

EVRT Sole Trustee governance model

Proposed administrative & financial arrangements for EPC as sole trustee of EVRT

This document should be read in conjunction with the EVRT document 'Review of Governance Options For EVRT'. A draft Charity Scheme is attached.

EXECUTIVE SUMMARY

- EPC as sole trustee would be responsible for carrying out the normal duties and responsibilities of a charity trustee. The EVRT Charity Scheme will remain the governing document for the charity, and EVRT will maintain its own policies and procedures. The EPC Standing Orders will not apply to meetings of EPC acting as sole trustee.
- To implement the change in governance, it is sufficient to amend the EVRT Charity Scheme. A draft scheme for discussion is attached, based on making minimal amendments to the existing scheme. This will need to be approved by the Charity Commission, and needs prior agreement from EPC that the council is willing to take on the role of sole trustee.
- There must be no confusion between the corporate property and assets of EPC as local authority and the property and assets held by EVRT (the 'brick wall'). EPC as local authority can transfer funds into the charity but must not take funds out of the charity to subsidise other council activities; there is a one-way door for funding in the 'brick wall'. Councillors should be clear that EPC acting as the sole trustee acts as a corporate body; individual councillors are not themselves charity trustees.
- The financial and administrative 'brick wall' can be established by:
 - **Appointing an Executive Board with delegated authority to conduct most of the business of the Trust.** There would be at least 3 and up to 10 members of the Board, to include at least 2 parish councillors along with other volunteers from the community, all appointed annually by EPC acting as sole trustee. EPC as trustee should make it easy for residents to volunteer for membership of the Board. The Board will guide the operations of the KGV, working with the KGV Manager and with appropriate administrative support, and make recommendations to the trustee as to the budget, the business plan, major projects, and significant licences and contracts. This is similar to the responsibilities of the existing Board of Trustees, but members of the Executive Board are no longer trustees and do not carry personal liability.
 - **Holding separate meetings of EPC as the sole trustee, with responsibility for the annual appointment of members of the Executive Board, and for formal decisions of the Trust.** There would normally be three ordinary Trustee meetings per year, which could be short meetings immediately before or after EPC meetings, and an Annual General Meeting of EVRT, open to all Effingham residents. This is very similar to the current situation where EPC meets as the custodian trustee, and much of the workload would be scrutinising and formally signing off recommendations from the Executive Board.
 - **Putting in place appropriate administrative support for this governance structure, ensuring complete separation between the activities of EPC as the local authority and EPC as the sole trustee of EVRT.** All banking, accounting and auditing arrangements of EVRT would remain separate from those of EPC.
- Members of the community who are not parish councillors would be encouraged to get involved with EVRT, either as members of the Executive Board or by joining an advisory committee to work on specific projects such as playgrounds or environmental projects.

1. Introduction

This document suggests suitable administrative and financial arrangements which could be used should Effingham Parish Council (EPC) become the sole trustee for Effingham Village Recreation Trust (EVRT). It addresses two main questions:

- How can arrangements be made to erect a 'brick wall' between EPC acting as local authority (LA) and EPC acting as sole trustee of EVRT, as set out in Section 8 of the EVRT document 'Review of Governance Options For EVRT'?
- Can we ensure that the extra workload on EPC's Clerk and councillors is minimised?

An important aim is to have a structure which encourages volunteers from the local community to get involved with the charity, as they will no longer face the legal liabilities of becoming a charity trustee.

EVRT and EPC will need to take formal advice on whether the arrangements proposed here are correct and appropriate. Potential sources of advice include the Charity Commission, Fields in Trust, NALC, SALC and independent solicitors.

2. The EVRT governing document

Charity Commission Operational Guidance OG B56 B1 sets out the constitutional issues for local authorities when acting as charity trustee. The guidance makes clear that EPC as sole trustee would be responsible in the same way as any other charity trustee for carrying out the normal duties and responsibilities of a charity trustee. EPC can decide for itself what structures should be used to reach decisions in its name as trustee. OG B56 B1 4.1 says: '*An alternative to requiring all the decisions to be reached by the full body of councillors, for example, is to set up a separate committee to discharge its responsibilities as trustee (see section 101 of the Local Government Act 1972).*'

We can assume from this that the EVRT Charity Scheme remains the governing document for EVRT, setting out the principles that must be followed by EPC when acting as sole trustee. EVRT will continue to have its own set of policies and procedures, which are distinct from the Standing Orders and other policies and procedures of EPC acting as LA.

There are important differences between the legal requirements for the two roles. For example, there is no requirement for meetings of the Trustee to be held in public, trust minutes and documents are not subject to FoI requests, and the Trust continues to submit Annual Returns to the Charity Commission rather than the local government auditors. (The way trust funds should be handled in EPC's own Annual Governance Statement is discussed in a later section.)

To implement the change in governance to make EPC the sole trustee, it is sufficient to:

1. Amend the EVRT Charity Scheme to allow the structures that would suit this governance model. A draft amended scheme for discussion is attached, based on making minimal amendments to the existing EVRT charity scheme. This will need to be checked and approved by the Charity Commission and needs prior agreement from EPC that the council is willing to take on the role of sole trustee.
2. Add a preamble to the existing EPC Standing Orders to make it clear that they apply when EPC is meeting as a local authority and not when EPC is meeting as sole trustee.
3. Amend the policies and procedures of EVRT as necessary to refer to the new sole trustee. This must include precise Terms of Reference for the Executive Board.

3. The 'brick wall'

The essence of the administrative and financial arrangements required to create a 'brick wall' between EPC acting as LA and EPC acting as sole trustee is set out in Section 8 of the EVRT document 'Review of Governance Options For EVRT'.

This can be summarised as:

- ensuring there is no confusion between the corporate property and assets of EPC as LA and the property and assets held by EVRT; and
- ensuring meetings of EPC as LA are clearly distinct from meetings of EPC as sole trustee of EVRT, with separate agendas and minutes, and councillors are clear about their role in each type of meeting

Charity Commission guidance makes it clear that EPC as LA can transfer funds into the charity but must not take funds out of the charity to subsidise other council activities. There is a one-way door in the 'brick wall', allowing the transfer of funds from EPC as LA to EVRT.

Charity Commission Operational Guidance OG B56 C1 2. points out that one advantage of a local authority acting as sole trustee is:

- *often the local authority will be willing to subsidise the operation of the charity out of its own statutory funds:*
 - *either directly, by way of grant aid; or*
 - *indirectly by, for example:*
 - *meeting the cost of maintaining the charity's property; or*
 - *providing professional services free of charge.*

This means that the provision of funding by EPC as LA to EVRT, for example via the KGV Funding Agreement or grants from the Community Fund and Concurrent Functions Grant scheme, remains entirely legitimate without creating conflicts of interest for individual councillors.

4. Practical administrative and financial arrangements for EPC as sole trustee

A draft amended charity scheme for EVRT operating under the sole trustee model is attached, for discussion, in the Appendix.

Meetings of the Trustee

EPC must hold separate meetings of all councillors when acting as sole trustee rather than LA, in accordance with the provisions of the EVRT Charity Scheme for meetings of the Trustee. All councillors should be clear that EPC acting as the charity trustee acts as a corporate body. Individual councillors are not themselves charity trustees; it is the parish council which is the corporate charity trustee. Note that the Chairman and Vice-Chairman of EPC as LA are also the Chairman and Vice-Chairman of EPC as Trustee.

Matters which must be decided at meetings of the Trustee (which may be held online via Zoom or by email) include:

- The appointment of members of the committee to be known as the Executive Board (Board members will elect their own Chairman and Vice-Chairman).
- Approval of the Annual Return to the Charity Commission
- Approval of the EVRT budget for the next financial year
- Approval and signing all contracts, licences and any other legal agreements
- Signing off grant applications

- Creation of, and appointment of members to, any 'advisory committee' that may be required at the strategic level e.g. a committee for the KGV rebuild project
- Approval of a business plan for EVRT, and any other strategic policies that may be required
- Adoption of new or revised EVRT policies and procedures, including the terms of reference for the Executive Board
- Employment of EVRT staff, and approval of any change in their employment contracts, whether proposed as a result of appraisal, or otherwise. (EPC as sole trustee will not have a role in line-management, but EVRT staff will have the right to take employment grievances to EPC as trustee.)

It is anticipated that most of these matters will be recommended to the Trustee by the Executive Board or an advisory committee, so that the main role of councillors at meetings of the Trustee will be to scrutinise, amend if necessary, and make the formal decision of the Trustee.

Depending on the amount of business, meetings of the Trustee may be short meetings before or after EPC meetings or free-standing meetings on a separate date. There should be at least 3 ordinary meetings per year:

1. The Annual Meeting of the Trustee, to be held as soon as possible after the Annual Meeting of EPC. This meeting should include the following:
 - The appointment of members of the committee to be known as the Executive Board. The Board must have a minimum of 3 and a maximum of 10 members, including at least 2 councillors, and may include non-councillor volunteers. The quorum for decision making of the Board would be either 3 or 50% of the members of the Board, whichever is greater. EPC as Trustee should have a procedure in place to invite and facilitate non-councillor volunteers to become members of the Board, subject to some vetting as is done now for EPC-appointed managing trustees.
 - Review of EVRT policies and procedures and adoption of revised versions if necessary.
2. A meeting to agree the audited (or examined) accounts and the report of the trustee in the Annual Return to the Charity Commission, to be held in June of each year or as soon as possible thereafter. (The Annual Return can be submitted to the Charity Commission from the beginning of October, at the latest by 31st January in the following year.)
3. The EVRT budget meeting to agree the budget for the next financial year, based on the recommendation of the Executive Board.

The Trustee will also convene the EVRT Annual General Meeting, open to all inhabitants of the area of benefit, which should be held as soon as possible after meeting 2. The Trustee will present the accounts and the 'report of the trustee' to this meeting, and take questions and comments from residents.

Other occasional meetings of the Trustee may be necessary, for example to agree and sign significant contracts and licences, to authorise spending above the threshold which can be delegated to the Executive Board, to deal with HR matters for EVRT employees, and to agree strategic policies and business plans. Generally these matters could be included in the three ordinary meetings listed above, or in extra short meetings held just prior to or just after EPC meetings.

The Executive Board

The Executive Board will be a committee appointed by and reporting to the Trustee with delegated powers which are defined in clear terms of reference adopted by the Trustee. Members of the Board are not themselves trustees, so carry no personal liabilities for their volunteer role.

All members of the Board are entitled to vote and the quorum for decision making will be either 3 or 50% of the members of the Board, whichever is greater. There should be at least 2 councillor members, to ensure the Board remains aligned with the strategic direction set by EPC as the sole trustee. Members of the Board may elect a Chairman and Vice-Chairman.

The Executive Board will have delegated responsibility to:

- When requested, provide guidance to the KGV Manager as to action to be taken to resolve any problems at the KGV
- Operate within the expenditure budget authorised by the Trustee
- Make recommendations to the Trustee as to the annual budget
- Make recommendations to the Trustee as to the business plan, significant projects etc
- Make recommendations to the Trustee as to significant contracts and licences for user groups
- Make recommendations to the Trustee as to grant applications
- Provide line-management and carry out HR functions for KGV staff as authorised by the Trustee
- Create of advisory committees, and appoint members (councillors or volunteers) to them, e.g. for playground refurbishment, or environmental projects

The Board would normally meet quarterly, with additional meetings as needed.

Administrative support

Administrative tasks, including financial administration, can be split into two categories:

Governance

- Preparing papers, agendas and minutes for Trustee meetings
- Maintaining the Register of Interests
- Submission of statutory reports, including the Annual Return to Charity Commission once approved by the Trustee
- Advising on and ensuring compliance with relevant charity legislation
- Maintaining the Governance Calendar and ensuring that EVRT completes all governance responsibilities at the appropriate time

Administration

- Maintaining the Risk Register for the KGV and other land held by EVRT
- Oversight of financial administration, including submission of yearly accounts to the auditors, preparation of draft budgets and monitoring spending against budget (NB book-keeping is carried out by the KGV Manager)
- Drafting and review of EVRT policies and procedures
- Maintenance of records and archives

- Working with the KGV Manager to ensure timely implementation of Trust decisions
- Assisting with the preparation of licences and other contracts

It is envisaged that appropriate administrative support could be provided by a part-time 'EVRT Executive Officer', paid for within EVRT's existing budget.

5. Implications for workload of EPC Clerk and councillors

The aim would be to maintain the workload of the EPC Clerk at its current level, by employing administrative support for EVRT within its own budget.

It should be made clear that EPC as LA cannot accept complaints from the public or KGV users relating to EVRT so there is minimal additional burden on the EPC Clerk or councillors.

The Annual Governance and Accountability Return (AGAR) of EPC as LA will require an assertion as prescribed in the NALC Practitioners Guide (March 2021) set out below.

Assertion 9 — Trust Funds (local councils only)

Trust funds (including charitable). In our capacity as the sole managing trustee we discharged our accountability responsibilities for the fund(s)/assets, including financial reporting and, if required, independent examination or audit.

- 1.41. Where a local authority acts as a sole managing trustee for a trust or trusts, to warrant a positive response to this assertion the authority needs to have made sure that it has discharged all of its responsibilities with regard to the trust's finances. This needs to include financial reporting and, if required, independent examination or audit. This is notwithstanding the fact that the financial transactions of the trust do not form part of the authority's accounts and are therefore not included in the figures reported on Section 2 of its Annual Governance and Accountability Return (see paragraph 2.30 below).
- 1.42. Supporting information on trust funds can be found in Section 5.

Line 11 (of Accounting Statement)— Disclosure note re trust funds (local councils only)

- 2.30. This cell requires a local council only to answer 'yes' or 'no' to whether it acts as sole trustee for, and is responsible for managing, Trust funds or assets. The council needs to ensure that the accounting statements in Section 2 of the Annual Governance and Accountability Return do not include any Trust transactions or balances (see paragraph 1.41 above).

Parish councillors will be members of the corporate trustee, but they are not themselves charity trustees. There will be an expectation that they attend meetings of the Trustee, but may give apologies if necessary in the usual way, so the additional workload on the majority of councillors will be minimal unless they wish to do more. This is quite similar to the current workload for councillors as members of the custodian trustee.

It is anticipated that several councillors will want to be more closely involved in EVRT, since it is a significant asset for the Effingham community. Two or more councillors are needed to be appointed to the Executive Board, and there is scope for others to be appointed to advisory committees.

6. Transition arrangements

It will be necessary to have certain roles in place immediately from the start date of the new scheme until an Annual Meeting of the Trust can be held. It is suggested we keep the current members of the Board in place during that time, and organise an Annual Meeting as soon as possible so that additional / replacement appointments can be made:

Executive Board: Chris Hogger (Chairman), Paula Moss, Charles Thorne

There will be no change to the existing KGV staff (KGV Manager and Facilities Officer).

There will be no change to banking arrangements. Some change in bank signatories may be needed once a new Board is in place.

Terms of Reference for the Executive Board should be prepared in advance and agreed at an early meeting of the Trustee, so that delegation of powers to the Executive Board is clear. This could be done by a short meeting of the Trustee immediately before an EPC meeting.

Ideally, any EVRT policies and procedures which need revision for the sole trustee governance model should also be prepared in advance and adopted at the same early meeting of the Trustee.

It will take some time to appoint additional administrative support. In the meantime, the administrative tasks can be done by volunteers; Chris Hogger has volunteered to help, and other councillors may also be willing to look after some parts of this support until appropriate appointments are made.

7. References:

'Review of Governance Options For EVRT', EVRT document January 2022

'Charity Commission Operational Guidance' (OG) available from the Charity Commission (CC) at <http://ogs.charitycommission.gov.uk/>, which covers CC policy and practice based on charity law. The most relevant OGs are:

OG 38 – 'Corporate Trustees' <http://ogs.charitycommission.gov.uk/g038a001.aspx>

OG 56 – 'Local Authorities as Trustees' <http://ogs.charitycommission.gov.uk/g056a001.aspx>

OG 519 – 'Changes to Governing Documents' <http://ogs.charitycommission.gov.uk/g519a001.aspx>

'NALC Practitioners Guide', March 2021, available at <https://www.nalc.gov.uk/publications#practitioners-guide>

Appendix

Draft amended EVRT Charity Scheme

This is based on the existing EVRT Scheme dating from 2009 and revised in April 2018

THE CHARITY COMMISSION FOR ENGLAND AND WALES

Under the power given in the Charities Act 1993

Orders that from today, the

28 August 2009

this

SCHEME

will govern the charity

formerly known as

KING GEORGE'S FIELD AND HALL (305018)

and now to be known as

EFFINGHAM VILLAGE RECREATION TRUST (305018)

at

Effingham, Surrey

**SCHEME revised by
EFFINGHAM VILLAGE RECREATION TRUST
with effect from ???? 2022**

**Agreed at the meeting of managing trustees on ???? 2022
and by Effingham Parish Council on ???? 2022**



Authorised Officer

Sealing: 742/0910
Case No: C-238011-COE6

1

Definitions

In this scheme:

"the charity" means the charity identified at the beginning of this scheme.

"the area of benefit" means the Parish of Effingham and its immediate neighbourhood.

"the trustee" means Effingham Parish Council as the sole trustee of the charity acting under this scheme.

"councillor" means a member of Effingham Parish Council

ADMINISTRATION

1. Administration

The charity is to be administered by the trustee in accordance with this scheme. This scheme replaces the former trusts of the charity.

2. Name of the charity

The name of the charity is Effingham Village Recreation Trust.

OBJECT

3. Object of the charity

- (1) The object of the charity is, for the public benefit, to provide or assist in the provision, support and or maintenance of facilities for recreation and other leisure-time occupation for the inhabitants of the area of benefit, in particular through the provision of a village hall and recreation grounds.
- (2) The land numbered 1 in the schedule to this scheme is part of the national memorial to His Late Majesty King George V and must be retained for use as a public recreation ground and village hall under the name of King George's Field and King George's Hall.
- (3) The land numbered 2 and 3 in the schedule to this scheme must be retained for use for the object of the charity.

POWERS OF THE TRUSTEE

4. Powers of the trustee

In addition to any other powers which it has, the trustee may exercise the following powers in furtherance of the objects of the charity:

- (1) Power to make rules and regulations consistent with this scheme for the management of the charity. The rules may include the terms and conditions upon which the facilities provided by the charity may be used by persons or bodies other than the trustee and the sum (if any) to be paid for such use.
- (2) Power to delegate the performance of any act consistent with the rules and regulations made by the trustee, subject always to the authority of the trustee, to a committee consisting of up to 10 members, including at least 2 councillors together with up to 8 natural persons who are not councillors, where:
 - (a) Members of the committee must be appointed at a meeting of the trustee; and
 - (b) The committee may elect a chairman and a vice-chairman; and
 - (c) All members of the committee must act according to the best interest of the charity on all matters and will observe the same procedure for dealing with any conflicts of interest as that which is set out for councillors in clause 11 of this scheme.

The committee must promptly report their acts and proceedings to the trustee. The committee must not incur expenditure on behalf of the charity except in accordance with a budget previously agreed by the trustee.

From the date this scheme comes into effect until such time as members are appointed by an ordinary meeting of the trustee, the members of this committee will be Councillor Paula Moss, Councillor Charles Thorne and Dr Christopher Hogger.

- (3) Power to establish advisory committees and to make regulations setting out the constitution, roles and responsibilities of any such committee.

THE TRUSTEE

5. The trustee

Effingham Parish Council is the sole trustee of the charity.

6. Chairman and Vice-Chairman

- (1) The chairman and vice-chairman of Effingham Parish Council shall be the chairman and vice-chairman of the trustee.
- (2) The chairman, or the vice-chairman if the chairman is not present, will chair meetings of the trustee.
- (3) The councillors present at a meeting of the trustee must elect one of their number to chair the meeting if neither the chairman nor the vice-chairman is present, or if the offices of chairman and vice-chairman are vacant.

7. Secretary or clerk

The trustee may appoint a secretary or clerk to keep a proper record of meetings.

MEETINGS OF THE TRUSTEE

8. Meetings

Meetings of the trustee may be held in person or by electronic means.

9. Ordinary meetings

- (1) The trustee must hold at least 3 ordinary meetings in each 12 month period.
- (2) Ordinary meetings require at least 7 days' notice.
- (3) The chairman, or the vice-chairman, or any 2 councillors, may call an ordinary meeting at any time.

10 Special meetings

- (1) The chairman, or the vice-chairman, or any 2 councillors, may call a special meeting at any time.
- (2) Special meetings require at least 4 days' notice.
- (3) The notice calling a special meeting must include details of the business to be transacted at the meeting.
- (4) A special meeting may, but need not, be held immediately before or after an ordinary meeting.

11. Conflicts of Interest

- (1) At or before the first meeting of the trustee after the Annual Meeting of Effingham Parish Council in each year, all councillors must declare any interest that he or she has by reason of:
 - (a) membership of any organisation which holds a licence with the charity or a lease of the charity's premises
 - (b) management responsibility in any organisation which holds a licence with the charity or a lease of the charity's premises
 - (c) pecuniary interest in any organisation which holds a licence with the charity or a lease of the charity's premises or a business contract with the charity.
- (2) The declarations of interest shall be entered into a register of interests.
- (3) At any meeting of the trustee councillors must declare any new interest that he or she has which has not previously been declared, and this must be added to the register of interests.
- (4) If there is a matter for discussion at a meeting of the trustee which relates to a registered interest held by a councillor and declared under clauses (1) (b) or (1) (c) above, or some other personal interest which could give rise to a conflict with his or her duty to act solely in the best interest of the charity on the matter, then the councillor must absent themselves from discussion on that matter and must not vote or be counted as part of the quorum in any decision of the trustee on the matter.

12. Quorum

No business may be transacted at a meeting unless one-third of the whole number of councillors are present and in no case shall the quorum of a meeting be less than 3.

13. Voting

- (1) Every matter must be decided by majority decision of the councillors present and voting at a duly convened meeting of the trustee.
- (2) The chairman of the meeting may cast a second or casting vote only if there is a tied vote.

14. Record of meetings

The trustee must keep a proper record of all meetings of the trustee.

ANNUAL GENERAL MEETING

15. Annual general meeting

- (1) There must be an annual general meeting of the charity in June of each year, or as soon as possible thereafter, called by the trustee.
- (2) All inhabitants of the area of benefit of 18 years and upward must be allowed to attend and speak at the meeting. The trustee may allow inhabitants who are under 18 to attend the meeting, and to speak at the chairman's discretion.
- (3) Public notice of the meeting must be given in the area of benefit at least 14 days before the meeting.
- (5) The chairman of the trustee, or the vice-chairman if the chairman is not present, will chair the annual general meeting. The councillors present must elect one of their number to chair the meeting if neither the chairman nor the vice-chairman is present.
- (6) At the meeting the trustee must present the report of the trustee and the accounts for the last financial year.

CHARITY PROPERTY

16. Use of income and capital

- (1) The trustee must firstly apply:
 - (a) the charity's income; and
 - (b) if the trustee thinks fit, expendable endowment; and
 - (c) when the expenditure can properly be charged to it, its permanent endowment

in meeting the proper costs of administering the charity and of managing its assets (including the repair or replacement and insurance of its buildings).
- (2) After payment of these costs, the trustee must apply the remaining income in furthering the object of the charity.
- (3) The trustee may also apply for the object of the charity:
 - (a) expendable endowment; and
 - (b) permanent endowment, but only on such terms for the replacement of the amount spent as the Commission may approve or direct in advance.

GENERAL PROVISION

17. Questions relating to the Scheme

The Commission may decide any question put to it concerning:

- (1) the interpretation of this scheme; or
- (2) the propriety or validity of anything done or intended to be done under it.

SCHEDULE

1. Land with the buildings thereon known as King George's Field and King George Hall in Effingham registered at HM Land Registry under title number ~~SY741434~~ SY747230



R Mitchell

2. Land with the building thereon known as the Cricket Ground registered at HM Land Registry under title number SY139050

That part of the

3. Land in Effingham registered at HM Land Registry under title number ~~SY375391~~ SY139050

from which the land now registered at HM LAND Registry under title number SY375391 was taken.



R Mitchell