

East Herts Council Report

Overview and Scrutiny Committee

Date of meeting: Tuesday 9 June 2026

Report by: Councillor Alex Daar – Executive Member for Communities

Report title: Emerging Proposals to Establish an Arts-focused Charity

Ward(s) affected: All

Summary

- Members of the Overview and Scrutiny Committee are invited to review and input to emerging plans to establish an arts-focused charity that would enable, fund and support delivery of arts and cultural activities primarily within the boundaries of the current district of East Hertfordshire, though potentially beyond this area following local government reorganisation.

RECOMMENDATION FOR OVERVIEW AND SCRUTINY COMMITTEE:

A) Members Review and provide feedback to the Executive Member for Communities on the emerging proposals to establish an arts-focused charity to enable arts and cultural endeavours primarily within the boundary of the current district of East Hertfordshire.

1.0 Proposal

1.1 Proposals are being drawn up to establish an arts-focused charity that would enable, fund and support delivery of arts and cultural activities primarily within the boundaries of the current district of East Hertfordshire, though potentially beyond this area following local government reorganisation. External legal advice has been sought on how best to do this. Members of the Overview and Scrutiny Committee are now invited to offer their views and insights at this early stage of plan development.

2.0 Background

2.1 East Herts Council launched its Cultural Strategy in 2021. Although it was originally envisaged that the strategy would run until 2025, given the local government reorganisation (LGR) timetable arguably mitigates against updating council's strategies which remain highly relevant, it is felt the 2021-2025 is still an important reference document. The strategy recognises that arts and cultural activities contribute to tangible gains in health and wellbeing outcomes, economic resilience and environmental sustainability. The Cultural Strategy, when coupled with the council's current vision and corporate priorities, demonstrates the significance the council places on the arts.

2.2 As a practical demonstration of the council's focus on expanding local engagement in arts and cultural activities, in 2024 the council used UK Shared Prosperity Fund (UKSPF) resources to run its first arts showcase event, called Arts in East Herts. This was repeated in 2025 using monies from the council's second UKSPF allocation. The events, which both ran over the months of September and October, achieved substantial levels of engagement as shown the table below.

	2024	2025
Arts sessions delivered	200	298
Members of the public taking part	5,406	4,225
<i>Of whom were new to arts activities</i>	<i>1,732</i>	<i>1,684</i>
Volunteers supporting the delivery	213	198

2.3 Of note, unlike some council-led initiatives, Arts in East Herts was not delivered primarily in the district's five main towns. On the contrary, there were artists setting up in village church halls, opening their village studios to run workshops and running free sessions in community halls throughout the district.

2.4 The council's appetite to see the cultural offer diversified in the district is further evidenced by donation-led activity by BEAM, the council-owned, redesigned Hertford Theatre, focused beyond their Hertford base.

2.5 With the government's UKSPF programme having now ended and the council continuing to face financial pressures, the Executive Member for Communities has asked officers to identify

and explore a suitable way to build on the track record of arts engagement fostered by Arts in East Herts and BEAM's outreach remit without reliance of council funding.

3.0 Reasons

3.1 Officers from BEAM and the Communities directorate have identified that support for arts and cultural activities through a charitable entity could have significant benefits over the council continuing to try to do this. Notably an arts-focused charity:

- could enhance revenue income for charitable uses through access to gift aid donations, something the council can't utilise. For example, BEAM's current passive fundraising (that is, money raised without constant direct requests, campaigns or proactive officer involvement) totals around £10,000 a year. The ability to utilise gift aid would mean that 25% tax could be reclaimed on this amount, thus in this example, if BEAM's fundraising was via a charity, the £10,000 would be boosted by another £2,500. These donations sit outside of the revenue stream to the council and thus if the charity were to benefit from such donations in the future this would not deprive the council of a revenue income stream it currently enjoys
- would be able to bid for a far wider range of external funding than can the council. For example, certain Arts Council and Lottery funding streams are only available to charities or favour non-local authority bidders
- may be better placed to access more local grant-making bodies such as the Hertfordshire Community Foundation, Stansted Airport's Community Fund, Clarion Futures and even some public health bodies
- could prove to be a more attractive recipient of donations for local arts than the council itself
- could avail itself, through careful selection of its trustees, of a wider range of relevant experience, expertise and skills regarding arts and cultural endeavours than the council could.

3.2 Officers have noted that it is becoming increasingly common for local authorities to establish arts charities, generally in the form of leisure and culture charities. In East Herts for example, the council was instrumental in setting up the Scott's Grotto

Charitable Incorporated Organisation (CIO) in 2018 and Southern Maltings in Ware is a charity that frequently partners with Ware Town Council to deliver arts programmes.

Legal advice

3.3 Given the distinct benefits of providing local arts and cultural activities through a charity, officers sought independent legal advice on how best to establish a charity, including its form, function and structure. To this end, expert advice was procured from Browne Jacobson, a leading legal practice with considerable expertise regarding the not-for-profit and charitable sectors. The discussion below on the legal aspects of establishing an arts-focused charity in East Herts is based on their advice.

Structure

3.4 Browne Jacobson set out four possible structures for a charity. These are summarised in the table below.

Legal structure	Description	Pros	Cons	Suitability
Unincorporated association	Informal grouping of individuals with no separate legal personality	<ul style="list-style-type: none"> • Simple to set up • Minimal administration • Flexible governance 	<ul style="list-style-type: none"> • No separate legal identity • Trustees/members may have personal liability for debts and obligations • Harder to enter contracts or own property 	Not recommended for the council's purposes
Charitable trust	Charity established via a trust deed, run by trustees	<ul style="list-style-type: none"> • Straightforward structure • Suitable for holding assets for charitable purposes • Relatively simple governance 	<ul style="list-style-type: none"> • No separate legal personality • Trustees may have personal liability • Limited flexibility for trading or operational complexity 	Not recommended for this purpose
Charitable company limited by guarantee (CLG)	Incorporated company with charitable status, governed by company and charity law	<ul style="list-style-type: none"> • Separate legal personality • Limited liability for trustees/members • Well-understood legal structure • Can enter contracts and employ staff easily 	<ul style="list-style-type: none"> • Dual regulation (Charity Commission and Companies House) • More administrative burden • Company reporting requirements (accounts, filings) 	Potential alternative to CIO
Charitable Incorporated	Charity-specific incorporated	<ul style="list-style-type: none"> • Separate legal personality • Limited liability 	<ul style="list-style-type: none"> • Slightly less flexible than a company in 	Often preferred

Organisation (CIO)	legal structure registered only with the Charity Commission	<ul style="list-style-type: none"> • Simpler than CLG (single regulator) • Designed specifically for charities • Easier governance and compliance than CLG model 	some corporate contexts <ul style="list-style-type: none"> • Still relatively new compared with older structures (less familiarity for some stakeholders) 	modern model for charities
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3.5 The recommended structure for a new art-focused charity in East Herts would be the Charitable Incorporated Organisation (CIO) model. As noted above, the council has previously used this model with regard to Scott's Grotto in Ware.

Charitable objectives

3.6 Any charity's purpose(s) must align to at least one of the thirteen specific categories identified as having charitable status in the Charities Act 2011. In the case of an arts-focused charity in East Herts, the most relevant objective would be the '*advancement of the arts, culture, heritage or science*'. Browne Jacobson have advised that the Charity Commission favours more tightly defined descriptions and business plans related to precisely what the charity is aiming to achieve. At this stage, it is anticipated that the charity would seek to:

- secure and pass on funding to the providers and purveyors of arts and cultural endeavours
- enable participation in the arts, including among groups who are typically underrepresented in the provision of and participation in arts and cultural activities
- focus its endeavours within the boundaries of (the former) district of East Hertfordshire while enabling some flexibility within the new unitary geography.

3.7 The council would seek to benefit from further expert advice on how best to craft and explain these aims so as to secure Charity Commission approval as quickly as possible.

CIO governance

- 3.8 If the CIO model were to be adopted (as is considered the most appropriate model), the council would need to choose between the 'foundation' model (where the trustees are also the members) and the 'association' model (where there is a separate membership body).
- 3.9 Browne Jacobson have pointed out that the association model is often applied by large charities with large numbers of individual members, for example, professional membership organisations, although it is also available to small charities whenever there is a desire for the trustees and the members to be different people.
- 3.10 It is worth noting here that in a CIO, the trustees are responsible for the strategy, finances, policies and administration of the charity, with the possibility of delegating functions to an executive team/chief executive or committees of the board of trustees. The members in a CIO have more limited rights, including the right to amend the governing document of the CIO, decide the use of any net assets on winding down of the CIO (within certain constraints) and any rights which are reserved to them under the CIO's governing document which could include, for example, the right to appoint/remove all/some trustees.
- 3.11 The choice between these two models will depend on the degree of influence the council ultimately wishes to retain and the Charity Commission's likely reception of the chosen approach, such that they tend to favour the maximum possible independence of charities from the councils establishing them.
- 3.12 Officers suggest further expert advice is sought on whether the foundation or association model is better suited to the council's objectives in establishing a charity.

Trustees

- 3.13 Browne Jacobson suggest that for a new arts charity operating across East Herts, the board should contain between five and nine trustees. This, they argue, would give the board sufficient breadth of skills and experience while remaining manageable. They go on to suggest three trustees being present to achieve a quorum.

3.14 Browne Jacobson's views were specifically sought on how the council could, should it wish, exert legitimate influence over who form the trustees, bearing in mind that at all times the trustees would have to act in the best interests of the charity. Their views are summarised in the table below.

Option	Structure	Council role	Trustee composition	Charity Commission's likely position
Sole corporate trustee	Council acts as sole trustee of the charity	Council holds all assets and exercises all trustee powers	Council only	<ul style="list-style-type: none"> • Permitted in principle but closely scrutinised • Strong governance and conflict-of-interest controls required
Majority trustee appointer	Council appoints majority of trustees	Appoints majority	Majority council-appointed, minority independent	<ul style="list-style-type: none"> • Likely to be cautious • Requires strong evidence of independence and oversight of council–charity transactions
Minority trustee appointer	Council appoints minority of trustees	Appoints up to, say, one third 1/3 of board	Majority independent trustees with sector expertise, with possibility of co-option by board	<ul style="list-style-type: none"> • Generally favourable if independence and sustainability demonstrated
Nominator only with no appointment role	Council does not appoint	May nominate some candidates	Fully independently recruited/co-opted board	<ul style="list-style-type: none"> • Very favourable

	trustees directly	for consideration only		<ul style="list-style-type: none"> • Strongest independence model
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3.15 Browne Jacobson recommend that the council acts as the ‘minority trustee appointer’ because this affords a degree of legitimate control over who some of the trustees are while being able to clearly demonstrate to the Charity Commission that the new charity is independent of the council. While officers can see the benefit of this approach, no recommendation has yet been formalised on this point and further views will be sought.

Day-to-day running of the charity

3.16 The charity would require day-to-day management. This could in theory be provided by the trustees but it is likely to prove more effective for the charity to pay for such services. Depending on the size of the charity, in terms of financial resources and activities, it could directly employ an officer or officers. It appears more likely, however that at least in its early years it would be expedient to buy in these services.

3.17 Specific advice was sought from Browne Jacobson on the ability of the council (including BEAM) to offer services to the charity and the charity to pay for services from the council They have advised that the council may provide services to the charity, however, the following requirements must be observed:

- all service provision must be governed by a written service-level agreement, setting out the nature of the services, the charges, the standard to be achieved and the duration and termination rights
- if the council provides services to the charity at a higher price than cost, the trustees of the charity will need to be satisfied that the terms and conditions offered by the council are the best that the charity can find in the market to ensure best value. Browne Jacobson have added that if the charity was to be controlled at trustee or members level by the council, it might fall within the public procurement regulations
- unless the council only has a minority of trustees, if the council were to provide services to charity other than at cost, it is likely that the Charity Commission would need to approve the arrangement

- any council-appointed trustee who is also an officer or elected member of the Council involved in the provision of council services to the charity must normally declare a conflict of interest in relation to any decision about whether to engage the council to provide services and must withdraw from the vote
- independent trustees must assure themselves, and be able to evidence to the Charity Commission, that engaging the council to provide services represents good value for money for the charity.

Summary of the emerging potential model for an arts-focused charity

3.18 To summarise the above discussion, the emerging potential model for a charity is as follows:

- it would be a Charitable Incorporated Organisation (CIO) to enable charitable purposes to be furthered while limiting trustees' exposure to liabilities and risk
- the CIO's charitable purposes, subject to further refinement, would be to (a) secure and pass on funding regarding of arts and cultural endeavours, (b) enable participation in the arts and (c) focus on (the former) district of East Hertfordshire while enabling some flexibility within the new unitary geography
- either a foundation or association model for the charity would be adopted following further consideration of the relative merits of each
- the charity would have between five and nine trustees, subject to further consideration
- the council would appoint a minority of trustees, although this would be subject to greater consideration
- the charity could pay for services provided by the council subject to best value consideration and transparency of the arrangement.

4.0 Next steps

Short term

4.1 The views of the Overview and Scrutiny Committee will help shape the emerging proposals. The establishment of a charity is

subject to an Executive decision to do so. Thus, it is envisaged at this stage that a report will be brought to the Executive by the Executive Member for Communities at its meeting on 14th July recommending 'in principle' support for the establishment of an arts-focused charity primarily focused on East Hertfordshire, at least in the first instance. The same report is likely to recommend that authority be delegated to the Director for Communities, acting in consultation with the Executive Member for Communities, to complete the necessary work and due diligence to submit an application to the Charity Commission for registration of the charity. The report will include the views of the Overview and Scrutiny Committee.

4.2 Browne Jacobson have brought to the council's attention that the process to register a new charity can take between six weeks and six months, or longer if the Charity Commission raises queries. It is perhaps prudent, therefore, to set the end of this financial year as a long-stop timeline for registration.

4.3 At the same time, even if registration were achieved at the lower end of the anticipated timescale, it would not be possible to establish the charity in time to oversee an Arts in East Herts showcase in September and October (or similar dates) this year. Officers thus propose that:

- the council administers this year's Arts in East Herts event with grants payable from the council's resources already allocated for community grants
- officers establish a 'steering group' to assist in bringing forward this year's event, some members of which could potentially become trustees of the new charity. This approach has the benefit of a phased handover should the charity proceed.

4.4 At the same time, of course, work would progress on defining the structure of the new charity and securing Charity Commission registration as soon as possible.

Medium term

4.5 As discussed earlier in this report, it is felt that a new charity would be better placed to raise funds for arts and cultural endeavours than the council. That said, a new charity is unlikely

to have access to funding immediately on forming, therefore, subject to future member decisions, it is envisaged that the fledgling charity could receive:

- gift donations made to BEAM which – for avoidance of doubt – sit entirely outside of BEAM’s business plan and revenue income to the council
- ‘seed funding’ from East Herts Lottery resources held by the council for use at its discretion on community-focused activities.

4.6 The charity would in time, it is envisaged, make applications for its own funding from external bodies and embark on other fundraising activities.

5.0 Options

5.1 Do not pursue work with the aim of establishing an arts-focused charity. **NOT RECOMMENDED** as the council does not have resources to continue and build on the UKSPF-funded Arts in East Herts programme in which so many local people have participated. Furthermore, the full potential of BEAM’s donation-funded activity could be compromised by fettering the ability to access funding for which local authorities are not eligible, such as gift aid and some external grants. In combination, this would vastly reduce previous years’ efforts widen access to arts and culture in the district.

5.2 Support an alternative charity model to the emerging approach outlined in this report. **NOT RECOMMENDED** as the emerging proposals discussed in this report have been informed by expert independent legal advice.

6.0 Risks

6.1 Whilst relatively straightforward, establishing a charity is a legal process with its own complexities, especially in regard to its relationship with the council setting it up. There is a risk that the council is not able to satisfy the Charity Commission of the charity’s feasibility and/or distance from the council. This risk is being mitigated by having already sought expert legal advice and being prepared to do so again to assist in the drafting of

registration documentation should this appear necessary.

- 6.2 There is a risk that the establishment of a steering group to oversee this year's proposed Arts in East Herts showcase could prove difficult, suggesting limited appetite locally for people to put themselves forward as trustees. This risk is being mitigated in two ways; first, officers have already begun to seek views via existing arts-related networks and there appears to be some appetite for greater direct involvement and second, a model which limits trustees' liability (the CIO) is likely to be pursued.

7.0 Implications/Consultations

- 7.1 Thus far, discussions have been largely internal involving officers from BEAM and the Communities directorate and the Executive Member for Communities.
- 7.2 As noted above, independent legal advice on the setting up a charity has been sought.

Community Safety

None arising directly from this report.

Data Protection

None arising directly from this report, although it is noted that a new charity would need to ensure the collecting and storing of personal data relating to artists and attendees on their programmes complies with the Data Protection Act.

Equalities

Should the emerging proposal to establish an arts-focused charity progress, the documents governing the charity's purpose, business plan and so on would need to be subject to an equalities impact assessment. This would be carried out at the time.

Environmental Sustainability

None arising directly from this report.

Financial

The independent legal advice was funded with UKSPF resources and further legal advice would be subject to resources being identified. No decisions have yet been made regarding any 'seed funding' that could be passed to a new charity.

Health and Safety

None arising directly from this report.

Human Resources

None arising directly from this report.

Human Rights

None arising directly from this report.

Legal

A legal review on the establishment of a charitable organisation by a local authority has been undertaken by Browne Jacobson legal consultants. Their advice is underpinning the emerging proposals, as noted throughout the report. Should matters progress to seeking registration with the Charity Commission, further legal advice will be sought internally and possibility externally too.

Specific Wards

No.

7.0 Background papers, appendices and other relevant material

7.1 Browne Jacobson's legal advice.

7.2 There are no appendices.

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