

Committee/Meeting: King George's Fields Charity Board	Date: 4 April 2012	Classification: Unrestricted	Report No: 3
Report of: Corporate Director Communities, Localities and Culture Originating officer(s) Andy Bamber, Service Head – Community Services		Title: Trespassers camping in Mile End Park Wards Affected: Mile End East	

REASONS FOR URGENCY

On Sunday 1 April 2012, the Council was made aware that trespassers had commenced camping in Mile End Park, near to Hamlets Way. On Monday 2 April 2012, officers attended at the camping site and gave notice to the trespassers to vacate the site by the morning of Wednesday 4 April 2012. If the trespassers do not leave, then proceedings may need to be commenced to obtain a court order for possession of the land. The Board's permission is required before taking any such action.

1. SUMMARY

- 1.1. The reasons for urgency summarise the background to this report.
- 1.2. An oral update will be provided at the meeting if there are any developments prior to that time.

2. DECISIONS REQUIRED

The King George's Fields Charity Board is recommended to –

- 2.1 Agree that the persons camping on Mile End Park are trespassers, that their occupation of a section of the Park is contrary to the objects of the King George's Fields – Mile End Charity and that action should be taken to remove them.
- 2.2 Authorise officers to take all necessary and lawful action to have the trespassers removed from Mile End Park, including taking court proceedings for possession, if necessary.

3. REASONS FOR THE DECISIONS

- 3.1 There are trespassers occupying a section of Mile End Park, which is required to be held in perpetuity as playing fields for the use and enjoyment of the public. This occupation is considered to be contrary to the objects of the Mile End Charity and action is required to have the trespassers removed.

4. ALTERNATIVE OPTIONS

- 4.1 The alternative would be to take no action and allow the trespassers to remain in occupation. This is considered to be contrary to the objects of the charity and inconsistent with the Council's role as trustee.

5. BACKGROUND

- 5.1 A group of people (believed to be upwards of 20 individuals) has recently started camping in Mile End Park near Hamlets Way. The group have pitched tents in the park and dug a fire pit and, what appears to be, a latrine trench. They have been seen digging in the area of flower beds. Based on these observations, it appears that damage is being caused to the park as a result of the occupation.
- 5.2 The location of the camp site is part of the park lands known as King George's Fields. The Council is the trustee of the King George's Fields – Mile End Charity (registered number 1077859), the purpose of which is to maintain the park lands in perpetuity as playing fields for the use and enjoyment of the public. Under the Council's Constitution, the King George's Fields Charity Board exercises the Council's trustee function. It is open to the Board to conclude that the current occupation of the land in Mile End Park is inconsistent with the objects of the charity. This is because the occupation by the trespassers prevents current use of the land as playing fields and damages the land so as to prejudice later use.
- 5.3 The persons who are camping have not sought the Council's consent, which is required as the Council is the trustee for the owner, which is the Mile End charity. On Monday 2 April 2012, officers of the Council attended at the camp site and delivered notices to the trespassers, directing them to leave the site by the morning of Wednesday 3 April 2012. It is possible that the trespassers will comply with this demand, but if they do not or if they return to the site it is recommended that officers be in a position to take appropriate action to remove them.
- 5.4 There are Byelaws that relate to this Park, namely the Greater London Council Parks, Garden and Open Spaces Byelaws. Byelaw 8 of those Byelaws provides: "No person shall, without first obtaining or otherwise than in accordance with the terms of a permit from the Council, camp out any open space. Further, Byelaw 11 provides that "No person shall in any open space, without first obtaining or otherwise, that in accordance with the terms of a

permit from the Council, erect or place or retain any post, rail, fence, photographic stand, apparatus, tent, booth screen, stand, swing or other building, erection or structure or any obstruction of any kind whatsoever." By camping on the site without the Council's permission, the trespassers are also committing offences for which the Council may prosecute.

- 5.5 The police have power under section 61 of the Criminal Justice and Public Order Act 1994 ("the 1994 Act") to direct the individuals who have moved into Mile End Park to leave and to remove any vehicles or other property they have with them on the land. There are a number of circumstances in which the police may exercise this power, but it is sufficient if there are two or more persons trespassing, that reasonable steps have been taken by the occupier to ask them to leave and the persons are causing damage to the land. As set out above, all of these circumstances pertain in relation to the occupation of Mile End Park. However, at the time of writing, it is understood that police have declined to exercise the power under section 61.
- 5.6 One option for the Council is to commence proceedings in a County Court to obtain an order for possession of the land and to enforce such possession order. The necessary investigation and legal work can be handled by council officers without charge to the Charity. There will be actual costs associated with the proceedings. The fee for filing the court application is £175.00. At the enforcement stage, if the High Court Sheriff is used, there will be a fee for transfer to the High Court of £50.00 and a fee from the Sheriff estimated at £5,000.00. There is a risk in any legal proceedings of an adverse costs order being made against the Council. The risk of this is considered to be low, but if the trespassers engaged solicitors and were successful then the costs would be in the range of £10,000.00.
- 5.7 Another option is for the Council to consider a claim for Judicial Review against the Metropolitan Police for failing to exercise the power under section 61 of the 1994 Act. Any such claim would need to be brought promptly (there is an outside limit of 3 months for such claims from the decision or action complained of). Such claims are expensive. The legal costs on the Council's side would be in the order of £10,000.00. If the claim were lost, then the respondent's costs would have to be paid and these are estimated at £15,000.00.
- 5.8 Any actual costs of taking legal action would be met out of the Communities Localities and Culture budget at the Council, rather than being paid from charity funds.

6. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 6.1 The King George's Field Charity Board will need to be aware that if the decision is taken to remove trespassers from Mile End Park legal proceedings may follow. The Council's costs will be dependent on the option pursued as set out in Para 5.6 and 5.7 of the report. Any legal costs will have to be met from within the Communities Localities and Culture budget and resources identified.

7. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL SERVICES)

- 7.1 The report deals with the removal of trespassers from land the subject of the King George's Field, Mile End charity ("the Mile End charity"), registered number 1077859.7
- 7.2 The Council is the trustee of the Mile End charity pursuant to the governing document, which is a scheme dated 28 February 2000. The Council's Constitution establishes the King George's Fields Charity Board to administer the charity's affairs and discharge the Council's trustee functions.
- 7.3 The purpose of the Mile End charity is to preserve the park lands in perpetuity as a memorial to King George V under the provisions of the King George's Field Foundation. In effect this means that the park lands are to be maintained in perpetuity in accordance with the following object: "to promote and to assist in the establishment and to promote the preservation throughout the United Kingdom of Playing Fields for the use and enjoyment of the people..."
- 7.4 The park lands may be used for the following: (1) playing fields named and sign-posted as "King George's Fields"; and (2) facilities for recreation or other leisure-time occupation, provided that it is in the interests of social welfare and for the public benefit.

8. ONE TOWER HAMLETS CONSIDERATIONS

- 8.1 The Council is required to exercise its trustee function for the Mile End Charity pursuant to the terms of the governing document and the legislation governing trusts, particularly the Trustee Act 1925 and Trustee Act 2000. The Council is not, in exercising the functions of trustee, necessarily free to pursue its own partnership goals expressed in the Community Plan. That said, it seems clear that the discharge of the trustee duties, which involve the maintenance of playing fields in perpetuity will contribute to the Community Plan goal of "A Great Place to Live" by supporting and improving open spaces.
- 8.2 The Council remains subject to its general obligation to have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't, but such considerations must be taken into account against the background of exercising a trustee function under the charity's governing document. There is no information available to indicate that the removal of the trespassers would be in anyway contrary to the matters the Council is required to consider under the Equality Act 2010.

9. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 9.1 There is a management plan in place for Mile End Park, under which ecology-related goals are pursued to the extent they are connected with the express objects in the governing documents.

10. RISK MANAGEMENT IMPLICATIONS

- 10.1 The potential costs of legal proceedings are referred to above. The risk of taking no action is that the Council would fail to properly discharge its obligations as trustee. In that event the Council may be exposed to legal liability and adverse comment.

11. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 11.1 The trespassers are currently in breach of the applicable bye laws and are committing offences by their presence on the land. Their removal will be consistent with the reduction of crime and disorder.

12. EFFICIENCY STATEMENT

- 12.1 Where possible, work done to enforce possession of the park lands will be carried out in-house. Where it is necessary to use external providers these will be procured in accordance with the Council's procurement procedures, which are designed to ensure best value.

13. APPENDICES

- 13.1 None

**Local Authorities (Executive Arrangements) (Access to Information) (England)
Regulations 2000
List of "Background Papers" used in the preparation of this report**

Brief description of "background papers"	Name and telephone number of holder and address where open to inspection.
1. The scheme pursuant to which the Charity Commissioners of England and Wales ordered on 28 February 2000 that the charity known as King George's Field, Mile End should be administered	Jill Bell, 6 th Floor, Mulberry Place, 5 Clove Crescent, E14 2BG, telephone: 020 7364 4978
2. Plan No. KGF 2	As above