

IN THE MATTER OF

A LEASE DATED 1961 IN RESPECT OF

“SPORTGROUND AT BARFORD, NORFOLK”

ADVICE ON TERMS AND LEGAL EFFECT OF LEASE

1. I make this advice¹ with respect to the terms and legal effect of the Lease in respect of the Sportsground at Barford, Norfolk for the benefit of the Barford and Wramplingham Parish Council. A copy of the Lease is attached to this advice. There is no plan attached to the lease – that plan appears to be lost.
2. The lease is between the [REDACTED] and the Trustees and their successors in title. It is a 99-year lease from 1st January 1961, determinable in the terms set out in the lease. It is signed and witnessed as a deed. The Trustees are required to hold the demised premises on Trust subject to the powers and provisions in the Second Schedule.
3. By clause 3 of the Lease there are some standard covenants between the Trustees and the Landlord (e.g. payment of rent etc) and at 3(d) a covenant to erect and thereafter maintain stockproof fences on the west and northern boundaries “*to the reasonable*

¹ The advice has been provided on *a pro bono* basis. The author declares that as a person living in the area of benefit he has a relevant interest which it is appropriate to declare. That interest has not to his knowledge, affected the terms of the analysis below of the lease in legal terms.

satisfaction of the landlord". To my knowledge there is no suggestion that the Landlord has suggested there has been any breach of this or any of the other standard covenants.

4. With particular relevance to the present issue (the proposed VBAR2 allocation), the following clauses/covenants made by the Trustees are of particular relevance:
 - clause 3(f) to whereby the Trustees covenant to "*manage and manure the said premises in a good and husbandlike manner so as to keep the same constantly in good heart and condition.*"
 - clause 3(g) whereby the Trustees covenant to "*use the said premises for the purpose of a playing field and Village Hall for use for Meetings, Lectures, and Classes and for other forms of recreation and leisure time occupation but for no other purposes whatsoever*"
 - clause "3(j)" whereby the Trustees covenant "*Not to assign, underlet or part with the possession of the said premises or any part thereof save that the Trustees may underlet for fetes exhibitions competitions sports and other special occasions.*"
5. By clause 4, the Landlord covenants that the Trustees, observing the covenants on their part, "*shall peacefully hold and enjoy the said premises during the said term without any interruption by the Landlord or any person rightfully claiming under or in trust for him.*"
6. By way of proviso, Clause 5 confers upon the Landlord a right of re-entry for non-payment of rent or other breach of covenant by the Trustees. Any such right of re-entry if sought to be enforced by the Landlord would have to be preceded by formal notice (e.g. a s.146 Notice under the Law of Property Act 1925) and an ability of the Lessee to comply with any alleged breach prior to facing forfeiture. So far as I am aware there has been no suggestion that the Landlord considers that the Trustees have been in material breach of any condition or covenant under the Lease in the past 64 years.
7. Under clause 4 (d) (i) and (ii) the lease may be determined by the Landlord if it is no longer used on a reasonable number of occasions recreational purposes for a continuous period of 3 years, or 4(d)(ii) if three quarters of the area of the premises is

not properly maintained for a continuous period of three years. These clauses are not applicable, there has been no such disuse or failure to maintain.

8. By clause 4(d)(iii) the Landlord may also serve a notice to terminate the lease if a decision of the Committee made *under clause 15 of the Second Schedule* is confirmed. or if a decision of the Committee. Clause 15 of the Second Schedule is particularly relevant and provides as follows (emphasis emboldened):-

"If the Committee by a majority decision decides at any time that on the ground of expense or otherwise it is necessary or advisable to discontinue the use of the Trust Property in whole or in part for the purposes hereinbefore indicated it shall call a Meeting of the inhabitants of the age of Eighteen years or upwards of the area of benefit of which Meeting not less than fourteen days' notice (stating the terms of the resolution that will be proposed thereat) shall be posted in a conspicuous place or places on the Trust property and advertised in a newspaper circulating in the area of benefit and if such decision shall be confirmed by a majority of the such inhabitants present at the meeting and voting the Committee may, with the consent of the Minister of Education², let or sell the Trust Property or any part thereof...."

9. By the Contracts (Rights of Third Parties) Act 1999 ss. 1(1)to (3) it is provided that a person not a party to a contract ('the third party') may enforce a term in the contract if the contract expressly so provides, "*or the term purports to confer a benefit on him*". The benefit of the term may be conferred upon the third party expressly or by the third *"party being referred to as a member of a class or as answering a particular description"*.
10. In the present case the clause in the lease relating to a "*majority vote*" by inhabitants in the area of benefit, is a term which confers a benefit on a specific class of third parties, (viz. those persons living in the area of benefit) and this clause could be enforced by a

² Consent would now be required from the Charity Commission as it would be a charitable disposal of land.

member of the community in the area of benefit by way of injunctive relief or other proceeding.

Construction of Lease

11. I set out below the general principles for construction of a lease such as the present as summarised in the current version of the looseleaf encyclopaedia, *Hill and Redman on Landlord and Tenant* at [647]:

"The principles which govern the construction of covenants and conditions in a lease are those which govern the construction of deeds and contracts generally. As with the construction of any contractual document the court is seeking to ascertain what the mutual intentions of the parties were as to the legal obligations which each assumed by the contractual words in which they sought to express them. The intention of the parties is ascertained objectively with reference to its object and the whole of its terms. What must be ascertained is the meaning which the document would convey to a reasonable person having all the background knowledge which could reasonably have been available to the parties in the situation in which they were at the time of the lease. Where the language used by the parties has more than one potential meaning, the court is entitled to prefer the construction which accords with business commonsense. The working assumption will be that a fair construction best matches the reasonable expectations of the parties. If the interpretation of a word or phrase is in dispute, the resolution of that dispute will normally involve something of an iterative process, namely checking each of the rival meanings against the other provisions of the document and investigating its commercial consequences."

12. Applying those principles it is clear that:-

- (i) The Trustees hold the land on Trust **subject to** the powers and provisions set out in the Second Schedule to the Lease.
- (ii) The Second Schedule of the Lease provides that the Trust Property shall be held on Trust for the purposes of a Playing Field and Village Hall for the use of the inhabitants of the Parishes of Barford and Wramplingham

(the area of benefit) and in particular for use for meetings lectures and classes and for other forms of recreation and leisure-time occupation with the object of improving the conditions of life for the said inhabitants.

- (iii) The Landlord's right of termination and re-entry is limited to breach of the covenants under Clause 3 of which there is and has been no evidence in the past 66 years.
- (iv) By clause 3(j) of the lease the Trustees jointly and severally covenant **not to assign, underlet or part with the possession of the premises or any part thereof**, save that the Trustees may underlet for fetes exhibitions competitions sports and other occasions.
- (v) By 3(d)(iii) and Clause 15 of the Second Schedule, the right of the Trustees to determine the tenancy or to dispose of **any part of the land**³ subject to the lease is subject to a majority vote by the inhabitants in the area of benefit

13. In other words, a community vote suitably notified and advertised which must result in more than 51% of the inhabitants in the area of benefit being in favour of the said disposal before the Trustees could lawfully dispose of any part of the land.

Conclusion

14. My conclusions are as follows:

- (i) The Trustees may not dispose of the whole or any part of the land which is held for charitable purposes without a majority community vote.
- (ii) The Landlord has no right of re-entry save for breach of the covenants under the lease. There is no evidence of any such breach or any complaint by the Landlord of such breach in the past 64 years.

³ n.b the words in *whole or in part* in clause 15.

- (iii) A member of the community living in the area of benefit is entitled to seek to enforce the terms of the covenant in the Lease which prohibits disposal of any part of the land without a majority community vote under the Contracts (Rights Against Third Parties) Act 1990.

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