



## **MINUTES OF THE CALL IN OVERVIEW AND SCRUTINY COMMITTEE** **Wednesday 27 February 2013 at 7.30 pm**

PRESENT: Councillor Ashraf (Chair), Councillor Denselow (Vice-Chair) and Councillors Beck (alternate for Councillor Lorber), Daly, Kabir, HB Patel, RS Patel and Krupa Sheth

Also present: Councillors Butt (Leader/Lead Member for Corporate Strategy and Policy Co-ordination), Cheese, R Moher (Deputy Leader/Lead Member for Finance and Corporate Resources) and Powney (Lead Member for Environment and Neighbourhoods)

An apology for absence were received from: Councillor Lorber

### **1. Declarations of personal and prejudicial interests**

Councillor Daly stated that she had received correspondence from Friends of Barham Park Library, PIVOT and Track Academy, all of whom had made bids in respect of the Barham Park building in relation to item 4, however she did not regard these as prejudicial interests and remained present to consider the call in.

All Members of the committee also acknowledged that they had received correspondence from the We Care Foundation who had also made a bid in relation to the Barham Park building.

### **2. Minutes of the last meeting held on 17 May 2012**

RESOLVED:-

that the minutes of the last meeting held on 17 May 2012 be approved as an accurate record.

### **3. Matters arising**

*Call in of Executive decisions from the meeting of the Executive held on 23 April 2012 – Control of distribution of free literature on designated land*

In reply to queries from Councillor H B Patel, Councillor Powney (Lead Member for Environment and Neighbourhoods) advised that fixed penalty notices had been issued and that some organisations had applied for licences since the recommendations of the report had been implemented. He added that he would ask Michael Read (Assistant Director – Environment and Protection, Environment and Neighbourhoods) to provide further details of these.

### **4. Call-in of Executive decisions from the meeting of the Barham Park Trust Committee held on 13 February 2013**

Decisions made by the Barham Park Trust Committee on 13 February 2013 in respect of the following reports were called-in for consideration by the Call In

Overview and Scrutiny Committee in accordance with Standing Orders 6 (b) and 18.

### **Proposals for improving Barham Park building complex and park**

*The decisions made by the Barham Park Trust Committee on 13 February 2013 were:-*

#### **RESOLVED:**

- (i) that the Association for Cultural Advancement through Visual Art (ACAVA) be appointed as the preferred bidder for lots 1, 3, 4, 5 and 6.
- (ii) that the Assistant Director Property and Asset Management in consultation with the Assistant Director Neighbourhood Services be delegated authority to enter into appropriate lease arrangements with the preferred bidder.
- (iii) that a tenancy or tenancies be granted to Brent Council of the land shown edged red on Appendix 2 to the report 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 this space will then be utilised by the Council for the Children's Centre and a sub-let to the Barham Park Veterans Club or such other future use as appropriate.
- (iv) that the finalisation of the terms of the tenancy or tenancies to be granted to the council be delegated to the Assistant Director of Property and Asset Management, in consultation with the Assistant Director for Neighbourhood Services, to act in the best interests of the Trust.
- (v) that a licence be granted to Brent Council to provide grounds maintenance from the depot at nil cost provided the service is for the sole benefit of Barham Park.
- (vi) that the lounge area (Lot 2) continues to be used for ad-hoc lettings in accordance with the recreational purposes of the Trust.
- (vii) that the letting rates for the ad-hoc lettings as set out in paragraph 3.27 of the report be approved.
- (viii) that officers enter into a Service Level Agreement between the Barham Park Trust and Brent Council to enable the day to day management of the Park and building (including lettings).
- (ix) that officers seek the requisite permissions from the Charity Commission to proceed with these lettings and officers advertise at the appropriate time the proposed disposal of public open space under Section 123 of the Local Government Act 1972 and the Charities Act 2011 and if there are objections to refer the objections to the Charity Commission.
- (x) that the vision for the park at Barham Park as detailed in paragraph 3.35 of the report, the core elements required to improve the open space as detailed in paragraph 3.36 to 3.44 of the report and the final concept design for the

- park attached at Appendix 4 to the report be approved.
- (xi) that the long standing arrangements whereby the Grounds Maintenance Service for the park is provided by Brent Council be noted.
  - (xii) that officers pursue options for a café on the site.
  - (xiii) that the works and services as set out in paragraph 3.30, 3.31 and 4.3 of the report at an estimated cost of £227,100 (including VAT) to enable the letting of Barham Park Building be approved.
  - (xiv) that the works and services as set out in paragraph 4.9 of the report at an estimated cost of £394,000 (including VAT) to improve park infrastructure for recreational purposes of the residents of Brent be approved.
  - (xv) that officers seek the necessary permissions from the Charity Commission to proceed with the capital expenditure.
  - (xvi) that officers be delegated the authority to procure and let contracts in accordance with the Council's relevant Contract Standing Orders and Financial Regulations for the building and park works and services as detailed in paragraphs 4.3 and 4.9 following receipt of the necessary Charity Commission approvals; and
  - (xvii) that officers be asked to publish and post the necessary public notices to comply with Section 123 2A the Local Government Act 1972 and the Charities Act 2011.

*The reasons for the call in were:-*

Defects in the decision making process:

- i. The committee was not presented with information that enabled it to compare the relative merits of the various bidders for space in the Barham Park buildings on a like-for-like basis. In particular the rental offer of the successful bidder was inclusive of service charges whereas it appears that the other bidders were evaluated on their rental offers excluding service charges. If this was not adjusted for during the evaluation, the effect was to make the successful bidder's financial offer appear more attractive relative to those of other bidders than it actually was
- ii. Based on the information provided in the report and the Frequently Asked Questions Regarding the Leasing of the Barham Park Buildings it is likely that the rental element of the successful bid (i.e. £43,000 minus services charges at £55 per sq metre) is less than the indicative rent (£35,739) and less than the rental income offered by other bidders and this was not drawn to the committee's attention. If this had been drawn to the committee's attention it may have influenced the decision made if members had

considered that they wished to generate the maximum rental income for the charity consistent with its purposes

- iii. The financial offer weighting criteria did not operate in the best interests of the council as the criteria did not consider the financial offers relative to each other and made no distinction between bids slightly under the asking price and substantially under the asking price.
- iv. The report sets out a 20 year vision for the park but does not address the need for a strategy that will secure the capital resources necessary to deliver the vision, especially taking into account that the agreed proposals will exhaust the charity's existing capital in a very short period.
- v. The committee did not consider alternative credible options for generating income such as alternative uses for the upper floors or casual hire of the old library space
- vi. The committee did not consider whether the evaluation criteria adopted were appropriate and what other options were available to meet the objectives of the charity.

A serious risk associated with implementing the decision that has not already been considered?

- i. The risk that the charity may run out of capital to deliver its objectives and look after its assets (in particular the buildings) in the light of the decision to spend all the charity's capital.
- ii. The risk that the revenue generated by the proposed lettings is lower than would have been the case if an alternative process been followed, therefore increasing the charity's reliance on the council's deficit funding.
- iii. Although the report refers to consultation carried out in September 2012 this exercise focussed on the vision for the park and not the buildings (see Appendix 4) and therefore did not fully comply with the Charity Commission's recommendations about consultation made in 2012; therefore there is a risk of challenge.

*Suggested action for the Call In Overview and Scrutiny Committee to take:-*

- i. To recommend that a new marketing exercise takes place based on criteria and weightings agreed by the Barham Park Trust Committee which better reflect the objectives of the trust. Failing this: to re-evaluate the bids on a like-for-like basis, obtaining necessary additional information from the bidders if required.

- ii. To recommend that the Barham Park Trust Committee retains a proportion of the charity's capital as contingency in order to reduce the risk to the charity's assets.
- iii. To recommend that the Executive should provide assurances to the Barham Park Trust Committee that Brent Council intends to continue to provide revenue support to the charity if necessary to cover annual deficits.

The Chair then invited Councillor Cheese, one of the councillors who had called in this item, to outline the reasons for call in. Councillor Cheese felt that the Barham Park Trust Committee (BPTC) had not been presented with sufficient information to make a decision, including information on other bidders. He stated that further explanation was required as to why the bidder that had scored highest in the bidding assessment had not been selected as the preferred bidder. Councillor Cheese felt that it had not been made clear enough to bidders that the rental fees they offered was a crucial factor in the bidding assessment. He also suggested that the evaluation criteria had not been demonstrated clearly in the results of the bidding assessment.

The Chair then circulated to the committee decision (i) of the Executive meeting of 12 March 2012 with regard to the Barham Park Improvements report that agreed that the Trustees of Barham Park approve a £30k budget to develop an option appraisal, project management plan and feasibility study for the future uses of the Barham Park buildings and options for improving the open space. He suggested that the BPTC report had not provided much in the way of detail in respect of this, apart from reference to it in paragraph 3.3 of the report. He also made reference of discussions between the council and the Charity Commission who had stated that consultation should take place with both current and potential benefactors of the Barham Park Trust and again he felt that this was not covered in the report. He also sought clarification with regard to £15k set aside for consultation on the building. The Chair then invited Councillor Powney to respond to first reason for call in and with regard to the Executive decision on 12 March 2012.

Councillor Powney began by advising that the council was the trustee of the Barham Park Trust and it had felt that it was appropriate to set up a specific committee, the BPTC, to look at issues relating to the Trust. The BPTC had met twice to date, in January and February 2013 and all Members were fully aware, as were Members of the Executive too, of the decisions made by the Executive on 12 March 2012. Councillor Powney disagreed with reason (i) of the call in, stating that officers had correctly carried out what was essentially a procurement exercise and the criteria for the bidding selection process had been weighted accordingly and in a consistent way. He felt that BPTC had all the information necessary to make an informed decision.

Members were then invited to discuss the call in. Clarification was sought as to whether the rent offered by the winning bidder, the Association for Cultural Advancement through Visual Art (ACAVA) was inclusive or exclusive of service charges. It was suggested that as the supplementary report correcting a few errors in the original report was only circulated a day before the meeting, the BPTC did not have sufficient time to consider the implications, particularly as the ACAVA rent

offer was significantly less once the service charge was removed. Furthermore, it was suggested that the report that went to the Executive on 12 March 2012, including the three background documents it referred to, should have been made available to the BPTC and clarification was sought as to whether they could still be viewed. A member felt that the report lacked clarity as a public document and that more information should have been made available. Another member commented that a realistic approach needed to be taken as to just how many documents be supplied to the BPTC, especially in view that a supplementary report was also provided. However, the issue was raised as to whether any lessons could be learnt in respect of future reports to the BPTC. Clarification was sought as to whether the winning bid represented 100% of the asking rent. It was enquired whether the zero score for rent could differentiate between how much less the bidders' offer was to the asking rent. Members also asked if the bidders were aware that Lot 2 could be let ad-hoc and attract a higher rental value. Further comments were sought in respect of why the highest scoring bid, Nikita Patel, the only one to have met the asking rent for Lot 2, had not been awarded as the preferred bidder and if any consideration could be given to approaching her to come up with a higher rental bid. One member commented that the one of the Trust's criteria for letting was that the building be used for community use, whilst the Nikita Patel bid was for a private nursery and so any decision was not necessarily based on the highest financial bid. It was asked whether consideration had been given to leave part of the building vacant because of its condition.

A member, in acknowledging that Lot 2 could attract higher rental values on an ad hoc basis, enquired whether there had been any consideration to renting out other Lots on this basis, particularly as the rent offered even from the winning bidder was less than the council's asking rent. Another member commented that renting out Lots to a sole bidder rather than several could present a risk should they be unable to fulfil their payment obligations and it was asked how far back each bidders' accounts had been assessed. Clarification was sought as to whether Parks Services still used Lot 7. In respect of paragraph 3.35, appendix 3, future vision for developing the site for public consultation, it was suggested that this only referred to the park and did not refer to the building. In addition, confirmation of the level of funding available for the vision of future development was sought and information on plans as to how this related to the building was sought as no details were available in the report with regard to options appraisals, feasibility studies and project management planning. Another member commented that it was clear in the consultation that the vision included both the open space and the building and that both were intricately linked and this was appropriate in view of the opportunity provided by the sale of the houses and the fact that the building was becoming increasingly empty. Assurances were sought that the necessary steps had been taken to ensure there was sufficient reserves for the Trust in view of the costs involved in the proposals and was the VAT element of these recoverable. Further clarity was sought in respect of the level of compliance with the Charity Commission's view, particularly if the council had chosen to simply retain the building without extending use, and would this be at variance with the Commission.

A member commented that as the building had already been empty for around two years, why would providing further time to re-consider proposals with more information made available be an issue. Another member felt that reconsidering proposals could present risks in view of the present economic circumstances and asked what costs would be involved if all lettings were made on an ad hoc basis.

Views were sought in respect of the document circulated by the We Care Foundation to the committee and what would transpire if the preferred bidder was unable to meet its rental obligations. One member questioned whether the use proposed by ACAVA, to support the development and practice of visual arts, could be considered to be of wider benefit to the community compared to other bidders' proposed uses. He stressed the importance that the recreational uses were of public and social benefit to all in the community and clarification was sought with regard to last bullet point under section 5.1 in the report. Another member felt that there was considerable local interest in the arts, citing an example of a local arts festival taking place in the area this year and she felt the proposed use would be welcomed locally, whilst other Lots remained open for other uses. Further details of the weighting criteria used in the application assessment form were also sought.

In reply to the issues raised, Councillor Powney advised that changes made in the supplementary report had been discussed by the BPTC at the meeting on 13 February 2013 and it was clear what these changes were. He acknowledged that there had been errors in the original report and that it could have been clearer, however these had been corrected and all relevant information was available to the BPTC. Furthermore, all BPTC members were also on the Executive that had made the decisions on 12 March 2012 and they were familiar with the site. He felt that providing the appendices referred to by a member of the committee was not necessary and there was already plentiful information on which to base a decision. Councillor Powney confirmed that all bidders had been subject to the same selection criteria. Turning to reason (ii) for the call in, Councillor Powney advised the number of Lots each bidder had bid for had varied, with ACAVA bidding for all but one of the Lots, Lot 2, whilst Nikita Patel had only bid for Lot 2. The BPTC had enquired whether it was possible to rent to both bidders at the meeting, however it had been explained that Lot 2 was suitable for ad hoc renting which attracted higher renting levels. However, the longer term renting arrangements offered by ACAVA for the remaining Lots also provided security and it was also easier to manage a single tenant for a large part of the building rather than multiple numbers. Nikita Patel's organisation was a start-up business which presented an element of risk, whilst by contrast ACAVA was bidding for most of the Lots available and had been assessed as having a good financial standing and its proposed use fitted well with the selection criteria requiring recreational use for the community. Councillor Powney advised that bidders had been made aware of indicative rent for all Lots and the committee heard that not all Lots were suitable for ad hoc renting. The selection of the preferred bidder was based not only on rent offered, but also the recreational and amenity value. It was confirmed that Parking Services was using part of the site as a depot, but this did not involve any of the Lots.

Turning to the consultation, Councillor Powney emphasised that the building was part of the proposals and that there was reference to this in the consultation document and discussion on this matter and he referred to paragraphs 4.3, 4.4 and 4.5 that made mention of building proposals. Meetings had taken place with stakeholders and both the building and park had been discussed together, and appendix 3 in the report referred to a part of the building. Members heard that £15,000 had been allocated for the building and £15,000 for the park to undertake a property option appraisal, project management plan and feasibility study and this had been summarised in the report. Councillor Powney commented that the Charity Commission would expect the Trust, as a charity, to use its capital, whilst there were also unavoidable costs involved such as building repairs. The proposals

were designed to maximise revenue and although there was an element of risk, such as inability of tenants to pay their rent, however Councillor Powney felt that this would not jeopardise the Trust's reserves and the preferred bidder had a reliable reputation. He felt that two years had been sufficient time to consider proposals for the use of the building and in view that it had been empty for two years, it was important to bring it back into use and any further delay could impact adversely on the Trust as it would be unable to benefit from revenue, whilst the community would also suffer. In respect of the We Care Foundation bid, Councillor Powney advised that school use was not in accordance with the recreational use stipulated by the Trust. He felt that ACAVA would engage positively and be an asset to the community and that the rent they would provide could contribute towards improvements to the site as a whole. The committee heard that most of the spending for the whole site would be for the park and this was accessible to all.

Mick Bowden (Deputy Director of Finance and Corporate Resources) confirmed that all bidders had been assessed without service charges. The reference to the £43k rental offer from ACAVA in the original report had included service charges, however this had been highlighted in the supplementary report. The bids received included a number of combinations of different Lots, however Lot 2 could attract a higher rental value on an ad hoc basis. Mick Bowden confirmed that the bidders' accounts from the last two years had been assessed. With regard to recovering VAT costs, he advised that whilst the council would be able to do this, after taking advice on the matter, it had been deemed not possible for Trust to do so.

Richard Barrett (Assistant Director – Property and Assets, Regeneration and Major Projects) advised that all bidders were subject to the same selection criteria and that a proforma template had been used. However, the Trust retained the flexibility to ultimately select the bid it deemed most suitable as it was not bound by the outcome of the evaluation process. This could include consideration of factors relating to a specific bid, such as the risks associated with a start-up business. Furthermore, the Trust could take into account issues such as the ability to attract higher rents from Lots that could be let on an ad hoc basis. Richard Barrett acknowledged that consideration could be given in future to the design of the selection criteria to include differentiation between the amount bids were below the requested rental value. The property had been widely advertised and the market had determined the best rent. ACAVA was the only bidder whose financial standing was regarded as strong and there was a risk that they may not bid again if the building underwent a re-bidding exercise. Furthermore, a re-bidding would be time consuming and increase risks, especially if the number of Lots that could be let on an ad hoc basis was increased. In addition, it would not be fair to re-open discussions with one bidder about the possibility of them increasing their rental offer.

Richard Barrett confirmed that Lot 2 was the only Lot that had been let on an ad hoc basis to date and it was proposed to continue with this arrangement because of the higher income that it has attracted to date. Although Lot 2 was well known to local organisations on its availability on an ad hoc basis, the remaining Lots would require generating a market to be let in this way and this would present a risk to the Trust. In view of this, it was far more desirable and logical to let the remaining Lots on a longer term basis and it also meant that the building would be fully utilised, as opposed to the risk of its condition deteriorating because of lack of use. The preferred bidder would be subject to the usual powers available to the Trust if they

were unable to pay their rent, with all efforts made to manage the process and this could include re-possession of the Lots in question. Richard Barrett confirmed that the Executive report of March 2012 had included an options appraisal for the building, including health and safety related matters and improvements that would be manageable cost wise to the Trust. He also confirmed that the background documents were available.

Fiona Ledden (Director of Legal and Procurement) advised that the Trust continued to liaise with Charity Commission in respect of the Barham Park site. She felt the consultation had been undertaken appropriately and that the Charity Commission would welcome the improvements to the governance arrangements of the Trust and that difficulties would have been encountered if the building had been left unused and fallen into disrepair. Fiona Ledden confirmed that the Trust could dispense with seeking the consent of the Charity Commission if Lots were let to another charity at less than best rent, providing they were being used for recreation of the public. She advised that there were significant legal implications to approaching a bidder after the bidding process had been closed and this would represent a dangerous precedent. Acting in the best interests of the Trust was of most importance and the level of income was a significant factor, as well as the interests of the community, providing they were not at variance of the Trust's.

The committee then decided against Councillor Beck's suggestion that the BPTC ensure that the value of the Lots are maximised and to re-evaluate the bids on a like-for-like basis, obtaining necessary additional information from the bidders if required. The committee also decided against the suggested action referred to by the Chair as set out in points ii. and iii. under *suggested action for the Call In Overview and Scrutiny Committee to take*.

RESOLVED:-

that upon considering the report from the Director of Environment and Neighbourhood Services, the decisions made by the Executive be noted.

**5. Date of next meeting**

It was noted that the next meeting of the Call In Overview and Scrutiny Committee was scheduled for Thursday, 28 March 2013 at 7.30 pm and would take place in the event of there being any call ins of decisions made by the Executive on 11 March 2013.

**6. Any other urgent business**

None.

The meeting closed at 9.50 pm

J ASHRAF  
Chair