



Barham Park Trust Committee

1 September 2021

Report from the Strategic Director of Regeneration & Environment

GENERAL UPDATE REPORT

Wards Affected:	Sudbury
Key or Non-Key Decision:	Non-key
Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
No. of Appendices:	None
Background Papers:	None
Contact Officer(s): (Name, Title, Contact Details)	Chris Whyte, Operational Director, Environmental Services; Email: chris.whyte@brent.gov.uk Tel: 020 8937 5342 Leslie Williams, Project Officer, Parks Service, Environmental Services, Regeneration and Environment. E-mail: Leslie.Williams@Brent.gov.uk Tel: 0208 937 5628

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.

2.2 To delegate authority to the Operational Director for Environmental Services in consultation with the Chair of the Trust Committee to decide on how to proceed moving forward regarding the letting of Unit 7 of the Barham Park Building;

2.3 To note that an independent valuation is being undertaken in respect of Unit 8 of the Barham Park Building (Children's Centre) and thereafter, that officers will

make arrangements for a public notice to be provided regarding the proposed lease renewal of Unit 8 to the Council;

- 2.4 To delegate authority to the Operational Director for Environmental Services to consider responses and objections in relation to the public notice regarding the proposed renewal of the lease in respect of Unit 8 of the Barham Park Building and address such issues in an application to the Charity Commission to seek consent to enter into the lease with the Council;
- 2.5 To delegate authority to the Operational Director for Environmental Services to apply to the Charity Commission to seek their consent for the Trust to enter into a further five year lease with the Council in respect of Unit 8 of the Barham Park Building with consent to sublet the property to an organisation to continue the Children's Centre service on similar terms to the previous lease which was signed on 28 October 2016;
- 2.6 Subject to consent of the Charity Commission, to delegate authority to the Operational Director for Environmental Services to make arrangements for the Trust to enter into a five year lease with the Council in respect of Unit 8 of Barham Park Building at a market rental set by the independent valuer.
- 2.7 To delegate authority to the Operational Director for Environmental Services to enter into a lease renewal with the Barham Park Veterans Club (Wembley) in respect of Unit 2 of the Barham Park Building as set out in section 3.15 of this report.
- 2.8 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.

3.0 Detail

- 3.1 **Project Officer:** The Project Officer is within the Parks Service team within Regeneration & Environment. That is a remit covering also other parks in the Borough. The post includes a continuing role for Barham Park given the special situation of Barham Park being managed by the Barham Park Trust. This role is funded by the Council and is not funded by the Trust.
- 3.2 **Security:** There have been several incidences of damage to windows, of people climbing onto the flat-roof areas; and in one incident of a log being thrown at a barred window while a tenant was working inside that room.
- 3.3 **Public Space Protection Orders:** Public Space Protection Orders were introduced to Brent's parks and open spaces in September 2019 and implementation has been in progress.
- 3.4 **Rough sleepers:** Brent Council works with the charity St Mungo's and other partners to reduce rough sleeping and to help people sleeping rough to find accommodation and help appropriate to their needs. During the year St Mungo's were aware of one or more rough sleepers at Barham Park and were working with those clients. During the year, rough sleepers have been offered accommodation at night shelters. The rough sleeper who was using the porch area of Unit 8, has vacated that situation during recent months though at the

time of drafting this report, a rough sleeper has recently been located staying in that same area. The position has been reported to StreetLink; and to St Mungos, a homeless charity which has in the past assisted such individuals. Any update will be brought to the attention of the Trust Committee at the 1st September 2021 meeting.

Operational works

- 3.5 Works: Operational grounds maintenance at Barham Park continue to be undertaken by the contractor, Veolia.
- 3.6 Grass and meadows: The meadow area mix of seeded areas within longer grass continues to work well. The maturing grassland seeded in previous years was complemented by additional areas of Poppies and other plants in 2020/21. Grassland butterfly species have now established populations in the grassland and while Bush Crickets provide a sensation of sound. The meadow grasslands will be cut in September.
- 3.7 Barham Park building – Operational. The Property team continued to work on Maintenance. During the year the Property team organised repairs for units including the Veterans Club and the Friends of Barham Library. This expenditure was from the Trust's unrestricted funds and is included in the accounts for the year 2020/21.
- 3.8 Fire security system. Property Services brief the tenant representatives on the operation of the fire-security system for Barham Park. Tenant organisations can re-brief their own members as required.
- 3.9 Barham Park building Unit 7 - The Mess Room & The Store Room (The Rooms): Negotiations with the lead tender applicant, the Friends of Barham Library (FOBL) and their proposed partner organisation the Memory Lounge for a Dementia Centre at Unit 7. FOBL suggest that the Memory Lounge would be the main occupiers and this could be considered to be sub-letting as it suggests a degree of permanence as opposed to a day to day hiring with other organisations. The tender marketing particulars were clear that a sub-lease would not be considered. FOBL have indicated the Memory Lounge are not a standalone body and on this basis the FoBL have made a successful NCIL application that would allow considerable investment in The Rooms to take place and on refurbishment their beneficial use under a lease would provide for an additional rental stream to The Trust.
- 3.10 The provisionally accepted tenant of Unit 7 and the Memory Lounge project have envisaged that the use of the currently vacant Unit 7 is considered to be a partnership between the provisionally accepted tenant of Unit 7 (Friends of Barham Library) and the Memory Lounge project. The alternatives are to agree that the occupation by the Memory Lounge is deemed to be a sub-tenancy; or that the Trust is not minded to create a sub-tenancy or a sub-lease. Officers would welcome the views of members of the Trust Committee on the way forward regarding the letting of Unit 7.
- 3.11 The Committee is invited to agree the proposal to renew the lease of the Children Centre for Unit 8 of the Barham Park Building. Officers are obtaining an independent valuation to assess the market rental. Thereafter, a public notice will be provided to enable the public to submit responses regarding the

proposal to renew the lease in respect of Unit 8 to the Council. Thereafter, after consideration of the responses and any objections in respect of the public notice, it is proposed that officers apply to the Charity Commission to seek their permission to enter into the lease with the Council in respect of Unit 8 and in the application, to address the issues raised in the responses and objections in respect of the public notice.

- 3.12 The lease in respect of Unit 8 of the Barham Park Building (the Children's Centre) expires on 27 October 2021 and a decision will need to be made whether to renew the lease for a further five years and if so, to seek the permission of the Charity Commission to enter into the lease. If this is the case, an independent valuation will be required to assess the market rental that will be applicable for the lease. An independent valuation needs to be carried out and thereafter, the consent of the Charity Commission will need to be sought before the Trust can enter into a further lease with the Council in respect of Unit 8 of the Barham Park building. This is because the Council is considered to be a "connected person" to the Trust as it is the sole corporate trustee of the Trust and the Charities Act 2011 requires that the permission of the Charity Commission is obtained before a charity can dispose of land to a connected person.
- 3.13 At its meeting of 1 September 2020, the Trust Committee agreed to the proposal regarding the underletting of Unit 8 of the Barham Park Building (The Children's Centre) by Brent Council's Children and Young People Service to a voluntary sector provider, namely the Young Brent Foundation (YBF), on the same rental terms pursuant to the lease in respect of Unit 8 between the Barham Park Trust and Brent Council and subject to the satisfactory clearance of financial checks. These have proved satisfactory and Legal Services are instructed to complete the sub-lease transaction. The YBF would continue to facilitate the Children's Centre services at the location. There is no change to the conditions of the lease between the Trust and Brent Council nor to the annual rent, which Young Brent Foundation will reimburse to the Council's Children and Young People Service. The lease to Brent Council in respect of Unit 8 will continue until the 27th October 2021 when the current five-year lease expires.
- 3.14 Property Services wrote to the individual Barham Park leaseholders early in 2021 inviting application where required for rents to be deferred should individual leaseholders have had financial issues during the lockdown period. There have been no applications thus far. However, ACAVA claim not to have received the letter and a separate form has been forwarded for their consideration. The Trust should note that ACAVA are in rent arrears and a negotiated solution needs to be worked through with them which would be in the benefit of the Trust in order for the arrears to be recovered.
- 3.15 Barham Park Building, Unit 2 - The Barham Park Veterans Club (Wembley): The lease on the Veterans Unit expires on 6th September 2021. Negotiations with the Veterans suggest they would want to renew the lease for a further 4 years. The passing rent is £3,000 per annum. The Trust is recommended to approve a modest increase in rent as the Barham Park Veterans Club is charitable organisation that serves the community with elderly members that has no income other than fee derived from the approximate 60 or so members.
- 3.16 776 -778 Harrow Road consist of two cottages within Barham Park that were subject to a freehold sale some years ago. The restrictive covenant in the sale

required that the site be retained as two residential units. Planning applications have been received in the past and more recently to re-develop the site with multiple residential units namely a block of flats. This was subsequently withdrawn. The Trust is reminded of the restrictive covenant should a similar application be received again and it may be prudent for the Trust to provide a steer as to how such re-development proposals, which include seeking to amend the terms of the restrictive covenant, should be considered in the future as the site appears to be attracting the interest of developers. As set out in the recommendation in paragraph 2.8 of this report, if members of the Trust Committee are minded to explore the possibilities of amending the current restrictive covenants for the financial benefit of the Trust in discussions with the owners of 776-778 Harrow Road, there is the option to delegate authority to the Operational Director for Environmental Services to enter into such discussions. The Trust Committee would have to make a decision or delegate a decision to officers in future as to whether to amend the restrictive covenant in respect of 776-778 Harrow Road and on what terms and for an application to be submitted to the Upper Tribunal (Lands Chamber) to amend and modify the terms of the said restrictive covenant.

Works – restricted funding

- 3.17 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.
- 3.18 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, and though the financial figures are similar to those of 2019/2020, some of the works had recommenced in 2020/21 following delays during the Covid-19 pandemic and lockdown restrictions.

Item of expenditure	Expenditure in GBP (£) approved by Trust Committee and Charity Commission	Cumulative expenditure to date to 04/08/2021
Barham Park Tree Works	62,000	43,130
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	10,370
Events Field Drainage Works	90,000	
Total	177,000	63,213

- 3.19 Tree works: The main tree surgery works recommenced in 2020 following lockdown restrictions and have now completed. There may be some follow-up works required. Note that amongst this work that several trees that were growing immediately adjacent to the Barham Park building have been removed. The Mulberry tree to the east of the building has been braced at height.
- 3.20 Windows: A separate report in the Agenda updates the Committee on options for the financing for the exterior renovation of the Barham Park building. The Planning Application documents including drawings and Planning Permission are available on Brent Council's Planning website pages for the application reference 19/3769:
- https://pa.brent.gov.uk/online-applications/applicationDetails.do?keyVal=DCAPR_147523&activeTab=summary
- 3.21 Events Field drainage: The Barham Park Events Field, on the west (Sudbury Town) side of the park provides space for informal recreation and hosts, typically two visiting fairs each year (though none during 2020 due to the pandemic). Poor drainage can cause problems for the fair in years when there is heavy rainfall in either or both of the spring or the summer. The fair is a significant source of rental income to the Trust. In winter, the Events Field can be water-logged making it un-useable for informal recreation, while also affecting access on sections of the footpath to the west side. A revised package of documents is with Brent Council's Procurement team for a competitive tendering exercise.
- 3.22 A leak was identified in the early autumn of 2020 with the public surface water system (Thames Water) that takes water from the Sudbury Town area. This flows under the railway embankment to then continue to serve communities towards North Wembley. The design of the insert replacement was technically challenging. Work by Thames Water and their contractors continued to April / May 2021.
- 3.23 During the year two water leaks of clean / mains water within Barham Park's own system were repaired.
- 3.24 Events field effluent: While the Funfair was onsite during June and July 2021, a foul effluent was noticed from approximately the centre of the Events Field. There are no known public / Thames Water, nor Council / Trust foul water systems in the vicinity. Thames Water were however contacted, but have not reported a leak. An accidental or other discharge into a surface water system is a possibility and officers are keeping an open mind as to the possible source.

Works – other funding

- 3.25 Oak tree replacement at west side of Barham Park: At the September 2019 meeting of the Barham Park Trust, the Committee resolved to replace an Oak tree that had had to be felled at the west (Sudbury Town) side of Barham Park. The original Oak tree was the one of a pair of prominent, former hedgerow Oak trees, that had had to be felled due to reasons of safety. Tests had indicated that the second tree could be retained. Though the planting of the tree was delayed due to the pandemic, the replacement Oak tree was planted in

2020/21. A number of disease-resistant Elm trees were also planted, on the curve of Barham Park facing Sudbury roundabout.

- 3.26 Queen Elizabeth II Silver Jubilee Garden. Following technical changes to the design and a procurement exercise, a contractor was appointed and works commenced on site in June 2021. The garden is situated in the open courtyard to the west of the Barham Park building. The current work is for the hard landscaping; while the soft landscaping will commence in the autumn of 2021. This was funded with a Neighbourhood Community Infrastructure Levy grant.
- 3.27 Barham Park Walled Garden Pond: Works commenced to clear debris from the northern of the two ponds of the Walled Garden in the autumn of 2020. After removal of the material, occupying the large majority of the volume of the pond, it was found that the concrete liner appears to be in reasonably good condition. Minor concrete repairs were conducted though it may not require a full sealing. The inlet drainage channel was also cleared to restore that feature. Completion for that pond is due in the late summer of 2021. The southern of the pair of two ponds will be cleared of debris at the same time. The shallow pond, to the north of the Walled Garden will also be cleared of debris. This was funded with a Neighbourhood Community Infrastructure Levy grant.
- 3.28 Trees and open woodland: Barham Park has received funding from a 2020 round of the Neighbourhood Community Infrastructure Levy for the planting of replacement and other trees in Barham Park and for the planting of woodland ground flora in some areas of open woodland and on hedges. These works will be programmed for the autumn and winter of 2021/22.

Rental in respect of the Barham Park building

- 3.29 Officers recognise the impact the Covid-19 pandemic may have had on the tenants' ability to pay their rent. In December 2020, a formal application process was implemented which enabled the Trust's tenants in respect of the Barham Park Building to request a full or partial rent deferral or rent negotiation through an online form following the decision of the Trust Committee on 1 September 2020. Support was available for tenants experiencing temporary illiquidity which was a direct consequence of the pandemic. Officers on behalf of the Trust wrote to all tenants to explain the process and provided the link to the online application form. Members of the Trust Committee are advised that no applications have been received from the tenants in arrears at the time of preparing this report. Unpaid rent has continued to accrue since the start of the pandemic and may in the long run compromise the Trust's ability to pay its bills as they fall due if the rent is not collected. Where tenants have arrears and do not engage in the process for applications for rent deferrals, or do not conform to the agreement made as part of that process, the Trust may use legal powers that are available to commercial landlords to recover rent arrears in the future after the current moratorium on commercial landlord action for rent arrears expires on 25 March 2022. Enforcement action may include:
- i. Commercial rent arrears recovery, where allowed by statute (for example, where the Trust is owed 554 days of accrued outstanding unpaid rent or more rent);
 - ii. Adding interest where tenants have not agreed rent deferrals with the Trust;

iii. Possibility of forfeiture of the lease(s) after the expiry of the above-mentioned moratorium.

3.30 If rent arrears continue to accrue, the Trust will not be able to afford to carry out the necessary building works and it also risks losing access to the sum of £167k worth of Public Sector Decarbonisation funding. This is a one-off opportunity and if this opportunity is lost, the future of the maintenance of the whole building is in question. On the other hand, if the renovation works to the exterior of the Barham Park building can be carried out, then existing tenants will also benefit from the refurbishment. Officers therefore propose to take all necessary action as outlined above to recover rent arrears where agreements to abate or defer the level of rent have not been reached.

Events

3.31 Though neither of the usual FunFairs were held during 2020 due to the pandemic, one was held in June/July of 2021 and a second may possibly be held between 29th August to 19th September 2021. Events organised by tenant activities were curtailed by the pandemic. A socially-distanced Barham Park Art Festival, part of the London Borough of Culture programme was held on 3-4th October 2020. This involved tenants ACAVA and the Barham Community Library; and also ActionSpace. Part of the event was outdoors, and the indoor activities also with social distancing.

4.0 Financial Implications

4.1 The market rent of Unit 7 is valued at £2k-£3k per annum with no rental income currently being received for that unit as no lease is in place.

4.2 The proposal is for is a lease renewal of Unit 8 at market rent, as will be confirmed by an independent valuation. The current rental income from Unit 8 is £11,300 per annum.

4.3 The proposal is for a lease renewal of Unit 2 at a negotiated increase in rent on the £3,000 per annum passing rent.

4.4 Other financial implications are set out in the main body of the report.

5.0 Legal Implications

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 lease between the Barham Park Trust and Brent Council in respect of Unit 8 of the Barham Park Building is due to expire on 27 October 2021 with the Council having rights of renewal under the Landlord & Tenant Act 1954, though such a renewal will require the permission of the Charity Commission. Before submitting an application to the Charity Commission, a public notice of the proposed renewal of the lease must be made in a local newspaper and on site giving at least one calendar month for representations to be made in response. Those representations will need to be considered and addressed in the

application to the Charity Commission for consent for the Trust to enter into the renewed lease arrangements with the Council. Under the lease in respect of Unit 8, underletting requires the permission of the Barham Park Trust and such permission must not be unreasonably withheld. Under the lease in respect of Unit 8, underletting requires the permission of the Barham Park Trust and such permission must not be unreasonably withheld. Under the lease, the authorised use of Unit 8 is as a Children's Centre within Class D1 of the Town and Country Planning (Use Classes) Order 2005 with such other uses to be subject to the written consent of the Barham Park Trust.

- 5.3 A disposal or letting of Trust land to another charity for similar charitable purposes is not subject to the procedural requirements in the Charities Act 2011 (applicable to a disposal to any other third party or a connected person like the Council)
- 5.4 The statutory requirements relating to any other disposal or letting of land are summarised as follows :
- 5.4.1 any disposal or letting of Trust land for more than 7 years to a third party (who is not a charity with similar purposes) can only be authorized by the trustees after considering a written report prepared by a qualified surveyor as to the marketing and the valuation of the land on the basis that the terms proposed for the disposal are the best that can be reasonably obtained;
- 5.4.2 any disposal or letting of Trust land for 7 years or less to a third party (who is not a charity with similar purposes) can be authorized by the Trustees after considering the advice of a suitably qualified person;
- 5.4.3 any disposal of recreational charity land or letting for more than two years to a third party or a connected person (who is not a charity with similar purposes) must be notified in the local press and on site and provide at least one calendar month for people to make representations;
- 5.4.4 any disposal of Trust land or letting to the Council or any other connected person is subject to:
(1) requirements as set out in paragraphs 5.4.1, 5.4.2 and 5.4.3 above depending on the terms of the disposal
(2) and the written consent of the Charity Commission
but the Charity Commission may at its discretion specify that the charity obtain a written report prepared by a qualified surveyor independent from the charity as to the marketing and the valuation of the land.5.4.5 The disposal or letting of Trust land for less than best price to another charity whose objects come within those of the disposing charity and where the disposing charity has power to dispose of land to another charity is not subject to the procedural requirements in the Charities Act 2011 regarding the disposal of charity land, pursuant to section 117(3) of the Charities Act 2011.
- 5.5 The current restrictive covenants that are in place regarding the use of 776-778 Harrow Road are as follows:
- Not to use the Property otherwise than as a single dwelling house and the garage for any purpose other than as an ancillary private garage.
 - Not to divide the Property into two or more dwellings or residential units;
 - Not to erect or cause to be erected on the Property any building or structure whatsoever except a greenhouse or shed of not greater length

- than 4 metres and of not greater height than 3 metres or permit or suffer any person under the Transferor's control to do so;
- Not to carry out any development within the meaning of section 55 of the Town and Country Planning Act 1990 in or upon the Property.

5.6 Applications to modify the restrictive covenant would have to be submitted to the Upper Tribunal (Lands Chamber) pursuant to section 84 of the Law of Property Act 1925. The Registrar of the Upper Tribunal (Lands Chamber) will usually give directions upon receipt of an application to modify a restrictive covenant as to how notice of the application should be provided and published. There will be a process for persons to make objections before a decision is made on whether to approve an application to modify a restrictive covenant. Only those persons with a legal right to the benefit of the restrictions are entitled to object to an application to modify a restrictive covenant. The decision on whether to approve an application to modify a restrictive covenant will rest with the Upper Tribunal (Lands Chamber).

5.7 Applications in respect of planning permission will be a matter for either the Council's Planning Department or the Council's Planning Committee to decide in the exercise of the Council's non-executive functions and that will not be a matter for the Trust to make a decision.

5.8 There is an existing moratorium on the forfeiture (whether by court proceedings or peaceable re-entry) of the vast majority of commercial landlord leases, including for non payment of rent and sums due under the lease, pursuant to section 82 of the Coronavirus Act 2020 and this is currently due to expire on 25 March 2022. As for Commercial Rent Arrears Recovery (CRAC), The Taking Control of Goods and Certification of Enforcement Agents (Amendment) (Coronavirus) Regulations 2020 currently prevent commercial landlords from using the CRAC procedure unless an amount of at least 554 days' rent is due. This restriction is currently due to expire on 25 March 2022.

6.0 Equality Implications

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.

7.0 Consultation with Ward Members and Stakeholders

7.1 Officers meet regularly with Ward Members.

8.0 Human Resources/Property Implications (if appropriate)

8.1 Nothing specific other than noted in this report.

CHRIS WHYTE

Operational Director of Environmental Services