

AGM MOTION EXPLANATORY NOTE

Motion 1 - *that the Society agrees the Rules should be amended to include in addition a further object “to provide for the running of a community cafe offering volunteering opportunities throughout the community”.*

This is a protective measure to prevent an unwelcome tax charge while the Social Investment Tax Relief rules will prevent us from introducing a more effective tax structure with all trading activities being dropped down into a company limited by guarantee (probably called Wellington Orbit Ltd) after 1st April 2026.

Any profit of Wellington Orbit Ltd will be gift aided upwards to CCAC so WOL has no Corporation Tax charge while the gift aided amount in CCAC is charity exempt.

1 Station Road will remain in the ownership of CCAC. This has the additional advantage that in the case of a commercial failure by WOL that a creditor could not seek to recover any amount by seeking us to dispose of the property or obtain debt secured finance to pay off their claim.

This is a structure that is commonly adopted in whole or in part by charitable companies that run a cinema as part of a wider facility.

For example, Lewes Community Screen trades from an old brewery depot in Lewes under the trade name the Depot. It was funded through a benefactor who gift aided £13m to enable them to acquire and develop the site. It runs multi screen cinemas generating income of £785k but also runs a bar and restaurant generating income of over £1m which they have dropped down into a subsidiary. All in a town of 17k but with no multiplex.

Derby Quad Ltd shows its activities to be the promotion of education in development of and appreciation of the arts. Its accounts show trading income of £538k including café bar income of £309k being carried out through a trading subsidiary Derby Quad Enterprises Ltd

More locally, Festival Drayton's accounts carry no trading income but rather include a donation and service charges from FDC Trading Ltd.

The reason why these concerns have done this, besides making their major asset – i.e. the freehold property – bankruptcy remote is the interaction of charity law and tax law.

The government has published CC35: Trustees Trading and Tax: how charities may lawfully trade.

Charity law allows charities to trade provided that the trading falls into one of the following categories:

- ‘primary purpose trading’
- ‘ancillary trading’
- ‘non-primary purpose trading’ that does not involve significant risk to the resources of the charity

‘Primary purpose trading’ is trading which contributes directly to one or more of the objects of a charity as set out in its governing document. The running of a cinema is clearly income from a cultural or arts facility and is exempt from tax.

‘Ancillary trading’ contributes indirectly to the successful furtherance of the purposes of the charity. This is treated as part of ‘primary purpose trading’ for both charity law and tax purposes.

The guidance gives an example of food and drink sold in a restaurant or bar of a theatre. This clearly covers kiosk income but not other café sales.

'Non-primary purpose trading' is trading intended to raise funds for the charity, as distinct from trading which in itself furthers the charity's objects. Charities may engage in such trading only where no significant risk is involved. Currently the café income would fall within this category.

It will be liable to tax but there is a relief called small scale exemption which will exempt it from tax.

In short, we acquired a building with significantly underutilised space. We have generated income from the utilised space through primary and ancillary trading. We have also milked the asset through non primary purpose trading.

For the avoidance of doubt, the servery, in its current state and location, fulfils three functions – being the serving area for the café (non primary purpose trading), the kiosk for the cinema *ancillary trading) and a booking office (primary trading).

Once we have a fully developed building the rationale of milking the limited usable space we have disappears and we need to address a new reality in the characterisation of the cafe income.

Hence we need to recognise that the café is part of our overall business and its income needs to be primary purpose income. There are undoubtedly people who visit and frequent the café who either do not attend the cinema at all or seldom. The café has built up its own goodwill, particularly in the morning, that is separate to the cinema operation. You only need to look at the 111 Facebook likes for the Halloween dressing up by staff working in the morning (one comment - Happy Halloween to all the 'Orbiteers' - the Wellington Orbit only is great because of your great efforts ! x) and the 132 likes of the volunteer party (one comment - My favourite coffee house. All staff are a credit. Amazing people xx) to demonstrate our evolution that is not reflected in the rules as they currently stand.

An early indication of this showed itself in the £50k donation from the Church which was intended to create community space and has led directly to the parents and toddlers day which it can not be denied is an integral part of the Orbit and is more community development than the promotion of the arts.

The major problem we have with the rules is our stated aim of providing arts and cultural facilities for the benefit of the community. This is too narrowly framed and just addresses one charitable object, i.e. the promotion of arts and culture which by necessity leave that part of the café operation that is not related to the cinema kiosk as non primary trading income with the taxation risks that flow.

These risks disappear if we can attach the operation to a separate charitable objective,

An example of such a charity is Palmers of Shrewsbury which is located within the Baptist Church in Shrewsbury, Its objects are stated to be "the charity is established for the objects of advancing the Christian Faith including advancing of education of the public in all aspects of the faith in Shrewsbury and the surrounding areas by the provision of a Christian run coffee shop" and the accounts confirm its income is charity exempt.

That would demonstrate that to become primary income it is necessary to identify a charitable object. The advancement of religion is one of several charitable objects.

For us, the relevant charitable object is s3(1)(e) of the Charities Act 2011 which includes as a charitable purpose "the advancement of citizenship or community development" and s3(2)(c)(ii) confirms that subsection 3(1)(e) includes the promotion of volunteering. Therefore

the motion is that if we extend our objects to include “and to provide for the running of a community cafe offering volunteering opportunities throughout the community”.

By doing so, we not only ensure that all the café operations are either primary purpose or ancillary but also reflect the reality of how we have evolved with the café assuming equal importance to benefitting the community rather than being an incidental add on.

Motion 2 - *that the Society agrees that the Society will prepare the accounts for the year ending 31st December 2024 without the need of an audit but will be the subject of an assurance review prepared by a firm of chartered accountants.*

Under s83 of the Co-operative and Community Benefit Societies Act 2014 every Community Benefits Society is under a duty to appoint auditors. This will not apply to a small society which we are not. In addition, s84 disapplies s83 if members vote as such at a meeting of members. Members have always done that.

The ability to disapply is subject to limits. Generally they are: -

(a) the total value of its assets at the end of the preceding year of account did not exceed £5,100,000, and

(b) its turnover for that preceding year did not exceed £10,200,000.

We are comfortably within those thresholds and most societies would be. Similar levels apply for companies within the Companies Act. However, the CCBSA imposes a different requirement for charitable Community Benefit Societies and that is to substitute for (b) the phrase “its gross income for that preceding year did not exceed £250,000 “

Because of our donations in 2023 our gross income exceeds £250,000. That would suggest we require an audit.

However, in their own guidance, the Financial Conduct Authority who are the regulatory body state the requirement is turnover exceeding £250k. There is a difference between turnover and income. Turnover is defined in s474 of the Companies Act as broadly being sales and we are below that.

We would also state that the income limit for charities that are not Community Benefit Societies for and audit is £500k. In our view, particularly in the current time, the audit limit therefore is in urgent need of reform.

I have discussed the matter with our accountant who has confirmed that the basic work and checks she will do are the same whether we have an audit or an independent examination which we currently have but there will be extra fees on partner’s time and the regulatory requirements placed on certified auditors which can be significant.

We are proposing that we use the turnover threshold in the FCA guidance and seek a motion to dispense with the audit. There is legal justification for this in that despite the wording in the CCBSA. The FCA’s general duties are set out in the Financial Services and Management Act 2000 and s1B (6) (c) provides giving general guidance under that Act which is extended by s 139A (1) (b) to include being in relation to any other matter relating to the functions of the FCA.

The Board therefore recommend that the motion be passed.