

Appendices: 3



NORTHAMPTON
BOROUGH COUNCIL

CABINET REPORT

Report Title

Abington Park Café: Revised Lease and Licence

AGENDA STATUS:

PUBLIC

Cabinet Meeting Date:	12th April 2017
Key Decision:	No
Within Policy:	Yes
Policy Document:	No
Directorate:	Regeneration, Enterprise & Planning
Accountable Cabinet Member:	Cllr Tim Hadland, Cabinet Member for Regeneration, Enterprise and Planning
Ward(s)	Abington

1. Purpose

1.1 Following the advertisement of the proposed disposal of an area of public open space this report now asks for Cabinet to consider the objections received and seeks authority for the surrender of the existing lease, the grant of a new, lease and a licence for the siting of tables & chairs for Abington Park Café.

2. Recommendations

That Cabinet:

2.1 Receive and consider representations arising from the advertisement of the proposed disposal of public open space in accordance with the requirements of Section 123 (2A) of the Local Government Act 1972.

2.2 Approve the leasing to the existing tenant of an additional area of the Park upon which an extension to the Café has been built and agree that this be effected by the surrender of the existing lease of the Abington Park Café and the grant of a new lease of an extended area shown edged red on the Plan at Appendix 2, to the existing tenant.

2.3 Approve the grant of an annually determinable licence, with conditions, for the placement of tables & chairs within the area shown edged blue on the Plan attached at Appendix 2.

2.4 Authorise the Director of Regeneration Enterprise and Planning, acting in consultation with the Borough Secretary to agree terms based on a commercial arrangement for a new lease and for a licence for the Abington Park Café.

3. Issues and Choices

3.1 Report Background

3.1.1 The Council owns the freehold interest in land on which the Abington Park Café (previously known as the Old Oak Café) is situated. The property has been leased to an operator for many years and was extended at the current tenant's cost some years ago. The current lease expires in 2029.

3.1.2 A further extension to the café, which involves an enlarged trading area and store has been constructed which included the development of additional land, which comprises public open space, outside of the tenants current lease. Although this extension enjoys the benefit of planning permission (PA No. N/2015/0421) the tenant wishes to regularise the position.

3.1.3 The tenant has made significant investment in the property including the extension and has requested a further full 25 years lease term to support this expenditure.

3.1.4 The tenant currently provides tables and chairs for the consumption of food and drink in an area that extends beyond the current demise and it is considered desirable to also regularise this situation. Accordingly The Parks and Open Spaces Team has defined a suitable area for the placement of tables as shown edged blue on the plan at Appendix 2.

3.1.5 A licence, determinable annually, and incorporating appropriate conditions for the placement of tables & chairs within the area shown edged blue on the plan at Appendix 2 can be granted which would give the tenant the ability to continue to provide this facility and the Council the ability to regulate the use.

3.1.6 As previously reported and in the interests of transparency Cabinet should be aware that the tenant is a Member of the Council, although clearly not acting in that capacity in relation to this matter.

3.1.7 The additional land which it is proposed to be included in the demise to the tenant is public open space and it has therefore been necessary to advertise the proposed disposal in accordance with the statutory requirements. The Plan at Appendix 1, identifies the area of public open space that it is proposed to dispose of by way of a lease.

3.1.8 The Council received a good response to the Notice of the proposed disposal of open space. Approximately 286 individual representations had been received of which 276 of these representations (approximately 96.5%) did not object to the

disposal by way of lease, whilst 9 representations, (approximately 3.1%), did object to the proposed disposal. One representation seemed to contain both support and objection to the proposed disposal.

3.1.9 Section 123 (A) of the Local Government Act 1972, requires that objections to the proposed disposal of open space be considered before any decision to dispose is taken. That being the case, the *objections put forward in representations* can be summarised as follows:

Probity Objections

The applicant, because he occupies a role as a Councillor, should not be able to benefit from the proposed lease extension.

Inappropriate to use Borough Council Land to further the business of a private business owner and take land away from Abington Park which was bequeathed to the people of Northampton.

Officer Observations

Cabinet needs to be absolutely clear that the applicant has, quite properly, approached the Council in a private individual capacity with a view to regularising a property matter. That being so there are no grounds for disqualifying the applicant in relation to this matter.

Planning Objections

The disposal should have been approved before the planning permission was granted.

The building connected with the proposed disposal is an “eyesore and out of place”.

The extension that has been constructed is an “illegal building”.

Reference to the emerging Northampton Local Plan 2 – Options Consultation Paper where objectives relating to design & public spaces and the management of heritage. Suggestion that the “...Café has increased significantly in scale and scope and is rather ugly and not in keeping with the other traditional buildings contained within the park.

Suggested that the Café is “...inappropriate development within the Conservation Area.

Officer Observations

The planning application has already been determined and permission granted for the Café in its current form. So the building has been constructed with the benefit of planning consent. Although it would have been preferable for the leasing issue to have been concluded earlier, this does not make the building ‘illegal’. It would be unreasonable to seek to use the process of considering a lease extension to revisit a

scheme that already has the grant of planning permission. Constitutionally, Cabinet has no locus in re-visiting the planning application.

Property Objections

The proposed disposal is likely to “set a precedent” for not only Abington Park, but also other parks and open spaces.

Concern that any new lease terms should represent best value.

The proposed term of 25 years is both exceptional and unusual.

The lease should only be granted for ten years.

Suggestion that the “...new lease needs to make it clear that the extension must meet the criteria of the dilapidation process.

Concern about the impact of the existing siting of tables and chairs on the Park.

The public should be consulted on the proposed terms of the licence for the siting of tables and chairs.

Suggestion that the proposed licenced area should be included in the lease and in the area of public open space identified for possible disposal.

The various charitable events supported by the Café should be better controlled and the incorporation of the licensed area into the leased area might be an appropriate way of achieving this control.

Suggestion that there may be “...a number of different areas where the process for offering a new lease may be challenged “. The Concessions Contract Regulations (2016) are cited as an example.

Objection to the ‘disposal;’ because the existing tenant “...should be given every support to continue their role’. (This actually seems to be a comment in support of what has been proposed, but is reported here for completeness).

Officer Observations

There is no reason why this should set a precedent. It is suggested that should there be any similar matters that they be considered on their respective merits.

Should Cabinet be minded to approve the recommendations set out in this report, then officers will negotiate appropriate terms and conditions including the term, in the usual way, having regard to relevant legal and financial requirements and guidance. The tenant has leased the Café since 1990. There is nothing inherently unusual about a 25 year lease.

It is not proposed to dispose of the area identified as being appropriate for the siting of tables & chairs by way of lease, as the Council wishes to be able to apply conditions via a licence that can be terminated, and is renewable annually, at its discretion, as a means of regulating this aspect of the Café's operation.

It is the case that many of the Councils activities and decisions are challengeable. Whilst the Council endeavours to conduct itself in a way that will minimise the chances of successful legal challenges, they will probably continue to be made from time to time. We need to be clear that in relation to this report, Cabinet is being asked to determine property matters.

Other Objections

Suggestion that there is a discrepancy between the Plans used in the Notice and the Plans included in the 16th October 2016 report to Cabinet

Insufficient consultation on the issues involved with appropriate local bodies and national advisory bodies and given this view, that the matter be postponed to allow such consultation to take place.

Officer Comment

The Plan associated with the Public Notice identified the area of public open space that is proposed for disposal. See Plan at Appendix 1.

For the avoidance of doubt, the areas for the proposed new lease and for the proposed licence are shown on the Plan at Appendix 2.

The Public Notice concerning the proposed disposal of public open space, displayed by the Council, including in the Northampton Chronicle and Echo, afforded both the general public and stakeholders the opportunity to formulate and submit representations by the due date.

Prior to this, as part of the planning application process (PA No. N/2015/0421), the extension has already been subject to public consultation.

3.2 Choices (Options)

3.2.1 The Council could choose not to grant a new lease including the additional land sought. As the extension has been completed the Council could seek to take action to require the demolition and removal the extension. This would seem to be a disproportionate approach and it is not recommended.

3.2.2 The Council could choose to agree to extend the area of land leased to the Tenant to include the extension. For practical and legal reasons, it is

suggested that this be done by way of a surrender of the existing lease and the grant of a new lease to include the land identified on the plan within a single lease. If this is done, the Tenant has requested that the new lease be for a period of 25 years. A license to regularise and control the siting of tables and chairs could also be granted. This will be negotiated at a commercial rate. *This is the recommended option.*

3.2.3 The Council could also choose not to grant an annually determinable licence for the placement of tables and chairs, and just agree to grant a new lease. This would not give the Council the level of control that it is looking for in relation to the siting of tables and chairs and it is not recommended.

3.2.4 The Council could, as one of the objectors has suggested, seek to incorporate the area that is proposed to be licenced into a new lease. This is not proposed because it would create property rights that officers do not consider to be appropriate or necessary in relation to the siting of tables and chairs. This option is not therefore recommended.

4. Implications (including financial implications)

4.1 Policy

4.1.1 This report does not set new Policy.

4.2 Resources and Risk

4.2.1 Implementation of the recommendations of this report would increase both revenue income of the Council.

4.3 Legal

4.3.1 LGSS Law will be instructed to progress the lease extension and license should these be approved by Cabinet.

4.3.2 In relation to the proposed disposal of public open space, the process of public advertisement and the consideration of objections is required by S123 (2A) of the Local Government Act 1972, as amended.

4.4 Equality and Health

4.4.1 There are no direct equality and health implications arising directly from the proposed property arrangements. The Café is in an area where it is available to all sections of the community.

4.5 Consultees (Internal and External)

4.5.1 The Parks Service, Property, Legal and Finance have been consulted on the proposed lease and licence of Abington Park Café. The proposed disposal of public space associated with the grant of a new lease was also advertised, as required.

4.6 How the Proposals deliver Priority Outcomes

4.6.1 The proposals contained in this report will increase revenue and capital income to the Council assisting in the delivery of priority outcomes.

4.7 Other Implications

4.7.1 We are not aware of any other implications arising from the recommendations contained within this report.

5. Background Papers

5.1 Agenda Item 13, Cabinet Report, October 2016.

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