



Executive
4th August 2008

**Report from the Director of
Environment and Culture**

Wards Affected:
Roundwood, Harlesden

Petition - Roundwood Park Café

Forward Plan Ref: E&C-08/09-007

1.0 Summary

1.1 This report is in response to a petition presented to Brent Council with regard to the café in Roundwood Park.

2.0 Recommendations

- 2.1 That Members note the content of the report.
- 2.2 That Members reconfirm the Council's long standing policy for seeking open market rent when leasing this type of facility.
- 2.3 That Members note that the terms of the lease signed by the tenant includes a requirement to pay to the Council at least an open market value rent, including insurance rent.
- 2.4 That Members instruct officers to continue to ensure that an appropriate café facility is provided in the park, through the existing tenant completing a lease, or if this fails, through a lease with an alternative tenant.

3.0 Detail

Background

- 3.1 Roundwood Park is situated off Harlesden Rd, Harlesden, NW10 and is located East of Longstone Ave and West of Harlesden Rd NW10. It is approximately 30ha in size.
- 3.2 Roundwood Park was opened to the public on 11th May 1895. The park was designed by the Surveyor to the Local Board and later District Council, Oliver

Claude Robson. His work included provision of drainage, path layout, planting of 14,500 trees and shrubs, a fine mock-Tudor lodge house for the gardener built 1894, children's gymnasium and a bandstand and flagstaff at the highest point. The extravagant wrought-iron gates and railings were provided by a local company, Messers. Tickner and Partington. The park entrance was set back from the main road behind a shallow D-shaped lawn, formed by straightening old Harlesden Lane, Inside the gates is a brilliant display of bedding, complimented by shrub borders. The path from the entrance leads to a drinking fountain (a landmark for the park); elsewhere in the park is a rockery dating from 1895

3.3 Roundwood Park has Grade II listing and is on the English Heritage Register of Parks and Gardens. The listing was given because Roundwood Park has maintained the original layout of the pathway network within the park.

3.4 The park enjoys a comprehensive range of facilities which include:

- Children's playground
- Bowling Green
- Multi-Use Games Area
- Aviary
- Formal bedding displays and ornamental areas including a pond
- Public Toilets
- Warden Service
- Events Area
- Summer theatre
- Local café

3.5 The original cafe was built in 1897. The building was designed by the Council and was made of brick and timber construction with a steeply pitched slate roof and gables. Various franchise owners succeeded one another, and a new building was constructed in 1958. In 1997 the building was let to the present occupier and renamed the Roundwood Lodge Café.

3.6 Roundwood Park is a Green Flag Park, this accolade is the industry's premier award made in recognition of excellent management of public open space. The park is judged by industry experts annually and the award is set against strict criteria. The park has secured accreditation to the Green Flag for ten consecutive years.

3.7 As detailed in the London Borough of Brent's Unitary Development Plan (Adopted February 1996), Roundwood Park is subject to a number of designations:

- (i) **Area of Open Character:** defined as *"large open areas which are particularly prominent and visible from the main road network. Although these areas are generally not large enough nor sufficiently widely used to be of strategic importance (and not therefore appropriate for designation as Metropolitan Open Land), they are nevertheless of great significance to the Borough as a whole. For this reason the open character and sense of openness of such areas require special protection, in accordance with RPG3"* (Brent U.D.P. - 2004).

Under this designation the Council undertakes to preserve the open character, whilst enhancing features such as woodland, nature conservation, and recreation.

- (ii) **Public Open Space:** Brent has less public open space per head of population than many London Boroughs, and therefore the opportunities offered by a Park the size of Roundwood Park are of great importance.
- (iii) **Site of Borough (Grade II) and Local Nature Conservation Importance:** As identified by the London Ecology Unit, Roundwood Park offers wildlife and nature conservation value. Policy OC17 ensures that no development is permitted on such land.
- (iv) **Cycling:** Roundwood Park forms part of the London Cycling network.

The Petition

3.8 The petition was compiled by 'Save the Roundwood Lodge Campaign' and comprises signatures and pre written letters signed by local residents, The campaign is being co-ordinated by a Ms Romanov, the current occupier. The main points of the petition are:

- The Councils proposed refusal of the renewal of the lease to the Countess Mariaska Romanov

The petition was accompanied by a letter which is attached in Appendix 1.

Current Arrangements

- 3.9 On 8th December, 1997, the Environment Committee agreed to grant a lease of the café.
- 3.10 The Council granted a five-year lease to Marianne Johnson commencing 1st October 1997 and ending on 30th September 2002. The tenant (now known as Ms. Romanov, the petitioner) is occupying the property on the terms of the now expired lease. The lease was granted on the basis that rent would be determined after an initial three-year rent free period, expiring 30th September 2000. The signed lease states that from 1st October 2000 the tenant will pay rent at "open market value" or 10% of gross turnover, whichever is the higher.
- 3.11 The council began a process in 2006 to regularise the lease agreement for the café in Roundwood Park with Ms Romanov. However, Officers were unable to reach an agreement with her. Despite numerous requests since then the tenant has not provided the details of audited accounts showing the café's annual gross turnover as required by the rent review provisions of the lease.
- 3.12 Brent has demanded that Ms Romanov pay £3,642.54 representing six years of accrued arrears of annual insurance rent payable under the lease. Agreement has been reached with the tenant for payment of monthly instalments of the insurance rent arrears and four such payments have been made in accordance with the agreed timetable.
- 3.13 Ms Romanov has been uncooperative and so the Council had no alternative but to commence the statutory process to terminate the lease. This is only the

first stage and this matter can still be resolved without taking possession of the café premises if the monies owing are paid.

- 3.14 Served separately was a contractual notice to review the rent to the market value. This is open to negotiation but if there is no agreement, then there is a process of arbitration. When the revised rent is agreed or determined six years back rent will become due and payable. Application has now been made for the appointment of a suitable arbitrator under the terms of the original lease.
- 3.15 On Thursday 22 May 2008, Officers met with Ms Romanov, two of her colleagues and her lawyer and officers made clear to them the necessary process that needed to be followed to resolve this matter. All parties agreed a way forward at this meeting and there appeared to be full understanding of the current situation by the parties present.
- 3.16 The lawyer representing Ms Romanov wrote to Brent Council in a letter dated 29.05.08 offering terms to pay off, in instalments, the monies owed by the café for the outstanding insurance rents, as referred to in 3.12. To date the instalments have been made as agreed.
- 3.17 Heads of Terms for a new lease have been provided to the tenant, without prejudice, and this has been acknowledged by the tenant and they have instructed a surveyor to respond.

Conclusions

- 3.18 In direct response to the request of the petitioners, while the Council recognises that the cafe provides a valuable service, it is reasonable for the Council to ensure that lease arrangements are in place and that the commercial operator occupying these premises pays rent which reflects the commercial nature of the letting.
- 3.19 29 April 08 - Brent served a notice under S25 of the Landlord and Tenant Act 1954. Full explanatory notes are provided with the notice which also advises that legal advice should be taken.
- 3.20 Ms Romanov can apply to the court for a new lease provided she does this by the time limits set out in the Council's notice.
- 3.21 Should the tenant pay the remainder of the contractual insurance rent due under the lease, Brent would then have limited grounds to oppose a new tenancy, which could be agreed or, in the absence of agreement, the court would impose new terms on an open market basis. Lawyers for the café proprietors have made an offer of instalment payments to clear the outstanding insurance rent debt.
- 3.22 The Council has an overriding fiduciary duty to protect Council assets and the interests of the Council Tax payers and this is precisely what is being done in this case.
- 3.23 The Council wishes to be reasonable to the existing tenant, but should there be disagreement with Ms Romanov, she has the protection of arbitration in relating to setting the previous rent level under the lease and the protection of

making an application to the Court for it to make a decision in relation to a disagreement between the parties concerning the terms of a new lease.

4.0 Financial Implications

4.1 Brent Parks Service has not budgeted for any increased rent at this stage but plans will be developed to ensure that future rentals received will be invested in the park and its facilities.

5.0 Legal Implications

5.1 Lawyers for the café proprietor have sought to challenge the Council's ability to operate the rent review provisions retrospectively. The Council has obtained counsel's opinion which indicates that the Council is entitled to operate the rent review.

5.2 The business tenancy of the café is governed by statutory security of tenure provisions and the tenant has a right to a new tenancy save where the Council is able to object to the grant of a new tenancy on certain specified grounds.

5.3 In this case the only ground on which objection could be made is persistent failure to pay rent. The only rent currently outstanding is the insurance rent, and if this is paid off, the Council would have no grounds to object to a new lease.

6.0 Diversity Implications

6.1 The proposals in this report have been subject to screening and Officers believe that there are no diversity implications.

7.0 Staffing/Accommodation Implications (if appropriate)

7.1 n/a

Background Papers

None

Contact Officers

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