

	Barham Park Trust Committee Meeting 24 February 2025
	Report from Director Property & Assets
Operational Property Matters and 776 and 778 Harrow Road, Restrictive Covenant(s) Update.	
Wards Affected:	Wembley Central
Key or Non-Key Decision:	Non-Key
Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1 Schedule 12A of 1972 Local Government Act)	Part Exempt: Appendices 1 and 5 are not for publication as they contain the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely: "Information relating to the financial or business affairs of any particular person (including the authority holding that information)".
No. of Appendices	Five Appendix 1: (exempt) Designated Adviser's Report Appendix 2: 776 and 778 Transfer Documents Appendix 3: Planning Committee Report Appendix 4: Planning Decision Notice Appendix 5: (exempt) Heads of Terms
Background papers:	None
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1.0 Executive Summary

- 1.1 The Barham Park Trust (Trust) currently benefits from restrictive covenants in the 776 and 778 Harrow Road sale and transfer documents. These covenants limit development to two residential dwellings on the combined plots, as set out when the properties were sold in 2011. In June 2023, Zenaster Properties Ltd

(Zenaster) obtained planning permission (reference: 22/4128) to demolish the existing dwellings and construct four new three-story houses. Zenaster is now seeking to modify these covenants to enable the proposed development.

- 1.2 The purpose of this report is to secure approval and/or provide information to:
- Modify the restrictive covenants in exchange for an agreed sum of £200,000, thereby generating significant income for the Trust to support ongoing maintenance of the Barham Park Estate.
 - Increase the allocation of funds for Year 1 repair works to account for VAT.
 - Inform the Trust Committee of the ongoing review of removing Unit 6 from ACAVA's demise (re-gear), as it is surplus to their requirements.
 - Provide an update on the operational and strategic initiatives approved by the Trust Committee in September 2024.
 - Provide an update on the status of Unit 8 and the Council's intention to surrender its lease by the end of March 2025, which will allow the Trust to re-market the unit on the open market, ensuring the best possible terms.
- 1.3 The proposed modification of restrictive covenants, the increased funding allocation for urgent repairs, and the lease re-gear with ACAVA collectively support the Trust's operational and strategic objectives. These measures will generate essential income and help ensure the long-term stability of the Barham Park Estate. Officers recommend that the Trust Committee approve the resolutions outlined below.

2.0 **Recommendations:**

The Barham Park Trust Committee RESOLVES to

- 2.1 Approve the modification of the restrictive covenants at 776 and 778 Harrow Road, as detailed in paragraphs 3.8-3.11 and delegate authority to the Director of Property and Assets to execute a deed with Zenaster Properties Ltd for the agreed sum of £200,000, subject to 2.2 below.
- 2.2 If required, approve seeking Charity Commission consideration of the Qualified Surveyor's Report (Appendix 1) and authorisation under Section 105 of the Charities Act to modify or discharge the covenants.
- 2.3 Approve an increase in the allocated funding for Year 1 works from £268,950 plus professional fees to £352,221 to account for VAT and seek Charity Commission approval to utilise restricted funds.
- 2.4 Authorise the Director of Property and Assets to negotiate and finalise the lease re-gear for Unit 6 with ACAVA.

3.0 **Detail**

776 and 778 Restrictive Covenant modifications

- 3.1 The restrictive covenants were imposed in August 2011 to preserve the area's character and limit development. Zenaster's planning permission, secured in June 2023, envisages the construction of four houses—an objective hindered by the current covenants.
- 3.2 An independent Designated Adviser's Report (Appendix 1) was obtained for the Trust in accordance with Charity Commission guidelines. The report confirms that modifying the restrictive covenants, in light of the enhanced development potential, results in a measurable uplift in the land's value. The agreed sum of £200,000, negotiated with Zenaster, represents the assessed market value of the modification and will be allocated to the Trust's restricted funds in line with Charity Commission guidance on disposals. This includes transactions involving rights over land, such as easements and restrictive covenants. The Designated Adviser has revised the valuation since its presentation to the Trust Committee on 5 September 2023. It includes an up-to-date development appraisal with revised assumptions, ensuring all relevant costs, including the required Community Infrastructure Levy (CIL) contribution (a significant cost), are appropriately accounted for.
- 3.3 The transaction satisfies the key principles outlined in the Charity Commission's guidance on land disposals, specifically:
- The Trust is the legal beneficiary (owner) of the restrictive covenants, giving it the right to negotiate their modification or discharge.
 - The disposal is in the Trust's best interests, as it generates funds to support its charitable objectives.
 - The Trust's landholding has not been reduced, as the 776 and 778 Harrow Road properties were previously sold and are no longer in the Trust's ownership.
 - The Trust has the legal power to dispose of property interests, including restrictive covenants.

Compliance with the Charities Act 2011

- 3.4 The two key legal requirements under the Charities Act for land disposal have also been met:
- **Independent advice:** A report has been obtained from a qualified Designated Adviser acting solely in the interests of the Trust.
 - **Best terms achieved:** The proposed transaction represents the best financial terms reasonably obtainable by the Trust.

Requirement for Charity Commission Approval

- 3.5 Under the Charities Act 2011, charities do not typically require prior Charity Commission approval for land disposals where the two legal requirements above are satisfied. However, approval may be required in specific circumstances, including:
- Disposals to a "connected person" (as defined in the Charities Act).
 - Disposals involving designated land in most cases.

- 3.6 As neither of these conditions appears to apply in this case, Charity Commission approval may not be required. However, further due diligence will confirm whether approval should be sought.
- 3.7 The land affected by the restrictive covenants has already been removed from the Trust's estate; modifying or discharging the covenants does not impact land ownership, reduce the estate's physical footprint, or diminish the land available for public use.
- 3.8 To facilitate the development of four houses, the following covenants (as detailed in Appendix 2) require amendment or discharge:

Existing Covenants (extract from single plot):

- Not to use the Property otherwise than as a single private dwelling house and the garage for any purpose other than as an ancillary private garage.
- Not to divide the Property into two or more dwellings or residential units.
- Not to erect or cause to be erected on the Property any building or structure whatsoever except a greenhouse or shed of not greater length than 4 meters and of not greater height than 3 meters or permit or suffer any person under the Transferor's control to do so.
- Not to stand or support any vehicle, commercial vehicle trailer, mobile home, caravan, trailer, cart or boat on any part of the Property.
- Not to carry out any development within the meaning of Section 55 of the Town and Country Planning Act 1990 in or upon the Property.
- Not to park any motor vehicle on or otherwise obstruct any part of the accessway hatched yellow and hatched green or any part of the Retained Land at any time.

Proposed Modification (combined plots)

- 3.9 The deed (to be prepared in accordance with the planning committee report dated 12 June 2023 and decision notice dated 13 June 2023—see Appendices 3 and 4) will amend these covenants to permit the development of four houses.
- 3.10 A revised version of the restrictive covenants that would enable the proposed redevelopment in accordance with the granted planning permission is set out below and may be subject to further refinement.

Permitted Use:

- The Property may be used for residential purposes, permitting the construction and occupation of up to four residential dwellings, together with any ancillary buildings, structures, and facilities required for their use

in accordance with the planning permission granted under reference 22/4128.

Subdivision of the Property:

- The restriction on dividing the Property into multiple dwellings is removed, allowing for the development of up to four separate residential units, as approved under planning permission 22/4128.

Construction of Buildings and Structures:

- The restriction on erecting buildings or structures is modified to permit the construction of four residential dwellings and any associated infrastructure, including garages, outbuildings, and landscaping, in accordance with planning permission 22/4128.

Vehicle and Storage Restrictions:

- The restriction on standing or supporting vehicles, commercial vehicle trailers, mobile homes, caravans, trailers, carts, or boats on the Property is modified to permit reasonable residential use, including the parking of vehicles by residents and visitors in designated parking areas as approved under planning permission 22/4128.

Permitted Development:

- The restriction on carrying out development within the meaning of Section 55 of the Town and Country Planning Act 1990 is removed to allow the construction and occupation of four residential dwellings in accordance with planning permission 22/4128.

Accessway and Parking Restrictions:

- The restriction on parking and obstruction of the accessway hatched yellow and hatched green or any part of the Retained Land is modified to allow vehicular and pedestrian access as required for the lawful residential use of the Property, ensuring that any access arrangements comply with planning permission 22/4128 and any subsequent highway or planning authority requirements.

- 3.11 These modifications preserve reasonable protections while enabling the approved redevelopment. The precise wording of the changes may be further refined or amended during the legal conveyancing process.

Timeline

- 3.12 The overall timeline for these steps is expected to span several months. Suppose the Trust Committee approves the restrictive covenants' modification and/or discharge. In that case, completion may be subject to obtaining Charity Commission approval, if required, and the conclusion of legal formalities by the

parties. This includes Zenaster applying to the Land Registry to register the Deed and effect the necessary changes.

- 3.13 The modification or discharge of the restrictive covenants is subject to the satisfactory reinstatement of the boundary in respect of 776 and 778 Harrow Road and return of the Barham Park Trust land to open space as agreed by way of surveyor's aerial plan signed by George Irvin on behalf of Zenaster on 28th August 2024.

Year 1 Works – Funding Allocation Increase

- 3.14 The initial repair works approved in the September 2024 Trust Committee Operational Property Matters report were estimated at £268,950 plus 10% professional fees.
- 3.15 OCR Surveying Ltd has prepared a tender with a revised estimate of £352,221 (£266,834 for works plus £26,683 professional fees plus £58,703 VAT). To cover the additional VAT cost, officers request an increase in the funding allocation—either from restricted funds (subject to Charity Commission approval) or unrestricted funds. The anticipated income from the restrictive covenant modification would ultimately replenish the restricted funds for future works.
- 3.16 As at March 2024, the Trust held cash reserves of £638,206. Out of this total sum of £638,206, the sum of £285,054 relates to unrestricted funds and the sum of £353,152 relates to restricted funds. The Trust Committee to note that a bank account with NatWest is in the process of being set up for the Trust.

ACAVA Lease Re-gear

- 3.17 ACAVA currently occupies Unit 6, which has remained largely vacant and unused for an extended period and is no longer required. In response to ACAVA's request, officers propose a lease re-gear (mid-lease amendment) to remove Unit 6 from ACAVA's demise, subject to negotiating a pro-rata rent adjustment. This will enable the Trust to market and re-let the unit on the best possible terms, aligning with its charitable objectives.

Operational Update

3.18 Lease Renewals and Negotiations:

- **Units 1 and 2:** Negotiations with tenants such as Tamu Samaj UK and the Veterans' Club are ongoing. It is anticipated that heads of terms for the lease renewals will be completed by March 2025. Officers may utilise Section 25 notices to formalise the lease renewal process and apply for interim rent if lease renewals cannot be completed by negotiation by the end of March.
- **Unit 7:** Discussions with the Friends of Barham Library are advancing to reactivate unit 7, which has remained vacant for several years.

Unit 8 Proposal:

- 3.19 The Council currently occupies Unit 8 under an expired lease arrangement, with the Young Brent Foundation (YBF) providing Children's Centre services from the unit. The Council has notified officers of its intention to vacate Unit 8 by the end of March 2025. Consequently, the unit will be marketed for re-letting following a voluntary surrender by the Council, or by the Council serving 3 months' notice as required. This transition is expected to regularise future occupancy while aligning with the Trust's operational and strategic objectives. Acting under delegated authority, the Director of Property and Assets will oversee the transition, ensuring the correct procedures for surrender and vacant possession are followed. Given this transition, YBF will need to consider its future occupancy arrangements. In the interim, YBF may have the opportunity to enter into a short-term agreement with the Trust, subject to terms being agreed upon, or it may need to vacate the premises while the marketing and reletting process is completed.

Arrears Update:

- 3.20 The current arrears for occupying tenants total approximately £34k. A repayment plan, in place since December 2024, anticipates clearing most of the outstanding arrears by the end of March 2025. Virgin Media has notified the Trust that it has vacated the site, and its arrears are being actively pursued.

Rent Reviews:

- 3.21 Rent reviews have been completed, resulting in an annual income increase of £15,671. All future rent reviews will be conducted on time, ensuring rental income remains aligned with lease terms and maximised in the Trust's best interests.

Health, Safety, and Compliance:

- 3.22 Energy Performance Certificates (EPCs) have been updated, with all units achieving C-D ratings. Asbestos surveys have been completed, identifying only low-risk classifications. Officers are developing and implementing an asbestos management plan to ensure ongoing safety, including clear labelling of identified areas and a schedule for regular inspections. Long-term accessibility improvements are planned as part of broader redevelopment efforts; however, access to the upper floor will remain limited due to the absence of a lift. Certification and compliance for electrical, gas and legionella are being monitored and updated. From April 2025, a planned preventative maintenance (PPM) schedule will be implemented, part-funded by service charges.

Parks and Estate Management:

Drainage Challenges and Remedial Works

- 3.23 The events field continues to experience drainage issues, and the results of vertical drainage trials are pending. Once available, officers will review the findings and determine the most effective course of action to improve site conditions.

Tree Maintenance and Funding Allocation

- 3.24 Following the Barham Park Tree Survey (2024)—conducted after the winter storm—essential tree maintenance is required in high-traffic areas of the park. Previous and ongoing works have been funded through restricted funds already approved by the Charity Commission.
- 3.25 Following a competitive procurement process, two quotes were received from the four suppliers approached, with the lowest quote for the required tree works being £18,055. To ensure the timely completion of these essential safety and maintenance works, the Trust Committee is asked to note using unrestricted funds to cover the cost. This is necessary as the Year 1 works will exhaust the current restricted funds, and there will be a delay before funds are replenished following the transaction relating to 776 and 778 Harrow Road.

Consultation and Charitable Purpose Expansion:

- 3.26 Formal and informal consultations are scheduled to inform future estate redevelopment proposals and a comprehensive business case for expanding the estate's permissible uses (to be submitted to the Charity Commission).

Strategic Update

Consultation:

- **Phase 1 (Informal):** Officers have distributed a questionnaire to tenants to gather feedback on management issues and assess usage. To facilitate further engagement, individual meetings are scheduled for February/March 2025, during which tenants can complete the questionnaire and discuss their responses with officers.
- **Phase 2 (Formal):** Following phase 1, a formal consultation on the bronze redevelopment option is planned for July/August 2025 to help shape the redevelopment business case.

Charitable Purpose Expansion:

A comprehensive business case will be developed to expand the Estate's permissible uses, including commercial activities. After the consultation exercise, the proposal will be submitted to the Charity Commission to support advancing the Trust's strategic objectives.

Approach to Strategic Property Management

- 3.27 Officers will review the Council's Property Strategy to assist the Trust Committee in considering its approach to property management. While the Council's strategy may provide a useful reference, it will be for the Trust

Committee to independently assess whether, and to what extent, any elements of that strategy align with the Trust's charitable objectives and legal obligations. Any approach adopted must be in the charity's best interests, ensuring that property lettings secure the best terms reasonably obtainable and support the Trust's financial sustainability in furtherance of its charitable purposes. Following this review, officers will bring forward recommendations for consideration at a future Trust Committee meeting.

4.0 Financial Implications

- 4.1 The Trustees of Barham Park Trust have a fiduciary duty to ensure the Trust's long-term financial stability. When acting as Trustees, they must prioritise the Trust's financial interests over those of the Council.
- 4.2 The background papers referenced at the start of this report detail the Trust's challenging financial position. While the funds for modifying or discharging the restrictive covenants will help address some of these challenges, they are insufficient to secure the Trust's long-term financial security.
- 4.3 Through the amendment of the restrictive covenants enabling the redevelopment of 776 and 778 Harrow Road, a one-off capital receipt of £200k could be made to support future works.
- 4.4 The Trust is limited in its ability to recover VAT. It can only recover VAT on its non-business activities, and not on its business activities.
- 4.5 Operating the park for the public's benefit is a non-business activity, so the Trust can recover VAT paid for tree maintenance.
- 4.6 The Trust charges to rent out the building, which is a business activity. Therefore, the Trust cannot recover VAT on building maintenance. The Trust needs to budget for the entire work cost on its building, including VAT.
- 4.7 The Trust could only recover VAT on building maintenance with a major reconfiguration of its operations using the building, and it is not clear that the benefits would outweigh the disadvantages.

5.0 Legal Implications

- 5.1 The land (which includes various buildings) known as Barham Park was given by George Titus Barham on trust to the Council in 1938. The terms of the Trust are 'to preserve the same for the recreation of the public in such manner and subject to such regulations in all respects as the Council may occasionally think proper'. It was registered with the Charity Commission in June 1963 and is regulated by that body.
- 5.2 The independent valuation appended to the report is consistent with Charity Commission guidance.

6.0 Equity Diversity and Inclusion Considerations

6.1 Any proposals that come forward in due course must be assessed in compliance with the Trust's equality duties. The recommendations in this report have been carefully reviewed and are confirmed to have no adverse impacts on equality, diversity and inclusion.

7.0 Consultation with Ward Members and Stakeholders

7.1 Officers meet regularly with Trust Committee Members and Ward Members.

8.0 Human Resources/Property Implications (if appropriate)

8.1 These have been highlighted in the main body of the report.

Related document(s) for reference:

Report to Trust Committee on Operational Property Matters Relating to Barham Park, 660 Harrow Road, Wembley HA0 2HB – 10 September 2024

Report to Trust Committee on Strategic Property Matters Relating to Barham Park, 660 Harrow Road, Wembley HA0 2HB - 5 September 2023.

Report sign off:

Tanveer Ghani

Director of Property and Assets