

**ORDER OF
THE CHARITY COMMISSION FOR ENGLAND AND WALES**

to authorise the Trustee to enter into a tenancy agreement under the power given in section
105 of the Charities Act 2011

dated the

10 August 2012

for the charity known as

THE RECREATION GROUND, BATH (1094519)

at

Bath in the County of Somerset

ORDER

In this Order:

“the Charity” means the Recreation Ground, Bath;

“the Rec” means a large open space in the centre of Bath, used for recreational purposes by Bath residents and the public generally and owned by the charity;

“the Commission” means the Charity Commission for England and Wales;

“BANES” means Bath and North East Somerset Council, the Trustee of the charity;

“the Club” means Bath Rugby PLC, a professional Club; and

“the Proposed Lease” means the lease which BANES proposes to grant to the Club in the terms of the draft Counterpart Tenancy Agreement submitted to the Commission on 21 June 2012 under which the Club will occupy and use the land belonging to the Charity specified in the schedule to this Order for the period 13 August 2012 to 20 May 2013.

Background

1. The Rec was acquired by the Mayor, Aldermen and Citizens of the City of Bath from the Bath and County Recreation Ground Company Limited by a conveyance dated 1 February 1956. BANES is the successor to the Mayor, Aldermen and Citizens of the City of Bath and more recently Bath City Council. At the time of the transfer the land was subject to a number of leases.

2. BANES did not consider that the Rec was held on charitable trusts and it was therefore managed by BANES for many years as though it was part of BANES corporate property. At BANES request, the Commission gave its view in 1993 that the Rec was not held on charitable trusts.
3. On 23 May 1995 the Club had its lease renewed for a further term of 75 years for the use and occupation for a stadium of part of the Rec. The Club pays £6,500 rent under that lease.
4. In July 2002 the High Court (*Bath and North East Somerset Council v HM Attorney General* [2002] EWCA 1623 (Ch) determined that the Rec was held on charitable trusts and BANES was charged with maintaining the Rec "as a recreational facility available for the benefit of the public at large"
5. As a result of the decision of the court, the Club's occupation of the Rec is inconsistent with the trusts of the Charity.
6. Nevertheless, BANES' view is that the Club has a valid lease as a result of the operation of section 122 of the Charities Act 2011 and therefore, cannot be required to vacate the part of the Rec which it occupies under that lease.
7. The Charity was registered on the Register of Charities in November 2002.
8. It is the duty of BANES to seek to resolve the irregularities in relation to the occupation of the Rec and discharge its duties and responsibilities as Trustee of the Charity.
9. BANES completed a strategic review of the charity in May 2007. Having taken and considered appropriate professional advice and acknowledged the benefit to the charity of the additional income generated by the leases with the Club, BANES identified the option in the strategic review to grant a lease of further additional land to the Club on terms to be determined ("the Potential Future Lease") as the proposed final solution to the Club's continuing occupation of the Rec. BANES formally approached the Commission for guidance as to whether the Commission was able legally to support this. In March 2008, the Commission confirmed that it was not yet satisfied that the Charity had put forward any specific proposal that passed the legal test which would enable the Commission to make a legal scheme to allow the Potential Future Lease. The Charity needed to provide the Commission with a specific proposal that included a detailed list and analysis of both the benefits and detriments arising to the Rec. from the Potential Future Lease and the basis upon which it believes that the former outweigh the latter. That proposal was received on 14 October 2008 but rejected by the Commission on 9 October 2009 on the basis that on balance the benefits did not outweigh the detriments
10. In 2009 BANES subsequently developed a substantively revised proposal in relation to the Potential Future Lease which it considered would mitigate the detriments and enhance the benefits arising from the Club's continuing occupation of the Rec. This proposal included the provision of land to the Charity in addition to the Rec for use in furtherance of its charitable purposes ("the Second Proposal"). Following the Second Proposal, the Commission gave BANES further advice and guidance and awaited BANES formal application for a legal scheme.
11. In June 2010 BANES notified the Commission that the Club had a new owner and its management team was being appointed. This resulted in further negotiations between BANES and the Club in respect of possible contractual terms and the steps

taken by BANES to ensure that the merits of any further proposal made to the Commission out-weighed the detriments. The Commission advised BANES, in accordance with its policy in respect of a change of use or disposal of functional property, that BANES should conduct a public consultation, in a form to be decided by BANES and let the Commission know the outcome. The proposals currently being considered by BANES are in a different form from those previously articulated to the Commission in the Second Proposal.

12. During the period of the strategic review and formulation of proposals to find a long term viable resolution for the future of the Rec that would be in the best interests of the Charity the Commission has authorised BANES to grant a temporary one-year lease for full market rent to the Club of an additional area.
13. BANES have carried out a public consultation and benefit and detriment analysis in formulating proposals
14. On 23 December 2011 the Commission received proposals from BANES for the future of Rec which BANES consider to be in the best interests of the charity. In accordance with the Commission's role as regulator for charities in England and Wales further advice was provided by the Commission to Banes.
15. On 16 May 2012 BANES applied to the Commission for a Scheme in respect of the proposals. On 25 June 2012 the Commission wrote to BANES outlining the proposed powers to be included in the scheme and the terms to be satisfied in the exercise of those powers. The Commission advised that the draft scheme would be subject to a statutory publication period of one month. On 4 July 2012 BANES confirmed to the Commission its agreement to the scheme proposals.
16. It is now proposed to publish a draft scheme for public consultation.
17. Given the above developments the Commission is satisfied that it is expedient in the interests of the Charity for BANES to grant the Proposed Lease, subject to BANES' compliance with the directions of this Order.
18. The terms of the Proposed Lease expressly exclude the provisions of section 24-28 of the Landlord and Tenant Act 1954 in relation to the tenancy to be created by the Proposed Lease and that the necessary notices and statutory declaration will have been given in respect of this tenancy.

ORDER

19. Now the Commission having considered the proposals made by BANES hereby authorises BANES to grant the Proposed Lease being satisfied that this is expedient in the interests of the Charity.

DIRECTIONS

20. BANES will publish this Order on its website.
21. The proposed draft scheme for the administration of the Charity is published by 30 September 2012 or within such time-frame as the Commission may agree in writing.
22. At the time of publication of the draft scheme BANES shall also put in place a stakeholder communications plan which explains the longer term proposals for the future of the Rec.

Richard Black

Authorised Officer

SCHEDULE

Land containing 1136 square metres or thereabouts being part of the land comprising the Recreation Ground Bath