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Meeting	Cabinet Resources Committee
Date	16 February 2006
Subject	Sunny Hill Park, Hendon NW4 - Restaurant Development.
Report of	The Leader of the Council (substituting for the Cabinet Member for Environment and Transport)
Summary	This report illustrates the development of the existing park café as proposed by the current occupier. It seeks a determination of the acceptability of the proposal and if the proposal is not acceptable, it seeks a determination of what would be acceptable.

Officer Contributors	Interim Head of Environmental Services Principal Greenspaces Manager
Status (public or exempt)	Public (with separate exempt report)
Wards affected	Hendon Ward.
Enclosures	Site location
For decision by	Cabinet Resources Committee
Function of	Executive
Reason for urgency / exemption from call-in (if appropriate)	Not applicable

Contact for further information: Matthew Mardling, Principal Greenspaces Manager,
Telephone No 8359 7823

1. RECOMMENDATIONS

- 1.1 That the Committee note the steps taken by officers of the Council to conclude negotiations with the occupier of Sunny Hill Park café as to the terms of his occupancy.**
- 1.2 That the Committee instruct officers not to agree to enter into a lease with the occupant upon the terms proposed by him and set out in 8.8 (i) to 8.8 (iv) in this report.**
- 1.3 That the Committee instruct officers how the committee wish this matter to proceed.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Action taken under delegated powers, Chief Recreation Officer CR/2001/024. Acceptance of tender and agreement to lease the kiosk.
- 2.2 Conditional Planning approval W04305B/02 granted 29th January 2003. To allow an extension of the existing building by approximately 100 sq m. subject to a range of conditions including:
 - (i) The materials to be used in the construction of the external surfaces of the building(s) shall match those used in the existing building(s). Reason: To safeguard the visual amenities of the building and the surrounding area.
 - (ii) The use hereby permitted shall not be open to customers before 9.00am or after 9.00pm on weekdays or before 9.00am or after 9.00pm on Sundays. Reason: To safeguard the amenities of occupiers of adjoining residential properties.
 - (iii) No deliveries shall be taken at or dispatched from the site on any Sunday, Bank or Public Holiday or before 9.00am or after 6.00pm on any other day. Reason: To prevent the use causing an undue disturbance to occupiers of adjoining residential properties at unsocial hours of the day.
 - (iv) The premises shall be arranged to minimise the risk of noise and nuisance to nearby properties. Reason: To ensure that the proposed development does not prejudice the enjoyment of neighbouring occupiers of their properties.
 - (v) The building shall be constructed so as to provide adequate sound insulation against internally generated noises, in accordance with a scheme to be submitted and approved in writing by the Local Planning Authority prior to the commencement of the development. Reason: To protect the amenities of occupiers of neighbouring residential properties.
- 2.3 Hendon Area Environment Sub-Committee, 6th December 2005. Disposal of public open space reported for noting that there were no objections to the advertised disposal.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 Working towards the Council's priority of "A Cleaner Greener Barnet" by improving the standards of Greenspaces. The presence of quality catering facilities supports the Premier Parks Strategy.
- 3.2 The Cabinet Report of 22nd March 2004 of the Green Spaces Best Value Review of March 2004 stated "the need to ensure that all cafes and potential cafes are leased".

4. RISK MANAGEMENT ISSUES

- 4.1 If the building was vacated it is likely to become a target for vandalism, and there maybe an increase in anti-social behaviour within the vicinity.
- 4.2 The proposed tenant has an established catering business at Sunny Hill Park. He has provided satisfactory references and proposes to invest a substantial amount of money to extend the building. Therefore, the financial risk to the Council in proceeding with this proposal is considered to be low.
- 4.3 If the lease can not be completed the Council would need to initiate action to recover outstanding reasonable costs of occupation including legal costs.
- 4.4 There is a risk that, given the proposed scale of the development and proposed use, the café becomes a destination in it own right rather than a facility supporting the principal function of Sunny Hill Park.
- 4.5 Potential disturbance to local residents caused by the late night departure of customers.
- 4.6 Further within the exempt report.

5. FINANCIAL, STAFFING, ICT AND PROPERTY IMPLICATIONS

- 5.1 None beyond those set out in the exempt report.

6. LEGAL ISSUES

- 6.1 As set out in the public and exempt reports in relation to the various terms of the proposed lease.

7. CONSTITUTIONAL POWERS

- 7.1 Constitution - Part 3 Responsibility for Functions - Section 3.6 Functions delegated to the Cabinet Resources Committee - All matters relating to land and buildings owned, rented or proposed to be acquired or disposed of by the Council.

8 BACKGROUND INFORMATION

- 8.1 In May 2000, Mr Grunberg successful tendered for the occupation of a small catering kiosk. This was available following the departure of the previous tenant who had occupied since 1996.
- 8.2 Following this successful application Mr Grunberg entered negotiations to have the adjacent building also converted for his occupation. The work was concluded in March 2001, and he subsequently commenced occupation of that building. Since that time Mr Grunberg has developed a successful business which has had a positive impact on the park. This has helped to remove undesirable elements to the benefit of adjacent residents.
- 8.3 In May 2002, Mr Grunberg applied for planning permission to expand the facility into a more substantial restaurant. This was granted with conditions in January 2003.
- 8.4 Publicity surrounding the launch of his business in July 2001, which included a proposal to create a race track for battery operated cars, live music concerts and barbeque evenings; resulted in the creation of a protest group. These proposals however did not occur and hence the group dissipated. At the time of the planning application petitions were received both for and against the development. Totalling 386 for and 62 against.
- 8.5 Since March 2001 negotiations have been on-going regarding the terms and conditions associated with Mr Grunberg's occupancy.
- 8.6 While the existing café facility has proved very successful and an asset to the park, officers have concerns about the proposed expansion of the operation. Particular concern is attached to the following: the hours of opening, the sale of alcohol with food, the playing of live music, the size of the proposed building once the additional enclosed canopies are added, and the pressure to expand the existing car park and associated implications for access from the A41, which maybe difficult to resist if the venture is successful.
- 8.7 The reason these factors generate concern, is that they are aspects of a business which is targeted at a wider audience than just park users, and this may lead to a development which is out of keeping with its surroundings. This would be especially true of late night winter opening.
- 8.8 The following heads of terms represents the current and final position being requested by Mr Grunberg:
 - (i) Property to be the buildings and land known as Sunny Hill Café, Sunny Hill Park, NW4. This is to include the existing café building, the land required for the development as submitted for planning permission, plus the additional land required for proposed enclosed canopies annexed to the front of the building, which do not have the benefit of planning permission. The existing built structure covers approximately 80 sqm. The proposal consists of an additional approximate 100 sqm for the building and a further 120 sqm for the enclosed

canopies. The canopies will need planning permission as they constitute a material change.

- (ii) Subject to securing an appropriate licence, alcohol will be allowed to be sold with food only. No tobacco products will be sold.
- (iii) The tenant is requesting opening hours from 9 am to 11:30 pm, throughout the year. The terms as requested are outside the time limits imposed as a condition of the planning consent.
- (iv) The occupier is requesting permission to stage live music with amplification maintained at a reasonable level.

General clauses

- (vi) Use will be class A3 restaurants and cafes, as defined by the Town and Country Planning (Use Classes) (Amendment) (England) Order 2005 made under the Town and Country Planning Act 1990.
- (vi) Lease to be for 30 years from 10 June 2001.
- (vii) Rent to be as stated in the exempt report. The rent to be reviewed on 10th June 2011 and every 5 years thereafter.
- (viii) Rent to represent the value of the existing building and the additional land provided to enable the development.
- (ix) Tenant to be responsible for full repairs of the property. The Council will insure the property and the tenant will reimburse the Council through an insurance rent.
- (x) Assignment of the whole will be permitted subject to landlord's consent, not to be unreasonably withheld. Assigning of part or subletting the whole or of part of the premises will not be permitted.
- (xi) No residential use of the property will be allowed.
- (xii) Tenant to undertake building works to extend the building. Works to be:
 - As per planning permission granted on 29th January 2003 (application number W04305B/02) for "Extension to existing café".
 - Completed within two years from the date of the completion of the lease.
 - Disregarded for rent review purposes for a term of 30 years from the 10th June 2001.
- (xiii) Tenant to clean maintain, repair and keep in a safe and usable condition, to the reasonable satisfaction of the Council, the public lavatories which form part of the building. The general public to have access to the lavatories at all times while the café is open. The toilets to be upgraded to a standard which is accessible to the disabled and may be accessed with out passing through the restaurant.
- (xiv) The tenant will ensure litter within a 50m radius of the café and within a 10m of any additional litter bins installed as part of the development, is regularly removed.

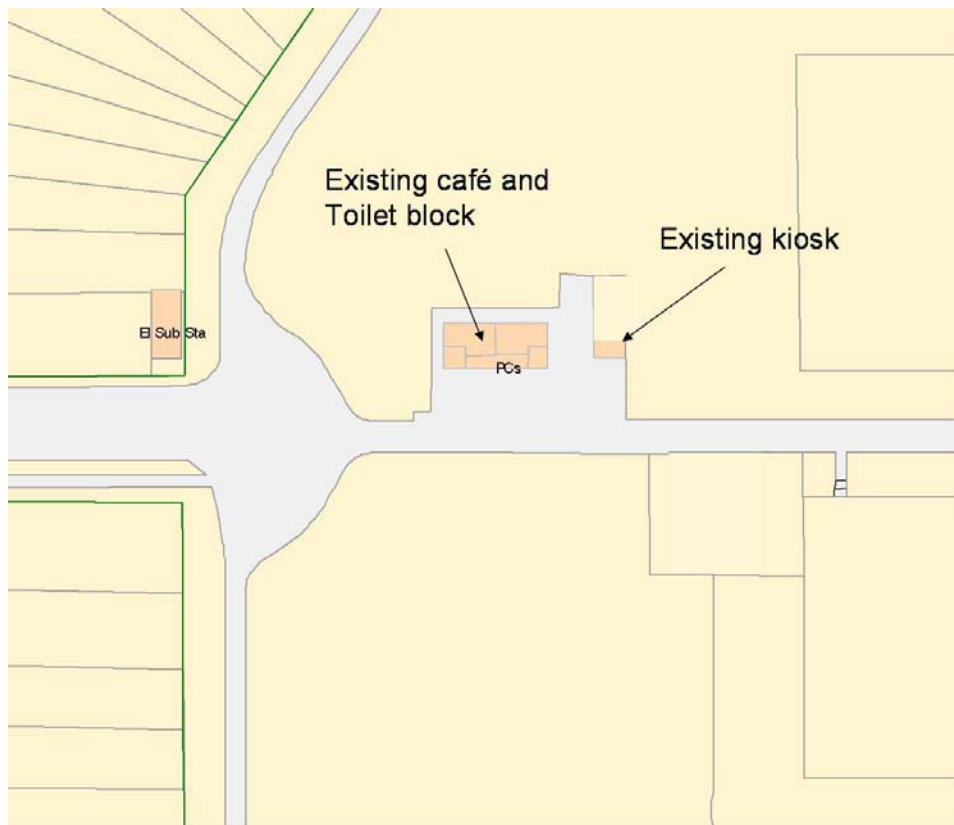
- (xv) The lease will not be excluded from the security of business tenure provisions contained in Part II of the Landlord and Tenant Act 1954 as subsequently amended. As such, upon taking certain procedural steps within fixed time limits, the tenant will be entitled to a new tenancy as of right unless the Council can establish one or more specific grounds of opposition
- (xvi) The proposed extension of the property is on public open space. Accordingly the proposed disposal of the land affected was advertised under S.123 in (2A) of the Local Government Act 1972, in August and September 2004. There were no objections, and this has been reported to the Hendon Area Environment Sub-Committee.
- 8.9 Should members be minded to approve a development of a scale which is acceptable to the Council. A small addition to the existing car park will be undertaken by the Council at the occupier's expense. It should be noted that the tenant was seeking a substantially larger car park to be located behind his café building, which could accommodate an additional 70 cars. If approval is granted for the scheme and this exacerbates the current parking and access problems, there maybe irresistible pressure to further enlarge the car park. There is no resource allocated to the potential work and it would not normally be considered a priority for investment.
- 8.10 It is to be noted that as part of the development the tenant does not expect that the vehicular access from the A41 Watford Way will be improved. However it should also be noted that the tenant has been campaigning for this to be improved. If the scheme is approved there is likely to be further pressure for these improvements. No Council resources are currently available for such work and it is unlikely that the tenant's development alone could fund these changes.
- 8.11 Though approval for the access improvements onto the A41 would ultimately be needed from Transport for London, the Senior Highways Design Engineer reports that the maximum car park proposed, would require a two way vehicle entrance with a footway. Due to the presence of the subway this could not be achieved without considerable expense.

9. LIST OF BACKGROUND PAPERS

- 9.1 Any person wishing to inspect back ground papers in connection with this report should contact Matthew Mardling on 020 8359 7823.
- 9.2 Plans as submitted for planning permission.

Legal: SS
CFO: CM

Sunny Hill park Café – general location



Sunny Hill Park Café – proposed extension

