Kingskerswell Parish Council

Recreation Ground Charity Committee Terms of Reference

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Introduction

1. This Terms of Reference (ToR) provides the basic information for the conduct and remit of the Kingskerswell Parish Council (KKPC) Recreation Ground Charity Committee (RGCC), covering:

   a. Background to forming the RGCC;

   b. Its purpose and scope;

   c. Its membership and meeting structure; and

   d. The review and sign off, of this ToR.

Background

2. The Kingskerswell playing fields, playgrounds and pavilion were gifted to the village of Kingskerswell in 1952. These assets were further taken into a Charitable Trust in 1962, as part of a UK wide government act of parliament to protect recreation grounds across the country. A new Charitable Trust was formed, on the 08th August 1962, known as the Kingskerswell Recreation Ground Charity (RCG) - Registered Charity Number 300880. The link to the Charity Commission webpage is: KINGSKERSWELL RECREATION GROUND - 300880 (charitycommission.gov.uk)

3. All RGCs formed in 1962 had identical charitable objects, which intentionally included additional legal covenants, to ensure these RGCs would be:

   a. Protected forever by an act of parliament;

   b. For the sole provision of recreation and sport;

   c. Protected in law against councils selling or leasing the charity's property and assets to use the proceeds for other purposes; and

   d. Fixed and unamendable, in that there is no power of amendment which would allow any council to change the purpose or object of the RGC.

4. The land and assets overseen by the Kingskerswell RGC include:

   a. Kingskerswell Pavilion and Playing Field: Land Registry DN585303;

   b. Land Parcel Area 51: Land Registry DN629182;

   c. All boundaries and entry gates to those land parcels; and

   d. All other assets held on that land, including playparks and sports fields.

5. At the Parish Council meeting on the 23rd August 2021, the KKPC voted to refresh the local governance arrangements for the RGC, in that: KKPC will now move to take on the formal role of 'sole trustee'. From this point forward there will no longer be named individual trustees, but the KKPC as a legal entity becomes the 'sole trustee' as a corporate body.

6. This is quite a common approach as local authorities are empowered by Section 139 of the Local Government Act 1972 to receive and hold gifts on charitable trusts. This may include money or assets left by donors, or charitable trusts created by ancient royal charters or Acts of Parliament (as with Kingskerswell). Local authorities are well suited to being sole charity trustees; in particular parish councils as they are:

a. Rooted in the local community;

b. Open and transparent in their dealings;

c. Highly accountable for their actions; and

d. Have the high standards of public conduct embedded in the way they work.

7. Under s.139(1)(b) of the Local Government Act 1972 ('the 1972 Act'), KKPC has appointed itself as the Parish Council to act as sole trustee: the council as a corporate body holds the property and oversees its application as sole charity trustee for the benefit of all of the people living in its area.

8. Pursuant to s.2 of the Charities Act 2011('the 2011 Act'), a charitable body must be established for a charitable purpose and for the public benefit. It cannot be established to further the purposes of some non-charitable body such as the parish council itself. Local councils and charities often have close interests in local matters, and KKPC is no different here. But the charity needs to be independent of the council. Decisions about the administration and operation of the charity must be taken solely with a view to furthering its charitable purposes and for no other purpose.

9. In short, the council must realise going forward it has a dual role, first, as a local authority and secondly as a charity trustee and the two roles must be kept entirely separate. All discussions and decisions relating to the RGC should be taken at a separate committee meeting specifically called for that purpose, not at a council meeting.

10. There are advantages to having a local council as trustee, but there may also be disadvantages. Conflicts of interest between the council and the charity can often occur as well as a failure by the council to appreciate that it must deal with the charitable property in accordance with the set charitable trusts, as opposed to just local parish council direction. It is the RGCC role to ensure that where these conflicts of interest occur, they are managed without detriment to the RGC objects.

11. This governance change requires KKPC, as the sole trustee, to establish a committee pursuant to s.101(1) of the 1972 Act. The individual committee members are not charity trustees, the KKPC as a legal entity is. However, the committee members have a responsibility to ensure that the local council acts appropriately as the sole trustee.

Purpose and Scope

12. In line with s.101(1) KKPC has established a RGCC to:

a. Represent the KKPC interest in its capacity as sole trustee;

b. Assure KKPC delivery against the RGC Charitable Objects;

c. Assure the production and publication of the RGC Accounts. These accounts should contain all fiscal activity relating to those assets listed at Paragraph 4 of this ToR, including all relevant expenditure;

d. Ensure KKPC delivers a focussed annual plan for the continuous development and improvement of all aspects of the RCG;

e. Provide oversight, assurance and advice to KKPC in relation to all aspects of the RGC and that development plan;

f. Where required, conduct an assessment of progress against the KKPC annual plan. Producing a concise annual report on the activity and performance of KKPC management, including any recommendations for future activity and improvement;

g. Ensure that KKPC continues to manage and develop all aspects of the RGC on behalf of the village of Kingskerswell;

h. Ensure any development includes the increased usage and where appropriate the diversification of sporting and recreational use of the RGC;

i. Ensure that any such sporting use does not interfere with the charity's broader object of providing a recreation ground for the residents of Kingskerswell, in that such sporting use does not prevent reasonable public access to all or part of the RGC; and

j. Ensure all activity supports the charity objects, that is, it should not hinder the furtherance of the purposes of the RGC.

13. The RGCC will not have budgetary control over any fiscal activity, this remains with the full council, but it will make recommendations for accounting and spend against any annual plan.

RGCC Membership and Meetings

14. The RGCC Chair will always be the current Chair of KKPC, whilst other Cllrs can join as members, this will always have an upper limit of three Cllrs (including the Chair), ensuring that RGCC meetings always remain separate to KKPC business. There will be no upper limit on the number of committee members who can join. New members can apply informally to join, with existing members voting to reach a majority either in or out of committee to confirm that membership. Therefore the committee should as a minimum be constituted of:

a. Chair of KKPC acting as Chair of the RGCC;

b. Treasure (always the Parish Clerk);

c. Secretary (normally the Parish Clerk);

d. Members (invited local interested parties).

15. The Committee will adhere to the general approach encapsulated within KKPC Standing Orders, which will ensure a continuity of approach, where possible. With two specific differences, which are:

a. Every normal member of the RGCC will be a voting member, with a single and equal vote. However, to ensure a full separation from KKPC business the Chair will not have any voting rights at any time;

b. Where voting on a proposal is tied, the proposal will be deemed as having not been passed. However, the committee should where practical and possible then amend any tied proposal and re vote until there is a resolution which is decided by a majority.

16. The RGCC shall convene as many times as good governance requires it to, but will as a minimum, meet biannually. Whilst there are only two mandated meetings, this should not prevent committee members conducting any work required in between these meetings. The meetings should focus on delivery and the core governance objects, as opposed to being where 'business' is done. These biannual meetings will be held, where possible, in the first week of November and then in the first week of June, every year:

a. Each meeting will have an agenda produced jointly by the Chair and the Clerk, covering any business required for discussion by committee members;

b. The November meeting will concentrate on the production of a costed annual plan for the RGC. Those costings then translating into a financial bid that can be passed to KKPC for inclusion in the December KKPC Precept meeting;

c. The June meeting will concentrate on a Treasurer's report, enabling the RGC accounts to be assured by members. It would also include a visual inspection and tour of the entire RGC grounds and assets, to assess delivery and progress against the annual plan. The RGCC will then subsequently produce an annual report for KKPC, including any recommendations for action;

d. Extraordinary meetings can be called where three committee members request that meeting, through the Chair and the Clerk.

17. All RGCC meetings must be kept entirely separate from Parish Council business, in that:

a. KKPC must by law have no influence on RGCC decisions or actions;

b. The RGCC is not a public meeting, but the RGCC may invite relevant attendees;

c. Whilst the RGCC produces minutes and an annual plan and report for the use of KKPC, it is not reporting to KKPC;

d. The Chair and Proper Officer have a duty to ensure that RGC and Parish Council business is kept distinct in every aspect to maintain the integrity around decision making required by the Charity Commission and the law.

18. KKP Councillors may attend RGCC meetings, but only in an ex-officio capacity. Three committee members shall constitute a quorum for meetings. Minutes will be produced by the Parish Clerk, to ensure an accurate record of all decisions and actions. These will be published in line with all other KKPC meeting minutes. Outside of the biannual meetings in June and November any additional meeting dates will where practical be published to Cllrs at least a week in advance.

Review

19. This ToR should be reviewed periodically by the RGCC and approved by both the full council and the RGCC. Where there is disagreement about amendment or contents the final 'say' on all KKPC matters lies with KKPC, and with RGC matters, with the RGCC. Date of last review January 2024.