

Report title	Englefield Green Play Area
Report author	Chris Swatridge
Department	Englefield Green
Exempt	No
Exemption type	Not applicable
Reasons for exemption	Not applicable

Purpose of report:

To outline the options for members of whether to approve or reject the play area replacement project at Englefield Green and, if to approve to then determine which budget (Section 106 monies or the Englefield Green earmarked reserves) is to be used.

Synopsis of report:

Following work undertaken to look at the need for replacement play areas across the borough, this report sets out the outcome of the work undertaken for a proposed replacement play area for Englefield Green.

Recommendation(s):

Members (i) approve the procurement of the play area at Englefield Green; and (ii) determine whether to utilise (a)Section 106 monies; or (b) the Englefield Green earmarked reserve.

1. Context and background of report

- 1.1 The Open Space and Community Development team is responsible for the strategy and associated development of the Council's Parks and Open Spaces as well as projects to develop and support the community.
- 1.2 The above work strand works closely with colleagues in Environmental Services who lead on the operational day to day management and maintenance of the Council's play areas.
- 1.3 In recent months the Council's Open Spaces and Community Development Manager has been working on realising the play area programme as approved by Community Services Committee and Corporate Management Committee in September and October 2023 respectively.

- 1.4 This work started with a series of Ward briefings for Members in Summer 2023 where feedback and comments were sought around the condition of play areas within the wards as well as a priority list for replacements.
- 1.5 The feedback from Members as well as the view of Officers around health and safety requirements resulted in the suggested list that was approved by members in Autumn 2023.
- 1.6 The programme was then progressed through a series of tenders, working with colleagues in Procurement and bids were received for the list of works identified.
- 1.7 Works have now begun on the majority of play areas with completions on target for Spring 2024.
- 1.8 The ward briefings for Englefield Green focused primarily on the play area on the Green itself, which is showing signs of deterioration and has several health and safety issues.
- 1.9 A project was put forward through the Englefield Green S106 Major Fund scheme and was approved by Officers and Members. The fund is from s106 payments connected to a planning application which was approved by the Council in 2018, relating to the development of the Runnymede Campus, at Coopers Hill Lane, Englefield Green (planning ref – RU.17/1649).
- 1.10 The criteria of the grant scheme focused on how projects will contribute to the health and wellbeing of Englefield Green residents following the priority strands of the corporate Health and Wellbeing strategy and Empowering Communities strategy. Officers felt that a new play area covered these aspects of the scheme.

2. Report and, where applicable, options considered and recommended

- 2.1 Within its Green Spaces and Housing areas, Runnymede Borough Council currently provides and maintains 42 play areas. The Council is committed to providing well-designed, exciting, and accessible play areas for the enjoyment of their users/residents.
- 2.2 A budget was proposed to completely replace the play equipment on Englefield Green, this was put forward at £80,000. The specifications were drawn up between Open Space Development, Green Spaces and Procurement. The project went out as one lot amongst ten others in a large programme of works.
- 2.3 One bid for the Englefield Green Lot (Lot 5) was received and totaled £35,898.42. The reason for the lower amount was due to economies of scale within the programme and also that originally it had been envisaged that other site infrastructure might need replacing, such as fencing and surfacing, but these were later deemed not necessary.
- 2.4 Due to the aesthetics of the Green itself, the specification for the play area material was stipulated to be timber (whether Robinia or engineered timber). Officers felt this would be a significant improvement to the current metal equipment on site.
- 2.5 The design for the new play area is available as Appendix A.

3. Policy framework implications

- 3.1 Play and recreation, as well as the use of the Council's parks and open spaces, aligns with the Corporate Business Plan, particularly relating to the Health and Wellbeing Strategy.
- 3.2 The Health and Wellbeing Strategy Objective 2 - Healthy Communities has the action "for all residents to be able to engage and participate in their community, access services, facilities, amenities, leisure, and recreational opportunities locally", contained within the Community Services, Services Area Plan.

4 Resource implications/Value for Money

- 4.1 Costs directly associated with the new play area were envisaged to be through the S106 funds available to the Council. This has been approved by a group of Members and Officers but there is a suggestion that alternative funds could be used.
- 4.2 The approach taken is considered to be the most appropriate way to ensure the best value given the amount of works needed across the Borough for play.

5. Legal implications

5.1 Statutory Constraints

5.1.1 The Egham Inclosure Act 1814:

- (a) The Englefield Green is subject to a private Act of Parliament, the Egham Inclosure Act 1814, which allocated the Englefield Green as common land. Pursuant to advice sought from Counsel in 2012 has since 2012 been considered to impose a statutory duty to keep the Green "open uninclosed "for the pleasure of the inhabitants". This statute is more problematic than the more widely applicable town and village green statutes, as it contains no exceptions.
- (b) The legal position in regard to the application of the 1814 Act is not clear cut. The statute can be interpreted to mean that the play area was unlawfully constructed. However, the Council has received legal advice to the effect that it is doubtful that any court would order its removal bearing in mind that it was erected in the bona fide belief that it was lawful and a long time has elapsed since its construction.
- (c) On the basis that the play equipment enables residents to better enjoy the Englefield Green it can be argued that the equipment promotes the recreational enjoyment of the Green and that the equipment itself does not breach the requirement in the 1814 Act to keep the Englefield Green 'open'. However, it is likely that the fencing in of the play equipment breaches the requirements of the 1814 Act. Whilst advice has been received that it is unlikely that the Council would be required to remove the play area, there remains a risk is that if this project proceeds and a challenge is made, the Council may be asked to remove the equipment that it has installed.

5.1.2 Nationally applicable statute:

- (a) Pursuant to section 29 of the Commons Act 1876, erections on a town or village green are generally unlawful unless made 'with a view to the better enjoyment of such town or village green' The provision of play or sports facilities provided to assist local people to indulge in lawful sports and pastimes, which would include the replacement of such play facilities, comes within the exception.
- (b) The playground can be argued to be in accordance with section 12 of the Inclosure Act 1857 as it does not interrupt, and arguably promotes 'the use thereof as a place for exercise and recreation'

5.2 TVG Registration: The whole of the Englefield Green was registered as a Town and Village Green, in the 1960s, which registration restricts the ability of any party to develop the land.

5.3 Lease: The Council and its predecessor authorities have leased the Englefield Green since the 1890s and occupy subject to both the legal constraints and the lease. The Council currently occupies the Englefield Green, pursuant to a 1955 lease from the Crown Estates. This lease states that the Council must not 'cut or allow to be cut any turf or otherwise to break up the surface of the said land without the previous consent in writing of the Lessor', and 'not to erect or set up ...any other erection whether temporary or otherwise on the said land without the previous licence in writing of the Lessor'. It would therefore be prudent for the approval and consent of the Crown Estate to be sought to the playground replacement works, if their implementation is approved by the Members of this Committee.

5.4 Scheme:

5.4.1 In June 1955, the Minister of Agriculture Fisheries and Food approved a scheme made by Egham UDC under the Commons Act 1899, which Act allowed for such schemes to be put in place. It was understood (it is now thought, in error) that the 1899 Act applied to the Englefield Green that the Scheme created validly allowed amongst other things, the building of the Pavilion and public conveniences, temporary fencing off of parts of the green and other building with the consent of the Crown Estate and the Minister.

5.4.2 In 2009, the Council applied to the Planning Inspectorate for consent under Part 3 of the Commons Act 2006 to extend the enclosed children's playground on the Green. In her Application Decision dated 9th April 2010, the inspector accepted that she had jurisdiction to grant the application on the basis that the Green was subject to a scheme under the CA 1899 but refused the application on the merits. However, the Council has since received conflicting legal advice as to whether the effect of the 1814 Egham Inclosure Act is to render the 1955 Scheme pursuant to the Commons Act 1899, invalid. The position of current Council Officers is that on balance the better advice is that which supports the invalidity of the Scheme, notwithstanding the inconvenience of this position to the Council's management of the Englefield Green.

5.4.3 If, as is the Council's current understanding, the Englefield Green is not subject to a valid Scheme under the Commons Act 1899, then Secretary of State consent (delegated to the Planning Inspectorate) is not required for restricted works that may

form part of the proposed play area works (e.g. resurfacing) pursuant to Part 3 of the Commons Act 2006.

5.5 Lawfulness :

5.5.1 The restricted funds can be used for the maintenance and upkeep of the Green. The relevant S106 Funds can be used for recreation in the Englefield Green Ward. Use of either funding option is appropriate to the proposed works.

5.5.2 It can be argued that the replacement and renewal of the play area equipment without any extension of the area or additional fencing, does not involve any additional breach of the statutes.

5.6 Planning permission: for small works done by a local authority, specific permission is not needed for the erection, construction or maintenance of 'equipment on land belonging to or maintained by them' intended for recreation (see paragraph A, Part 12 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 SI 1995/418)

6. Equality implications

6.1 The Council has a duty under the Equality Act 2010 (as amended). Section 149 of the Act provides that we must have due regard to the need to;

- a) eliminate discrimination, harassment, victimisation and other conduct prohibited by the Act
- b) advance equality of opportunity
- c) foster good relations between persons who share a relevant protected characteristic and persons who do not share protected characteristics.

6.2 Within the design of new play areas, suitable equipment will need to be incorporated, to promote the accessibility of play to all children. In support of this, an Equalities Impact Assessment has been prepared and reviewed and it was found that the policy may have a positive impact on people with the protected characteristics of age and disability.

7. Environmental/Sustainability/Biodiversity implications

7.1 The decision to replace equipment items to maximise the life span of other equipment within a play area reduces the requirement for avoidable removal and disposal of equipment.

7.2 It was within the procurement process that potential suppliers were encouraged to submit designs that promote environmental sustainability as well as in relation to the disposal of existing materials. The winner of this lot uses recycled plastic in their equipment.

8. Risk Implications

8.1 The major risk is a legal challenge from local residents about the play area being replaced, there is a view from some that the play area shouldn't be on the Green at all. [The play area was constructed in 1988/9 and refurbished upgraded and enhanced in 1998. Previously, there has been local resistance to the play area,

notably when an extension of the play area was under consideration in 2009. Residents that have previously objected to the play area on the Englefield Green, or who took legal action in relation to the roping of the wicket, may be moved to object before, during or after refurbishment, thus there is a litigation risk that could re-emerge through this project.

9. Other implications

9.1 Not applicable

10. Timetable for Implementation

10.1 The procurement for the play area programme is already complete. If a decision is made to proceed with this replacement, then the equipment can be ordered and arrangements made on logistics

11. Conclusions

11.1 A potential new play area for Englefield Green has been designed and costed, with contracts agreed. If Members wish to proceed with this project then a decision is needed on the preferred funding source.

12. Background papers

12.1 None

13. Appendices

13.1 Appendix A – Englefield Green Play Area Design
Appendix B - Play area materials examples