

CHARNEY HALL & FIELD TRUST (CHARITY NO 294765)

CHARNEY BASSETT PARISH COUNCIL

1. PURPOSE OF REPORT.

1.1 This paper provides an overview of management issues relating to the village hall and the recreation ground (Charney Field). They have been the subject of detailed discussions between Charney Hall & Field Trust (CHAFT) and Charney Bassett Parish Council (PC).

1.2 In seeking advice from Community First Oxfordshire both organisations stress they have no territorial ambitions but a common desire to comply with legal requirements and provide clarity which will be of benefit all those involved now and in the future.

2. REFERENCE DOCUMENTS

CHAFT Governing document.

CHAFT Governing document – Explanatory guidelines

Copy of Land Registry Document for Village Hall.

Copy of Land Registry Document for Charney Field.

Draft Memorandum of Understanding (MOU)

3. POSITIONAL STATEMENT.

3.1 For three years the two organisations have been working on a Memorandum of Understanding, initially to confirm responsibilities for various parts of Charney Field and latterly to also include the Village Hall. Central to these discussions has been the need to clarify ownership of the parcel of land referred as Charney Field (the Recreation Ground) and the respective roles of the custodian trustee (Parish Council) and the management trustees (CHAFT)

3.2. Earlier discussions stalled but have now been refreshed. The Parish Council has drawn up draft terms of reference for the recently renamed Joint Liaison Group (JLG) and produced the most recent draft of a Memorandum of Understanding (MOU)

3.3 CHAFT will consider (and is likely to approve) the JLG terms of reference at its February meeting but has yet to formally respond to the draft MOU. At its meeting in December 2020 it resolved to seek the advice of Community First on key issues relating to

- Legal ownership of the Hall and Charney Field.
- Management responsibilities and Charney Field.
- Finance, subvention and governance.

3.4 The Parish Council has approved the draft JLG terms of reference and the draft MOU (with one minor amendment) and agreed to a joint approach being made to seek advice from Community First Oxfordshire.

3.5 Since drawing up the draft MOU further research has been undertaken by the Parish Clerk and the Interim Chair of CHAFT and this is reflected in outlining the key issues which follow.

4. KEY ISSUES

4.1 Legal ownership of hall & recreation ground

4.1.1 The draft Memorandum of Understanding make reference to the Parish Council being the legal owner of both the Village Hall and Charney Field in several places

- ownership - the PC is the legal owner and CHAFT is akin to a leaseholder
- Financial accounts – the PC as legal owner can control CHAFT’S accounts..... although it has no wish to do so.
- winding up of the charity/disposal of properties.

4.1.2. However, it appears the Parish Council cannot be both the landowner and custodian trustee (ACRE document 40 refers) If this is so, it is assumed the Parish Council as custodian trustee is the ‘holding body’ for CHAFT as the legal owner. The Parish Council is named on the land registry documents and it is further assumed it has merely lent its legal status to hold the title on behalf of CHAFT. That being said the Parish Council understands that an unincorporated charity is unable to own property and suggests this further feeds the doubt of who actually owns the properties.

4.1.3. Evidence indicates there has been uncertainty over who owns the two properties since the Charity Scheme for the Village Hall was agreed in 1988 and subsequently updated to include the recreation ground in 2002

- Both properties are registered with the Land Registry in the name of the Parish Council (no reference is made to it being custodian trustee - or to CHAFT)
- The two properties are referred to in the Parish Council’s Asset Register with the Parish Council named as the owner with management responsibilities falling to the Charity.
- Documentation submitted to the VHHDC by CHAFT in 2008 refers to the Parish Council being the owner of the hall whilst later documentation submitted to the same body in 2017 refers to the owner of the recreation land being the Charity.
- Recent correspondence from Oxfordshire Council in relation to a footpath issue refers to the Parish Council as the owner of the recreation ground (probably because of the reference in the Land Registry Document)
- There is no evidence in the Parish Council minutes that the Parish Council intended to ‘gift’ either property to the charity, although the fact it agreed to become the custodian trustee may suggest that it knew this is what it was doing.

4.1.4. Resolution of ‘legal ownership’ is crucial to all future decision making processes and the proposed MOU and advice is therefore sought on the following matters:

(a) Who owns the two properties and what are their respective responsibilities?

(b) If CHAFT is the owner and the Parish Council the custodian trustee should the land registry documents be amended to specifically indicate the Parish Council is the custodian trustee and that CHAFT is the land owner?

(c) Again, if CHAFT is the legal owner does the Charity Scheme act as the vehicle by which ownership legally passed from the Parish Council to the Charity?

(d) What happens to the properties in the event the Charity has to be wound up?

4.1.5 The research into legal ownership has also identified the need to confirm that the registry document for Charney Field gives CHAFT/PC the right of vehicular access and egress to the recreation ground in perpetuity via right of way 158/8 from Buckland Road on land owned by Oxfordshire County Council. Any clarification you can offer in this respect would be welcome.

4.1.6 Should uncertainty exist about this right of access it will be necessary to establish if CHAFT/PC (as the owner of the Bridle Path) has the right of vehicular access and egress to the main recreation area via the Bridle Path.

4.2 Management responsibilities relating to the Bridle Path

4.2.1. The Bridle Path runs from Main Street and becomes the bridleway when meeting the recreation area.

4.2.2 Until recently the Parish Council dealt with all management issues and enquiries relating to the Bridle Path. These covered issues such as maintenance, parking and clearance of the watercourse Charney Wick Ditch (CWD), environmental issues and protection of the banking to the ditch.

4.2.3 This is at odds with guidance issued by the National Association of Local Councils (NALC) and the Charity Commission on the role of a custodian trustee and CHAFT is having to address the reality of the situation and its responsibilities, particularly in relation to its purpose as set out in the Charity's governing document.

4.2.4 An alternative solution might be an approach to the Charity Commission for the Bridle Path to be removed from the parcel of land known as Charney Field. It is assumed ownership and management responsibility would then fall to the Parish Council. Advice is sought in how this might be achieved if this becomes a solution favoured by both parties.

4.3. Management responsibilities relating to the watercourse known as Charney Wick Ditch (CWD)

4.3.1 Charney Wick Ditch runs along the southern edge of Charney Field (including the Bridle Path) Until recently it appears the Parish Council dealt with all management issues and accepted riparian responsibility for the ditch and banking. It fronted project CHAFFINCH (Charney Against Flash Flooding In Charney Bassett) following local flooding in 2008 and established links with the District Council and the Environment Agency for that purpose. It stores and maintains equipment used for the clearance of the ditch and manages a group of volunteers operating within terms of reference approved by the Parish Council.

4.3.2 This is at odds with guidance issued by the National Association of Local Councils (NALC) and the Charity Commission on the role of a custodian trustee and CHAFT is having to address the reality of the situation and its responsibilities, particularly in relation to its purpose as set out in the Charity's governing document.

4.3.3 An alternative solution might be for the two bodies to approach the Charity Commission with a request for CWD and the accompanying bridleway to be removed from the parcel of land known as Charney Field. It is assumed ownership and management responsibility would then fall to the Parish Council, alongside that referred to at para. 4. 2.4. Whilst the Parish Council is likely to support the separation of the Bridle Path from the parcel of land known as Charney Field it is far less likely to support the detachment of the bridleway and the land to CWD.

4.4 Governance, Finance and subvention.

Subvention

4.4.1 In considering the issues of governance, finance and subvention, account also needs to be taken of the additional responsibilities now falling to CHAFT in relation to the management of the significant land area of woodland at the southern end of the field which until recently housed some 200 trees.

4.4.2 Since purchase of the field in 2002 the Parish Council accepted management responsibility for this woodland area. Safety concerns over a large number of Aspens was one of the main reasons behind the formation of the Joint Liaison Group. Subsequent discussions resulted in an agreement to fell a large number of these trees at significant cost to both bodies (the Parish Council funding being in the form of a grant to CHAFT)

4.4.3 CHAFT is now charged with developing a replanting and maintenance scheme to secure the long-term future of the woodland area in conformity with the felling licence (obtained by the Parish Council at the start of the project) A Woodland Renovation Group has been established by CHAFT with agreed terms of reference and accountability to CHAFT. Consideration is being given to appropriate community involvement. One suggestion under consideration is to explore the feasibility of developing the woodland area and the watercourse (CWD) in a way which would be of greater amenity and recreational value. The formation of a 'Friends of the Woodland Group' or similar might be considered.

4.4.4 The recent changes outlined in this report will have financial implications for CHAFT. The recreation ground itself does not provide any direct income. CHAFT'S financial priorities are centred on building up its now depleted reserve fund for the recreation ground in anticipation future expenditure will need to be focussed on the replacement of essential playing field equipment and maintenance needs. Initial work on the preparation of a longer term financial plan suggests there will be no money available for the maintenance of the woodland area, the Bridle Path and Charney Wick Ditch. The Parish Council has indicated that financial assistance might be provided via an annual subvention but its view is likely to be that this should be directed at maintenance rather than development.

Advice is sought on the principle of subvention, whether it is utilised elsewhere and if there is any recognised way on how it might be calculated.

Finance

4.4.5 It has been suggested that paragraph 3.2 of Charity Commission guidance <https://ogs.charitycommission.gov.uk/g039a001.aspx#tab2> indicates the default position is that the custodian trustee should manage the charity's accounts unless agreed otherwise. Advice is sought on whether this is the case.

Governance

4.4.6 It is not clear whether the full implications of managing the charity's land parcel were envisaged when the land was vested in the charity for the charitable purpose of providing a recreation ground. Advice is sought on the important issue of whether the charity is/will be acting in compliance with the objective of its scheme (as set out in the governing document) and in accordance with guidance issued by the Charity Commission if it has to be responsible for Bridle Path CWD and any part of the woodland.

4.4.7 If the Charity is in compliance consideration may need to be given to any changes to the existing constitution (as set out in the governing document) necessary to ensure effective management in the long term.

4.4.8 Once consideration has been given to the key issues outlined in this report the focus will need to be on the appropriateness of developing the proposed memorandum of understanding.

End.