

BATTERSEA PARK ACTION GROUP

NEWSLETTER

22nd NOVEMBER 2017

Welcome back to the BPAG Newsletter, which this time will focus mainly on green spaces campaigns and updates on other issues concerning Battersea Park.

NEAL'S FARM LODGE, WANDSWORTH COMMON



The decision to grant a lease to a private nursery was not a lawful exercise of the Council's powers under the 1967 Greater London Parks and Open Spaces Provisional Order ("the Long Act"), said a high court judge on 28 July 2017.

Many of you will already have heard about the victory won by Alexander Muir and his colleagues last Summer. The Council had attempted to grant a long lease on Neal's Farm Lodge on Wandsworth Common; this was to be used for a private nursery.

Application

1. The Claimant applies for judicial review of the Defendant's decision to grant a long lease of premises known as Neal's Farm Lodge and Cottage ("the premises"), situated on Wandsworth Common ("the Common"), in the London Borough of Wandsworth, to the Interested Party ("IP").

2. The IP is a limited company which intends to operate a private nursery at the premises for up to 62 pre-school children, aged 2 to 5 years.

3. The Defendant ("the Council") is the local authority which, pursuant to statute, holds the freehold of the land on which the Common is situated.

Although Wandsworth Common is not a Park, the judge's decision has wider implications for all green spaces, including parks, in the UK. The Council is appealing.

Sandy writes:

In essence the Hon Mrs Justice Lang ruled that:

- The residents are the owners of the open space
- The LA are the trustees of the local space
- Any revenues/profits accruing from the open space belong to the space
- And the LA does not appear to be at liberty to appropriate such revenues for their "General" funds.

In view of the revenues generated by Formula E, and the ongoing revenues from the variety of events that take place in Battersea Park, it appears that the implications of the judgement could be of particular significance to the park and the groups, such as yourselves, committed to its protection.

Unfortunately I have recently learnt that despite being refused Permission to Appeal by the High Court when the judgment was handed down, Wandsworth

BC have chosen to file a further application for Permission to Appeal with the Court of Appeal.”

If anybody would like copies of the relevant documents, please let me know.

In the meantime, Sandy has an enormous amount of costs to pay, since he was only granted a modicum of his total expenditure. It is totally unfair that private campaigners such as he and his colleagues are left with such large sums to pay, whilst Councils use public funds to fight these cases. Fingers crossed that the Appeal will fail.

FRIENDS OF FINSBURY PARK

Meanwhile, the Friends of Finsbury Park took their Council to Judicial Review over the use of the Park for the Wireless Festival. They had produced an excellent Report, and I quote here the final paragraph. If anyone would like the full report, please let me know. Some of the comments made by local people about this dreadful situation are not pretty.

“Based on all the evidence that has been given to me over the past weeks by dozens of local people, it is more than clear to me that the Wireless festival has been managed in a way that has shown not just neglect, but contempt for the many thousands of members of the community who live around Finsbury Park, and who have had to endure continual anti-social behaviour, violence, drugs, drug dealing, litter, defecation and intolerable noise for days on end. Their reward for enduring this is to find, after two weeks of closure, a park in a much worse state than it was not long ago, bereft of vitality and deteriorating year-on-year. What the evidence given to me has shown is that it is simply not possible for an event the size of Wireless to be held in a public space in an inner-city area like Finsbury Park. The organisers of the festival, as well as the local authority, need to seriously consider making the festival smaller to a manageable scale, or, failing this, to move the festival altogether to a more appropriate location.”

Simon Hunt

Chair, FoFP

As the Friends said back in April last year:

The outcome of this case could affect all London Parks, as councils seek to sell off and privatise green spaces. The argument that huge commercial events such as Wireless Festival must take place in order to maintain a public space is deeply disturbing and cannot be allowed to happen.

At the beginning of the month I went along to the High Courts in the Strand to show solidarity. I was unable to sit through the whole hearing, due to the tail end of a cold, plus a nasty cough. The judgement was reserved, and I have just heard on the 16th that FoFP had lost, although they will be asking permission to Appeal to the Supreme Court. An important point was made about profits made from letting out our green spaces; I say “our” because they are essentially held in trust for us. The corollary of this would be that the money should only go toward the green space in question. See page 11 for the correspondence between Jan Littlewood and the Council, where they confirmed that the Park is held in accordance with the Terms of the 1906 Act, and page 12 in connection with Neal’s Farm Lodge.

Court Of Appeal Refuses Appeal But Make An Important Acknowledgment

“The Court of Appeal gave judgment on Thursday 16 November 2017 at 2 p.m. Although the Court of Appeal refused our appeal, the judgment is extremely important in that it acknowledges that public parks are held by local authorities on trust for the purpose of public enjoyment and the public are its beneficial owners; as such the public have a statutory right to use the land for recreational purposes and the local authority owner must allow the public free and unrestricted use of it.

Although the Court found that s.145 of the Local Government Act 1972 is not limited by any other statutory provision and gives the local authority the power to exclude the public from public parks notwithstanding the public’s rights, that power must be exercised

lawfully and not perversely or to frustrate the purpose of the trust (i.e. the public's right to use the land for recreational purposes). Crucially, the Court of Appeal raises therefore the prospect that where a local authority uses s.145 to exclude the public from a park, that decision can be challenged by residents asserting that the closure of a park is unlawful because it interferes too much with the public's right to use the park for recreation.

Also, as the court has found that the Council holds Finsbury Park on trust for the public, this means that any monies raised by the Council from the hire of Finsbury Park must be used only for the purpose of Finsbury Park. We will also be asking Haringey Council to account for all the monies they have raised by the hire of Finsbury Park as they are only allowed to spend the monies on Finsbury itself. The Friends are concerned that in fact the Council has been using the monies for its general parks budget.

The Friends of Finsbury Park maintain however that a local authority's power to exclude the public from a park is limited by the restrictions on space and time as set out in the Public Health Amendment Act 1890, section 44 (closure of a park for no more than 12 days in a year or 6 consecutive days on any one occasion) and the Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967, Article 7 (max of 1/10 of park to be closed).

We have therefore applied for permission to appeal to the Supreme Court and will continue to raise funds to be able to do this including for their potential exposure to the other sides' costs, the court fees and copying charges; the Friends' legal team continues to act on a conditional fee (no win no fee) basis.

Although we have lost the appeal this case is gathering momentum fast as people all over the country begin to hear about how their parks will be affected. Many thanks for your donations and support this far. More updates soon!"



There has to come a point where parks can no longer be wrecked and people's lives made a misery. In the meantime, May 2018 sees local government elections.

Other Parks Campaigns and Campaigners

Green Belt Destruction NW7 *Once it's gone, it's gone !*

This organisation has created an excellent website with information on how to create a campaign.

Web: <https://www.green-belt-destruction-nw7.org.uk/>

Email: info@green-belt-destruction-nw7.org.uk

Haggerston Park

Haggerston Park was threatened with Winterville– 11 weeks of noise and events – which would have moved there from Victoria Park. After initial objections, the Council decided to defer the move. However, see next paragraph.

Clapham Common

Winterville is shortly arriving on Clapham Common from Victoria Park. It will be open November 23rd to January 1st. It will only close on Christmas Eve and Christmas Day.

Opening Times

Monday to Thursday 11.30 to 22.00; Friday 11.30 – 22.30

Saturday 10.30 to 22.30 Sunday 10.30 to 22.00

<http://winterville.co.uk/>

Not only that, but the big wheel thrown out from Barry Island, due to excess height and lack of planning permission, is being sited on the Common.

“Barry Island's big wheel will no longer be back up in time for Christmas after it was taken down during a planning dispute.

Henry Danter, who took ownership of the famous seaside fairground in 2015, put up the new big wheel in October, but by the start of November it was being taken down.

Mr Danter has now revealed that it will instead be used at Clapham Common.

Mr Danter said: "As soon as I get planning it will be back."

Let's hope he gets it soon. No-one objects to people having a good time. But they do object to all the negative aspects that often accompany it.

<http://www.walesonline.co.uk/business/business-news/barry-islands-big-wheel-wont-13912973>

London Green Spaces Friends Groups Network

www.lfgn.org.uk

IMPORTANT NOTICE. OUR FINANCIAL SUPPORT IS NEEDED.

Whenever possible members of BPAG have been along to the meetings of the LGN in city Hall. They are working on a hard campaign in which all London Friends' Groups are included. Our support is needed. Details on the next page. As you know, campaigns cost more than an arm and a leg. Even though we won the FE battle, keeping the Council to properly restoring the Park, and fighting its incompetence, made quite a large hole in our reserves. Dave Morris, their Chair, says:

“The **London Friends Groups Network** is teaming up with the London branch of the **Campaign to Protect Rural England** because we want to be able to bring you much more support in the coming year. BUT we need to raise at least £2,500 by Christmas!

CPRE London will also contribute £2,500 to the project if we can raise the same – so please help! We've set out more detail below about the extra ideas, information, guidance and advice we will be able to bring you. More details at the donation link here

<https://mydonate.bt.com/events/helpLondonparks/450542>



As part of our exciting new OUR SPACE project – we hope to bring you:

- A monthly newsletter focused on telling inspiring stories and pointing Friends groups to useful documents, good practice etc – (Friends Network members can tell us what kind of things they would like this to include)
- An improved website to support communications efforts and which makes information easy to find
- Two free annual events in a central London location, focused on telling inspiring stories and creating a networking space
- A series of visits or open days hosted by different parks friends groups around London, open to all friends groups to attend free
- A function which aims to put people in touch with other people who have similar issues or projects

As part of the widespread work carried out by LGN they have also made an excellent Submission to City Hall on 17th November last as **Response to the Draft London Environmental Strategy**. It is too long to reproduce here, so please email me for a copy. Or you can find it in the relevant section at

www.lfgn.org.uk

NATIONAL PARK CITY

http://www.nationalparkcity.london/?utm_campaign=july_2016&utm_medium=email&utm_source=greaterlondonnationalparkcity

OPEN SPACES SOCIETY

The Open Spaces Society is Britain's oldest national conservation body, founded in 1865.

- We campaign for stronger protection and opportunities for everyone to enjoy commons, greens and paths.
- We defend open spaces against loss and pressures from development.
- We assist local communities so that they can safeguard their green spaces for future generations to enjoy.

Your open spaces need you

We couldn't keep fighting to protect commons, greens, open spaces and public paths without our members - we rely on member subscriptions to fund our work and provide a mandate for action. Please [join the Open Spaces Society today](#) and support us in our work to protect your open spaces.

(At this point BPAG should add that OSS have been of immense help to us, and to all those others fighting to protect their green spaces.)

INCOME FROM GREEN SPACES

Request for information and the reply received (in red)

Request for Information - 2017/15801 - Battersea and Open Spaces Act 1906

- 1. Is Wandsworth Council aware of the fact that, in accordance with the Open Spaces Act 1906 (OSA 1906) a local authority, as a trustee, cannot lawfully make a profit from land held under the OSA 1906, and that any money raised can only be used for the improvement or maintenance of said open space?**

This is not a request for information held by the Council, as opposed to an invitation to agree with a legal opinion, and therefore does not fall within the scope of the Freedom of Information Act.

- 2. Is Battersea Park held by Wandsworth Council under the OSA 1906?**

Battersea Park was not acquired by the Council under the Open Spaces Act 1906, and so is not held under that Act. However, the Council is required by other relevant statutory provisions to hold Battersea Park "for the purposes of" the 1906 Act.

- 3. With regard to the OSA 1906, please can you inform me upon what legal basis Wandsworth Council deemed it acceptable to use the majority of the funds obtained from the Formula E event in Battersea Park for purposes other than the improvement and maintenance of Battersea Park?**

This is not a request for information held by the Council, as opposed to an invitation to agree with a legal opinion, and therefore does not fall within the scope of the Freedom of Information Act.

- 4. Disregarding the income from the Formula E event in the summers of 2015 & 2016, does Wandsworth Council currently use all other money generated by Battersea Park for the improvement or maintenance of the park?**

Disregarding the income mentioned in the request, any net income received by the Council in connection with events in or uses of Battersea Park is paid into the Council's General Fund. Although a period has not been specified in this request we can confirm that the overall costs to the Council of maintaining and improving Battersea Park in recent years have exceeded such net income (disregarding the income mentioned above).

These rather vague replies seem to indicate that the Park is indeed held in trust. The corollary should therefore follow that monies derived from letting out all or part of the park should be used only for the Park. The statement about overall costs exceeding net income is irrelevant, since the balance of £2.34 million was not used by the park

but, if remarks made by people like Cllr. Cook are anything to go by, the money went into the general treasury for social workers and so on.

From the Muir v. Wandsworth Council Case

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.

PARK RESTORATION AND PARKING

Several people have been vigilant in keeping an eye on the parking in the Park, in particular, the vast amount of lorries, caravans and other juggernauts parked on the Western Carriageway. In addition to taking photographs, they have also written to Enable to ask why these vehicles park there, rather than in the Rosery Car Park.

On several occasions, it has been impossible to sit there, because the only view is a white-out of lorries. As was pointed out, why have these rather attractive seats, if the view is often obliterated. So, please, do keep writing.

It has been suggested that we keep a log. Any volunteers? Maybe we could take a morning each?

PEAR TREE CAFÉ

Until recently it was difficult to access the railings and enjoy the view, unless you bought something from the café. One of our members wrote to Paul McCue to ask whether the Café had been allowed to “privatise” the area. Paul McCue’s replies are in red, including his rather snide final sentence. I should add that even though the Café has now removed the notice, if you wish to stand by the lakeside, it is impossible, because tables are lined up all the way round, and you cannot get through.

In front of the main entrance to the Pear Tree cafe there is a large outdoor area with picnic tables positioned directly next to the lake. This area is surrounded by approximately 50cm high fencing. Just for general information (and numerous people have asked me this during the course of the summer) I wonder if you could clarify the following. I am referring simply to the outdoor area in front of the Pear Tree cafe and not the cafe itself.

1. What is the designation of this space? Is this public open space?
Yes, as it has not been subject to a “disposal”.
2. Is this space mentioned and included within the contract for the Pear Tree Cafe concession? If so, what is its official designation within this contract?
It is mentioned in the café lease – but it is not actually part of the demise of the property/lease. The terrace is referred to as “the land edged in blue” – and is the tarmac terrace only. The café has the right to use it for the placing of tables & seating for customers. And more latterly they have a licence from for a “pop-up” bar.
3. Are people allowed to freely access this space even though they have not purchased anything from the Pear Tree Cafe?
Yes
4. Are people free to consume food and drink that has not been purchased from the Pear Tree Cafe within this space?
The café do not prevent people bringing their own food, though the tables and chairs are the property of the cafe. My view is that it would therefore not be unreasonable for the cafe to ask people not to consume own food if the café’s tables and chairs are being used – but not to actually prevent it. There are, of course, numerous other benches in the park that one can use. Personally, I wouldn’t expect to take my own food and use a café’s facilities, but that’s just my personal opinion.

The reason I am asking is because this area is effectively the only area on the eastern side of the park that is directly next to the lake and easily accessible. It is extremely pleasant at sunset. So myself, and numerous others, were just wondering what fundamental rights we have as regards to accessing this area.

Council elections next May. For your information:

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Paul McCue	PMcCue@wandsworth.gov.uk

This will probably be the last Newsletter this side of the New Year. If anyone fancies meeting up for a drink nearer Christmas, perhaps we could get together. The Ethelburga Centre has been out of action for 4 months, and doesn't look anywhere near finished. But we have plenty of good pubs.

