



Cabinet
13 March 2017

**Report from the Strategic Director
Regeneration & Environment**

For Action

Wards Affected:
Kilburn

**South Kilburn Trust – Proposed Constitutional
Amendments**

1.0 Summary

- 1.1 This report proposes changes to the Articles of Association of the South Kilburn Trust. In summary the main amendment seeks to provide for the Trust to not exclude people who are visiting South Kilburn, acknowledging that people have friends, family and other positive networks who should be welcomed into South Kilburn, and that South Kilburn has needs which could be supported by people who bring additional knowledge, skills, and resources; with other various proposed changes as detailed within this report.
- 1.2 This report confirms that these proposed changes to the Articles of Association will continue to ensure that people living in South Kilburn are the primary beneficiary and that the South Kilburn Trust will only provide services within the original “Area of Benefit” being the South Kilburn Neighbourhood.

2.0 Recommendations

- 2.1 Subject to Recommendation 2.2, that Cabinet gives conditional approval to the amendments proposed to the Articles of Association of the South Kilburn Trust as set out in Para. 3.8.
- 2.2 That Cabinet authorises the Interim Head of Legal Services to require that these proposed changes to the Articles of Association do not permit the Trust to operate outside their “Area of Benefit” as originally agreed when South Kilburn Trust was set up.

3.0 Detail

Background

- 3.1 In 2008, the South Kilburn Partnership (“the SKP”) was set up by the Council as an unincorporated body responsible to act as the vehicle for strategic decision-making for promoting the aims of the South Kilburn New Deal for Communities programme regeneration strategy and to act as an umbrella body to oversee investment in South Kilburn. The SKP incorporated 4 sub-groups that focused on key areas within the agreed strategy – (a) housing and infrastructure; (b) access to employment and skills; (c) young people and education; and (d) healthier communities.
- 3.2 The Council together with the SKP set up the South Kilburn Trust (“the Trust”) (formerly known as the South Kilburn Neighbourhood Trust), as an incorporated entity in December 2008 and formerly registered the Trust as a charity in March 2009 to continue making the links between the physical development activities, which would be delivered by the Council and community development, to raise funding, encourage partnership working and ensure the benefits achieved by the South Kilburn New Deal for Communities were taken forward.
- 3.3 The SKP is no longer in existence and therefore the Council directly leads and delivers on the physical regeneration of South Kilburn with the Trust now providing independent input and support for the other key areas and also to the local community within South Kilburn, alongside the Council’s relevant service units.
- 3.5 The ‘Area of Benefit’ as set out within the Trust’s constitutional documents refers to the South Kilburn new deal for communities programme in the London Borough of Brent and specifically relates to the South Kilburn area; the Trust company was incorporated to oversee the continued regeneration of this area.

3.6 Governing Documents

- 3.6.1 In order to reflect the current reality in terms of company governance, changes in company practice since the Companies Act 2006 and enable the Trust to work more effectively, the Trustees have proposed that changes should be made to the current governing documents, to give legal effect to the revised structure. The current governance documents are: -
- The Framework Agreement – between Brent Council and the Trust
 - The Trust’s Memorandum and Articles of Association (as amended by Special resolution on 28th March 2009 and with effect as of 1st April 2011).

3.7 Framework Agreement

3.7.1 The Framework Agreement sets out the range of decisions to be made by the Trust that must involve and must have the approval or consent of the Council. These matters include the following: -

- Any changes to the Trust's Memorandum and Articles of Association including changes to the Area of Benefit
- Entering into, varying, or terminating any contract or arrangement as long as the contract relates to the expansion of work of the Trust outside the Area of Benefit (South Kilburn)
- Changes to the scope of business of the Trust company
- Undertaking any activity which is likely to prejudice status of the Trust as a registered charity
- Changes to any Bank mandate
- Acquisition or formation of new companies or subsidiaries
- Changes to the structure of the Trust company
- Changes or revisions to the Business Plan

3.7.2 The Framework Agreement provides that as a major strategic partner in the work of the Trust, the Council seeks to be actively involved in the key decisions of the Trust company and to protect the investment that has been made in the Area of Benefit. The Framework Agreement also lists the Trust's obligations to the Council and joint obligations of both the Trust and the Council.

3.7.3 There are no fundamental changes being proposed to the Framework Agreement, though it is noted that references to the SKP in the Recitals and the definition within the Framework Agreement no longer have effect, as this entity has ceased to exist and for some time now the Trust has been acting as the partnership hub and co-ordinator.

3.8 Proposed Changes to Articles of Association

3.8.1 The main changes proposed, which have been agreed by the South Kilburn Trust Board of Trustees at the meeting on 12 November 2013, are:-

- Clauses in the Memorandum are now incorporated into the Articles of Association in accordance with the Companies Act 2006.
- All reference to Annual General Meetings are to be deleted as the advice received by the Trust is that it is no longer a legal requirement for Voluntary Organisations to hold such meetings.
- SK Trust is committed to holding an annual meeting in South Kilburn to enable residents and stakeholders to attend in person. Furthermore SK Trust will hold regular meetings in South Kilburn and adopt a virtual meeting mode only when necessary. This ensures the residents and stakeholders have the opportunity to

attend meetings and engage with the Trust's activities and Business Plan.

- Remove the distinction between resident and stakeholder members – the Articles now should just simply refer to 'members'
- Reference to "South Kilburn Partnership" should be removed
- Extensive terms relating to the resident and stakeholder company members are to be deleted
- An addition to the objects should be made – to allow the South Kilburn Trust to not exclude people who live outside South Kilburn from visiting the area and accessing a service, acknowledging that people have friends and family who live in the broader area, and that South Kilburn has needs which could be supported by people who bring knowledge, skills, and resources, ultimately benefiting the people living in South Kilburn and achieving the primary objects of the South Kilburn Trust.
- Terms of office should now be added for Directors (with the exception of the Brent Council Director appointed), each term to be for 3 years and the maximum number of terms when aggregated with previous appointments shall not exceed a term of 9 years
- Power to appoint co-optees to the Board should now be included in the Articles
- Terms in relation to complaints about Directors should be removed and instead are to be included in a Code of Conduct adopted by the Trust company
- Ability for Directors to hold virtual meetings should now be included. The majority of meetings in any one calendar year will remain physical meetings and in any event the SK Trust will publish minutes of all meetings on their web site for general public review
- Minimum and maximum number of directors now added- a minimum of 5 and a maximum of 11 members of the Board of directors

3.8.2 The proposed change to permit the South Kilburn Trust to not exclude their South Kilburn based services to people who are visiting South Kilburn is deemed by Council Officers, as a substantial change requiring an oversight and approval by the Council's Members in accordance with the Framework Agreement.

3.8.3 Currently the Trust primarily supports South Kilburn residents within South Kilburn and will continue to do so. There are two reasons the change is being proposed. Firstly residents from other Brent areas do come to South Kilburn. For example:-

- visiting friends and relatives

- older people visiting their friends at the South Kilburn Trust's lunch club
- young people attending training or sports sessions with their friends;
- Brent residents' accessing the support and activities at the South Kilburn Studios which the Trust runs;
- People attending local events and festivals which may not be happening in their area.

The Trust has stated that, similar to the Council's aims, it does not want South Kilburn to be an isolated place that only welcomes South Kilburn residents, it wants it to be a place that, while keeping its own identity, is part of a wider area. The Trust also wants to raise the profile of South Kilburn across Brent as a "great place to live, work and play".

- Secondly, people from other areas bring knowledge, skills and resources that the residents of South Kilburn will benefit from e.g. South Kilburn Studios businesses offer traineeships to local young people and run workshops on their area of expertise; and the new Enterprise Hub should bring more established businesses which will additionally bring jobs into the area.

3.8.4 Therefore, to be clear, the Trust is not planning on delivering services in other areas outside of South Kilburn. The Trust itself will only deliver services within South Kilburn with a continued priority on South Kilburn residents. However if this change is approved it will enable the Trust to help some people who visit South Kilburn from other parts of Brent - mainly the neighbouring areas.

4.0 Financial Implications

4.1 There are no direct immediate financial implications for the Council.

5.0 Legal Implications

5.1 At present, there is delegated authority given from the Council's Executive (12 December 2011) to the then Director of Regeneration & Major Projects, in conjunction with the then Director of Legal and Procurement to agree future minor amendments to the Trust's Memorandum and Articles of Association. However, the Trust is required to refer back to the Council's Cabinet to obtain its Member's approval where both the Director of Regeneration & Major Projects and the Director of Legal and Procurement deem the proposed changes to be substantial, especially in policy terms. It is deemed that the redefinition of those able to avail of service provided by the South Kilburn Trust is substantial and will require the prior approval of the Members.

5.2 Representatives from the Trust have set out their rationale for seeking to amend the Articles as reflected in the reasoning in paragraph 3.8.3 above. Members should note that the original funding used to set up

the Trust was legacy money that was ring-fenced very specifically to South Kilburn under the old New Deal for Communities programme.

5.3 Notwithstanding the proposed changes to the Trust's Articles of Association the Trust's Board of Directors will still be bound by the terms of the existing Framework Agreement.

5.4 Recommendation 2.1 seeks Cabinet's authority to give the Council's approval to the necessary proposed changes to the Articles of Association.

6.0 Diversity Implications

6.1 In the exercise of its public related functions, the Trust must continue to pay "due regard" to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

6.2 The Equality Act 2010 and the Public Sector Equality Duty (outlined above) cover the following nine protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation.

7.0 Staffing/Accommodation Implications (if appropriate)

7.1 There are no direct staffing or accommodation implications.

8.0 Background Papers

8.1 Executive Report – 12 December 2011

Contact Officers

Richard Barrett
Head of Estates Regeneration
Email: Richard.barrett@brent.gov.uk
020 8937 1330

AMAR DAVE

Strategic Director of Regeneration & Environment