

TONBRIDGE & MALLING BOROUGH COUNCIL
COMMUNITIES and HOUSING ADVISORY BOARD

25 May 2021

**Joint Report of the Director of Central Services & Deputy Chief Executive and the
Director of Street Scene, Technical and Leisure Services**

Part 1- Public

Matters for Recommendation to Cabinet - Council Decision

1 POLICY ON THE USE OF THE COUNCIL'S OPEN SPACES

This report introduces a proposed new policy which sets out how applications made to use the Council's open spaces will be assessed

1.1 Background

- 1.1.1 The Council has always received numerous requests from a range of individuals and organisations to use the Council's open spaces for a diverse array of activities and events.
- 1.1.2 These activities and events can range from small scale, one-off, events run by local charities or volunteers, through to large scale, commercial activities.
- 1.1.3 In recent times, one-off events (no matter the size or scale) have been assessed via an Events on Open Spaces application process, led by Leisure Services, in consultation with a range of other Council services. Regular or re-occurring events or activities have tended to be progressed by Property Services as they often require a bespoke land agreement.
- 1.1.4 Since the commencement of the first COVID-19 'lockdown' the Council has seen the number of enquiries about using its open spaces rise sharply. A large proportion of these enquiries have centred around fitness and exercise following the closure of gyms and leisure centres but also include those looking to operate a new business or venture.
- 1.1.5 This increased level of interest prompted Officers to review how enquiries and applications were being managed. This identified a need for an overarching policy, setting out how the Council would assess applications. It was also felt Members needed to be given the opportunity to comment as to whether there were certain activities which they do not believe should be undertaken on Council owned open spaces.

1.2 Proposed Policy

- 1.2.1 A range of Officers from across the Council have been involved in drafting the Policy on Use of Council Owned Open Spaces, which can be found at **Annex 1**.
- 1.2.2 Set out below is some commentary against a number of the main headings contained in the policy:

Scope

- 1.2.3 Officers considered which areas and activities should be included within the policy, based on experience of previous applications. Officers were keen to include a range of different areas and activities to ensure a consistent approach was taken.

Assessment Criteria

- 1.2.4 Members will note there are a range of different criteria that applications would be assessed against. These have been drafted in such a way to make them applicable to both small and large scale events.
- 1.2.5 By setting out the criteria, those wishing to make applications will be able to consider them in advance, meaning more relevant information should be included from the outset with the aim of reducing the time Officers have to spend seeking clarification or additional information from organisers.
- 1.2.6 As highlighted in Section 1.1, the Council has seen a dramatic increase in the number of enquiries to use the Council's open spaces over 'lockdown', especially those related to fitness activities.
- 1.2.7 The Council's needs to be consider whether there are some activities which have the potential to impact too much on members of the public using the open space.
- 1.2.8 Council Officers have found, for example, fitness instructors operating small classes or one to one sessions where fitness equipment is being used which raises safety concerns for members of the public using the space.
- 1.2.9 If fitness classes, or 'bootcamps', are to be allowed to operate on Council owned open spaces it is suggested firm dates and times need to be agreed with operators so that the Council can manage the number of activities taking place on an open space at any given time to ensure areas do not become 'saturated', to the detriment of members of the public using the areas.
- 1.2.10 Members are invited to comment on whether there are any particular events or activities which they would not deem suitable to operate on the Council's open spaces, or whether there are any specific locations they would want to see restrictions in place.

Charging

- 1.2.11 Feedback from Officers administering the Events on Open Spaces application process was that a lot of administrative work is required to progress applications, including extensive consultation with Council services and ongoing liaison with the organisers.
- 1.2.12 The policy introduces an administration fee for processing applications, which is banded depending on the number of people attending and the type of organisation running the event. This is a similar approach adopted by a number of local authorities in Kent.
- 1.2.13 A proposed charging structure is also set out for one-off events, again, banded depending on the number of attendees and the type of organisation.
- 1.2.14 It is difficult to set out a charging regime for re-occurring events or activities as often the charge, or rent, will be determined by a range of factors. The policy sets out the criteria against which a charge or rent will be assessed.

1.3 Delegated Authority

- 1.3.1 The Policy states at 7.8 that where an application is refused the applicant be able to appeal the decision. Due to the timescales involved in assessing an application then arriving at a decision, it is felt that if an applicant wishes to appeal the decision they may have to wait some time before the matter could be considered by Members at a relevant Committee or Advisory Board, potentially resulting in the timescales for the proposed event being missed.
- 1.3.2 It is suggested that delegated authority be granted to the Cabinet Members for Finance, Innovation & Property and Community Services to consider and determine any appeals.
- 1.3.3 Although the Policy has been written with the intention of being able to cover a range of different events and scenarios, it may be the case in exceptional circumstances that the fees and charges set out in the policy are not appropriate for a particular event. To deal with this scenario it is suggested that delegated authority be given to the Cabinet Members for Finance, Innovation & Property and Community Services to determine fees, but only in exceptional circumstances.

1.4 Legal Implications

- 1.4.1 Members will note at Section 5.0 of the policy that it is envisaged a pro-former land use agreement will be completed for the majority of one-off events, which Legal Services are currently drafting. This will include all relevant terms and conditions associated with the use of Council owned land, including provisions related to insurance and reinstatement.

- 1.4.2 Member approval may be sought from the Finance, Innovation and Property Advisory Board where required to grant longer term agreements. Legal Services would then be instructed to draft any bespoke licences or leases based on the particular event.

1.5 Financial and Value for Money Considerations

- 1.5.1 The proposed charges set out in the policy are felt to be reasonable and will be reviewed annually.
- 1.5.2 For any re-occurring activity, the Council will need to demonstrate it is achieving best value from those arrangements, which will be determined on a case-by-case basis. This may involve identifying an opportunity which should be advertised more widely to provide other operators a chance to 'bid' for the opportunity.
- 1.5.3 The policy will provide a framework against which the Council can look to maximise the potential income generation of the Council's open spaces, while acknowledging and respecting the nature of those spaces.

1.6 Risk Assessment

- 1.6.1 If the Council does not have a clear policy on use of its open spaces it will be difficult to justify decisions where events or activities are refused. If no clear direction is given it may also lead to a 'saturation' of open spaces where a range of events have been given permission to operate.
- 1.6.2 Without a clear direction, operators may take the opportunity to try and operate on open spaces without the Council's permission, leading to a risk of injury to members of the public or those participating in the event if the Council has not had the opportunity to consider the relevant health and safety impacts of the activity.
- 1.6.3 If land use agreements are not put in place the Council risks inadvertently granting tenant rights which may result in them becoming protected under landlord and tenant legislation.

1.7 Equality Impact Assessment

- 1.7.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.8 Policy Considerations

- 1.8.1 Asset Management
- 1.8.2 Healthy Lifestyles

1.9 Recommendations

- 1.9.1 It is **RECOMMENDED** to Cabinet and then Full Council that:

- 1.9.2 The policy be adopted;
- 1.9.3 Administration fees and charges are introduced as detailed in the policy;
- 1.9.4 Delegated authority be granted to the Cabinet Members for Finance, Innovation & Property and Community Services to consider and determine appeals, and;
- 1.9.5 Delegated authority be granted to the Cabinet Members for Finance, Innovation & Property and Community Services to determine fees and charges in exceptional circumstances

Background papers:

Nil

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