



ADUR & WORTHING  
COUNCILS

Joint Strategic Committee  
14 January 2020  
Agenda Item 10

Key Decision [~~Yes~~/No]

Ward(s) Affected: Northbrook

## **Creation of a new Trust for Highdown Gardens**

### **Report by the Director for Communities**

#### **Executive Summary**

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

- 1.1. The purpose of the report is to seek authority to set up a new Charitable Incorporated Organisation (CIO) to act as an independent development trust charity to raise future funds for Highdown Gardens, following the successful application for funding to the National Lottery Heritage Fund (NLHF), in order to form part of the long term business plan for the sustainability of the Gardens.
- 1.2. The report outlines the background to this recommendation and a number of options that have been considered as part of this process, concluding with the recommendations outlined here.
- 1.3. As background to these recommendations the report provides information on the legal status of Highdown Gardens, which were bequeathed to the Council in Trust, by Lady Stern in 1968. The existing Charitable Trust was set up in 1968 in response to this bequest, with the Council being the sole Trustee.

## **2. Recommendations**

It is recommended that the Joint Strategic Committee:

- 2.1. Approves the establishment of an independent development trust charity (CIO), whose sole aim is to raise funds for Highdown Gardens.
- 2.2. Approves the appointment of the Head of Environmental Services to the Board of Directors of the new CIO.
- 2.3. Delegates authority to the Director for Communities to appoint the trustees of the new CIO in consultation with the Worthing Borough Council Executive Member for the Environment
- 2.4. Approves the objects of the CIO as set out in Appendix 1 of this report.
- 2.5. Approves that the Director of Communities registers the new CIO with the Charity Commission.

## **3. Context**

- 3.1. Highdown Gardens is arguably the 'Jewel in the Crown' for Worthing Borough Council, a treasured place for many visitors, both for pleasure and for professional purposes given the horticultural and heritage assets contained therein. Earlier this year the Council was successful in obtaining £813,200 in grant funding from the National Lottery Heritage Fund (NLHF) to support immediate capital improvements and ensure the long term sustainability of the Gardens, and the valuable plant and local history that they represent.
- 3.2. The Gardens, together with other land, were gifted as part of a Trust to the Council in 1968 from Lady Stern. The Trust conditions are :- *"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"*.
- 3.3. 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”.*

- 3.4. Recommendations were made to the Joint Governance Committee (26 November 2019) to ensure that Worthing Borough Council complies with its obligations as the sole charitable trustee of the charity; namely, financial reporting, the holding of regular meetings and an annual general meeting. These recommendations were further agreed at the full meeting of Worthing Borough Council on the 17th December 2019.
- 3.5. In accepting the terms of the NLHF grant for Highdown Gardens, the Council will be committed to meeting the terms of the grant for 20 years after the project completion date which are part of the standard NLHF grant agreement. An additional grant condition requires that for each of the 10 years after project completion, detailed accounts, certified by the Council's Chief Financial Officer, is provided showing the funding and resources used at Highdown Gardens in the year before.
- 3.6. The Council is committed to ensuring that Highdown Gardens is safeguarded for the future as a valuable heritage asset; however, in the context of ongoing public sector budget constraints, the Council will need the support of other funding sources in order to protect the National Plant Collection and continue to deliver associated activities that deliver the agreed outcomes for the funded project.

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

- 4.1. The NLHF is able to fund the Council directly, other trusts and foundations do not do so, hence the need for greater clarity about the charitable status of Highdown Gardens and the potential opportunities this creates. In particular, consideration has been given to the 'activation' of the existing charity, which would provide greater scope to attract external funding to support the long term sustainability of the Gardens. This however raises two particular issues:
  - 4.1.1. First it is recommended that the Council retains operational control of the Gardens to ensure they are safeguarded as a valuable heritage asset; and
  - 4.1.2. Secondly, whilst potential Trustees may be interested in supporting the long term sustainability of the Gardens, those who have been approached for initial discussions have expressed concern over taking

on responsibility for the day to day operation of the Gardens and have therefore requested a more limited remit.

- 4.2. In responding to these legitimate issues, four options were considered as a way forwards, and external legal advice was sought.
  - (i) Do nothing
  - (ii) Transfer of all assets to an independent charity - one which would not be the responsibility of the Council as sole Trustee.
  - (iii) Set up a fundraising sub-committee of the existing trust
  - (iv) Establish a development trust charity to fundraise on behalf of the Gardens, leaving operational arrangements in the existing Trust.
- 4.3. Option (i) Do nothing restricts potential future income that is required to maintain the level of activities and engagement created by the NLHF investment, and puts the Council under a greater financial burden. This is therefore not recommended.
- 4.4. Option (ii) would not resolve the issue of allowing future trustees to have limited liability for the operation and corresponding costs of maintaining the garden. This option would also remove Worthing Borough Council from having operational responsibility for the Gardens. This is therefore not recommended.
- 4.5. Option (iii) whilst this may allow for some additional fundraising, it is still restrictive, and may continue to limit the ability of the Council to engage local residents and others in fundraising for the gardens. Potential organisational or individual donors may be less likely to donate to a charity where the Council is the sole trustee. This is therefore not recommended.
- 4.6. The recommended option (iv) addresses the liability concerns of potential trustees; allows the Council continued responsibility for and control of the operation of the garden; and confers charitable status on the fundraising activity, signifying integrity and credibility when raising money from the public.
- 4.7. It is intended that the charity will be a Charitable Incorporated Organisation (CIO) and be a 'foundation model' CIO in which the only members are the trustees.
- 4.8. The main advantages of charitable status are:
  - 4.8.1. Access to tax reliefs: organisations recognised as charities can take advantage of a variety of reliefs from direct and indirect tax.

There are also various tax incentives to encourage individuals and businesses that pay tax in the UK to donate to charities.

- 4.8.2. Access to funding: charities can raise funds from the public, grant-making trusts and local government more easily than non-charities. Many funders have a policy of only making grants to charities.
- 4.8.3. Public support and reputation: charitable status signifies integrity and credibility when raising money from the public. Members of the public and some organisational stakeholders, may be reassured by the knowledge that charities are regulated by the Charity Commission.

- 4.9. In recommending the establishment of a CIO with independence from the Council and from the operational obligations of the Gardens themselves, it is anticipated that the recruitment of trustees and the involvement of local residents and other members of the public in fundraising activities, will be more easily achieved.

## **5. Engagement and Communication**

- 5.1. In order to inform the decision-making in this matter and to better understand the legal implications of progressing each option, advice was taken from VWV, specialist lawyers in Charity law.
- 5.2. In creating a CIO, it is necessary to consider carefully the composition of the board of charity trustees. This is likely, over time, to involve 8-12 people with an appropriate balance of skills, knowledge and experience to equip the Gardens for their future development. This board will have a more limited remit than the Joint Governance Committee which oversees the operations of the Gardens directly on behalf of the original charity. However, In practice, the need for coordination between the operational team of the Gardens and the CIO means that it is important that WBC is given representation on the board of trustees.
- 5.3. It is therefore recommended that the Head of Environmental Services be appointed to the board of trustees. Paragraph 3.2 of part 3 of the WBC Constitution provides that the appointment of an individual to any other office is a decision of the Executive to the extent that appointments are to outside bodies in connection with the functions which are the responsibility of the Executive.

5.4. In the meantime, potential external trustees have been approached and are currently considering their involvement. These trustees have been selected as they have a range of desirable skills that will support the ambitions of the Development Trust to support the long term sustainability of the Gardens; namely:

- Horticulture
- Finance
- Fundraising
- Learning and outreach
- Public engagement
- Local knowledge
- Heritage

## **6. Financial Implications**

- 6.1. As the Trust will be independent of the Council, there will be no direct financial implications arising from this report.
- 6.2. There may be some initial minor costs in setting up the Trust but these will be funded from within existing budgets.

## **7. Legal Implications**

- 7.1 Section 139 Local Government Act 1972 allows a Local Authority to accept, hold and administer gifts made for the discharge of their functions or benefit of the inhabitants of their area or some part of it. This would allow the Council to fundraise and accept money to be held in trust to further benefit the local community's enjoyment of Highdown Gardens.
- 7.2 The new CIO will be a separate legal entity in its own right and will therefore be completely outside the control of Worthing Borough Council.

**Background Papers**

- Joint Governance Committee paper 26.11.19
- JSC report following approval of the NLHF bid

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## **Sustainability & Risk Assessment**

### **1. Economic**

- A CIO would have greater access to funding: charities can raise funds from the public, grant-making trusts and local government more easily than non-charities. Many funders have a policy of only making grants to charities.
- Independent trustees from our communities would play a stronger role in contributing to the economic development of Highdown Gardens.

### **2. Social**

#### **2.1 Social Value**

- Individuals from the local community acting as trustees will play an active role in generating funds for use at Highdown Gardens, and the maintenance of a full activity and engagement programme.
- Depending on the fundraising opportunities promoted by the CIO, the wider community will be given improved and independent opportunities to contribute financially to the future of Highdown Gardens.

#### **2.2 Equality Issues**

- The NLHF grant allows an improvement of access at Highdown Gardens - both in terms of improving physical access for people with specific needs, and improvement in access for all by extending opening hours. These improvements can potentially be extended with improved funding through the CIO.

#### **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**

- The fundamental objective of the NLHF grant is to protect the horticultural heritage at Highdown Gardens by specifying and running a propagation programme, supported by the labelling of key plants and better interpreting the gardens. Offering key trustee positions to highly regarded horticultural specialists will improve the Council's custodianship of this important heritage resource.

### **4. Governance**

- The JGC will be making recommendations to the WBC full Council on 17th December 2019 that they make a delegation of the Executive functions relating to the Trust to JSC (and day to day management to the Head of



Service) and delegate the function of administration of the Charity to JGC who will make recommendations to full Council.

- It is likely that administration resource will be provided to the CIO in the initial inception period to ensure agendas and minutes are provided in a robust and timely manner. The proposed Chair of the CIO has an accountancy background so it is not anticipated that additional accountancy resource will be provided by WBC other than reviewing accounts before submission.
- Operational control of the gardens and therefore health and safety implications to the public will be maintained by WBC.