



www.guildford.gov.uk

Contact Officer: Andrea Carr
Committee Services
01483 444058

16 November 2018

Dear Councillor

Your attendance is requested at a meeting of the **EXECUTIVE SHAREHOLDER AND TRUSTEE COMMITTEE** to be held in the Council Chamber, Millmead House, Millmead, Guildford, Surrey, GU2 4BB, on **TUESDAY 27 NOVEMBER 2018** at 6.00 pm.

Yours faithfully

James Whiteman
Managing Director

MEMBERS OF THE EXECUTIVE SHAREHOLDER AND TRUSTEE COMMITTEE

Chairman:

Councillor Paul Spooner (Lead Councillor for Partnerships, Planning and Regeneration)

Vice-Chairman:

Councillor Matt Furniss (Lead Councillor for Infrastructure and Governance)

Councillor Geoff Davis, Lead Councillor for Social Enterprise and Voluntary Sector
Councillor Nigel Manning, Lead Councillor for Finance and Asset Management
Councillor Iseult Roche, Lead Councillor for Community Health, Wellbeing, and Project
Aspire

Authorised Substitute Members:

Councillor David Bilbé, Lead Councillor for Enterprise and Economic Development
Councillor Philip Brooker, Lead Councillor for Housing and Development Management
Councillor Graham Ellwood, Lead Councillor for Licensing, Environmental Health and
Community Safety
Councillor Gordon Jackson, Lead Member for Innovation and Transformation
Councillor Nikki Nelson-Smith, Lead Councillor for Skills, Arts and Tourism

WEBCASTING NOTICE

This meeting will be recorded for live and/or subsequent broadcast on the Council's website in accordance with the Council's capacity in performing a task in the public interest and in line with the Openness of Local Government Bodies Regulations 2014. The whole of the meeting will be recorded, except where there are confidential or exempt items, and the footage will be on the website for six months.

If you have any queries regarding webcasting of meetings, please contact Committee Services.

QUORUM 3



THE COUNCIL'S STRATEGIC FRAMEWORK

Vision – for the borough

For Guildford to be a town and rural borough that is the most desirable place to live, work and visit in South East England. A centre for education, healthcare, innovative cutting-edge businesses, high quality retail and wellbeing. A county town set in a vibrant rural environment, which balances the needs of urban and rural communities alike. Known for our outstanding urban planning and design, and with infrastructure that will properly cope with our needs.

Three fundamental themes and nine strategic priorities that support our vision:

- | | |
|---------------------|--|
| Place-making | Delivering the Guildford Borough Local Plan and providing the range of housing that people need, particularly affordable homes |
| | Making travel in Guildford and across the borough easier |
| | Regenerating and improving Guildford town centre and other urban areas |
| Community | Supporting older, more vulnerable and less advantaged people in our community |
| | Protecting our environment |
| | Enhancing sporting, cultural, community, and recreational facilities |
| Innovation | Encouraging sustainable and proportionate economic growth to help provide the prosperity and employment that people need |
| | Creating smart places infrastructure across Guildford |
| | Using innovation, technology and new ways of working to improve value for money and efficiency in Council services |

Values for our residents

- We will strive to be the best Council.
- We will deliver quality and value for money services.
- We will help the vulnerable members of our community.
- We will be open and accountable.
- We will deliver improvements and enable change across the borough.

AGENDA

**ITEM
NO.**

1 APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTES

2 DISCLOSURE OF INTERESTS

In accordance with the Councillors' Code of Conduct, a councillor is required to disclose at the meeting any disclosable pecuniary interest (DPI) that they may have in respect of any matter for consideration on this agenda. Any councillor with a DPI must not participate in any discussion or vote regarding that matter and they must also withdraw from the meeting immediately before consideration of the matter.

If that DPI has not been registered, the councillor must notify the Monitoring Officer of the details of the DPI within 28 days of the date of the meeting.

Councillors are further invited to disclose any non-pecuniary interest which may be relevant to any matter on this agenda, in the interests of transparency, and to confirm that it will not affect their objectivity in relation to that matter.

3 MINUTES (Pages 1 - 4)

To confirm the minutes of the meeting of the Committee held on 25 September 2018 as a correct record.

4 FUTURE USE OF FOXENDEN DEEP SHELTER (Pages 5 - 10)

**Please contact us to request this document in an
alternative format**

This page is intentionally left blank

EXECUTIVE SHAREHOLDER AND TRUSTEE COMMITTEE

MINUTES OF MEETING HELD ON TUESDAY 25 SEPTEMBER 2018

Present:-

Councillor Paul Spooner, Lead Councillor for Partnerships, Planning and Regeneration
Councillor Matt Furniss, Lead Councillor for Infrastructure and Governance
Councillor Geoff Davis, Lead Councillor for Social Enterprise and Voluntary Sector
Councillor Graham Ellwood, Lead Councillor for Licensing, Environmental Health, and Community Safety

Councillors David Elms and Caroline Reeves were also present.

Action By

12. APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTES

Apologies for absence were received from Councillor Nigel Manning.
Councillor Graham Ellwood was present as a substitute for Councillor Nigel Manning.

13. DISCLOSURE OF INTERESTS

There were no disclosures of interest.

14. MINUTES

The minutes of the meeting of the Executive Shareholder and Trustee Committee held on 2 May 2018 were agreed as a correct record, and signed by the Chairman.

15. CONSULTATION: MAKING THE MOST OF GUILDFORD SPORTS GROUND AT WOODBRIDGE ROAD

As Sole Trustee of the Guildford Sportsground charitable trust, the Council had undertaken a consultation in respect of the options available to manage the venue following the refurbishment of the pavilion. The Committee considered a report which set out the background to the site, the consultation undertaken and the consultation responses received. The report also invited the Committee to consider a recommendation to broaden and increase community use to further public benefit with key stakeholders committed to furthering the aims and objectives of the trust and to enable the Trustee to put in place effective controls and monitoring to ensure that public benefit was delivered.

There had been one consultation response received for the Trustee to consider. This was submitted by Guildford Sea Cadets seeking clarification that there would be no change in the status of their lease. The Committee confirmed that the proposed future management of the Sportsground would have no impact on the lease held by Guildford Sea Cadets.

RESOLVED:

That the Sportsground be leased to a management company or committee to deliver its day to day management responsibilities in accordance with the charitable objects of the site, subject to:

- (1) agreement between the Trustee and company or committee; and
- (2) operation in accordance with the requirements of the Charities Act 2011.

Reasons for Recommendation:

To fulfil the role of Sole Trustee considering the vesting deed and to further the purposes of the trust.

16. FUTURE USE OF FOXENDEN DEEP SHELTER

A report concerning the future use of Foxenden Deep Shelter was before the Committee for consideration. The Shelter, which was constructed in 1941 and consisted of approximately 230 metres of 2½ - 3 metre high tunnels located 15 metres beneath Allen House Grounds, was formerly opened to the public on heritage days but closed in 2010 on safety grounds. There were various works required to make the Shelter suitable for public access and the cost of the works combined with management costs could not be justified to allow infrequent public access.

Alex Duggan

Allen House Grounds were gifted to the Council in 1914 and the Shelter was subject to the same restrictive legal covenants and charitable status as the Grounds. These restrictions included sole use as public gardens and pleasure grounds and also a prohibition on the sale, production and consumption of alcohol and could only be modified or removed if the Charity Commission approved an application for this purpose. The Charity Commission's approval would also need to be obtained for the grant of a lease of the Shelter. Any disposal must achieve best consideration and be in the best interests of the Charity. Prior to submitting the application to the Charity Commission, a 4 week public consultation in respect of the proposals must be undertaken.

The Council was the sole charitable trustee of the Shelter and Grounds and the Executive had delegated related decision-making to the Executive Shareholder and Trustee Committee. Following completion of the public consultation, the outcome of the consultation must be reported to the Committee and a decision must be taken by the Committee as to whether to proceed with the application to the Charity Commission. The process was likely to be lengthy.

If the Trust proceeded with an application to the Charity Commission then the application would be either to remove the restrictions on alcohol and use entirely or amend them so they did not apply to the Shelter. The Council's Parks and Leisure Services favoured the removal of the restrictions to enable events to take place on the Grounds.

Regardless of whether the Trust proceeded with a disposal of the Shelter, it may be necessary to address the structural issues. Any expenditure incurred by the Council on the Shelter must be treated as charity expenditure on behalf of the Trust and accounted for accordingly. Equally, any income received from leasing the Shelter must be used for the benefit of the Trust. An incoming tenant may agree to undertake the required works in return for a rent free period and there may be grant funding available from external funders to cover or contribute to the cost of works. If the Trust proceeded with an application to the Charity Commission and this application was successful then the likelihood of being able to obtain a tenant increased,

thereby creating a potential income stream for the Trust.

The future use of the Shelter had been discussed by the Place-making and Innovation Executive Advisory Board on 10 September 2018 and the Board had indicated its support for this Committee to authorise the undertaking of a public consultation concerning the removal of the restrictive covenants and the grant of a lease of the Shelter.

The Committee acknowledged that the Shelter was popular with the public who would appreciate access to it. As Allen House Grounds were also popular it would be advantageous to lift the restrictive covenants relating to both to enable the sale, production and consumption of alcohol.

RESOLVED:

That a public consultation regarding the modification or removal of the restrictive user covenants in respect of the Foxenden Deep Shelter be undertaken.

Reason(s) for Recommendation:

The Shelter is currently disused and may require expenditure to avoid structural failure. If the Trust proceeds with an application to the Charity Commission and this application is successful, the likelihood of being able to obtain a tenant increases, thereby creating a potential income stream for the Trust.

17. GUILDFORD SPORTS GROUND CHARITY ANNUAL RETURNS YEAR ENDING 31 MARCH 2018

The Committee considered a report presenting the Guildford Sports Ground Charity's Annual Account Returns for the year ending 31 March 2017 and the Annual Trustee report for approval. The report explained the legal requirement to submit the Charity's Annual Trustee Report and accounts to the Charity Commission.

The terms of reference for the Committee included the completion and submission of Charity Annual Account returns and the Charity Annual Trustee Report to the Charity Commission on behalf of the Guildford Sports Ground charity.

The Committee expressed its appreciation of the revitalised Sports Ground facility for use by the wider public.

RESOLVED:

1. That the Committee approve the Annual Trustee Report and the Annual Accounts for the year ending 31 March 2017, as set out in Appendices 1 and 2 of the report;
2. That the Committee note the report of the Independent Examiner, as set out in Appendix 4 of the report; and
3. That the Principal Corporate Services Solicitor be authorised to submit the Annual Trustee Report, Annual Accounts and the Independent examiner's report to the Charity Commission supported by the relevant department(s).

Reason for Recommendation:

To comply with the legal requirement that the Charity must keep its registered details up-to-date. If the Trustee fails to submit these returns, it could result in the Charity Commission removing the charity from its register and taking further action.

Executive Shareholder and Trustee Committee Report

Ward(s) affected: Holy Trinity

Report of the Director of Community Services

Author: Alex Duggan

Tel: 01483 444584

Email: alex.duggan@guildford.gov.uk

Lead Councillor responsible: Nigel Manning

Tel: 01252 665999

Email: nigel.manning@guildford.gov.uk

Date: 27 November 2018

Future use of Foxenden Deep Shelter

Executive Summary

The author previously reported to the Executive Shareholder and Trustee Committee (“the Trustee Committee”) that interest had been received in using Foxenden Deep Shelter (“the Shelter”). However, the use of the Shelter was limited by covenants restricting the use to public walks and pleasure grounds and prohibitions on the production, sale and consumption of alcohol. There are also significant works required to make the Shelter safe and bring it into a usable state.

The works to the Shelter could be undertaken by an incoming tenant but in order to seek a tenant the covenants need to be modified or removed. Removal of the restrictive covenants relating to alcohol can also benefit Allen House Grounds by allowing activities to take place that complement the use of the land e.g. occasional food festivals and other events during which alcohol could be sold.

Removal or modification of the restrictive covenants requires consent from the Charity Commission. Prior to submitting an application to the Charity Commission, it was necessary to undertake a 4 week public consultation. The consultation ran from 8 October until 5 November and asked for the public’s views on the following options:

- Option One – Do not proceed with an application to the Charity Commission. The Shelter would remain closed and the Council would undertake any structural works that are required on behalf of the Trust.
- Option Two – modify the restrictive covenants, so that they do not apply to the Shelter. The restrictive covenants would still apply to Allen House Grounds but would no longer apply to the Shelter, which would increase the opportunity to let the Shelter.
- Option Three – remove the restrictive covenants, so that they do not apply to the Shelter or Allen House Grounds.

The Council received thirty-two responses. Fourteen of these responses were supportive of Option 3, ten were in favour of Option 2 and eight were in favour of Option 1.

Recommendation to the Committee

- (1) That the Executive Shareholder and Trustee Committee approves the submission of an application to the Charity Commission to:
 - (a) remove the restrictive covenants relating to alcohol so that they do not apply to Allen House Grounds or to Foxenden Deep Shelter; and
 - (b) modify the restrictive user clause relating public walks and pleasure grounds, so that it only applies to Allen House Grounds and does not apply to Foxenden Deep Shelter.
- (2) That, should the application referred to in paragraph (1) (a) above fail, the Director of Community Services be authorised to submit a further application to the Charity Commission to seek approval to modify the covenants, so that they do not apply to Foxenden Deep Shelter.

Reasons for Recommendation:

- To allow the Council to seek a tenant of Foxenden Deep Shelter on behalf of the trust.
- To allow activities such as events to take place on Allen House Grounds.
- To generate an income for the trust and help fund works to take place to preserve Foxenden Deep Shelter.

1. Purpose of Report

- 1.1 To update the Trustee Committee on the outcome of the public consultation regarding the future use of Foxenden Deep Shelter (“the Shelter”) and seek approval to proceed with an application to the Charity Commission.

2. Strategic Priorities

- 2.1 The grant of a lease of the Shelter will generate rental income for the Trust. The income would contribute to the management, maintenance and improvement of Allen House Grounds.

3. Background

- 3.1 On 25 September 2018, the author reported to the Trustee Committee that interest had been received in using the Shelter for whiskey maturation. The interested party would require a lease of at least 25-30 years.
- 3.2 The Shelter is located beneath Allen House Grounds, which is held by the Council as the sole charitable trustee. The previous report to the Trustee Committee set out issues around the condition of the Shelter and restrictive

covenants that affect the Shelter and Allen House Grounds. The restrictive covenants include prohibitions on the sale, production and consumption of alcohol. The use is also restricted to public walks and pleasure grounds.

- 3.3 The report explained that an incoming tenant could be required to undertake any necessary repair works but in order to seek a tenant of the Shelter it would be necessary to modify or remove the restrictive covenants. This could only happen by making an application to the Charity Commission. The decision to proceed with an application to the Charity Commission is taken by the Trustee Committee.
- 3.4 Prior to submitting the Charity Commission application it was necessary to undertake a four week public consultation. The report recommended that the Council proceed with the consultation on behalf of the charitable trust. The Trustee Committee approved the recommendation.

4. Consultations

- 4.1 A four week public consultation commenced on Monday 8 October 2018. The consultation involved putting a notice in the *Surrey Advertiser* and erecting notices in Allen House Grounds and on the entrances to the Shelter in York Road Multi Storey Car Park. The notices directed the public to a consultation document on the Council's website. The consultation was also promoted on social media.
- 4.2 The consultation set out the following three options:
- Option One – Do not proceed with an application to the Charity Commission. The Shelter would remain closed and the Council would undertake any structural works that are required on behalf of the Trust.
 - Option Two – modify the restrictive covenants, so that they do not apply to the Shelter. The restrictive covenants would still apply to Allen House Grounds but would no longer apply to the Shelter, which would provide the opportunity to seek a tenant.
 - Option Three – remove the restrictive covenants, so that they do not apply to the Shelter or Allen House Grounds.
- 4.3 The consultation stated that the Council's preferred option is Option 3. The consultation stated that this option provides the opportunity to preserve the Shelter, generate income for the charitable trust and allows the most flexibility around the use of the Shelter and Allen House Grounds.
- 4.4 The Council received thirty-two responses to the consultation. Fourteen respondents supported Option 3.
- 4.5 Ten responses were in favour of Option 2. A number of those who commented in support of this option expressed concerns that the removal of the covenants would lead to changes being made to Allen House Grounds that would affect the use and enjoyment of the area by residents.

- 4.6 Eight responses were received in respect of Option 1. A number of those who commented in support of this option were concerned about similar matters raised by those who supported Option 2. Concerns were also raised that allowing the sale, production and consumption of alcohol at Allen House Grounds would exacerbate problems with anti-social behaviour.

5. Executive Advisory Board comment

- 5.1 This matter was considered by the Place-making and Innovation Executive Advisory Board on 10 September 2018. The Board was supportive of proceeding with the public consultation but wants to have input into how the Shelter is used in future.

6. Equality and Diversity Implications

- 6.1 As previously reported, if the application to the Charity Commission is approved and a lease of the Shelter is granted then the Trustee Committee will need to consider whether an incoming tenant should be required to open the Shelter to the public. Providing access to the elderly or disabled may not be possible without additional investment in the Shelter's access arrangements.

7. Financial Implications

- 7.1 There is no fee for submitting the application to the Charity Commission, although there will be staff resource implications.
- 7.2 As previously reported, if the application to remove or modify the restrictive covenants is approved then this will allow the Council to seek a tenant for the Shelter. If the Council seeks a tenant for the Shelter then valuation, marketing and letting fees will be incurred.
- 7.3 The grant of a lease will generate rental income, which will be invested back into the charitable trust. The works required to the Shelter could also be undertaken by an incoming tenant. However, it would be necessary to close up to four parking spaces in York Road Multi Storey Car Park to provide adequate access to the Shelter. The closure of spaces would result in a loss of car parking revenue.

8. Legal Implications

- 8.1 A change of use and leasehold disposal requires approval from the Charity Commission. All decision making regarding the Council's charitable land is delegated to the Trustee Committee, which includes the decision to proceed with the Charity Commission application.

9. Human Resource Implications

- 9.1 It will be necessary to invest officer time in proceeding with an application to the Charity Commission and dealing with the outcome of the application.

10. Summary of Options

- 10.1 The Trust could decide not to proceed with an application to the Charity Commission and leave the Shelter in its current state. However, it is possible that works will be required in future to prevent structural failure. If the Shelter was to be opened to the public for educational purposes then further investment would be required to deal with any health and safety issues and in ongoing management and maintenance. 25% of respondents to the public consultation were in favour of this option.
- 10.2 The Trust could proceed with an application to modify the covenants, so that they do not apply to the Shelter but continue to restrict the use of Allen House Grounds. This would allow the Trust to seek a tenant for the Shelter but some uses relating to events and activities that complement the use of Allen House Grounds would not be able to take place. 31% of respondents to the public consultation were in favour of this option.
- 10.3 The Trust could proceed with an application to remove the restrictive covenants, so that they do not affect the Shelter or Allen House Grounds. This would allow the greatest flexibility around how the Shelter and Allen House Grounds can be used and managed in future. 44% of respondents to the public consultation were in favour of this option.

11. Conclusion

- 11.1 The majority of the respondents to the public consultation were either in favour of the restrictive covenants being modified, so that they do not apply to the Shelter or removed entirely, so that they do not apply to Allen House Grounds or the Shelter. The majority of these favoured the removal of the restrictive covenants on the sale, production and consumption of alcohol.
- 11.2 A decision is now required from the Trustee Committee about whether to proceed with an application to the Charity Commission.

12. Background Papers

- 12.1 None

13. Appendices

- 13.1 None

This page is intentionally left blank