

Decision Review: Allotments for Labouring Poor (Charity 248607)

1. Introduction

- 1.1 This is a review of the proposal to make a Scheme for The Allotments for Labouring Poor ('the charity') in the parish of Hughenden, Buckinghamshire.
- 1.2 The trustees (as agents of the Commission) gave notice of the Commission's intention to make a Scheme and invited representations to be made to them. The trustees passed these representations to the Commission. In accordance with the Commission's procedure, I was appointed to review these representations and take the decision whether or not to make the Scheme and if so, in what terms. I am Neil Robertson, Head of Operations, Taunton.
- 1.3 In conducting this review, I have been mindful of the public sector equality duty set out in section 149 of the Equality Act 2010. I have therefore had regard to the needs set out there: to eliminate discrimination, harassment, victimisation and any other prohibited conduct, to advance equality of opportunity and to foster good relations.
- 1.4 In considering the representations, I can only consider matters that are relevant to the charity according to the legal framework for making the Scheme. In particular, wider issues about the future use and development of land owned by the charity are largely outside of my remit under the legal framework.
- 1.5 The charity was formed as a result of awards of land in 1855 and 1862 arising from the Inclosure Acts. The original purpose of the Charity was to provide allotments for the labouring poor of the parish. These allotments were managed by the overseers of the poor and the churchwardens of the parish until 1894, when these responsibilities were transferred to the parish council under the provisions of the Local Government Act of that year.
- 1.6 The land is held as permanent endowment (being property that was originally meant to be held by the charity forever) and consequently the trustees currently have no power to sell or otherwise dispose of the land (other than to let the land as allotments to the poor).
- 1.7 It is clear from correspondence and the history of the charity that there has been confusion locally over the status of the land and the parish council's role in relation to it. In particular, there has been misunderstanding about the object of the charity, being the relief of poverty - rather than the provision of allotment gardens to inhabitants of the parish regardless of need. For the purpose of this review, I do not need to recite the history of how the present situation was reached.

The trustees and the parish council have now reached agreement and the trustees have applied to the Commission for a Scheme for the administration of the charity.

- 1.8 Notice was given of a draft scheme which, if made, would replace the existing trusts. It would provide a new object, establish a self-perpetuating body of trustees, include provisions for the administration of the charity and give the trustees power to dispose of all or any of the land.

2. The Commission's power to make a cy-près Scheme

- 2.1 Since the draft Scheme would amend the purposes of the charity, I have considered the criteria under which the Commission may implement it. These powers are set out in sections 61- 69 of the Charities Act 2011 and require that there must have been a cy-près occasion. "Cy-près" is a Norman French word, meaning "as near as" and is used to describe an ancient common law doctrine whereby assets dedicated to charity may be re-directed to alternative (similar) charitable purposes if they cannot be used for their original purpose.
- 2.2 At some point in the past, using the land to provide allotment gardens ceased to be a suitable and effective means of relieving poverty in the parish. I therefore consider that the provisions of section 62(1)(e)(iii) of the Charities Act 2011 apply. This provision states that:

"Where the original purposes, in whole or in part, have, since they were laid down,

(iii) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the gift, regarding being had to the appropriate considerations¹".

I therefore consider that the Commission would be justified in making a Scheme to provide for the change in the objects of the Charity by reason of a cy-près occasion. I also consider that, given the need to update the trusts, this would be a proportionate use of the Commission's powers.

- 2.3 In deciding the application of the property cy-près (i.e. what the new object of the charity should be), the Commission must have regard to the matters set out in s67(3) Charities Act 2011.² The original purpose of the charity was to relieve the poor by providing them with an

¹ The appropriate considerations are "The spirit of the gift concerned, and ... the social and economic circumstances prevailing at the time of the proposed alteration of the original purposes."

²The matters are: "the spirit of the original gift, the desirability of securing that the property is applied for charitable purposes which are close to the original purposes, and the need for the charity to have purposes which are suitable and effective in the light of current social and economic circumstances".

allotment of land. I therefore agree that if the Scheme were made, then it is right that it should express the charity's new purpose in terms of relieving poverty.

- 2.4 Since the provision of allotment gardens to the poor will no longer be the charity's object, the trustees need to have full power to manage the land, including the power to sell or otherwise dispose of the land. I therefore agree that if made, the Scheme should include land management provisions, including a power of sale.

3. Representations

- 3.1 Representations were received by the trustees about the Scheme. These included suggestions about how the draft could be improved:

- The name of the charity does not tie in with the object;
- There should be guidance on what is meant by the relief of poverty;
- The number of trustees is too low, it (and the quorum) should be increased;
- Trustees should be resident in the area;
- The trustees should be required to hold an initial annual general meeting;
- The use of the land should be restricted to allotments;
- The trustees should be required to maintain the rural nature of the area of benefit;
- The trustees should be legally required to consult before taking any major changes, like selling land.

- 3.2 I also considered representations about matters which in my decision would not themselves have prevented the Scheme from being made:

- It has been suggested that the Scheme should be amended to contain a provision requiring the trustees to use the land to maintain the rural nature of the area of benefit and restricting the land's use to allotments. The trustees must operate the charity consistent with the charity's purposes (which are the relief of poverty) and act only in its best interests. In managing the land, this will usually mean letting (or otherwise disposing of) the land for the maximum possible return. Maintaining the rural nature of a particular area would not (in itself) be a proper charitable purpose and would not be a factor that the trustees should take into account in their decision making. Where decisions are required about the future use of land, the trustees will need to take professional advice.

- It has also been suggested that the trustees should consult before agreeing major changes of use of the land and make papers and minutes available to the public. Charities should be accountable to their stakeholders and transparent in their dealings. However, including such provisions in a charity's governing document would be unusual for a small charity of this nature and might lead to inefficiencies. Accountability and transparency can be achieved by making an annual report available to the Parish Council (see below) and, if the trustees so decide, by holding an AGM. I do not therefore believe that it would be in the interests of the charity to include additional requirements in the Scheme.
- It has been suggested that the parish council should be appointed as sole trustee. This is not legally possible – a parish council cannot act as trustee of a charity for the relief of poverty.

4. Decision

4.1 Having regard to the representations, I have decided that, whilst the Commission has power and sound justification to make a Scheme covering many of the aspects in the draft Scheme, it should not be made in its current terms. In reaching this view, I consider that it is important that the Scheme provides an effective framework for the future administration of the charity and that it has the confidence of stakeholders. In order to ensure this, I conclude that further consideration is given to the following points before a Scheme is made:

- Finding a new name for the charity that reflects its new objects;
- Replacing the objects clause and definition of 'beneficiaries' with the following more expressive and well established formulation:
 - (1) *The object of the charity is the relief of persons resident in the parish of Hughenden who are in need, hardship or distress.*
 - (2) *The trustees may relieve persons in need by:*
 - (a) *making grants of money to them; or*
 - (b) *providing or paying for goods, services or facilities for them; or*
 - (c) *making grants of money to other persons or bodies who provide goods, services or facilities to those in need.*
- Re-considering the size and composition of the trustee body, including asking the Parish Council whether they would wish to nominate up to two trustees (who need not be parish councillors).

- Considering the inclusion of a provision that the trustees must either have local knowledge or be persons who can otherwise make an effective contribution to the charity. I would suggest a clause on the following lines:

Trustees must be persons who:

- (1) *through residence, occupation, employment or otherwise have special knowledge of the area of benefit; or*
- (2) *are otherwise able by virtue of their personal or professional qualifications to make a contribution to the effective administration of the charity.*

- Including a provision providing that the trustees must hold a general meeting in public not more than 18 months after the Scheme comes into operation. Thereafter, the trustees to have discretion, having regard to local interest, as to whether or not to hold a public AGM.
- The Scheme needs to be made under both the Charities Act 2011 and the Commons Act 1899 to lift the inclosure award restrictions. This requires an application to be made by the Parish or District Council, which needs to be obtained.
- There are some minor clerical amendments to be made to the draft.

4.2 As a registered charity, the trustees must prepare an annual report. However, because the charity's annual income is likely to continue to be less £25,000, it does not have to send a copy of it to the Commission and it will not therefore be publically available on its website, but can be requested from the trustees (under section 171(2) Charities Act 2011). I therefore suggest that the Parish Council requests this report each year. Since there is statutory provision for requests for a charity's accounts, I see no need to make provision for this in the Scheme.

4.3 When the revised Scheme is prepared, I consider that it should be published on the Commission's website for a limited period (not less than two weeks), inviting representations to be made to the Commission, for the purpose of meeting the requirements of s.88 Charities Act 2011. I will then review the representations and consider whether the Scheme should be made and, if so, whether any further changes are necessary to the Scheme.

4. Conclusion

- 4.1 There are good reasons which would justify a scheme to be made. However, as a result of the representations, I consider that the draft should be revised and further consideration given to, amongst other things, the composition of the trustee body. The draft should then be re-published for a short period in accordance with the Act.

Neil Robertson
31 March 2015