

TONBRIDGE AND MALLING BOROUGH COUNCIL

POLICY FOR USE OF COUNCIL OWNED PUBLIC OPEN SPACES

1.0 THE REQUIREMENT FOR A POLICY

- 1.1 Tonbridge and Malling Borough Council (the Council) own and manage a range of open spaces across the borough, ranging from small amenity areas within housing estates through to country parks. These open spaces are utilised by a wide range of different users all year round and it is important that the Council ensures they remain safe and available to access.
- 1.2 Requests are often received from organisations to utilise areas of Council open space for a variety of uses. The Council has an established Events on Public Open Spaces procedure for applications relating to one-off events, however there is currently no policy framework underpinning the process and it does not deal with regular events / activities.
- 1.3 Such is the number of requests now being received, especially for regular use, it is felt a policy setting out the criteria against which each request will be assessed against is required to establish a fair and transparent system.

2.0 AIMS OF THE POLICY

- 2.1 The overarching aim of the policy will be to ensure the Council's open spaces remain a safe place for members of the public to use, while also allowing organisations to benefit from them where it is deemed appropriate and not to the significant detriment of the general public use. In addition, the policy will aim to protect the Council's existing income streams and/or third-party arrangements as well as to identify additional income streams.
- 2.2 The policy will set out the framework against which applications to use the Council's open spaces will be made.

3.0 SCOPE

AREAS

- 3.1 Council owned areas which will be considered to fall within the scope of this policy include (but are not limited to):
 - Grassed areas

- Woodland
 - Play areas
 - Sportsgrounds
 - Country parks
 - Tonbridge Castle grounds
 - Car parks
- 3.2 Any part of a Council owned open space which has been leased to, or is managed by, another organisation will be out of scope on the basis those organisations will have control over those areas and any applications to use them should be made to those organisations.
- ACTIVITIES**
- 3.3 The policy will be used whenever an application is received to use an area of Council owned open space that would be considered not to fall within the broad parameters of 'normal' use of a public open space, whether that be for a one-off event or regular activity.
- 3.4 These events will include those run by individuals, voluntary and charitable organisations as well as commercial organisations. Examples may include (but are not limited to):
- Fitness classes or events
 - Dog walking and training for more than 1 household
 - Sports events or classes
 - Markets
 - Entertainment events
 - The sale of food and beverage
 - Boat hire
 - Fun fairs
 - Fund raising events

4.0 ASSESSMENT CRITERIA

- 4.1 When an application is received it shall be assessed against the following criteria.

SAFETY

- 4.2 Officers will need to determine the impact of the proposed event on the potential safety of those attending the event and/or members of the public using the open space at the same time. This will be achieved through the requirement to submit relevant safety documentation to demonstrate the organiser has considered all relevant safety matters to the full satisfaction of the Council.
- 4.3 The Council will provide comments and advice on the applicant's plans but will not 'approve' them in a formal sense as the responsibility for managing health and safety will be that of the applicant.
- 4.4 For larger events, attracting a significant crowd, an Event Management Plan may also be required.

INSURANCE

- 4.5 The requirement for public liability insurance will be assessed on a case-by-case basis, which may involve seeking the advice from the Council's insurers. Where it is determined insurance is required then minimum cover of £5m should be in place and adequate proof provided, although some events may require a higher indemnity limit.

TYPE OF ACTIVITY

- 4.6 Officers will determine whether the proposed event is in keeping with the specific area of open space on which it is to be held. This will include an assessment of the following:

- 4.6.1 The purpose of the event. Is it in any way controversial or not in keeping with the Council's Corporate Strategy?
- 4.6.2 The number of people attending. Can the area of open space cope with the proposed number of people whereby irreparable damage will not be caused?
- 4.6.3 Duration and/or frequency of the event. On what day(s) will the event take place and at what time(s)? Will the duration or frequency of the event have an adverse impact on the location or other users?
- 4.6.4 Infrastructure support for the event. Is the organiser providing enough facilities to manage the event, for example toilets, bins, barriers, marshalling, lighting, power generation etc.
- 4.6.5 Proposed equipment to be used. Is the type of equipment appropriate for the particular open space and event? Are there any safety issues which may arise as a result of its use? In certain circumstances documents will be needed to demonstrate the piece of equipment is safe to use, such as electrical testing certification or testing and tagging for inflatable play equipment (PIPA).

TRAFFIC MANAGEMENT

- 4.7 If the proposed event is likely to impact on the movement of traffic in the surrounding area, then details will be required detailing what the impact will be and what mitigation measures will be put in place by the organiser. This will include an assessment of the following:

- 4.7.1 Will any proposed road closures and diversion routes cause unacceptable traffic issues elsewhere in the vicinity? Application for any road closures would need to be made to Kent County Council as the Highway Authority.
- 4.7.2 Are traffic marshals required and, if so, have an adequate number been provided with appropriate experience? Has their health and safety been taking into consideration?

- 4.7.3 Are there adequate car parking arrangements in place for both visitors and organisers/volunteers?
- 4.7.4 Organisers will be responsible for closing any car parks, including advance warning signs and manning the closure
- 4.7.5 Car parks should not be used to store equipment or facilities in unless they are closed

IMPACT ON EXISTING USER/USE

- 4.8 If an application is received which would impact upon an existing event for which the Council has already granted permission, Officers will determine which should take precedence. In arriving at a decision, the following factors will be considered:

- 4.8.1 Is there a contractual or legal requirement which means a particular event has to occur?
- 4.8.2 Is there an existing contractual or legal requirement which means another similar event cannot take place? For example, where an existing agreement or permission has an exclusivity clause.
- 4.8.3 Is it more economically advantageous to the Council to cancel or offer an alternative location for an existing event to accommodate a new application, if contractual conditions allow?
- 4.8.4 Would the proposed event have a negative impact on an existing event or user for which the Council has already granted permission?
- 4.8.5 Would the proposed event have an unacceptable effect on members of the public using the open space?
- 4.8.6 Where events have already been given permission, can the Council agree with those organisers to change dates to allow concurrent uses, if deemed appropriate?

LOCATION

- 4.9 When assessing applications, Officers will have regard to the location of the proposed event and whether it is appropriate. This will include an assessment of the following:

- 4.9.1 Will the event cause an unreasonable nuisance or disturbance to adjacent sites or residents?
- 4.9.2 Is there sufficient space at the proposed location to support the event?
- 4.9.3 Is there a more appropriate location for the event?

- 4.9.4 Are there any existing restrictions or controls at the proposed location which would mean the event could not take place?
- 4.9.5 Is the proposed location not in keeping with the event and/or will have a negative impact on the location? Consideration will be made as to whether the site has any special designation (listed, ancient monument for example) or has any specific safety issues (water course/bodies for example)

5.0 LAND USE AGREEMENTS

- 5.1 When assessing applications, Officers will consider whether a land use agreement is required in order to protect the Council's land interests, as well as to set out standard terms and conditions for events taking place on the Council's open spaces. It is anticipated that in the majority of cases a licence agreement will be put in place for one-off events. A pro-forma licence agreement can be found at **Appendix A** which will be completed for one-off events.
- 5.2 Where a regular or re-occurring event is proposed, the views of Administrative & Property Services and/or Legal Services will be sought as to whether a lease agreement is requirement. Each case will be assessed on its merits, although it is anticipated where an activity takes place regularly (on the same day at the same time, for example) and at the same location or space then a lease will be required in order to ensure no tenant rights are established.
- 5.3 Any leases granted will be 'contracted out' of the Landlord and Tenant Act 1954.

6.0 CHARGING

ADMINISTRATION FEE

- 6.1 When inviting applications for events to take place on Council owned land, it is important to consider the Officer time involved in assessing the applications. An administration fee will be charged based on particular criteria which is set out below for one-off events:

Type of event	Maximum attendees (at once)	Administration fee
Commercial	Less than 500	£50
	Between 500 and 1,499	£300
	More than 1,500	£600
Charity or community	Less than 500	£25
	Between 500 and 1,499	£50
	More than 1,500	£100

- 6.2 Where events or activities require the production of bespoke legal agreements the Council will charge legal fees based on a rate of £217 per hour.

CHARGES

- 6.3 In addition to the administration fee, the following charges will apply to one-off events taking place on Council owned land:

Type of event	Maximum attendees (at once)	Charge
Commercial	Less than 500	£500
	Between 500 and 1,499	£1,000
	More than 1500	£1,500
Charity or community	Less than 500	£100
	Between 500 and 1,499	£100
	More than 1,500	£100

- 6.4 Additional charges may apply where events require use of Council equipment, car parks or buildings. These charges will be determined on a case-by-case basis. In the event of a car park needing to be closed, the charge would equate to the loss of car parking income.
- 6.5 The charges, or rent, for regular activities will be determined on a case-by-case basis and will be specified in the legal agreement. In arriving at a charge or rent, Officers will take into account the following criteria:
- 6.5.1 The requirement for the Council to obtain best value. This assessment may result in the opportunity being tendered to provide other operators a chance to apply
 - 6.5.2 The nature of the proposed activity, for example whether it is being run for commercial gain. The Council will assess the anticipated income/profit being generated and may seek comparable evidence from similar activities taking place in similar areas to arrive at a charge or rent
 - 6.5.3 The frequency and duration of use. Activities which take place more frequently or for a longer duration will attract a higher charge than those taking place for short durations
 - 6.5.4 The physical area on which the activity will take place. For example, the proposed location may result in additional income being generated
- 6.6 Charges for some areas may attract VAT.

7.0 PROCESS, CONSULTATION AND DECISION

ONE-OFF EVENTS

- 7.1 Applications to use an area of Council owned open space for a one-off event should be made to Leisure Services using the Event on Public Open Spaces Application Form, which can be found at **Appendix B**, available on the Council's website. Applications should be submitted at least 2 months prior to the event.

- 7.2 Upon receipt of a completed application form internal Council services shall be consulted depending on the application and the nature of the event. However, it should be made clear to the applicant that additional permissions may be required from other Council departments to hold the event, including (but not limited to):
- 7.2.1 Planning permission
 - 7.2.2 Food safety
 - 7.2.3 Noise
 - 7.2.4 Drinks licence
 - 7.2.5 Temporary events licence

- 7.3 By the Council granting permission as landowner, it does not mean additional permissions will be forthcoming. Operators will need to ensure compliance with all relevant statutory regulations and requirements.

REGULAR ACTIVITIES

- 7.4 Applications to use an area of Council owned open space for a regular or re-occurring activity should be made to Administrative & Property Services using the application form found at **Appendix C**, available on the Council's website.
- 7.5 Upon receipt of a completed application form internal Council services shall be consulted, depending on the application and the nature of the activity, and consideration given to whether a lease is required and what rent should be charged. Where an agreement over 5 years is proposed, Member approval will be required via the Finance, Innovation and Property Advisory Board.
- 7.6 Where the application concerns a regular commercial activity, Administrative & Property Services, in consultation with other relevant Council services, will assess whether the opportunity should be tendered to allow other potential operators to apply and so that the Council can demonstrate it is achieving best value.
- 7.7 Again, as outlined at 7.2, the application may require additional permissions from other Council departments to operate the activity.

DECISION

- 7.8 The applicant will be advised of the Council's decision to either permit the event or reject the application. If an application is rejected the applicant may appeal the decision, which will be considered by the Cabinet Members for Finance, Innovation & Property and Community Services, who's decision will be final.
- 7.9 The Council reserves the right to amend or cancel an event in the event of particular circumstances which may include (but are not limited to):
- 7.9.1 The Council or other public body requiring urgent use of the space

- 7.9.2 The Council becoming aware of new information which may have affected its decision to approve the event
- 7.9.3 Direction from the Police or other public authority that the event should be cancelled

8.0 UNAUTHORISED EVENTS

- 8.1 Where the Council becomes aware of an event or activity taking place on Council owned land which has not been approved, the organisers will be told to shut down the event. Should any substantial damage be caused as a result of the unauthorised event the Council may seek damages from the event organisers.
- 8.2 If the organisers of an unauthorised event make any future applications for additional events, the Council will factor into their decision making the fact an unauthorised event took place.

9.0 APPROVAL AND REVIEW OF THIS POLICY

- 9.1 This policy shall be considered by Members at an appropriate Advisory Board, Cabinet and then Full Council. The policy shall be formally reviewed every 4 years, with the charges being reviewed annually

Last reviewed:

May 2021

APPENDIX A – PRO-FORMA LICENCE AGREEMENT

APPENDIX B – EVENTS ON PUBLIC OPEN SPACES APPLICATION FORM

APPENDIX C – RE-OCCURRING EVENTS ON PUBLIC OPEN SPACES APPLICATION FORM