



Barham Park Trust Committee
28 January 2015

**Report from the Barham Park Trust
Property Adviser**

Wards affected:
Sudbury

**Property Update and Proposals for the Future Uses and Tenure
Arrangements of the Unlet Units at Barham Park.**

1.0 Summary

- 1.1 To confirm to the Trust the successful planning appeal and subsequent letting of various Units to the Association for Cultural Advancement through Visual Art (ACAVA).
- 1.2 To update the Trust with regard to the status of the various units at Barham Park and to seek approval in regard to their future use, marketing and tenure arrangements.
- 1.3 To clarify the position with regard to the covenants and controls relating to 776 & 778 Harrow Road, where a planning application has recently been rejected for the development of this site.

2.0 Recommendations

- 2.1 That the Trust approve the marketing of the Card Room (Unit 1) for a possible Café A3 and/or D1 use and to authorise the Property Adviser to the Trust in conjunction with the Trust Chair to select and let the unit to a suitable tenant on terms to be agreed.
- 2.2 That the Lounge (Unit 4) be marketed for a D1 and/or an A3 Use depending on the outcome of the marketing of the Card Room, or marketed in conjunction with the Card Room as a D1 use and to authorise the Property Adviser to the Trust in conjunction with the Trust Chair to select and let the unit to a suitable tenant on terms to be agreed.
- 2.3 That the Trust directly lease the Snooker and Billiard Rooms, (Unit 2), to the current occupiers, The Barham Park Veterans' Club (Wembley), under appropriate leasing arrangements to ensure compliance with the aims of the Charitable Trust. The terms

of the lease to be as set out below in Para 3.6 or as amended by the Property Adviser to the Trust in conjunction with the Trust Chair/

- 2.4 To obtain an independent valuation of the terms proposed between the Council and the Trust so that another application can be made to the Charity Commission for consent to lease the Children's Centre (Unit 8) to the Council as Nursery Education Grant funded childcare open 5 days per week with children centre sessions being delivered in evenings and at weekends and to agree the Council can sub-let the space to a third party for similar use only.
- 2.5 That the Trust confirms it concurs with the views expressed by the Council's Parks Department as set out in Para 3.10 below and authorises Officers of the Trust to formally comment in similar terms on any future planning application for the houses at 776 & 778 Harrow Road.

3.0 Detail

- 3.1 Following a formal re-numbering of the various spaces within the Barham Complex of Buildings they are now known as Units 1-10, 660 Harrow Road Wembley HA0 2HB. The plan in Appendix I shows each unit and the current occupational status.

ACAVA (Units 3,5,6,9 and 10)

- 3.2 On the 9th September 2014 the Planning Inspectorate upheld the Trust's planning appeal for change of use for Units 6, 10 and 3 from D1 and Sui Generis respectively, to a B1 Use. It also formalised a D1 Use (previously Sui Generis) for Unit 4, The Lounge. Subsequently, on 16th September 2014, the Trust was able to complete a 15 year lease to ACAVA for the above units.

ACAVA will now hire these units out to artists as studio space as well as engage in community activity as part of their own charitable objectives. As such, Sudbury Ward Councillors have already met with representatives of ACAVA to start a local arts project, which is anticipated to start in March 2015. ACAVA are also exploring opportunities to work on projects with Borough community organisations such as the Sudbury Neighbourhood Forum.

The Remaining Units (Nos. 1,2,4,7 and 8)

- 3.3 (i) On the 13th November 2014 the Charity Commission withheld approval for the Trust to lease Units 1, 2 and 8, (the Card Room, Snooker and Billiard Rooms and the Children Centre), to the Council, due to issues regarding the Council being a "Connected Party" and therefore giving rise to a perceived concern that the valuations, undertaken by the Council's internal valuer, were not sufficiently arms-length.

(ii) In light of this opinion from the Charity Commission, it is now proposed that the Trust directly determine and review the use and occupation and possible tenure arrangements, with regard to the following Units:-

3.4 Unit 1-The Card Room

(i) In 2012 a Barham Park Users Consultation was undertaken which identified that there was a demand for a café within the Barham Park. Following that Report the Trust decided that officers should pursue options for a café within the site as part of the previous marketing campaign. It was considered that Unit 1 might be suitable for such a use, but it did not attract a bid in isolation of the bids for the other Units.

(ii) After the previous marketing campaign it was considered more practical for the Council to market and let the Unit. Therefore the proposal was accepted for the

Council to take a lease of the space and to then regularise its current ad hoc usage by the Barham Park Veterans' Club and the Council, and then market the Unit for a café use. However, following the recent letter from the Charity Commission, if the Trust agrees, the premises will be re-marketed and let directly by the Trust to a selected tenant. Note if a café operator is secured this will then require a planning application for change of use, even with the retention of the current D1 use.

The recommendation is for the Property Adviser in conjunction with the Chair Trust to select the tenant. It is suggested that the selection criteria be published in advance so that interested parties will be aware of the weighting to be attached to any rental offer and also to the quality criteria. This will allow the Trust to emphasise the aims of the Charitable Trust and to encourage applications from community-focused organisations

The Trust has already received an offer from the Friends of Barham Library, (FOBL), for the Card Room and the Trust maybe minded to pursue this offer as the FOBL has charitable status with similar aims, in certain respects, to the Trust's. Alternatively the Trust could suggest to the FOBL that they may wish to consider participating in the tender process, should the Trust decide to approve the recommendation to instruct officers to conduct another marketing campaign for this Unit. As mentioned above the Vets currently make occasional informal use of this space and they will be similarly advised of the intention to market the space should the Trust so approve.

(iii) It should be noted that The Card Room, is of a simple timber frame construction. It is in poor condition and will require considerable expenditure to secure any long term use. Any ingoing tenant will need to not only install catering facilities, but will also need to expend a comparatively large sum of money on the Unit to carry out basic and essential improvements. Thus if a suitable tenant is not procured through this marketing process, it may then be necessary to consider demolition of the building as the cost of repair would not be economic for the Trust to undertake as a speculative project.

3.5 **Unit 2-The Snooker and Billiard Rooms**

(i) Unit 2 is occupied by the Barham Park Veterans' Club (the Vets) under no formal tenure. In order to regularise this historic position, previously the Trust had agreed to let this Unit to the Council, (subject to Charity Commission consent), who would then sublet this Unit to the Vets. As mentioned above the Charity Commission did not grant consent to this proposal. Therefore the recommendation is that the Trust deal direct with the Vets.

3.6 As the Vets have been in occupation for a considerable period it is considered a priority to regularise that occupation rather than seek possession and market the unit. Similarly it is suggested that the rent should be staggered so as to allow the Vets a period of time to adjust to the more formal relationship. Therefore it is recommended that the Trust adhere to the terms which were agreed between the Vets and the Council which are not immediately market value but are considered to be a reasonable compromise. Thus the following, are the main terms for the sub-lease that was to be granted by the Council to the Vets and are now recommended to the Trust:

The lease to be for a 4 year term outside the security of tenure provisions of the 1954 Landlord and Tenant Act, with a stepped rent and service charge of:-

Year 1–Rent Nil; Service Charge and Insurance Nil.

Year 2- Rent £1,000 per annum (pa); Service Charge and Insurance £500pa.

Year 3- Rent £2,000 pa; Service Charge and Insurance £1,000 pa.

Year 4- Rent £3,000 pa; Service Charge and Insurance £1,500 pa.

These terms were agreed with the Vets, however on the 19th May 2014 the Vets' legal representative wrote to the Council rejecting these terms. The objections are believed to be resolvable and therefore Officers will need to re-engage with the Vets in order to persuade them to accept the above terms.

3.7 **Unit 4 -The Lounge**

(i) Since the refurbishment the Barham Park Lounge, (which has now created two areas for separate, simultaneous, hire), it has been made available for hire by the Community at rates of hire agreed by the Trustees. However the take up of this facility by the local community has been very low. An analysis of take up since refurbishment shows approximately eight lets per month mainly to two religious groups for, on average, five hours per week.

Income to date is £6,045. Additional income anticipated from December 2014 to March is £2,875. Total likely income from lets from April 2014 to March 2015 is £8,920.

The availability of this space for community hire is made known via marketing of the facility on the Council's web page and on notice boards within the park. However as interest is low and therefore generally the rooms are underutilised, the Trust may wish to consider if the Unit could be put to a better use by attracting a more permanent use/tenant. In fact the Planning Inspector who presided over the planning appeal, referred in Paragraph 10 of his decision, to the fact that even before the refurbishment, the facility had an underutilisation of 89%. He stated that "a significant underutilisation which calls the need for such a facility in this location into question". Therefore in order to ascertain whether this Unit would generate a better financial return than is currently being received, it is recommended that the Trust markets the Unit to seek to identify a tenant that will bring in an improved revenue income and for a use that fulfils the Trust's charitable objectives. Any proposed tenant will need to use the space within the current Use Class D1, or apply for a change of use in order to comply with the conditions of the original conveyance of Barham Park and its buildings. A café/restaurant in this Unit may be considered more of a viable proposition than in Unit 1.

The recommendation is for the Property Adviser in conjunction with the Chair Trust to select the tenant. It is suggested that the selection criteria be published in advance so that interested parties will be aware of the weighting to be attached to any rental offer and also to the quality criteria. This will allow the Trust to emphasise the aims of the Charitable Trust and to encourage applications from community-focused organisations

(ii) It should be noted that the Trust has recently received two approaches, one from the PIVOT Point Community Development Foundation to lease Unit 4 and another from The FOBL, who have made an offer to lease the former Parks Reception room (separately from the main Lounge area) in conjunction with their offer to lease the Card Room. The Trust may wish to accept one of these approaches as these Organisations both have charitable status with similar aims in certain respects, to the Trust's. Alternatively they could ask these two organisations to participate in a tender process, should the Trust decide to conduct another marketing campaign for Unit 4.

Unit 7 – Parks Depot

This Unit is held on licence by the Council and utilised by Veolia as a store and work area within the Park.

Unit 8 -The Children's Centre

(i) The Executive on the 14th October 2013 approved the letting of Unit 8 for use as a Children's Centre to the Council from the Barham Park Trust. It was agreed that it would be leased for a term of 5 years at a rent of £11,000 per annum. However The Charity Commission, as previously mentioned, has not granted consent for this letting, citing the need to obtain an independent valuation of the proposed terms. Therefore it is recommended that this independent valuation be obtained from the District Valuer and that, once received subject to Charity Commission consent the Trust completes a lease to the Council on appropriate terms.

(ii) In addition, the Trust should note that in the 21 July 2014 Cabinet Report from the Strategic Director of Children and Young People, (Extension of Childcare at Treetops, Barham Park and St Raphael's Children's Centres), it was recommended that the Cabinet approve the re-designation of the children's centre satellite delivery at Barham Park Children's Centre (currently 1.5 days per week) as Nursery Education Grant-funded childcare provision for two, three and four year olds open five days per week, managed by a private, voluntary or independent early years provider, with children's centre sessions being delivered in the evenings and at weekends and seeks permission for the proposed changes from the Barham Park Trust. Any lease to the Council will therefore require it to have the ability to sub-let to a third party.

776 & 778 Harrow Road Wembley

(i) Within the Barham Park Estate there are two semi-detached houses which were sold via auction on the 12th August 2011. When sold a restriction was put on the Title which covenanted:

To use each house as a single dwelling house and the associated garages, as garages.

Not to divide each property into two or more dwellings or residential units.

Not erect any building or structure, except a green house or a shed.

Not to carry out any development within the meaning of Section 55 of the Town and Country Act 1990 in or upon the property.

(ii) However, on 28th May 2014 the current owner submitted a planning application to demolish the existing 2 semi-detached dwelling houses and for the erection of 4 new dwelling houses, being 2 two storeys high, (2 x 3 bed), and 2 three storeys high, (2 x 5 bed), with converted loft space, provision for car parking, bin stores and hard and soft landscaping to the front and associated amenity space and fencing.

The planning application was rejected on the 15th November 2014 with the reasons for the objection stated in Appendix II of this report. The Council's Sports and Parks Service had a number of concerns about this planning application and it is thought that the Trust would have had the same concerns as the Councils' in this regard.

(i) The failure of this planning application does not preclude the owner from submitting another planning application for these two sites. If consent was granted on a future application, the owner would still need to approach the Trust to request and negotiate a lifting of the restrictive covenants listed above. Such an application would have to alleviate any previous concerns that were raised with the last planning application.

(ii) These concerns include the fact that any new development should not have a negative impact on the amenity space of the park; that there is enough parking space within the boundary of the site to ensure that occupiers of the residential units and their visitors, do not park on the general entrance to the park, or on the grass.

(iii) There will also be concerns that any increase in vehicular access to the site does not endanger pedestrians or park users. The design of the residential units will need to compliment their location within Park. This part of the Park also has poor drainage and any soakaways should not compound this problem.

(iv) Other concerns include the fact that any proposed new development should have enough private amenity space relative to the size of the properties. so that any activities that residents would undertake within their amenity space have enough space. This will preclude the residents pursuing such activities in the park, which would be prohibited.

It is understood the owner may be discussing his proposal to redevelop this site with the local Sudbury RA however he has made no approach to the Trust since the failure to obtain planning consent.

4.0 FINANCIAL IMPLICATIONS

- 4.1 A potential increase in rental income for the Trust if Units 1 and 4 are successfully marketed and leased to tenants, for a use that is compatible with the Trust's charitable objectives.

5.0 LEGAL IMPLICATIONS

- 5.1 A disposal or letting of Trust land to another charity for similar charitable purposes is not subject to the procedural requirements in the Charities Act 2011 (applicable to a disposal to any other third party or a connected person like the Council)
- 5.2 The statutory requirements relating to any other disposal or letting of land are summarised as follows :
- 5.2.1 any disposal or letting of Trust land for more than 7 years to a third party (who is not a charity with similar purposes) can only be authorized by the trustees after considering a written report prepared by a qualified surveyor as to the marketing and the valuation of the land on the basis that the terms proposed for the disposal are the best that can be reasonably obtained
- 5.2.2 any disposal or letting of Trust land for 7 years or less to a third party (who is not a charity with similar purposes) can be authorized by the Trustees after considering the advice of a suitably qualified person
- 5.2.3 any disposal of recreational charity land or letting for more than two years to a third party or a connected person (who is not a charity with similar purposes) must be notified in the local press and on site and provide at least one calendar month for people to make representations
- 5.2.4 any disposal of Trust land or letting to the Council or any other connected person is subject to:
- (1) requirements as in 5.2.1, 5.2.2 and 5.2.3 depending on the terms of the disposal
 - (2) and the written consent of the Charity Commission
- but the Charity Commission may at its discretion specify that the charity obtain a written report prepared by a qualified surveyor independent from the charity as to the marketing and the valuation of the land

6.0 DIVERSITY IMPLICATIONS

6.1 Please see the attached Equalities Analysis.

7.0 STAFFING/ACCOMMODATION IMPLICATIONS

7.1 None.

8.0 BACKGROUND PAPERS

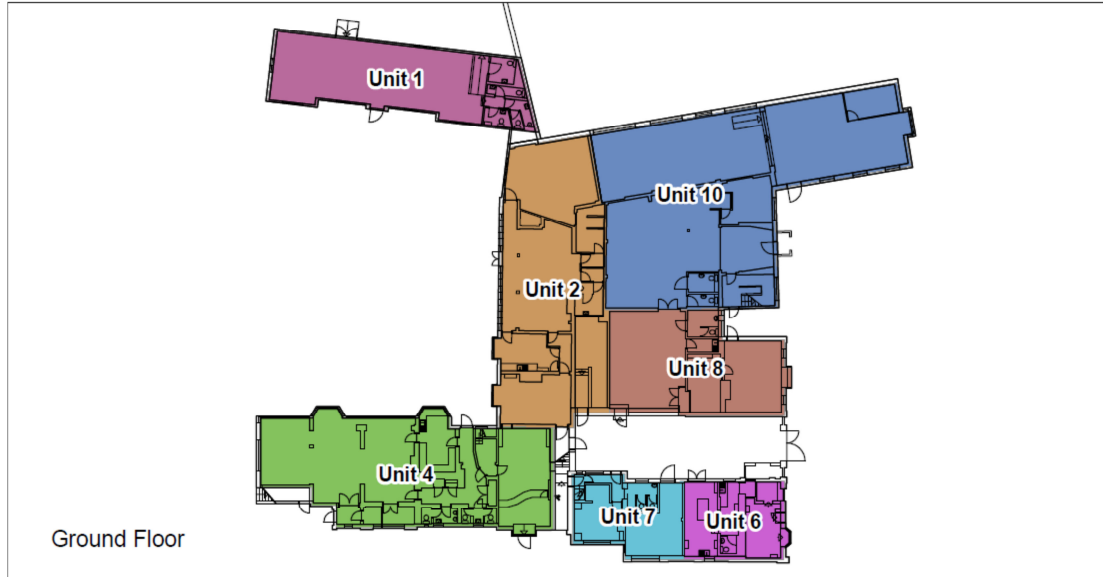
1. Charity Commission Guidance.
2. Brent Council Constitution.
3. 13th February 2013 Barham Park Trust Committee Report -Proposals for Improving Barham Park Building Complex and Park.
4. 14th October 2013 Executive Report- Leasing of Buildings, Barham Park, 656-660 Harrow Road, Sudbury HA0 2HB.
5. Appeal Decision by Michael Boniface MSc MRTPI
Decision date: 9 September 2014
The Barham Park Complex of Buildings











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Appendix I

Barham Park Buildings, Barham Park, 660 Harrow Road, Wembley, HA0 2HB



 Unit 1, Barham Park Charitable Trust	 Unit 6, ACAVA
 Unit 2, Barham Park Veterans' Club (Wembley)	 Unit 7, Veolia
 Unit 3, ACAVA	 Unit 8, Brent Council Children's Centre
 Unit 4, Barham Park Charitable Trust	 Unit 9, ACAVA
 Unit 5, ACAVA	 Unit 10, ACAVA

NORTH



Appendix II

SCHEDULE "B"

Application No: 14/2078

PROACTIVE WORKING STATEMENT

- 1 To assist applicants the Local Planning Authority has produced policies and written guidance, all of which is available on the Council's website and offers a pre planning application advice service. The scheme does not comply with guidance and no pre application discussions were entered into. The local planning authority delivered the decision in a timely manner

REASONS

- 1 The proposed development, by reason of the design, scale and proximity with the boundaries of the site with Barham Park together with the proportion of hard landscaping with the frontage of the site, constitutes a development which has a poor and over-bearing relationship with the park and is therefore detrimental to the setting of the adjoining public open space. The development is therefore contrary to policies BE2, BE7, and BE9 of Brent's Unitary Development Plan, policy CP17 and CP18 of Brent's Core Strategy, 2010, and guidance contained within Brent's Supplementary Planning Guidance 17 on Design Guide for New Development.
- 2 The submission fails to demonstrate that the proposed development, including demolition of the existing building and the construction of the new building, will not have an impact on the root protection zone of mature trees located within the adjoining Barham Park and is likely to have impact on the trees that are close to the eastern and southern boundaries of the application site. As such, the proposal is likely to have a detrimental impact on the quality and quantity of trees within Barham Park and is contrary to Policy CP18 of Brent's Core Strategy 2010, and Supplementary Planning Guidance 17 "Design Guide for New Development".
- 3 The proposal would result in the provision of substandard forms of accommodation by reason of the poor light and outlook for habitable room windows within units 1 and 2 and the absence of useable private amenity space provision for proposed Unit 1, and the inadequate provision and poor quality of outdoor amenity space for proposed units 2, 3 and 4 which would be detrimental to the enjoyment and amenities of future occupiers. The proposal is therefore contrary to policies BE6, BE7 and H12, of Brent's Unitary Development Plan 2004 and the advice of Supplementary Planning Guidance 17: "Design Guide for New Development".
- 4 The submission fails to demonstrate that internal levels of noise and vibration for the proposed units will be acceptable (having regard to the standards described in BS8233:2014 and BS6472:2008) and as such, does not demonstrate that the proposal will result in a good standard of residential accommodation for future residents. The proposal is contrary with Policy EP2 of Brent's Unitary Development Plan 2004.

INFORMATIVES

- 1 The applicant is advised to submit plans showing the layout and area of all existing floors with any re-submission in order allow the accurate calculation of CIL liability.
- 2 The applicant is advised to seek pre-application advice from the Council prior to the submission of a revised planning application.