

<b>Committee:</b> King George's Field Charity Board	<b>Date:</b> 19 March 2014	<b>Classification:</b> <b>Unrestricted</b>	<b>Report No:</b>	<b>Agenda Item:</b>  7.1
<b>Report of:</b>  Service Head – Legal Services  <b>Originating officer(s)</b> To be completed by author  Agnes Adrien – Team Leader Enforcement & Litigation		<b>Title:</b>  Injunction seeking removal of gate at the entrance to the car park in Mile End Park  <b>Wards Affected: Mile End Park Wards</b>		

### **REASONS FOR URGENCY**

Pursuant to Section 100B(4)(b) of the Local Government Act 1972, by reason of special circumstances, namely the need to institute proceedings at the earliest opportunity, the Chair is of the opinion that this item should be considered at the meeting as a matter of urgency.

#### 1. **SUMMARY**

- 1.1 This report seeks the authority of the Board to institute proceedings to seek an injunction subject to favourable Counsel's advice on the merits of proceeding.

#### 2. **RECOMMENDATIONS**

It is recommended that the Board:-

- 2.1 Agree that subject to Counsel's advice proceedings may be issued by the Council to seek an injunction requiring removal of the gate.

#### **BACKGROUND**

- 3.1 Lessanda Street, Palm Street and Totty Street formed part of the highway that were stopped up pursuant to a road closure order in July 1983.

The *ad medium filum viae* rule applies when highways are stopped up i.e each party takes one half of the former highway. Valerie and Alfred Barrett own land adjacent to the former highway and applied to be registered as the freehold proprietors of half of the former highway, without objection from the Council. The land is adjacent the Palm Trees Public House which is located within the park.

The Council subsequently applied for first registration of the other half of the land and the Barretts objected. The matter was listed for hearing before the Adjudicator to the Land Registry on 14/15 January 2009.

The Adjudicator decision's dated 4 February 2009 confirmed that the Council was entitled to be registered as the freehold proprietor. The Barretts sought to appeal the decision and a settlement was reached allowing the Barretts to park on the Council's land as long as the premises are used as a public house and the parking is in connection with the use of the business of a public house.

The Council has a right of way over the Barrett's land solely to manoeuvre vehicles in and out of the car park in cases where those vehicles are driven by:

- i) those in the locality in connection with Council business.
- ii) disabled persons, displaying a disabled badge and who are parking in order to use the neighbouring car park or
- iii) persons who have children under 5 years of age with them and who are parking in order to use the neighbouring car park

#### **4. BODY OF REPORT**

- 4.1 Subsequent to the Court Order dated 25 May 2010 and in breach of the agreement the Barretts have installed a gate with the potential to restrict access to the car park.
- 4.2 Authority is sought to institute legal proceedings subject to Counsel's advice on the merits of proceeding with the case, for an injunction to remove the gate.

#### **5. COMMENTS OF THE CHIEF FINANCIAL OFFICER**

- 5.1 The report seeks board approval to proceed with court action against the Barretts to remove the gates as detailed in the body of the report above.
- 5.2. Financial implications, which include legal costs associated with taking court action, is expected to be minimal. Exact amounts are difficult to predict at this stage and will depend on the length and nature of any counter action the Barretts may take. However, Counsel advice will be sought before taking action and this is likely to help minimise costs.
- 5.3. Any costs incurred will initially need to be borne by the council and there maybe opportunity to claim some of it back from the Barretts.

#### **6. LEGAL SERVICES**

- 6.1 This report has been provided by Legal Services and the legal implications have been incorporated in the body of the report.

**7. ONE TOWER HAMLETS CONSIDERATIONS**

7.1 If it is possible to institute legal proceedings, this will ensure that access to Mile End Park is more widely available and not restricted.

**8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

8.1 There are no implications.

**9. RISK MANAGEMENT IMPLICATIONS**

9.1 Obtaining Counsel’s advice in advance of issuing proceedings will ensure that all the risks of litigation are identified and where possible minimised.

**10. CRIME AND DISORDER REDUCTION IMPLICATIONS**

10.1 There are no immediate implications for the Council’s Community Safety Partnership Plan.

**11. EFFICIENCY STATEMENT**

11.1 There are no implications.

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**Local Government Act, 1972 Section 100D (As amended)  
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.
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**To be completed by author**

**To be completed by author ext. xxx**

*Report authors should refer to the section of the report writing guide which relates to Background Papers when completing this section. Please note that any documents listed in this section may be disclosed for public inspection. Report authors must check with Legal Services before listing any document as ‘background papers’.*

**12. APPENDICES**

Appendix 1 – Photograph of the Gate