



**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

ORDER

Upon the Tribunal having issued its decision in these appeals on 27th March 2014

And upon the Tribunal considering the representations of the parties as to the final form of this Order

The Tribunal now Orders:

- 1. That the Respondent's Scheme of 12th June 2013 shall be amended as directed by the Tribunal in the attached document.**
- 2. That the amended Scheme shall take effect as of the date of this Order.**

24th April 2014

Signed

Peter Hinchliffe Tribunal Judge

**Carole Park Tribunal Member
Susan Elizabeth Tribunal Member
The First-Tier Tribunal (Charity)**

Under the power given in the Charities Act 2011

Orders that from today, the 21st April 2014, this SCHEME will govern the charity known as Bath Recreation Ground Trust

1. Definitions

In this scheme:

‘the Bath Recreation Ground’ means the land identified in Part 1 to the schedule.

‘the charity’ means Bath Recreation Ground Trust, established by a conveyance to the Mayor and Citizens of the City of Bath of 1st February 1956.

‘the Commission’ means the Charity Commission for England and Wales.

‘the Council’ means Bath and North East Somerset Council.

‘the 1995 lease’ means the lease of land belonging to the charity which was granted to Bath Rugby Club on 23rd May 1995.

‘the existing trusts’ means the conveyance of 1st February 1956.

‘the schedule’ means the schedule to this scheme.

‘the trustees’ means the managing trustees of the charity appointed in accordance with Clause 6.

1A. Objects

- (1) The objects of the charity are the provision, with or without charge, of land in or near Bath, including but not limited to the Bath Recreation Ground, for use as outdoor recreational facilities for the benefit of the public at large and in particular for use for games and sports of all kinds, tournaments, fetes, shows, exhibitions, displays, amusements, entertainments or other activities of a like character and the maintenance, equipment or lay out as the trustees shall think fit of such land and always provided that (i) the charity shall not show any undue preference to or in favour of any particular game or sport or any particular person, club, body or organisation, and (ii) the charity shall not use the Bath Recreation Ground otherwise than as an open space.
- (2) The net income of the charity and (where permissible) permanent endowment of the charity shall be applied in the repair, insurance, maintenance and improvement of the property of the charity and otherwise in furtherance of the objects of the charity.

2. Administration

- (1) The property of the charity is to be administered in accordance with the provisions of this scheme.

- (2) The charity may carry out its activities on other sites in addition to the Bath Recreation Ground.
- (3) The charity shall not enter into any transaction that permits the use of part of the Bath Recreation Ground otherwise than as open space or on a basis that favours any particular game or sport or any particular club over another unless and until the trustees have considered such transaction and have decided that the overall effect of the transaction is to provide a net benefit to the charity in furthering its charitable purposes.
- (4) The trustees must (with the benefit of such professional advice as necessary):
 - (a) seek to negotiate and enter into binding arrangements with the Council in respect of the Bath Sports and Leisure Centre for its ongoing maintenance, its continued occupation of part of the charity's land and its future demolition when the building is deemed life expired; and
 - (b) seek to negotiate and enter into a binding settlement of any claims that the charity has against the Council in respect of the past operation of the Bath Sports and Leisure Centre and car parks on the charity's land.
- (5) The trustees shall ensure that they hold an AGM in public each year. Not less than 28 days before the AGM, they shall give notice on the charity's website and by prominent notices on the charity's land giving notice of the AGM including details of how to get a copy of the Annual Report. The Annual Report shall be made available in accordance with the notice on the charity's website and hard copies shall be made available for inspection at a reasonably accessible location in central Bath. The AGM shall be held at a time and location in central Bath suitable for interested parties to be able to appear at the AGM and ask questions or make comments to the trustees.

3. Bath Sports and Leisure Centre

- (1) In sub-clause (2) below, 'the relevant date' is the date on which the existing Bath Sports and Leisure centre building can no longer be used for indoor recreation for the benefit of the public at large.
- (2) Until the relevant date, the provision in the objects set out at sub-clause 1A above that the Bath Recreation Ground may only be used as an open space is suspended in respect of the land identified in part 3 of the schedule to this scheme. It may be used during this period as a facility for indoor recreation for the benefit of the public at large (including ancillary car parking). For the avoidance of doubt, after the relevant date, the trustees must return the land to open space suitable for the furtherance of the Charity's objects.

4. Powers

- (1) For the purpose of resolving the issues arising from the continuing occupation by Bath Rugby Club of the land contained in the 1995 lease, and in the event of the surrender of the 1995 lease, the trustees may (subject to sub-clause (2) below) exercise all or any of the powers in this clause.
- (2) Before exercising the powers conferred by this clause, the trustees must fully consider all options for the management of the land belonging to the charity (including the option of making no changes to the current arrangements) and before adopting any option

satisfy themselves that that option is in the best interests of the charity.

- (3) Sub-clause (4) applies only to the land:
 - (a) currently subject to the 1995 lease; and
 - (b) described in part 4 of the schedule to this scheme.
- (4) Subject to sub-clause (2) above and the conditions, the trustees may grant a lease or leases of the land and receive replacement land instead of, or in addition to, consideration by way of a capital sum and by way of further consideration. The conditions are:
 - (a) the term of any lease(s) must not exceed the unexpired term of the 1995 lease; and
 - (b) any replacement land must be suitable for and further the purpose of the charity; and
 - (c) the trustees shall have satisfied themselves that the overall effect of the grant of any such lease or leases and the terms of such grant will be to further the charity's ability to achieve its charitable purposes.
- (5) In so far as any lease is granted by the trustees of the whole or any part of the land described in part 4 of the schedule:
 - (a) no lease must be granted unless and until all necessary formalities (including the elapse of time if appropriate) have been properly performed and recorded to exclude sections 24 to 28 of the Landlord and Tenant Act 1954 in relation to that lease; and
 - (b) the lease must not permit the tenant use otherwise than as a site for a temporary stand or playing pitch or access areas and must require the site to be available as open space for use by the trustees for the purposes of the charity for at least three months in each year. The three months shall be consecutive summer months. The site, including all grass surfaces, shall be made available at the start of the three month period in a condition that is immediately suitable for the playing of sports and the use of the land for leisure purposes.
- (6) In exercising the powers conferred by this clause, the trustees must:
 - (a) before accepting a surrender of the 1995 lease, satisfy themselves that they are doing so on the best terms reasonably available;
 - (b) satisfy themselves (having undertaken public consultation) that any land taken in exchange will:
 - (i) have suitable amenity value for the purpose of a recreation ground; and
 - (ii) be in a location that is reasonably accessible and suitable for the purposes of the charity;
 - (iii) be better suited to the achievement of the charity's purpose than any other suitable land available at that time at an equivalent cost to the charity.

- (c) before entering into any commitment to grant, accept a surrender of the 1995 lease or take any interest in land obtain (from a professional valuer) a valuation of the land in question. A valuation must take full account of:
 - (i) the special interest of Bath Rugby Club in securing a grant of the land in part 4 of the schedule and its marriage value with the existing land held under the 1995 lease for the purpose of proposed development by Bath Rugby Club; and
 - (ii) (in valuing any re-grant of the 1995 lease) the other commercial uses which may be made within the current use class and under any planning permission that might reasonably be obtained for the land.
- (d) in granting any new lease of the land comprised in the 1995 lease:
 - (i) ensure that the lease is non assignable;
 - (iii) ensure that the lease contains a right of pre-emption should Bath Rugby Club cease to use the property as its principal site for professional rugby football;
 - (iii) require Bath Rugby Club to minimise disruption to local residents and to the users of the charity's land; and
 - (iv) give public notice in accordance with the provisions of section 121 Charities Act 2011 (whether or not this would otherwise be required).
 - (v) minimise any adverse effects of the grant of such lease on the ability of the charity to pursue its charitable purpose.
- (7) In exercising the above powers (and in administering and managing the charity), the trustees must:
 - (a) act only in the best interests of the charity to further the charity's objects for the public benefit;
 - (b) act in good faith (meaning acting in a way that the trustees honestly believe to be in the best interests of the charity);
 - (c) take into account all relevant factors and disregard any irrelevant factors; and
 - (d) adequately inform themselves, including having regard to the views of those who have an interest in the charity.

5. Custodian Trustee

- (1) The Council will be the custodian trustee of the charity.
- (2) The Official Custodian for Charities is discharged in respect of the land identified in part 1 of the schedule. From this date, the land is vested in the Council as custodian trustee of the charity.

6. Trustees

- (1) When complete, the trustee body comprises:
 - 1 trustee nominated by the Council
 - 1 trustee nominated by Fields in Trust
 - 1 trustee nominated by Somerset County Playing Fields AssociationNot less than 3 individual trustees
- (2) Except as provided for the first trustees listed in part 5 of the schedule to this scheme, each appointment must be for a period of three years.

7. First Trustees

- (1) The first trustees nominated by external bodies are the persons listed in part 5 of the schedule. They will hold office for the periods shown in the schedule.
- (2) The first six individual trustees are listed in part 6 of the schedule.
- (3) All trustees may serve a further term of up to three years.

8. Individual Trustees

- (1) When appointing individual trustees, the trustees must:
 - (a) identify the needs of the charity regarding skills or knowledge of its trustees; and
 - (b) consider the extent to which appointees demonstrate the skills or knowledge; and
 - (c) not appoint members of the Council.
- (2) Of the individual trustees, the trustees must appoint at least one whose skills and knowledge include an ability to represent those groups of beneficiaries that use the recreation ground, other than Bath Rugby Club. At least three of the trustees must be resident within the former boundaries of the City of Bath.
- (3) In appointing individual trustees, the trustees must have regard to the desirability of advertising in the local and/or specialist press or using trustee brokerage services. Candidates must be asked to consider and declare any existing or potential conflicts of interest before appointment.
- (4) The appointment of an individual trustee must be made by the trustees at a meeting of which not less than 21 days' notice has been given. All trustees shall have a vote on the appointment of new individual trustees.
- (5) An appointment may, but need not, be made before the date on which the term of office of an existing individual trustee comes to an end, to take effect on that date. In these circumstances:
 - (a) the appointment may not be made more than 3 months before the date on which the existing co-opted trustee's term of office is due to end; and

- (b) any individual trustee whose term of office is about to come to an end must not vote in favour of their own re-appointment.

9. Quorum

- (1) Except as provided in sub-clause (2) below, no business may be transacted at a meeting unless at least 3 trustees are present.
- (2) At least 5 trustees must be present at a meeting before any decision can be taken to exercise a power contained in clause 4 above.

10. Rules and Regulations

The trustees may make rules and regulations for the administration and management of the charity, which must be consistent with the provisions of the existing trusts and this scheme.

11. Independence

The trustees must:

- (1) exercise their own independent judgement solely in the best interests of the charity;
- (2) ensure that the charity is independent and exists to pursue its own purposes and not to carry out the policies or directions of the Council or of any other body;
- (3) at their first meeting (or as soon as possible thereafter), adopt a conflicts of interest policy (taking account of the guidance issued by the Commission) and adequately manage any conflicts of interest in accordance with that policy;
- (4) not appoint the trustee nominated by the Council as their Chairman or Deputy Chairman.

GENERAL PROVISION

12. Questions relating to this Scheme

The Commission may decide any question put to it concerning:

- (1) the interpretation of this scheme; or
- (2) the propriety or validity of anything done or intended to be done under it.

SCHEDULE

PART 1

Freehold land in the City of Bath described in a conveyance of 1st February 1956 which was made between The Bath and County Recreation Ground Company Limited of the one part and the Mayor Alderman and the Citizens of the City of Bath of the other part, a part of which is subject to a 75 year lease, and other parts of which are subject to subsisting leases dated 25th March 1996, 22nd July 2000, 12th September 2002 and 11th December 2008.

PART 2

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PART 3

Land containing 11,120 square metres or thereabouts being part of the land described in Part 1 above with the building thereon known as Bath Sports and Leisure Centre.

PART 4

Any land not exceeding in total 1136 square metres being part of the land described in Part 1 above and not subject to the 1995 lease.

PART 5

First Nominated trustees

Nominated by the Council

David Dixon for a period of 3 years

Nominated by Somerset County Playing Fields Association

David Durdan for a period of 3 years

Nominated by Fields in Trust

Don Earley for a period of 3 years

PART 6

Stephen Baddeley

Elizabeth Bloor

Derwent Campbell

Simon Emery

Geoffrey Fairclough and

Michael Laughton

all until 30 October 2016.