



ADUR & WORTHING  
COUNCILS

Joint Governance Committee  
26 November 2019  
Agenda Item 7

Ward(s) Affected: All

## **Governance Arrangements for Charitable Trusts in Adur and Worthing**

### **Report by the s151 Officer and the Monitoring Officer**

#### **Executive Summary**

##### **1. Purpose**

- 1.1. This report advises Members of some historic issues that have arisen surrounding Charitable Trusts in Adur and Worthing and the need to regularise matters with the Charities Commission and establish robust governance arrangements going forwards.

##### **2. Recommendations**

The Joint Governance Committee is recommended to :

- 2.1. Note that Highdown Gardens are held in trust by Highdown Tower Garden and Pleasure Ground, of which Worthing Borough Council is the sole charitable Trustee.
- 2.2. Note that Officers will be reporting amended annual financial returns in respect of Highdown Tower Garden and Pleasure Ground, to the Charities Commission, for the previous 7 years.

- 2.3. Recommend to Worthing Borough Council that they delegate to the Joint Governance Committee the authority to act on behalf of Worthing Borough Council as sole charity trustee of Highdown Tower Garden and Pleasure Ground, in all matters other than those requiring Charity Commission consent or notification, and that they be required to bring an annual report to full Council each year on activity during the previous year.
- 2.4. Recommend to Worthing Borough Council that the Scheme of Delegations to Officers be amended to delegate authority to the Council's Head of Environmental Services to act on behalf of Worthing Borough Council as Trustee of Highdown Gardens Trust in respect of all day to day management activities and administrative matters.
- 2.5. Note that Officers will be regularising matters with the Land Registry to ensure that the ownership of the land at Highdown Gardens is accurately recorded.
- 2.6. Note that Adur Recreation Ground is held in Trust by Adur Recreation Ground and that Adur District Council is the sole Charity Trustee.
- 2.7. Recommend to Adur District Council that they delegate to the Joint Governance Committee, the authority to act on behalf of Adur District Council as Trustee of Adur Recreation Ground Trust in all matters other than those requiring Charity Commission consent or notification, and that they be required to bring an annual report to full Council each year on activity during the previous year.
- 2.8. Recommend to Adur District Council that the Scheme of Delegations to Officers be amended to delegate authority to the Council's Head of Environmental Services to act on behalf of Adur District Council as the sole charity Trustee of Adur Recreation Ground in respect of all day-to-day management activities and administrative matters.
- 2.9. Note that Southwick Green is held in trust by The Green and that Adur District Council is the sole charity Trustee.
- 2.10. Recommend to Adur District Council that they delegate to the Joint Governance Committee, the authority to act on behalf of Adur District

Council as the sole charity Trustee of The Green, in all matters other than those requiring Charity Commission consent or notification, and that they be required to bring an annual report to full Council each year on activity during the previous year.

- 2.11. Recommend to Adur District Council that the Scheme of Delegations to Officers be amended to delegate authority to the Council's Head of Environmental Services to act on behalf of Adur District Council as sole charity Trustee of The Green in respect of all day-to-day management activities and administrative matters.
- 2.12. Recommend to Worthing Borough Council that they delegate to the Joint Governance Committee, the authority to act on behalf of Worthing Borough Council as sole charity trustee of the Chalk Pit Charity, in all matters other than those requiring Charity Commission consent or notification, and that they be required to bring an annual report to full Council each year on activity during the previous year.
- 2.13. Recommend to Worthing Borough Council that the Scheme of Delegations to Officers be amended to delegate authority to the Council's Head of Environmental Services to act on behalf of Worthing Borough Council as Trustee of Chalk Pit Charity in respect of all day-to-day management activities and administrative matters.
- 2.14. Note the Monitoring Officer's use of delegated powers to make consequential changes to the Constitutions, in respect of the terms of reference of the Joint Governance Committee, the Officer Scheme of Delegations and the Joint Committee Agreement, subject to the above recommendations.
- 2.15. Note the Monitoring Officer's use of delegated powers to make consequential changes to the Constitutions and the Joint Committee Agreement between Worthing Borough Council and Adur District Council in respect of Leisure and Cultural services arising from alternative delivery arrangements having been made by each Council.

### **3. Context**

- 3.1. Charitable Trusts will normally arise when an individual gifts land to either Council for the benefit of the general public. The Council will then hold the land, in trust, on behalf of the charitable organisation.
- 3.2. In such circumstances the Council does not own the land as a Council, but rather as a Charity Trustee and its role and responsibilities are different from those where it holds the land, purely as a Council. In particular, the Council when acting as a Charity Trustee will be subject to the provisions of the Charity Acts and this imposes obligations upon the Charity Trustee when dealing with charitable land and making annual financial returns to the Charity Commission in respect of those charitable organisations.

#### Highdown Gardens

- 3.3. In 1968 Worthing Borough Council received the Gardens together with other land from Lady Stern upon trust:-

“to preserve in perpetuity for the benefit of the public (subject to such restrictions upon access as the Council may from time to time consider desirable in the interests of preservation) the Garden.

- 3.4. Highdown Tower Garden and Pleasure Ground (charity number 305445) was registered with the Charity Commission on 10th April 1968, with Worthing Borough Council as the sole charity trustee. The charitable objects are:

“Garden for the benefit of the public as an amenity open space park or pleasure grounds to the intent that the same shall forever form a natural approach to the South Downs from the built up area of the Borough of Worthing”.

- 3.5. The fact that Worthing Borough Council do not own the gardens as a Council but as a sole charity trustee is a vital distinction which has, in the past, caused some confusion. As the Council hold the garden as a charity trustee it is bound by the Charity Acts and these impose certain conditions in relation to the management of land which is held for charitable purposes.

- 3.6. In 1983 Worthing Borough Council sold the East Lodge but without obtaining the Charity Commission's consent. The position was regularised with the Charity Commission by an order dated 11th July 1983 whereby the Council undertook to hold the net proceeds of sale which amounted to £27,700 in trust for the charity and invest them. The order confirmed that the Council (as trustee of the charity) could apply income from the investment in or towards the upkeep of the remaining property belonging to the charity.
- 3.7. The financial returns that have been made for the charity have been inaccurate for many years as they have only included the income earned from the investment referred to in paragraph 3.5 above and have not included the donations received from the public. These donations have been accounted for separately by the Council and designated for use in maintaining Highdown Gardens but they were not historically treated as funds held on trust for the charity. This reflects the confusion in the governance arrangements, whereby the land was thought to be in the ownership of the Council.
- 3.8. The accounts should show the other income earned by the charity including donations received from the many members of the public who access Highdown Gardens each year. They should also reflect, as a gift in kind, the substantial subsidy that the Council has made towards the upkeep of the gardens which in the last financial year amounted to approximately £210,000. The accounting procedures will now be amended to ensure that, in future, all financial returns to the Charity Commission show not only the income generated, but also the expenditure incurred and paid for by Worthing Borough Council from the General Fund, as a benefit in kind to the Trust.
- 3.9. Now that it is appreciated that Worthing Borough Council holds the land as a Charity Trustee, rather than owning them, the Council will now need to hold an annual general meeting to comply with its obligations as the sole Charity Trustee of the Charity.

#### **4. Issues for consideration**

- 4.1. Worthing Borough Council will need to advise the Charity Commission of the historic omissions in our financial returns and provide an explanation as to how the situation arose. In addition, the Council will advise what steps have been taken to rectify the position and to ensure

that all future returns to the Charity Commission are both accurate and transparent.

- 4.2. Worthing Borough Council will need to set up governance arrangements to ensure that the Council can lawfully operate in its capacity as the sole trustee of the Charity. It is not considered practicable to call a meeting of the entire Council to agree every action in respect of the Trust. The majority of such decisions relate to routine operational requirements which a charity trustee can routinely delegate to staff. There are some decisions that will need to be made by the Council in its capacity as charity trustee and some of those governance decisions are relatively routine whilst others are more significant. For example if it were proposed to dispose of land or make another decision which would require the involvement of the Charity Commission.
- 4.3. In the circumstances, it is therefore proposed that the Council delegate authority to the Joint Governance Committee to act on behalf of the Council as a trustee. It is proposed that this authority be limited to matters which do not require the Charity Commissioner's consent, or where any formal notification to the Charity Commission may be required. In those circumstances a full report would need to be made to all Members of the Council for a decision. It is also proposed that an annual report should be brought to all Members of the Council, by the Joint Governance Committee, on the activities of the Charity, together with a plan for the forthcoming year enabling the Council to approve at a strategic level the activities proposed.
- 4.4. In respect of the day-to-day management of the charity and the gardens it is proposed that these be delegated to the relevant Head of Service through the Officer Scheme of Delegations. In relation to the day-to-day management of the gardens this has been the case for many years.
- 4.5. It is intended that a new charitable incorporated organisation (CIO) is to be formed for fund-raising purposes and called The Highdown Gardens Development Trust whose charitable objects will be:-
  - (i) for the public benefit to advance learning about the importance of the pioneering work of Sir Frederick Stern and the resulting national collection of plant introductions and its preservation

- (ii) to support the role of Highdown Gardens in promoting the health and wellbeing for all its communities
- 4.6. The new CIO will be a separate legal entity and will not be involved in the day-to-day management of the gardens. It will have amongst its responsibilities and aims a fundraising role via a number of innovative fund raising activities / strategies.
- 4.7. The Land Registry will be requested to amend the title details so that it is clear that the land is held by the Council as trustee. In addition there will be a restriction entered on the title so that it is evident that there cannot be any dealings with the land without the appropriate consent of the Charity Commission or that the regulations imposed by the Charity Acts have been complied with.

#### Adur Recreation Ground

- 4.8. Adur Recreation Ground (charity number 271495) was gifted to Adur District Council by a Conveyance dated 11th August 1921. It was registered as a charity on 29th June 1976. Its charitable objects are:

“A recreation ground for use by the inhabitants of Shoreham by Sea”.

Adur District Council is the sole charity trustee.
- 4.9. The financial returns made to the Charity Commission are complete and accurate.
- 4.10. However, It appears that there are no robust governance procedures in place for the Council to act in its capacity as charity trustee and the Council will therefore need to establish appropriate arrangements. Again, it would not be practical for the whole Council to meet to agree every action in respect of the Trust. In the circumstances it is therefore proposed that Adur District Council delegates authority to the Joint Governance Committee to act on behalf of the Council as a trustee. It is proposed that this authority be limited to matters which do not require the Charity Commissioner’s consent or where any formal notification to the Charity Commission may be required. In such circumstances a full report would need to be made to all Elected Members for a decision. In addition, an annual report will also need to be brought to all Members on the activities of the Charity and the Council in its capacity as the sole charity trustee.

- 4.11. In respect of the day-to-day management of the charity it is proposed that these be delegated to the relevant Head of Service through the Officer Scheme of Delegations.

#### Southwick Green

- 4.12. Southwick Green was gifted to Adur District Council by a Conveyance dated 9th January 1902. It was registered as a Charity on 28th November 1984 under the name "The Green" (charity number 290683). Its charitable objects are:

"A recreational ground for the inhabitants of the said parish and district and for no other purpose".

There is a Scheme in place in respect of The Green dated 13th February 1987.

Adur District Council is the sole charity trustee.

- 4.13. The financial returns made to the Charity Commission are complete and accurate.
- 4.14. However, it appears that there are no robust governance procedures in place for Adur District Council to act in its capacity as Charitable Trustee and the Council will therefore need to set up appropriate governance arrangements. Again it will not be practical to call a meeting of all Councillors to agree every action. In the circumstances it is therefore proposed that Adur District Council delegate authority to the Joint Governance Committee to act on behalf of the Council as a trustee. It is proposed that this authority be limited to matters which do not require the Charity Commissioner's consent or where any formal notification to the Charity Commission may be required. In such circumstances a full report would be made to all Councillors for a Council decision. In addition, an annual report should be brought to all Councillors on the activities of the Charity and the Council in its capacity as the sole charity trustee of the charity.
- 4.15. In respect of the day-to-day management of the charity it is proposed that these be delegated to the relevant Head of Service through the Officer Scheme of Delegations.

### Chalk Pit Charity

- 4.16. Chalk Pit Charity governing document is a Scheme dated 27th October 1936. It was registered on 17th September 1963 under the name “Chalk Pit Charity” (Charity number 305440). Its charitable objects are:-

“Public recreation ground or open space”.

The land was vested in Worthing Borough Council for use by residents of West Tarring. Worthing Borough Council is the sole charity trustee.

- 4.17. The financial returns which are made to the Charity Commission in respect of the charity are accurate. There is reference that a small area of land was sold to the Electricity Board in 1962 and the money was invested and any investment income is attributed to the Trust.
- 4.18. It does appear that there are no robust governance procedures in place for Worthing Borough Council to act in its capacity as charity trustee and the Council will therefore need to set up governance arrangements to ensure that the position is rectified. Again it will not be practical to call a meeting of all Councillors to agree every action. In the circumstances it is therefore proposed that Worthing Borough Council delegate authority to the Joint Governance Committee to act on behalf of the Council as a trustee. It is proposed that this authority be limited to matters which do not require the Charity Commissioner’s consent or where any formal notification to the Charity Commission may be required. In such circumstances it is proposed that a full report is made to all Councillors for a decision. In addition, it is also proposed that an annual report should be brought to full Council on the activities of the Charity and the Council in its capacity as the sole charity trustee of the charity.

### Other Charitable Trusts

- 4.19. Both Adur District Council and Worthing Borough Council had entered into an agreement with each other, by way of the Joint Committee Agreement, to jointly deliver Leisure services in both the District and the Borough and to jointly deliver Cultural Services in Worthing Borough. Both Councils have since made alternative arrangements for delivery of their Leisure and Cultural Services and have made contractual arrangements for service delivery with other organisations.

- 4.20. It should be noted that to reflect these changes the Monitoring Officer will, under her delegated powers, be amending the Joint Committee Agreement to remove Cultural and Leisure services from the remit of partnership working between the two Authorities.

## 5. Engagement and Communication

- 5.1. The Council's Finance Officers are liaising with the Charity Commission in order to report the omissions made and rectify the financial returns.

## 6. Financial Implications

### 6.1. Highdown Trust:

- 6.1.1. For many years there has been confusion about the nature of Highdown Trust. It has been erroneously assumed that the Trust related to the monetary funds held (£27,700) and consequently the returns to the Charity Commission have reflected only the income generated from the bequest and any donations.

- 6.1.2. The council on an annual basis funds the maintenance of the gardens. Over the past three years the council has spent the following amounts:

<b>Including Grants, Donations &amp; Interest on Trust investment</b>	<b>2016/17 £</b>	<b>2017/18 £</b>	<b>2018/19 £</b>
Expenditure - Direct costs	240,501	177,117	193,340
Expenditure - Indirect costs	19,514	31,620	31,688
<b>Total expenditure</b>	<b>260,015</b>	<b>208,737</b>	<b>225,028</b>
Income	-12,254	-16,192	-15,446
<b>Net expenditure</b>	<b>247,761</b>	<b>192,546</b>	<b>209,583</b>
<b>Council contribution (As above but excluding Grants, Donations &amp; Interest on Trust)</b>	<b>2016/17 £</b>	<b>2017/18 £</b>	<b>2018/19 £</b>
Expenditure - Direct costs	236,254	166,953	190,281
Expenditure - Indirect costs	19,514	31,620	31,688
<b>Total expenditure</b>	<b>255,768</b>	<b>198,573</b>	<b>221,969</b>

Income	-5,432	-9,558	-8,114
<b>Net expenditure</b>	<b>250,336</b>	<b>189,015</b>	<b>213,855</b>

6.1.3. Following the uncovering of the extent of the terms of the trust, it will be necessary to amend and resubmit the returns to the Charity Commission to include the substantial contribution by the Council to the upkeep of the garden in compliance with the terms of the original bequest. It is proposed to resubmit the past 7 years of claims as part of the report to the Charities Commission.

6.1.4. Going forward, the Council will set up a new bank account for the Trust which will hold both the investment and any donation income. This will aid financial clarity. The Leader, as the main Trustee, will in future authorise the use of any funds on behalf of the Trust which will form part of the annual report to Council.

6.1.5. Taxation issues

The Trust is not registered for VAT. Consequently, it will not be possible for the Trust to reclaim any VAT on any purchases. However, this will not impact on the recent successful bid by Worthing Borough Council to the HLF for funding to preserve the horticultural heritage and improve access to facilities at Highdown Gardens. The Council is able, under VAT legislation, to deliver these improvements and reclaim the associated VAT. At the end of the project, these improvements will be gifted to the Trust.

## 6.2. Adur Recreation Ground and Southwick Green

6.2.1. Both of the open space trusts for Adur District Council have included within their returns to the Charities Commission all costs associated with the management and maintenance of these spaces funded by the Council. Consequently, the returns are financially accurate. As neither Trust has any resources of their own, there is no need to set up separate bank accounts for them.

## **7. Legal Implications**

- 7.1. The Council's specialist legal advisors have advised that a common means of managing charities is to establish a Committee to administer the Charity. The administration of the Charity by the Council is not an Executive function and therefore it is proposed to delegate the function to the existing Joint Governance Committee, and to expand its terms of reference accordingly.
- 7.2. It must be acknowledged that there is a risk of a conflict of interests arising from this proposal, should the corporate interests of the Council ever conflict with the interests of the Charity. However, this risk is considered minimal and such conflict unlikely to arise: in respect of Highdown Tower Garden and Pleasure Ground the Council does not seek to exploit the Charity or its assets for the Council's own purposes but rather the Council and the Charity have aligned interests in the continued existence of a much valued open space, and in respect of the other Charities the land is maintained at no cost by the Council.
- 7.3. Should Members of the Joint Governance Committee feel conflicted they would need to declare their interest and not vote on any issue should a conflict arise, which is highly unlikely. There is the potential for this to leave the Committee unable to be quorate, although the risk of this occurring is reduced by the nature of the Joint Committee Agreement between Adur District Council and Worthing Borough Council which would render only some of the decision makers being Trustees of any particular Charity. However, in the highly unlikely situation where a Joint Governance Committee was not quorate to deal with a Charity matter due to conflict of interests between the Council and the Charity, reference would need to be made to the Charity Commission to authorise matters affected by the conflict.
- 7.4. Under s5 Local Government and Housing Act and s114 Local Government Finance Act 1988, the Monitoring Officer and Chief Financial Officer have a duty to advise Members on irregularities which may have inadvertently arisen on this occasion. This report sets out the reasons for the incorrect procedures being followed, and the actions being taken to transparently rectify the situation and ensure robust governance arrangements for the future.
- 7.5. Should the recommendations in this report be resolved by the Joint Governance Committee and subsequently each full Council, the

Monitoring Officer, under her delegated authority, will make the necessary and appropriate consequential changes to the Constitution.

### **Background Papers**

None.

### **Officer Contact Details:-**

Sarah Gobey and Susan Sale

Chief Financial Officer and Monitoring Officer

01903 221119

[sarah.gobey@adur-worthing.gov.uk](mailto:sarah.gobey@adur-worthing.gov.uk) and [susan.sale@adur-worthing.gov.uk](mailto:susan.sale@adur-worthing.gov.uk)

## **Sustainability & Risk Assessment**

### **1. Economic**

Matter considered and no issues identified

### **2. Social**

#### **2.1 Social Value**

Matter considered and no issues identified

#### **2.2 Equality Issues**

Matter considered and no issues identified

#### **2.3 Community Safety Issues (Section 17)**

Matter considered and no issues identified

#### **2.4 Human Rights Issues**

Matter considered and no issues identified

### **3. Environmental**

Matter considered and no issues identified

### **4. Governance**

Matters addressed within the body of the report