



**Executive
17 January 2011**

**Joint Report from the Directors of
Regeneration and Major Projects and
Environment and Neighbourhood
Services**

Ward Affected:
Sudbury

**Former Park Keepers Houses at
776 & 778 Harrow Road Wembley HA0 2HE
Disposal in the Open Market**

1.0 SUMMARY

- 1.1 This report seeks to vary the decision of the Executive on 14 September 2010 so that approval is given for the disposal, in the open market, of the former park-keepers houses at 776 and 778 Harrow Road, located within the Barham Park open space.
- 1.2 These buildings and the parkland surrounding are held by the Council as Trustee of the Barham Park Estate Trust. The September decision was to approve the disposal subject to Charity Commission approval. Subsequently, following discussion with the Charity Commission it is now considered by officers that the Council, as Trustee, can dispose of these assets without prior Charity Commission approval. This view is pursuant to consideration of the charity trust issues and decision of the Barham Park Trust Management Team comprising senior officers in Finance and Corporate Services, Environment and Neighbourhood and Regeneration and Major Projects departments.

2.0 RECOMMENDATIONS

- 2.1 Members to note the report of the Director of Finance and Corporate Resources and decision dated 14 September 2010 to dispose of the properties in the open market at auction i) subject to the appropriate Charity Commission approval and ii) statutory advertising of a disposal of land within public open space and in the event of significant objections in the opinion of the Head of Property and Asset Management the matter is to be reported back to the Executive
- 2.2 Members agree to vary the decision to dispose of the properties in the open market at auction subject to the appropriate Charity Commission approval **such** that Member approval is now given to the disposal of the properties **subject to**

the final advice of the District Valuer in accordance with the Charities Act 1993 without recourse to the Charity Commission for its prior consent pursuant to consideration of the charity trust issues and decision of the Barham Park Trust Management Team.

3.0 DETAIL

- 3.1 Members have considered and agreed the report of the Director of Environment and Culture at the meeting on 14 December 2009. This detailed how two properties located on the western edge of Barham Park were surplus to Parks Service operational requirements and how capital secured from the sale of the two properties could be used to improve infrastructure and facilities within the park. The Director of Finance and Corporate Resources also reported to Members on 14 September 2010 informing Members that the preferred purchaser Notting Hill Housing Trust could not proceed and approval was sought and obtained for a sale in the open market to achieve best value subject to Charity Commission consent
- 3.2 Barham Park is held on Trust in perpetuity by the Council for the purpose of providing public open space for active and passive recreational activities. The park and associated facilities passed to the Council in the 1930's. The issues relating to the trust status of the Council are explained in the Legal Implications below
- 3.3 In the 1970's the Council built a pair of three-bed semi detached houses on the western border of the park to be used as housing for staff working in the park. The properties are no longer used for this purpose and for a number of years were left vacant. One is currently in use as a temporary child care facility operated by Brent and the other is used as temporary housing. The effect is that the properties are no longer providing a direct benefit to the park. The park itself although well maintained and holding the green flag award would benefit from significant capital investment to realise its full potential
- 3.4 The Council's duty as trustee of the Barham Park Estate is to secure market value on sale of the properties. Officers commissioned an independent open market valuation of the properties last year by the District Valuer Services to comply with the charitable status of the properties and assuming disposal to the Council's preferred purchaser at the reported market value. In view of the changed circumstances and the time elapsed since, officers have a further refreshed opinion of current open market value which is in the sum of £610,000 for the two houses to be sold at auction as individual lots for residential use. This will satisfy the trust's need to ensure proper advertising. A reserve price for each will be established prior to auction.
- 3.5 Officers have received advice from the Charity Commission regarding the statutory disposal process and detail of this is provided in the Legal Implications of this report. The Barham Park Trust Management Team consider that the Council as trustee of the Barham Park Estate can rely on statutory powers under S6 of the Trusts of Land and Appointment of Trustees Act 1996 (TLAT) which allows the disposal of designated property without replacement where the

disposal is so small it has no effect on the purposes of the charity and there is no express prohibition in the trusts of the charity preventing disposal.

- 3.6 The land area of the two houses is 732 sq m and the overall land area of the park is 10.33 hectares/ 103,300 sq m. The houses comprise 0.0071% or thereabouts of the land area of the park which is considered to be a very small proportion. It is also a consideration that the houses which were built nearly forty years ago are located on the extreme north west boundary and do not interfere with the recreational enjoyment of users of the park.
- 3.7 Officers will arrange for the statutory local advertising of a disposal of public open space and in the event of significant objections in the opinion of the Assistant Director of Regeneration (formerly Head of Property and Asset Management), the matter will be reported back to the Executive in line with Member decision on 14 September 2010
- 3.8 The consent of the Charity Commission must be obtained to dispense with the proceeds of sale after all associated costs, which have to be for the improvement of the park. Officers will arrange for this procedural requirement

4.0 FINANCIAL IMPLICATIONS

- 4.1 Any capital receipt from a sale of the properties could only be used to fund improvements to Barham Park

5.0 LEGAL IMPLICATIONS

- 5.1 As the properties form part of land held under a charity, then, in its role as trustee, the Council has to be satisfied that the disposal is in the best interests of the charity. In considering this issue, the benefits of the disposal to the purchaser or to the Council's wider objectives in its corporate role, must be ignored. In this case, the Barham Park Trust Management Team has considered the issues and concluded that a disposal of the two residential units is in the best interests of the charity as explained above:
- 1) It will produce a receipt which can be used to improve the park
 - 2) It will not involve the loss of park land as the area is currently occupied by two houses.
 - 3) Demolition of the existing buildings and reinstatement of this area of land back to park land would not result in any significant increase in the overall quality of Barham Park.
- 5.2 As well as this general duty, there are specific requirements which have to be complied with under Section 36 of the Charities Act 1993, before any disposal can be undertaken. These are to obtain a written report from an independent qualified surveyor and to advertise the disposal (unless the independent surveyor advises that it is not necessary to market the property) and to be satisfied that the proposed terms are the best that can reasonably be obtained in the

circumstances. The Council has sought a Report from District Valuer Services of the Valuation Office Agency to satisfy these requirements

If these requirements cannot be complied with then Charity Commission consent for the disposal will be required.

The Assistant Director Regeneration and Major Projects (Property & Asset Management) is satisfied that a disposal at auction would produce the best price reasonably obtainable in the market.

Officers therefore consider that the Executive can be satisfied that the terms obtained on a disposal at auction would be the best than can reasonably be obtained in the circumstances of the disposal, subject to the final advice of the District Valuer in accordance with the Charities Act 1993

- 5.3 The land in question forms part of the charity's "permanent endowment". Under Section 75 of the Charities Act 1993, specific consent is required to dispose of any land forming part of a charity's "permanent endowment" and Charity Commission consent will also be required on this ground. Land held as part of a Charities permanent endowment is now known as "designated property".
- 5.4 In this instance the Charity Commission has stated that the Council as a Charitable Trust can dispose of the property under Section 6 of the Trusts of Land and Appointment of Trustees Act 1996 (without the need to obtain its prior consent under the 1993 Act) if the Trust considers the disposal falls within the scope of Section 6.
- 5.5 Section 6 allows the disposal of designated property without replacement where the disposal is so small it has no effect on the purposes of the charity and there is no express prohibition in the trusts of the charity preventing disposal.
- 5.6 The Barham Park Trust Management Team considered that the Council can exercise the statutory power under Section 6 given the size and history of the property and there was no express prohibition in the trusts against disposal
- 5.7 The Council will still need consent of the Charity Commission as to how it intends to use of the proceeds of sale.
- 5.8 As these properties are situated within Barham Park they form part of the estate and so, under charity rules, any capital gained from their disposal would have to be used to further benefit the recreational enjoyment of the park by the public. Members are therefore recommended, in their role as Trustees, to dispose of the two properties and use the capital receipt towards the match funding for a Lottery application.
- 5.9 There is also a separate issue to be considered by virtue of Section 123 of the Local Government Act 1972. This requires that any disposal of the freehold of any land owned by the Council must be at the best consideration reasonably obtainable, unless consent from the Secretary of State for the disposal is obtained. In assessing whether best consideration has been obtained, all

possible planning uses need to be considered. However in this case, the view of the Planning Service is that the only other possible use (apart from retention as park land) would be use for a small housing scheme. Accordingly the land has been valued on this basis either as a sale as existing or as a residential development. A residual valuation has suggested that a sale as a residential development site would produce a lower value than an outright sale as existing therefore the Assistant Director Regeneration and Major Projects (Property & Asset Management) is satisfied that this proposed disposal, at the figure independently provided by District Valuer Services, is sufficient to satisfy the requirement to obtain best consideration on any disposal. Officers therefore consider that the requirements of Section 123 are fulfilled in this case.

- 5.10 Since the land in question forms part of the Park, then notwithstanding the fact that the two houses that have been constructed on it, Officers view is that it should be treated as public open space. Accordingly, assuming that Members approve the proposed disposal in the open market, then the intention to dispose of the land will need to be advertised in a local newspaper for two weeks and any objections which are made will need to be considered. Accordingly, members are asked to instruct Officers to carry out this procedure, but to report back to the Executive if any objections are received which are significant in the opinion of the Assistant Director regeneration and Major Projects Head (Property & Asset Management).

6.0 DIVERSITY IMPLICATIONS

- 6.1 None specific

7.0 STAFFING/ACCOMMODATION IMPLICATIONS

- 7.1 None specific

8.0 BACKGROUND PAPERS

- 8.1 Report of the Director of Environment & Culture to the Executive Meeting on 14 December 2009 and Minutes
- 8.2 Report of the Director of Finance & Corporate Resources to the Executive Meeting on 14 September 2010 and Minutes

Contact Officers

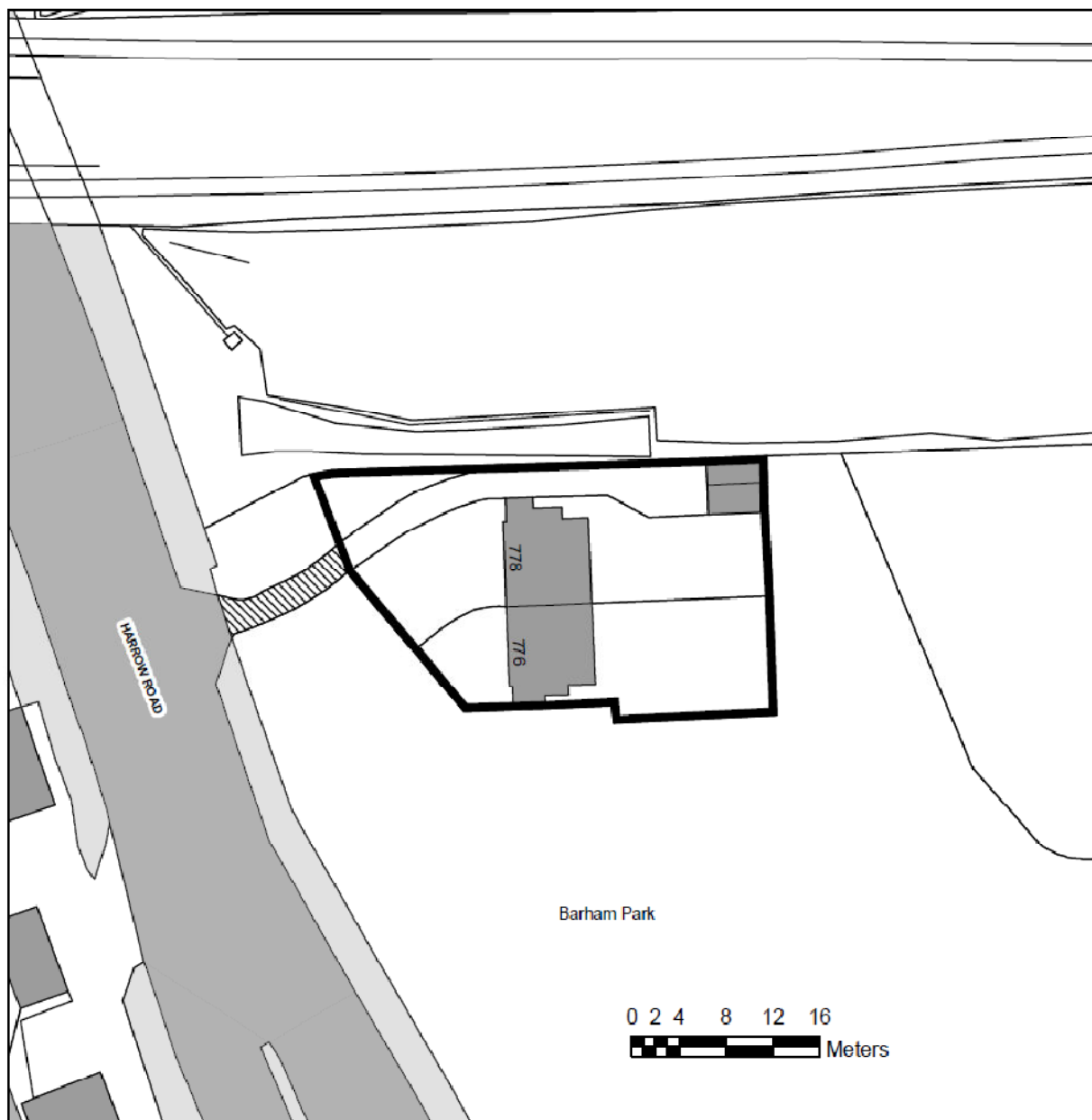
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EXECUTIVE COMMITTEE

**Former Park Keepers Houses,
776/778 Harrow Road, London HA0 2HE.**



**Premises shown edged black.
Access hatched black.**

Plan for information purposes only.

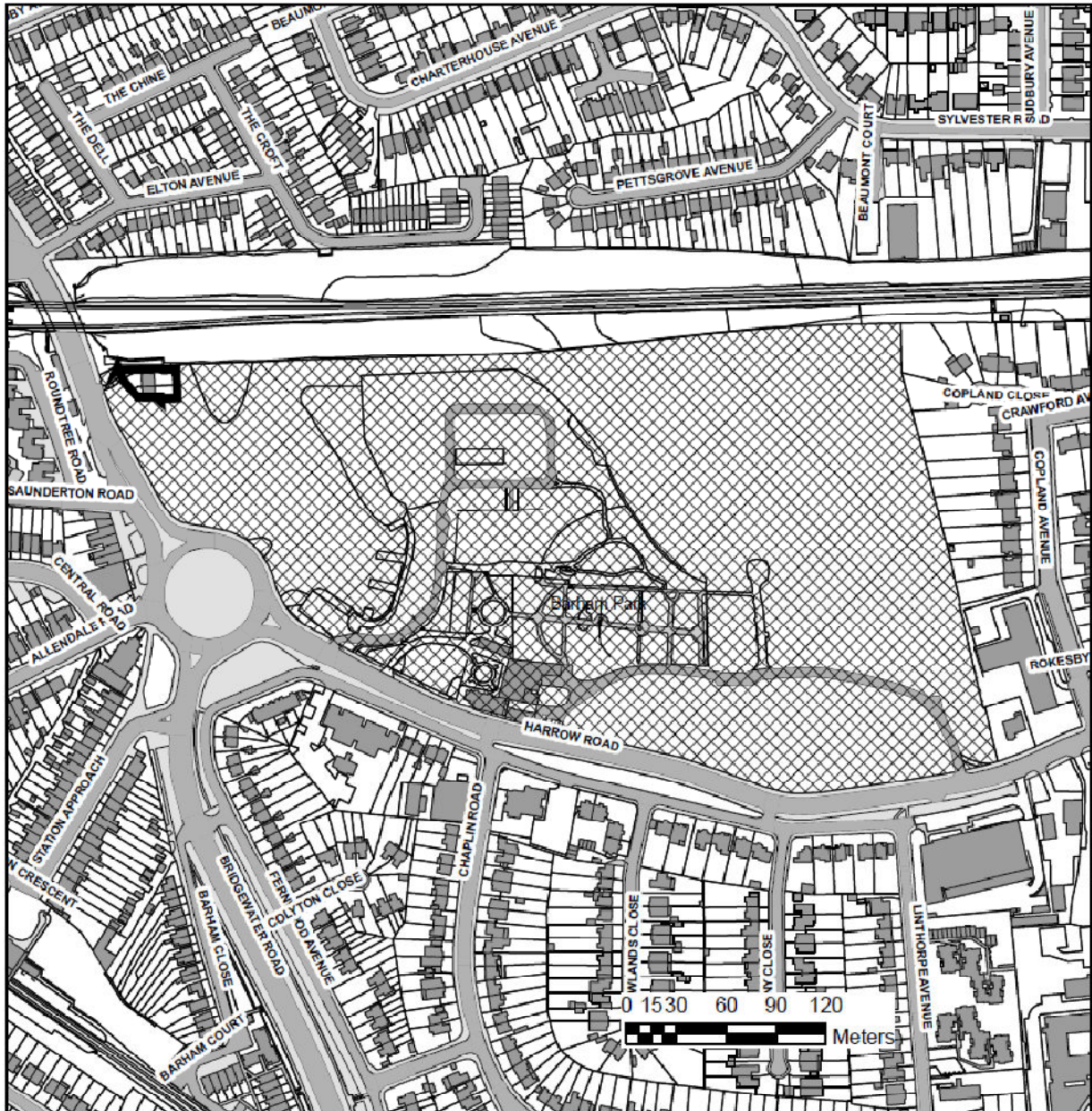
NORTH



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EXECUTIVE COMMITTEE

**Barham Park and houses at 776/778
Harrow Road, London HA0 2HE.**



**Park shown cross hatched.
Premises shown edged black.**

Plan for information purposes only.

NORTH



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**776 & 778 Harrow Road HA0 2HE shown outlined red,
and having an area of 732 square metres;
and Barham Park shown cross hatched green,
and having an area of 10.33 Hectares.**

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NORTH



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Plan to stated scale if printed at A4.