

From: Nicholas Taylor nicholas.taylor@plaistowandifold.org.uk
Subject: Re: Looking for some trust advice
Date: 9 April 2020 at 14:30
To: Roger Taylor Roger.Taylor@wellerslawgroup.com

NT

Dear Roger,

This is very comprehensive - and comprehensible! I have no further questions - at least for now.

Thank you so much. Enjoy the long weekend.
Nicholas

Nicholas Taylor
Plaistow & Ifold Parish Councillor

On 8 Apr 2020, at 09:34, Roger Taylor <Roger.Taylor@wellerslawgroup.com> wrote:

Dear Nicholas

Thank you for your email.

My replies to your queries are as follows

1. You have understood the position correctly. The status of the Parish Council's ownership changed as a result of the Declaration of Trust
2. When the property was owned by the Parish Council it held the title (the legal estate) and if the property was sold it was entitled to deal with the proceeds of sale as it wished (the beneficial interest). When it became custodian trustee it holds the legal estate but the beneficial interest belongs to the Charity and has to be dealt with in accordance with the trusts of the Charity. Capital funds are the proceeds of sale of the property or any other funds which are not income. For instance if the Charity sold a portion of the car park to the next door neighbour it would realise capital funds which could only be used for capital projects (e.g. rebuilding or improvements) and not used as income. Because in the event of the destruction of the Hall and payment of insurance monies for rebuilding would release capital funds which would have to be used to further the charitable objects such proceeds of the insurance would be held by the Custodian Trustee on the Charitable trusts. A claim for a leaking tap would not come into this category. Because we have many cases of Halls being underinsured and the importance of capital funds, we consider that the Custodian Trustee must ensure that the property is adequately insured. Such insurance has to be separate from any insurance effected by the Parish Council as local authority
3. Once assets are transferred into a Charity they remain subject to the laws of Charity. They cannot benefit a person or organisation who cannot be an object of a Charity. For reasons which are beyond the scope of this email, a Parish Council cannot ever be the object of a Charity. If a Charity is unable to continue the Charity Commission would require the asset to be sold and the proceeds of sale used for another charitable purpose. This need not be in the same community. This is an absolute rule, assets cannot come out of the world of charity, even if the same is stated as possible in the Trust Deed. It is for this reason that we strongly advise Councils to think very carefully about putting g assets into a charity as they can never revert back to the Council as local authority. Any asset should be leased to the charity in order to preserve the freehold with

Incidentally Charity Commission guidance is that a Charity with a building should create reserves to assist with rebuilding costs. This is however easier said than done

CONF

If there are any further queries please contact me

Yours sincerely

Roger Taylor
Wellers Hedleys.

From: Nicholas Taylor [<mailto:nicholas.taylor@plaistowandifold.org.uk>]
Sent: 07 April 2020 14:33
To: Roger Taylor <Roger.Taylor@wellerslawgroup.com>
Subject: Re: Looking for some trust advice

Dear Roger,

Thank you for your swift reply. I confess to being somewhat confused! I have interspersed some questions in your text below, **marked in brown**. I am happy for you to answer by e-mail or, if you think it would be easier, for us to arrange a phone call.

Thank you for your fee quote. I can confirm that I have authority from the PC to proceed (up to a point!) on this basis.

Kind regards,
Nicholas

Nicholas Taylor
Plaistow & Ifold Parish Councillor

On 7 Apr 2020, at 12:37, Roger Taylor
<Roger.Taylor@wellerslawgroup.com> wrote:

Dear Nicholas

Thank you for your email. This certainly simplifies matters.

By the Conveyance dated 9th June 1951 the Hall was conveyed to the Parish Council. It was subject to restrictive covenants but otherwise with no restrictions. It was therefore held by the Parish Council as Local Authority

On the 22nd March 1961 the Parish Council executed a Declaration of Trust whereby the Parish Council held the property on Charitable Trusts. This was a disposal of the property by the Local Authority and consent to the transfer should have been obtained from the Ministry of Local Government. In the absence of such consent the transfer is void. **I just want to make sure that I understand this correctly. Up until 1961 the PC held the property in its capacity as a Local Authority. But by virtue of the deed of 22/03/61 it transferred ownership of the property to the trust (which is the charity called 'Winterton Hall' registered with the Charity Commission). The PC is a custodian trustee under the terms of that deed. Have I understood that correctly?**

However the Declaration of Trust is a valid document creating a charity and the Charity Commission take the view that this overcomes the defect of not having consent. We have had intensive argument with the Commission on this point and unless a Parish Council is prepared to take the matter to the Court of Appeal we must work on the basis that there is a valid charity and the property was transferred to it. The Parish Council is the custodian trustee whose obligation is only to hold the legal title to the property **What is the distinction between 'owning' the property (if I have understood you correctly the property is 'owned' by the charity) and holding the legal title to the property (which the PC does in its capacity as custodian trustee)? and deal with any capital funds What does this mean? What are capital funds?.** We also advise that they should ensure that the property is insured. **Who is responsible for insuring the property - the charity or the PC (as custodian trustee)?** They have no other administrative function and must act in accordance with the instructions of the Managing Trustees

Once a property is transferred to a charity it has to remain within the ambit of charity. It cannot be transferred out of a charity other than by way of sale, or subject to conditions, lease. There are no exceptions to this rule and therefore it is not possible for the Charity to transfer the property to the Local Authority. **Is this position absolute? What would happen if, for example, the charity found itself unable to meet its obligations under the terms of the trust deed? Could the charity, foreseeing a situation where it would be unable to raise the funds necessary to meet those obligations, declare itself insolvent? What would happen then? Could the trustees of the charity elect - and apply to the Charity Commission for consent - to dissolve the charity and transfer its assets (i.e. the property) to the Parish Council (as Local Authority)?** It is possible, in certain circumstances, for the Charity to appoint the Parish Council as Managing Trustee, but even so the Parish Council has to deal with matters separately from its functions as local authority, separate meetings, accounts etc.

The Parish Council as local authority is able to make grants to the charity, but these should be in accordance with its grant making policy. The local authority, but not the Charity can obtain a loan from the Public Works Lending Board. The local authority can then make a grant of those funds to the Charity (but cannot make a direct loan of them to the Charity) This spreads the cost over a defined number of years repayments coming from the parish precept.

If there are any queries on the above please contact me.

There is a charge of £100 plus VAT for initial advice. Further advice is charged at £200 per hour with an initial budget ceiling of £500 plus Vat

Yours sincerely

Roger Taylor .

From: Nicholas Taylor [<mailto:nicholas.taylor@plaistowandifold.org.uk>]
Sent: 07 April 2020 12:00

To: Roger Taylor <Roger.Taylor@wellerslawgroup.com>

Subject: Re: Looking for some trust adive

Dear Roger,

The Charity is registered with the Charty Commission (no. 305406 'Winterton Hall'). Would it follow that it's also registered with HMRC? I am still waiting for reply on that one.

All the best, N.

Nicholas Taylor
Plaistow & Ifold Parish Councillor

On 6 Apr 2020, at 17:04, Nicholas Taylor
<nicholas.taylor@plaistowandifold.org.uk> wrote:

As far as I know, that is the case, but I will clarify and come back to you.

Many thanks. N.

Nicholas Taylor
Plaistow & Ifold Parish Councillor

On 6 Apr 2020, at 16:41, Roger Taylor
<Roger.Taylor@wellerslawgroup.com> wrote:

Dear Nicholas

Thank you for your email with attachments.

I will revert to you on the various points, but to clarify, are you saying that the Trust, although it has the constitution of a Charitable Trust, is not a Charity registered with either the Charity Commission or HMRC. ?

Yours sincerely

Roger Taylor
Wellers Hedleys

From: Nicholas Taylor
[<mailto:nicholas.taylor@plaistowandifold.org.uk>]
Sent: 06 April 2020 16:28
To: Roger Taylor
<Roger.Taylor@wellerslawgroup.com>
Subject: Re: Looking for some trust adive

Dear Roger.

That's music to my ears!

I have attached two relevant documents.

The trust is not a registered charity. The issue is not a lack of trustees (although when we pointed out to the chair that they had unlimited liability, that was news to her - so it might become one in the future!). The trustees are extremely effective and run things very well indeed. The problem is that the trust is fully responsible for the maintenance and upkeep of the building, which is reaching an age where we can see the need to spend more money on repairs than the trust can generate by renting it out. Our aim is therefore to transfer the liability from the trust to the PC which is in a better position to raise funds for substantial work if and when such work is required.

If you could take a look and let me have

- an outline of a solution,
- a fee quote for achieving such a solution and
- an estimate of other costs involved (court fees etc.),

I would be most grateful.

Since one of the attachments is rather large, I'd be grateful if you could confirm safe receipt of this e-mail.

Kind regards,

Nicholas Taylor
Plaistow & Ifold Parish Councillor

On 6 Apr 2020, at 16:08, Roger Taylor
<Roger.Taylor@wellerslawgroup.com> wrote:

Dear Nicholas

Thank you for your enquiry. This is the type of enquiry with which we

are dealing on a constant basis.

I will need to see a copy of the Conveyance/transfer to the Parish Council to establish the exact status of it's ownership. Is the Management Trust a registered Charity ? Could I please see a copy of it's constitution.

I assume that the problem is obtaining Trustees ?

Yours sincerely

Roger Taylor
Wellers Hedleys

-----Original Message-----

From: Nicholas Taylor

[<mailto:nicholas.taylor@plaistowandifold.org.uk>]

Sent: 06 April 2020 15:56

To: Roger Taylor

<Roger.Taylor@wellerslawgroup.com>

Subject: Looking for some trust advice

Dear Roger,

I was given your name by Claire Jackson at Howell Jones. I'm hoping you'll be able to help me.

I am a Parish Councillor for Plaistow & Ifold Parish Council (West Sussex). The PC owns a village hall but, under the terms of the trust under which the village hall was established, it is managed and maintained by a separate trust. We can see trouble looming for this arrangement and both the PC and the trustees are minded to reestablish the hall's management committee as a committee of the Parish Council rather than as a separate trust. Clearly this will involve altering/dissolving the trust - something on which we will need some advice!

Is this up your street?

Feel free to give me a call if you'd like to discuss: 020 3397 8252.

Kind regards.

Nicholas Taylor
Plaistow & Ifold Parish Councillor

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