



**Executive  
14 October 2013**

**Report from the Strategic Director  
Regeneration and Growth**

Wards affected:  
SUDBURY

**Leasing of Buildings, Barham Park, 656-660 Harrow Road,  
Sudbury, HA0 2HB**

**1.0 Summary**

- 1.1 To agree that the Council enters into leases of property from the Barham Park Trust (BPT) as offered at the Trust meeting of 13 February 2013; and to authorise officers to grant a sub-lease of those properties as appropriate.

**2.0 Recommendations**

- 2.1 That the Executive agree that Brent Council enter into three leases of buildings for lease terms in accordance with details set out in Paragraphs 3.8 - 3.20 set out. Final terms to be approved by the Director of Regeneration and Growth.
- 2.2 That the Executive authorise the Director of Regeneration and Growth to approve terms for a sub-lease(s) of those properties as appropriate along the lines set out in this report.
- 2.3 That the Executive authorise officers to advertise in a local newspaper the disposal by way of the sublease(s) of those properties forming part of open space under Section 123 of the Local Government Act 1972 and if in the opinion of the Operational Director Property & Projects there are significant objections in respect of the loss of open space to refer those substantive objections back to the Executive to consider.

**3.0 Detail**

- 3.1 On 13<sup>th</sup> February 2013 the BPT resolved that a tenancy or tenancies be granted to Brent Council at market rent on terms to be agreed for use in

accordance with the charitable purpose of the trust for a period or periods of up to 25 years. The intention is that these spaces will then be utilised by the Council for the Children's Centre, a sub-let to the Barham Park Veterans Club and such other future use as appropriate. (These units are shown on the attached plan Numbered 1, 2 and 3)

- 3.2 Since then officers have, sought to regularise the relationship between the Trust and the Council and have also, on behalf of the Trust, successfully marketed a number of units within the complex of buildings.
- 3.3 All bar three of the units originally marketed are currently under offer to the Association for Cultural Advancement through Visual Art (ACAVA) - a charity organisation who provide facilities for artists, community groups and outreach work.
- 3.4 One other unit is to be retained by the Trust for occasional community lets and will be managed by the Council on behalf of the Trust (Numbered 4 on the attached plan). The Parks Service also occupies one other unit which was not part of the marketing campaign as it is used exclusively as a store and depot serving Barham Park. As this store and depot are used as the base for Parks Services for Barham Park, the Trust authorised a simple licence between the Trust and the Council which has regularised this situation (Numbered 5 on the attached plan).
- 3.5 In regard to the units under offer to ACAVA it is intended, subject to a successful planning application which is due to be considered by the local Planning Authority in October 2013, that these will be utilised as artists studios. Subject to the outcome of the planning decision, it is hoped these units will be occupied by Christmas 2013, following an eight week period of building improvements and capital works. These works will be project managed by the Council on behalf of the Trust.
- 3.6 This report deals with the three remaining units. Historically, the Council has directly or indirectly been in occupation of these units for many decades. Previously, it is acknowledged the relationship between the Trust and the Council has been informal and led to blurred responsibilities.
- 3.7 Based on its own legal advice, and in order to comply with Charity Commission regulations, the Trust is seeking to have more formal arrangements in place. As the Council in its capacity as a statutory authority is regarded as a "connection person" under charity law the proposed letting to the Council by the Trust needs Charity Commission consent. Subject to the decision of the Executive, the Council's Legal Services will subsequently apply for this consent. This is referred to in more detail under Legal Implications.

## **Children's Centre**

- 3.8 Ground floor unit shown on the attached floor plan providing accommodation of 105 m<sup>2</sup> (gross internal area - GIA) and 91 m<sup>2</sup> (net internal area - NIA). The accommodation, together with relevant associated areas, was refurbished and converted by Brent Council in 2010 at a cost of around £246,000. This investment into the building and the use as a Children's Centre has over the recent period helped protect what is a vulnerable asset in an exposed park location.
- 3.9 The Trust had offered Brent a lease of up to 25 years at market rent. However following negotiations it is considered reasonable by officers acting on behalf of the Council that the initial rent will be £11,000 per annum, the lease term to be for a five year period and to be within the Landlord & Tenant Act 1954. This lease will also be subject to a service charge to cover the costs of maintenance of the building fabric, insurance and any other common services.
- 3.10 On this basis officers would recommend the Council accept the offer from the Trust for the space.

### **Barham Park Veterans Accommodation**

- 3.11 Ground floor accommodation of 196 sqm (GIA) and 134 m<sup>2</sup> (NIA) providing two large rooms for snooker, a kitchen and a club lounge area. Brent Council (The former Wembley and District UDC) enabled the Barham Park Veterans (The Vets) Club to occupy the space in 1947. Officers acting on behalf of the Council proposed that the Council accept a 5 year lease at a rent of £6,000 pa. The lease will allow Brent to sub-let the unit should it so choose. There will also be a service charge to cover the costs of maintenance of the building fabric, insurance and any other common services.
- 3.12 The "Vets" have been in occupation of this space since 1947, albeit they were re-constituted in 2000. The "Vets" is a registered charity and provides a club for the elderly. As mentioned above, until recently the distinction between the Trust and the Council has been blurred. Since 1947, when the Council first provided accommodation to the Vets in Trust property, the Vets have solely engaged with the Council and not the Trust. Therefore, it seems sensible that should the Council wish to ensure the continuation of the Vets occupation at Barham Park, that the Council take responsibility for this unit.
- 3.13 It is acknowledged the Council has had, since 2009, a policy which seeks to place voluntary organisations in council accommodation on a proper market rent and short-term lease. However, given the Vets have been in occupation free of charge since 1947, it is suggested this "custom and practice" be reflected in the initial terms proposed to the Vets. Nevertheless, it is suggested that over a four year period the Vets are moved into a position which reflects tenancies for other voluntary organisations across the Borough. It is therefore proposed that the Council grant a 4 year contracted out sub-lease of this unit to the Vets on an initial one year rent free rising on each anniversary of the lease by £2K pa.

- 3.14 Thus at the end of the 4 year period, the Vets will be paying full market rent in accordance with the Council's policy towards voluntary organisations in Council accommodation. This gradual rise will provide the necessary time required for the Vets to secure the necessary funding in order to meet these outgoings.
- 3.15 Officers recommend this proposal as a pragmatic solution to the requirement by the Trust to regularise this occupation. If approved, the Council would take a lease from the Trust on terms outlined above in paragraph 3.11 and then grant a sub-lease to the Vets also on terms as outlined above in paragraph 3.13.

### **Card Room**

- 3.16 A virtually detached single story timber room of 116 m<sup>2</sup> (GIA) and 94 m<sup>2</sup> (NIA). This accommodation has previously been hired out on an adhoc basis by the Council and has also been informally used by the Vets. This unit was marketed but received no offer acceptable to the Trust.
- 3.17 The Trust Report of 13 February 2013 identified that the provision of a café was the most popular new facility provision arising out of the public consultation on the vision for the park and that officers would pursue options for a café in the park albeit at the time it was felt that this may not be possible in the short term. The Parks Service would like to see a café established in Barham Park and this would fit with current Parks Strategy service objectives of increasing participation in parks and increasing customer satisfaction. It was also a stated ambition of the Trust at their meeting of 13<sup>th</sup> February 2013 wherein it was resolved that officers pursue options for a café on the site
- 3.18 The Council are, therefore, recommended to take a short term tenancy of this space at a rent of £3,250 pa with an option to take a lease of up to 25 years. In the short term, subject to an H&S inspection to consider concerns around heating facilities and electrical wiring, this will then allow the Council to continue the current ad hoc lettings
- 3.19 The Council would then be in a position to market this unit to potential café operators. If a suitable operator can be identified a longer lease of up to 25 years will then be sought from the Trust and the tenancy may then be assigned to the selected operator. This longer term is likely to be required by operators to reflect the level of investment that they would need to make in the property. The tenant would be responsible for the maintenance of the fabric of this part of the property, and there would need to be some minor service charge costs to cover any items of common expenditure such as insurance.
- 3.20 The Council's registered valuer - acting on behalf of the Council - considers that the terms proposed above are reasonable in the circumstances. Whilst it is not ideal that Brent takes on direct leasing of the Card Room and the Barham Park Veterans, it is considered that the arrangement allows for transparency and regularisation of money from the Council to the Trust. The rental values are realistic and reflect broadly the recent terms agreed by the

Trust to lease parts of the complex to ACAVA following an open market exercise. They also reflect the values placed on the space by the Inland Revenue for the purposes of uniform business rates.

#### **4.0 Financial Implications**

4.1 The proposed charges to the council would total £20,250 per annum, excluding service charges.

4.2 It should be noted that this additional income to the Trust will reduce the Council's net subsidy to the Trust by the same amount.

#### **5.0 Legal Implications**

5.1 The land in question forms part of the charity's "designated property". Generally specific consent is required to dispose of any land forming part of a charity's designated property. An important exception is where the disposal falls within the scope of the statutory power granted to charities which authorises disposals where the disposal is so small that it has no effect on the purposes of the charity and there is no express prohibition in the trusts of the charity preventing disposal. Disposal in this case includes granting a lease from the Trust to the Council

5.2 As Brent Council is a connected person in regard to the charity (i.e. usually a trustee or an employee of a charity in this instance Brent Council as service provider of statutory functions and amenities.) the Trust will need to obtain the consent of the Charity Commission to the proposed lettings.

5.3 The Commission must be satisfied that the conflicts between the Council as a trustee and the Council as service provider are managed satisfactorily and the Trust is achieving the best terms for disposal.

The Trust will be publishing the proposed disposal as part of its Charities Act notice sent to the Commission.

5.4 Any letting of land including buildings held for recreational purposes by the Trust (inclusive of a short term letting) must be at best value (save to a charity with similar purposes and the proposed use of land or buildings must not interfere with the objects of the charity in providing a recreation ground for the public or prevent reasonable public access to the park

5.5 Any letting at best value for a term of 7 years or less (save to a charity with similar purposes) by the Trust must be in accordance with the recommendations of a qualified surveyor appointed to act exclusively for the Trust and the Trust will comply with all the requirements of the Charities Act 2011 and the Local Government Act 1972 in respect of the disposal or letting of public open space.

#### **6.0 Diversity Implications**

- 6.1 Under the Equality Act 2010 Section 149 the Council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between those who have a protected characteristic and those who do not.
- 6.2 The proposals before members are commercial leasing arrangements to regularise the current position whereby the Council utilises space at Barham Park. As such these do not give rise to a need for any further detailed consideration under the Equality Act 2010.
- 6.3 In relation to the proposed sub let to the Vets this is also an arrangement whereby current use is to be regularised by way of a commercial lease. The proposal is in line with Council policy for use of Council property by voluntary organisations. In view of the long standing property arrangement it is proposed there be a phased introduction of rent. Any potential impact on the organisation (and its users) by the proposed lease arrangements is mitigated by the phased introduction of the rental charge.

## **7.0 Staffing/Accommodation Implications (if appropriate)**

7.1 None

## **8.0 Background Papers**

Previous reports

### **Contact Officers**

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