

Executive Shareholder and Trustee Committee Report

Ward(s) affected: Holy Trinity

Report of the Director of Community Services

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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