

# Alexandra Palace

**ALEXANDRA PARK AND PALACE**  
**CHARITABLE TRUST BOARD**  
**20<sup>th</sup> February 2018**

**Report Title:** Governance Change

**Report of:** The Chief Executive

**Report Authorised by:** Louise Stewart, Chief Executive, Alexandra Park and Palace Charitable Trust (APPCT)

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**Purpose: To discuss the findings of the Governance Review and decide if the Trustee Board should recommend to the Trustee that the Governance of the charity is changed.**

## **Local Government (Access to Information) Act 1985**

N/A

### **1. Recommendations**

- 1.1 To recommend to the Trustee that the governance of Alexandra Park and Palace Charitable Trust should be changed and to seek their approval in principle, subject to details being presented to the Trustee for final decision.
- 1.2 Dependent on the decision of the Trustee; to ask the Chief Executive to progress the detailed design of the new structure and to devise an implementation plan, to include; a timetable, budget and key stages for consultation and decision making.
- 1.3 To write to the SAC and CC to inform them of the Board's decision and respond to the concerns expressed, as appropriate.

### **2. Background**

- 2.1 The Trust commenced a review of its Governance in 2016 in recognition that:
  - there were concerns about the effectiveness and efficiency of current arrangements;
  - there were concerns about the level of compliance with charity law and governance codes;

- aspects of governance were unclear, even to those responsible for overseeing and implementing it;
- stakeholder expectations of organisational governance standards have risen in recent years from funding bodies, the charity regulator and members of the public;
- requirements of the Board are increasingly demanding and require more specialised skills and capabilities on top of the general requirements of charity trustees;
- the charity is undertaking significant restoration, repair and maintenance works and wishes to continue the current pace of development in the future it therefore needs to be a well governed organisation that funders, donors and partners entrust resources to.

2.2 The review has been a significant undertaking over 18 months, involving an experienced charity secretary, external legal support, a review of documentation and past and current practices. The progress and findings of the review were discussed by the Board at a series of workshops in 2016 and 2017.

2.3 The review identified several issues that changes to governance could overcome, in the best interests of the Charity, enabling it to deliver its charitable purposes more effectively. These issues can be summarised as:

- a lack of clear and consistent leadership of the Charity, as a result of the council committee arrangement, which results in a less than optimal level of stability, continuity or depth and breadth of the required skills on the Board;
- inherent conflicts of interest exist in the governance structure that require significant management to avoid conflicts of interest impacting on the business of the Charity and breach of trust occurring;
- the complex arrangements and lack of clarity do not give potential funders and partners the level of confidence required to attract the funding and support required to further the Charity's purposes, and;
- on a practical level the operation as a charity and a council committee is inefficient and time consuming for the Charity, using sparse resources, which could be better deployed.

2.4 The review concluded that it would be in the best interests of the Charity to:

- modernise the governance arrangements; to provide the best opportunity for the Trust to become more financially self-sustaining, achieve a skills based board, improve the Charity's engagement with its stakeholders, and deliver an appropriate level of transparency enabling the Charity to fully meet the Charity Governance Code;
- adopt a separate legal identity from the Council to enable it to operate as a clearly independent charity, to appoint a skills based board and to better deliver the functions and operations of the Charity
- retain Haringey Council, as Trustee, in the best interests of the Charity.

2.5 The review suggested that the most suitable legal form for the Charity, allowed for in the Charities Act 2011, is a Charitable Company Limited by guarantee. This form of company is registered both at Companies House, as a company, and with the Charity Commission, as a charity in its own right. Charitable companies must make returns and submit accounts on an annual basis to both Companies

House and the Charity Commission, and must also comply with both charity and company law.

2.5.1 In addition the review suggested;

- no changes to the Alexandra Park and Palace Acts and Orders. However it is recognised that in exploring the correct legal route to achieve governance improvements, some amendments may be necessary, although none have been identified at this point
- no changes to the Advisory Committee, at this point or its role and remit as specified within the Act
- that the Consultative Committee should develop into a broader stakeholder forum, administered by the Charity

2.6 The Trust has sought the advice and opinion of its retained legal advisors, the Charity Commission and; in conjunction with the Trustee, has sought Counsel Opinion. The two stakeholder committees have also been provided with information and have been given an opportunity to provide their feedback at this stage.

2.6.1 The Charity Commission have responded to our request for their opinion that:

- 'A charitable company could be established and, provided it has compatible objects to those of the existing charity, it could accept to undertake functions delegated to it by the trustee(s) of that charity;
- The trustee(s) of the existing charity have an express and wide power to delegate functions (and also to transfer interests in land) conferred by clause 8 of the Alexandra Park and Palace Act 1985;
- At this point it appears that the charity has in place the powers it requires to proceed with the proposals

2.6.2 Russell Cooke LLP, the Trust's retained legal advisors, have reviewed the Charity Commission response and have provided their assessment of the Commission's response to assist the Trustee Board. Attached at appendix 1.

2.6.3 The initial advice from Queen's Counsel was that the case for governance change had been well made. The legal route to achieve it would require further work and more than one legal route was presented and included the creation of a Charitable Company Limited by Guarantee. The joint QC opinion is attached at appendix 2.

2.6.4 Stakeholder Committees' Feedback<sup>1</sup>

- a) The Advisory Committee (SAC) met on 23<sup>rd</sup> January 2018 to provide feedback on the Governance review findings. The Trustee Board has a statutory duty to consider the advice of the SAC. The committee was provided with a report that summarised the findings and identified potential implications for the SAC.

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<sup>1</sup> The two committees met separately to discuss governance. They also met as the joint committee, where some additional discussion took place.

The Committee appeared to welcome the opportunity to input at this stage and the opportunity to discuss this separately to the Consultative Committee. The full comments from the meetings are attached at appendix 3. The main points raised were:

- positive comments about the improvements suggested to the relationship between the SAC and the Trust;
- some concerns from a Ward Councillor member of the Committee that this was the first they had heard of the Governance review.<sup>2</sup>

b) The Consultative Committee also met on 23<sup>rd</sup> January 2018 to provide their feedback on the Governance review findings. The Committee was provided with a report that summarised the findings and identified potential implications for the CC. The full comments from the meeting are attached at appendix 3. The main points raised were:

- Broadening and developing the Committee was welcomed by some
- There was recognition that the current method of appointment to the Trust board did not provide the Charity with an appropriately skilled and experienced board
- There were some concerns expressed about the transparency of any new arrangements and whether the Board meetings of any new charitable company would be public or private<sup>3</sup>
- There was a concern that if the Committee was 'abolished', a lot of goodwill, experience and continuity would be lost. (Note that the report did not state that the Consultative Committee should be abolished)
- That the identity of the Committee would be lost if it became a forum – or if the 'membership' became too broad.

2.6.5 The Governance review was considered by the Trust's Finance Risk and Audit Committee on 1<sup>st</sup> February 2018 who resolved:

- To note the findings of the Governance Review and recommend them and the timetable to the APPCT Board as will be set out within the business plan for 2018/19 proposed;
- To note the example issues and considerations identified;
- To note the risks identified and recommend to the Trust Board that the risk register is updated to reflect these;
- To recommend to the APPCT Board that additional expertise, particularly legal and financial, is added to the Board on a non-voting basis ahead of any governance change to support the Board in shaping, planning and potentially overseeing implementation.

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<sup>2</sup> Note that 2<sup>nd</sup> Feb '16 -SAC/CC notified Governance Review would take place; 30<sup>th</sup> June '16 - confirmed to SAC/CC appointment of Company Secretary to undertake Review; 22<sup>nd</sup> November '16 -SAC/CC agenda pack informed SAC/CC that scope of Review had been approved by the Board; 19<sup>th</sup> April '17 -SAC/CC agenda pack note that aspiration of Trust to become more independent from the Council, 3 October '17 - SAC/CC minutes recorded question about Governance Review and that the Board would be discussing findings at 21 Oct strategy day.

<sup>3</sup> It is purely the local authority committee status of the Board that places this requirement on the Charity at present. It is not a requirement that a charity does the same, openness and accountability standards are set out in the Charity Governance Code 2017.

### 3. Other options considered

3.1 Options for improving governance were considered by the Board at the workshop in December 2017, these included:

- a) incorporate the Charity to create a body capable of delivering under separate legal identity;
- b) no change (but improve the existing arrangements);
- c) create a fully independent trust from Haringey Council, effectively removing the Council as Corporate Trustee;
- d) the Council delivers the duties of the trustees directly alongside the delivery of Council functions;

3.2 In summary the options analysis concluded that:

Option a) The Charities Act 2011 allows two forms of charitable incorporation and a charitable company limited by guarantee was deemed to be the best fit of the two for Alexandra Park and Palace, this would allow the Charity to achieve the standards set out in the Charity Governance Code and increase the potential to attract external funding and investment.

Option b) was discounted at an early stage; it became clear when undertaking a compliance check that the current arrangement cannot be improved to meet the requirements of the Charity Governance Code.

Option c) The creation of a new trust and the removal of Haringey as corporate trustee was deemed too large a step for the Charity and not in its best interests, or those of Haringey.

Option d) This was deemed to create the potential for greater confusion and increase the perceived lack of independence, reduce further the ability to attract external funding and investment available to other charities and could not achieve the standards set out in the Charity Governance Code.

3.3 **Option a)** was the preferred option. It is proposed that the size and extent of the Charity's operation now requires a separate legal identity to allow it to operate more effectively as a clearly independent charity.

3.4 The two Queen's Counsel presented the legal routes available to address the issues that the review highlighted with the current governance arrangements. This is attached (at appendix 2) and confirms that it is possible to achieve governance change, although there may be more than one legal route available to achieve it.

### 4. Risks

4.1 The risks in the table below detail the risks of the decision and implementation. The risks of the current governance arrangements were the subject of the governance review and are documented in that report.

<b>Risk</b>	<b>Outcome</b>	<b>Consequence</b>	<b>Mitigation</b>
<b>Decision on change is delayed</b>	No change is made No further progress on implementation plans can be made Investment of resources to date is wasted (board time and knowledge, legal fees, CEO time, Trustee time)	Trust is unable to make progress to tackle funding & perception challenges	A decision is made and the reasons for the decision are clearly documented.
<b>The proposal is not communicated or handled appropriately</b>	Lack of understanding and confidence in the proposal. Damage to reputation of the Charity. Changes are not made as deemed too high risk/controversial	Charity fails to comply with Governance Code impacting on effective use of resources and ability to achieve greater financial sustainability	Explain the rationale for the changes to stakeholders.  Give stakeholders the opportunity to ask questions and comment on the proposals.
<b>Risk</b>	<b>Outcome</b>	<b>Consequence</b>	<b>Mitigation</b>
<b>The financial and taxation consequences of the proposal are less favourable than current arrangements</b>	Cost of the changed arrangements is unaffordable for the Charity	Further deterioration in available resources for charitable purposes.	External assessment of financial implications of changes against efficiencies in operation and ability to attract funding and investment.
<b>The changes are legally challenged</b>	The process stalls or is halted The Trust incurs costs it cannot afford in responding to legal challenge	Damage to reputation of the Trust Charity Commission investigation	Obtain legal opinion; retain legal support throughout the process. Communicate clearly and openly about the reasons and benefit for change and the legal basis for the route and structure proposed.
<b>Stakeholders do not accept the need for change</b>	Negative publicity reacting against the proposals, damaging Charity's reputation and highlighting current governance weaknesses to potential funders and investors.	Negative impact on funding and confidence of funders.	Ensuring the focus is on the Charity, the delivery of public benefit, best use of all of its resources, broadening and improving stakeholder engagement and not only on the single issues of special interest groups.  Potential to broaden consultation to the wider

			stakeholder base to seek opinions of other charities, past, present and potential funders of the Palace its projects and activities.
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## 5. Benefits of the potential changes for the Charity

- Clearer roles and responsibilities for decision making about the Charity
- A more appropriate and effective model for delivering the Charity's purposes strategically and operationally
- Strengthen the Charity's ability to deliver its purposes, use its resources to better effect, to achieve greater public benefit
- Improved arrangements and reporting mechanisms to provide reassurance to the Trustee that the Charity is carrying out its responsibilities effectively
- Greater freedom to operate as a charity
- Incorporating the Charity provides regulation and disclosure requirements appropriate for the Charity's operation, to satisfy the need to achieve public confidence in its work
- The ability to raise funding and investment would be enhanced through greater transparency of independence of the Charity from the activities of the Local Authority
- The change enables the Charity to meet the standards set out in the Charity Governance Code

## 6. Conclusion

- 6.1 The review made a clear case for change and neither legal opinion nor stakeholder feedback has fundamentally disagreed that change is required.
- 6.2 The Charity Commission and legal advice supports the view that establishing a charitable company limited by guarantee is possible.
- 6.3 Other options have been considered and disregarded, including the status quo. It is clear that in order to secure the delivery of the charitable purposes in the future and the finances to support their delivery the Charity needs to have the freedom to operate fully as a charity and gain the benefits that this brings.
- 6.4 The stakeholder committee feedback sessions have been useful at this stage of consideration. The relationship between the SAC and the new company and or Trustee will need to be agreed in the design stage of the new arrangements, to ensure compliance with the Act of Parliament. The Charity Commission confirm that the new arrangements will need to take account of the role of the Advisory Committee. *'Potentially this may require the Company seeking, and having regard to, the views of the Advisory Committee in furthering its purpose. Again this does not imply the need for any change to the trusts of the existing charity'*.
  - 6.4.1 However the Trustee/directors of any new charitable company will need to make its own decisions about the specifics of wider stakeholder engagement; who it identifies as its stakeholders and the method and frequency of its engagement. Whilst some of the concerns raised cannot be answered at this stage, the feedback can be taken into consideration in the development of new arrangements. It is suggested that stakeholder engagement is included in the design of the charitable company so that current stakeholders remain engaged and their input and support continues to inform, as appropriate.
- 6.5 Implementation of any governance change needs to be handled sensitively. The current ambiguity is not the fault of any of the parties involved. However if the Park and Palace are to thrive in the future, changes need to be made. The process of change needs to be led and driven by the board, stakeholders need to be engaged appropriately in the process and resource needs to be identified to ensure that change is communicated and implemented properly.
- 6.6 It is acknowledged that the current political context may be uncertain, but the Trustee Board is reminded that it must act in the best interests of the Charity at all times. The governance review process has taken a long time. If the decision to proceed is taken it should be remembered that implementation could also be lengthy. The Trust needs to implement change properly but also be mindful that its financial health is predicted to worsen over the next five years. Improvements to the financial health of the Charity will not happen the instant governance change is implemented, but the sooner the changes can be put in place the sooner the Charity can start to benefit.



## 7.0 Next steps

If the decision of the Board is to approve the recommendations it is proposed that a briefing session for the Trustee is held prior to its formal consideration of the Trustee Board recommendation at the scheduled meeting of Full Council in March 2018. The briefing session has been provisionally scheduled for 5<sup>th</sup> March 2018. A background briefing note has been developed to provide advance information to those attending. This is attached at appendix 4.

## 8.0 Legal Implications from the Trust perspective

- 8.1 The creation of a Charitable Company Limited by Guarantee is permitted within the Charities Act 2011. The regulator has assessed the proposed change as possible.
- 8.2 The proposals have been assessed as requiring no changes to the Alexandra Park and Palace Acts and Orders. Although it should be noted that when the fine detail is worked through this could be a possibility. At this stage it is felt not to be necessary by the Charity Commission and the Trust's retained legal advisors.
- 8.3 The Trustee Board does not have the authority to make the governance changes proposed. The Board can only recommend to the Trustee, that changes should be made and the reasons for the Trustee Board's recommendation.
- 8.4 The regulator has pointed out:
  - That any decision must be taken solely in the interest of the charity and in accordance with the principles set out in our published guidance [it's-your-decision: charity-trustees-and-decision-making CC27](#). Such a decision may face challenge and the trustee(s) will need to be able to demonstrate the basis for the decision and that it is only based on relevant factors.'
  - That in exercising its (their) power the trustee(s) must decide if this will best enable it/ them to carry out the charity's purposes.
- 8.5 The Trustee has a duty to ensure that the governance of the Charity is fit for purpose and when Full Council considers the recommendation, it must do so in its capacity as Charity Trustee, free from political influence and distinct and separate from its role as a democratically elected body.
- 8.4 The proposals would require changes to the Constitution of Haringey Council as it relates to the Park and Palace.
- 8.5. The Council's Assistant Director, Corporate Governance has been consulted in the preparation of this report, and makes the following comments:
- 8.6. It is agreed that specialist Queen's Counsel have advised that the adoption of a governance model based on an independent – of the Council - charitable company limited by guarantee is possible. However, that view was expressed as very much being "provisional", as more thought is required. Indeed, issues such as the Council's ongoing responsibility for future debt, and its right to 'step in' and revoke any delegation of functions to a company - notwithstanding that company's

independence from the Council - were flagged as issues to be considered and resolved prior to any change.

- 8.7. However, given that provisional view, the Assistant Director, Corporate Governance agrees that it is appropriate for the proposal to go to the Board for it to express an 'in principle view' at this stage. Subject to what that view is, and the outcome of the Council Members briefing on 5<sup>th</sup> March 2018, the further work required will be undertaken to establish clarity on the proposal, and consequential issues such as what the mechanism for taking the decision to change is.

## **9. Financial Implications**

- 9.1 The Charity's ability to raise funding and investment would be enhanced through greater transparency and independence from the activities of the Local authority.
- 9.2 Simplified and streamlined processes will over time reduce the workload of both Haringey Council and the Charity, generating efficiency savings.
- 9.3 There will be short term costs relating to legal and audit advice to create new governance arrangements in a legally compliant and financially efficient manner.
- 9.4 The Council's Chief Financial Officer has been consulted in the preparation of this report, and has the following comments:
- 9.5 The report is seeking an in principle agreement to changing the governance arrangements of the APPCT to a model whereby a charitable company limited by guarantee is formed to discharge the APPCT's functions. Before the final decision is made there will need to have been detailed financial modelling undertaken that clearly shows the financial position of the company going forward as the report cites an improved financial outcome as one of the reasons for the proposed change.
- 9.6 The detailed financial modelling will also need to exemplify the effect on the Council's finances and in particular the manner in which the company intends to meet existing obligations to the Council and as importantly the manner in which it takes on new obligations and liabilities which could ultimately fall to the Council's account. The new obligations and liabilities could include the hiring of staff, major capital works, and trading activities.

## **10. Use of Appendices**

Appendix 1 – Russell Cooke Letter

Appendix 2 – Exempt QC opinion –*not attached*

Appendix 3 – Stakeholder committee, initial feedback

Appendix 4 – Trustee Background briefing note *draft and circulated to Members 23 February*

*The Governance Review Report October 2017 has already been provided to members in hard copy.*