



**CALL-IN FORM**

**For the Attention of: Deputy Director Democratic Services**

**From: Councillor Lorber**

**Date: 16 September 2024**

**Decision(s): Item 7 Strategic Property Review & Item 8 Operational Property Matters**

**Date of decision: Barham Park Trust Committee (10 September 24)**

**Five non-cabinet members making request, which must include representatives from more than one political group (Note: all five members do not have to be listed on or sign the same form):**

	<b>Name of councillor &amp; Political Group</b>	<b>Signature</b> <i>(only required if submitted in hard copy)</i>
1	Councillor Paul Lorber (Liberal Democrats)	
2	Councillor Anton Georgiou (Liberal Democrats)	
3	Councillor Hannah Matin (Liberal Democrats)	
4	Councillor Michael Maurice (Conservative)	
5	Councillor Sunita Hirani (Conservative)	

**Please provide below an explanation as to why you are calling in the decision and if you are calling in all or part of the decision:**

*(Note: according to the Protocol On Call-in (Part 5 of the Constitution), call-in requests will not be considered valid if they:*

- are used as a means of gaining information/understanding or discussing general concerns with Members and officers,*
- duplicate a call-in on the same issue within the previous six months,*
- are based on reasons already discussed by the relevant Scrutiny Committee prior to the decision being made,*
- concern a decision of the Cabinet referring a matter to Full Council for consideration.*
- concern operational management decisions, or*
- are otherwise considered by the Chief Executive to be frivolous, vexatious or clearly outside the call-in provisions.)*

At its meeting on 5 September 2023 Barham Park Trust Committee agreed the following:

- (1) To note the outcomes from the architect's feasibility study commissioned by the Council on behalf of the Trust, as detailed within the report.
- (2) To delegate authority to the Director for Environment and Leisure Services in consultation with the Chair of the Trust Committee to:
  - (a) 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.
  - (b) Undertake detailed analysis of the legal risks associated with the proposed scheme and the means as to their mitigation and management.
  - (c) 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.
- (3) To agree for the Director for Environment and Leisure Services in consultation with the Chair of the Trust Committee to report back the findings and recommendations to the next available 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 delivery of the scheme.

The Report presented to the Trust Committee at its last meeting (over a year later) on 10 September on the Strategic Property Review did none of those things:

- a. There are no detailed costings
- b. There is no detailed analysis of the legal risks – and there are no estimates how much it will cost to undertake some of the work proposed – for example the cost of preparing the request to the Charity Commission to change the charitable objects of the Trust
- c. There is no draft investment strategy showing how the cost of £1.7 million will be funded. There is no indication if a request for strategic CIL will be made or a strategy for any form of Grant Funding or who would make the Grant applications.
- d. In relation to (3) above there was no report back on the potential financial options to deliver the whole Estate option recommended by RLB.

**Please provide below an outline alternative course of action to the decision being called in:**

#### **Strategic Property Matters relating to Barham Park**

In view of the concerns highlighted the following alternative actions in relation to the decisions taken by the Trust Committee on 10 September 2024 on the Strategic Property Matters report are requested:

Under **RESOLVED (1)** the Trust Committee agreed:

*“In relation to the Strategic Property Review options outlined within the report, to adopt development option 1 (bronze) with redevelopment and strategic investment beginning in 2031”*

Officers set 2031 as the key date and this was accepted by the Trustees without question and the basis of the statement this is the year of the “longest lease expiry”. There is no calculation in the report of the possible Sure Start Clawback if Unit 8 is vacated at the same time because officers failed to advise, and the Trustees failed to ask, when that risk expires completely.

There is a risk that Unit 8 may need to be occupied for a few years (to avoid the Sure Start funding clawback – which may amount to tens of thousands of pounds) and thus create a situation of leaving most of the buildings vacant and failing to generate any income.

The bronze (or any of the other options) have not been subject to any consultation with existing tenants or users of Barham Park despite the Charity Commission recommendations that the trust actively engages with interested parties.

**Alternative action being sought:**

For all the above reasons to refer this decision back to the Trust Committee to reconsider with a recommendation that the decision taken should not be confirmed until such time as:

- (1) All the financial and legal consequences of the decision are clearly set with a supporting business case and funding plans.
- (2) The extra costs which will arise as a result of obtaining vacant possession of all units (including Unit 8) have been calculated and evaluated for risk.
- (3) A full engagement consultation has been undertaken with the tenants and local people who are the direct beneficiaries of the Titus Barham bequest which resulted in the gift of his home and gardens for “the enjoyment of the public” and not for the provision of retail outlets or hotels.

Under **RESOLVED (2)** the Trust Committee agreed:

*“To authorise officers to develop proposals for expanding the Trust’s charitable purposes to be submitted for approval to the Charity Commission to allow broader uses of the buildings and bring a report on the proposals to a future Trust Committee.”*

Titus Barham donated his home and gardens for the “recreational enjoyment” of the public. Up to now Wembley Council and its successor Brent Council broadly fulfilled this wish. The gardens were turned into a Barham Park while the buildings were initially home to the Barham Museum and later the Barham Public Library. Other parts were used as a reception facility and many older Wembley residents still remember holding birthday parties, wedding receptions and similar events.

Things only changed after Brent Council closed the Public Library in 2011 and brought in an external tenant who lets part of their leased premises to people from outside of Brent and has in recent years failed to pay their rent. Over the past 12 years Brent Council has failed to maintain the buildings or the park to an acceptable standard, missed many opportunities to apply for external grants, wasted large sums of money on surveyors and consultants and failed to collect rents and charges due.

The Architects study which led to the Bronze, Silver and Gold Options cost over £20,000. The Trust was told, and the Trustees proceeded with the study on a clear decision that the cost would not be paid by the Trust. Without any formal decision by the Trustees, the cost was then charged to the Barham Park Trust.

More importantly despite the fact that all the architect's recommendation that the proposed work depended on "vacant possession" officers of the Council failed to check when vacant possession could be achieved and the architects failed to ask.

There may be a valid case for "failure of due professional care" and a demand from the Trust to the Architects for a refund of the fees charged.

In response to previous residents' complaints the Charity Commission expressed the view that the Trust should consult and engage with interested parties and users of the park before making major decisions.

#### **Alternative action being sought:**

For the above reasons to refer this decision back to the Trust Committee to reconsider with a recommendation that the decision taken should not be confirmed until the Charity Commission recommendation for greater consultation and engagement with interested parties is carried out.

#### **Operational Property Matters relating to Barham Park**

In addition, the following decisions made by the Trust Committee on 10 September 2024 have also been called in given their links to the Strategic Property Review. These relate to Agenda Item 8 – Operational Property Matters relating to Barham Park.

Under **RESOLVED (1)** the Trust Committee agreed:

*"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 detailed within paragraph 3.4 of the report"*

Delegation in recent years has failed. Rents were not collected, services were not charged, actions required were not taken and as a result the Barham Park Trust has lots many tens of thousands of pounds.

Trustees have fiduciary and other duties towards the Trust which they have failed to fulfil properly. It is clear that the current Trustees have neither the time, experience or sufficient knowledge to undertake their responsibilities properly.

Key oversight functions have been delegated to Council officers which should not have been, resulting in the Trusts affairs being put at risk.

**Alternative action being sought:**

For the above reasons to refer this decision back to the Trust Committee to reconsider with a recommendation that the Council should once again review the Governance arrangements for the Trust and appoint Trustees with sufficient knowledge, experience and interest who will manage the affairs of the Trust better than has been done in recent years.

Delegation to Council Officers should also be deferred until this has been done and until the losses made by the Trust, as a result of the delegation of powers to officers, have been identified and evaluated and a revised set of duties and responsibilities have been listed to avoid similar failures in the future.

Under **RESOLVED (2)** the Trust Committee agreed:

*“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 of the report.”*

The report to the Trust refers to:

“officers will commission independent valuations and issue Section 25 notices etc” without stating who the Independent Valuer will be or what the costs of obtaining those valuations will be. Issuing Section 25 Notices to the tenants also has material implications for the Charity tenants as they will have to seek their own independent legal advice, which will be costly. Bearing in mind that all of this could have been avoided had the Council started negotiations in good time – before the leases expired – an alternative approach should be pursued in relation to Unit 1 or 2 bearing in mind that the leases will be for relatively short periods and the legal costs that would be incurred would be disproportionate.

As far as Unit 8 is concerned this was previously leased to Brent Council so that it could provide a Children Centre. A genuine Children Centre ceased to operate from the premises many years ago.

The current arrangements are only in place to avoid a possible clawback of the Sure Start Grant. Even though the Council has been aware of the risk of clawback the officers of the Council are not able to advise whether the claw back would need to be paid by the Council or the Barham Park Trust. In the view of the members who have called-in the decision, the fact that the Children Centre was a Council Service would lead to responsibility for any clawback falling on the Council. Irrespective of this view, however, the position should be clarified before the leasing of Unit 8 is pursued further. There is a related issue in that it is questionable whether the arrangements for Unit 8 have been on an ‘*arms length*’ basis or whether officers have been acting for the benefit of the Council rather than the Trust.

Unit 8 is clearly not being used for its original intended purpose. In view of the apparent drive for commercialising part or all of the buildings in the Barham Park complex there is an opportunity to take a different approach.

**Alternative action being sought:**

For the above reasons to refer this decision back to the Trust Committee to reconsider with a recommendation that:

- (1) In relation to Units 1 & 2 and bearing in mind that the 2 current tenants are charities providing community services and the fact that the leases are for a relatively short 7 year period and to avoid unnecessary costs to both the Trust and the two Charities, the decision made should be varied so that new terms are negotiated in line with current arrangements with possible indexation in line with similar leases in place until 2031.
- (2) In relation to Unit 8, this should no longer be leased to Brent Council but marketed externally to a suitable provider who meets the requirements of Sure Start Grant and thus guarantees NO clawback for the full 25-year term.

Under **RESOLVED (3)** the Trust Committee agreed:

*“To Authorise the Director of Property and Assets to let Unit 7 for meanwhile use as outlined in paragraph 3.8 of the report.”*

This Unit was intended for a Dementia Advice and Outreach service. Heads of Terms were being negotiated as far back as 2018 and stalled because of lack of understanding by Council officers. The officer report refers to NCIL grant of £150,000 while referring to “NCIL considerations”. NCIL has nothing to do with the Trust and officers or Trustees should neither interfere or make assumptions about it.

What the report does NOT mention is the fact that officer and Trustee actions have wasted 6 years and deprived dementia sufferers and their carers of an important local service and that as a result of the Unit remaining derelict the Trust has lost out on £150,000 of improvements and up to £15,000 of rent!

The report also does not explain either what is meant by “meanwhile use” and what “updated terms” means. Bearing in mind that the space will be used by vulnerable people and the unit is derelict (no heating, outdated electrics, wrecked toilets, no sink, uneven floors, no disabled toilet, no ramps or disabled entrance door etc) the full £150,000 NCIL grant may be needed to meet all the refurbishment costs.

Unit 7 also suffered from substantial water damage from upstairs because officers failed to deal with a leaking roof when it was reported to them. All the timbers in the upstairs units had to be removed because of wet rot which also penetrated the downstairs. Unit 7 had a window removed and boarded up and large sections of plasterwork hacked off as a result. It was agreed at the time that the Trust would meet the cost of the replacement window and to pay for the re-plastering when the refurbishment of Unit 7 started. The cost of this will not come out of the NCIL Grant.

**Alternative action being sought:**

For the above reasons to refer this decision back to the Trust Committee to reconsider with a recommendation that

- (1) The Trust reconfirms its decision to let Unit 7 for a Dementia Advice and Outreach Support Hub and pursue terms in line with the original Heads of Terms issued by officers working on behalf of the Trust.
- (2) The Trust agrees to meet in full the cost of making good the damage cause by the water penetration from above.
- (3) The threat of remarketing in 3 months be removed bearing in mind that the failure to get the unit refurbished and generating income for the Trust lies with officers and the Trustees.

Under **RESOLVED (5)** the Trust Committee agreed:

*“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 of the report.”*

In another part of the report officers claim that service charges were not made because the Trust wished to support the charities occupying parts of the building. This seems an odd statement because the lessee of Unit 8 is Brent Council and NOT a charity and the relationship between the Trust and the Council should have been on an arms-length basis.

Some members may recall the issue of Service Charges was raised under a previous call-in relating to the Trust Accounts 2022-23. The plain truth is that officers simply forgot that service charges should have been made and the Trustees did not check. Hence my point that unlimited delegation should not be made and that better Trustees with knowledge, interest and time should be appointed.

In relation to maintenance (or lack of it) over the past 13 years the Trust has incurred large fees on a succession of surveys and recommendations which have never been implemented. The maintenance of the buildings has been neglected resulting in much greater deterioration of the fabric of the buildings than would have happened otherwise. It is therefore not right that the work identified in the latest survey and marked SC (presumably suitable inclusion in a service charge) should in fact be charged to the tenants. The impact of the failure to carry out regular maintenance should be evaluated and fully taken into account in a downward adjustment to any service charges.

**Alternative action being sought:**

For the above reasons to refer this decision back to the Trust Committee to reconsider with a recommendation:

- (1) Service charges due for Unit 8 should be backdated to the date of the original Lease and paid over to the Trust.
- (2) Any future Service Charges should have a downward adjustment to take into account the deteriorating condition of the buildings as a result of the failure to carry out regular and timely maintenance – (the external woodwork has not been painted since at least the closure of the Public Library in 2011 which

explains the amount of rotting woodwork visible on the external parts of the buildings).

Under **RESOLVED (6)** the Trust Committee agreed:

*“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, as outlined in paragraph 3.12 of the report.”*

This issue has been going on for well over a year. The report from officers refers to obtaining an updated valuation and legal activities to sort out a boundary issue. All of this has costs associated with it. Yet nowhere in the report do officers provide details of the costs incurred to date, the costs to be incurred in the future and the cost of vast amount of officer time on this issue. There are no costs in relation to this matter shown in the Trust Accounts for the last 2 years, so the presumption is that all these costs will be borne by Brent Council and the Brent Council taxpayers. If this is so then this should be confirmed and clearly stated.

If the intention is to recharge the costs to the Trust then this should be stated too.

The report also makes no mention of the range of values/receipts that the Trust may receive for removing the Covenant which was of course put in place for a good reason and to which the purchaser of the two cottages signed up to in full knowledge of its implications.

There is strong opposition from the local community to the lifting of the Covenant and objections will inevitably follow any submissions made by the Trust to the Charity Commission. Despite the public interest, members of the public are being kept in the dark and denied the right to speak at the Trust Meetings to express their views.

**Alternative action being sought:**

For the above reasons to refer this decision back to the Trust Committee to reconsider with a recommendation that

- (1) The Trust should suspend further work, incurring of costs and negotiations on the matter of the Covenant until:
  - (a) All the costs incurred to date and estimates of further costs are identified and reported to the Trust in an Open Meeting
  - (b) The range of possible capital sum to be received for the lifting of the Covenant is reported.
  - (c) The public are informed about all the implications, costs, income and process and consulted as to whether they are in favour or against the idea.

Under **RESOLVED (8)** the Trust Committee agreed:

*“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, as detailed within paragraph 3.10 of the report.”*

In the notes to the 2023-24 Trust Accounts there is a reference to rent arrears of £44,500 as at 31 March 2024 – the officers report states that by the 2nd quarter of 2024 (presumably as at July/August 2024) the rent arrears stand at over £62,000.

Under the call-in on the Trust Accounts considered last year, two issues were raised in relation to rents - the failure to collect rent and the failure to implement rent reviews.

It is important to note that as part of last years accounts (2022-23) and report to the Trustees, officers advised that the rent arrears at 31 March 2023 stood at around £39,500 and that they expected them to be cleared by the end of the financial year – by 31 March 2024. These arrears have not been cleared as expected and in fact have grown.

It was also pointed out last year that according to the leases any arrears outstanding from more than 21 days are subject to interest charges at base rate plus 4%. YET no interest was charged. With a base rate at around 5% the interest on arrears would be around 9%.

Persistent non-payment could (should?) lead to legal action for eviction and termination of the lease. Why has it taken so long, and arrears of over £62,000 before firm action is taken? Did the Trustees have proper oversight and did delegation to officers go too far?

In considering this call-in scrutiny members also need to be aware that the Council makes cash advances to the Trust equal to the balance of rent arrears to assist with cash flow and to also pay interest on these figures (it is not clear what the rate of interest is and whether it equates to base rate +4%). So, while the Trust may be partially compensated for the loss of interest it is the Brent Council Taxpayers and not the tenant who is meeting this cost.

It is also not clear what would happen if there was a rent default (i.e the £62,000 currently owed was never paid) – who would suffer the loss? Would the Trust have to repay the ‘advance’ in which case the loss would be fully suffered by the Barham Park Trust. The report to the Trustees does not make the position on this clear.

**Alternative action being sought:**

For the above reasons to refer this decision back to the Trust Committee to reconsider with a recommendation that officers should be requested to:

- (1) Charge interest on any rent arrears as per the terms of the lease back dated to the time when interest could or should have been charged.
- (2) Inform the relevant tenants to clear all their arrears of rent within 2 months of the date of next Trust meeting to which this recommendation is reported and to start legal proceedings to recover the Trust property if the outstanding rent has not been paid.

Please return this form to a representative of the Deputy Director Democratic Services, by email (from your individual email address) [james.kinsella@brent.gov.uk](mailto:james.kinsella@brent.gov.uk) at or in hard copy (with signatures) and in person to the Governance Team on the fourth floor of Brent Civic Centre.