

## **Questions for the Alice Park Trust Sub-committee meeting of 7 December 2020**

### **Agenda Item 4**

The first paragraph states “This would avoid the Trust incurring any further legal Charges”. In item 11(3) of the minutes of the meeting of 4 September 2019 the sub-committee agreed to a threshold of £6,000 for disposal fees.

#### *Question 1*

Is the cost to the Trust in relation to the Council Skatepark on its land now going to be higher than £6,000? If so, does this not need agreement?

#### **Response**

No, the total cost of the external legal advice was £5,896. Therefore, no further agreement is required.

### **Agenda Item 7 Chair’s Update**

#### **Item 1 The Skatepark**

It would appear that there may be issues with the size and location of the skatepark not being in accordance with the plan. It is clear that due to the fact that the skatepark is very close to the children’s’ sandpit that a substantial fence will need to be constructed for safety reasons.

#### *Question 1*

The skatepark is a Council facility that has been constructed on Charity Land. As the charity receives no income from the lease of the ground to the Council can the Committee confirm that the cost of the required fencing is a cost wholly for the Council and that the Charity will have no share of the cost, apart from what may be left of the £6,000 above?

#### **Response**

The skatepark fence will be funded by the Council.

### **Agenda Item 8**

#### **Item 1**

In the budget the Trust is being shown as having to pay just under £16,000 pa to maintain the public conveniences. I believe this payment is paid by virtue of a contract between the council and Healthmatic that is in excess of 7 years.

### *Question 1*

Could the sub-committee advise as to whether the contract for the cleaning of the toilets was subject to tender as required by the Charities Act as the agreement was for longer than 7 years?

#### Response

The contract for 'The Provision and investment of A Public Convenience Service' the Council holds with Healthmatic was awarded in 2013. The opportunity was advertised and tendered with partner authorities Bristol City Council and City of York in compliance with public procurement regulations. The contract commenced on 6 January 2014 and has an initial term of 15 years, with the option to extend by a further 5 years to January 2034.

If this contract was not subject to tender, can the sub-committee advise whether they are legally bound by it?

#### Response

The contract was subject to tender.

### Item 2

The budget is showing property income of £14,701 in 19/20 and 20/21. We are advised elsewhere that a new lease has been agreed for the Café from September 2020 and yet there appears to be no change in income.

### *Question 2a*

Either the budget is wrong, or the new lease is on the same terms as before?

#### Response

The budget paper was prepared in advance of the new lease being agreed and therefore is still reflective of the previous value.

### *Question 2b*

Can the committee confirm that all leases are for less than 7 years as I can see no record of any tendering process, which is a legal requirement if the lease period is in excess of 7 years.

#### Response

The proposed new lease for the Café is to be less than 7 years.

### Item 3

The audit fee I see is set at £255. I would be grateful for confirmation of who the independent examiner of the accounts will be. I note that in the past it has been the Internal Audit function of the Council who provide an internal audit function.

#### Response

The independent examiner of the accounts will be One West.

### *Question 3a*

Are members of the Sub-Committee happy for the internal auditor function closely associated with the Council to perform this function?

#### **Response**

The Sub-Committee members are happy for One West to perform this function.

### *Question 3b*

A professional accountancy firm in Bath has offered to fulfil this role pro bono. Would this not be seen to be more independent and also save the Charity £255 per annum and give users of the accounts more confidence?

#### **Response**

One West are a professional auditor and neither the Council as Trustee, nor the Charity Commission as regulator have concerns over conflict of interest.

## **Agenda Item 9**

### **Item 1**

Firstly I would like to advise the sub-committee that the interaction between themselves and the Charity Commission in 2020 is subject to a Freedom of Information request and I can also confirm that the Charity Commission are reviewing their processes at a senior level so their decision may be subject to review.

I am grateful for the restatement of the facts of the matter which are, simply, that the original sale of Cottage no 2 was in contravention of the Charities Act.

In the minutes of the Sub-Committee meeting of December 2016 it was confirmed that the matter was illegal and sub-committee members were advised by Counsel that they were potentially conflicted by the dual role as Councillors of the Trustee and members of the Sub-Committee.

#### **Response**

The Council appointed the Charitable Trust Board to facilitate the management of the charitable trusts for which the Council is the sole trustee; independently, in accordance with their governing documents and in the best interest of the charity. This created a separation between the two roles.

### *Question 1*

What advice did those potentially conflicted councillors take?

## Response

The Charitable Trust Board and the Alice Park Trust Sub-Committee were created to address the issue of conflict. This was done in accordance with counsel's advice.

### Item 2

The treatment that was agreed by the Sub-Committee was to treat the original sale as a Charity Trust sale, but then to claim back the exact same value by reducing the subsidy in a later year.

It has now been clarified that the support from the Council is in the form of an income subsidy vs running costs and the recent accounts have confirmed this treatment by showing these amounts as "gifts in kind" and this year's budget describes this contribution as an Income subsidy.

This treatment of the property I believe is fundamentally flawed as it confuses revenue and capital. It shows a fundamental lack of understanding of the loss to the charity and also to the Council.

### *Question 2*

Does the committee agree that the property should not have been sold and should still be an asset of the Charity?

My belief is that the property is now worth £550,000 (Zoopla) and that the loss to the charity is much higher than the £90,000 disclosed. Do the members agree?

## Response

The cottage was sold in error and the Council has reimbursed the Trust together with interest. The Charity Commission have confirmed that they are satisfied with this course of action.

The Council has never provided a "gift in kind", it has always provided a cash grant/subsidy. If the term "in kind" has been provided previously then it has been in error.

### Item 3

The charity has lost the ability to generate significant income for over 20 years on this asset. This has resulted in the council subsidy being much greater than it should have been. While I have not quantified the loss of income, I would estimate that this is in excess of £200,000.

### *Question 3a*

Does the committee agree that the trust has lost a significant income from Cottage no 2 since 1999?

### **Response**

In 2016 the Sub-Committee dealt with the situation which it inherited. Its views on this matter now are not relevant.

### *Question 3b*

Does the committee agree that the council has incurred additional subsidy costs to the detriment of local Council Taxpayers?

### **Response**

In 2016 the Sub-Committee dealt with the situation which it inherited. Its views on this matter now are not relevant.

### *Question 3c*

It would appear that the Charity has been illegally denuded of an Asset worth £550,000 and I would be interested what the sub-committee now intend to do about that - if anything?

### **Response**

A report has now been submitted to the Sub-Committee giving an update on the sale of the cottage. The Charity Commission has accepted the Council's explanation and has now closed its enquiry into this matter. The Sub-Committee accepted the position in 2016 and have noted the update report which provided further clarity.

### *Question 3d*

Are the sub-committee comfortable that they have the access to competent advice outside of the council, as to me the Trustee has demonstrated over 20 years that they do not have sufficient expertise to manage the Charity effectively?

### **Response**

The Sub-Committee acknowledges that mistakes have been made but these have now been rectified. The Alice Park Trust has been retained as a Council responsibility. Lessons have been learnt since the creation of the Sub-Committee and there is no evidence that the charity has not been managed effectively since it has taken on this responsibility.