

# SWEFFLING VILLAGE HUT REVIEW 2022

## Background

By a Conveyance dated 21st February 1973 the land and buildings upon which the current village hut stands was conveyed by one Arthur James Denning Skelton to the Reverend Cyril Stevens, James Bromley and Derek Wilkinson, the land as trustees of Sweffling Village Hut. Although the above Conveyance was made in 1973, the deed recites that a village hall or hut had stood on the land for the purpose of being used as a village Hut for approximately 40 years beforehand, but no conveyance or other deed could be traced. In other words, any earlier deed may have been lost, or perhaps an earlier obligation to transfer the land was never undertaken by an oversight.

The freehold transferred to the original trustees in 1973 essentially provided **that the** land should be transferred to them To Hold the property Upon Trust for the benefit of Sweffling Parish Village Hall, thereby establishing a simple Trust.

Limited access only has been had to relevant records of the Trust and there may well be long memories capable of contradicting my above assumptions, but it is apparent that in 1993, perhaps owing to some difficulties over ownership or management of the Hut, The Charity Commission ordered a Scheme<sup>1</sup> under the terms of which amongst many other provisions, including most notably rules for the governance of the Hut, the Hut's land and buildings became vested in the Official Custodian for Charities. The effect of the "vesting" was to transfer ownership, (effectively by court order) from the original trustees to the Custodian, which body therefore appears to remain legal owner of the land and buildings.

The Scheme, it is assumed involved an application to the Commission by the then Trustees of the Hut at the time, to assist with the absence of a formal constitution and for the protection of the land and buildings. The advantage of property being vested in The Custodian is that there is continuity of ownership, regardless of the demise of, or inability to trace individual Trustees. The vesting of land in The Custodian's vesting is subject to the original simple trusts as to the land and buildings, as set out in the 1973 Conveyance, i.e., wholly for the benefit of The Hut.

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<sup>1</sup> A scheme is a legal document which amends, replaces, or amplifies the trusts of a charity.

## **What is the status of the Trust?**

A key point of importance is that, by virtue of the 1993 Scheme it is very apparent that the Sweffling Village Hut is a charity, and the current committee are accordingly its trustees, who must in that role comply faithfully with all provisions of the Hut's constitution as set out in the Scheme, but who must additionally comply with charity law and regulations. The most recent statute being Charities Act 2011.

To put The Hut's present legal status beyond any doubt, it is notable that wording within the text of the Scheme makes repeated references to "**the Charity**". The charity is not however a registered charity as searches and inquiries made to the Charity Commission, reveal no current or probably past registration.

Before dealing with any suggested changes to the management and constitution of the Hut it might assist to consider the below recent Charity Commission guidance published specifically for village halls and community centres.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/284719/rs9text.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/284719/rs9text.pdf)

***“Attributes of a successful village hall .***

***As a rule, active, vibrant governance and an active, vibrant village hall go hand in hand. Government research revealed a clearly identifiable link between the ability of village hall charities to attract users, their ability to attract trustees and other volunteers, and their ability to generate funding. Many of the successful charities we identified had a ‘cradle to grave’ policy of offering something for everyone. The charities that thrive are those in which trustees are pro-active in understanding their responsibilities and in ensuring that their charity provides activities that meet local needs. Our research shows that a successful village hall charity usually has:***

- *A governing document that is workable and up-to date, containing provisions for everything that the trustees need to do.*
- *A trustee body that is diverse, knows the extent of its role, responsibilities and powers and presents potential new trustees with a realistic picture of what is involved.*
- *A building that meets legislative requirements and that can facilitate a range of activities.*
- *An effective means of communicating and consulting with the local community to ensure that its needs and interests are understood, and that the community knows about the charity's activities and plans.*
- *A funding regime that is sustainable and diverse enough to allow trustees sufficient flexibility to direct their activities in accordance with local needs and interests.*
- *A strategic plan, however simple, that takes account of the impact of proposed changes on all aspects of the running of the charity.”*

Guidance continues.....

*“Charities with a governing document that is unworkable may experience problems that lead to Charity Commission intervention. Village halls sometimes have a governing document that dates to when the building or land was first given over for use as a village hall. For example, the governing document may be the conveyancing document for the property or another such legal document. This may not lay out in any detail provisions for the day-to-day running of the charity, and the document may need modernising and broadening in its terms if it is to be of use as a reference tool to guide trustees in the administration of the charity.*

*Most charities will have a power of amendment in their governing document, which means that they can change its details to enable them to do things that were previously beyond their powers. Charities that are long established including SVH often do not have a power of amendment, because of its governing document is old. All amendments must be approved by the Charity Commission.”*

**SVH future status: Charity, or some other other kind of organisation?**

There are many not for profit organisations and social enterprises: not all of these are charities. For example, a community interest company (CIC) or an organisation registered with HM Revenue and Customs as an amateur sports club.

SVH is however already a charity, established by its written constitutional document namely, the 1993 Scheme approved by the Charity Commission at that time. Transferring the assets out to another body would therefore be complicated and would in all likelihood be impossible unless the Charity were to be wound up

### **Amendment of Constitution Document.**

The existing scheme is hopelessly out of date and needs to be drastically amended /replaced. A copy of the document is available for inspection [[on the Village website](#)] and copies may be downloaded by anyone having an interest in its content.

Regardless of whether or not steps are taken to register the charity, possibly for the first time, vast changes are necessary to make the constitution both wider and workable.

It should be noted that the scheme contains no provision for amendment and therefore no amendment is possible without either another scheme being substituted the current Scheme, or otherwise consent of the Charity Commission.

The Charity Commission has a unit dedicated to small charities in order to provide advice and assistance.

Before considering what steps should or should not be taken some consideration must be given to whether or not charitable status is necessary or desirable.

## **What are the advantages and disadvantages of charities?**

There are many advantages to being a charity including

- tax breaks;<sup>2</sup>

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<sup>2</sup> Charities do not pay tax on [most types of income](#) as long as they use the money for [charitable purposes](#). Charities can [claim back tax](#) that's been deducted, for example on bank interest and donations (this is known as [Gift Aid](#)).

- a good level of public trust and greater ability to raise funds;
- a defined purpose, acting for the public benefit.
- reduction in personal liability for Trustees subject to proper compliance with constitution and charity laws

**But charities also have restrictions. For example:**

- If you set up a charity you **must** apply to [register it with the commission](#) if it is a charitable incorporated organisation (CIO) - one possibility to be considered, or its annual income is more than £5,000, unless it is a specific type of charity that doesn't have to register, i.e. if it is a small unincorporated charity. So, if a charity is based in England and Wales and isn't a CIO, you don't have to apply to register it if its annual income is less than £5,000. But you can still apply to HM Revenue and Customs for recognition as a charity to get charity tax breaks and claim gift aid. You can apply to the commission to register this sort of charity voluntarily, but the commission will only consider applications in exceptional circumstances. For example, if you can prove that your charity has been offered significant funds but must provide a registered charity number before it can receive the funds.
- Charities must follow charity law, which includes telling the Charity Commission and the public about their work., (preparation and submission of an annual return)
- Charities can only have [purposes the law recognises as being charitable](#) - they can't have a mix of charitable and non-charitable purposes.
- Charities must be independent - a charity can work with other organisations but must make independent decisions about how it carries out its charitable purposes.
- Charities must be run by trustees who are normally unpaid volunteers - they can [only be paid where it is authorised](#).
- Charities [can't usually benefit anyone connected with the charity](#), for example giving work to a trustee's family member or company, unless it is authorised.
- Charities can't take part in [certain political activities](#), such as campaigning for a change in government.
- Strict rules apply to [trading by charities](#).

- Registered charities must provide public, up-to-date information about their [activities](#) and [finances](#).
- Charities are outward facing - they can't be set up to benefit the narrow interests of a closed group.

## Summary

1. The Hut is a charity and therefore Is already subject to oversight by the Charity Commission and charity law regulation, including all the above bullet points.
2. The existing constitution of the Hut is archaic and now needs to be updated to give the trustees freedom to properly meet the needs of the community and to manage its affairs more meaningfully, and in line with modern Governance. **Please note** Any steps being undertaken by the current trustees outside of the existing constitution are ultra vires and probably unlawful. on the other hand , it is unlikely that any enforcement action would ever be taken by the Charity Commission. Most likely consultation and advice would be offered to remedy the situation. Accordingly existing trustees or not to be unsettled or become worried.
3. In practical terms , as a first step, it will probably be necessary to consider how exactly the constitution should be redrafted in line with what the trustees believed to be meeting the community's needs. The Charity Commission publishes useable draft templates.
4. Dependent upon the existing and proposed income of the Hut registration with the charity Commission may be a legal obligation already. (The current threshold is £5,000). If grants are to be applied for to modernize make safe and insulate the Hut then the Hut's future income maybe considerable.
5. much of what is required by charity law is likely already being achieved by the existing trustees adopting common sense approaches to situations within the scope of the huts existing activities.

## Next steps

The steps taken to make changes undoubtedly complicated but ought to be achievable if for example a sub-committee is established to investigate and to present a clear case. Any future changes will take a fairly long period of time to consider and to fulfil.

Mike Smithson

10 November 2022