

## **Guidance for authorised use of Clapham Recreation Ground (v2, September 2019)**

### Legal context

Clapham Recreation Ground is now the subject of two very different leases, designed by the Trustees on the advice of the Charity Commission (CC), to cater for the wishes of the community within the framework of the Charities Act 2011.

#### The land leased to Clapham Parish Council, at a peppercorn rent, for 21 years

The overall guiding principle is that the tenant cannot do, or authorise others to do, anything that the charity is not itself permitted to do on the land. As 'designated land' in CC terms, the land may only be used for the purpose specified in the trust document (furthermore, the CC specifically stated, when granting permission for the lease to CPC to be issued, that the land must only be used as a recreation ground).

Reflecting the stipulations of the Charities Act 2011, clause 22.6 of the lease to CPC specifies that:

- there must be free and unrestricted access for the public at all times for recreational purposes;
- no charge may be made for access;
- no money may be charged by CPC for any use of the land without written consent in advance from CRGT.

It is therefore clear that CPC cannot authorise any use which denies, or charges for, access to any member of the public wanting to use the land for recreation. Neither can CPC authorise any use which is not broadly recreational.

The law may of course change, or be re-interpreted, in future. Until/unless that happens, the Trustees cannot think of any circumstances where use might be charged for. And note that any money that could be so charged would have to be passed on to the charity, to be applied for the charity's (recreational) purpose.

Additionally, the Charities Act 2011 forbids any trading whatsoever (i.e. money changing hands in return for goods or services) on designated land. As the Charity Commission makes clear in its guidance note CC35, 'trading' includes lotteries (which covers such things as tombolas, raffles, etc.).

The Act does not forbid taking voluntary collections on the ground, and these would be permitted provided:

- a) they comply with the requirements of the Fundraising Regulator; and
- b) the intended beneficiary is not one whose objects would run contrary to those of the Trust.

#### The land let under a Tenancy at Will at a market rent, to the owner/operator of the café/shop

The CC is aware that Trusts responsible for Recreation grounds will, if they have no 'un-designated' assets, find it difficult to cover their expenses. Such Trusts are therefore allowed to set aside a very small proportion of their designated land to be leased at a market rent, on condition that the rent received is used by the charity in furtherance of its purposes. So, while CRGT cannot allow any form of trading on the majority of its land (the part leased to CPC), it can allow trading on the small plot let (at a market rent) to the owners/operators of the café/shop.