

Agenda item:

Cabinet 22/04/08

Report Title: **Encroachments and Expired Leases on Council Land**

Report of: **Director of Adult, Culture & Community Services**

Wards(s) affected: **All**

Report for: **Key Decision**

1. Purpose

- 1.1 To consider options and agree a course of action for dealing with encroachments onto Council land.
- 1.2 To consider options and agree a course of action regarding expired leases on Parkland Walk.

2. Introduction by Cabinet Member

- 2.1 Through this report, I am asking my Cabinet colleagues to consider the best course of action to take in order to protect the local nature reserves at Parkland Walk and Palace Gates from both encroachment and inappropriate use.
- 2.2 I am recommending to Cabinet that from the 3 options set out in paragraph 13.6 of this report, that they consider and approve option 2. This is because, in my view, this option represents the best balance between taking action against those who have illegally encroached, protecting the integrity of the nature reserve and effective budgetary management.

3. Recommendations

- 3.1 That Cabinet consider the options for dealing with encroachment and expired leases.
- 3.2 That Cabinet endorses the process for managing new and existing encroachments.
- 3.3 That Cabinet agrees to ring fence lease income to support more effective management of the process and sites.

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Director of Adult, Culture & Community Services**

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4. Chief Financial Officer Comments

4.1 The report recommends that enforcement action is taken in respect of all home owners who have encroached onto Council land. If enforcement action is successful, legal costs should be recovered in full. The Adult, Culture and Community Services Directorate will have to fund any costs that are not recovered from its current budget.

4.2 Where land has been leased to private home owners, the report recommends that, as leases expire, these are re-offered at “full market” value. The income generated of up to potentially £8,500 a year could be directed towards site management or other Council priorities.

5. Head of Legal Services Comments

5.1 The Legal Service is satisfied with the suggested approach to new encroachments and old/complicated encroachments set out in Appendix 6a and Appendix 6b and with the options set out at paragraph 13.4 of this report.

6. Local Government (Access to Information) Act 1985

6.1 [Also list reasons for exemption or confidentiality (if applicable)]

- Information relating to the financial or business affairs of any particular person (including the Council).

- Information which is likely to reveal the identity of an individual
- Information which reveals that the Council proposes:
 - (a) to give under any enactment a notice, under or by virtue of which, requirements are imposed on a person; or
 - (b) to make an order or direction under any enactment.

7. Strategic Implications

7.1 This report concerns the separate issues of occupation of Council land under lease which has now expired with the tenants holding over, at Parkland Walk Local Nature Reserve, and encroachment onto Council land at Parkland Walk Local Nature Reserve and Palace Gates Embankment Nature Reserve.

7.2 Encroachment is defined as use of someone else's land, restricting the owner from using their own land. This can be through building structures, fences, walls, and paving. It also includes objects such as compost and waste bins, recreation objects (trampolines, paddling pools, etc), rubbish and green waste, removal of trees, plants, street furniture.

7.3 Historically, certainly dating back to the 1970s, the Council leased areas of Parkland Walk where it had been approached by private house owners seeking to extend their back gardens, and in a few cases sold plots. All the leases have now expired.

7.4 However, the Council has become aware at both sites of private house owners who have illegally extended their back gardens onto the nature reserves.

7.5 As well as being illegal, the encroachments, if not dealt with, would be contrary to a number of regional and local plans and strategies.

7.6 In addition, the Natural Environment and Rural Communities (NERC) Act 2006 imposed a duty on local authorities to take into account the conservation of biodiversity in undertaking their wider duties and responsibilities.

7.7 DEFRA has stated that it will be reviewing the performance of local authorities and local area partnerships in respect of NERC in 2009.

7.8 There are legal, financial and public relations issues to consider in determining the best course of action for the Council to take in order to regularise arrangements on these sites.

7.9 Legally, the Council may be in breach of both UDP policy and the GLA London Plan for the protection of open space and nature conservation in allowing encroachment to occur. Alternatively, where encroachment has occurred for a period of 12 years or more and not been challenged by the Council, home owners may be able to establish rights of ownership by virtue of long term possession.

7.10 Financially, should the Council decide to take action to reclaim this land, there would be legal costs incurred in initiating the action. However, as long as the Council is successful in proving the case, the majority of monies spent should be reclaimable in damages from the home owner and the Council land should be returned.

7.11 In respect of public relations implications, there are 5 principal areas where the Council is at risk in terms of adverse press coverage. These are:-

- Loss of habitat for nature conservation
- Public open space loss/ enclosure
- Not taking action previously
- Lack of expenditure on both sites
- Reaction to market rental.

8. Financial Implications

8.1 As open space with protection from development under planning law, Palace Gates and Parkland Walk have low financial value, this value will increase if usage and designation changes. Future encroachments could occur on sites with greater financial value.

8.2 Enforcement action will have a legal cost although successful actions should mean that these costs would be recovered in full.

8.3 Selling or leasing of encroached upon land and the renewal of expired leases would raise revenue that could then be directed towards site management or other Council priorities.

8.4 Leases would come with ongoing legal and management cost implications.

8.5 Enforcement or lease will need ongoing resources and commitment of Property Services in terms of advice, survey time, and the management of agreements.

9. Legal Implications

- 9.1 Legally, the Council may be in breach of both UDP policy and the GLA London Plan for the protection of open space and nature conservation in allowing encroachment to occur. If no enforcement takes place over a 12 year period it may be possible for the encroacher to gain legal possession of the land.
- 9.2 Each encroachment will have to be dealt with separately on a case-by-case basis.
- 9.3 Successful legal action should recoup costs for land reinstatement and legal fees; however there is no guarantee that all cases will be successful. Action will also require initial upfront investment.
- 9.4 The lease of land will also require legal costs that should be recoverable from the lessee.
- 9.5 Any change in the boundary or land use at Parkland Walk should be through consultation with Natural England as it is a designated Local Nature Reserve under the National Parks and Access to the Countryside Act 1946. Parkland Walk is also a Site of Metropolitan Importance for Nature Conservation and Metropolitan Open Land; any change in boundary should be in consultation with the Mayor of London.
- 9.6 With regard to encroachments at Palace Gates, Planning Enforcement has stated that they do not have the powers to take action and that it is a property law issue.

10. Equalities Implications

- 10.1 Leasing land or choosing to do nothing in terms of enforcement favours property owners adjacent to open spaces and limits opportunity for others.

11. Consultation

- 11.1 Extensive consultation has taken place with residents living adjacent to Palace Gates Embankment Nature Reserve. This has resulted in the formation of a new 'Friends' group, a consensus that the largest encroachments should be dealt with as a priority, that encroachments should be dealt with individually and initially through dialogue with a Council Officer as opposed to legal action.
- 11.2 Both Palace Gates and Parkland Walk have active Friends of Groups working with the Council to preserve the nature reserves. The Council has agreed to work with these groups in writing new management plans for the sites.
- 11.3 Internal liaison has taken place with Property Services regarding boundaries, Legal Services regarding the law on encroachment and possible enforcement action and costs, and Planning Enforcement regarding enforcement.

- 11.4 Natural England has confirmed that it should be fully consulted if there is any change to the boundary of a Local Nature Reserve.
- 11.5 The Greater London Authority has confirmed that any proposal to change the boundary of a Site of Metropolitan Importance or Metropolitan Open Land should be through consultation.
- 11.6 Policies relating to the protection of open space and the environment found in Council documents including Haringey's Open Spaces Strategy and Unitary Development Plan have been developed and adopted through wide public consultation.

12. Background

- 12.1 This report concerns the issue of encroachment onto Council land and occupation of Council land under lease which has now expired with the tenants holding over at Palace Gates Embankment Nature Reserve and Parkland Walk Local Nature Reserve respectively. Encroachment is defined as use of someone else's land, restricting the owner from using their own land.
- 12.2 A number of encroachments onto Council land at Palace Gates Embankment Nature Reserve and Parkland Walk Local Nature Reserve have been identified and reported by members of the public, local friends groups and Council staff. However as future encroachments will not be limited to these two sites the issue of encroachment has wider implications.
- 12.3 Encroachment is illegal and there is a need for the Council to decide how to address the issue.
- 12.4 The Mayor of London's, London Plan, Haringey's Sustainability Strategy, Unitary Development Plan, draft Greenest Borough Strategy and Biodiversity Action Plan all stress the importance of the natural environment and open space, saying that they are of high importance and should be protected. The ongoing situation with encroachments represents a loss contrary to these policies.
- 12.5 Encroachment onto designated nature conservation sites such as Parkland Walk and Palace Gates reduces habitat size and degrades ecological value. In some cases the damage could be irreparable and could lead to the loss of priority species. Education and amenity value can also be lost through encroachment. Degradation of sites can lead to them losing their designations.
- 12.6 Encroachment can reduce public access and possibly increase areas of deficiency in access to natural green space as identified in the London Plan. Those people with least mobility, either through disability or low income are amongst those most likely to be affected.
- 12.7 Details of current encroachments at Palace Gates Embankment Nature Reserve and Parkland Walk are detailed in Appendices to this report which will be dealt with following the exclusion of public and press from the meeting.

- 12.8 A process has been developed to deal with encroachments in line with best practice at other local authorities. Divided into two the process differentiates between new encroachments and old or complicated encroachments, and provides direction on the gathering of evidence, roles and responsibilities of Council employees and the methodology of enforcement under different scenarios (see Appendix 6).
- 12.9 Recreation Services expertise is in ongoing management and development, not enforcement, however the Council does have this expertise in other departments.
- 12.10 Legal costs for enforcement cases are hard to quantify as each case will need to be dealt with separately and have varying levels of complexity. Due to the number of cases and the 12 year rule regarding claims of possession additional funding will need to be found in the short term to bring forward any legal action.
- 12.11 The failure to enforce legal boundaries could be seen by some as an opportunity, encouraging encroachment through minimum risk and high reward, and could undermine the planning system.
- 12.12 A further issue is that of ongoing expenditure for the management and maintenance of these sites which are currently managed on a reactive basis incurring minimal expenditure. In the event of enforcement action, there could be greater pressure on the Council to maintain the sites to a higher standard. Although it has been suggested at consultation meetings that the lack of maintenance has led to the current situation, as residents felt Palace Gates was a neglected and unmanaged site. The Council has already agreed with the respective 'friends of groups' to produce new management plans for these sites. The Council has a statutory obligation to maintain Local Nature Reserves. This needs to be assessed, quantified and included in the 2008/9 budget planning process.
- 12.13 Pressure to maintain these sites to a higher standard may already be coming from Central Government. DEFRA will be asking local authorities to report on their performance with regard to the Natural Environment and Rural Communities (NERC) Act 2006 and the "Biodiversity Duty" it imposes upon the Council. The active management of locally designated wildlife sites is likely to be seen as a key indicator of this duty. Also, the new performance framework for local authorities and local area partnerships has cut national indicators down from a total of approximately 1200 to 198 and now includes under Environmental Sustainability, "improved local biodiversity through the active management of local sites".

13. Conclusion

- 13.1 A failure to enforce the removal of illegal encroachment identified at two sites of ecological importance could be seen as a failure to uphold policy and statutory obligations and have wider implications when dealing with future incidents of encroachment at other sites. However enforcement is reliant on financial resources and staff time which will need to be taken from elsewhere and as such the option of leasing where a previous lease arrangement has expired should be considered.
- 13.2 Offering the lease of land to those that have encroached is likely to be a complicated business as despite the moral issue where some will see this as rewarding illegal activity, not all those that have encroached will want to or be able to afford to lease.
- 13.3 In the event that Members should choose to lease land to those that have encroached, consultation will be necessary with Friends groups and statutory bodies such as Natural England, and decisions will need to be made on when a site becomes unviable under its current designation. Some pieces of land may be strategically important and should not be leased as they could control access to the site as a whole.
- 13.4 The management of leases at Parkland Walk has been fraught with difficulty in the past however the renewal of expired leases would provide much needed revenue for the site if ring fenced.
- 13.5 It is important that any decision made considers the wider issue of encroachment as a whole and not just the current situation at Palace Gates Embankment Nature Reserve and Parkland Walk Local Nature Reserve.
- 13.6 For the reasons discussed Members may wish to consider a range of options before determining the Council's future course of action. These options include:
1. Take enforcement action in respect of all home owners who have encroached, and where leases expire do not renew them and take the land back as part of the nature reserve.
 2. Take enforcement action in respect of all home owners who have encroached. As leases expire, re-offer these but at full 'market' value and if not taken up return land to the nature reserve.
 3. Offer everyone, both those with leases and those who have encroached, the opportunity to enter into leases at full 'market' value and if not taken up return the land to the nature reserve.

13.7 Option 2 is recommended as it would provide a regular income which if ring-fenced could fund valuable but currently under resourced sites whilst discouraging encroachment and preventing further loss of land.

13.8 If option 2 is selected, a four stage approach is envisaged, this will prioritise action in the following order of priority -

| Priority | Action | Rationale |
|----------|--|--|
| 1 | Offer expired leases at full market value and if not taken up return the land to the nature reserve. | A relatively straight forward process that could provide revenue for other priorities. As the land in question has historically been fenced and used as gardens there are not the same issues here with regard to encroachments onto LNR and SMI land. |
| 2 | Enforcement action on the oldest encroachments | After 12 years of encroachment it is possible to claim adverse possession through the courts. It is therefore important that action is taken before this can happen. |
| 3 | Enforcement action to be taken on large encroachments | Larger encroachments are likely to have a more damaging impact on the ecology and recreational use of the sites. |
| 4 | Enforcement action on smaller encroachments | In most cases these are likely to have a less adverse effect on the ecology and recreational use of the sites than larger encroachments. |

Advice from officers is that action on each of these priorities would need to be staggered and if necessary only a few cases will be dealt with at any one time in order to get successful results. Officers believe that by strictly following the process detailed in appendix 6 and achieving successes a clear signal of intent will be sent to other encroachers.

13.9 It is suggested that leases be limited to a 5-7 year period, be non assignable and specify what land use is acceptable e.g. no hard standing, permanent structures, etc. This would mean that the leases could be reviewed and updated on a more regular basis and the land could be reinstated into the nature reserve if necessary in the future.

13.10 A meeting between Recreation, Legal, Property, and Media and Public Communications services has taken place where it was agreed that any action should be initiated in the summer and with publicity advertising the positive approach the Council is taking in managing its sites.

13.11 The meeting also raised awareness of the costs involved including the possibility of replacement fencing, legal advice, land registry search costs and costs for drawing up heads of terms for new leases. This was seen as another reason for a staggered approach to implementation as these costs would have to be met from existing budgets.

14. List of Appendices

Appendices 1 – 6 to this report contain exempt material and which is not for publication and will be considered following a resolution to exclude the public and press from the meeting.

Appendix 1. Photographic Images of Current Encroachments

Appendix 2. Parkland Walk (section) showing sales, leases out, encroachments and tenancy at will.

Appendix 3. Map of Encroachments at Palace Gates Embankment Nature Reserve

Appendix 4. Encroachments to the rear of Lancaster Road

Appendix 5. Parkland Walk Cases Update from Property Services 23/11/07 (excluding Claremont Road).

Appendix 6a. Process for Dealing with New Encroachments

Appendix 6b. Process for Dealing with Old or Complicated Encroachments.