

**Report to Cabinet Sub Committee Acting as Trustees for
Lower Memorial Park Failsworth**

Lower Memorial Park Failsworth

Trustees: Cllr Fielding, Cllr Roberts and Cllr Shah

Officer Contact: Emma Barton – Director of Economy

**Report Author: Ben Hill – Principal Regeneration Officer
Ext. 5261**

21 February 2019

Reason for Decision

The Council, acting in its capacity as charitable trustee, is required to make resolutions to regularise procedural steps taken regarding works to the Lower Memorial Park Failsworth.

Executive Summary

As part of the development of the Lancaster Club, Bellway Homes has constructed a drainage attenuation basin and relocated top soil on part of the adjoining Lower Memorial Park Trust/Centenary Fields land. A complaint has been received from a member of the Friends of Moston Brook group concerning the works taking place and the condition of the land as a result of the works.

In September 2018 the Trustees authorised officers to inform the Charity Commission of the serious incident and obtain professional independent advice on the dis-amenity and appropriate compensation resulting from the works.

The Charity Commission has now confirmed that subject to a consultation exercise, it is satisfied in how the Trustees have handled the case and is closing its file. A copy of the correspondence is appended to this report (Appendix 1).

The independent report does not suggest that there should be monetary compensation for any loss of amenity to the trust but the landscape architect has made recommendations with regards to the remediation of the land and the safety of the attenuation basin. The

independent landscape architect is of the opinion that the ground is capable of fulfilling recreational purposes. A copy of the report can be found at (Appendix 4).

Recommendations

- To note dialogue with the Charity Commission and authorise the disclosure of the decision of the Charity Commission as and when required.
- To note the contents of the independent landscape architect's amenity report and authorise disclosure of the report and consultation with the Friends Group and local residents and wider members of the public on the following:
 - The recommendations in the independent landscape architects report listed in paragraph 2.3 of this report
 - The proposal to transfer additional land to the charitable trust for the Lower Memorial Park Failsworth.

Cabinet Sub Committee Acting as Trustees for Lower Memorial Park, Failsworth

Lower Memorial Park, Failsworth.

1 Background

- 1.1 As part of the development of the Lancaster Club, Bellway Homes has constructed a drainage attenuation basin and relocated top soil on part of the adjoining Lower Memorial Park Trust/Centenary Fields land. The approved scheme for the Bellway development included an attenuation pond on charity park land as well as permission to run a foul drainage connection across the land.
- 1.2 Complaints have been received from a member of the 'Friends of Moston Brook' Group regarding the works which have taken place, the current condition of the land and permissions required for the works. There is a concern that members of the local community feel aggrieved with the size of the attenuation basin and the placing of the topsoil.
- 1.3 Shortly before commencing work on site (June 2017), Bellway Homes requested that they layer and re-grade the top soil from the former football pitches over part of the Trust Land. This is only the high quality top soil from the sports pitches and should have been to a depth of around 30 to 45 cm.
- 1.4 Inspections have shown that the soil is in fact to a depth of around 180-150 cm in places. The soil has been levelled and graded into the existing land and creates a consistent surface. Seeding and landscaping is still required to the area around the attenuation basin.
- 1.5 Independent legal advice was obtained on behalf of the Trustees on the steps that the Council and the Trustees should take in the circumstances and in September 2018 the trustees approved the following steps be taken:
 - (i) Report the current situation to the Charity Commission.
 - (ii) Seek independent advice on the damage caused (the extent of the dis-amenity), the extent of financial compensation required in the form of a gift of land to the Charity or other possible remedies.
 - (iii) Discuss the proposed compensation/remedy/gift of additional land with the Friends and consult with the wider public on the proposals.
 - (iv) Consider the independent advice and outcomes of the various consultations.
 - (v) Seek the Charity Commission's approval to the proposed solutions.

2 Current Position

- 2.1 Legal Services reported the breach to the Charity Commission which included steps to remedy the situation in September 2019. The Charity Commission contacted the Council on 11th January requesting clarification on issues around representation with the public, copies of minutes and agendas from meetings held with the trustees

and our plans to remedy the situation. These were sent to the Charity Commission on 24th January.

- 2.2 The Charity Commission contacted the Council again on 6 February and confirmed that they are confident that Trustees have taken the correct steps in reporting the incident to the Commission and that following the recommendations of the independent examiner's report would represent appropriate handling of the case moving forward. Further advice was given that the Trust should consider a consultation exercise to allow public representation on the future of the park. The expectation was that the Trustees should follow the advice. Copies of the correspondence are appended to this report at Appendix 1.
- 2.3 An Independent Landscape Architect, TPM, has completed a Landscape and Amenity Assessment Report a copy of which is appended to this report at Appendix 4. The report provides advice to the trustees generally and in particular in relation to "the terms of the easement and consider appropriate compensation to the charity for any dis-amenity to the land caused by the works taking into account all pertinent events and circumstances including but not limited to the requests of the complainant and any other representations made and the offer by the Council to gift additional land into the trust."
- 2.4 A summary of the reports main findings are:
- The spreading of the topsoil over the land does not alter the openness of the land, nor does it prevent the land from functioning as part of the park in a similar manner as it has done in the past.
 - The topsoil areas should be re-profiled to feather down the edges of the mound to better blend this into the existing topography of the land.
 - This work should be included into the final landscape remediation works for all the area and seeded/planted accordingly to return the land to a semi natural state.
 - The drain connections, easements and topsoil mounding will not prevent access as enjoyed prior to the work commencing.
 - The key route ways through the site will be unaffected and the wider works and land swap have enabled improvements to this path network.
 - Following the completion of the works the area of land covered by topsoil and attenuation pond will be returned to a state and landscaped so as to play a full role in maintaining the local value of the wider park and Moston Brook corridor.
 - The benefits and dis-benefits of fencing off the attenuation area with a timber post and rail fence should be considered, or other landscaping could be considered to create a natural barrier.
 - There is no justification for any level of dis-amenity to justify the council requiring to further transfer land over to the Lower Memorial park trust as compensation.
- 2.5 A meeting took place with the former Leader and representatives from the Friends Group in April 2018 where they requested that the land previously allocated as a Goals! Soccer Centre located between the Memorial Trust land, the Lancaster Club, Broadway and the new allotments should be gifted to and thus become part of the Charity Land. Whilst not a recommendation of the

Independent landscape Architect the Trustees may wish to consider the option as part of the consultation exercise. This land can be identified as edged red at Appendix 3.

3 Options

- 3.1 Option 1 – Follow the advice from the independent landscape architect and the Charity Commission. This may include the gift of additional land, outlined in paragraph 2.5 to the trust.
- 3.2 Option 2 – Do not follow the independent advice from the landscape architect and Charity Commission.

Option 1 is the preferred option.

4 Financial Implications

- 4.1 The cost of the Independent Survey was £3,000 which will be met through Regeneration's Professional Fees budget. The cost of additional landscaping works will be met by Bellway Homes when agreed.

5 Legal Services Comments

- 5.1 Legal Services have entered into correspondence with the Charity Commission copies of which are appended to this report at Appendix 1. The Charity Commission has approved the Trustees approach so far in seeking the advice of an independent expert to prepare a report and has issued formal advice to the Trustees to consult and seek representations from members of the public on the future of the park. The advice was caveated as follows: ***"This letter constitutes formal advice from the Regulator. Failure to follow this advice, in the absence of a reasoned argument as to why it was not possible or effective to do so, may be considered as misconduct or mismanagement in the administration of a charity"***.
- 5.2 Such consultation has not taken place to date and therefore, Legal Services advise the Trustees to authorise the commencement of the consultation process as a matter of urgency. Legal Services would recommend a consultation exercise of at least one month in duration. The outcome of the consultation exercise should be reported to the Trustees forthwith so that the Trustees can make appropriate decisions. (Elizabeth Cunningham Doyle)

6. Co-operative Agenda

- 6.1 Not applicable.

7 Human Resources Comments

- 7.1 Not applicable.

8 Risk Assessments

-
- 8.1 To be informed after the works have been agreed.
- 9 IT Implications**
- 9.1 Not applicable.
- 10 Property Implications**
- 10.1 Outlined above.
- 11 Procurement Implications**
- 11.1 Not applicable.
- 12 Environmental and Health & Safety Implications**
- 12.1 Outlined above.
- 13 Equality, community cohesion and crime implications**
- 13.1 Not applicable.
- 14 Equality Impact Assessment Completed?**
- 14.1 No
- 15 Key Decision**
- 15.1 Not applicable.
- 16 Key Decision Reference**
- 16.1 Not applicable.
- 17 Appendices**
- 17.1 Appendix 1 – Copy correspondence between the Charity Commission and Council.
Appendix 2- Plan of Lower Memorial Park trust Land
Appendix 3 – Plan showing land requested by the Friends Group (red edged).
Appendix 4 - Copy of the report provide by the Independent Landscape Architect, TPM

Appendix 1 – Copy correspondence between the Charity Commission and Council.

From: RC Landing & Correspondence (Queue) [<mailto:RCCorres1@charitycommission.gsi.gov.uk>]

Sent: 06 February 2019 10:51

To: Mark Prestwich

Subject: 20190206 - S 15.2 Advice - PF C-491464 CRM:0205070

Dear Trustees

Ref: Land at Failsworth Lower Memorial Park (1924) (1136597)

We previously wrote to you on 11/01/2018 to discuss some regulatory concerns we held about the construction of an attenuation pond on Charity land which may have been in breach of the Charity deed, as well as failure on the Charity's part to comply with proceedings laid out in section.121 of the Charity act.

I can confirm we have now received a copy of the independent examiner's report on the landscape value, as well as minutes of relevant meetings and photographs of the site. This is in addition to the RSI report we received on 26/09/2018.

Having assessed the information we have received, we are confident that trustees have taken the correct steps in reporting the incident to the Commission, and that following the recommendations of the independent examiners report would represent appropriate handling of the case moving forward.

We will be still providing formal advice to the Charity as follows:-

The Charity Commission's role

As the independent regulator of charities in England and Wales, our aim is to provide the best possible regulation to enable charities to deliver effective services whilst also ensuring compliance with charity law. We do this by working with charities through providing advice and guidance, and setting out best practice to resolve difficulties encountered.

I have reviewed the case and have formed the view that the Commission can use its powers under S. 15(2) of the Charities Act 2011[1].

We advise as follows:-

Trustee Management

It is the responsibility of trustees to make decisions in the best interest of the Trust, including in relation to assets and land. This includes seeking a proper valuation for dis-amenity to Charity land in future, as well as having proper authorisation for the usage of land for other purposes confirmed and recorded in Trustee meetings. Trustees should ensure that any future projects undertaken involving the land follow Commission guidelines.

In addition, Trustees must ensure that Charity land is still suitable for recreational purposes. This may involve implementing the recommendations of the Independent Examiner's report.

For more information on Trustee responsibility relating to land and property, please see our published guidance: [Charity Land and Property](#)

For information specific to disposal of Charity land, please see the following guidance: [CC28 - Disposal of Charity Land](#)

Public consultation

As discussed in our correspondence, the Trust failed to invite representation from the public on the proposal to allow construction on the land. Following the independent examiner's report, the Trustees should consider a consultation exercise to allow public representation on the future of the park.

This letter constitutes formal advice from the Regulator. Failure to follow this advice, in the absence of a reasoned argument as to why it was not possible or effective to do so, may be considered as misconduct or mismanagement^[2] in the administration of a charity.

If we have any further concerns regarding the charity we may re engage at a future date and check that the advice we have given in this letter has been acted upon.

We will now be closing our case

Yours sincerely

**Patrick Foley
Case Officer
Regulatory Compliance**

[1] The Commission may, in connection with its second general function, give such advice or guidance with respect to the administration of charities as it considers appropriate. (The Second general function is: Encouraging and facilitating the better administration of charities.)

[2] Misconduct includes any act that the person committing it knew (or ought to have known) was criminal, unlawful or improper. Mismanagement includes doing anything to lose or misuse charitable resources, undermine a charity's reputation or put beneficiaries at risk.

W: <https://www.gov.uk/charity-commission>

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<https://www.gov.uk/government/organisations/charity-commission/about/personal-information-charter>

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From: Elizabeth Cunningham-Doyle

Sent: 24 January 2019 17:18

To: 'RCCorres1@charitycommission.gsi.gov.uk' <RCCorres1@charitycommission.gsi.gov.uk>

Subject: Lower Memorial Park Failsworth -FW: 20190111 - Commission e-mail to Mark Prestwich - Regulatory Concerns C-491464 - PF CRM:0205052

Dear Mr Foley, thank you for your email addressed to my colleague Mark Prestwich.

The Council notes your concerns with regards to the RSI and has responded to your specific enquiries below, providing you with the additional information which you have requested.

The Council would address your concerns as follows:

Professional Independent advice has been obtained by the Trustees which does not suggest that there should be monetary compensation for any loss of amenity to the trust but the valuer has made recommendations with regards to the remediation of the land and the construction of a post and rail fence. The independent valuer is of the opinion that the ground is capable of fulfilling recreational purposes. The Trustees have not yet had the opportunity of considering the advice of the independent valuer and a meeting of the Trustees will be convened as soon as possible.

In taking professional independent advice the Trustees are seeking to manage any competing public interests and any conflicts/potential conflicts of interests.

The Council has not commenced the process of inviting representations from members of the public even though the Trustees have authorised the consultation exercise. The Council was waiting for confirmation from the Charity Commission with regard to the appropriate way forward. A meeting of the Trustees will be convened forthwith to appraise the Trustees of your concerns and to clarify the scope of the consultation exercise taking into consideration your concerns.

Information required.

1. Confirmation that the trust has now held representation, and the outcome of this. The Trustees have not yet sought representations from members of the public or the Friends of Moston Brook. A meeting of the Trustees will be convened as soon as possible and the trustees will be advised of your letter and the concerns which you have raised and the outcome of the independent landscape value and amenity report a copy of which is attached to this email. Instructions will be sought from the trustees with regards to the nature and scope of the consultation exercise which is required in view of the advice and recommendations of the independent valuer.

2. The conclusion of the independent valuation, and the steps taken to recover compensation for funds lost to the charity. Please find attached a copy of the independent landscape value and amenity report provided by TPM which has made clear recommendations with regard to adequate compensation for the loss of amenity regarding the attenuation pond and for the value attributable to the facility to place the topsoil on trust land. The recommendations include re-profiling the topsoil to feather down the edges of the mound to better blend into the existing topography of the land and to complete the final landscape remediation for all the area and to seed and plant accordingly to return the land to a semi natural state. Consideration should also be given to the construction of a timber post and rail fence around the attenuation pond and/or other landscaping option to create a natural barrier to the pond.

Bellway Homes were required to carry out additional works on the trust land to comply with its planning conditions to include the provision of new steps down to Moston Brook to improve access. These works to re-instate the steps have now been completed and these are open to the public.

The Trustees will consider the recommendations for compensation and any other options available at their meeting.

3. Minutes of meetings in which the decision to authorise construction was taken, and minutes of any meetings since where the trust has discussed the failure to follow correct procedures and decisions taken to prevent this in the future. As requested, copies of the relevant reports and minutes of the meetings of the Cabinet Sub Committee (the Trustees) held on 29th July 2015 and 17th September 2018 respectively are attached.

The Council is endeavouring to deal with this RSI in an open and transparent way and welcomes any advice from the Charity Commission to redress this situation.

Kind regards,

Elizabeth Cunningham-Doyle
Solicitor, Corporate
Legal and Democratic Services
Oldham Borough Council, PO Box 33, Civic Centre, West Street, Oldham, OL1 1UL
T. 0161 770 4840
F. 0161 770 3701
Email: elizabeth.cunningham-doyle@oldham.gov.uk

From: RC Landing & Correspondence (Queue) [<mailto:RCCorres1@charitycommission.gsi.gov.uk>]
Sent: 11 January 2019 10:24
To: Mark Prestwich
Subject: 20190111 - Commision e-mail to Mark Prestwich - Regulatory Concerns C-491464 - PF CRM:0205052

Dear Mark

Ref: Land At Failsworth Lower Memorial Park (1924): 1136597

I am writing to you as charity trustee [and contact for the Charity Commission] about a regulatory issue that came to our attention following the receipt of an RSI.

You should bring this letter to all of the trustees' attention.

I am the case officer assessing these concerns - please direct all correspondence to me quoting the above case reference number.

The Commission assesses concerns on a case-by-case basis against its published [Risk Framework](#) and its published guidance 'Complaints about Charities - [CC47](#)'. Both documents are available on our website and explain what types of complaints we will and will not take up.

Regulatory Concerns

Our concerns regard the construction of a water basin on the Lower Memorial Park, and the failure of the charity to follow proceedings laid out in section. 121 of the Charity act. Following receipt of the RSI, we maintain the following concerns:

1. Whether the trust has now invited representation from the public on the next steps of the disposition
2. Has the independent valuation of the land been concluded
3. Has the trust calculated lost funds due to the construction, and have there been steps taken to rectify this
4. Whether the ground is still capable of fulfilling recreational purposes
5. Are there conflicts of interest in the Council being the sole trustee of the park

In order to consider how to progress this matter I require the following information from the charity

Information required.

1. Confirmation that the trust has now held representation, and the outcome of this
2. The conclusion of the independent valuation, and the steps taken to recover compensation for funds lost to the charity
3. Minutes of meetings in which the decision to authorise construction was taken, and minutes of any meetings since where the trust has discussed the failure to follow correct procedures and decisions taken to prevent this in the future.

Whilst these regulatory concerns are being considered, co-operation from the trustees is essential. The trustees' responses are important in deciding what action we may or may not need to take to resolve any issues

If other issues emerge during the course of our engagement with the Charity it may also be necessary to explore these. I will notify you if this is the case.

Way forward

I look forward to hearing from you by 25/01/2019. If you cannot meet this deadline, please let me know immediately and before the deadline expires.

Yours sincerely

Patrick Foley

Case Manager – Regulatory Compliance

Charity Commission England and Wales

Patrick Foley

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Appendix 2- Plan of Lower Memorial Park trust Land



Appendix 3 – Plan showing land requested by the Friends Group (edged red).

