

BRAMSHOTT WAR MEMORIAL RECREATION GROUND CHARITY NUMBER 301766

Public Documentation Trail V1.4

References:

- A. Jacobs & Hunt Survey Report dated 19th August 2014.
- B. Charity Commission (CC) – Trust Registration.
- C. CC3 – Guidance notes: The Essential Trustee (ET).
- D. CC3a - The ET: New guidance on trustees' responsibilities.
- E. Action with Communities in Rural England (ACRE) Information Sheet 36.
- F. CC28 – Sales leases transfers or mortgages: Disposing of charity land.
- G. Parish Council's Standing Orders.

Background

1. **Explanation.** This note lists the public documentation trail used by the trustees when considering the corporate position on the Bramshott War Memorial Recreation Ground Trust. Where appropriate explanatory notes have been added. The councillors in their role as the corporate trustee have read all these documents. This paper will not cover any private discussions, documents or deliberations by them as these are considered confidential.
2. **Charity Registration.** The scheme was set up on 17th November 1939 and its charitable objects are cited as Recreation Ground with its activities stated as: the provision of facilities to the local community. Under its classification it makes no mention of education.

Aim

3. The aim of this paper is to inform the public of the trustees' duties and responsibilities and to disclose those public documents which they considered when looking at the long term future of the Recreation Ground Trust including the Pavilion.

Pavilion Building

4. **Historical outline.** When the building ceased to be used as a pavilion the council, quite sensibly, granted in the absence of any other recreational purpose, other none recreational organisations a one year license. This gave the Trust greater flexibility. It generated income and would have enabled it to return the building to recreational use as a later date. Following receipt of the surveyor's report, **Reference A**, it was concluded that the Pavilion, which is well over 75 years old and in poor condition, was uneconomical to repair. It therefore decided that it should be demolished.
5. **Trust.** The Pavilion forms part of the whole Recreation Ground which is held in trust. Its Charity Commission registration details are contained in **Reference B**. This clearly states that the **Object** of the Trust is Recreation Ground or recreational activity. It also makes clear that Bramshott and Liphook Parish Council is the corporate trustee. Councillors therefore need to take a consistent and legal position on the use of all the property and develop an agreed policy that meets the objects of the charity.

Corporate Trustee

6. **Trustees' Responsibilities.** Guidance notes for trustees are laid down by the Charity Commission in **Reference C**. These were updated on 10th July 2015 in **Reference D**. When reading these documents it must be borne in mind that the words 'Charity' and 'Trust' have similar meanings. Paragraph 1 of **Reference C** explains the meaning of 'Must' and 'Should' when interpreting the legal duties and responsibilities of trustees. In this respect the trustees were briefed on:

- a. What they need to know about trust law, recent changes to it and how the disposal of property should be handled. This knowledge can be gleaned from professional training courses, however as time precludes this they used the Charity Commission's guidance notes.
 - b. The Trust's registration, its authorized activities, charitable objects and financial position, i.e. what they, as trustees, are responsible for.
 - c. How the trustees can secure the long term future of the Recreation Ground by considering all options available before looking specifically at the Pavilion and those surrounding it.
7. **Changing Objects.** Paragraph 4.4 in **Reference C** make it clear that trustees can update their charity's objects if circumstances have changed. However they should consider what the charity was originally set up to do. In this case it's recreational activity. Any change would take some time to achieve and require Charity Commission approval. A change to include education would set a precedent and open the Trust up to requests from other educational establishments.
 8. **Corporate Trustee.** The requirement for councillors to act as corporate trustee brings with it entirely different responsibilities: councillors are elected by and responsible to the electorate; trustees are responsible under charity law for maintaining the wishes – **Object** - laid down in the trust deed. This is made much clearer in Paragraph 3 to **Reference E**. The last bullet point in Paragraph 3.1 states that: "The interests of council tax payers, party political or personal interests must not come into play." This is why trust meetings are held in private and for no other reason.

Disposal of Trust Property

9. **Leasing.** The Charity Commission guidance on leasing land and buildings is laid down in **Reference F**. These are legal requirements which the trustees must adhere to. As the Willows wish to repair the building and are offering to pay for this work, they want a long term lease (6 or 7 years) for their financial outlay in return. This is classified as a premium as shown in Paragraph 4, Bullet Point 4 of **Reference F**. Therefore in line with Paragraph 4.1 the trustees **must**:
 - "Obtain and consider a written report from a qualified surveyor."
 - "Advertise the disposal following advice from your surveyor."
 - "Decide you are satisfied that the proposed terms are the best that can reasonably be obtained in the circumstances of the disposal."
10. **Implications.** This means that the trustees would need to look at all alternative uses. Initially these would have to be within the **Object** of the Trust. It would also have to consider what recreational activity the land could be used for following demolition. After that it would have to advertise the land and/or building to obtain the best value for the Trust, hence the need for a qualified surveyor. It is not permitted to just accept the Willows' offer.
11. **Other Options.** Even if the Trust's deeds were changed to include educational activity there would still be a need to advertise the site. In so doing, other bidders may offer to demolish the building and erect their own, or put a second hand or hired portacabin on the site on more favourable terms. In this case the Trust would be obliged to conduct a cost benefit analysis to find out which proposal would be more beneficial. The Trustees were not aware of these charity law constraints and the likely consequences until they carried out due diligence checks with the Charity Commission and established the insurance position. These checks revealed that:

- a. The Charity Commission stated in their email dated 27th July 2015 that “If you [the Trust] are disposing of ‘designated’ land, it was most likely that you will need our authority.”
- b. The Willow’s insurers, Sterling, were **not** shown **Reference A** in January 2015 when the policy was taken out. When both insurance companies received the report in July 2015 the responses were:
 - The Council’s insurers, Zurich, reduced cover to demolition only.
 - Sterling immediately sent out their own surveyor and then insisted that all the work be completed before children reentered the building.

Options

12. **Standing Orders.** The initial discussion with the Willows were conducted by a duly authorised working party in accordance with Paragraph 4d of **Reference G**. Under Paragraph 4f, working parties have no delegated powers to make decisions which bind the council. The Willows request was considered by the Trust in July 2015 when they were being asked to sign a lease. This revealed that the lease incorrectly named the Parish Council as the owners and implied that the building would be returned to the Trust in the same condition.
13. **Future of the Pavilion.** It is understood that the original intention was for the building to be used until it was no longer economically viable. That time has now been reached. It is over 75 years old and will cost a considerable amount of money to make it safe and habitable. The Trust has no money and relies on rent to maintain the Recreation Ground with the Council making up any shortfall. A substantial sum of Council funding would be required to restore the building. This would be unacceptable unless the purpose for which it was being restored or replaced was for community use, as per the **Object** of the Trust. If restored it would continue to have a limited life and therefore be an uneconomical project. From a Trust perspective it would make sense to demolish it and make recreational use of the land or build something that would better suit the community’s needs and last considerably longer. Such a specific purpose project may not be immediately feasible considering that funding would take some time to raise. Furthermore, it should also not be looked at in isolation; the tractor shed, too, is in poor condition and access to the top floor is restricted.

Cllr. Trevor Maroney
17th August 2015