

Report for: Cabinet Member decision – 11 April 2017

Item number: 4

Title: Application by Manning's Fairview Company Ltd to hire Priory Park for a family funfair 2017

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

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Ward(s) affected: Muswell Hill and Hornsey

**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 Fairview Company Ltd to hire Priory Park over 10 days in April and May 2017 in order to stage a family funfair.
- 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 17 December 2013, and implemented on 7 January 2014.

2. Cabinet Member Introduction

Not applicable.

3. Recommendations

- 3.1 The Cabinet Member for Environment is recommended to:
 - (a) Take note of comments received from recognised stakeholders of Priory Park in response to the event notification being sent as part of the decision making process.
 - (b) Authorise the Assistant Director – Commercial and Operations, to approve conditional in principle agreement to hire Priory Park to the event promoter for the event detailed in this report as set out in para 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 8.2.7 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 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 Priory Park (the Park) and other parks. 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. The Policy ensures a balance of income generation and that of continued public use of the park through the busiest summer months is achieved. This is reiterated at para 5.3.6 which states:
 - *“the timing of events approved will be structured to maintain a balance between events and informal/casual use of parks and open spaces.”*
- 6.4. On 13 January 2017, the Council received an application from Manning’s Fairview Company Ltd to hire the Park to stage a family funfair between 28 April and 7 May 2017. If approved, this would be the 3rd successive year that Manning’s Fairview has operated in the Park, and over 35 years operating in the borough.
- 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 set up and take down periods”
- 6.6 Both of the criteria detailed above apply to this application, and so hence this referral to the Cabinet Member.
- 6.7 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”*.
- 6.8. In discharging the requirement to consult, officers sent details of the applications to 16 stakeholder groups by e-mail dated 23 January 2017. Details of the list of consultees appears at Appendix 1 to the report. Stakeholders including park user groups and leaseholders; councillors from 2 adjoining 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.
- 6.9. Of the list of consultees, only those highlighted in green at Appendix 1 provided a total of 3 responses broken down as follows:
- (a) 1 response from the leaseholder of the Priory Park Cafe
 - (b) 2 responses from the Friends of Priory Park
- 6.10 The comments in full are set out at Appendix 2. However in summary, comments received from the leaseholder of the Priory Park Cafe are in support of the application. The Friends of Priory Park comments can be summarised as being concerns around the proximity of the event to other proposed events; the duration Manning’s Fairview would be in operation.
- 6.11 Officer responses to these comments are as follows:
- (a) Proximity to other planned events
Manning’s Fairview initially applied for operational dates in late May that fell the week before another regular event is scheduled to take place in the park. The Friends of Priory Park raised concerns that these events would be too close together, and therefore Manning’s have amended their event dates to take place earlier, leaving more time in between events.
 - (b) Duration proposed event would be in operation
In 2016 the Friends of Priory Park raised concerns that the length of time the fair would be in operation for (10 days) was too long, considering the dates fell in August during the school summer holidays, and they claimed would have a negative impact on those using the park on a daily basis. Following

discussion with Manning's it was agreed that their operational length would be reduced to 5 days and their visit monitored.

Following an assessment made by officer's whist in operation in 2016, it was felt their presence did not have a negative impact on other park users and that the length of their stay could be increased in 2017.

- 6.12 As the Cabinet Member will see, this application affects 2 wards. Accordingly, officers have considered whether this ought to be categorised as being a key decision.
- 6.13 Officers take the view that this is not a key decision on the grounds that notwithstanding the fact that it affects 2 wards, the decision is not likely to result in a significant impact on those wards. In making that judgment, officers had regard to whether the decision is likely to result in substantial public interest within those wards, and decided against that view. The reasons in support of that view are as follows:
- all 6 ward Councillors in the 2 wards were consulted over the proposal, and none came back with an objection – see paragraph 6.7 and Appendix 1 of the report
 - officers have provided rational responses to the one objection which was received – see paragraphs 6.10 – 6.11 of the report
 - the event has taken place in the same venue for the last 2 years – see paragraph 6.4 of the report
 - the content of paragraphs 8.3.2 – 8.3.4 of the report

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. The Medium Term Financial Plan sets out a £600,000 increase in income during the period up to March 2018. All money raised by events is ring fenced back to the Parks budget to maintain and improve parks in the borough.

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

8.1 Chief Finance Officer (including procurement)

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

8.2 Legal

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

8.2.2 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 against the decision to permit the application to stage Wireless 2016 in Finsbury Park.

8.2.3 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 Finsbury Park”*.

8.2.4 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.

8.2.5 It is understood that the duration restriction applies to this application, but that less than 10% of the Park is required to be closed off to the public in order to stage the event. Accordingly, it is for that reason why it is important for the Cabinet Member to be made aware of the fact that 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”*.

8.2.6 It is understood that the appeal could be heard on a date between February – July 2017, but by no later than 31 October 2017.

8.2.7 Given the proximity of the appeal to the event – and notwithstanding the fact that the law remains as found by the High Court 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 the appeal to the Court of Appeal being to uphold the decision of the High Court
- (2) Approval is given subject to contract
- (3) Delegated authority is given to the Assistant Director, Commercial and Operations, acting on advice from the Assistant Director, Corporate Governance, to attach any other conditions as deemed appropriate

8.2.8 Confirmation is given of the fact that officers have correctly applied the definition of what amounts to a key decision as set out in Part Five, Section C of the Constitution.

8.3 Equality

8.3.1 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.

8.3.2 An equality impact assessment (please refer to section 10) was completed to accompany the decision in December 2013 to adopt Haringey's Outdoor Events Policy which governs the assessment of event applications to Priory 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.

8.3.3 The Policy aims to strike a balance between ensuring that parks, such as Priory 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 events to contribute to our borough's cultural and leisure offer.

8.3.4 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.

9. Use of Appendices

Appendix 1 – List of Priory Park stakeholders who were consulted

Appendix 2 – Priory Park stakeholders' responses to the park hire application

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

10. Local Government (Access to Information) Act 1985

Haringey Outdoor Events Policy

Outdoor Events Policy 2014 Equality Impact Assessment