go far beyond the protection of personal information, and that only the most immediate, urgent and specific circumstances can justify the use of **overt** LFR, even within police work:

“3.39 In the first instance, it is important that the police specifically define the pressing problem which they seek to address and the case for compulsion for them to act. In so doing, judgement can be better exercised as to the legitimacy of any proposed action to address that problem. Having defined the specific problem, a clear case of justification for use of LFR should be set out, which is based upon information and facts.”

It says that any **covert** surveillance is a further, even more serious matter in respect of the risk to human rights, requiring even more justification and directed authorisation under the Regulation of Investigatory Powers Act 2000 (RIPA) (set out in paragraphs 3.61 to 3.74 of the guidance).

The requirements on police to adequately inform people about the use of LFR in overt situations are very stringent, aimed squarely at avoiding any risk of covert surveillance. These transparency and information requirements are covered in sections 6.4 to 6.7 and include this comment:

“6.4 ... For example, for the police to be seen to be acting ‘overtly’ there should be appropriate information prominently displayed, distributed or otherwise provided to the public which clearly informs the public that LFR is being operated by them or on their behalf.”

My own view on facial recognition is well known, and I have long called for Parliament to debate specific legislation, which I believe should include banning its use completely. However, I do welcome these clarifications from the current Commissioner who is attempting to work within current legislation to protect citizens from abuse within the grey areas that remain in the law.

I believe that the extracts above give a clear justification for the Public London Charter to include a complete ban on the private installation and use of live facial recognition within CCTV in the new public spaces it will govern.

Taking the new guidance into account, it is not possible to envisage a circumstance in which a private operator of CCTV in a public space could have an ongoing justification for the use of live facial recognition within its systems. Indeed, any circumstance extreme enough to warrant a temporary and specific use of this technology on images arising from a private system would clearly be something for the police to initiate based on the strictest regulatory tests in the new guidance, and for their own technologies, regulated only to highest standards, to be used to analyse images.

No software with this capability could ever be needed within a private system, and a ban is therefore fully justified. This measure would remove any risk of abuse and fulfil the need for the Mayor, in making this policy, to comply with his obligations towards human rights under current legislation and codes of practice.

Recommendation:

- The policy should prohibit the installation and use of intrusive biometric surveillance technologies (including live facial recognition) within CCTV systems for public spaces covered by this policy.

References

- ¹ Draft Public London Charter. Mayor of London, October 2020
<https://consult.london.gov.uk/5205/widgets/15607/documents/6823> and accompanying Equality Impact Assessment <https://consult.london.gov.uk/5205/widgets/15607/documents/6853>
- ² Consultation page: <https://consult.london.gov.uk/public-london-charter>
- ³ Privately owned public spaces need new London plan rules. London Assembly, 7 September 2017.
<https://www.london.gov.uk/press-releases/assembly/privately-owned-public-spaces-need-new-london-plan>
- ⁴ Facial recognition at Kings Cross. MQ 2019/17417, Sian Berry AM, Sep 2019
<https://www.london.gov.uk/questions/2019/17417>
- ⁵ Camden Planning Guidance: Public Open Space. London Borough of Camden, March 2018
<https://www.camden.gov.uk/camden-planning-guidance?inheritRedirect=true>
- ⁶ Cabinet member response to written question by Councillor Sian Berry, Camden Full Council, 12 November 2018 <http://democracy.camden.gov.uk/ielistDocuments.aspx?CId=149&MIId=7736&Ver=4>
- ⁷ Privately owned public spaces data. MQ 2020/3850, Sian Berry AM, Nov 2020
<https://www.london.gov.uk/questions/2020/3850>
- ⁸ Privately owned public spaces and the draft Public London Charter (1). Question to the Mayor, Sian Berry AM, Nov 2020 <https://www.london.gov.uk/questions/2020/3851>
- ⁹ Surveillance Camera Code of Practice. Surveillance Camera Commissioner, Jun 2013
<https://www.gov.uk/government/publications/surveillance-camera-code-of-practice>
- ¹⁰ In the introduction to the new guidance (reference below) the SCC reiterates his view, saying: “I still believe that there remains a degree of opacity as to the current legal framework which accommodates LFR use by the police which would benefit from a revision of legislation, the Secretary of State’s Surveillance Camera Code of Practice (SC Code) and regulatory safeguards.”
- ¹¹ “The ever-increasing use of AFR in the private sector will continue to be a concern.” Surveillance Camera Commissioner annual report 2018-19 <https://www.gov.uk/government/publications/surveillance-camera-commissioner-annual-report-2018-to-2019>
- ¹² Facing the Camera. Good Practice and Guidance for the Police Use of Overt Surveillance Camera Systems Incorporating Facial Recognition Technology to Locate Persons on a Watchlist, in Public Places in England & Wales. Surveillance Camera Commissioner, published 3 December 2020
<https://www.gov.uk/government/news/surveillance-camera-commissioner-releases-guidance-for-police-on-use-of-live-facial-recognition>