

Black Torrington Parish Council

Leasefield Farm, Halwill Junction, Beaworthy EX21 5XU

Telephone: 07809 688 725 Email: clerkblacktorrington@outlook.com

To All Black Torrington Parish Councillors,

You are hereby summoned to attend a **Virtual Meeting of Black Torrington Parish Council**, which will be held on **Wednesday, 20th May 2020, 7:00 pm** by video conferencing, for the purpose of transacting the following business.

In accordance with the Public Bodies (Admission to Meetings) Act 1960 members of the public are welcome to attend, email the clerk for details of how to do this.

D Osborne

20/04/2020

Members of the press and public requiring access to any of the documents mentioned in this agenda are asked to contact the Town Clerk (electronic links to documents are provided where available).

AGENDA

- 1. Election of chair for the municipal year to May 2021.** Or if no candidates, for the current meeting
- 2. To receive and accept apologies** (Please make any apologies known to the Parish Clerk)
- 3. Declarations of Interest** - To receive declarations of personal interest and disclosable pecuniary interests (DPI's) in respect of items on this agenda.
- 4. Parish Council Minutes** - To approve and sign the minutes of the Black Torrington Parish Council meetings held on 11th March 2020 as a correct record.
- 5. Matters Arising** - At the discretion of the Chairman, to report on matters arising from the minutes of the Meeting held January 2020, for information only.
- 6. Public Question Time** - At the discretion of the Chairman, to receive questions from members of the public relevant to the work of the Council. Answers may be given in writing.
- 7. Councillor Reports** - At the discretion of the Chairman, to receive reports from Councillors (Parish, District, and County) and representatives of the Council and its committees - for information only.
- 8. Steps to be taken to comply with the obligations as sole trustee of the playing fields charity.**
- 9. Scheme of delegation**
- 10. Bills to pay**
- 11. Torridge District Council - Planning Applications** [TDC Planning Public Access Portal](#)

For information only, Torridge District Council, the determining Authority, has **granted permission** for the following planning applications:

Reference: 1/01952020/FUL

Proposal: Reserved matters application for access, appearance, landscaping, layout and scale for 5 no. dwellings pursuant to application 1/1151/2016/OUT

Location: Longcross Farm, Black Torrington, Beaworthy, Devon

Reference: 1/0182/2020/FUL

Proposal: Single story extension and dormer

Location: Pinelands, Highampton, Beaworthy, Devon

Torrige District Council, the determining Authority, has **asked for comments** for the following planning applications:

Reference: 1/0183/2020/FUL
Proposal: Creation of equestrian arena
Location: Land at The Retreat, Highampton, Devon

12. Date of next Meetings

13. Close.

Bills for payment April/May 2020

Current Account

Date	Payee	Amount Ex VAT	Amount inc VAT	Brief details of supply
01/04/2020	Devon Association of Local Councils	£98.00	£110.64	DALC Affiliation Fees
05/05/2020	Parish Magazine Printing	£211.20	£211.20	BT Times printing
15/05/2020	Craythorn Communications	£60.00	£60.00	Website hosting

Total for month ex VAT £369.20

Total for month inc VAT £381.84

VAT for month £12.64

11 May 2020

Rebecca Walker
Devon Association of Local Councils

Our Reference: Dev 20/222
Your Reference: 20.21.02 Black Torrington

By email only – rebecca@devonalc.org.uk

Dear Rebecca,

Re: Client: Black Torrington Parish Council
Subject Matter: Black Torrington Playing Fields

I have been allocated this request to advise upon and I have seen your email dated 6 May 2020 together with a photocopy of a deed of gift between William Holland Bickford Coham-Fleming and the Parish Council dated 1 August 1952 with transcript and a copy of a conveyance of the same date between Beryl Louise Wilmot Sluggett and the Parish Council.

This request is about the status of the land transferred to the Parish Council in 1952. I understand that the two transactions relate to contiguous pieces of land and they are both for the use of the land as a recreation ground.

This is an extremely difficult situation to advise upon because, for perfectly valid reasons, there is little information available about the original set up of this recreation ground or how the current situation was created. Neither of the 1952 transactions specifically creates a charity for the land nor defines how the land is to be administered. However, the recreation ground is currently registered as a charity under number 300771. The trustees are listed as Mr Downs and Mr Roberts and both of these appear on the Parish Council website as Parish Councillors. Financial information for the charity is missing for the years ending June 2018 and June 2019 and as a result I do not know if the charity is still active in its current form. The governing document for the charity is stated to be the Gift of Deed date 1 August 1952 which suggests that the charity only covers part of the recreation ground but also it gives no guidance on the management of the charity as the 1952 documents make no provisions for management. I do not know whether the Parish Council is still the legal owner of the land or whether the title has been transferred to a custodian trustee to hold for the charity.

On the current information I do not know how the charity came to be created nor what management arrangements were made. However, I note that the Charity Commission have refused to allow the management structure to be changed to the Parish Council as custodian trustee and Parish Council committee as management trustee.

The request raises seven specific questions but in the absence of other documentation it is difficult to be precise about the current situation. However, I will do my best to assist. The questions raised are:

- 1. What is the legal status of the charity in relation to the Parish Council and can the council as a corporate body be sole trustee?**
The charity seems to be separate from the Parish Council with two individual trustees. There is no legal reason why a Parish Council cannot be the sole trustee of a charity but that is not the situation in this case.
- 2. Is the charity a separate legal entity to the Parish Council?**
As stated above the charity seems to be a separate legal entity from the Parish Council.
- 3. Can the Parish Council appoint trustees and if so, do they have to be councillors?**
The appointment of trustees must be done in accordance with the management structure of the charity and I do not know what that structure is. If the Parish Council has the power to appoint trustees they do not have to be Parish Councillors. Once trustees are appointed they must act in the interests of the trust even if that is against the interests of the Parish Council.
- 4. Is there a requirement to hold a trustees meeting?**
Charity law requires the trustees to meet for time to time for the management of the charity. Every year the trustees have to file a return and accounts with the Charity Commission but as mentioned above this has not happened for 2018 and 2019.
- 5. If the Parish Council does appoint trustees, does the charity need to have its own insurance to cover trustees' liabilities?**
Whether or not the Parish Council has the power to appoint trustees it has no responsibility for the actions of the trustees and it is for the charity to arrange any insurance for the trustees.

6. If the Parish Council does appoint trustees, then should the clerk act to support the charity (filing annual returns etc) or should the trustees appoint an officer themselves to fulfil this role?

Whether or not the Parish Council appoints the trustees, the charity must appoint its own officers. The charity could appoint the Parish Clerk to be its own clerk but that person would not be acting as Parish Clerk when on charity business.

7. The Deed of Gift relates only to half of the current playing fields, the other half is the subject of the Conveyance. Both of these have identical dates. Does the charity relate to the whole of the playing fields or just the part identified in the Deed of Gift?

On the basis of the entry on the Charity Commission website, the charity only relates to the land covered by the Deed of Gift. However, it is possible that the land purchased at the same time has been incorporated in the charity.

The current position is very confused. One would expect that the result of the two 1952 transactions would be that the Parish Council would be the sole trustee of the trust. However, clearly something has happened to set up the charity in a different way.

I have attempted to give answers to the questions but I am acutely aware that there are a number of questions that I have not been able to answer or to only give assumptions. I would strongly advise that the Parish Council discusses the charity with the Charity Commission to find out exactly what the Charity Commission's view is of the extent of the land covered and the management structure of the charity. In particular the Parish Council should see if the Charity Commission has any other documents, including correspondence, that explains how the current situation arose. Once that has been ascertained it may be possible to arrange for a new scheme to be approved by the Charity Commission to regularise the arrangements for the future.

I hope that this clarifies the position but if the council requires any further information or advice please contact NALC again.

Yours sincerely,

Gary Barker
Solicitor
NALC

Direct Line: 020 7290 0310



Local authorities as charity trustees

Guidance for local authorities which are sole corporate trustees for charities in their area.

Types of charities under local authority control

Charities where the local authority is trustee of a public facility

A public facility could include:

- open spaces, such as recreation grounds, playing fields (including some King George's Fields), public gardens, common land, allotments and car parks
- cultural facilities, such as concert halls, art galleries, museums and buildings of architectural or historic interest
- other civic buildings, such as reading rooms, town halls, libraries and leisure centres
- war memorials

This is not an exhaustive list and nor will all public facilities be charitable property. They may be part of the local authority's statutory property. You will need to check the basis on which the local authority acquired control of the property to see whether it is held on charitable trusts.

It is important to know if the property is charity property, or not, because that will affect how the local authority can deal with it, for example, if it wants to develop the property or sell it. See Property transactions, Transfer of assets and Consolidation of small funds for more information.

Charities where the local authority is trustee of a fund including appeals

These include school prize funds and grant-making funds.

Checking who's the trustee

You're a councillor or a council employee. You attend a charity's trustee meetings or deal with the charity's day-to-day administration.

- Are you there because you are a trustee?
- Or are you carrying out the charity's business on behalf of the council because it is the trustee of the charity?
- Or is there some other reason for your involvement, perhaps representing the council in another capacity, eg as a major funder of the charity?

It's important to understand your role and what its responsibilities and liabilities might be. These questions can help you to check.

1. Has the Council the right to appoint one or more trustees to the charity's board?

If the Council has appointed you as a trustee:

- you, rather than the Council, have responsibility for the administration of the charity
- you will be personally liable for the decisions you make
- you must act in the interests of the charity, not those of the Council

2. Does the charity's governing document specify that the Council is the trustee?

If the Council is itself the charity trustee:

- you are not a trustee and do not have the responsibilities or liabilities of a trustee
- you may be managing the charity's affairs on the Council's behalf

If the Council is only the custodian trustee, then

- it does not have the responsibilities of a charity trustee
- it must act only on the directions of the managing trustees (eg the management committee of a village hall) unless to do so would create a breach of trust

3. Has the charity voluntarily invited you as a representative of the Council to inform/observe its meetings?

You have no legal responsibility for the charity. You cannot make decisions relating to its administration nor vote at its meetings.

Checking the charity is fit for purpose

Charities are created to meet particular social and economic needs. Those needs are likely to change over time and charities should adapt to continue being relevant and effective to those they are meant to serve.

These questions help you to review whether your charity is still fit for purpose.

1. Is the charity still capable of carrying out its objects?

Are there still enough people who can properly benefit from the charity? Is the nature of the benefit/service offered by the charity relevant to modern needs?

2. Could the charity's assets be more efficiently/effectively used in conjunction with another similar charity?

Is the scale of the charity's assets too small to achieve sufficient impact on their own? Is the cost of administering the assets out of proportion to the size of those assets?

3. If the charity has permanent endowment capital, would it be useful to be able to spend all or some of the capital as income?

For example, if the charity is small and you want to wind it up.

4. Are the trustee arrangements still appropriate?

Is it still in the charity's interest for the charity trustee/custodian trustee to be the local authority? Would it be useful to have some/all independent trustees? Would the charity benefit from having user trustees?

5. Does the charity have all the administrative arrangements and powers it needs?

Does the governing document allow you to do the things that you need to do to run the charity effectively?

6. Does the charity have the appropriate legal form?

If it is an unincorporated body, would it be suitable to set up a new charity that is a corporate body to which its assets could be transferred?

Managing and planning for change

Questions to help you consider your charity's future.

- 1. Have you considered the future sustainability of the charity you manage – balancing what is needed now with what will be needed in the future?**
- 2. Have you identified the mix of skills, knowledge and experience which the charity needs?**
- 3. Have you reviewed whether your charity's governing document gives you the powers you need to achieve the charity's purposes and to manage resources effectively?**
- 4. Have you started to review and assess the risks faced by the charity in all areas of work and to plans for the management of those risks?**
- 5. Have you considered whether collaborations and partnerships with other organisations could improve efficiency, the use of funds and the better delivery of benefits and services to your charity's users?**
- 6. Have you reviewed whether the charity's purposes as set out in the governing document are up to date and relevant to the needs of your charity's users?**
- 7. Do you identify emerging trends in the environment in which your charity operates and use this information as part of your planning processes?**
- 8. Have you ensured financial sustainability by managing cash flow and monitoring and reviewing financial performance during the year?**
- 9. Have you considered the sources of your charity's income and have a strategy in place to raise the funds it needs - diversifying sources of income as far as possible?**
- 10. Are you complying with your legal obligations (and best practice), as set out in the Statement of Recommended Practice (SORP), to produce annual accounts and a report which includes an explanation of what the charity has done for the public benefit during the year?**

Managing small funds

A local authority may be trustee of several separate small trust funds, eg school prize funds and grant-making funds. Several issues can arise:

- the funds may not have enough income for the purpose they were set up for
- the cost of administration may be out of proportion to the income
- they may get overlooked or forgotten

Charity law provides for some solutions for dealing with such charities. Use these questions to help you review the situation.

- 1. Are you clear about who the trustees are? Is it the Council itself, Council members or officers nominated by the Council, or individuals that include a specific post holder (eg the Mayor)?**
- 2. Do you have an up-to-date asset list of the trust funds of which the Council is trustee?**
- 3. Is there central oversight of the management of all the Council's trust funds?**
- 4. Do you have a copy of all the trust funds' governing documents?**
- 5. Does each fund have clear written purposes and administrative provisions? If not, does the Council have the power to declare trusts for the charity?**
- 6. Do any of the funds need to be registered with us?**
- 7. Are any of the funds large enough that their accounts need to be submitted to us?**
- 8. Do you review regularly the trust funds' investments?**
- 9. Are you spending money in accordance with the funds' respective governing documents?**
- 10. Are the funds still relevant to modern circumstances?**
- 11. Are there any relevant policies relating to the making of grants? Are these followed? Do they need updating?**
- 12. Is there a formal grant application process?**
- 13. How are grant applications assessed?**
- 14. Are conditions applied to any grants made? Do they need updating?**
- 15. Are there monitoring procedures in place to ensure the grant is being spent in accordance with the grant conditions, if any?**
- 16. Have you considered consolidating and/or transferring the funds?**

Property transactions

All charities have to follow rules for managing transactions involving the disposal of an interest in land, eg selling or leasing. These rules are to make sure that the charity's financial interests are protected and that the services it provides to its users are able to continue, as far as possible.

Many charity transactions involving a disposal of an interest in land do not require our authority. However, all trustees have a legal duty of care towards their charities. We strongly recommend that trustees should consider properly all reasonable options when making decisions that will have a significant effect on charity land and its use. Our general guidance on dealing with property explains when our authority is required and highlights issues to consider when selling or buying land.

[Sales, leases, transfers or mortgages: what trustees need to know about disposing of charity land \(CC28\)](#)

Specific issues for local authorities which are charity trustees include:

1. Conflicts of interests

Local authorities also have to manage the conflicts of interest that can arise because of the different 'hats' they may be wearing - for example, as land-holding charity trustees, as the provider of statutory amenities, and as planning authorities. See: [Conflicts of interest](#)

2. Consulting the local community

Where a local authority is the trustee of charity land, there is often another important factor to take into account - the voice of local inhabitants. This is because the land is often a facility intended for local community use eg a recreation ground or public building. Proposals for a major change in the way the land is used, or for the sale or lease of a significant part, or all, of the land, will have an impact on its use by the public. There are likely to be strong local views.

We encourage trustees to review their charity's purposes regularly to check that they are still relevant to the needs of its users. A local authority as a charity trustee is entitled to consider the suitability and the viability of the charitable property it manages, and to make proposals for the future of charity land and other assets.

However, we know from our casework that, if such proposals are not managed carefully, they can create problems for the local authority, including financial loss and reputational risk.

Transfer of assets (land and buildings)

The general principle is that charity property being transferred must:

- continue to be charity property
- continue to be used for similar purposes to those for which it was originally used

However, a charity cannot generally transfer its property to a non-charitable body or for a non-charitable purpose – eg charity land could not be transferred to a local authority to form part of its statutory property, even if it were to be used for purposes similar to those formerly undertaken by the charity.

Here are some things to think about before transferring charity assets to another body:

1. **Have you checked that the land is a charitable asset, and is not part of the Council's statutory property?**
2. **Is the land you want to transfer 'designated land'? This is land which was acquired to be used for the purposes of the charity. If you have such land, you can't use the simplified process of the Charities Act for transferring land, and you usually can't change the use of the land without the Commission's involvement, even if you transfer it to another body to manage.**
3. **Do you need to manage a possible conflict of interest arising because the Council is both the charity trustee and a local authority with an interest in the land in its statutory capacity?**
4. **Have you involved the local community in the proposals to transfer the land?**
5. **Is the transfer the best way of serving the charity's beneficiaries in future?**
6. **Is the body to which the land is to be transferred a charity? If not, that body would have to hold the property on charitable trusts separate from its other assets.**
7. **Does the body receiving the land have sufficient resources to manage and maintain the land?**
8. **Have you considered what legal methods are open to you to carry out the transfer?**

You may be able to use a simplified process if the land is not 'designated land' (see question 2). You should check to see if the charity's governing document gives you power to transfer the trusteeship of the charity. You might need a Scheme from the Commission in some circumstances, for example:

- if there is no clear power to permit the transfer
- if the land is designated land and its use will be changed
- if the receiving body isn't a charity
- if the transfer involves innovative methods, eg a lease-back arrangement

Consolidation of small funds

Local authorities may manage several small charitable funds (not including land). The funds might cover a range of charitable activity, such as education and recreation.

As the charity trustee, the Council has a duty to review whether these funds continue to be effective in delivering the benefits they were originally set up for. For example, if the income they generate is very small, and is no longer sufficient to provide meaningful benefits, the Council could consider whether the charities would be more effective, and easier to administer, if they were:

- consolidated into one fund, and/or
- transferred to another charity to administer

The Charities Act provides simplified procedures for dealing with small charities, including changing their purposes and transferring assets. Using these procedures can be an easy way of creating a consolidated pool of charitable money that can be spent on a wider range of charitable purposes than those of the original charities. This can help free up the potential of these assets for the benefit of the local community.

Two possible options are:

1. Passing the assets to a new charity run by the Council with wide charitable purposes for the benefit of the local community.

This is suitable where:

- there are a worthwhile number of small funds with sufficient monetary value when consolidated, and
- the Council has other significant charitable assets (for example, a recreation ground or other public amenities) which it will continue to manage, and
- the income of the consolidated funds can be used to support and maintain the other charitable assets the Council manages

2. Passing the assets to another separately-run charity to be used for wide charitable purposes for the benefit of the local community.

This is suitable where:

- there are few small funds with a limited monetary value when consolidated
- the Council has few or no other significant charitable manages which it will continue to manage
- the Council is satisfied that the funds will benefit from the expertise and focus that being managed by an independent charity can bring

Checklist - things to think about before transferring charitable money to another body

1. Have you checked that the money is a charitable asset, and is not part of the Council's statutory property?
2. Do you need to manage a possible conflict of interest arising because the Council is both the charity trustee and a local authority with an interest in the money in its statutory capacity?
3. Is the transfer the best way of serving the charity's beneficiaries in future?
4. Are you transferring the money to a charity?
5. Does the body receiving the money have sufficient resources to manage the assets effectively?
6. Have you considered what legal methods are open to you to carry out the transfer?
 - Does the charity's governing document contain a dissolution clause? If so you might be able to do the transfer as part of the winding up of your charity – see: [Tell us your charity has closed](#)
 - Does the charity's governing document give you power to transfer trusteeship of the charity?
 - Can you use a simplified process to transfer the funds? See: [Transfer of property for smaller charities](#)
 - Do you need authority or a scheme from the Commission to make the transfer happen? You might need this if, for example, there is no clear power to permit the transfer, or if the receiving body is not a charity
7. Have you considered changing the purposes of the funds before you transfer them?

If you are able to use the simplified procedure of the Charities Act for the transfer of the funds, you will also be able to use similar procedures to change the purposes of the funds. If you do this before any transfer, it makes it easier to ensure that the transferred funds have a better 'fit' with the purposes of the charity you are transferring to.

If the Council has decided to keep the consolidated funds under its management, it has the option to establish a new charity with wider purposes for the benefit of the local community, and pass two resolutions under the Charities Act to:

- change the purposes of the funds to the wider purposes (these must include the original purposes)
- transfer the funds to the new charity

The section on the simplified process to transfer the funds helps you decide if you can use the simplified process to change the purposes of your fund.

For guidance on the process and an online application form, see [Transfer of property for smaller charities](#).

For general guidance on combining charities, see [Merging or linking with another charity](#).