

ABERDEEN CITY COUNCIL

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COMMITTEE	Finance and Resources
DATE	17 August 2012
DIRECTOR	Gordon McIntosh
TITLE OF REPORT	Possible proposal for temporary Café at Union Terrace Gardens
REPORT NUMBER:	EPI/12/154

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1. PURPOSE OF REPORT

This report advises the Committee of an unsolicited approach for a temporary lease or licence to operate a café business from a proposed temporary structure to be housed in one of the existing arches in Union Terrace Gardens, under Union Terrace, Aberdeen. The report also advises on the principle of the offer received and the range of factors for the Committee to consider.

2. RECOMMENDATION

It is recommended that the Committee instructs officers to advertise the availability of a lease for a temporary café at Union Terrace Gardens which will satisfy all regulatory requirements.

3. FINANCIAL IMPLICATIONS

Any income would be credited to the Common Good account and it would be for them to determine how this income would be used.

In such a situation officers believe that it is difficult to arrive at an estimate of what the site would be worth for such a short term lease/license and therefore some means of testing the market would provide evidence to quantify this. Were negotiations to take place direct with a single applicant, rather than through an open marketing exercise, it would not be possible to be sure that Best Value had been achieved.;whereas, best value would be demonstrated by competitive tender.

The issue is considered de-minimus by way of State Aid issues. However, in this particular approach, the Council would require to scrutinise the accounts to determine whether there is any possibility that profits will be generated, to ensure that were such a situation to

occur, these profits could be secured as income to the Common Good account.

There is no budget identified for appropriate officers to carry out work associated with this proposed lease.

#### 4. OTHER IMPLICATIONS

Officers across a range of services will have an input to the development of any Lease or Licence transactions by ensuring that any operation satisfies all legal obligations and can operate safely.

#### 5. BACKGROUND/MAIN ISSUES

5.1 This Report advises the Committee of an unsolicited approach to the Council received from Mr Steve Bothwell, Café 52, The Green, Aberdeen, requesting a lease to introduce and operate a temporary café at Union Terrace Gardens.

5.2 This request follows the granting of Conditional Planning Consent for a temporary café by the Development Management Sub-Committee on 14 June 2012. The consent was granted for a period of one year expiring on 14 June 2013 when the structure must be fully removed and the site made good. There may be provision to extend this consent by a new application to that Committee.

#### 5.3 BUILDING WARRANT

In the current proposed layout, the infilling of the arch with timber screening and summerhouse frontage attracts the need for building warrant approval. However, discussions with the applicant will see a change from timber screening to an ironwork infill resulting in the summerhouse being classed as a detached building. This change will dispense with the need for building warrant approval. However further clarification of the current planning permission will be required as a result of such a material change.

5.4 In summary the proposal includes the erection of a timber summerhouse cabin under the central arch at Union Terrace Gardens below the Robert Burns Statue on Union Terrace. The temporary structure would provide indoor seating for 15 persons and with the adjacent hardstanding/footpath area, additional external seating for 20 persons. Food would not be prepared in the cabin as it is to be prepared off-site and transported in, along with a selection of hot and cold drinks. Service is to be provided by volunteer groups.

The applicant proposes that profits from the sale of goods be ring fenced towards the costs of the upkeep and improvement of the plants in Union Terrace Gardens. At this time no business plans have been provided by, nor requested from, the applicant as it is not yet clear to

whom the lease would be granted. Mr Bothwell has made the initial approach but there is also mention of voluntary parties.

- 5.5 To date, based on the planning application no provision is identified for staff or patron welfare/hygiene facilities, neither potable water supplies nor drainage connections. However, power for lighting would be provided by a temporary generator at the rear of the Arch.

A local, simple CCTV system is to be installed to deter vandalism but it is unclear how this system is to be powered out-with operating hours and where images etc are to be recorded to.

- 5.6 The approach is described as unsolicited, as the Council has not previously identified such a use/service to be provided in Union Terrace Gardens. Therefore no forward operational planning has been carried out to determine the requirement, type or location of a café facility.

- 5.7 In situations where the Council considers such a service is of value and is affordable within its budget, the Council generally seeks bids from operators/providers to ensure it can demonstrate that it is meeting its obligations in terms of Best Value. Examples of comparable operations in other city parks where operations have been exposed to some form of 'competition' are Duthie and Hazlehead Parks.

- 5.8 In developing a comprehensive operating lease/license the terms and conditions would require a successful applicant to fully comply with all statutory consents and regulations for the provision and operation of a temporary café. This may include the need to obtain a Building Warrant and Environmental Health approval. The current approach and proposals have not fully addressed these issues. There are obvious concerns about hygiene facilities for staff and customers and how any emissions from temporary energy sources will be controlled and dispersed.

- 5.9 This particular approach suggests that profits from sales be ring fenced towards contributing to funds for enhanced planting in Union Terrace Gardens. Whilst this is agreeable to the Environment Service, who maintains the Gardens, it is usual practice in a lease arrangement to agree a market rent to be credited to the Council's finances, in this case the Common Good Account.

- 5.10 The Committee may take the view that this is an innovative proposal and that the temporary provision of a café in the Gardens is of benefit to the public. The nature of the planning consent is such that the facility will have to be moved in a relatively short period of time with costs borne by the tenant/occupier. Given the 'short' term nature of the proposal it could be construed as a benefit to the City until alternative plans are firmed up and developed.

- 5.11 Given the constraints within the planning consent, the significant challenges in meeting suitable standards of construction and safe operation, officers would consider that any lease or license has to be structured in such a way to enable the Council to be satisfied that the project has been fully thought through from start to finish, can be operated safely and that the presence of the temporary structure can be managed in such a way as to not generate problems of anti-social behavior in this part of the city centre. In order to achieve all of these conditions satisfactorily officers believe that a short period of time should be provided for potential bidders to submit detailed proposals for consideration which would allow for a report back to Committee in December with a recommended way forward with a preferred bidder. This would ensure that our best value obligations are addressed and we would have sufficient time to work with the preferred bidder to have all matters addressed in time for the facility to be open for spring 2013.

## 6. IMPACT

Corporate – Within the Single Outcome Agreement there is a requirement on the Council to effectively use and maximise its assets.

Public – It is extremely likely that this current offer, if accepted, will invoke considerable debate from the public on the current status of the park and the disused public toilets.

## 7. BACKGROUND PAPERS

Site Plan

## 8. REPORT AUTHOR DETAILS

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