

**IN THE MATTER OF
THE PEEL PARK**

UPDATED ADVICE

Introduction

1. I am instructed to advise City of Bradford Metropolitan District Council (“**the Council**”) in its capacity as charitable trustee of the charity ‘The Peel Park’ (charity number: 523509). A concert is proposed in in Peel Park which will require alcohol sales and I am asked to advise whether this is permissible. Further to the provision of my advice I have been asked to consider a further matter namely whether the Council can sell alcohol elsewhere and people can then bring it onto the Park.

2. I am grateful to those instructing me for the helpful summary background which I have incorporated into this advice. The Council as charitable trustee requires specialist advice in this matter to enable the trustees to make an informed decision regarding the concert. In particular I am asked:
 - (1) to advise the charitable trustees generally in the matter in the light of the circumstances in my instructions;
 - (2) whether the 1863 Conveyance in any way restricts/prohibits/fetters the Council’s intention to hold a concert in Peel Park and the need to have alcohol sales to make it successful;
 - (3) if there are restrictions which fetter the Council’s proposed intentions, whether (i) such restrictions are still enforceable and by whom and (ii) whether it would be possible to remove the same;
 - (4) whether there are any other charitable/open space implications which would affect the Council’s intended use of the property.

Background

3. The Council is the registered proprietor of Peel Park Bradford (“**the Charity**”), which is registered under title number WYK 914293, as charity trustee. Referred to in the register of title number WYK914293 is a Conveyance dated 7 November 1863 made

between (1) William Brook Addison and Henry Brown and (2) The Mayor Aldermen and Burgesses of the Borough of Bradford Peel Park was conveyed to the Council on trust as therein provided in the 1863 Conveyance which contains various restrictions/provisos on the use of Peel Park in some way for the benefit of another's land.

4. The charity's governing document is the 1863 Conveyance which contains the charitable objects/purposes. The 1986 Conveyance, inter alia, contains a proviso as follows: "*PROVIDED ALWAYS that on no occasion and on no day in the year shall it be lawful for the said corporation or their successors to sell or permit any person or persons to sell intoxicating liquors of any kind whatever at in or upon the said Peel Park or any part thereof or in or at any refreshment room or other building therein or thereon or in any part thereof.*"
5. Moreover the 1926 City of Bradford Illustrated Handbook of the Bradford City of Parks, Recreation Grounds and Open Spaces records the following: "*...was conveyed to the corporation by a deed dated 7th November 1863, In addition to the usual recitals and operative conveyancing clauses, the deed embodied the following Trusts: " That on no occasion, and on no day in the year, shall it be lawful for the corporation to sell, or permit any person or persons to sell, intoxicating liquors of any kind whatever at, in, or upon the park or any part thereof, or in or at any Refreshment Room or other building therein or thereon , or any part thereof."*
6. The Council is the corporate charity trustee who is responsible for the general control and maintenance of the administration of the charity 'The Peel Park'. All discussions/decisions have to go through the Regulatory and Appeals Committee (R&A Committee) who discharge the functions of the Council. The R&A Committee need to be satisfied that any decision which affects the charity is in the best interests of the charity and not the Council.
7. As part of the City of Culture 2025 the Council wishes to hold a concert in Peel Park which needs to have alcohol sales to make it successful. The concert would be over the May bank holiday weekend 2025.

Advice

8. The Council is required to make a decision in accordance with duties under the Charities Act 2011. This includes an obligation to perform and observe all conditions and directions in the governing document.
9. The governing document is **crystal** clear. There is an absolute prohibition regarding the sale of alcohol whether by the owner of the land or permitting another person to sell alcohol. The choice of the language used is emphatic, precise and repetitive. The Council as Trustee cannot use the Park to sell or allow any other person to sell alcohol. This applies to the whole of the demised land.
10. These obligations are binding upon the Council as Trustee and could be enforced by the Charity Commission. Acting in breach of the governing document is not permissible and the Council would be in breach of duty as Trustee if it did so.
11. In the event that the Council wishes to change the governing document of the charity it can make an application to the Charity Commission. However, that application would appear to be challenging in circumstances where the governing document is both clear and emphatic.

Further Advice

12. Following receipt of my advice as set out above the client has asked whether it can sell outside the demise and allow it to be consumed in the venue.
13. In my view the covenant is clear that the prohibition is directed towards the sale of alcohol and not the consumption of it. It would have been entirely possible to prohibit the sale or consumption of alcohol on Peel Park but this is not what the governing instrument provides. Given how emphatic and detailed the prohibition was regarding the sale of alcohol it would be expected that the additions of words “or consumption” would have been included had that been the intention.
14. I have considered the analogy of covenants in leases and note that Woodfall considers the distinction between the sale of alcohol on premises and elsewhere in the context of landlord and tenant obligations at 11.215. The paragraph includes the following: *There*

is a conflict of authority whether a covenant not to use a house as a beer-shop or public-house is broken by the sale of beer not to be drunk on the premises under an off-licence.² A covenant not to use property as a beer-shop is broken by the sale of beer for consumption off the premises.” The case cited is *Sood v Barker* [1991] 1 E.G.L.R. 87.

15. In *Bishop of St. Albans and Others v Battersby* (1878) 3 Q.B.D. 359 the case concerned a lease in which there was a covenant not to permit any house erected on the land as a beershop. The assignee of the lease carried out the trade as a grocer and sold beer. The issue was whether there was a breach of covenant. It was held that the covenant was broad enough to cover sale of alcohol as well as consumption on the premises. However, as noted by Woodfall:

“Carrying on the business of a “retail brewer” has been held to be no breach of a covenant not to carry on the business of a common brewer or retailer of beer. A covenant made in 1854 not to use the trade or calling of a seller by retail of “wine, beer, spirits or spirituous liquors ” was held not to be broken—or at any rate broken so far as to justify an injunction—by the sale of wine and spirits in bottle by a grocer, under the Revenue (No. 1) Act 1861, on the ground that, at the time the covenant was made, this would not have been a selling by retail. A covenant not to use or follow the trade of a publican has been held not to be broken by trading on the premises as a licensed spirit grocer. But in another case the tenant of a theatre bought land adjoining the theatre which was subject to a covenant that the trade of an innkeeper, victualler, or retailer of wine, spirits or beer should not be carried on there. On this land he erected a building which afforded convenient egress from the theatre, but on each floor of which he set up a counter for selling wine, spirits and beer. The counter could not be approached from the outside, but any person who paid for admission to a play at the theatre could buy refreshments there. The tenant of the theatre was restrained at the suit of purchasers of other lots bought from the same vendors. The expression “vintner” in such a covenant has been held to apply to a person selling wine not to be drunk on the premises.”

16. Notwithstanding the range of authorities regarding breach of covenant it is my view that it would have been perfectly simple for the governing instrument to have provided for a prohibition against the consumption of alcohol or permitting the consumption of alcohol in the park. The governing document cannot control what the Council do elsewhere. It can only prohibit the consumption of alcohol on the demised land. In my view a proper construction of this document is that it does not prohibit the consumption of alcohol on the land and cannot control what the Council does elsewhere.

17. Accordingly, I am of the view that the client can sell alcohol outside the demise and allow it to be consumed in the venue (subject to addressing matters of licencing). However, I must emphasise that this is my opinion. I consider that there would be a very good prospect of the Council arguing that it was not in breach of the governing document but that is not a certainty.

Conclusion

18. In these circumstances I consider that the Council is bound to act in accordance with the governing document unless or until it is varied. However, I do not consider that the governing instrument prohibits the consumption of alcohol on the demised land. If I can assist further those instructing should not hesitate to contact me.

Kerry Bretherton KC
11 December 2023

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ADVICE

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