

Report for: Cabinet Member decision – 22 March 2018

Item number: n/a

Title: Application by Manning’s Amusements Ltd to hire Finsbury Park for an Easter family funfair in March/April 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 Manning’s Amusements Ltd to hire Finsbury Park in order to stage an Easter family funfair between 29th March and 15th April 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) Note that no comments were received from recognised stakeholders of Finsbury Park in response to the event notification being sent as part of the decision making process.
 - (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 application to progress. The event will then be subject to lengthy discussions between the Applicant and the Council before final agreement is given.
- 4.3 The rejection of the application 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 funfairs and circuses 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:
- *“Fairs will be limited to up to 3 occasions per year and where possible the location of fairs within the Park will be varied.”*
- 6.4 On 5th January 2018, the Council received an application from Manning’s Amusements Ltd to hire the Park to stage an 18 day family funfair over the Easter period.

- 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 The 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. In recent years, Finsbury Park has been the prime location for many international music acts, playing to large audiences within the open arena of the Park. This includes the first open-air symphony concert of the London Philharmonic Orchestra in 1948.
- 6.8 The Applicant has a long and successful history of organising family funfairs in Haringey, having hosted family funfairs in Bruce Castle Park for nearly 100 years, and hosting an Easter and summer bank holiday funfair in Finsbury Park for over 40 years.
- 6.9 During that time thousands of people have attended and enjoyed the entertainment the event provides.
- 6.10 Due consideration as to the effects this event could have on the Park, park users and local residents has been given, with 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.
- 6.11 To facilitate the event the Applicant has applied to hire a small section of the internal carriageway running between Finsbury and Hornsey Wood Tavern Gates, plus a small section of the grass known as the bandstand field, and a section of the grass field running parallel to Seven Sisters Road.
- 6.12 This area within the Park is ideal for facilitating the event as many of the heavier pieces of equipment used are placed on the internal carriageway. The grass sections which are some of the flattest in the Park, host the lighter parts of the infrastructure. Part of the carriageway, including the bit used for this event, 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 these this event equates to 4% of the Park. The remaining 96% of the Park remains open to the public at all times.
- 6.14 Attendance for the event is expected to be no more than 1,500 at any one time.

- 6.15 Much of the bandstand field, the grass area running parallel to Seven Sisters Road 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 the funfair 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.
- 6.17 Many of these visits continue, unaffected by this event taking place, by ensuring that all public facilities including the sports courts, play areas, cafes and lake remain open.
- 6.18 Indeed it could be said that the funfair provides entertainment that actually attracts more people into the Park.
- 6.19 During the build and break for the event and on event days all main thoroughfares are kept open to park users, except for the small section of carriageway running between Finsbury and Hornsey Wood Tavern Gates, as this is where the main event facilities are located. Trackway is placed on the grass here, in parallel to the carriageway, providing an accessible pathway.
- 6.20 Continued use of the Park by park user groups during the times of the funfair is maintained.
- 6.21 It is accepted that due to the high footfall experienced during the funfair, 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 these areas.
- 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 application to 36 external stakeholder groups by e-mail dated 8th January 2018. 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 None of the stakeholders provided feedback.
- 6.26 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.
- 6.27 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.
- 6.28 Four of the applications were looking to take place in July, but realistically only two of these could be accommodated.
- 6.29 To date 1 application has been withdrawn by the event organiser.
- 6.30 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 21 October	9 days	Sunday 14 October / Friday 2 November	Between 700 – 3,000	Medium	7%

6.31 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							
									15k		12k				45k	45k											12k						1k	1k	1k		
									15k		12k				45k	45k												12k						1k	1.5k	1.5k	
																																		700	700		

7. Contribution to strategic outcomes

- 7.1 Hosting events such as the funfair 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 A large proportion of the Park will remain open whilst the event takes place, and the event days take up no more than 4% of the Park for 5% of the year / 6% 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 funfairs 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, the comments made by officers on those objections, and the outcome of the EqlA 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 An equality impact assessment has been completed to accompany the Manning's Amusements Ltd application and can be found in Appendix 2. The assessment explores impact on residents in the immediate wards surrounding Finsbury Park: Stroud Green (LB Haringey), Harringay (LB Haringey), Brownswood (LB Hackney), Finsbury Park (LB Islington) as well as groups who shared protected characteristics.
- 9.3.6 The assessment identifies that children, women with children and people with disabilities will be impacted negatively by the proposal, as they are more likely to use the park. However, the impact on these groups is not assessed as significant, partly because the Council is taking a number of actions to mitigate equality issues arising from the event. The assessment also identifies that the event creates considerable benefits for the community, advances equality of opportunity for individuals with protected characteristics, and fosters good relations between communities.

10. Use of Appendices

- 10.1 Appendix 1 – List of Finsbury Park stakeholders who were consulted
- 10.2 Appendix 2 – Equality Impact Assessment: Application by Manning's Amusements Ltd to hire Finsbury Park for an Easter family funfair in March/April 2018
- 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>