



**IN THE FIRST-TIER TRIBUNAL (CHARITY)
GENERAL REGULATORY CHAMBER**

Appeals No. CA/2013/0006, CA/2013/0007 and CA/2013/0008

(1) JACK SPARROW

First Appellant

(2) ROSEMARY CARNE

Second Appellant

(3) NIGEL WEBSPER

Third Appellant

- and -

THE CHARITY COMMISSION FOR ENGLAND AND WALES

First Respondent

THE TRUSTEES OF THE BATH RECREATION GROUND

Second Respondent

DECISION ON APPLICATION FOR PERMISSION TO APPEAL

DECISION

Permission to appeal is granted.

REASONS

1. The Second Respondent in these appeals applies for permission to appeal against the decision of the First-tier Tribunal (Charity) dated 27 March 2014. In their application dated 23 April 2014 the Second Respondent explained the scope of their appeal and set out three grounds in support of their application.
2. I have considered in accordance with Rules 43 and 44 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 whether to review the decision in this

appeal but decided not to undertake a review as I am not satisfied that there was an error of law in the decision.

3. By virtue of Rule 42(5) an application for permission to appeal to the Upper Tribunal must identify the alleged error or errors of law in the decision and state the result the party making the application is seeking.
4. The Second Respondent has set out the limited scope of their appeal in the following terms:

“The Trustees wish to appeal solely against those parts of the Decision and/or Order that:

- (i) Reduce to coincide with the area of the 1995 lease and the area of the existing temporary lease the extent of the land forming part of the Recreation Ground as described in Part 4 of the schedule to the amended scheme in respect of which the Trustees are permitted to grant a lease for 9 months of the year for the use and occupation of Bath Rugby (the Rugby Club); and*
- (ii) impose an absolute prohibition on any future assignment of any such lease.”*

5. The Second Respondent has stated that the result they seek is for the decision of the First-tier Tribunal (Charity) (the “Tribunal”) in these appeals to be amended in part. The Tribunal decided to substitute for the order made by the Charity Commission on 12 June 2013 establishing a scheme for The Recreation Ground, Bath (charity reference 1094519) an order effecting an amended scheme for The Recreation Ground, Bath. The Second Respondent seeks either, one of the following modifications to the order;

- (i) the existing specification of the land available to be leased to Bath Rugby and the existing provision regarding assignment of such lease to remain as in the Charity Commission scheme prior to the appeals; or
- (ii) to withdraw the amendment to clause 4(6)(d)(i) of the Charity Commission scheme and make provision in the amended scheme to enable the Charity Commission to determine the precise area of land to be made available to be leased to Bath Rugby as and when the true position became clear;

or

- (iii) to have the form of the Scheme remitted to the Charity Commission for amendment in accordance with principles laid down by the Tribunal.

6. The Second Respondent describes the following alleged errors of law in the decision of the Tribunal:

- (1) (a) The Tribunal did not have sufficient evidence of the original intention of the sellers of the land comprised in the conveyance dated 1 February 1956 that created the charitable trust over The Recreation Ground, Bath to justify an interpretation that the true charitable purpose was to preserve the land *in specie* as an open space.
- (b) Distinguishing the trusts establishing The Recreation Ground, Bath from those considered in *Oldham Metropolitan Council v Attorney General* [1956] 2 All ER 432 CA and treating them as within the type of case referred to near the end of the

judgment of Dillon LJ as having a purpose rendered charitable ‘by reason of the particular qualities of the land in question’.

Or, in the alternative;

- (2) If the grounds for appeal set out in (1) above do not succeed and the land of The Recreation Ground, Bath is held on trust to be preserved *in specie* as an open space, the Tribunal should not have;
 - (a) regarded the provisions relating to the 1995 lease in the Charity Commission scheme and any modification of it as being ‘administrative’ rather than *cy pres* provisions; and
 - (b) regarded the 1995 lease as ‘compatible’ with the object of The Recreation Ground, Bath when in fact the Tribunal held that it was admitted by all parties to be a breach of trust, and by reason of the construction thereon of the three permanent stands the use of the land under the 1995 lease was clearly inconsistent with the preservation of the land as an open space.

And, in addition to either of the grounds for appeal set out in (1) and (2) above,

- (3) The decision of the Tribunal was irrational and unsupported by the evidence as no submissions were made to the Tribunal by any of the parties specifically on the questions of (a) the exact extent of the land which was to be capable of being leased to Bath Rugby in addition to the land already the subject of a long lease from The Recreation Ground, Bath to Bath Rugby and (b) the prohibition of the assignment of any new lease.
7. Having considered the application for permission to appeal and the circumstances of these appeals, I conclude that permission to appeal should be granted in respect of the alleged errors in law set out in (1) and (2) (a) above. In view of the long history of uncertainty over the legal position of The Recreation Ground, Bath, the public interest in the outcome of these appeals and the exercise of judgment that the Second Respondents are called upon to exercise under the terms of the scheme on the matters within the limited scope of this appeal, it appears fair and just to have a definitive determination of these alleged errors of law, as set out in more detail in the application for permission to appeal.
 8. I conclude that the grounds set out in (2) (b) and 3 do not disclose an error of law for the following reasons. Ground (2) (b) is based on a mis-reading of the Tribunal’s decision. The relevant section of the decision does not reflect a conclusion that the 1995 lease of land to Bath Rugby was not in breach of trust; it reads as follows and makes a more general point about how the trustees can choose to manage the charity and use its assets:

“The existence of an elite Rugby Club and of three stands surrounding an open space that can be used for rugby or for other sports are not, in themselves, incompatible with the purposes of the Charity. It is for the Trustees to assess whether or not such arrangement can further the purposes of the Charity. However, the enclosure of a large area of the Recreation Ground by the erection of the East Stand and the restriction on entry to, or use of, this enclosed area by the requirement of a payment to a sports club operating as a profit making business raises considerable concerns about how this will assist the Charity in furthering its purposes.”

9. With regard to ground (3) (a), the Tribunal heard representations and evidence about whether any further lease of land to Bath Rugby should be agreed and about the changes in the size of the land that might be the subject of a further lease. The issue arose in the course of the examination of the Second Respondent's witnesses by the First Appellant, the Third Appellant and the Tribunal. Counsel for the Second Respondents asked her witness to clarify whether the proposed new lease left enough space for cricket to be played. All of the Appellants and the First Respondent raised the issue of the size of any further lease and its effect on the use of the Recreation Ground in their closing submissions and the Third Appellant specifically asked the Tribunal to reach a decision on this issue in the course of determining the Appeals. With regard to ground (3) (b), the Tribunal heard representations from the Appellants about the alleged uncertainty over the assignment of the 1995 lease to Bath Rugby and their concern that the identity of the other party to any new lease should be known and that it should be the company operating Bath Rugby Club and not an entity that owns the company operating Bath Rugby Club from time to time. The Second Respondents had the opportunity to respond to these representations. In any event the application for permission to appeal assumes that the Tribunal had made untested assumptions that the requirements of Bath Rugby Club could be met by the terms of the amended scheme. In fact, the decision of the Tribunal does not assume that the Second Respondents will conclude that it is in the best interest of The Recreation Ground, Bath to enter into any new lease with Bath Rugby or to take any steps to permit or encourage professional rugby to continue to be played on the Recreation Ground.
10. If any party is dissatisfied with the outcome of the application for permission to appeal this decision, they have a right to apply to the Upper Tribunal for permission to appeal the decision in this appeal. Such an application must be made in writing to the Upper Tribunal Office, Tax and Chancery Chamber, 45 Bedford Square London WC1B 3DN no later than one month after the date of this notice. Further information about appealing to the Upper Tribunal can be found at:

http://hmctsformfinder.justice.gov.uk/HMCTS/GetForms.do?court_forms_category=Tax&Chancery%20Chamber%20-%20Upper%20Tribunal

Peter Hinchliffe

Tribunal Judge

Date 08 May 2014