Wickwar Parish Council – Agenda Report 1st December 2021

9.1 To CONSIDER feedback from South Gloucestershire Council regarding queries raised about the recently installed speed tables and other highways issues, and AGREE any actions require

Email from Ward Councillor P Trull and response for South Gloucestershire Highways

From: Pat Trull <Pat.Trull@southglos.gov.uk>
Sent: 22 November 2021 22:07
To: xxx
Subject: Speed tables Sodbury Road Wickwar

Hello xxx

I know we have been in contact regarding the speed tables in Sodbury Road, Wickwar. The tables recently installed at the Frith Lane end of the village. They really do appear to be very steep, the rise onto the table seems to be very severe.

Is it possible for you to attend a Parish Council meeting? Our next meeting is on the 1st December 2021, Wickwar Town Hall at 7pm. I think it would be beneficial for the Councillors and any members of the public to hear what you have to say.

I know you said you would contact the contractors and have them check the work and specifications are correct. Have you got any results yet?

Looking forward to hearing from you.

Patricia Trull

Councillor – Chipping Sodbury and Cotswold Edge

Response

From xxx on 2021-11-24 13:03

Cllr Trull,

The contractor for Linden Homes has surveyed the ramps as shown on the attached plan. The ramps accord with the Road Hump regulations that allow a height of 25mm - 100mm. That being said I have asked them, following your concerns, to look to re-visit the ramps and flatten them slightly. You will appreciate there is a fine line between installing a ramp that slows vehicles down and one that is ineffective, especially where this is being installed on an existing road that may have pre-existing depressions and undulations.

I have also asked that an independent Road Safety Audit is undertaken by Linden Homes to check the works on Sodbury Road.

The matters raised by Cllr Fielding fall outside my area of responsibility as they are not developer related. I have passed these comments to colleagues in Traffic Management and Assess and Decide who may be able to provide a response.

Regards

9.3 To CONSIDER progress with a review of governance and accounting arrangements for the King George's Field charity (Reg Charity No – 1084979) and AGREE to obtain quotations for legal advice.

Background – The King George's Field Wickwar charity

1. **King George's Field Wickwar is a registered charity (Reg Charity No – 1084979)**

2. **Wickwar Parish Council is registered with the Charity Commission as the sole trustee to the King George's Field Wickwar charity. This may have been done in the early 2000s [check]. In 2006 the first meeting of the 'Management Trustees of the King George V Playing Fields' was held (26/10/2006 - all councillors) – extract from the minutes:**

1. To determine if written guidance with regard to how Management Trustees will conduct business is required

There should be separate meetings for the Trustees, to discuss Trustee business. They will be held twice yearly to coincide with the Playing Fields Committee meetings, which are currently held in April and September.

The meeting will run consecutively, 7.30 – 9pm for the Playing Fields Committee Meeting and 9 – 10pm for the Management Trustees meeting.

The Clerk will contact the NPFA to ask if they have a document on a Constitution for the Management Trustees to adopt?

What constitutes a Quorum, do the same rules that apply to the Parish Council apply to the Management Trustees, on their meeting?

The '**minutes file'** contains minutes of Playing Fields Committee Meetings (Councillors plus cricket and football team representatives) from Oct 2003 – Feb 2010. It is assumed that this was a management/ advisory committee but NOT a trustees meeting.

The minutes file also contains minutes of three meetings of the 'Management Trustees of the King George V Playing Fields' held on:

26/10/2006 (this was the first meeting of the 'trustees')

29/10/2009

21/10/2010

The last set of minutes are from the meeting of the 'Management Trustees of the King George V Playing Fields' held on 21/10/2010. It is concluded that separate meetings relating to the charity took place between 2003 and 2010. After 21/10/2010 it is assumed that the management/ advisory committee AND the Management Trustees of the King George V Playing Fields ceased to meet separately, and all business of the charity was dealt with in Parish Council meetings. [Need to check WPC minutes from 2010 to confirm this].

3. **King George's Field Wickwar is protected by Fields in Trust in perpetuity (since 1938). It is protected as a King George V Field. (From the Fields in Trust website: Following the death in 1936 of our founder, King George V, 471 parks and playing fields were protected following donations of both money and land as a fitting memorial. The spaces are clearly identifiable by the heraldic plaques that signify their status as a King George V Field.)**

King George V Playing Fields (Wickwar) | Fields in Trust

The Clerk submitted an enquiry to Fields in Trust to check that the Field was in fact held as a charitable trust. The response from FiT is copied below, followed by the original query. The conclusion was that the land is held as a charitable trust.

RE: FW: FW: King George's Field Wickwar (Registered charity 1084979)

From xxx *on* 2021-06-18 09:17

Hi Rachel
We don't have any guidance I'm afraid. The Charity Commission's guidance is really comprehensive so we always suggest people look there.

Referring to the two points you raise specifically, it would be good practice to separate the money, and in terms of meetings, when our Trustees meet (who are also Trustees of the King George's Field Foundation) and they have KGFF business, they have a separate section of the meeting with Minutes taken accordingly, rather than organise completely separate meetings.

Hope that helps.
Kind regards
xxx

From: *clerk@wickwarparishcouncil.gov.uk <clerk@wickwarparishcouncil.gov.uk>*
Sent: *15 June 2021 13:25*
To: *xxx*
Subject: *Re: FW: FW: King George's Field Wickwar (Registered charity 1084979)*

Hi Angela.

Thank you, that clears up some confusion and fits with the local knowledge I have gathered.

What I don't have is anything that sets out how the charity should be governed as the documents below are silent on this point. I expect that is quite common! If there is nothing written down, do I refer to Charity Commission guidance on charity governance, or is there a guidance document available from Fields in Trust that can be applied to the management of dedicated fields?

To give some context, separate trustee meetings are not held and the charity's funds are not held in a separate account etc, etc. The field is effectively run as a Parish Council asset. I think this has been the case for as long as anyone can remember, although there used to be separate management committee meetings, albeit advisory rather than decision-making.

Any signposting you can provide would be very helpful!

Best wishes,

Rachel

On 2021-06-09 17:29, xxx wrote:

Hi Rachel

Sorry I haven't called you. I thought I would email and then we can chat if you have any questions. Although I will probably have to refer you to our Solicitor depending on those questions!

The Charity Commission's register shows that the governing documents for the site are CONVEYANCE DATED 24 NOVEMBER 1936, DEED OF RELEASE 10 OCTOBER 1938 AND DEED OF DEDICATION 24 NOVEMBER 1938.

This means that the site was already held charitably before it was dedicated in 1938, the trust being set up by the 1936 conveyance.

And then the last paragraph of the guidance is useful:

"Where a local authority has entered into contracts or covenants with the foundation or its trustee, Fields in Trust, those legal obligations remain in force. They are not affected by the charitable status of the land in question."

The charities that were removed by the Charity Commission had a KGV deed that intended to create a charitable trust which is not the case with this site. The removed charities remained dedicated as non-charitable sites.

I hope that's helpful.

Best wishes

-------- Original Message --------

Subject:King George's Field Wickwar (Registered charity 1084979)
Date:2021-05-27 11:49
From:clerk@wickwarparishcouncil.gov.uk
To:info@fieldsintrust.org

Good morning,

I am contacting you as the representative of Wickwar Parish Council, which I understand is the corporate trustee of the King George's Field , Wickwar, registered with you and with the Charity Commission.
http://www.fieldsintrust.org/FieldSite/Wickwar-KGF
https://register-of-charities.charitycommission.gov.uk/charity-search/-/charity-details/3979296/charity-overview

I am looking into the charitable status of the field and its governance arrangements, and wonder if you can provide some guidance or point me in the direction of sources of help.

As far as I can tell from the governing documents, the field was purchased by the Parish Council in 1936 for the purposes of recreation, and then dedicated as a King George's Field in 1938, as per the deed of dedication attached. There are no other governing documents that I can locate which set out the governance arrangements or refer to the charitable status.

Looking online I found this information from the Charity Commission which may be relevant:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/352531/Dedication_of_local_authority_land_as_a_King_Georges_Field.pdf
This paragraph may apply to the charity/ field I am looking into:

The commission's conclusions
The commission has come to the view that declaring charitable trusts over corporate property is a disposal for the purposes of legislation affecting local authorities. Accordingly only if the procedures for disposing of property at an undervalue applicable at the time were followed by a local authority, is the declaration valid. In very many cases, the procedures were not followed and so the land is not currently held on an indisputably valid charitable trust.

However, for those local authorities who are now in this position the commission has agreed a model declaration of trust which can be used to secure the charitable status of the Field. This is available from Fields in Trust.

First of all, can you advise how I may find out if the land is actually held as a charitable trust? Do I need to seek independent legal advice for example?

Secondly, are you able to supply a copy of the model declaration of trust mentioned above, which can be used to secure the charitable status (if it doesn't have it)?

Any advice or signposting that you can provide would be very much appreciated.
Best wishes,
Rachel Davis

Why does it matter that King George's Field Wickwar is held as a charitable trust, and the Parish Council is sole trustee?

4. **The extract from NALC legal topic note (LTN 28 April 2017) – BASIC CHARITY LAW, explains why it matters that the playing filed is held in trust and the Parish Council is sole trustee.**

A1. local councils can act as:

Sole trustee: the council as corporate body holds the property and oversees its application as charity trustee.

Local councils acting as sole trustee

6. If a council is the sole trustee, it should set up a committee pursuant to s.101 (1) of the 1972 Act. Individual committee members are not charity trustees. However they must ensure that the local council acts appropriately as sole trustee.

7. Pursuant to s.2 the Charities Act 2011 ('the 2011 Act'), a charitable body must be established for charitable purpose and for the public benefit. It cannot be established to further the purposes of some non-charitable body such as the council itself. Local councils and charities often have close interests in local matters. But the charity needs to be independent of the council. Decisions about the administration and operation of the charity

5. **The Wickwar Playing Fields Association was a separate association responsible for managing the playing field from 1935 until 1977. It had a separate bank account (presumably) and kept its own accounts. It was entirely separate from the Parish Council from 1935 until 1965 although Parish Council members were part of it. In 1965 it adopted**

a new constitution and effectively became a sub committee of the Parish Council (although its legal status as such was never resolved). The Wickwar Playing Fields Association ceased to exist in 1977. It handed all of the charity's funds (£488.27) and responsibility for managing the King George's Field on behalf of the community, to Wickwar Parish Council.

6. **It is assumed that in 1977 the bank account for Wickwar Playing Fields Association was closed and the balance at that time (£488.27), was transferred into the Wickwar Parish Council bank account. This means that the Parish Council's bank account contains cash that should belong to the King George's Field Trust and be held in a separate bank account.**

7. **Since (at least) 1977 Wickwar Parish Council has funded, in part or in whole, the running costs of King George's Field Wickwar i.e. the running costs that could not be covered using the charity's income from renting/ leasing the field to football and cricket clubs, its reserves plus any other charitable income.**

8. **Also since 1977 the Parish Council has collected the income from the King George's Field, which should be charity income. The cost of maintaining and improving the field is higher than the income however – see above.**

9. **The Parish Council has the power to maintain and invest in public open space that it does not own (or that is held in trust as in this case). This means that it can budget for the maintenance costs of the King George's Field, it can invest capital funds there and it can reclaim VAT on the expenditure. VAT can only be reclaimed however, if none of the charity's income (from renting to the Football Club) is used to fund running costs. It can be held for a future large capital investment.**

10. **Although the Parish Council can continue to fund the running costs of the field, the charity's funds and income must be separated from the Council's funds AND separate trustee meetings should take place to make decisions about King George's Fields. The future arrangements for funding must be clarified. The charity expert at SLCC has provided some advice in this respect. See email conversations below.**

Email from Rachel Davis (Parish Clerk) to SLCC Advice Line

Dear xxx,
Thank you for calling me back. As requested here are the details of my query to pass on to Crispin.

- I have recently figured out that Wickwar Parish Council is the sole trustee for King George's Field Wickwar, a playing field and registered charity (no.1084979). The playing field has a pavilion, shed, two football pitches and a playground. It is not clear whether the Council is sole managing trustee but it is acting as such at this time, and has been for a number of years. I have discovered that there was once a separate committee for the field, but it was, I believe, advisory rather than a management committee. It was disbanded once the cricket club, which used the field with the football club, folded.
- I do not have a copy of the governing document, but I have requested this from the Charity Commission.
- I have filed an annual return for 2019/20 for the field with the Charity Commission, as that was what the previous Clerk said to do.
- Separate trust meetings do not take place, and decisions about the field are taken in full council

meetings - which I am aware is not correct.
-There is no separate bank account for the field and all income and expenditure goes through the WPC account. Again I realise that this is not correct.
- Financial records are kept separately for the field within the council's EDGE accounts package - it is set up as a separate committee.
Separate accounts are not produced, but I can easily determine the income and expenditure that relates specifically to the field due to the way the accounts package is set up and invoices are entered.
- Expenditure far exceeds income for the field. At the beginning of the year a budget is set for expenditure on the field, which comes from the precept. It is not called a grant, but that is effectively what it is.
- The only source of income is the annual letting of the two pitches and pavilion on the field to the local football team, plus any grants applied for.
- The income and expenditure for the field are included within the AGAR produced for Wickwar Parish Council. This has been the case going back for a number of years as far as I can tell.
- All of the assets on the field are listed on the WPC asset register.
- WPC has been made aware that the governance arrangements and accounts for the field need sorting out and it has agreed to set aside funds for legal advice.

- As an aside, the field is named in a section 106 agreement for sports funding from a local development. This funding is now available -
£144,126.86 capital and £44,641.00 revenue plus a similar amount from a second development within the next 2 - 5 years. The council is being invited to submit an expression of interest to South Gloucestershire Council for this funding. Councillors are keen to look at extending/ redeveloping the pavilion that is on site, subject to sorting out the financial and governance arrangements for the charity. There is no great urgency, but the councillors wish to twin track preparing an expression of interest with sorting out the governance and accounting issues. I am not sure if that is a feasible approach or not.

My immediate concern is to separate out the finances ready for end of year, but other than that I am not sure what my next steps should be.
Any guidance you can provide on how to proceed would be very welcome.

Best wishes,
Rachel

Reply from Crispin Taylor (SLCC)

Hi Rachel, I have been asked to reply. Apologies for delay but I think Sarah mentioned that I was on leave last week.

Your scenario, mixing the activities of a council and a charity, is very common. Fortunately it is easy enough to put things right for the future. As usual the message is 'don't panic'. I doubt whether you will need legal advice.

A quick search of the Charity Commission website reveals, as expected, that the council is sole managing trustee.

Meetings of the council (or of a committee) as trustee should be completely separate from meetings of the council as local authority. It will normally be appropriate for the public to be excluded from meetings of the council as trustee since the trustee is not spending public money.

The council as local authority has plenty of powers to provide and maintain recreational facilities, whether or not it owns them. It is preferable for any work to be paid for by the council (i.e. out of the precept) to be commissioned by and invoiced to the council, since this permits the VAT to be recovered provided that no contribution whatsoever is made by the trustee or anyone else. This is preferable to making a 'grant' to the trust, which may also lead to confusion as to who is making decisions on spending.

The accounts of the trustee are completely separate from the council's accounts. Trust income and expenditure (i.e. expenditure out of trust funds) must not be included in the AGAR and trust assets, including any bank balance, must not be included in Line 8 or Line 9 (ideally the trust should have its own bank account to minimise the risk of funds being mixed). There is no objection to including assets in the council's asset register provided that there is a note that the council holds as trustee. Similarly the council's insurer should be aware of assets that the council holds as trustee.

If this year's AGAR includes correct figures the figures for 2019/20 in the left-hand column must be stated (marked 'Restated') on a comparable basis.

Make sure that the trustee is claiming any business rate relief that is due. The council as trustee, not the council as local authority, is the occupier for rating purposes and therefore the property should be eligible for charity relief. I have not checked the Rating List.

The one area where the council (in both capacities) may need further advice is on the section 106 money. Developers, and indeed principal councils, are often alarmingly causal about legal arrangements for payment of section 106 money. It is important to be clear whether the project is being carried out by the council as local authority or the council as trustee (or perhaps there is more than one project). There is in fact no advantage in feeding section 106 money through the council as local authority if the expenditure will be for the benefit of the trust. Whatever the structure it is unlikely that VAT will be recoverable (developers sometimes use methods of doubtful legality to try to avoid having to pay the VAT).

Happy to advise further.

Crispin Taylor PSLCC
SLCC National Finance & VAT Advisor

Dear Crispin,
Thank you for your very helpful and detailed response.
I have got myself into a muddle about the trust income/ expenditure and trust assets based on what you have written. I have tried to explain my questions below, but it may work better to explain it over the phone. If so, please let me know how/ when to reach you.
Trust income
The only income that the trust has is an annual hire charge paid by the football club for use of the pavilion and pitches during the football season. The hire charge has historically been calculated by adding mowing and pitch maintenance costs (relating to the season only) to rates and utilities costs for the pavilion (again relating to the season only). It is usually about £1200.
In theory the mowing charges and utilities charges outside of the football season are picked up by the Parish Council, although in practice the Council pays all of the bills and holds the contracts with the grass-cutters and utility companies.
(i) If I have interpreted your email correctly it is okay for the Council to contract with and pay the grass-cutters and utility companies directly and reclaim VAT, but NOT to use the income from hire to the Football Club to pay for any of these bills?
(ii) Am I correct in thinking that anything that is paid for from the hire income must be paid with VAT (i.e. no reclaim)?

(iii) How can this actually work in practice - e.g. pay part of the grass-cutting bill using trust income and do not reclaim VAT on that part?

Trust assets
The trust has no cash as far as I am aware.
As well as the field there is a pavilion, storage shed and a play area with various pieces of equipment, including at least five new pieces of play equipment that have been purchased by the Parish Council over the last two years (using CIL and reserves), with the VAT being reclaimed. The other play pieces are very old so I guess they are trust assets. It is the Parish Clerk's role to inspect the play equipment and other assets, the PC pays for the annual play area inspection and all the maintenance of the equipment.
(iv) Are all/ just some of the above, assets of the trust? (I am assuming that most of the above, apart from the land itself, were purchased by the Parish Council using its funds although I don't know that).
(v) In particular the recently purchased play equipment - should that be 'donated' to the trust or is it PC-owned on trust land?

Many thanks in advance for your advice.

Best wishes,
Rachel

Hi Rachel. The easiest answer is for the parish council to pay all the bills and provide all the equipment out of its own resources (precept, reserves, the PC's share of CIL), with no contribution being made out of trust funds or from anywhere else. This is a non-business activity and so VAT ('input tax') can be recovered without limit. The trust funds could perhaps be used for major expenditure such as pavilion refurbishment on which input tax can probably not be reclaimed by anyone (unless an 'option to tax' is made).

Fixed play equipment is normally a 'fixture' in law which means that it has become part of the land. The trust land, and any parish council land, should be registered at the Land Registry so that ownership is clear.

Crispin Taylor PSLCC
SLCC National Finance & VAT Advisor

Decision required

The Clerk is compiling all of the documentary evidence that she can find in relation to the King George's Field charity.

At this point it is proposed that the Parish Council seeks independent legal advice to aid it in separating out the accounts, funds and governance arrangements for the King George's Field Trust from its own.

The questions/issues to be resolved are summarised below:

1. **Is the Council sole (managing) trustee?**

2. **Are any further actions/ documentation required to confirm the sole trusteeship?**

3. **Wickwar Parish Council requires a governing document to set out how the charity will be managed (separate trust meetings, funding arrangements) – can you assist with this?**

Please note that all running costs are currently met by the Parish Council and have been since 1977. We have been advised (by SLCC) that this is allowable under the Parish Council's powers and hence VAT can be reclaimed on all costs. How should this be reflected in the governing document, given that funding decisions are currently made by the Parish Council and the charity has negligible funds of its own?

4. **Is a lease/ underlease required for the pavilion as it is a Parish Council owned building (as far as we can tell)? If it is possible, what are the advantages/ disadvantages to this?**

5. **The only charity income is currently from a 'rental' fee which is charged to the football club who have exclusive use of the pitches and pavilion during the football season. The fee is roughly commensurate with the costs of grass cutting during the season (although the grass would be cut anyway), pitch maintenance and pavilion running costs, but not ongoing pavilion maintenance costs. However, as all costs are currently met by the Parish Council (and VAT is reclaimed) how should a rental fee be calculated/ charged in future?**

We have been advised that any rental fee charged by the charity should not be spent on running costs, but should be set aside for larger capital expenditure on which VAT cannot be reclaimed.

6. **Can you assist in drawing up a licence agreement for sole use of the pitches and pavilion by the football club?**

7. **How should the charity's funds be separated out from Parish Council funds given that the charity's funds were transferred the Parish Council in 1977 [the last apparent mention of a separate bank account is from 01/04/94, but this needs to be verified]? (Do we require separate accountancy advice re separating the funding?)**