

# **CHAFT Management Committee 23<sup>rd</sup> June, 2021.**

## **Management of Charney Hall & Field**

### **1. BACKGROUND**

- 1.1 The proposed Memorandum of Understanding (MOU) between the Parish Council and Charney Hall & Field Trust (CHAFT) was redrafted by the Parish Council at the request of CHAFT. This involved in depth and time consuming research by the Parish Clerk which gave focus to important and longstanding issues in need of clarification and resolution.**
- 1.2 On the 2nd February, 2021, a joint submission was made to Community First Oxfordshire requesting advice on issues relating to:**
  - Legal ownership of the Village Hall and Charney Field.**
  - Management responsibilities and Charney Field.**
  - Finance, subvention and governance.**
- 1.3 In seeking advice both organisations stressed they had no territorial ambitions but a common desire to comply with legal requirements and provide clarity on management issues which would be of benefit to all those involved now and in the future.**
- 1.4 This report is largely based on advice provided via an interchange of emails and a virtual meeting with Community First and ACRE (Action with Rural Communities in England) Their representatives have wide experience and knowledge of working with village halls over many years but are not legally qualified.**
- 1.5 Trustees are now asked to consider issues which will influence how the charity operates in the future and assist with the updating of the draft MOU.**
- 1.6 Community First have offered to review the MoU at the final draft stage. Trustees may now feel they have sufficient information to enable them to respond to the Parish Council on the current draft in the knowledge that a final check by Community First would ensure their advice has been correctly interpreted. Attention is drawn to the fact that no specific advice has been offered on the questions posed at paragraphs 2.2 and 4.1.**

### **2. OWNERSHIP RELATED ISSUES.**

#### **2.1 Who owns the two properties and what are their respective responsibilities?**

**The Parish Council doesn't own the land and property under the two schemes referred to in the governing document. The land/property is held on trust by the CHAFT trustees as a village hall and recreation ground for the community. It should be managed by the Management Committee as trustees of the charity. The Parish Council is the custodian trustee and holds the legal title as a corporate body but can only act on the direction of the Management Committee. The land and property are not Parish Council assets (of value)**

The Trustees have legal responsibility for the management and financial control of the charity and its land and properties.

The Parish Council can support the charity in its role as a Parish Council but not as a custodian trustee

The charity is unincorporated and in certain circumstances the trustees can be held individually liable. Incorporated charity status could be pursued to give some protection against liability. This would require legal advice. Further information is available via Community First

From the Parish Council's perspective, as Custodian Trustee, it has no obligations to the Charity, other than acting under any lawful instruction given by the Committee in the context of the property title.

## **2.2. Did the charity schemes act as the vehicle by which ownership legally passed from the Parish Council to the Charity?**

No specific advice has been received.

## **2.3. Should the land registry documents be amended to specifically indicate the Parish Council is the custodian trustee and CHAFT is the landowner as trustees of the charity?**

The land registry documents should indicate the Parish Council is the custodian trustee. Legal advice may be needed to undertake this change. ACRE are to approach a solicitor to ask what costs might be involved.

**Do the Trustees agree action should be taken to amend the land registry documents?**

## **2.4. What happens to the properties in the event the Charity has to be wound up?**

The Charity must follow any rules set out in the governing document and seek guidance from the Charity Commission as necessary.

The following extract from an article by Graham Betts, Village Hall advisor Shropshire RCC and an ACRE network advisor states

*'If the Charity has any difficulty, the Council as Custodian Trustee is under no obligation to help. It may, and hopefully chooses to do so, in order to maintain and support a valuable community asset. The Committee cannot simply abandon the Charity with the assumption that the Council will 'take over'. That would be a fundamental 'breach of trust' on their part. Importantly, the Custodian Trustee has no powers to administer the Charity under the 1906 Act or the Charity's Governing Document and should not seek to do so.*

2.5. In summary, it would appear the appointed Trustees have full individual and collective legal responsibility for the management and financial control of the charity and its land and properties. Given this interpretation, the charity's responsibilities extend to the full parcel of land known as Charney Field unless changes are made to the governing document and the land registry document. Paragraph 3 refers.

## **3. GOVERNANCE AND THE PARCEL OF LAND KNOWN AS CHARNEY FIELD.**

3.1 Advice has been sought from Community First and ACRE as to whether the charity is acting in compliance with its charitable objective of providing a recreational ground (and in accordance

with guidance issued by the Charity Commission) in undertaking management responsibilities for the full parcel of land. No firm advice has been provided.

The charity may wish to consider

(a) Asking the Parish Council to agree to a joint approach to the Charity Commission for the ownership of the Bridle Path to be removed from the parcel of land known as Charney Field. Management responsibility would then fall to the Parish Council

The Parish Council has always dealt with management issues and enquiries relating to the Bridle Path. These have covered maintenance, parking and clearance of the watercourse Charney Wick Ditch (CWD), environmental matters and protection of the banking to the ditch.

It had been suggested that such an approach could leave the charity without vehicular access and egress to the field. However, charge 7 of the land registry document gives CHAFT the right of vehicular access and egress to the recreation ground via right of way 158/8 from Buckland Road (via land owned by Oxfordshire County Council)

Legal advice would be necessary and changes would need to be made to the governing document and land registry document.

**Do the Trustees want to ask the Parish Council to agree to joint enquiries being made to the Charity Commission with a view to ownership of the Bridle Path being transferred to the Parish Council?**

(b) Asking the Parish Council to agree a joint approach to the Charity Commission for the land at the southern edge of Charney Field (comprising of the bridleway to the edge of Charney Wick Ditch) to be removed from the parcel of land known as Charney Field. Ownership and management responsibility would then fall to the Parish Council.

The Parish Council has always dealt with any management issues and undertaken 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. Matters relating to the bridleway have normally been dealt with by the Parish Council in liaison with the County Council.

Legal advice would be necessary and changes would need to be made to the governing document and land registry document

**Do the Trustees want to ask the Parish Council to agree to joint enquiries being made to the Charity Commission with a view to ownership of the land at the southern edge of Charney Field (comprising of the bridleway to the edge of Charney Wick Ditch) being transferred to the Parish Council?**

3.2 With regard to the woodland area, until about three years ago the Parish Council dealt with management issues. CHAFT is currently charged with implementing a replanting plan for the woodland area in accordance with the Felling Licence obtained by the Parish Council for the felling of potentially dangerous trees in Nov. 2020. This was a condition imposed by the Parish Council in providing a grant towards the felling of the trees. The charity has already initiated a woodland renovation project

3.3 Discussions have suggested that a way forward might be for CHAFT to build on this initiative and set up a sub-committee (s) to manage different areas of responsibility. This would require clear written terms of reference so that lines of communication are clear for now and in the future. The Management Committee would remain legally responsible and the subcommittee(s) would need to report back to the management committee regularly.

It was thought essential that the charity ensures it has the necessary skills, capacity and administrative support to effectively manage the woodland area (and the full parcel of land if this remains the case) A 'Friends of the Woodland' initiative or something similar would be one option. Such field initiatives could provide additional amenity attractions and place focus on environmental issues.

It was also noted that such an approach might require the Management Committee to review its governing document to ensure it remains 'fit for purpose' bearing in mind current emphasis is on village hall organisation user representation.

Do the Trustees wish to adopt the above information (para. 3.3) as a basis for considering future policy development?

## **4. FINANCE**

### **4.1 Managing the Charity's accounts.**

It had 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.

No advice has been received. However, such an interpretation is inconsistent with the Trustees having legal responsibility for the management and financial control of the charity and its land and properties.

### **4.2 Subvention**

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

No specific information is available on the use of the term subvention. The use of the term 'grant' or 'annual grant' is more commonly used by Parish Councils

**Do the trustees agree that any new responsibilities relating to the management of the Bridle Path, Charney Wick Ditch and the woodland area will result in additional expenditure and that the Parish Council should be asked to consider agreeing the principle of an appropriate annual subvention or annual grant?**

## **5. MEMORADUM OF UNDERSTANDING**

The draft MOU prepared by the Parish Council will need updating.. Community First/ACRE advise that a long and complicated MOU may be unnecessary. A much shorter document could be drawn up providing a commitment from the PC to provide an annual grant and an understanding that they will co-operate and support CHAFT in their endeavours to manage the land and property. This would be with their Parish Council hat on (rather than as custodian trustee)

As stated earlier, Community First have offered to give their views on the final draft of the MOU. This would ensure their advice has been correctly interpreted and allow further discussion on any new information/issues which come to light.

## **6. SUMMARY OF KEY POINTS.**

From the advice obtained so far the evidence suggests

- The land/property is held by the trustees of the charity on trust as a village hall and recreation ground for the community.
- Trustees have individual and collective legal responsibility for the management and financial control of the charity and its land and properties.
- The Parish Council can support the charity with its parish council hat on but not in its role as a custodian trustee
- Consideration should be given to amending the land registry documents to indicate the Parish Council is the custodian trustee.
- The charity's current responsibilities for Charney Field include the full parcel of land referred to in the governing document and the land registry document.
- Possible options for change include asking the Parish Council to agree to a joint approach to the Charity Commission (and then to the Land Registry Office) for the Bridle Path and/or the land at the southern edge of Charney Field (comprising the bridleway to the edge of Charney Wick Ditch) to be excluded from the parcel of land known as Charney Field, with ownership then being transferred to the Parish Council. Legal advice would be necessary

- Further consideration to be given to the use of sub-committee(s) to assist with the management of the parcel of land known as Charney Field. The charity should ensure it has the necessary skills, capacity and administrative support
- Trustees to consider reviewing the governing document to ensure it is fit for purpose.
- Continued support of the Parish Council, in its Parish Council role, is important if these valuable community facilities are to provide maximum benefits for local residents
- Parish Council to be asked to consider making an annual grant to the charity towards future costs.
- Joint liaison Group (CHAFT/ Parish Council) to produce revised Memorandum of Understanding for review by Community First.

## **7. RECOMMENDATIONS.**

CHAFT is recommended to

- (a) Forward a copy of this report to the Parish Council
- (b) Inform the Parish Council of the decisions taken at paragraphs 2.3, 3.1, 3.2 and 4.2 of this report.
- (c) Indicate their belief that the continued support of the Parish Council, in its Parish Council role, is important if these valuable community facilities are to continue to provide maximum benefits for local residents
- (d) Authorise its representatives on the PC/CHAFT Joint Liaison Group (JLG) to address any outstanding issues and agree with the Parish Council a final draft of the MOU for review by Community First.