



**Barham Park Trust Committee
7 September 2016**

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

Ward Affected:
Sudbury

**Property Update, Barham Park Building Complex, 660 Harrow
Road, Wembley**

1.0 SUMMARY

1.1 The purpose of this report is to update the Trust Committee on:

- a. the marketing of Unit 1 The Card Room;
- b. granting the lease for Unit 2 The Snooker and Billiards Room;
- c. granting the lease for Unit 4 The Lounge;
- d. granting the lease for Unit 8 The Children's Centre;
- e. the marketing of Unit 7 the Mess Room;
- f. the installation of an integrated fire alarm system; and
- g. the Maintenance Plan for the building complex.

2.0 RECOMMENDATIONS

- 2.1 That the Trust Committee notes the content of this update report regarding the properties at the Barham Park building.
- 2.2 That the Trust Committee considers a request by Friends of Barham Library for a 12 month rent free period for Unit 4, the Lounge, as set out in paragraph 3.3 – 3.15 of this report.
- 2.3 That the Trust Committee authorises the Barham Park Trust Property Adviser to complete the lease in respect of Unit 4, the Lounge by 16 September 2016.
- 2.4 That the Trust Committee authorises the Barham Park Trust Property Adviser to proceed with completing the lease in respect of Unit 2, the

Snooker and Billiards Room with the Barham Park Veterans Club on terms agreed by the Trust Committee on 28 January 2015.

3.0 DETAIL

- 3.1 The marketing of unit 1, The Card room, was delayed as the lead surveyor left the Council's service. Marketing commenced on 20th August 2016 with a deadline to receive non-binding open market tenders by 31st August 2016. On 10th August the Trust Property Advisor extended the tender close date to 17th October 2016 as it was considered the marketing process needed a longer period. The marketing particulars have been added to the Councils 'Commercial Property To Let' website. A marketing board has been placed on site that has attracted a number of enquiries.
- 3.2 The draft lease for Unit 2 the Snooker & Billiards Room incorporating the revised equalities and diversity section is being reviewed by the Council's Legal Service and the final version should be sent to the Baham Park Veterans Club (the Vets) shortly. There was a delay as the equalities section had to be approved by the Vets at their AGM in April 2016 which subsequently took place. As this equalities section is now incorporated into the draft lease, the Trust Committee is invited to authorise the Barham Park Property Trust Adviser to complete the lease in respect of Unit 2 with the Barham Park Veterans Club on behalf of the Trust.
- 3.3 The Trust Committee decided to grant the lease in respect of Unit 4, The Lounge, to The Friends of Barham Library (FoBL) at its meeting on 8 October 2015 on the general terms set out in the marketing particulars and the specific terms offered in the bid submitted by FoBL. The marketing particulars did not offer a rent free period. Nor did the bid submitted by FoBL propose a rent free period for the first year of the term of the lease.
- 3.4 Subsequently, during the lease document preparation process, the FoBL requested a rent free period. The FoBL argued that the Vets had been offered a 12 month rent free period and therefore in the interests of fairness they should be offered the same terms. The FoBL also relied upon the fact that in order for them to operate their library services they would need to incur substantial fitting out costs.
- 3.5 Consistent with the Trust Committee's decision, the Heads of Terms prepared by the Council and dated 19 January 2016, and which the FoBL agreed, did not include a rent free period. However, a draft lease prepared by the Council in March of this year inadvertently included a 12 month rent free period. According to the FoBL the inclusion of a rent free period was not a mistake. They argue that they asked for it and it appeared in the lease and therefore it has been agreed and they have relied upon it in good faith and to their detriment ever since.

- 3.6 The Council would maintain, however, that a rent free period has not been agreed. It was obvious to officers that the basis upon which the Trust Committee decided to grant a lease to the FoBL did not permit officers to forfeit rental income totalling £7,000. In the circumstances, there can be little doubt that officers had neither the actual or ostensible authority to do so.
- 3.7 The officers concerned have confirmed that a rent free period had not been agreed and the extensive correspondence between the Council and the FoBL bears that out. The inclusion of the rent free clause in the lease was a mistake and when it came to light, albeit some months later, the FoBL were informed.
- 3.8 The Council's Heads of Terms were expressly marked 'without prejudice' and 'subject to contract'. Although the draft copies of the lease were not, in accordance with legal convention and general legal principles, they did not need to be. A draft lease, contract etc. has no legal force and is not legally binding during the drafting process. It becomes legally binding upon its completion. If a prospective tenant chooses to incur expenses and changes their position on reliance of a draft lease, they do so at their own risk.
- 3.9 The various Units at Barham Park have been let individually and subject to different letting processes and terms depending on the different commercial and other considerations unique to that Unit. The contention that FoBL should have a rent free period just because it has been approved in respect of a different Unit is not sustainable. Different terms for different Units do not amount to unfairness.
- 3.10 FoBL competed in an open competition in order to realise their ambition to take up occupation of the Lounge. A rent free period was not on offer and no such concession was requested prior to the acceptance of the successful bid submitted by FoBL. In these circumstances, it is incumbent on all bidders to anticipate start-up and running costs in any bid submitted to ensure that bids can be assessed on an equal footing.
- 3.11 In the circumstances, the Trust Committee need to consider whether to grant a rent free period to FoBL and, if so, for how long. This is a matter for the Trust Committee to decide consistent with the Council's obligations as trustee which include acting in the best interests of the Trust and in accordance with its fiduciary duties. The Council also has to act in accordance with public law principles.
- 3.12 Whatever the technical legal arguments, as the Trust Committee will appreciate, there is considerably more at stake. The letting of the Lounge has already been a protracted process demanding a disproportionate amount of resources both at Trust Committee and officer level. Any further delay will only add to the costs incurred by both the Council and the FoBL.

- 3.13 If the Trust Committee were to agree to the request for a rent free period, the Trust would suffer a loss in rental income. The amount would of course depend on the period. A 12 month rent free period would cost the Trust £7,000.
- 3.14 In addition, the Trust Committee should note that during the lease negotiation period, the FoBL sought permission “to move items in for storage” because they had to vacate their former premises. This was allowed and since then, in preparation of their occupation, FoBL have already incurred fitting out costs. This, they would argue clearly evidences their commitment to complete the lease and ensure they can be up and running without any further delay.
- 3.15 That being the case, it is equally important from the point of view of the Trust that the impasse between the Council and the FoBL is resolved once and for all. It is suggested that the FoBL be given the opportunity to complete a lease of the Lounge on the terms set by the Trust Committee by no later than 16 September 2016. If the lease is not completed, it is suggested that the offer of a lease to the FoBL be withdrawn and that the Trust’s Property Adviser be authorised to review the other bids received in 2015 and return to the Trust Committee with recommendations
- 3.16 The draft lease for Unit 8 the Childrens Centre is awaiting comments from the surveyor acting for the Trust. The licence to Barnardos and the service level agreement have now been finalised, with Barnardos operating the service from the Childrens Centre.
- 3.17 It is recommended that no further action is taken to market Unit 7 the Mess Room and Store, essentially a toilet and store area measuring 51 sqm, until the completion of all the outstanding leases of the Barham Park Buildings.
- 3.18 The integrated fire alarm system to service the 10 Units within the Barham Park Building Complex needs to be commissioned in line with the 27th January 2016 decision that was made by the Trust Committee. The Council’s Surveyor acting for the Trust will move forward with commissioning the work with the approved contractor that had previously tendered at £13,250,60, noting that the cost may have risen with the lapse of time.
- 3.19 The Maintenance Plan for the Building Complex required a Mechanical & Electrical (M & E) Survey and a separate Conditions Survey (CS). Out of four companies approached for an M & E Survey only NLF Associates submitted a tender at £6,630. Five companies were approached for the Conditions Survey of which Baqus Group tendered at £3,750, ig9 Limited tendered at £3,900 and Watts tendered at £4,480 with two organisations not applying. Taken together the combined surveys would have cost in excess of £10k. By way of an internal recommendation Rider Levett Bucknall were subsequently approached and have submitted a tender for both the Conditions and M & E Surveys combined at £2,247. This is an

unusually low survey fee and clarification is being sought as to whether the tender specifications have been correctly understood. If correct the Council's Surveyor acting for the Trust will move forward with commissioning the survey.

4.0 FINANCIAL IMPLICATIONS

4.1 Unit 1 the Card Room is to be let on Full Repairing & Insuring terms as the property requires substantial works. Other Units at The Barham Park Complex are on Internal Repairing & Insuring terms. As such there should be a minimal impact on the overall service charge budget for the Complex when the Card Room lease completes.

4.2 In respect of Unit 4, the Lounge, the financial implications of a rent free period are mentioned in the body of the report.

4.3 The expenditure on the integrated fire alarm system previously reported at £13,250.60 needs to be undertaken at an early stage to ensure that the Units are aligned with the current legislation and the integrity of the building fabric is maintained.

4.4 The Maintenance Plan that includes the Condition and M & E Survey is anticipated to cost less than the £6,000 reported in the 17th October 2015 Report.

5.0 LEGAL IMPLICATIONS

5.1 The 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.

5.3 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 authorised by 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. Subject to the proviso that a disposal to a connected person is subject to the consent of the Charitable Commission, which may specify additional requirements to those specified in this paragraph.

5.4 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.

5.5 The legal issues pertinent to the Trust Committee's consideration of the FoBL's request for a rent free period are set out in the body of the report.

6.0 DIVERSITY IMPLICATIONS

6.1 There are no direct equalities implications arising from this report, other than the ones already mentioned above and in previous reports.

7.0 STAFFING/ACCOMMODATION IMPLICATIONS

7.1 None

8.0 BACKGROUND PAPERS

8.1 None.

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