

Report for: Cabinet Member decision – 23 March 2018

Item number: n/a

Title: Application by the Great Russian Circus Ltd to hire Ducketts Common for the International Circus in 2018

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

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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 the Great Russian Circus Ltd to hire Ducketts Common over 15 days between March and April 2018 in order to stage the International Circus.
- 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) Take note of the one response that was received from a recognised stakeholder of Ducketts Common 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 Ducketts Common to the event promoter for the event detailed in this report as set out in para 6.3.

(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 be subject to discussions with relevant authorities 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 Ducketts Common (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 events. 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 event does 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. On 27th September 2017, the Council received an application from the Great Russian Circus Ltd to hire the Park to stage the International Circus between the 28th March and 8th April. They would move onto site on the 25th March to prepare for the event, and move off site on the 8th April.
- 6.4. 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 set up and take down periods”*

- 6.5 Both of the criteria detailed above apply to this application, and so hence this referral to the Cabinet Member.
- 6.6 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.
- 6.7 The Applicant has applied to hire part of the green field which lies in the southern half of the park, to facilitate the event area.
- 6.8 The total area used for this event equates to 30% of the Park. The remaining 70% of the Park remains open to the public at all times, including all the facilities such as the ball courts, play area, café and other grass areas for park users to enjoy informal recreational activity.
- 6.9 As part of the approval process, the Policy stipulates the need for consultation on the application 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”*.
- 6.10 In discharging the requirement to consult, officers sent details of the application to recognised stakeholder groups on 24th October 2017. Details of the consultees appears at Appendix 1 to the report. External recognised stakeholders including park user groups and councillors from Harringay Ward, plus internal council stakeholders and statutory bodies were given 10 working days to respond.
- 6.11 Of the list of the consultees, only those highlighted in green at Appendix 1 provided a total of 1 response as follows:
- (a) 1 response was received from the Friends of Ducketts Common
- 6.12 The comments are set out in full at Appendix 2. However, they can be summarised as being concerns around access, traffic management and grounds protection.
- 6.13 Officer responses to the comments are as follows:

Friends of Ducketts Common

As regards concerns raised regarding access onto the Common, the current vehicle entrance situated on Willoughby Road will be widened to allow HGV access with ease. This will mean that a small section of wildflower meadow will need to be crossed, but the Applicant will be told to use trackway to protect this area as much as possible.

As regards traffic management, the Circus is a local event aimed at residents of Haringey. Ducketts Common has great public transport links for regular visitors as well as event attendees. Event attendees will be encouraged to use public transport including tube and bus, and this will be advertised on the marketing

materials. The Ladder Roads, including Willoughby Road, have parking restrictions in place including; resident parking only between 8am and 6.30pm Monday to Saturday.

These parking restrictions would significantly reduce the number of cars that are non-resident parking on those roads, whilst the event is operational.

As regards to grounds protection, waste water produced by the event will be disposed of using the appropriate method and will not be drained onto the Common. Trackway will be used where vehicles cross over meadows or flowerbeds, to limit damage.

It is accepted that due to the high footfall experienced during events of this kind, some short-term damage to the grass may occur. A restoration programme will take place following the event season to ensure the re-establishment of the grass in these areas if needed. This will be carried out by the Parks Operations Team, and any cost associated with repairs will be deducted from the grounds deposit paid by the Applicant before moving onto site.

7. Contribution to strategic outcomes

- 7.1. Hosting 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 this type of event 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'
- 7.4 All income generated through events held in Ducketts Common, will be spent in the Park. 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 8.2.4.

8. The Open Spaces Act 1906

- 8.1 It is currently unclear as to whether the council holds Ducketts Common as trustee under the Open Spaces Act 1906 (the Act). Accordingly, officers consider it prudent to act on the basis that the land is so held for present purposes.
- 8.2 All income generated through events specifically held in the Park, will be spent in the Park as required under 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 Given the concession made in relation to the Act, the Council is required to hold the land comprising the Common 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 6.13 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 30% of the Park for 3% of the year / 4% of the year, including build and break days. These responses also take into consideration the outcome of the EqIA.

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

9.1 Chief Finance Officer (including procurement)

9.1.1 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 Finsbury 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 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 Finsbury 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. However, as stated above, it is not clear whether the Act applies in this case, but in erring on the side of caution, officers are proceeding on the basis that it does. 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 to facilitate the event applied for.
- 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 event and the comments made by officers on those objections is 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:

- tackle discrimination and victimisation of persons that share the characteristics protected under S4 of the Act. These include the characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (formerly gender) and sexual orientation;
- 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 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.

9.3.3 The Council's Events Policy ensures that event providers operate in accordance with the Equality Act and do not discriminate against groups who share a protected characteristic.

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

9.3.5 In undertaking the directions of the existing Events Policy, the Council consulted with recognised stakeholder groups associated with Ducketts Common. The Council received one response, which came from the Friends of Ducketts Common Group. The group's submission covered concerns relating to access to the Common, traffic management and grounds protection. The Council has addressed each concern and explained how it will ensure any impact on the physical landscape is minimised before, during and immediately after the event.

- 9.3.6 The proposed event is likely to occupy approximately 30% of the Common. The remaining 70% of the Common, which includes all of the Common's facilities (ball courts; play area; café) will be unaffected and remain open to park users.
- 9.3.7 The proposed event will not affect current access to the Common. All existing entrances and exits in the Common will remain open during the event days, including the set up and dismantling phases. In addition, the proposed event will not affect the existing footpaths in the Common, ensuring that park users with disabilities are not subject to changing routes within the Common. Access to and within the Common will be maintained throughout the event.
- 9.3.8 An equality impact assessment is not required as the event is not assessed as having a significant impact on groups who share protected characteristics. The proposed event will not affect access to and within the Common, allowing park users to use 70% of the remaining space, which includes all of the Common's facilities for children, young people and adult park users.
- 9.3.9 The Council will use feedback from the consultation and previous events to ensure that local parking restrictions enable residents to maintain parking facilities during the event.
- 9.3.10 The Council is committed to working with event organisers to reduce the effects of events on all residents living near the Common 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.
- 9.3.11 The Council and the event organisers will clearly communicate the details of the event and any potential impacts on the local area in advance of the event, ensuring that residents are aware of the occupation of the Common before the event takes place.

10. Use of Appendices

- 10.1 Appendix 1 – List of Ducketts Common stakeholders who were consulted
- 10.2 Appendix 2 – Responses received from 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>