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|  | Barham Park Trust Committee 3 September 2019 |
| | Report from the Strategic Director of Regeneration & Environment |
| Approval to apply to Charity Commission for permission to incur specified items of expenditure on Barham Park from the Trust's restricted funds | |

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| Wards Affected: | Sudbury |
| 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: | None |
| Background Papers: | None |
| Contact Officer(s): <small>(Name, Title, Contact Details)</small> | Chris Whyte, Operational Director, Environmental Services; chris.whyte@brent.gov.uk Leslie Williams, Project Officer, Parks Service, Environmental Services, Regeneration and Environment. E-mail: Leslie.Williams@Brent.gov.uk Tel: 0208 937 5628 Arnold Meagher, Head of Litigation and Dispute Resolution; Tel: 020 8937 2166; Email: arnold.meagher@brent.gov.uk |

1.0 Purpose of the Report

- 1.1 This report seeks the approval of the Barham Park Trust Committee to seek the permission of the Charity Commission to increase an item of proposed expenditure on and for the benefit of Barham Park from the restricted funds of the Trust in relation to the events field drainage survey and design. The report also updates on recent expenditure and projects, on the main points from a Windows Schedule and issues that need to be considered. A resolution from the Trust Committee is required before seeking permission to apply to the Charity Commission to spend such items of expenditure from restricted funds. If approval is granted by the Trust Committee, officers will submit the application to the Charity Commission which will consider the same under its powers under section 282 of the Charities Act 2011.

2.0 Recommendation(s)

That the Barham Park Trust Committee RESOLVES:

- 2.1 To approve the proposed additional expenditure of £10,000 (from £5,000 to £15,000) on the events field drainage survey and design to be paid from the Trust's restricted funds and permanent endowment arising from the sale proceeds of 776 and 778 Harrow Road, Wembley HA0 2HE and seek permission of the Charity Commission to spend the additional aforementioned sum from the Trust's restricted funds using the procedure set out in section 282 of the Charities Act 2011.
- 2.3 To authorise officers to submit the necessary application for permission to the Charity Commission and delegate authority to the Operational Director Environmental Services to progress the application and deal with any issues, requirements and queries arising that are raised by the Charity Commission.
- 2.4 To authorise officers to give public notice of this resolution if it is directed to do so by the Charity Commission pursuant to section 283 of the Charities Act 2011.
- 2.5 To note and approve for officers to co-ordinate and submit a planning permission application to Brent Council's Planning Committee for the renovation works for exterior and appearance of the Barham Park building.
- 2.6 To note the progress on other projects.

3.0 Detail

- 3.1 At the Barham Park Trust Committee of 14th January 2019 the Trust Committee recommended to authorise officers to submit an application for permission to the Charity Commission to incur expenditure from the restricted funds of the Trust. The Charity Commission subsequently agreed to this request.

The table below sets out the agreed expenditure and the expenditure to date.

| Item of expenditure | Expenditure in GBP (£) approved by Trust Committee and Charity Commission | Expenditure to date in 2019/20 |
|---|---|--------------------------------|
| Barham Park Tree Works | 62,000 | 2,360 |
| Schedule of works in respect of all of the existing windows, doors, frames and similar structures of the Barham Park building | 10,000 | 9,713 |
| Events Field Drainage Survey and Design | 5,000 | |
| Events Field Drainage Works | 90,000 | |
| Total | 167,000 | 12,073 |

- 3.2 The drainage design and works requires a topographic survey of ground levels to inform the drainage design, which together with quotes for the drainage design works and consent for drainage discharge totals about £10,795. This exceeds the earlier estimate and request of £5,000 for the survey and design. To enable the design stages to proceed it is recommended that the ceiling be raised for the survey and design stages be raised to £15,000; and to seek approval to request from the Barham Park Trust Committee and with the approval of the Charity Commission an additional £10,000 (from £5,000 to £15,000) to be spent from the restricted funds of the Trust to pay towards events field drainage and design. The cost of the events field drainage and works remains as an estimate and those costs will need to be market tested once the design is known. The additional £10,000 is sought from the restricted funds of the Trust as part of the same overall project; and so that the changing balance of the unrestricted funds remains available for operational use during the financial year.
- 3.3 **Windows schedule** - RLB, a surveying consultancy have undertaken a windows schedule of all of the windows and external features of the Barham Park buildings. They have provided estimates of the priorities and costs of the works. As the Barham Park buildings are Locally Listed, Planning Permission will be sought for the works that may affect the external appearance of the building. The Planning Application will be for the whole of the building. The works can then be undertaken either as one or in phases. At present, the Trust's restricted funds can only be used for the schedule of works for the windows and not on the works to the windows.
- 3.4 The results of the windows schedule can briefly be summarised as:
- The majority of the windows, frames, and other external features require attention within bands of 1-2 and 3-5 years.
 - There are several damp issues, including works required for the roof and rainwater systems. There was also an issue identified, but outside of the scope of this survey, relating to penetrating damp partially attributable to a lack of damp proofing to the historically retrofitted concrete staircase on Harrow Road and abutting the external walls.
 - Estimates for the total cost of the works will be market tested after the Planning Permission stage. Some costs may be variable depending upon whether refurbishment or replacement of certain sets of windows and their frames are undertaken; and the materials of the frames which is subject to Planning. Scaffolding costs will be a significant amount of the total, such that there may be economies in undertaking all of the project at one time rather than piecemeal.
 - Total costs could be in the region of £400,000 to £500,000. Options for funding and works need to be worked up and considered in detail.

Planning Permission will be sought at the next stage. Officers are currently considering the detail of the reports. Officers could also consider the merits of attending to the damp problems ahead of the main works. Some of these works may be of an operational nature, while if of a larger scale, will require

reporting to the Trust.

- 3.5 **Tree works** - Following additional tests, works were undertaken to fell an Oak tree in the west of Barham Park and to pollard (with regrowth from the lower height expected in 2020) a nearby Weeping Willow also in the events field. It is intended to replace the Oak tree, as mentioned in the General Update Report. Officers are working to detail the surgery works required on some other trees in Barham Park. Plans for tree replanting and the future tree landscape of Barham Park will also be investigated.

4.0 Financial Implications

- 4.1 As of 31 March 2019 the Trust has accumulated £72k in unrestricted funds and £416k in restricted funds, with an overall year-end cash fund of £488k.
- 4.2 The recommendation to fund expenditure of £167k from the Trust's restricted fund was approved by the Trust Committee in January 2019 and will reduce the restricted fund balance to £249k, in the event that the whole sum of £167k from the Trust's restricted fund is spent.
- 4.3 Approval of the recommendation in paragraph 2.1 of this report to finance further expenditure of £10k from the Trust's restricted funds will further reduce the balance down to £239k, assuming the Charity Commission gives permission for the Trust to incur this further expenditure from its restricted funds. There is no other call on the restricted funds at present.
- 4.4 Other funding sources would need to be sought if all or part of the works required from the windows schedule highlighted in paragraph 3.4 above costing between £400k to £500k are to be undertaken. If priority works are carried out, they would need to be met from the Trust's unrestricted funds and / or another application for permission would be required to incur expenditure from the Trust's restricted funds though as stated in the previous paragraph, the available balance in respect of the Trust's restricted funds would be £249k in the event that the £167k expenditure which was approved in January 2019 is spent and the additional £10k as sought in this report is approved by both the Trust Committee and the Charity Commission.

5.0 Legal Implications

- 5.1 Under section 282 of the Charities Act 2011, a charity may make a resolution to spend funds from a permanent endowment if the capital of the fund consists entirely of property given by a particular individual and the charity's gross income in its last financial year exceeded £1000 and the market value of the endowment fund exceeds £10,000. In such circumstances, a charity's Trustees (or the Trust Committee in this instance) may resolve that part or all of the restricted funds arising from the permanent endowment ought to be freed from the restrictions with respect to expenditure of capital that apply. However, in order to do this, it is conditional the Trust Committee is satisfied that the purposes as set out in the Trust to which the endowment funds are subject could be carried out more effectively if the capital of the fund, or a relevant portion of the capital, could be expended as well as income accruing to it rather than just income. In this scenario, once such a resolution is passed by the Trust Committee, a copy of

the said resolution must be sent to the Charity Commission together with a statement of reasons for passing it. Such a resolution must not be implemented except in accordance with sections 282 and 283 of the Charities Act 2011. The Charity Commission may direct the Trust to provide it with any additional information or explanation requirements regarding the Trust's application for permission and the circumstances it has applied under section 282 of the Charities Act 2011 and the obligations imposed on the Trust under that section.

- 5.2 Under section 283, the Charity Commission may direct the Trust to give public notice of the resolution in such a manner as specified in the resolution and if it does make such a direction, it must take into account any representations made to it by persons appearing to it to be interested in the charity within the period of 28 days beginning with the date when public notice of the resolution is given by the Trust.
- 5.3 When considering whether to concur with the proposed resolution under section 284(1) of the Charities Act 2011, the Charity Commission must take into account any evidence available to it as to the wishes of the donor (ie the terms of the Trust) and any changes in the circumstances relating to the charity since the making of the gift of land and building at Barham Park (including, in particular, its financial position, the needs of its beneficiaries, and the social, economic and legal environment in which it operates).
- 5.4 Under section 284(2) of the Charities Act 2011, the Charities Commission must not concur with such a resolution unless it is satisfied that its implementation would accord with the spirit of the Trust's purposes and that the Trust Committee has complied with the obligations imposed on them by sections 282 and 283 of the Charities Act 2011. The Charity Commission must notify the Trust in writing within 3 months of receipt of the application made under section 282 of the Charities Act 2011 or within 3 months of a direction to give public notice of the resolution. If the relevant three month deadline has lapsed without the Charity Commission notifying the Trust that it does not concur with the proposed resolution, the specified portion of the restricted funds can be expended in carrying out the purposes set out in the trusts to which the fund is subject without regard to the restrictions on spending from the Trust's restricted funds.
- 5.5 The land (including the building) 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*".

6.0 Equality Implications

- 6.1 The proposed projects mentioned in this report will be subject to a screening for equalities impacts and where the potential for adverse impacts is identified, a full equalities impact assessment will be carried out and any requisite mitigating action taken.

7.0 Consultation with Ward Members and Stakeholders

Ward Members are kept updated of activities at Barham Park.

8.0 Human Resources/Property Implications (if appropriate)

8.1 Nothing specific other than noted in this report.

AMAR DAVE

Strategic Director of Regeneration &
Environment