

Corporate Governance/Legal Services
Haringey Council
7th Floor
Alexandra House
10 Station Road
London N22 7TR

Attn: Raymond Prince

By post and email: Raymond.Prince@haringey.gov.uk

Your ref: LEG/L&C/50231RP

Our ref: FRI0031/SR

Email: susanring@hglaw.co.uk

22 February 2018

Dear Sirs,

R (The Friends of Finsbury Park) v Haringey London Borough Council
C1/2016/2662

We note from the Court of Appeal's judgment in this matter (see para 17 per Hickinbottom LJ) that the Court has found that your Council holds Finsbury Park on a statutory trust for the public pursuant to section 10 of the Open Spaces Act 1906 ("the 1906 Act").

The effect of a statutory trust was considered in a series of rating cases that turned on earlier legislation governing parks and open spaces held by local authorities. In *The Churchwardens and Overseers of Lambeth Parish v London County Council* [1897] AC 625 at 630, Lord Halsbury held that the Council did not occupy Brockwell Park, they were "merely custodians and trustees for the public" and "Here there is no possibility of beneficial occupation to the county council; they are incapable by law of using it for any profitable purpose; they must allow the public the free and unrestricted use of it" [emphasis added].

It was also considered in *Mayor of Liverpool v Assessment Committee of West Derby Union* [1908] 2 KB 647, which concerned Stanley Park in Liverpool. Sir Gorrell Barnes, President, described Liverpool Corporation as "not occupiers, but mere custodians or guardians of the property for the public, who are themselves the occupiers" (at 663). Farwell LJ said (at 669):

"The by-laws are for the good management of the park as dedicated to the public. I can find nothing to warrant the suggestion that the corporation are to be allowed to use the park on those days for their own profit. The object appears to me to be to enlarge the public benefit intended to flow from its use as a park by allowing the park to be utilised during the seven days for some charitable or public purposes for which a small charge may be made, or possibly to enable the corporation themselves to recoup the expense to which they may be put by holding some show there which may be of general public interest. *I very much doubt whether on the true construction of these bylaws the corporation are entitled to use the park for the purpose of*

making a profit for themselves.... "[Emphasis added]

These authorities were applied by the Court of Appeal in *Burnell v Downham Market Urban District Council* [1952] 2 QB 55, which concerned the local authority's liability to rates in respect of seven acres of land which it held under the 1906 Act. The Master of the Rolls held that the land was held on a statutory trust, imposing on the local authority the duty of allowing it to be used by the public for the purposes of recreation (at 65), and the case was indistinguishable from the Brockwell Park case. The council's expenditure on the park in that case amounted to £427 17s 6d and its receipts were £189 18 6d.

These cases were in turn considered in *R (Muir) v Wandsworth Borough Council* [2017] EWHC 1947 (Admin). Under the heading 'Making a profit', Lang J recorded the following at 75:

"In the light of the observations in the *Brockwell Park* and *Liverpool* cases to the effect that the local authority, as trustee, could not lawfully make a profit from land held under the OSA 1906, the Council conceded that it could not properly use any rent paid by the IP for its general purposes; it could only be used for the purpose of improving or maintaining the Common. In its written evidence and skeleton argument in these proceedings, the Council had stated it intended to use only 30% of any rent received from the IP for the purpose of improving and maintaining the Common, but it withdrew that statement during the hearing. Of course, I accept the Council's point that the cost of maintaining the Common far exceeds the amount of rent payable under the proposed lease."

In the case of Finsbury Park, we note as follows:

1. In the Report for the Cabinet dated 17 December 2013 on the Haringey Outdoor Events Policy:
 - a) 9.3: 'It is proposed as part of the new policy...that event income generated in Finsbury Park should used [sic] to address the identified priorities Finsbury Park. Remaining income can then be used to improve the maintenance in other parks in the Borough.
 - b) 14.1: 'A sustainable income can be generated to meet income targets and to reinvest money back from all events in all parks into the Boroughs [sic] parks.'
2. In the Outdoor Events Policy dated 7 December 2014:
 - a) 8.2.1: Income generated from events in parks and open spaces will be used in the first instance to meet the parks event income target in each year.
 - b) 8.2.3: Surplus income will initially be used to support and develop community led festivals and events in parks across the borough....
 - c) 8.2.4: Any additional income generated will be ring fenced to be reinvested back into parks maintenance across the borough. *Where significant sums of money are generated in individual parks, the investment needs of that park will be addressed first before redistributing the remainder of any funds to other parks.* [emphasis added]
 - d) 8.2.5: In terms of Finsbury Park, surplus event income generated will be used to address the following priorities....

- e) 11.1.1: ...All income generated by events is used to meet income targets, support the community programme and for parks maintenance.

We note that the 1906 Act is not noted at section 10 – 'The legal context'.

3. In the Finsbury Park Events Scrutiny Project Report dated October 2015:

- f) at 2.3 it is noted that the maintenance costs of Finsbury Park are £250,000 p.a.
- g) at 9.1 'income from events is ring fenced back to the parks budget...'
- h) at 9.3 the income and expenditure for 2015/2016 is set out including borough wide expenditure.
- i) At 9.7 the recommendation is set out that there should be greater transparency about how income from events held in Finsbury Park is used including confirmation to be made as to how much money is generated from events in Finsbury Park and:
 - i. (b) Make clear that all income from events is ring fenced back to the parks budget;
 - ii. (c) Identify how local residents... can contribute to decisions on how income is spent, *including work in other local parks;* [emphasis added]
 - iii. (d) Provide information on how money from previous years has been spent, including updates on projects and improvements.

4. In the minutes of the meeting of the Overview and Scrutiny Committee on 19 October 2015:

- a) the Chair's response is noted:

The Chair reiterated his response, emphasising that the income generated was a significant factor given the current austerity measures...

- b) Recommendation 2b – it was confirmed that the income generated by events was approximately 40% of the parks budget. The remaining 60% of the parks budget came from other income lines and approximately £300k of council funding

5. In the minutes of the meeting of the Cabinet held on 15 December 2015, the Leader is noted as saying in response to representations of the Friends of Finsbury Park:

"The Council were working in a financial climate when there was little funding available to maintain Parks. However, the Council...had taken forward an events policy to enable income from events to pay for the upkeep, improvement of Parks rather than relinquishing their management.'

6. In the report to the Overview and Scrutiny Committee meeting on 8 March 2016, 'Conclusions and recommendations' there is an agreed recommendation to 'Make clear that all income from events is ring fenced back to the parks budget'.

7. In the officer's report to the then Leader for decision on 18 March 2016 at para 7.4 it is recorded that the money raised by events in Finsbury Park is used for its general purposes i.e. for the Haringey parks budget as a whole.

'All money raised by events is ring fenced back to the Parks budget to maintain and improve parks in the borough.'

8. Your Council's skeleton argument dated 2 June 2016 in the High Court refers at para 147 to the 'fact that the income would help the Council meet its Parks Budget' and at para 148 it 'is correct that the Parks Budget for 2016/2017 includes an income target for all events of £545,000...the events income has exceeded £750,000 for each of the previous two years...'
9. Your Council's skeleton argument dated 21 April 2017 in Court of Appeal refers at para 147 to the 'fact that the income would help the Council meet its Parks Budget' and at para 148 it 'is correct that the Parks Budget for 2016/2017 includes an income target for all events of £545,000...the events income has exceeded £750,000 for each of the previous two years...'

As noted by Lang J in *Muir*, it would be an improper application of income generated from a park held in trust under the 1906 Act to use that income for any purpose but the maintenance and improvement of that park. In the case of Finsbury Park it is clear that not only has income generated by Finsbury Park been used for purposes other than maintaining and improving Finsbury Park in breach of the statutory trust, *but it is the policy of your Council to do this.*

In the circumstances, we request the following:

- 1) that by close of business on 15 March 2018 you please account for all the monies that have been generated by Finsbury Park and how these monies have been expended;
- 2) you confirm that you will amend your Council's policy forthwith to confirm that monies generated by Finsbury Park will only be used for the purposes of maintaining and improving Finsbury Park.

We look forward to hearing from you as a matter of urgency.

Yours faithfully,

Harrison Grant