



Barham Park Trust Committee

Tuesday 5 September 2023 at 10.00 am

Conference Hall - Brent Civic Centre, Engineers Way,
Wembley, HA9 0FJ

Please note this will be held as a physical meeting which all Committee members will be required to attend in person.

The meeting will be open for the press and public to attend or alternatively can be followed via the live webcast. The link to follow proceedings via the live webcast is available [HERE](#)

Membership:

Members:

Councillors:

M Butt
Donnelly-Jackson
Mili Patel
Krupa Sheth
Tatler

Substitute Members:

Councillors:

Farah
Grah
Knight
Nerva

For further information contact: Abby Shinhmar, Governance Officer
Tel:020 8937 2078; Email: abby.shinhmar@brent.gov.uk

For electronic copies of minutes and agendas please visit:
[Council meetings and decision making | Brent Council](#)

Notes for Members - Declarations of Interest:

If a Member is aware they have a Disclosable Pecuniary Interest* in an item of business, they must declare its existence and nature at the start of the meeting or when it becomes apparent and must leave the room without participating in discussion of the item.

If a Member is aware they have a Personal Interest** in an item of business, they must declare its existence and nature at the start of the meeting or when it becomes apparent.

If the Personal Interest is also a Prejudicial Interest (i.e. it affects a financial position or relates to determining of any approval, consent, licence, permission, or registration) then (unless an exception at 14(2) of the Members Code applies), after disclosing the interest to the meeting the Member must leave the room without participating in discussion of the item, except that they may first make representations, answer questions or give evidence relating to the matter, provided that the public are allowed to attend the meeting for those purposes.

*Disclosable Pecuniary Interests:

- (a) **Employment, etc.** - Any employment, office, trade, profession or vocation carried on for profit gain.
- (b) **Sponsorship** - Any payment or other financial benefit in respect expenses in carrying out duties as a member, or of election; including from a trade union.
- (c) **Contracts** - Any current contract for goods, services or works, between the Councillors or their partner (or a body in which one has a beneficial interest) and the council.
- (d) **Land** - Any beneficial interest in land which is within the council's area.
- (e) **Licences**- Any licence to occupy land in the council's area for a month or longer.
- (f) **Corporate tenancies** - Any tenancy between the council and a body in which the Councillor or their partner have a beneficial interest.
- (g) **Securities** - Any beneficial interest in securities of a body which has a place of business or land in the council's area, if the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body or of any one class of its issued share capital.

**Personal Interests:

The business relates to or affects:

(a) Anybody of which you are a member or in a position of general control or management, and:

- To which you are appointed by the council;
- which exercises functions of a public nature;
- which is directed is to charitable purposes;
- whose principal purposes include the influence of public opinion or policy (including a political party of trade union).

(b) The interests a of a person from whom you have received gifts or hospitality of at least £50 as a member in the municipal year;

or

A decision in relation to that business might reasonably be regarded as affecting, to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral ward affected by the decision, the well-being or financial position of:

- You yourself;
- a member of your family or your friend or any person with whom you have a close association or any person or body who employs or has appointed any of these or in whom they have a beneficial interest in a class of securities exceeding the nominal value of £25,000, or any firm in which they are a partner, or any company of which they are a director
- any body of a type described in (a) above.

Agenda

Introductions, if appropriate.

Item	Page
1 Appointment of Chair and Vice Chair for 2023-24	
To appoint a Chair and Vice Chair for the new municipal year 2023-24.	
2 Apologies for Absence and clarification of alternate members	
For the Committee to note any apologies for absence.	
3 Declarations of Interests	
Members are invited to declare at this stage of the meeting, the nature and existence of any relevant disclosable pecuniary or personal interests in the items on this agenda and to specify the item(s) to which they relate.	
4 Minutes of the Previous Meeting	1 - 8
To approve the minutes of the previous meeting held on Monday 5 September 2022 as a correct record.	
5 Matters Arising (if any)	
To consider any matters arising from the minutes of the previous meeting.	
6 Barham Park Trust Annual Report and Accounts 2022/23	9 - 22
This item presents the annual report for the Barham Park Trust for 2022/23. There is a statutory requirement to produce an Annual Report, including the Accounts each financial year.	
Ward Affected: Wembley Central	Contact Officer: Jekaterina Popova, Head of Finance 020 8937 1463 Jekaterina.Popova@brent.gov.uk
7 Barham Park Strategic Property Review	23 - 100
This report provides an update on the Barham Park Strategic Property Review, including the position regarding the restrictive covenant relating to 776-778 Harrow Road.	

Ward Affected: Wembley
Central
Contact Officer: Denish Patel, Head of Property
020 8937 2529
denish.patel@brent.gov.uk

8 General Update Report 101 - 106

To update Members on operational issues at Barham Park and on current progress on projects.

Ward Affected: Wembley
Central
Contact Officer: Leslie Williams, Project Officer
020 8937 5628
Leslie.Williams@brent.gov.uk

9 Review of Alternative Administration and Governance Models 107 - 116

In accordance with good practice recommended by the Charity Commission, this report sets out for periodic review the governance and management options available to the Barham Park Trust Committee.

Ward Affected: Wembley
Central
Contact Officer: Bianca Robinson, Senior Lawyer, Constitutional and Governance
0208 937 1544
Bianca.Robinson@brent.gov.uk

10 Review of Barham Park Trust Governance Document 117 - 258

This report sets out for review proposed updates to the Barham Park Trust Governance and Guidance Document. Primarily designed to reflect changes following organisational restructures in the council and updated guidance issued by the Charity Commission.

Ward Affected: Wembley
Central
Contact Officer: Bianca Robinson, Senior Lawyer, Constitutional and Governance
0208 937 1544
Bianca.Robinson@brent.gov.uk

11 Exclusion of the Press & Public

Agenda Item 7: Barham Park Strategic Property Review – Appendix 3 (Restrictive Covenant 776-778 Harrow Road external valuation)

This appendix is classified as exempt under Paragraph 3 of Part 1 Schedule 12A of the Local Government Act 1972, namely: "Information relating to the financial or business affairs of any particular person (including the authority holding that information)"

12 Any Other Urgent Business

Notice of items to be raised under this heading must be given in writing to the Head of Executive and Member Services or her representative before the meeting. Any decisions taken urgently under this heading must comply with the provisions outlined in paragraph 12 and 39 of the Council's Access to Information Rules (part 2 of the Constitution).

Date of the next meeting: To be advised, as required



- Please remember to set your mobile phone to silent during the meeting.
- The meeting room is accessible by lift and seats will be provided for members of the public. Alternatively it will be possible to follow proceedings via the live webcast [HERE](#)

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MINUTES OF THE BARHAM PARK TRUST COMMITTEE

Held in the Conference Hall, Brent Civic Centre on Monday 5 September 2022 at
10:00am

PRESENT: Councillor M. Butt (Chair), Councillor Mili Patel (Vice-Chair) and Councillors Donnelly-Jackson, Krupa Sheth and Tatler

Also Present: Councillor Lorber

1. **Appointment of Chair and Vice Chair for 2022-23**

RESOLVED to appoint Councillor Muhammed Butt as Chair and Councillor Mili Patel as Vice-Chair of the Trust Committee for the 2022-23 Municipal Year.

2. **Apologies for Absence**

None.

3. **Declarations of interests**

No declarations of interest were made at the meeting.

4. **Minutes of the previous meeting**

RESOLVED that the minutes of the previous meeting held on Thursday 27 January 2022 be agreed as a correct record.

5. **Matters arising (if any)**

None.

6. **Public Representations**

Prior to consideration of the main agenda Councillor Muhammed Butt (as Chair) advised the Trust Committee that he had accepted a number of requests to speak at the meeting from a range of stakeholders in relation to matters due to be considered on the agenda.

Each representative was then invited to address the meeting with the following comments highlighted.

Councillor Lorber (representing the Friends of Barham Park Library) was the first to address the Trust Committee highlighting a number of property related issues relating to the current building on the estate. These included concerns in relation to out-dated signage around the complex and arrangements for the Fire Alarm test, which he advised were in addition to the points raised in a separate email submitted prior to the meeting regarding the provision of public toilet facilities, progress in a final decision being made on the use of Unit 7 and the potential use of alternative renewable energy sources.

Having thanked Councillor Lorber for his comments, Councillor Muhammed Butt advised that a written response on the various matters raised would need to be provided following the meeting. He then moved on to welcome Debbie Howe (Project Manager Dementia Hubs Brent) and invited her to address the meeting.

As well speaking on behalf of the Dementia Hubs Project, Debbie Howe advised that she was also representing Ashford Place & Community Action on Dementia in order to highlight the work being undertaken through the Dementia Memory Lounge and Café (supported by the Dementia Hub Project) in relation to community support, outreach work and private consultations for individuals suffering with Dementia and their families. In addition, the Trust were advised that the Hub were keen to explore the potential to enable temporary use of part of Unit 7 within the Barham Park Building in order to complement the support being provided through the provision of an additional dedicated space for small private advice & guidance sessions using part of the Neighbourhood Community Infrastructure Levy (NCIL) funding allocated to bring the Mess Room area back into use.

Councillor Muhammed Butt thanked Debbie Howe for her comments and the positive work being undertaken through the Dementia Hub Project in relation to the provision of dementia support across the borough. Whilst willing to consider the support available to address the issues highlighted, Councillor Butt advised it would not be possible to provide assurances around the unit identified at this stage, pending the outcome of the wider strategic property review of the Barham Park building.

As a final contribution, Councillor Muhammed Butt then invited Mahendra Desai (representing the Barham Park Veterans Club) to speak as one of the Trust's tenant organisations.

In addressing the Trust Committee Mahendra Desai advised he was speaking as Chair of the Veterans Club in order to outline concerns regarding the current state of repair, windows and upgrade of the boiler within Unit 2 of the Barham Park Building.

Councillor Butt thanked Mahendra Desai for his comments and attending the meeting and advised that the issues and concerns raised in relation to the current state of repair of the building had been noted. Whilst again highlighting the current strategic property review being undertaken in relation the building, he also highlighted potential use of the Carbon Offset Fund as a means of supporting the works required, which he assured the Veterans Club officers would also be considering in seeking to address the issues raised.

In noting the comments raised, Councillor Muhammed Butt thanked everyone who had spoken for their participation and advised that the issues raised would be responded to as appropriate during the remainder of the meeting.

7. Annual Report and Accounts 2021/22

Solomon Akuffo, Senior Finance Analyst, introduced the Annual Report and Accounts for the Barham Park Trust for 2021/22. In considering the report Members noted:

- The work undertaken on behalf of the Trust as detailed within the Annual Report, which had included repair and improvement works to the park and ongoing work to secure tenants for the various buildings on site.
- The accounts had been subject to an independent examination by the Head of Audit & Investigations, with the outcome attached as Appendix 3 to the report on the agenda. The audit had resulted in a minor adjustment to the Accounts in relation to property rental income, with it recommended that income related to the funfair held on the estate should be reported separately from all other property rental income. There had been no other issues regarding the accounts needing to be brought to the attention of the Trust Committee.
- The overall improvement in the Trust's Accounts for 2021/22 when compared to the previous year in terms of expenditure and income. During 2021/22 the Trust had incurred expenditure of £61,105 on maintenance of the building complex and park, which had all been comprised of unrestricted funds and was £35,178 less than the previous year. The Trust had generated £123,599 receipts from rental income and interest earned (an improvement of £23,681 from the previous year) although members were advised this also included £55,967 of cumulative rental income due but not yet paid. In terms of the Trust's overall assets this had resulted in an unrestricted cash fund balance of £141k (not including the £56k rental income due but not yet received) and a restricted cash fund balance of £353k which again represented an improved position when compared to 2020/21.
- The current position in respect of the restricted funds balance as at 31 March 22 and funding previously agreed, as detailed within sections 3.10 of the report.

The following comments and issues were highlighted by members in response to presentation of the 2021/22 Annual Report and Accounts:

- Whilst recognising the improvement in the Trust's financial position during 2021/22 details were sought on any potential risks identified in terms of the financial and operational viability and sustainability of the Trust. In response officers advised that the main risk identified had involved the arrears in relation to rental income. As mitigation, however, Members were advised of the arrangements established, following discussion with tenants, to improve collection and reduce the overall debt in an effort to clear the arrears incurred during the pandemic by March 2024.

Having noted the update provided and positive work being undertaken to manage the Trust's financial position in order to ensure the park and its facilities could be sustained over the long term as an important asset for the local community, the Trust Committee **RESOLVED** to:

- (1) Approve the annual report and the Barham Park Trust's Accounts for 2021/22.
- (2) Note the Independent Examiner's Review of the Barham Park Trust's Accounts for 2021/22.
- (3) Authorise officers to update the Charity Commission with the Annual Report and the Accounts for 2021/22 of the Barham Park Trust.

8. General Update Report

Chris Whyte, Director Environmental & Leisure, introduced the report providing an update on operational issues at Barham Park along with current progress on a range of projects. As context to the update provided, members were reminded of the decision made by the Trust on 27 January 2022 to appoint an architect to undertake an initial options appraisal of the Barham Park building as part of a strategic property review. The architect had subsequently been appointed and work was now progressing on the review with the proposals, once finalised, due to be reported back to the Trust Committee in order to consider the way forward. Pending this process being completed the position regarding the existing Units within the building would remain as previously reported.

Members were then provided with operational updates in relation to the following issues:

- Following a recent senior management restructure within the Council it was noted that delegation of the day-to-day trustee functions and decision making in relation to operational aspects of the Trust's activities would need to be updated from the Operational Director Environmental Services to the Director Environment & Leisure to reflect the change in post title.
- Security and anti-social behaviour - as detailed within section 3.2 of the report, with members noting that littering continued to be an issue alongside concerns relating to the feeding of pigeons. Members noted the work being undertaken with Veolia (as the operational grounds maintenance contractor) to maintain the cleanliness of the park working with volunteers, who were thanked for their efforts and support.
- Rough sleeping with the Park - as detailed in section 3.4 of the report, with members noting the ongoing work being undertaken with StreetLink and St Mungo's to address the issue and support those individuals sleeping rough to access accommodation and other assistance according to their needs. Members were advised that the east side recessed porch area of the Barham Park building had been used by one or more persons sleeping rough during the year. When vacated the area had received a thorough clean and jet-wash with anyone concerned about the welfare of rough sleepers being encouraged to report these via StreetLink London.
- Gated access – as detailed within section 3.5 of the report, with members advised that in response to security concerns officers had been investigating the feasibility of requests received from Unit 8 (Children Centre) and Units 3 & 5 (ACAVA) for a gate to cover the recessed porch area within each of the units. These proposals were being reviewed as part of the wider strategic property review in order to provide enhanced security to better assist with management of the Barham Park building.
- Park events – as detailed within section 3.6 – 3.7 of the report, with members having noted and welcomed the enhanced range of events successful hosted within the Park including the return of Irvin's Fun Fair, as well as Brent Let's Grow (a training event for young people organised by Young Brent Foundation) and also the Shree Gurupournima Utsav festival. In addition, members noted the resumption of the full range of many activities in the tenanted units within the Barham Park building following the pandemic.

- Thames Water works – as detailed within section 3.9 of the report. Whilst now completed, members noted the complex nature of the works which had needed to be undertaken as a result of a leak being identified with the public surface water system which had included the off-site design and manufacture of an insert replacement.
- General operational works – Members noted that operational grounds maintenance works continued to be undertaken by the Council's main contractor Veolia and welcomed the update provided on the Walled Garden having achieved a Silver Gilt award at London In Bloom in September 2021.
- Grass and meadows - with members noting the continued progress and improvements being made to the range of grasslands and associated wildlife within the park, as detailed within section 3.11 of the report.

In addition to the operational issues identified above, members also received updates in relation to the following specific property and tenancy related issues:

- Barham Park building – Pending the outcome of the strategic property review ongoing maintenance work continued across the building. This had included works to the porch area and to replace the gutters for Unit 2 (Barham Park Veterans Club) alongside work to the porch area and door for Unit 4 (Friends of Braham Park Library). Works were also underway to repair an area of the slate roof of Unit 10 (ACAVA) with the disused small lean-to in the east-side courtyard also having been removed to allow for better use of the space. Confirmation was provided that proposals were also being considered for the installation of a security gate on the east side and front of the building in order to enhance security and deter use of the area by rough sleepers.
- Fire Security System - with members noting the ongoing briefings being provided for tenant representatives on operation of the system, as detailed in section 3.13 of the report. It was noted that the annual service had now been completed with the test to be undertaken over the forthcoming weeks.
- Rent Arrears update – members noted the efforts made to significantly reduce the level of rent arrears by the Property and Debt Collection teams working with tenants of the building, as detailed within section 3.15 of the report. This has included the use of specific payment arrangements with it anticipated that the arrears accrued during the pandemic would be cleared by March 2024, which members welcomed as a positive step forward.
- 776-778 Harrow Road - Members noted the update provided in relation to the current position on the two cottages on the site. Members were reminded that whilst subject to a previous freehold sale the restrictive covenant in the sale required that the site be retained as two residential units. At its meeting on 1 September 2021, the Trust had resolved to authorise the Operational Director for Environmental Services to enter into discussions with the owners of 776-778 Harrow Road to explore the possibilities of reaching agreement to amend the restricting covenants on that property for the benefit of the Trust. These discussions were ongoing with the owner of the site, which the Trust would continue to be kept updated on moving forward. It was noted that a final decision on whether to amend the restrictive covenant and on what terms (in order for any application to be submitted to the Upper Tribunal Lands Chamber) would need to be made by the Trust Committee or delegated by the Trust Committee for officers to decide with an application in respect of

- planning permission being a matter for the Planning Department or Planning Committee rather than the Trust.
- The progress being made in relation to works previously approved through the Trust's Restricted Funds, as detailed within section 3.17 – 3.22 of the report. Members welcomed the works it had been possible to progress utilising grant funding through the Public Sector Decarbonisation Scheme (PSDS) on the interior of the Barham Park building including the addition of roof insulation and attic repairs, where accessible, to the various Units together with the addition of new LED lighting and controls. Whilst works to replace the windows and upgrade the exterior of the building had also been included within the original PSDS bid, based on the potential for energy / Carbon Dioxide emission savings, further assessment had been required given the criteria needing to be met in relation to the carbon savings required and material to be used in the frames. As a result, it had not been possible to meet the timescales required for the allocation of funding for this element of the work under the previous grant scheme however the PSDS were considering bids for the next stage of the scheme with the potential identified to include some of the Barham Pak Building in that bid, subject to the revised criteria introduced.
 - The progress in relation to the funding of other works associated with tree planting and replacement, the Queen Elizabeth II Silver Jubilee Garden and Walled Garden Pool as detailed within section 3.23 – 3.26 of the report.

In summing up, Chris Whyte (Director Environment & Leisure) took the opportunity to highlight the progress made in moving forward with management of the park and estate since the pandemic. This was not only in relation to the financial position of the Trust but also the ongoing maintenance and works to the building and park alongside a welcomed expansion in the programme of events and work progressing in relation to the wider strategic property review.

Having thanked officers for the updates provided the Chair then invited comments and questions from members of the Trust Committee, with the following issues raised:

- Given concerns relating to rising energy costs details were sought on the potential impact in terms of increased energy bills for tenants within the Barham Park building. In response Amin Soorma (Property Services) advised that tenants, under their existing agreements, would be required to meet the costs of the individual energy bills incurred for use of their respective units although officers remained aware and would continue to monitor the potential impact.

As no further issues were raised, Councillor Muhammed Butt (as Chair) thanked officers, along with Veolia, for their efforts in maintaining and managing the park and facilities given their importance as a community asset. The need to focus on the wider strategic property issues and works identified in relation to the Barham Park building, particularly in relation to the security issues highlighted, were also recognised in view of the need to ensure a co-ordinated approach was maintained in seeking to secure the long-term use of the Trust's assets for the benefit of the local community.

As no further issues were raised it was **RESOLVED** on the basis of the discussion at the meeting:

- (1) To note the issues set out in the report.
- (2) To authorise that the day to day Trustee functions and decision making of the Barham Park Trust be delegated to the Council's Director of Environment & Leisure following the Council's senior management restructure process and to authorise any previous decisions of the Trust Committee to delegate authority to the Operational Director of Environmental Services that have yet to be exercised to be delegated to the Council's Director of Environment & Leisure.


9. **Any other urgent business**

No items of urgent business were raised at the meeting, with members noting that should any further meetings of the Trust Committee be required during the year these would be arranged as needed.

The meeting was declared closed at 10:33am

COUNCILLOR MUHAMMED BUTT
Chair

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	<p align="center">Barham Park Trust Committee 5 September 2023</p>
	<p align="center">Report from Director of Environment and Leisure</p>
<p align="center">Annual Report and Annual Accounts 2022 – 2023</p>	

Wards Affected:	Wembley Central
Key or Non-Key Decision:	Non-key
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	<p>Three</p> <p>Appendix 1: Annual Report of the Barham Park Trust to the Charity Commission for the 2022/23 financial year.</p> <p>Appendix 2: Accounts of the Barham Park Trust for the 2022/23 financial year;</p> <p>Appendix 3: Independent Examiner's Review of the accounts of the Barham Park Trust for the 2022/23 financial year.</p>
Background Papers:	None
Contact Officer(s): <small>(Name, Title, Contact Details)</small>	<p>Jekaterina Popova, Head of Finance, Finance, Finance and Resources Department. 020 8937 1463 Jekaterina.Popova@brent.gov.uk</p>

1 Purpose of the Report

- 1.1 This report presents the annual report for the Barham Park Trust for 2022/23. There is a statutory requirement to produce an Annual Report, including the Accounts each financial year.

2 Recommendation

For the Barham Park Committee to:-

- 2.1 Approve the annual report and the Barham Park Trust's Accounts for 2022/23.

- 2.2 Note the Independent Examiner's Review of the Barham Park Trust's Accounts for 2022/23.
- 2.3 Authorise officers to update the Charity Commission with the Annual Report and the Accounts for 2022/23 of the Barham Park Trust.

3 Detail

Annual Report for 2022/23

- 3.1 The annual report is set out for consideration by the Committee. It outlines the work undertaken on behalf of the Trust during the year, which included the repair and improvement works on the park and ongoing work to secure tenants for the various buildings on the site.
- 3.2 The Charity Commission has set a threshold below which independent audit of financial statements is not required. For England and Wales this was set as either gross income exceeding £1,000,000 or gross income exceeding £250,000 and gross assets exceeding £3,260,000. Therefore, an Independent Examiner's Report is an accepted way for smaller charities to present their accounts as allowed for by the Charities Act 2011.
- 3.3 The accounts have been subject to an independent examination by the Head of Audit and Investigation. The Independent Examiner's Report is attached to this report and is set out in Appendix 3. There were no recommendations raised.
- 3.4 During 2022/23 the Trust incurred expenditure of £79,119 on maintenance of the building complex and the park, which was all funded from unrestricted funds. The Trust generated £104,140 income from rental income and interest earned. This includes rental income that is due but has not been paid yet. The total rental income due but not paid as at 31 March 2023 was £29,625. The Authority expects all arrears to be cleared by March 2024 following discussions with tenants.
- 3.5 As at 31 March 2023, the Trust had assets of:
- (i) £222k unrestricted funds cash
 - (ii) £353k restricted funds cash
 - (iii) £939k asset representing valuation of the Barham Park Building Complex
- 3.6 This means that if the rent arrears are not received, the Trust would have £192k of unrestricted funds left, which would be enough to cover around two (2) years of maintenance and wardens costs.
- 3.7 Following approval by the Trust Committee, the annual report and accounts for 2022/23 will be submitted to the Charity Commission – the deadline for

submission is 31st January 2024. In practice the documents are submitted shortly after the Trust committee meeting.

Comparison between 21/22 and 22/23

- 3.8 Overall expenditure has increased by £18,014 when compared to last year. This is predominately because additional one-off costs have been incurred associated with commissioning a Barham Park Feasibility study to consider the use of the Barham Park building and its condition in the long-term.
- 3.9 Total income shows a reduction of £19,459, which is due to some rental income received in advance in the previous financial year that has not been deferred to 2022/23. This is a timing difference and does not impact the Trust's funds overall.

Restricted funds

- 3.10 The restricted funds balance as at 31st March 2023 remains at £353,152. In order for restricted funds to be spent, this expenditure needs to be approved by both the Committee and the Charity Commission. The Committee needs to be satisfied that the proposed expenditure of the restricted funds is in accordance with the terms of the Trust.

4 Financial Considerations

- 4.1 Financial considerations are included in the body of the report.

5 Legal Considerations

- 5.1 In accordance with the Charities Act, the Trust Committee must ensure that accounting records are kept in respect of the charity which are sufficient to show and explain all the charity's transactions, and prepare a statement of accounts.
- 5.2 If a charity's gross income in any financial year does not exceed £250,000, the charity trustees may, in respect of that year, elect to prepare — (a) a receipts and payments account, and (b) a statement of assets and liabilities, instead of a statement of accounts.
- 5.3 An independent audit of financial statements is required if the charity's gross income in that year exceeds £1 million, or the charity's gross income in that year exceeds £250,000 (the accounts threshold) and at the end of the year the aggregate value of its assets (before deduction of liabilities) exceeds £3.26 million.
- 5.4 Where those thresholds do not apply and the Charities gross income in a financial year exceeds £25,000, the accounts of the charity for that year must, be examined by an independent examiner, and that independent person can be someone who is reasonably believed by the trustees to have the requisite ability and practical experience to carry out a competent examination of the accounts.

6 Equality, Diversity & Inclusion Considerations

6.1 None.

7 Consultation with Ward Members and Stakeholders

7.1 None.

8 Human Resource/Property and other Considerations

8.1 None

Report sign off:

Chris Whyte

Director for Environment and Leisure



Trustees' Annual Report for the period

From	Period start date			To	Period end date		
	Day 01	Month 04	Year 2022		Day 31	Month 03	Year 2023

Section A Reference and administration details

Charity name Barham Park Trust

Other names charity is known by Barham Park Trust

Registered charity number (if any) 302931

Charity's principal address Brent Civic Centre, Engineers Way
 Wembley
 Middlesex
Postcode HA9 0FJ

Names of the charity trustees who manage the charity

	Trustee name	Office (if any)	Dates acted if not for whole year	Name of person (or body) entitled to appoint trustee (if any)
1	London Borough of Brent	Barham Park Trust Committee		Not applicable as corporate sole trustee
2				
3				
4				
5				
6				
7				
8				
9				
10				

Names of the trustees for the charity, if any, (for example, any custodian trustees)

Name	Dates acted if not for whole year

Names and addresses of advisers (Optional information)

Type of adviser	Name	Address

Name of chief executive or names of senior staff members (Optional information)

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Section B Structure, governance and management

Description of the charity's trusts

Type of governing document (eg. trust deed, constitution)	<p>The voluntary conveyance dated 22 October 1936 between George Titus Barham (1) and Wembley UDC (2) copy annexed.</p> <p>Related documents</p> <ul style="list-style-type: none"> • The conveyance dated 1st February 1937 between Florence Elizabeth Barham (1) and the Mayor Alderman and Burgesses of the Borough of Wembley (2) copy annexed • The Assent dated 1st February 1938 between James Williamson and Kenneth Ewart Tansley (1) and the Mayor Alderman and Burgesses of the Borough of Wembley (2) copy annexed.
How the charity is constituted (eg. trust, association, company)	London Borough of Brent as sole trustee
Trustee selection methods (eg. appointed by, elected by)	Not applicable – the Council as local authority is the sole trustee. The London Borough of Brent is statutory successor to the Borough of Wembley.

Additional governance issues (Optional information)

You **may choose** to include additional information, where relevant, about:

- policies and procedures adopted for the induction and training of trustees;
- the charity's organisational structure and any wider network with which the charity works;
- relationship with any related parties;
- trustees' consideration of major risks and the system and procedures to manage them.

Summary of the objects of the charity set out in its governing document

The land is be held on trust 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.

Summary of the main activities undertaken for the public benefit in relation to these objects (include within this section the statutory declaration that trustees have had regard to the guidance issued by the Charity Commission on public benefit)

The benefit is the provision of Barham Park and building for recreational purposes.

Members of the Barham Park Trust Committee received training in July 2022 and this included a wide range of information including governance, conflicts of interest and public benefit.

Additional details of objectives and activities (Optional information)

You **may choose** to include further statements, where relevant, about:

- policy on grantmaking;
- policy programme related investment;
- contribution made by volunteers.

During the year of 2022-23, activities including those of community tenants returned to a more typical pattern following the Covid-19 pandemic. Several organisations organised activities and events, both within the Barham Park building and using the park.

The park of Barham Park recontinued as one of the most visited parks within the Brent area. The park includes a range of features including a Walled Garden, other gardens, trees and open woodland, amenity grassland and a meadow, a children’s playground and an outdoor gym.

The park hosted a Fun Fair on two occasions, guided walks and healthy walking activities. A Remembrance Day event was held in November 2022.

Working with the Council, Brent Council’s Property Services and Parks Service continued to work to progress operational issues, and to prepare capital projects towards commissioning both for the buildings and for the park.

One of those projects is a strategic review of the use of the building to look at opportunities to improve the quality of the accommodation and income generation.

Following the earlier works to re-landscape the Queen Elizabeth II Jubilee Garden, planting was conducted during the winter of 2022/23. Twenty standard-sized trees were planted in an open woodland. A low wall was restored. These works were funded by grants provided by Brent Council.

Summary of the main achievements of the charity during the year

The Barham Park Trust continued to maintain Barham Park for visitors from local areas of Brent and from elsewhere. The Barham Park building hosted tenants of community organisations. The Park and building hosted several events. Barham Park also provides a range of landscaping and biodiversity.

Restoration work continued on several features in the park, while the Barham Park Trust is conducting a review of the building and how best to maintain the building into the future.

Section E

Financial review

Brief statement of the charity's policy on reserves

As at 31 March 2023 the charity held cash reserves of £575,183. Out of this total sum of £575,183, the sum of £222,031 relates to restricted funds and the sum of £353,152 relates to unrestricted funds. There was no expenditure from the Trust's restricted funds in the 2022/23 financial year up to 31 March 2023.

In accordance with the decision of the trustees any future receipts will be used for improvements within Barham Park.

Details of any funds materially in deficit

Further financial review details (Optional information)

You **may choose** to include additional information, where relevant about:

- the charity's principal sources of funds (including any fundraising);
- how expenditure has supported the key objectives of the charity;
- investment policy and objectives including any ethical investment policy adopted.

Section F

Other optional information

Section G

Declaration

The trustees declare that they have approved the trustees' report above.

Signed on behalf of the charity's trustees

Signature(s)		
Full name(s)	Chris Whyte	
Position (eg Secretary, Chair, etc)	Director for Environment and Leisure: Officer with delegated authority to deal with day to day trustee functions of the Trust.	

Date

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Charity Name Barham Park	No (if any) 302931
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CC16a

Receipts and payments accounts

For the period from	Period start date 01/04/2022	To	Period end date 31/03/2023
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Section A Receipts and payments

	Unrestricted funds	Restricted funds	Endowment funds	Total funds	Last year
	to the nearest £	to the nearest £	to the nearest £	to the nearest £	to the nearest £
A1 Receipts					
Hall Hire, Fun Fair & Ice Cream Concessions				-	-
Property Rental Income	23,087			23,087	3,089
Ad-hoc lettings				-	14,625
Fun Fair				-	28,172
Car Parking				-	-
Catering Rights				-	-
Rental Income - Virgin Media	4,875			4,875	6,500
Rental Income - Other	54,500			54,500	50,009
Brent Council Contribution				-	-
Children Centre	11,300			11,300	11,300
Interest earned	10,378			10,378	9,903
				-	-
				-	-
Sub total (Gross income for AR)	104,140	-	-	104,140	123,599
A2 Asset and investment sales, (see table).					
	-	-	-	-	-
	-	-	-	-	-
Sub total	-	-	-	-	-
Total receipts	104,140	-	-	104,140	123,599
A3 Payments					
Maintenance and Wardens	55,375			55,375	54,438
Premises - Utility				-	-
Premises - Insurance	2,500			2,500	2,500
Premises - Security				-	700
Premises - Cleaning				-	-
Premises - Repairs and Maintenance				-	-
Premises - Other				-	-
Supplies and Services				-	-
Waste Disposal				-	-
Trees - felling and planting				-	-
Machinery Repairs				-	-
FM running Costs				-	-
NNDR				-	-
Surveys				-	-
Consultancy	21,244			21,244	-
General contingency				-	3,467
				-	-
Sub total	79,119	-	-	79,119	61,105
A4 Asset and investment purchases, (see table)					
	-	-	-	-	-
Buildings Refurbishment	-	-	-	-	-
Sub total	-	-	-	-	-
Total payments	79,119	-	-	79,119	61,105
Net of receipts/(payments)	25,021	-	-	25,021	62,494
A5 Transfers between funds	-	-	-	-	-
A6 Cash funds last year end	197,010	353,152	-	550,162	487,668
Cash funds this year end	222,031	353,152	-	575,183	550,162

Section B Statement of assets and liabilities at the end of the period

Categories	Details	Unrestricted funds to nearest £	Restricted funds to nearest £	Endowment funds to nearest £
B1 Cash funds	Cash	222,031	353,152	-
		-	-	-
		-	-	-
	Total cash funds	222,031	353,152	-
	<small>See balances with receipts and payments account(s)</small>	OK	OK	OK
		Unrestricted funds	Restricted funds	Endowment funds

	Details	to nearest £	to nearest £	to nearest £
B2 Other monetary assets		-	-	-
		-	-	-
		-	-	-

	Details	Fund to which asset belongs	Cost (optional)	Current value (optional)
B3 Investment assets			-	-
			-	-
			-	-

	Details	Fund to which asset belongs	Cost (optional)	Current value (optional)
B4 Assets retained for the charity's own use	Barham Park Building Complex			939,071

	Details	Fund to which liability relates	Amount due (optional)	When due (optional)
B5 Liabilities			-	
			-	
			-	

Signed by one or two trustees on behalf of all the trustees	Signature	Print Name	Date of approval

Barham Park Trust

2022-23 accounts: Supplementary audit review

1 Introduction

1.1 The Audit and Investigations Unit (A&I) were asked to act as an independent examiner and review the draft Barham Park Trust (“the Trust”) 2022-23 accounts which will be submitted to the Charities Commission.

2 Respective responsibilities of trustees and examiner

2.1 The charity's trustees are responsible for the preparation of the accounts. The charity's trustees consider that an audit is not required for this year under section 144(2) of the Charities Act 2011 (the 2011 Act) and that an independent examination is needed.

2.2 It is my responsibility to:

Examine the accounts under section 145 of the 2011 Act;

Follow the procedures laid down in the general Directions given by the Charity Commission under section 145(5)(b) of the 2011 Act; and to state whether particular matters have come to my attention.

3 Basis of independent examiner’s report

My examination was carried out in accordance with the general directions given by the Charities Commission. An examination includes a review of the accounting records kept in respect of the Trust and a comparison of the accounts presented with those records. It also includes consideration of any unusual items or disclosures in the accounts and seeking explanations from officers acting for the trustees concerning any such matters. The procedures undertaken do not provide all the evidence that would be required in an audit and consequently no opinion is given as to whether the accounts present a “true and fair view” and the report is limited to those matters set out in the statement below.

4 Independents Examiner’s statement


4.1 Officers acting for the trustees have prepared receipts and payments accounts.

4.2 No matter has come to my attention, which gives me reasonable cause to believe that, in any material respect, the requirement:

- To keep accounting records in accordance with section 130 of the Charities Act; and
- To prepare accounts which accord with the accounting records and comply with the accounting requirements of the Charities Act have not been met, or
- To which, in my opinion, attention should be drawn in order to enable a proper understanding of the accounts to be reached.

Darren Armstrong – Head of Internal Audit and Investigations at London Borough of Brent
Relevant professional qualification or body: Chartered Institute of Internal Auditors (CMIIA, CIA)
Brent Civic Centre, Audit & Investigations, Floor 7D, Engineers Way, HA9 0FJ

24 August 2023

 <p>Brent</p>	<p>Barham Park Trust Committee 5 September 2023</p> <hr/> <p>Report from Director Environment & Leisure</p>
<p>Strategic Property Matters Relating to Barham Park, 660 Harrow Road, Wembley HA0 2HB and 776-778 Harrow Road, Wembley HA0 2HE</p>	

Wards Affected:	Wembley Central
Key or Non-Key Decision:	Non-key
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Appendix 3 is not for publication as it contains the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely: "Information relating to the financial or business affairs of any particular person (including the authority holding that information)".
No. of Appendices:	Three: Appendix 1: Barham Park Building RLB Feasibility Study – Silver Option Appendix 2: Barham Park Building Feasibility Study – Gold Option Appendix 3: (Exempt) External valuations restrictive covenant 776 and 778 Harrow Road
Background Papers:	None
Contact Officer(s): <small>(Name, Title, Contact Details)</small>	Chris Whyte, Director Environment & Leisure Services; 020 8937 5342 chris.whyte@brent.gov.uk Denish Patel, Head of Property, Property and Assets 020 8937 2529 Denish.patel@brent.gov.uk Tanveer Ghani, Director of Property and Assets 020 8937 1722 Tanveer.ghani@brent.gov.uk

1.0 Purpose of the Report

- 1.1 At the 27 January 2022 Trust Committee, Officers reported that the infrastructure of the Barham Park Estate (“Estate”) is subject to a range of issues and conditions that are affecting the efficient running of the Estate and that a feasibility study was required to review the Estate more holistically and shift away from short term infrastructure/maintenance solutions, which are resulting in only short-term benefits and higher longer term running costs. The Barham Park Trust Committee (“Trust Committee”) authorised Officers to commission an architect to prepare a feasibility study for design options. One aspect of this report is to provide an overview of the conclusions and recommendations of the architect, Rider Levett Bucknall (RLB), who were commissioned to prepare the feasibility study following a tender exercise.
- 1.2 The Barham Park Trust (“Trust”) is a beneficiary of a restrictive covenant in respect of two residential dwellings at 776 and 778 Harrow Road, which are owned freehold by a private owner. The covenant restricts the owner from increasing the number of dwellings at the site. The owner has obtained planning permission under reference 22/4128 and wishes to develop the site for the “Demolition of 2 existing dwellings and construction of 4 new three storey dwellinghouses, associated cycle and refuse storage, amenity space and boundary treatment at 776 & 778, Harrow Road, Wembley, HA0 2HE”. At its meeting of 1 September 2021, the Trust Committee authorised the Director for Environmental and Leisure Services to enter discussions with the owner of 776 and 778 Harrow Road to explore the possibilities of reaching an agreement to vary the restrictive covenant to enable redevelopment for the benefit of the Trust. This report provides an update on the independent valuation that the Council commissioned on behalf of the Trust to establish the market value opinion of varying the covenant and the next steps required to progress the matter.
- 1.3 The report also asks the Trust Committee to note its decision of 27 January 2022 not to enter new leases in respect of Units 2, 7 and 8 of the Estate pending the completion and consideration of the options appraisal of the architect and thereafter, to agree for the Director for Environmental and Leisure Services to decide on the way forward regarding those three units. This report provides an update on the decision in respect of these units in paragraphs 3.20 to 3.21.

2.0 Recommendation(s)

That the Barham Park Trust Committee RESOLVES:

- 2.1 To note the outcomes from the architect’s feasibility study commissioned by the Council on behalf of the Trust.
- 2.2 To delegate authority to the Director for Environmental and Leisure Services in consultation with the Chair of the Trust Committee to:
- I. Obtain detailed costings of the preferred option presented in the architect’s report including a cost/benefit analysis and financial appraisal of the proposed scheme.

- II. Undertake detailed analysis of the legal risks associated with the proposed scheme and the means as to their mitigation and management.
 - III. Prepare a draft investment strategy to establish the Council's ability to fund the refurbishment proposal and prepare an outline delivery plan for consideration by the Trust.
- 2.3 Agree for the Director for Environmental and Leisure Services in consultation with the Chair of the Trust Committee to report back the findings and recommendations at the next Trust Committee, outlining the suggested interventions, the amount of funding required to deliver the whole Estate option being recommended by RLB, and the potential financial options that would enable the delivery of the scheme.
- 2.4 Agree to hold in abeyance the letting/lease renewal of units 2, 7 and 8 until such time the Director for Environmental and Leisure Services has considered the viability of progressing the proposed scheme, with an update being provided at the next Trust Committee.
- 2.5 Agree for the Director for Environmental and Leisure Services in consultation with the Chair of the Trust Committee to negotiate in principle the variation of the restrictive covenant in respect of 776 and 778 Harrow Road for the best terms that can reasonably be obtained, subject to final approval by the Trust Committee, and any approval required by the Charity Commission under the Charities Act 2022 and 2011.

3.0 Detail

- 3.1 This report provides a synopsis of the RLB feasibility study. This report includes the key elements for the initial concept, the proposed design, and high-level cost estimate of developing the scheme. A copy of the preferred proposed design is included in Appendix 1.
- 3.2 This feasibility study is produced with the intention to explore options for the renovation and potential reconfiguration of the existing old court buildings of the Estate. The feasibility study looked at the potential for reconfiguring the existing building to enhance the relationship between the building and park, develop new spaces and modern facilities to reflect market demand and trends with respect to a wide variety of sustainable community uses.
- 3.3 The proposal for the Estate has developed from several contributing factors: In practical terms, the aspiration of Trust Committee is that the Estate becomes more cost effective to run, thereby yielding more rental income and improving on multiple dimensions of performance at the same time. Ideally, the Estate should benefit from fundamental improvements in the building and its relationship with the park, enjoy strong diverse income growth, be sufficiently flexible to adapt for future uses thereby improving the lettings potential and meet the various needs of diverse customer groups, which seek to serve the

community and public benefit and improve the overall visual and aesthetic elements of the park.

The current situation

- 3.4 The existing buildings on the site have all been adapted at different times, and further modified over their lifetime. This has resulted in a highly disorganised and compartmentalised set of interior spaces which do not lend themselves for easy flexibility to meet future needs/uses.
- 3.5 The intent is to respect and preserve the more historically significant elements of the structure, while generally expanding and upgrading the accommodation.
- 3.6 The conceptual approach taken by the architects is an attempt to unify these spaces by opening out the interior spaces, and by inserting a new central structure and circulation route providing step-free access to most areas and increase the amount of light in the building.
- 3.7 The Trust would incur capital costs to build out the proposed scheme. While it would gain the benefit of the optimisation and increased capacity, the Trust will need to balance the potential increased cash flow of future capacity with the cost of investment. There is currently a significant discrepancy between the rent generated from existing tenants and the potential market rent achievable from the redesigned scheme. For example, the current rent generated from existing tenants is circa £72,300 per annum. Wilks Head Eve Chartered Surveyors have assessed the rent achievable from the redesigned scheme to be between £302,200 to £440,900 per annum based on estimated market rents.
- 3.8 In order to fulfil the plans to redesign the scheme, the Trust Committee will need to consider getting vacant possession of the whole building and retendering the spaces on completion of the refurbishment. This is to ensure that 1) the works can be carried out cost-effectively 2) the charitable purposes of the Trust can be maximised and 3) the rental value, which is a crucial source of value creation for the Trust to ensure the Estate is sustainable in the long term, is balanced effectively with its charitable aims. The legal implications and strategy of obtaining vacant possession of the building to progress the proposed scheme will need to be considered in more detail by Officers and reported back to the Trust Committee.

Findings and recommendations of the feasibility study

- 3.9 The findings of RLB feasibility study have recommended the following interventions:
 - A remodelled mixed-use Estate with relocated and expanded retail facilities, more accessible and visible to residents;
 - New units for flexible uses within a newly created floor area on the first floor to make the most of existing unused space and support the financial sustainability of the Estate;

- A landscape strategy to strengthen the link and interconnectivity between the park and the Estate;
- Ensure the new design takes advantage of any new opportunities;
- There are a range of proposals included in the proposal that will improve social cohesion;
- There will be improved links and signage to enable the integration of Estate with the open spaces, key frontages and landmarks.
- There will be a greater mix of units and uses, comprising better quality space and improved relationship between individual units and the rest of the building.

3.10 RLB were asked to provide three tiers of refurbishment levels to represent bronze, silver and gold options, whereby the bronze option represents the lowest intervention and cost, and gold represents the highest intervention and cost. These are set out in summary below:

- Bronze: - This level of minimal refurbishment was discounted early in the design process because insufficient value was being created.
- Silver: - This level improves the structural configuration of the building by the removal of non-load bearing walls to provide larger dedicated spaces for different uses, reconfiguration of stairs to improve level relationships, improved connectivity to the external spaces, and the addition of a new floating structure running along the spine of the building to create additional space, at a cost of £3,161,537. This option is shown in Appendix 1.
- Gold: - This level includes further enhancements such as the addition of improved connectivity to the park, access, aesthetics and additional space at a cost of £4,060,733. Due to the increased cost relative to the additional benefits this option has been discounted. A summary of this option is shown in Appendix 2.

Next steps

- 3.11 The RIBA stage 2 concept design prepared by RLB is preliminary only and has been produced for the Trust Committee's feedback and initial costing purposes.
- 3.12 All existing and proposed information has been based upon drawings provided by Officers and will be subject to the commissioning of a full 3D building survey.
- 3.13 The stage 2 design has not yet been coordinated with M&E, Structure, Fire, Acoustic, Interiors or any other design consultants, who will be subject to additional appointments.

- 3.14 The stage 2 design will be subject to review, comments and approval by the planning authority, building control, heritage consultant and other statutory consultees.
- 3.15 The proposed scheme requires significant capital investment. The high-level estimated construction cost of carrying out the recommended option provided by RLB is between £3,161,537 and 4,060,733 depending on the extent of the interventions.
- 3.16 At this time, funding has not been identified for the proposed scheme or further professional fees required to progress the scheme. The current public funding environment is challenging i.e., high borrowing costs, construction inflation and securing the necessary resources cost-effectively will be a major component on whether the proposed scheme can be delivered. Officers will need to consider what resources can be used to support the delivery of the scheme.
- 3.17 This report seeks to present the conclusions of the feasibility study, outlining the suggested interventions and the approximate amount of funding required to deliver the whole estate option recommended by RLB. To enable the recommendations contained within the feasibility study to become a reality significant investment will be required and the routes to achieving this will need to be further explored.
- 3.18 Consultation with non-statutory consultees, such as existing tenants, and other relevant stakeholders will take place once the proposed scheme has been developed further and an investment strategy identified. Until such time, there is no impact on the occupation of existing tenants arising from the feasibility study.

The do-nothing option

- 3.19 The alternative to redesigning the Estate is to maintain the status quo and continue to deal with repairs and the maintenance liabilities as and when they arise on an item-by-item basis. However, the Estate does not generate sufficient income from the existing scheme to ensure sufficient funds are available for ongoing and future repairs in this way. The do-nothing option is therefore not cost neutral and will cost the Trust more than the revenue it can generate in the longer term. To build a strong and sustainable foundation, and ensure charitable aims continue to be met, holistic interventions are required which consider the Estate as a whole, in capital, revenue and expenditure terms.

Update on Units 2, 7 and 8.

- 3.20 The Estate is currently a 'live' site with several tenants in occupation on various types of leases and/or other types of arrangements. Officers will need to work through feasibility and design options with the Director for Environmental and Leisure Services and the Chair of the Trust Committee to consider the potential impact of the current occupation, uses, leases and tenancies of the Estate on the design proposals. The impact of existing tenancies will be subject to the

terms of the existing leases and lease break mechanisms and these impacts will need to be considered in more detail by Officers before any new tenancies or lease renewals can be made.

- 3.21 The proposal is therefore to maintain the status quo and hold in abeyance the letting/lease renewal of units 2, 7 and 8 until such time the Director for Environmental and Leisure Services has considered the viability of progressing the proposed scheme and a tenancy strategy to support the proposed whole Estate development has been developed.

Restrictive covenant in relation to 776-778 Harrow Road

- 3.22 The subject property is situated on the east side of Harrow Road in Sudbury and backs onto Barham Park. The property comprises a pair of semi-detached houses which are owned by a single private owner on a freehold basis.
- 3.23 In the title register of 776 and 778 Harrow Road there are several restrictive covenants which restrict the development of additional dwellings. The Trust is the main beneficiary of the restrictive covenants.
- 3.24 The proposal by the existing owner, contrary to the terms of the restrictive covenants, is to seek consent from the Trust Committee to amend the restrictive covenants to enable him to demolish the existing buildings and erect 4 houses on the combined plot, whereas currently the restrictive covenants allow for only 2 dwellings on the combined plot.
- 3.25 The varying of the restrictive covenants is a matter for the Trust Committee and Charity Commission. As beneficiary of the restrictive covenants, the Trust Committee can negotiate a monetary consideration for varying the restrictive covenants. Simply put, the monetary consideration is usually determined by what the market value of the 2 additional completed properties might be and deduct from that the estimated development costs to arrive at a gross development value. This gross development value is then typically split 50/50 between the Covenantor and Covenantee by negotiation and is the formula used in the valuation for varying the restrictive covenant.
- 3.26 Officers have obtained an external valuation of the gross development value, and this is shown in Appendix 3 (classified as containing exempt information). The valuation has been carried out by Maurice Walsh MRICS BSc (Surveying) Dip Env Econ, RICS Registered Valuer of Robson Walsh Chartered Surveyors on behalf of the Trust Committee to make it aware of the opinion of market value of varying the covenant in line with the planning permission obtained. The current valuation only applies to the existing planning permission under reference 22/4128 for 4 dwellings because a change in the proposal would result in a different valuation. The report was prepared prior to obtaining legal advice on the Charity Commission requirements for valuation on disposals by a charity and therefore the valuation report will need to be amended to include additional information to meet the requirements of the Charity Commission as set out in paragraph 5.3 below. However, these amendments will not have a material effect on the opinion of market value reported.

3.27 If the Barham Park Trust proposes to vary the restrictive covenants and allow the development of 2 additional houses, the redevelopment will be subject to planning and other statutory consents. Planning permission has been obtained by the owner under reference 22/4128 which is valid for 3 years from 8 December 2022.

4.0 Financial Considerations

4.1 There are no remaining resources available from the Trust's restricted funds to fund the proposed scheme and the Trust's receipts and payments account approximately balances on an operational level within individual years and over any series of years.

4.2 Several approaches have been made during recent years to the Heritage Lottery Fund for renovation of the Barham Park building and the park. To date it has not proved possible to identify a grant scheme with criteria that would match the needs for renovation of the building or of the whole Estate, but Officers are continuing to explore opportunities.

4.3 Officers will explore the potential to reinvest the proceeds from varying the restrictive covenants in respect of 776-778 Harrow Road back into the Estate as part of developing a multi-faceted investment strategy for the refurbishment project. Accordingly, the proceeds would count as permanent endowment funds (capital funds which are held in trust for the benefit of the charity over the long term and are subject to restrictions as regards how they may be used).

5.0 Legal Considerations

5.1 The land (including the building) 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".

5.2 The Charities Act 2022 (2022 Act) updates parts of the Charities Act 2011. Where those changes impact the Trust Committee, they have been referred to below. Sections 117¹ of the Charities Act 2011 prevent a disposal of charity land without an Order of the Court or the Commission unless the procedure in accordance with s119 which provides:

"That the charity trustees must, before entering into an agreement for the sale, or (as the case may be) for a lease or other disposition, of the land—

(a) Obtain and consider a written report on the proposed disposition from a designated adviser (a fellow or a professional associate of the Royal Institute of Chartered Surveyors) instructed by the trustees and acting exclusively for the charity, and

¹ The changes to s117 CA 2011 relate to jointly owned properties, which does not impact the Trust Committee.

- (c) *Decide that they are satisfied, having considered the adviser's report, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity.*"

For these purposes, a designated adviser is a person who (a) is a fellow or professional associate of the Royal Institution of Chartered Surveyors or satisfies such other requirement, and (b) is reasonably believed by the charity trustees to have ability in, and experience of, the valuation of land of the particular kind, and in the particular area, in question.

5.3 In accordance with the Charities (Dispositions of and: Designated Advisers and Reports) Regulations 2023, the Surveyors report must deal with:

- (a) the value of the relevant land;
- (b) any steps which could be taken to enhance that value;
- (c) whether and, if so, how the relevant land should be marketed;
- (d) anything else which could be done to ensure that the terms on which the disposition is made are the best that can reasonably be obtained for the charity; and
- (e) any other matters which the adviser believes should be drawn to the attention of the charity trustees.

(2) The report must also include a statement by the 5.3 that—

- (a) the adviser has ability in, and experience of, the valuation of land of the particular kind, and in the particular area, in question; and
- (b) the adviser has no interest which conflicts, or would appear to conflict, with that of the charity.

5.4 The definition of land (under section 2 of & Schedule to the Interpretation Act 1978) includes "any estate, interest, easement, servitude or right in or over land." Accordingly, a restrictive covenant is a right in or over land.

5.5 The word "disposal" is not defined. The Charity Commission takes the view that a disposal would include the release of a restrictive covenant:

<https://www.gov.uk/government/publications/sales-leases-transfers-or-mortgages-what-trustees-need-to-know-about-disposing-of-charity-land-cc28/sales-leases-transfers-or-mortgages-what-trustees-need-to-know-about-disposing-of-charity-land> para 4.

The rationale being to prevent the sale of charity assets at an undervalue, whether that be the sale of a freehold interest or the release or varying of a restrictive covenant.

5.6 If the Trust is to release or varying, vary, amend or discharge the restrictive covenant then such a decision falls within the scope of Part 7 of the Charities

Act 2011 caveated by the above procedure whereby reliance on a surveyor's report can be utilised.

- 5.7 Use of s117, pre-supposes that the owner of the cottages is not a "connected person" within the meaning of section 118. Connected persons² includes:

"Who at the time of the disposition in question, or at the time of any contract for the disposition in question are, for example—

- (a) a charity trustee or trustee for the charity...*
- (c) a child, parent, grandchild, grandparent, brother or sister of any such trustee or donor,*
- (d) an officer, agent or employee of the charity...*
- (f) a person carrying on business in partnership with any person falling within any of paragraphs (a) to (e)"*

- 5.8 In accordance with s120, any disposal of Trust land over seven years to a third party is also subject to similar requirement imposed by s119 above. Furthermore, the disposal of charity land, or letting for more than two years to a third party or connected person requires consultation in the form of being notified in the local press and onsite and providing for at least one calendar month, from the date of the notice, for members of the public to make representations.

- 5.9 Accordingly, if the owner of the cottages is a connected person, or a conflict of interest is deemed to exist in the decision making process re the disposal (for example, amongst other things because payment of a capital sum to the Council (as trustee) for releasing the covenant would reduce the contribution required to be made in practice by the Council (as local authority) to subsidise the running of the charity), the Trustees should request the Charity Commission consider the Qualified Surveyor's Report (referred to under the 2022 Act as the Designated Advisor's Report (DARs) (valuation) and release or varying the restrictive covenant pursuant to their s105 Charity Act powers, to authorise dealings with the charity property.

6.0 Equality, Diversity & Inclusion Considerations

- 6.1 The proposed projects mentioned in this report will be subject to a screening for equalities impacts and where the potential for adverse impacts is identified, a full equalities impact assessment will be carried out and any requisite mitigating action taken.

- 6.2 It is probable that short-term there may be some impacts of some protected characteristics particularly for the more community-centred tenants though this will depend on decisions that are made following consideration of the options

² Disposals to employees of a dwelling as a home for a fixed or periodic term of less than a year no longer require the Charity Commission's consent. This change does not impact the Trust Committee.

appraisal of the architect. The longer-term aspiration is to provide enhanced facilities for community tenants and for park users.

7.0 Consultation with Ward Members and Stakeholders

7.1 Officers meet regularly with Ward Members.

8.0 Human Resources/Property and other Implications (if appropriate)

8.1 Nothing specific other than noted in this report.

Report sign off:

Chris Whyte

Director of Environmental and Leisure
Services

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REPORT

MAY 2023

FEASIBILITY STUDY

**BARHAM PARK, BRENT COUNCIL - RENOVATION AND
RECONFIGURATION OF THE EXISTING BUILDINGS**
HARROW RD, WEMBLEY, LONDON HA0 2HB

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Appendix A: AEW Drawings and Report

Appendix B: Cost Plans

1.0 EXECUTIVE SUMMARY

This Feasibility report is produced with the intention to explore options for the renovation and potential reconfiguration of the existing Old Court buildings at Barham Park on Harrow Road, Wembley, London, on behalf of the client Brent Council. The document provides an overall summary of AEW's initial RIBA Stage 2 document.

This report offers recommendations on how to meet the brief set by Denish Patel of Brent Council.

The base scheme comprises of improving the existing standard of accommodation and commercial potential of the overall development.

Following on from RLB and AEW's Initial site inspection with Amin Soorma Estates Surveyor on 2nd September 2022, this feasibility study looks at the validity of reconfiguring the existing building to enhance the relationship between the building and park, develop spaces and facilities to reflect market demand and trends with respect to a wide variety of sustainable community uses.

Barham Park is a live site, tenants and operations to the building will be required to come to a pause throughout the duration of the works. Vehicular access to the main car park area will continue to be in use as it is not included within the scope.

The estimated construction cost of carrying out the recommended option is as follows:

AEW Feasibility appraisal – £ 3,161,537.50

The above cost excludes VAT, decant, dilapidation settlements further investigations, and. A project cost summary has been included within the appendix of the report.

2.0 CONFIRMATION OF INSTRUCTION

Rider Levett Bucknall (RLB) is working with our supply chain partner, AEW Architects, who are providing Architectural support. RLB has been appointed by Brent Council to explore options for the and potential reconfiguration of the existing buildings, with a view to improving the existing standard of accommodation and commercial potential of the development overall.

The key items considered within this report are:

- Location of additional parking (including EV charging)
- Partial demolition & rebuild of certain elements of the building (eg. the flat-roofed areas towards the rear) have insufficient potential to add value to the project as a whole and has been excluded from the project scope.
- No full demolition & rebuild - design to relate to & incorporate existing building.
- Not to consider existing tenancies and to consider the building as vacant.
- Tracking and tracing of all underground drainage / pipe routes.
- Topography survey and levelling to ensure sufficient drainage.
- Structural constraints of the Barham Park Trust building
- EPC C to be targeted.
- Trees located within a conservation area that are not protected require written notice to the local planning authority.
- Temporary closure to parts of the car park whilst works are being carried out / Consideration of relocating parking spaces during construction works.
- Budget Costs Estimates
- Project risk

2.1 LIMITATIONS & CAVEATS OF THE REPORT

During our inspections on the 2nd of September 2022, we also checked all visible, exposed and accessible elements of construction relevant to the instruction, in order to give rise to the feasibility study contained in this report.

We have not moved heavy furniture, equipment, or stored materials, nor lifted / fitted curb stones and paving slabs. We have not inspected woodwork or other parts of the structure which are covered, unexposed or inaccessible and therefore, we have been unable to report that such elements are free from defect. Our external inspection has been undertaken from ground level.

We have not arranged for exposure works to be conducted to below ground or carried out testing for the presence of deleterious materials. Where appropriate we will seek further instruction for such investigations to be undertaken for an additional charge, should the project proceed to the next stage.

This report has been addressed and forwarded to the person named at the head of the covering letter and will be confidential to that person and his professional advisors. This report has been prepared with the skill, care and diligence reasonably expected of a competent Architectural Technologist and any liability which may arise from the content of the report will be specifically restricted to the client. Any other person who relies upon this report does so at their own risk. This report should not be reproduced in whole or in part or relied upon by third parties, for any use, without express written authority from us as the surveyors.

With regard to service installations, incoming mains, wastes and drains, we have undertaken a visual inspection only and shall report on any matters which come to light as requiring further investigation by specialists. We shall not arrange for tests to be carried out unless specifically instructed to do so.

2.3 EXISTING SITE, BUILDINGS & SERVICES

Barham Park is located along Harrow Road, approximately between Sudbury Hill and Wembley. The park is a large green space surrounded by large built-up areas of predominantly residential housing. The site is well connected for local public transport. The site has great potential to provide a wide offer to the surrounding residential community depending on the future use. The dense areas of housing and local urban connectivity have potential to create a strong visitor base and significant footfall both past and through the site.

The existing park has several pedestrian routes through the various constituent parks (open park, Victorian Garden, Walled Garden). Currently the Old Court (660 Harrow Road) is situated by the park entrance but does not connect well to any of the constituent park areas and does not aid site connectivity.

There is an opportunity to improve the relationship and connectivity between the building and the surrounding park, both through improvements and alterations to the building fabric, and through future uses which increase visitor traffic and complement the parkland setting.

Surveys of existing drainage and proposed works to be instigated by the structural engineer – yet to be appointed by the client. Surveys of existing services & utilities to be instigated by the M&E consultant – yet to be appointed by the client.

2.4 CONDITION ASSESSMENT

Prior to commencement of this report, we conducted an inspection of Barham Park, Wembley, London, identifying construction form, condition and establishing the existing layout. The following details are designed to be a brief overview of the existing facility.

2.4.1 EXTERNAL / INTERNAL

BUILDING FABRIC

The building is a mix of masonry and stud walls which has been modified and added to in the past. The layout is highly compartmentalised and fragmented, reflecting the buildings history, structural design, and current occupancy. Barham Park consists of Timber framed windows and double storey timber windows with stained glass inserts. The property presents a good example of a Victorian development displaying the prevailing fashion of house design and taste of the period.

EXISTING USE

The Barham Park building is the centre of the park and is tenanted by community organisations including a community library, arts organisation, Brent youth foundation, Veteran's club, others and is thought to have been originally constructed between 1760-1790.

GARDEN BOUNDARY WALLS

Barham Park in Wembley, London has several entrances, and some of these entrances are bordered by garden boundary walls. The boundary walls are primarily constructed of brick and are designed to provide a decorative and functional boundary around the park's perimeter. The park has several entrances, and some of these entrances are bordered by garden boundary walls.

Due to the site being being a site of importance for nature and conservation the boundary walls means that any alterations or repairs to them must be done with special care to ensure that their historic fabric is preserved. This may require the use of specific materials and techniques that are in keeping with the original design and construction of the walls.

SITING AND LANDSCAPING INFORMATION

The public park covers an area of approximately 27 hectares. The parks layout and landscaping have evolved over time, reflecting the changing trends in landscape design. The park is situated on gently sloping terrain and is surrounded by residential neighbourhoods. It has several entrances, including a main entrance on Harrow Road.

CHARGING POINTS

There are currently no car charging points at Barham Park.

TREES

The site has a variety of trees that contribute to the parks natural beauty and provide habitat for wildlife. Some types of trees found at the park include:

Oak trees, London plane trees, horse chestnut trees, sycamore trees and common lime trees. It is possible that some of the trees in Barham Park may be protected by Tree Preservations orders (TPO's), which are legal orders made by local authorities to protects specific trees, group of trees or woodlands. It is advised to contact the local council or park authority for further guidance.

3.0 AEW ARCHITECT'S OPTION APPRISAL

The design team have produced a proposed layout to meet with the client brief, refer to Appendix A.

3.1 GUIDANCE

Brent Council has previously indicated that they would like to consider three future overall options based upon degree of intervention:

Bronze (minor intervention & refurbishment / removal of some partition walls)

Silver (moderate intervention & structural alteration / removal of most partition walls)

Gold (significant intervention, structural alterations, and remodelling)

The scope and nature of any of these potential tiers of intervention will be dependent on the desired future uses & occupancies indicated by the client.

This report only considers the Silver Option, further brief guidance provided by client on 12/01/2023:

‘A mixture of uses as small office spaces, café, small retail, and studios, connected to community type/third sector uses. A mixed economy would also help drive both economic and social benefits from the building.’

3.2 GENERAL DESIGN CONSIDERATIONS

3.2.1 STAGE 1 - WHOLE BUILDING ANALYSIS

GROUND AND FIRST FLOOR POTENTIAL REMOVAL OF EXISTING NON-LOADBEARING STRUCTURE:

- The park has several entrances, and some of these entrances are bordered by garden boundary walls.
- Removal of non-optimal staircase arrangements provides the opportunity to rationalise and improve circulation provision.

GROUND AND FIRST FLOOR ESTIMATED FLOOR LEVEL RELATIONSHIP

- Relative floor levels have been estimated based upon survey information provided.
- Most of the ground floor appears to be on a similar floor level, but there are lower areas (eg. plant room) and higher areas (eg. main entrance area)

- Improving accessibility to the ground and first floors may involve the provision of multiple internal platform lifts and ramps where the floor levels cannot be equalised.
- The first floor appears to feature a larger range of levels than the first floor, with a significant number of single steps even within the same corridor.
- The first floor appears to feature a larger range of levels than the first floor, with a significant number of single steps even within the same corridor.

3.3 FUTURE OCCUPANCIES

SECTOR	USE
Commercial	Office space for single / multiple tenants. Serviced co-working spaces. Dance studio. Artist / photography studio. Hotel / Airbnb / boutique style accommodation e.g., for football matches at the nearby stadium. Events / Wedding venue.
Food and Beverage	Independent food court e.g., with multiple traders around a central courtyard Single or multiple restaurant use Independent Cafe / Bakery
Retail	Community Grocery Local independent retail shops Market / supermarket
Community	Community Hub Local Information Library

INITIAL STRATEGIC EXPLORATION

- The existing courtyard provides a focus for events or activities.
- Connecting routes are created via the courtyard into the adjacent units and provide a link through to the war memorial on the western side.
- Stairs are inserted & reconfigured to serve a proposed revised layout more efficiently at first floor level. The linking of spaces at first floor level via bridges/walkways may be more efficient overall if it permits elimination of staircases & platform lifts.

- Visual and functional links are created between the walled garden and the building areas looking onto it.
- Visual links are created between the busy pedestrian footpath bordering the site, and the potential uses within the buildings facing Harrow Road.
- Potential for individual units to use their own support / services areas, or to share a single larger dedicated area.

OTHER

- Phasing of construction works to ensure parking spaces are available for use during working hours.
- Works around the existing trees to be in accordance with BS 5837: 'Trees in Relation to Construction: Recommendations' (2005).

3.4 INITIAL CONCEPT DESIGN

3.4.1 STAGE 2 – RECOMMENDED SCHEME OPTION (REFER TO AEW'S ARCHITECTURAL DRAWINGS IN APPENDIX A)

GROUND FLOOR

- Community uses proposed for two of the buildings facing the western courtyard, with the potential to link them together internally. Potential to use external courtyard area for playground or similar.
- Cafe / bar proposed for the existing library area at ground floor, with possibility to use external courtyard for events or gatherings.
- Retail units proposed along the rest of Harrow Road with access potential from central courtyard or from the pavement.
- Link created between eastern and western courtyards.
- Primary circulation core created around existing stair, with new lift and WCs. Corridor linking to new office areas.
- Office use proposed for the remainder of the ground floor with potential for the meeting / conference room to be used separately or incorporated as part of Office 6 (with ramp to accommodate level change).
- Potential location for an external bin store is by the existing main site entrance.

FIRST FLOOR

- Single storey elements to be demolished, ground floor slab to be retained if possible; new steel frame & second storey to be constructed above, primary circulation core leads to new first floor.
- Office 1 sits within a partially glazed 'box' in the centre of the new space with lightwells surrounding to bring light down to ground floor level, with the views of the existing historical facades retained from inside.
- Office 2 situated in remainder of new first floor extension.
- Central circulation corridor allows access to all upper floor areas.
- Majority of first floor space above the cafe and retail could either be upgraded studio space or used as storage for retail units below.
- Existing stair moved to the south & new access walkway created to allow access to the upper floor of the South-eastern building.

4.0 CONSENTS, STATUTORY APPROVALS

4.1 PLANNING CONSENT

Planning will be required for the development of the proposal including liaison with the conservation officer. Next step will be to engage with a Planning Consultant (to be appointed by the client) in order to discuss items including (but not limited to):

- Transportation & highways policy
- Refuse storage & collection arrangements.
- Car & cycle parking policy & requirements

4.2 TREE PRESERVATION ORDER

The trees located on the site are not protected. It is not within the proposal for any works to be carried out to any trees, shrubs, hedges. If works are required at a later stage, then further investigation is required to determine whether works will require the local authority to be notified.

4.3 BUILDING REGULATIONS

Building regulations approval will be required for the development of the proposal. A building notice will be required to comply with the Building Regulations, we would recommend the appointment of an approved inspector. Allowance should be made for the following:

Allowance should be made for the following:

- Potential upgrades required for Fire Safety requirements (Part B of the Building Regulations)
- Potential requirement for acoustic upgrades (Part E of the Building Regulations)
- Potential requirement for ventilation upgrades (Part F of the Building Regulations)
- Potential requirement for upgrades to the fenestration and new elements of circulation (Part K of the Building Regulations)
- Potential requirement for thermal upgrades to the existing building (Part L of the Building Regulations)
- Potential requirement for accessibility upgrades to the building & site (Part M of the Building Regulations)

4.4 CONSTRUCTION (DESIGN & MANAGEMENT) REGULATIONS 2015

Due to the scale of the project, full compliance with the CDM Regulations 2015 will be required. We would recommend the appointment of a Principal Designer for better Health & Safety reassurance throughout the project.

4.5 PARTY WALL ETC. ACT 1996 AND NEIGHBORLY MATTERS

There will be no requirement for a Party Wall Notice to be issued for the proposed development.

4.6 PRESENCE OF ASBESTOS

A full refurbishment and demolition survey (R&D) should be carried out prior to any works taking place. It is advised that this survey is carried out before tendering to the respective contractors.

4.7 LICENCING

Depending on the finalised proposed end uses of the development (eg cafe / bar) it may be necessary to apply for licences. All such licences to be arranged by the client.

4.8 CLIMATE & ECOLOGICAL EMERGENCY

AEW are accredited members of the B Corporation programme, highlighting our commitment to integrating sustainability principles as part of a holistic approach to the design process.

As part of this and in conjunction with the requirements of the client brief, our Stage 2 design approach to date has been to prioritise the reuse and upgrade of an existing building (as opposed to the full-scale redevelopment of the site).

5.0 PROJECT DEVELOPMENT

5.1 RIBA STAGE 3-4

Feasibility and initial Stage 2 design work has been provided in the form of this booklet to the extent requested by the client:

- Stage 2 concept design as shown is preliminary only and has been produced for initial client feedback and costing purposes.
- All existing and proposed information has been based upon drawings provided by the client and will be subject to receipt of a newly commissioned 2D site topographical survey and full 3D building survey.
- All areas shown are approximate.
- Subject to further brief development and scope of client / occupier requirements, and coordination of areas including (but not limited to) the following: plant rooms, service risers, refuse stores, cycle stores, loading areas, occupier stores, landlord stores, meter rooms, IT & data rooms.
- All furniture is shown indicatively only and is not intended to represent a proposed furniture layout or room capacity.

Development of the project to RIBA stage 3 and 4, will require input from Structural Engineers, M&E and other relevant consultants to ensure that the proposed building can be built practically and sustainably. This stage will involve developing a coordinated and fully integrated design, considering the buildings structure, foundations, envelope, and internal systems, including electrical and plumbing, soil surveys, geo-technical investigations, and site topography surveys. These investigations will assist in ensuring the proposed building could be constructed safely and efficiently taking into consideration site-specific issues such as flooding, subsidence, or ground contamination.

RIBA stage 3 and 4 will require close collaboration between the client, design team and other stakeholders. Further discussion to identify the best project procurement route will be required as this will have significant impact on project.

7.0 RISKS, ISSUES & FURTHER INVESTIGATIONS

7.1 ASBESTOS

As demolition/strip out works are being carried out it is recommended under the Control of Asbestos Regulations 2012 that a survey is carried out. An allowance has been made for the removal of any asbestos containing materials identified.

7.2 BURIED SERVICES

Underground services surveys are recommended to provide information of incoming supplies and drainage locations, these include CCTV and Buried Services surveys.

Incoming services should be measured and tested to check capacity and whether there is a requirement to upgrade. This can have a significant effect on programme if not considered early on.

7.3 STRUCTURAL AND CIVIL ENGINEER

A Structural and Civil Engineer will need to conduct a site visit to review the design and confirm whether the proposed options are possible within the constraints of the site.

7.4 PLANNING

A full planning application is required to undertake the proposed works.

7.5 MITIGATION OF PROJECT DELAY

Communication and slow decision making are a significant cause for projects becoming a financial or programme risk. Clear lines of communication and client approval need to be established from the outset to remove any risk. RLB have provide potential work start dates to ensure works are not carried out during winter.

7.6 LISTED BUIDLING

Grade II listing - Garden walls, gates, pergola of 2 Portland stone ionic columns. sundial on Portland stone ionic columns at Barham old court

1. 5006 HARROW ROAD Wembley Garden walls, gates, pergola of 2 Portland Stone Ionic Columns. Sundial on Portland Stone Ionic Columns at Barham Old Court TQ 18 NE 1/7
2. Probably C18 remodelled early/mid C19. Red brick garden walls with 2 C18 wrought-iron gates. Mid C19 pergola of 2 Portland stone Ionic columns. C19 sundial on Portland stone Ionic column. The house dated from circa 1850 and was demolished circa 1960.

7.7 SITE OF IMPORTANCE FOR NATURE CONSERVATION (SINCS)

Barham Park grounds (park area) is a site of importance for nature conservation (SINCS). This means that the site is of particular importance to wildlife and biodiversity. SINCS receive high level of protection from development within the planning system. It has been advised that this site is of Local importance.

7.8 RECOMMENDED ADDITIONAL CONSULTANTS

- Structural Engineer
- MEP Engineer
- Fire Engineer
- Acoustic Engineer
- Planning Consultant
- Heritage Consultant
- Landscape Consultant
- Interior Designer
- Principal Designer (to comply with the CDM 2015 Regulations - if no PD is appointed then the client assumes this role)
- Procurement of 2D topographical survey
- Procurement of 3D (Revit) measured building survey.
- Clarification of the chosen Building Control body

8.0 CONCLUSION

To conclude, this feasibility report for the reconfiguration and redesign of Barham Park has provided an initial assessment of the projects potential to meet the clients' requirements.

The report has identified the key opportunities and constraints. The proposed initial design concept reflects the client's needs and aspirations with increased design functionality whilst in keeping with the site's limitations.

The report has provided an assessment of the potential risks and challenges of the project and identified areas where further investigation is required to de-risk elements of the work. The information will inform the design development process, ensuring that the project is feasible and practical to implement.

We trust that this report satisfactorily confirms the brief and a suitable technical solution. Once Brent Council have come to a decision on moving the project further RLB will proceed to develop the project to Stage 3 and 4.

**APPENDIX A:
AEW DRAWINGS AND REPORT**

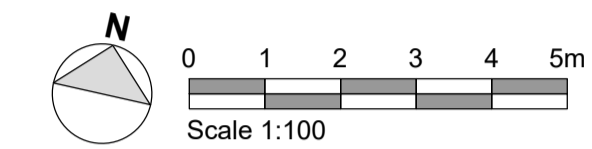
- All dimensions and levels are to be checked on site.
- Any discrepancies are to be reported to the architect before any work commences.
- This drawing shall not be scaled to ascertain any dimensions. Work to figured dimensions only.
- This drawing shall not be reproduced without express written permission from AEW.
- Title overlay drawings and ownership boundaries are produced using all reasonable endeavors. AEW cannot be responsible for the accuracy or scale discrepancy of base plans supplied to them.
- All works are to be undertaken in accordance with Building Regulations and the latest British Standards.
- All proprietary materials and products are to be used strictly in accordance with the manufacturers recommendations.

CDM 2015

Client notified of duties: 25/05/22

Principal Designer: TBC

Unless noted below, all known hazards have been highlighted on the drawing.



Key:

- Existing retained structure
- New structure

NOTE:

All information shown is preliminary - drawing has been produced as an initial concept design for client discussion purposes only.

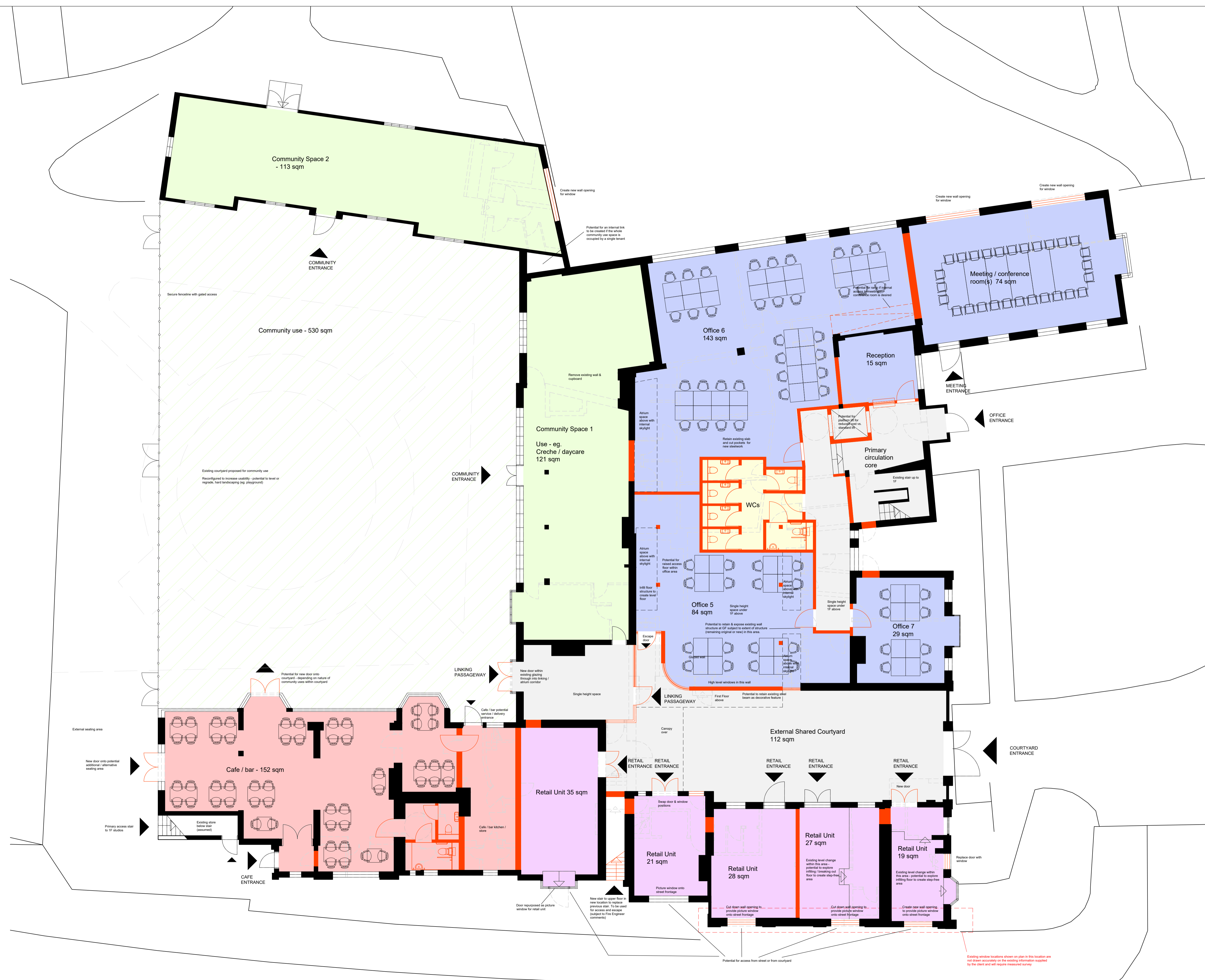
A measured topographical survey and full measured building survey will be required. All areas shown are approximate.

All information shown as part of these proposals is subject to consultation & development with other consultants - including (but not limited to) Statutory Authorities, Structural Engineer, Civil Engineer, M&E Engineer, Fire Engineer, Planning Consultant, Heritage Consultant.

All furniture is shown indicatively only and is not intended to represent a proposed furniture layout or room capacity

Schedule of Accommodation:

Retail	
Retail units total	130 sqm
Office	
Office 5	84 sqm
Office 6	143 sqm
Office 7	29 sqm
Meeting / Conference	74 sqm
TOTAL OFFICE	330 sqm
Cafe / Bar	
Cafe / bar	152 sqm
Community	
Community Space 1	121 sqm
Community Space 2	113 sqm
Other	
Reception	15 sqm
External courtyard	112 sqm



P01	26/01/23	MH	DJ
REV	Date	Drawn by: -	Checked by: -
Status	Purpose of Issue		
S0	Preliminary		
drawing stage	Concept Design		
client	LB Brent		
project	Barham Park, LB Brent		
drawing title	Proposed Ground Floor Plan		
date	26/01/23	drawn	MH
scale@A1	1:100	checked	DJ

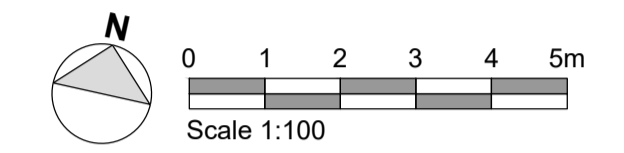


NOTES AEWTP026C

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CDM 2015

Client notified of duties: 25/05/22
 Principal Designer: TBC
 Unless noted below, all known hazards have been highlighted on the drawing.



Key:

- Existing retained structure
- New structure

NOTE:
 All information shown is preliminary - drawing has been produced as an initial concept design for client discussion purposes only.

A measured topographical survey and full measured building survey will be required. All areas shown are approximate.

All information shown as part of these proposals is subject to consultation & development with other consultants - including (but not limited to) Statutory Authorities, Structural Engineer, Civil Engineer, M&E Engineer, Fire Engineer, Planning Consultant, Heritage Consultant.

All furniture is shown indicatively only and is not intended to represent a proposed furniture layout or room capacity

Schedule of Accommodation:

Office 1	63 sqm
Office 2	107 sqm
Office 3	54 sqm
Office 4	70 sqm
Shared Meeting	9 sqm
TOTAL OFFICE	303 sqm
Studios	
Studios total (incl. circulation)	244 sqm

P01	26/01/23	MH	DJ
Initial Issue			
REV	Date	Drawn by: -	Checked by: -
Status	Purpose of Issue		
S0	Preliminary		
drawing stage	Concept Design		
client	LB Brent		
project	Barham Park, LB Brent		
drawing title	Proposed First Floor Plan		
date	26/01/23	drawn	MH
scale@A1	1:100	checked	DJ

Existing window locations shown on plan in this location are not drawn accurately on the existing information supplied by the client and will require measured survey

Barham Park, LB Brent

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Stage 1 & Initial Stage 2 Workbook

Introduction & Developing Brief

Introduction

This document has been prepared on behalf of the client Brent Council regarding the existing Old Court buildings at Barham Park on Harrow Road, Wembley, London. This document has been prepared as an initial RIBA Stage 2 document for client discussion and feedback.

The intention for the project is to explore options for the renovation and potential reconfiguration of the existing buildings, with a view to improving the existing standard of accommodation and commercial potential of the development overall.

Client Aspirations

- + Enhance relationship between building and park.
- + Make the building & gardens more attractive for visitors
- + Building uses to complement the park and building.
- + Spaces and facilities to reflect market demand and trends with respect to wide range of community uses. (Brent Council to advise)
- + Improve connectivity
- + Improve access
- + Improve aesthetics
- + Increase footfall
- + To confirm the structural constraints of the Barham Park Trust building (to be estimated at initial stages - client to provide/commission full structural survey).
- + EPC C to be targeted
- + Identify opportunities for value for money, capital interventions, on the physical look and feel of the Barham Park Trust building. (Brent Council to advise)
- + "A refurbished and remodelled building that is capable of accommodating a wide range of sustainable uses and create opportunities for income generation that is in synergy with the surrounding park."

Opportunities / Constraints on brief

- + Not to take into account existing tenancies and to consider the building as vacant
- + No full demolition & rebuild - design to relate to & incorporate existing building.
- + Partial demolition & rebuild of certain elements of the building (eg. the flat-roofed areas towards the rear) has insufficient potential to add value to the project as a whole, and has been excluded from the project scope.
- + Additional parking (including EV charging) could be possible within the entrance driveway.

Further information to be provided

- + Brent Council to provide working drawings from previous schemes (refurbishment/extension).
- + Brent Council to provide Siting / Landscaping information
- + Brent Council to provide existing surveys or commission new surveys eg. condition survey, structural survey, MEP survey, asbestos survey, deleterious surveys at the appropriate stage.
- + Precise location / extents of Grade 2 Listed garden features to be clarified.
- + Listed building entry:

1. 5006 HARROW ROAD Wembley Garden walls, gates, pergola of 2 Portland Stone Ionic Columns. Sundial on Portland Stone Ionic Columns at Barham Old Court TQ 18 NE 1/7.

2. Probably C18 remodelled early/mid C19. Red brick garden walls with 2 C18 wrought-iron gates. Mid C19 pergola of 2 Portland stone Ionic columns. C19 sundial on Portland stone Ionic column. The house dated from circa 1850 and was demolished circa 1960.

Listing NGR: TQ1719585091

Initial Feasibility Study (RIBA Stage 1)

Site Location Overview

Barham Park is located along Harrow Road, approximately between Sudbury Hill and Wembley.

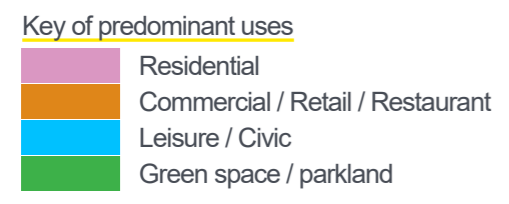
The park is a large green space surrounded by large built-up areas of predominantly residential housing.

The site is well connected for local public transport, and has the potential to attract visitors from further afield as well as local residents.



Location Analysis

The site has great potential to provide a wide offer to the surrounding residential community depending on the future use. The dense areas of housing and local urban connectivity have potential to create a strong visitor base and significant footfall both past and through the site.



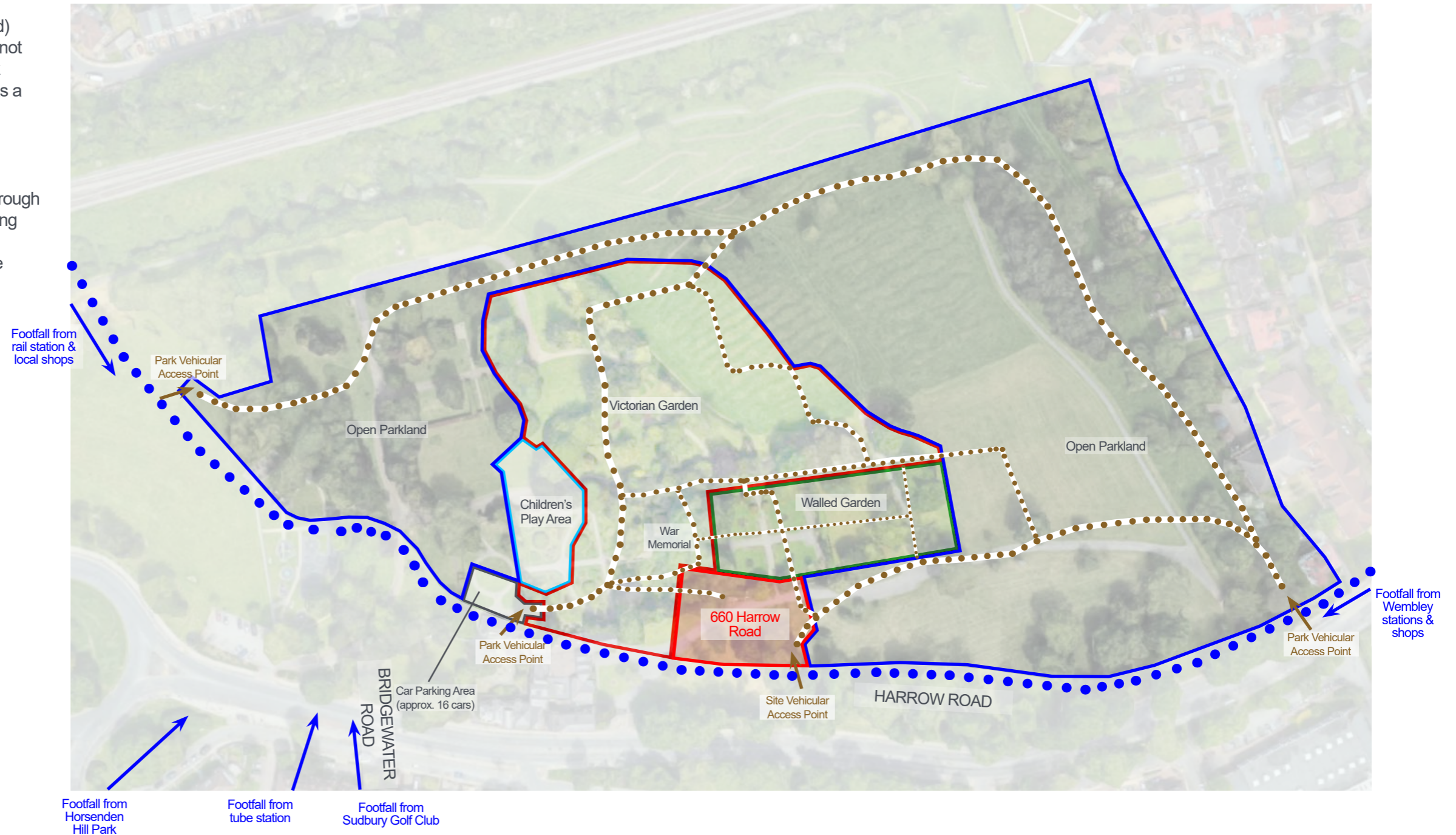
Site Analysis

The existing park has a number of pedestrian routes through the various constituent parks (open park, Victorian Garden, Walled Garden).

Currently the Old Court (660 Harrow Road) is situated by the park entrance, but does not connect well to any of the constituent park areas, and does not aid site connectivity as a whole.

There is an opportunity to improve the relationship and connectivity between the building and the surrounding park, both through improvements and alterations to the building fabric, and also through future uses which increase visitor traffic and complement the parkland setting.

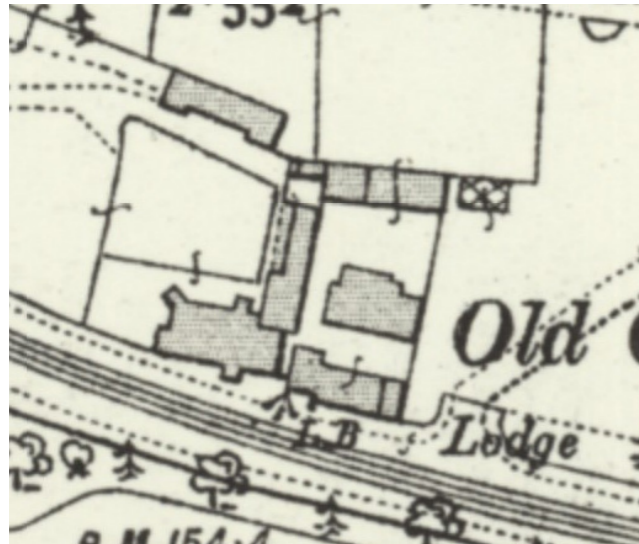
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- Key**
- ● ● ● External footfall
 - ● ● ● Site primary routes

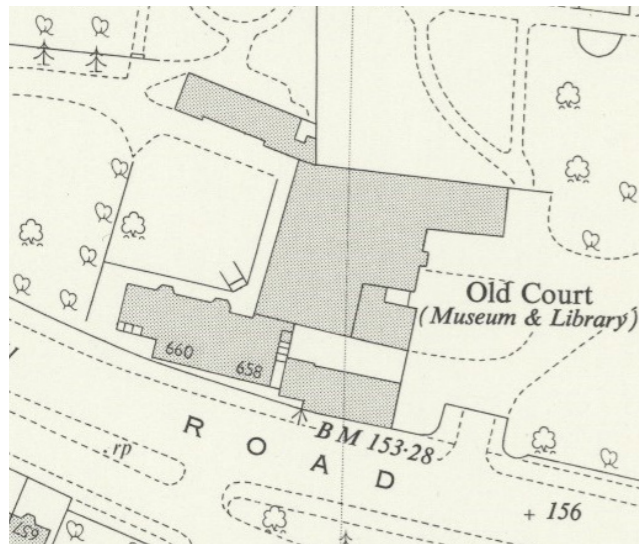


Historical Map Analysis



Map 1892-1914

Courtyard of buildings surrounding a central building



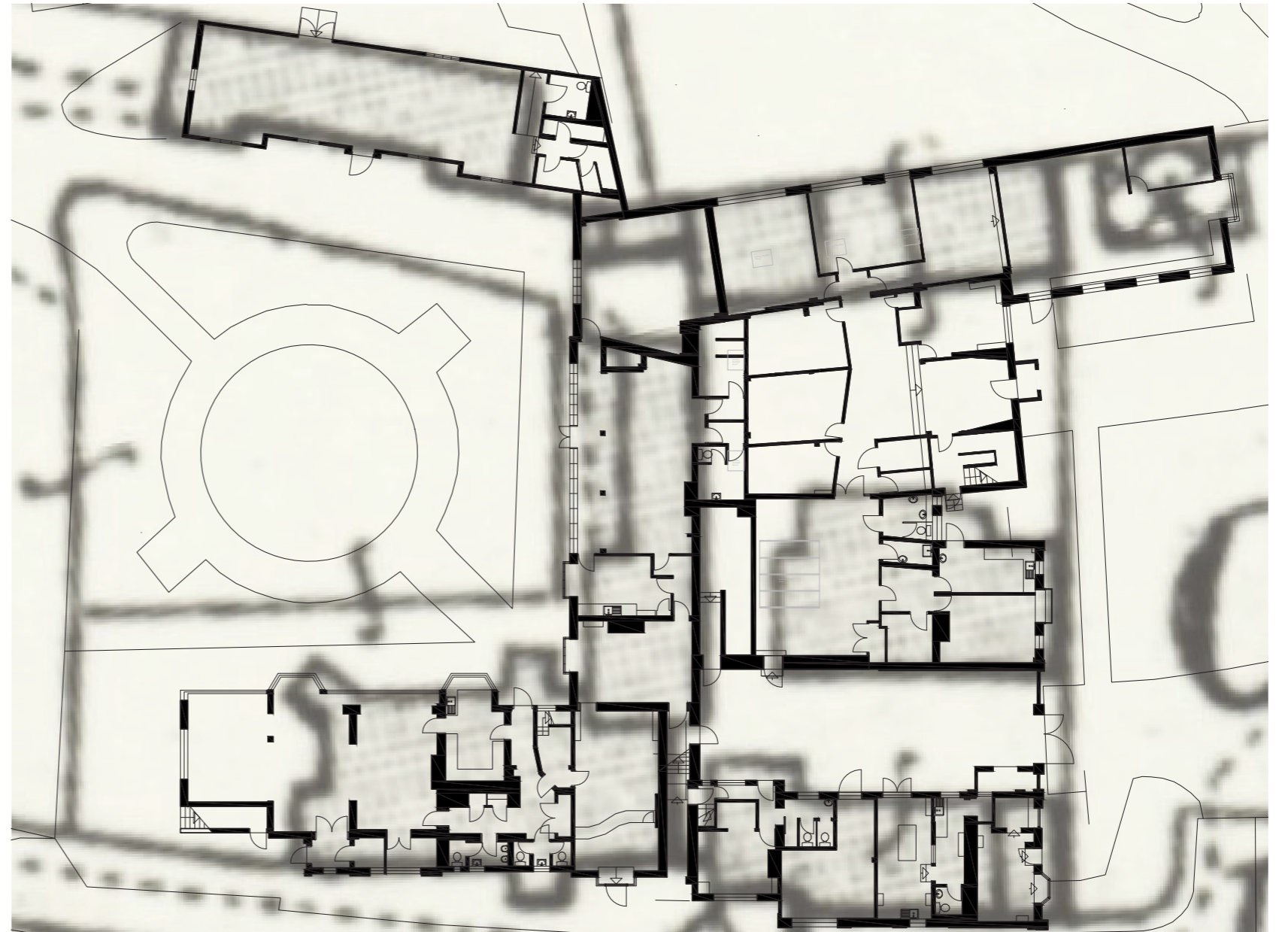
Map 1944-1971

Majority of the courtyard has been infilled, other buildings extended or replaced



Satellite 2022

Existing Plan Overlay onto 1892-1914 Map (approximation)



Overlaying a historical map onto the current ground floor plan helps give an idea of how the buildings were laid out on the site at an earlier period, and how these may have been altered or added to over time.

This may help to better understand the hierarchy of the existing structural elements when considering alteration or reorganisation, in conjunction with a structural engineer's input.

Ground Floor - Existing

- + Mix of masonry & stud walls which have been modified and added to in the past
- + Layout is highly compartmentalised & fragmented, reflecting the building's history, structural design & current occupancy
- + Few or no links between existing internal areas, and between internal & external areas
- + Total Existing Ground Floor GIA approx 1,000 sqm plus external courtyard approx. 100sqm



Note: Existing plans have been based upon initial information provided by client. Full measured topographical & building survey will be required

HARROW ROAD

First Floor - Existing

- + Mix of masonry & stud walls which have been modified and added to in the past
- + Layout is highly compartmentalised & fragmented, reflecting the building's history, structural design & current occupancy
- + Few or no links between existing internal areas, and between internal & external areas
- + Total Existing First Floor GIA approx 460 sqm



Note: Existing plans have been based upon initial information provided by client. Full measured topographical & building survey will be required

Ground Floor - Existing Tenancies

- + Unit 1 - Tamu Samaj UK
- + Unit 2 - Barham Park Veterans Club (Wembley)
- + Unit 3 - ACAVA
- + Unit 4 - Trustees of Barham Library
- + Unit 5 - ACAVA
- + Unit 6 - ACAVA
- + Unit 7 - Vacant
- + Unit 8 - Brent Council Children's Centre
- + Unit 9 - ACAVA
- + Unit 10 - ACAVA
- + Boiler Room, Landlord



Note: Existing plans have been based upon initial information provided by client. Full measured topographical & building survey will be required

First Floor - Existing Tenancies

- + Unit 1 - Tamu Samaj UK
- + Unit 2 - Barham Park Veterans Club (Wembley)
- + Unit 3 - ACAVA
- + Unit 4 - Trustees of Barham Library
- + Unit 5 - ACAVA
- + Unit 6 - ACAVA
- + Unit 7 - Vacant
- + Unit 8 - Brent Council Children's Centre
- + Unit 9 - ACAVA
- + Unit 10 - ACAVA
- + Boiler Room, Landlord



Note: Existing plans have been based upon initial information provided by client. Full measured topographical & building survey will be required

Ground Floor - Potential removal of existing non-loadbearing structure

- + Removal of (assumed) stud walls begins to indicate potential for a more open-plan layout
- + Removal of non-optimal staircase arrangements provides the opportunity to rationalise and improve circulation provision



Note: Existing plans have been based upon initial information provided by client. Full measured topographical & building survey will be required

Note: Non-loadbearing structure has been assumed based upon initial information provided by client, and is subject to site investigation and structural engineer's input.

HARROW ROAD

First Floor - Potential removal of existing non-loadbearing structure

- + Removal of (assumed) stud walls begins to indicate potential for a more open-plan layout
- + Removal of non-optimal staircase arrangements provides the opportunity to rationalise and improve circulation provision



Note: Existing plans have been based upon initial information provided by client. Full measured topographical & building survey will be required

Note: Non-loadbearing structure has been assumed based upon initial information provided by client, and is subject to site investigation and structural engineer's input.

Ground Floor - Estimated Floor Level Relationships

- + Relative floor levels have been estimated based upon survey information provided.
- + The majority of the ground floor appears to be on a similar floor level, but there are lower areas (eg. plant room) and higher areas (eg. main entrance area)
- + Improving accessibility to the ground and first floors may involve the provision of multiple internal platform lifts and ramps where the floor levels cannot be equalised

Key of estimated relative floor levels

	Higher
	Similar
	Lower
	Existing Stair

Note: Relative floor heights/levels have been estimated based upon initial information provided by client, and is subject to receipt of detailed building survey and structural engineer's input

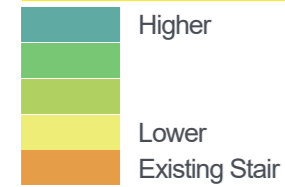
HARROW ROAD

First Floor - Estimated Floor Level Relationships

- + Relative floor levels have been estimated based upon survey information provided.
- + The first floor appears to feature a larger range of levels than the first floor, with a significant amount of single steps even within the same corridor.
- + It is not known why the floors step in this way, or to what degree the current structural configuration will permit equalisation of the levels.
- + Improving accessibility to the ground and first floors may involve the provision of multiple internal platform lifts and ramps where the floor levels cannot be equalised

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Key of estimated relative floor levels



Note: Relative floor heights/levels have been estimated based upon initial information provided by client, and is subject to receipt of detailed building survey and structural engineer's input



Developing Brief - Potential future occupancies

Commercial

- + Office space for single / multiple tenant
- + Serviced co-working spaces
- + Dance studio
- + Artist / photography studio
- + Hotel / AirBNB / boutique style accommodation eg. for football matches at the nearby stadium.
- + Events / Wedding venue

Food & Beverage

- + Independent food court eg. with multiple traders around a central courtyard
- + Single or multiple restaurant use
- + Independent Cafe / Bakery

Retail

- + Community Grocery
- + Local independent retail shops
- + Market / supermarket

Community

- + Community Hub
- + Local Information
- + Library



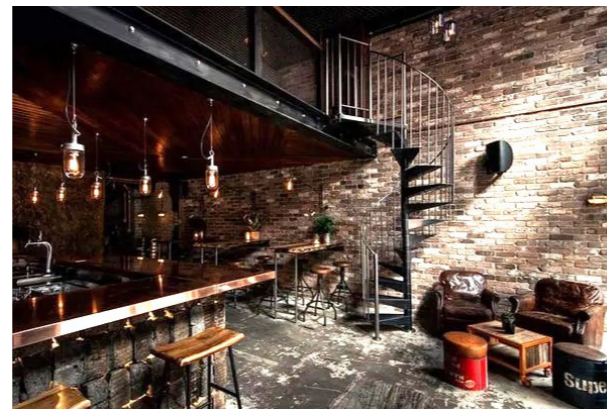
Retail / small shop units around courtyard



Co-working / office areas



Independent food traders / communal eating or casual working spaces



Evening cafes / bars opening onto enclosed courtyard for events / functions



Brent Council has previously indicated that they would like to consider three future overall options based upon degree of intervention:

- + Bronze (minor intervention & refurbishment / removal of some partition walls)
- + Silver (moderate intervention & structural alteration / removal of most partition walls)
- + Gold (significant intervention, structural alterations and remodelling)

The scope and nature of any of these potential tiers of intervention will be dependent on the desired future uses & occupancies indicated by the client.

Further brief guidance provided by client on 12/01/2023

- + *A mixture of uses as small office spaces, café, small retail, and studios, connected to community type/third sector uses. A mixed economy would also help drive both economic and social benefits from the building.*

Note: Uses given are suggestions for further client discussion & consideration, and will be subject to client's own economic & viability assessment

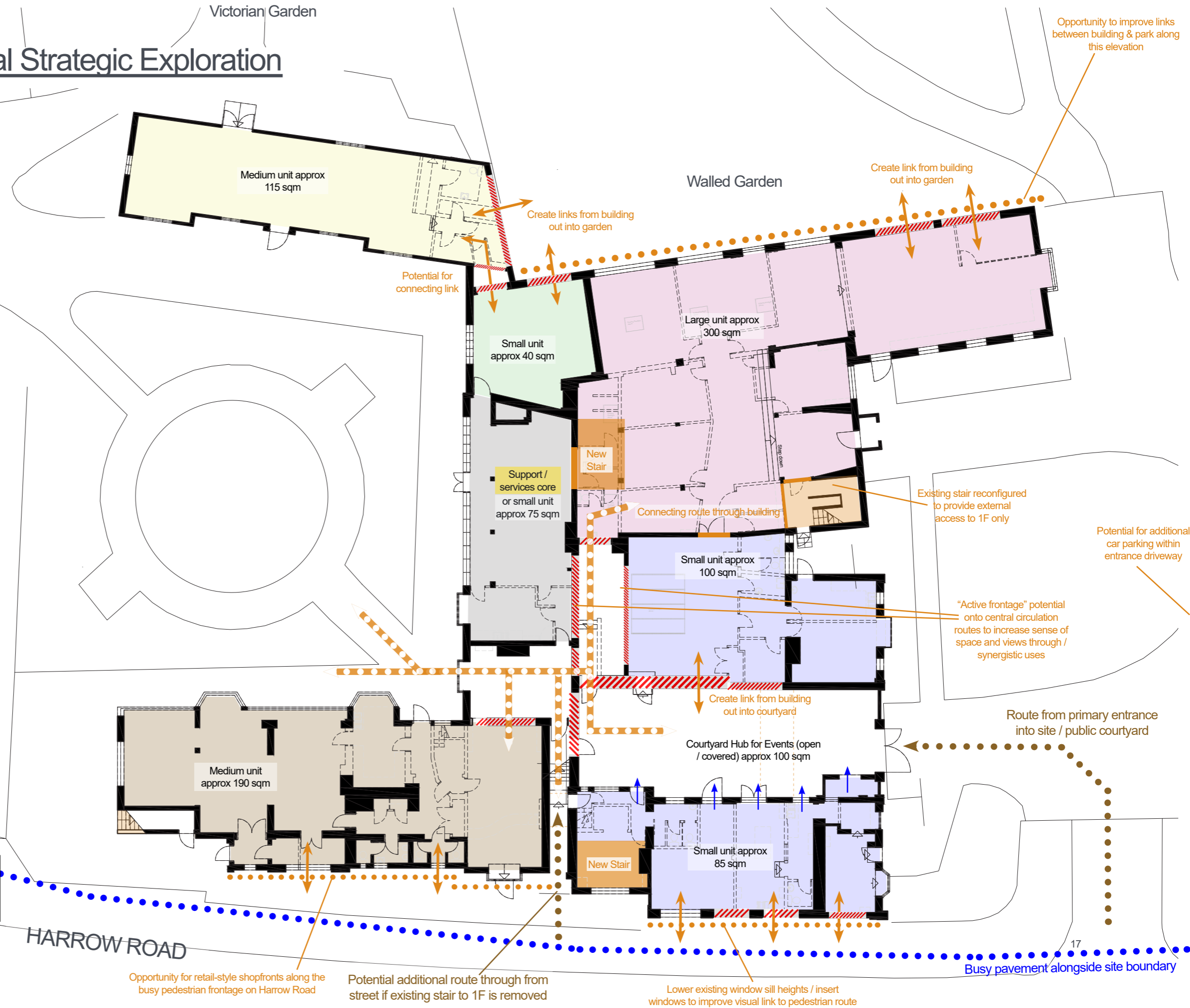
Ground Floor - Initial Strategic Exploration

- + Units have been allocated based upon a best guess of the existing structural configuration & assumption of the requirements of some potential future uses.
- + The existing courtyard provides a focus for events or activities.
- + Connecting routes are created via the courtyard into the adjacent units, and provide a link through to the war memorial on the western side
- + Stairs are inserted & reconfigured to more efficiently serve a proposed revised layout at first floor level
- + Visual and functional links are created between the walled garden and the building areas looking onto it.
- + Visual links are created between the busy pedestrian footpath bordering the site, and the potential uses within the buildings facing Harrow Road.
- + Potential for individual units to use their own support / services areas, or to share a single larger dedicated area

Key

- Potential connecting routes
- Existing structure modified
- New partition wall

Note: Existing plans have been based upon initial information provided by client. Full measured topographical & building survey will be required

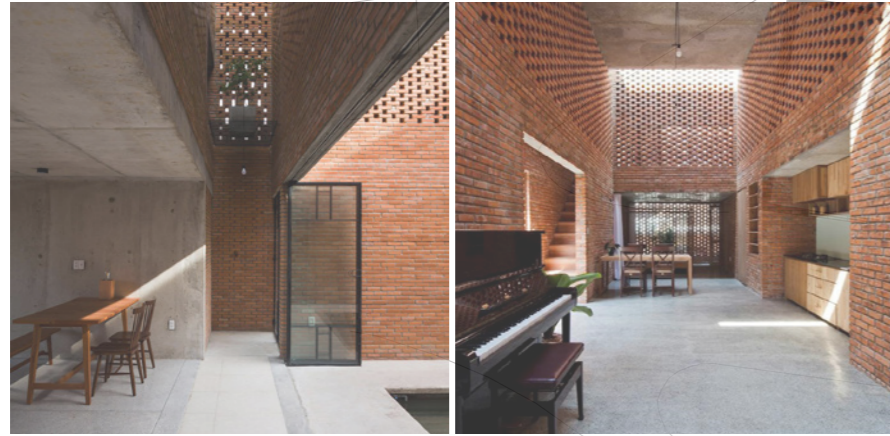


Ground Floor - Initial Strategic Exploration

Victorian Garden



Walled Garden



Linking circulation routes between units - opportunity for synergy & shared spaces



Lower existing window sill heights / insert windows to improve visual link to pedestrian route



Opportunity for retail-style shopfronts along the busy pedestrian frontage on Harrow Road



Note: Existing plans have been based upon initial information provided by client. Full measured topographical & building survey will be required

First Floor - Initial Strategic Exploration

- + Units have been allocated based upon a best guess of the existing structural configuration & assumption of the requirements of some potential future uses.
- + The linking of spaces at first floor level via bridges/walkways may be more efficient overall if it permits elimination of staircases & platform lifts.
- + Stairs are inserted & reconfigured to more efficiently serve a proposed revised layout at first floor level



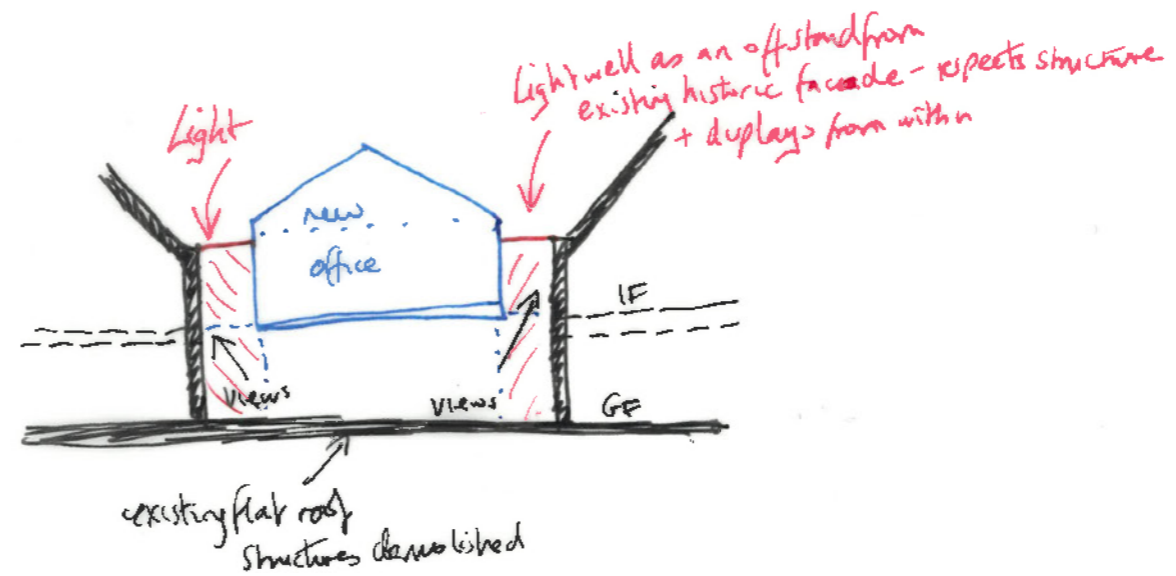
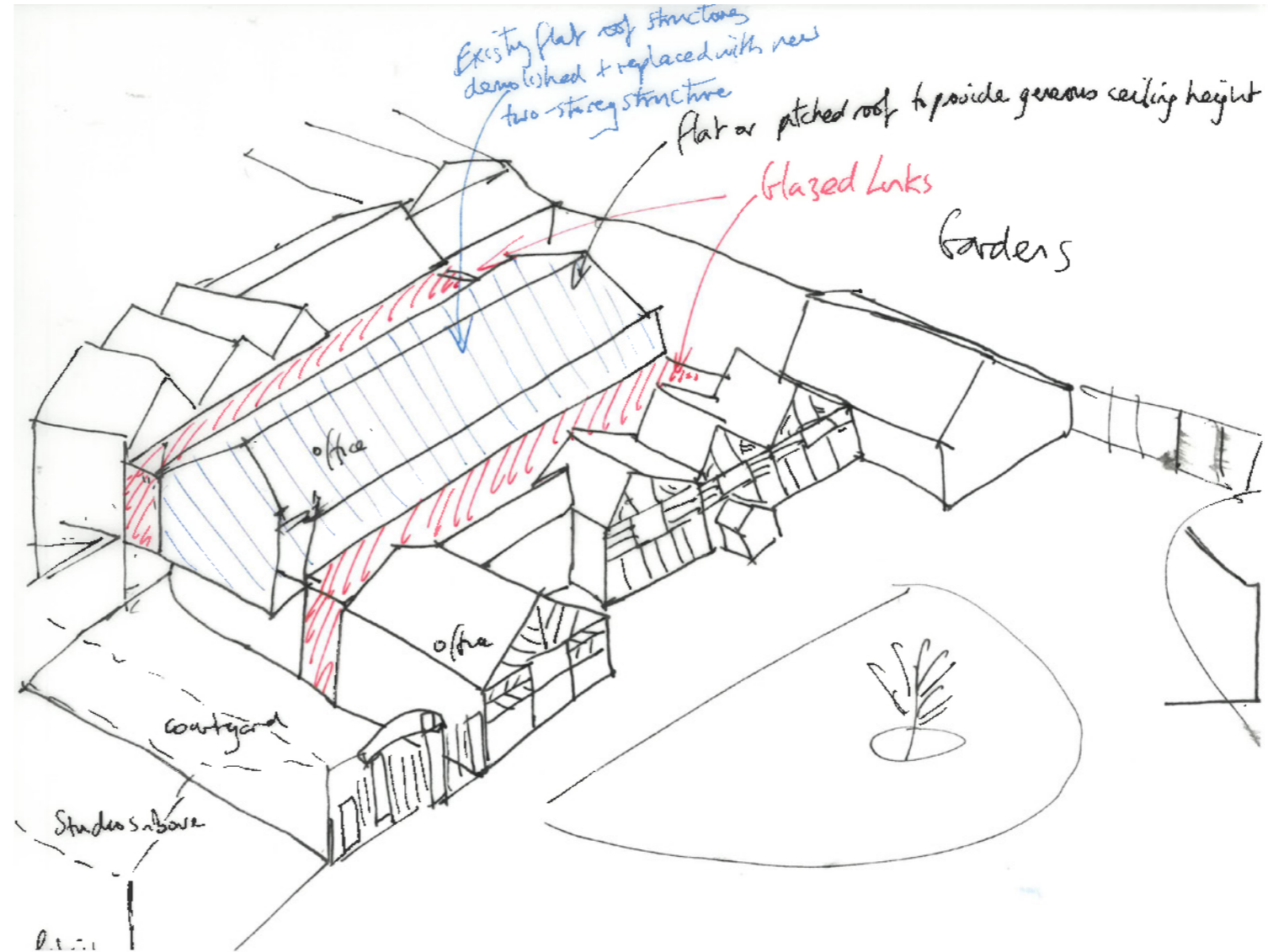
Initial Concept Design Work (RIBA Stage 2)

NOTES:

- Stage 2 concept design as shown is preliminary only, and has been produced for initial client feedback and costing purposes.
- All existing and proposed information has been based upon drawings provided by the client and will be subject to receipt of a newly commissioned full 3D building survey. All areas shown are approximate.
- Stage 2 design has not yet been coordinated with M&E, Structure, Fire, Acoustic, Interiors or any other design consultants, who will be subject to additional appointment by client.
- Subject to review, comments and approval by Local Planning Authority, Building Control, Heritage Consultant and other statutory consultees.
- Subject to further brief development and scope of client / occupier requirements, and coordination of areas including (but not limited to) the following: plant rooms, service risers, refuse stores, cycle stores, loading areas, occupier stores, landlord stores, meter rooms, IT & data rooms.
- All furniture is shown indicatively only and is not intended to represent a proposed furniture layout or room capacity.

Concept outline

- + The existing buildings on the site have all been developed at different times, and further modified over their lifetimes.
- + This has resulted in a highly disorganised and compartmentalised set of interior spaces which do not lend themselves easily to future uses
- + The intent is to respect and preserve the more historically significant elements of the structure, while generally rationalising and upgrading the accommodation for new uses
- + The conceptual approach we have taken is an attempt to unify these spaces by opening out the interior spaces, and by inserting a new central structure and circulation route providing step-free access to the majority of areas.
- + Light is brought down into the lower floorplate through the use of vertical glazed slots (as indicated in the diagram to the right). These sit at both sides of a central volume which is raised up to first floor level, and will appear to 'float' within the new glazing from within the courtyard



Ground Floor - Initial Concept Design ('Silver' Scheme option)

- + Community uses proposed for two of the buildings facing the western courtyard, with the potential to link them together internally. Potential to use external courtyard area for playground or similar
- + Cafe / bar proposed for the existing library area at ground floor, with possibility to use external courtyard for events or gatherings
- + Retail units proposed along the rest of Harrow Road with access potential from central courtyard or from the pavement.
- + Link created between eastern and western courtyards.
- + Primary circulation core created around existing stair, with new lift and WCs. Corridor linking to new office areas.
- + Office use proposed for the remainder of the ground floor with potential for the meeting / conference room to be used separately or incorporated as part of Office 6 (with ramp to accommodate level change).
- + Potential location for an external bin store is by the existing main site entrance



Schedule of Accommodation:

Retail	
Retail units total	130 sqm
Office	
Office 5	84 sqm
Office 6	143 sqm
Office 7	29 sqm
Meeting / Conference	74 sqm
TOTAL OFFICE	330 sqm
Cafe / Bar	
Cafe / bar	152 sqm
Community	
Community Space 1	121 sqm
Community Space 2	113 sqm
Other	
Reception	15 sqm
External courtyard	112 sqm

First Floor - Initial Concept Design ('Silver' Scheme option)

- + Single storey elements to be demolished, ground floor slab to be retained if possible; new steel frame & second storey to be constructed above, primary circulation core leads to new first floor.
- + Office 1 sits within a partially glazed 'box' in the centre of the new space with lightwells surrounding to bring light down to ground floor level, with the views of the existing historical facades retained from inside.
- + Office 2 situated in remainder of new first floor extension.
- + Central circulation corridor allows access to all upper floor areas.
- + Majority of first floor space above the cafe and retail could either be upgraded studio space or used as storage for retail units below.
- + Existing stair moved to the south & new access walkway created to allow access to the upper floor of the southeastern building.

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Schedule of Accommodation:	
Office	
Office 1	63 sqm
Office 2	107 sqm
Office 3	54 sqm
Office 4	70 sqm
Shared Meeting	9 sqm
TOTAL OFFICE	303 sqm
Studios	
Studios total (incl. circulation)	244 sqm



Appraisal of current project status within RIBA Stage 2

As part of the production of this Feasibility report, we have been requested to include an appraisal of the following, which we have summarised below:

Providing information for approximate estimate of Construction Cost (for inclusion with Cost Information)

Feasibility and initial Stage 2 design work has been provided in the form of this booklet to the extent requested by the client:

- + Stage 2 concept design as shown is preliminary only, and has been produced for initial client feedback and costing purposes.
- + All existing and proposed information has been based upon drawings provided by the client and will be subject to receipt of a newly commissioned 2D site topographical survey and full 3D building survey.
- + All areas shown are approximate.
- + Subject to further brief development and scope of client / occupier requirements, and coordination of areas including (but not limited to) the following: plant rooms, service risers, refuse stores, cycle stores, loading areas, occupier stores, landlord stores, meter rooms, IT & data rooms.
- + All furniture is shown indicatively only and is not intended to represent a proposed furniture layout or room capacity.

Ground Investigation

To be instigated by the structural engineer – yet to be appointed by the client.

Building Control aspects

Chosen Building Control body to be advised by the client. AEW will be able to provide more in depth analysis following coordination with the consultant team. Allowance should be made in particular for the following:

- + Potential upgrades required for Fire Safety requirements (Part B of the Building Regulations)
- + Potential requirement for acoustic upgrades (Part E of the Building Regulations)
- + Potential requirement for ventilation upgrades (Part F of the Building Regulations)
- + Potential requirement for upgrades to the fenestration and new elements of circulation (Part K of the Building Regulations)
- + Potential requirement for thermal upgrades to the existing building (Part L of the Building Regulations)
- + Potential requirement for accessibility upgrades to the building & site (Part M of the Building Regulations)

Rights & Easements

Development will be subject to any restrictions caused by covenants, rights or easements which may be in force To be advised by client and/or planning consultant

Planning Points/Policy

Next step will be to engage with a Planning Consultant (to be appointed by the client) in order to discuss items including (but not limited to):

- + Transportation & highways policy
- + Refuse storage & collection arrangements
- + Car & cycle parking policy & requirements

Licencing

Depending on the finalised proposed end uses of the development (eg cafe / bar) it may be necessary to apply for licences. All such licences to be arranged by the client.

Drainage

Surveys of existing drainage and proposed works to be instigated by the structural engineer – yet to be appointed by the client.

Statutory undertaking and services

Surveys of existing services & utilities to be instigated by the M&E consultant – yet to be appointed by the client.

Structural Analysis

To be instigated by the structural engineer – yet to be appointed by the client.

Programme

To be advised by the client

Approval/Decisions

Any additional approval or decisions required by any consultant to be brought to the attention of the relevant parties.

Additional Material

Any additional material required to be advised by the client

Climate & Ecological Emergency

AEW are accredited members of the B Corporation programme, highlighting our commitment to integrating sustainability principles as part of a holistic approach to the design process.

As part of this and in conjunction with the requirements of the client brief, our Stage 2 design approach to date has been to prioritise the reuse and upgrade of an existing building (as opposed to the full scale redevelopment of the site).

Suggested List of Additional Consultants Required (non-exhaustive)

As part of our Stage 2 design work we have identified the following list of information and consultants which we recommend should be appointed directly by the client at the appropriate stage:

- + Structural Engineer
- + MEP Engineer
- + Fire Engineer
- + Acoustic Engineer
- + Planning Consultant
- + Heritage Consultant
- + Landscape Consultant
- + Interior Designer
- + Principal Designer (to comply with the CDM 2015 Regulations - if no PD is appointed then the client assumes this role)
- + Procurement of 2D topographical survey
- + Procurement of 3D (Revit) measured building survey
- + Clarification of the chosen Building Control body

Note: AEW have forwarded an initial list of potential consultants (Structure, Fire, M&E) for consideration. The final selection and appointments are to be made by the client, although AEW are happy to comment on any proposals. AEW recommend that the selection be made with due consideration given to the distance of any proposed consultants' main office from the project site.



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**APPENDIX B:
COST PLANS**

REPORT

02 February 2023

BARHAM PARK FEASIBILITY - ESTIMATE COST PLAN - REV A

BRENT COUNCIL

TABLE OF CONTENTS

1.0 BASIS OF REPORT

2.0 ELEMENTAL SUMMARY

1.0 Basis of Report

2.1	Purpose and Status of Feasibility Estimate
	<p>This feasibility estimate is based on the information identified below. As the project progresses, the developing design will have to be reviewed against the allowances made within this report. The costs are against an indicative scheme which consists of a refurbishment and reconfiguration to provide office, retail, community and cafe space.</p> <p>The costs are current at: 1Q2023</p>
2.2	Basis of Procurement
	<p>The costs have been based on a AEW'S initial design proposal Stage 1. This does not constitute a full and detailed cost plan.</p>
2.3	Information used in Preparation of Estimate
	<p>12953-AEW-XX-00-DR-A-0010-S0-P01_Proposed Ground Floor Plan 12953-AEW-XX-01-DR-A-0011-S0-P01_Proposed First Floor Plan</p>
2.4	Exclusions
	<p>Land acquisition cost / Land compensation costs Planning and Statutory Applications Pre and post contract design fees. Fixed furniture and equipment Land rental Restrictive Land Covenants / Ransoms / Rights of Light / Land compensation / Oversailing Archaeological finds Employer finance costs CIL, Section 106 and 278 contribution or works. Legal Fees NHBC fees Agency Fees Client direct costs Unforeseen/ unknown groundwork conditions Offsite services reinforcement Inflation Value added Tax Pre-construction surveys</p> <p>This Cost Plan does not allow for any extraordinary impact of Brexit, such as BUT NOT LIMITED TO materials, skilled and un-skilled labour shortages, and currency exchange rate variations. It is recommended that any potential extraordinary impact of Brexit should be reviewed as part of the clients corporate Brexit risk review and included on the project risk register, where appropriate.</p> <p>This report does not allow for any extraordinary impacts due to the outbreak of Coronavirus, such as BUT NOT LIMITED TO materials and labour shortages and impacts on currency exchange rate variations. It is recommended that any potential extraordinary impact of Coronavirus should be reviewed as part of the client's corporate risk review and included on the project risk register where appropriate.</p>
2.5	Inclusions
	<p>Provisional Sum for Asbestos Removal</p>

2.0 Elemental Summary

Ref	Item	Total Cost
1	WORKS BREAKDOWN	
1.01	Building Fabric	£ 1,554,500.00
1.02	M&E	£ 744,800.00
2	SUB-TOTAL	£ 2,299,300.00
2.10	Preliminaries	£ 229,930.00
2.20	Overheads & Profit	£ 344,895.00
3	CONSTRUCTION TOTAL	£ 2,874,125.00
3.10	Contingency	£ 287,413.00
4	CONSTRUCTION TOTAL INCLUDING CONTINGENCY	£ 3,161,537.50

Barham Park, LB Brent

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Option 2 proposal

Developed Concept Design Work (Option 2)

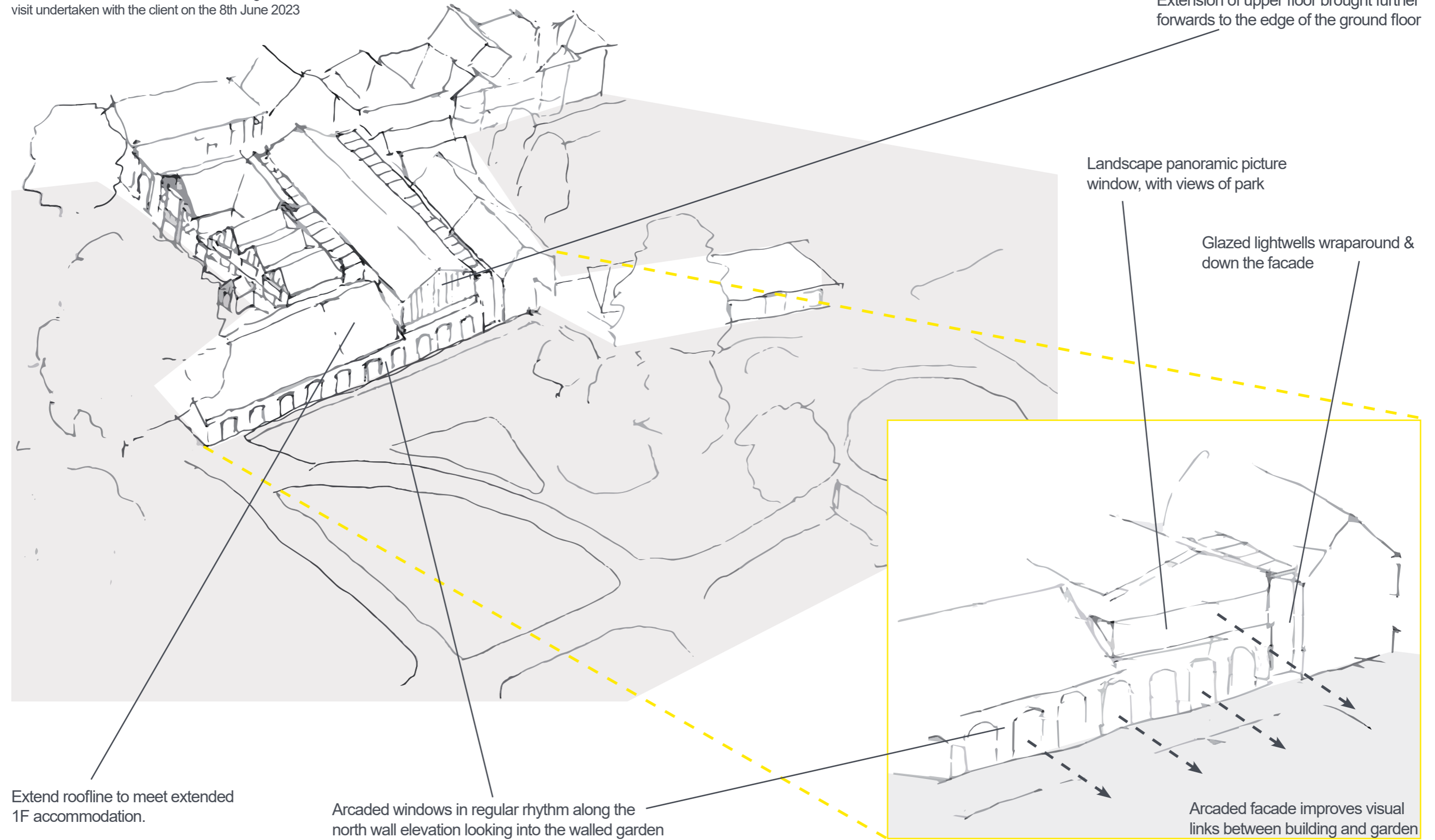
(RIBA Stage 2)

NOTES:

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- Subject to review, comments and approval by Local Planning Authority, Building Control, Heritage Consultant and other statutory consultees.
- Subject to further brief development and scope of client / occupier requirements, and coordination of areas including (but not limited to) the following: plant rooms, service risers, refuse stores, cycle stores, loading areas, occupier stores, landlord stores, meter rooms, IT & data rooms.
- All furniture is shown indicatively only and is not intended to represent a proposed furniture layout or room capacity.

Concept outline (Option 2)

Following the initial concept work undertaken, the scheme has been further amended following a site visit undertaken with the client on the 8th June 2023



Extension of upper floor brought further forwards to the edge of the ground floor

Landscape panoramic picture window, with views of park

Glazed lightwells wraparound & down the facade

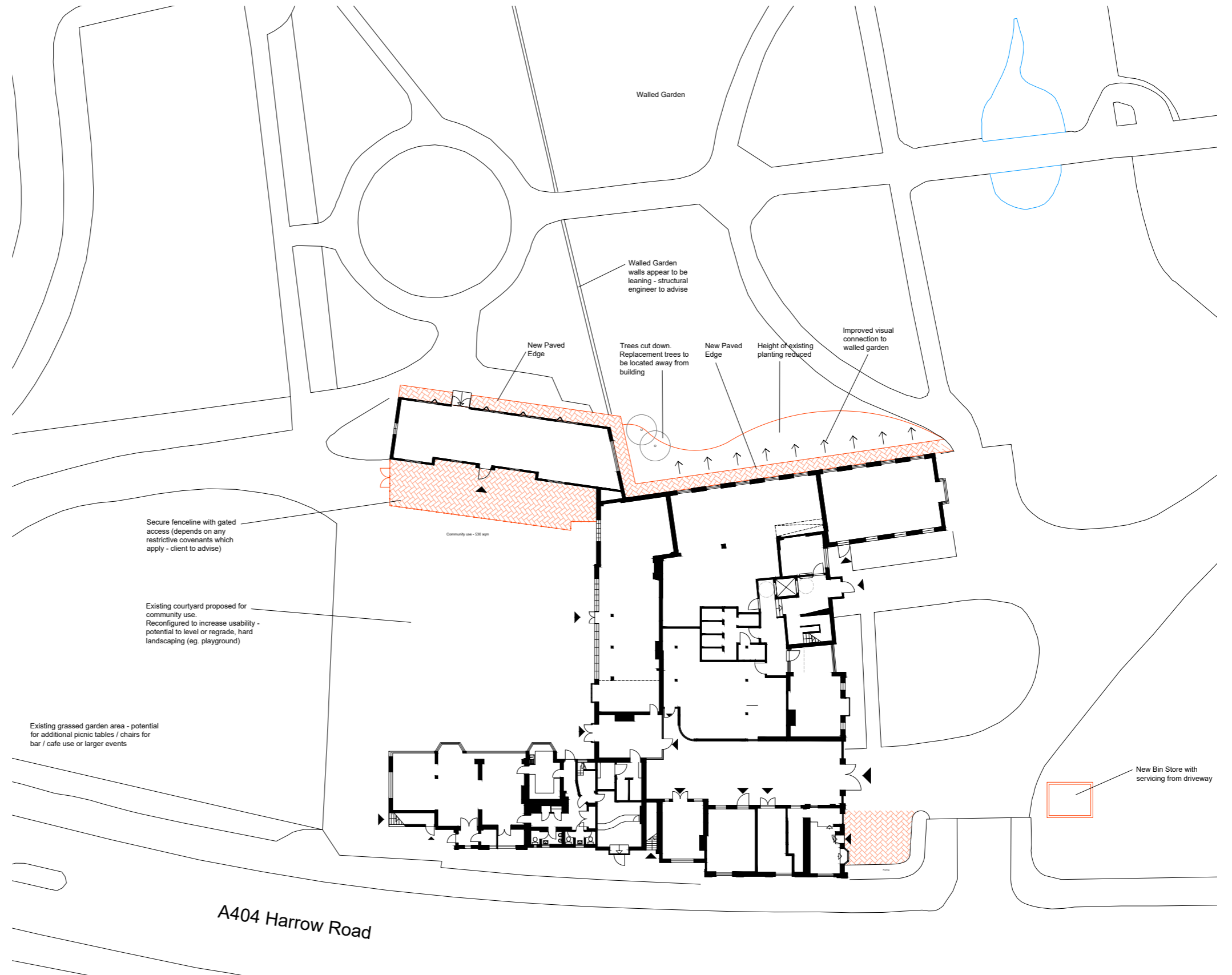
Extend roofline to meet extended 1F accommodation.

Arcaded windows in regular rhythm along the north wall elevation looking into the walled garden

Arcaded facade improves visual links between building and garden

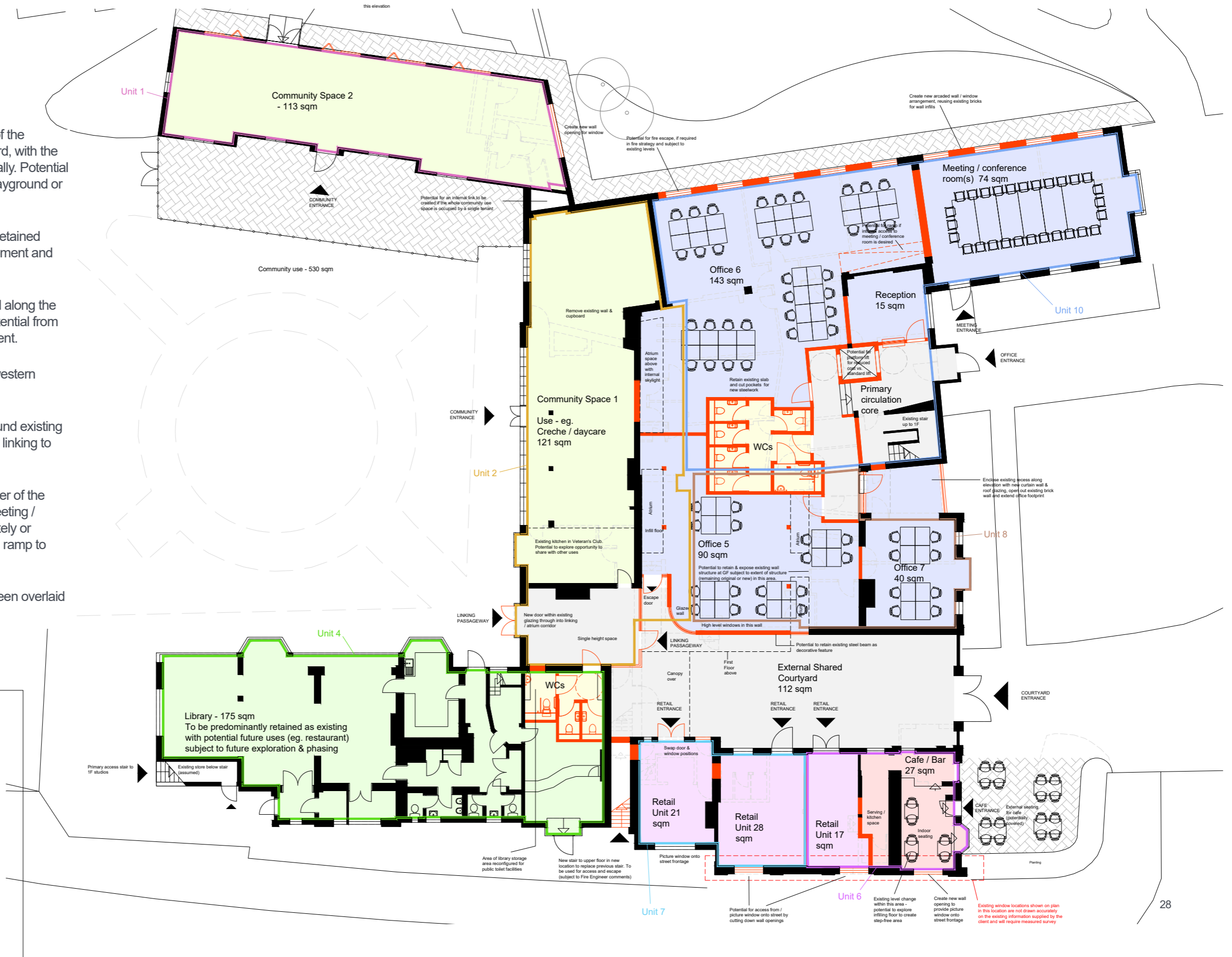
Site Plan - Option 2 Concept Design (Optimal 'Gold' scheme)

- + Potential for attractive seasonal kiosk (eg. cafe / retail) to be provided within existing circular grassed area - paving to front. Provides focal point within the garden for views out of the building
- + Within walled garden, 2no. existing trees close the building to be replaced, existing planting height reduced to enhance views out and increase visual connection to garden via additional windows
- + New paving proposed to perimeter of existing community centre and north elevation facing walled garden.
- + New external paving forming seating area for relocated Cafe / bar to the southeast corner
- + Area of external courtyard enclosed with securable fenceline for community centre
- + Remainder of courtyard to be retained as existing, subject to further development
- + Potential location for an external bin store is by the existing main site entrance



Ground Floor - Option 2 Concept Design (Optimal 'Gold' scheme)

- + Community uses proposed for two of the buildings facing the western courtyard, with the potential to link them together internally. Potential to use external courtyard area for playground or similar
- + Existing library area at ground floor retained as existing, subject to future development and building phasing
- + Retail units and a cafe unit proposed along the rest of Harrow Road with access potential from central courtyard or from the pavement.
- + Link created between eastern and western courtyards.
- + Primary circulation core created around existing stair, with new lift and WCs. Corridor linking to new office areas.
- + Office use proposed for the remainder of the ground floor with potential for the meeting / conference room to be used separately or incorporated as part of Office 6 (with ramp to accommodate level change).
- + Existing tenancy boundaries have been overlaid to inform potential future phasing



Schedule of Accommodation:

Retail	
Retail units total	66 sqm
Office	
Office 5	90 sqm
Office 6	143 sqm
Office 7	40 sqm
Meeting / Conference	74 sqm
TOTAL OFFICE	347 sqm
Cafe / Bar	
Cafe / bar	27 sqm
Community	
Community Space 1	121 sqm
Community Space 2	113 sqm
Other	
Reception	15 sqm
External courtyard	112 sqm
Library	175 sqm

First Floor - Option 2 Concept Design (Optimal scheme)

- + Single storey elements to be demolished, ground floor slab to be retained if possible; new steel frame & second storey to be constructed above, primary circulation core leads to new first floor.
- + Office 1 sits within a partially glazed 'box' in the centre of the new space with lightwells surrounding to bring light down to ground floor level, with the views of the existing historical facades retained from inside.
- + Office 2 situated in remainder of new first floor. Extension footprint has now been increased to extend to line of building below with additional lightwells
- + Central circulation corridor allows access to all upper floor areas.
- + Majority of first floor space above the cafe and retail could either be upgraded studio space or used as storage for retail units below.
- + Existing stair moved to the south & new access walkway created to allow access to the upper floor of the southeastern building.
- + Existing tenancy boundaries have been overlaid to inform potential future phasing

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Schedule of Accommodation:	
Office	
Office 1	63 sqm
Office 2	176 sqm
Office 3	54 sqm
Office 4	70 sqm
Shared Meeting	9 sqm
TOTAL OFFICE	372 sqm
Studios	
Studios total (incl. circulation)	244 sqm





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REPORT

16 August 2023

Barham Park Feasibility - Estimate Cost Plan -

OPTION 2

Brent Council

TABLE OF CONTENTS

1.0 EXECUTIVE SUMMARY

2.0 BASIS OF REPORT

3.0 COST BREAKDOWN

2.0 BASIS OF REPORT

2.1 PURPOSE AND STATUS OF FEASIBILITY ESTIMATE

This feasibility estimate is based on the information identified below. As the project progresses, the developing design will have to be reviewed against the allowances made within this report. The costs are against an indicative scheme which consists of a refurbishment and reconfiguration to provide office, retail, community and cafe space.

The costs are current at: 3Q2023

2.2 BASIS OF PROCUREMENT

The costs have been based on a AEW'S initial design proposal Stage 1. This does not constitute a full and detailed cost plan.

2.3 INFORMATION USED IN PREPARATION OF ESTIMATE

12953-AEW-XX-00-DR-A-0021-S2-P01_Proposed Ground Floor Plan - Option 2

12953-AEW-XX-01-DR-A-0022-S2-P02_Proposed First Floor Plan - Option 2

12953-AEW-XX-SI-DR-A-0020-S2-P01_Proposed Site Plan - Option 2

12953-AEW-XX-XX-PP-A-0004-P02_Option 2 Workbook

2.4 EXCLUSIONS

Land acquisition cost / Land compensation costs

Asbestos Removal

Planning and Statutory Applications

Pre and post contract design fees.

Fixed furniture and equipment

Ground conditions surveys

Land rental

Restrictive Land Covenants / Ransoms / Rights of Light / Land compensation / Oversailing

Archaeological finds

Employer finance costs

CIL, Section 106 and 278 contribution or works.

Legal Fees

NHBC fees

Agency Fees

Client held contingency

Client direct costs

Unforeseen/ unknown groundwork conditions

Offsite services reinforcement

Inflation

Value added Tax

Sustainability enhancements in relation to accreditations such as BREEAM or NABERS

Pre-construction surveys

This Cost Plan does not allow for any extraordinary impact of Brexit, such as BUT NOT LIMITED TO materials, skilled and un-skilled labour shortages, and currency exchange rate variations. It is recommended that any potential extraordinary impact of Brexit should be reviewed as part of the clients corporate Brexit risk review and included on the project risk register, where appropriate.

This report does not allow for any extraordinary impacts due to the outbreak of Coronavirus, such as BUT NOT LIMITED TO materials and labour shortages and impacts on currency exchange rate variations. It is recommended that any potential extraordinary impact of Coronavirus should be reviewed as part of the client's corporate risk review and included on the project risk register where appropriate

2.5 INCLUSIONS

Allowance for temporary support to new openings

Any underpinning/below ground reinforcement works.

Steel frame allowance based on a assumed 70kg/m2 of new GIA area

General allowance for cleaning / repairs to the external existing façade

Structural strengthening to new arcade wall

**Barham Park Feasibility - Estimate Cost Plan - Rev A
Brent Council**


3.0 ELEMENTAL SUMMARY

REF	ITEM	TOTAL COSTS
1	WORKS BREAKDOWN	
1.01	Building Fabric	£ 2,324,280
1.02	M&E	£ 655,200
2	SUB-TOTAL	£ 2,979,480
2.10	PRELIMINARIES	£ 536,306
2.20	OVERHEADS & PROFIT	£ 175,789
3	CONSTRUCTION TOTAL	£ 3,691,576
3.10	CONTINGENCY	£ 369,158
4	CONSTRUCTION TOTAL INCLUDING CONTINGENCY	£ 4,060,733

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted

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	<p align="center">Barham Park Trust Committee 5 September 2023</p>
	<p align="center">Report from the Director of Environment and Leisure</p>
<p>General Update Report</p>	

Wards Affected:	Wembley Central
Key or Non-Key Decision:	Non-key
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	None
Background Papers:	None
Contact Officer(s): <small>(Name, Title, Contact Details)</small>	<p>Chris Whyte, Director of Environment and Leisure 020 8937 chris.whyte@brent.gov.uk</p> <p>Leslie Williams, Project Officer, Parks Service, Environmental Services, Regeneration and Environment 020 8937 5628 Leslie.Williams@Brent.gov.uk</p>

1.0 Purpose of the Report

1.1 To update Members on operational issues at Barham Park and on current progress on projects.

2.0 Recommendation(s)

That the Barham Park Trust Committee RESOLVES:

2.1 To note the issues set out in this report.

3.0 Detail

3.1 Tenant activities resumed following reduced activities during the Covid pandemic. Council officers on behalf of the Trust usually have an annual meeting with the occupiers to review matters associated with the building and

the park. Council officers from Property Services and Parks Services met with representatives of tenant organisations on 23rd February 2023.

3.2 Fun fairs: Irvin's Fun Fair were at Barham Park: Operating between 26th May to 4th June (10 days); and onsite from 20th May 2023. Operating days between 18 Aug to 3rd September (17 days); and onsite from 7th August 2023.

3.3 Events: Barham Community Library: Hosts a range of regular and other events including the Community Library itself, Yoga, Pilates, activities for people with dementia; and Story Telling & Rhyme for the under-5s. Details from the Community Library.

Walking for Health: Tuesday's 10.30-11.30am. Organised by Brent Council's Public Health Team.

Wellness Wonder Walks held in February – March 2023.

Let's Grow Brent organised by the Young Brent Foundation.

Religious and cultural festivals.

3.4 Security: The Barham Park estate has been experiencing a number of incidents of crime, nuisance and disorder from various sources that are causing disturbance and harassment to occupiers and to park users. One such example is of individuals climbing onto the flat roof of the Barham Park building. Officers have previously reduced the trees adjacent to the wall to deter such incidents from taking place.

Litter continues to require significant resources to clear. There have been reports of motorbike riding within the park. There was an incident of graffiti which was then cleaned by the Council's grounds maintenance team. In June to early August 2023 there were several incidents that resulted in Police making arrests on two occasions in response to break-ins to the building and other incidents. To effectively combat nuisance, harassment and anti-social behaviour at the estate will require involvement by tenants, the police, and officers who will do whatever they can to help.

3.5 Public Space Protection Orders: Public Space Protection Orders (PSPO) were introduced to Brent's parks and open spaces in September 2019 and a revised PSPO including a prohibition for nuisance vehicles was introduced from 20th April 2023. Explanatory signage is being updated to reflect the new PSPO.

3.6 Persons sleeping rough: Brent Council works with the charities StreetLink and St Mungo's to reduce rough sleeping. Help is provided to people sleeping rough to find accommodation and help appropriate to their needs. During the year there were several occasions when one or more people were sleeping rough within Barham Park. The east side recessed porch area of the Barham Park building was frequently used by one or more persons sleeping rough, but now has gated access which restricts the use of that space to its intended uses of access to and egress from the building.

- 3.7 Thames Water works in Barham Park: There were some follow-up works related to the public surface water system in the vicinity of the railway line.

Operational works

- 3.8 Works: Operational grounds maintenance at Barham Park continued to be conducted by the contractor, Veolia to 31st July 2023; with a new contract commencing with Continental Landscapes Ltd from 1st August 2023.
- 3.9 Grass and meadows: The mix of grasslands at Barham Park includes mown amenity grassland and the meadow area of longer grass and flowers. The meadow grassland also supports a range of invertebrate species including bees. The meadow grasslands will be cut in September.
- 3.10 Minor repairs: Both the Parks service for the park and Property Services for the building have attended to a range of minor repairs during the year.

Works – restricted funding

- 3.11 The Barham Park Trust Committee previously agreed and sought the consent of the Charity Commission to spend some of the capital comprising the permanent endowment of the Trust's restricted funds under section 282 of the Charities Act 2011. The Charity Commission gave its concurrence for the Trust to use its restricted funds in respect of £167,000 on 24/01/2019 following the decision of the Trust Committee on 14 January 2019 and subsequently in respect of an additional sum of £10,000 on 17/09/2019 towards the events field drainage survey and design following the decision of the Trust Committee on 3 September 2019; and in respect of £258,000 towards part of the exterior renovation of the Barham Park building on 19/10/2021 following the decision of the Trust on 1 September 2021.
- 3.12 The table below sets out the agreed expenditure and the expenditure to date from the Trust's restricted funds, with a summary of progress in the paragraphs that follow. The cumulative expenditure column is of committed purchase orders.

Item of expenditure	Expenditure in GBP (£) approved by Trust Committee and Charity Commission	Cumulative expenditure to date to 12/08/2023
Barham Park Tree Works	62,000	45,285
Schedule of works in respect of all of the existing windows, doors, frames and similar structures of the Barham Park building	10,000	9,713
Events Field Drainage Survey and Design	15,000	10,979

Events Field Drainage Works	90,000	
Towards part of the exterior renovation of the Barham Park building	258,000	2,205
Total	435,000	68,182

- 3.13 Tree works: Tree surgery on a number of trees at Barham Park were completed in 2020. Subsequently there have been some follow-up and additional works, including some during 2022/23 and in 2023-24 to date.
- 3.14 Windows and exterior of the Barham Park building: Planning permission was sought for a revised mix of wood window frames on the key public-facing elevations with UPVC frames to be used elsewhere. That would be expected to achieve energy and carbon-emissions saving, at a lower total cost. Planning Permission was consented. The procurement details are in preparation.
- 3.15 Events Field drainage: The Barham Park events field hosts usually two fairs a year and is available at other times for informal recreation and potentially for other events. The low-lying situation of the field on London Clay soils means that drainage can be an issue. Verti-draining, a maintenance technique that introduces aeration, relieves compaction and can provide near to the surface drainage, has been introduced following the fairs in autumn 2022 and spring 2023, while a longer-term solution is sought.

Works – other funding

- 3.16 Queen Elizabeth II Silver Jubilee Garden: (the open courtyard on the Sudbury Town / west side of the Barham Park building. Following the completion of the hard- landscaping of this garden in early 2022, soft-landscaping (plants) were supplied and planted during the winter of 2022/23. There has been variable success to date with some plants continuing to establish and based on that, some further planting is planned for the winter of 2023/24. The Community Library have planted the central 'Well' feature. There were further renovation works to the low wall of the same series extending to the north-west of the garden. This is funded with a Neighbourhood Community Infrastructure Levy grant.
- 3.17 Wooden pergola: The wooden pergola was completely rebuilt during the summer of 2023, with new materials. The pergola is on the north side of the Rose Garden and connects several paths linking areas with Barham Park including a path to the Walled Garden. As part of that work the one, remaining climbing plant was transferred to the support of the new pergola. Over-hanging tree branches will be reduced, to increase light to the pergola and additional climbing plants will be planted during autumn / winter 2023/24.
- 3.18 Barham Park Walled Garden Pond: Following the earlier restoration of the two ponds in the Walled Garden, renovation continued on the shallow and seasonal pond on the north side of the wall of the north wall of the Walled Garden. Works included shade reduction and seeding. This is funded with a Neighbourhood Community Infrastructure Levy grant.

3.19 Trees and open woodland: Twenty standard trees were planted during the winter of 2022/23 in the open woodland in the south-east of Barham Park fronting the Harrow Road. There was some watering of the trees during a dry period of the summer of 2023. Planting of bulbs extended along some of the hedges and in the Old Greenhouse, which should be more evident in future spring seasons. There will be some additional bulb and other planting during the winter of 2023/24. Barham Park has received funding from an earlier round of the Neighbourhood Community Infrastructure Levy for the planting in Barham Park.

4.0 Financial Considerations

4.1 The financial considerations are set out in the main body of the report.

5.0 Legal Considerations

5.1 The land (including the building) 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”*.

5.2 This report satisfies the requirement to undertake an annual review of how the Trust is carrying out its charitable purpose, in accordance with the Barham Park Trust Committee, Terms of reference as set out in Table 4, Part 3 of the London Borough of Brent Constitution.

5.3 The remaining legal considerations are set out in the main body of the report.

6.0 Equality, Diversity and Inclusion Considerations

6.1 The proposed projects and events mentioned in this report will be subject to a screening for equalities impacts and where the potential for adverse impacts is identified, a full equalities impact assessment will be carried out and any requisite mitigating action taken.

7.0 Consultation with Ward Members and Stakeholders

7.1 Officers meet regularly with Ward Members.

8.0 Human Resources/Property and other Considerations (if appropriate)

8.1 Nothing specific other than noted in this report.

Related documents for reference:

- (i) General Update Report to the Barham Park Trust Committee dated 1 September 2021;
- (ii) Strategic Matters relating to Barham Park, 660 Harrow Road, Wembley HA0 2HB to the Barham Park Trust Committee dated 27 January 2022.

Report sign off:

Chris Whyte

Director for Environment and
Leisure

	<p align="center">Barham Park Trust Committee 5 September 2023</p>
	<p align="center">Report from the Director Environment and Leisure</p>
<p align="center">Review of Alternative Administration & Governance Models</p>	

Wards Affected:	Wembley Central
Key or Non-Key Decision:	Non-Key
Open or Part/Fully Exempt:	Open
List of Appendices:	None
Background Papers:	None
Contact Officer(s):	<p>Chris Whyte, Corporate Director Environment & Leisure 020 8937 5342 Chris.Whyte@brent.gov.uk</p> <p>Biancia Robinson 020 8937 1544 Biancia.robinson@brent.gov.uk</p>

1.0 Executive Summary

- 1.1. It is considered by the Charity Commission to be good practice to periodically review whether it continues to be in the best interest of the charity for the local authority to remain as trustee. At its meetings on 28.01.2015 and 07.03.2018 the Barham Park Trust Committee (the Trust) considered various governance and management arrangements of the Trust and decided to maintain the status quo. It is now considered timely to review alternative administration & governance models of the Trust.
- 1.2. The five options for the future governance of Barham Park for the Trust Committee's consideration are set out in section 4 of this report.

2.0 Recommendation(s)

That the committee:

- 2.1 Consider and comment upon the options available for the future governance of the Barham Park Trust.
- 2.2 Either choose Option 1 or recommend one of the other options to Cabinet for further consideration and consultation.
- 2.3 Subject to 2.2 above, agree and confirm that it continues to be in the best interest of the charity for the local authority to remain as trustee.

3.0 Detail

- 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”. The Trust was registered with the Charity Commission in June 1963 and is regulated by that body.
- 3.2 The land is held by the Council on trust and accordingly can only be used in furtherance of its stated charitable purpose. As sole trustee, the Council is ultimately responsible for the management and administration of the Trust. In making decisions about the trust property and finances, the Council must act in the best interests of the trust and its beneficiaries (namely, the users of the Park and its facilities) and must be mindful of any conflict of interest.
- 3.3 In 2012, it was decided to create a more apparent and defined separation of roles and the Executive established a sub-committee, the Barham Park Trust Committee, to deal with decisions regarding the Trust land, property and finances. Over the years decisions have been made in accordance with the governance arrangements set out in that report and separate accounting systems have been established.
- 3.4 While the current arrangements provide a significant improvement on the previous position before 2012 as there is a clearer separation between the Council and the Trust as far as decision making is concerned, the Council as trustee has a responsibility to periodically consider whether the current arrangements best serve the charitable purposes and whether alternative arrangements should be explored.
- 3.5 As the Trust’s sole trustee, the Council has generally met the costs of managing, maintaining and developing Barham Park, although there is some rental income and some interest on capital and the Trust receives occasional grants from external sources. The net running costs of Barham Park are met by the Council which, in practical terms, means that the Trust receives a subsidy from the Council. The Trust’s funds are kept separate from those of the Council and separate accounting systems are in place for the Trust and the Council respectively.
- 3.6 In late 2014, Brent Legal Services obtained advice from Bircham Dyson Bell, which specialises in the law of trusts and charities, regarding the options and

alternative models regarding the management of the Barham Park Trust and the advantages and disadvantages of those respective options. In addition to the advice on the law of trusts and charities, further specialist advice on local government law and decision making was obtained from Nigel Giffin QC and the basis of their advice forms this report. In addition, the council has more recently obtained advice from Matthew Smith who was of the view it was a formidable summary of the pros and cons of each potential governance model.

- 3.7 The five options which Bircham Dyson Bell proposed regarding the future governance of the Barham Park Trust are set out in section 4 below. These are still considered to be the available options.
- 3.8 Before appraising these five options, it is worth mentioning the fundamental limitations. Based on the 1936 conveyance, George Barham intended the property to be preserved and used for recreational purposes. He did not include an express power of sale and therefore did not make any provision for the application of the proceeds of any sale. Accordingly:
- the only purpose for which the charity is set up is the provision of a recreation ground; and
 - there are no provisions enabling the Trust to sell or lease the charity's property and use the proceeds for other purposes; and
 - there is no power of amendment in the Trust which would enable the Trust to change the purposes or objects of the charity.

Accordingly, The Trustees have no power to dispose of the property and would need to apply to the Commission or the Courts for a Scheme to provide the necessary power and new purposes.

- 3.9 Furthermore, it is not possible for the Council to purchase Barham Park and have it assimilated into its property portfolio, without permission of the Court or Charity Commission because of its fiduciary duty, namely a Trustee may not purchase trust property (commonly referred to as the self - dealing rule). It should be noted, this principle is strict to ensure there is no possibility of the trustee(s) taking advantage of their position whether they do in fact do so or not. In addition, and for the avoidance of doubt, neither could the Trust lease Barham Park to the council for the above reason and the requirement that any a lease to a connected person would require permission of the Commission.
- 3.10 Consequently, the continuation of the charitable status of Barham Park, in one form or another, is a given. This means that, even though the Trust is subsidised by the Council and is unlikely (for the foreseeable future at least) to be financially self-sufficient, an option which is not open to the Council is to assimilate, convey, transfer or lease Barham Park into its property portfolio, or to itself.
- 3.11 Conversely, if the Council wished to but was unable to transfer the Trust to another charity, the process of resignation as trustee would require an application to the Charity Commission and would be far from straightforward.

- 3.12 The Committee should also observe that there is provision under the Charities Act to request the Charities Commission make a scheme. Such an administrative arrangement could, for example, specifically deal with conflicts of interest or enable the spending of proceeds of a permanent endowment rather than just the income, providing it remains in the interests of the charity and satisfies the public benefit requirements. Such provision could be employed to deal with conflicts of interest that may arise under option 1. There is a pre-requisite consultation requirement with anyone who would be affected by, or have an interest, in the changes before the Charity Commission would consider an application.

4.0 Options for future governance and management arrangements

Option 1 – Maintain the status quo

- 4.1 The functions regarding the management of the Barham Park Trust have been properly and lawfully delegated to the Barham Park Trust Committee. This option is perhaps the least likely to affect the longer-term financial stability of the Trust, since any annual subsidy from the Council would continue to be justifiable on the basis that the Council is the legal owner of the land. There would be less need to rely on outside sources of funding and the arrangements would be much easier to review than would be the case were the land to be transferred to another legal entity. This option would also allow flexibility as the Council currently has very broad powers regarding the running of Barham Park, which would not necessarily be possible under an alternative structure. This option provides the greatest scope for the involvement of the local community as meetings of the Barham Park Trust Committee are held in public and members of the community have been accustomed to being consulted on decisions that might have an impact on Barham Park or the way it might be used.
- 4.2 This option envisages the Council continuing to meet the various costs of running the Barham Park Trust, including the grounds maintenance costs, the day to day management costs for the Park and the buildings and the cost of providing the advice of the Council's in-house legal team and other officers in advising the Barham Park Trust Committee. However, it does mean that the Council has control over the subsidy it gives to the Barham Park Trust. One concern is the potential for conflicts of interest between acting in the best interests of the Council and that Barham Park Trust, which do not arise often. However, such concerns can only be eliminated totally if the Council gives up all direct or indirect involvement with the administration of Barham Park.

Option 2 – Appoint additional trustees alongside the Council

- 4.3 This option involves appointing additional trustees to act alongside (or even in place of) the Council in the governance and management of Barham Park. This option reduces the potential for conflicts of interest that might arise between the Council and the Barham Park Trust and helps to avoid any perception of bias. Another advantage of having independent trustees is that this would allow

individuals to be selected on the basis of their particular skills or expertise and bring new perspectives in the management of the Barham Park Trust.

- 4.4 This option will inevitably mean the Council relinquishing some control over the Barham Park Trust and its assets. It is possible that this could cast doubt over the financial stability of the Trust if it becomes more difficult in future for the Council to justify its continued financial support. Furthermore, as the Trust is not currently self-sufficient, unless alternative sources of funding were identified in advance, it may be difficult to justify this option as being in the best interests of the Trust and its beneficiaries.
- 4.5 Under the current legislation, only Members of the Cabinet may be appointed to an Executive committee – in this case, the Barham Park Trust Committee – so additional members could not be appointed to that Cabinet sub-committee. Therefore, this option seems to entail two layers of decision-making – one internal to the Council about how it should act as trustee and one at trustee level, involving the Council’s representative(s) alongside the other trustees. The difficulty of having additional trustees to act alongside, and in addition to the Council, is that this would provide an unwieldy and unsatisfactory structure which would be likely to cause confusion in the future.

Option 3 – Appoint a corporate trustee

- 4.6 This would involve the establishment of a new corporate entity (most likely a company limited by guarantee) with the specific object of supporting the Barham Park Trust. This entity would be appointed as sole trustee (hereafter referred to as “the Corporate Trustee”) of the Trust in place of the Council, which would instead become the sole company member (rather like a sole shareholder) of the Corporate Trustee. In effect, the Corporate Trustee would be a wholly owned subsidiary of the Council which, in structural terms, would sit as an additional layer between the Council and the Barham Park Trust. This model is not too dissimilar to the arrangements involving for example, First Wave or I4B albeit that was a much larger organisation. This option would require the approval of the Charity Commission.
- 4.7 The Corporate Trustee’s board of directors could include one or more Council representatives. If the majority of the directors were independent, this would significantly avoid conflicts of interest. The directors would act as agents or appointees of the Corporate Trustee and, as such, would have a shared responsibility for ensuring that the Corporate Trustee fulfilled its duties when managing the Trust. The directors would therefore need to be aware of, and adhere to, the duties of a charity trustee when making decisions about the management of the Trust (as well as about the Corporate Trustee) but they would not themselves be charity trustees or become personally liable as such.
- 4.8 As sole member of the Corporate Trustee, the Council would retain overall control of the make-up of its board (as the Companies Act reserves certain fundamental rights to Trustees, including a statutory right to remove directors from office). It would also be possible to reserve additional rights to the Council – such as the sole right to appoint directors, and the right to be consulted under

certain circumstances – in its Articles of Association but this would not make the Council a charity trustee under the definition set out in the Charities Act 2011.

- 4.9 This option would enable a clear separation between the Council and the Trust, without loss of overall Council control. Liability for decisions affecting the Trust would rest with the Corporate Trustee, not its individual directors. Although it would retain control over the make-up of the board of directors (and hence the decision-makers), the Council itself would not be involved in the decision-making process, thereby avoiding conflicts of interest at Council level. As the Council would remain at the top of the group structure and therefore, in essence, the “owner”, there would be no reason for it to discontinue or vary its financial or other support of the Trust, as might be the case were Barham Park to be transferred to another body. In relation to providing financial support to the corporate trustee, the Council has the power to provide such support under its grant-making powers under section 164 of the Public Health Act 1875 (which confers a power to “support or contribute to the support of public walks or pleasure grounds provided by any person whomsoever”) and section 1 of the Localism Act 2011 (known as the “general power of competence”).
- 4.10 One drawback is that this would create additional administration, especially the introduction of a new corporate entity into the structure. As a company, the Corporate Trustee would be required to file annual returns and accounts with Companies House, which would be the responsibility of its board of directors. In practice, however, these requirements are not onerous. The other concern is whether there may be sections of the local community which may not want control in the running of Barham Park and the Trust to be removed from the Council. Although it is possible for the Council to take back control of the Barham Park Trust and the running of Barham Park if the corporate trustee was in serious difficulties, this process of taking back control of the management of Barham Park would be expensive, administratively burdensome and could take a considerable period of time to complete and resolve. Another disadvantage is that this creates a complicated structure for what is a small trust.

Option 4 – Establish a new corporate charity to take on ownership and control of Barham Park

- 4.11 This option would be similar in many respects to that described in option 3 as set out above except that it would involve winding up the Trust and transferring all of its assets to a new corporate entity (either a company limited by guarantee or a charitable incorporated organisation). The new entity would, in effect, replace the existing charitable trust altogether.
- 4.12 As this option would involve the creation of a new charity (albeit with purposes identical to those of the Barham Park Trust), it would provide the opportunity to modernise the Trust documentation governing how the Park is to be run, while still leaving room for the making of new or replacement regulations and byelaws by the Council in the future. This option would also give rise to a number of the advantages associated with a corporate trustee – i.e., it would enable the

appointment of independent directors, for example, and the Council could still retain overall control by becoming the sole corporate member.

- 4.13 This option would envisage the disappearance of the existing charitable trust, which might give rise to concerns among members of the local community that their voice would be lost and that their use of the Park would be adversely impacted in some way – even if this was not the intention in practice. These concerns might be greater if the decision was made to have an entirely independent board, without the presence of Council representatives, as the means by which the Council would nonetheless be able to exert control might not be appreciated. Equally, the local community might feel that a completely new charity was too far removed from the status quo, or not in keeping with Mr Barham’s original wishes with regard to who should manage the Park. Also, as similar with option 3, this option would mean additional administration and cost in setting up a new corporate charity and this would also create a complicated structure from what is a small trust. This option would require the approval of the Charity Commission.
- 4.14 Equally, from the Council’s perspective, this arrangement might have the appearance of being rather more at arm’s length than at present, which may make the Council’s continued financial support of the charity more difficult to justify in the longer term – particularly if, in practice, the charity was seen to be operating efficiently with little or no Council oversight or intervention. Were the charity to become too independent of the Council, it might risk losing its subsidy which, in the absence of alternative income streams, would not be in the Trust’s best interests. One concern is that the Council’s powers to take back full control of Barham Park if the new corporate charity ran into difficulties would be more limited than options 1 and 2 above and even more difficult and cumbersome than option 3 above.

Option 5 – Outright transfer to another charity

- 4.15 It would be open to the Council to transfer the Trust in its entirety to another body (either pre-existing or newly created) with similar objects, completely severing its ties with Barham Park in the process. There is much to be said for this option from a pure charity law perspective, as the recipient charity would operate at a complete remove from local authority control, thereby removing the potential for conflicts of interest of the types described above. The decision to proceed with this option could only be made if the Council considered the transfer to be in the best interests of the Trust and its beneficiaries. It is possible that an independent charity would be more successful in terms of fundraising than has perhaps been the case with the current Barham Park Trust. Corporate donors and high-net-worth individuals are often reluctant to donate to charities associated with public bodies, as there is a commonly held perception that the assets and activities of such charities are subject to state or local authority control. Were the charity transferred away from the Council altogether, this would no longer be a cause for concern. With this option, the Council would be able to reduce and possibly end the support and subsidy it currently provides to the running of Barham Park. This would require the approval of the Charity Commission.

4.16 As with option 4 above, however, there may be some resistance to this proposal from the local community if this route was taken – not least because a completely independent charity might decide not to adopt the Council’s practice of holding meetings in public and otherwise giving the local community the opportunity to be heard. If this option was pursued, the Council would have no power to take back control of Barham Park if future serious difficulties arose after the Council transferred the Trust and its assets to another charity.

4.17 As the Council is the sole trustee of the Barham Park Trust, the Council cannot simply resign from being the sole trustee of the Trust as the Council - as the sole Trustee cannot resign without the appointment of a successor. Unless the Council can find an alternative trustee, it must ask the Charity Commission to vest the property of the Trust in the Official Custodian and make a scheme for the election of local people as managing trustees. This remains to be an unusual and novel scenario for a local authority and the Charity Commission.

5.0 Stakeholder and ward member consultation and engagement

None

6.0 Financial Considerations

6.1 Options which involve setting up a separate legal entity will require the advice and assistance of external solicitors and are therefore more costly in the short term than maintaining the status quo. Although the cost should be met from Trust funds, there is a shortfall between income and expenditure which is met by the Council.

6. The treatment of VAT incurred in running and maintaining the park will need to be carefully considered in any change in the management of the Trust.

7.0 Legal Considerations

The legal implications are set out within the body of the report.

8.0 Other Considerations

There are no:


- Equality, Diversity & Inclusion (EDI)
- Climate Change and Environmental
- Human Resources/Property or
- Communication Considerations arising out of the contents of this report.

Report sign off:

Chris Whyte

Director Environment & Leisure

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	<p align="center">Barham Park Trust Committee 5 September 2023</p>
	<p align="center">Report from the Director Environment & Leisure</p>
<p align="center">Review of Governance and Guidance documents</p>	

Wards Affected:	Wembley Central
Key or Non-Key Decision:	Non-Key
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	One: Appendix A Proposed changes to Governance & Guidance document
Background Papers:	None
Contact Officer(s): <small>(Name, Title, Contact Details)</small>	<p>Chris Whyte, Corporate Director Environment & Leisure 020 8937 5342 Chris.Whyte@brent.gov.uk</p> <p>Biancia Robinson 020 8937 1544 Biancia.robinson@brent.gov.uk</p>

1.0 Summary

1.1 This report proposes changes to the Barham Park Trust Governance and Guidance Document date 2013, primarily to reflect the changes following Organisational restructures in the council and updated guidance issued by the Charity Commission.

2.0 Recommendations

2.1 To agree the amendments to the Governance and Guidance documents set out in Appendix A.

3.0 Detail

- 3.1. The council is the sole trustee of Barham Park Trust, and accordingly the Barham Park Trust is set up as committee of the Cabinet. The committee meetings are conducted in accordance with the Council's Constitution but are subject to and governed in accordance with charity law as well and decisions are made in the best interests of the charity.
- 3.2. The Governance and Guidance document sets out the responsibilities of the council as trustee, the charity's purposes and, how the Barham Park Trust (the Trust) is to be administered. It recognises that decisions about the administration and operation of the charity must be taken solely with a view to furthering its charitable purposes and for no other purpose; and that the council realises it has a dual role, first, as a local authority and secondly as a charity trustee and the two roles must be kept entirely separate. In addition, it acknowledges and highlights the process for identifying and addressing conflicts of interest. Lastly, it recognises the role of the Charity Commission as the main sources of detailed advice and information about charities as well as its enforcement and regulatory functions.
- 3.3. The document has not been formally reviewed since 2013. Accordingly, it does not reflect the new job titles following organisational restructures, section changes to the London Borough of Brent's Constitution, the delegation to the Director of Environment & Leisure in September 2022 or the updated guidance regarding conflicts of interests issued by the Charities Commission. Alongside these changes, it is also proposed to recognise the change in the frequency of the formal officer meetings for Barham Park Trust matters following the change in management delegations in September 2022. Dedicated discussions between officers regarding Barham property and parks matters generally fall as business as usual for their respective services. Accordingly, it is proposed to retain the flexibility to meet for Barham Park Trust matters "as and when required" but have dedicated meetings for Trust matters "no less than once a year", as opposed to the previous requirement of "no less than twice per year". The proposed changes, set out in Appendix A, reflect these changes and are essentially administrative in order to bring the Governance & Guidance document up to date.
- 3.4. There are no substantive changes that alter the charitable trust which would require permission of the Charities Commission.

4.0 Legal Considerations

- 4.1 There are no specific legal considerations arising from this report.

5.0 Financial Considerations

- 5.1 There are no specific financial considerations arising from this report.

6.0 Equality, Diversity & Inclusion (EDI) Considerations

- 6.1 Under Section 149 of the Equality Act 2010, the Council has a duty when exercising their functions to have 'due regard' to the need:
- a) to eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited under the Act;
 - b) advance equality of opportunity; and
 - c) foster good relations between those who share a "protected characteristic" and those who do not.

This is the Public Sector Equality Duty (PSED). The 'protected characteristics' are: age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, sex, and sexual orientation

- 6.2 No equalities considerations are considered to arise from this report.

Report sign off:

Chris Whyte

Director Environment & Leisure

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Barham Park Trust
Governance and Guidance Documents
2023

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[Barham Park is situated in the west of Brent, on the west of Wembley and bordering Sudbury. Following the recent boundary review, it now falls within the Wembley Central Ward.](#)

[Having been given to the people of Wembley, the park is held and managed by the Barham Park Trust, of which Brent Council is the Trustee. The Park is about 10 hectares in area. It includes the Barham Park building hosting a range of community-based tenants and a range of park features.](#)

1. Details of the Trust and its Assets

The land (which includes various buildings), known as Barham Park was given on trust by conveyances (dated 1936) to the Council (originally Wembley Urban District Council, of which the London Borough of Brent is the successor) 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' ([Charitable Purpose](#)).

The Charity was registered with the Charity Commission in 1963 (Registration number 302931). At the time of the bequest it was not clear, as a matter of law, whether land for recreational purposes was to be regarded as a 'charitable purpose'. The Recreational Charities Act 1958 clarified the law following a court case and the land was registered.

The land is situated within the London Borough of Brent and comprises of an extensive park and gardens. It includes a children's playground, rose gardens, a war memorial, lawns and established trees and shrubs. The children's playground and war memorial have been added since the land was given on trust. [The main house](#), which formed part of the estate, fell into disrepair in the 1960's and was demolished. The land on which it stood still forms part of the site. Various other buildings remain on the site. Save for the sale of the houses at 776 & 778 Harrow Road (located by number 8 on the map), the site remains the same as it was in 1938.

No funding or other assets were bequeathed. The cost of managing, maintaining and developing the site has largely been met by the Council. Some rental has been received by the Trust from use of the land and there is also Trust capital from the sale of the two houses. External funding, such as a grant of £10,000 from Natural England has also been obtained from time to time. However, competition for such funding is very strong.

Following the sale of the two houses capital funds were available to the Trust. A decision was taken by the Barham Park Trust Committee in February 2013 to use these funds to improve the park and undertake works to the buildings so that they could be let. The future use of the buildings was also considered and this includes offers of use to outside organisations and the council which has resulted in increased income to offset some of the costs of maintenance of the park.

[The park won Green Flag status \(a national standard for parks and open spaces\) in 2009, 2010 and 2011. The last parks survey undertaken in 2010 showed that it was the third most popular park in Brent.](#)

2. Constitutional Arrangements

The Council as a corporate body is the trustee (rather than individual members) and accordingly it is for the Council to make decisions about the Trust in its role as Trustee. The Local Government Act 2000, The Local Authorities (Functions and Responsibilities) Regulations 2000 (as amended) and the Council's Constitution provide that all functions of the Council, which are not the preserve of others, are 'executive' functions. In the case of the Trust function, no restriction exists and accordingly it falls to the Council's Executive ([the Leader and the Cabinet](#)) to make decisions.

At a meeting of the [Executive \(now called the Cabinet\)](#) 12th November 2012 members agreed the following arrangements for decisions to be made by the Council:

- i) note the Barham Park Trust status as a charitable trust
- ii) arrange for the trustee functions in relation to Barham Park Trust to be discharged by a sub-committee of 5 members of the Executive to be known as 'Barham Park Trust Committee'
- iii) agree the membership and terms of reference of the Barham Trust Committee of the Executive as set out in below [\(note: the below reflects minor change since 2012 such as changed titles\)](#)

THE MEMBERSHIP AND TERMS OF REFERENCE OF THE BARHAM PARK TRUST
COMMITTEE OF THE CABINET

Membership

The sub-committee comprises 5 members of the Cabinet appointed by the Cabinet.

Chair and Vice Chair

To be appointed by the Barham Park Trust Committee

Quorum

3 Cabinet members

Terms of Reference

The Cabinet has agreed to delegate the following executive functions to the committee:-

- (1) the trustee functions in relation to Barham Park Trust including decisions to dispose of land, vary or cease the charitable purpose, or change the trustee, except those functions it has delegated to officers;
- (2) an annual review of how the trust is carrying out its charitable purposes and a review of the Trust's finances; and
- (3) any other matter which the Director Environment & Leisure Services considers ought to be referred to the committee for a decision.

The Committee shall meet not less than once per year.

These arrangements are set out in [Table 4, Part 43](#) of the Constitution. This is a ~~an Executive Cabinet sub~~ committee and the conduct of the meetings shall be in accordance with the rules set out in the Council's Standing Orders paragraph ~~44 to 47~~ [13](#).

Day to day management of the Trust assets has historically been undertaken by a group of officers ~~the Assistant Director Regeneration and Major Projects, the Assistant Director Neighbourhood Services and the Deputy Director Finance and Corporate Resources,~~ collectively known as the 'Barham Park Trust Management Team' [representing parks, property and assets, finance and legal services](#). On 12th November 2012 the [Executive Cabinet](#) made the following formal arrangements for day to day management of the trust;

- iv) delegate the day to day trustee functions and decision making to the Assistant Director Neighbourhood Services in consultation with the Assistant Director Regeneration and Major Projects and the Deputy Director Finance and Corporate Services who shall collectively be known as the 'Barham Park Trust Management Team'
- v) the officers in iv) above are delegated such executive powers relating to their service areas as are necessary to carry out the day to day trustee functions and, in so far as they relate to Barham Park Trust matters, these powers are the same as those delegated to Directors in those service areas under Part 4 of the Constitution.

[In September 2022, the following delegation was made by the Barham Park Trustee Committee:](#)

[To authorise that the day to day Trustee functions and decision making of the Barham Park Trust be delegated to the Council's Director of Environment & Leisure following the Council's senior management restructure process and to authorise any previous decisions of the Trust Committee to delegate authority to the Operational Director of Environmental Services that have yet to be exercised to be delegated to the Council's Director of Environment & Leisure.](#)

[Following the delegation of September 2022,](#)

The Barham Park Trust Management Team ('BPTMT') terms of reference ~~were~~ agreed in February 2012 ~~and are as are amended as~~ follows:

- To oversee the management of Barham Park on behalf of the Council (the Trust) acting in its charitable function of preserving the park 'for the recreation of the public'.
- To ensure [Executive Cabinet](#) Members are kept informed and that appropriate matters are raised at the [Executive Cabinet](#) for decision.
- To ensure annual accounts are submitted to the Charity Commission.
- To meet as and when required to make a discrete decision but ~~on~~ no less than ~~two~~ [once per occasions a](#) year in pursuance of the above.
- Minutes of meetings of the BPTMT are [to be](#) maintained by officers.

3. Annual Accounts and Returns

The Charity Commission guidance ~~on~~ [Local Authorities as Charity trustees—Cllrs Guide to a Council's role as Charity Trustee - trustee](#) (copy [provided in the attached as](#) Appendixes ~~six~~ 1) provides that the finances of the Trust must be kept separate from those of the council. The assets must be accounted for separately and income and expenditure should be channelled through discreet cost centres. The local authority may top up the finances of the Trust but no funds should pass from the trust to the council. The council must observe the Commission's registration and reporting requirements.

The Trust is required to submit annual accounts and returns to the Charity Commission within ten months of the end of the financial year. The accounts summarise the money received and paid out by the Trust in the financial year and a statement is provided giving details of its assets and liabilities at the end of the year. The annual return is used to provide the Charity Commission with basic financial information, details of contacts, trustees and activities of the Trust.

The accounts will be brought to the Barham Park Management Team and Barham Park Trust Committee for approval.

With regard to the accounts they will be managed in the following way in order to ensure a clear division between Council and trust funds and to provide up to date detailed accounts for the trust income and expenditure:

- The accounts are produced using distinct cost centres held centrally, outside of individual departments
- ~~Quarterly monitoring reports and annual accounts will be based on returns from~~ [Regeneration and Major Projects and Environment and Neighbourhood Services](#) [Environmental and Leisure Services](#) signed off by the relevant ~~Assistant~~ Director. These reports will be compiled by the central finance team.

- The quarterly financial reports will be reported to the [Director of Environment & Leisure Barham Park Trust Management Team](#).
- [The financial reports will be reported annually to the Barham Park Trust Management Team.](#)
- The annual accounts [will be](#) approved by Barham Park Trust Management Team and Barham Park Trust Committee

4. Dealing with Trust land

The law relating to charity land, its use and disposal is complex and detailed. The advice will depend on the proposed use, the type of disposal, and the value. Each decision on use of trust land will require individual consideration, and in many cases legal advice will be required. These general comments should not be substituted for advice on specific disposals.

The Barham Park Trust land and premises are held as "designated land" (formerly called permanent endowment) for the recreation of the public. The 1936 conveyance does not state that the Charity has the power to sell or let designated land.

However, the Charity and Trust legislation provides means by which disposals can take place. The legislation allows for some small disposals by the Trust without the involvement, or only limited involvement, of the Charity Commission. There are however, various procedural requirements which need to be followed in many of those cases, including advertising, the involvement of a qualified surveyor etc. For those disposals which have a more significant impact upon the Charity, involvement of the Charity Commission is required, including in some cases an [approved](#) 'Scheme' provided by the Commission in advance of any disposal.

5. Making decisions about the Trust

The detail above regarding the division of roles [between](#) members and officers sets out how decisions will be made regarding the management of the Trust funds and assets in order to fulfil the terms of the Trust.

In accordance with the law and Charity Commission guidance it is essential that decisions regarding the Trust are made on the basis of what is in the best interests of the Trust and separate from any other interest, be that personal, or that of the Council, or other bodies. Issues regarding conflict of interest are addressed below.

A charity (which includes Barham Park Trust) is an entity established exclusively for purposes which are capable of being charitable and which are for the public benefit.

The trustee (the council through its [executive Cabinet](#)) has ultimate responsibility for directing the affairs of the charity and ensuring it is solvent, well run and delivering the charitable outcomes for the public benefit for which it has been set up. Trustees have a duty to act solely in the interests of the charity and its beneficiaries.

The Charity Commission recognises that Councils are well suited to being charity trustees but there are certain common pitfalls that must be avoided.

These are:

- Failure to comply with the restrictions which are placed on the use of charitable assets

- Conflicts which can arise between things that would be popular with the electorate and the obligations of the trustee imposed by the terms of the charity
- Ignorance of the terms ~~or~~ of the charity or its assets.

This governance document, together with the procedures put in place for management of the Trust, the on-going advice and input of professional staff and the safeguards in place for council activity generally (e.g. The Council's Members' Code of Conduct) are designed to ensure that these matters are effectively addressed. Members and Officers will also be provided with training as and when required.

The principles highlighted in the guidance are:

- The Trust must be independent — it must exist and operate solely for the charitable purpose and not as a means of carrying out the policies or directions of the Council.
- While on-going management can be delegated to officers, responsibility for significant decision making and oversight rests with members, and management should be kept separate, as far as possible, from the business of the Council.
- the terms of the Trust must be clearly understood.

The [Commissions](#) guidance ([Appendix 1](#)) sets out ten tips for councils in their role as charity trustee which provides a useful checklist by which the Council can periodically measure its effectiveness and compliance.

6. Identifying Conflict of Interest and dealing with this

The Charity Commission guidance documents pay particular attention to conflicts of interest for charity trustees. This ~~is~~ ~~has a~~ particularly relevant for the Council which has two roles — one as sole trustee to Barham Park Trust, and the other in its statutory role. [The Charity Commission highlights that conflicts of interest affect charities of all types and sizes which can lead to decisions that are not in the best interests of the charity and which are invalid or open to challenge. In addition they may be damaging to a charity's reputation or public trust and confidence in charities generally.](#)

The Charity Commission's [Guidance, Conflicts of interest: a guide for charity trustees, updated as of 31 October 2022](#), provides detailed general guidance on conflict of interest, [a copy is attached as Appendix 2, and also particular notes on the position for Local Authorities](#)

Set out below are extracts from the Guidance ~~titled Conflicts of Interest which is included in the Appendices to these governance documents.~~

2. Conflicts of interest: at a glance summary (legal requirement)

[Trustees have a legal duty to act only in the best interests of their charity. They must not put themselves in any position where their duties as trustee may conflict with any personal interest they may have.....](#)

3.1 What is a conflict of interest? (legal requirement)

[A conflict of interest is any situation in which a trustee's personal interests or loyalties could, or could be seen to, prevent the trustee from making a decision only in the best interests of the charity.....](#)

..... Even the perception that there is a conflict of interest can damage the charity. Where the perception is not accurate because there is no conflict of interest, the trustees should always be able to respond appropriately to the situation by managing the risks to the charity and being prepared to explain how they have made their decisions only in the best interests of the charity.

Conflicts of interest relate to a trustee's personal interests and the interests of those connected to them. This means that there is a conflict of interest where there is a proposed transaction between the charity and a connected person. Similarly, there is a conflict of interest where there is a benefit or a potential benefit to a connected person.....

3.2 Where and how do conflicts of interest arise?

Conflicts of interest usually arise where either:

- there is a potential financial or measurable benefit directly to a trustee, or indirectly through a connected person
- a trustee's duty to the charity may compete with a duty or loyalty they owe to another organisation or person

"2. What is a conflict of interest and what issues does it raise?

A conflict of interest is any situation in which a trustee's personal interests, or interests that they owe to another body, may (or may appear to) influence or affect the trustee's decision making.

It is inevitable that conflicts of interest occur. The issue is not the integrity of the trustee concerned, but the management of any potential to profit from a person's position as trustee, or for a trustee to be influenced by conflicting loyalties. Even the appearance of a conflict of interest can damage the charity's reputation, so conflicts need to be managed carefully."

The law states that trustees cannot receive any benefit from their charity in return for any services they provide to it without express legal authority. No such express authority is provided for in relation to Barham Park Trust so no benefit must be received by the council, members or officers. This provision is to ensure that they are not in a position where their personal interests and their duty to the charity conflict.

A conflict of interest can arise in a variety of ways: direct financial gain may arise where a member or officer is paid for services, or the award of a contract to an organisation in which the member or officer has an interest. Indirect financial gain may arise if a spouse would benefit, and non-financial gain may arise where the trustee is also a user of the charity service. Conflict of loyalties may arise where the trustee member is also a member of the local authority.

It is important to identify circumstances in which a conflict of interest may arise and to have in place mechanisms for dealing with it effectively. The Charity Commission recommends that there be a register of interests of m members, that at the beginning of each meeting members declare any such interest and that they withdraw from the meeting where the interest amounts to a conflict of interest, and that records be kept of such interests.

In Brent the Code of Conduct applies to members sitting on the Barham Park Trust executiveCabinet sub committee. The Code includes a duty to declare a Disclosable Pecuniary Interest and to withdraw from participation in that item where such a personal financial interest arises. Members may in some circumstances be required to withdraw from participation where other personal interests arise. The Code also provides that members must not improperly advantage or disadvantage themselves or others when deciding matters. This also applies to decisions taken as a member of the executiveCabinet sub committee. In addition to these rules members are clearly advised of the requirement that they should not vote on matters where they are biased. Members are asked to declare their personal and Disclosable Pecuniary Interests at the beginning of each meeting and these are recorded. The meetings of the sub committee are held in public (save for exceptions relating to confidential matters and where certain

exemptions apply), and the register of Disclosable Pecuniary Interests is publicly available. This provides transparency and openness in the Trust decisions.

In relation to members' involvement with Trust matters the other risk of conflict aside from a 'personal' conflict is between the members' roles as councillors and their statutory responsibilities, and those as trustee to Barham Park Trust. This issue is highlighted in the guidance [at paragraph 8](#);

[Conflicts can arise between things that would be popular with the electorate and the obligations of the trustee, imposed by the terms of the charity](#) Charities, such as playing fields, are sometimes managed by the local authority as sole trustee, or by members of the local authority, as trustees. It is especially important when this is the case that the local authority as trustee, or its members as trustees, are clear when they are dealing with charity business and when they are dealing with local authority business. When they are dealing with charity business, they must only consider the best interests of the charity and not those of the local authority

In circumstances where a conflict of interests between the Council and the Trust arises, members must only consider the best interests of the Trust when deciding Trust business. Where one or more members of the sub-committee considers their role within the council is such that they are unable to put the interests of the Trust first or risk the appearance of not doing so, for example as a result of any appearance of bias, then they should not vote, nor participate in the decision making on that item.

Conflict can equally arise with regards officer decisions. There is a register of officers' personal interests and in situations where an officer of the Council is so closely connected with a statutory function that it makes it impossible for them to put the Trust interests first then the Trust decision shall be taken by other senior officers who are not involved in matters which directly conflict with those of the Trust.

7. Charity Commission Guidance

The Charity Commission has published various guidance documents, [including the Essential Trustee Guidance \(attached as Appendix C\)](#) which are on its web site ([Charity Commission guidance - GOV.UK \(www.gov.uk\)](#)). Those which are most relevant to the position regarding the management of Barham Park Trust are included in these governance notes [in theas](#) Appendices.

There is a specific guidance note for Councillors: Councillor's Guide; to a council's role as charity trustee ([Appendix A](#)). This is produced jointly with the Local Government Association and the Charity Commission. It specifically addresses the situation where a local authority is itself the sole trustee of a charity. It is intended to help councils and council members fulfil their role as trustee responsibly and in accordance with charity law, and is designed to help the council avoid some of the financial and reputational pitfalls that can occur when things go wrong. Members and officers involved with the Trust are advised to read this and it is the principles and processes set out in that document which are followed by the Council in its dealings with the Trust.

[8th January 2013](#)

[5th September 2023](#) [Local authorities as trustees – Page 1 of 2](#)

[Charity Commission](#)

[The regulator for charities in England and Wales](#)

[Local authorities as trustees](#)

[This section provides guidance for local authorities which are sole corporate trustees for charities in their area.](#)

[Overview](#)

[Councillors' guide to a council's role as charity trustee](#)

[A quick guide jointly published by the Local Government Association and the Charity](#)

[Commission](#)

[Detailed guidance](#)

[Types of charities under local authority control](#)

[Checking who's the trustee](#)

[Understanding the council's relationship to a charity](#)

[Trustee checklist](#)

[The issues of which a trustee needs to be aware](#)

[Other governance checklists for local authorities](#)

[Checklists for topics such as fitness for purpose and planning for change](#)

[Property transactions, transfers of land and funds and consolidation of small funds](#)

[Guidance for local authorities on dealing with charity property correctly, with links to further resources](#)

See also:

[Recreation grounds and King George's Fields](#)

[Charities and Public Service Delivery \(CC37\)](#)

[Small charities guidance](#)

[The Boost Initiative](#)

[Read Aloud](#)

[Email Updates](#)

http://www.charity-commission.gov.uk/Charity_requirements_guidance/Specialist_guidance/07/01/2013-Local-authorities-as-trustees Page 2 of 2

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Councillors' guide: to a council's role as charity trustee

Introduction

This guide has

been jointly produced by the Local Government Association and the Charity Commission. It specifically addresses the situation where a local authority is itself the sole trustee of a charity. Many local authorities hold assets that are subject to charitable trusts. Often this is because a donor has left land or property to a council on condition it is used for a public purpose – such as a museum, art gallery or recreation ground. In such a situation the local authority has the status of charity trustee.

This brief introductory guide is intended to help councils and council members fulfil this role responsibly in accordance with charity law and to avoid some of the financial and reputational pitfalls that can occur when things go wrong. This guide does not address the wider set of issues relating to council staff or members being trustees of other charities or the relationship between local authorities and external charitable bodies more generally.

What is a charity?

A charity is an organisation or entity established exclusively for purposes which are capable of being charitable and which are for the public benefit. In England and Wales, charitable purposes are defined in the Charities Act 2011. Public benefit is explained in Commission guidance.

The people who serve on the governing body of a charity are called charity trustees. The beneficiaries might be the population of a local area, or a particular type of person, such as those suffering from a medical condition. Trustees have and must accept ultimate responsibility for directing the affairs of a charity, and ensuring that it is solvent, well-run, and delivering the charitable outcomes for the public benefit for which it has been set up. Trustees have a duty to act solely in the interests of the charity and its beneficiaries.

A corporate body such as a local authority can also be a charity trustee. Where a local authority is trustee, the property in question is often land or buildings intended for a particular purpose, but councils as

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trustees can also hold financial investments or other funds, often for the purpose of awarding grants to the community. In either case, it is essential to ensure that the assets are held and applied in accordance with the charity's particular purpose.

Charity law and the Charity Commission

There are about 180,000 registered charities in England and Wales with a collective income of around £50 billion a year. All charities must comply with charity law which defines charities and how they are run.

The Charity Commission is the independent regulator of charities in England and Wales. Its aim is to provide the best possible regulation of charities in order to increase charities' effectiveness and public trust and confidence in the work they do. Most charities with an income above £5,000 per year must register with the Commission.

The council's role as charity trustee

Local authorities are empowered by Section 130 of the Local Government Act 1972 to receive and hold gifts on charitable trusts. This may include money or assets left by donors, or charitable trusts created by ancient royal charters or Acts of Parliament.

Local authorities are well suited to being charity trustees; in particular councils are:

rooted in the local community;

open and transparent in their dealings; highly accountable for their actions; and have the high standards of public conduct embedded in the way they work.



Zoca/ Government Association



There are similarities between the rules and regulations that apply in discharging the functions of a local authority and those of a charity. While many of these underlying principles of prudence and transparency will apply equally to managing charitable trusts, there are also differences. An understanding of these differences is essential if local authority trustees are to perform this role effectively and with the minimum of risk. A number of councils have encountered problems in this area, most notably because:

councils, used to exercising wide discretion in the way they manage their assets, may not have fully recognised and complied with the restrictions on the use of charitable assets;

conflicts can arise between things that would be popular with the electorate and the obligations of the trustee, imposed by the terms of the charity;

where assets were left to the council many years ago, the precise terms of the charity, or even the fact that it is a charity, may have been forgotten or overlooked.

Fictional Case Study A — Southbeach Borough Council

Scenario: Southbeach Borough Council plans a major refurbishment of the sea-front Pavilion Rooms, to include a new art gallery, public meeting rooms and tourist information centre. The Council's solicitor has checked and the building was left to the Council in 1948 on charitable trusts to be used for "public gatherings, artistic or cultural or other activities for the benefit of the people of Southbeach."

Issues and promotion of tourism is not a legally charitable purpose, The Council has a conflict of interests between its desire as a public authority to promote tourism and its duty to act in the charity's interests.

As trustee, the Council must ensure that the purposes of the charity are fulfilled. Depending on the terms of the trusts perhaps a proportion of the charitable use could be accommodated within council premises elsewhere to allow a Tourist Information Centre to be incorporated in the refurbished Pavilion. Alternatively, if there is genuinely spare capacity within the Pavilion, perhaps a Tourist Information Centre could be accommodated through a commercial lease from the charity to the Council. In either case, Charity Commission advice and authorisation are likely to be needed.

Fictional Case Study B — Touchline District Council

Touchline District Council is trustee of a recreation ground in an out-of-town location which is little used. It was bequeathed in 1967 by a local citizen as a public recreation ground within the meaning of the Recreational Charities Act 1958. Last year the Council leased the site to the Touchline Football Club to facilitate their expansion plans and the Club has now laid out pitches, spectator areas and has built a substantial Clubhouse.

Issues and solutions: Under the Recreational Charities Act the facilities must be available to members of the public at large. Accordingly, permitting the exclusive use of the grounds by one club would not meet this requirement. In granting the lease, the Council has acted outside its powers and in breach of the charitable trusts. This situation may be complicated to resolve and local feelings are likely to run high, but open public access must be restored as soon as possible on this site or a suitable replacement provided by the Council. Charity Commission advice and authorisation may be required, particularly if the Council is considering an exchange of charity land for land it holds in a corporate capacity.

Managing

trusts safely

Local authorities have the skills, public knowledge and professional resources to manage charitable trusts very effectively but care needs to be taken to ensure that unnecessary problems do not arise. Councils and council members should be aware of the following principles:

For a body to be a charity, it must be independent, i.e. it must exist and operate solely for charitable purposes, not as a means of carrying out the policies or directions of the local authority.

Where a local authority is a trustee of a charity, it is the corporate body, acting in accordance with its usual procedures, which is "the trustee." While ongoing management may be delegated to officers, responsibility for decision-making and oversight rests with the councillors.

The terms of the charity must be clearly understood. Nearly all problems that occur stem from a lack of clarity regarding these terms, or indeed failing to recognise that a charity exists in the first place. If there is any doubt about the terms of a charity or how they should be interpreted, appropriate advice should be sought, for example from legal advisors or from the Commission.

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The management of the charity should be kept separate, as far as possible, from the business of the local authority. Depending on the size and circumstances of the charity, it may make sense for a committee of councillors to be allocated this task. It must not be forgotten, however, that responsibility continues to rest with the whole council.

Equally the finances of the trust must be kept separate from those of the council. The assets must be accounted for separately and income and expenditure should be channelled through discrete cost centres. The local authority may top up the finances of the trust but no funds should pass from the trust into the council's own accounts — although the council may, depending on the circumstances, recover the costs of administration.

If the original terms of the charity can no longer be realistically followed, because circumstances have changed, the local authority should approach the Commission to see if the charity's governing document can be amended or updated. The Commission can advise on the most appropriate way of doing this.

The Commission's registration and reporting requirements must be observed. For example, all charities must produce annual statements of accounts under charity law. Depending on the financial size of the charity, it may have to register with the Commission, or be subject to higher levels of accounting scrutiny.

If any issues arise about whether the terms of the trust have been properly followed, the local authority should contact the Commission and work with them in finding a solution.

Fictional Case Study C — Heritage City

City Council

Council

Scenario: Heritage City Council is trustee of a charity whose investments include a number of properties, with the income applicable for charitable purposes that benefit the inhabitants of the City. One large building has become semi-derelict and a developer has offered the Council £3 million for the site which it wishes to convert to a night club and casino. The Council feels obliged to accept the windfall but local residents are outraged.

Issues and solutions: As trustee the Council must act exclusively in the best interests of the charity. It must make its decision based on consideration of the charity's interests alone. The trustee must manage its conflict of interests and not take account of factors that are irrelevant to the charity (such as the Council political interests). It must adequately inform itself before making a decision.

Taking appropriate independent professional advice, the trustee should consider whether the offer of £3 million represents the best sale price that the building is likely to achieve. The property should be marketed unless the charity's professional advisor advises otherwise. The trustee could consider whether it should take account of any risk to the charity's reputation. There may be a range of issues on which the trustee might require the Commission's advice, depending on the particular trusts on which the building is held.

In this case, however, the conflict of interest may be unmanageable because of the rules against self-dealing; the Council would have to act as both charity trustee and planning authority. The Council might need legal authority from the Charity Commission either to act notwithstanding the conflict of interest, or to bring in an independent "trustee" to act for the charity for this transaction (which might be preferable in the circumstances).

The trustee might have found it helpful to have a pro-active asset management plan in place. This might have increased the range of potential options for maximising the return on the charity's assets.

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Useful Guidance

Available from the Charity Commission website

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The Essential Trustee (CC3)

Local Government
Charity Toolkit

Sales, leases, transfers or
mortgages: What trustees need to know - Charities Act 2006:
What Trustees Need to Know - a plan E

en.gov.uk

Commission and the Office of the Third Sector

about disposing of charity land (CC28) - id
published jointly by the Charity

Public benefit guidance

3

Ten tips for councils in their roles as charity trustee

1. Ensure that any charitable assets, for which the local authority is the trustee, are clearly identified.
2. Make sure you are clear about the objects of the charity set out in its governing document as these dictate how any such asset may be used, in accordance with charity law.
3. Make sure that any charitable assets, for which the council is the trustee, are managed independently in accordance with their charitable purpose and any restrictions in the governing document.
4. Recognise that charity trustees have a duty to be prudent and to act solely in the best interests of the charity.
5. Ensure there is a clear line of responsibility for the management of all charities for which the local authority is the trustee.
6. Ensure that there are clear guidelines for officers and councillors about roles, responsibilities and decision making in the administration of charities.

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~~7. Ensure you have a clear process for identifying and managing any conflicts of interest that arise where the local authority is the trustee of a charity.~~

~~8. Actively manage any charity for which the council is the trustee—keeping records up to date, submitting the necessary returns to the Charity Commission and reviewing investments, risks and opportunities on a regular basis.~~

~~9. Periodically review whether it continues to be in the best interests of the charity for the local authority to remain as trustee.~~

~~10. Follow Charity Commission guidance (and obtain appropriate advice) if you are planning to dispose of charity land, alter the charitable purpose or other terms of the governing document, or take action where trusts have become dormant.~~

~~*with thanks to Richard Eggington, Chief Executive, Stratford upon Avon Town Trust~~

in England and Wales

[Types of charities under local authority control](#)

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[Charity Commission](#)

[The regulator for charities](#)

[Types of charities under local authority control](#)

[Charities where the local authority is trustee of a public facility](#)

[A public facility could include:](#)

- open spaces, such as recreation grounds, playing fields (including some King George's

- Fields), public gardens, common land, allotments and car parks
- cultural facilities, such as concert halls, art galleries, museums and buildings of architectural or historic interest
- other civic buildings, such as reading rooms, town halls, libraries and leisure centres
- war memorials

This is not an exhaustive list and nor will all public facilities be charitable property. They may be part of the local authority's statutory property. You will need to check the basis on which the local authority acquired control of the property to see whether it is held on charitable trusts.

It is important to know if the property is charity property, or not, because that will affect how the local authority can deal with it, for example, if it wants to develop the property or sell it. See [Property transactions, transfers of land and funds and consolidation of small funds for more information](#).

[Charities where the local authority is trustee of a fund including appeals](#)

http://www.charity-commission.gov.uk/Charity_requirements_guidance/Specialist_guidance... 07/01/2013

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~~These include school prize funds and grant-making funds.~~

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Checking who's the trustee

2

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Charity Commission

The regulator for charities

Checking who's the trustee

You're a councillor or a council employee. You attend a charity's trustee meetings or deal with the charity's day-to-day administration.

● Are you there because you are a trustee?

● Or are you carrying out the charity's business on behalf of the council because it is the trustee of the charity?

● Or is there some other reason for your involvement, perhaps representing the council in another capacity, eg as a major funder of the charity?

It's important to understand your role and what its responsibilities and liabilities might be. These questions can help you to check.

1. Has the Council the right to appoint one or more trustees to the charity's board?

If the Council has appointed you as a trustee:

• you, rather than the Council, have responsibility for the administration of the charity

• you will be personally liable for the decisions you make

in England and Wales

~~• you must act in the interests of the charity, not those of the Council~~

~~2. Does the charity's governing document specify that the Council is the trustee?~~

~~If the Council is itself the charity trustee:~~

~~• you are not a trustee and do not have the responsibilities or liabilities of a trustee~~

~~• you may be managing the charity's affairs on the Council's behalf~~

~~If the Council is only the custodian trustee, then~~

~~• it does not have the responsibilities of a charity trustee~~

~~• it must act only on the directions of the managing trustees (eg the management committee of a village hall) unless to do so would create a breach of trust~~

~~Checking who's the trustee~~

~~Page 2 of 2~~

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~~3. Has the charity voluntarily invited you as a representative of the Council to inform/observe its meetings?~~

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~~You have no legal responsibility for the charity. You cannot make decisions relating to its administration nor vote at its meetings.~~

~~http://www.charity-commission.gov.uk/Charity_requirements_guidance/Specialist_guidance 07/01/2013~~

See also:

● [The Essential Trustee: what you need to know \(CC3\)](#)

● [A guide to conflicts of interest for charity trustees](#)

● [What are holding trustees and custodian trustees?](#)

● [Read Aloud](#)

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<http://www.charity-commission.gov.uk/Charity-requirements-guidance/SDecialist-211...-07/01/2013>
[Other governance checklists for local authorities](#)

[Charity Commission](#)

[The regulator for charities](#)

[Other Governance checklists for local authorities](#)

[Good governance means having the right systems in place for running your charity. These checklists can help you.](#)

in England and Wales

[Checking the charity is fit for purpose – reviewing the charity's aims and administration to see if they are still relevant and effective](#)

[Managing and planning for change – considering the charity's future](#)

[Managing small funds – reviewing small trust funds](#)

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Quality Commission

The regulator for electricity in England and Wales

Quality Commission

Quality Commission is a public body that regulates the quality of electricity supply in England and Wales.

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in England and Wales

Checking the charity is fit for purpose

Charity Commission

The regulator for charities

Checking the charity is fit for purpose

Charities are created to meet particular social and economic needs. These needs are likely to change over time and charities should adapt to continue being relevant and effective to those they are meant to serve.

These questions help you to review whether your charity is still fit for purpose:

"1. Is the charity still capable of carrying out its objects?"

C "Are there still enough people who can properly benefit from the charity? Is the nature of the benefit/service offered by the charity relevant to modern needs?"

"2. Could the charity's assets be more efficiently/effectively used in conjunction with another similar charity?"

"Is the scale of the charity's assets too small to achieve sufficient impact on their own? Is the cost of administering the assets out of proportion to the size of those assets?"

"3. If the charity has permanent endowment capital, would it be useful to be able to spend all or some of the capital as income?"

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~~"Eg if the charity is small and you want to wind it up."~~

~~"4. Are the trustee arrangements still appropriate?"~~

~~"Is it still in the charity's interest for the charity trustee/custodian trustee to be the local authority? Would it be useful to have some/all independent trustees? Would the charity benefit from having user trustees?"~~

~~"5. Does the charity have all the administrative arrangements and powers it needs?"~~

~~"Does the governing document allow you to do the things that you need to do to run the charity effectively?"~~

~~"6. Does the charity have the appropriate legal form?"~~

~~"If it is an unincorporated body, would it be suitable to set up a new charity that is a corporate body to which its assets could be transferred?"~~

See also:

~~● [The Hallmarks of an Effective Charity \(CCI 0\)](#)~~

~~● [The Essential Trustee \(CC3\)](#)~~

~~● [Good Governance: a Code for the Voluntary and Community Sector](#)~~

~~● [Read Aloud](#)~~

~~<http://www.charity-commission.gov.uk/Charity-requirements-guidance/Specialist-guidance-07/01/2013>~~

~~[Checking the charity is fit for purpose](#)~~

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<http://www.charity-commission.gov.uk/Charity-requirements-guidance/Socialist-guidance-07/01/2013/Managing-and-planning-for-change-checklist>

[Charity Commission](#)

[The regulator for charities](#)

[Managing and planning for change checklist](#)

If you plan for change and manage it effectively then you will avoid problems. Here are questions to help you consider your charity's future.

1. [Have you considered the future sustainability of the charity you manage – balancing what is needed now with what will be needed in the future?](#)

2. [Have you identified the mix of skills, knowledge and experience which the charity needs?](#)

3. [Have you reviewed whether your charity's governing document gives you the powers you need to achieve the charity's purposes and to manage resources effectively?](#)

07/01/2013

4. Have you started to review and assess the risks faced by the charity in all areas of work and to plans for the management of those risks?

5. Have you considered whether collaborations and partnerships with other organisations could improve efficiency, the use of funds and the better delivery of benefits and services to your charity's users?

6. Have you reviewed whether the charity's purposes as set out in the governing document are up to date and relevant to the needs of your charity's users?

7. Do you identify emerging trends in the environment in which your charity operates and use this information as part of your planning processes?

8. Have you ensured financial sustainability by managing cash flow and monitoring and reviewing financial performance during the year?

9. Have you considered the sources of your charity's income and have a strategy in place to raise the funds it needs – diversifying sources of income as far as possible?

10. Are you complying with your legal obligations (and best practice), as set out in the Statement of Recommended Practice (SORP), to produce annual accounts and a report which includes an explanation of what the charity has done for the public benefit during the year?

See also:

● [Milestones: Managing key events in the life of a charity \(RS6\)](#)

● [The Hallmarks of an Effective Charity \(CCI 0\)](#)

● [Avoiding problems in running your charity \(risk management\)](#)

● [Read Aloud](#)

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Wales

[Property transactions, transfers of land and funds and consolidation of small funds](#)

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[Guidance for local authorities which are sole corporate trustee of charitable funds and assets and which are considering changing the way these assets are managed.](#)

[Property transactions – information for local authorities on selling and leasing charity land with links to further guidance](#)

[Transfer of assets \(land and buildings\) – what local authorities need to think about when considering transferring charitable assets to another body](#)

[Consolidating/transferring small funds – options available to consolidate several small charity funds](#)

[Making mergers work: Helping you succeed – the Commission's mergers toolkit](#)

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Finance Commission

The Commission for Finance in England and Wales

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Wales

~~Property transactions~~

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~~Charity Commission~~

~~The regulator for charities in England and~~

~~Property transactions~~

~~All charities have to follow rules for managing transactions involving the disposal of an interest in land eg selling or leasing. These rules are to make sure that the charity's financial interests are protected and that the services it provides to its users are able to continue, as far as possible.~~

~~Many charity transactions involving a disposal of an interest in land do not require our authority. However, all trustees have a legal duty of care towards their charities. We strongly recommend that trustees should consider properly all reasonable options when making decisions that will have a significant effect on charity land and its use. Our general guidance on dealing with property explains when our authority is required and highlights issues to consider when selling or buying land.~~

~~Specific issues for local authorities which are charity trustees~~

~~1. Conflicts of interests~~

~~Local authorities also have to manage the conflicts of interest that can arise because of the different 'hats' they may be wearing – for example, as land holding charity trustees, as the provider of statutory amenities, and as planning authorities.~~

~~Guidance on conflicts of interest~~

2. Consulting the local community

Where a local authority is the trustee of charity land, there is often another important factor to take into account – the voice of local inhabitants. This is because the land is often a facility intended for local community use eg a recreation ground or public building. Proposals for a major change in the way the land is used, or for the sale or lease of a significant part, or all, of the land, will have an impact on its use by the public. There are likely to be strong local views.

We encourage trustees to review their charity's purposes regularly to check that they are still relevant to the needs of its users. A local authority as a charity trustee is entitled to consider the suitability and the viability of the charitable property it manages, and to make proposals for the future of charity land and other assets.

However, we know from our casework that, if such proposals are not managed carefully, they can create problems for the local authority, including financial loss and reputational risk.

See also:

<http://www.charity-commission.gov.uk/Charity-guidance/Specialist>

Property transactions

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● Sales, leases, transfers or mortgages: What trustees need to know about disposing of charity land (CC28)

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[Transfer of assets 4](#)

[Charity Commission](#)

[The regulator for charities in England and](#)

[Transfer of assets \(land and buildings\)](#)

[The general principle is that charity property being transferred must:](#)

- [continue to be charity property](#)
- [continue to be used for similar purposes to those for which it was originally used](#)

[However, a charity cannot generally transfer its property to a non-charitable body or for a non-charitable purpose — eg charity land could not be transferred to a local authority to form part of its statutory property, even if it were to be used for purposes similar to those formerly undertaken by the charity.](#)

[Here are some things to think about before transferring charity assets to another body:](#)

1. Have you checked that the land is a charitable asset, and is not part of the Council's statutory property?

2. Is the land you want to transfer 'designated land'?

This is land which was acquired to be used for the purposes of the charity. If you have such land, you can't use the simplified process of the Charities Act for transferring land, and you usually can't change the use of the land without the Commission's involvement, even if you transfer it to another body to manage.

3. Do you need to manage a possible conflict of interest arising because the Council is both the charity trustee and a local authority with an interest in the land in its statutory capacity?

4. Have you involved the local community in the proposals to transfer the land?

5. Is the transfer the best way of serving the charity's beneficiaries in future?

6. Is the body to which the land is to be transferred a charity?

If not, that body would have to hold the property on charitable trusts separate from its other assets.

7. Does the body receiving the land have sufficient resources to manage and maintain the land?

8. Have you considered what legal methods are open to you to carry out the transfer?

(land and buildings)

Page of 2

[Transfer of assets 2](#)

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~~You may be able to use a simplified process if the land is not 'designated land' (see question 2). You should check to see if the charity's governing document gives you power to transfer the trusteeship of the charity. You might need a Scheme from the Commission in some circumstances eg:~~

- ~~• if there is no clear power to permit the transfer if the land is designated land and its use will be changed if the receiving body isn't a charity if the transfer involves innovative methods eg a lease-back arrangement~~

[See also:](#)

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~~[Transferring property to another charity – guidance on the simplified process for small charities to transfer land and funds](#)~~

~~[Sales, leases, transfers or mortgages: What trustees need to know about disposing of charity land \(CC28\)](#)~~

~~[Asset Transfer Unit – provides guidance and support concerning the transfer of under-used land and buildings to community ownership and management](#)~~

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Charity Commission

The regulator for charities in England and Wales

Disposals of land and buildings - recreation ground charities

(Infosheet SCUIO)

There are several questions that trustees often ask about disposal of all or part of the recreation ground held for their charity. The following may be of some assistance in helping you to decide whether or not you, as the trustees of the charity, may proceed with the disposal you are proposing.

More complete explanations of what is required for disposals in general can be found in our guidance Sales, leases, transfers or mortgages: What trustees need to know about disposing of charity land (CC28)

If you cannot find the answer you can use our online forms to contact us.

Do we need the Commission's consent before selling or leasing all or part of our recreation ground?

In the majority of cases the land held by recreation ground charities must be used for a particular purpose or for particular purposes of the charity. The following guidance covers most situations.

Situation A

For many recreation ground charities, the effect of selling or leasing all or part of the ground without replacing it will mean that the trustees will no longer be able to carry out the charity's

~~purposes. It is normally possible to assess this by looking at your charity's governing document (which is likely to be in the form of a trust deed or a Charity Commission Scheme).~~

~~If it is clear from that document that:~~

~~• the only purpose for which the charity is set up is the provision of a recreation ground; and~~

~~• there are no provisions enabling you to sell or lease the charity's property and use the proceeds for other purposes; and~~

~~• there is no power of amendment which would allow you to change the purposes or objects of the charity;~~

~~you will need to approach us in good time before any sale or lease takes place. This is because you will have no power to dispose of the property and you will need to apply to us for a Scheme to~~

~~provide the necessary power and new purposes.~~

~~<http://www.charity-commission.gov.uk/Charity> 211...~~

- ~~• Our guidance Changing your charity's governing document (CC36) explains what a Scheme involves. You will also need to comply with the provisions of Part 7 of the Charities Act 2011. Because the governing document states that the land must be used for the purposes of a recreation ground, you will be required to give public notice of the disposal – s. 121 of the Charities Act 2011. Details of these various requirements can be found in Sales, leases, transfers or mortgages: What trustees need to know about disposing of charity land (CC28).~~

~~Before approaching us, you should be able to explain:~~

- ~~• why it is better for the charity that you should dispose of the land. For example, why the land is no longer suitable to serve the purposes of the charity;~~
- ~~• how the disposal will be of benefit to the charity or will enable you to achieve the purposes better;~~
- ~~• if you are not going to replace the land, why the purposes of the charity can no longer suitably be served by providing land for use.~~

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~~If you are replacing the land with other land as suitable or more suitable for the purpose(s) of the charity, the purposes of the charity are not altered as the provision of the facilities provided by the charity will continue to exist, albeit on a different ground in a different location.~~

Situation B

~~If you already have the power to dispose of all or some of the property (or you have a power of amendment which will allow the trustees to give themselves such a power) then any disposal must proceed in accordance with the requirements of Part 7 of the Charities Act 2011. This sets out what the trustees must do. In our guidance Sales, leases, transfers or mortgages: What trustees need to know about disposing of charity land (CC28) there is a section explaining the requirements.~~

~~Our consent is only needed if the disposal is to be to a connected person or if you cannot comply with the requirements of Part 7 of the Charities Act 2011 or if you are not intending to replace land designated to be used for the purposes of the charity.~~

~~A section of our guidance in CC28 explains who a 'connected person' might be. Very broadly a connected person covers anyone or any organisation that has a link with the charity which may give rise to conflict of interest. Common examples include trustees or employees of the charity, their close relatives, and organisations over which people on these categories can exercise some influence.~~

~~When you approach us for consent you must show us that:~~

- ~~• you are securing the best terms reasonably obtainable in the circumstances and no better offer is likely to be received from a third party; and that you have advertised widely enough to ensure this is the case (For example, we may need to see a copy of a report for valuation purposes and possibly copies of adverts you have placed in appropriate publications.); and~~
- ~~• any conflict of interest is properly managed and the transaction is open and transparent, thereby avoiding the risk of challenge or criticism (For example, if the connected person is a~~

~~<http://www.charity-commission.gov.uk/Charity-guidance>~~

~~trustee they may be required by the governing document of the charity to withdraw from any meetings where the transaction is discussed. We may need to see copies of the minutes of any meetings to ensure this happened.)~~

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~~We will then consider whether we can make an Order to give our consent for the disposal to proceed or, in the case of non-replacement of designated land, whether a Scheme will be necessary.~~

~~What sort of arrangements allowing other organisations to use our recreation ground would the Commission accept?~~

~~It is quite common for sports clubs to ask recreation ground charities for permission to use part of the ground on a regular or permanent basis. In such a case you must be satisfied that this will not interfere with the charity's object of providing a recreation ground for the local inhabitants. If such use will prevent reasonable public access to all or part of the ground then it is likely that the arrangement will not be in the best interests of the charity, that is, it will hinder the furtherance of the purposes of the charity.~~

~~Examples:~~

~~• If a local football club wishes to use as of right the ground one afternoon a week during the winter season for matches, the club may come to an arrangement allowing the club to prepare suitable holes for posts to be slotted in on match days and have reasonable time available to mark out a pitch. If this does not interfere with public access for the rest of the time then this may be acceptable if you, as trustees of the recreation ground, ensure that the club's usage is subject to a formal agreement (such as a licence or hire agreement) and that the club pays the going rate for its usage. The trustees of the recreation ground will need to take care that the arrangement does not become extended resulting in the football club taking over the ground for more and more of the time so that the public is increasingly excluded from enjoying the facility.~~

~~• The trustees may decide that the recreation ground is large enough so that, even if you were to allow the football club permanent use of part of it, there would still be sufficient space for the public to use. The part to be occupied by the club would be surplus to the requirements of the charity. In such a situation, you may well need a formal document, perhaps taking professional advice on the terms of the use by the club. The earlier advice on selling and leasing applies. • If the whole ground were used only by a sports club and no other group or individuals wanted to make use of it, then the charity would not be achieving its objects by the continued retention of the ground. The ground should be sold or let as a whole so that the proceeds could be used to further the charity's objects in some other way, for example by obtaining other land to set up as a new recreation ground in a new location. Any such sale or lease would need to be considered in the light of the answer to the first question above and would have to be on market terms to the buyer who made the best offer.~~

(SCU 10)

Can we build facilities such as a sports hall or cycle track on the charity's playing field or recreation ground?

When considering any proposals which would entail giving over all or part of a playing field or recreation ground to a single interest or 'specialist' activities, you must be satisfied that implementation of the proposals would not interfere with the charity's object of providing a playing field or recreation ground for the local inhabitants generally, if that is the object of the charity. If the end result would prevent use by the public generally in accordance with the object of the charity on a permanent basis, then it may be that the proposals are not in the best interests of the charity.

You must also consider whether the development of the property would fall within the objects of the charity by checking the charity's governing document and any other deeds relating to the land to see if there is any restriction on the use of the property.

For example, sometimes trustees are prohibited from erecting any buildings on the land or from using it for any purpose other than as an open space.

If you can put up a building on the land, you will then need to consider who is allowed access to the building. If the building is to be a pavilion for the sole use of a sports club using the ground and no members of the public are to be allowed to use the facility then that may be too restrictive and not fulfil the trusts of the charity. On the other hand, the pavilion or club house might be available for use by anyone using the ground in accordance with the object(s) of the charity.

Can we grant leases or licences to owners of land adjoining our recreation ground to allow them access to their homes?

If the recreation ground is fully used, the answer will generally be "No", because any proposals along these lines impinge on the use of the ground by the public. As with any other property transaction you must be satisfied that the proposals are in the best interests of the charity. If there is some reason why it is good for the future of the ground to implement proposals along these lines, you, as trustees, should consider:

• why the adjoining owners need such access and whether it and how much it increases the value of their properties;

~~• whether the use of the recreation ground for recreational purposes would be affected; and~~

~~• whether the value of the recreation ground would be affected.~~

~~If a case could be made for granting access then you would have to bear in mind that, given your duty to obtain the best price reasonably obtainable, you would have to charge not just a market price but as much as the adjoining owner was prepared to pay.~~

~~Even if the access is to be by way of licence only, it would probably be unwise to allow the neighbours access over the charity's land without a formal document entered into after taking and considering the appropriate professional advice since they could acquire rights which you did not intend. You should take professional advice from at least a solicitor and a surveyor.~~

~~<http://www.charity-commission.gov.uk/Charity> [guidance/SocialIRt](#)~~

(SCU 10)

~~Are there any considerations that we need to take when we know the land involves Miners' Welfare property?~~

~~In cases involving Miners' Welfare property or property which was formerly Miners' Welfare property, there may be some kind of "claw back" provisions where all or a percentage of the proceeds of sale are returned to the donor organisation if the land is sold at any time or on the dissolution of the charity. In these cases you should take independent legal advice to ensure you fulfil your obligations as set out in the governing document.~~

Generally

~~We aim to give trustees of charities much more freedom in taking straightforward but important decisions, in consultation with their professional advisers if necessary, freeing them from the need always to justify their actions to us in detail but ensuring they comply with the requirements of the law. However, if, having read this information sheet and the guidance recommended, the proposals for disposal are outside the scope of what we have covered and you are still in doubt, you should use our online forms to contact us.~~

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Disposals of land and buildings - recreation ground charities

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Commission

charities in England and Wales

[Good governance](#)

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[Charity](#)

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[The regulator for](#)

[Good governance for charities](#)

[Our key guidance The Hallmarks of an Effective Charity sets out six standards that will help trustees improve the effectiveness of their charity, and uphold the principles that our regulatory framework exists to support. This section sets out our guidance and other resources to help trustees translate these principles into good practice in governance.](#)

[Basic principles of good governance](#)

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[Hallmarks of an effective charity – the underlying principles of running a charity effectively](#)

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[Good Governance: a Code for the Voluntary and Community Sector – a practical and easy-to-use guide to help charities develop good practice](#)

[Recruiting trustees](#)

[I want to find new trustees – our guidance on the things you need to think about before recruiting new trustees, plus links to useful resources](#)

[Finding new trustees a 'start to finish' guide to help charities to recruit new trustees effectively and increase the range of skills and experience on their board](#)

● [Involving young people in running a charity – how to bring the experience, perspective and enthusiasm young people offer to the board of your charity](#)

● [Users on Board: Beneficiaries who become trustees – explains the issues that can arise when beneficiaries of a charity become trustees](#)

● [Trustee expenses and payments – explains the restrictions on the extent to which charity trustees may receive remuneration and the circumstances where payments may be made](#)

[Other governance resources](#)

● [Charities and the Equality Act – what the Equality Act means for charities which support specific groups of people](#)

● [Managing conflicts in your charity – explains our approach to disputes and where we can and cannot help](#)

● [Conflicts of interest – an introduction and links to further guidance to help trustees identify and manage potential conflicts of interest.](#)

● [Changing your charity's Governing Document – explains the various ways in which trustees can amend and update their charity's governing document themselves, and where we can help in those cases where trustees don't have the power to make amends](#)

● [Good governance](#) 2

● [Appointing Nominees and Custodians – explains the provisions for the appointment of nominees and custodians brought in by the Trustee Act 2000 and the requirements for trustees choosing to exercise these powers](#)

● [Incorporating Charity Trustees – provides information about the incorporation of trustees under the Charities Act 2011](#)

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[Charities and Meetings](#) – guidance on the law and good practice when arranging charity meetings

[Charities and Insurance](#) – explains the various forms of insurance, and the circumstances in which trustees may need to consider obtaining them

[Questions to consider at key stages in the life of a charity](#) – a quick reference checklist of questions trustees should consider as their charity develops, with links to guidance and resources we provide

[Incorporating an existing charity as a company](#) – guidance on changing the status of a charity from unincorporated to some form of incorporated structure with limited liability

[The Companies Act 2006](#) – explains the impact of the Act for charitable companies

[Providing alcohol on charity premises](#) – explains the legal and practical problems that can arise when selling alcohol from charity premises

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<http://www.charity-commission.gov.uk/Charity>

[Conflicts of Interest Landing](#)

[Charity](#)

[The regulator for](#)

[Conflicts of Interest](#)

A conflict of interest is any situation where either of the following may influence, or appear to influence, a trustee's decision making:

[the trustee's personal interests](#)

[interests or loyalty that the trustee owes to another person or body](#)

[For example:](#)

[if a trustee is an electrician and the charity wants to pay them for rewiring their property](#) [if the trustees are making a decision that affects another organisation that one of them is involved with](#)

[if a trustee has been appointed by a local authority and the charity is negotiating a contract with that local authority](#)

It's important that trustees identify and manage any conflicts of interest that arise. If a situation looks like a conflict of interest, it may be best to treat it as one.

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~~You can find out more information about how to do that in this section.~~

~~A guide to conflicts of interest for charity trustees – helps trustees of all charities to identify and manage conflicts of interest~~

~~Trustee expenses and payments (CCI 1) – gives guidance on when trustees may be paid, and how to manage the arising conflicts of interest~~

~~Conflicts of interest and the Companies Act 2006 – questions and answers – advises directors of charitable companies about conflict of interest provisions in company law~~

~~Conflicts of interest guidelines for arts charities – for the trustees of arts charities, drawn up jointly by the Commission and the Department of Culture, Media and Sport (DCMS)~~

~~Conflicts of interest checklist – to help trustees of all charities manage conflicts of interest~~

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<http://www.charity-commission.gov.uk/Charity-requirements>

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[A guide to conflicts of interest for charity trustees](#)

[\(Version 02/1-1\)](#)

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Common terms

~~Governing document means any document which sets out the charity's purposes and, usually, how it is to be administered. It may be a trust deed, a constitution, memorandum and articles of association, rules, conveyance, will, Royal Charter, Scheme of the Commissioners or, in relation to an appeal, the published terms of the appeal inviting donations.~~

~~Trustees—means charity trustees. Charity trustees are the people who are responsible for the general control of the management of the administration of the charity. In the charity's governing document they may be called trustees, managing trustees, committee members, governors or directors, or they may be referred to by some other title.~~

~~Trustee board—means the charity's governing body. This may be called the management committee, executive committee or board of directors, or may be referred to by some other title.~~

~~<http://www.charity-commission.gov.uk/Charity-reform-2007/01/2011>~~

~~1. Who is this guide for?~~

~~This guide is for trustees of all charities, regardless of the size or type of charity. The guide seeks to help trustees identify and manage conflicts of interest.~~

~~A number of our existing publications contain information about conflicts of interest in particular situations, such as Trustee expenses and payments (CCI 1). The intention of this guide is not to look in depth at these particular situations, but to provide an overview of conflicts of interest, and how to deal with them, and to signpost sources of further information, provided both by the Commission and by other organisations.~~

~~This guide sets out the legal and regulatory requirements in relation to conflicts of interest and offers advice to trustees on complying with these requirements. There is also a checklist to help trustees follow the correct procedures when dealing with a conflict of interest.~~

~~Whilst this guide applies to the trustees of all charities, directors of charitable companies are also subject to the provisions of the Companies Act 2006 in relation to conflicts of interest, and are required to declare any interest in contracts or proposed contracts. That Act also limits or does not allow certain types of conflict of interest, such as sales of property or loans from the charitable company to directors of that company.~~

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Companies House provides a wide range of guidance for company directors
www.companieshouse.gov.uk

2. What is a conflict of interest and what issues does it raise?

A conflict of interest is any situation in which a trustee's personal interests, or interests that they owe to another body, may (or may appear to) influence or affect the trustee's decision making.

It is inevitable that conflicts of interest occur. The issue is not the integrity of the trustee concerned, but the management of any potential to profit from a person's position as trustee, or for a trustee to be influenced by conflicting loyalties. Even the appearance of a conflict of interest can damage the charity's reputation, so conflicts need to be managed carefully.

3. What does the law say about conflicts of interest?

The law states that trustees cannot receive any benefit from their charity in return for any service they provide to the charity unless they have express legal authority to do so. "Benefit" includes any property, goods or services which have a monetary value, as well as money. This legal authority will come either from a clause in the charity's governing document or, where there is no adequate clause in the governing document, from us or the Court.

The rule that a trustee cannot receive any benefit from his or her charity without explicit authority is based on the principle that trustees should not be in a position where their personal interests and their duty to the charity conflict, unless the possibility of personal benefit from which the conflict of interest arises is transparent. Transparency is achieved by requiring explicit authorisation of the benefit, and by ensuring that any particular conflict of interest is properly and openly managed.

It is the potential, rather than the actual, benefit from which the conflict of interest arises which requires authority. In order to avoid a breach of trust and to ensure transparency, authority is

A guide to conflicts of interest for charity trustees

<http://www.charity-commission.gov.uk/John;tw>

requirements guidance/Charity.gov.uk 07/01/2013

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required where there is a possibility of benefit. This will avoid accusations of impropriety, which could in turn have a damaging effect on the charity's reputation.

Not all benefits enjoyed by trustees need to be authorised by the governing document, the

Commission or the Courts. It is perfectly acceptable to repay reasonable out of pocket expenses to trustees. Any costs that are necessary to allow a trustee to carry out his or her duties as a trustee can be classed as expenses and recovered from the charity or met directly by the charity. This may include travel costs and the cost of providing care for a dependent whilst attending a trustee meeting or when undertaking trustee business. It may also include the cost of providing documents in Braille or on audio tape for a trustee who is blind, or providing special transport, equipment or facilities for any trustee with a disability

Benefits that are available to all, or that are of inconsequential or little measurable value, will not normally need to be authorised, such as the use of the village hall facilities by one of the village hall trustees. This would not need to be authorised, as the facilities are available to all members of the local community, which includes the trustees.

Where a trustee has a conflict of interest or loyalties on a particular issue, but there is no potential for profit, the governing document may still require this trustee to declare his or her interest and take no part in deciding that issue. Any requirement of this kind must be strictly complied with.

4. How do I identify a conflict of interest?

Conflicts of interest may come in a number of different forms:

- direct financial gain or benefit to the trustee, such as:
 - payment to a trustee for services provided to the charity
 - the award of a contract to another organisation in which a trustee has an interest and from which a trustee will receive a financial benefit
 - the employment of a trustee in a separate post within the charity, even when the trustee has resigned in order to take up the employment
 - indirect financial gain, such as employment by the charity of a spouse or partner of a trustee, where their finances

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are interdependent, non-financial gain, such as when a user of the charity's services is also a trustee, conflict of loyalties, such as where a trustee is appointed by the local authority or by one of the charity's funders, or where a friend of a trustee is employed by the charity

Further information about the most frequent situations where conflicts of interest arise can be found in section 8.

We expect trustees to be able to identify conflicts of interest when they arise and to ensure, if they receive a material benefit as a result of the conflict of interest, that the benefit is authorised. We will provide authority where there are clear advantages to the charity.

If there is no material benefit to a trustee, no authority will be required, but the trustees will need to ensure that the conflict of interest is properly managed. Further information about managing

conflicts of interest can be found in section 7.

<http://www.charity-commission.gov.uk/Charity-Trustees>

Where we find, or are alerted to, an unauthorised benefit, the action we take will depend on the extent of the benefit and conflict of interest and the impact which it has on the charity. We will also take into account other factors, such as the reason why the trustees did not obtain authority. We are likely to be more supportive if the trustees can show that the failure to obtain authority was an oversight. However, we will generally not take a sympathetic line where we have previously advised the trustees that the benefit needs to be authorised or where a solicitor is acting for the trustees.

Where the arrangements are in the interests of the charity we will give advice on the management of conflicts of interest and the authorisation of future benefits to trustees. However, we may investigate in some cases, with the possibility that we might use our statutory powers to protect the charity. These include where trustees appear to have placed their personal or other interests ahead of those of the charity in order to derive significant benefit at the charity's expense, and where they have deliberately ignored the requirements of the law or of previous advice.

More information about how we evaluate complaints made to us can be found in [Complaints about charities \(CC47\)](#).

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5. What do I do if I identify a conflict of interest affecting a trustee?

If the trustee board has identified a conflict of interest, the first thing to do is to find out whether or not the trustee or trustees involved will receive a material benefit from the conflict of interest and, if so, whether the benefit is authorised.

The first place to look to see if the necessary authority exists is the charity's governing document. If the governing document does provide authority, the trustee board must ensure that the authority is used appropriately, and that the necessary arrangements are in place to manage the conflict of interest.

If the governing document does contain authority, it will usually be in relation to a trustee benefit arising from a specific type of conflict of interest, rather than a general authority for trustee benefits arising from all types of conflict of interest. For example, it may include authority to pay a trustee who is also a solicitor or accountant for work done on behalf of the charity, but it is unlikely to authorise any other type of payment to a trustee, such as payment to a trustee who is a builder for repairs carried out to the charity's property.

If the benefit from which the conflict of interest arises is not authorised by the charity's governing document, trustees will need to apply to us for the necessary authority. If the trustees are in any doubt about whether the governing document contains sufficient authority, we would encourage them to take professional advice or seek advice from us.

In order for us to consider authorising the benefit, trustees will need to show why it is in the charity's best interests to permit the benefit and resulting conflict of interest. We will also need to be satisfied that there are arrangements in place to ensure that the conflict of interest will be properly managed once the benefit has been authorised.

It is important to remember that it is not simply enough for the benefit arising from the conflict of interest to be authorised. Trustees also need to ensure that the charity has adequate procedures in place to manage the conflict of interest once the benefit has been authorised.

<https://www.charity-commission.gov.uk/requirements-guidance/Charity-governance-requirements-guidance/07/01/2013>

Further information about managing conflicts of interest can be found in section 7.

6. In what circumstances will the Commission authorise a benefit arising from a conflict of interest?

requirements guidance/Charity 07/01/2013

There is a relationship between the potential benefit to the trustee and the strength of the case the trustees will need to make. Charities will need to be able to demonstrate that the arrangement is in the best interests of the charity and that the conflict of interest is transparently managed.

Trustees will need to consider things like:

- whether or not the benefit and conflict of interest will be ongoing or a one-off situation

- the procedures which the trustees have in place to ensure that conflicts of interests are managed transparently

See [Trustee expenses and payments \(CCI 1\)](#) for more information

7. How can conflicts of interest be managed effectively?

All trustees need to be alert to possible conflicts of interest which they might have and to how they can minimise their effects. A key aspect of minimising the effects of conflicts of interest is to be open and transparent about such situations when they arise. We recommend that all trustees advise their charity of any actual or potential conflicts of interest of which they are aware, as soon as they arise.

We recommend that charities have a policy on how they will deal with any conflicts which arise as a result of the work which the charity undertakes. A policy can include guidance on the procedures to follow when a trustee is subject to a conflict of interest, such as:

- the removal of the trustee concerned from the decision making process

- managing the conflict of interest once a decision has been made

- recording details of the discussions and decisions made

~~We also recommend that trustees establish a register of interests. In recording all their other interests openly, any actual or potential conflicts of interest can be identified more easily. The register of interests should be regularly updated.~~

~~It is good practice at the beginning of a meeting for every charity trustee to declare any private interest which he or she has in an item to be discussed, and certainly before any discussion of the item itself. Simply declaring that a conflict exists and withdrawing from the discussion and any decision making will be all that is required if the trustee is not receiving any material benefit as a result of the conflict of interest. However, if a trustee is receiving a material benefit this will need authority.~~

~~We would encourage trustees to make the operation of the charity as transparent as possible. With this in mind, the charity may wish to make their policy on conflicts of interest available to the public. The charity may also wish to make some or all of their register of interests publicly~~

~~<http://www.charity-commission.gov.uk/Charity> [gove...](#)~~

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~~available. This information may be subject to the provisions of the Data Protection Act 1998, and trustees may wish to take advice about making personal information publicly available.~~

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~~Further information about the Data Protection Act is provided by the Information Commissioner at www.ico.gov.uk~~

~~A number of organisations provide model conflict of interest policies and model registers of interest, such as the Institute of Chartered Secretaries and Administrators (CSA)~~

~~It is good practice to ensure that prospective new trustees consider the question of possible conflicts of interest before they are appointed. If new trustees are elected by the charity's membership, we recommend that the membership is made aware of any possible conflict of interests involving the individuals standing for election, so that they can take this into account when voting. This is particularly important where personal interests may be significant enough to make it difficult for the individual concerned to make a full and rounded contribution to the decisions and discussions of the trustee body.~~

~~We strongly recommend that all charities disclose benefits received by trustees in their report and annual accounts. This can help protect trustees from accusations that they are benefiting in a hidden way. It is a legal requirement for charitable companies, those non-company charities with a gross annual income or expenditure over £100,000, and smaller charities which prepare their accounts on an accruals basis, to disclose benefits to trustees.~~

~~Further information on charity accounts can be found in [Charity Reporting and Accounting: The essentials \(CCI-5b\)](#).~~

~~8. What are the most common situations in which conflicts of interest can occur?~~

~~There are a number of situations in which conflicts of interest commonly occur, and of which you, as trustees, should be aware.~~

~~Direct financial gain or benefit to a trustee~~

~~Payment of trustees~~

The most common type of direct financial gain to a trustee is the payment of a trustee. By payment we mean:

- payment to a trustee for a service provided to the charity, such as painting the charity's premises, or legal or accountancy services
- payment for acting as a trustee
- payment for a separate post within the charity, such as headteacher or chief executive, to someone who is also a trustee

If trustees wish to pay one or more trustees, such payment will need to be authorised, either by a clause in the charity's governing document, or by an Order of the Court or the Commission. This authorisation is needed even if the trustee will be providing a service to the charity at below market

cost, since the conflict of interest will still exist.

<http://www.charity-commission.gov.uk/Charity-law> In the case of a trustee also being employed in a separate post within the charity, or a trustee being paid for a service provided to the charity, the conflict of interest may result in a liability to repay salary or other related benefits. It should not be assumed that such conflict can be overcome merely by the person concerned resigning as a trustee, either before or after taking up the post. The only instance where authority may not be needed is where, practically, the trustees can show that there is no conflict of interest. In our view, this is confined to the fairly narrow circumstance where the trustee concerned:

- has had no significant involvement with the trustees' decision to create or retain the post, or with any material aspect of the recruitment process
- where that person resigns as a trustee in order to apply for the employed post in advance of a fair and open competition for it

All other circumstances require an express authority.

Further information about the payment of trustees, including how to apply for our authority to pay a trustee, is contained in our publication *Trustee expenses and payments (CCI 1)*.

Trustees as directors of a subsidiary trading company

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~~When a charity establishes a trading company to undertake a wider range of activities than the charity, often a number of the charity trustees also become directors of the trading company. This clearly creates the potential for conflicts to arise between the interests of the charity and the interests of the trading company.~~

~~A charity trustee cannot be paid for his or her services as a director, or employee, of the subsidiary trading company (or, of course, as an employee or trustee of the charity), unless authority is contained either in the governing document or has been provided by us.~~

~~Further information about charities and the extent to which they can trade can be found in Trustees, trading and tax (CC35).~~

~~Sale of land to a trustee~~

~~Any sale or lease of land to a trustee or to someone closely connected to a trustee, even if it is at full market value, will need to be authorised by the Commission.~~

~~Further information about selling, leasing and mortgaging land, and how to apply for our authority is contained in Sales, Leases, Transfers or Mortgages (CC28).~~

~~Use of trustee's property by the charity~~

~~There may be circumstances in which a trustee of a charity is willing to allow that charity to use the trustee's land at little or no cost to the charity. Whilst the use of the land for little or no payment will be in the charity's interests, if the charity then puts buildings on the land or makes improvements to an existing property, unless the charity has a formal interest in the land, any buildings or improvements to the property might be returnable to the trustee.~~

~~<http://www.charity-nmqqinn-onv-11k/Charity> 0900~~

~~Similarly, a trustee may loan money to the charity at a favourable rate of interest, or at no interest, without any security. Whilst the situation may be clearly in the charity's interests, we recommend that it should be formally documented.~~

In any situation where a trustee is loaning money to the charity of which they are a trustee or letting the charity use their property, we expect trustees to protect themselves and the interests of the charity by ensuring that formal agreements are in place.

Indirect financial gain or benefit to a trustee

The most common situation in which a trustee will receive an indirect financial benefit from the charity is when a close relative, such as a spouse or partner, is employed by the charity. By being involved in the appointment or payment of their spouse or partner to a paid position within the charity, the trustee could be seen to benefit, at least indirectly, from the appointment and the resulting payment.

If the trustee is wholly or partially dependent upon the financial support of his or her spouse or partner, the payment could be said to directly benefit the trustee. Even if the trustee has other income, if he or she and his or her partner or spouse are living in the same household, and are reliant on joint income and share joint expenses, the payment received contributes to the "joint purse" and the trustee is receiving some benefit through the contribution to these expenses.

Despite the fact that the payment is not being made directly to a trustee, the payment will still need to be authorised, and if there is no suitable power in the charity's governing document, the trustees will need to apply to the Commission for the necessary authority.

If the trustee is not receiving a financial benefit, there will still be a conflict of loyalties and the trustee will need to follow certain procedures, which are outlined in the section on conflicts of loyalty.

Further information about the payment of spouses or partners of trustees and how to apply for our authority is contained in Trustee expenses and payments (CCI 1).

Non-financial gain

Users as trustees

Many charities involve users in the effort to improve services, including appointing users as trustees of the charity, and we welcome user trusteeship as a way of helping a charity achieve its aims more effectively.

Defining what is a personal interest can be a difficult area in the context of user trustees. However, the key to this is the size and nature of the proposed transaction in relation to the number of people who will benefit. Essentially, the question is whether the decision to be taken by the trustees will confer a direct tangible benefit on the user trustee which is exclusive to him or her and which is not shared with other users.

For example, a user trustee in a charity that helps people with cerebral palsy might apply for assistance from an independent living scheme run by the charity. Obviously, this trustee would be

<http://www.rcharity-nmmiQQinn-111<10har;tx,'form;rpm.ante-aidance/Charity.gov> 07/01/2013

~~in a position where they might gain from the award of a grant or direct assistance, and this situation would need to be authorised.~~

~~However, often there will be circumstances where user trustees will be asked to take a decision which indirectly affects them or a relative, such as the level of fee to be charged for a service provided by the charity. We consider that a decision would indirectly affect a trustee if:~~

~~• it results in the user trustee or relative receiving something which will also be more generally available to other users outside the trustee body, or; • it is a general policy or practice decision affecting the service in which the user trustee or relative, along with other users, participates.~~

~~User trustees can take part in such decisions, but should declare their interest at the outset.~~

~~More detailed information about users of the charity being trustees can be found in Users on Board: Beneficiaries as trustees (CC24).~~

~~Conflicts of loyalty~~

~~Trustees should bear in mind that when they are dealing with the business of the charity, their overriding duty is to act in the best interests of the charity. There may be situations in which a trustees' loyalty to the charity conflicts with their loyalty to the body which appointed them, to another charity of which they are a trustee or to a member of their family. Such conflicts of loyalty will not stop anyone from being a trustee, but they can occasionally cause conflicts of interest.~~

~~Any trustee who has a conflict of loyalty should declare this and it should be included in the register of interests. They should also declare the interest at the beginning of any meeting at which an issue is to be discussed that is subject to the conflict and should take no further part in the discussions on the issue. This will help to ensure transparency and avoid any accusations of impropriety.~~

~~Nominative or representative trustees~~

~~Trustees appointed by another organisation, such as by a local authority, (sometimes referred to as nominative or representative trustees) have exactly the same duties and responsibilities as other trustees. They must act independently of the organisation which appointed them and act only in the best interests of the charity. There may well be occasions where such trustees will have to act in a way which conflicts with the interests of the organisation appointing them. In~~

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~~such circumstances the best interests of the charity must come first; this duty overrides all other considerations.~~

~~Failure to act in the best interests of the charity could constitute a breach of trust for which a personal liability (financial or otherwise) could arise.~~

~~Where a conflict of interest arises in relation to a particular issue, for example in relation to a property transaction, the trustee concerned should not vote on it and should withdraw from any meeting at which it is considered.~~

~~It is a good idea to ensure that when nominated or representative trustees are appointed, the trustees are fully trained in their responsibilities as trustees and that the appointing body is also made aware of these responsibilities.~~

~~Further information can be found in our guidance on charities and local authorities. Information about trustee responsibilities is contained in The Essential Trustee: What you need to know (CC3).~~

~~Ex-Officio trustees~~

~~An ex-officio trustee is a trustee who is in that position by virtue of their office. Normally this relates to positions such as the Vicar of a parish or the Mayor of a town. Ex-officio trustees have exactly the same responsibilities as other trustees to act in the best interests of the charity.~~

~~Local authorities as trustees~~

~~Charities, such as playing fields, are sometimes managed by the local authority as sole trustee, or by members of the local authority, as trustees. It is especially important when this is the case that the local authority as trustee, or its members as trustees, are clear when they are dealing with charity business and when they are dealing with local authority business. When they are dealing with charity business, they must only consider the best interests of the charity and not those of the local authority.~~

~~Further information can be found in our guidance on charities and local authorities.~~

~~9. What are the consequences of an unmanaged conflict of interest?~~

~~There can be a number of consequences arising from an unmanaged conflict of interest.~~

~~If a trustee has received a benefit from the charity which is not authorised, either by the charity's governing document or by the Court or the Charity Commission, they will be acting outside the terms of the charity's governing document and may be in breach of trust. Even if the governing document does provide a power for trustees to receive benefits from the charity, if this power has been used in a way which is not in the best interests of the charity (for example, if a trustee is buying part of the charity's property for a much reduced price) then a breach of trust might still have occurred. If a breach of trust has occurred, then the transaction could be challenged by the Commission or by another interested party, such as a beneficiary of the charity. Where a trustee has received an unauthorised benefit, or where a trustee doesn't personally benefit but does not act in the best interests of the charity, the transaction may not be valid and the trustee could be liable to pay back the value of the benefit to the charity.~~

~~In cases where it seems that trustees have deliberately placed their own interests ahead of those of the charity in order to gain significant benefit at the expense of the charity, we will investigate and, if appropriate, refer the matter to the police.~~

~~An unmanaged conflict could also adversely affect the way in which the trustee body operates. Trustees may find it difficult to make a decision on a matter which involves a fellow trustee. You may feel that you should decide in favour of the trustee as you know him or her, or that, for the same reason, you should decide against him or her, even if the trustee's and the charity's interests are the same. You may also feel uncomfortable voting against the interests of a fellow trustee.~~

~~http://www.charity-commission.gov.uk/Charity_requirements_guidance/Charity_governance/07/01_4004-Q~~

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~~In addition to the legal consequences of an unmanaged conflict of interest, trustees also need to be aware of the effect that an unmanaged conflict can have on the charity's reputation. If those outside the trustee body have the impression that the trustees have acted in their own interests rather than those of the charity, this could damage the reputation of both the charity and the trustees, even where the trustees have acted in the charity's best interests. This could affect the charity's fundraising and the confidence of staff, volunteers and beneficiaries in the charity. Additionally, if the publicity is widespread, trustees may need to devote time and resources to defending the decision they have made, which will divert resources away from carrying out the objects of the charity.~~

~~When dealing with conflicts of interest, trustees should be aware of how the situation may appear to someone from outside the charity, and make sure that a policy and procedures are in place which will allow trustees to demonstrate that such situations have been dealt with properly.~~

~~10. ————— What do I do if I discover an unauthorised trustee benefit?~~

~~If you, as a trustee, realise that there is an unauthorised trustee benefit, we would encourage you to tell us about it, particularly if a significant breach of trust has occurred. This should be accompanied by an explanation of why the breach of trust occurred, how the trustees would prevent a similar situation occurring in the future and what benefits, if any, the charity received from the situation.~~

~~Details of how we will deal with unauthorised trustee benefits can be found in section 4.~~

~~11. ————— Where can I find further information and advice?~~

~~Further information on what to do if you are an employee of a charity or someone else with an interest in the charity and you discover an unauthorised trustee benefit can be found in Complaints about Charities (CC47).~~

~~In addition to the organisations mentioned in this guide, there are a number of organisations which provide advice on dealing with conflicts of interest together with a range of advice for trustees, which can be accessed from the Useful websites area on our website.~~

~~12. ————— Checklist for trustees~~

1. If you have identified that a conflict of interest exists, are you, or is the trustee concerned, receiving a material benefit as a result of that conflict of interest? (details of benefits which need to be authorised can be found in section 3 of this guide).

"If no, go to Q3. "

"If yes, go to Q2. "

2. Is the benefit arising from the conflict of interest authorised:

By the charity's governing document?

By the Charities Act?

specifically, by the Charity Commission (see section 6 of the guide)?

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"If no, you must apply to the Commission for authority for the benefit (see section 6 of the guide). Go to Q3." "If yes, have the charity's trustees complied strictly with the terms of the benefit (see section 6 of the guide). Go to Q3." "to Q3."

3. Are there procedures in place to manage the conflict of interest effectively (see section 7 of the guide)?

"If no, the charity's trustees must ensure that suitable conflicts of interest procedures are put in place." "If yes, go to Q4."

4. Have the charity's trustees ensured that any benefit received by the trustees is disclosed in the annual report and accounts (see section 7 of the guide)?

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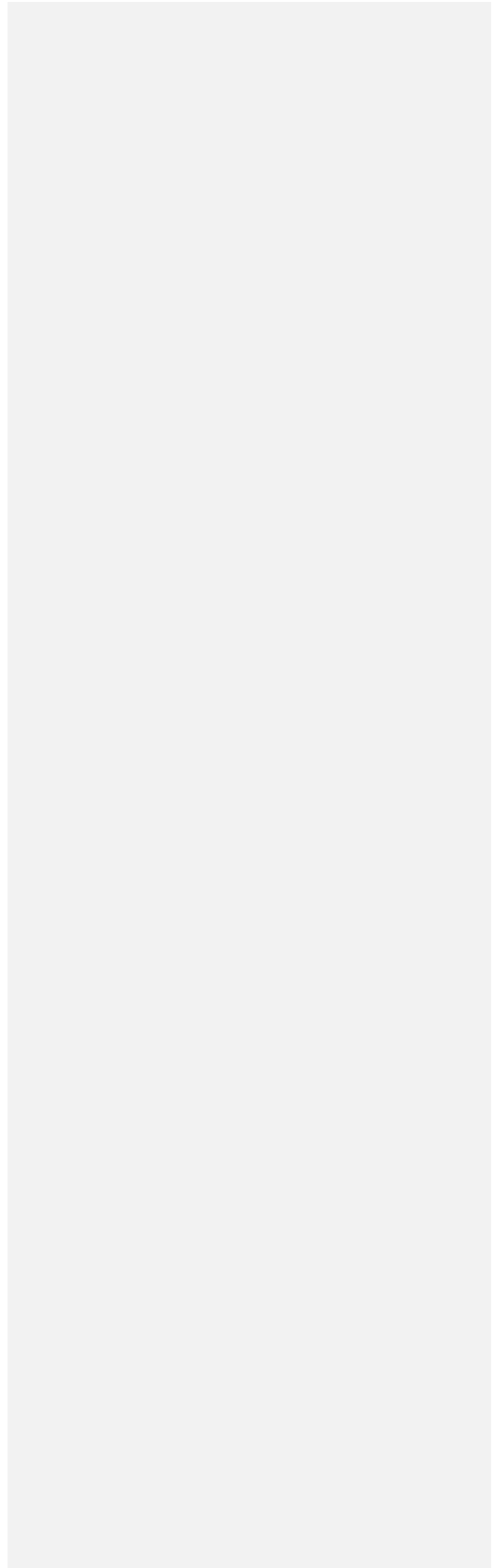
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Councillors' guide: to a council's role as charity trustee

Introduction

This guide has been jointly produced by the Local Government Association and the Charity Commission. It specifically addresses the situation where a local authority is itself the sole trustee of a charity. Many local authorities hold assets that are subject to charitable trusts. Often this is because a donor has left land or property to a council on condition it is used for a public purpose - such as a museum, art gallery or recreation ground. In such a situation the local authority has the status of charity trustee.

This brief introductory guide is intended to help councils and council members fulfil this role responsibly in accordance with charity law and to avoid some of the financial and reputational pitfalls that can occur when things go wrong. This guide does not address the wider set of issues relating to council staff or members being trustees of other charities or the relationship between local authorities and external charitable bodies more generally.

What is a charity?

A charity is an organisation or entity established **exclusively** for purposes which are capable of being **charitable** and which are for the **public benefit**. In England and Wales, charitable purposes are defined in the Charities Act 2011. Public benefit is explained in Commission guidance.

The people who serve on the governing body of a charity are called **charity trustees**. The **beneficiaries** might be the population of a local area, or a particular type of person, such as those suffering from a medical condition. Trustees have and must accept ultimate responsibility for directing the affairs of a charity, and ensuring that it is solvent, well-run, and delivering the charitable outcomes for the public benefit for which it has been set up. Trustees have a duty to act solely in the interests of the charity and its beneficiaries.

A corporate body such as a local authority can also be a charity trustee. Where a local authority is trustee, the property in question is often land or buildings intended for a particular purpose; but councils as trustees can also hold financial investments or other funds, often for the purpose of awarding grants to the community. In either case, it is essential to ensure that the assets are held and applied in accordance with the charity's particular purpose.

Charity law and the Charity Commission

There are about 180,000 registered charities in England and Wales with a collective income of around £50 billion a year. All charities must comply with charity law which defines charities and how they are run.

The Charity Commission is the independent regulator of charities in England and Wales. Its aim is to provide the best possible regulation of charities in order to increase charities' effectiveness and public trust and confidence in the work they do. Most charities with an income above £5,000 per year must register with the Commission.

The council's role as charity trustee

Local authorities are empowered by Section 139 of the Local Government Act 1972 to receive and hold gifts on charitable trusts. This may include money or assets left by donors, or charitable trusts created by ancient royal charters or Acts of Parliament.

Local authorities are well suited to being charity trustees; in particular councils are:

- rooted in the local community;
- open and transparent in their dealings;
- highly accountable for their actions; and
- have the high standards of public conduct embedded in the way they work.



There are similarities between the rules and regulations that apply in discharging the functions of a local authority and those of a charity. While many of those underlying principles of prudence and transparency will apply equally to managing charitable trusts, there are also differences. An understanding of these differences is essential if local authority trustees are to perform this role effectively and with the minimum of risk. A number of councils have encountered problems in this area, most notably because:

- councils, used to exercising wide discretion in the way they manage their assets, may not have fully recognised and complied with the restrictions on the use of charitable assets;
- conflicts can arise between things that would be popular with the electorate and the obligations of the trustee, imposed by the terms of the charity;
- where assets were left to the council many years ago, the precise terms of the charity, or even the fact that it is a charity, may have been forgotten or overlooked.

Fictional Case Study A – Southbeach Borough Council

Scenario: Southbeach Borough Council plans a major refurbishment of the sea-front Pavilion Rooms, to include a new art gallery, public meeting rooms and tourist information centre. The Council's solicitor has checked and the building was left to the Council in 1948 on charitable trusts to be used for "public gatherings, artistic or cultural or other activities for the benefit of the people of Southbeach."

Issues and solutions: The promotion of tourism is not a legally charitable purpose. The Council has a conflict of interests between its desire as a public authority to promote tourism and its duty to act in the charity's interests.

As trustee, the Council must ensure that the purposes of the charity are fulfilled. Depending on the terms of the trust, perhaps a proportion of the charitable use could be accommodated within council premises elsewhere to allow a Tourist Information Centre to be incorporated in the refurbished Pavilion. Alternatively, if there is genuinely spare capacity within the Pavilion, perhaps a Tourist Information Centre could be accommodated through a commercial lease from the charity to the Council. In either case, Charity Commission advice and authorisation are likely to be needed.

Fictional Case Study B – Touchline District Council

Touchline District Council is trustee of a recreation ground in an out-of-town location which is little used. It was bequeathed in 1967 by a local citizen as a public recreation ground within the meaning of the Recreational Charities Act 1958. Last year the Council leased the site to the Touchline Football Club to facilitate their expansion plans and the Club has now laid out pitches, spectator areas and has built a substantial Clubhouse.

Issues and solutions: Under the Recreational Charities Act the facilities must be available to members of the public at large. Accordingly, permitting the exclusive use of the grounds by one club would not meet this requirement. In granting the lease, the Council has acted outside its powers and in breach of the charitable trusts. This situation may be complicated to resolve and local feelings are likely to run high, but open public access must be restored as soon as possible on this site or a suitable replacement provided by the Council. Charity Commission advice and authorisation may be required, particularly if the Council is considering an exchange of charity land for land it holds in a corporate capacity.

Managing charitable trusts safely

Local authorities have the skills, public knowledge and professionalism to manage charitable trusts very effectively but care needs to be taken to ensure that unnecessary problems do not arise. Councils and council members should be aware of the following principles:

- For a body to be a charity, it must be independent, i.e. it must exist and operate solely for charitable purposes, not as a means of carrying out the policies or directions of the local authority.
- Where a local authority is a trustee of a charity, it is the corporate body, acting in accordance with its usual procedures, which is "the trustee." While ongoing management may be delegated to officers, responsibility for decision-making and oversight rests with the councillors.
- The terms of the charity must be clearly understood. Nearly all problems that occur stem from a lack of clarity regarding these terms, or indeed failing to recognise that a charity exists in the first place. If there is any doubt about the terms of a charity or how they should be interpreted, appropriate advice should be sought, for example from legal advisors or from the Commission.

- The management of the charity should be kept separate, as far as possible, from the business of the local authority. Depending on the size and circumstances of the charity, it may make sense for a committee of councillors to be allocated this task. It must not be forgotten, however, that responsibility continues to rest with the whole council.
- Equally the finances of the trust must be kept separate from those of the council. The assets must be accounted for separately and income and expenditure should be channelled through discrete cost centres. The local authority may top up the finances of the trust but no funds should pass from the trust into the council's own accounts – although the council may, depending on the circumstances, recover the costs of administration.
- If the original terms of the charity can no longer be realistically followed, because circumstances have changed, the local authority should approach the Commission to see if the charity's governing document can be amended or updated. The Commission can advise on the most appropriate way of doing this.
- The Commission's registration and reporting requirements must be observed. For example, all charities must produce annual statements of accounts under charity law. Depending on the financial size of the charity, it may have to register with the Commission, or be subject to higher levels of accounting scrutiny.
- If any issues arise about whether the terms of the trust have been properly followed, the local authority should contact the Commission and work with them in finding a solution.

Fictional Case Study C – Heritage City Council

Scenario: Heritage City Council is trustee of a charity whose investments include a number of properties, with the income applicable for charitable purposes that benefit the inhabitants of the City. One large building has become semi-derelict and a developer has offered the Council £3 million for the site which it wishes to convert to a night club and casino. The Council feels obliged to accept the windfall but local residents are outraged.

Issues and solutions: As trustee the Council must act exclusively in the best interests of the charity. It must make its decision based on consideration of the charity's interests alone. The trustee must manage its conflict of interests and not take account of factors that are irrelevant to the charity (such as the Council's political interests). It must adequately inform itself before making a decision.

Taking appropriate independent professional advice, the trustee should consider whether the offer of £3 million represents the best sale price that the building is likely to achieve. The property should be marketed unless the charity's professional advisor advises otherwise. The trustee could consider whether it should take account of any risk to the charity's reputation. There may be a range of issues on which the trustee might require the Commission's advice, depending on the particular trusts on which the building is held.

In this case, however, the conflict of interest may be unmanageable because of the rules against self-dealing; the Council would have to act as both charity trustee and planning authority. The Council might need legal authority from the Charity Commission either to act notwithstanding the conflict of interest, or to bring in an independent "trustee" to act for the charity for this transaction (which might be preferable in the circumstances).

The trustee might have found it helpful to have a pro-active asset management plan in place. This might have increased the range of potential options for maximising the return on the charity's assets.

Useful Guidance

Available from the Charity Commission website www.charitycommission.gov.uk

- *The Essential Trustee* (CC3)
- *Sales, leases, transfers or mortgages: What trustees need to know about disposing of charity land* (CC28)
- *Charities Act 2006: What Trustees Need to Know* - a plain English guide published jointly by the Charity Commission and the Office of the Third Sector
- *Public benefit guidance*
- *Local Government Charity Toolkit*

Ten tips for councils in their roles as charity trustee

1. Ensure that any charitable assets, for which the local authority is the trustee, are clearly identified.
2. Make sure you are clear about the objects of the charity set out in its governing document as these dictate how any such asset may be used, in accordance with charity law.
3. Make sure that any charitable assets, for which the council is the trustee, are managed independently in accordance with their charitable purpose and any restrictions in the governing document.
4. Recognise that charity trustees have a duty to be prudent and to act solely in the best interests of the charity.
5. Ensure there is a clear line of responsibility for the management of all charities for which the local authority is the trustee.
6. Ensure that there are clear guidelines for officers and councillors about roles, responsibilities and decision making in the administration of charities.
7. Ensure you have a clear process for identifying and managing any conflicts of interest that arise where the local authority is the trustee of a charity.
8. Actively manage any charity for which the council is the trustee – keeping records up to date, submitting the necessary returns to the Charity Commission and reviewing investments, risks and opportunities on a regular basis.
9. Periodically review whether it continues to be in the best interests of the charity for the local authority to remain as trustee.
10. Follow Charity Commission guidance (and obtain appropriate advice) if you are planning to dispose of charity land, alter the charitable purpose or other terms of the governing document, or take action where trusts have become dormant.

[Charity Commission] Guidance

Conflicts of interest: a guide for charity trustees

Updated 31 October 2022

1. About this guidance

Conflicts of interest affect charities of all types and sizes. They can lead to decisions that are not in the best interests of the charity and which are invalid or open to challenge. Conflicts of interest can also damage a charity's reputation or public trust and confidence in charities generally. These harmful effects can be prevented where individual trustees can identify conflicts of interest, and the trustee body can act to prevent them from affecting their decision making.

All trustees have a legal duty to act only in the best interests of their charity. The Charity Commission expects them to take appropriate steps in line with this guidance to ensure that they can do this.

1.1 Conflicts of interest can affect any charity

Trustees' personal and professional connections can bring benefits to the work of a charity and they often form part of the reason why an individual has been asked to join the trustee body. However, they can give rise to conflicts of interest, to which the trustees must respond effectively.

The existence of a conflict of interest does not reflect on the integrity of the affected trustee, so long as it is properly addressed.

1.2 What does the Commission expect?

The Commission sees too many cases of unidentified or poorly handled conflicts of interest, many of which could have been prevented by better trustee awareness and stronger systems. It expects trustees to identify and address effectively any conflicts of interest that affect them or their charity.

1.3 Who should read this guidance and when does it apply?

This guidance applies to the trustees of all charities in England and Wales, registered and unregistered.

The Commission recommends that trustees read this guidance to understand the basics, and how it expects them to deal with conflicts of interest facing them or their charity.

For a quick overview of the key issues it recommends reading the summary article on [conflicts of interest](#).

For a detailed explanation of the Commission's view of the law underpinning the guidance, please refer to the [legal underpinning](#) for this guidance.

This guidance is generally applicable to all types of trustee, including corporate trustees. The directors of charitable companies and the trustees of charitable incorporated organisations (CIOs) are also subject to some specific duties. There are summarised in [Annex 2](#).

Although outside the scope of this guidance, which is only concerned with trustees, the trustees may also need policies to ensure any conflicts of interest affecting the charity's staff, particularly its senior staff, can be dealt with correctly. The principles are largely the same as those for trustees affected by a conflict of interest. However, unlike trustees, staff are normally paid and may receive other benefits from the charity as part of their remuneration. They should not be involved in any trustee decisions about the remuneration they receive.

The proper handling of conflicts of interest is an essential part of proper decision making by trustees, something which is covered in [It's your decision: charity trustees and decision making \(CC27\)](#).

1.4 'Must' and 'should': what the Commission means

The word 'must' is used where there is a specific legal or regulatory requirement that you must comply with. 'Should' is used for minimum good practice guidance you should follow unless there's a good reason not to.

1.5 Technical terms used in this guidance

Breach of duty: this means a breach of any trustee duty. For charity trustees, these duties depend on the nature of the charity. Trustees of unincorporated charities have duties under the trustee acts and directors of charitable companies have duties under the Companies Act 2006. The Charities Act sets out the duties for trustees of CIOs.

Charities Act: this means the Charities Act 2011, as amended.

Charitable incorporated organisation (CIO): a charitable incorporated organisation, or CIO, is a new legal form for a charity. It is an incorporated form of charity which is not a company. The provisions of the Companies Act 2006 do not apply to CIOs unless the CIO regulations make such provision.

Conflict of interest: a conflict of interest is any situation in which a trustee's personal interests or loyalties could, or could be seen to, prevent them from making a decision only in the best interests of the charity.

Connected person: in broad terms this means family, relatives or business partners of a trustee, as well as businesses in which a trustee has an interest through ownership or influence. The term includes a trustee's spouse or unmarried or civil partner, children, siblings, grandchildren and grandparents, as well as businesses where a trustee or family member holds at least one-fifth of the shareholding or voting rights. If in doubt about whether a person or business is a connected person seek advice from a solicitor or other person qualified to advise on the matter.

Where a charity is either paying a connected person for goods or services, or disposing of land to a connected person, the charities act defines what a connected person is at s188 (for goods and services) and s118 (for land disposals).

Conflict of loyalty: this means a particular type of conflict of interest, in which a trustee's loyalty or duty to another person or organisation could, or could be seen to, prevent the trustee from making a decision only in the best interests of the charity.

Expenses: this means refunds by a charity of legitimate payments which a trustee has had to meet personally in order to carry out their trustee duties. Any reasonable costs that allow trustees to carry out their duties can be classed as legitimate expenses and paid from the charity's funds.

Goods or services: this means services provided, or goods provided, or goods and services provided together.

Governing document: this means the legal document setting out a charity's objects and, usually, how it is administered. It may be a trust deed, constitution, articles of association, conveyance, will, Royal Charter, scheme of the Commission or other formal document.

Trustee: this means a charity trustee. Charity trustees are the people who are responsible for the general control of the management of the administration of the charity. In a charity's governing document, they may be collectively called trustees, the board, managing trustees, the management committee, governors or directors, or they may be referred to by some other title.

Trustee benefit: this means any instance where money, or other property, goods or services, which have a monetary value, are received by a trustee from the charity. The law says that trustees cannot receive a benefit from their charity, whether directly or indirectly, unless they have an adequate legal authority to do so. The potential for a trustee to benefit from the charity also creates a conflict of interest which the trustees need to address effectively. The term trustee benefit does not include any payments to trustees which are for their proper out of pocket [expenses](#).

Service user trustee: this means any trustee who makes use, as a beneficiary of the charity, of the equipment, facilities, services or support that are provided as part of the charitable purposes of their charity.

2. Conflicts of interest: at a glance summary (legal requirement)

Trustees have a legal duty to act only in the best interests of their charity. They must not put themselves in any position where their duties as trustee may conflict with any personal interest they may have.

This means that they should handle conflicts of interest using the following steps:

2.1 IDENTIFY conflicts of interest

Trustees:

- each have an individual personal responsibility to declare conflicts of interest which affect them
- should have strong systems in place so that they are able to identify conflicts of interest

[Section 3](#) explains how to identify a conflict of interest.

2.2 PREVENT the conflict of interest from affecting the decision

Trustees must make their decisions only in the best interests of the charity. This means that they must consider the issue of the conflict of interest so that any potential effect on decision making is eliminated. How they do this will depend on the circumstances. In cases of serious conflicts of interest it may mean the trustees deciding to remove the conflict by:

- not pursuing a course of action
- proceeding with the issue in a different way so that a conflict of interest does not arise
- not appointing a particular trustee or securing a trustee resignation

Where trustees have decided against removal of the conflict of interest they must prevent it from affecting their decision in a different way. They:

- must follow any specific requirements in the law or the charity's governing document which deal with conflicts of interest and how they should be managed (legal requirement)
- should, where there are no specific governing document or legal provisions:
 - require conflicted trustees to declare their interest at an early stage and, in most cases, withdraw from relevant meetings, discussions, decision making and votes
 - consider updating their governing document to include provisions for dealing with conflicts of interest
- may, exceptionally, need to seek the authority of the Commission where the conflict of interest is so acute or extensive that following these options will not allow the trustees to demonstrate that they have acted in the best interests of the charity

Conflicts of interest often arise because a decision involves a potential trustee benefit. Where this is the case:

- the trustee benefit must be properly authorised and (legal requirement)
- the trustees must follow any conditions attached to the authority which say how the conflict of interest should be handled (legal requirement)

[Section 3](#) and [Annex 1](#) explain how to ensure that a proper authority is in place before any decision to confer trustee benefit is made.

2.3 RECORD conflicts of interest

Trustees:

- should formally record any conflicts of interest and how they were handled
- must, if they prepare accruals accounts, disclose any trustee benefits in the charity's accounts

[Section 4](#) explains the steps that trustees can take to prevent the conflict of interest from affecting decision making and ensure that their decision is made only in the interests of their charity.

Trustees can use this [checklist](#) to help them address a conflict of interest.

3. Identifying conflicts of interest (legal requirement)

The Commission expects individual trustees and trustee bodies to be able to identify any conflicts of interest at an early stage. The law says that each individual trustee must avoid putting themselves in a position where their duty to act only in the best interests of the charity could conflict with any personal interest they may have. In practice this means that:

- individual trustees who fail to identify and declare any conflicts of interest will fail to comply with their personal legal responsibility to avoid conflicts of interest and act only in the best interests of the charity
- the trustee body must ensure that any conflicts of interest do not prevent them from making a decision only in the best interests of the charity

The early identification of conflicts of interest is key to ensuring that trustees act only in the best interests of the charity. This section describes what a conflict of interest is, the written policies and procedures trustees should have in place, and the common situations where conflicts of interest arise.

3.1 What is a conflict of interest? (legal requirement)

A conflict of interest is any situation in which a trustee's personal interests or loyalties could, or could be seen to, prevent the trustee from making a decision only in the best interests of the charity.

Key points about identifying conflicts of interest

A conflict of interest exists even where there is the possibility that a trustee's personal or wider interests could influence the trustee's decision making.

Even the perception that there is a conflict of interest can damage the charity. Where the perception is not accurate because there is no conflict of interest, the trustees should always be able to respond appropriately to the situation by managing the risks to the charity and being prepared to explain how they have made their decisions only in the best interests of the charity. The Commission's guidance [It's your decision: charity trustees and decision making \(CC27\)](#) explains the principles that trustees should apply when making decisions affecting their charity.

Conflicts of interest relate to a trustee's personal interests and the interests of those connected to them. This means that there is a conflict of interest where there is a proposed transaction between the charity and a connected person. Similarly, there is a conflict of interest where there is a benefit or a potential benefit to a connected person.

Being prepared to respond to conflicts of interest

It is good practice for a charity's governing document to include provisions to deal with conflict of interest situations and if a governing document does not include such provisions, trustees should consider [amending their governing document](#).

It is also good practice to have a written conflicts of interest policy and register of interests as these can help individual trustees and the trustee body to identify conflicts of interest promptly. [Annex 4](#) outlines some suggested content for inclusion in a conflicts of interest policy.

The Commission encourages trustees to make the operation of the charity as transparent as possible. With this in mind the trustees may decide to make their policy on conflicts of interest available to the public and to make some or all of their register of interests publicly available.

The trustee body should consider conflicts of interest as a pre-appointment issue. Prospective trustees should be asked about potential conflicts of interest, and these should be declared to those who will decide on the appointment. Where prospective trustees are likely to be subject to serious or frequent conflicts of interest, the trustees should seriously consider whether that trustee should be appointed.

3.2 Where and how do conflicts of interest arise?

Conflicts of interest usually arise where either:

- there is a potential financial or measurable benefit directly to a trustee, or indirectly through a connected person
- a trustee's duty to the charity may compete with a duty or loyalty they owe to another organisation or person

The following 2 sections cover these in more detail.

Benefits to trustees

Trustees can only benefit from their charity where there is an explicit authority in place before any decision conferring trustee benefit is made.

Examples of benefits to trustees are where the trustees decide to:

- sell, loan or lease charity assets to a charity trustee
- acquire, borrow or lease assets from a trustee for the charity
- pay a trustee for carrying out their trustee role
- pay a trustee for carrying out a separate paid post within the charity, even if that trustee has recently resigned as a trustee
- pay a trustee for carrying out a separate paid post as a director or employee of the charity's subsidiary trading company
- pay a trustee, or a connected person, for providing a service to the charity - this covers anything that would be regarded as a service and includes legal, accountancy or consultancy services through to painting or decorating the charity's premises, or any other maintenance work
- pay a trustee, or a connected person, for providing goods to the charity, such as paint, timber, sports equipment, consumables or stationery
- employ a trustee's spouse or other close relative at the charity (or at the charity's subsidiary trading company)
- make a grant to a service user trustee, or a service user who is a close relative of a trustee
- allow a service user trustee to influence service provision to their exclusive advantage

Example 1: identifying trustee benefits

A charity has some empty office space and its trustees are considering letting it to a company owned by one of the trustees.

This would be a trustee benefit: it would involve a transaction with a business owned by a trustee. The trustees can only proceed with the transaction once they have a proper authority for the trustee benefit: in cases which involve a property transaction with a connected person, the trustees must get authorisation from the Commission and comply with the conditions in the Charities Act 2011 before proceeding.

[Annex 1](#) gives more detail about trustee benefit and the legal rules that trustees need to be aware of.

Conflicts of loyalty

These conflicts of interest arise because, although the affected trustee does not stand to gain any benefit, the trustee's decision making at the charity could be influenced by their other interests.

For example, a trustee's loyalty to the charity could conflict with their loyalty to:

- the body that appointed them to the charity
- the membership or section of the charity that appointed them to trusteeship
- another organisation, such as their employer
- another charity of which they are a trustee
- a member of their family
- another connected person or organisation

Some conflicts of loyalty arise because a trustee has a competing legal obligation or duty to another organisation or person. Others result from conflicting loyalties which trustees owe or may feel towards family, friends or other people or organisations who are part of the trustee's network. A conflict of loyalty could also arise where the religious, political or personal views of a trustee could interfere with the ability of the trustee to decide the issue only in the best interests of the charity.

Example 2: identifying conflicts of loyalty

An individual is a trustee for 2 charities planning to bid for the same service provision contract.

This conflict of interest is a loyalty conflict. It doesn't involve benefit to the trustee, but the trustee's decision at either charity could be influenced by their knowledge of and duty to the other charity. This means that the trustee cannot fulfil their duty to either charity to make decisions only in its best interests.

[Example 5](#) in section 4 shows how this conflict should be dealt with.

Trustees' other interests and loyalties can generate conflicts of interest from time to time, some of which pose a minor risk to the charity and some of which are more serious. The trustees may decide that where a conflict of loyalty poses no risk or a low risk to decision making in the best interests of the charity, the affected trustee, having declared their other interest, can participate in decision making.

Legal requirement: the directors of charitable companies taking this approach, must have authority in the governing document which allows the unconflicted directors to decide that the trustee affected by the conflict of loyalty can participate. The trustees of other types of charity should consider updating their governing document to include this type of authority. Even where trustees are relying on a governing document authority, they should ensure that they can demonstrate that they have taken their decision only in the best interests of the charity.

Identifying low risk conflicts of loyalty

Deciding that a conflict of interest is low risk, and that the affected trustee can participate in the decision, is a judgement for the trustees. It is not possible to give a definitive view of when this is appropriate. It depends on the particular decision and relevant circumstances. The trustees must take all relevant factors into account and be ready to explain their

approach if asked. The following examples illustrate some common situations and the considerations that may be involved.

Example 3: membership of another organisation

An educational charity is making a decision about delivering a programme of work at regional arts centres, including a centre where one of its trustees is a member.

This conflict is a conflict of loyalty because the trustee has a connection with the arts centre through their membership. However, the trustees may conclude that this is a low risk conflict of loyalty which, once declared, does not need to prevent the trustee from participating because:

- the trustee's connection to the arts centre is through membership only
- the trustee's membership is likely to have no bearing on their approach to the decision
- any benefits to arts centre members which result from the decision will only affect the trustee in the same way as other members

[Example 6](#) in section 4 shows how this conflict can be dealt with.

Example 4: appointments to closely linked organisations

Where a trustee is appointed by:

- a local branch to the charity's national trustee body
- by a religious foundation to one of its schools

it is usually acceptable for the trustee to simply declare a conflict of loyalty and then participate in decisions.

Although there may be a decision at the charity that also affects the appointing body, the similarity of charitable purpose between the 2 organisations means that conflicts of loyalty which do crop up often present only low risks to the charity. However, the trustees should decide in each case how the conflict of loyalty should be handled and should ensure they can demonstrate that that any decision was taken only in the best interests of the charity.

Appointed trustees

Where a trustee is elected, or appointed, by a connected organisation or other third party, they must act only in the best interests of the charity in carrying out their trustee role.

It is a good idea to ensure that when elected or appointed, the trustees are fully trained in their responsibilities as trustees and that the appointing body is also made aware of these responsibilities.

There is more information for trustees who are [school governors](#) or appointed by [local authorities](#) or by a [corporate foundation](#).

4. Preventing conflicts of interest from affecting decision making (legal requirement)

Having identified a conflict of interest, trustees must act only in the best interests of the charity. This means that they must consider the issue of the conflict of interest so that any potential effect on decision making is eliminated. How they prevent the conflict from affecting decision making will depend on the circumstances. This section of the guidance explains that:

- individual trustees should always declare any conflicts of interest which affect them
- any failure to declare a conflict of interest is a serious issue
- the trustee body should consider whether serious conflicts of interest should be removed or require authority
- affected trustees should not participate in any decisions where they stand to gain, whether directly, or indirectly through a connected person
- where there is a conflict of loyalty, trustees should carefully handle any participation by a conflicted trustee
- irrespective of the approach trustees take to prevent a conflict of interest from affecting their decision making, they should be able to demonstrate that their decision was made only in the best interests of the charity

The following steps describe how trustees can prevent a conflict of interest from affecting their decision making.

4.1 Declare conflicts of interest

Each trustee's legal duty to act only in the best interests of the charity means in practice that individual trustees who fail to declare any conflicts of interest will fail to comply with their trustee duties.

Although declaring conflicts of interest is primarily the responsibility of the affected trustee, the trustee body should ensure that they have strong systems in place so that individual trustees:

- have a clear understanding of the circumstances in which they may find themselves in a position of conflict of interest
- and understand their personal duty to declare them

The Commission expects trustees to have a standard agenda item at the beginning of each trustee meeting to declare any actual or potential conflicts of interest.

A trustee should declare any interest which he or she has in an item to be discussed, at the earliest possible opportunity and certainly before any discussion of the item itself.

If a trustee is uncertain whether or not they are conflicted, they should err on the side of openness, declaring the issue and discussing it with the other trustees.

If a trustee is aware of an undeclared conflict of interest affecting another trustee, they should notify the other trustees or the chair.

4.2 Consider removing the conflict of interest

Trustees must consider the issue of the conflict of interest so that any potential effect on decision making is eliminated. This means that in cases of serious conflicts of interest they may decide that removing the conflict of interest is the most effective way of preventing it from affecting their decision making and demonstrating that they have acted only in the best interests of the charity.

Serious conflicts of interest include, but are not limited to, those which:

- are so acute or extensive that the trustees are unable to make their decisions in the best interests of the charity, or could be seen to be unable to do so

- are present in significant or high risk decisions of the trustees
- mean that effective decision making is regularly undermined or cannot be managed in accordance with the required or best practice approach
- are associated with inappropriate trustee benefit

In practice removing the conflict of interest is likely to mean:

- not pursuing the course of action
- proceeding with the issue in a different way so that a conflict of interest does not arise. This might mean deciding not to consider using a trustee's company to do some work for the charity if this would mean that the number of payments to trustees, although authorised, is at risk of introducing levels of conflict of interest which could be difficult to manage and to justify. It could, exceptionally, mean seeking the Commission's prior authority to a continuing and widespread conflict of interest
- securing the resignation of a trustee affected by a conflict of interest
- not making trustee appointments which will introduce a conflict of interest

There is more information about serious conflicts of interest and how they should be approached at [Annex 3](#).

Where trustees wish to go ahead with a decision affected by a serious conflict of interest, they should seek the authority of the Commission unless they are satisfied that the handling options outlined in this section of the guidance or at [Annex 3](#) will allow them to demonstrate that their approach and decision were in the best interests of the charity.

4.3 Follow the law and the charity's governing document (legal requirement)

Where trustees have decided against removing the conflict of interest, they must consider how to make their decision only in the best interests of the charity.

There are often specific requirements in the law, the charity's governing document, or the terms of an authority granted by the Commission which deal with how the conflict of interest must be handled. For example, where trustees are using the power in the Charities Act, which allows for the payment of trustees for the provision of goods or services to the charity in certain circumstances, the decision to do this must be made only by those trustees who will not benefit.

Trustees must follow any legal or governing document requirements which say how the conflict of interest must be handled. They should also be satisfied that doing so is an appropriate way of demonstrating that their decision was made only in the best interests of their charity.

The trustees should also consult and follow their own conflicts of interest policy if they have one.

Where the governing document or law does not say how a conflict of interest should be managed, trustees should follow the steps in this section of the guidance.

4.4 Withdrawing from decision making where the conflict of interest is associated with trustee benefit

Where there are no legal or governing document provisions about managing conflicts of interest, and there is a proposed financial transaction between a trustee and the charity, or any transaction or arrangement involving trustee benefit:

- the trustee benefit must be authorised in advance
- the Commission expects the affected trustee to be absent from any part of any meeting where the issue is discussed or decided - the individual should not vote or be counted in deciding whether a meeting is quorate

Withdrawing from decision making means withdrawing when the initial discussions and decisions take place, and from any subsequent discussion or decision making on the issue.

The trustees should consider updating their governing document to include provisions for dealing with conflicts of interest, including the circumstances where they will require withdrawal from decision making. The Commission expects that these provisions will, as a minimum, require withdrawal from decision making by a trustee who stands to benefit from a decision.

4.5 Withdrawing from decision making where there is a conflict of loyalty

Where there is a conflict of loyalty and:

- the affected trustee does not stand to gain any benefit
- there are no specific governing document or legal provisions about how the conflict of loyalty should be handled;

the affected trustee should declare the interest. The other trustees must then decide what level of participation, if any, is acceptable on the part of the conflicted trustee. Ultimately it is for the trustees to decide whether withdrawal is in the best interests of the charity when this type of conflict has been declared. The options might include, but are not limited to, deciding whether the trustee:

- having registered and fully declared the interest, can otherwise participate in the decision - the governing document of some charities allows the non-conflicted trustees to authorise a conflicted trustee to fully participate in this type of decision
- can stay in the meetings where the decision is discussed and made but not participate
- should withdraw from the decision making process in the way described

In deciding which course of action to take, trustees:

- must always make their decisions only in the best interests of the charity
- should always protect the charity's reputation and be aware of the impression that their actions and decisions may have on those outside the charity
- should always be able to demonstrate that they have made decisions in the best interests of the charity and independently of any competing interest
- should require the withdrawal of the affected trustee from any decisions where the trustee's other interest is relevant to a high risk or controversial trustee decision or could significantly affect, or could be seen to significantly affect, the trustee's decision making at the charity

- can allow a trustee to participate where the existence of their other interest poses a low risk to decision making in the charity's interests, or is likely to have only an insignificant bearing on their approach to an issue - if the charity is a company this approach must be allowed by the governing document
- should be aware that the presence of a conflicted trustee can affect the relationship between trustees, could inhibit free discussion and might influence decision making in some way
- should, where there are no governing provisions setting out how conflicts of interest should be handled, consider updating their governing document to include provisions for dealing with conflicts of interest, including the circumstances where they will require withdrawal from decision making

The trustees can, before their discussion, ask a trustee who is withdrawing to provide any information necessary to help make a decision in the best interests of the charity.

Trustees cannot use information obtained at the charity for their own benefit or that of another organisation if it has been obtained in confidence or has special value such as commercial sensitivity.

Example 5: withdrawing where there is a conflict of loyalty

In [example 2](#), a conflict of loyalty was identified for an individual who is a trustee for 2 charities planning to bid for the same service provision contract. The trustees should deal with the conflict of interest as follows.

Firstly, the trustee concerned has a responsibility to declare the conflict of interest at an early stage with each charity.

The trustees of each charity must consider the issue of the conflict of interest so that any potential effect on decision making is eliminated. It may mean deciding that the conflict of interest is so serious that it can only effectively be prevented by removal, which here is likely to mean the resignation of the trustee. This is only likely to be the case if the conflict of interest is likely to recur frequently or otherwise poses high risks to effective decision making.

If the trustees decide that the conflict is not so serious as to require removal, they must prevent the competing interest/duty which the trustee has from affecting their decision. Here, this means that the affected trustee should withdraw from the meeting and from all aspects of the discussion, decision-making and voting so that the remaining trustees can freely discuss and make a decision. However, in deciding their approach the trustees must follow any governing document or legal requirements which outline how conflicts of interest should be handled. They should also follow any processes in the charity's conflicts of interest policy. They should be satisfied that their handling approach is an appropriate way of demonstrating that their decision was made only in the best interests of the charity.

They should keep a proper record of their discussions and decision.

However they proceed, the trustees of each charity should be satisfied that the affected trustee understands that they cannot use information obtained at the charity for their own benefit or that of another organisation if it has been obtained in confidence or has special value such as commercial sensitivity.

Example 6: participating where there is a conflict of loyalty

In [example 3](#), a conflict of loyalty was identified for an individual who is a trustee of an educational charity, and a member of a local arts centre, where the charity is considering delivering a programme of work at the local arts centre. Example 3 also sets out the factors that may make this conflict low risk.

It can be helpful for trustees to have a conflicts of interest policy to help identify conflicts of loyalty that are low risk. If the trustees decide that the affected trustee has a conflict of loyalty that does not prevent them from making decisions in the best interests of the charity, even though the decision also concerns the arts centre, it is acceptable for the trustee simply to declare the interest before participating in the decision.

Deciding that a conflict of interest is low risk, and that the affected trustee can participate in the decision, is a judgement for the trustees. It is not possible to give a definitive view of when this is appropriate. It depends on the particular decision and relevant circumstances. The trustees should take all relevant factors into account and be ready to explain their approach if asked.

4.6 Record the conflict of interest

Keep a written record of the decision

The Commission expects the charity's written records to document any conflicts of interest and how the trustees have dealt with them. The usual way to record the trustees' decisions is in the minutes of their meetings.

Where there is a conflict of interest, the trustees should ensure that the written record of the decision shows:

- the nature of the conflict
- which trustee or trustees were affected
- whether any conflicts of interest were declared in advance
- an outline of the discussion
- whether anyone withdrew from the discussion
- how the trustees took the decision in the best interests of the charity

Recording decisions in this way helps trustees to show that they have acted properly and complied with their duties.

Disclose payments or benefits (legal requirement)

Charities which prepare their accounts on an accruals basis must include details of payments and other benefits to charity trustees and connected persons - including family members and businesses. They are also required to say under what legal authority the payments or benefits have been made, together with the reason for them.

The Commission recommends that, whether or not they are required to prepare accruals accounts, all charities should disclose benefits received by trustees in their annual accounts.

There is more information about charity accounts in [Charity reporting and accounting: the essentials 2009 \(CC15b\)](#).

5. Why it's important to follow this guidance

5.1 What are the consequences of not acting properly where there is a conflict of interest?

Where trustees don't identify or properly respond to a conflict of interest, there can be serious consequences for the affected trustee, the charity, and public trust and confidence in charities generally.

Where trustees have acted outside the terms of the charity's governing document or the law, their decision may not be valid. It could be challenged by the Commission or by an interested party, such as a beneficiary of the charity.

The Commission has produced this guidance to help trustees approach their decision making properly where there is a conflict of interest. It expects them to use this guidance to fulfil their duty to act only in the best interests of the charity and to be able to provide a sufficient justification for their decisions in the event of challenge.

Where trustees fail to act properly or make a mistake the Commission always expects them to act promptly to put things right and prevent a recurrence of the same or similar issue.

Where trustee actions or failings present a serious risk to the charity, the Commission is likely to regard this as mismanagement or misconduct and take regulatory action.

A. Legal consequences (legal requirement)

Failure to act properly where there is a conflict of interest is a breach of the trustees' legal responsibilities.

A transaction affected by a conflict of interest, where the trustees have not acted properly, could be challenged by the Commission or by an interested party. In some circumstances the transaction may be unsafe and capable of being invalidated or, in the worst case, might be void from the start.

Where they have not acted properly, trustees may have to repay any sums paid by the charity, whether they result from an unauthorised trustee benefit or another breach of duty. This can be the case, even where the charity has benefitted from the arrangement. If the charity has also suffered a loss, the trustees may have to make good such loss to the charity.

B. Regulatory consequences

The Commission will intervene where it has concerns about trustee misconduct or mismanagement or if there is a risk to charity property. The Commission's [risk framework](#) explains that decisions to intervene are based on the nature and level of the risk posed to a charity or charities generally.

The regulatory consequences of making a decision which is subject to a conflict of interest largely depend on the nature and severity of the conflict, its impact on the charity, and the ability of the trustees to remedy the situation and operate in line with their duties.

Remedial action by the trustees

Where:

- the impact of the conflict of interest on the charity is low
- there is little or immaterial loss or damage to the charity
- the trustees can show that the failure to act properly was an error

the Commission expects trustees to use this guidance to correct their approach.

In these cases the Commission's minimum expectation of trustees is that they:

- take reasonable steps to assess and manage any risks to the charity's work and reputation
- make a full record of the issue and how they have handled it
- review or develop a conflicts of interest policy, ensure that all trustees are made aware of its content and meaning, and fully implement the policy in the future

Corrective regulatory advice

Where the impact of the decision subject to the conflict of interest is higher the Commission will give corrective regulatory advice. Factors which may have a higher impact on the charity include conflicts of interest which are associated with unauthorised trustee benefit, other loss of charity funds, bad publicity for the charity or potential damage to public trust and confidence in charities generally.

Regulatory advice will specify what the trustees should do to remedy the situation and to ensure that it doesn't recur. The action plan often requires the serving trustees to decide whether to take action themselves to recover any sums lost to the charity. Very often it means that the serving trustees are required to appoint new independent trustees to work with them.

The Commission will monitor the trustees' implementation of the required improvements, within a stipulated timescale. Any failure to fully implement the required improvements is likely to be regarded as misconduct or maladministration of the charity and can lead to further use of the Commission's powers.

Using the Commission's powers

The Commission will intervene using its investigative powers in serious or high risk cases. This will usually be where the issue or allegation presents a serious risk to the charity or to public confidence in charities generally.

For example, where it seems that trustees have deliberately or negligently placed their own interests ahead of those of the charity and have, as a result, gained significant benefit at the expense of the charity, the Commission will use its powers to:

- stop abuse, trustee misconduct and mismanagement – this includes where the trustees fail to fully take steps to resolve the issues or are incapable of doing so
- intervene in a charity's affairs and take steps to recover any sums lost to charity, where the trustees are unable or unwilling to do so, and the amount involved is significant

If the Commission finds evidence of or suspect criminal activity it will refer the matter to the police and other relevant agencies and, if the public interest justifies it, use its own powers of intervention. In all cases where the Commission intervenes, whether by giving corrective regulatory advice requiring action or using its powers, it will take a stronger line and be less tolerant where it has previously engaged with the charity about the same, or similar, issues.

Where the Commission intervenes, its minimum expectation of trustees is that they:

- promptly provide full and frank disclosure of all relevant facts and information they have about the incident
- take reasonable steps to assess and manage any risks to the charity's work and reputation
- co-operate and work with the Commission, if required, to get the charity's management right
- act responsibly and take action to ensure that they fulfil their legal responsibilities in the future. This often requires the serving trustees to decide whether to take action themselves to recover any sums lost to the charity. Very often it means that the serving trustees are required to appoint new independent trustees to work with them
- review or develop a conflicts of interest policy and ensure that all trustees are made aware of its content and meaning, and fully implement the policy in the future
- make a full record of the issue and how they have handled it

C. Reputational consequences including damage to public confidence in charities

Trustees should be aware of the significant negative effects that a conflict of interest can have on the charity's reputation and on public trust and confidence generally. If those outside the trustee body, such as the charity's funders or other supporters, have the impression that the trustees have acted in their own interests rather than those of the charity, this may have reputational consequences and affect future funding. When dealing with conflicts of interest, trustees should be aware of how the situation may appear to someone from outside the charity, and make sure that policies and procedures are in place which will allow trustees to demonstrate that such situations have been dealt with properly.

Annex 1. Trustee benefit - the legal rules that trustees need to be aware of (legal requirement)

Where there is a potential trustee benefit, it is important to remember that there are 2 issues which the trustees must address:

- acting only in the best interests of the charity to prevent the conflict of interest associated with the trustee benefit from affecting decision making
- ensuring that there is an appropriate authority in place before any decision conferring trustee benefit is made

The first of these is covered in this guidance. The second is summarised as follows:

- the law says that trustees can only benefit from their charity where there is an explicit authority, obtained in advance
- authority will come either from:
 - a clause in the charity's governing document

- a statutory provision such as the power in the Charities Act which allows charities, in some circumstances, to pay trustees for additional goods or services they provide to the charity over and above normal trustee duties
- the Commission
- the court

The term trustee benefit includes 'any' payments or benefits to trustees or a connected person, apart from their reasonable out of pocket expenses. The term also covers situations where a trustee could receive property, loans, goods or services from the charity.

Authority is required where there is a possibility of benefit. This means that trustees must ensure that there is a proper authority for any situations where trustees could benefit, irrespective of whether there is any actual benefit to a trustee.

Where there is a proposed sale or lease of charity land to a trustee, or to a person or company closely connected with a trustee, this will need to be authorised by the Commission. This applies even if the disposal is at full market value.

The payment of reasonable expenses to trustees is not a trustee benefit, so it does not create a conflict of interest or require authorisation.

There is more information about trustee benefits and the requirement for authority in [Trustee expenses and payments \(CC11\)](#).

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GUIDANCE

The essential trustee: what you need to know, what you need to do



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1. About this guidance

This guidance explains the key duties of all trustees of charities in England and Wales, and what trustees need to do to carry out these duties competently.

Trustees have independent control over, and legal responsibility for, a charity's management and administration. They play a very important role, almost always unpaid, in a sector that contributes significantly to the character and wellbeing of the country.

Trusteeship can be rewarding for many reasons - from a sense of making a difference to the charitable cause, to new experiences and relationships. It's also likely to be demanding of your time, skills, knowledge and abilities. Being aware of the duties and responsibilities covered in this guidance will help you carry out your role in a way that not only serves your charity well but also gives you confidence that you will be complying with key requirements of the law.

You should read this guidance if you are a trustee of any charity based in England or Wales, including:

- a registered charity
- a charity that is not required by law to register
- a charity that is required to register, but has not yet done so

You should also read this guidance if you are thinking about setting up a charity or becoming a trustee in England or Wales.

The charity regulators in **Scotland** and **Northern Ireland** have their own guidance for trustees.

If you are involved in running a charity but don't know whether you are a trustee, check the charity's governing document. (This is the document that sets out the charity's rules; it may be a constitution, trust deed, articles of association or similar document.) It will tell you which body has ultimate authority and responsibility for directing and governing the charity. All properly appointed members of that body are charity trustees in law, whatever they are called (trustees, directors, committee members, governors or something else).

If you are a member of that body, you are automatically a charity trustee. You share, with all members of that body, equal responsibility for the charity.

The Charity Commission expects trustees to take their responsibilities seriously. Using this guidance and ensuring you give sufficient time and attention to your charity's business will help. The Commission recognises that most trustees are volunteers who sometimes make honest mistakes. Trustees are not expected to be perfect - they are expected to do their best to comply with their duties. Charity law generally protects trustees who have acted honestly and reasonably.

1.1 Must and should - what they mean

In this guidance:

- 'must' means something is a legal or regulatory requirement or duty that trustees must comply with
- 'should' means something is good practice that the Commission expects trustees to follow and apply to their charity

Following the good practice specified in this guidance will help you to run your charity effectively, avoid difficulties and comply with your legal duties. Charities vary in terms of their size and activities. Consider and decide how best to apply this good practice to your charity’s circumstances. The Commission expects you to be able to explain and justify your approach, particularly if you decide not to follow good practice in this guidance.

In some cases you will be unable to comply with your legal duties if you don’t follow the good practice. For example:

Your legal duty	It’s vital that you
Act in your charity’s best interests	Deal with conflicts of interest
Manage your charity’s resources responsibly	Implement appropriate financial controls Manage risks
Act with reasonable care and skill	Take appropriate advice when you need to, for example when buying or selling land, or investing (in some cases this is a legal requirement)

Trustees who act in breach of their legal duties can be held responsible for consequences that flow from such a breach and for any loss the charity incurs as a result. When the Commission looks into cases of potential breach of trust or duty or other misconduct or mismanagement, it may take account of evidence that trustees have exposed the charity, its assets or its beneficiaries to harm or undue risk by not following good practice.

1.2 How to use this guidance

You may want to read all of this guidance to get a better understanding of trustees’ duties overall, or you may want to find out more about a specific topic. As a minimum the Commission recommends that you read the summary of trustees’ duties in section 2:

- section 2 of this guidance gives a summary of trustees’ duties
- section 3 explains whether you can legally be a trustee
- sections 4 to 9 explain the 6 key duties of trustees in more detail
- section 10 explains when trustees can be liable and how to reduce the risk
- sections 11 and 12 provide more detail about charity structures, and the roles of charity officers
- section 13 contains definitions of technical terms used in this guidance

2. Trustees' duties at a glance

This is a summary of trustees' main legal responsibilities, which are explained in detail in the rest of this guidance. You should read this section as a minimum, and ensure you fully understand your responsibilities by referring to the rest of the guidance as necessary.

Before you start - make sure you are eligible to be a charity trustee

You must be at least 16 years old to be a trustee of a charity that is a company or a charitable incorporated organisation (CIO), or at least 18 to be a trustee of any other charity.

You must be properly appointed following the procedures and any restrictions in the charity's governing document.

You must not act as a trustee if you are disqualified, unless authorised to do so by a waiver from the Commission. The reasons for disqualification are shown in the disqualifying reasons table and include:

- being bankrupt (undischarged) or having an individual voluntary arrangement (IVA)
- having an unspent conviction for certain offences (including any that involve dishonesty or deception)
- being on the sex offenders' register

You can read the automatic disqualification guidance for charities which explains the disqualification rules in more detail.

There are further restrictions for charities that work with children or adults at risk. See section 3 for more information.

Ensure your charity is carrying out its purposes for the public benefit

You and your co-trustees must make sure that the charity is carrying out the purposes for which it is set up, and no other purpose. This means you should:

- ensure you understand the charity's purposes as set out in its governing document
- plan what your charity will do, and what you want it to achieve
- be able to explain how all of the charity's activities are intended to further or support its purposes
- understand how the charity benefits the public by carrying out its purposes

Spending charity funds on the wrong purposes is a very serious matter; in some cases trustees may have to reimburse the charity personally.

See section 4 for more information.

Comply with your charity's governing document and the law

You and your co-trustees must:

- make sure that the charity complies with its governing document
- comply with charity law requirements and other laws that apply to your charity

You should take reasonable steps to find out about legal requirements, for example by reading relevant guidance or taking appropriate advice when you need to.

See section 5 for more information.

Act in your charity's best interests

You must:

- do what you and your co-trustees (and no one else) decide will best enable the charity to carry out its purposes
- with your co-trustees, make balanced and adequately informed decisions, thinking about the long term as well as the short term
- avoid putting yourself in a position where your duty to your charity conflicts with your personal interests or loyalty to any other person or body
- not receive any benefit from the charity unless it is properly authorised and is clearly in the charity's interests; this also includes anyone who is financially connected to you, such as a partner, dependent child or business partner

See section 6 for more information.

Manage your charity's resources responsibly

You must act responsibly, reasonably and honestly. This is sometimes called the duty of prudence. Prudence is about exercising sound judgement. You and your co-trustees must:

- make sure the charity's assets are only used to support or carry out its purposes
- avoid exposing the charity's assets, beneficiaries or reputation to undue risk
- not over-commit the charity
- take special care when investing or borrowing
- comply with any restrictions on spending funds or selling land

You and your co-trustees should put appropriate procedures and safeguards in place and take reasonable steps to ensure that these are followed. Otherwise you risk making the charity vulnerable to fraud or theft, or other kinds of abuse, and being in breach of your duty.

See section 7 for more information.

Act with reasonable care and skill

As someone responsible for governing a charity, you:

- must use reasonable care and skill, making use of your skills and experience and taking appropriate advice when necessary
- should give enough time, thought and energy to your role, for example by preparing for, attending and actively participating in all trustees' meetings

See section 8 for more information.

Ensure your charity is accountable

You and your co-trustees must comply with statutory accounting and reporting requirements. You should also:

- be able to demonstrate that your charity is complying with the law, well run and effective
- ensure appropriate accountability to members, if your charity has a membership separate from the trustees
- ensure accountability within the charity, particularly where you delegate responsibility for particular tasks or decisions to staff or volunteers

See section 9 for more information.

3. Who can be a trustee and how trustees are appointed

You must make sure you are allowed to be a trustee:

- there are some restrictions on who can be a trustee – there are minimum age limits and some factors that automatically disqualify people from being trustees
- you must be properly appointed, and should know how long your appointment lasts
- if you are not properly appointed, the trustees' decisions or actions may be invalid, potentially creating disputes or putting charity assets at risk
- if you are a trustee of a charity that provides 'regulated activities' for children or adults, be prepared for your charity to request a DBS check on you

3.1 Who can be a trustee

3.1.1 Minimum age

You must be at least 16 years old to be a trustee of a charitable company or a charitable incorporated organisation (CIO), unless the charity's governing document says you must be older. You must be at least 18 to be a trustee of any other type of charity.

3.1.2 Disqualification

You must not act as a trustee if you are disqualified under the Charities Act, unless your disqualification has been waived by the Commission. Reasons for disqualification include if you:

- are disqualified as a company director
- have an unspent conviction for an offence involving dishonesty or deception (such as fraud)
- are an undischarged bankrupt (or subject to sequestration in Scotland), or have a current composition or arrangement including an individual voluntary arrangement (IVA) with your creditors
- have been removed as a trustee of any charity by the Commission (or the court) because of misconduct or mismanagement
- are on the sex offenders' register

You can read the automatic disqualification guidance for charities which explains the disqualification rules in more detail.

If any of the current or new disqualification reasons apply to you, you may be able to get your disqualification lifted (or 'waived') by the Commission. The Commission will carefully consider whether granting a waiver is appropriate, although there are some situations where it has no power to grant a waiver – for example, where a trustee is disqualified as a company director.

Read more about **trustee disqualification**.

3.1.3 Fit and proper persons

Charities that want to claim UK tax reliefs and exemptions (eg Gift Aid) must meet the management condition in the Finance Act 2010. This requires all of the charity's managers (including trustees) to be 'fit and proper persons'.

Find out more - see the **HM Revenue and Customs guidance**.

3.1.4 Disclosure and Barring Service (DBS) checks

There are legal restrictions under safeguarding legislation on who can be involved in working with children

and adults at risk. In addition, the DBS undertakes criminal records checks of individuals, which charities can use to ensure that they are eligible and suitable for the trustee role. The type of check that can be made depends on the nature of the charity's activities and the role that the trustee plays. For example, if you are a trustee of a charity that provides 'regulated activity' for children or adults, you should expect your charity to request an enhanced DBS check on you: where it is satisfied that the role is eligible, this will include a check against the relevant barred list.

Find out more about **safeguarding and DBS checks**.

3.2 How trustee appointments begin and end

You must follow any rules in your governing document about:

- who appoints new trustees
- when, and how, new trustees are appointed
- who can be a trustee - the governing document may impose conditions
- how long appointments last and whether a trustee can be re-appointed
- how trustees can **resign or be removed**

If your governing document has no specific provisions for these things, your charity must comply with the relevant legal provisions:

- companies must comply with company law provisions for appointing and removing directors
- unincorporated charities must comply with Trustee Act 1925 provisions

CIOs must include provisions in their constitutions for appointment and removal of trustees.

The Commission can use its powers to appoint or remove trustees if the charity's trustees (or members, if applicable) are unable to do so.

Read more about **legal powers to remove and appoint trustees**.

3.3 What to consider when recruiting trustees

When charities recruit new trustees, they should think about:

- the skills and experience the current trustees have, and whether there are any gaps
- ensuring new trustees are eligible to act
- ensuring new trustees don't have **serious conflicts of interest**, or getting Commission consent and putting procedures in place to manage the conflicts
- how to help new trustees to understand their responsibilities and the charity's work

It's also important for trustees to be interested in the charity's work and be willing to give their time to help run it.

Members or beneficiaries on your board

Many charities' governing documents allow or require:

- some or all of the trustees to be elected by the members (this is usual practice for charities with voting members other than the trustees)
- the trustee body to include beneficiaries
- other groups or organisations, such as local authorities, to appoint trustees

It's important to listen to the views and perspectives of members, beneficiaries and other bodies with an interest in your charity. Having people as trustees is one way of obtaining these views. But all trustees, regardless of how they are appointed, must act solely in the interests of the charity; it's not their role to act on behalf of any particular group. They must also manage conflicts of interest, including conflicts of loyalty to their appointing body.

Find out more:

Trustee board: people and skills - how to appoint the right people with the right skills

Finding new trustees: what charities need to know

Charity trustee: declaration of eligibility and responsibility

Avoid mistakes - make sure trustee appointments are valid

Be careful to follow the rules in your charity's governing document and the law when appointing trustees. If trustee appointments breach these rules they are not valid. The validity of actions and decisions they were involved in could be called into question. But even if a trustee isn't validly appointed, they can still be held liable for their actions and decisions.

Improper trustee appointments can often lead to disputes. In the worst cases this can harm the charity's reputation, alienate supporters, put charity assets at risk (including by loss of funding) or ultimately leave the charity unable to function.

4. Ensure your charity is carrying out its purposes for the public benefit

You and your co-trustees must make sure that everything your charity does helps (or is intended to help) to achieve the purposes for which it is set up, and no other purpose. This means you should:

- ensure you understand the charity's purposes as set out in its governing document
- plan what your charity will do, and what you want it to achieve
- be able to explain how all of the charity's activities are intended to further or support its purposes
- understand how the charity benefits the public by carrying out its purposes

Spending charity funds on the wrong purposes is a very serious matter; in some cases trustees may have to reimburse the charity personally.

4.1 Understanding the charity's objects and powers

You should read the objects clause in your charity's governing document and ensure you understand:

- what the charity is set up to achieve (its purposes)
- who the charity is there to benefit (its beneficiaries)
- how they will benefit (what the charity will do for or with them)
- any order of priority to the services and benefits the charity provides
- any restrictions on what the charity can do or who it can help (geographical or other boundaries; or specific criteria that beneficiaries must meet)

The objects might be quite broad and general, or they might be quite narrow, specifying what services or activities the charity can provide in order to achieve its purposes.

You can find out more about governing documents in section 5 of this guidance.

The charity may have specific powers in its governing document. Charities also have powers from the Charities Act and other laws. You must only use these powers in ways that further your charity's purposes.

Find out more about **charitable purposes**.

Some charities produce 'mission statements' or other summaries of their aims and activities. When checking the scope of your charity's objects or powers, be careful not to rely on such statements instead of the charitable purposes set out in the governing document, as the wording may be less precise. If you need to check whether your charity can lawfully undertake a particular activity, you should check against the objects clause rather than any other statement of the charity's mission or aims. Otherwise you could end up carrying out activities in breach of the charity's governing document.

4.2 Public benefit

All charities must be for the public benefit. Trustees must have regard to the Commission's **public benefit guidance PB1, PB2 and PB3** when making decisions they are relevant to. This would include reviewing the charity's activities or considering new ones.

Public benefit is essential to:

- charitable status - to be a charity an organisation must have only charitable purposes for the public benefit
- a charity's operation - its activities must all be focussed on carrying out the charity's purposes for the public benefit
- a charity's accountability - trustees must be able to explain how their charity's activities are or have been for the public benefit

This means that you should understand, and be able to explain:

- what the charity is set up to achieve - its purpose
- why the charity's purpose is beneficial - this is the 'benefit aspect' of public benefit
- how the charity's purpose benefits the public or a sufficient section of the public - this is the 'public aspect' of public benefit
- how the charity will carry out (or 'further') its purpose for the public benefit

4.3 Planning and reviewing your charity's work

You and your co-trustees are responsible for deciding and planning how your charity will carry out its purposes. All charity trustees should, therefore, decide together what activities the charity will undertake, and think about the resources it will need. Trustees of larger charities should take responsibility for setting the charity's strategic aims and direction, and agreeing appropriate future plans.

Involving the charity's staff, volunteers and others with an interest in the charity in the planning process can be helpful.

As part of your planning process, you should work out what funds and other resources the charity will need and where it will get them. See section 7 of this guidance for more detail.

You and your co-trustees should periodically review what the charity is achieving, and how effective the charity's activities are. Thinking about the difference your charity makes may help you to explain more clearly how it benefits the public. It may also help you to decide whether it could be more effective in carrying out its purpose by changing what it does.

Find out more:

Inspiring Impact

Charity governance, finance and resilience: 15 questions you should ask

You and your co-trustees should also review the charity's objects from time to time and make sure that they are still appropriate, relevant and up to date. Circumstances change over time and this could affect whether:

- the charity's beneficiary group still exists, and is still a **'sufficient section'** of the public
- the geographical 'area of benefit' in which the charity can operate is still relevant
- the need that the charity was set up to meet still exists, and meeting it is still for the public benefit
- there may be better ways of meeting the need for which the charity was set up

If your charity's objects are no longer effective, you must consider how these could be changed or take other action to enable the charity's resources to be applied for its purposes.

In the past many charities helped people by providing goods including food, clothing or fuel. Many charities have decided that they can meet current needs more effectively with cash payments or vouchers, and have updated their objects. Some charities still work effectively by providing goods (such as food or medical equipment).

Charities are often set up for a particular locality. Changes over time may mean that there are no longer enough people who need the charity's services in that place. In these circumstances, charities can expand their area of benefit to include neighbouring areas.

Two charities providing similar (or complementary) services in the same area may decide to collaborate or merge for greater efficiency.

4.4 Updating your charity's objects

Charities can modify or add to their objects if necessary, using powers in the governing document, company law or the Charities Act. They can't usually change their objects completely; the governing document and charity law do not usually allow it. If your charity is planning to update its objects, you and your co-trustees should consider what the charity was originally set up to do, and how circumstances have changed. Most charities must obtain permission from the Commission before changing their objects.

You should also review the other provisions in your charity's governing document and update them if they no longer meet the charity's needs - see section 5 of this guidance.

Governing documents are legal documents. You must follow the correct procedures to amend them, and it's important to word any changes correctly. You should consider taking appropriate advice about any changes. Use one of the **Commission's model governing documents** or an **approved governing document**, to ensure that your governing document has all the provisions and powers you need.

Find out more:

How to make changes to your charity's governing document

How to write charitable purposes

5. Comply with your charity's governing document and the law

You and your co-trustees must:

- make sure that the charity complies with its governing document
- comply with charity law requirements and other laws that apply to your charity

You should take reasonable steps to find out about legal requirements, for example by reading relevant guidance or taking appropriate advice when you need to.

5.1 Your charity's governing document

You and your co-trustees must make sure that the charity complies with the governing document, which usually contains key information about:

- what the charity exists to do (its purposes, as explained in its objects clause)
- what powers it has to further its objects
- who the trustees are, how many trustees there should be and how they are appointed and removed
- whether the charity has members and, if so, who can be a member
- rules about trustees' (and members') meetings; how they are arranged and conducted; how decisions must be made and recorded, and so on
- how to change the governing document
- how to close the charity down

There may also be rules limiting how powers can be used, who can vote at meetings, or which rules can be changed.

Every trustee should have an up to date copy of their charity's governing document and regularly refer to it. If you don't have a copy, or don't know what it is, ask your fellow trustees. If they don't have a copy, the Commission can usually provide one (if your charity is a registered charity).

The governing document is essential to your charity. You and your co-trustees may need to review it from time to time to ensure that it continues to meet the charity's needs. Governing documents are legal documents. You must follow the correct procedures to amend them, and it's important to word any changes correctly. You should consider taking appropriate advice about any changes. Use one of the **Commission's model governing documents** or an **approved governing document**, to ensure that your governing document has all the provisions and powers you need.

Read more about **governing documents**.

5.2 Charity law - registration, accounting, reporting and other requirements

Charities set up in England or Wales must register with the Commission unless they are:

- exempt charities
- excepted from registering
- very small (below the annual income threshold for compulsory registration, currently £5,000) and not a CIO (all CIOs must register)

Find out **whether your charity needs to register or is exempt or excepted**.

Charities that operate in Scotland or Northern Ireland may also have to register there.

All charities must keep proper financial records and prepare annual accounts. Trustees must arrange for accounting books and records (including cash books, invoices and receipts) to be kept for a specified period.

Read more: **Retention of Accounting Records**.

All registered charities:

- must inform the Commission of any changes to the information on the register of charities, including trustee details and changes to the governing document
- must send an annual return (or annual update) and other information to the Commission
- must comply with any additional accounting and reporting requirements such as filing annual accounts and reports with the Commission, depending on the size of the charity
- should report to the Commission any serious incident in their charity, as soon as possible after it occurs (see section 8.3 for more details)

Exempt charities may have to send accounting information to their principal regulator.

Find out more about **accounting and reporting requirements for charities**.

Charities whose income is over £250,000, and all charitable companies, must prepare their accounts and trustees' annual report in accordance with the Statement of Recommended Practice - Accounting and Reporting by Charities (Charities SORP).

Find out more about the **Charities SORP**.

A registered charity with an income over £10,000 in its last financial year must state that it's a registered charity on any fundraising documents and on many of its financial documents, including cheques, invoices and receipts. This includes electronic documents such as emails and websites. You don't have to state the charity's registration number, but it's good practice to do so.

5.3 Other laws and regulations

Charities and their trustees may be subject to a range of other laws and regulations depending on what the charity does, where it works and how it is set up. Some laws apply to all charities, such as equality, data protection and copyright law. It is important to be aware of the laws that apply to your charity, for example if it:

- is a company, CIO or community benefit society
- employs staff
- owns or rents premises
- operates vehicles
- provides:
 - legal, financial or other regulated advice
 - housing or accommodation
 - medical or care services
 - works with children or adults at risk
- undertakes activities that are subject to regulations, such as fundraising
- wants to benefit from Gift Aid or other tax reliefs
- works in Scotland, Northern Ireland or outside the UK

The Commission doesn't expect every trustee to be a legal expert. You and your co-trustees should take reasonable steps to find out about legal and regulatory requirements and keep up to date, for example by getting mailings from the Commission and other sources, reading relevant guidance and attending appropriate training. The charity should also have systems and procedures to ensure that it complies with legal requirements.

Where there is concern about a specific issue, the trustees may wish to consider taking independent advice from a suitably qualified person.

Find a solicitor - Law Society

Legal advice for small charities - LawWorks

Avoid mistakes - know your governing document

If the trustees don't comply with the governing document, the charity might undertake activities outside its objects. It might fail to follow the correct procedures, or take actions it has no power to take. Actions and decisions could be invalid and have to be reversed as a result.

If you don't follow rules about who can be a member or a trustee, or how to arrange and run meetings, it often leads to disputes, which can prevent the charity from operating effectively.

6. Act in your charity's best interests

You must:

- do what you and your co-trustees (and no one else) decide will best enable the charity to carry out its purposes
- with your co-trustees, make balanced and adequately informed decisions, thinking about the long term as well as the short term
- avoid putting yourself in a position where your duty to your charity conflicts with your personal interests or loyalty to any other person or body
- not receive any benefit from the charity unless it is properly authorised and is clearly in the charity's interests; this also includes anyone who is financially connected to you, such as a partner, dependent child or business partner

6.1 Understanding the charity's interests

Acting in the charity's best interests means always doing what the trustees decide will best enable the charity to carry out its purposes, both now and for the future. It's not about serving:

- the interests of trustees or staff
- the personal interests of members or beneficiaries
- the personal interests of supporters, funders or donors
- the charity as an institution in itself, or preserving it for its own sake

Sometimes trustees need to consider **collaborating or merging with another charity**, or even spending all of the charity's resources and **bringing it to a close**.

6.2 Making decisions

You and your co-trustees are ultimately responsible for deciding what activities the charity will undertake, what resources it will need, how it will obtain and use them. Collective decision making is one of the most important parts of the trustee role. Some decisions are simple and straightforward; others can be complex or far reaching in their consequences. When you and your co-trustees make decisions about your charity, you must:

- act within your powers
- act in good faith, and only in the interests of your charity
- make sure you are sufficiently informed, taking any advice you need
- take account of all relevant factors you are aware of
- ignore any irrelevant factors
- deal with conflicts of interest and loyalty
- make decisions that are within the range of decisions that a reasonable trustee body could make in the circumstances

You should record how you made more significant decisions in case you need to review or explain them in the future.

Read more about **decision making**.

Avoid mistakes - be prepared to challenge assumptions

Trustees must make decisions solely in the charity's interests, so they shouldn't allow their judgement to be swayed by personal prejudices or dominant personalities.

Trustees must act collectively (jointly). Part of their role is to critically and objectively review proposals and challenge assumptions in making decisions. No one should be able to direct the trustees or drive decisions through without sufficient consideration. Trustees who simply defer to the opinions and decisions of others aren't fulfilling their duties.

Decisions don't usually have to be unanimous (depending on your governing document), but once the trustees have made a decision, they must all comply with it, including any who disagree. If you strongly disagree with your fellow trustees' decision, you can ask for your disagreement to be recorded in the minutes of the meeting. If you think that your fellow trustees are acting in breach of their duty, you should discuss the matter with the chair or your fellow trustees. If you are still concerned, contact the Commission. Ultimately, you may feel that you have to resign in order to distance yourself from the decision.

The Commission can only advise or intervene in relation to trustees' legal duties; it can't arbitrate in disputes between trustees.

6.3 Dealing with conflicts of interest and conflicts of loyalty

You can only comply with your duty to act in the charity's best interests if you prevent your personal interests from conflicting (or appearing to conflict) with the best interests of the charity. This means recognising and dealing with conflicts of interest.

A conflict of interest is any situation where your personal interests could, or could appear to, prevent you from making a decision only in the charity's best interests. For example, if you (or a person connected to you, such as a close relative, business partner or company):

- receive payment from the charity for goods or services, or as an employee
- make a loan to or receive a loan from the charity
- own a business that enters into a contract with the charity
- use the charity's services
- enter into some other financial transaction with the charity

Even when you receive no financial benefit, you could have a conflict of loyalty. For example if your charity has business dealings with your employer, a friend, family member, or another body (such as a local authority or charity, or a charity's trading subsidiary) that you serve on.

This means you and your co-trustees:

- should identify, and must declare conflicts of interest (or loyalty)
- must prevent the conflict of interest (or loyalty) from affecting the decision
- should record the conflict of interest (or loyalty) and how it was dealt with

How you prevent a conflict of interest from affecting a decision will depend on the circumstances and the seriousness of the conflict of interest. You must follow any specific conflict of interest provisions in your governing document. If a trustee (or a person connected to a trustee) stands to benefit directly or indirectly, the conflicted trustee(s) should withdraw from the discussion and decision making process. If the non-conflicted trustees can demonstrate that a conflict of loyalty involves no material benefit and poses a low risk to decision making in the best interests of the charity, they may permit the affected trustee to participate. Directors of charitable companies must have specific authority in the company's articles to do this. For the most serious conflicts of interest it may mean obtaining permission from the Commission, deciding not to proceed with a proposal or even resigning as a trustee.

Avoid mistakes - deal with conflicts of interest

Conflicts of interest (and conflicts of loyalty) are more common than people often think. If one of your fellow trustees appears to have a conflict of interest you should say so; you are not calling their integrity into question by doing so.

In deciding how to deal with a conflict of interest, trustees should be mindful of what feels right, and also how others might view the trustees' actions.

Where conflicts of interest have not been identified or properly dealt with, it can have negative impacts on both the charity and individual trustees including financial cost and reputational damage. Because the trustees have acted in breach of their duty, decisions may be called into question or legally challenged. The Commission may have to take regulatory action to protect the charity from further harm or to deal with any misconduct or mismanagement by the trustees.

Read more about **conflicts of interest**.

6.4 Payments and other benefits to trustees

Charities can't usually pay their trustees. When you become a trustee, you usually volunteer your services and receive no payment for your work. This is called the voluntary principle. You can, however, reclaim reasonable expenses that you incur such as travel and childcare - being a trustee shouldn't mean being out of pocket.

These restrictions apply to trustees (or someone with a financial connection to a trustee, such as their partner, dependent children or a business partner) benefiting by:

- supplying goods or services to the charity eg building work or specialist services, even if the trustee offers better value or expertise than other suppliers
- being employed by the charity or by a trading subsidiary owned by the charity
- receiving material benefits as a beneficiary of the charity
- being paid to act as a trustee; this is very unusual and only permitted in exceptional circumstances
- entering into a property transaction (or any other financial transaction such as a loan) with the charity - this is called self-dealing

In some circumstances, one or more trustees (or persons with a financial connection to a trustee) do receive payments or other benefits from their charity. This is only permitted if:

- the benefit is specifically authorised by the governing document, the Charities Act (or other relevant legislation), the Commission or the courts; any specified procedures must be strictly followed
- even if the benefit is authorised, the non-conflicted trustees are satisfied that allowing it is in the charity's best interests
- the conflict of interest is managed; so in most cases the conflicted trustee(s) can't be involved in the decision and only a minority of trustees can benefit

Read more about **payment of trustees**.

Find out whether you need permission, and how to apply.

7. Manage your charity's resources responsibly

You must act responsibly, reasonably and honestly. This is sometimes called the duty of prudence. Prudence is about exercising sound judgement. You and your co-trustees must:

- make sure the charity's assets are only used to support or carry out its purposes
- avoid exposing the charity's assets, beneficiaries or reputation to undue risk
- not over-commit the charity
- take special care when investing or borrowing
- comply with any restrictions on spending funds or selling land

You and your co-trustees should put appropriate procedures and safeguards in place and take reasonable steps to ensure that these are followed. Otherwise you risk making the charity vulnerable to fraud or theft, or other kinds of abuse, and being in breach of your duty.

7.1 Managing risks

A risk is anything that could, if it happened, affect your charity achieving its purposes or carrying out its plans. All charities face some risks. The risks your charity might face will depend on factors such as its size, funding and activities. For example, managing property, employing staff, using volunteers, using IT, working with children or people at risk, or implementing change all involve elements of risk.

You and your co-trustees should manage risk responsibly. You have a duty to avoid exposing your charity to undue risk. This doesn't mean being risk averse. Risk management is the process of identifying and assessing risks, and deciding how to deal with them. It may involve an element of responsible risk taking, and is central to how trustees make decisions.

The Commission's guidance on risk management sets out the basics of dealing with risks and includes a risk management model, made up of the following steps:

1. Establish a risk policy.
2. Identify risks (what could go wrong).
3. Assess risks (how likely is it, and how serious would it be).
4. Evaluate what action to take (eg avoid it, transfer it, insure against it, accept it).
5. Review, monitor and assess periodically.

Find out more:

How to manage risks in your charity

Institute of Risk Management guide for charities

Charities: how to protect vulnerable groups including children

Some charities work in areas or undertake activities that involve greater exposure to risks such as fraud, financial crime, extremism or terrorism. Charities should assess their exposure to these risks and take proportionate action. If your charity needs to address these risks, you may find the Commission's toolkit on **protecting charities from harm** helpful. Chapter 2 of the toolkit includes a practical guide to due diligence, based on 3 principles:

- know your donor (for example, if your charity receives large donations, particularly anonymous or cash donations or with conditions attached)
- know your partner (if your charity relies on partners or intermediaries to carry out any of its work)
- know your beneficiaries (for example if your charity makes grants of cash or other financial support directly to individuals)

Charities must also assess and manage safeguarding risks. For example, they must ensure that their beneficiaries or others who come into contact with their charity do not, as a result, come to harm. For example, many charities come into contact with or provide activities for those who may be experiencing, or at risk of, abuse or neglect. This includes:

- children and young people under 18 years of age
- adults (aged 18 and over) at risk

Even where work with children or adults at risk does not form part of the core business of the charity, trustees must be alert to their responsibilities to protect from risk of harm those with whom the charity comes into contact.

Read more about **protecting vulnerable groups**.

These principles will help you and your co-trustees to carry out their legal duties and manage the risks to the charity's beneficiaries, assets and services.

7.2 Budgeting

You and your co-trustees need to work out what funds and other resources your charity will need and where the charity will get these from. A charity can only succeed in meeting its aims if it manages its money and other resources properly. You will need to plan and monitor its income and outgoings so that it can meet its short, medium and long term goals.

Find out more:

Managing charity assets and resources

Charity governance, finance and resilience: 15 questions you should ask

Financial difficulties in charities

7.3 Getting the funds your charity needs (income generation)

Most charities get their funds through one or more of the following methods:

- fundraising (asking for donations, legacies or grants)
- trading (selling goods or services)
- investment
- leasing or letting land or buildings

In practice, it's best to avoid relying on a single source of income. You and your co-trustees are responsible

for deciding how your charity will obtain funds. You should think about:

- how much money the charity needs
- the costs, benefits and risks of different methods of generating income
- any legal requirements that the charity must comply with, including fundraising regulations, and restrictions on commercial trading
- any potential reputational issues
- whether you need advice

If your charity is already bringing in funds, you and your co-trustees should ensure that its income generation is on target, complies with the law and is not exposing the charity to undue risk.

Find out more:

Fundraising legally and responsibly

Institute of Fundraising code of fundraising practice and good practice guides

Charity trading: selling goods and services

How to invest charity money

7.4 Charities and their trading subsidiaries

Charities need to use a trading subsidiary if they carry out commercial (non-charitable) trading which exceeds the threshold for paying income or corporation tax, or involves significant risk.

A trading subsidiary is a separate company controlled by the charity. The charity can raise money from trade without exposing its assets to risk or being liable for income or corporation tax.

There are, however, risks which trustees need to be aware of and manage:

- the charity exists for charitable purposes, but the trading subsidiary exists to generate income; their aims and interests are different; you need to distinguish between them
- if the trading subsidiary starts to fail, the charity must not bail it out; this would be putting the charity's funds at risk
- charity trustees who are also directors of the subsidiary have a conflict of interest
- if a charity trustee is also a director of the trading subsidiary, the restrictions on payments and benefits to trustees also apply to any payments or benefits as a director

7.5 Managing funds and keeping them safe

You and your co-trustees are responsible for your charity's money. Your charity should have effective processes for handling money, to help avoid poor decisions and accidental errors, as well as theft and fraud. Failure to do so is likely to result in a breach of your duty. You should:

- set a budget and keep track of it
- put in place clear policies and procedures to deal with income and expenditure
- ensure the charity keeps accurate records of income and expenditure
- have robust and effective **financial controls** in place

- protect the charity from **financial crime such as theft or fraud**
- put appropriate safeguards in place for money, assets and staff if **the charity operates outside of the UK**
- have an appropriate **reserves policy**
- ensure the charity receives **tax reliefs** to which it is entitled

If something does go wrong, you should inform the Commission and (if appropriate) the police. See the section on what to do if something goes wrong in section 8 of this guidance.

Find out more:

Charity money: how to keep it safe

Charities: due diligence checks and monitoring end use of funds

7.6 Managing property (land and buildings)

If the charity owns or rents land or buildings, you and your co-trustees should:

- make sure the property is recorded as belonging to the charity - see section 11 of this guidance
- know on what terms it's held
- ensure it's properly maintained and being correctly used
- make sure the charity has sufficient insurance

You should regularly review whether the property is suitable for the charity's purposes, and whether any property the charity lets to generate income is still a good investment.

Decisions about property are important, so think about the advice and information you may need in order to make decisions in the charity's interests.

Most charities can buy, sell or lease land when they need to. When selling or leasing land, trustees must try to get the best deal for the charity (unless they are making the disposal to further the charity's purposes). So all charities should, and registered charities must:

- obtain written advice, including a valuation, from a qualified surveyor before agreeing a sale or granting a lease for more than 7 years
- advertise the sale or lease, unless the surveyor advises otherwise

Otherwise, you are likely to need permission from the Commission for the sale or lease.

A charity's governing document may specify that land or buildings must be used for a particular purpose. This is called designated land (or 'specie land'). Special conditions apply to leasing or selling designated land.

Land belonging to a charity (particularly designated land) might be permanent endowment. This restricts how you can use the proceeds of sale.

You must get permission from the Commission to sell or lease property to or from a trustee, someone closely connected to a trustee, or an employee of the charity.

Before taking out a mortgage or loan secured against your charity's land you must get written financial advice and ensure that:

- the loan is needed and used for an activity that fits with your charity's purposes
- the terms of the loan are reasonable
- the charity will be able to repay the loan

Otherwise you will need permission from the Commission to proceed.

Find out more about **buying, selling, leasing or mortgaging charity property**, including designated land and **permanent endowment**.

7.7 Staff and volunteers

As part of your overall responsibility for the charity, you and your co-trustees have responsibilities towards any volunteers or staff.

You must ensure that:

- the charity complies with relevant law including employment, pension, equality and health and safety law
- volunteers are clearly distinct from employees in terms of responsibilities and rights; for example by not requiring volunteers to work set hours, nor paying them more than expenses they actually incur

You should ensure that:

- people are clear about what they are supposed to do, through appropriate job descriptions for staff or role descriptions for volunteers
- people are aware of the rules and boundaries within which they must work, for example, when representing or speaking on behalf of the charity
- people work safely
- people know what to do if there's a problem
- people know what they need to report and who they report to
- senior managers are not disqualified (see below)

You and your co-trustees should ensure that the charity has appropriate procedures and policies in place, staff and volunteers get appropriate training, and people know they must comply with policies and procedures. You also have an important role in promoting effective working relationships between trustees, senior staff (if any), staff and volunteers.

If your charity has senior managers – typically carrying out chief executive or finance director roles – you and your co-trustees should ensure that you have procedures in place to check if they will be disqualified by law from acting in that role. The reasons for disqualification are the same as for trustees – see section 3.1.2.

You can read the automatic disqualification guidance for charities which explains the disqualification rules in more detail.

Find out more:

How to manage your charity's volunteers

Charity staff: how to employ paid workers

Pension rules for charities

Pensions (Charity Finance Group guidance)

Avoid mistakes - don't rely too much on individuals

Things can go wrong when trustees place too much reliance on individuals, and don't implement sufficient safeguards to ensure accountability. This can result in the charity falling victim to fraud or theft, or beneficiaries suffering abuse. These kinds of occurrences could cause the charity serious reputational and other damage.

All charities should have appropriate financial controls which ensure that more than one person is involved in receiving income and authorising expenditure. These should cover all payment methods that the charity uses - cheque, cash, credit card, charge card, debit card, prepaid card, telephone or internet banking or other electronic means. Handling cash brings increased risk, so try to avoid cash payments wherever possible.

When other people raise funds on behalf of the charity, whether they are volunteers or paid professionals, you should ensure there are proper controls over the funds raised. This is to make sure that the charity receives the full amount due to it.

Read more about **financial controls**.

If something does go seriously wrong, you should take prompt action to deal with it and report it to the Commission. Find out more in section 8.3 of this guidance.

8. Act with reasonable care and skill

As someone responsible for governing a charity, you:

- must use reasonable care and skill, making use of your skills and experience and taking advice when necessary
- should give enough time, thought and energy to your role, for example by preparing for, attending and actively participating in all trustees' meetings

This is sometimes called the duty of care.

8.1 Using your skills and experience

As a trustee, you must use your skills and experience to inform decision making and benefit your charity. For example, the Trustee Act 2000 says that trustees must “exercise such care and skill as is reasonable in the circumstances”. What is reasonable in the circumstances will depend on any special knowledge or experience that the trustee has or claims to have. It also depends on whether a trustee is acting in a professional or paid capacity, and what it would be reasonable to expect such a person to know.

The Trustee Act 2000 applies to trustees of unincorporated charities. Company law and the Charities Act impose similar duties on directors of charitable companies and trustees of CIOs (see section 11 of this guidance). In addition, all trustees have a general duty of care which they must apply to all aspects of their role.

8.2 Taking advice when you need to

Trustees should recognise and acknowledge when they need advice. This is particularly important if the charity (or its property) may be at risk, or if they could act in breach of their duties, for example, when:

- buying or selling land (most charities must take advice from a surveyor or other qualified person when selling charity land)
- investing charity funds
- entering into novel, long-term, complex or high-value contracts
- considering legal action

Some larger charities employ their own professional advisers; most charities are more likely to obtain advice externally.

Find out more:

It's your decision: charity trustees and decision making

How to invest charity money

Other sources of help and advice

8.3 What to do if something does go wrong

Most problems in charities can be resolved by the trustees themselves, sometimes with some advice. However, in serious cases the Commission may need to advise the trustees or take action to protect the charity.

If something does go wrong, you should take prompt and appropriate action to:

- prevent or minimise any further loss or damage
- if appropriate, report it to the Commission, the police if a crime has been committed, and any other regulators that the charity is accountable to
- plan what you will say to your staff, volunteers, members, the public or the media
- take reasonable steps to prevent it from happening again - review controls and procedures, take appropriate advice

The Commission requires charities to report serious incidents. A serious incident is an adverse event, whether actual or alleged, which results in or risks significant:

- loss of your charity's money or assets
- damage to your charity's property
- harm to your charity's work, beneficiaries or reputation

The most common type of incidents are frauds, thefts, significant financial losses, criminal breaches, terrorism or extremism allegations, and safeguarding issues.

If a serious incident takes place, you need to report what happened and explain how you are dealing with it, even if you have reported it to the police, donors or another regulator.

The Commission can then decide what action, if any, is appropriate. Trustees must avoid exposing their charity to undue risk and should take reasonable steps to assess and manage risks to its activities, beneficiaries, property and reputation. Reporting serious incidents to the Commission demonstrates that you have identified a risk to the charity and that its trustees are taking appropriate action to deal with it. It also means the Commission can respond positively to any enquiries from the public or media.

If trustees fail to report a serious incident that subsequently comes to light, the Commission may consider this to be mismanagement and take regulatory action, particularly if further abuse or damage has arisen following the initial incident.

Find out more:

How to report a serious incident in your charity

8.4 When the Commission would become involved

The Commission will get involved if it is concerned that trustees are not fulfilling their duties towards their charity, either because they don't understand them or are unwilling or unable to fulfil them.

In some cases, the Commission may decide that it's sufficient to advise the trustees about their duties. In more serious cases, when charities' assets, reputation, services or beneficiaries have been harmed or are at significant risk, the Commission may open a statutory inquiry, which will allow it to:

- obtain and assess evidence
- use enforcement powers to protect the charity's assets or secure their proper application

Opening an inquiry does not always mean the Commission suspects wrongdoing. The Commission's aim in such cases is to stop abuse or damage and put charities back on a proper footing for the future.

Read about the Commission's work to prevent, detect and tackle abuse and mismanagement in charities and promote charity law: **Tackling abuse and mismanagement in charities**.

9. Ensure your charity is accountable

You and your co-trustees must comply with statutory accounting and reporting requirements. You should also:

- be able to demonstrate that your charity is complying with the law, well run and effective
- ensure appropriate accountability to members, if your charity has a membership separate from the trustees
- ensure accountability within the charity, particularly where you delegate responsibility for particular tasks or decisions to staff or volunteers

9.1 Complying with accounting requirements

All charities must produce accounts and provide a copy of the most recent to anyone who asks. (You can charge to cover your costs.) The Commission will take regulatory action against charities that persistently fail to provide copies of accounts when asked by members of the public or a regulator.

Exactly what accounts your charity must produce depends on whether the charity is a company and how much income it receives. Different rules apply to exempt charities. Find out more about **accounting and reporting requirements for charities**.

Charities whose income is over £250,000, and all charitable companies, must prepare their accounts and trustees' annual report in accordance with the Statement of Recommended Practice - Accounting and Reporting by Charities (Charities SORP).

Find out more about the **Charities SORP**.

All registered charities must also provide information annually to the Commission. The rules vary according to your charity's size and structure. Registered charities with:

- income up to £10,000 should complete the relevant sections of the annual return, which include updates to trustees
- income above £10,000, and all CIOs, must prepare and file an annual return form
- income above £25,000, and all CIOs, must also file copies of their trustees' annual report and accounts

Failure to submit accounts and accompanying documents to the Commission is a criminal offence. The Commission also regards it as mismanagement or misconduct in the administration of the charity. Providing timely, accurate and informative financial information that will help funders, donors, beneficiaries and others to understand your charity and its work will encourage trust and confidence in it.

Remember, those trustees who sign the trustees' annual report and accounts are signing on behalf of the whole trustee body so all of the trustees are responsible for the accounts.

Find out more about **annual returns**.

Your charity may also have to report to other regulators, for example, if its activities include providing social housing, education or social care. Companies must also submit accounts and annual returns to Companies House annually.

9.2 Being accountable to people with an interest in the charity

It's important to take account of what your members, beneficiaries, supporters and funders say. Use this information to inform decisions and improve the charity's services. If your charity has a wider voting membership in addition to the trustees, your governing document may contain specific provisions about when to involve members in decisions, for example through general meetings.

Charities should consider the benefits of having appropriate **procedures for dealing with complaints**, and ensuring they are easy to find and easy to follow.

You and your co-trustees must ensure that your charity complies with the law, and should be able to demonstrate that it is legally compliant, well run and effective in carrying out its purposes. If you can't demonstrate these things, you should be able to explain what steps you are taking to address any difficulties.

You may find it helpful to review your charity's compliance and good practice using:

- a governance code, such as **Good Governance: a Code for the Voluntary and Community Sector**
- a quality standard, such as **PQASSO**, or another standard that is suitable for your charity
- benchmarking (comparing and learning) with another organisation
- an independent review by a suitably qualified adviser

Read about **public trust and confidence in charities**.

9.3 Trustees and delegation

Trustees often delegate day to day activities to particular trustees (such as the chair), volunteers or staff. Many charities also have power to delegate decision making to sub-committees or senior staff. Delegation can help trustees to govern more effectively, but they cannot delegate their overall responsibility. Trustees always remain collectively responsible for all decisions that are made and actions that are taken with their authority.

You and your co-trustees should set out in writing the limits of any delegated authority. You should also put clear reporting procedures in place, so you can ensure the delegated authority is exercised properly. This could include staff job descriptions, volunteers' role descriptions and committees' terms of reference. A periodic review of any delegated authorities can help to ensure that those authorities are properly managed.

The trustees should consider and decide what decisions they will not delegate. High risk and unusual decisions should not be delegated. You should agree appropriate guidelines to help assess what is likely to be high risk or unusual. Staff, particularly senior staff, can have an important role in informing trustee decision making by providing information and advice.

Trustees might be told that they should not interfere in day to day operations. You should allow staff and volunteers to carry out any functions that have been delegated to them. But you and your co-trustees must be able to ensure that delegated authority is being properly exercised, through appropriate monitoring and reporting procedures (and, where appropriate and possible, independent checking).

It's important to have clear and appropriate channels of communication between staff and trustees and ensure these are followed.

Avoid mistakes - ask questions (even ones that seem 'awkward' or 'stupid')

Part of your role is to hold people (including staff, volunteers and fellow trustees) to account for how they carry out their role or use the charity's resources. This can mean asking probing or challenging questions about information at trustee meetings, or being prepared to say 'I don't understand what this means'. You should receive timely information in a format that you can understand and use, and if necessary ask for explanations, training or a different presentation. For example, all trustees, not just the treasurer, are responsible for the charity's finances and should be able to understand, consider and comment on financial information.

10. Reduce the risk of liability

It's extremely rare, but not impossible, for charity trustees to be held personally liable:

- to their charity, for a financial loss caused by them acting improperly
- to a third party that has a legal claim against the charity that the charity can't meet

Understanding potential liabilities will help you to protect yourself and your charity by taking action to reduce the risk. This includes complying with duties covered in this guidance. It also includes deciding whether your charity should become incorporated.

10.1 Personal liability to the charity

Trustees can be held liable to their charity for any financial loss they cause or help to cause. This applies to any type of charity whatever its legal form.

The law generally protects trustees who have acted honestly and reasonably from personal liability to their charity. The Commission and the courts:

- can relieve trustees from liability if they have acted honestly and reasonably and have not benefited from their actions
- rarely enforce liability on an unpaid trustee who has made an honest mistake
- expect higher standards from trustees who act in a professional capacity or are paid for being trustees

Trustees who receive an unauthorised payment or benefit from their charity have a duty to account for (ie repay) it. The Commission can't relieve trustees from this duty.

There is no legal protection for trustees who have acted dishonestly, negligently or recklessly. However, there may be financial protection for those trustees who have made an honest mistake and can rely on the indemnity provisions in the charity's governing document, insurance cover or relief from the Commission or the court.

Find out more:

Charity Commission policy on restitution and the recovery of charitable funds misappropriated or lost to charity in breach of trust

10.2 Liability to third parties

Charities or their trustees can become liable to a third party who has a claim against the charity such as:

- breaches of an employee's terms, conditions or rights
- failing to pay for goods or services, or to fulfil the terms of a contract
- a member of the public being injured on the charity's premises
- liability to any staff pension scheme

If the charity is incorporated, the charity itself will be liable for the claim. Some types of incorporated body (companies, CIOs and Community Benefit Societies) can specifically limit the liability of their trustees and members.

If the charity is unincorporated, the trustees have to sign contracts and other agreements personally, and will have to meet any claim. The charity can normally meet any liabilities that you incur as a trustee provided you have acted honestly and reasonably. (Some charities also have power to indemnify trustees against liability arising from an honest mistake.) But if you incur liabilities that exceed the value of the charity's assets, you could be liable for any amount that the charity can't cover.

Find out more about your charity's legal structure – see section 11 of this guidance.

Find out more:

Vicarious liability of a charity or its trustees

10.3 Criminal liability

In some cases, the charity or its trustees can become liable for offences committed by the charity's staff (for example, under the Bribery Act or corporate manslaughter law).

Find out more about the **Bribery Act** (Transparency International guidance).

10.4 Reduce the risk of personal liability

To reduce the risk of becoming personally liable, you should:

- ensure trustees understand their responsibilities
- ensure the charity can meet its financial obligations, particularly before agreeing to any contract or substantial borrowing
- ensure the charity can meet any obligations to staff pension schemes
- hold regular trustee meetings and keep proper records of decisions made and the reasons for those decisions
- ensure you prevent conflicts of interest from affecting decisions
- ensure any transactions with and benefits to trustees or connected persons are properly authorised
- take appropriate advice from a suitably qualified person when you need to
- if you delegate any powers, give clear written instructions and make sure the instructions are being followed
- ensure the charity has effective management and financial controls including:
 - keep receipts and records of income and expenditure
 - receive regular financial reports
 - file accounts on time
- ensure the charity is complying with other laws that apply to it
- consider whether the charity needs additional insurance or needs to become incorporated

If your charity is unincorporated and employs staff or enters into other contracts, the trustees should seriously consider changing the charity into an incorporated form. You may need to take professional advice about this, particularly in relation to any pension liabilities which could be triggered by incorporation.

Read more about:

How to manage risks in your charity

Charities and insurance

Changing your charity into a company or CIO

Pension rules for charities

Pensions (Charity Finance Group guidance)

11. Your charity's legal structure and what it means

It's important to know your charity's legal structure (eg trust, association, CIO, company) because it affects whether:

- the charity itself can enter into contracts or employ staff, or the trustees must do these things personally
- land is held by the charity itself or by the trustees (or someone the trustees appoint for that purpose)
- trustees' liability is limited
- trustees have specific legal duties that go with that legal structure

11.1 Different legal structures for charities

An 'incorporated charity' is one that's set up in a legal form which makes the charity itself a legal entity. This is called 'legal personality', and means the charity can own property or enter into contracts in its own name. Incorporation gives trustees more protection from personal liability. Some incorporated forms can limit trustees' liability to third parties. The law places duties on board members to prevent the abuse of limited liability.

An 'unincorporated charity' doesn't have legal personality, so can't hold property or enter into contracts in its own name. Trustees' personal liability is unlimited.

This table summarises the characteristics of different legal forms and what they mean for trustees.

Legal form or structure	Incorporated (legal personality)	Title to land held by	Contracts/ employment in the name of	Liability to third parties limited	Additional duties on trustees
Trust	No	Trustees for the charity	Trustees personally (for the charity)	No	No
Association	No	Trustees for the charity	Trustees personally (for the charity)	No	No
Company	Yes	The charity	The charity	Yes	Company law
Charitable Incorporated Organisation (CIO)	Yes	The charity	The charity	Yes	Charities Act and CIO regulations
Corporation created by Act of Parliament	Yes	The charity	The charity	Yes unless excluded by the Act	No
Royal charter body	Yes	The charity	The charity	Incorporation gives some protection	No
Community Benefit Society	Yes	The charity	The charity	Yes	Co-operative and Community Benefit Societies Act

Find out more:

Charity types: how to choose a structure

Running a limited company: Directors' responsibilities

Royal Charter charities

11.2 Unincorporated charities (trusts and unincorporated associations) - holding land

Charities set up by a trust deed, constitution or similar governing document are unincorporated. This means they are not legal bodies in their own right and can't hold property in their own name; it must be held for the charity by trustees.

If the charity trustees don't want to hold legal title for any land or other property themselves, they can appoint a nominee, holding trustees (other individuals) or a custodian trustee (a company or other corporate body that has power to hold property for the charity). The governing document may explain how to do this.

Holding and custodian trustees aren't charity trustees; they can't make decisions about the management of the charity or its property, and must follow the lawful directions of the charity trustees.

You may find it simplest to vest the land in the Official Custodian for Charities. Read about **The Official Custodian for Charities' land holding service**.

Apply to transfer land or property to the Official Custodian.

12. Charity officers - the chair and treasurer

Some trustees have special roles, such as the chair and the treasurer. They are known as officers. You must comply with any specific provisions for officers in your governing document. Trustees can also nominate a trustee to take the lead on a particular matter.

Charity officers don't automatically have any extra powers or legal duties than their co-trustees, but may carry out specific roles or have specific responsibilities delegated to them. However, all trustees remain jointly responsible for the charity. For example, all trustees share responsibility for finances (not just the treasurer). A chair can only make decisions in accordance with any provision in the governing document or delegated authority agreed by the trustees, and should notify the other trustees of any decisions made.

12.1 The treasurer

The treasurer usually takes the lead at board level on:

- making sure the charity keeps proper accounts
- reviewing the charity's financial performance
- drawing up or reviewing policies for finance and investment
- ensuring that the charity has robust and effective financial controls in place
- liaising with finance staff and with the charity's independent examiner or auditor
- reporting on financial matters to the members, in a membership charity

In larger charities the treasurer may share these responsibilities with a finance committee, and staff may carry out day to day finance functions.

Find out more:

The Honorary Treasurer's Forum

12.2 The chair

The role of the chair may vary depending on the charity's circumstances. The chair usually:

- helps plan and run trustee meetings (and in a membership charity, members' meetings)
- takes the lead on ensuring that meetings are properly run and recorded
- takes the lead on ensuring that trustees comply with their duties and the charity is well governed
- might have a second or casting vote if a vote on a trustees' decision is tied, but only if this is specified in the charity's governing document
- may act as a spokesperson for the charity
- acts as a link between trustees and staff
- line manages the chief executive on behalf of the trustees

A Chair's Compass - A guide for chairs of charities and non-profit organisations.

13. Technical terms used in this guidance

This section explains some legal and technical terms used in this guidance.

'Beneficiary' or 'beneficiaries' means a person or group of people eligible to benefit from a charity. A charity's beneficiary group is usually defined in its governing document. Some charities call their beneficiaries clients or service users.

The 'Charities Act' is the Charities Act 2011. This guidance occasionally refers to specific powers under this Act.

A 'charitable incorporated organisation', or 'CIO', is an incorporated legal form designed specifically for charities. See section 11 of this guidance for more detail.

A 'charity' is any organisation set up under the law of England and Wales for solely charitable purposes.

The 'Commission' means the Charity Commission, the regulator for charities in England and Wales.

A 'community benefit society' is an incorporated legal form in which charities can be set up. It is similar to a limited company. Community benefit societies are registered by the Financial Conduct Authority. Charitable community benefit societies are currently exempt charities.

'Excepted charities' don't have to register with the Commission or submit annual returns. Apart from that, the Commission regulates them and can use any of its powers if it needs to. This only applies to specified churches, Scout and Guide groups and armed forces charities whose income is below £100,000. Read more about **excepted charities**.

An 'exempt charity' is exempt from registration and direct regulation by the Commission. Most exempt charities have a different charity regulator (or 'principal regulator'). Trustees of exempt charities have the same basic duties as other charity trustees. Read more about **exempt charities**.

The 'governing document' is the legal document that sets out the rules that govern a charity. These include the charity's objects and, usually, how it must be administered. It's usually a trust deed, constitution, CIO constitution or articles of association. Some charities have a different type of document such as a conveyance, will, royal charter or Commission scheme. **Find out more about governing documents**.

'Have regard to' does not have a strict legal definition, but generally means 'take into account' or 'consider', rather than 'comply with'.

'In the charity's best interests' means what the trustees believe will best enable the charity to carry out its purposes for the public benefit. See section 6 of this guidance for more detail.

An 'incorporated charity' means a charity formed as a company, CIO, royal charter body, community benefit society or a corporation created by Act of Parliament. Being incorporated means the charity itself is a legal body. It can own property or enter into contracts in its own name. Incorporation gives trustees more protection from personal liability. See section 11 of this guidance for more detail.

Misconduct includes any act (or failure to act) that the person committing it knew (or ought to have known) was criminal, unlawful or improper.

Mismanagement includes any act (or failure to act) that may cause charitable resources to be misused or the people who benefit from the charity to be put at risk.

A charity's 'purpose' is what it is set up to achieve (for example, relieving poverty or promoting health).

A charitable purpose is one that:

- falls within one or more of 13 'descriptions of purposes' listed in the Charities Act
- is for the public benefit (the 'public benefit requirement')

A charity's 'objects' are a written statement of its purposes - they must be exclusively charitable.

A 'registered charity' is a charity registered with the Commission.

A 'suitably qualified person or adviser' is someone who the trustees could reasonably expect to be competent to advise them about a particular matter. This includes professional advisers (such as solicitors, accountants and surveyors). It could also include (for example) a member of the charity's staff, a suitably qualified trustee or an adviser from another organisation.

'Trustee' means a charity trustee. Charity trustees are the people responsible for governing a charity and directing how it is managed and run. The charity's governing document may call them trustees, the board, the management committee, governors, directors, or something else. The Charities Act defines the people who have ultimate control of a charity as the charity trustees, whatever they are called in the charity's governing document:

- a 'custodian trustee' is a corporation appointed to hold property for a charity; it isn't a charity trustee and must act on the lawful instructions of the charity trustees
- 'holding trustees' are individuals appointed to hold property for a charity; they aren't charity trustees, they must act on the lawful instructions of the charity trustees and in accordance with any provisions in the governing document

An 'unincorporated charity' is a charity set up as a trust or association. Being unincorporated means the charity isn't a legal body (so it can't hold property or enter into contracts) in its own right. Trustees' personal liability isn't limited. See section 11 of this guidance for more detail.