


Cabinet 23 July 2014	 TOWER HAMLETS
Report of: Stephen Halsey Corporate Director, Communities, Localities and Culture	Classification: Unrestricted
Museum Gardens Toilet Block and Bethnal Green Shelter	

Lead Member	Shafiqul Haque, Cabinet Member for Culture
Wards affected	Bethnal Green South
Community Plan Theme	Great Place to Live
Key Decision?	Yes

Executive Summary

It is proposed to tender out a lease for a café concession at *Museum Gardens toilet block*. The concession would require a substantial amount of private capital investment to realise given the poor condition of the building and the conversion costs. The lease would be granted on the basis that 100% of this investment is undertaken by the Lessee. The length of the lease needs to be long enough to justify the capital investment which Council officers estimate to be in the region of £250,000. It is proposed therefore that the term of the lease will need to be 15 years. Any less and the business model is unlikely to stack up. The concession would bring in an annual rental income that would be the subject of negotiation with the bidders with the added benefit to the council of new public toilet facility managed by the tenant. It would enhance the park and help to bring in more visitors, keep down ASB, drinkers and rough sleepers.

Also proposed to tender out in similar fashion a lease for the operation of a catering concession at the *shelter in Bethnal Green Gardens*. Again this building is in poor condition and circa £180,000 of capital investment would be required to convert the building and provide concession. It would be the basis of the lease arrangement that 100% of that investment is delivered by the lessee and not the Council. A lease of 15 years has been determined as the term necessary to make the investment sufficiently attractive to secure bidders. It will provide an annual rental income that would be subject of negotiation with the bidders.

- › Proposals outlined above require a Cabinet decision as the lease period proposed for both buildings is over seven years and under current rules constitutes a disposal of parks land.

Recommendations:

The Mayor in Cabinet is recommended to:

1. To tender out a lease of 15 years for a café concession at Museum Gardens toilet block. The length of the lease is a requirement linked to a capital investment estimated at £250,000. The concession would bring in an annual rental income with the added benefit to the council of new public toilet facility managed by the tenant. It would enhance the park and help to bring in more visitors, keep down ASB, drinkers and rough sleepers.
2. To tender out a lease of 15 years for the operation of a catering concession at the shelter in Bethnal Green Gardens in exchange for a capital investment of up to £180,00 and an annual rental income.

1. REASONS FOR THE DECISIONS

- 1.1 The length of the lease is a requirement linked to a capital investment estimated at £250,000. The concession would bring in an annual rental income of around £16,000 with the added benefit to the council of new public toilet facility managed by the tenant. It would enhance the park and help to bring in more visitors, keep down ASB, drinkers and rough sleepers.
- 1.2 The shelter is currently in a poor condition. We have planning permission to create a small café area with estimated building costs of £180,000 which investment would be a requirement of the tender and which is why a long lease is required to attract offers. The benefits to the council would be a capital investment into refurbishing an existing property currently in poor condition and an ongoing income stream from annual rental of around £10,000.

2. ALTERNATIVE OPTIONS

- 2.1 The alternative options for this proposal would be:
 - Wait until the Council could identify the necessary funds to carry out the required works itself and then option on a shorter lease. This would be unlikely given the Medium Term Savings Plan and the need to make budget savings across the council.
 - Do nothing and leave the buildings empty and derelict. This could lead to ASB in and around the buildings and have a negative impact on the surrounding park area.
 - Demolish buildings and landscape locations; this would require a capital investment with on-going maintenance costs. There are no funds currently available for this type of work.

3. DETAILS OF REPORT

- 3.1 The existing toilet block is a single storey brick built building lying within Museum Gardens (Bethnal Green) on the western side of Cambridge Heath Road. The building is separated from the footway along Cambridge Heath Road by a wrought iron perimeter fence. The building is relatively modern but dilapidated and has been closed and disused for many years.
- 3.2 Attempts have been made in the past to demolish the building and re-landscape the site but these met with local opposition from some residents. In February 2013 a meeting was held with representatives of those who had objected to the proposed demolition and it was agreed that the Council would seek a change of use and explore potential for a commercial let of the premises for an alternative use that would integrate some kind of public toilet facility.
- 3.3 Feasibility work indicates that conversion of the property to form a café with public toilet facility would cost in the region of £250k. Under these proposals the successful developer / operator would be required to pay for all of the works and to provide a public toilet facility with agreed operational hours written into the lease. Planning permission for the toilet block works was granted in October 2013.
- 3.5 Planning permission was granted in October 2013.
- 3.6 The **Bethnal Green Gardens shelter** is situated in the northern part of the park. It is currently in poor condition. Planning permission exists for the creation of a small café area which will enhance the park for visitors and improve safety.
- 3.7 A pilot scheme involving a pop up café was run there at the weekends over the summer months of 2013 and this is being repeated in 2014. A smaller set up than the fully developed café it did demonstrate that a café is a viable option in that location.
- 3.8 The benefits to the Council would be a capital investment of around £180,000 (Based on BATs estimate) plus an annual estimated income stream of around £10,000. A competitive tender may achieve more than this.
- 3.9 In both of the above cases it is considered that, in order to attract this level of capital investment, a lease of fifteen years would be required to give sufficient comfort to the market that this level of outlay could be recouped.
- 3.10 The development will be a welcome addition for park users, encourage more use of the park and help deter rough sleepers and drinkers who currently use the shelter.
- 3.11 Both premises have attracted considerable unsolicited interest from commercial operators. There is a data base of 19 people asking to be informed when these premises will be on the market. The trial pop up café in

Bethnal Green Gardens over the summer of 2013 started for just Saturdays but within two weeks had expanded to Fridays due to demand. There is good evidence from existing local economy that the two proposed businesses could be viable additions to the park and local economy.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 The report seeks approval to the proposed leases of the park based buildings in Museum Gardens and Bethnal Green Gardens for a period of up to 15 years. The leases will be granted on the basis that external capital investment is secured in each of the parks to form a café with public toilet facility.
- 4.2 The feasibility work undertaken on both park buildings estimate the cost of conversion on the Museum Gardens toilet block into a café with toilet facilities to be in the region of £250,000, whilst the cost of the conversion in Bethnal Green Gardens Shelter is estimated to cost £180,000. The granting of the leases for 15 years is subject to the investment being undertaken in full by the Lessees. The annual rental income currently estimated at circa; £16,000 for Museum Gardens and £10,000 for Bethnal Green Gardens will be subject to negotiation with the bidders. The rental income achieved will need to be considered as part of the Medium Term Financial Plan and the need for investment in the parks.

5. LEGAL COMMENTS

- 5.1. The proposed grant of the leases will constitute a disposal given they exceed seven year terms. Therefore they will be subject to the provisions of section 123(2A) of the Local Government Act 1972, which prevents the Council disposing of open space land without first advertising its intention in the local press and considering any objections made to the disposal. Any disposal will have to be for the best consideration reasonably obtainable in order to meet the requirements of section 123 of the Local Government Act 1972.
- 5.2. Whilst on the face of it this would appear to be a property based deal, the fact that once the properties have been developed the Council will require a service to be run at the sites means that potentially the operation of the services (and in particular acquiring third parties to provide the services) means that this could represent procurement activity for the purposes of domestic and European legislation. This is particularly true as it could be seen that the “payment” to the Council of renovating the premises is a payment “in kind”
- 5.3. Where the Council is acquiring services it has a duty under section 3 of the Local Government Act 1999 to ensure that it achieves Best Value.
- 5.4. Under the Public Contracts Regulations 2006 (as amended) concession agreements are specifically excluded from the application of these regulations even though the sums involved are otherwise in excess of the relevant threshold. However, case law shows that concessions must be subject to a

reasonable and appropriate level of advertising. This advertising and awarding the concession to the highest scoring bidder will also satisfy the Council's best value obligation under the Local Government Act 1999.

- 5.5. The Council is not prevented from contacting the organisations on the database directly to notify them of this opportunity when it arises. However, this must be also subject to an advert and the Council must be willing to accept interest from parties other than those on the database.
- 5.6. If further consents (such as planning and building control consents) are required in order for this scheme to be a success, any awarded contract must be subject to this as where the Council has a separate statutory duty / function in respect of these consents the Council must not appear to be prejudging these decisions under any contract that it awards or has awarded.
- 5.7. Under any contract that is awarded, the Council must ensure that the winning bidder is responsible for all matters relating to the renovation. In particular the Council must not be responsible for the diversion / provision of utilities as the potential tenant should be responsible for liaising with the relevant statutory undertakers (in respect of gas, water and electricity) to ensure that the sites are properly connected to the various networks. However, the Council is free to determine whether the subsequent supply of these utilities is something that should then be paid for separately or paid by the Council and reclaimed from the tenant.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 The two buildings including the public toilet facility would be DDA compliant
- 6.2 The new facilities would help to bring more visitors into the park and affordability for local people would be part of the criteria
- 6.3 Officers will build into the tender process and marketing of the tender opportunity an emphasis on encouraging existing locally based businesses to apply
- 6.3 Officers build into the tender process opportunities for local employment and training of local residents

7. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 7.1 The scheme will enhance an existing green space.

8. RISK MANAGEMENT IMPLICATIONS

- 8.1 The key risk of failure to get an acceptable bid through a tender process would not result in any financial loss or reputational damage to the Council

9. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 9.1 The introduction of staffed toilets and café into this park would help to reduce ASB.
- 9.2 Bringing the shelter in Bethnal Green Gardens will help reduce rough sleepers and ASB in the park

10. EFFICIENCY STATEMENT

- 10.1 A successful tendering process would result in bringing back derelict premises into use and generating an annual rental income to the council.

Appendices

- Appendix 1 Bethnal Green Gardens Shelter Conversion Design, Access and Impact Statement
 - Appendix 2 Museum Gardens Shelter Drawings
 - Appendix 3 Bethnal Green Museum Gardens Toilet Site Design, Access and Impact Statement
 - Appendix 4 Museum Gardens Toilet Block Drawings
 - Appendix 5 Bethnal Green Gardens Shelter and Museum Gardens Toilet: Equality Analysis Quality Assurance Checklist
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Linked Reports, Appendices and Background Documents

Linked Report. None

Appendices. None

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- Drawings of planned scheme

Officer contact details for documents:

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