



**Barham Park Trust Committee  
15 October 2014**

**Report from Director of Legal and  
Procurement**

For Action

**The Future of Barham Park Trust**

**1.0 Summary**

- 1.1 This report considers the future governance of the Barham Park Trust. The current arrangements for the management of the Trust have been in place since November 2012 and in accordance with Charity Commission guidance it is appropriate to periodically review whether it continues to be in the best interests of the charity for the local authority to remain as sole trustee and to review its management arrangements.

**2.0 Recommendations**

- 2.1 That members consider the current arrangements for the management of the Trust and decide whether other options should be explored. In the event that members do wish to further explore options it is recommended that independent expert Trust advice on the alternative models be obtained.

**3.0 Detail**

- 3.1 The land (which includes various buildings) known as Barham Park was given by George Titus Barham on trust to the Council in 1938. The terms of the trust are 'to preserve the same for the recreation of the public in such manner and subject to such regulations in all respects as the Council may from time to time think proper'. It was registered with the Charity Commission in June 1963 and is regulated by that body.
- 3.2 The land is held by the Council on trust and accordingly can only be used in furtherance of its stated charitable purpose. In making decisions about the trust property and finances, the Council must act in the best interests of the trust and must be mindful of any conflict of interest.
- 3.3 Until 2012 the Executive made decisions about the Trust in its ordinary executive meetings. It was made apparent from the content of those reports that the decisions were in relation to the Trust. However, for the reasons set

out in the report attached as **Appendix 1**, in 2012 it was decided to create a more apparent and defined separation of roles and the Executive established the Barham Park Trust Committee to deal with decisions regarding the Trust land, property and finances. Over the past two years decisions have been made in accordance with the governance arrangements set out in that report and separate accounting systems have been established.

- 3.4 While the current arrangements provide a significant improvement on the previous position, the Council as trustee has a responsibility to periodically consider whether the current arrangements best serve the charitable purposes and whether alternative arrangements should be explored.
- 3.5 The Council as a corporate body is the trustee (rather than individual members) and accordingly it is for the Council to make decisions about the trust in its role as Trustee. The Local Government Act 2000 and the Local Authorities (Functions and Responsibilities) Regulations 2000 (as amended) provide that all 'functions' of the Council (widely defined), which are not the preserve of others, are 'executive' functions. In the case of the role of Trustee, no restriction is specified and accordingly members are advised that, while the Council is sole trustee, it falls to the Council's Cabinet to make decisions regarding the Trust. Under the Local Government Act 2000 the Cabinet sub committee comprises members of the Cabinet. Accordingly, for so long as the Council is sole trustee, it appears that it can only be managed under the current arrangements, with possible minor variations, for example to the size of the sub committee, or the form of officer delegations.
- 3.6 A legal alternative to the current governance arrangement is to transfer the assets to a new or existing charitable body with some or no connection to the Council. The Charity Commission is the regulatory body and as such its permission would be required to approve any transfer scheme. It is anticipated that where possible the Charity Commission would expect the current charitable purpose to continue and would want to be satisfied that any alternative arrangement would be in the best interests of the Trust and its beneficiaries. In the event that a new body is planned, trust documents would need to be drafted and membership of that body determined.
- 3.7 The dual role of the Council as provider of services and as trustee is not always straight forward, and while the Council has been mindful of and complied with the rules on conflict of interest it has on occasion led to some unusual situations where Cabinet members have had to separate out their responsibilities. However, such arrangements are not entirely alien to the Council since they arise in other areas such as planning. The establishment of a separate body may have certain advantages, including the option to involve persons or bodies outside the Council in decisions about the Trust, although it was the unequivocal intention of Titus Barham to entrust the decisions to the Council.
- 3.8 In addition to any legal issues around alternatives for management of the Trust the Council would also need to consider any financial and practical issues that may arise. The Trust has always been and continues to be heavily subsidised by the Council; the grounds maintenance costs, day to day management of the park and buildings and expert advice on the various business aspects of the Trust are currently met by the Council and while some form of funding may still be an option, the financial security of the Trust would

need to be carefully considered. The day to day cost of running the park was £96k in 2013/14, offset by £45k of income. The balance is a cost to the Council. There are also potential VAT implications for the Trust if it is separated from the Council.

- 3.9 The transfer of land from control of the Council to an independent Trust may also have some practical implications, for example the ability to make bye laws in respect of that land will be constrained. Furthermore, the maintenance of the park is now undertaken by Veolia and the implications of that would also need to be considered.
- 3.10 Further details on alternative options including the financial and practical viability of those options would require expert input by lawyers and tax advisers outside of the Council and as such will incur a cost. The cost estimate is between £4,000 and £6,000
- 3.11 It is not the purpose of this report to identify all the possible options for the future management of the Trust, nor to set out the advantages and disadvantages of those options, but to outline the basis on which the Trust is managed as it is currently and to ask members to consider whether, in light of the broad outline given in this report, members wish to explore any possibilities further.

#### **4.0 Financial Implications**

- 4.1 The cost relating to the investigation of future options is the commissioning of external advice which is estimated in the body of the report as being between £4,000 and £6,000.

#### **5.0 Legal Implications**

- 5.1 Any legal implications are set out in the body of the report

#### **6.0 Diversity Implications**

- 6.1 None

#### **7.0 Staffing/Accommodation Implications (if appropriate)**

- 7.1 None

### **Background Papers**

Charity Commission Guidance  
Brent Council Constitution

### **Contact Officers**

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