

## ALICE PARK TRUST SUB-COMMITTEE

### Minutes of the Meeting held

Wednesday, 4th September, 2019, 6.00 pm

Councillor Rob Appleyard	-	Bath and North East Somerset Council
Councillor Paul Myers	-	Bath and North East Somerset Council
Councillor Joanna Wright	-	Bath and North East Somerset Council
Paul Hooper	-	Independent Member
Graham Page	-	Independent Member

#### 1 ELECTION OF CHAIR

RESOLVED: To elect Cllr Rob Appleyard as Chair of the Alice Park Trust Sub-Committee.

#### 2 ELECTION OF VICE CHAIR

RESOLVED: To elect Cllr Paul Myers as Vice-Chair of the Alice Park Trust Sub-Committee.

#### 3 WELCOME AND INTRODUCTIONS

The Chair welcomed everyone to the meeting.

#### 4 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer explained the emergency evacuation procedure.

#### 5 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were no apologies for absence.

#### 6 DECLARATIONS OF INTEREST

There were no declarations of interest.

#### 7 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

It was noted that there was one urgent item relating to an event to be held on the park at the end of October. This would be discussed later in the meeting.

#### 8 ITEMS FROM THE PUBLIC - TO RECEIVE DEPUTATIONS, STATEMENTS, PETITIONS OR QUESTIONS

Mr Derek Swift had submitted a number of questions. Responses to some of these questions were circulated at the meeting. The remaining questions will be answered in writing in due course. *(A copy of the questions and answers is attached as an*

*appendix to these minutes).*

Mr Swift then asked a supplementary question relating to legal fees and whether a budget had been prepared for the current financial year. The Chair explained that a new Group Accountant had just been appointed to support the Trust and that members were not able to answer detailed financial questions at this time.

The Legal Services Manager explained that B&NES Council is the sole corporate trustee and therefore individual members of the sub-committee are not trustees.

Paul Hooper expressed concern about the lack of information about the financial position of the Trust. The Legal Services Manager explained that members can request financial reports as required and pointed out that all previous reports are available on the Council website. It was agreed that the current financial position will be considered at the next meeting.

Cllr Myers stated that all Sub-Committee members should take some ownership of Trust matters. Cllr Appleyard agreed with this approach noting that officers would be taking a “lighter touch” approach in future with the Sub-Committee becoming more self-sufficient.

## **9 MINUTES OF THE MEETING OF 25 FEBRUARY 2019**

The minutes of the meeting held on 25 February 2019 were confirmed and signed as a correct record.

## **10 CHAIR'S UPDATE**

The Chair gave the following updates:

- Notice Boards – Graham Page has been leading on this project. The work is ready to be carried out except for one grammatical error which needs to be rectified. The Sub-Committee confirmed that Graham Page can progress with the provision of the notice boards and the necessary correction provided there are no cost implications.
- Footpath Join-Up – The footpath has brought a huge benefit to park users and many positive comments have been received.
- General Maintenance – This matter will be discussed at the next meeting.

## **11 HEADS OF TERMS FOR SKATEPARK LEASE**

The Sub-Committee considered a report by the Team Manager, Parks and Bereavement Services. It was noted that to commence the installation of the skatepark the Council must enter into a lease with the Alice Park Trust for the land required.

The following issues were discussed:

- The delivery of the skate park is the responsibility of the Council.

- Paul Hooper noted that one of the recommendations asked the Sub-Committee to allocate some funding towards legal costs. The Team Manager explained that this was now required because the original plan had been to install the skate park at the same time as the footpath works to save money. A fence is also now required to keep the skate park separate from the children's play area.
- Graham Page stated that if the Council has not made adequate provision in its budget for the skatepark then the Trust should not be expected to contribute towards its legal costs. He also asked that the area to be leased for the skate park be changed for health and safety and child protection reasons. The skate park should be clearly separated from the children's playground as there are foreseeable risks.
- Paul Hooper supported the provision of the skate park and its design but had concerns around the way the contract had been awarded and why Canvas had been selected.
- The Legal Services Manager explained that the Council would be required to remove and replace the skate park at the end of its life. The Council would also be responsible for all repairs and maintenance. He also confirmed that the Council had followed its contract standing orders when awarding the contract to Canvas.
- Cllr Myers queried the extent to which there was a conflict of interest if the Trust gave money to the Council.
- Cllr Appleyard explained that the Council had allocated money for a skate park. Private donations were also given to provide the facility. Following discussions the Sub-Committee had agreed to allocate £25k from the skate park monies towards other park improvements. Some of this funding had already been spent but what was being requested from the Trust was a return of some of the original skate park funds.
- The Legal Services Manager explained that the Council, as sole corporate trustee for the Alice Park Trust, was being advised by external solicitors. He confirmed that a copy of the lease, when finalised, would be brought back to the Sub-Committee.
- Graham Page raised the issue of a potential conflict of interest for Cllrs Appleyard and Wright as they had campaigned during the election for a skate park. The Legal Services Manager confirmed that Councillors can campaign on an issue and then make decisions relating to that issue provided they are not "predetermined".
- Cllr Myers stressed the importance of being clear about reinstatement. It was important to have the power to remove the skate park if it was no longer required. He was concerned about the lack of budget information and felt that the Sub-Committee needed to know the facts before agreeing to release any funding. He supported the recommendation provided:
  - There are clear plans in the Heads of Terms regarding reinstatement.
  - Full details of the Trust's budget are made available at the next meeting.

**RESOLVED:**

- (1) To approve the proposed Heads of Terms as set out in the report.

- (2) To work with assistance from the Council, to gain Charity Commission approval for the disposal of land via a lease, commensurate with its formal asset valuation by a qualified surveyor and through their agreement to advertise the disposal via public notice upon the site.
- (3) To ask the Team Manager, Parks and Bereavement Services to provide a specific quote for the disposal fees and other contingencies. To agree expenditure of up to £6k from the Alice Park Trust budget for these items to enable the project to move forward.
- (4) Once the lease is finalised the Trust Sub-Committee will formally approve the lease with the Council subject to Charity Commission approval.

## 12 **TENNIS COURTS LEASE**

The Sub-Committee considered a report by the Leisure Team Manager regarding a proposal for the refurbishment, operation and management of the tennis courts in Alice Park.

It was noted that the tennis pavilion would not be included in the proposed refurbishment at this stage because the necessary funds are not available.

Officers confirmed that the lease would come back to the Sub Committee for approval once finalised.

**RESOLVED:** To approve the grant of a 25 year lease of the 6 tennis courts to the Council to carry out a refurbishment project and take on the operation and all liabilities associated with the courts throughout the 25 year period.

## 13 **PETANQUE FACILITY**

Chris Garrett from the Bath Grand Cru Petanque Club addressed the Sub-Committee on the following matters:

- The old playing area in the park has been expanded to create a 13 x 14m terrain. The new area is now ready for use and appears to be a very high quality playing area, with a suitable top surface, and a solid and stable substrate underneath.
- No formal user agreement has been completed and when the project was underway it was inferred that the club would have some “ownership” of the amenity. This control would be accompanied by a degree of responsibility for regular use and maintenance. It seems that the park’s regular maintenance team would have neither the time nor the technical expertise to ensure this is carried out satisfactorily in the future.
- The Bath Grand Cru Petanque Club is now a well-established and successful club. The club would like to see the terrain and amenity completed by:
  - Installation of a semi-permanent surround area boundary e.g. old railway sleeper style.
  - Signage to indicate the terrain use.
  - Electricity connection to enable use of portable lighting to enable play

- to take place some evenings and during Winter months.
- Some means of securely storing playing equipment and sundry items.

Such works would enable the club to make regular use of the facility. The club could ensure that the facility is maintained in good order and well enough to allow competitive and casual use at all times.

Cllr Appleyard queried what the club could commit to in terms of usage and “in kind” contributions.

Paul Hooper noted that sports facilities generally charged users and suggested that people could book to hire per track.

The Legal Services Manager explained that charging for hire would lead to health and safety obligations. A lease for the area may be required.

Cllr Myers stated that a system should be put in place for the use and maintenance of this facility and that the Sub-Committee should be aware of activities that are taking place within the park. It was noted that this is not a Council facility and it will be important to ensure that any charging regime is as simple as possible.

RESOLVED: To agree that Cllr Rob Appleyard, Cllr Paul Myers and Chris Garrett meet to discuss and formulate proposals for the future use and management of the petanque facility and report back to the Sub-Committee.

(Note: At this point Cllr Myers left the meeting).

#### 14 **WILDLIFE GARDEN**

Sam McGuire gave a brief update on the wildlife garden that has been created in the park. He showed a number of photographs of the garden area.

The Sub-Committee thanked Sam for his work to create the wildlife garden and stated that it was a beautiful area that was an asset to the park.

The annual cut and maintenance could be discussed as part of the Council’s service level agreement.

#### 15 **PROCESS FOR MEMORIAL BENCHES ETC**

Requests have been received regarding the provision of a memorial park bench and a memorial tree in Alice Park. The Trust will need to agree a process for this type of request including future maintenance.

Cllr Wright stated that the Cabinet has discussed plans for future tree planting and there is likely to be a policy on this in due course.

RESOLVED: To discuss this matter at the next meeting.

16 **CAFE LEASE**

The Chair confirmed that the café lease would be discussed, in confidential session, at the next meeting when a comprehensive report has been prepared by officers.

17 **PARK IN THE DARK EVENT**

It was noted that a “park in the dark” event is planned for 26 October 2019. This will be the fourth such event and will take the same format as in previous years. An event management plan has been submitted to the Trust.

There was some discussion around health and safety matters and the merits of closing the park to enable set-up for the event.

RESOLVED: To take advice on this proposal and liaise with Tony Hickman the event organiser to finalise arrangements.

18 **DATE OF NEXT MEETING**

RESOLVED: That the next meeting be arranged once the skate park and tennis court leases and independent valuation report are available for formal approval.

The meeting ended at 8.00 pm

Chair .....

Date Confirmed and Signed .....

Prepared by Democratic Services

## Questions from Derek Swift

### Alice Park Trust Sub-Committee – 4 September 2019

#### 1. Skatepark lease

It would appear that the skatepark heads of terms requires both parties, the landlord (the Trust) and the tenant (Bathnes) to pay for their own legal fees? As the trust in its current structure only survives because Bathnes makes a donation equivalent to the excess costs every year would it not be simpler that Bathnes is responsible for both parties' legal fees? The trust will not generate any income from the lease so it appears to be unfair that the trust should incur a cost under these circumstances.

#### Response

*The Council's resources are finite and the skatepark must be completed within the allocated budget. The Trust has taken £25K from the Council's original budget for the skatepark from which it can choose to pay the professional costs. These are not costs in kind but actual payments to professionals for which there is no budget and will therefore come from the skatepark budget. In acknowledgement of the constrained budget, a request is being made in the report to the Alice Park Trust Sub-Committee to agree to pay these professional costs. It is for the sub-committee to decide whether it is prepared to do so. The risk of not doing so is that the Council budget is inadequate and the skatepark is compromised or potentially cannot proceed.*

#### 2. Lawn Tennis Association

It would appear that the tennis courts work requires both parties, the landlord (the Trust) and the tenant (Bathnes) to pay for their own legal fees? As the trust in its current structure only survives because Bathnes makes a donation equivalent to the excess costs every year would it not be simpler that Bathnes is responsible for both parties' legal fees? The trust may not generate any income from the lease so it appears to be unfair that the trust should incur a cost under these circumstances.

#### Response

*The Council (Leisure and Business Development) is happy to bear the cost; this will be covered from the income received before any profit share is calculated.*

**3. £25,000**

It would appear that £25,000 of the councils £97,000 has been earmarked for other expenditure. What is the £25,000 to be spent on?

Response

*At the time of provisionally agreeing to the Council's installation of a skatepark, it became acknowledged by the Trust Sub-Committee that other areas of the park were similarly in need of improvement. The Trust therefore sought to agree an amount of budget to be taken from the skatepark project and used to invest in other park fixtures.*

*An amount of £25k has been earmarked; the Trustees plan to agree the expenditure priorities under the heading 'other park improvements'.*

**4. Budget**

Under the terms of reference for the Alice Park Sub-committee the Alice Park Sub-committee is required to produce a budget for the running of the park. As its income would not normally cover its costs this should be seen as an essential issue for the Sub-committee. In no previous minutes has there been any reference to a budget. Has a budget for 2019-20 been prepared/agreed by the Sub-committee?

Response

*The 2019/20 budget and 2018/19 statement of accounts will be presented to future meeting for the Sub-committee to review.*

**5. Charity commission accounts 2014 to 2018**

It would appear that the independent examiners of the accounts for all these years has produced a report which states that the accounts as submitted do **not** comply with the statutory requirements? Could this be urgently investigated and reported on at the meeting?

Response

*Please provide further details of the report that is being referred to above.*

**6. Costs Recharged to the Trust**

It is clear from the accounts as submitted that the bulk of the expenses are Bathnes costs charged to the Park. It is unclear as to how these costs are calculated. Do the costs specifically relate to what Bathnes does at Alice Park or are they an apportionment of the Parks budget based on some other basis? The basis for knowing how these costs are arrived at is essential for the Trust to agree the budget for the Trust?

## Response

*The B&NES costs allocated to the Park are primarily direct costs of parks service provision from maintaining Alice Park; this is allocated through the basis below:*

### *Grounds maintenance (allocated on hours provided)-*

- *Grounds maintenance of main grassed areas.*
- *Mowing and strimming of fine lawn areas, play area, grass bank/tennis court area, outside verges and other areas.*
- *Various works including hedge cutting, weed control, cutting back epicormic growth, and leaf collection.*
- *Various grounds maintenance tasks as required.*
- *Team leader time to oversee and allocate work.*

### *Tree management –*

- *Maintenance of the approx. 156 trees at Alice Park. Annual charge based on estimate of work provided.*

### *Play equipment management –*

- *Weekly inspections of play equipment, annual cost of which including routine repairs and maintenance. Annual charge based on estimate of work provided.*

## **7. Gift in Kind**

- a. The filed accounts for the last 5 years show that the shortfall in income has always been fulfilled by Bathnes making a gift in kind to bridge the gap. However unless the actual costs are agreed and signed off between the Trust and Bathnes it seems that no-one can be sure that either the costs or the gift in kind are actually correct. In the current arrangement the gift in kind is determined effectively by the charges made by Bathnes for services provided. While the net result might be the same this represents some material corporate governance issues. In short are the trustees relying on the fact that the council will just make a gift of the difference at the end of the year or are they challenging the cost basis? The argument has been put for many years that the trust is reliant on the gifts but unless the cost basis of the charges made by Bathnes are known and agreed the real position of the trust may not be known by the Trustees and the reliance on the Bathnes annual gift in kind could be materially under or overstated. As the agenda makes clear in many areas the Trust and Bathnes are separate entities and I don't see any mechanism by which trustees review the proposed charges from Bathnes for the forthcoming year and agree them in advance and that the level of gift in kind is known. What is the expected gift in kind likely to be for the year ended 31 March 2020?
- b. Secondly could the Trustees confirm that as far as they are aware that the gift in kind is an absolute gift in kind?

Response

*A written response will be provided following the meeting.*

**8. Trustees Fiduciary Duties**

Leading on from all the above points if the trustees are to be seen to comply with their fiduciary and statutory duty and to be acting as independent trustees, they must have accurate and appropriate financial information before they commit the APT to any substantial financial transaction. Since the APT is entirely dependent on Banes subsidy to continue as a going concern, there would need to be a written undertaking in advance of any major financial decision that Banes would bear any costs which the Trust could not.

What undertakings have the trustees sought from Bathnes on this matter?

Response

*This is a statement based on a false premise that the members of the Alice Park Trust Sub-Committee are trustees. In addition there are no substantial financial transactions planned or liabilities the Alice Park Trust is committing to.*

*It is proposed that there is to be the grant of two leases at less than market value to assist the Alice Park Trust to deliver its objects with the Council maintaining full repair/insurance and reinstatement costs. The Charity Commission needs to approve the proposed transactions precisely because these are not commercial transactions and because the council is a connected party. Therefore is there any merit in the Council giving an undertaking to itself when the lease will provide for its obligations and there is no financial risk which the Alice Park Trust is committing to. The Council will ultimately bear the cost of any shortfall as it has done so since becoming a sole corporate trustee until such time as it relinquishes that role.*

**9. March 2019 Accounts**

When are the March 2019 accounts due to be prepared?

Response

*The accounts will be submitted to the next meeting of the Alice Park Trust Sub-Committee.*

**10. Tea Chalet Lease**

The lease for the Tea Chalet is due to expire in 12 months. There has been no agenda item for this and yet bearing in mind the investment made by the lessee and the potential TUPE and other issues and the fact that the lease is due to expire towards the end of the summer season surely the Trustees should now be urgently considering this matter. This facility is vital to the Park and is arguably the principle reason for the increased usage of the Park. It must be in

the Trustees interests to resolve the situation with the existing lessee before 2020 begins.

Response

*The renewal process of the cafe lease will be addressed by the Alice Park Trust Sub-Committee, with the appropriate legal advice, under confidential session given the sensitivities and commercial issues that exist. Given that it is recognised the cafe is an important part of Alice Park.*

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