



**Barham Park Trust Committee
Meeting**
10 September 2024

**Operational Property Matters Relating to Barham Park, 660
Harrow Road, Wembley HA0 2HB**

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	Two Appendix 1: Works and Cost Summary Appendix 2: Tenancy map
Background papers:	None
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1.0 Purpose of the Report

- 1.1 This report provides an overview of the Barham Park Estate building's condition, summarising the essential findings and recommendations from the Watts Building Survey regarding necessary repairs and associated costs in the short, medium, and long term. It also addresses the restrictive covenant on properties at 776 and 778 Harrow Road, where the current owner, who has obtained planning permission for further development, seeks to negotiate a modification with the Trust. Previous discussions authorised by the Trust Committee explored this potential change, which could benefit the Trust.
- 1.2 The report revisits the Trust Committee's earlier decision to hold off on decisions regarding Units 2, 7, and 8 until an architect's options appraisal is completed. It now offers strategic recommendations for these units and other operational matters that have arisen. Additionally, it stresses the importance of implementing service charges as per tenants' leases to ensure sufficient funds for ongoing maintenance.

- 1.3 The report addresses the recent Council restructuring, which has shifted senior management responsibility for the building's day-to-day operations.
- 1.4 This report should be read alongside the 'Strategic Property Matters' report, which outlines the overarching strategy from which operational activities will flow for ensuring the Barham Park Estate is sustainable, well-maintained, and aligned with the Trust's charitable objectives.

2.0 Recommendation(s)

That the Barham Park Trust Committee RESOLVES

- 2.1 To delegate day-to-day Trustee functions and decision-making authority to the Director of Property and Assets, replacing the Director, Public Realm (formerly the Operational Director for Environmental Services, as per paragraph 3.4).
- 2.2 To authorise the Director of Property and Assets to renew the expired leases for Units 1, 2, and 8 and regularise any associated subtenancies, as outlined in paragraph 3.7.
- 2.3 To authorise the Director of Property and Assets to let Unit 7 for meanwhile use as outlined in paragraph 3.8.
- 2.4 To approve the use of restricted funds, under existing Charity Commission permissions, to carry out essential repairs (year one) identified in the Watts analysis, valued at £269k plus professional fees, ensuring the building remains safe and compliant, as per paragraphs 3.20 to 3.26.
- 2.5 To note that the Director of Property and Assets will implement service charges for all tenants under their lease terms, starting from the 2025/26 fiscal year, as detailed in paragraph 3.9.
- 2.6 To note that the Director of Property and Assets will continue negotiations with Zenaster Properties Ltd for the potential amendment to the restrictive covenant at 776 and 778 Harrow Road, outlined in paragraph 3.12.
- 2.7 To note that the Director of Property and Assets will finalise terms, submit necessary applications to the Charity Commission, address any related issues, and, if required by the Charity Commission under Section 283 of the Charities Act 2011, provide public notice of this resolution.
- 2.8 To note that the Director of Property and Assets will seek to agree on repayment plans with tenants in arrears, which may include re-gearing leases to ensure sustainability. If an agreement cannot be reached or a default occurs, leases may be terminated for breach. See paragraph 3.10.
- 2.9 Authorise the Director of Property and Assets to seek the consent of the Charity Commission where required to fulfil the recommendations in this report.

3.0 Background

- 3.1 In January 2022, the Trust Committee reviewed various issues affecting the Estate and authorised the appointment of an architect to assess the Estate's spatial and socioeconomic characteristics. The objective was to evaluate the Estate's potential as a sustainable environment that meets the needs of both current and future users. The architect was tasked with developing a range of options, from minor to significant remodelling solutions ("bronze, silver, gold" concepts).
- 3.2 Additionally, the Trust Committee decided to halt new leases for Units 2, 7, and 8 of the Barham Park Building until the architectural options appraisal was completed. The Operational Director of Environmental Services (this post is now designated the Director, Public Realm) was responsible for determining the future of these units following the assessment.
- 3.3 **Council restructure and changes to day-to-day delegated authority for Estate management**
- 3.4 This report proposes transferring the current delegated authority for the day-to-day management of the Barham Park Estate from the Director for Environmental Services (now Director, Public Realm) to the Director of Property and Assets. This recommendation aligns with the recent Council senior management restructuring. Under this proposal, the Director of Property and Assets would take on responsibility for operational decisions related to the Estate, including lease agreements, building maintenance, and strategic planning, while continuing to collaborate closely with the Director, Public Realm to manage the wider park estate.
- 3.5 **Operational matters following completion of the architectural appraisal**
- 3.6 Following the completion of the architectural appraisal and in alignment with the strategic direction outlined in the Strategic Property Matters report (Agenda Item 7), which targets redevelopment of the bronze option in 2031, the following landlord activities are recommended to ensure that vacant units are available at that time and in the meantime income is maintained for the Trust:
- 3.7 Lease Renewals for Unit 1 (Tamu Samaj UK), Unit 2 (Veterans' Club (Wembley), and Unit 8 (Brent Council - Children Centre)

Tenants currently occupying these units on expired leases are to be offered the opportunity to renew their leases. Officers will commission independent valuations and issue Section 25 notices to ensure lease renewals occur within statutory time limits, with independent valuations guiding negotiations. These renewals will align with strategic objectives, ensuring leases terminate before the anticipated redevelopment in 2031. They will include appropriate break clauses and exclusion from the Landlord and Tenant Act 1954 to obtain vacant possession at the proper time.

The Young Brent Foundation occupies Unit 8 and delivers the Children's Centre services. Officers will formalise these arrangements under a sub-tenancy to ensure legal compliance, safeguard the rights of all parties and establish a clear framework for the ongoing use of the premises.

3.8 Vacant Unit 7 Re-activation

In 2018, Unit 7 was marketed, and the Friends of Barham Library, who occupy Unit 4, were awarded the bid, supported by an NCIL grant of £150,000 for a Dementia Advice and Support project. However, the lease was not finalised due to unresolved lease terms and the Trust Committee's pause on new leases pending the completion of the architectural study. It is now proposed that Unit 7 be temporarily reactivated for 'meanwhile use', allowing flexibility while seeking Charity Commission approval to modify the charitable purposes, enabling other or commercial uses of part of the building.

The Friends of Barham Library will be offered the first opportunity to occupy Unit 7, subject to agreeing to updated terms that incorporate 'meanwhile use' and NCIL considerations. The original bid terms are outdated and not aligned with the strategic objective of securing vacant possession by 2031 or earlier. If no agreement is reached, the unit will be remarketed for alternative temporary use within three months.

3.9 Implementation of Service Charges

Starting in April 2025, service charges will be applied across all leases at Barham Park to fund the building's upkeep and maintenance. Although the lease provisions for service charges have not been previously activated, this is now necessary. Tenants will be notified in advance to allow adequate time for financial planning. Service charges will be calculated according to the formulas outlined in their leases. The process begins with an initial assessment and communication phase, where the total maintenance, repairs, and other expenses are calculated. Tenants are then informed about the upcoming service charges through detailed explanations of the calculation methods in their respective leases. By implementing service charges, the Trust can begin to mitigate any financial impact and gradually build the necessary funds (such as a sinking fund) to maintain and improve the Barham Park Building and broader estate.

Appendix 1 outlines the specific expenditure items eligible for recharging to service charges (items marked with 'S/C').

3.10 Arrears Management

Discussions are ongoing to establish a repayment plan with tenants who have fallen into arrears. However, the Trust Committee should be aware that proactive measures, including forfeiture or legal action, may be necessary for tenants who fail to comply with payment plans or do not settle their arrears. The delegated officer (Director of Property and Assets) will actively enforce contractual obligations. The total debt is approximately £62,355¹ as of Q2 2024/25 financial year.

3.11 Improving Income (see Strategic Property Matters report)

The Barham Park Trust's current charitable purpose limits the Estate's activities and tenancy options, affecting its financial sustainability. An amendment to the charitable purpose is necessary to address this, allowing for expanded uses

¹ Accrual basis.

that could improve cash flow and attract a broader range of tenants. Officers will seek Charity Commission approval for these changes, supported by a robust business case demonstrating that all other revenue-boosting options have been explored. This approval process typically takes 8 to 12 months, but it is essential for ensuring the Estate's long-term viability and its ability to continue serving the community effectively.

3.12 776 and 778 Harrow Road

In 2011, the Trust sold 776 and 778 Harrow Road with covenants restricting their development. The current owner, Zenaster Ltd, sought to amend these covenants in 2021 to allow the demolition and construction of four new houses, with planning permission granted in June 2023. An independent valuation assessed the Trust's share of the development, but negotiations remain unresolved. Officers are now seeking an updated valuation and actively engaging with the owner to reach an agreement on amending the covenants. The owner wishes to commence development within six months. Several boundary issues between the owner and the Trust were identified, including potential parkland encroachment (an independent boundary report obtained by Officers in January 2024 suggested that the owner had fenced off small sections of the parkland). The owner has now agreed upon the correct boundaries, with remedies to follow.

3.13 Barham Park Funfair

In 2022, the Irvin Organisation Ltd was granted a five-year license to operate funfairs in several parks, including Barham Park, from January 2022 to January 2027. The license permits funfair operations between 11:00 AM and 11:00 PM, with specific terms requiring the Licensee to maintain cleanliness, adhere to health and safety regulations, secure necessary consents, and avoid disturbances. The Licensee is also responsible for fire safety measures, insurance coverage, and indemnifying the Trust as Licensor. The license can be terminated with three months' notice or immediately in case any breach is not remedied, and it naturally expires in January 2027. This funfair operation provides valuable rental income to the Trust.

Fulfil Landlord Functions and Obligations

3.14 The rent review process is now completed in line with the provision of individual leases to help strengthen the Trust's financial position. Rent reviews have been carried out on the following tenants whose leases contain rent review provisions:

- Tamu Samaj UK
- ACAVA (Association for Cultural Advancement through Visual Art)
- Friends of Barham Library

3.15 The total rent uplift from the rent reviews is £4,652 p/a, and the backdated rent owed due to the rent reviews is £20,835. No other tenant's lease has a rent review provision. Instead, their rents will be reviewed at lease renewal.

Statutory Compliance Summary for Barham Park Building.

- 3.16 Energy performance certificates have recently been renewed for all ten units, and ratings are between C and D. These ratings are above the minimum E rating required under the Minimum Energy Efficiency Standards (MEES) regulations. Looking ahead, there are upcoming changes to EPC regulations. By 2030, it is anticipated that it will be unlawful to let commercial properties with an EPC rating below B unless exempt (e.g., voids, 7-year payback test not met). Interim targets include achieving an EPC rating of C by 2027. Under the MEES regulations, the Barham Park Trust, as Landlord, is responsible for ensuring the building has up-to-date EPCs.
- 3.17 Eton Environmental Group Ltd (Eton) recently conducted a comprehensive asbestos survey of the building. However, due to access limitations, a few units were not inspected. The provisional report indicates that some building areas contain asbestos and are classified as very low-risk. These can be managed by labelling the affected regions and conducting regular re-inspections. The responsible officers will coordinate these actions with the occupants. Additionally, Eton will be re-commissioned to return and inspect the remaining units. It is important to note that any future building redevelopment must consider the presence of asbestos to ensure safe and compliant management.

Other Statutory Compliance Issues

- 3.18 The Barham Park Building at ground level is designed with accessibility in mind, featuring level thresholds and well-planned landscaping. These features ensure that navigation throughout the property is generally straightforward and accessible. Units 3, 5, and 9 are on the first floor and may have accessibility issues. Officers will audit accessibility standards to review whether improvements are required to meet the Equality Act 2010 and improve accessibility for tenants and users, particularly in the strategic redevelopment context.

Health and Safety

- 3.19 Officers actively liaise with tenants to ensure all health and safety compliance information is current and accurate. This includes essential documentation such as electrical and gas safety certificates, among other safety documentation, as shown below. Officers continue to chase outstanding documentation and compliance.
- Fire risk assessments
 - Electrical certificates
 - Gas safety certificates
 - Legionella risk assessments

Building Condition

- 3.20 The exterior of the building has received piecemeal repairs over many decades, much of which is now also in need of repair. Many window frames need to be in better condition, while the glazing provides poor insulation; therefore, there

is room to improve heat and energy management. The following repairs are recommended improvements by Watts within one year:

3.21 Summary Table of Costs

3.22 Based on the provided figures, the estimated costs and timing for the necessary works are as follows:

Building Element		Approximate costs			
		1 Years	3 Years	10 Years	TOTAL
1	External	£248,750	£194,850	£221,050	£664,650
2	Structure	£8,800	0	0	£8,800
3	Internal	0	0	£7,500	£7,500
4	External Areas/Boundaries	£11,400	£2,100	£600	£15,600
TOTAL		£268,950	£196,950	£229,150	£695,050

3.23 This table highlights the key areas requiring attention and the phased approach to addressing the condition and safety of the Barham Park Building. Year one works for £268,950 (plus circa 10% professional fees) is recommended to ensure the building remains safe, compliant, and functional. The detailed estimated costs and itemised breakdown are shown in Appendix 1.

Park Services is currently testing Verti-drainage on the events field, which uses vertical drains designed to filter and prevent clogging, at an annual cost of £700. So far, the funfair has not been prevented from using the events field. If the solution continues to work, it could result in substantial savings on future drainage expenses. However, more significant costs may be incurred if the trial is unsuccessful in the coming years.

3.24 Proactively undertaking maintenance and improvement works at this stage is not only a prudent strategy for preserving the current state of Barham Park but also serves as a cost-effective measure for the long term. By addressing potential issues now, we can mitigate the escalation of repair costs and complexities that may arise if these issues are left unattended until the planned redevelopment in 2031. Early intervention can significantly reduce the overall financial burden of future redevelopment by minimising the scope of necessary works, ensuring that the park remains in good condition and that future redevelopment efforts can be carried out more efficiently and economically.

3.25 The events field west of Barham Park serves as a key recreational area, hosting a play area, outdoor gym, and various fairs and events that generate income for the Trust. Funds have been invested in addressing flooding and drainage issues in recent years.

3.26 In 2019/20, the Barham Park Trust Committee, with Charity Commission approval, allocated approximately £177k from restricted funds for drainage design, tree works, and external improvements. Due to high costs, a trial with

more affordable vertical drainage systems is underway. Three permissions, totalling £435k, have been secured in total from the Charity Commission, using the procedure set out in Sections 282 to 284 of the Charities Act 2011, to utilise restricted funds for necessary repairs, with around £70k spent so far on park improvements. This means the Trust can use restricted funds of up to £365k, subject to available funds, or use unrestricted funds to fill any shortfall, covering the essential works for year one and associated field drainage works.

Heritage and Planning Status

- 3.27 Barham Park Estate, including its grounds and buildings, is a designated heritage site due to its historical significance and contributions to the local community. The estate is not listed on the National Heritage List for England but is recognised locally for its heritage value. This local listing means that any changes to the buildings or grounds must respect and preserve their historical and architectural significance.
- 3.28 Planning permission was sought and granted for window repairs under Planning Permission Reference: Ref. 22/3817. This application encompassed repairing and replacing deteriorating timber and metal windows, addressing critical issues such as energy efficiency and water ingress. The planning permission was granted subject to conditions, ensuring that all renovations comply with the relevant planning regulations and standards.

Do Nothing (maintain the status quo)

- 3.29 Do nothing is not an option as the Barham Park Trust must maintain the building per its obligations under the lease agreements, the Landlord and Tenant Act 1954, and its responsibilities as a charitable trust to preserve the property for the benefit of the community and ensure compliance with the Charities Act 2011. This option would continue the cycle of minimal and costly short-term repairs, likely leading to increased long-term costs and further property value and utility degradation. Therefore, the Trust Committee must perform urgent repairs to ensure the building is safe and compliant and act as appropriate to preserve the Trust's charitable objectives and financial sustainability.

4.0 Financial Considerations

- 4.1 The Trustees of Barham Park Trust have a fiduciary duty to ensure its long-term financial stability. When acting as Trustees, they must prioritise the Trust's financial interests over those of the council.
- 4.2 As of March 2024, the Trust had £285k in accumulated unrestricted funds and £353k in restricted funds: £638k in total. The Trust collects, on average, £103k in receipts per annum, most of which relate to rent and funfair charges. Payments, on average, cost £78k per annum, although this has fallen in recent years. The average increase in restricted funds has been £25k per annum.
- 4.3 The Trust must spend £269k (plus professional fees of approximately 10%) on urgent building repairs and potentially £150k on drainage works in the future. The total cost of all repairs for all years will likely exceed the Trust's available funds as of March 2024.

- 4.4 The DfE capital grant of £423k for Unit 8 is at risk of clawback if the use of Unit 8 changes. Assuming nine years out of the 25-year term are clawed back, this would constitute a charge of £152k. It is unclear whether the Trust or the Council would be liable for this cost.
- 4.5 The arrears for the Trust's tenants also pose a risk to the Trust, given its finances' tightness. Suppose tenants default on the £62k they owe. In that case, the trust may require emergency financial support from the Council to address immediate cashflow issues at a minimum and potentially longer term if its finances cannot be more sustainable.
- 4.6 In recent years, the Trust has only averaged an increase of its funds by £25k annually. At the present rate, it would take nearly three years for the trust to recover from a £62k hit to its finances.
- 4.7 The rent increases from reviews detailed in paragraph 3.15 of less than £5k per annum are insufficient to significantly improve the Trust's financial position.
- 4.8 A potential gain for 776 and 778 Harrow Road (if the amendment to the restrictive covenant can be agreed upon) offsets these risks and expected future costs.
- 4.9 In recent years, the Council has provided grants of £150k from NCIL for various works for the Trust. If the Council had not provided these funds, the Trust would have had to use its funds to carry them out. The financial challenges highlighted above suggest that additional funds may need to be found to support the Trust in the foreseeable future.
- 4.10 The Council has also awarded £150k to the Friends of Barham Library for Unit 7, which has not been let under the 2018 tender. So far, only £15k of this has been provided. In the context of paragraph 3.8, the Council will need to review what happens to these monies and any legal requirements on them.

5.0 Legal Considerations

- 5.1 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 occasionally think proper". It was registered with the Charity Commission in June 1963 and is regulated by that body.
- 5.2 The terms of the Trust are extensive. Section 5 of the 2011 Act states that it is charitable to "provide or assist in providing facilities for recreation or other leisure time occupation if the facilities are provided for social welfare." Commercial office space, retail, surgeries, etc., would not fall under the scope of recreational or leisure use for social purposes (though a park café would be in scope).

- 5.3 To comply with the procedural terms of the Charities Act 2011, any letting that falls outside of the terms of the Trust would require an application to be made to the Charity Commission.
- 5.4 The key EPC regulations are the Energy Performance of Buildings Regs 2012, SI 2012/3118, and the Building Regs 2010, SI 2010/2214. An EPC is required when an existing building is sold or rented out. Enforcement of the EPC regime is by the local weights and measures authorities (through trading standards officers). These officers can request that a copy of the EPC recommendation report or inspection report be provided within seven days of request. Penalties are set out in EPC Regs 2012, SI 2012/3118, reg 38, and breaches connected to non-dwellings could lead to fines of between £500 and £5,000, depending on the rateable value of the building. In most cases, the fine is set at 12.5% of the rateable value of the building, subject to a minimum fine of £500 and a maximum fine of £5,000, with a default penalty of £750 where the formula cannot be applied.
- 5.5 Legislation governs the disposal of charitable land. For example, the Trustees can only authorise the disposal or letting of Trust land for more than seven years to a third party (who is not a charity with similar purposes) after considering a written report prepared by a qualified surveyor on the marketing and valuation of the land, if the terms proposed for the disposal are the best that can be reasonably obtained.
- 5.6 Officers to take more proactive action against tenants in arrears. This should include the option of forfeiture or initiating legal proceedings for debt recovery for those not complying with agreed payment plans or not paying off their arrears. The Trust Committee is to note that the delegated officer will seek to enforce contractual obligations actively.

6.0 Equity Diversity and Inclusion Considerations

- 6.1 While there may be temporary impacts on some protected characteristics, particularly for community-centred tenants, our ongoing focus is on enhancing facilities for all community tenants and park users. Officers are committed to carefully assessing potential equality impacts as we work towards achieving our broader strategic objectives. Should any concerns arise, a thorough equalities impact assessment will be conducted to identify potential issues, and appropriate steps will be taken to address them.

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 what is noted in this report.

9.0 Climate Change and Environmental Considerations

- 9.1 None other than those identified within the main report.

10.0 Communication Considerations

10.1 None other than those identified within the main report.

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