

Report for: Cabinet Member decision – 22 March 2018

Item number: n/a

Title: Application by Worldwide Festival UK Ltd to hire Finsbury Park for the London Oktoberfest in 2018

Report authorised by : Stephen McDonnell, Interim Director – Commercial and Operations

Lead Officer: Zoe Robertson, Head of Commissioning & Client
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Ward(s) affected: Harringay Ward

Report for Key/

Non Key Decision: Non Key Decision

1. Describe the issue under consideration

- 1.1 This report seeks a determination of an application made by Worldwide Festival UK Ltd to hire Finsbury Park in order to stage Oktoberfest, a German themed food and drink festival in October 2018.
- 1.2 The application is required to be determined pursuant to the Council's Outdoor Events Policy (the Policy), which was approved by Cabinet on 17th December 2013, and implemented on 7th January 2014.

2. Cabinet Member Introduction

Not applicable.

3. Recommendations

3.1 The Cabinet Member for Environment is recommended to:

- (a) Consider, and take account of, the comments received from recognised stakeholders of Finsbury Park in response to the event notifications being sent as part of the decision making process (attached as Appendix 2).
- (b) Authorise the Interim Director – Commercial and Operations, to approve conditional in principle agreement to hire Finsbury Park to the event promoter for the events detailed in this report as set out in paragraph 6.4.

(c) Agree that the conditions which are to be attached to any final approval of authority are as set out in the comments of the Assistant Director, Corporate Governance at paragraph 9.2.12 below.

4. Reasons for decision

- 4.1 Under the terms of the Policy, applications of the type detailed in this report are required to be determined with the prior agreement of the Cabinet Member.
- 4.2 If authority is given, then officers will give in principle agreement to the Applicant for the event applications to progress. The events will then be subject to lengthy discussions with relevant authorities, including licensing before final agreement is given.
- 4.3 The rejection of the applications would have implications for the Parks Service budget, and reduce the opportunity for reinvestment into Finsbury Park (the Park). It would also mean that the wider cultural and economic benefits to the borough were lost.

5. Alternative options considered

- 5.1 In adopting the Policy, the Council established its commitment to using the Park for a limited number of major events each year. Accordingly, the only other alternative option which could be considered would be to reject the application. That option was rejected, on the grounds that the events did not fall within any of the grounds set out in paragraph 5.3 of the Policy for automatic refusal.

6. Background information

- 6.1 In January 2014, the Council adopted the Policy to recognise the value and benefit that a varied, and well managed, outdoor events programme can offer the residents of Haringey.
- 6.2 The Policy assists the decision making process behind building a sustainable and varied programme of events. It also seeks to protect the community and the parks and open space infrastructure and minimise or mitigate any negative impacts which events may cause.
- 6.3 Some of these restrictions as set out at paragraph 5.2.2 of the Policy specifically relate to the Park to ensure a balance of income generation and that of continued public use of the park through the busiest summer months is achieved. These restrictions include, but are not limited to, the following:
- *“Major scale events [more than 10,000 attendance] will be ordinarily limited to 5 per year, save where there is demonstrable community support for additional events*
 - *Duration of major scale events will be of 1 – 3 days per event*
 - *No major scale events will take place during the school summer holidays”*
- 6.4 On 19th October 2017, the Council received an application from Worldwide Festival UK Ltd to hire the Park to host a German themed food and drink

festival over nine days between 18th and 21st October, 25th and 28th October and 31st October 2018.

- 6.5 The Policy details the approval process for determining applications. Paragraph 5.2.3. of the Policy requires prior authority for the event to be given by the Cabinet Member as a non-key decision before officers give in principle agreement whenever the following criteria applies:
- *“Event lasts more than 7 days”*
 - *“Organiser occupies a site for more than 14 days including setup and take down periods.”*
- 6.6 Both criteria detailed above applies to this application, and so hence this referral to the Cabinet Member.
- 6.7 Public events have been taking place in Finsbury Park since it first opened in 1869.
- 6.8 The Applicant has a successful history of organising the Oktoberfest event in parks in London and internationally. This would be the first event of its kind to be held in Finsbury Park.
- 6.9 Due consideration as to the effects this event could have on the Park, park users and local residents has been given, with detailed plans in place to ensure public access is maintained to the Park and all facilities, whilst ensuring the events provide increased recreational enjoyment within the Park environment.
- 6.10 The Applicant has applied to hire part of the space known as the bandstand field to facilitate the main event area for both events.
- 6.11 The event will take place within a temporary tented structure which will house all activities within. This will contain the entertainment and any noise emitted by attendees. All facilities including toilets will be located within this structure. Temporary toilets will also be placed outside the event area, within the Park.
- 6.12 The bandstand field is a green expanse of grass which slopes gently down to the southern boundary of the park, creating a natural amphitheatre. This main field is encompassed by the internal park carriageway. Part of the carriageway was re-surfaced to motorway standards during the Heritage Lottery Funded restoration of Finsbury Park in 2004 to facilitate heavy, articulated vehicles and provides easy access to the areas to build the event infrastructure, with minimal need for crossing grass.
- 6.13 The total area used for the proposed event events equates to 7% of the Park. The remaining 93% of the Park remains open to the public at all times.
- 6.14 Daily attendance for the event ranges between 700 and 3,000.
- 6.15 Many of the grass areas of the park and the areas used for quieter, informal recreational activity including all formally laid out horticultural spaces such as

the Mackenzie and American Gardens in the northern section of the Park remain open and accessible to the general public while this event takes place.

- 6.16 Data collected from people counters installed on the gates into Finsbury Park between 18th July and 11th September 2016 show that on average nearly 8,000 daily park visits were made. This is one of the Parks busiest times falling during the school summer holidays. No major events are allowed to take place during this time, as set out in the Policy at 5.2.2.
- 6.17 Many of these visits will continue while this event take place, by ensuring that all public facilities including the sports courts, play areas, cafes and lake remain open.
- 6.18 The event is based solely on a grass area of the bandstand field.
- 6.19 During the build and break for events and on event days the carriageway and all paths will be kept open to park users. Continued use of the Park by park user groups during the times of these events is maintained.
- 6.20 A Premises Licence was granted for the event, in February 2018. This requires that all regulated entertainment ceases at 22:45 on Thursday, Friday and Saturday and 19:30 on Sunday in consideration of the start of the working week. Alcohol sales are required to cease at 22:30 on Thursday, Friday and Saturday and 19:00 on Sunday. All alcohol is to be consumed on the premises, with no alcoholic drinks allowed to leave the event area.
- 6.21 It is accepted that due to the high footfall experienced during events such as this, some short-term damage to the grass will take place. A full 6-8 week restoration programme will take place following the event season to ensure the re-establishment of the grass in this area.
- 6.22 This year the Sports Turf Research Institute has been commissioned, to do an in-depth study into the use of these high footfall areas and to make recommendations to establish a longer-term programme of restoration.
- 6.23 As part of the approval process, the Policy stipulates the need for consultation on the applications to take place. Paragraph 5.1.6. of the Policy states *“Consultation will involve all stakeholders, including Friends Groups, Area Parks Managers, Ward Councillors, Cabinet Member for Environment and the members of the Haringey Safety Advisory Group. Other consultees may be added where appropriate to the specific park or open space”*.
- 6.24 In discharging the requirement to consult, officers sent details of the applications to 36 external stakeholder groups by e-mail dated 6th December 2017. Details of the list of consultees appears at Appendix 1 to the report. Stakeholders including local resident associations, Hackney and Islington council officers, park user groups and leaseholders; councillors from 6 adjoining wards including in Hackney and Islington; internal council stakeholders including licensing and emergency planning; and statutory bodies including the Metropolitan Police and London Fire Brigade were given 10 working days to respond.

- 6.25 Of the list of consultees, only those highlighted in green at Appendix 1 provided a total of 2 responses broken down as follows:
- (a) 1 response was received from Islington Council;
 - (b) 1 response was received from a residents' association: Stroud Green Residents' Association.
- 6.26 The comments are set out at Appendix 2. However, they can be summarised as being concerns around the effects on local services; potential clashes with football games at the Emirates; quality of information contained within the application.
- 6.27 Officer responses to the comments are as follows:

Islington Council

LB Islington has raised concerns that they incur significant strain on resources dealing with the impact that events held in Finsbury Park have on their borough and residents. It is envisaged with the low attendance levels for this event, compared to some of the larger music festivals that take place, that this will be minor, if at all.

In recent months a cross working party has been formulated, attended by senior officers from all three boroughs, with a focus on Finsbury Park. Any potential impact on neighbouring borough's resulting from the events in the Park will be highlighted and discussed within this forum.

A Premises Licence for the Park to host this event with capacity of up to 3,000 was granted in February 2018.

Relevant authorities including the Police were consulted as part of the Licence application, with no concerns being raised about a clash with a potential football match.

Discussions on the event planning will continue until all relevant authorities represented on the Safety Advisory Group are satisfied with the proposed plans.

The Police, TfL and other transport providers are part of the Safety Advisory Group which will decide if final approval is given to these events, based on the final Event Management Plan, 30 days prior to the first event date. To date none have raised concerns of a potential clash, causing issues.

The setting of the hours and controls around this event are decided through the Premises License application. LB Islington made representations during that process and subsequently withdrew these on the amendment of the hours by the Applicant.

Stoud Green Residents' Association

The information contained within the park hire application that is shared with stakeholders provides basic information on the park hire application. All applications are shared in more detail as the application progresses, and also with the Finsbury Park Events Stakeholder Group.

6.28 In order to further assist the Cabinet Member, details of the overall picture in relation to other applications to stage events which require Cabinet Member Approval in 2018 is as follows.

6.29 A total of nine hire applications were received in 2017 from event organisers wanting to host large or major events in the Park between March and October 2018. Five of these events have a capacity of 20,000 attendees or less and four events, have a capacity of circa 45,000 attendees.

6.30 Four of the applications were looking to take place in July, but realistically only two of these could be accommodated.

6.31 To date 1 application has been withdrawn by the event organiser.

6.32 Seven applications for Finsbury Park are now at a stage where Cabinet Member approval is to be sought in principle to allow the park hire applications to progress. These are:

Event	Event Dates	Duration	Build / Break Dates	Capacity	Event Classification	Event Area % of Park
Manning's Easter Fair	Thursday 29 March to Sunday 15 April	18 days	Monday 26 March / Monday 16 April		Medium	4%
Steel Yard	Saturday 26 & Sunday 27 May	2 days	Monday 14 June / Friday 1 June	15k	Major	Less than 15%
Southport Weekender & Tranz-mission	Saturday 9 & Sunday 10 June	2 days	Monday 4 June / Wednesday 13 June	12k	Major	12%
Liam Gallagher, Queen's of the Stone Age and Community Festival	Friday 29, Saturday 30 June & Sunday 1 July	3 days	Tuesday 19 June /	45k	Major	27%
Wireless Festival	Friday 6, Saturday 7 & Sunday 8 July	3 days	/ Friday 13 July	45k	Major	27%
Hospitality in the Park & Abode	Saturday 22 & Sunday 23 September	2 days	Monday 17 September / Wednesday 26 September	12k	Major	12%
London Oktoberfest	Thursday 18 – Sunday 21, Thursday 25 – Sunday 28 October, Wednesday	9 days	Sunday 14 October / Friday 2 November	Between 700 – 3,000	Medium	7%

	21 October					
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6.33 If the above events were all to progress to fruition then the 2018 season would look like this:

Finsbury		KEYS: Build/break		Event		2018																													
		March	April	May	June	July	August	September	October	November																									
M																																			
T																																			
W																																			
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Week ending		25-Mar	01-Apr	08-Apr	15-Apr	22-Apr	29-Apr	06-May	13-May	20-May	27-May	03-Jun	10-Jun	17-Jun	24-Jun	01-Jul	08-Jul	15-Jul	22-Jul	29-Jul	05-Aug	12-Aug	19-Aug	26-Aug	02-Sep	09-Sep	16-Sep	23-Sep	30-Sep	07-Oct	14-Oct	21-Oct	28-Oct	04-Nov	11-Nov
Event		Manning's Funfair				Steel Yard		Slammin' Events		Liam Gallagher / QOSA / Community Festival		Wireless Festival		Slammin' Events		Oktoberfest																			

7. Contribution to strategic outcomes

- 7.1 Hosting large and major events within the Park contributes to supporting the local economy, developing the cultural offer in the borough and provides an opportunity for local people to enjoy these type of events with minimal travel.
- 7.2 The recommendations made will contribute to policy and practice primarily in relation to Priority 3 of the Corporate Plan: 'A clean, well maintained and safe borough where people are proud to live and work'.
- 7.3 In addition there are links to the Corporate Plan in relation to:
Priority 2: 'Enable all adults to live healthy, long and fulfilling lives'
Priority 4: 'Drive growth and employment from which everyone can benefit'

8. The Open Spaces Act 1906

- 8.1 The income generated from the events is for the benefit of the Park itself, and is fundamental to keeping it open as a viable facility.
- 8.2 All income generated through events specifically held in the Park, will be spent in the Park as required under the Open Spaces Act 1906 (the Act). In the first instance, this will assist with all management and maintenance costs associated with running the Park. Any surplus event income derived will be used to make improvements to the Park's infrastructure as set out in the Outdoor Events Policy at 8.2.5.
- 8.3 The above said, the Cabinet Member is made aware of the fact that the Council does have a statutory duty under the Act as trustee to hold the land comprising the Park on trust for the public. As such, in coming to a view on the Recommendations contained in the report, account has to be taken of the existence and impact of all material circumstances which arise from a decision to grant in principle approval for the events to take place prior to the Cabinet Member coming to a settled view.
- 8.4 Officers have set out the concerns from objectors and how they can be overcome, at the sub paragraphs under 6.27 above. Officer responses to the concerns raised recognise that a large proportion of the Park will remain open whilst the events take place, and that the event days take up no more than 7% of the Park for 2% of the year / 5% of the year, including build and break days.

9. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

9.1 Chief Finance Officer (including procurement)

This information is exempt and is attached as Part B of this report.

9.2 Legal

9.2.1 The Assistant Director, Corporate Governance has been consulted in the preparation of this report, and makes the following comments.

9.2.2 The law which governs the Council's powers to hire the Park in these circumstances was challenged in the High Court on an application for judicial review brought by the Friends of Finsbury Park (the Friends) against the decision to permit the application to stage Wireless 2016 in the Park.

9.2.3 The case was heard on 8th and 9th June 2016, and the judge delivered his judgment on 22nd June 2016. In summary, the judge ruled that the provisions of section 44 of the Public Health Amendment Act 1890; The Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967 and section 145 of the Local Government Act 1972 – all of which govern the ability to permit entertainment in open spaces such as the Park – *“creates different powers for different places subject to different limitations”*. Accordingly, the judge went on to rule that *“s145 of the 1972 Act, of itself and standing alone, provides the Council with the necessary power to permit Wireless 2016 to take place in the Park”*.

9.2.4 The significance of that ruling, was that the restriction placed on the amount of the Park which could be enclosed or set apart to facilitate the event, and the duration for such enclosure as prescribed under the 1890 and 1967 Acts – *“one acre or one tenth of the [Park] whichever is greater” / “12 days in any one year, nor four [six in London] consecutive days on any one occasion”* – simply did not apply.

9.2.5 Having been refused permission to appeal by the judge, the Friends made an application to the Court of Appeal. On 19th December 2016, the Court of Appeal granted the Friends of Finsbury Park permission to appeal on the ‘legal powers issue’. The basis for the decision was because the issue *“raises a point of considerable importance for London local authorities and ought to be considered by the Court of Appeal.”*

9.2.6 The Court of Appeal also granted an application made by the Open Spaces Society for it to be heard in the appeal, on the grounds *that “The issue in the appeal is of importance to London open spaces and parks”*.

9.2.7 The appeal was heard on 2nd November 2017, and the judgment was delivered on 16th November 2017. All three judges dismissed the appeal, in ruling that the High Court judge had correctly identified what the legal power position was.

9.2.8 Having been refused permission to appeal, the Friends filed an application with the Supreme Court on 14th December 2017. Officers have since filed notice of objection to the application, and a decision is awaited.

The Current Applications

9.2.9 During the course of the hearing in the Court of Appeal, the Friends and the Open Spaces Society introduced new representations not made in the High Court, concerning the fact that the Council holds the Park on trust for the enjoyment by the public as an open space pursuant to section 10 of the Open Spaces Act 1906 (the 1906 Act).

9.2.10 The Council conceded that the 1906 Act did apply. Accordingly, in coming to a view on the Recommendations contained in this report, the Cabinet Member is required to consider whether in light of the duty held under the 1906 Act, it would still be reasonable to exercise the power under section 145 of the Local Government Act 1972, to close off part of the Park for the number of days proposed to facilitate the event applied for. In so saying, the attendance at events such as that proposed, is itself recreational, and therefore within the statutory trust.

9.2.11 Any decision reached by the Cabinet Member is required to be one which is balanced, rational and in the interests of all park users in terms of an overall assessment of the benefits and detriments of public recreation in relation to different sections or user groups within the community. The analysis of the objections to the events and the comments made by officers on those objections are key to aiding the Cabinet Member in the decision making process.

9.2.12 Given the outstanding decision on the question of a further appeal - and notwithstanding the fact that the law remains as found by the High Court and the Court of Appeal unless or until it is overturned on appeal – it is important that the Council takes all necessary, proportionate and reasonable steps to protect its position when considering all applications in the interim. Accordingly, if the Cabinet Member is minded to adopt the recommendations in this report, then the following non-exhaustive list of conditions should also be attached to any approval to permit these applications:

- (1) Approval is conditional on the outcome of any appeal to the Supreme Court – assuming that the appeal is heard on a date prior to the events - being to uphold the decision of the Court of Appeal
- (2) Approval is given subject to conditional agreement
- (3) Delegated authority is given to the Interim Director Commercial and Operations - acting on advice from the Assistant Director, Corporate Governance - to attach any other conditions as deemed appropriate

9.3 Equality

9.3.1 The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
- Advance equality of opportunity between people who share those protected characteristics and people who do not
- Foster good relations between people who share those characteristics and people who do not.

9.3.2. The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.

9.3.3 An equality impact assessment was completed to accompany the decision in December 2013 to adopt Haringey's Outdoor Events Policy which governs the assessment of event applications to Finsbury Park. The policy does not permit events where the sole purpose is as a religious act of worship. The impact assessment acknowledged that this restriction could have the effect of discouraging religious or belief organisations from using the park for major worship based events. However, it reasoned that this restriction could be justified because such religious/belief based events by their very nature could exclude others who don't share that religion/belief from attending the event or using the park more generally.

9.3.4 The Policy aims to strike a balance between ensuring that parks, such as Finsbury Park, can be used as a community asset for all groups to access for the majority of the year, against the need to generate income from hosting major events and for these events to contribute to our borough's cultural and leisure offer.

9.3.5 The proposal is for Worldwide Festival UK Ltd to hire a space equating to 7% of the total area of Finsbury Park to host London Oktoberfest in 2018.

9.3.6 The Applicant will be required as a condition of the hire to host London Oktoberfest 2018 to prevent discrimination based characteristics protected by the Equalities Act 2010, in compliance with the act. The event will include facilities to ensure that individuals with protected characteristics are able to attend, including disabled access and designated disabled toilets.

9.3.7 The council is committed to working with event organisers to reduce the effects of events on all residents living near the park, and will enforce the individual conditions that accompany the event's permission including those related to reducing disruption, number of days (including set up) and maximum event space. All paths, entrances and facilities with the Park will remain open to public access throughout the duration of the event.

10 Use of Appendices

10.1 Appendix 1 – List of Finsbury Park stakeholders who were consulted

10.2 Appendix 2 – Finsbury Park stakeholders' full responses to Oktoberfest 2018 consultation

10.3 Part B – Not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972

11 Local Government (Access to Information) Act 1985

11.1 Haringey Outdoor Events Policy -
<http://www.minutes.haringey.gov.uk/documents/s48887/OEP%20-%20CLEARED%20COVERING%20REPORT.pdf>