



Charity Commission

Question and Answer Sheet The Kidd Legacy being a part of Central Park, Dartford (4013609)

1 What is this question and answer sheet about?

The Charity Commission for England and Wales is established by law as the regulator and registrar of charities in England and Wales (See www.charitycommission.gov.uk for further information).

We propose to make a legal document called a Scheme for the Kidd Legacy being a part of Central Park Dartford. This Scheme will deal with all aspects of the charity's administration and become the governing document for the charity.

We are aware that this is a matter of public interest and this question and answer sheet answers some questions and sets out why we need to make the Scheme. This sheet should be read together with the proposed Scheme. This is not a full explanation of our decision making process.

2 What is the background?

On 28 September 1903 Charles Newman Kidd conveyed land, upon charitable trusts, to the Urban District Council of Dartford. Dartford Borough Council has since succeeded the Urban District Council as charity trustee of the Kidd Legacy land. The Council acting as charity trustee is legally responsible for the Kidd Legacy land. Decisions relating to the charity are for the Council, as charity trustee, to make in the interests of the charity.

The charity land was conveyed by an indenture which stated that the land was to be used "...in perpetuity as a public recreation grounds and for no other purpose whatsoever...". The land forms what is now part of Central Park Dartford and is made up of the land described in parts 1 and 3 of the schedule to the Commission's draft Scheme.

On the 4 June 2004 Dartford Borough Council sold the piece of the Kidd Legacy land described in part 1 of the schedule to the Commission's draft scheme. The trusts in the 1903 indenture did not provide authority for the sale and therefore the sale was in breach of the charitable trusts.

3 What is the role of the Commission in this matter?

We aim to ensure that the charity does not suffer a loss as a result of the breach of trust and to assist the charity to ensure that its administration is improved in the future.

4 What is the role of Dartford Borough Council in this matter?

The Council has two distinct roles:

- Its role as *charity trustee* of the Kidd Legacy land.; and
- Its statutory role as *Local Authority*.

5 What about the potential conflict of interest in the Council acting both as Local Authority and as charity trustee?

The Council has set up a separate committee to act on its behalf as the charity trustee. The committee is advised by an independent legal advisor. The Council acting as the trustee through the committee has the legal duty to act solely in the interests of the charity.

Many local authorities act as the charity trustee of charitable land so this situation is not unusual.

6 Why did the Council sell the land when it was held on charitable trusts?

The Council was aware, prior to the sale that the land was subject to the terms of the 1903 indenture. It told us that on the basis of legal advice it believed the restrictions within the indenture were restrictive covenants, rather than charitable trusts. The trustee's advisors took the view that the Council had the power to sell the land. It is now accepted that the Kidd Legacy land is held subject to charitable trusts and that the sale was in breach of those trusts.

7 How does the trustee propose to rectify the breach of trust?

The Local Authority, has agreed to replace the land detailed in part 1 to the schedule of the draft scheme with the land detailed in part 2 to the schedule (to be held upon the same trusts) together with the sum of £270 000 (see questions 9 and 10 below for more details about the £270,000). This means that the loss caused to the charity by the unauthorised sale will be rectified.

8 Why can't the sale be reversed?

The trustee's independent legal advisors have expressed the view that there is no legal mechanism by which the land can be recovered. The obligation upon the Council is to make good the loss to the charity which is what this Scheme is about.

9 What was the value of the charity land sold?

An independent surveyor acting for the charity trustee has placed a value of £275 000 on the charity land sold.

10 What is the value of the land the Council propose to convey to the charity?

An independent surveyor acting for the charity trustee is of the opinion that the land is an adequate replacement in terms of its location, size and designated use. The surveyor has valued the replacement land at £5000. The balance of the proceeds of the sale amounting to £270,000 is held on trust for the charity in addition to the land. This resolves the loss the charity suffered as a result of the breach of trust.

11 Why is a Commission Scheme necessary?

The Commission needs to authorise the replacement of land and funds because the Council is acting in two capacities (as the local authority and as charity trustee). The Commission Scheme will authorise the charity to hold the sum of £270K to provide a future income for the maintenance and improvement of the charity land. The Scheme will also provide a modern administrative framework which the charity can operate under.

This Scheme will then be the governing document for the charity and the trustee is obliged to comply with its terms. Currently the charity is unregistered, and following the Scheme it will be entered onto the Register of Charities.

12 Is it in the interests of the charity to accept the land and funds in replacement of the land which was sold?

The trustee has considered this issue and is of the view that the land adequately replaces the land lost. It is also of the view funds received will provide a valuable income which will help meet the cost of maintaining the charity land. The Council is therefore satisfied that this is in the best interests of the charity.

13 Will the remaining charity land be “landlocked” following the loss of the land connecting to Lowfied Street?

The trustee has agreed that an easement will be obtained and registered with the Land Registry in order to secure access rights to the charity land.

14 Is the land the Local Authority proposes to exchange held on charitable trusts?

We have no evidence to suggest that the replacement land is currently held on charitable trusts.

15 Hasn't there been an overall loss of green space within Dartford?

Our role is limited to protecting the land held on charitable trusts and to ensure that any replacement land is suitable for the provision of a recreation ground and that the charity does not lose out as result of the breach of trust. It is not within our remit to consider whether this results in a net loss of green space and this is a matter for the Council.

16 Does the Commission have any control over the use of the charity land which was sold in breach of trust?

No, as outlined in point 8 above, the Commission no longer has jurisdiction over this land because it is not now charitable land.

17 Wasn't the Drill Hall also part of the 1903 conveyance?

The trustee and their advisors consider that the “Drill Hall” land was not conveyed under the 1903 indenture. Whilst the 1903 indenture makes reference to certain rights being retained with regard to the drill hall, the Drill Hall was not conveyed by the 1903 indenture. There is no evidence that the Drill Hall was part of the conveyance.

18 What is the 'publication period'?

The Charity Commission's Scheme will have public notice given to it for a minimum period of a month. During this time members of the public are able to make representations about the Scheme to us for consideration.

The Commission has arranged for the draft scheme to be published in a number of places to ensure it is available for public comment. These places include the Dartford Times, Dartford Express, Dartford Messenger and Dartford and Swanley Express newspapers, on the Commission's website (www.charitycommission.gov.uk), and on notice boards in Central Park Dartford. The Scheme will be published on 31 January 2008 and representations should be made by noon on 7 March 2008.

19 What will happen to those representations received by the Charity Commission?

An officer who has not dealt with this charity will consider all representations made and will decide if we should go ahead and make the Scheme and/or if changes should be made to the Scheme. The final decision on whether to make the Scheme will take account of all the information, evidence and arguments received.

20 How do I make representations about this Order?

You can send representations about this Order by post or by e.mail to:

Charity Commission Direct
PO Box 1227
Liverpool
L69 3UG

e.mail to: enquiries@charitycommission.gsi.gov.uk

Please quote reference number 492101.
They must be received by noon on 7 March 2008.

21 When will I hear from you?

If we need more information we will ask you for it. Otherwise we will let you know when a final decision has been made.