

Report for: Cabinet Member decision – 27 March 2019

Item number: n/a

Title: Application by Manning’s Amusements Ltd to hire Finsbury Park for a family funfair in April 2019 and Bruce Castle Park in June/July 2019

Report authorised by: Stephen McDonnell, Director – Environment and Neighbourhoods

Lead Officer: Zoe Robertson, Head of Commissioning & Client
zoe.robertson@haringey.gov.uk, 020 8489 2223

Ward(s) affected: White Hart Lane Ward

**Report for Key/
Non Key Decision:** Non Key Decision

1. Describe the issue under consideration

- 1.1 This report seeks a determination of two applications made by Manning’s Amusements Ltd to hire (1) Finsbury Park in order to stage a family funfair between 6th and 23rd April 2019 and (2) Bruce Castle Park in order to stage a family funfair between 28th June and 7th July 2019.
- 1.2 The applications are 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 either Finsbury Park or Bruce Castle Park in response to the event notifications being sent as part of the decision making process.
 - (b) Authorise the Director – Environment and Neighbourhoods, to approve conditional in principle agreement to hire Finsbury Park and Bruce Castle

Park to the funfair operator for the events detailed in this report as set out in paragraph 6.5.

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 events will then be subject to discussions between the Applicant and the Council 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 both Finsbury Park and Bruce Castle 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 both parks 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 applications. 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 Finsbury 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 The Policy doesn't specifically specify the number of funfairs that can be held in other parks in the borough, as it is felt that these will be less in demand than Finsbury Park. In fact on average, Bruce Castle Park hosts one funfair a year.

- 6.5 On 18th December 2018, the Council received two applications from Manning's Amusements Ltd to hire (1) Finsbury Park to stage an 18 day family funfair over the Easter period and (2) Bruce Castle Park to host a 10 day family funfair in June/July.
- 6.6 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:
- (i) *“Event lasts more than 7 days”*
 - (ii) *“Organiser occupies a site for more than 14 days including setup and take down periods”.*
- 6.7 Both criteria above apply to the application received for Finsbury Park and only criteria (i) applies to the Bruce Castle Park application, and so hence this referral to the Cabinet Member.
- 6.8 Public events have taken 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.
- 6.9 The Applicant has a long and successful history of operating family funfairs in Haringey, having hosted 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.
- 6.10 During that time thousands of people have attended and enjoyed the entertainment the events provide.
- 6.11 Due consideration as to the effects these events could have on the parks, park users and local residents has been given, with plans in place to ensure public access is maintained and all their facilities, whilst ensuring the events provide increased recreational enjoyment within the park environment.
- 6.12 To facilitate the event in Finsbury Park 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.
- 6.13 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.

- 6.14 The total area used for this event equates to 4% of Finsbury Park. The remaining 96% of the Park remains open to the public at all times.
- 6.15 Attendance for the event is expected to be no more than 1,500 at any one time.
- 6.16 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.
- 6.17 To facilitate the event in Bruce Castle the Applicant has applied to hire a small section of the main grass area, that equates to 8% of the park. The remaining 92%, plus all facilities including play and sports areas will remain open to the public at all times.
- 6.18 Public visits continue, unaffected by these events taking place, by ensuring that all public facilities including the sports courts and play areas remain open.
- 6.19 Continued use of both parks by user groups during the times of the funfair is maintained. Indeed it could be said that the funfairs provide entertainment that actually attracts more people into the parks.
- 6.20 During the build and break for the events 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 in Finsbury Park, as this is where the main event is located. Trackway is placed on the grass here, in parallel to the carriageway, providing an accessible pathway for members of the public to use.
- 6.21 It is accepted that due to the footfall experienced during the funfairs in both parks, some short-term damage to the grass may take place. This is greatly influenced by the weather during the operation of the funfair. Restoration works will take place if and where needed to ensure the re-establishment of the grass. Any works needed will be paid for by the Applicant as set out in the park hire terms and conditions.
- 6.22 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”*.
- 6.23 In discharging the requirement to consult, officers sent details of the Finsbury Park application to 36 external stakeholder groups by email dated 31st January 2019. 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.

- 6.24 In discharging the requirement to consult, officers sent details of the Bruce Castle Park application to 18 external stakeholder groups by email dated 31st January 2019. Details of the list of consultees appears at Appendix 1 to the report. Stakeholders including the Friends of Bruce Castle Park, park leaseholders and ward members were given 10 working days to respond.
- 6.25 None of the stakeholders provided feedback.
- 6.26 At the time of this report no other applications have been received to hold events in Bruce Castle Park in the months leading up to the event and three months after the event. In order to further assist the Cabinet Member, details of the overall picture in relation to other applications to stage events in Finsbury Park which require Cabinet Member Approval in 2019 are as follows.
- 6.27 Five hire applications were received in 2018 from event organisers wanting to host large or major events in Finsbury Park between May and September 2019. Three of these events have a capacity of 20,000 attendees or less and two events have a capacity of circa 45,000 attendees.
- 6.28 To date one application with a capacity of less than 20,000 has been withdrawn.
- 6.29 Five 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	First build date	Last break date	Capacity	Event Classification	Event Area % of Park
Manning's Easter Fair	Saturday 6 – Tuesday 23 April	18 days	2 April	24 April	1.5k daily	Medium	4%
Steel Yard	Saturday 25 & Sunday 26 May	2 days	13 May	1 June	15k	Major	11%
Community Festival	Friday 28, Saturday 29 & Sunday 30 June	3 days	19 June		45k	Major	27% (29% if tennis courts inc)
Wireless Festival	Friday 5, Saturday 6 & Sunday 7 July	3 days		12 July	45k	Major	27% (29% if tennis courts inc)
Slammin' Events Presents	Saturday 21 & Sunday 22 September	2 days	16 September	25 September	12k	Major	11%

- 6.30 If the above events were all to progress to fruition then the Finsbury Park 2019 event season would look like this:

8. The Open Spaces Act 1906

- 8.1 The income generated from events held in parks is for the benefit of the Park itself and is fundamental to keeping them open as a viable facility.
- 8.2 All income generated through events specifically held in Finsbury 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 It is currently unclear as to whether the council holds Bruce Castle Park as trustee under the Act. Accordingly, officers consider it prudent to act on the basis that the land is so held for present purposes. Therefore, all income generated through events held in Bruce Castle Park will be spent in the park as required under the Act.
- 8.4 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 Finsbury 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.
- 8.5 In so saying, the Cabinet Member will note that there have been no objections to the applications, notwithstanding the proposal in that all of the footprint of the Parks will not be taken up to facilitate the events.

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 Finsbury Park – and parks and open spaces in general - in these circumstances was challenged in the High Court on an application for judicial review brought by the Friends of Finsbury Park 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 Finsbury 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 filed notice of objection to the application, and on the 26th June 2018 the Supreme Court dismissed the application on the grounds that it *“does not raise an arguable point of law”*.

The Current Applications

- 9.2.9 During the course of the hearing in the Court of Appeal, the Friends of Finsbury Park 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. 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 Finsbury 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. It should be recognised that in the absence of any recognised stakeholder objections to the event applications, the outcome of the EqlA for Finsbury Park, and the rationale for there not being a need for an EqlA in relation to Bruce Castle Park – see paragraphs 9.38 – 9.39 below - is key to aiding the Cabinet Member in the decision making process.

9.3 Equality

9.3.1 The Council has a public sector equality duty under the Equality Act (2010) to have due regard 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;
- 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 apply to the first part of the duty.

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 the borough's parks. 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 such as Finsbury Park and Bruce Castle 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 events and for these to contribute to the borough's cultural and leisure offer.

9.3.5 An equality impact assessment has been completed to accompany the application to use Finsbury Park which can be found in Appendix 2. This is due to a small section of carriageway being used by the Applicant, as detailed at sections 6.12 and 6.30, which could have an impact on accessibility. 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, to a limited extent, impacted negatively by the proposal, as they are more likely to use the park. However, this needs to be balanced against the identified benefits for the community, improving equality of opportunities and fostering good relations. The Council is taking a number of actions to mitigate the negative impact on specific groups with protected characteristics arising from the events.
- 9.3.7 The proposed event in Bruce Castle Park is likely to occupy approximately 8% of the Park. The remaining 92% of the park, which includes all of the park's facilities (ball courts, play area etc) will be unaffected and remain open to park users.
- 9.3.8 The event will not affect current access to Bruce Castle Park. All existing entrances and exits in the park 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 park, ensuring that park users with disabilities are not subject to changing routes within the park. Access to and within the park will be maintained throughout the event.
- 9.3.9 Therefore an equality impact assessment is not required as the proposed event for Bruce Castle Park 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 park, allowing park users to use 92% of the remaining space, which includes all of the parks facilities for children, young people and adult park users.
- 9.3.10 The council is committed to working with event organisers to reduce the effects of noise from 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.

10. Use of Appendices

- 10.1 Appendix 1 – List of Finsbury Park and Bruce Castle stakeholders who were consulted
- 10.2 Appendix 2 – Equality Impact Assessment: Application by Manning's Amusements Ltd to hire Finsbury Park for a family funfair in April 2019.
- 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>