

Charney Bassett Parish Council

Charney Hall and Field Trust (CHAFT)

Memorandum of Understanding Month/Year

Content

- 1 Introduction 2 Background to the Parish Council**
- 3 Background to CHAFT 4 Agreed Objective 5 General Principles**
- 6 General Governance 7 Village Hall**
- 8 Charney Field**

Appendices

- 1 **Plan of Village Hall 2 Plan of Charney Field**
- 3 **Plan of Bridle Path**

1 **Introduction**

- 1.1 This Memorandum of Understanding (MoU) clarifies the respective roles of Charney Bassett Parish Council (the Parish Council) and Charney Hall and Field Trust (CHAFT) with regard to the Village Hall and Charney Field.
- 1.2 The MoU was drafted by representatives of both organisations meeting as the MoU Formulation Group¹. It was approved by the parent bodies in ???????.²
- 1.3 Each body is governed by different legislation. The MoU has not been prepared with the benefit of legal advice but it has been peer reviewed by Community First - successor to the Oxfordshire Rural Community Council (who had a role in the initial establishment of CHAFT). It is hoped the MoU could withstand legal scrutiny, but it is more important for the fact it

¹ (For the Parish Council) David Roberts (Chair); David Nellist (Vice-Chair); Trevor Brown (Clerk) and for CHAFT Lucy Gildersleeves (Chair); David Sibbert (Vice-Chair); Peter Busby (Woodland Project Officer).

² The Parish Council on xxxxxxx and CHAFT on yyyyyyy

addresses the issues that are important to both organisations and reflects the way they would wish to see them taken forward.

- 1.4 In its current form the MoU is a 'work in progress' in some areas and should therefore be reviewed in 12 months' time. When the outstanding issues identified have been finalised, it should then be reviewed at least every two years, to ensure it takes account of ongoing changes in legislation etc.

2 Background to the Parish Council

- 2.1 The Parish Council is a local authority comprising five elected Councillors and a (paid) Clerk. Councillors are elected every four years. Its role as a service provider is limited, but it is the representative voice of the village in seeking to influence the way services are provided by others, in particular by the County and District Councils.
- 2.2 The Parish Council's relationship with CHAFT is governed by the fact it has been appointed as a Custodian Trustee to the Charity (see also next section). This role has been defined thus³:

"The role of a custodian trustee is very limited. The legal title to the charity's property is vested in the local council and it has custody of all documents relating to the property. The managing trustees must have free access to the title deeds. The property should be listed in the council's asset register but with nil value. Responsibility for insurance of the charity property falls on the managing trustees. The custodian trustee has no power to manage the property and no role in the administration of the charity. The custodian trustee duty is to perform all lawful acts necessary to enable the managing trustees to administer the charity efficiently. The custodian trustee should not act if the matter is a breach of trust or involves liability for the custodian trustee."

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- 2.3 The Charity Commission⁴ has also provided guidance on the role of a Custodian Trustee:

"The watchword here is 'assistance'. The custodian trustee can only assist the managing trustees, it cannot have any management responsibilities itself, no matter how convinced individual members of the corporate body may be that it does.....All sums payable to or out of the income or capital of the trust property should be paid to or by the custodian trustee. It may, however, allow the dividends or other income derived from the trust property to be paid to the managing trustees (or to such person, directly or by credit to their bank account, as they may direct). If this is allowed, then the responsibility for ensuring the proper allocation of those funds falls to the managing trustees, and the custodian trustee is not liable for any loss or misappropriation of them.

The custodian trustee, if it acts in good faith, is not liable for accepting as correct, and acting upon, any written statement by the managing trustees relating to any matter of fact upon

³ Para 10 of National Association of Local Council Legal Topic Note 28 "Basic Charity Law" (April 2017)

⁴ OG 39 A1 14th March 2012 - <https://ogs.charitycommission.gov.uk/g039a001.aspx#tab2>

which the title to any or all of the trust property may depend. It is also not liable for acting on any legal advice obtained by the managing trustees independently of it."

3 Background to CHAFT

- 3.1 CHAFT was first formed in 1988 as the Village Hall Committee and was re-named CHAFT in 2002 when it took on responsibilities for Charney Field. As a charity, CHAFT is governed by a Scheme drawn up by the Charity Scheme (the Scheme)⁵ which set out its objectives (below) and the way it should be run. The Scheme confirms that CHAFT shall be managed by a Management Committee of ten trustees, two of whom are nominated by the Parish Council. It can, and does, appoint volunteers to help with key aspects of its work.
- 3.2 The Scheme confirms CHAFT's objectives as follows:
- (1) The object of the Charity is, in the interests of social welfare, to improve the conditions of life of the inhabitants of the area of benefit without distinction of political, religious or other opinions by the provision and maintenance of:*
- (a) A village hall for use by the inhabitants, including use for:*
- Meetings, lectures and classes and; ○ Other forms of recreation and leisure-time occupation, and: (b) A recreation ground for use by the inhabitants.*
- (2) The land identified in the schedule to the governing document and the land identified in the schedule to this scheme must be retained by the committee for use for object (1) above of the charity.*
- 3.3 Plans of the land associated with the Village Hall and Charney Field are attached.

4 Agreed Objective

- 4.1 Both organisations aim to work together in the best interests of the residents of the village. Both facilities are likely to benefit a wider area than that of the Parish, but decisions on their future management should primarily be in the best interests of Charney residents.

5 General Principles

- 5.1 Against this background, the following general principles can be agreed:
- The Parish Council is the legal owner of both properties;

⁵ https://charneybassett.org.uk/hq-ch/wp-content/uploads/2017/01/CHAFT_CharityScheme_Documents_1988-2002.pdf

- The Scheme entitles CHAFT to regard both properties as its own, as would normally benefit a leasehold owner;
- CHAFT is solely responsible for the management of the properties, including maintenance and upkeep and the operation of the facilities there provided;
- In so far as it is able, the Parish Council as Custodian Trustee helps CHAFT to fulfil its obligations when asked. But it otherwise plays no active role in the running of the Charity or the operational decisions it makes;
- CHAFT may wish to consult the Parish Council on matters that may give rise to particular interest from local residents, bearing in mind the Parish Council's role as 'representative voice of the village'.

6 General Governance

- 6.1 Title Deeds: the Parish Council holds the title deeds to both properties. The deeds to the Village Hall are held in the Berkshire County Archive⁶. John Mant Solicitors originally kept the deeds to Charney Field but returned them to the Parish Council about five years ago. Arrangements will be made for these deeds to be transferred to the Berkshire Archive if possible and for copies of both sets of deeds to be made for local inspection as required.
- 6.2 Liaison: each organisation shall make the draft minutes of its meetings available to the other as soon as possible after a meeting so each is kept abreast of matters of common interest. Representatives of both organisations shall meet at least once a year to discuss matters of common interest.
- 6.3 Representation: when attending meetings of CHAFT the two representatives of the Parish Council act solely as trustees of CHAFT. They act and vote in a way that they believe best serves CHAFT's interests. Their role is not to represent any collective view held by the Parish Council. At meetings of the Parish Council the two representatives will, if necessary, declare an interest and act according to the Parish Council Code of Conduct in matters that relate to CHAFT.
- 6.4 Accounts: the Parish Council initially managed finances for Charney Field on CHAFT's behalf, but CHAFT eventually took on those financial responsibilities and continues to do so. General advice from the Charity Commission (see 3.2 above) suggests that the Parish Council should effectively control CHAFT's accounts. However, it has no wish to do so as long as these
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- accounts are well kept and published, and believes that CHAFT should manage its own accounts - as long as it feels able to do so. Indeed, para 21 of the Scheme expects this in any event.
- 6.5 Funding: the Village Hall generates income which, together with fund raising and grant aid, has generally allowed for the maintenance and improvement of both facilities. Until recently the Parish Council paid for any work necessary to the woodland area on Charney Field but it

⁶ Although now part of Oxfordshire, prior to 1974 the area was part of Berkshire and historic records are generally kept in the Berkshire County Archive, not Oxfordshire.

is hoped that with the recent felling of the mature aspens the cost of maintaining the woodland area, once replanted, will not be anywhere near so costly. Despite this, the Parish Council recognises that CHAFT may still find it challenging to look after and improve Charney Field (which produces no income of its own) from Village Hall income and fund raising. The parties will therefore work to agree an annual subvention, informed by CHAFT's annual accounts and to be paid in April each year, to help with the running of Charney Field. For larger improvement projects, grant aid will need to be explored, including from sources other than the Parish Council.

- 6.6 Insurance. CHAFT provides public liability insurance for all of the areas identified on the plans at Appendices 1 and 2.
- 6.7 CHAFT winding up. The possibility that at some point in the future it may become necessary to wind up the charity cannot be ignored. The Charity Scheme contains no provisions as to how, if needed, the charity should be wound up and, in particular, how its assets should be disposed.
- 6.8 As Custodian Trustee, the Parish Council already holds the title deeds to both properties and as legal owner would expect that they be returned to the Parish Council if CHAFT were to be wound up. But the Charity Scheme (para 24) allows CHAFT to sell the Village Hall – subject to a village referendum. The basis on which this is allowed is not clear, but as this clause may be seen to cast some doubt on the Parish Council's legal ownership of the properties, CHAFT undertakes that if no new charity is formed to take on the role currently it performs, for the avoidance of doubt, CHAFT will do its best to ensure that any interest it holds in the two properties (the Village Hall and Charney Field) will be handed back to the Parish Council with no obligations.

7 Issues particular to the Village Hall

- 7.1 The Village Hall was gifted to the Parish Council by xxxxx in xxxxx and it was agreed xxxxxxxxxx. The Parish Council looked after the building until xxxxx when, with encouragement from the Oxfordshire Rural Community Forum, application was made to the Charity Commission to set up a charity (the Village Hall Committee) to manage the facility.
- 7.2 Two issues merit mention.
- 7.3 Building work can be costly and difficult to manage. Although CHAFT is responsible for the running of the Hall and for its upkeep, there are circumstances where more active involvement by the Parish Council is possible and may be of benefit. This may be the case for larger scale building projects where the Parish Council might be able to reclaim VAT on building costs and provide a financial saving. This will not always be the case, however, and guidance provided by Oxfordshire Association of Local Councils and Community First⁷ can be used to determine if this is so. If CHAFT believes it to be appropriate and worthwhile, it can approach the Parish Council to ask whether it would be prepared to manage a project on CHAFT's behalf to allow such a financial saving to be made.

⁷ A Briefing Note on Village Halls and VAT (Oct 2017)

- 7.4 Paras 24 and 25 of the Charity Scheme allows CHAFT to dispose of the Village Hall, subject to the agreement of the village by means of a referendum, and utilise the funds in furtherance of its objectives. It appears that this clause was inserted because at the time consideration was being given to the building of a new and larger Village Hall on another site. This plan was, however, dropped and as long as Charney Bassett remains a small settlement in open countryside⁸ this is most unlikely to be revived.
- 7.5 Notwithstanding this, the legitimacy of the two clauses is questionable since the Parish Council is the legal owner of the property. CHAFT agrees that it will not invoke this clause without the Parish Council's agreement (see also 6.7 and 6.8 above). In the long term, CHAFT agrees to request that the Charity Commission removes these two clauses from the Scheme. This would be best done at a time when other amendment(s) to the Scheme are being sought.

8 Issues relating to Charney Field

- 8.1 Charney Field was purchased by the Parish Council from Oxfordshire County Council in 2002. It replaced a smaller field leased by the Parish Council from the County Council and which previously served as the playing field to Charney School at the junction of New Road and Buckland Road.
- 8.2 The purchase was made possible by a grant from the Trust for Oxfordshire's Environment (TOE). There were conditions attached to the grant offer but these related to the way the project was to be undertaken: there were no restrictions on the way the land could be used once Charney Field had been set up. Part of the plan included the planting of a substantial number of new trees to supplement the stand of white poplar (or aspen) trees bordering bridleway 158/5 that runs along the north side of Charney Wick Ditch⁹. The Parish Council successfully applied for a grant from Vale of White Horse District Council to fund the new planting.
- 8.3 At the invitation of the Parish Council, the Village Hall Committee entered into correspondence with the Charity Commission to explore the possibility of the Committee expanding its role to also manage Charney Field. It was explained¹⁰ that the aim was to provide a sports field, a children's play area and a nature trail and that endowing responsibility for the management of Charney Field to the expanded charity would avoid the need for a new Committee to be set up which, in a village of the size of Charney, would be difficult in terms of finding sufficient volunteers. The Charity Commission duly drew up a new scheme that would allow the role of the Village Hall Management Committee to be

⁸ The District Local Plan categorises the village as 'open countryside' where sites for new housing should not be sought

⁹ The aspens are believed to have been planted earlier by Oxfordshire County Council as replacements for elms ravaged by Dutch Elm Disease in the 1970's.

¹⁰ Letter from Village Hall Management Committee Secretary 16th October 1999

enlarged, and this was approved by both organisations and sealed on 29th August 2002 following the appropriate period of public advertisement.

- 8.4 The Scheme entrusts the safe keeping of all the land purchased by the Parish Council to CHAFT. This includes Bridle Path, bridleway 158/5, two footpaths (158/2 & 158/33), the aforementioned woodland and an area of flat grassland that presently accommodates a football pitch, a basketball hoop, a willow arbour and a fenced children's playground.
- 8.5 A number of issues merit mention.
- 8.6 Vehicular Access. This is currently provided by a grass track from Buckland Road. This track, recently gated to prevent unauthorised entry, is not part of Charney Field but there is a legal right of way along it to and from Buckland Road. Alternative access to the field is potentially available via Bridle Path. This is part of the Charney Field land parcel but has never been used to provide access to the field or wooded area.
- 8.7 CHAFT is happy to rely on the access from Buckland Road and currently has no desire to use Bridle Path to access Charney Field. It believes that the inclusion of Bridle Path as part of the Scheme was not necessary and that this is not compatible with the responsibilities it has been given in the Scheme (namely to manage "a recreation ground for use by the inhabitants").
- 8.8 A useful statement on the status of the Bridle Path was compiled in 2004 by the Parish Clerk¹¹. Detailed boundaries are shown on a plan provided by the County Council prior to purchase by the Parish Council (Appendix 3). The 2004 statement asserts that "Bridle Path is owned by the Parish Council" and although this is technically correct, under the terms of the Charity Scheme responsibility for its management actually rests with CHAFT. Shared use of a private access can give rise to disputes, but since 2002 no 'management issues' have arisen. Much is owed to the fact that the three households responsible for its upkeep have diligently looked after its condition.
- 8.9 Most residents probably believe that the Parish Council is responsible for the Bridle Path, but this is currently not the case and the true position may need to be better communicated. CHAFT is currently responsible. However, CHAFT's wish to no longer be responsible for Bridle Path could be addressed by through application to the Charity Commission for an amendment to the Charity Scheme to remove Bridle Path from the Charney Field land parcel. This would probably need to agreement of the Parish Council.
- 8.10 In 2002, the Parish Council discussed the wisdom of including Bridle Path in the Charney Field land parcel, but the County Council insisted on it forming part of the sale as it provided the only 'guaranteed' means of access to Charney Field. The Parish Council believes it would be unwise for CHAFT to divest itself of the right to be able to use the Bridle Path at some future point (either temporarily or otherwise) as a means of access to Charney Field. However, should CHAFT wish to make application to the Charity Commission to remove Bridle Path from the Charney Field land parcel, the Parish Council will not raise objection, subject to agreement on a detailed boundary plan. If approved by the Charity Commission the Parish Council would again become responsible for its management. Pending

¹¹ https://charneybassett.org.uk/hq-ch/wp-content/uploads/2018/06/20040128_BridlePath_StatusPD.pdf

confirmation of any change to the current arrangements, CHAFT will continue to be responsible for matters relating to Bridle Path, including public liability. In the event of the

Scheme being amended as aforementioned, the Parish Council would again become¹² responsible for its management.

8.11 Maintenance of the grassed areas. The Children's Play Area was provided by CHAFT and is fenced from the rest of the field. The only hard features on the Sports Field are two goalposts (with nets), a public bench and basketball hoop. There are other benches but these are not fixed. All features were provided and maintained by CHAFT. Current arrangements for maintenance of the grassed areas are as follows:

- The Sports Field is cut by the adjoining landowner (Mr T Fitzgerald-O'Connor) under arrangements put in place by CHAFT.
- The Children's Play Area is mowed fortnightly by BGG Garden and Tree Care, which also cuts other grassed areas throughout the village for the Parish Council. CHAFT reimburses the Parish Council for the cost of cutting this area (for administrative convenience the company invoices the Parish Council). Under these arrangements the Parish Council is not able to reclaim VAT.

8.12 Woodland Area. This is an area bordering bridleway 158/5 that follows the line of Charney Wick Ditch. Originally this area comprised mainly elm but these were replaced with aspens when the elm suffered disease in the 1970's. The area was made larger with new trees planted immediately to the north of the aspens soon after the playing field was formed and these are growing well. The aspens have just been removed following professional advice¹² and the area now left is to be replanted.

8.13 When Charney Field was first developed for recreation, the Parish Council undertook to look after and maintain this area of woodland. The reason is not entirely clear, although it is believed to have been largely financial i.e. to help CHAFT establish itself as a viable financial entity. The Parish Council paid for several pieces of tree surgery on a 'needs must' basis (costing several thousands of pounds) but under the terms of the Scheme CHAFT trustees were and still are responsible for this area. This arrangement has been reviewed through discussion of the plan to replace the aspens¹³, and it is now recognised that the Parish Council should play no active role in the management of the woodland area.

8.14 Public Rights of Way. Oxfordshire County Council has responsibility for maintaining public paths and keeping them free of obstruction. This can include removal of any growth that impedes access and movement. Where public paths have overhanging tree growth, responsibility for maintenance rests with the owner/occupier.

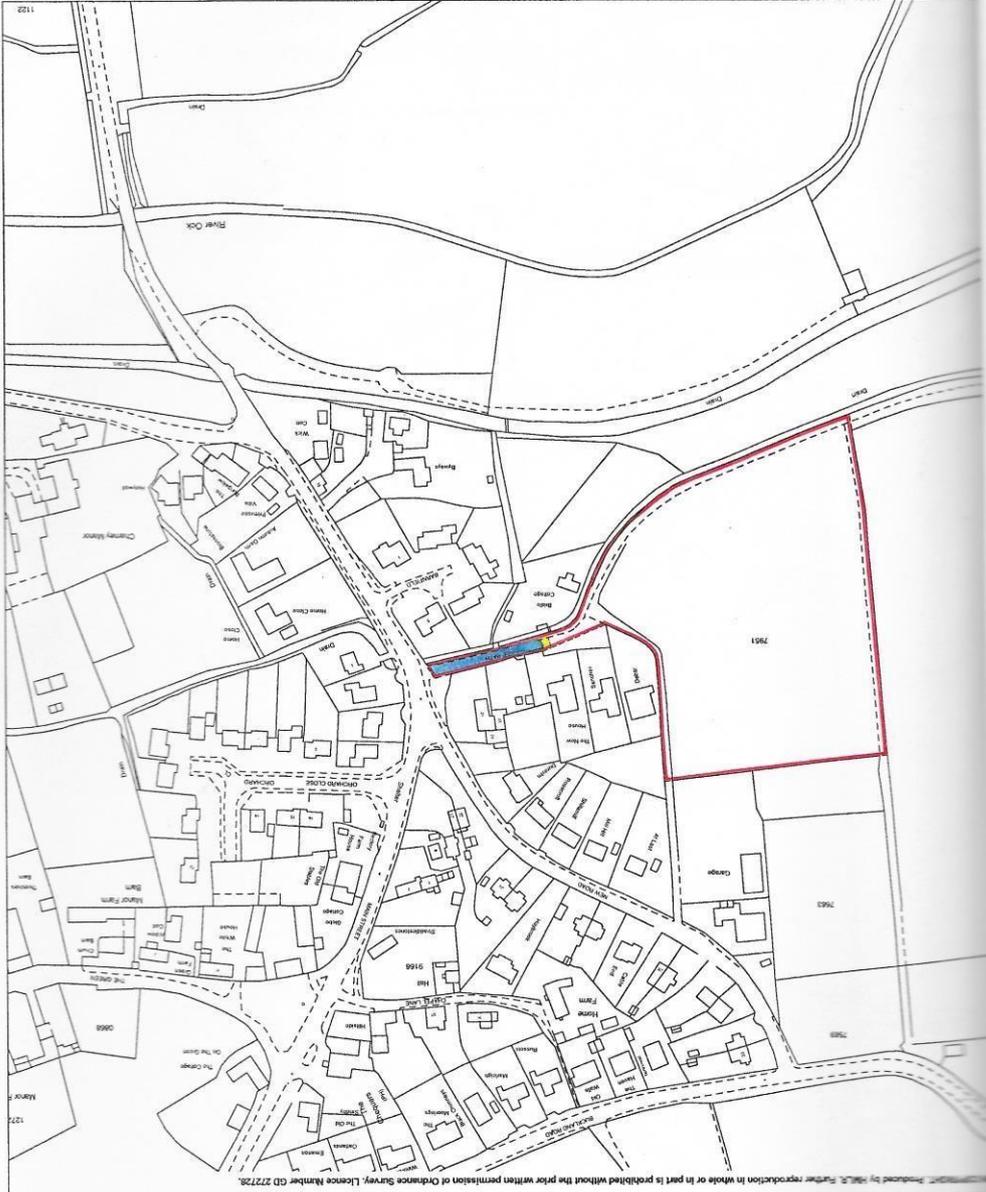
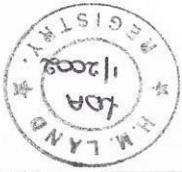
¹² report by David Rees, Project Manager for Oxfordshire County Council and subsequently 2020 report by Sylva Consultancy.

¹³ CHAFT has managed the project which has been part funded through a grant provided by the Parish Council.

- 8.15 Bridleway 158/5 – there is no awarded width on the Definitive Map. OCC has previously advised that the default should be 3 metres (on a field edge)¹⁴.
- 8.16 Footpath 158/3 – there is no awarded width on the Definitive Map. The marked route on the map appears to run tight to the western boundary with De Bar, where a protective hawthorn hedge was planted on the playing field side of the boundary. This emphasises the need for this hedge to be kept well- trimmed to avoid any claim of encroachment or obstruction.
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- 8.17 Footpath 158/8 – this has an awarded width of 1 metre on the Definitive Map. The marked route on the map shows this being very close to the Charney Field western boundary, but there is very little vegetation to encroach. The trees planted to the east of the path are still young and present no risk at present. Prior to the purchase of the land, the Parish Council was in discussion with the County Council to upgrade the footpath to a bridleway. The County Council had indicated its support for the proposal but for some reason the legal process was not completed and it remains a footpath. CHAFT allows horses to use that part of Charney Field (which includes the path) as a route to Buckland Road. But this is presently something of an anomaly, and for this to continue will need to be discussed with the County Council and the adjoining owner (who owns the route north of the field boundary).
- 8.18 The Parish Council liaises with the County on issues relating to public rights of way throughout the parish area and will do so on any issues relating to the rights of way on Charney Field if CHAFT so wishes.
- 8.19 Charney Wick Ditch. The title deeds to Charney Field show that land ownership (including of Bridle Path) extends to the water line of the watercourse. This strongly suggests that the water course itself is owned by the adjoining properties south of the ditch¹⁵. However, this does not necessarily mean that responsibility for keeping the water course clear of obstruction rests entirely with the adjoining owners; CHAFT may well have some joint responsibility.
- 8.20 The Parish Council is sympathetic to CHAFT's view that such responsibility could be said to be beyond its remit of providing for "a recreation ground for use by the inhabitants". But Charney Army, which does general upkeep work for the Parish Council, can be made available to undertake work on Charney Field if CHAFT so requests. This can potentially extend to ditch clearance as equipment for this purpose was purchased recently (with grant aid) and the volunteers have received training from the Environment Agency on ditch clearance techniques. If Charney Army agrees to undertake ditch clearance for CHAFT the volunteers are covered by the Parish Council's employer and public liability insurance.

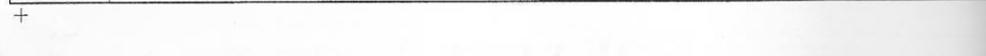
¹⁴ Letter from County Solicitor to Parish Clerk dated xxxxxxxxxxxxxx

¹⁵ Nos. 4 and 5 Barnfield, White Cottage and Brook Cottage Farm



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OXFORDSHIRE : VALE OF WHITE HORSE
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