

Report for: Cabinet Member decision – 10 April 2019

Item number: n/a

Title: Application by Manning’s Fairview to hire Priory Park for a family funfair between April and May 2019

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

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Ward(s) affected: Hornsey Ward and Muswell Hill Ward

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

1. Describe the issue under consideration

- 1.1 This report seeks a determination of a park hire application made by Manning’s Fairview to hire part of Priory Park in order to stage a family funfair to run between 26th April and 6th May 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 Priory 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 Priory Park to the funfair operator for the event 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 application would have implications for the Parks Service budget and reduce the opportunity for reinvestment into Priory 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 use 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 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, Priory Park hosts two funfairs a year: the one detailed within this report, and another which operates annually in July.
- 6.5 On 8th January 2019, the Council received an application from Manning's Fairview to hire Priory Park to stage an 11 day family funfair.

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”*

6.7 The criteria above apply to the application received, and so hence this referral to the Cabinet Member.

6.8 Public events have taken place in Priory Park for a number of years including the well-established YMCA fun run and funfairs.

6.9 The Applicant has a successful history of operating family funfairs in the borough for many years; most specifically the proposed event in Priory Park for the last six years.

6.10 During that time thousands of people have attended and enjoyed the entertainment the event provides.

6.11 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 and all its facilities, whilst ensuring the event provides increased recreational enjoyment within the park environment.

6.12 To facilitate the proposed low-impact event in Priory Park the Applicant has applied to hire a section of the main grass area that equates to 9% of the park. The remaining 91%, plus all facilities including play and sports areas will remain open to the public at all times.

6.13 Public visits continue, unaffected by these events taking place, by ensuring that all public facilities including the sports courts and play areas remain open.

6.14 Continued use of the park 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.

6.15 During the build and break for the events and on event days all main thoroughfares are kept open to park users.

6.16 It is accepted that due to the footfall experienced during the funfairs in the park, 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.

6.17 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”.

- 6.18 In discharging the requirement to consult, officers sent details of the event application to 18 stakeholder groups by email dated 14th February 2019. Details of the list of consultees appears at Appendix 1 to the report. Stakeholders including the local park user group; councillors from the 2 wards; 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.
- 6.19 None of the stakeholders provided feedback.
- 6.20 Further, consistent with what is said at paragraph 6.4 above, as at the date of writing this report, no other applications have been received to hold funfairs in Priory Park in the months leading up to the event and two months after the event.

7. Contribution to strategic outcomes

- 7.1 Hosting large and major events within the borough’s parks contributes to supporting the local economy, developing the cultural offer in the borough and provides an opportunity for local people to enjoy these types of events with minimal travel.
- 7.2 The recommendations made will contribute to policy and practice primarily in relation to the ‘Place’ section of the Borough Plan. This was adopted by the Council on 12 February 2019 and sets out priorities for Haringey.
- 7.3 ‘Place’ within the Borough Plan commits to ‘A place with strong, resilient and connected communities where people can lead active and healthy lives in an environment that is safe, clean and green.’
- 7.4 This can specifically be seen in Outcomes 9 and 11 as follows:

Outcome 9: A healthier, active and greener place

a) protect and improve parks, open space, and green space promoting community use:

- continue with partners to invest in our parks with over £15 million of improvements planned over the next five years, including new playgrounds and sports facilities;
- promote the use of our parks for a wide range of events and activities, including more community use.

Outcome 11: A culturally engaged place

a) Foster strong and diverse cultural activities:

- support a range of events in the borough, from sport at White Hart Lane and music festivals in our parks, through to activities in our libraries and community-led arts and culture in venues across the borough;

- safeguard and strengthen the borough's cultural heritage by effectively managing, investing in and encouraging access to our heritage assets, museums and libraries;
- protect and promote creative and cultural activity and infrastructure that enables people to gain skills and employment in creative industries and increase investment into the borough;
- support cultural organisations to attract more people to their offer so that there are more opportunities for everyone to connect to the arts and culture in the borough;
- celebrate what is distinctive about Haringey so that our residents are inspired to take part in the great culture on their doorstep and attract visitors from across London and beyond to join us.

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.
- 8.3 It is currently unclear as to whether the council holds Priory 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 Priory Park will be spent in the park as required under the Act.
- 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 Park 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 Priory Park in these circumstances – and parks and open spaces in general - 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 Application

- 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 Priory 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 rationale for there not being a need for an EqlA in relation to Priory 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 the 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.

9.3.7 The proposed event is likely to occupy approximately 9% of the Park. The remaining 91% 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 the 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 the 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 91% of the remaining space, which includes all of the park 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 Priory Park stakeholders who were consulted

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>