

To all members of Effingham Parish Council

28 March 2022

Dear Councillors

Governance of Effingham Village Recreational Trust

As former Trustees of EVRT, we have read about the proposal to make the Parish Council the Sole Trustee of the charity. We wish to make some comments which we hope will assist the Councillors in their deliberations about whether to accept this proposal. These comments on the proposed structure outlined in the paper of 14 March are set out in the attached document.

Although some Councillors might perceive our remarks as criticism from disaffected former Trustees, our single motivation in writing this letter is concern for the future wellbeing of the Charity. If the proposal currently being tabled is determined to be the optimum solution having taken all appropriate advice (including legal) then we will support it fully.

We refute a remark made at a previous Liaison meeting that the original proposal to amend the current Charity constitution to a Charitable Incorporated Organisation (CIO), as recommended by the Charity Commission, had “run aground” because the proposed constitution had inadequate “accountability” to the residents. The CIO structure was considered by the then Trustees as the most effective approach to the future well-being of the Charity and of the Trustee role and was recommended by one of the country’s leading solicitors specialising in charities. The CIO proposal was not progressed by the then Trustees because the Custodian Trustee (which in these circumstances had no role or standing in the matter) decided to object by formally involving the Parish Council (which also had no standing in the matter) therefore putting the matter in the public domain against the wishes of the Trustees. At a very late stage EPC publicly challenged the proposal which was, in effect, a show of no confidence in the work of then Trustees - work and decisions which had been discussed and explained to interested councillors in meetings over the previous two years. Although the then Trustees were advised that EPC had no grounds to frustrate the CIO conversion, they decided there was no future to be found in confrontation with EPC – especially as the Charity relies heavily for the time being on funding from the precept which is managed by EPC. One of the key objectives for a CIO was to make it *less* reliant on EPC/residents’ funding. We also feel that the question of “accountability” is based on misunderstanding - see comments attached.

We do note that EPC commits to take legal advice on the proposal to be appointed as Sole Trustee but hope the original legal advice given to former Trustees will be taken into account. We stress again that, having cared for the charity for so long and having considered the alternative approaches to an improved system, our comments are made to help in the debate over the best future for the charity. For the reasons we have stated in our comments, selection of an arrangement which preserves the clear separation of charity and parish council and as recommended by the Charity Commission was understood to be the best.

Yours sincerely

Michael Agius, Rob Home, Howard Manton, Sue Morris

Comments in response to the paper
'EVRT Sole Trustee governance model
Proposed administrative & financial arrangements for EPC as sole trustee of EVRT'
of 14 March 2022

Accountability

The role of a charity Trustee is completely different from that of a parish councillor. Parish councillors are accountable to residents. Trustees are also fully accountable for their actions and decisions, in many and various ways: to the ordinary law of the land for many aspects of the charity's activities, to specialist charity law and to the objectives of the charity. Trustees should seek out and listen to wishes of residents about how the facility might change or develop and ideally should liaise with residents regularly and openly. But Trustees are *not directly accountable* to the residents and cannot be dismissed by residents. Trustees must carefully consider all issues needing attention and often have to take difficult or unpopular decisions. As unpaid volunteers, Trustees could not sustain the role if they were directly accountable to residents. Trustees must have the freedom to take decisions based on information much of which should not, and by law cannot be, in the public arena. Trustees do not have their actions and discussions observed at monthly meetings; to do so would make the role impossible.

Trustees undertake the role on behalf of the members of the public who cannot or do not want to be involved. Ideally Trustees will have a fair acquaintance with the village, its needs and the potential of the KGV fields, but they do not 'represent' residents in the sense that parish councillors have undertaken to do. They simply bring their best skills to the tasks at hand.

CIO vs Sole Trustee

As former Trustees, we **did** consider the option of EPC being appointed as Sole Trustee. Councillors will recall a Zoom call in early 2021 attended by councillors and Trustees as well as a solicitor representing EVRT. The solicitor clearly stated the reasons why such an approach should be avoided - the main reason being a potential **conflict of interest** for councillors trying to act in the best interests of EPC and also in the best interests of the charity. The solicitor strongly recommended a clear and distinct separation of the two bodies.

Separating the interests of the Parish Council and of the Trustees

In the 1950s the KGV was established as a charity and for its own protection was not set up as a local government asset. Under the current charity constitution (as well as under a CIO) there is clear separation between the local authority and the charity, each with their different responsibilities and procedures. Currently, residents with a problem relating to KGV are directed to the Managing Trustees. We are concerned that residents will find it impossible to distinguish between EPC as Local Authority and EPC as Sole Trustee and councillors will need to clearly understand their role when such issues arise. The solicitor advising the former Trustees explained that such instances often lead to confusion and conflict within a 'parish council as Sole Trustee'.

A fundamental role of councillors as part of the Local Authority is to seek best value and keep the precept as low as possible. The task of a Trustee is to raise as much income for the

charity as possible, to pay for expenditure on the running of the existing facilities and invest in new ones for the benefit of residents. We question how EPC as Sole Trustee will achieve both objectives and are concerned that funding for the charity will be curbed as a result.

Ongoing care of the charity

We consider it to be essential for “individuals” to commit themselves very consciously to the care of the charity; this role cannot be just lip-service. Whilst any change to the current structure which reduces personal liability is welcomed, to reduce it to zero is of concern. It is vital for anyone involved in the running of a charity to abide fully by the relevant principles and practices of governing it - including safety and legality. In the current scheme, individuals must each make binding signed declarations that they will do this. If EPC as ‘Sole Trustee’ makes a ‘corporate’ declaration, this would be an impersonal, non-specific undertaking. A Sole Trustee will be made up of individuals who may or may not either wish to undertake this work or be clear about what standards and practices are required. In the new proposals the Executive Board members will not be Trustees, and therefore no-one will need to actively concern themselves and be responsible for the ethos and governance of the charity.

Workload and efficiency

As former Trustees, we are well aware of the workload involved in managing a charity with numerous facilities and ongoing demands from users and licensees. Frequently, significant decisions need to be taken quickly (within a day or two). Under the proposed structure, it appears that an additional tier of workload and decision-making will be created. It is proposed that members of the Executive Board will be required to consider all major issues, formulate their views, then clearly explain and justify their recommendations to the Sole Trustee, who in turn must assess and review/agree. This process will result in considerable delays if meetings with the Sole Trustee only occur as suggested on three occasions a year. If EPC as Sole Trustee is to be a responsible and informed trustee, councillors will need to take time to understand, argue and discuss the matters that come before them. Where the Sole Trustee comprises the EPC councillors, the budget process with funding required from EPC will present a major conflict of interest challenge.

Confidentiality

The existing constitution has the benefit of limiting access to detailed business and personnel matters to a very few people (Managing Trustees). The day-to-day state of the charity’s finances should always be privileged information, so that the Managing Trustees have the best chance possible in their financial negotiations with prospective grant-givers or partners, licence holders etc. The proposed scheme risks making this information much more easily available to a wider body of people to the negotiating disadvantage of the charity. Parish Councillors will also be in a difficult position, trying to maintain proper handling of detailed and confidential information they know in their capacity as Sole Trustee and but are not allowed to know in their capacity as parish councillor. The clearly defined separation of charity and council, as now, was designed for a reason.

Protection of the Assets

In the past, some councillors have expressed worries over conjectural ‘rogue Trustees’ who might pack a Board of Managing Trustees and with that majority sell off parcels of land - despite all the many existing legal restraints to prevent such action, restraints which would remain in place under a CIO. Protection of the land is paramount, but the proposed scheme could jeopardise this more than the existing one or the CIO. People can (and frequently do) join the Parish Council uncontested. They do not have to sign any advance declarations

about their willingness as individuals to bind themselves with the principles and ethics of being a charity Trustee, and neither will they personally sign such a declaration once they join the council. Thus, the Parish Council cannot protect against several people, unvetted in any way, organising themselves to take up seats, form a majority and then, as Sole Trustee (not Local Authority), take decisions either contrary to the overall interests of the charity, or which could just as easily include selling off land. This danger to the charity's current protection by the proposed scheme must not be overlooked. As explained before, unvetted people could not become trustees of a CIO and having joined, they would be very heavily constrained by their declarations and by the law which immediately applied to all their proposed decisions.