

LBMW Master Class

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How to be an Effective Trustee

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Key areas

- Skills and knowledge
- Know your Governing document
- Its all about the money
- High impact: low risk

Where are you now?

When you came in you were given
a questionnaire



Skills and knowledge - you

- Don't hide your light under a bushel
- Share the load – don't volunteer for everything!
- Everyone is skilled at something – people; fundraising; communication; organisation.

Skills and knowledge – people skills

- Effective trustees recognise that dealing with people is a skill. Especially when it comes to people passionate about a charity, a project or a particular outcome.
- Managing difficult meetings – first have a policy on trustee conduct and rights and responsibilities

Skills and knowledge - decisions

- Should be taken at quorate trustee meetings after a discussion of the issue and after having taken any necessary advice.
- Decisions are judged by not how "right" they were, but how well-informed they were.

Know your governing document

- Where is it?
- What are the objects/purposes
- What are the powers
- How can it be amended or updated

It's all about the money

- Do you know what you expected income is for the next 3 years?
- Do you rely on a single main source of funds?
- When was the last time you saw bank statements or investment portfolio returns?
- Do you read your own charity accounts?
- How do you measure impact?

Saying no

- Reach your own decision
- Be prepared to say “no” if
 - you don't feel you understand a proposal; or
 - you haven't seen any evidence; or
 - you don't think it complies with the governing document

Saying yes

- Reach your own decision
- When offered training
- If you get the chance to shadow employees or volunteers
- If you get the chance to meet beneficiaries

High impact: low risk

Beware of
soft risk:hard consequences



Risk Policy

- Agreed by trustees
- Cover the identified areas of risk
- Risk register showing likelihood and impact
- Mitigating factors or management tools
- Frequency of review and reporting to trustees
- Shared with auditors

Other policies

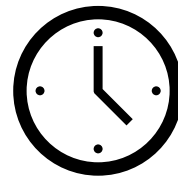
In support of the Risk Policy you might need or want policies on:

- Internal financial controls
- Grant making/application consideration
- Remuneration/benefits
- Volunteering
- Discipline
- Safeguarding (including harassment)
- Whistleblowing

Reputation

- The Charity and Company Register - Keep it accurate
- Website – keep it up to date
- Social media – keep an eye on it

Discussion time



Property Matters

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The Basics

- For most charities land/property is most valuable asset
- Most long established charities will hold land investments or **endowments**
- Charities Act 2011 contains the statutory framework that must be complied with when dealing with land
- Trusts/Schemes/Orders/Governing Documents must also be consider

What land?

For the purposes of charity land this includes open space, buildings, shops, offices, schools and places of worship which are:-

- Occupied by a charity in order for it to **function**; or
- Owned by a charity as an **investment** to generate funds for the charity to function (income or capital)

Charities Act 2011

- s117-s123 of the Charities Act 2011
- Non-exempt charities cannot generally dispose of land without
 - first taking advice from a qualified surveyor;
 - an order of the Court or the Charity Commission
- Disposal includes the sale, lease, surrender or grant of an easement or right in respect of land held by a charity.
- Similar rules apply to mortgages.
- Curiously, the Act does not require surveyors advice when acquiring land, but you should still get advice.

Exempt or Non-Exempt?

- Most charities will be non-exempt charities i.e they are not exempt from complying with the provisions of the Charities Act.
- Exempt Charities are exempt from complying with the provisions of the Charities Act.
- Examples of exempt charities include some (but not all) universities, museums and academy trust providers.
- However, it would be sensible for trustees of an exempt charity to follow the regulatory requirements as laid out for non-exempt charities as trustees still have a fiduciary duty to act in the best interest of the charity.

Qualified Surveyor' Report

- s119 of the Charities Act
- See also The Charities (Qualified Surveyors' Reports) Regulations 1992
- The Surveyor will advise on
 - Value of the land to be disposed
 - Any work that could be undertaken to maximise the value
 - How the land should be marketed

A good surveyor will also advise on mid to long term strategies.

Governing Documents

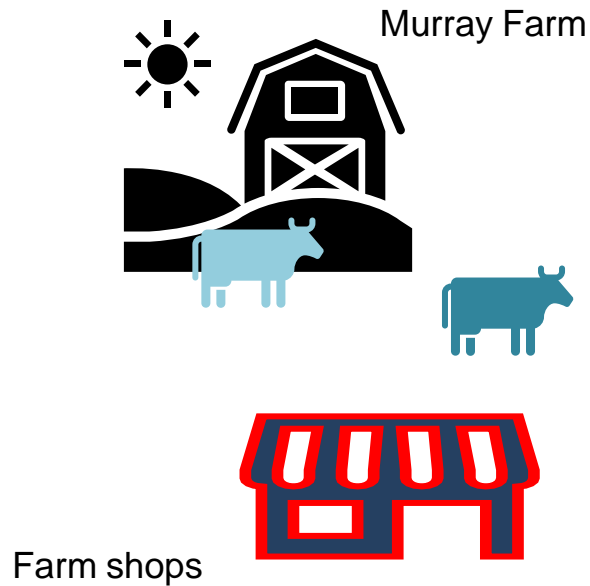
- Set out how the land is held i.e permanent endowment, functional or investment property.
- Give powers to the Trustees to deal with land i.e can they sell, lease or own land?
- Set out how any income or capital must or should be used.

The Dairy Queen Charity

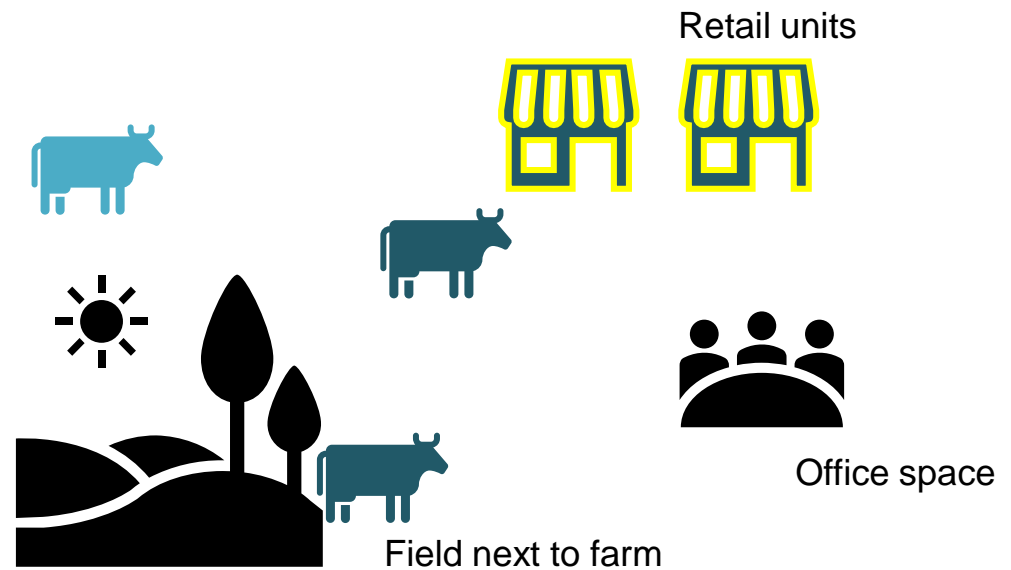
- Daisy Murray set up The Dairy Queen Charity.
- She donated substantial land assets to the Charity on specific trusts.
- Part of the property is functional property.
- Part of the property is investment property.

The Dairy Queen's assets.....

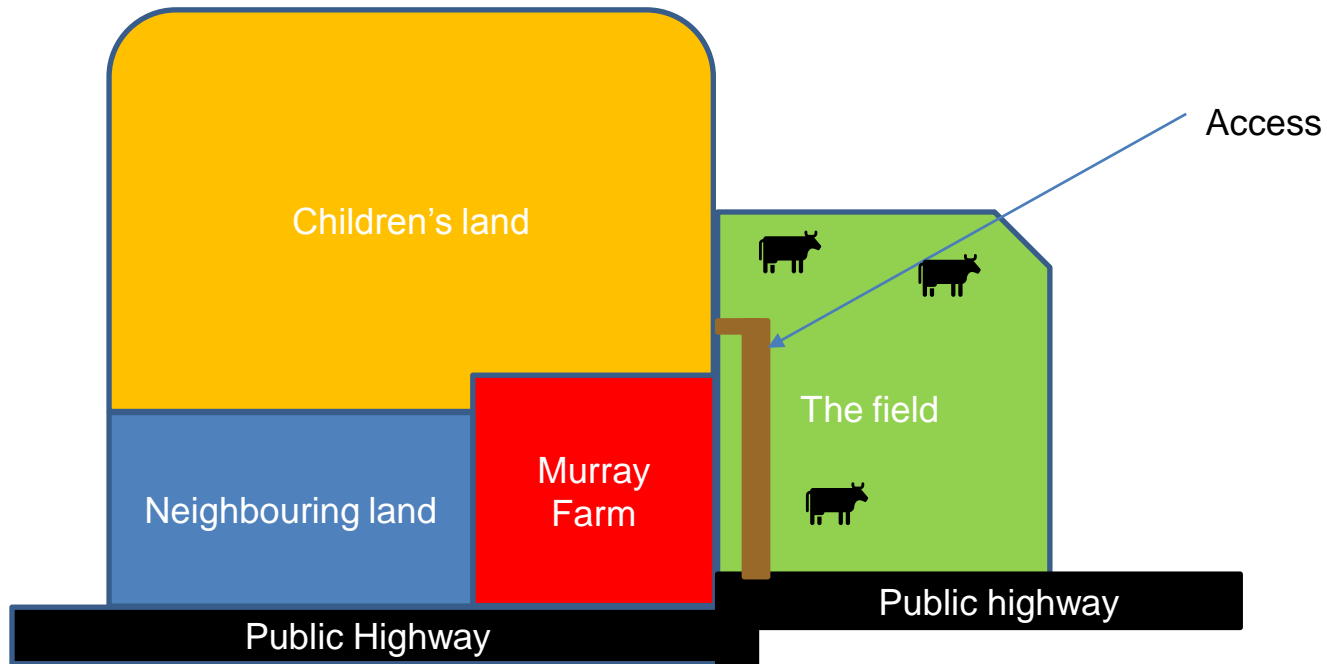
Functional



Investment



The Farm and surrounding land

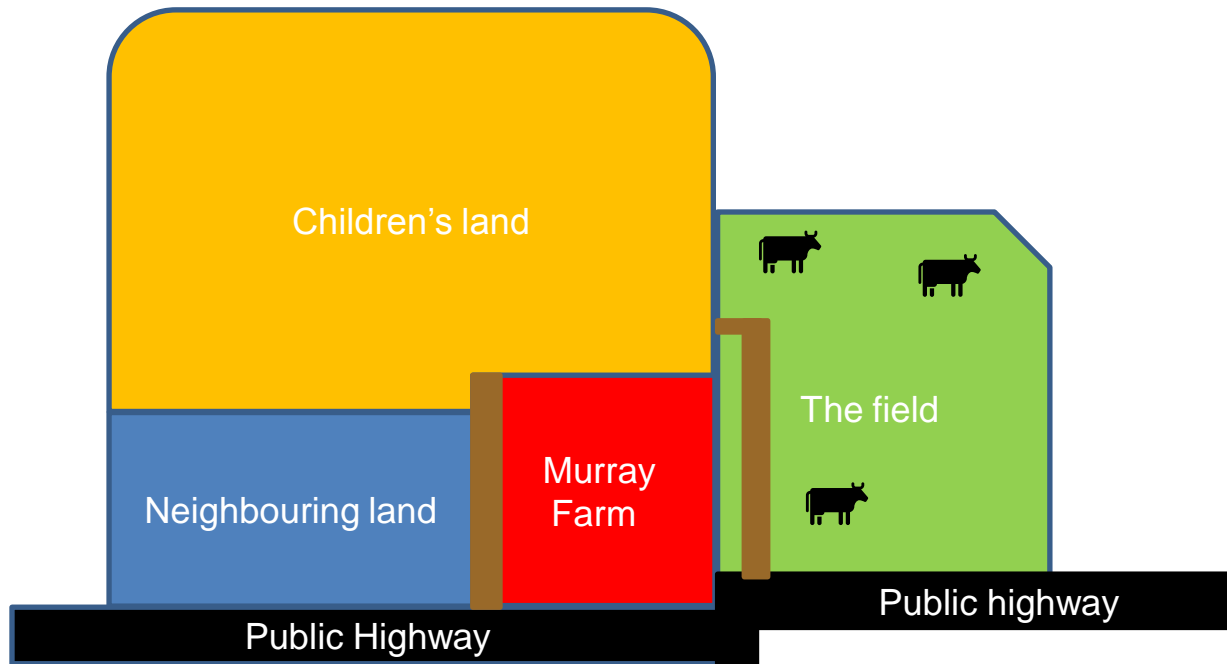


The Trustees have some
decisions to make.....

The Children make an offer.....

- Daisy's children, who are also trustees, have decided to develop the field next to Murray Farm.
- But they need better access from the highway.
- They approach the other trustees with the following proposals:
 - The Charity agrees to widen the existing road and allow for a better road and access for all purposes
 - The Charity sells part of the field for £15,000

The Farm and surrounding land



Solicitor says...

- The Field is restricted property with the specific purpose of providing a field for the farm, but there is a power of sale.
- Murray Farm is *specie property* and can only be sold if the proceeds are used to replace the land.
- A right of way is a disposal for the purposes of the Charities Act 2011, so you will need to comply with those requirements.
- The children are 'connected persons' for the purposes of the Charities Act and the Companies Act, so they should declare their interest and not be part of any decision making for the Charity in relation to this transaction. You will need an order from the Charity Commission.

Solicitor and Surveyors say...

- If you don't agree, could they get access through the neighbouring land?
- What sort of development is proposed?
- What about rights of light?
- Will this effect how the farm functions?
- Will granting the right of way through Murray Farm be better?
- What about any uplift in value following development?
- Would you be better off selling the farm and the field and buying a new more modern facility elsewhere?

Considerations for the Trustees

Can They

Charities Act

Right of Way = Disposal

Children = trustees = connected persons

Order from the commission

Surveyor's report

Best value

Governance

The field = Expendable property

Murray Farm = Permanent Endowment

Power to sell?

Conflict with the children?

Should They

Money

Do they need additional funds?

Is this the best offer?

Overage?

Bigger Picture

What will the effect of a large estate road have on the working of the farm?

Would access through Murray Farm be any better?

Is Murray Farm still fit for purpose – is this an opportunity for a joint venture with the children and a chance to purchase more suitable facilities?

One of the farm shops is empty

The Trustees options

- Subsidise the running
- Close it and leave vacant
- Sell it
- Lease to another business

Not sure what to do, they ask their solicitor for advice.....




Solicitor says...

- The shop is functional property and the specific purpose is to run a farm shop.
- In order to do anything else with this unit you'll need to be able to justify why it is no longer needed as a farm shop.
- Have you spoken with your surveyor?

Surveyor says....

- The business rates alone for the vacant unit will be £15,000 a year.
- Two well known supermarkets are looking to open 'express stores' in the area so the market for a more expensive farm shop may be limited.
- The market to sell is poor, though it may pick up in 5 years.
- The rental market however is not bad and you could get a rent of £25,000 a year with a review after 5 years with a 5 year break so you can reassess.
- I will prepare a report, but in the meantime let me find you some potential tenants.....

The possible tenants....

- A vegan restaurant who will pay 10% above market rent; 
- A low cost supermarket chain who sell mainly imported produce who will pay market rent; or 
- A local farmer who wants to set up a milkshake and ice cream bar to subsidise her income and promises to use only local organic milk, but will need a year's rent free. 

Considerations for the Trustees

Can They

Charities Act

Disposal

Best value

Surveyor's report

Is the farmer a beneficiary?

Governance

Functional property, generally cannot use it for other purposes

Power to lease

Should They

Money

Can the trustees justify the cost of subsidising the shop?

What about the rent free? Is this giving financial assistance to a dairy farmer?

Duty to obtain best value and maximise income for the Charity

Bigger Picture....the Charity's reputation

Is vegan restaurant use compatible with the objects of the Charity?

Will the supermarket be in direct competition with the farm shops

Will helping a female dairy farmer be seen as a positive thing for the Charity to do?

What about the office space?

- One of the trustee's friends wants to rent all of the office space from the Charity
- She has proposed a rent of £9,000 a year, inclusive of bills, which is significantly lower than the rent for newly refurbished offices
- The Charity will need to vacate and find alternative premises

Professional advice

- Solicitor confirms - the land is investment property and can be leased, but we can't give any advice as to the terms of the letting.
- Surveyor confirms that the £9,000, inclusive of services a year is on the low side for the area, but in the unmodernised state is not unreasonable.
- Spending £5,000 to refurbish and installing broadband could result in a rent of approximately £12,000. The surveyor suggests that this money should be spent as part of the rolling maintenance in any event.
- However, looking for alternative space locally will be difficult as there is a shortage of affordable co-working/shared space. There are some shared office spaces available for the short term at £5,000 a year, but will only be available for the next three years.

Considerations for the Trustees

Can They

Charities Act

Disposal

Best value

Governance

Investment Property

Power to grant a lease

Power to take a lease

Should They

Money

Is this the best rent that can be obtained?

Would a small investment to upgrade the office result in a better return? Does the Charity have the funds or expertise to do this project?

Will the rent be sufficient to find cover the cost of alternative accommodation?

Bigger Picture

Given the shortage of space is anyone else interested in the space and is willing to share it?

If the Charity vacates, where will it go?

Is the Charity expanding and will they need the additional space in the future?

Land Conclusions

- What do you have and where is it?
- What is it worth?
- How is it held and what can you do with it?
- Keep a clear and detailed record of your decision making.
- Get appropriate advice.

Final Thought on Land

Just because you can doesn't mean
you should.

Trustee Satisfaction Index

Jane Grenfell
Charities Manager

The ball is in your court

Only the trustees can really make a change to your charity's way of working



It's a team game

One trustee can raise an issue, but collective agreement is needed to implement changes



How satisfied are you?

10%

?

40%

70%

100%

50%

?