

ENFIELD ISLAND VILLAGE TRUST

EGM, 14 JULY 2016

Proposed changes to the Articles of Association - an explanatory note

1 Background

1.1 In September 2015, following the opening of a formal inquiry into Enfield Island Village Trust, the Charity Commission appointed Paul Ridout and Con Alexander as interim managers of the Enfield Island Village Trust. The Commission's principal concerns were about:

1.1.1 whether there were any validly elected trustees,

1.1.2 conflicts of interest in the appointment of the Trust's managing agent,

1.1.3 risk to charity funds, and

1.1.4 whether decisions affecting the Trust's assets had been taken properly and in the best interests of the Trust.

1.2 The Interim Managers have looked at what changes can be made to the Trust's Articles of Association to make it less likely that these sorts of concerns will arise in the future. We have taken account of the views of members who responded to our consultation earlier this year.

2 What the changes are intended to achieve

2.1 The main aims of the amendments that are proposed are:

2.1.1 to give members an opportunity to elect a fresh board of Trustees to take over the management of the Trust;

2.1.2 to provide the Trust with a robust and transparent set of rules to govern their decisions;

2.1.3 to ensure that decisions of the Trustees cannot be influenced by any prospect of personal gain from the Trust;

2.1.4 to create a board of Trustees that draws on a range of expertise and that can effectively represent the interests of all inhabitants of the estate.

2.2 Minor changes to the Articles have been proposed, including a provision for Trustees to take office at the end of the meeting at which they were elected or at which their election was announced, as well as a number of minor changes that are intended to make the Articles clearer and the restructuring of the old Memorandum and Articles into a single set of Articles in accordance with the Companies Act 2006.

3 A new board of Trustees

3.1 In view of the Commission's concerns about the decisions taken on behalf of the Trust and about the way in which elections were conducted, the Interim managers believe that the interests of the Trust and of its members and wider beneficiaries will be best served by having a fresh start.

3.2 This can only happen if the proposed new Articles are adopted. If members do not vote for the new Articles to be adopted, the management of the Trust would in due course (subject

to the Commission being satisfied that the Trust's governance was on a sufficiently robust footing to justify discharging the Interim Managers) be handed back to the individuals who were elected at the 2015 AGM (apart from any who have resigned in the meantime).

3.3 However, if members vote to adopt the new Articles are adopted at the EGM, the board of Trustees will be reconstituted as follows:

3.3.1 an election will be held for five vacancies on the Trust's board; and

3.3.2 Enfield Borough Council and Christian Action Housing Association¹ will each be entitled to nominate a Trustee.

3.4 Once elected/nominated, the Trustees will be able to appoint two further Trustees from among the residents of the estate, including tenants as well as homeowners, and will also be able to bring specific expertise and experience onto the board by co-opting up to two further people.

4 **The election process**

4.1 The Interim Managers are therefore inviting members to submit nominations for election as Trustees at the EGM. Please note that the election will only take place if the members pass the resolution to adopt the new Articles.

4.2 The Interim Managers will have a power under the new Articles to determine how the election is conducted, including any criteria about who may be elected at this EGM.

4.3 The new Articles already provide that only members of the Trust may be elected, and that at least 3 of the 5 elected Trustees must be permanent residents of the estate, meaning that they must be on the electoral roll with an address on the estate.

4.4 The draft Articles also provide that a person may only be appointed or elected as a Trustee if he or she is a fit and proper person to be involved in the management of a charity. The "fit and proper person" requirement is used in tax legislation as one of the ways in which charities are protected from abuse. A charity will not be recognised as eligible for charity tax reliefs if the people who manage it include any who are not considered suitable for various reasons.

4.5 For details of how HM Revenue and Customs will apply this test, please see the guidance at www.gov.uk/government/publications/charities-fit-and-proper-persons-test/guidance-on-the-fit-and-proper-persons-test.

4.6 The Interim Managers have also decided that no person shall be elected as a Trustee at this EGM if:

4.6.1 He or she, or any person or company connected with him or her, has at any time in the last 5 years been a party to a contract or other arrangement with the Trust under which he or she, or the connected person or company, received or was entitled to receive any payment.

A person is "connected" with a candidate if he or she is:

(a) a spouse or civil partner, or

¹ The Interim Managers offered Enfield Borough Council, Notting Hill Housing, London & Quadrant, Christian Action Housing Association and RSA Island Village Limited an opportunity to appoint a Trustee each.

- (b) any immediate relative who is financially dependent on him or her, or on whom he or she is financially dependent, or
- (c) a spouse or civil partner of anyone at (b) above.

"Spouse or civil partner" includes any other person in a relationship with a candidate which may reasonably be regarded as equivalent to that of a spouse or civil partner (as determined by the Interim Managers at their discretion).

A company is "connected" with a candidate if the candidate, or any person connected with him or her, is a paid director or employee of the company or holds more than 1% of the issued share capital of the company.

- 4.6.2 He or she, or any person or company connected with him or her, is a claimant in any legal proceedings against the Trust or has taken any steps preparatory to commencing such proceedings, including the service of any pre-action letter or notice.
- 4.6.3 He or she, or any person connected with him or her, is or may subsequently be the subject of legal proceedings brought against them by or on behalf of the Trust in respect of breach of trust, breach of duty or any other act or omission which has or may have given rise to any loss or damage for the Trust.
- 4.6.4 His or her rentcharge account is in arrears (including the current year's rentcharge).
- 4.7 Any question in relation to the application of the criteria set out above to any candidate for election as a Trustee shall be finally and conclusively determined by the Interim Managers in the exercise of their discretion.

5 **How to nominate someone for election**

- 5.1 If you wish to nominate a member of the Trust for election to the board of Trustees, please send your nomination to the Interim Managers using the form attached, which must also be signed by the candidate. A member may only nominate one candidate and if more than one nomination is received from the same member, only the first valid nomination will be put forward for election (unless that first nomination is later withdrawn).
- 5.2 Nomination forms must be received by the Trust no later than **5pm on 7 July 2016**. As soon as possible following this deadline, the Trust will publish on its website at www.eiv.org.uk the names of the eligible candidates who have been nominated, including any brief information about the candidate that has been provided on the nomination form.
- 5.3 Nominations may be withdrawn at any time up to the EGM, either by the person who nominated the candidate or by the candidate him or herself. Withdrawals should be made in writing to the Trust at its registered office.
- 5.4 If no more than 5 eligible candidates are nominated, the election will still proceed (subject to the adoption of new Articles).

6 **What happens on the day**

- 6.1 All members of the Trust may attend the meeting. Anyone else who has been validly appointed as a proxy may also be admitted to the meeting.
- 6.2 All those attending will be required to register on arrival and may be asked to provide identification and any other information that may reasonably be required to show their entitlement to attend and vote at the meeting.

- 6.3 Where a member is not an individual (for example where a property is owned by a housing association or a company) the member's vote may be cast by an authorised representative. If you intend to come to the EGM on behalf of such a member, please make sure that the member has notified us in writing that you are authorised to attend and vote on the member's behalf.
- 6.4 One set of ballot papers will be provided to each member who attends and is entitled to vote. Each set of ballot papers will consist of:
- 6.4.1 a voting card for the special resolution to amend the Articles; and
- 6.4.2 a voting card for the election of Trustees.
- 6.5 The meeting will be chaired by one or both of the Interim Managers, who will speak briefly about the Trust's affairs and about the work they have been doing for the Trust since their appointment in September 2015. The chair(s) may make such provision for questions and discussion at the general meeting as he thinks are reasonable.
- 6.6 The Chairman of the meeting will then ask the members present (including proxies) to vote on the special resolution to adopt new Articles of Association. A majority of 75% of those present and voting is required for the resolution to be passed.
- 6.7 The Chairman may call for votes to be cast by way of a show of hands, in which case only those people at the meeting who are members (and not just proxies) may vote by raising their hands.
- 6.8 The Chairman may, either as an alternative to a show of hands or after a show of hands, call for a poll. In this case, each member present in person or by proxy may vote, and the voting cards will be collected, checked and counted.
- 6.9 If the special resolution is not passed, the meeting will close.
- 6.10 If the special resolution is passed, the Chairman will then invite members to cast their votes in the election of Trustees by completing the second voting card. This voting card will be completed by marking the member's preferred candidate with an X. These voting cards will then be collected, checked and counted. The five candidates with the most votes will be elected.
- 6.11 While the Interim Managers remain in office, the Trustees will not have any powers or functions in relation to the Trust but it is hoped that, with a new Board in place, the Charity Commission will consider discharging the Interim Managers and thus handing control of the Trust to its elected Trustees.