



Coddendam Community and Sports Hall

A report by Robert Horn of Groundwork Suffolk, for Coddendam Parish Council

1. Introduction

The parish of Coddendam is situated approximately 8 miles to the north of Ipswich. The village is small with an estimated population of 620 (2011). The roads through the village have restricted access, but the village is just 2 miles away from the two of the county's biggest roads the A14 and the A140.

The Community and Sports Hall was built in 2003/2004 to replace a previous village hall on a different site in the village. It is a large hall designed for badminton with two sets of changing rooms, a commercial standard kitchen and a foyer area. Outside is a large car park, an all-weather bowling green and two tennis courts. The build was funded from the sale of the old property, various grants and a substantial loan from the Public Works Loan Board which is being repaid at £13,152 pa. At present the repayment is being met by a donation from the Day Foundation a registered charity which serves older people and occupies the adjoining property. Across the road is a football field and playground. The football field is linked to the centre because the players use the changing facilities in the centre.

The land was originally leasehold at the time of the build, but the freehold was acquired by the council in 2011 and is held in trust for Coddendam Community Sports Centre charity. At present this charity does not exist but the point of this report is to give guidance on the setting up of such a charity which is required by the Charity Commission.

The report will examine the various charitable options, make recommendations and give guidance on strategies to increase the sustainability of the centre so that it is less dependent on grants and public funding.

2. Charity options

In English law there are four main types of charity:

- Charitable Company (Company Limited by Guarantee with charitable status)
- Charitable Incorporated Organisation
- Unincorporated Association
- Trust

In choosing the model of charity it is also necessary to consider:

- Will it have substantial assets (including property) or significant income?
- Will the charity have employees or enter in to contract with other organisations?
- Whether the trustees are happy to be personally liable for the actions of the charity?
- Will the charity have a structured membership (i.e. a maintained list of members)?

3. Does the Charity need to be incorporated?

The first issue is to determine the size and scope of the charity and whether it should have a corporate status. An unincorporated charity cannot enter into contracts in its own name or hold property in its own name. Trustees of an unincorporated charity have full personal liability for the actions of the charity.

- Most community buildings such as village halls are run by registered charities which are unincorporated. This is not because it is the best model for their purpose now but because it was the best or only model available to them at the time. A corporate status would suit them better and many are making the change for a variety of reasons, but primarily those listed above. In the past because these charities could not hold title to land, the solution was to appoint another trustee or group of trustees known as the Custodian Trustee (or Holding Trustee). The role of the Custodian is to lend their corporate status to the charity by holding title to the land on behalf of the charity. The custodian does only this and must act on the instructions of the charity trustees (i.e. the managing trustees). The custodian does not take any part in the management or day to day running of the charity. If the custodian is a person or group of persons, the whole governing document (conveyance, constitution or similar) will need to be changed when they wish to step down and this would involve solicitor's fees. A more practical solution is to appoint a permanent custodian such as a Parish Council or The Official Custodian at the Charity Commission.
- Being unincorporated means that any contract (e.g. with a contractor or employee) is not between the organisation and that person, but between each of the trustees personally and that person. This means that any dispute that ends up in court could be very complicated and more expensive.
- Perhaps the most important issue for an unincorporated charity is the liability. Trustees have an unlimited personal liability and many are unaware of this. There is a certain amount of

protection afforded in the Charities Acts of 2006 and 2011 which gives the Commission the power to absolve trustees from breach of trust and to allow them to use the charity's assets to defend themselves **IF** and only if they can prove that they have been sensible, prudent and taken proper advice in their actions. The reality of bailiffs coming to take away someone's house for being a trustee has never happened to best of knowledge, but there have been cases where trustees have dug into their own finances to get the charity out of a problem. Unincorporated charities can take out trustee indemnity insurance unless their governing document specifically prohibits it. Insurance doesn't necessarily offer a great deal more protection than the Charities Act, but many groups have reported that they cannot attract Trustees without the insurance or the protection of being incorporated.

There are many small charities which are unincorporated because they have no significant assets, very few liabilities, no employees and a low turnover. An example would be a trust set up to remember someone by raising funds to be donated to a particular cause. However in the situation that we have here, given that the charity will be owning and managing significant assets (the building, sports facilities and the land around), is likely to employ people and will need to attract new trustees, incorporation would seem to be a vital part of the selection process.

4. Options for Corporate Charity models

Until 2013 the only option for an organisation which wanted to be a charity and incorporated was to become a Charitable Company. This is a standard company, normally a company which is limited by guarantee which then applies to the Charity Commission to become a registered charity. The company is formed first and then seeks charitable status. The Charity Commission may insist on changes to the company's governing document (Memorandum and Articles of Association) before charitable status is granted. The major charities that have high street shops are all Charitable Companies. Being both a company and a charity means that an organisation must comply with both company law and charity law. It must also make returns to Companies House and to the Charity Commission. For a smaller charity, such as community building this is perhaps more complex and certainly more time consuming than is needed.

Following many years of planning a new model of organisation, the Charitable Incorporated Organisation was launched in 2013. The idea was to offer the benefits of incorporation to charities in a simpler form that would have a legal entity, be able to conduct business in its own name and offer limited liability so that members and trustees would not have to contribute in the event of financial loss.

- The trustees still have liability for their actions but the financial side is limited either to nothing or sometimes a nominal value of one pound.
- Another of the benefits is that being a corporate body means that the organisation can enter in to contract in its own name rather than the combined names of the trustees. This is a far better system for the charity, its employees and any contractors and the simplification helps to reduce any legal costs that may be incurred.

- The third major benefit to using this model is that the CIO can hold title to land and therefore does not need to go through the process of using a Custodian.

Many existing charities which run Community Buildings have already changed to a CIO, are in the process of changing or are planning to because of the above reasons. It is not a simple process because it involves setting up a brand new organisation with new bank accounts etc. and then undergoing a series of due diligence exercises to check that all assets, contracts, agreements, grants are transferred and seeking permissions where needed. Once the transfer has taken place the original charity is normally closed after a nominal period to allow for any missed items. The process represents a fundamental change to these organisations but one that should see them as fit for purpose for many years to come. It is complicated and will require some legal costs, although a large part of it can be accomplished by a couple of sensible trustees with guidance.

There are several versions of the CIO model which depend on whether the charity is to be one with membership (Association model) or one without (Foundation model).

- Association model: Running a charity with a membership means keeping an up to date list of members and having a process to apply for or rescind membership. Only members are allowed to vote at an AGM. This is rarely used for community buildings because of the additional secretarial work.
- Foundation model: The only members of this charity are the trustees and they are the only ones who can vote. Simpler to administer than the foundation model, this can be viewed by an outsider as something of a “closed shop” because an outsider may not be able to get involved if they cannot get an invitation from the trustees. This can become a problem when the same group of trustees have been running the charity for a long time and have lost sight of the local needs and wishes.
- ACRE model: This is a hybrid model which follows the traditional set up by which most village halls have been run in the past. It is based on the Foundation model, but allows all residents of the area of benefit to attend the AGM and vote to select the trustees for the forthcoming year. It may seem a small detail but it is a fundamental part of governance for most community buildings. This variation was created by ACRE’s legal advisor and has been approved by the Charity Commission and all other appropriate bodies. This is the model document which is attached.

Coddenham is in the unusual position of being able to select a type of charity and set it up without the need to go through all of the due diligence and transfer processes. While there will undoubtedly be work in setting up a charity to take over the management of the building it will be considerably easier than it is for an existing charity to become a CIO.

5. Summary of choice of status

The criteria of the situation at Coddensham include:

- New organisation to be a charity
- Will manage a substantial community building
- Will also manage outdoor sports facilities including tennis court, bowling green and football field
- Will remove some or all of the Parish Council's responsibilities and costs
- Will be run by the community and be accountable to it
- Will aim to become more sustainable and less reliant on Council funding

Based on these key criteria and many other factors, it is recommended that the council considers setting up a Charitable Incorporated Organisation using the ACRE model document (supplied). This should be done at the earliest possible opportunity as it is overdue.

6. Next Steps

Should the Council wish to pursue the above course it should consider the method of how the new organisation will take over the management of the buildings and land:

- This could be on a Freehold basis where the council gives full control over to the charity, bearing in mind that the land is designated for the purposes of a community hall (Land Registry TP1 12.9.3 "The property will be held by Coddensham Parish Council in trust for Coddensham Community Sports Centre Charity..."). A freehold transfer would remove the council's obligations and allow the new charity to take full control of the site and manage it according to the new constitution. The council could still have an input through being an appointing body which would allow it to supply a trustee to the charity.
- The alternative would be for the council to grant a Lease to the charity to manage the building and site. This would be more costly in the longer term because it would need to be renewed at the end of the term and would involve greater time involvement should the charity wish to extend or change the building. If the charity were to apply for external grants with a Leasehold tenure, it makes the application process more complicated. It is not crucial for the council to decide on Leasehold or Freehold at this point as this is something that would be best discussed between the council and the new organisation when it is set up.

The application to set up a CIO is fairly straightforward – it is an online application using one of the templates. It is strongly recommended that whichever template is used that there are no or minimal alterations as they will lead to delays in registration or possible refusal by the commission. The application will need to know the names and details of the first set of trustees, who will be replaced at the first AGM. Ideally the trustees should include people who are not part of the council as it is important to send a message to the community that the new charity is not controlled by the council but is independent. The fact that it will be a new body may help to encourage people to step forward to play a part in the setting up of the charity, the transfer and ultimately the running of the

centre. Trustees are normally expected to serve for one year and can step down earlier if they need to so there is no long term obligation attached.

The immediate process would be for councillors to consider the attached template constitution and advertise by magazine for trustees. However the most effective way of getting trustees is usually word of mouth to find the right people to help set up the charity and get it running. Anyone who is interested should be given a copy of the template constitution and a copy of the charity commission's guide "The Essential Trustee" which is also attached. Another source of trustees is any of the regular user groups who could also be asked to become an appointing organisation. There are external general training courses for new trustees or potential trustees to explain the responsibilities and what it means to be a trustee and these can also be arranged on an organisation tailored basis.

The time frame for registering a CIO and effecting a transfer of management depends on the individuals concerned. Some village hall charities have converted to a CIO in less than three months where others have taken several years. The registration process, once trustees have been identified can be completed in a couple of weeks, but the transfer of management is likely to take a little longer as it should come from a dialogue between both organisations and will also involve legal professionals for the transfer whether freehold or leasehold.

7. Looking Ahead

Some of the key aims of the transformation process are to consider the usage of the facilities and make the centre more sustainable by reducing costs where possible and/or maximising income.

- As a charity the centre would not need to be VAT registered and so there are immediate benefits, i.e. the VAT could be incorporated to the charges which make an immediate gain of 20% in income without impacting most of the existing users.
- Most community buildings are run and staffed by volunteers as so apart from cleaning everything else is done for free. It may take a while to find someone to take on the role of booking secretary as a voluntary post but that should be an aim. Another option would be to consider the use of an online booking system which would reduce the time needed for the task. There are some like Hallmaster (www.hallmaster.co.uk) which for an annual fee will include automatic invoicing.
- Coddtenham is well positioned to be able to offer space for business meetings, training sessions and conferences. There are plenty of gaps in the regular bookings which could be used during the daytime (Mondays, Tuesdays and afternoons on Thursdays and Fridays). The new charity should consider how to market the hall, capitalising on the generous free parking, broadband, tranquil location, outdoor space, multiple rooms etc. It is an ideal central location between Ipswich and Bury St Edmunds. Finding a local source of lunches, or volunteers to do this in the building's kitchen would be an added bonus.
- Although the hall is used regularly, there may be scope to encourage more local interest groups to set up. Most villages in Suffolk have an aging population and there is an increase of groups like lunch clubs, art groups, bridge classes, gardening clubs and indoor bowls / curling. If a few individuals are interested in setting up such a group they could be offered

free or reduced price sessions as a start-up deal. Funding for this type of project can often be obtained from your district councillor's locality budget.

- There are relatively few weekend bookings and the hall could be used as a church or for antique fairs or other indoor exhibitions as well as more weddings and parties.
- The commercial standard kitchen is another benefit and with volunteers could be used to run an occasional café. This could be a stand alone event or could be tied in with walkers groups using the car park, or sports fixtures.
- The website would benefit from updating, particularly for business use.
- The council and charity should consider the whole usage of the site. It is understood that at present the bowling green is failing to attract any outside interest which means it is underused given the running costs and space occupied. The charity could consider replacing it with indoor bowls which could be run all year round. The site has potential for development. For example the tennis courts could be relocated to the bowling green area which would leave the courts area and land behind for potential development. There are many possibilities in terms of the land usage as the current site is large and must incur considerable maintenance costs.
- The smaller set of changing rooms could be converted to form a separate meeting room which would be more attractive to hirers than using the main foyer. This could double as an area for serving buffets with access to both the corridor and foyer. These and other improvements could be funded either by grant to the new charity or by developments suggested above.
- The council should make enquiries from the Land Registry about the Playing Field. If it is remains unregistered, the council should apply for possession with the land to be held in trust for the purposes of a sports field and recreation area for the benefit of the community. This would safeguard the asset for future generations.
- While it is hoped that the new charity will in time approach greater financial sustainability, if it is to manage some of the external assets which generate limited or no income, it would be expected for the council to continue to provide the funding for these assets. The playground equipment, football field, tennis courts and car park would all fall in to this category. The charity should aim to set aside funding every year towards the resurfacing of the car park as external funding for this type of asset is hard to find. The council should consider that it may need to continue to support the hall financially with running costs in the short term as the new charity finds its feet and takes steps towards sustainability.
- In divesting the management of the hall to the charity, the council should be able to make significant savings as the time spent by its employees, particularly the Clerk and RFO duties is reduced.

Sources of information used in this report:

Charity Commission: www.gov.uk/government/organisations/charity-commission

National Association of Local Councils: www.nalc.gov.uk

Action for Communities across Rural England (ACRE): www.acre.org.uk

Mid Suffolk District Council: www.midsuffolk.gov.uk

Land Registry Documents including TP1 and Copy of title relating to SK189041, SK331732, SK249650, SK191662 as supplied by CPC

Notes from the Working Group, supplied by CPC

Attachments

ACRE CIO Model constitution with notes (pdf)

ACRE CIO Model constitution can be edited (word)

Charity Commission document CC3: The Essential Trustee – What you need to know

8. Disclaimer

Any advice given in relation to legislation is based on the information currently available to Groundwork advisors. It cannot be regarded as legally binding and should only be seen as advisory. The legislation itself should always be read and understood, as that constitutes the law. As more information surrounding the legislation becomes available, advisors will be able to provide information on the latest developments. Whilst reasonable steps have been taken to ensure that the information contained within this report is correct, the organisation for whom this report has been prepared should be aware that the information contained within it may be incomplete, inaccurate or may have become out of date. Accordingly the author can make no warranties or representations of any kind as the content of this report or its accuracy and, to the maximum extent permitted by law, accept no liability whatsoever for the same including, without limit, for direct, indirect or consequential loss, business interruption, loss of profits, production, contracts, goodwill or anticipated savings. Any person making use of this report does so at their own risk and it is recommended that they seek professional advice from their own advisor whenever appropriate. Nothing in this report is intended to be or should be interpreted as an endorsement of, or recommendation for, any supplier, service or product.