

**Report for:** Full Council 19 March 2019

**Item number:**

**Title:** **Alexandra Park and Palace Charitable Trust (APPCT)  
Governance Review**

**Report**

**authorised by :** Louise Stewart, CEO, Alexandra Park and Palace Charitable Trust

**Lead Officer:** Louise Stewart, CEO, Alexandra Park and Palace Charitable Trust [ceo@alexandrapalce.com](mailto:ceo@alexandrapalce.com) / 020 8365 4335

**Ward(s) affected:** All

**Report for Key/**

**Non Key Decision:** Non Key Decision

**1. Describe the issue under consideration**

- 1.1 The Alexandra Park and Palace Charitable Trust (APPCT) Trustee Board has undertaken a review of the Charity's governance. The review has been a significant undertaking over 18 months, involving an experienced charity secretary, external legal advice, a review of documentation and Board workshops.
- 1.2 The Trustee Board has concluded that governance needs to be modernised and improved to fully and clearly comply with charity law and regulation, to deliver the charitable purposes more effectively and to support its ambition to become more financially self-sufficient.
- 1.3 The recommendation of the review was to establish a Charitable Company Limited by Guarantee to deliver the Trustee functions. The review did not recommend changes to the Alexandra Park and Palace Acts and Orders.
- 1.4 It is appropriate that the Trustee is informed of the governance review findings and recommendations at this stage and has the opportunity to endorse the approach or state its reasons for not wishing to follow the Trustee Board recommendation, before the resources of the Charity are expended on further work.
- 1.5 The Trustee is not being asked to approve the proposed governance change and new structure at this stage. Further detailed work is required before the Trustee Board will be ready to recommend a fully developed proposal to the Trustee.

## **2. APPCT Board Introduction – Cllr Christophides, Chair of the Alexandra Park and Palace Charitable Trust Board**

- 2.1 The Park and Palace is a valuable asset that is delivering not only its primary charitable purposes of repairing maintaining and restoring the Park and Palace for the recreation and enjoyment of the public but wider impacts that benefit the people of Haringey and further afield.
- 2.2 The Trustee Board has recognised the constraints and difficulties that the current governance arrangements place on the operation of the Charity and that if it is to make further progress, attract funding from new sources and deliver greater impact, then changes need to be made.
- 2.3 The Trustee Board have invested a considerable amount of time and energy to undertake a governance review. This has been a long and challenging process. It has required a level of honesty about our own abilities to deliver the leadership that the Charity requires.
- 2.4 Whilst we have recognised the complexity and weakness in the current arrangements we also recognise how much the Park and Palace have achieved to date and how vital the continued support of the Trustee has been in that success, and will be in the future.
- 2.5 We believe that the changes we are proposing are in the best interests of the Trust and that these changes will allow it to continue to progress.
- 2.6 The Trustee Board would like to be reassured that the Trustee is supportive of the rationale for the governance changes proposed and that the model should be developed further, for presentation to the Trustee at a future date.

## **3. Recommendations**

- 3.1 That Full Council:
- i. Agrees that in principle, based on the contents of this report, an arguable case has been made for the need to alter the arrangements currently in place for the governance of Alexandra Park and Palace Charitable Trust.
  - ii. Authorises the Alexandra Park and Palace Charitable Trust Board to carry out all necessary work designed to test the viability of the proposed new structure, namely to incorporate the Charity by establishing a Charitable company limited by guarantee.
  - iii. Agrees that subject to the outcome of the work required to test the viability of the proposed new structure being positive, Full Council will receive a further report containing details of viability; an implementation plan, to include; a timetable, budget and key stages for consultation and decision making.

- iv. Agrees that in the event that the outcome of the test on viability is not positive, a future meeting of Full Council will receive a further report on alternative courses of action that may be appropriate.
- v. Agrees that in recognition of the fact that only in principle agreement testing the viability of the preferred option is being given at this stage, should these Recommendations be adopted they will not bind any future meeting of Full Council, which considers the report detailed at Recommendations iii and iv above.

#### **4. Reasons for Decision**

- 4.1 The Trustee has a duty to ensure that the governance of the Charity is fit for purpose. The Trustee Board to which it delegates its Trustee functions has recommended that governance needs to be modernised and updated.
- 4.2 The Trustee has been informed by the Trustee Board that it is in the best interests of the Charity to adopt a new model of governance to enable it to fully comply with charity regulation and best practice and compete for funding more effectively, to deliver its charitable purposes.

#### **5. Alternative Options Considered**

- 5.1 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;
- 5.2 A summary of the options analysis and conclusions are listed in section 3.2 of the APPCT Board report, at Appendix 1.
- 5.3 Option a) was the preferred option. It is proposed that the size and extent of the Charity's operation now requires a new governance model that provides the Charity with a separate legal identity to allow it to operate more effectively as a clearly independent charity.
- 5.4 The Charitable Company model proposed is a recognised legal form for a charity. The charitable company would be bound by charity law and regulation, company law and regulation and would have to operate with the terms of the Trust set out by the Alexandra Park and Palace Acts and Orders and in accordance with the wishes of the Trustee.

5.5 The relationship between the Trustee and the Charitable Company would be similar, although not identical, to the commissioning approach that Haringey Council is already familiar with. The key difference is that the outcomes being commissioned would be the charitable purpose outcomes i.e. outcome related to the 'repair, maintenance and restoration of the Park and Palace for the recreation and enjoyment of the public'.

## 6. Background Information

6.1 Haringey Council (The Mayor and Burgesses of Haringey, the Municipal Corporation) is the statutory trustee of the Park and Palace. This makes the municipal corporation, the sole charity trustee.

6.2 Charity trustees are those responsible for the control and administration of a charity and setting the strategic direction of the charity in relation to its charitable purposes (or objects) and for the benefit of the public. The wider benefits are also benefits for Haringey residents and there is significant use of the Palace and Park by local people. In addition to statutory reporting duties, charity trustees have a legal duty to act only in the interests of the charity and make best use of the charity's resources.

6.3 The Trustee delegates the functions of the Trustee to a subcommittee, the Alexandra Park and Palace Charitable Trust Board. Neither the Charity nor the Trustee Board is a legal entity in its own right. The legal identity of the Charity is the 'Mayor and Burgesses of Haringey, acting as the Trustee of Alexandra Park and Palace'.

6.4 The Alexandra Park and Palace Charitable Trust has grown and developed in the last 10 years. The Charity has been successfully delivering its charitable purposes, 'repairing, restoring and maintaining the Park and Palace for the recreation and enjoyment of the public'.

6.5 The Trustee Board is responsible for a demanding work programme requiring the level of commitment and expertise of a large charity. The activities have resulted in significant multi million pound restoration projects, a decrease in the level of dereliction, improvement in the condition of the buildings and Park to award winning standards, a programme of events and activities throughout the year with a broad appeal, attracting over 3.5m visits a year.

6.6 The wider public benefit impact of the Charity's work include; an estimated £150m of economic impact, a creative learning programme delivering thousands of school visits and family activities, work experience for young people, dementia and mental health programmes and a growing volunteering programme. The Park and Palace are a successful major heritage and cultural asset; it is a large, diverse and dynamic operation.

6.7 The Trustee Board are committed to the aim of financial sustainability for the Charity. However whilst the progress above is positive the financial challenges remain. The historic backlog and annual maintenance and repairs on such a

large property, combined with a potentially reducing core grant and increasing overheads indicate that the development and growth of the last 10 years has reached a plateau. It is clear that new additional income sources need to be secured.

- 6.8 Governance was raised as a barrier to fundraising in 2011 by fundraising experts engaged to support the East Wing Restoration programme. It has proved to be a barrier to attracting funding for the programme. For fundraising purposes it is increasingly important that the Charity is seen to follow the best practice outlined in the Charity Governance Code. Examples of funding difficulties are provided in the exempt appendix 4 (available on request).
- 6.9 Governance has also been raised as an issue by the Trust's legal advisors and external auditors.
- 6.10 It is increasingly evident that the policy and administrative structures of a local authority are no longer the most appropriate form for the delivery of the charitable purposes at this scale of operation. The development of the Charity and its size combined with the need to transparently demonstrate compliance with charity regulation and governance code is increasingly difficult. It is also difficult to marry the two at an operational level and remain compliant with both local authority practices and charity best practice. It creates additional unnecessary administration for both the Charity and the Local Authority.
- 6.11 The Trustee Board recognised there were concerns about the suitability, clarity effectiveness and efficiency of current governance arrangements and that they needed to be clarified and improved. The issues of concern were:
- 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.
  - that to continue the current pace of restoration and progress the Charity needs to be a well governed organisation that funders, donors and partners entrust resources to.
- 6.12 The Governance Review commenced in April 2016. The findings at different stages have been reviewed by the Board. The findings have been reviewed by the Trust's legal advisors, exempt Appendix 4 (available on request).
- 6.13 The Trust (and the Council) have obtained initial joint legal opinion that these changes are possible. The Charity Commission has agreed that these changes are possible.
- 6.14 The findings and recommendations were tested with the Trust's stakeholder committees on 23 January 2018. Their feedback is contained in Appendix 2.

The Governance Review Report presented to the stakeholders is attached at Appendix 3.

- 6.15 A written information briefing was provided to all Councillors on 23 February and a briefing session with the Chair and Chief Executive of the Trust was held on 5<sup>th</sup> March 2018.
- 6.16 The review highlighted that the Governance of the Trust is:
- Complicated, difficult to understand and implement
  - Prevents the Charity operating effectively
  - Presents a barrier to accessing alternative funding and attracting investment
  - Creates confusion regarding the 'independence' required by charity law and regulation
  - Not able to achieve full compliance with the Charity Governance Code
- 6.17 The review recommended that improvements were required by the Trustee to:
- Better demonstrate the independence of the Charity
  - Improve mechanisms to hold the Charity to account
  - To specify more clearly the delegated functions and the functions it wished to retain
  - Help the Charity to reduce the need for trustee funding over time
  - Help the Charity to operate more recognisably as a Charity
- 6.18 The review recommended that:
- A charitable company limited by guarantee should be established and registered with the Charity Commission, as the most appropriate governance structure and delivery model for the Charity. This is a recognised legal form of charity.
  - The Trustee should transfer the trustee functions to the Charitable Company, as it does to the subcommittee at present
  - The Company as a charity would operate within charity law and regulation and the Alexandra Park and Palace Acts and Orders 1985 - 2004
  - The Mayor and Burgesses of Haringey would remain as Trustee
  - The Trustee should retain the right to reserve a number of Board position for its own appointees and sit on an appointment panel for the remaining Board members
  - The Haringey Constitution would need to be amended to reflect the changes (subject to further approval by the Trustee and the Standards Committee)
- 6.19 It is the opinion of the Trustee Board that these changes will provide:
- clearer roles and responsibilities for decision making;
  - 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;
  - improve arrangements and reporting mechanisms to provide reassurance to the Trustee that the Charity is carrying out its responsibilities effectively;
  - the structural model by which the Charity can meet the standards set out

in the Charity Governance Code including the formation of a board with appropriate skills and expertise

- increased ability to operate more clearly as a charity and follow systems and process appropriate for a charity;
- the level of openness and transparency appropriate for the Charity's operation, to satisfy the need to achieve public confidence in its work;
- increased ability to raise funding and investment through greater transparency of independence of the Charity from the activities of the Local Authority;
- appropriate levels of control for the Trustee without impacting on the Charity's required independence.

6.20 The Trustee Board met on 20<sup>th</sup> February 2017 and agreed to inform the Trustee of its findings, recommend that governance change was required and seek endorsement that it should develop a detailed proposal for the creation of a Charitable Company limited by guarantee.

## **7. Next Steps**

7.1 If the recommendations are approved, the Trust will commence work to develop the proposal more fully. This will include detailed design of the:

- governance structure
- control and reporting mechanisms
- level and detail of appropriate controls to be placed on the Charitable Company
- Articles of Association for the Charitable Company
- skills and experience matrix for the Board
- outline business plan and budget for the Charitable Company
- implementation plan

7.2 The Trust Chief Executive will work with the Trustee to

- Assess current versus future Trustee risks and liabilities
- The detail of the Trustees retained duties and powers
- The detail of the changes required to the Haringey Constitution

7.3 Prior to presentation of a more detailed proposal to the Trustee for approval the Trust will:

- Formally consult the Trust's two stakeholder committees as it is required to do by either the Act of Parliament or the Haringey Constitution;
- Undertake a wider consultation of the Charity's stakeholders and beneficiaries (the public).

7.4 This next stage of work could take around 12 months to complete.

## 8. Contribution to Strategic Outcomes

- 8.1 The Strategic outcomes of the Charity are its stated charitable purposes in the Alexandra Park and Palace Act 1985, to ‘repair, restore and maintain the park and Palace for the recreation and enjoyment of the public’.
- 8.2 Putting in place fit for purpose governance arrangements will assist the Charity to deliver these outcomes with greater effectiveness and efficiency and in turn reduce the level of financial reliance on the trustee over time.
- 8.3 Whilst the Charity cannot, in accordance to charity law, be required to deliver the Council’s own local authority strategic outcomes it should be noted that the wider public benefit impact of the Charity’s activity contribute to all of the priorities stated in the Haringey Corporate Plan 2015 – 18:
- **Priority 1 Enable every child and young person to have the best start in life, with high quality education.** The creative learning programme at the Palace delivers innovative out of classroom learning and development experiences in conjunction with local schools and other partners including the BBC, BAFTA, Microsoft. The Park is also used by local schools as a free resource in addition to the organised programme of activities. The work experience opportunities and apprenticeship activities offered through our work and that of our construction partners also contribute to this priority.
  - **Priority 2 Enable all adults to live healthy, long and fulfilling lives.** The creative learning programme delivered in partnership with local mental health charities and other partners delivers outcomes on this agenda.
  - **Priority 3 - A clean, well maintained and safe borough where people are proud to live and work.** The delivery of a high quality award winning open green space and maintaining the Palace as a strategic cultural venue is a major contributor to this priority. The addition of the newly restored theatre and East Court is adding to local pride.
  - **Priority 4 - Sustainable Housing, Growth and Employment.** The iconic nature of the Palace and the major community benefit of the Park as a strategic green open space assists in attracting investment to the wider area. The events and activities delivered have a wider benefit to surrounding businesses and an estimated annual economic impact of £150m. The Charity and its trading subsidiary employs 130 people. Increasingly our employees are local. We provide employment opportunities across a range of skill sets with low barriers to entry.
  - **Priority 5 - Create homes and communities where people choose to live and are able to thrive.** The Park and Palace deliver a varied year round activity and event programme and recreational opportunities which deliver health and wellbeing benefits generally associated with culture and leisure activities and from participating in a volunteering programme that undoubtedly assist in attracting people to live in the local area.



## 9. Statutory Officer Comments

### Comments of the Chief Financial Officer and Financial Implications

- 9.1 The report is recommending in principle that, based on the contents of this report, an arguable case has been made out for the need to review the arrangements currently in place for the governance of Alexandra Park and Palace Charitable Trust. The report also authorises the Alexandra Park and Palace Charitable Trust Board to carry out all necessary work designed to test the viability of the proposed new structure, namely to incorporate the Charity by establishing a Charitable Company limited by guarantee. The work will require extensive legal and financial advice to fully explore the implications of establishing a charitable company limited by guarantee.
- 9.2 Within the Trust budget for the financial 2018/19 it states that provision has been made for the work that is proposed to be undertaken to test the viability of the proposed new structure. There will need to be tight control of this expenditure to ensure that the budget is not exceeded.
- 9.3 At the point that the review is concluded, and if it concludes that a company limited by guarantee is a viable option, a detailed financial evaluation will be undertaken to provide Members with advice on the implications of accepting that model. The advice will address the resolution of existing financial obligations/liabilities between the Trustee and the Trustee Board, the ongoing financial relationship between the trustee and the company (including the creation of new liabilities), TUPE/pensions issues and asset management matters. The advice will also include a detailed risk assessment.

### Comments of the Assistant Director of Corporate Governance and Legal Implications

- 9.4 The Assistant Director, Corporate Governance has been consulted in the preparation of this report, and makes the following comments.
- 9.5 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.
- 9.6 However, given that provisional view, coupled with the views expressed by the Trust Board, stakeholder groups and Members at the briefing which took place on 5<sup>th</sup> March 2018, the Assistant Director, Corporate Governance agrees that it is appropriate for the proposal to come to Full Council for Members to express an ‘in principle view’ on the case for change at this stage. Subject to what that view is, 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.

9.7 Mindful of the view expressed by some Members at the briefing which took place on 5<sup>th</sup> March 2018, the Assistant Director Corporate Governance confirms that any resolution adopted on the Recommendations contained in this report will not bind any future meeting of Full Council where the issues contained in this report are considered.

### **Equality and Community Cohesion Comments**

9.8 The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
- Advance equality of opportunity between people who share those protected characteristics and people who do not
- Foster good relations between people who share those characteristics and people who do not.

9.9 The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.

9.10 There are no particular equalities implications arising from agreement in principle of the case that there is a need to conduct a review of governance arrangements of the Alexandra Park and Palace Charitable Trust, nor are there any particular equalities implications arising from authorisation to test new governance structures.

9.11 However, the Board of the Alexandra Park and Palace Charitable Trust will be required to ensure that no direct or indirect discrimination occurs as a result of any change to the organisation's governance arrangements.

### **Head of Procurement Comments**

9.12 Strategic Procurement notes the contents of this report; however, there are no procurement implications in respect of the recommendations.

## **10. Use of Appendices for Final Report**

- Appendix 1 – APPCT Board Report
- Appendix 2 – Stakeholder committees, initial feedback
- Appendix 3 – Governance Review Report
- Exempt Appendix 4 – Legal Opinion (available on request)
- Exempt Appendix 5 – Potential funders who have withdrawn interest (available on request)

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

The legal opinion contained at Appendices 4 & 5 are exempt, as defined in Schedule 12a of the Local Government Act, 1972; Paragraph 3 – information relating to the business or financial affairs of any particular person (including the authority holding that information) and Paragraph 5 – information in respect of which a claim to legal professional privilege could be maintained in legal proceedings