

Wimbledon and Putney Commons Conservators
Manor Cottage
Wimbledon Common
London SW19 5NR



Chief Executive: Simon Lee

MEDIA RELEASE

2nd December 2015

Wimbledon and Putney Commons Conservators

Trustees have agreed, ahead of the forthcoming General Open Meeting to be held on Wednesday 2nd December 2015 at 6.30pm at the London Scottish Golf Club, to release a copy of the Charity Commission letter of the 22nd October 2015. This includes the Formal Action Plan that the Regulator has set out.

The Board agreed at its 11th November 2015 meeting to accept the Commission's letter in full, including the Formal Action Plan. The Key Resolutions regarding the implementation of the Formal Action Plan and related matters are also included.

ENDS

NOTES for Editors

Wimbledon and Putney Commons is a charity managed by the Wimbledon and Putney Commons Conservators. It was established under the Wimbledon and Putney Commons Act of 1871. The Commons comprise some 1,140 acres across Wimbledon Common, Putney Heath and Putney Lower Common.

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Your ref:
Our ref: RD/303167/C - 422402

Date: 22/10/2015

Dear trustees,

Wimbledon and Putney Commons Conservators

Further to our meeting held at the charity's premises on Friday 9 October 2015. For the record all of the trustees and the CEO were present at the meeting.

By way of background and in the interests of clarity I recalled to the trustees that the Commission's understanding of the current governance failure is:-

There is a split between the trustee board caused by a difference of opinion with regard to the monetary valuation received by the charity for the granting of an easement (right of way) across part of the charity's land for the benefit of Wandsworth Council and its plans for residential properties on land it owns behind that of the charity. The right of way across the charity's land was the only way to access the Council's land and may have had some 'ransom' value.

Some trustees are of the view that there was a significant undervalue and have since instructed a QSR to provide a new valuation report. The valuation in this report indicates there is a significant difference between what the trustees secured for the charity at the time and what, allegedly, could have been secured. It is unclear to the Commission whether those trustees had authority to commission such a valuation however the overriding issue is that there is a valuation 'on the table' which indicates there is a significant difference between what the charity secured and what the valuation could have been.

As far as I understand it the trustees involved in the original decision to grant the easement did secure the services and acted on advice from solicitors and secured the services of qualified surveyors (Drivers Jonas). However, they did not, according to advice the Commission has seen from the trustees' then advisers Bates Wells and Braithwaite (BWB) obtain a full surveyors report that satisfied the conditions of The Charities Act 2011. BWB advice also states that the trustees did not advertise locally the fact that they intended to dispose of an interest in land. This, technically, was also a breach of the trustees' duties to satisfy the particular requirements of the Act.

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BWB provided the trustees with advice on a way forward which concluded that they should obtain fresh advice to get to the bottom of whether there was any loss to the charity from any undervalue or not. Accordingly BWB suggested three firms who could provide a new retrospective valuation report. Some trustees were of the view that two of the three firms named were not suitably experienced in the type of transaction the charity had entered into and from that point the governance of the charity has suffered because the trustee body as a whole has not been able to agree a particular valuer and move on to providing instructions and receiving a new report. As a result of the current impasse the management and administration of the charity is suffering and the trustees acknowledge this.

Whilst in normal circumstances trustees are entitled to have access to all of the records of the charity both to establish what major events took place before their appointment and to ensure they are fully informed to make future decisions in the best interests of the charity, some trustees appear to have not been given access to all records. This appears to be because of concerns raised by BWB as to what may happen with certain documents if full access was provided and legal privilege has been relied on as the reason not to divulge all records. I am aware of and would describe some postings on the site 'Putney SW15' as being inappropriate. This is likely to be the reason why BWB had denied access to their records and it is perhaps understandable that BWB felt they needed to fall back on legal privilege.

In addition both groups of opposing trustees have issued press statements and it is unfortunate that the trustees have felt it necessary to make their concerns known in the public domain. It is of concern to the Commission that such action can be seen to be in the best interests of the charity albeit that both parties clearly feel very strongly and passionately about their respective positions.

As regards any public comments either on a particular website/blog or press statements, all trustees need to carefully consider the impact of making such comments and the effects they may have. If, ultimately the trustees consider that any individual trustee or trustees have not acted appropriately or their actions/conduct are in contravention with their duties and responsibilities to the charity then the Commission would expect appropriate steps to be taken.

Previous Commission advice referred to the trustees seeking mediation however the current impasse has prevented this from happening.

Accordingly the Commission felt it necessary to meet with the trustees to forge a constructive way forward given our concerns around a breakdown of relations between the trustees resulting in the governance of the charity being adversely affected and the reputation of the charity damaged (we are aware of postponement/cancellation of trustee meetings).

No further steps have been taken to determine whether there may be some under value or not and pursuit, if appropriate, of any loss. This effectively means that no consideration is being given as to whether there may be funds that could be owed to the charity. Trustees would normally be expected to properly consider if there has been a loss and attempt to recover any loss unless there were particular reasons why they should not e.g. advice received indicates that there is no real chance of successfully pursuing funds or those who should repay the charity do not have the means to do so and such pursuit would be a costly but fruitless exercise.

During the meeting we appeared to be making good progress to the point where all trustees agreed to engage the services of the third valuer suggested by BWB. However, the discussions unfortunately broke down when it came to agreeing what, if any, background circumstances, relevant information etc. any new valuer should/should not be made aware of. If there were any particular extenuating circumstances or factors at the time of the original transaction which may have had an affect or impact one way or the other on the value to the charity then it would seem prudent that any new valuer should be made aware of those extenuating circumstances in order that he/she can take these into account and arrive at a valuation which takes into account of any circumstances at the time. I do not know and it is not for the Commission to determine if the original easement to the PCT and any subsequent arrangements with Wandsworth Council, who acquired the land from the PCT and any changes to what was being built on the land may have had an effect on the value to the charity. This is for the trustees to determine with their advisors.

If the trustees are satisfied that there were very few or indeed no such circumstances or factors affecting the overall transaction at the time then they should consider that it is appropriate to simply engage the valuer and ask for a retrospective valuation as at the time in question.

The Commission's role includes ensuring that charity trustees carry out their duties and responsibilities to the best of their ability and in the best interests of the charity they represent. They should put aside any personal views or opinions and ensure they act exclusively for the benefit of the charity.

Further information regarding trustees' roles & responsibilities and decision making can be found on the Commission's website at the following links:

<https://www.gov.uk/government/publications/its-your-decision-charity-trustees-and-decision-making/its-your-decision-charity-trustees-and-decision-making#section3>

<https://www.gov.uk/government/consultations/the-essential-trustee-cc3-new-version>

The trustees should consider the following steps as being a formal action plan and should report back to the Commission on any progress or lack of progress:-

- Agree appropriate legal advisers to guide/advise the trustees;
- Agree an appropriate valuer to look at providing the trustees with a retrospective valuation taking into account any relevant factors and circumstances at the time of the original transaction;
- Discuss the retrospective valuation and determine, with advice, if there has been a loss to the charity arising from the original transaction;
- If there is any significant difference in valuation the trustees should seek advice as to whether it is appropriate and feasible to recover this loss and from whom;
- If any of the current trustees may be personally liable for any such loss that is identified they will be conflicted from any further discussions relating to recovery and must declare any conflict and withdraw from discussions leaving only non-conflicted trustees to take this forward;
- Copy to the Commission all such legal and valuation advise and trustee discussions for our records;

Our power to give regulatory advice and guidance is conferred by s15(2) of the Act. This is advice given by us in our regulatory capacity and there are consequences of not following it without good reason.

The advice is given for the purpose of ensuring the trustees comply with their duties as trustees. Accordingly, if the advice is not followed without good reason, the trustees may be in breach of duty. Failure to comply may be evidence of misconduct or mismanagement in relation to the particular actions required.

The Commission expects a competent board of trustees to be able to resolve these issues for themselves without the need for the Commission's intervention. Our action or intervention is not a substitute for trustees exercising their duties and responsibilities and taking prudent decisions.

Given the current differences of views and opinions within the trustee board and the disruption and governance difficulties this is directly causing the Commission must consider what action may be appropriate in the circumstances if the trustees fail to act/agree a way forward and the governance and ultimately the charity, its name and reputation continues to suffer.

As the trustees are aware the charity is in the local media, the Commission is aware of MP interest and at least locally the charity is well known. If this interest continues or escalates then the public trust and confidence in the trustees' abilities to effectively manage the charity, the charity itself and the wider charitable sector could be damaged.

The courts have made it clear that they expect trustees to co-operate fully with the Commission as a Regulator. Failure to comply with requests in itself may be taken as evidence of misconduct and/or mismanagement in the administration of the charity.

Should the trustees not take the actions as outlined in this letter, the Commission will consider whether further regulatory steps are appropriate. Where we consider that the regulatory concerns are so serious we will consider opening a statutory inquiry under section 46 of the Charities Act 2011. We have a range of statutory powers that we can use including:

- information gathering powers which require us to obtain information or documents or require named individuals to meet us to answer questions
- temporary protective powers which allow us to protect charity property for a temporary period while we continue investigating
- remedial powers which allow us to implement long term solutions to problems often identified

As explained at the meeting this could include directing the trustees to take specified action or the appointment of an Interim Manager. The Commission can appoint an Interim Manager to act in the administration of a charity after opening a statutory inquiry if it considers that:

- there has been misconduct or mismanagement in the administration of a charity or
- it is necessary or desirable to protect the charity's property

As stated at the meeting, if it is felt appropriate and proportionate for a statutory inquiry to be opened, within three months of the conclusion of our investigation the Commission will publish the Statement of Results of Inquiry. The trustees should be aware of the adverse impact that such publicity can have on the reputation of the charity.

Further information regarding statutory inquiries can be found on the Commission's website at the following link:

<https://www.gov.uk/government/publications/statutory-inquiries-into-charities-guidance-for-charities-cc46/statutory-inquiries-into-charities-guidance-for-charities>

For the record at the meeting I confirmed that I could not see any objection from the Commission to the further expenditure of funds on additional legal and valuation advice given that this was the recommendation of BWB and that without such advice the trustees cannot confirm or dismiss any undervalue issue and they may remain in a stalemate perpetuating the current governance concerns.

In all the circumstances the Commission expects to hear from the trustees regarding the steps they have taken as set out in the formal action plan by no later than 30 November.

Mr Rob Davies
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Wimbledon and Putney Commons Conservators

Board Meeting 11th November 2015

Charity Commission Letter 22nd October 2015

Key Resolutions

Resolution 1

The Board unanimously resolved to:

- i. Accept the 22nd October letter from the Charity Commission, as a formal direction from the Regulator as to what action is required;
- ii. Accept the advice that the trustees should be guided by:

<https://www.gov.uk/government/publications/its-your-decision-charity-trustees-and-decision-making/its-your-decision-charity-trustees-and-decision-making#section3>

<https://www.gov.uk/government/consultations/the-essential-trustee-cc3-new-version>
- iii. Adopt the Action Plan set out in paragraph 17 of that letter as a formal direction from the Regulator;
- iv. Note that a formal report on progress, or lack of progress, is to be made to the Commission by 30th November 2015

Resolution 2

The Board unanimously resolved to approve:

- i. That any further decisions relating to the Putney Hospital site can only be taken at Board level.
- ii. To authorise the Chief Executive, with the Chairman and Vice Chairman, to draw up a set of instructions and approach Russell Cooke, Charles Russell Speechlys and Stone King as potential lawyers to guide/advise the Board through the implementation of the Action Plan. A report on each company's proposed approach would be brought back to the Board to allow consideration on which company to appoint. It was agreed that the instructions to be drawn up for the lawyers chosen would be discussed and agreed by the Board.
- iii. That when the valuation is available to determine, with advice, if there has been a loss to the charity arising from the original transaction.

Resolution 3

The Board resolved by a majority to:

- i. Delegate to the Chief Executive, in consultation with the Chairman and Vice Chairman, authority to open negotiations on behalf of the charity with Montagu Evans to agree a mutually acceptable figure at which their invoice should be settled.
- ii. In future, no individual Trustee, or group of Trustees, should commit the charity to any expenditure without the knowledge of the charity's officers, who are formally accountable for all expenditure, and the agreement of the Board.

Resolution 4

The Board resolved by a majority to:

- i. Suspend for an initial six month period the Committee structure, returning to bi-monthly Board meetings to be set for the second Monday every other month, commencing December 2015.
- ii. To review the implementation of Working Groups under the Chief Executive's direction at its December 2015 Board meeting

Resolution 5

The Board resolved by a majority that:

The documents identified by Bates Wells Braithwaite in their letter of the 7th August 2015 and any others potentially subject to legal privilege, should be made available to all trustees, on the understanding that information in them will be treated in accordance with the confidentiality undertakings they have made as part of their commitment to the Code of Conduct and will not be used to re-open any concluded litigation or for any purpose contrary to the best interests of the charity.

Resolution 6

The Board resolved by a majority that:

No press releases, public postings or public statements of any kind should be made by any trustees unless they have first been approved by the Board.

It was agreed this did not apply to the regular publications "Commons News" or other regular informational social media use such as Twitter postings.

The Board also resolved to approve by a majority that the Montagu Evans Report be noted.