

CLAPHAM RECREATION GROUND TRUST

NEWSLETTER 7 – October 2018

Dear Clapham (and Patching) residents,

At last, we have some positive progress to report!

The Charity Commission

The Commission pulled out all the stops to provide a decision on the Trust's charitable status by mid-September, in time for the Parish Council meeting. Here is what the decision said (our explanations in square brackets):

"Our view is that the entity is broadly charitable but that the Indenture [i.e. Conveyance] dated 13 August 1930 is unsatisfactory.

The 1930 Indenture states that the grantees [i.e. the Trustees] 'will forever hereafter hold and use the lands and hereditament hereby conveyed as and for the purpose aforesaid' and the purpose aforesaid is 'for such purposes for the benefit of the parishioners of Clapham Parish as the Grantees may from time to time determine'. What has been determined is not without doubt. Also, it is impossible to know in clear legal terms what has been determined.

There has been some disagreement locally about how to use the entity's property. However, all seem to be in agreement that this is a charity.

Therefore, in order to produce purposes that are exclusively charitable, the Commission could consider making a cy près [i.e. 'as close as possible'] scheme. A cy près scheme is a legal document which would provide the charity with new purposes. This would then sit alongside the 1930 Indenture as the charity's governing document.

In order to consider making this scheme, the trustees will need to make an application to the Commission. You may want to take legal advice to help with this but this is a matter for you. There is much more advice on cy près schemes and the application process in the attached document.

We note that there is some interest locally in wanting a shop on the charity's property. The trustees may decide that they want to proceed with this. If only a small part of the land will be used for this purpose, then the trustees may decide to dispose of that part of the land [NB 'disposals' include leases]. However, while this may be a good community use, it is not a charitable use and so would need to be on market terms.

As you know, the Commission had received some concerns about the charity linked to the shop and we have responded to provide the above view.

In summary, the Commission's view is that this is a charity but that its purposes are unsatisfactory and a cy près scheme is required to allow this charity to continue to act lawfully. You should understand that as we are agreeing that the land is held on charitable terms and that a cy près scheme is needed, this will result in the trustees' decisions having to be made entirely within the charitable sphere."

This means that yes, we are a charity, and the ground is protected as a recreation ground for ever. But we do need to put forward a clear definition of the purpose of the Trust, in modern language. This would be attached to the existing Conveyance document, in which the purpose is not clear as the crucial phrase 'for the purposes of pleasure grounds' only appears on the title page, and is not repeated in the main text. The Commission recommends that we inform the beneficiaries of our proposed definition; it is as follows:

The purpose of the charity is to provide and maintain a recreation ground for use by the inhabitants of Clapham parish.

Trustees: John Morris, Keith Preston, Charlie Smithers, Cliff Tomkins

c/o Secretary, South House, The Street, Clapham, Worthing BN13 3UU crgt-secretary@morris-assocs.demon.co.uk

CRGT

We would welcome as many responses as possible (from Clapham residents only, since they are the beneficiaries of the Trust) – please let us know whether you are happy with this definition, or whether you can suggest any improvements. (Note that, as the Charity Commission's letter makes clear, the operation of a shop/café on part of the land cannot form part of the charity's purpose.) Please reply to crgt-secretary@morris-assocs.demon.co.uk (or drop in a note at the address below) before the deadline of 31st October. We will then send the draft – revised if necessary in light of relevant comments – to the Commission and, if they are happy with it, they will set the appropriate process in motion.

Lease to Clapham Parish Council

At their meeting on 27th September, the Council approved the budget for the costs of maintaining the recreation ground and the future playground, and voted to go ahead with a lease from the Trustees for the majority of the land (subject of course to their lawyer's approval of the final agreement).

This means that as soon as the new wording has been agreed via the Charity Commission's formal process, we can go ahead and make a formal application to the Commission for a 'disposal' (i.e. lease) - they have indicated that approving this lease should not be a problem. We are therefore asking our lawyer to draw up a lease along the lines we have already agreed with the Council. The Commission has made it clear that we only need to charge a 'peppercorn' rent in this case, as the Council will be 'paying' us by taking over responsibility for insuring and maintaining the land (including the children's playground, as soon as the CPR group is able to raise the necessary funds for it to be installed).

Licence to The Junction @ Clapham

As the Charity Commission's letter makes clear, we are able to issue a licence for Neil to continue to occupy the plot on which the shop/café stands (assuming that planning permission is forthcoming and its conditions can be met). However, as the Commission states that the shop is not part of the Trust's charitable purpose, a full market rent will have to be charged – the process of obtaining an objective valuation for this purpose is under way. The income from the rent must be applied for the purpose of the Trust – for example, it could be used to help fund the playground, or indeed to offset the impact of maintenance costs on residents' Council Tax bills; it will not benefit the Trustees personally in any way.

Maintenance

Local resident David Collins has kindly agreed to take over the task of repairing and refurbishing the bench around the Memorial Chestnut, at his own expense. Seth Evans, who originally built the bench, does not have time to undertake the work but will be giving David what advice he can.

Now that the weather is improving, we hope to complete the scrub clearance very soon, and then to plant the native tree saplings which are waiting to go in. In the meantime, as you will have noticed, Charlie is continuing to mow the grass regularly. So the land should be in a good state when we hand it over to the Parish Council.

Further information is available on the villages website at <https://www.claphamandpatching-westsussex.org.uk/recreation-ground-trust>. As always, we are happy to answer any questions you may have – our email is CRGT-Secretary@morris-assocs.demon.co.uk

The Trustees

October 2018