



**Executive
12 November 2012**

**Report from the Director of
Legal and Procurement**

**The Future Administration and
Governance of Barham Park Trust**

1.0 Summary

- 1.1 This report recommends the further separation of the Council's role as Trustee for Barham Park Trust from its statutory role and functions as a London borough council, and the development of specific policies and procedures for the effective management and use of the Trust's assets in order to fulfil its charitable purposes. It also recommends changes to the financial management of the Trust funds. The review of governance issues is part of the major review of the Trust which started in 2009 and has been more actively pursued since the beginning of 2012. It also takes into account matters raised by the Charity Commission.

2.0 Recommendations

- 2.1 That officers agree that the Executive carrying out the functions of trustee of Barham Park Trust be advised to
- i) note the Barham Park Trust status as a charitable trust
 - ii) arrange for the trustee functions in relation to Barham Park Trust to be discharged by a sub-committee of 5 members of the Executive to be known as 'Barham Park Trust Committee'
 - iii) agree the membership and terms of reference of the Barham Trust Committee of the Executive as set out in paragraph 3.7 below
 - iv) delegate the day to day trustee functions and decision making to the Assistant Director Neighbourhood Services in consultation with the Assistant Director Regeneration and Major Projects and the Deputy Director Finance and Corporate Services who shall collectively be known as the 'Barham Park Trust Management Team'
 - v) the officers in iv) above are delegated such executive powers relating to their service areas as are necessary to carry out the day to day trustee functions and, in so far as they relate to Barham Park Trust

- matters, these powers are the same as those delegated to Directors in those service areas under Part 4 of the Constitution
- vi) recommend to Full Council that the Director of Legal and Procurement be requested to amend the Constitution accordingly
 - vii) Note the Director of Legal and Procurement will provide specific guidance to members and officers in their role as trustee, and provide training
 - viii) Note that changes to the Trust accounts will be undertaken.

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 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, The Local Authorities (Functions and Responsibilities) Regulations 2000 (as amended) and the Council's Constitution provide that all functions of the Council, which are not the preserve of others, are 'executive' functions. In the case of the Trust function, no restriction exists and accordingly it falls to the Council's Executive to make decisions. Under the Constitution functions are also delegated to officers. The Executive has made all major decisions concerning the Trust as and when they arise, most particularly the sale of 776 and 778 Harrow Road, and deciding to undertake a feasibility study of future use of the buildings and improvements to the park.
- 3.3 Day to day management of the Trust assets has been undertaken by a group of officers; the Assistant Director Regeneration and Major Projects, the Assistant Director Neighbourhood Services and the Deputy Director Finance and Corporate Resources.
- 3.4 When deciding matters concerning the Trust the Council as Trustee is required by law to decide matters based on the best interests of the Trust and to put aside any Council interests. The duties include fiduciary responsibilities and use of the assets in furtherance of the charitable purposes. The Charity Commission document '*Councillor's guide; A Council's role as Charity Trustee*' provides useful advice on how Councils should fulfil the role of trustee in accordance with the charity law and how to avoid financial and reputational pitfalls when they arise. One of the main issues highlighted in the document is the need for the charitable trust to be independent, namely to operate solely for its charitable purposes. To that end the management of the charity must be kept separate, as far as possible, from the business of the Council.
- 3.5 The Charity Commission contacted the Council regarding the Council's dealings as trustee for Barham Park following complaints it had received. The matters raised by the Charity Commission concerned the governance structures, the discharge of the duties and responsibilities as trustees and

annual returns to the Charity Commission. The Council responded that it was satisfied that it had acted properly as a Trustee for Barham Park but there were areas in which improvements could be made. The Charity Commission has confirmed, having received the information from the Council, that it is satisfied that the Council as the trustee of the Charity has a good grasp of its responsibilities and duties in connection with the charity and it does not propose to examine the concerns raised further. It offered advice on avoiding any future pitfalls and this has been taken into account when recommending these changes to members.

- 3.6 While the governance and structure of the Council's decision making in relation to the Trust is clear, defined and on the whole in practice, distinct from its decision making regarding the Council's statutory functions, there are advantages to creating a separate Executive committee to decide Trust matters and recording in detail the delegation of functions to officers. It is recommended that functions of the Council as the Barham Park trustee be undertaken by a specially constituted Executive committee, which should meet not less than once per year, whose terms of reference include acting in the best interests of the Trust, and that those members be advised by the senior officers who are delegated day to day management of the Trust. This formal arrangement would provide a clear and apparent separation of the Council's roles (thereby avoiding conflicts of interest which may arise if the roles are confused). It will ensure that decisions are made on the basis of the interests of the Trust and by doing so protect the public reputation of the charitable trust and the Council as Trustee. It will enhance public confidence in the trusts dealings. It is particularly important at this point in time that the governance arrangements are robust since the Council as trustee is shortly to make major decisions regarding the future use of the buildings and improvements to the park.

- 3.7 The following Terms of Reference are recommended

Barham Park Trust Committee

Membership

The sub-committee is comprised of 5 members of the Executive appointed by the Executive

Chair and Vice Chair

To be appointed by the Barham Park Trust Committee

Quorum

3 Executive members

Terms of Reference

The Executive has agreed to delegate the following executive functions to the sub committee:-

- (1) *the trustee functions in relation to Barham Park Trust including decisions to dispose of land, vary or cease the charitable purpose, or change the trustee, except those functions it has delegated to officers*
- (2) *an annual review of how the trust is carrying out its charitable purposes and a review of the Trust's finances*
- (3) *any other matter which the Assistant Director Neighbourhood Services considers ought to be referred to the committee for a decision*

The Committee shall meet not less than once per year.

- 3.8 The reports to the Executive on Trust matters include detailed advice on the financial and legal duties of the trustee, and the officers involved in the Trust are aware of the need to deal separately and in the best interests of the charity. However, as a matter of good practice and in accordance with the advice from the Charity Commission specific guidelines and training about roles and responsibilities and how to identify and deal with conflict of interests would be useful. It is recommended that this be provided by the Director of Legal and Procurement.
- 3.9 The Council as trustee is required to submit annual returns to the Charity Commission regarding the Trust's finances. The Charity Commission guidance stresses the need to keep the finances of the Council separate from the trust with the use of discreet cost centres.
- 3.10 With regard to the previous years the Council will need to complete all remaining accounts and ensure that the 2011/12 accounts are submitted by the deadline 31st January 2013. These will be brought to the Barham Park Management Team and Barham Park Trust Committee for approval. This will address the issues around completeness of the accounts and the basis of charges to and from the Council.
- 3.11 With regard to the accounts for future years it is proposed that:
- the accounts are produced using distinct cost centres held centrally, outside of individual departments
 - Quarterly monitoring reports and annual accounts will be based on returns from Regeneration and Major Projects and Environment and Neighbourhood Services signed off by the relevant Assistant Director. These reports will be compiled by the central finance team.
 - The quarterly financial reports will be reported to the Barham Park Trust Management Team
 - The annual accounts approved by Barham Park Trust Management Team and Barham Park Trust Committee

4.0 Financial Implications

- 4.1 The proposals in section 3 do not change the financial position of the charity, whereby the expenditure by the Council exceeds the income currently generated.

- 4.2 There is also no change to the treatment of the receipt from the sale of 776 and 778 Harrow, which continues to be ring-fenced for use by the Trust.

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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