

# REQUEST TO THE CHARITY COMMISSION FOR THE REVIEW OF A DECISION: The Commission's Order to charity 238159 dated 20 November 2014

## THE REQUEST FOR A REVIEW

The Friends of Roberts Park request a review of the decision by the Commission to make the Order dated 20 November 2014 to the Roberts Park (formerly Saltaire Park) charity 238159.

## WHO IS MAKING THIS REQUEST FOR A REVIEW?

The Friends of Roberts Park (FoRP) is a voluntary organisation which was founded in May 2004 with the help of Bradford Council. It consists of people who not only love the park but who have made a hands-on contribution to its operation and great success.

Alongside the Council, FoRP played a major role in the successful bid to the Heritage Lottery Fund. This led to the comprehensive and widely-acclaimed refurbishment of the park and a prestigious award to FoRP from English Heritage.

FoRP has been a key player in subsequent developments in the park, for example the founding of the Half Moon Café. It has provided volunteers for such tasks as planting, collecting litter, and the staging of numerous events.

It has also acted as a sounding board for the Council on all park-related matters. FoRP is the recognised voice of park users.



We believe that park users have a substantial interest in the Commission's Order and that FoRP is well placed to articulate that interest. It goes without saying that FoRP has a keen interest in the work and the proper operation of the Roberts Park charitable trust.

FoRP has asked Les Brook, a Saltaire resident and park user, to make this request on its behalf and the organisation's secretary, Richard Freeman, will confirm by separate email that Mr Brook is authorised to represent the group.

### **WHY IS THIS REQUEST FOR A REVIEW BEING MADE MORE THAN 3 MONTHS AFTER THE ORDER WAS MADE?**

The Friends understand why the Commission sets time limits for the submission of requests for the review of Commission decisions.

We ask the Commission to be flexible in this case for the following reasons which explain why the Order did not become public knowledge for 3 months:

- neither the relevant Council officers nor the trustees chose to consult either park users or FoRP about the application for an Order, nor did they inform park users or FoRP that the Order had been made;
- Bradford Council's Regulatory and Appeals Committee are the trustees. When they meet for this purpose, their designation is as the "Regulatory and Appeals Committee acting as trustees". They did not meet to discuss the application. Had they done so, it would have become public knowledge;
- notwithstanding the fact that the Commission says it consults trustees and those with a close interest in whatever matter is being considered, it did not see fit to consult park users nor the Friends;
- the first public intimation of the Order came almost 3 months after the Order had been made. This was in the papers published by the Council for a meeting of the Regulatory and Appeals Committee acting as trustees held on Monday 16 February;
- 2 days after the trustees' meeting, and still within the 3 months window, several questions about the Order were put to the Commission by the author of the current request, working closely with the chair and secretary of the Friends. These questions were designed to better understand the meaning of the Order as a preliminary to taking whatever action (such as a request for review) was necessary. At the time of writing, there has been no response from the Commission to these questions.

## **WHY DO THE FRIENDS OF ROBERTS PARK BELIEVE THE DECISION TO ISSUE THE ORDER TO BE WRONG?**

We should make clear right from the start that we remain unclear about many aspects of the decision-making process and the Commission's decision itself. Nonetheless, two factors have compelled us to lodge this request for a review now:

1. the Commission rightly requires such requests to be made within a reasonable timescale; and
2. a planning application has been made for the construction of a hydropower scheme in Roberts Park and this will be heard in April.

These are the concerns we have, the reasons we believe the decision-making process to be seriously flawed, and the reasons we think the Order to be wrong:

- The Deed of Gift which is the Roberts Park charity's Governing document includes the following injunctions:  
*THE Corporation will at all times hereafter keep the said Park for the purpose only of a Public Park and Recreation Ground...*  
*THE Corporation will not at any time hereafter do or permit to be done on the plot of land hereby conveyed anything which may in any way interrupt or interfere with the usual flow of water in the said River Aire past the adjoining land of the Settler on the South and East sides of the hereditaments hereby conveyed...*  
The proposal by the Council - which includes the use of the park for power generation (with no relevance whatsoever to the energy needs of the park) and significant 'interference' with the river - is incompatible with these fundamental obligations on the charitable trust.
- Notwithstanding the advice of the Commission that it *would normally expect the trustees to have consulted with people who might object to the order or scheme before making an application* [from Dissatisfied with one of the Charity Commission's decisions: how can we help you?] the trustees did not consult, and neither did the relevant Council officers (those administering the trust) on their behalf<sup>i</sup>.
- We understand that the trustees did not meet to discuss anything to do with the hydro until 16 February 2015, almost 3 months after the Order was issued. *Ipsa facto* they never discussed nor formally endorsed the application by Council officers for the Order, and the Commission cannot have consulted the trustees themselves about the Order.
- When they did meet, the trustees were not invited to address whether the hydro scheme was compatible with the objectives and obligations of the trust, and they did not do so. Trustees were not furnished with a copy of the trust's Governing document, or a summary of it - nor was there any mention of it in the papers for the meeting. When, at the meeting, a member of the

public drew their attention to the Deed and its terms, one trustee acknowledged that she had not seen the document, and she was not corrected. This strongly suggests that the Deed has never been circulated to all trustees and that they are therefore unfamiliar with the objects of the trust and their obligations as trustees. In consequence, they have been and are unable to act properly as trustees.

- The Commission may have been misled. FoRP is not confident that the Council officers working with the Commission presented it with both sides of the hydro argument. For example, was the Commission informed
  - that the Friends of Roberts Park, the voice of the users/the beneficiaries of the charity, was opposed?
  - that the Council itself acknowledges that the development “may have an adverse impact on the park”<sup>iii</sup>?
  - that the Council’s own noise assessment shows the location of greatest noise to be at the hydro itself and therefore within the park?
  - that the output of the hydro is modest and will decline significantly over time<sup>iii</sup>?
  - that opponents of the scheme include the Saltaire Village Society – the recognised voice of local residents – and the local MP?

And did Council officers ask the Commission for a view on whether the construction proposed is compatible with the Governing document and the fundamental objectives of the charitable trust?

- Neither is FoRP confident that these same Council officers have found themselves able to navigate the very difficult conflict of interests that they have faced. On the one hand, they are employees of the Council which is promoting the hydro: on the other, they are working for and with the trust which is bound to act according to its charitable purposes. The evidence supporting our concerns was on show at the 16 February trustees’ meeting. The paper presented to the committee by the officers who administer the trust was almost identical to that which we would have expected from those with direct responsibility for developing and promoting the hydro.

One of the paper’s conclusions is that “The ability of the charity to fulfil its remit will not be affected [by the construction of the proposed powerhouse]”. Since “its remit” is set out in the charity’s Governing document and includes the fundamental objective of keeping the park for the purpose only of a public park and recreation ground, that cannot be correct.

- As we have indicated, the hydro scheme is contentious. In addition to the argument that it is prohibited by the Deed, many see it as representing little gain (its maximum output equals the power consumed by only 20 houses and this will decline to 12) and as an inappropriate addition to a World Heritage site. It will certainly cause additional noise in the park and as we have mentioned, even the Council acknowledges  
*that the proposed development may have an adverse impact on the park...* [Bradford Council Planning Statement].

FoRP has opposed the hydro for some 2 years and it is not alone. Other objectors include the Saltaire Village Society, the Saltaire History Club, the Saltaire Cricket Club, the Saltaire Angling Club, and Shipley MP Philip Davies. Of course there are many supporters, and the Council wants to see the project go ahead.

But given this context of vigorous local debate, it seems inappropriate (even *ultra vires*?) for the Commission to declare itself on one side – yet with the issuing of the Order this is what has occurred according to the relevant Council officers at the February meeting of the Regulatory and Appeals Committee. They made this assertion both in their oral presentation to the trustees and in the words used in the heading appended to the Order<sup>iv</sup>.

The Commission is rightly jealous of its reputation for independence and fairness. This apparently partisan Order questions that reputation.

- The fact that the Commission has consulted neither the users of the park nor FoRP, the voice of the users, adds to the concern that the Commission is not acting fairly. It might have been expected that consulting the beneficiaries would be mandatory.
- Increasing public trust and confidence in charity is a statutory objective of the Commission, yet the Order and the decision-making process which preceded it run the risk of damaging both the Commission and the Roberts' Park charity. The process feeds the argument that there has been a conspiracy of silence.
- At this stage, the Commission and the trustees appear positioned as supporters of a "proposed development [which] may have an adverse impact on the park..."! This cannot be right. If it is not corrected, confidence in the Commission and the trustees will be impacted adversely.
- Notwithstanding some of what we say above, it could be that the relevant Council officers and FoRP have misunderstood the Order. It is sufficiently ambiguous to allow a different interpretation. The Order makes no explicit reference to the hydro scheme and does not include an endorsement of the view that the scheme is compatible with the Governing document. It could be interpreted as meaning that the trustees have not had general powers of disposal but these powers have now been authorised.

This lack of clarity is unhelpful and is another argument for review.

## **WHAT IS FoRP ASKING FOR?**

FoRP requests that the Order be reviewed.

FoRP also requests

- that the Order be temporarily suspended to allow for clarification of the Order's meaning, and thereafter to allow for consultation by the Commission with the trustees themselves and with the beneficiaries of the charity and specifically with park users;
- that the Commission requires that the trustees be supplied with copies of the Governing document;
- that the Commission requires that the trustees are supplied with independent advice on whether the proposed development is compatible with the terms of the Governing document, and that they consider and determine this question.

### **Les Brook on behalf of the Friends of Roberts Park**

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**12 March 2015**

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<sup>i</sup> FoRP acknowledges that there has been extensive consultation by Bradford Council and specifically by its Environment and Climate Change Unit which is developing and promoting the hydro scheme.

<sup>ii</sup> Bradford Council Planning Statement, one of the paper submitted to the Planning Department as part of the planning application for the hydropower project.

<sup>iii</sup> FoRP will be happy to supply the Commission with evidence of this and other assertions if and when requested.

Proposed Hydro Power Plant in Roberts Park Saltaire.  
**Appendix D: Charity Commission Authorisation for the disposal of land  
for a Hydro electric power plant at Roberts Park, Saltaire.**

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