

EAST HERTS COUNCIL

EXECUTIVE - 6 FEBRUARY 2018

REPORT BY EXECUTIVE MEMBER FOR ECONOMIC DEVELOPMENT  
AND DEPUTY LEADER

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SCOTTS GROTTO

WARD(S) AFFECTED:            WARE CHADWELL

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**Purpose/Summary of Report**

- To recommend an independent organisation is set up by the council to own and manage Scotts Grotto

**RECOMMENDATIONS FOR EXECUTIVE: that:**

<b>(A)</b>	<b>a Charitable Incorporated Organisation is set up to own and manage Scott's Grotto, with 4 Trustees initially (2 nominated from East Herts Council appointed by the Leader and 2 nominated from the Ware Society);</b>
<b>(B)</b>	<b>delegated authority is given to the Chief Executive in consultation with the Executive Member for Economic Development to transfer freehold ownership of Scotts Grotto to the Charitable Incorporate Organisation on 1st September 2018 for a nominal sum of £1, subject to the following conditions being met:</b> <ul style="list-style-type: none"><li>• <b>Charitable Incorporate Organisation being incorporated</b></li><li>• <b>Trustees appointed</b></li><li>• <b>Business plan produced;</b></li></ul>
<b>(C)</b>	<b>subject to (B) above, freehold ownership of Scott's Grotto is transferred with current covenants regarding</b>

	<b>building, drainage, utility rights and fence maintenance as well as an additional restriction that the Grotto and land cannot be disposed of in future without the Council's prior consent; and</b>
<b>(D)</b>	<b>a hybrid model of financing be adopted, entailing:</b> <ul style="list-style-type: none"> <li>• <b>a one off lump sum of £23,000 revenue from the New Homes Bonus priority spend reserve be provided on September 1<sup>st</sup> 2018 to the Charitable Incorporated Organisation; and</b></li> <li>• <b>a further £18,275 revenue from the New Homes Bonus priority spend reserve be allocated for match funding improvements to the Grotto over a 5 year period.</b></li> </ul>

## 1.0 Background

1.1 Over the past 18 months the Council, in conjunction with the Ware Society, has been exploring the possibility of setting up a trust (or equivalent independent organisation) to own and manage Scott's Grotto. The business benefits of this approach would be:

- increased community involvement in local heritage
- stimulation of new uses and attraction of new audiences
- access to grants to develop the asset (which the council cannot access)
- removal of on-going revenue costs for the council
- reduced risk of long term capital liability to the council
- an independently run and financially sustainable organisation securing the long term future of the Grotto

1.2 The approach has been discussed at the Council's Leadership Team (February 2016, March 2017) and Performance and Audit Governance (PAG) Committee (23 May 2017) and various proposals for how the trust should operate in practice have

been discussed. The previous report to PAG can be found here for reference:

<http://democracy.eastherts.gov.uk/ieListDocuments.aspx?CId=516&MId=3174&Ver=4&J=3>

- 1.3 Following PAG, the approach was further discussed with a group of interested councillors who have experience of running similar trusts (Cllrs Oldridge, Wyllie, Woodward) as well the Council's historic buildings champion (Councillor Peter Ruffles). Alongside regular liaison with the Ware Society Chairman, Vice Chairman and Secretary the authors of this report met with all members of the Society on 29<sup>th</sup> November 2017. They support the proposal for community ownership of Scott's Grotto through a charitable model.

## Report

### 2.0 Options Appraisal

2.1 The objectives for any independent organisation would be to:

- To continue the advancement of Ware's heritage by protecting the grotto, the summerhouse and the surrounding gardens; and by continuing to keep the Grotto open to the public
- To continue the advancement of the Grotto for public benefit through education, community involvement and tourism
- To ensure the budget is managed effectively and sustainably, and to ensure that the Grotto has funding for the short, medium and long-term
- To fulfil legal duties as a charitable trust

2.2 However there are a number of different trust and company forms which could be set up. Some of the most common can be found below:

## Voluntary Organisations

- Financial liability for the trustees, as it is an unincorporated organisation, is a concern as the liability cannot be limited and liability lies in the hands of the trustees.
- As a result of the above, trustees enter into contracts and hold property in their own name on behalf of the charity, rather than in the name of the charity itself.
- Community engagement is high due to simple models of governance. This also allows ease of administration. It is run on a volunteer basis which overtly encourages local participation.
- Due to its charitable status, it is eligible for funding and reliefs.

## Trusts

- Trusts follow on a similar line, in terms of their liability, to the above due to their unincorporated structure. Financial liability cannot be limited, and assets and contracts are held 'on trust' by the trustees for the charity.
- Charities require a minimum income of £5,000 per annum, which could be difficult for the grotto to achieve. This may limit the grotto's ability to maintain its charitable status and its ability to obtain charitable reliefs and funding.
- It should be noted that under the trust model you can vest charity land in an official custodian for free, reducing the risk to trustees. However, contracts still have to be entered into in the name of the trustees.
- Community engagement would likely be high due to the need to encourage volunteers or obtain volunteers to deliver local projects.

## Community Interest Company (CIC)

- Limits the liability of the trustees to a nominal sum which keeps financial liability risk to a minimum.

- Enters into contracts in the company's own name as it exists as a separate legal entity outside of its membership.
- Holds property in a statutory asset lock (i.e. means it is unable to dispose of the asset)
- CICs have the potential to obtain grants due to its 'not-for-profit' status, but the model is often used for social enterprises in which they generate *profit* for social good. This might limit community engagement, where decisions are made at the discretion of the directors.
- It does not have charitable status and therefore is liable to pay corporation tax like other limited companies. It may have to pay Capital Gains Tax, Stamp Duty, Land Tax and VAT. This limits its financial sustainability.
- Reports to Companies House which require fees, and it abides by Company legislation. This is out of keeping with the charitable aim of the other models.

#### Charitable Incorporated Organisation (CIO)

- Exists as a separate entity and can enter into contractual agreements and hold freehold land due to its incorporated structure.
- Liability can be limited by a fixed sum or no sum at all which reduces the financial risk.
- There is no minimum income, and if the income is less than £2,500 no independent examination is required. This allows flexibility over the income the grotto receives whilst maintaining a charitable status.
- Due to its charitable status it can benefit from financial relief that charities are eligible for, including opportunities for gift aid.
- There is a single tier trustee model in the foundation model which allows for ease of governance, and encourages local engagement.
- In terms of borrowing money, the members have to give a personal guarantee rather than in the organisation's own name. This increases the liability somewhat, but it

is hoped the grotto would have access to grants and would not have need of loans.

2.3 The following options appraisal suggests a Charitable Incorporated Organisation (CIO) is the best approach. This is based on consideration of 5 different criteria (also found below), and using a 1-5 scoring mechanism where a higher score means the model is better suited to the benefits outlined in (1.1).

Option	Liability of directors/trustees	Financial sustainability	Community Led	Enter into contracts	Hold property	Total
Community Interest Company	5	3	2	5	4	19
Trust	1	4	4	1	3	13
Charitable Incorporated Organisation	5	4	4	5	4	22
Voluntary or Unincorporated Company	1	4	5	1	1	12

#### Liability of directors/trustees

- The financial liability of the Grotto is high due to the capital work that will be required over time. Due to this financial risk, the liability of the trustees should be kept to a minimal amount.
- Limited liability ensures we can attract trustees who are willing to manage the grotto. Lower liability therefore means a higher score.
- Liability can be limited in an incorporated model, but not in an unincorporated model. Incorporated models exist as a separate legal entity, whereas in unincorporated models the charity exists in the name of the trustees.

#### Entering into contracts/holding property

- Incorporated models (CIOs or CICs) are recognised as a legal entity in their own right and therefore can hold property and contracts in the name of the organisation.

- Unincorporated organisations (Voluntary/Trust) are represented by their members, and therefore assets or contracts are held in the names of the trustees. The trustees essentially hold the assets 'on trust' for the charity.
- A trust, unlike a voluntary organisation, can vest charity land in an official custodian for free. This is a potential option to moving ownership away from the trustees whilst still allowing them to manage it on a day to day basis.
- This has an impact on the operational level of the grotto, in terms of being able to employ specialist contactors to deliver capital maintenance works. The ability to enter into contracts and hold property therefore means a higher score.

#### Financial Sustainability

- Access to grant funding ensures the long-term financial sustainability of the grotto. Not for profit organisations and charitable organisations are eligible for grant funding.
- Successful application for heritage applications is typically dependent on the project proposed. The Resilient Heritage Lottery fund provides capital grants, but typically for heritage assets are at risk. There is a concern if the Grotto is too well maintained on transfer that it will not be able to achieve a high grant funding.
- Charitable status ensures certain reliefs, such as business rate reliefs, tax reliefs etc. Under a CIO model the grotto will qualify for 80% mandatory relief and is likely to also meet the criteria for an additional 20% rate relief. The ability to access grant funding and obtain reliefs therefore leads to a higher score.

#### Local community engagement

- Encouraging local ownership and local involvement is important in increasing local engagement and local contributions.
- This will also tie in with grant applications, where projects could be proposed which encourage local participation and involvement.
- Voluntary organisations and trusts offer the greatest potential for community engagement through a simple model of

governance through single tier structures. Such models therefore lead to a higher score.

- 2.4 Taking account of the above optional appraisal, the CIO is recommended to Executive as the best option. This is based on the fact that it maintains the charitable status that unincorporated associations offer but has a legal personality and limited liability of the incorporated model, offering the benefits of a company structure but with much lower administration costs. The target market for the CIO is charities with an annual income between £10,000- £500,000, although also appeals to charities below £10,000 dependent of whether the simplicity of the unincorporated model appeals. This, along with the highest score from the options appraisal, indicates that this is the most suited model for the grotto going forwards.
- 2.5 Following discussions referred to in (1.3), it is suggested that the Grotto has core trustees in the form of two members nominated from the Ware Society, and two members nominated from East Herts Council. The constitution of the CIO would therefore reflect this composition. In the case of the Ware Society members will be agreed through the organisation's AGM and in the case of East Herts Council members will be agreed by the Leader. It is the prerogative of both organisations to determine who is based placed to become a trustee through their respective processes.
- 2.6 This core membership can then be grown as the trustees see fit. It may be that additional trustees are needed with specific skills/ experience to ensure the trust is effective. This could be extended to interested members of the public as well as specific organisations. The Charitable Committee suggests that the most effective recruitment of trustees is where a skills audit is undertaken and the existing trustees draw up a 'job description' of the skills required, conducting informal 'interviews' in order to ensure effective scrutiny of the candidate. Word of mouth is the most popular form of



recruitment, but members could also make use of networking through Herts Preservation Trust, English Heritage and others in order to widen the market. Up to twelve members in total could be appointed, depending on needs.

- 2.7 The CIO has a constitution as the governing document which can follow the model foundation CIO constitution (see ERP A).

### Financial Model

- 3.1 A number of financial models were noted at scrutiny and officers were tasked with working up proposals in more details, preferably looking at a solution which incentivises the trust to seek further funding but also where the initial set up costs are sufficient to avoid failure. It is in the Council's interest to ensure the trust is financially sustainable and a balance needs to be struck between this and managing budget challenges.
- 3.2 The Council's overriding objective is to realise the benefits outlined in (1.1). The expectation is that the trust would be financially independent after 5 years and thereafter will receive no regular funding from the council.
- 3.3 Options include:
- One-off lump sum to cover 5 years of revenue costs and capital improvements
  - Annual grant for 5 years covering all revenue and estimated capital costs
  - Hybrid model with initial lump sum to cover 5 years of revenue costs and access to match funding for capital improvements
- 3.4 Using the same 1-5 scoring approach as in (2.3) an options appraisal on each of these models can be found below, using 3 different criteria:

Option	Up front risk to the council	Level of incentivisation	Independence from the council	Total
One-off lump sum	1	1	5	7
Annual grant for 5 years	5	3	1	9
Hybrid model with initial lump sum to cover 5 years	3	5	3	11

### Up Front risk to the Council

- This is based on the money up front the council would have to initially pay to the Grotto. The higher the initial outlay from the council the lower the score.
- A larger initial sum requires good financial management of the grotto. If the money is mismanaged, the council has gifted a large sum with a result of the grotto returning to the council at a high cost.
- Whilst a one-off grant runs the above risk, the annual grant and hybrid model reduces the upfront cost and risk of spending all of the funds at once.

### Level of Incentivisation

- This is based on the need to encourage the grotto to become self-sufficient financially and raise money through local fundraising and through grants. A lower score indicates a lower level of incentivisation and vice-versa.
- The hybrid model offers the highest level of incentivisation through further funding only being provided when local fundraising has been raised.
- The annual grant offers some level of incentivisation by encouraging the grotto to search for further funding due to the smaller initial costs. However, the annual grant will be received despite what fundraising will be achieved which reduces the level of incentivisation.

- A one-off lump sum does not encourage financial sustainability.

#### Independence from the council

- A key objective is to ensure the organisation running the grotto is self-sufficient after 5 years. A financial model that encourages less dependence on the council means a higher score.
- The one-off lump sum offers the greatest independence for the grotto from the council, as the grotto would be gifted with the suggested sum and therefore would be financially independent immediately.
- The annual grant runs a risk of presenting the council that they are cutting funding for a local organisation, when it reaches the end of the five year annual grants.
- The hybrid model does not offer the grotto immediate independence, however the funding that is being accessed is match funding and therefore reduces the risk of the above.

3.5 The hybrid approach is recommended to Executive as the best option.

#### 4.0 Costs to the council

4.1 In order to understand how a hybrid model of funding works it is necessary to understand the cost of doing nothing. The hybrid model is composed of an initial lump sum equivalent to 5 years' worth of annual revenue costs to the council for running the Grotto. This entails buildings insurance, basic maintenance of grounds, tourism projects and the warden salary (around £4,500 per year in total and £23,000 over 5 years). This makes some basic assumptions around increases in warden salary pay and insurance costs over the 5 year period. See table 1 for details. Please note fees and charges consists of donations to the Grotto from visitors (usually £1 per person). However under informal agreement the Ware Society tend to retain any income from this to cover the running of the Grotto website and costs of producing the

Grotto leaflet. There is an expectation that a trust would increase income through running events, local fundraising, and encouraging local donations.

- 4.2 The amount available to access via future match funding arrangements has been based on costs of future capital improvements. The costs of these were identified through a capital condition survey condition undertaken in late 2015. The headline future costs were identified as follows:

<b>Timescale for repairs</b>	<b>Amount (£)</b>
Urgent repairs	£ 2,000
Within two years	£ 9,650
Within five years	£ 18,400
After five years	£ 2,200
Desirable (ie extras)	£ 6,500
<b>Total</b>	<b>£ 38,750</b>

- 4.3 In addition to this, the fence bordering the Grotto is in a significant state of disrepair. A quote from the Council's grounds maintenance contractor indicates the cost of replacement would be £13,500 (maximum).
- 4.4 This puts the total estimated costs of maintaining the Grotto over the next 5 years at £43,550. This figure is reached by combining the cost of the fence with "urgent repairs", "within two years" and "within five years" as outlined in (4.2). Combining this with 5 year's of revenue costs (see (4.1)) provides a total revenue cost of £66,650. Essentially this would be the cost to the council of maintaining the Grotto if we do not pursue alternative arrangements (ie. the cost of doing nothing between 2018/19 – 2022/23):

Table 1

	2016/17 Outturn	2017/18 Budget	FORECAST - DOING NOTHING					Total cost over 5 years
			2018/19	2019/20	2020/21	2021/22	2022/23	
			£	£	£	£	£	
Building Insurance	930	980	1000	1025	1050	1075	1100	
Maintenance of Grounds	1200	1200	1200	1200	1200	1200	1200	
Tourism Partnership Projects	1295	1100	1100	1100	1100	1100	1100	
Warden salary	1250	1300	1300	1325	1350	1375	1400	
Fees & Charges	0	-100	-100	-100	-100	-100	-100	
<b>Total (on-going costs)</b>	4675	4480	4500	4550	4600	4650	4700	23000
Repairs	0	0	13500	15025	0	15025	0	43550
<b>Total (on-going and repair costs)</b>	4675	4480	18000	19575	4600	19675	4700	66550

*\*please note this assumes repair costs fall 50% in 2019/20 and 50% in 2020/21*

4.5 Based on the above the hybrid model would entail the following (see table 2 for details):

- lump sum of 5 years' worth of on-going costs (£23,000)
- Council undertakes fence repair work before the trust is set up (£13,500)
- Council makes a further £18,275 available for match funding of repair work. This represents 50% of the estimated costs in the capital condition survey (including "desirables" but not including "after five years").

Table 2: (please note it is assumed that match funding is accessed in years 2019/20 and 2021/22)

	2016/17 Outturn	2017/18 Budget	FORECAST - SET UP A CIO					Total cost over 5 years
			2018/19	2019/20	2020/21	2021/22	2022/23	
			£	£	£	£	£	
Building Insurance	930	980	0	0	0	0	0	
Maintenance of Grounds	1200	1200	0	0	0	0	0	
Tourism Partnership Projects	1295	1100	0	0	0	0	0	
Warden salary	1250	1300	0	0	0	0	0	
Fees & Charges	0	-100	0	0	0	0	0	
One-off payment to CIO	0	0	23000	0	0	0	0	
<b>Total (on-going costs)</b>	4675	4480	23000	0	0	0	0	23000
Repairs	0	0	13500	0	0	0	0	13500
Match-funding pot for CIO	0	0	0	9138	0	9138	0	18276
<b>Total (on-going and repair costs)</b>	4675	4480	36500	9138	0	9138	0	<b>54776</b>

4.6 Thus, the proposal to set up a separate organisation to run the Grotto is likely to cost in the region of £55,000 over the next 5 years, compared to a cost of £66,550 of doing nothing. After 5 years, the on-going cost to the council is expected to be zero.

4.7 It should be noted that repair costs for Scott's Grotto are not captured in the council's budget however as the landlord these would need to be picked up at some point. If not there is a risk that the Grotto is eventually closed due to being a state of disrepair. The match funding arrangements will incentivise the CIO to raise money through grants or other fundraising techniques, and the Council will match fund the money up to a certain maximum amount. It should be made clear that once the bid funding has been used (up to a further £18,275 within five years) there will be no further funding. After five years, no matter the sum of money that is remaining, the bid money will cease to exist. By this point, it is thought the Grotto should be self-sufficient after the five year period and EHC can offer no on-going financial support.

## 5.0 Transition to a CIO and suggested timeline

5.1 After a CIO has been incorporated and the initial 4 trustees appointed, the organisation will still need on-going support before it can be fully operational and independent. This support will be provided by the Communications, Strategy and Policy service for 12 months, alongside other relevant officers. Key pieces of work include:

- Recruitment of additional trustees through a communications campaign
- Training/ support for trustees on skills gaps (eg. Grant applications, budget management)
- Support for producing a 5 year business plan and framework for management of annual accounts (including identification of grant funds and an events calendar)
- Support for setting up insurance and other operational matters such as grounds maintenance contracts

5.2 In terms of operational management of the Grotto, this will continue to be provided by the Ware Society as per current arrangements. The CIO will review this arrangement as required.

5.3 The timeline for implementation is as follows:

<b>Date</b>	<b>Actions to be Completed</b>
<b>February 2018</b>	Recommendation to Executive to set up a CIO and agree funding
<b>March 2018</b>	Core trustees nominated by East Herts Council and Ware Society identified
<b>April 2018</b>	CIO Incorporated
<b>April-June 2018</b>	Recruitment Campaign of additional trustees, identified through skills audit Public communications/ public consultation
<b>June 2018</b>	Agree draft 5 year business plan for CIO
<b>July 2018</b>	Interview any potential trustees to ensure appropriate scrutiny. Appointment of trustees

<b>August 2018</b>	East Herts employees to arrange monthly meetings (for twelve months) with trustees to ensure appropriate skills e.g. grant applications.
<b>September 2018</b>	East Herts to set match funding criteria for trust to apply for. Set out terms and conditions of grant funding. Fixed term contract for Scott's Grotto warden to cease Ownership of Scotts Grotto transferred to CIO Lump sum of £23,000 provided to CIO

## 6.0 Implications/Consultations

6.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

### Background papers

None

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