

**Further Advice Required from Brachers  
on the Arthur Nicholson Recreation Ground  
following Earlier Advice**

The Council requires further advice and clarification on number of points arising from or linked to your earlier advice.

1. As I understand it the Charity Commission in 1982 confirmed the previous leases to the Bidborough Sports Association but does this approval extend to the subsequent leases in 2002 and 2017. If this is the case would this be because there is nothing in these leases which contradicts the Charity Commission approval.

The question is asked because several Councillors think this is the case including a number of Members of the public.

This is an interesting point. The terms of the scheme in 1982 specify that the confirmatory lease should be on similar terms to those set out in an earlier lease dated 16 May 1980. The confirmatory lease had a term of 21 years from 16 May 1980 and so the lease appears to have come to an end in 2001. As such, it would seem that the subsequent leases were not authorised by the charity commission and so they may therefore be invalid.

Clearly, advice was sought from Warners Solicitors and Thomson Snell and Passmore Solicitors and so the point may at the time have been considered. However, it appears because the site must be available to members of the public at large, if the site is permitted to be used for only one club it could be in breach of charity rules and so charity commission approval under a new scheme would be needed.

I recall from speaking that the Bidborough Sports Association supports a number of clubs and may have been in a different format in 2001 to how it was in 1982 and so it may have been the case that the advice was that no new charity commission scheme was required.

For avoidance of any doubt it would be advisable to apply to the charity commission for confirmation that the present lease is valid.

2. The Councillors hold differing views over whether the Trust is a custodial trustee or a managing trustee. However in reading your advice it could be seen that these terms may not be relevant but in fact the Trust is a body with defined roles such as a) agreeing/setting the terms of reference for the Committee of Management, b) acting as the landlord in connection with its relationship with the BSA through the leases, c) as the sole determiner of any issue of disposal or could it delegate all of these functions to the Committee of Management other than that power of delegation. Understanding the role of the Trust itself and its relationship with the Committee of Management is vital for all parties involved.

There is no distinction between a custodial trustee or a managing trustee –these are not legal terms. BPC is the charity trustee and the Committee of Management is a body of persons with delegated functions.

3. I need to understand the operation of the conflicts of interest particularly in respect of individuals who are Councillors and de facto Trustees. I believe that it is very similar to the rules of Local Government with which I am very familiar but do have some differences. It would be very helpful to have a conversation over this to enable me to explain to you in more detail the unique circumstances involved. Hopefully the conversation should take no longer than 30 minutes but hopefully less than that.

Trustees with potential conflicts of interest should declare those conflicts of interest and remove themselves from voting on matters where there is a conflict where possible. [Alternatively, if a potentially conflicted trustee declares their position and the other trustees are happy that this is a low risk conflict then that trustee could continue to participate in the conflicted matter and vote on matters despite their conflict – Mary to check this].

Here however it is the BPC that is the trustee itself and not the individual parish councillors so the rules align with the rules for the Parish Council set out for Local Government so practically the issue should be dealt with in the same way.

4. In respect of the Council Membership on the Committee of Management, who appoints the 3 Council representatives. Is it the Parish Council itself or is it the Council in its role as Trustee. I would have thought that it would be the Parish Council but your advice on this would be gratefully received.

The trust document is not clear on this but on the basis that the Committee of Management (as explained above) is a delegated body of persons, it seems right that it can only be delegated functions by BPC in its role as charity trustee.

5. I would find it very useful to have a discussion about the possible publication of your existing advice and any future advice.

We have already set out our position on this. The decision to publish the advice that we have provided lies with BPC as the advice has been purchased by you and so we are unable to prevent BPC from publishing it. However, from our perspective, we would not advise you to publish the advice given as this is discrete advice given to BPC and could be taken out of context to BPC's detriment as a question of interpretation in another's hands.

6. A question has been asked regarding a change in the Parish boundary since 1929 which has reduced the size of the Parish. I would assume that the boundary change has no impact as the body corporate remains, namely Bidborough Parish Council, and therefore it refers to that body at the size it is at the current time and not at a fixed date in the past. This only becomes relevant if Clause 13 is applied. Your advice would be gratefully received.

We agree with your view on this.

