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Challenges facing green space: is statute the answer?

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Challenges Facing Green Space: is statute the answer?

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Abstract

Purpose - Against a backdrop of austerity, characterised by public-sector funding cuts and a devolutionary agenda, this paper explores how legislation might address two, inter-related challenges which face public urban green space ('greenspace') in England and Wales; namely, responsibility for provision, and identification of supporting funds. It focuses on two proposals; first, the introduction of legislative powers to enable local authorities to create user-charging schemes, and secondly, the imposition of a local authority statutory duty to provide greenspace.

Design/methodology/approach - Adopting a traditional doctrinal approach, this exploratory study provides a synthesis and analysis of statutory materials.

Findings - Whilst the study considers debates around user-charging schemes, it suggests that the imposition of a statutory duty to provide greenspace would provide a more equitable and effective solution.

Research limitations/implications - The paper calls for further research to establish the detail of such a statutory duty and how it might operate in practice.

Practical implications - There is an appetite amongst local authority stakeholders in England and Wales for such a statutory duty to better enable them to access the requisite underpinning funding.

Social implications - Imposing a statutory duty would help to protect the well-established social, economic and environmental benefits associated with greenspace.

Originality/value - This multi-disciplinary research considers the inter-relationship between two key greenspace challenges: responsibility for provision and funding. It identifies and evaluates a potential model for imposing a greenspace statutory duty which could address some of these issues.

Keywords Greenspace, Statutory duty, User-charging schemes

Paper type Research paper

Introduction

"After the 2008 financial crisis, recession and subsequent collapse in government revenues, the UK's public deficit reached levels not seen since the Second World War" (Ferry and Eckersley, 2015, p.203). In a direct response to "an unstable and unbalanced model of economic growth" (Gov.UK, 2015), the coalition Government imposed an agenda of austerity. The aim of this agenda was to reduce the financial deficit which, it has been proposed, would otherwise have remained at an

unsustainable 10% permanently (Institute of Fiscal Studies, 2015). It has been suggested that the implementation of this austerity agenda has gone too far with some public services already identified as being at "breaking point" by both the Institute for Government and the Chartered Institute of Public Finance and Accountancy (Ryan, 2017). Given predictions that austerity measures will need to remain a key feature of government policy until the 2020's (Inman, 2017), there are concerns about the breadth and depth of public services that can continue to be provided without the necessary underpinning funding (Tetlow, 2017).

Provision of greenspace, as a public service area, is no exception within this context of budget cuts. In England and Wales, it is expected that managers will have access to 20% less funding in 2020 than they had 10 years ago (Beament, 2016). Such significant budget cuts mean that "the continuing downward trend" (Heritage Lottery Fund, 2016, p.1) in the provision of quality greenspace is set to continue. A greenspace hierarchy has also begun to emerge with key 'Green Flag' sites situated at the pinnacle as less visible greenspaces are pushed towards the bottom level (Benjamin and Adu, 2016). The financially-neglected spaces risk falling into a "vicious circle of decline" (DCLG, 2017, p.31; Gabriel, 2016; Moore, 2017) or disappearing all together (Association of Play Industries, 2017). Considering that these spaces are commonly children's playgrounds and smaller neighbourhood resources, these cases of decline and loss can be particularly problematic for deprived neighbourhoods which need the social-cohesion that these "Third Places" (Oldenberg, 1989, p.16) can facilitate (Hickman, 2013). Although some local authorities are creatively working with external partners to identify alternative sources of funding, austerity measures are similarly limiting the panacean abilities of these partners (DCLG, 2017).

Rather than being an isolated problem, such issues around greenspace funding are faced worldwide. Against a similar backdrop of dwindling government funding, Wang *et al.* (2012) note how China's national parks are expected to be self-sustaining *and* generate enough funds to support "local economic development, major infrastructure development, poverty relief, local employment, and tourism" (p252). In a bid to meet these aims, China's national park managers are increasingly turning to the private sector to develop commercial and infrastructure projects to help plug the gap in funding (Wang *et al.*, 2012). China's local greenspaces face similar problems; they have been dubbed "paper parks" because "at least one-third [of them] lack staff, management and funding" (Yeh, 2014). The West faces similar conundrums; for example, it has been suggested that America's national parks need $11.5bn to repair their roads and infrastructure (O'Connor, 2017).

To address the problems presented by a lack of greenspace funding, this paper argues for more robust, longer-term solutions. The paper evaluates two proposals: first, empowering local authorities to introduce greenspace user-charging schemes, and secondly, imposing a statutory duty on local authorities to provide and guarantee greenspace. As a result of these evaluations, this paper draws

upon evidence from Scotland, which has been described as "a nation of green towns and cities" (Greenspace Scotland, 2018), to suggest that the most viable option is the establishment of a statutory duty.

The importance of greenspace, and some challenges…

As "treasured assets… often central to the lives of their communities" (DCLG, 2017, p.3), greenspaces play important environmental, social and economic roles in sustainable urban development. They have been found to facilitate "physical and mental health and wellbeing, biodiversity [and] climate change mitigation" (Peña-Salmón *et al.*, 2014, p.612). As "urban icons" (Castillo-Villar, 2016, p.255), greenspaces also provide local economic benefits in terms of "income and employment for equipment manufacturers, transport and accommodation providers, and all their suppliers" (Buckley, 2003, p.63). Perhaps one of greenspace's most important roles is enabling community cohesion (DCLG, 2017, p.16) by acting as a "social glue" (The Joseph Rowntree Foundation, 2007, p.2). Greenspaces can be particularly vital to deprived neighbourhoods (World Health Organisation, Europe, 2016; Buckley, 2003), creating a ""sense of place"… [and] civic pride" (Lawson, 2004, p.125) through facilitating the development of social capital (Williams and Pocock, 2009; Mehta and Bosson, 2010; Hawkins and Ryan, 2013). After the home (the "First Place"), and the workplace (the "Second Place"), these "Third Places" (Oldenberg, 1989, p.16) are democratic social "levellers" where "all are equal" (Hawkins and Ryan, 2013, p.193) regardless of their status and purpose (Marcuse, 2014).

Whatever the appeal, the popularity of greenspaces has increased (Heritage Lottery Fund, 2014). Perhaps categorising greenspaces as Third Places partially helps to explain this. As an "inclusive place… accessible to the general public" (Oldenburg, 1989, p.24), greenspace potentially fills the gap in the market which has been created by the well-documented closure of other types of Third Place. These include spaces such as public houses (Lucas, 2013), libraries (Griffin, 2016) and sports facilities (Finlay-King *et al.*, 2017; Conn, 2015). Rising population numbers (United Nations, 2017; Office for National Statistics, 2017) and intensified urbanisation (United Nations, 2014) have necessitated a broader definition of greenspace. This has led to increased demands for the development of both "pocket parks" (Gov.UK, 2016) and "roadside green spaces" (Kong *et al.*, 2010, p.16).

Identification of sufficient volume of greenspace is not the only issue. Such space also needs to be maintained and finding the funding to do this seems to be a common challenge. The austerity agenda, associated with both the 2010-2016 Coalition and current Conservative administrations in England and Wales, has led to disproportionate budget cuts for local authorities when compared to other areas of the public sector (Heritage Lottery Fund, 2016; Lowndes and Pratchett, 2012). Such fiscal

reductions have necessitated the re-prioritisation of local authority services (The Joseph Rowntree Foundation, 2015; Gainsbury and Neville, 2015). Concerns have been raised about the "insidious" side-effects; as "sites become less welcoming, they attract fewer and fewer visitors" (DCLG, 2017, p.31), thus contributing to the cycle of decline.

Following the Government's "devolution revolution" (Gov.UK, 2016) there has also been a trend towards greenspace "outsourcing", whereby local authorities pass the management of their greenspace estates to an external organisation (Moore, 2017). Within this context, there is mounting pressure on non-public organisations to help address the challenges facing greenspace (Jones, 2002). In addition to the growing trend for charities to take on the "place management" (Parker, 2008, p.5) of public parks and estates, there are increased expectations on communities to fill the greenspace provision cavities left as a result of the austerity agenda (Fors *et al.*, 2015). Despite perceptions that there is an appetite for the challenge (Heritage Lottery Fund, 2016), there is a danger of "mission creep" (Kalandides *et al.*, 2016, p.355), and questions have arisen as to the appropriateness of relying on 'Friends of Parks' groups as a sustainable solution. It has been questioned whether these voluntary groups have the necessary skills and experience to plug all the gaps effectively (DCLG, 2017; Mathers *et al.*, 2015). It is also acknowledged that such groups rely on significant input from local authorities, which is the very resource under threat from these fiscal contractions (Mathers *et al.*, 2015). There are additional concerns that an increased reliance on volunteers can mean a less equitable spread of greenspace provision (Chanan, 2003).

Even if such volunteer groups could provide the input required, they only constitute one type of stakeholder within greenspace's broad spectrum. Conflicting stakeholder values can potentially trigger disputes as different groups seek to control (what they perceive to be) *their* greenspace (DCLG, 2017). Adams *et al.* (2015) suggest that, in the absence of local authority control, frustrated stakeholder groups who are jostling for power may take it upon themselves to remedy the situation by illegally cultivating the greenspace (Reynolds, 2008). Such unauthorised "guerrilla gardening" activities, which may including removing vegetation and growing crops (Adams *et al.*, 2015, p.1231), illustrate aspects of Flyvbjerg's "dark side of planning" theory (1996), as developed by Certoma (2015). These types of activities, whilst potentially well-intentioned, can raise questions around sustainability, ownership and local community integration (Adams *et al.*, 2015). Against such a multifaceted backdrop, it is clear that governing greenspace requires tackling the challenges posed by "striking the right balance between open access to parks, and revenue-raising activities such as events or granting exclusive use to particular groups" (DCLG, 2017, p.26).

This paper identifies two inter-related greenspace challenges facing such stakeholders; namely, responsibility for greenspace provision, and identification of supporting funds. It explores the merits of two potential statutory solutions: first, the introduction of legislative powers for local authorities to impose greenspace user-charging schemes; and secondly, the imposition of a statutory duty on local authorities to provide greenspace. This paper scrutinises these possibilities within their wider context, questioning why Parliament has not yet taken either course of action. In doing so, it assesses the potential viability of each proposal before recommending a way forward. Whilst the focus of this paper is on England and Wales, some of the recommendations made could help to inform greenspace governance strategies adopted within other jurisdictions where, as noted above, there is a similar lack of funding available for greenspace provision and maintenance.

Methodology

To facilitate "a comprehensive critique of legal regimes and systems" (Kennedy, 2016, p.21), this paper adopts a traditional legal research approach. We use a doctrinal legal method and analysis to "identify, analyse and synthesize the content of the law" (Hutchinson, 2013, p.9) in order to provide "a coherent, detailed, and nuanced picture" (Stancil, 2011, p.1584) of legal frameworks within this area.

We adopted a doctrinal research methodology using available case law, statutes and legal rules. This approach provides for legal certainty in future decision-making as it includes precedent and legislative interpretation when critiquing existing approaches and determining prospective directions. We were aware of the limitations of using a doctrinal methodology. The collation of all available materials (which could include soft law, websites, judicial and administrative guidelines, communications from interested parties, blogs, etc.) is beyond the scope of many legal studies, researchers may undertake a study with a preordained result in mind (Smits, 2012), and it is possible to accept a misinterpretation of the law (due to the selection of a limited number of sources) or equally to accept an exceptional/unusual interpretation of the law on this same basis (Tjong Tjin Tai, 2013). In this respect, we also sought to avoid our own confirmation bias which could occur through a selective use of legal authorities (Vranken, 2014). Being aware of the limitations and potential pitfalls of this methodology enabled to us to mitigate against such complications.

Thus, for the purposes of this study, we use and make reference to a representative sample of available local and national governmental guidelines regarding the operation of greenspace. We analyse and incorporate the available statutory sources on the regulation of green and open spaces as they relate to individuals and communities. We use an existing Act of Parliament (the Scottish Land Reform (Scotland) Act 2003) as a vehicle arguing, on tangible grounds, for the transposition and incorporation of an existing national law into England and Wales. Thereby we provide, with a degree

of certainty, a critical analysis of an existing Act without fear of the omission of materials, case commentaries, or other extrinsic materials which could have led to the aforementioned limitations in using the doctrinal research methodology.

Doctrinal research methodologies can produce an intellectual contribution through 'recasting' which involves taking more than one line of legal authority across doctrinal fields, demonstrating why they belong together and providing a new framework (Minow, 2006). This approach is taken in this research by using an existing legal authority and exploring how its modified use and application to a legal problem in England and Wales may form a solution to the pressing problem of greenspace access, maintenance and regulation.

Statutory solution 1: Greenspace user-charging schemes?

The number of visitors to greenspaces is increasing each year (Heritage Lottery Fund, 2016). Greenspaces require funding to minimise the impact of such rising popularity whilst also ensuring visitors' safety and enjoyment (Watson and Herath, 1999; Newsome *et al.*, 2002; Buckley, 2003; Watson and Borrie, 2003). Conversely, those greenspaces which are already underfunded and/or undermanaged become even more at risk of falling into the "vicious circle of decline" (DCLG, 2017, p.31; Gabriel, 2016) without the funding required to regenerate them. Within the context of the austerity agenda within England and Wales, the financial resources needed to support sustainable greenspace provision are unavailable (Carrington, 2017).

One solution, which this paper considers below as 'statutory solution 2', is to impose a statutory duty on local authorities to provide greenspace which council officers could rely on to access the funding required. Yet, the identification of the funding sources themselves still remains "a pressing question" (Nesta, 2017, p.5).

A number of different funding-generation mechanisms have been mooted worldwide, including: planning law, the National Lottery, commercial enterprises and fundraising (the Commission for Architecture and the Built Environment, 2006; Heritage Lottery Fund; 2016; Nesta, 2017), and philanthropy (Owen, 2016). A further suggestion has been local property taxation schemes (Bailey, 1994) which would include green benefits districts (for example, San Francisco Public Works, 2018). In recent times, there has been considerable media, government and public attention focused on one particular funding model; the greenspace user-charging scheme. This widespread attention led to the DCLG's 'Running Free' consultation (2017). Despite much stakeholder scrutiny (Nesta, 2017), this greenspace user-charging scheme has become an increasingly popular method for generating greenspace funding (Heritage Lottery Fund, 2014).

Although considered by some as a potential solution to the challenge of greenspace funding, there are a number of aspects which need to be considered when introducing greenspace user-charging schemes. First, it is important to note that whatever guise greenspaces take they have traditionally been free to access (Conway, 1996), facilitating engagement from "the full spectrum of humanity" (Oldenberg, 1989, p.14). Echoing environmental justice principles, which advocate equitable sharing of "amenities… regardless of socio-economic status or ethnicity" (Mitchell *et al.*, 2015, p.2), the DCLG recommends that parks "should remain freely available" (2017, p.20).

Whilst the costs of greenspace provision do still have to be met, there have been concerns about the irony of turning to privatisation programmes to provide the answers (Marcuse, 2014). There are also apprehensions regarding "double taxation" (Buckley, 2003, p.56; Willis, 2003, p.14). Although Council Tax payments from individual households are already contributing to local services, it is anticipated that the additional income generated by council tax rises is unlikely to be sufficient to bridge the funding gap (Local Government Association, 2017). Some of these concerns may be appeased through better communication regarding revenue spending plans, yet given the size of local authority organisations, pinpointing direct, site-specific links between income-generation and spending could prove difficult (Buckley, 2003).

However these user-charging schemes are marketed, further questions arise as to their substance. As Buckley (2003) notes, any fees should vary according to whether the user is an individual (who could be charged per access and/or per activity), or an organisation (who could be subject to a periodic licensing fee, plus per client top-up fees). Creating such a charging-menu would encourage perceptions of fairness by enabling users to choose what they pay for (Bailey, 1994). Yet, such charges may preclude use, particularly in deprived areas where access to greenspace is particularly important (Ward Thompson *et al*, 2012). In addition, it has been highlighted that greenspace users cannot neatly be categorised as either private individuals or organisations. There is a third user-type; namely, individuals who use greenspace for their own commercial gain, for example as a personal trainer or a professional dog-walker (DCLG, 2017). Subjecting these 'commercial' individuals to a separate licensing system could be problematic to police; for example, there could be difficulties in distinguishing between two friends out jogging and a personal trainer and their client.

Additional questions arise as to how user-charges would be set. If determined centrally, they could be subject to objections that they do not take local factors into account. If set locally, they may be subject to the same "patchwork" arguments that have been directed at the Community Infrastructure Levy (Gov.UK, 2016, p.20) because of the disparities between different local authorities' charging schemes (DCLG, 2017). User-charging schemes could also increase user-expectations, and any

mismanagement of them could fuel liability claims. Such a heightened claims-potential is likely to elevate liability insurance premiums which, in turn, could mean increased user-charges in order for the local authority to recoup the costs. Finally, user-charging schemes could also cause spatial displacement as those who cannot afford to pay such charges may be forced to move on elsewhere. As Willis notes, "some people see [greenspace] as a place where neighbourhood children can play football and other games that they would otherwise play in city streets and piazzas" (Willis, 2003, p.14). Income-related charging schemes could be introduced (Willis, 2003), but these often require proof of eligibility which some greenspace users, such as homeless people, may be unable to provide.

Despite there being similar challenges in implementation, greenspace user-charging schemes are common in America, although they are usually limited to car parking and concessions (Bailey, 1994). Even then, such schemes tend to feature more in small to medium-sized cities which have limited access to other sources of funding (Criz, 1982).

All of these issues surrounding user-charging schemes have been the subject of much recent debate. In response to Local Authorities charging runners involved in free, weekly parkrun events to use their parks, the DCLG produced its consultation, "Running Free" (2017). In defending one such user-charging scheme, the local authority argued that "runners monopolised the park, residents had complained about litter and parking, and it was unfair that residents should pay when parkrun was an organisation with paid directors, fundraisers and sponsors" (DCLG, 2017, p.28).

Other local authorities have adopted a more conciliatory approach, entering into agreements to designate parkrun routes, encouraging stakeholder communication and eliciting volunteers from the parkrun group (see for example Wandsworth Borough Council, 2015; Stockport Metropolitan Borough Council in DCLG, 2017, p.29). In doing so, those authorities have also recognised the importance of perception; that the public need to "see that parkrunners who go for free are contributing in some other way" (DCLG, 2017, p.29). At the time of writing, the Consultation's findings have not yet been published but it is clear that their implications will extend beyond parkrunners and impact on the future of greenspace provision more generally.

Given the considerable issues outlined above regarding the equity and enforcement of greenspace user-charging schemes, this paper argues that a more feasible alternative could be the establishment of a statutory duty upon local authorities to provide greenspace.

Statutory solution 2: A local authority duty to provide greenspace?
Despite a lack of overarching statutory control regarding greenspace provision in England and Wales at present, central guidance has been issued to practitioners which is founded upon a tri-partite series

of accessibility, quality and service standards (Natural England, 2010). Intentionally targeted at decision-makers, planners and managers to assist their greenspace-delivery, the guidance's adoption of a case study methodology highlights successful use of Natural England's policies and grants schemes. These include Natural England's Country Parks Accreditation Scheme, which recognises contributions made to public health, and the Green Flag Award which "has become the nationally accepted quality standard for greenspace" (Natural England, 2010, p.17). Nonetheless, despite the practical information provided, the sources of help identified and the recommendations for establishing stakeholder 'champions', there is no legal basis for implementation. The guidance does not, therefore, compel local authorities to govern greenspace use and, significantly, it does not provide any legal redress for breach.

Imposing such a legal duty is not the only means by which greenspaces may be protected. Under the Local Government Act 1972, section 235, local authorities have a general power to make byelaws for the "good rule and government" of their district or borough. Considerably broad in potential scope, such byelaws could be used to regulate a range of activities carried out on greenspace, including anti-social behaviour and horse-riding (see for example Sheffield City Council, 1966). Offenders could be removed by the jusrisdiction of local councils or the police, and also be subjected to payment of a fine on summary conviction (see for example, Lambeth Parks, 2015). Other existing greenspace-regulation mechanisms are provided via both the Open Spaces Act 1906, sections 9, 10 and 15 (which enable local authorities to acquire, maintain and protect open spaces, such as village greens), and the Public Health Act 1875, section 164 (which empowers local authorities to purchase, lease, improve and maintain land for either public walks or pleasure grounds, or support anyone else in doing so). In addition, the National Planning Policy Framework, paragraph 76, has introduced local authority powers to designate local greenspaces when granting planning permission applications for development. Alongside these existing legislative provisions, the Law Commission has also previously recommended the creation of a new statutory scheme of conservation covenants across England and Wales (Law Commission, 2014). Such contractual promises would be voluntarily provided by landowners to conservation bodies, and would bind future owners of the land. Whilst there are limited instances of such schemes in place already, for example through the National Trust Act 1937, Section 8, they are only restrictive in nature and cannot impose any positive conservation obligations on landowners.

Given the challenges currently faced by greenspace, it is clear that this piecemeal approach is insufficient. Until an overarching statutory duty for greenspace-provision is imposed, cash-strapped local authorities may be forced to prioritise other facilities that they are legally-obliged to provide such as waste collection, pursuant to the Environmental Protection Act 1990. Further, the number of statutory duties imposed on local authorities is already expansive. In 2011, the DCLG identified some

1,294 local authority duties across a wide range of areas, including: housing, accountability, accounting and finance, council tax, planning, fire and rescue authorities and executive arrangements. In addition, it indicated that local authorities are subject to 200 additional sources of legislation, yet, none of these duties explicitly includes greenspace provision.

The creation of a specific statutory duty on local authorities to provide greenspace could complement the existing suite of resources to establish a 'green infrastructure' and facilitate the development of a greenspace-protection strategy. There may be hesitation, if not hostility, to the suggestion of such a statutory duty amidst some recent concerns that it could lead to "a race to the bottom" as high-performing parks are "managed down" (DCLG, 2017, p.56). Yet, findings from a review undertaken by the DCLG have previously suggested a movement "…towards a genuinely decentralised system of governance, lifting the burden of bureaucracy to allow local areas to determine how best to address local issues and concerns," (DCLG, 2011, p.1). Further, the respondents identified the importance of maintaining services as *protections* rather than *duties*, which, they argued, would help in eliminating "unhelpful and unnecessary" duties (DCLG, 2011, p.1). This included the suggested removal of the Sustainable Community Strategy, which, through the Local Government Act 2000, places a duty on local authorities, county and district councils and unitary authorities to prepare a community strategy in partnership with the community.

However, the DCLG review elicited an important finding in its 6,000 responses. There was "considerable" interest in retaining requirements around services for disabled children, libraries and the provision of allotments; it being recognised that greenspace is a valuable resource for community health-related activities (Lee *et al*., 2015). Imposing a statutory duty on local authorities may therefore serve many interests and be worthy of pursuit.

Suggesting the creation of a statutory duty in the abstract could appear as too ambitious, with little likelihood of successful enactment. However, given that an existing model has been utilised since 2005 in Scotland, where "54% of the urban land area is greenspace" (Greenspace Scotland, 2018), its application to England and Wales is worthy of consideration. A significant aspect of Scotland's identity is its "unparalleled" landscape (Scottish Natural Heritage, 2017). As recognised in the Land Reform (Scotland) Act 2003 Policy Memorandum, this led to the Scottish government establishing local authority guidance on land reform, implemented through planning authorities across Scotland (Scottish Parliament Corporate Body, 2015, para 3). The Land Reform (Scotland) Act 2003 (the Act) was promoted as a unifying strand of policy assisting asset transfer, community empowerment, housing and local governance and finance (Wightman, 2011). Its benefits comprise the development of a localism agenda which strengthens the power and influence of communities.

The Scottish Executive Guidance on the Act (section 6) provides the following instructions: "the establishment of access rights enables all members of the public to enjoy the countryside and to take part in informal recreation... Local authorities have a key role in ensuring that these access rights are facilitated on the ground…" (Scottish Government, 2005). In emphasising how access needs to be managed locally, the Guidance notes the Act's imposition of a specific duty on local authorities to uphold access rights. In recognising the importance of stakeholder communication and consensus building, it notes how Local Authorities will need to rely on advice from their officers and local access forums based on discussions with all stakeholders affected (Scottish Government, 2005).

Part 1 of the Act establishes public statutory rights of responsible access on and over most land which are underpinned through appropriate planning and development. Local authorities have a duty to uphold access rights (section 13), even where they do not have primary responsibility for the land (for example, national parks).The authority must defend these duties through legal challenges where appropriate following consultation with its advisors. In line with the World Health Organization, Europe's 2030 Agenda for Sustainable Development (World Health Organization, 2016), the Act facilitates community-enjoyment of greenspace by recognising local authorities' needs to hold sufficient powers to be able to manage access, ensuring access is compatible under equality laws by modifying facilities so those with disabilities may safely enjoy outdoor spaces.

A provision exists at Section 13(2) whereby the local authority is not required to do anything in pursuance of Section 13 which would be inconsistent with it carrying out any of its other functions. When faced with planning applications where access rights are already in existence, Section 13(2) would enable the authority to grant the appropriate consents for the development, but also attach conditions for reasonable and continuing public access. To ensure that the Act did not become stagnant through its implementation at the local authority level, Scottish central government provides information to planning authorities in the form of a Scottish Planning Policy series (SSP). Therefore, when preparing development plans, planning authorities must refer to contemporary government policy and, where appropriate, put this into its local / regional context. Importantly, and similar to the National Planning Policy Framework (2012), the SSP is not an advisory document. Rather, planners have an obligation to take into consideration central government policy.

Significantly, Section 13 requires a dialogue between interested and affected groups and the authority, and therefore consensus-building. This may best be achieved through officers obtaining advice and guidance from forums and using this to inform practice. Unlike England and Wales, where there is no such duty, each local authority in Scotland is obliged to create at least one local access forum which comprises and represents those who have an interest in public access of the land (Section 25). The forum(s) are tasked with providing advice, where requested to do so by the local authority, and to

provide dispute resolution assistance (Section 25(2)). At Section 30, the Act requires all byelaws, which relate to public access to land and which have been created by the local authorities within two years of the coming into force of the Act, to be reviewed to ensure consistency.

The Act grants powers to local authorities to facilitate the requirements of access, whilst also ensuring that existing greenspace may be used in the manner which is consistent with existing practice. For example, Section 11 enables the authority to exempt particular land from access rights (whether following a request from a third party or through its own volition) for periods in order to enable activities to take place. This period may be a few hours (for example to allow a parkrun to be held) or a longer period (for example for a village fete / circus to be held) as necessary.

The duty placed on local authorities through Section 13 is assisted through Sections 14 and 15. Section 14 prohibits land owners from preventing or deterring the exercise of access rights. Failure to adhere to such a requirement may lead to a written notice being issued by the local authority requiring the problem to be remedied (Section 14(2)). Where this is not complied with, the Act enables the local authority to undertake the remedial action itself and recharge the owner (Section 14(3)). Again, a significant aspect of the Act is that whilst Sections 14 and 15 provide the local authority with the tools to achieve the goal of Section 13, it will also breach its statutory duty where it fails to secure the access as required through Section 13. An individual concerned that the local authority has failed to take appropriate action may seek a judicial review of its decision not to act. In essence, therefore, the Act places clear, statutory responsibilities on local authorities to facilitate, uphold and defend public access rights over greenspace. In doing so, it recognises the importance of local community engagement, utilising local access forums to inform greenspace decision-making.

As this paper discusses above, another issue concerning greenspace provision is the potential for tortious liability, particularly when greenspace is used for commercial activities. Currently, a poorly maintained pavement, for example, in a public park, which leads to an individual tripping and being injured would be the local authority's responsibility. Depending on the nature of the land in question, the local authority could be responsible for breaches of its duty of care where such breaches lead to (recognised) injury pursuant to different frameworks, including the Occupiers' Liability Acts 1957 and 1984, the Highways Act 1980, and the Countryside Rights of Way Act 2000.

Other activities, for example parkruns, may change the issue of liability (through the addition of a contractual element) and require additional liability insurance to be obtained, particularly when they are operated as commercial activities. There may also be confusion as to the extent of liability depending on the activity undertaken when the claimant was injured, whether the claimant was voluntarily partaking in the activity or was injured through the negligent activities of others, and

whether the activity was hosted with the consent of the local authority. Both the Occupiers' Liability Acts 1957 and 1984 previously mentioned do enable local authorities in England and Wales to discharge their duties as occupiers by issuing appropriate warnings of any dangers which arise on land which they control. Section 15 of the Land Reform (Scotland) Act 2003 goes further by enabling local authorities to warn against such dangers on *any* land where access is exercisable, issuing written notices to landowners requiring them to take remedial action to remove anything which the authority considers may likely cause injury to a person exercising their rights of access (Section 15(2)).

In essence, this Scottish greenspace model combines both statutory duties on local authorities to: defend access rights, maintain greenspace and facilitate community engagement through the creation of local forums, and related enforcement provisions through issuing of notices and taking remedial action. It has been in force for over a decade yet, despite continued calls for a review of the English and Welsh context (for example by the National Federation of Parks and Green Spaces (Plimmer, 2016), 38 Degrees (Topping and Taylor, 2016) and the Open Spaces Society, 2017), the law in England and Wales has not yet followed suit and remains governed by a myriad of both legislative and common law components.

Discussion and Conclusions

The benefits to the communities of local greenspaces are well-established (GreenSpace, 2007; Maller, *et al.*, 2009; Greenspace Scotland, 2008; The King's Fund, 2016); be these economic (Dunse *et al.*, 2007; National Audit Office, 2006; Natural Economy North West, 2008; RPA and Cambridge Econometrics, 2008), environmental (Beckett *et al.*, 1998; Fang and Ling, 2005; Gill *et al.*, 2007; *et al.*, 2011) or social. Good quality, accessible greenspace: encourages increased activity which lowers the likelihood of obesity (Coombes *et al.*, 2010; Wolf, 2010), nurtures mental health (White *et al.*, 2013 and Alcock *et al.*, 2014), facilitates community engagement and socialisation (GreenSpace, 2007) and indicates a good place to live and work (van Dillen *et al.*, 2011; Ward Thompson *et al.*, 2012; White *et al.*, 2013). Policy reports, research and opinion polls have indicated respondents' preference for local councils to protect greenspace. Yet, identifying greenspaces as places that improve the lives of those who have access does not necessarily equate with the ability for local authorities to maintain their greenspace estates in light of the considerable challenges that they face, not least their depleting budgets.

Commercialising such spaces to act as a revenue stream to provide the necessary funds is one possible solution. Those groups who seek to use greenspace for their own profit, such as professional dog-walkers or personal trainers, could be required to pay through a user-charging scheme. The local authority could then ring-fence the funds generated, utilising them for the improvement of greenspace.

Yet, as indicated above, such an approach is fraught with many uncertainties. Identification of the scope and extent of legal rights and responsibilities of both the users and the local authority, along with politically sensitive restrictions of persons who may be unable to afford the associated costs, may leave this 'solution' to feature as just one (possibly minor) aspect of a much larger strategic plan.

Ultimately, a statutory duty on local authorities in England and Wales to "place manage" (Parker, 2008, p.5) greenspaces through a combination of managing access rights, facilitating community engagement, and enforcement is quite possible when compared with that model already in existence in Scotland. Whilst Scotland is characterised by its own unique landscape (Scottish Natural Heritage, 2017), the legislative and policy framework that it has adopted for greenspace "place management" (Parker, 2008, p.5) is used across its spectrum of greenspace types, including those found in inner-city areas. Of course, the fact that requirements are imposed on Scottish local authorities does not mean they have been universally approved, understood and adopted (Garner, 2008). Access to information about the duty and its enforcement appeared to be somewhat limited and has led to possible "uncertainty" amongst respondent planners to a survey in 2008 (Garner, 2008, p.30). Further, some local authority and planning respondents questioned whether the planning system was "the correct vehicle" to tackle some issues under its remit, including anti-social behaviour (when this was not caused by the particular development) (Garner, 2008, p.25).

The recognition of such issues, coupled with the fact that Scotland's approach has been developed over a significant period of time, together create an opportunity for the government of England and Wales to explore some of the lessons learned and develop a more strategic, overarching approach for its own greenspace governance. Whilst the detail is beyond the scope of this paper, the findings suggest that such a scheme could replicate the Scottish model through being similarly underpinned by comprehensive statutory rights and obligations. There is also scope to supplement, clarify and keep such a legal framework current through the provision of separate, statutory guidance. As indicated within the critique of the Scottish model, effective and efficient communication would be essential to the successful creation, development and implementation of any such strategy. To help encourage key stakeholder engagement at a strategic level, all relevant Government Departments (including the DCLG, Health, Transport, Business, Energy and Industrial Strategy, Environment, Food and Rural Affairs) would need to be involved from the outset. The scheme could also encourage commitment at a more operational level by the creation of local community greenspace groups. Involving a range of stakeholders, including council officers, residents, voluntary groups and businesses, these groups could identify, consult on and manage greenspace issues on a local basis. Such joined-up thinking may help to facilitate better understanding between stakeholders, and encourage the employment of a more holistic approach to greenspace governance, mitigating some of the challenges identified earlier.

Despite the various issues that have been identified as arising from the implementation of Scotland's greenspace model, the overwhelming response from its local authorities to the Act has been positive and reflects the importance of access to good quality greenspace. Whilst further research is needed to facilitate a detailed consideration of any necessary modifications to Scotland's greenspace governance model, if England and Wales wish to secure their greenspaces, imposing a statutory duty to provide them may act as both a carrot and a stick to local authorities to achieve their green infrastructure.

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