

Briefing Note: The Tunstall Community Hall Charity

A summary of current issues and options for discussion

In the following, TCH refers to the Tunstall Community Hall Charity and TPC refers to the Tunstall Parish Council.

Introduction

In June 2004, TCH contracted with TPC (ref. the Lease) and with the Charities Commission (ref. the Trust Deed) to manage the Community Hall and its Premises as a Charity for the benefit of the residents of the Parish of Tunstall. The Lease is for a term of 199 years.

During the latter part of 2020, it came to light that the Community Hall Charity was not being managed in a way that was consistent with the terms of the Lease agreed with the Parish Council and with the terms of the Trust Deed agreed with the Charities Commission.

(Ref. (1) An explanatory document entitled, 'Documentation Concerning Tunstall Community Hall', prepared by Judi Hallett and shared with TPC Councillors and TCH Trustees by email dated 25th September 2020 and (2) A draft outline of the informal working arrangements between TCH and TPC drafted by Steve Smith and shared with TPC Councillors and TCH Trustees by email from Judi Hallett dated 13th October 2020. (See Annexe)

It was agreed that this needed to be discussed with the community hall management committee, indeed it is understood that there were some initial discussions between the council and the hall at that time, but it was decided to complete the implementation of the MUGA before progressing these (Ref. TPC meetings 14/10/20, 10/2/21 and 10/3/21).

It has since emerged that the way in which management of the community hall has diverged from the terms of the Lease and Trust Deed (both of which remain unchanged from when originally agreed in June 2004) represent serious breaches from a legal, property and insurance perspective that cannot simply be remedied.

It is for this reason that TPC felt it important to obtain legal advice and clarity on these issues, hence the report commissioned by the council from Birketts Solicitors (Ref. TPC meeting 12/11/21).

Based on the council's own research and the content of the report recently received from Birketts, we are now keen to proceed to further discussion with the hall committee to find a solution on how to resolve these issues going forward.

It should be noted that it is the express aim of TPC to find a solution that considers the preferences of the hall committee while also honouring the objects of the charity, the terms of the lease and the trust deed; is manifestly in the best interests of the Parish and preserves good relations between TCH and TPC.

This briefing paper is intended to provide background necessary to aid these discussions and possible solution/s. An annexe to this paper provides further supporting information.

Relevant background

In June 2004, TCH contracted with TPC (ref. the Lease) and with the Charities Commission (ref. the Trust Deed) to manage the Community Hall and its Premises as a Charity for the benefit of the residents of the Parish of Tunstall. The Lease is for a term of 199 years.

The Objects of the Charity are for TCH “to provide playing fields and other facilities in the interests of social welfare for recreational and leisure time occupation ...”

The terms of the Lease and the Trust Deed clearly provide for TCH to take responsibility for management and insurance of the whole of the Property, i.e., “all that piece or parcel of land together with the community hall building, parking facilities and recreation and playgrounds as shown edged in red upon the plan”



This contracted position has not been changed since it was agreed in 2004

However, over the years, TPC and TCH have allowed informal arrangements to evolve to the extent that both parties are currently operating in breach of the terms of the Lease and the Trust Deed. TCH are not managing and insuring the whole of the Property as intended by the terms of the Lease and the Trust Deed but instead these responsibilities have been shared in an informal, ad-hoc arrangement with TPC. (Ref. documents 3 and 4 – see Annexe).

According to these evolved arrangements, TCH now operate as though the Charity only has responsibility for the hall, the land on which it stands and the car park while TPC operates as though it has responsibility for the recreation ground, the play park, the two pedestrian access routes and of course the more recently built Multi Use Games Area (the MUGA).

In addition, instead of TCH arranging insurance for the whole of the Premises this is currently split in an unsatisfactory manner between TCH and TPC.

This is not consistent with the terms of the Lease and the Trust Deed.

It must be noted that this is not just a matter for TCH and TPC to resolve but any change involving the Objects of the Charity must also be agreed with the Charities Commission and, de facto, to have the support of the Parish.

In regard to this, it must be noted that all Trustees (i.e. members of the TCH management committee) have an obligation to the Charities Commission “to ensure that everything the Charity does helps (or is intended to help) to achieve the purposes for which it was set up”. (Ref. Charities Commission guidance).

The problem

At the Tunstall Community Hall management committee meeting of 19th July 2021, ref item 5, it was agreed that “if possible, we should try to leave things as they are, excepting that this needs legal confirmation.”

The problem, as has been highlighted by the foregoing, is that ‘to leave things as they are’ is not consistent with the terms of the Lease and the Trust Deed and poses many legal, property and insurance anomalies, risks and exposures. In other words, to leave things as they are is simply NOT an option.

Any attempt to amend the Lease and Trust Deed necessary to reflect the evolved arrangements would involve negotiation and agreement not just with TPC in respect of the Lease but also with the Charities Commission in respect of the Trust Deed.

This would involve considerable time, effort and expense. The parts that TCH do not want to manage could potentially be carved out back to the council, but this would not be at all straightforward with incumbent land, legal implications and costs. And most importantly, it would be hard to argue that this would be consistent with the best interests of the Charity that the Parish Council and the Trustees of TCH are obliged to do all they can to maintain.

The way forward

It would seem to be in the best interests of all parties to find a solution that protects and preserves the original objects of the charity and to avoid the need for costly change to the Lease and the Trust Deed that would yield no benefit to the Parish.

As set out in the Annexe, three possible options have been considered but it is option 3 that commends itself for further detailed consideration. This provides an arrangement whereby:

- TCH assumes the full responsibilities required by the Lease and the Trust Deed (thereby avoiding significant legal change)
- a management agreement is made between TCH and TPC that provides full support to TCH in terms of management and cost (thereby minimising additional management overhead and avoiding exposure to additional cost).

As set out in the attached, such an approach preserves the original intentions of the Lease and Trust Deed, establishes a defined and legally sound working relationship between TCH and TPC, avoids considerable potential cost and uncertainty and caters for current management preferences while providing scope for flexibility over the longer term.

All options as well as the preferred solution can be discussed in detail when we meet but hopefully this note provides the background and basis for such discussion.

Annexe

This annexe includes additional information referred to in this paper and/or which may otherwise be of use to the reader.

Proceeding with discussion

It would be helpful to have a statement of principle to guide discussions. We should all be prepared to cooperate in any way we can to find practical solutions but should not compromise on principle.

The proposed statement of principle is as follows.

Statement of Principle

The agreed solution shall be able to pass the following test.

Unless there is good reason otherwise (such reason to be documented and justified) the agreed way forward will be:

- *consistent with the originally stated charitable purpose as set out in the Trust Deed (i.e. the Objects of the Charity)*
- *capable of practical implementation*
- *legally and financially sound, affordable and sustainable*
- *clearly and demonstrably in the best interests of the Parish, both now and for the longer term, so far as can reasonably be foreseen*

Supporting documentation

There are two important documents and a further three supporting documents which TPC Councillors and Trustees of the Community Hall Charity (TCH) should be familiar with.

These are:

1. **The Lease** between TPC and TCH
2. **The Trust Deed** between TCH and the Charities Commission
3. An explanatory document entitled, 'Documentation Concerning Tunstall Community Hall', prepared by Judi Hallett and shared with TPC Councillors and TCH Trustees by email dated 25th September 2020.
4. A draft outline of the informal working arrangements between TCH and TPC drafted by Steve Smith and shared with TPC Councillors and TCH Trustees by email from Judi Hallett dated 13th October 2020.
5. The TPC management document entitled, 'Responsibilities in respect of Tunstall Community Hall', adopted by the council on 10th June 2021.

The first, second and fifth of these documents are accessible via the Parish web site. The third and fourth are attached with this paper.

In addition, essential Charity Commission guidance is available via the following web site:
<https://www.gov.uk/guidance/charity-commission-guidance>

Options for a Way Forward

There are two obvious options:

- 1. TCH with the full support of TPC take responsibility for all aspects of the Property as set out in the Lease and the Trust Deed.** This is by far the best option as it means that all aspects of the hall, the recreation ground, play park and MUGA would be managed and insured by one party as originally intended.

The MUGA is now up and running, is well managed and supported, has well established policies and procedures and is currently generating a level of income which, if it continues, should be sufficient for the MUGA to become self-funding. This includes the accumulation of funds necessary to cover longer-term maintenance requirements such as re-surfacing when that becomes due.

This could if considered appropriate include a separate management agreement between TCH and TPC covering some of the Property, e.g., the MUGA, but TCH would still need to assume overall responsibility and insurance of the MUGA necessary to avoid the significant legal and administration costs that would otherwise be associated with changes to the Lease and Trust Deed.

- 2. The Lease and Trust Deed are renegotiated to suit a revised agreement between TCH, TPC and the Charities Commission,** if indeed such revised agreement can be found. This would involve considerable expense with no guarantee of a successful outcome and is surely not in the best interests of the Parish whether for the short or longer term. We should do all we can to explore all other options before considering this option as a serious way forward.

There is potentially a third option which is really a variation of option 1.

- 3. The existing Lease and Trust Deed are retained and observed in full but with a negotiated management agreement between TCH and TPC,** i.e., with delegated authority to manage certain facilities (e.g. Recreation Ground and MUGA) on behalf of TCH. This could be covered by a Heads of Agreement (HOA).

TCH would still need to retain full legal and management responsibility set out in the Lease and the Trust Deed (including for the MUGA) but defined management arrangements would apply as agreed between the two parties. TCH would arrange insurance for the whole of the property, including the delegated management arrangements agreed between TCH and TPC together with any sharing of costs that may also be agreed.

This preserves the original intentions of the Lease and Trust Deed, establishes a defined and legally sound working relationship between TCH and TPC, avoids considerable potential cost and uncertainty and caters for current management preferences while providing scope for flexibility over the longer term.

Background to the MUGA

A Multi Use Games Area (MUGA) was first proposed as one of the options for the village to consider spending the s.106 new development funding (Street Farm Close) on. Other options included improvements to the Bowls Club and enhancements to the Community Centre.

This was put to a public vote in February 2019 and the result was “an overwhelming victory for the MUGA” with over 72% of residents who registered a vote voting for it! (Tunstall Bulletin April 2019).

Based on this public vote and leveraging on the s.106 funding, the Parish Council was successful in raising a total of £86,000 for a project with an estimated total cost of c£90k. This marked a very significant achievement for the village.

During the ensuing project the Parish was kept fully informed of the development through bulletins and other means.

Planning and implementation of the MUGA was discussed extensively in TPC meetings throughout 2019/20 with planning permission being confirmed at the TPC meeting of 11/3/20. The main contractor was selected through competitive tendering and building of the MUGA started around August 2020.

Discussions concerning arrangements for ongoing management of the MUGA were first aired at the TPC meeting on 19/8/20 and discussed in more detail at a meeting on 9/9/20 at which it was agreed to form a steering group to manage the implementation of the MUGA, reporting to TPC. The MSG (MUGA Steering Group) was formally established at a meeting on 14/10/20 led by Andy Vince.

Discussion around the possibility of TCH taking on operational management responsibility for the MUGA was first discussed at TPC meeting on 10/2/21. The clerk was asked to put together an options paper which was drafted and circulated to TPC councillors (including the council's TCH representative on the committee) on 22/2/21.

However, at the TPC meeting on 10/3/21 it was agreed that the steering group should continue to run the MUGA until it was fully open and then discussions could start as to how it would be managed going forward.

Nevertheless, it cannot be said that there was no awareness of the origin, intentions and plans for the MUGA. Nothing was ever hidden (quite the contrary) and given the clear way in which this was voted for by the residents of the Parish, the MUGA could not fit more squarely to the objects of the Tunstall Community Hall Charity.

1st March 2022