

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.