

Barr Beacon Trust Management Committee – 10 October 2022

Management Committee – proposed amendment to Terms of Reference

1.0 Purpose

To amend the Terms of Reference of the Barr Beacon Trust Management Committee (the committee) to enable meetings to be conducted by a variety of methods thereby providing the committee with maximum flexibility to manage Trust business efficiently and effectively.

2.0 Recommendation

2.1 To recommend to Council sitting as Trustee:

That the Terms of Reference of the Barr Beacon Trust Management Committee relating to the holding of meetings be amended to include the following:

“In these Terms of Reference, the expression ‘meeting’ includes, except where inconsistent with any legal obligation:

- a physical (in-person) meeting;*
- a virtual (digital) meeting being a video conference, an internet video facility or similar electronic method allowing simultaneous visual and audio participation;*
- by telephone conferencing; or*
- a combination (hybrid) of any of the above.*

2.2 **Deliberative:** To consider the recommendation of the Charity Commission that at least one wholly in-person takes place each year, and decide if the committee is satisfied that the arrangements for each of the methods of meeting at 2.1 above are such that good governance will be served by any method and that it would therefore be at the discretion of the committee to decide whether wholly in-person meetings are required.

3.0 Report detail

3.1 In April 2020 as a result of the recent pandemic, the Charity Commission (the Commission) published *Coronavirus (COVID-19) guidance for the charity sector*’ which explained that that the Commission would take a flexible, proportionate approach to trustees deciding to hold meetings on a virtual or hybrid basis where there were no rules permitting this in the charity’s governing document.

3.2 In practice, this meant that charities were able to continue operating during the pandemic without their trustees meeting in person, regardless of what their governing documents allowed.

- 3.3 The Commission's more flexible approach to virtual meetings came to an end on 21 April 2022, meaning that charity meetings after this date can only happen virtually if their governing document allows them to do so. If this is not the case then meetings must take place in person for it to be validly held.
- 3.4 The Commission's guidance states that "If a charity's governing document does not allow for virtual meetings and the trustees want meetings to be able to take place in that way, they should consider using any power (usually in the charity's governing document) to amend the rules to allow this".

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- 3.5 The current Barr Beacon Trust Scheme, dated 14 February 1972, includes the following:

"Rules, Management and Delegation

5. *Within the limits prescribed by this Scheme the Council shall have power to make, alter and revoke Rules for the regulation and management of the trust property or any part thereof, including rules for the constitution of a Committee of Management to be constituted in such manner as the Council shall from time to time think fit and may delegate all or any of its powers or duties under this Scheme (other than the power to hold land or to levy a rate) to any Committee so constituted (hereinafter referred to as "the Committee"), with or without restrictions or conditions as the Council shall from time to time think fit."*

- 3.6 In February 2007, the Council as Trustee established a management committee to deal with the day to day affairs of the Trust. The terms of reference (its governing document) included the usual arrangements for meetings such as quorum, voting, number of meetings required per year, but did not state the method of meeting as, at that time, there was no facility to hold digital meetings.
- 3.7 Holding digital meetings during the pandemic worked well as matters requiring decisions were able to be made quickly and therefore the committee would benefit from continuing with more flexible ways of meeting so that the committee can continue to meet and make decisions efficiently and effectively.

Options for methods of meeting

- 3.8 *In-person.* It has proven to be a challenge at times in the past for meetings to be quorate for in-person meetings. Decisions take longer to make and can be an inefficient and outdated way of dealing with some Trust affairs. Committee agendas on occasions only contain one or two items which requires members to attend in-person for a relatively short meeting.
- 3.9 *Digital:* given the increasingly fast moving advances in technology, the Commission recognises the advantages of holding digital meetings which enables members to attend meetings that they would otherwise not have been able to. Commission guidance refers to meetings via virtual means as an "...electronic method allowing simultaneous visual and audio participation"

Its guidance also recommends that at least one in-person meeting takes place each year.

- 3.10 *Telephone conferencing*: The Commission accepts that there can be a need for exceptions to the requirement to simultaneously see and hear participants in the meeting for example to enable people with disabilities or impairments to participate and therefore does not exclude the use of telephone conferencing to conduct meetings so long as the governing document permits this.
- 3.11 *Hybrid*: A meeting combining two or more of the above methods would enable members to access meetings they may not have been able to attend otherwise.
- 3.12 **Recommended options**: it is recommended that the committee's governing document allows for all of the above meeting methods as this would provide a practical and flexible means of conducting the affairs of the Trust in the most appropriate way and would 'future-proof' the continuous management of the Trusts affairs

Financial implications

- 3.13 None

Legal implications

- 3.14 The courts have decided that a valid meeting normally consists of people who can both see and hear each other (*Byng v London Life Association* (1989) 1 All ER 560). This definition applies where a charity's governing document gives no other definition of a meeting.
- 3.15 As telephone conferencing only permits the participant to hear but not see each other it does not constitute a 'meeting' within the meaning of the decision in the *Byng* case. However, it is still possible for meetings to be arranged in the form of a telephone conference if there is a specific provision in the charity's governing document and if so, it follows that a combination of physical and/or digital presence and telephone conferencing will be acceptable.
- 3.16 Trustees must always clearly continue to show good governance and informed decision making however they choose to meet. The Clerk to the Trust is the Council's Director of Governance. Meetings are facilitated by the Council's Democratic Services officers who ensure that the committee has the advice it needs to comply with the Trusts governing document, Commission regulations and the law in the management of the Trusts affairs.
- 3.17 The management committee was established by the Council sitting as Trustee, therefore, a recommendation needs to be made to the Council, again sitting as Trustee, to amend the terms of reference of the committee.

Staffing implications

- 3.18 Having the flexibility to meet in a variety of ways will benefit the efficient management of Trust affairs by enabling officers from the various services which support the Trust to more easily attend meetings.

Equalities implications

- 3.19 Providing greater flexibility to hold meetings in a variety of ways enables members with disabilities or impairments to more easily participate in meetings.

3.19 *Climate impact*

This is important to the Trust given its environmental and health related purpose. Having the ability to hold meetings digitally will contribute to the reduction in carbon emissions.

4.0 Review

Meeting arrangements would be reviewed at the first committee meeting of each municipal year.

Report Author

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On behalf of the Clerk to the Trust

30 September 2022