



Call In Overview and Scrutiny Committee

Wednesday 27 February 2013 at 7.30 pm
Committee Rooms 2 and 3, Brent Town Hall, Forty Lane, Wembley, HA9 9HD

Membership:

Members

Councillors:

Ashraf (Chair)
Denselow (Vice-Chair)
Daly
Kabir
Lorber
HB Patel
RS Patel
Krupa Sheth

first alternates

Councillors:

Hopkins
Mrs Bacchus
Adeyeye
Mitchell Murray
Matthews
BM Patel
McLennan
Harrison

second alternates

Councillors:

Brown
Hossain
Al-Ebadi
Chohan
Beck
Colwill
Aden
Ketan Sheth

For further information contact: Toby Howes, Senior Democratic Services Officer
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The press and public are welcome to attend this meeting

Agenda

Introductions, if appropriate.

Apologies for absence and clarification of alternate members

Item	Page
1 Declarations of personal and prejudicial interests	
Members are invited to declare at this stage of the meeting any relevant financial or other interest in the items on the agenda.	
2 Deputations (if any)	
3 Minutes of the last meeting held on 17 May 2012	1 - 6
The minutes are attached.	
4 Matters arising	
5 Call-in of Executive decisions from the meeting of the Barham Park Trust Committee held on 13 February 2013	7 - 34

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.
- (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 are:-

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.

6 Date of next meeting

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

7 Any other urgent business

Notice of items raised under this heading must be given in writing to the Democratic Services Manager or his representative before the meeting in accordance with Standing Order 64.



Please remember to ***SWITCH OFF*** your mobile phone during the meeting.

- The meeting room is accessible by lift and seats will be provided for members of the public.
- Toilets are available on the second floor.
- Catering facilities can be found on the first floor near the Paul Daisley Hall.
- A public telephone is located in the foyer on the ground floor, opposite the Porters' Lodge



MINUTES OF THE CALL IN OVERVIEW AND SCRUTINY COMMITTEE **Thursday 17 May 2012 at 7.30 pm**

PRESENT: Councillor Mitchell Murray (Chair) and Councillors Bacchus (alternate for Councillor Denselow) , Gladbaum, Lorber, HB Patel, RS Patel and Krupa Sheth

Also present: Councillors Chohan and S Choudhary

Apologies for absence were received from: Councillors Ashraf and Denselow.

1. Election of Chair

In the absence of both the Chair and Vice Chair, nominations were sought for Chair of the committee for this meeting. Councillor Mitchell Murray and Councillor Hopkins were nominated. Both nominations were put to the vote and Councillor Mitchell Murray was declared Chair for this meeting.

RESOLVED:-

that Councillor Mitchell Murray be elected as Chair of the committee for this meeting.

2. Declarations of personal and prejudicial interests

Councillor Hopkins declared an interest in that she had been approached by local residents and the Brent Trade Union in Council in respect of item five, 'Control of distribution of free literature on designated land'. However, she did not consider the interest prejudicial and remained present to consider this item.

3. Minutes of the last meeting held on 1 February 2012

RESOLVED:-

that the minutes of the last meeting held on 1 February 2012 be approved as an accurate record.

4. Matters Arising

None.

5. Call-in of Executive decisions from the meeting of the Executive held on 23 April 2012

Decisions made by the Executive on 23 April 2012 in respect of the following report were called in for consideration by the Call In Overview and Scrutiny Committee in accordance with Standing Orders 6 (b) and 18.

Control of distribution of free literature on designated land

The reasons for the call in were:-

- (1) The report does not quote the relevant passage of the act, nor explain that interpretation of the act would be a matter for the courts.
- (2) The report does not explain the evidence base for the problem. There should be a context paragraph explaining why they think the problem will get so much worse, why existing measures are inadequate and what action other London boroughs are taking.
- (3) The report should either time limit these powers or make explicit that they are being requested permanently. At the moment the report implies they are just for the Olympic period from the way it is worded.
- (4) The issue of enforcement, in particular the circumstances which would lead to action by council officers, is unclear.
- (5) Equalities issues are dealt with inadequately: for example many small businesses in Brent are owned by members of particular ethnic minorities and small non-commercial group which are not charities or political organisations may be disproportionately affected given the level of fees proposed.
- (6) The report does not sufficiently make clear whether small organisations which are not charities or political organisations and do not cause litter will be compelled to take out licenses and risk fines.

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

- (1) Clarify how the controls will be enforced and who they will affect.
- (2) Consider whether further information is needed about the equalities impacts of the decision.
- (3) Recommend that if the council goes ahead with the proposal it should consult on and adopt a code of practice for enforcement of the controls, including guidance as to how officers will use their discretion, particularly in the case of small unlicensed distributors (commercial and non-commercial) who are not causing littering.

The Chair invited Councillor Lorber, one of the councillors who had called in this item, to summarise the reasons for the call in. Councillor Lorber began by stating that the report that went to the Executive lacked clarity in a number of areas. He felt that the subsequent supplementary briefing that had been circulated to the committee had partially resolved this, however some outstanding issues remained. He then drew Members' attention to the reasons for call in and suggested action for the committee to take as set out in the agenda.

The Chair then invited members of the public who had requested to speak to address the committee. Peter Murray introduced himself as the Secretary of the

Brent Green Party, a campaigner against climate change and as a local resident. Peter Murray explained that he regularly leafleted on a number of issues, such as during elections, nuclear waste and publications on climate change. He felt that the proposals to charge for leafleting needed to be reconsidered as many organisations that leafleted did not enjoy media coverage and were dependent on leafleting to raise awareness of their cause. Such organisations were also likely to be lacking financial resources and licence fees may prevent them from being able to leaflet any longer. Peter Murray felt that most organisations who were distributing leaflets in support of causes behaved responsibly and discarded unused leaflets appropriately and felt that litter from leafleting was not a significant issue in Brent. He also sought clarification with regard to what fundraising and religious groups would be exempt from the charges.

Peter Firman introduced himself to Members as Chair of the Brent Trade Union Council and as a member of the Brent Fightback campaign. Peter Firman felt that it was not totally clear that the proposals were designed to address issues in respect of commercial leafleting and even if this was the case, the proposed fees would discriminate in favour of larger organisations. He asked whether events such as school fairs would be classified as exempt and felt that there were a number of grey areas in relation to exemptions, including whether the Brent Trade Union Council, which relied on leafleting to help gain support, would be classified as such. He asserted that organisations' rights to publish should be protected.

Councillor Powney (Lead Member for Environment and Neighbourhoods) then provided an initial response to the call in. Councillor Powney began by stating that the council had proposed to adopt new powers under Section 23 of the Clean Neighbourhoods and Environment Act 2005 (CNEA) as it allowed the council both more effective powers whilst also creating a wider range of exemptions. The previous powers available to the council under the London Local Authorities Act 1994 (LLAA) were stricter but also more difficult to enforce, costly and a considerable administrative burden. Councillor Powney advised that if the decisions were overturned, then the existing more stricter powers would remain in force. He set out the consultation timetable that would take place over a two week period which included a public notice and a newspaper advertisement on 22 May with a deadline of 7 June to respond to the consultation. Feedback from the consultation would contribute to any tweaking of the proposals needed with the new powers coming into force on 2 July, in time for the Olympics.

Councillor Powney advised that in practice enforcement was not a particularly serious issue in the borough and he referred to the guidelines of the Enforcement Policy relating to proportionality, accountability, consistency, transparency and targeting as set out in the supplementary report. Members noted the relevant passages of legislation contained in the supplementary report. He then drew Members' attention to the responses to the call in as set out in the supplementary report, adding that adopting the new powers was particularly necessary in view of the anticipated greater demand both in terms of leaflet distributing and visitors to the borough during the Olympics. Councillor Powney stressed that enforcement would be proportionate, occasional and would target larger organisations that were creating the most nuisance.

Michael Read (Assistant Director – Environment and Protection, Environment and Neighbourhoods) added that powers to deal with free literature nuisance were used

in particular to tackle problems on Wembley event days as this was when the most serious nuisance was caused and most complaints received. The powers had not been used to prevent distribution of literature by political organisations and enforcement was proportionate and dependent on whether a particular non-compliant activity was causing sufficient risk of harm. The council was accountable for any enforcement action taken and targeted where there was the most serious risk of harm. Michael Read advised that the new powers would not lead to action being taken against political organisations or faith groups or events such as school fairs. The new powers would also allow the council to issue fixed penalty notices (FPNs) to offenders rather than having to pursue lengthy and administrative-laden court action. Michael Read reassured the committee that proper consideration would be given to any representations submitted during the consultation.

David Thrale (Head of Service – Safer Streets, Environment and Neighbourhoods) advised that enforcement focused on public nuisance, such as on Wembley event days where often there were a number of opportunist distributors who would block pavements whilst advertising their products or services. Persistent offenders might for example include pay as you go mobile phone providers and pawn brokers. David Thrale informed Members that the last prosecution had been made in 2006 and there had been no formal action taken against charities, organisations promoting a cause and political organisations. Members heard that under the existing powers, the council faced a number of practical issues such as having to seize and store materials as well as the administrative action required to initiate court proceedings.

Yogini Patel (Senior Regulatory Service Manager – Safer Streets, Environment and Neighbourhoods) then addressed the committee. Yogini Patel cited some examples of public nuisance and harm caused by distribution of free literature on Wembley High Road which often occurred on Wembley event days. One such example included a betting shop promoting gambling activities to young people. She felt that under the new powers, issuing an FPN to an offender would act as an effective deterrence and this would be far preferable to having to take time-consuming court action and seizing material.

Members then discussed the call in. Councillor Hopkins commented that although assurances had been received that distributing literature for political causes would not lead to enforcement action, she asked for clarification as to whether this would also apply to literature pursuing other causes, many of which may be deemed good causes. She questioned the need to bring in the new powers in view that there had been no prosecutions since 2006 and asked whether enforcement action could be taken if the activity was taking place on the distributor's own property or doorway. Councillor Hopkins supported action to reduce litter, however she expressed concern that changes in staff could mean different interpretations of when to take enforcement action. She felt that more clarity and definition was needed as to what situations would be subject to enforcement action and this should be included in the enforcement guidance. She also asked if it was feasible to introduce a sliding scale of fees in respect of issuing licences to distributors to make it more affordable to smaller organisations.

Councillor Gladbaum felt that the supplementary report had clarified a number of issues, particularly in respect of bringing in the new powers in time for the Olympics and the need to make enforcement powers more effective and practical to apply.

She sought further details with regard to what constituted risk of harm and enquired whether more enforcement action would require the need for more staff to be employed. Councillor H B Patel acknowledged that powers to take enforcement action had been available for around 20 years but queried why it had been perceived that litter was more of a nuisance now. He sought further clarity in respect of exemptions and was it intended to increase the number of streets designated in respect of licensing and if so would it be even harder to enforce bearing in mind the problems experienced with the present number of streets. Councillor H B Patel also felt that the licensing fees may be prohibitive for some organisations and he requested that consideration be given as to how such organisations could be helped.

Councillor Lorber commented that more clarity was needed concerning the proposals and the key objectives. He felt that if the main objective was to provide additional powers in dealing with nuisance, then there would be no need to introduce licensing fees, which would disproportionately disadvantage small organisations. Councillor Lorber suggested that if it was made clear that enforcement would apply where unlicensed operators were distributing leaflets for commercial purposes, this would provide the clarity needed and enable the council to focus its attention on those operators most likely to cause nuisance. He also enquired if the finalised proposals after the consultation would be presented to the Executive for approval or delegated under the authority of officers.

The Chair welcomed the supplementary report and understood the concerns with regard to the potential of nuisance caused by leafleting during the Olympics. She commented that she was aware of an incident where betting coupons had been distributed in Ealing Road. The Chair also asked whether the council was aware of the concerns raised in respect of smaller organisations.

In response to the issues raised, Councillor Powney advised that the main advantage of the new powers was the ability to issue PCNs to offenders as a quick and effective way to deter future offending, as opposed to current powers which limited the council to pursuing long and expensive court proceedings. He acknowledged the need to provide greater clarity, however he warned that providing excessive detail of what was enforceable action would actually make it harder to be understood. He felt that providing general principles and using sound judgement acting proportionately with regard to enforcement action would strike the best balance in addressing this issue. Councillor Powney added that there could be some difficulties in defining what precisely constituted 'commercial purposes'. With regard to the suggestion of a sliding scale for licensing fees, Councillor Powney advised that legal and technical advice needed to be sought to see if this was feasible. Other than through a reference from this committee, the item would only be referred back to the Executive if there were changes to the proposed licensing fees.

Michael Read advised Members that with regard to risk of harm and enforcement, this could involve assessing a number of situations, such as how the leafleting was being conducted and this may include operators blocking a pathway or piling leaflets on the ground. Members noted that there was no legislation controls in place with regard to literature placed in letterboxes. Michael Read advised that introducing a licensing system allows the council to include conditions on the licence to regulate the behaviour of the operators which would help address situations such as that described by Yogini Patel with regard to a betting shop's

actions. He stated that more clarity would be provided on the website concerning enforcement action, however if organisations were still unsure, they could still apply for a licence.

David Thrale commented that the new powers would be both more effective and proportionate whilst also offering clearer and wider exemptions. The main intention was to curb excessive leafleting activities and the vast majority of operators acted responsibly. David Thrale confirmed that the expanded list of designated streets only applied to those listed in the report. The Olympics was an additional driver as to why implementing the new powers at this time was particularly timely in view of the prospect of there being more operators and visitors to the area. With regard to enforcement powers, he advised that these came into effect once an activity was within seven metres of a public highway.

The committee then decided against Councillor Lorber's suggestion that a report be presented to the Executive after the consultation to consider whether a sliding scale of license fees can be introduced, or if this is not possible, that the license fee be set at a level taking into account the financial limitations of smaller organisations.

RESOLVED:-

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

6. The Executive list of decisions for the meeting that took place on 23 April 2012

RESOLVED:-

that the Executive list of decisions for the meeting that took place on 23 April 2012 be noted.

7. Date of next meeting


It was noted that the next meeting the Call In Overview and Scrutiny Committee was scheduled for Wednesday, 6 June 2012 and would only take place if there are any call ins from the Executive meeting held on 21 May 2012.

8. Any other urgent business

None.

The meeting closed at 8.55 pm

W Mitchell Murray
In the Chair

	<p style="text-align: center;">Barham Park Trust Committee 13 February 2013</p> <p style="text-align: center;">Report from the Director of Environment and Neighbourhood Services</p>
<p>For Action</p>	<p>Wards Affected: Sudbury</p>
<p>Proposals for Improving Barham Park Building Complex and Park</p>	

1.0 SUMMARY

- 1.1 To update the Barham Park Trust Committee (BPTC) on three matters: the proposal for letting the Barham Park building complex; proposals to rejuvenate the open space and a suggested allocation of capital funding.
- 1.2 The report proposes leasing a proportion of the building complex to the Association for Cultural Advancement through Visual Art (ACAVA), generating a gross income of £43,000 per annum for the Trust. It proposes that the lounge area continues to be available for ad-hoc lettings. It also regularises the arrangements for the Children's Centre, park depot and card room.
- 1.3 The report sets out a 20 year vision for the public open space and the core elements to begin to deliver the proposals.
- 1.4 Finally, the report suggests how the capital funds arising from the sale of 776 and 778 Harrow Road could be spent to best achieve the Trust's charitable objectives.

2.0 RECOMMENDATIONS

Members of this Committee acting on behalf of the Council as trustee of Barham Park agree the following:

Letting arrangements

- 2.1 That the Association for Cultural Advancement through Visual Art (ACAVA) be appointed as the preferred bidder for lots 1, 3, 4, 5 and 6.
- 2.2 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.
- 2.3 A tenancy or tenancies be granted to Brent Council of the land shown edged red on Appendix 2 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.

- 2.4 The finalisation of the terms 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.
- 2.5 To grant a licence to Brent Council to provide grounds maintenance from the depot at nil cost provided the service is for the sole benefit of Barham Park.
- 2.6 The lounge area (Lot 2) continues to be used for ad-hoc lettings in accordance with the recreational purposes of the Trust.
- 2.7 Approve the letting rates for the ad-hoc lettings set out in paragraph 3.27.
- 2.8 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).
- 2.9 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.

Park vision and 10 year management plan

- 2.10 The vision for the park at Barham Park as detailed in paragraph 3.35, the core elements required to improve the open space as detailed in paragraph 3.36 – 3.44 and the final concept design for the park attached as Appendix 4.
- 2.11 Members note the long standing arrangements where the Grounds Maintenance Service for the park is provided by Brent Council.
- 2.12 Officers pursue options for a café on the site.

Capital Expenditure

- 2.13 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.
- 2.14 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.
- 2.15 Officers seek the necessary permissions from the Charity Commission to proceed with the capital expenditure.
- 2.16 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.
- 2.17 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.

3.0 DETAILS

General Background

- 3.1 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 from time to time think proper’*. It was registered with the Charity Commission in June 1963 and is regulated by that body.
- 3.2 The terms of the Trust are extremely wide and it is difficult to summarise in general terms the uses allowed. Section 5 of the 2011 Act states it is charitable to “provide or assist in the provision of facilities for recreation or other leisure time occupation if the facilities are provided for social welfare”. A school would not fall under the scope of recreation as education is a separate charitable purpose under charity law.
- 3.3 The building complex and park are both in need of investment to continue to achieve the charitable objectives. The Trust has a reserve of £658k (as of 31 December 2012). The Executive Report of 12th March 2012 approved the allocation of a total of £30,000 from these capital funds to fund a property option appraisal, project management plan and feasibility study and a feasibility study for the improvement of the open space. Charity Commission approval for this expenditure was given in May 2012.

Proposals for letting the Barham Park building complex

- 3.4 Following Charity Commission approval, the building complex was divided into lots as set out below. The Lots were marketed from August to September 2012 and the deadline for the receipt of bids was 1st October 2012. The full details of the marketing exercise and evaluation are set out in Appendix 1 and Appendix 2 comprises floor plans of the individual Lots.

Accommodation	Area	Lot
660 Harrow Road 1 st floor offices.	180 sq m	1
558 Harrow Road Ground floor lounge & ancillary.	178 sq. m	2
660 Harrow Road Former Library.	291 sq. m	3
660 Harrow Road Former Library 1 st floor offices.	80 sq. m	4
1 st Floor Office 656 Harrow Road offices.	90 sq. m	5
656 Harrow Road Ground floor Community Workshop.	45 sq. m	6
Card room.	116 sq. m	7
TOTAL	980 sq. m	

- 3.5 The other units at the Barham Park complex of buildings were not subject to the marketing process: The Children’s Centre; the Sports and Parks Service Depot; and the Snooker and Billiard rooms.
- 3.6 At the first stage of the bidding process there were 12 bids and one later withdrew. The bids were evaluated against the following criteria:
- Financial positioning,
 - Proposed use – in particular whether recreational or not and if use is suited to the park location,
 - The bidder’s ability to deliver the project; and
 - The bidder’s financial offer.

- 3.7 The top three bids are: ACAVA, Nikita Patel and the Alpha and Omega Christian Fellowship. The Alpha and Omega Christian Fellowship scored third, however their proposed uses are not considered to be fully recreational use and so are not compatible with the charitable objects of the Trust. Their bid for Lots 1 & 3 would also prevent a comprehensive letting of most of the units to one bidder.
- 3.8 Nikita Patel scored second highest and is a start up business. Her bid is for only one Lot, which would prevent a comprehensive letting of most of the Lots to one bidder.
- 3.9 The top scoring bid was from ACAVA, who has bid for Lots 1,3,4,5 & 6 (totalling of 686 sq. m). In terms of property management for the Trustee, it is simpler to have one tenant occupying most of the Lots than a number of individual tenants.
- 3.10 The Council's Finance and Corporate Resources Department have undertaken financial checks confirming ACAVA will be able to fulfil their proposed rental bid, this assessment is based on accounts for the year ending 31st March 2011. Their financial returns for 2012 are being finalised.
- 3.11 ACAVA's activities fulfil the required recreational use of the building. It is a charity established in 1983 to support the development and practice of the visual arts. It provides studios for over 500 artists in 20 buildings, mostly in London. ACAVA use a wide variety of buildings, many converted from buildings such as industrial factory premises, offices, shops, and schools. Based on their track record we believe they would have the expertise to undertake works/alterations and deliver their programmes.
- 3.12 ACAVA have offered a rent of £43,000pa including service charge. The service charge figure will be calculated to reflect management, maintenance and repair obligations. This will be dealt with during the course of negotiations and deducted from the rental figure above taking into account any capital works to be undertaken. The recommendation is that lots 1, 3, 4, 5 & 6 are let to ACAVA as overall this is the best offer for the Trust:
1. Taken on a number of Lots.
 2. Demonstrate sufficient financial capacity to take on the rental obligation offered.
 3. Fit well with the recreational use required by the Trust.
 4. Have experience and a track record of delivering similar projects.
 5. Have offered a rental bid subject to subsequent service charge calculation that is in excess of the amount assessed and advertised by our RICS Chartered Surveyor.
 6. Most advantageous letting in estate management terms in that it ensures there are no voids from amongst the marketed units and establishes another "anchor tenant" alongside the Council.
- 3.13 Further information about the unsuccessful bidders is below:
1. PIVOT (Alton Bell) - PIVOT scored fourth in the bid process, however their financial standing and rental bid was too low.
 2. Angels Families CIC (Ms Thripp) - They scored fifth in the bid process, however that their financial standing was too low and there were some operational.
 3. Friends of Barham Library (Councillor Paul Lorber) - They scored sixth in the bid process. Their financial standing was considered too low and their rental bid was significantly lower than the winning bid. Two letters of support have been received for their bid, one from Francis Henry and another from Track Academy.
 4. Total Freedom Tabernacles Int'l Ministries (CAC) - They scored seventh in the bid process. Their financial standing and rental bid were considered too low. Their proposed use was not considered to be in keeping with the Charitable objectives of the Trust.

5. Elder Folajimi Raymond Awosika (EFRA) - They scored eighth in the bid process. Their financial standing and rental bid were considered too low. Their proposed use was not considered to be in keeping with the Charitable objectives of the Trust.
6. Track Academy didn't participate in the 2nd stage of the process.

Proposals for the Children's Centre, Snooker and Billiards Room and Card Room

- 3.14 At present there is no formal arrangement for the occupation of these spaces. Therefore the intention is to regularise the various existing occupations and to provide transparency as to the opportunity cost of these spaces to the Trust, in compliance with Charity Law. The additional intention is to ensure the appropriate rent is paid or offset against the value of the Council's contribution to the management of the Park and for this to be properly reflected in the accounts of the Trust.
- 3.15 The space occupied by the Children's Centre was converted into a Children's Centre by the Council at a cost of £285,000 funded by a Sure Start, Early Years & Childcare Grant. These activities are a good fit with the recreational objectives of the Barham Park Trust and the money delivered significant improvements to the building. The capital grant can be used as a lease premium and therefore the intention is to discount this capital work against a yearly rental value.
- 3.16 As part of the grant conditions the area designated as the Children's Centre, has to be made available for a period of 25 years. Therefore it is proposed that any let of this space will be for a term of 25 years.
- 3.17 To comply with the procedural terms of the Charities Act 2011 this letting is to a connected party (the Council) and therefore a separate application will need to be made the Charity Commission.

Space Occupied by the Barham Park Vets

- 3.18 The Barham Park Veterans Club (Wembley) is a Registered Charity, having been registered on 27th September 2000. Their charity number is 1082639. They are therefore a different entity from the original Veteran's Club that was formed in the late 1940's and occupied the Snooker and Billiard Room from that period.
- 3.19 The Barham Park Veterans Club (Wembley) have been using the Snooker and Billiard Rooms for a number of years paying no rent, with the Council paying for any repairs to the property and until recently, the business rates. The card room is also currently used by the Veterans. The recent condition survey has indicated this building, (shown as Lot 7 on the accompanying site plan) is in poor condition and of light weight construction and it has been suggested that possible demolition may be the best option. The cost of bringing this space back into beneficial use may be prohibitive and therefore the medium to long term future for this space will need further consideration.
- 3.20 The current Barham Park Veterans Club (Wembley) has, at best, a licence to occupy, and no other form of tenure for their current use and occupation of the Snooker and Billiard Room.
- 3.21 The Barham Park Veterans Club (Wembley) use of Trust land needs to be documented to regularise their status and use of the land consistent with charity law and practice.
- 3.22 Therefore the recommendation is that the Council will take an over-riding lease of the Snooker and Billiard Room space from the Trust. In turn the Council will then grant the Veterans a tenancy of this space on terms to be agreed between the Council and the

Veterans. This will separate out the relationship of the three parties into two distinct and separate contractual arrangements and also help to ensure the Trust complies with the Charity Commission regulations.

- 3.23 In addition, in the short term, it is proposed to include the card room within the over-riding lease to the Council and if appropriate, i.e. if the building is considered to comply with health and safety and other compliance issues, to continue with the ad hoc use by the Council, in particular the Remembrance Sunday Commemorations and the Vets by way of licence from the Council.
- 3.24 The recommendation, in order to regularise these occupations, is for the Trust to grant the Council a lease or leases of the Children's Centre, Snooker and Billiards Room and Card Room.
- 3.25 The Council rent is to be assessed at a open market level and in accordance with Charity Commission requirements in regard to transactions with a "connected party". This rental will be reflected in the accounts of the Trust. The meaning of a "connected party" is summarised in paragraph 5.7 below.

Parks Depot Centre

- 3.26 This space within the Barham Park complex was omitted from the recent marketing campaign as it is utilised by the Parks Service solely for the betterment of the Park. As the use is exclusively for the maintenance of Barham Park it is proposed that a rent or occupations fee is not charged.

Ad-hoc lettings of the lounge area

- 3.27 There is a long standing arrangement with Environment & Neighbourhood Services who manage the lettings of the lounge. In 2011/12 this generated £18,800. The Trustees need to agree the fees for 2013 and it is proposed that the current fees are retained:
- £45.00 per hour
 - £60.00 per hour after 10pm between 1st April & 31st October)
 - £60.00 per hour after 8pm between 1st November & 31st March

There is an additional Refundable Deposit of £150.00

A 25% reduction of the £45.00 Standard Rate is allowable for children's parties (provided the hire finishes before 7pm) and series/long-term bookings.

If the event is cancelled 5 or more working days before the hire date a fee of 25% is deductible from the deposit.

If the event is cancelled less than 5 working days before the hire date the deposit is not refunded.

Capital investment required to improve the condition of the Barham Park Building

- 3.28 Recently Property and Asset Management (PAM) has commissioned a number of building related reports to assess the condition of the complex and to prepare a schedule of works required to undertake essential or desirable repairs to the building. These reports will assist the Trust in maintaining the Assets to avoid future potentially expensive repair liabilities and also to improve the lettability of the various parts of the complex.
- 3.29 A well known and respected firm of Building Surveyors, Calford Seaden Partnership were commissioned to review the reports to identify what works were essential, i.e. wind and

water-tight, health and safety related and needed for the purposes of letting individual lots. They were requested to provide a schedule of essential works, costs and project plan for Trust approval. A précis of the report is set out below.

3.30 The external elements comprise – Recommended (landlords obligation):

1. Roofs: general noted as in good condition with no felt underlay, Calford's opinion is that roofs can be left but on-going maintenance will be required as slates fail.
2. Gutters and down pipes: the most cost effective solution is to replace them as they are leaking and blocked.
3. Chimney stacks: some repointing required, bedding of pots and replacement of flaunching.
4. Walls: generally good condition with minor repointing needed and removal of shrub that is growing out of wall and section re-built, some pebble dashing is in poor condition and needs renewing.
5. Windows: no change proposed although it is noteworthy in some areas the glazing comprises old single glazing.
6. Damp: evidence in 654 and 660 this needs further investigation and remediation if necessary.
7. Drains and gulleys: blocked gulleys noted and full CCTV survey recommended to determine works.

3.31 The internal elements, marketed lots comprise – Recommended (as per commitments during the marketing process):

8. Services: poor services noted and non compliant fire alarm and emergency lighting, the proposal is for replacement.
9. Decorations: if the services, in particular re-wiring instructed, then all rooms and lettings lots will need to be re-decorated.
10. Floor coverings: all carpets are noted as in poor condition and the proposal is that they will be removed and not replaced.
11. WC's: they are all aged and tiling is poor, the proposal includes removal and replacement in most areas.
12. Mains services: as far as practical, where works are being undertaken mains services will be individualised.
13. The Parks Mess Room – It is understood this area and lot 6 share services, the proposal is to provide new services to Lot 5 and 6, providing separation.
14. Structural Survey: Issues with flooring and joists. The surveyor initially indicated a cost of £5,000 however this is subject to further inspection and could be higher.
15. Means of escape (health & safety – essential): Upper levels may require the installation of emergency evacuation provision. The extent of this work will be dependent upon the proposed use and any modern building control requirements. An initial view is, if proved necessary, the installation of windows that allow emergency escape would be sufficient. An indicative budget of £10,000 excluding professional fees and VAT has been set.

3.32 The proposed programme is as follows:

1. Specification – 4 weeks
2. Tender – 4 weeks
3. Tender report approval – 2 weeks
4. Contracts lead in – 3 weeks
5. Contract period – 20 weeks

3.33 The contract period has factored the risk of utility providers taking a long time to process orders and undertake works. The cost summary for the essential or recommended items is set out in the financial implications section of this report.

Vision for Barham Park and Management Plan

- 3.34 On 12 March 2012 Trustees agreed to allocate £15,000 funding to enable specialist consultants to develop a strategic approach to develop the open space within 'Barham Park' into a more environmentally friendly park. Following this, extensive work has been done to develop a vision and management plan. Further detail on this is in Appendix 3. One of the goals was to reduce the costs of day to day maintenance.
- 3.35 Following extensive professional advice and the public consultation process the following ambitious 20 year vision and core elements for improving the park's open space were developed.

20 Year Vision

Barham Park will bring local people together and provide a resource which will help to enhance the lives of local people. The park will provide opportunities and facilities for all members of the local community to meet with each other, relax, learn and play. The beauty and tranquility of the historic formal gardens at the heart of the park will flow into a wider parkland rich in wildlife habitats. Users will be encouraged to explore the whole of the park in a safe environment. The park will be improved and managed in a sustainable manner to ensure that investment in the park is protected for future generations.

Core Elements

- 3.36 To deliver the vision, the consultants identified seven core elements at the heart of the landscape improvements to the park. A concept design is included in Appendix 4.

Paths and Circulation

- 3.37 It is proposed to remove the line of existing conifers between the War Memorial and railway embankment. This will enable the area behind the conifers to link up with the rest of the park which will be enhanced by the creation of a path that links the west of the park to the east, extending access to the entire park.

Nature Conservation, Meadows, Ponds and Woodlands

- 3.38 A series of meadows are proposed in the east of the park. Maintaining the meadows at a variety of heights would create habitats that would extend the nature conservation and biodiversity value of the park. Ponds and wetlands would be created in the lower part of the park with a viewing platform and new interlocking path. These would provide the habitat for aquatic, marsh and water loving species as well as educational opportunities such as pond dipping. Vegetation in the existing formal ponds should be reduced to increase biodiversity and health of these ponds. The provision of log piles will offer shelter and food for insects, beetles and invertebrates.
- 3.39 To increase Barham Parks' educational value interpretation information should be provided to provide information about the plants/trees, how they are being managed and the benefits of their provision.

Historic Core

- 3.40 The walled and formal gardens will remain although many parts of the existing garden walls need restoring. More seats could be added and access arrangements reviewed to reinstate the original historic features. A couple of options were put forward to make the area

between the walled garden and the war memorial more welcoming and functional.

Boundary Trees and Woodlands

- 3.41 Mature oak trees are located along the Southern boundary and pre-date the park. It is recommended to plant additional oaks along the boundary as well as more native trees and shrubs.

Car Park Access and Highway Improvements

- 3.42 It is suggested to create a new entrance to the park by widening the existing pedestrian entrance. Entrance to the car park should be moved as it is currently in a dangerous position and re-orientating it could reduce its visual impact. Better pedestrian access across the busy Harrow Road is also recommended.

Café and Outdoor Eating

- 3.43 The provision of a café was the most popular new facility provision arising out of the consultation. This has been explored as part of the property options and unfortunately isn't possible in the short term.

Children's Play

- 3.44 An area for toddler play could be created on the lawn near the card room allowing the existing playground to be developed over time to accommodate older children in more adventurous play.

Other Options

- 3.45 The consultants report also identified a number of other improvements that could be made to the park over time. Some of these were ideas less well supported during the consultation phase and others have a significant cost associated and therefore additional funding would be required. These improvements include the creation of a community orchard / food growing area, reinforcing the grass surface of the funfair / events area so that it can be used by wheeled vehicles and accommodate a greater number and range of events throughout the year.

4 FINANCIAL IMPLICATIONS:

Income from property lettings

- 4.1 The proposals in this report would provide estimated annual income to the Trust as follows:

	£'000
ACAVA	43
Brent Council	25
Lettings	<u>19</u>
Total	<u>87</u>

- 4.2 This supplements the existing income of approximately £9,000 from funfair and ice cream concessions, bringing the projected income to £96,000 per annum.

Capital expenditure to improve the condition of the building complex

- 4.3 The table below summarises the costs of carrying out the essential work on the Barham Park building complex. It is anticipated that during the course of project delivery some of these costs may move around.

Item	Cost
Building Surveyor/Project Manager	£ 14,000
Building Works	£145,650
Structural Survey Building Works	£ 5,000
Means of Escape	£ 10,000
Contingency 10% based on £145k	£ 14,500
Sub TOTAL	£189,150
VAT @ 20%	£ 37,900
TOTAL	£227,050

Dilapidations

- 4.4 Following the receipt of the Structural Survey the Barham Park Management Team have considered whether previous use caused any problems with the building such that a claim should be made to seek to recover part of the repair costs. Part of the building was used as offices for park staff from which to manage park services including Barham Park itself. This office use ceased in 2010 and whether, and if so to what extent, any such use had any causal effect on the state of part of the property is not clear.
- 4.5 The majority of the problems relating to the current condition of the building are due to age and wear and tear of the building for which there is no attributable responsibility. There are some internal repairs required to remedy the faults in the joists and ceilings, the cause of which is unclear.
- 4.6 There are legal and administrative hurdles in seeking to take action on behalf of the Trust to recover any repair costs. These are summarised as follows:
- (a) Status of Parks Occupation
- There are no documentary arrangements in place governing the status of the historic use of the building by the Parks Department and therefore there are only limited legal responsibilities and liabilities arising from any Parks use implied by the law and accordingly establishing legal responsibility will be difficult.
- (b) Age of the Property
- The property dates back to 1894 (it was gifted to the Council in 1938). It has been used for various purposes since that date such that causation will be hard to establish. Therefore given the various contributing factors it will be difficult to identify and apportion responsibility.
- (c) Financial Cost/Benefit of any Recovery Process
- The financial benefit (whether or not there is any likelihood that substantial causal link could be established with Parks use of the building) of the Trust ascertaining and claiming for the recovery of the costs is unclear because:
- It is likely that any such claim, would probably only result in a relatively small sum of compensation having regard to the overall cost of the works required.
 - Establishing any legal liability would be complex given that the Parks use of the building was made in part in furtherance of the recreational purposes of the Trust.
 - It may be practically difficult to separate out or differentiate between the different statutory and charitable functions and roles historically.

- It has always been the case that the Council has financially provided for the maintenance and upkeep of the park and the buildings, such that any potential claim by the Trust for monies owed would be offset against the significantly higher contributions made over many years.

4.7 Members as trustees need to be made aware of this matter however, as set out above it is not considered to be a fruitful line to pursue having regard to the very limited prospects of real success in ascertaining and recovering any monies.

Capital expenditure to improve the condition of Barham Park Open Space

4.8 The vision for Barham Park is ambitious and must be seen as a 20 year programme. The consultants have identified projects based on the public consultation priorities that should be considered as the initial phase. They have grouped these works into potential work packages which if implemented together are likely to offer the best value in terms of construction costs

4.9 The total costs for all the landscape improvements put forward by the consultants comes to a total cost of approximately £2 million over 20 years. The core first phase projects are set out in the following table and are estimated to cost £393,000. Officers will continue to seek other sources of funding to implementing the remainder of the vision. It is also noted that this investment will not increase the costs of maintenance.

Core Facilities	Tasks/Elements	Year 1	Year 2
Paths, circulation and events	Remove conifers	4,836	
	Remove stumps	1,872	
	Main path**	121,427	
	Path edging		33,626
Nature conservation, meadows, ponds and woodlands	Meadows -Short	5,330	
	Meadows -Medium	26,325	
	Meadows - Long	16,250	
	Pond**		6,546
	Bridge*		19,500
	Decking*		15,600
	Planting		4,680
	Wetlands**		5,850
	Planting		3,120
	Tree and shrub planting		2,250
	Restoration of existing gardens		14,000
Historic core and extension			
Boundary trees and woodland	Tree planting	1,560	1,560
	Bulbs	325	325
Others	Seats/notice boards/signs	2,500	2,500
	Outdoor Classroom		6,500
	Picnic benches		1,500
	Detailed design	30,000	
Sub total		210,425	117,557
	VAT @ 20%	42,085	23,511
Total		252,510	141,068

* Estimated needs further investigation

** Assume no cart off site

5 LEGAL IMPLICATIONS

Lettings

- 5.1 The trust land and premises are held as “designated land” (formerly called permanent endowment) for the recreation of the public. Any letting of land by a charity has to comply with the procedural requirements of the Charities Act 2011. In summary:
- the Charity must advertise the proposed disposal by inviting bids in accordance with a report of a qualified surveyor
 - the Charity must consider a valuation report from a qualified surveyor on the bids received
 - the Charity must be satisfied in choosing a bid or bids that the proposed terms are the best that can be reasonably obtained and
 - the Charity must provide the requisite certification in the lease that the trust has complied with these procedural requirements
 - if the Charity has not been able to comply with these standard requirements it has consent from the Charity Commission to dispense with these requirements
 - the Trust must obtain the consent of the Charity Commission if the proposed letting is to a “connected person”. The charity law in respect of disposals to “connected persons” is summarised below in paragraph 5.7
 - if the proposed letting is to another charity at less than best rent these procedural requirements can be dispensed with provided the land is being used for recreation of the public but if the other charity has charitable purposes wider in scope Charity Commission guidance should be obtained as to whether the dispensation applies
- 5.2 As the Charity is letting designated land and the disposal is by means of a lease of 2 years or more then the Charity must with :
- The Charity must have a power to let the land.
 - as there is no express power to dispose of land stated in the trust deed the Charity may be able to rely on a power granted under statute
 - if the statutory power does not apply the Charity would need a Charity Commission scheme to add a disposal power to the trust deed
- 5.3 The Charity can consider using the general statutory power under Section 6 of the Trusts of Land and Appointment of Trustees Act 1996 (commonly called “the statutory power”) provided:
- (1) the statutory power is exercised in a way which is compatible with the charitable purposes of the Trust
 - (2) the letting is in best interests of the charity,
 - (3) there is nothing in the trust deed or legislation which prohibits lettings
 - (4) if the charity is not replacing the land the extent of the land to be let is small relative to the overall site and will have no effect on the charity furthering its objects
 - (5) if the charity is not replacing the land in the circumstances set out in 4) above the charity must advertise the disposal in the press and place a notice on the land inviting representation and consider any representations received. The notice must give 1 calendar month for representations. (“ the Charities Act notice “)
- 5.4 Although the purposes of the lettings are consistent with the purposes of the Charity, the proposed lettings are for over 2 years and therefore the Charity will be publishing a Charities Act notice.

- 5.5 In addition as the proposed letting is of a building within a public open space the Council should advertise the proposed disposal under section 123(2)(A) of the Local Government Act 1972 in a local newspaper on 2 consecutive publication dates inviting representations within 21 days of the first publication date. This is because it is a park open to the public owned by a charitable trust which is a local authority for the purposes of the Local Government Act 1972.
- 5.6 Any activities provided by tenants should not dominate or generally restrict the use of Barham Park by the public.
- 5.7 The Charity Commission's consent is required where a disposal (i.e. a sale or letting) of charity land is made to a "connected person" i.e. trustee or employee of a charity in this instance, Brent Council as a service provider of statutory functions and amenities. The Commission must be satisfied that the conflicts of interest between the Council as a trustee and the Council as a service provider of statutory functions and amenities are managed satisfactorily and the trust is achieving the best terms for disposal. The Council will be publishing the proposed disposal as part of the Charities Act notice.
- 5.8 In view of the value of the proposed contracts for building and park works and services, the contracts will not be subject to the Public Contracts Regulations 2006.
- 5.9 Officers will 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 detailed in paragraphs 4.3 and 4.9 following receipt of the necessary Charity Commission approvals. Based on estimated costs, all of contracts would be classed as Low Value Contracts or Very Low Value Contracts. For Low Value Contracts at least three written quotes must be sought when procuring the contract whereas for Very Low Value Contracts, there is a requirement to secure best value.
- 5.10 The Council in its capacity as statutory parks authority will be granted a Licence to use the Depot for the purpose of providing parks /public realm services to the Trust under its Service Level Agreement with the Trust in its capacity as the Barham Park Trust.

6 DIVERSITY IMPLICATIONS

- 6.1 The Equality Act 2010 section 149 requires that the council has due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations when exercising its functions. The 'due regard' is that which is appropriate in the circumstances and it therefore depends, upon amongst other considerations, on the nature of the decision being made. The decision before members concerns the use and development of the park and buildings which the Council holds on trust for specific charitable purposes.
- 6.2 The decisions regarding improvement of the park do not give rise to any adverse impact, and indeed the proposed works will enhance the general public enjoyment and accessibility.
- 6.3 With regards the letting of the buildings the Charities Act 2011 sets out specific requirements which must be complied with, including fiduciary duties. The need to consider suitability, income generation and viability are major factors in the decision to let and in the recommended choice of bidder for use of the buildings. The recommended decisions do not give rise to any obvious adverse equality impacts on any of the protected groups; the decision to let offers practical use of an empty building, and the proposed use by the arts organisation does not appear to have any adverse impact on any of the protected groups.

- 6.4 The group states on its website that 'ACAVA, the Association for Cultural Advancement through Visual Art, is an educational charity. It develops and delivers a wide range of educational initiatives, aiming to promote the development of visual skills in relation to school and university curricula and beyond, to provide work experience and promote career development. To meet these aims ACAVA provides a comprehensive range of visual arts services, including the provision of studios and other facilities for professional artists, the mounting of exhibitions, the development of public art and community educational projects, training in the use of digital technology and a consultancy service'. Under the title 'Who benefits from the charities work?' their Charity Commission entry sets out the following beneficiaries:

'School students/teachers benefit from support of artists in teaching the creative curriculum and from "taster days" pointing interested students towards the range of careers in the creative industries

The various communities involved with outreach & intercultural programmes including elderly people, those with special needs and potentially socially excluded young people

Clients of NHS partnership projects recovering from substance misuse, mental health issues etc

Local people who benefit from ACAVA's support for town centre regeneration through the creation of affordable studios and the associated development of artists' skills in delivering community projects

The general public through exhibitions and open studios.

- 6.5 Having regard to the nature and type of service provided not only is there no apparent negative impact, but there appears to be the potential for the advancement of equality of opportunity and fostering of good relations of various protected groups including the young, the elderly and persons with disability amongst others.
- 6.6 When having due regard to the equality duty and any unmitigated impact the decision may have upon one or more protected groups, the council is also permitted to take into account countervailing factors, which in this case are the shortage of trust income and the offer made by the recommended bidder and the high level of expenditure in maintaining the buildings and grounds.

7 STAFFING / ACCOMMODATION IMPLICATIONS (IF APPROPRIATE)

- 7.1 There are no staffing or accommodation implications.

8.0 BACKGROUND PAPERS

Executive report dated 12 March 2012 – Barham Park Improvements.

Appendices

Appendix 1 Detail of the marketing exercise for the letting of the Barham Park Complex

Appendix 2 Floor plan of the building lots

Appendix 3 Further information on developing the vision for the park and public consultation

Appendix 4 Concept design for the 10 year vision for the park

9.0 CONTACT OFFICERS

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Appendix 1 Detail of the marketing exercise for the letting of the Barham Park Complex

- 1.0 The Barham Park Complex of Buildings comprises a number of units of which the accommodation details, size and rental values are set out below. During the marketing process individual areas were allocated lot numbers as detailed in the following table.

Accommodation	Area	Rental Value	Lot
660 Harrow Road 1 st floor offices.	180 sq m	£10,100 pa	1
658 Harrow Road Ground floor lounge & ancillary.	178 sq m	£8,496 pa	2
660 Harrow Road Former Library.	291 sq m	£13,968 pa	3
660 Harrow Road Former Library 1 st floor offices.	80 sq m	£4,734 pa	4
1 st Floor Office 656 Harrow Road offices.	90 sq m	£5,362 pa	5
656 Harrow Road Ground floor Community Workshop.	45 sq m	£1,575 pa	6
Card room.	116 sq m	£10,700 pa	7
TOTAL	980 sq m	£54,935 pa	

- 1.1 The other units at the Barham Park complex of buildings are:

1. The Children's Centre;
2. The Sports and Parks Service Depot; and
3. The Snooker and Billiard rooms.

These units were not subject to the marketing process.

- 1.2 The Lots were marketed from August to September 2012 and the deadline for the receipt of bids was 1st October 2012.
- 1.3 Applicants were invited to bid for the seven individual lots, a combination of, or for all of, the Lots.
- 1.4 Local and national adverts were placed in the print media as part of the marketing process.
- 1.5 Property particulars were advertised on the council's web page and sent to various types of organisations including community groups, arts organisations, charities, commercial companies and those parties who had specifically contacted the council regarding the leasing of the Barham Park Buildings.
- 1.6 Particulars were also sent to parties on the Property & Asset Management's data base of property applicants.
- 1.7 The Property Particulars contained a bid assessment form which detailed how bids would be assessed. The form specifically aims to assess the bidder's:
1. Financial positioning,
 2. Proposed use – in particular whether recreational or not and if use is suited to the park location,
 3. The bidder's ability to deliver the project; and
 4. The bidder's financial offer.

- 1.8 During the marketing process, as interested parties sent in questions, responses were given and placed on our website so every bidder had the same information on which to base their bid.

First Stage of the Tender Process

- 1.9 Twelve parties originally submitted bids, one of which withdrew their bid. Eleven bids directly related to the areas that were advertised.
- 1.10 One bid, a submission from the We Care Foundation (Toby Chambers), was for areas outside of those that were marketed, which would impact current occupation arrangements. The proposals included the leasing of parkland. The submission contained suggestions that would involve the relocation of existing users in a manner that is deemed undeliverable. These included installing a railway carriage in the park for the Barham Park Vets to use as a snooker and billiard room. Another proposal was to locate a double decker red bus in the car park for use as a café and to relocate the car park elsewhere within the park.
- 1.11 These first stage bids were evaluated by Richard Barrett (Assistant Director Regeneration & Major Projects), Sarah Chaudhry (Head of Strategic Property) and Howard Fertleman (Estates Surveyor) using the bid assessment form, at this stage no score was awarded for financial positioning as further checks were required.

Second Stage of the Tender Process

- 1.12 In order to understand bid proposals further, Officers asked bidders to submit comprehensive business plans to support their initial figures, including confirmation of the final rental bids exclusive of service charges.
- 1.13 Eight of the original bidders responded to the second stage with the required information.
- 1.14 First stage bidders who did not respond to the second stage, or responded without dealing with our specific queries are:
- a) We Care Foundation did respond to the second stage deadline by email which contained information on his meeting with the planning department. However the response did not contain the information requested, therefore Officers were unable to assess him for the second stage of the process.
 - b) Track Academy despite asking for an extension of the deadline to expand on their business case (which was granted for all parties), no second stage bid was submitted.
 - c) Majic Nurseries did not respond to the second stage.
 - d) Mrs Patel withdrew their bid at the first stage.
- 1.15 On receipt of the Second Stage information, Officers undertook financial checks on the bidders in the form of applying for bank references and credit checks through the council's Finance and Corporate Resources Department to ascertain their financial standing.
- 1.16 In some cases bank references were not received and bids from the business start-ups had no financial history.
- 1.17 At this Stage, based on the new information received, Officer's re-scored all eight bids using the bid assessment form. Scores were also awarded for the financial assessment section.

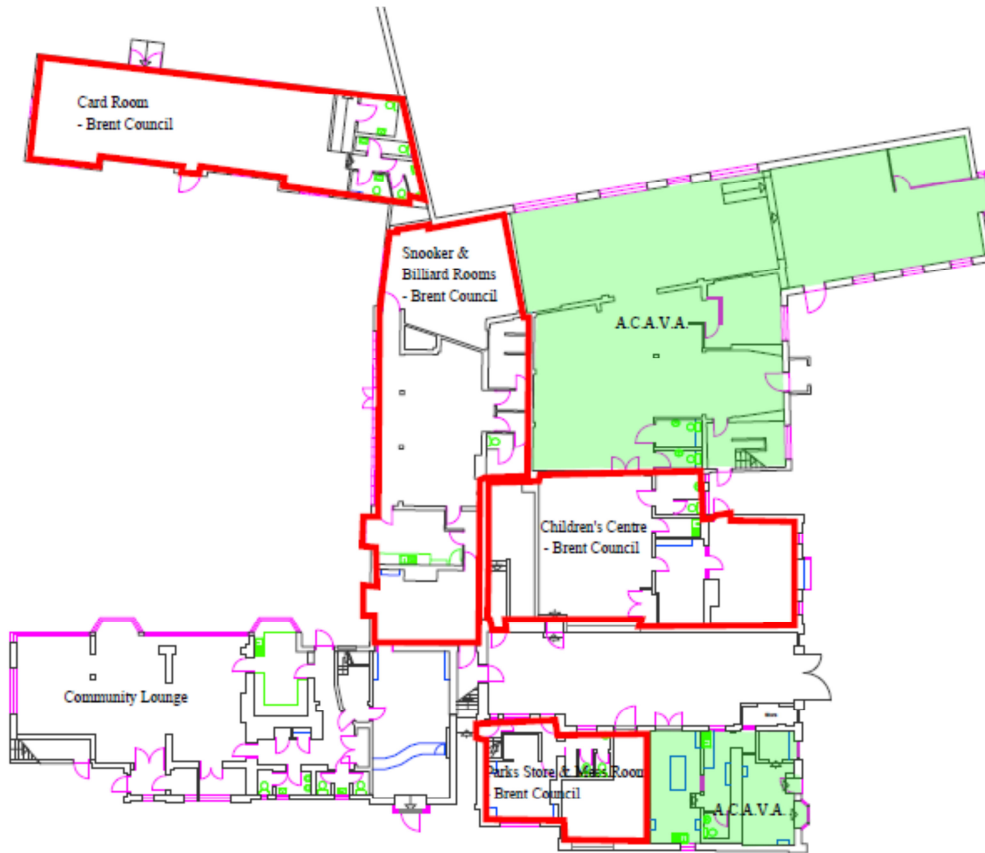
Commentary on the top three bids

- 1.18 The top three bids are: ACAVA, Nikita Patel and the Alpha and Omega Christian Fellowship. The ACAVA's activities fulfil the required recreational use of the building. It is a charity established in 1983 to support the development and practice of the visual arts. It provides studios for over 500 artists in 20 buildings, mostly in London.
- 1.19 The Alpha and Omega Christian Fellowship scored third, however their proposed uses are not considered to be recreational use, in keeping with the Charitable objectives of the Trust. Their bid for Lots 1 & 3 would prevent a comprehensive letting of most of the units to one bidder. They want to use the Lots for church services, after school club, youth activities, a contact centre, community use and office space.
- 1.20 Nikita Patel wants to use the Lot 2 as nursery. She is a business start up with no industry or financial track record for her proposed use. Her bid is only for one Lot, which would prevent the comprehensive letting approach. She scored second in the bid process.

Recommended bidder

- 1.21 The top scoring bid was from ACAVA, who has bid for Lots 1,3,4,5 & 6 (totaling of 686 sq m).
- 1.22 In terms of property management it is more conducive to have one tenant occupying most of the Lots than a number of individual tenants. This will reduce Officer time and costs in terms of day to day management and issues such as service charge apportionment is a lot easier to agree.
- 1.23 The Council's Finance and Corporate Resources Department have undertaken financial checks confirming ACAVA will be able to fulfil their proposed rental bid, this assessment is based on accounts for the year ending 31st March 2011, 2012's financial returns are being finalised.
- 1.24 ACAVA uses a wide variety of buildings, many converted from buildings such as industrial factory premises, offices, shops, and schools. Based on their track record we believe they would have the expertise to undertake works/alternations and deliver their programmes.
- 1.25 ACAVA have offered a rent of £43,000pa excluding service charge, when compared with the advertised rental figure of £35,739, this equates to a bid of 120%. The service charge figure will be calculated to reflect management / maintenance and repair obligations this will be dealt with during the course of negotiations and deducted from the rental figure above.
- 1.26 On the basis that ACAVA have:
1. Taken on a number of Lots,
 2. Demonstrate sufficient financial capacity to take on the rental obligation offered,
 3. Fit well with the recreational use required by the Trust,
 4. Have experience and a track record of delivering similar projects; and
 5. Have offered a rental bid excluding service charge that is in excess of the amount assessed and advertised by our RICS Chartered Surveyor.
- 1.27 We recommend letting lots 1, 3, 4, 5 & 6 to ACAVA, as overall we consider this bid to demonstrate the best bid.

Ground Floor, Barham Park Areas to be Let



Brent Council occupation shown bordered red.
Proposed letting to A.C.A.V.A. shown shaded green

First Floor, Barham Park Areas to be Let



Proposed letting to A.C.A.V.A. shown shaded green.

Appendix 3 Further information on developing the vision for the park and public consultation

1 LANDSCAPE IMPROVEMENT DETAIL

- 1.1 In May 2012 a consultant's brief was sent to six consultants. Two submissions were returned and Land Management Services Ltd was appointed to undertake the work.
- 1.2 The consultants visited the park on several occasions and were provided with information about the history of the park. They met with officers from the Council's Sports and Parks service and identified that:
- The events area used for the funfair is low lying and becomes waterlogged
 - Large parts of the park have no footpaths and as a consequence are less well used
 - The walled garden is the historic core of the park
 - There is a large flat area which could give more activity and biodiversity value to the park
 - The area at the rear of the park near the railway line is often water logged
 - There are many mature oak trees
 - The row of conifers in the park are a venue for anti social behaviour and are coming to the end of their lifespan.
- 1.3 An initial vision for the park's open space and early concept designs were drafted. These were used to consult with local residents and users of the park.

Consultation

- 1.4 Two Barham Park User consultation sessions were promoted around the park and held in September in the Lounge. A stakeholder session was also held in September where local ward councillors, local GP's, safer neighbourhood officers, religious group representatives, community groups and residents associations were invited. Designs, photos and plans of the park improvement proposals were displayed and Council officers talked through the suggested park improvements concepts with attendees. Attendees were encouraged to identify their top five improvements and list any new suggestions. Officers tried to arrange consultation sessions with two local primary schools but the schools were unable to accommodate the request
- 1.5 A brief questionnaire was sent to the occupiers of 898 properties that adjoin or are close to Barham Park. The documentation provided information about the proposals and asked respondents to rank the top ten improvements they felt were most important as well as any other improvement that hadn't been suggested. Their frequency of use of Barham Park and equalities data was also collected.
- 1.6 The park user session attracted approximately 30 individuals and the stakeholder meeting 6. Twenty seven questionnaires were returned (3%). Of those people responding to the postal survey 33% were aged 45 – 64 and 33% aged 65+. Fifty two per cent of respondents were male. Forty per cent said they had no religion or preferred not to say and 26% were Christian. Forty four per cent of respondents were White and twenty nine per cent Asian or Asian British. Fifty five per cent of respondents said that they visited the park at least once or twice a week whilst thirty per cent visit the park once a month or less.
- 1.7 The consultation identified that the following facility provisions or facility improvements were the most popular (in order of priority)
1. Café
 2. Nature conservation

3. Ponds and wetlands
4. Walled garden
5. Removal of conifers
6. New path
7. Meadows

1.8 In addition a number of other suggestions were put forward during the consultation process with the most frequently proposed being:

1. Need for more sports facilities: tennis, football, outdoor gym
2. More seats and toilets
3. More security
4. Remove conifers although some had concern that this would remove the screen from the railway
5. Creation of a bee garden, more flowers, provision of bird boxes and feeders, medical herb and sensory garden.

1.9 Taking into consideration the views from officers and the consultation process the following ambitious 20 year vision and core elements for improving the park's open space were developed:

20 year vision

Barham Park will bring local people together and provide a resource which will help to enhance the lives of local people. The park will provide opportunities and facilities for all members of the local community to meet with each other, relax, learn and play. The beauty and tranquillity of the historic formal gardens at the heart of the park will flow into a wider parkland rich in wildlife habitats. Users will be encouraged to explore the whole of the park in a safe environment. The park will be improved and managed in a sustainable manner to ensure that investment in the park is protected for future generations.

Core elements

1.10 To deliver the vision, the consultants identified seven core elements at the heart of the landscape improvements to the park. A picture is included overleaf.

Paths and circulation

1.11 It is proposed to remove the line of existing conifers between the War Memorial and railway embankment. This will enable the area behind the conifers to link up with the rest of the park which will be enhanced by the creation of a path that links the west of the park to the east, extending access to the entire park.

Nature conservation, meadows, ponds and woodlands

1.12 A series of meadows are proposed in the east of the park. Maintaining the meadows at a variety of heights would create habitats that would extend the nature conservation and biodiversity value of the park. Ponds and wetlands would be created in the lower part of the park with a viewing platform and new interlocking path. These would provide the habitat for aquatic, marsh and water loving species as well as educational opportunities such as pond dipping. Vegetation in the existing formal ponds should be reduced to increase biodiversity and health of these ponds. The provision of log piles will offer shelter and food for insects, beetles and invertebrates.

1.13 To increase Barham Parks' educational value interpretation information should be provided to provide information about the plants/trees, how they are being managed and what the benefits of their provision are.

Historic core

- 1.14 The walled and formal gardens will remain although many parts of the existing garden walls need restoring. More seats could be added and access arrangements reviewed to reinstate the original historic features. A couple of options were put forward to make the area between the walled garden and the war memorial more welcoming and functional.

Boundary trees and woodlands

- 1.15 Mature oak trees are located along the Southern boundary and pre-date the park. It is recommended to plant additional oaks along the boundary as well as more native trees and shrubs.

Car Park Access and Highway improvements

- 1.16 It is suggested to create a new entrance to the park by widening the existing pedestrian entrance. Entrance to the car park should be moved as it is currently in a dangerous position and re-orientating it could reduce its visual impact. Better pedestrian access across the busy Harrow Road is also recommended.

Café and outdoor eating

- 1.17 The provision of a café was the most popular new facility provision arising out of the consultation. This has been explored as part of the property options and unfortunately isn't possible in the short term.

Children's Play

- 1.18 An area for toddler play could be created on the lawn near the card room allowing the existing playground to be developed over time to accommodate older children in more adventurous play.

Other options

- 1.19 The consultants report also identified a number of other improvements that could be made to the park over time. Some of these were ideas less well supported during the consultation phase and others have a significant cost associated and therefore additional funding would be required. These improvements include the creation of a community orchard / food growing area, reinforcing the grass surface of the funfair / events area so that it can be used by wheeled vehicles and accommodate a greater number and range of events throughout the year.

Implementation plan

- 1.20 A phased management plan has been developed looking initially at the landscape improvements and secondly focusing on ongoing maintenance.

Appendix 4 Concept design for the 10 year vision for the park





Barham Park Trust Committee
13 February 2013

**Report from the Director of
Environment and Neighbourhood
Services**

For Decision

Wards Affected:
ALL

**Schedule of Updates: Proposals for Improving Barham
Park Building Complex and Park**

1.0 SUMMARY

- 1.1 This report amends the report titled 'Proposals for Improving Barham Park Building Complex and Park', which is being taken for decision by the Barham Park Trust Committee on 13 February 2013. These changes do not affect the recommendations.

2.0 RECOMMENDATIONS

- 2.1 That Councillors note the amendments to the report which do not affect any of the recommendations.

3.0 DETAILS

- 3.1 Paragraphs 3.6-3.13 are deleted and to be replaced with the following paragraphs:

- 3.6 *At the first stage of the bidding process there were 12 bids and one later withdrew. The bids were evaluated in accordance with the published criteria, (set out overleaf) which were provided in advance to all bidders.*

**Barham Park
Application Assessment Form**

Applicant's Name	
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Scoring Explanation	Score
Very Poor	1
Poor	2
Average	3
Good	4
Very Good	5

1. Financial positioning

Criteria	Score
Individual / Company financial standing to include credit rating agency check.	
Individual / Company bank reference.	
If a short lease (upto 15 years) Guarantors financial standing to include credit agency check.	
Short lease - Guarantors bank reference.	
Sub Total	

Total Score out of 20/ 10		% Score	
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2. Proposed use of building

Criteria	Score
Recreational as per Trust requirements	
Sensitive to Park Location	
Sub Total	

Total Score out of 5		% Score	
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3. Deliverability

Criteria	Score
Applicants experience of delivering similar projects.	
Deliverability i.e. professional team, skills and resources to refurbishing property to a satisfactory timescale	
Sub Total	

Total Score out of 10		% Score	
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4. Financial Offer

Criteria / Ranking	Score
Price (if below asking price = 0, if at asking price = 1, if 2% more then asking = 2, if 4% more then asking = 3, if 6% more then asking = 4, if 8% or more above asking = 5)	
Sub Total	

Total Score out of 5		% Score	
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After the initial process, London Borough of Brent reserves the right to introduce additional processes at which stage applicants will be re-scored based on the criteria in this scoring sheet.

WEIGHTED SCORE SUMMARY

Assessment Criteria	Base Score	Weighting Multiplier	Weighted Score
1. Financial Positioning		20%	
2. Proposed use of building		30%	
3. Deliverability		20%	
4. Financial Offer		30%	
		Total	

3.7 The table below sets out the results of the evaluation.

		Alton	AOCF	EFRA	Niketa	ACAVA	Thripp	Friends of Barham Library	CAC
	Advertised Rent								
Lot 1	£ 10,100.00	X	X			X			
Lot 2	£ 8,496.00	X			X				X
Lot 3	£ 13,968.00	X	X			X	X		
Lot 4	£ 4,734.00	X				X	X	X	
Lot 5	£ 5,362.00	X				X			
Lot 6	£ 1,575.00	X		X		X			
Lot 7	£ 10,700.00	X							
Criteria	Weighting								
Financial Standing	20%	4%	4%	4%	6%	8%	4%	4%	4%
Use	30%	27%	21%	12%	27%	27%	24%	24%	18%
Deliverability	20%	14%	8%	10%	6%	18%	8%	8%	6%
Financial Offer	30%	0%	0%	0%	30%	0%	0%	0%	0%
SCORE		45%	33%	26%	69%	53%	36%	36%	28%
RANKING		3	6	8	1	2	4	4	7

3.8 The top bids are Nikita Patel and ACAVA. Nikita Patel scored highest and is a start-up nursery business. Her bid is for Lot 2 only, but the rental income is less than the income currently generated through ad-hoc lettings and so is not recommended to the Trustees.

3.9 The second highest scoring bid was from ACAVA, who has bid for Lots 1,3,4,5 & 6 (totalling of 686 sq. m).

3.10 The Council's Finance and Corporate Services Department have undertaken financial checks confirming ACAVA will be able to fulfil their proposed rental bid, this assessment is based on accounts for the year ending 31st March 2011 and 2012.

3.11 ACAVA's activities fulfil the required recreational use of the building. It is a charity with a long track record, established in 1983 to support the development and practice of the visual arts. It provides studios for over 500 artists in 20 buildings, mostly in London. ACAVA use a wide variety of buildings, many converted from buildings such as industrial factory premises, offices, shops, and schools. Based on their track record we believe they would have the expertise to undertake works/alterations and deliver their programmes.

3.12 *ACAVA have offered a rent of £43,000pa including service charge. The recommendation is that lots 1, 3, 4, 5 & 6 are let to ACAA as overall this is the best offer for the Trust when evaluated against the published criteria:*

1. *Demonstrate sufficient financial capacity to take on the rental obligation.*
2. *Fit well with the recreational use required by the Trust.*
3. *Have experience and a track record of delivering similar projects.*

3.2 Turning to Appendix 1, paragraphs 1.18-1.27 are deleted.

4.0 FINANCIAL IMPLICATIONS

4.1 There are no additional financial implications.

5.0 LEGAL IMPLICATIONS

5.1 There are no additional legal implications.

6.0 DIVERSITY IMPLICATIONS

6.1 There are no additional diversity implications.

7.0 STAFFING / ACCOMMODATION IMPLICATIONS (IF APPROPRIATE)

7.1 There are no additional staffing implications.

BACKGROUND PAPERS

None

CONTACT OFFICERS

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