

Advice note for the committee of management of CHAFT

I have now read through the documents sent me concerning the stance of Charney Bassett Parish Council (the Council) in relation to the ownership of the village hall and field and the administration of CHAFT. The Council's stated position is a curious one: they have been advised by their own solicitors, Wellers Hedleys, in a letter dated 15th September 2022, and I understand, by the Charity Commission (CC) that both the village hall and the field are held in trust for the purposes of CHAFT. This fact is unequivocally expressed in both the 1988 and 2002 Schemes, the second Scheme broadening the objects to include the field to be held in trust for recreational purposes. Interestingly, I note that the Council has now signed the Land Registry documents so have conceded this point. I will however return to this below.

In both Schemes, the Council is expressed to be custodian trustee holding property in trust for the charity. Yet the Council raises concerns about "how best to safeguard the properties for the benefit of the village residents" (as per the draft minutes of a meeting on 10th October). Wrapping up property in a charitable trust is usually the most effective way to safeguard it and I fail to see how the Council's suggestions would enhance existing protection.

In the governance session delivered in late 2021 I advised that it is the members of the committee of management who are the managing trustees of CHAFT, with responsibility for the administration of the charity. The role of the Council as custodian trustee is extremely limited and they must act on the reasonable instructions of the managing trustees. This point is made in relevant CC guidance for village hall charities, not least because Parish Councils don't always understand their role as custodian trustee.

Charney Field

There is no challenge to the basis on which the village hall is held. It is basis on which the playing field is held which appears to be the issue. Wellers Hedleys refers to the possibility of an application to the Commission to rectify the outright transfer of the field to CHAFT, with the caveat that without evidence of intention at the time of the transfer and subsequent management of the land by the Council since, an application would probably fail. The solicitors go on to state that "It would be easier if the Charity supported the Parish Council in such an application". Unless there is good reason to do so I would not recommend supporting such an application, of which more below.

Joint meeting with Parish Council

I note the proposal by the Council for a joint meeting with CHAFT. The purpose of such a meeting seems to be to discuss an application to rectify the basis upon which the field is held and comments from their solicitors (on page 3 of the letter) suggesting the charity could approach the Council to act as the sole corporate trustee or purchase the properties. The brief paragraph in that letter does not expand on the circumstances in which either of these options could happen or what the CC would expect to see before providing its consent.

Any decision by the managing trustees of CHAFT, either as to the basis on which property is held or who administers it, must be made in the best interests of the charity, not in the best interests of a third party. It is axiomatic that the best interests of the Council are not necessarily the same as the best interests of CHAFT.

I query on what reasonable basis CHAFT would consent to a joint application to the CC to rectify the transfer of the field unless say there were discussions at the time (which are recorded in writing) that the field would be leased or licensed to the charity and an error was made. And why would the trustees agree to the Council replacing them as managing trustee, particularly given your work in seeking to make changes to the charity's governance and in ensuring that the committee has a full complement of trustees?

It is possible for parish councils to administer charities as sole trustee. Here there would need to be a compelling argument put to the CC as to why this would be in CHAFT's best interests. Given what you have told me, I cannot see good reason for a change of trustee. Based on my experience of advising village charities, it is usually better in terms of governance for them to be managed independently of the local council, something the CC is aware of.

Sale of property

I now address the suggestion that the Council purchases the properties. This would need to be more than just "a good idea", as stated in the solicitors' letter. It would be up to the committee of management to decide to sell the properties, not the Council, and that decision would need to be made in the charity's best interests. As you state in your proposed response to the Council at paragraphs 5 & 6, the committee would need to follow the charity's governing document at clauses 24 and 25 of the 1988 Scheme as well as CC guidance on disposing of charity land. A decision to discontinue the use of the property for its stated charitable purposes would need to be "necessary or advisable" (clause 24). That decision would then need to be confirmed by majority decision at a public meeting attended by those living in the Charney Bassett area.

Unless there was no longer the need for a village hall or playing field (which I imagine is very unlikely), it would be hard to imagine circumstances in which local people would willingly confirm a decision to dispose of the land unless an alternative and better site were available for the hall and playing field. In the event of a sale the net proceeds would need to be held in trust to further the objects of the charity or for the general benefit of those living in the village, "as the Committee think fit". If the Committee did not wish to hold and apply the sale proceeds, it would be possible for another charitable body to hold and administer them with the CC's consent.

You have asked whether parish councils can hold charitable funds. The answer is yes, but funds must be held and accounted for separately from statutory funds and decisions to spend the funds taken in the charity's best interests, not those of the Council.

MoU

It is unclear whether a MoU has been agreed with the Council. If this is under discussion, I would recommend that this deals with practicalities of running the charity e.g. funding, or

ground maintenance, rather than substantive issues such as what happens if the charity is unable to operate. You rightly state in the proposed response to the Council that the governing document/requirements of charity law would have precedence over what was stated in the MoU.

Charities Act 2022

You have asked me about the new Charities Act 2022. This makes some technical changes to charity law by amending parts of the Charities Act 2011. The changes are being implemented in three tranches with the first tranche coming into force on 31st October 2022, followed by Spring 2023 and Autumn 2023. The changes do not affect either the Council's role as custodian trustee or the proposed response by CHAFT.

Note by Tessa Hennessy Solicitor 10th November 2022