

Minutes of a meeting of the Regulatory and Appeals Committee (sitting as Trustees) held on Thursday 19 July 2018 at City Hall, Bradford

Commenced 5.15 pm
Concluded 6.20 pm

Present – Councillors

LABOUR	CONSERVATIVE	LIBERAL DEMOCRAT
Amran S Hussain Wainwright Warburton	Cooke M Pollard	R Ahmed

Observers: Councillors Jenkins, Love and Warnes (Minute 29)

Apologies: Councillors Brown, Griffiths and Watson

Councillor Warburton in the Chair

26. DISCLOSURES OF INTEREST

In the interests of transparency, Councillor Pollard disclosed that he had been contacted by a number of Baildon residents in respect of the item relating to Northcliffe Park, Shipley (Minute 29); he had passed the matter on to one of the other Ward Councillors to respond.

In the interests of transparency, Councillors Amran, Cooke, Wainwright and Warburton disclosed that they had been in receipt of a number of emails from interested parties in respect of the item relating to Northcliffe Park, Shipley (Minute 29) but had not entered into discussion or expressed an opinion on the issue.

27. INSPECTION OF REPORTS AND BACKGROUND PAPERS

There were no appeals submitted by the public to review decisions to restrict documents.

NO ACTION

28. LITTLEMOOR PARK, QUEENSBURY, BRADFORD

The Strategic Director – Place presented a report (**Document “O”**) which sought the Trustee’s permission to approach the Charity Commission to apply for a scheme in respect of the potential disposal of part of Littlemoor Park, Queensbury, Bradford.

He explained that the request had been forthcoming further to approval of the Council’s Bereavement Strategy. Feasibility studies were being undertaken in respect of five potential sites across the district, of which this was one, to allow the construction of two new crematoria and associated works.

The report explained that Littlemoor Park (otherwise known as Foster Park) was a registered charity (519426) of which the Council was the sole Trustee. Its charitable objectives were *‘for the purpose of a public park and recreation ground for the benefit and use of the inhabitants of Queensbury and the public and to be associated with the Silver Jubilee of his late Majesty King George the Fifth and in memory of the said Herbert Anderton Foster’*.

Independent legal advice had been sought to advise the Trustees on their obligations and a summary was set out in the report (the full advice was appended to the report as Not for Publication Appendix C). This explained that unless the disposal of the property (or part of the property) to the Council was sanctioned by a Charity Commission Scheme then an Order of the Charity Commission would be required (under Section 118 of the Charities Act 2011). This was due to the Council being a ‘connected person’ and thus there being a conflict of interest. The report also reminded the Trustees that they had to act in the best interests of the Trust.

In response to questions from the Trustees, the Strategic Director and the City Solicitor said that:

- The understanding was that any scheme to dispose of the land could not be drawn up until the Charity Commission had been consulted and the Charity Commission could not be consulted until the agreement of the Trustees was obtained.
- The Charity Commission may ask how the Trust intended to use any funds arising from the disposal of the land.

The Trustees commented that:

- In order to get to the point of disposal the Trustees had to be comfortable that the disposal of any part of the park would be in the interests of the beneficiaries of the Trust ie the people of Queensbury. There was a need to be clear that there would be a benefit for the people of Queensbury before an approach was made to the Charity Commission.
- Any benefit would arise from the value of the land; this could be determined without permission being required from the Charity Commission. The benefits would be established from knowing how much the land was worth and whether that was enough to provide another facility for the people of Queensbury.
- At this stage this was purely an appraisal of the possibilities and the viability.

- The proposal was considered to be a non-starter; the land had been bequeathed as an open space for all time for the inhabitants of Queensbury.
- The Trustees were responsible for overseeing this process on behalf of the public and the people of Queensbury.
- The Trustees had to consider if they would be acting improperly if they requested a valuation so that they could consider if this was sufficient to provide value to people of Queensbury; or should the Charity Commission be approached first; or was the answer an unequivocal 'no' due to the terms of the Trust.
- It was understood that some Trust terms could become irrelevant due to changes in circumstances but in this case the land was still there so the purpose established by the Deed of Gift had not been frustrated.

The Strategic Director said that the legal advice was clear that the Trustees could, with the approval of the Charity Commission, properly dispose of a part of the park if they chose.

The City Solicitor stated that, as Trustees, a decision had to be made on whether the terms of the Trust were still valid and to consider whether they could be better served by a sum of money used to fulfil the same objectives.

Representatives of the Friends of Littlemoor Park were in attendance at the meeting and put forward the following concerns:

- The Friends Group and the wider community wholeheartedly objected to this proposal, a petition had been gathered with over 1000 signatures.
- The proposal constituted a serious conflict of interest. The Charity Commission suggested that without the removal of a conflict of interest a matter should not proceed.
- The independent legal advice did not appear to consider this to be as serious a matter as described by the Charities Commission. The information in the Strategic Director's report did not resolve the conflict of interest and it was believed the Trustees could not, therefore, make a decision.
- The Trustees were not in possession of all the facts. An approach should only be made to the Charities Commission when the Trustees were in possession of all the relevant information; they had not been given all the information they required.
- The Trustees needed to be confident that all the facts had been gathered, this should include consultation. It was a criminal offence under the relevant legislation to not provide all the necessary information. The Committee had not been made aware of all the key facts.
- The proposal would not fulfil the terms of the Trust. It was considered that there had been a failure in the obligation to understand how the Charity benefited the public.
- The Trustees must behave with integrity in order to maintain the respect of the public.
- The Foster family had not been aware of these proposals nor had the Ward Councillors.
- A member of the Foster family had said this proposal had been a 'bombshell' to them. As a descendant of the person who had gifted the park, he considered this proposal to be against the spirit of the gift and it should be strongly resisted.

- Green spaces such as the park were needed in built up areas. There were brownfield sites that could be used.

A Member of the Committee stressed that they were present in the role of Trustee not as Councillors.

The Strategic Director noted that the Trustees would not be involved in the conveyancing process if the scheme did progress.

Members expressed the view that it would be acting in undue haste to go to the Charity Commission at this stage and that consultation on the potential benefit should take place before any decision was made. The residents of Queensbury should be asked whether they considered that it would be appropriate to dispose of part of this land on the basis that the proceeds would be used for the benefit of the inhabitants of Queensbury.

The Strategic Director undertook to obtain an estimate of the potential financial benefit that could be achieved through disposal and to bring this information back to the Trustees alongside the results of a consultation exercise. This would allow consideration of whether the monies achieved through disposal could be of greater benefit to the people of Queensbury than retention of the land.

Resolved –

That the Strategic Director – Place be requested to:

- (i) **Undertake appropriate consultation with the inhabitants of Queensbury to ascertain their views on the potential disposal of part of Littlemoor Park, Queensbury on the basis that any proceeds would be used for their benefit, and**
- (ii) **Establish the potential financial benefit to the Trust of such action,**

and to report back to the Trustees in due course.

ACTION: Strategic Director - Place

29. NORTHCLIFFE PARK, SHIPLEY, BRADFORD

The Strategic Director – Place presented a report (**Document “P”**) which sought the Trustee’s permission to approach the Charity Commission to apply for a scheme in respect of the potential disposal of land at Northcliffe Park, Shipley.

The request had been forthcoming further to approval of the Council’s Bereavement Strategy. Feasibility studies were being undertaken in respect of five potential sites across the district, of which this was one, to allow the construction of two new crematoria and associated works.

The report explained that Northcliffe Park (also known as Norman Rae Playing Fields) was a registered charity (515034) of which the Council was the sole Trustee.

One of the Trustees noted that the deed in respect of this Trust was even more specific than that for the previous item relating to Littlemoor Park.

The Ward Councillors were in attendance at the meeting and made the following comments:

- It was necessary to clarify in respect of the reference to income in the Deed that this referred to income from rent or hiring out, not from sale of the land.
- It was considered that any consultation would be a waste of time and effort; the result could be foretold now.
- The Trustees should refuse the proposal outright.

- This matter was being considered in the context of building a crematorium.
- The Deed was very clear, stating.. 'all lands and woodlands in perpetuity solely and entirely as an open space'. The benefit was tied directly to recreational purposes.
- The Trustees had a duty to abide by this; there was no need to consult.
- Income was subservient to these instructions and related to that achieved through recreational purposes not disposal of part of the park.

- The Deed contained clear instructions in respect of use for recreation and open space. The wording relating to it not being used for the purpose of profit worked in favour of not proceeding with this proposal.
- Use for cremation would not fulfil the Trust's objectives.
- The need for a new crematorium was understood but this should not be pursued on the basis of using Northcliffe Park.
- The Local Government Association (LGA) guidelines stated that Council's must insure that the purpose of a Trust was followed.
- The word 'Trustee' meant 'to care'.
- The Council had a conflict of interest.
- The land must be available for the public at large.
- Trustees must be independent and must act in the interests of the charity not the Council.
- Had the Trustees visited the park? It was a very diverse, well loved and well used space close to the heart of all in Shipley and the fact that it had been gifted to the community was known by everyone.
- A petition, of 1300 signatures, had been gathered in a matter of days.
- The crematorium proposal would remove a large part of the park and make the remaining land less pleasant.
- The proposal would also impact on wildlife and there were issues in relation to the Green Belt.
- This proposal should be a 'no-go'.

The Trustees commented that:

- The members of the Committee were present as Trustees and always acted in the best interests of the charity concerned.
- As Trustees they had to act in the widest interest of all beneficiaries of the Trust. Although the gut instinct may be to say no if an organisation wished to purchase some of the Trust's land it was considered that it would be wrong to not even explore what that might mean; all options should be considered.

In response to questions, the Strategic Director said that:

- The recommendations in the report had been led by the independent legal advice he had no alternative options to recommend.
- The percentage of park land that would be lost as a result of this proposal would be within 5 to 10 %.

A representative of the friends of Northcliffe Park addressed the meeting:

- The Charities Commission had recently released a report in respect of why the public found charities to be trustworthy. The Charity Commission stated that a Trust must always act in the best interests of the charity.
- There was a need to ensure that the duty was carried out for public benefit.
- There needed to be a proper understanding of the governing documents.
- It was not understood how approaching the Commission supported or furthered the purpose of the Charity.
- There was a duty to ensure compliance with the indenture.
- Conflict of interest must be avoided.
- Any decision but to reject this proposal would conflict with the objectives of the charity.
- The Trustees must ensure assets were properly used and not put at risk.
- A crematorium did not fit with the charity's purpose and was a risk to the charity.
- It was considered surprising that no risk management/governance issues had been included in the report; it was believed that there was a risk in terms of public confidence.
- The Trustees' integrity would be called into question by approval.
- It was questioned how the decision could serve any interest other than the Council?
- No equality and diversity implications were detailed in the report. Northcliffe Park was used by a sizable Muslim population. Cremation was not permitted by their religion so there would be a disproportionate impact on this community.
- The Trustees were requested to do their duty, to stay true to the governance document and reject the proposal as no monetary value could replace what would be lost.

The Trustees said that:

- The terms of the Trust in this case had in no way been frustrated and were also very specific, permission should be denied.
- Whilst being very clear in terms of the Trustee's purpose in acting in the interests of the Trust and its beneficiaries, it was still considered that proper consideration had to be given to what the proposal from the Council actually meant, to ascertain those people's views on it and to make an informed decision based on all the evidence.
- If the Trustees refused the proposal without looking at the options it was considered that this would place them in a difficult position.

Further to which it was

Resolved –

That the Strategic Director – Place be requested to:

- (i) Undertake appropriate consultation with the inhabitants of the Shipley and Heaton Wards to ascertain their views on the potential disposal of part of Northcliffe Park (Norman Rae Playing Fields), Shipley on the basis that any proceeds would be used for their benefit, and**
- (ii) Establish the potential financial benefit to the Trust of such action,**

and to report back to the Trustees in due course.

ACTION: Strategic Director - Place

Chair

Note: These minutes are subject to approval as a correct record at the next meeting of the Regulatory and Appeals Committee.

THESE MINUTES HAVE BEEN PRODUCED, WHEREVER POSSIBLE, ON RECYCLED PAPER