

Broadhembury Parish Council

AGENDA

NOTICE of EXTRAORDINARY
PARISH COUNCIL meeting via ZOOM
13th April 2021 - 7.30pm

To join: clerk@broadhembury-pc.gov.uk

1. Apologies
2. Approval of Minutes:
BPC Meeting on 16.03.2021
3. Declarations of Interest
4. Appointment of Auditor
5. Approval of expenditure to resolve HMRC rejection of
BNCLT Rule
Letter from HMRC and related emails, set out detail.
(See attached.)

FROM: SARA CLARKE - RE: BNCLT CHARITABLE STATUS CC: STEVE HEMBERCOMBE

TO: CLERK

SENT: 25 MAR 2021, 12:02 + ATTACHMENTS

Attached is a letter from HMRC re BNCLT's application to register as a charity for tax purposes. HMRC have refused our request because they do not believe clause 33 of our rules has been framed in an acceptable form and have requested an amendment to our rules. As the rules were drafted by Wrigleys for the PC can you please refer the letter to them – it may be something that Wrigleys can sort easily.

Many thanks

Sara



HM Revenue
& Customs

Charities, Savings & International 2
HM Revenue and Customs
BX9 1BU

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Date 22 March 2021
Our Ref ENVA51682041
Bundle ref 061000071834

Dear Mrs Clarke

Re: Broadhembury Neighbourhood Community Land Trust

I am sorry for the late reply. Thank you for your HMRC application recognition as a charity for tax purposes

The Dissolution Clause in section 33 of your governing document makes mention of passing assets to a charitable institution or institutions with objects similar to the Association. HMRC would be looking for terms such as 'charity' or 'charity in law' here as the term 'charitable institution' could potentially relate to an organisation that isn't recognised by HMRC as a charity.

It may help if I explain further. As you may be aware, the definition of 'charity' for UK tax purposes is laid out in Schedule 6, Part 1, Paragraph 1(1) of the Finance Act 2010 (FA 2010) and reads as follows;

1 (1) For the purposes of the enactments to which this Part applies "charity" means a body of persons or trust that—

- (a) is established for charitable purposes only,
- (b) meets the jurisdiction condition,
- (c) meets the registration condition, and
- (d) meets the management condition.

Any organisation seeking recognition as a charity for UK tax purposes must meet this definition. This legislation also relies upon the definition of 'charitable purposes' laid out in the Charities Act 2011 (CA 2011).

As explained above, FA 2010 requires a body of persons or trust to meet the jurisdiction and registration conditions, and on the basis of the information you have provided, I am satisfied

If you need extra support, for example if you have a disability, a mental health condition, or do not speak English/Welsh, go to www.gov.uk and search for 'get help from HMRC'.
Text Relay service prefix number – 18001

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FROM: CHAIRMAN@BROADHEMBURY-PC.GOV.UK

SENT: 25 MARCH 2021 14:43

TO: PETER.PARKER@WRIGLEYS.CO.UK

**CC: SARA CLARKE; CLERK BPC; STEVE HEMBERCOMBE;
LAURA.MOSS@WRIGLEYS.CO.UK**

SUBJECT: HMRC LETTER RE CHARITABLE STATUS.PDF

Peter, you will recall that you acted for Broadhembury Parish Council last year in the creation of Broadhembury Neighbourhood Community Land Trust. Particularly you advised on and drafted Rules using your agreed model as a template. At the time we created a CBS with the clear intention of applying for charitable status.

You will see from the attached that HMRC has rejected the Rules on the basis of the clause describing the procedure in the event of dissolution or wind up.

This clause was one of your standard clauses and not one we redrafted or debated. It is a little strange that HMRC has therefore rejected it.

Could you have a look at this please and let me know how you would suggest the CLT should proceed. The CLT is now a separate and stand-alone body with no link to the Parish Council but because we were your clients in this matter I am writing to you on their behalf in the first instance.

The chairman and Co Secretary are copied on this E mail.

ON 26 MAR 2021, AT 12:56,

PETER.PARKER@WRIGLEYS.CO.UK

Yes, you are correct that this is one of the provisions in the model rules which was not amended in the rules for BNCLT. I'm afraid it appears that HMRC has recently changed its position in relation to the wording in the dissolution clause of these model rules. We have heard of one or two groups having similar problems, either in relation to these model rules and another sponsor's rules which use the same language. It is really frustrating, particularly as we are obviously aware that HMRC have registered other societies in the past whose rules have the same provisions. We understand that some sponsors are tweaking their model rules to fit in more explicitly with HMRC's requirements and we are working with the CLA to take steps to review and amend their model rules in light of your issue, and the other issues which have been flagged to us recently.

Whilst, as a matter of principle, it may feel like the best approach is to push the point with HMRC, knowing how they work and that this now seems a common point for them, I would suggest that the best option for BNCLT would be to amend the dissolution clause to HMRC's satisfaction.

I am afraid that this would require a vote of the members (being a two thirds majority at either a general meeting or by written resolution in accordance with rule 31). You will be required to provide 14 days' notice under rule 8.2, or you could use the consent to short notice provision in rule 8.3 if 75% of members agree. You are also permitted to hold a general meeting by electronic means under rule 8.17. As HMRC has advised, the amendment would need to be filed with the FCA before it became effective.

If you would like our assistance with this, I would estimate that our costs for preparing the documents for a partial rule amendment (resolution and FCA form(s)) would be £500 plus VAT.

Let me know how you would like to proceed.

Peter Parker | Partner

Wrigleys Solicitors LLP

FROM: CHAIRMAN@BROADHEMBURY-PC.GOV.UK

SENT: 26 MARCH 2021 13:46

TO: PETER.PARKER@WRIGLEYS.CO.UK

CC: CLERK@BROADHEMBURY-PC.GOV.UK

**SUBJECT: RE: HMRC LETTER RE CHARITABLE STATUS.PDF
[WRIG-WRIGLEYSWORK.FID361609]**

Peter, thank you for the explanation.

Given that this seems to have been an evolving situation I think the CLT could have reasonably expected some alert or prior warning from you. Obviously things change but it has only been five months since registration .

I agree with you that it is impractical to challenge HMRC on this issue. What's more neither we nor the CLT has the resources to do so.

I think therefore if the CLT wishes to proceed to charitable registration the best solution as you advise is to amend the specific Rule and submit again.

In the circumstances would you be prepared to look again at your fee proposal? I accept of course as your clients that the Parish Council was caught at a moment in time when things were changing, but at some point prior to the letter from HMRC to BNCLT you must have been aware of the changing interpretation .

Bob Nelson

**RE: HMRC LETTER RE CHARITABLE STATUS.PDF
[WRIG-WRIGLEYSWORK.FID361609]**

PETER.PARKER@WRIGLEYS.CO.UK

26 MAR 2021, 15:39

TO BOB, CLERK, LAURA, LAUREL

I'm afraid this issue has only become known to us over the past couple of weeks, and even now I am unsure as to whether HMRC are applying a completely consistent approach in relation to this, although that would appear to be the case. Given the time since you registered with the FCA I had assumed that you might have successfully registered with HMRC. Sorry for not following up.

Happy to produce the partial amendment paperwork for £425 plus VAT if that helps a little.

Best wishes

Peter Parker | Partner

Wrigleys Solicitors LLP