

SAXILBY WITH INGLEBY PARISH COUNCIL RECREATION GROUND PAPER

Full Council

July 2022 (V1)

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RECREATION GROUND SAXILBY, MANAGEMENT (July 2022)

RECREATION GROUND, SAXILBY - MANAGEMENT HAND BACK

1. Overview

- i** This paper follows on from the agreement to hand back the day-to-day management of the recreation ground to its associated public recreation ground charity (no. 521978).

This decision was taken in light of the charity bringing to the council's attention requirements under charity law in late 2021, which require action to ensure compliance.

The council recognises the value that residents, members of the public, and visitors place on the facilities - with the site being broadly aligned with the council's vision and a number of the council's objectives (see Appendix 1). However, it is acknowledged that due to the field being a charity it's aims are more restrictive (see 3b and 4g) than that of the council.

The paper lays out areas of consideration following the hand back decision and provides a draft road map to successfully achieve the hand over to ensure legal compliance and reduce the risk to the council, whilst seeking to ensure the site remains sustainable for the benefit of residents and users in the longer term.

2. Objectives

- i**
 1. To hand back the management of the recreation ground and buildings to the managing trustees to ensure the council acts in-line with charitable law
 2. To ensure the council's interests and assets are looked after in-line with the council's vision and objectives

3. Background

i On 22 November 1920 a conveyance and trust deed was signed for the recreation ground, Saxilby. This was amended by the trustees on 11 Jan 2022 and 07 Mar 2022. An overview of contents of the indenture include:

- a. The recreation ground is a war memorial in memory of those in the parish who lost their lives in WWI
- b. The aim of the charity, as per the original indenture is - **open public grounds for the benefit of inhabitants of Saxilby, Ingleby, and Hardwick for the resort and recreation of adults and as playgrounds for the children and youth**
- c. The management and control of the recreation ground and any building on it, is through a **committee of management**
- d. A pavilion shall be erected and maintained in good repair and condition and a tablet containing the names of the inhabitants of the said Parish of Saxilby cum Ingleby who have fallen in the late Great War

ACTION: Tablet not present in the pavilion (community centre). Raise with trustees to instate

- e. Income derived from the letting or hiring of the ground or admission is to be used for the maintenance and improvement of the fields or buildings on it or connected to the field/buildings
- f. Until 2022 the indenture stated there should be 10 persons on the committee of management with four being members of, and nominated or elected by, the council.

This has now been changed to: two shall be members of and nominated or elected by the council and the remaining eight (who may either be members of the council or not) shall (subject as hereinafter provided) be elected at the yearly Charity AGM

ACTION: Council to appoint two trustees - nominate or elect

In 2007, the memorial field trustees passed over the day-to-day management of the memorial field to the council. A legal process should have been undertaken accordingly as custodian trustees do not manage the charity's property (see 4d below).

In late 2021, the trustees raised changes needed to take place to ensure the charity is run in-line with its indenture and charity law.

In May 2022 the council agreed to hand back the day-to-day management of the field to the charity.

4. Legal

i In law the council is a **custodian trustee** for the recreation ground charity. Currently, the land is registered with the Land Registry in the council's name. The National Association of Local Councils has a Legal Topic Notice on charity law which offers guidance on what it means to be a custodian trustee. In examining this guidance, it is advised the council needs to take some actions:

What does being a custodian trustee mean in charity law?¹

- a. The legal title of the charity's property is vested in the local council, and it should have custody of all documents relating to the property. The council holds the land on trust for the charity and the managing trustees must have free access to the title deeds²
 - i) **ACTION: Arrange for the title to be updated with Land Registry to reflect it is held as a custodian trustee (form E), thus removing any future confusion.**
 - ii) **ACTION: Check if the trustees hold any documents which are required to be held by the council**
 - iii) **ACTION: Audit and log documents held in the councils archive**
- b. The charity property should be listed in the council's assets register, but with a nil value

ACTION: Council officers to update the asset register

- c. Responsibility for the insurance of the charity property falls on the managing trustees³

ACTION: Council to notify trustees to arrange for them to take on the insurance of the land and property and request copy of certificate

- d. The custodian trustee has no power to manage the property and no role in the administration of the charity⁴

This is in-line with the council decision to hand make arrangements to hand back the day-to-day management of the recreation ground and buildings to the trustees (Full Council May 202) – thereby complying with charity law.

ACTION: Hand back day-to-day management to the charity by November 2022

¹ Source for required actions - NALC (2022) LTN 28 | Basic Charity Law (pp3).

² NALC (2022) LTN 28 | Basic Charity Law. Para 10, pp3.

³ NALC (2022) LTN 28 | Basic Charity Law. Para 10, pp3.

⁴ NALC (2022) LTN 28 | Basic Charity Law. Para 10, pp3.

- e. The custodian trustee can not have any management responsibilities itself. It can only assist the managing trustees. 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 allow dividends and other income derived from the trust property to be paid to the managing trustees. If this is allowed then the responsibility for ensuring the proper application of those funds falls to the managing trustee and the custodian trustee is not answerable for any loss or misapplication of them⁵

ACTION: Explore and agree how financial transactions will operate going forwards and bring back to August Full Council

- f. Under the Localism Act the code of conduct adopted by council may prevent a councillor from participating and voting at a council meeting in respect of any decision about a charity they are a charity trustee of without profit or gain, even if appointed by the council. The councillor would need to obtain a dispensation to vote on the matter.⁶

ACTION: Council to note for future reference

- g. Council officers and employees have a duty to ensure that they act in the best interests of taxpayers and trustees have a duty to act in the best interests of the charity and its beneficiaries. These duties can, and frequently do, conflict. A conflict can arise in a number of situations and a classic example is the sale or lease of land by one body to the other. For example, trustees leasing or selling land to a council are under a duty to obtain the best price or rent. At the same time, council officers or employees are under a duty to ensure that taxpayers' money is spent prudently. Another example is where contracts are agreed by one body to the other.

ACTION: Council to note the above and where required seek guidance.

- h. A trustee acting in breach of trust is usually liable for any losses personally
- i) **ACTION: Suggest the charity's insurance includes trustees' indemnity.**
 - ii) **ACTION: Council to clarify with their insurers whether trustees appointed to the charity (as per the current indenture) are covered by trustees' indemnity [contacted pending reply] and increase level of cover to include if available**

⁵ NALC (2022) LTN 28 | Basic Charity Law. Para 12, pp3-4.

⁶ NALC (2022) LTN 28 | Basic Charity Law. Para 22, pp6.

5. Affected Parties

- i** • Members of the public using the field and facilities
- Clubs playing out of the recreation ground – tennis, bowls, football, cricket
- Library - volunteers and Lincolnshire County Council
- Council staff members working at/out of the community centre
- Scouts
- Facility users - room hirers, field hirers (including Hurricane Sports), school

Council to advise if any further groups need to be added

6. Affected Business Processes or Systems

- i** This is dependent on whether any services move out of the community centre. Potentially:
 - Council administration/office – IT system, finance system, phone/broadband, archive filing
 - Library and associated public and service IT

7. Implementation Plan

i LIBRARY

The council has a Service Level Agreement with Lincolnshire County Council to provide the service, with volunteers present in the library during opening hours.

The library is housed in community centre in a purpose designed space, with infrastructure in place, and was recently fully refurbished following a fire in May 2020.

70% of respondents in the Big Community Survey felt the provision of a library including to computers, copying, and printing was important or very important. (1084 respondents) ⁷

A meeting has been held with library volunteers and the Library Development Officer and their preferred option is to remain in the same location under a comparable structure.

Maintaining a library is in-line with the council vision and objectives 1,4, 5, and 7 (see Appendix 1).

Depending on location of council staff there may not be on-site staff presence - risk assessment and further training may be required etc

- i) PROPOSAL: To retain the library in its current location, with the council putting in place a lease with the charity (see 2g), in liaison with the county council.**

PLAY AREAS

There are two play areas on the recreation ground, which are maintained by the council. The main play area was funded primarily via grants and fund raising. The council has a responsibility to look after its investment for the benefit of the community.

78% of respondents in the Big Community Survey felt the provision of play equipment was important or very important (1085 respondents).

Maintaining the play area is in-line with the council vision and objectives 1,4, 5, and 7 (see Appendix 1).

- ii) PROPOSAL: Put in place a lease for the play areas between the council and charity, to inspect and maintain the equipment and fencing (including ancillary items e.g. play area surfacing, benches, bins, and fencing).**

⁷ Saxilby with Ingleby Parish Council (2021) Big Community Survey 2021. Available from <https://saxilby-ingleby.parish.lincolnshire.gov.uk/downloads/file/316/big-community-consultation-apr-2021->

TBA: Who will own and maintain the picnic benches on-site

TBA: Who will cut the grass in the play areas? (As a custodian trustee the council should not have management responsibilities. Seek clarification from Charity Commission).

WHEELED PARK

The wheeled park on-site was funded via grants and a developer contribution. The council has a responsibility to look after its investment for the benefit of the community and to 'honour' the funding received.

Maintaining the play area is in-line with the council vision and objectives 1,4, 5, and 7 (see Appendix 1).

- iii) **PROPOSAL: Put in place a lease for the wheeled park between the council and charity, to inspect and maintain the equipment (including ancillary items e.g. benches, bins, and fencing).**

TBA: Who will cut the grass in the wheeled park area? (As a custodian trustee the council should not have management responsibilities. Seek clarification from Charity Commission).

TENNIS CLUB AND BOWLS CLUB (INCLUDING ASSETS)

The council is a custodian trustee (see 2d) therefore the committee of management will need to make appropriate management arrangements with the tennis and bowls club going forwards in-line with the indenture and charity law.

- iv) **PROPOSAL: Council to liaise with tennis club and committee of management to hand over the day-to-day management arrangements to the charity**
- v) **PROPOSAL: Council to liaise with bowls club and committee of management to hand over the day-to-day management arrangements to the charity**
- vi) **PROPOSAL: To consider what happens to the assets as they are currently on the council's asset register (the level of previous council investment in the pavilions and courts is to be determined). Does a lease or transfer of asset need to take place, or nil value on asset register? Further guidance to be sought.**

Utilities are not separate for the tennis and bowls. The charity may wish to consider separating the feeds.

Clubs also use changing rooms.

FOOTBALL AND CRICKET CLUB (INCLUDING ASSETS)

The council is a custodian trustee (see 2d) therefore the committee of management will need to make appropriate management arrangements with the clubs going forwards for the November deadline.

- vii) **PROPOSAL: Council to liaise with cricket club and committee of management to hand over the day-to-day management arrangements to the charity**
- viii) **PROPOSAL: Council to liaise with football club and committee of management to hand over the day-to-day management arrangements to the charity**
- ix) **PROPOSAL: To consider what happens to the assets (such as goal posts and cricket score board) as they are currently on the council's asset register. Does a lease or transfer of the asset need to take place or nil value on asset register? Further guidance to be sought. Further guidance to be sought and liaise with clubs and charity.**

PUBLIC TENNIS COURT

- x) **PROPOSAL: Explore hand over public tennis court to trustees - clarify asset value and previous council investment in assets to determine way forward**

RECREATION GROUND

The council is a custodian trustee (see 2d) therefore the committee of management will need to make appropriate management arrangements going forwards, in-line with charity law and the full council decision to hand back the day-to-day management

This would include maintaining green spaces (pitch maintenance, grass cutting, line marking, weed control etc) and paths etc

- xi) **PROPOSAL: Council to work to the November deadline to hand over the day-to-day management recreation ground.**
- xii) **PROPOSAL: To clarify with the Charity Commission if the council as a local authority (and custodian trustee) could maintain these areas if the trustees so requested this, and if so, what the process would be in order to do this in-line with charity law, including any expenditure allocation**

- xiii) **PROPOSAL: If yes to the above, to determine a costing for undertaking the maintenance of the field (including breaking down into difference areas of work such as football/cricket pitch maintenance, preparation for use by the school – e.g. athletics track maintenance and grass cutting of the other areas)**
- xiv) **PROPOSAL: Scouts lease & Fields in Trust documents to be checked as may need updating.**
- xv) **PROPOSAL: To re-locate the Salvation Army clothing bin off the recreation ground to elsewhere in the parish**
- xvi) **PROPOSAL: To consider implications for memorial assets including gates and pillar, memorial circle, memorial bench and planting**

CAR PARK, AND BASKETBALL COURT

- xvii) **PROPOSAL: Council to work to the November deadline to hand over the day-to-day management of the car park and basketball court.**

These items are currently on the council's asset register.

Hand over car park electricity lighting account.

COMMUNITY CENTRE

The council is a custodian trustee (see 2d) therefore the committee of management will need to make appropriate management arrangements going forwards in-line with charity law and the full council decision to hand back the day-to-day management:

Room Hire – Regular and Ad-hoc

Hand over room hire to charity by November deadline.

- xviii) **PROPOSAL: Regular hirers will need to be contacted to update them and permission to share details with trustees obtained.**

Pavilion Bar

The bar was closed as a result of the fire in the community centre and the pandemic. It was agreed to look at out-sourcing the bar, with a tender document being drafted in December 2021.

When the charity raised queries regarding the management of the site by the council, the outsourcing was paused.

Now it has been determined that the previous structure of a custodian trustee being involved in the management of the site is incorrect, the council will not continue with the outsourcing. This is in-line with the decision to hand back the management of the site to the charity.

The license is currently in the council name and will need removing by the hand back date.

- xix) PROPOSAL: Agreement in relation to the assets within the bar area will need to be determined as part of the hand back.**

Building

Areas to consider as part of the hand back will include:

PROPOSALS:

- xx) Hand-over of contracts – gas, electricity, water,**
- xxi) Service contracts – cleaning, hygiene and nappy waste**
- xxii) Trustees will need to obtain insurance for the building**
- xxiii) Contact WLDC as business rates may not be required with being a charity and update site manager details**
- xxiv) The council has a number of assets in the building which will need considering (including defibrillator)**
- xxv) The council will need to look at hiring a venue for any meetings going forwards**
- xxvi) There is a PWLB loan being repaid on the building for the lift installment and building alterations until 2023-24. Agreement needed on covering this loan with charity**

Staff

With the management being handed back to the trustees, caretaking staff will need to be considered for TUPE to the charity.

- xxvii) PROPOSAL: Liaise with staff and charity to progress TUPE**

Council office

Options to be explored as may be a conflict of interest with the custodian trustee's office being located within the community centre (see 2g). Options to be explored include researching alternative locations within the parish, whether it is an option to remain in the current location (check with trustees/Charity Commission) and the cost to lease

- xxviii) PROPOSAL: Draft an options paper to bring to the next Full Council meeting**

ACKNOWLEDGEMENT

The above proposals have been put forward to seek to ensure the council is meets its legal responsibilities in relation to the recreation ground.

It is proposed to confirm the above approach is agreeable and meets charity law requirements with the Charity Commission and to proceed. If the Charity Commission advises further work or changes are required, those elements will be brought back to council.

8. High-Level Timeline/Schedule

i See Appendix 2: Proposed Project List

OVERALL PROPOSAL

For council to consider the above document and associated Appendix 2: Project List Document and agree to the proposals contained within it as a road map to achieve the hand back and legal compliance (as a custodian trustee).

APPENDIX 1: COUNCIL VISION AND OBJECTIVES

Council Vision

Saxilby with Ingleby Parish will develop and thrive as an active, sustainable community, whilst retaining its rural character. It will continue to be an area that is attractive for people to live, work, and visit.

Council Objectives

- 1. Maintain and improve community facilities and amenities**
- 2. Protect and enhance our green spaces and street scene**
- 3. Preserve and enhance heritage assets, environmental assets, and wildlife**
- 4. Retain and encourage employment and tourism opportunities**
- 5. Improve the well-being of residents**
- 6. Respond to planning consultations in-line with the NDP, to meet the needs of the community and addressing any transport impacts**
- 7. To foster public participation and engagement**
- 8. To recognise the climate and biodiversity emergency and it should be considered as the basis of all decision and policy making**