

Bidborough Parish Council

13 February 2023

Report of the Clerk

Arthur Nicholson Recreation Ground – Management Arrangements

The Council has asked me to review the arrangements for the management and operation of the Arthur Nicholson Recreation Ground including the relationship between the Parish Council and the Parish Council in its role as the sole Trustee of the Arthur Nicholson Recreation Ground Trust. In undertaking this review I have considered the relevant paperwork and have asked that Brachers, Solicitors who had undertaken a review on this matter previously complete and update their previous advice taking into account all the relevant information and previously unseen documents. A copy of their updated advice is attached to this report, together with their response to the further questions asked of them.

In undertaking this review I have looked at the following areas as the key issues for providing a way forward in the future management and operation of the Arthur Nicholson Recreation Ground (ANRG): -

1. The future management of the ANRG so that it complies with the original Trust Deed, as amended, and including the role of the Committee of Management.
2. The lease with the Bidborough Sports Association, and its status in respect of the ANRG and the responsibility of the Landlord in respect of major adaptation and construction.
3. The relationship between the site and the Church land adjoining the site.
4. The financing of the Trust in order that it can fund its responsibilities
5. The financing of the future plans for the Play Park

Future Management of the Arthur Nicholson Recreation Ground

The Council sought Brachers advice on the future management arrangements of the ANRG and the relationship of the Council as the sole trustee of the Trust and the Parish Council. Their advice was also sought on the role of the Committee of Management within this process. The main section of their advice focuses on this, and their advice is very clear which is that the role of the Parish Council and the role of the Parish Council as the sole Trustee of the Arthur Nicholson Recreation Ground Trust must be separated in all aspects and their recommendations within their advice sets out the actions required to bring about this separation and these recommendations are: -

- The reinstatement of Management Committee;

- Ensure there are clear guidelines for officers and councillors about their roles, responsibilities, and decision-making in the administration of the Charity;
- Ensure you have clear processes for identifying and managing conflicts of interests arising and put in place a process for making independent decisions for the charity when those conflicts arise;
- Ensure any charitable assets, such as land or bank account, for the Charity are managed independently from the accounts of the Parish Council and the Charity and keep spending separate;
- keep trustee meetings separate from Parish Council meetings;
- have a clear distinction between decision-making for the day to day running of the Charity from the Parish Council decision-making; and
- periodically review whether it continues to be in the best interest of the Charity for the Parish Council to remain as trustee of the Charity.

The advice from Brachers is very clear about the need for the separation and have formulated these recommendations to clearly bring about the separation of the 2 bodies. If the recommendations are adopted, and the advice is very clear, the next step would be to have meetings of both the Parish Council and the Trust on the same evening probably with the Trust meeting first and then the Council in case they need to make any decisions arising from the Trust meeting. This would allow decisions to be made as quickly as possible to implement these recommendations that would then enable decisions to be made about the future of the ANRG including the Play Park.

Once the Trust has met and a new Committee of Management (CofM) established with its new terms of reference, that have been formulated in accord with the advice from Brachers, the detailed management of the ANRG can commence. However, a lot of that work will fall on the Officers of the Trust which in effect will mean the Clerk of the Council as that role will already be undertaking these actions but will now continue with these actions but ensure that they are done within the correct rules and for the correct body.

Reference has been made within the advice that the Trust can abolish the CofM but if that were the case, they would have to make a definite decision to abolish and that decision minuted. Having sought further advice from Brachers on this, any abolition of the CofM would require the agreement of the Charity Commission.

Lease with the Bidborough Sports Association

Brachers have confirmed that the lease with the Bidborough Sports Association (BSA) is valid having been confirmed by the Charity Commission and therefore both the 2002 and 2017 are valid. This means that the BSA are responsible for the area of land leased to them in accord with the provisions of the lease. The area of land leased to them centres around the Cricket pavilion, the Bowls Club, and the Tennis courts.

The BSA can build on this land and/or make major adaptations but it is very likely planning permission would be required and Brachers are clear in their advice that the BSA would require the approval of the Landlord which in this instance would be the Parish Council as the Corporate Trustee of the Charity.

At this stage there is no action required by the Trust other than to note the position.

Relationship between the ANRG and the Church Land

This issue has been raised on a few occasions and in particular whether any land is leased to the Parish Council at an annual rental. There is an agreement relating to part of the land though the specific details are not known.

I have been in touch with the Diocese regarding the exact piece of land, but they are currently digitising their records and are not able to tell the Council anything at present. I will continue pursuing this with them but at this point in time this should not impact on the management arrangements or the plans for the play park.

Financing of the Trust

This is a very complicated area, but S19 of the Local Government (Miscellaneous Provisions) Act 1976 gives the Parish Council authority to give a grant to a voluntary organisation to provide recreational facilities within its Council area which is for the benefit of all its residents. In my view the ANRG falls into this category and therefore would be eligible for grant under this section.

S137 of the Local Government Act 1972 falls in the area of providing support to bodies outside the local authority such as the Trust but is not relevant to those areas for which there is a power to the Parish Council such as the provision of recreational facilities and this is where S19 powers become relevant.

However, there is a limitation in that the grant can only be given for the provision of this service and must be directly related to expenditure on this area. Therefore, the Council can give a grant to the Trust for the provision of the day-to-day services such as cutting the grass, but the grant must be based on expected costs therefore a figure based on the previous year plus an allowance for inflation could be acceptable. This could be calculated at a specific period in time around Parish Council precept time. If there is a likely underspend it can be topped up during the year and if there is too much grant that can be adjusted in the following year's grant. This means that each October/November the Council and the Trust need to agree the grant to be made to the Trust. In effect the Clerk will calculate the expenditure the Trust needs and then ensure that figure is reflected in the Council's expenditure and therefore its precept.

Additionally, S19 will allow all expenditure in relation to the recreation ground including the provision of a grant for the purchase of play equipment. Therefore, the Council could give a grant to the Trust for the purchase of a refurbished play area. Therefore, the Trust could ask for a grant of £70k for new play equipment. Inspection and maintenance costs could also be included in any annual grant. However, this may not be the best way to finance this improvement, and this is covered in the next section.

In effect the Council has the power to give a grant to the Trust for any matter relating to the management of the ANRG including any potential development such as

refurnishing the Play Park. For 2023/24 the Council would have to give a grant based on the information calculated for the setting of the precept for that year.

Financing of the Future Plans for the Play Park

In the section on the financing of the Trust I have set out how the Council can provide a newly refurnished Play Park by way of a grant to the Trust and the Trust then purchasing and taking total responsibility for the Play Park going forward. This would mean that the Trust would be responsible for inspecting it, maintaining it, insuring it etc.

An alternative to this is that the Council purchases it and retains ownership of it but that it would have to place the equipment on land determined by the Trust. The Council by continuing to own it would therefore have responsibility for inspecting it, maintaining it, and insuring it but these could be linked into its other activities in the Peter Roberts Field and across the Parish.

I would recommend the second option which Brachers have confirmed can be done but this is not an option that needs to be decided now but is something that will need a decision fairly quickly if the Council is going to get the provision of a refurnished Play Park actioned in this calendar year.

Next Steps

1. Confirm the adoption of the recommendations from Brachers or if not adopting all or part of the recommendations what alternative actions are to be taken. That an early meeting of the Trust be arranged as soon as is possible to set in motion the actions needed to implement these recommendations.
2. To note that the implementation of the recommendations will take time particularly as most of them relate to an administrative separation of the 2 bodies. However, most of these actions whilst time consuming are not complicated.
3. That in respect of the lease no action is required other than to note that any major adaptation or building on the site will require the agreement of the landlord. At some point, in the future, this should be drawn to the attention of the BSA. At this point no other action is required.
4. To note the position in respect of the land leased to the Council by the Church and that the Clerk continue to follow this up with the Diocese.
5. That the position of the financing of the Trust, including the actions for 2023/24, be noted and that the Clerk take the appropriate action for implementing this change as soon as is practicably possible, including the allocation of a grant to the Trust for the day-to-day activities based on the allocation of funds within the precept. That it also be noted that further grants could be required during the forthcoming financial year as the movement to the new system is developed.

6. That the Clerk report back in more detail on the best method of for the ownership of the new Play Park (unless the Council is agree this evening to proceed on the basis of the Council purchasing and retaining ownership of the new Play Park), the financing for this project, a detailed location of the site and on a proposed timetable for implementation to both the Trust and the Council potentially at the early meetings highlighted above.