



**Barham Park Trust Committee**  
5 September 2023

**Report from Director Environment  
& Leisure**

**Strategic Property Matters Relating to Barham Park, 660 Harrow Road, Wembley HA0 2HB and 776-778 Harrow Road, Wembley HA0 2HE**

<b>Wards Affected:</b>	Wembley Central
<b>Key or Non-Key Decision:</b>	Non-key
<b>Open or Part/Fully Exempt:</b> <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	Appendix 3 is not for publication as it contains the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely: "Information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)".
<b>No. of Appendices:</b>	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
<b>Background Papers:</b>	None
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**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 117<sup>1</sup> 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*

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<sup>1</sup> 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 persons<sup>2</sup> 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

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<sup>2</sup> 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