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Meeting	Cabinet Resources Committee
Date	7 November 2012
<b>Subject</b>	<b>The leasing of the Pavilion in Cherry Tree Wood Brompton Grove East Finchley N2</b>
Report of	Deputy Leader of the Council / Cabinet Member for Resources and Performance
Summary	To report on the Finchley & Golders Green Area Environment Sub Committee representations in relation to the proposed grant of a lease of the pavilion in Cherry Tree Wood, Brompton Grove, N2

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Officer Contributors	Judith Ellis – Valuation Manager Richard Malinowski – Principal Valuer Jenny Warren – Greenspaces Manager
Status (public or exempt)	Public (with separate exempt report)
Wards Affected	East Finchley
Key Decision	No
Reason for urgency / exemption from call-in	Not applicable
Function of	Executive
Enclosures	Appendix 1 – Notice under Section 123(2A) of the Local Government Act 1972 Appendix 2 - Lease Plan Appendix 3 – Summary of objections Appendix 4 – Tenant’s Preliminary Drawing Appendix 5 – Photographs Appendix 6 – Extract from Catering Specification
Contact for Further Information:	Judith Ellis, 020 8359 7364 <a href="mailto:judith.ellis@barnet.gov.uk">judith.ellis@barnet.gov.uk</a> and Richard Malinowski, 020 8359 7359 <a href="mailto:richard.malinowski@barnet.gov.uk">richard.malinowski@barnet.gov.uk</a>

## **1. RECOMMENDATIONS**

- 1.1 That the Committee take into account the information contained in the public and the exempt reports and confirms the authority to grant a lease of the pavilion in Cherry Tree Wood to Mr Sarfaraz Dostezad.**
- 1.2 That the Committee note the Finchley & Golders Green Area Environment Sub Committee's representations resulting from objections received following the publication of a Notice under Section 123(2)(A) of the Local Government Act 1972.**

## **2. RELEVANT PREVIOUS DECISIONS**

- 2.1 Delegated Powers Report dated 9 July 2012 reporting the terms of the letting of the pavilion to Mr Sarfaraz Dostezad.
- 2.2 Finchley & Golders Green Area Environment Sub Committee 16 October 2012 (Decision Item 14) - resolved to make the following representations to the Executive in relation to the proposed grant of a lease of the pavilion in Cherry Tree Wood, Brompton Grove, N2:
  - (i) details are provided regarding the vehicular access to the cafe
  - (ii) concerns about any potential loss of trees
  - (iii) the cafe will not be open outside the park opening hours
  - (iv) only the lessee, his family or his employees will be allowed to sell food/refreshments at the cafe
  - (v) that sufficient due diligence has been undertaken in the proposed grant of the lease.

## **3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS**

- 3.1 The Corporate Plan 2012-13 has a corporate priority of 'Better Services with Less Money'. A key principle of the medium term financial strategy is to continually review the use of council assets so as to reduce the cost of accommodation year on year and to obtain best consideration for any surplus assets to maximise funds for capital investment and/or the repayment of capital debt. This letting does this by producing a rental income and the refurbishment of an empty and dilapidated property.

## **4. RISK MANAGEMENT ISSUES**

- 4.1 There are no policy considerations and officers do not anticipate significant levels of public concern. If the Council does not proceed with the letting then an empty building attracts the obvious detrimental nuisances such as vandalism and arson and will eventually require demolition. To offset the risks of further vandalism, Greenspaces have installed fencing around the building. However this has been breached on a number of occasions involving further vandalism and on at least one occasion a squatter.

## **5. EQUALITIES AND DIVERSITY ISSUES**

- 5.1 The property was widely marketed such that it was open to any category of persons to submit a bid, irrespective of race, sex, disability, sexual orientation, marital status, transgender, age, religion or religious belief. Further, the Council's Equalities Policy takes account of the Council's statutory duty to

promote equal opportunities and to eliminate discrimination and inequality amongst persons of different race, gender and disability. The proposed disposal has been evaluated against the principles in the Equalities Policy and no adverse implications for any, specific, equalities group has been identified.

## **6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for money, Staffing, IT, Property, Sustainability)**

- 6.1 The prospective tenant will be spending a considerable sum on the repair and refurbishment of the building. Furthermore the Council will benefit from the annual rent detailed in the exempt report with the responsibility for repair and maintenance being passed to the tenant. The only other options would be for the Council to repair and maintain the building at considerable expense or else to demolish and a community asset with potential would be lost.
- 6.2 The property has been marketed for a number of years and the grant of a lease to the highest bidder will ensure compliance with the best consideration requirements of Section 123 of the Local Government Act 1972, as referred to in section 7.1 below.

## **7. LEGAL ISSUES**

- 7.1 Local authorities are given powers under Section 123(1) of the Local Government Act 1972 (as amended) to dispose of land held by them in any manner they wish, including the grant of leases. The only constraint is that, except with the consent of the Secretary of State, a disposal must be for the best consideration reasonably obtainable.
- 7.2 Section 123 (2A) of the Local Government Act 1972 (as amended) provides that a local authority may not dispose under Section 123(1) of that Act of any land consisting or forming part of an open space unless, before disposing of the land, they cause notice of their intention to do so to be advertised for two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider any objections to the proposed disposal which may be made to them.
- 7.3 If the Committee confirms the recommendation to grant a lease of the pavilion, the lease will contain the terms detailed in this and the accompanying exempt report.

## **8. CONSTITUTIONAL POWERS**

- 8.1 Council Constitution, Part 3, Responsibility for Functions – section 2 details the terms of reference of the Council’s Area Environment Sub-Committees. Section 5.9 provides that where an area environment sub-committee is discharging executive functions a reference up can only be made to the Executive.
- 8.2 Council Constitution, Part 3, Responsibility for Functions - states in paragraph 3.6 the functions delegated to the Cabinet Resources Committee including all matters relating to land and buildings owned, rented or proposed to be acquired or disposed of by the Council.
- 8.3 Council Constitution, Part 4, Management of Real Estate, Property and Land, states in Paragraph 7 (i) that “Whenever a decision is taken by the Executive

or the relevant Director acting under delegated powers to advertise the possible disposal or appropriation of open space land, the Director or designated officer shall report the matter to the next relevant Area Environment Sub-Committee to enable it to decide whether it wishes to make representations to the Executive in relation to the disposal of the open space land”.

- 8.4 The Council’s Constitution in Part 4, Council Procedure Rules, Management of Real Estate, Property and Land, states in paragraph 19 that all recommendations for approval of the sale price and other terms of disposal must contain a statement from the Chief Valuer or, if appointed, from suitably qualified external agents that the Council will obtain the best price which can reasonably be obtained or that there is approval through the General Consent or that the consent of Central Government has been obtained or will be sought to enable the disposal of the property to proceed as recommended.

## **9. BACKGROUND INFORMATION**

- 9.1 Property Services have been requested by Greenspaces to market a number of vacant buildings located in the Council’s parks and open spaces. This particular building was originally used as a sports pavilion and changing rooms but since the playing fields in the park often became waterlogged during the winter months this use ceased. Subsequently it was used for a short time as a nursery but then became vacant and has deteriorated over the years. The building is now derelict and fenced off for safety reasons and consequently has proved difficult to let and the only other option is to demolish. Nevertheless the pavilion has character and is adjacent to a children’s play ground and in the opinion of officers once refurbished would add considerably to the facilities available in the park.
- 9.2 The park is currently served by a small 150 sq ft (13.93 sq m) modular kiosk that was leased to Sally Anne Wigfield. The lease on the kiosk has now expired. If the Committee confirms the recommendation to grant a lease of the pavilion the tenant will be permitted to remain under a Tenancy at Will until the pavilion café opens. Once the letting of the pavilion has been concluded, the Tenancy at Will will be determined and the kiosk will be relocated to another park.
- 9.3 The premises comprise a pavilion of 1,044 sq ft (97 sq m) with a covered veranda of 511 sq ft (47.5 sq m) at the front giving a total area of 1555 sq ft (144.5 sq m). Thus it is larger than the existing kiosk and will also provide protection from the elements thus extending its use to the winter months.
- 9.4 The premises have been marketed a number of years and in the past several proposals, mainly for nurseries were received. A nursery use would not be approved by planners as this would give rise to traffic issues along Brompton Grove, an unadopted, unmade up and unlit road at the rear of the park. During the last two years discussions have taken place with the existing kiosk operator and various proposals were put forward and considered by officers but these discussions stalled as the plans were ambitious, expensive and funding was not available.
- 9.5 During the past year further marketing took place and an acceptable offer was eventually received. The operator of the kiosk also submitted a proposal but this

was below the offer received from Mr Sarfaraz Dostezad approved by the Delegated Powers Report dated 9 July 2012. As the land is held as public open space, notice of the proposed disposal was advertised in the Barnet Press for two consecutive weeks on 28<sup>th</sup> June and 5<sup>th</sup> July 2012. Notice of the proposed disposal was also posted at the property. These required that any objections to the letting were to be made to the Council by 13<sup>th</sup> July 2012. A copy of the Notice appears at Appendix 1.

- 9.6 The objections received arising from the Notice were reported to the Finchley and Golders Green Area Environment Sub Committee ('F&GGAESC') at its meeting on 16 October 2012. As summarised in paragraph 2.2 above, the F&GGAESC resolved to make representations to the Executive in respect of the proposed lease on five grounds. This report asks the Committee to note the representations and to seek confirmation to the letting.
- 9.7 The extent of the letting is the building shown edged red on the lease plan in Appendix 2. The blue and green areas shown on the plan are the permitted external seating areas. The green area is part of the footpath and the blue area comprises soft ground where the tenant will be permitted to place a hard surface, subject to any Greenspaces requirements.
- 9.8 In respect of item (i) of the F&GGAESC representations, a right of way for vehicle deliveries is shown coloured brown on the lease plan. This leads from Summerlee Avenue, and so access will not be from Brompton Grove. The lease of the premises will, amongst other terms, be made subject to the provisions of the council's standard Catering Specification. An extract from the Catering Specification dealing with deliveries is attached as Appendix 6. As will be seen, along with Council vehicles that access the park for maintenance purposes, delivery vehicles will be limited to a maximum speed of 5 mph with their hazard warning lights flashing.
- 9.9 As regards item (ii) of the F&GGAESC representations, only the building shown edged red on the plan is to be demised, with rights to place table and chairs in the designated green and blue areas. The tenant will not have rights to carry out works beyond his demised area and so will not be able to cut down or lop any trees. In addition Greenspaces have confirmed there are no trees of any consequence in the vicinity of the pavilion.
- 9.10 As for item (iii) of the F&GGAESC representations, the proposed terms are for a lease for a period of 25 years on a full repairing and insuring basis, contracted out of the Landlord and Tenant Act 1954, the permitted use being as a café with the trading hours being restricted to the usual park opening hours. The property will be repaired by the tenant and minor changes externally comprising either new front or café style doors are proposed to be installed, as shown on the drawing in Appendix 4. The financial terms of the lease have been included in the exempt part of this report. It should be noted that the offer from the prospective tenant is subject to his obtaining planning permission. The planning consent will contain appropriate provisions regarding trading hours.
- 9.11 The Council's Chief Valuation Officer has confirmed that the prospective tenant's offer complies with the Council's statutory duty to obtain the best consideration reasonably obtainable.
- 9.12 Officers have been informed by the prospective tenant that the menu will be

varied with a Middle East and Mediterranean cuisine, salads and vegetarian options, sandwiches and pastries. It will not be a pizzeria as appears to be the concern of a number of objectors.

- 9.13 Following the Notice of the proposed disposal being advertised, 18 communications were received which are summarised in a table under Appendix 3. Of these 10 are considered as objections and the remaining 8 as regarded more as representations or observations relating to the loss of the kiosk and the use of the pavilion as a pizzeria. As indicated in paragraph 9.12 the prospective tenant's proposals do not involve a pizzeria or the carrying out of pizza deliveries. Two of the objections to the proposed letting referred to an entirely different person and can be ignored.
- 9.14 The F&GGAESC also commented, at item (iv) of their representations, on the possibility of restricting the running of the pavilion café to the prospective tenant or members of his family and employees and, at item (v), whether sufficient due diligence has been carried out. As regards item (iv), officers consider that restricting the running of the café or indeed any business would be a totally unreasonable restriction. There is no such restriction in leases of other park cafes granted by the council, and indeed the current kiosk operator employs staff to assist in the running of her business. Furthermore assignment of leases is generally allowed in the event of a tenant wishing to sell his business; the intention for the proposed pavilion lease is to allow assignments subject to the council's consent. As regards item (v), status enquiries of the prospective tenant have been carried out including a bank reference and these are in order. The previous and current Principal Valuers have met the tenant and inspected his existing business located on the High Road East Finchley. Also a rent deposit is being obtained.
- 9.15 The kiosk currently located in the park was intended as a temporary facility as it was hoped that in time the pavilion would be refurbished and provide these facilities. It is the opinion of officers that the park cannot support two cafes and so the kiosk currently operated by Sally Anne Wigfield will have to close once the pavilion opens for business. Greenspaces will relocate the kiosk to another park where there are currently no catering facilities. Thus the rent for the kiosk, as detailed in the exempt report, will cease to be payable but should be recouped on another site.

## **10. LIST OF BACKGROUND PAPERS**

10.1 None

<b>Cleared by Finance (Officer's initials)</b>	<b>MC</b>
<b>Cleared by Legal (Officer's initials)</b>	<b>SWS</b>

Appendix 1 - Section 123 Advertisement

**LONDON BOROUGH OF BARNET**

COMMERCIAL DIRECTORATE

SECTION 123(2A) OF THE LOCAL GOVERNMENT ACT 1972

**Proposed Lease - Pavilion building**  
**Cherry Tree Wood, East Finchley**

NOTICE IS HEREBY GIVEN that the Council is intending to grant of a lease for 25 years for the above pavilion for the use as a cafe.

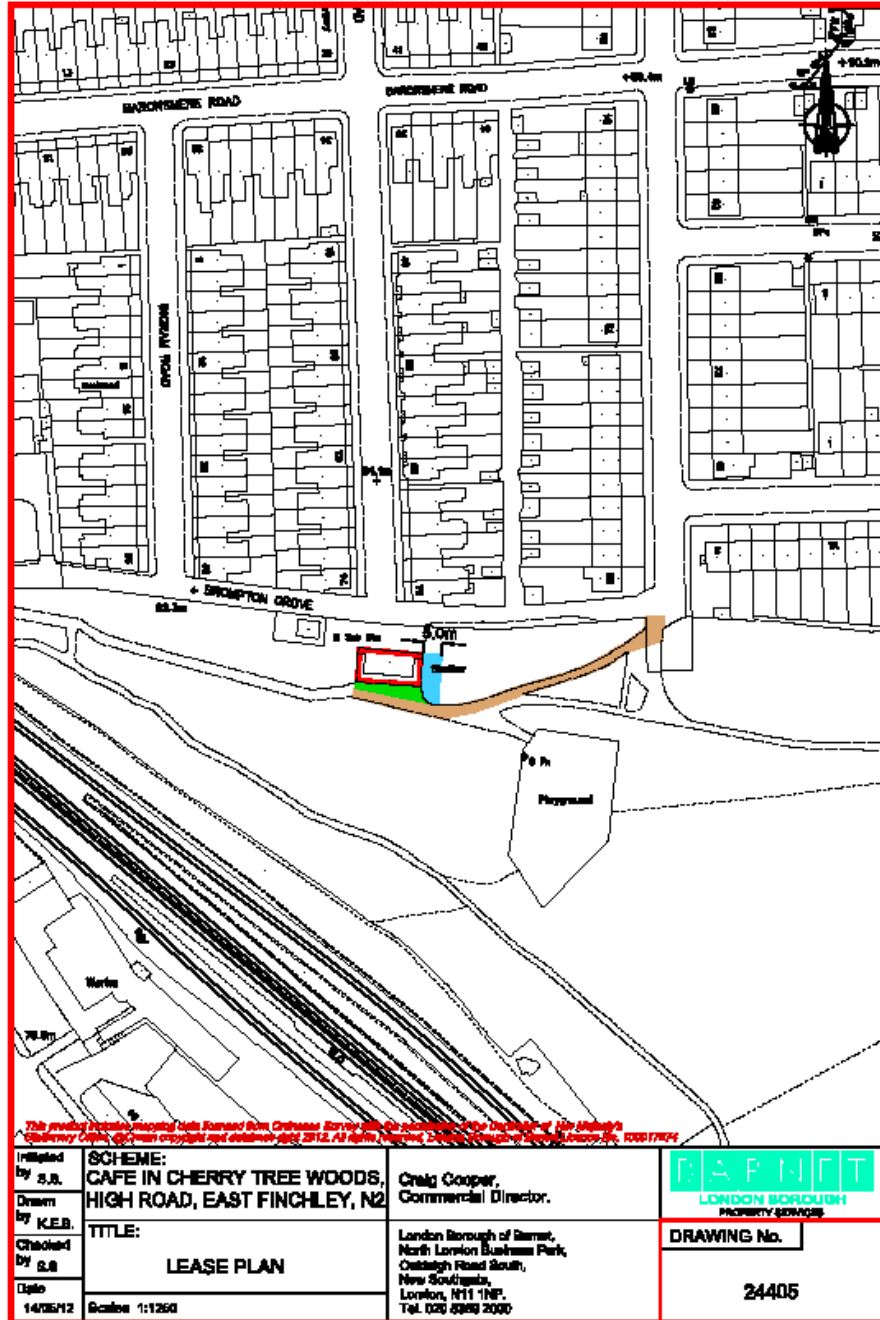
A plan showing the proposed leased area may be viewed at the offices of Property Services, Building 2, North London Business Park, Oakleigh Road South, London N11 1NP. It may be viewed between the hours of 9.00 am to 5.00 pm Mondays to Fridays (excluding public holidays).

Before making any further decision on the proposal, the Council will consider any written representations received. All written representations, which should be addressed to the interim Assistant Director of Commercial Services, 1<sup>st</sup> floor, Building 2, North London Business Park, Oakleigh Road South, London N11 1NP (quoting reference: Property Services Disposal of Cherry Tree Wood) must arrive no later than 5pm, 13<sup>th</sup> July 2012.

Dated this day 25<sup>th</sup> June 2012

Mark Peat  
Interim Assistant Director or Commercial Services  
1<sup>st</sup> Floor Building 2  
North London Business Park  
Oakleigh Road South  
London N11 1NP

# Appendix 2 - Lease Plan



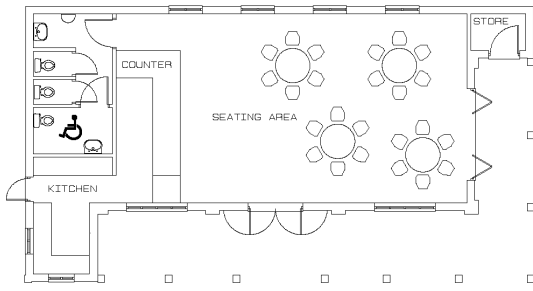
Prepared by <b>S.S.</b>	<b>SCHEME:</b> <b>CAFE IN CHERRY TREE WOODS,</b> <b>HIGH ROAD, EAST FINCHLEY, N2</b>	<b>Craig Cooper,</b> Commercial Director.	
Drawn by <b>K.E.B.</b>	<b>TITLE:</b> <b>LEASE PLAN</b>	London Borough of Barnet, North London Business Park, Oakleigh Road South, New Southgate, London, N11 1NP. Tel. 020 8989 2000	
Checked by <b>S.S.</b>	Scale: 1:1250	<b>DRAWING No.</b> <b>24405</b>	
Date <b>14/05/12</b>			



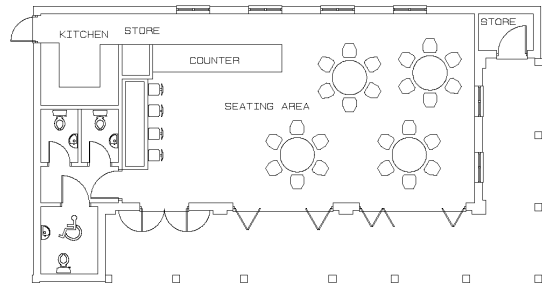
### Appendix 3

<b>Communication</b>	<b>Date</b>	<b>Summary of Objections and Representations</b>
Letter	05.07.2012	Preference for pavilion to be demolished and site restored to woodland as change of use will alter character and tranquillity of the park.
Letter	06.07.2012	Existing café provides appropriately scaled facility. Extra traffic, noise, smells, litter
Letter	07.07.2012	Barnet should adopt and a condition that lessee makes good Brompton Grove. Best to demolish.
Letter	07.07.2012	Against Pizza use, pizza boxes and rats
Letter	08.07.2012	Too many cafes in High Street, rats, noise and cooking smells will spoil peace and quiet. Resurfacing Brompton Grove endanger users. In a dangerous state. Return to natural state.
Letter	08.07.2012	As above
Letter	10.07.2012	No proper consultation
Letter	11.07.2012	Whether tenant is fit person
Letter	11.07.2012	Written by Tenant of Kiosk
Letter	10.07.2012	No consultation
Email	10.07.2012	Concerns re existing kiosk – tenant works with Tree house
Email	10.07.2012	Concerns re existing kiosk
Email	10.07.2012	Concerns re existing kiosk - Pizza proposal
Email	10.07.2012	Concerns re existing kiosk
Email	10.07.2012	Concerns re existing kiosk - Pizza proposal
Email	18.07.2021	Concerns re existing kiosk - Pizza proposal
Email	28.07.2012	Concerns re existing kiosk - Pizza proposal
Phone	13.07.2012	Further information requested. Subsequent visit to inspect plans
Visit to NLBP	02.07.2012	Inspect plan

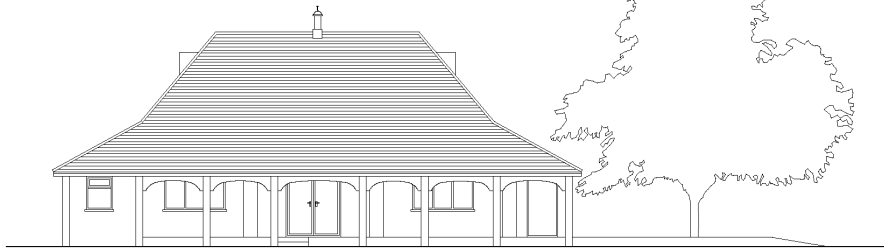
# Appendix 4 - Tenant's Proposals - Preliminary Drawing



PROPOSED PLAN (A)



PROPOSED PLAN (B)



PROPOSED FRONT ELEVATION

No.	Date	By	Revised
<b>Project</b>			
<b>Site Address</b>			
CHERRY TREE WOOD PAVILION EAST FINCHLEY NS			
<b>Site Use</b>			
CONVERSION OF PAVILION TO BOUTIQUE			
<b>Drawing Title</b>			
PROPOSED PLANS AND ELEVATION			
<b>Scale</b>	1:50	<b>Date</b>	13/11
<b>Drawn by</b>	AK	<b>Checked by</b>	AK
<b>Alan Cox Associates</b>			
ARCHITECTS & PLANNING CONSULTANTS			
TEL: 020 - 846 - 7777			
FAX: 020 - 856 - 9556			
<b>Site No.</b>	20161	<b>Doc.</b>	

Appendix 5 - Photographs – The pavilion



Existing temporary kiosk currently leased to Ms Sally Anne Wigfield



Access into park from Summerlee Avenue



Brompton Grove



## Appendix 6 - Extract from Catering Specification

### **Vehicles**

4.29 The Tenant will be permitted to bring one vehicle onto site for the purposes of deliveries and collections. The vehicle can remain in the park whilst the Tenant carries out this function for a period of up to 15 minutes. The Tenant is not permitted to park a vehicle next to the café.

4.30 Vehicles must travel at not more than 5 mph in the park and must display hazard warning lights.

4.31 Vehicles which reverse only with aid of mirrors and accompanied with a warning bleeper or be guided by a pedestrian assistant.

4.32 The Tenant must ensure the safety of all park users when driving in the park or taking deliveries. Attention is drawn to the additional risk posed by the fact that vehicles crossing public parks will not be expected by park users.

4.33 Accidents that occur within the park shall be reported to the Environmental Services (020 8359 7820), NLBP Building 4, Oakleigh Road South, N11 1NP either by telephone or in writing.