

**STATEMENT ON BEHALF OF
THE ST. BRIAVELS ASSEMBLY ROOMS CHARITABLE TRUST**

Report to Beneficiaries on Current Position and Future Development.

Now that all legal proceedings surrounding (literally) the Assembly Rooms have been settled, though some consequences yet to be concluded, the trustees are at last in a position to provide a factual summary of the present situation, and positive plans for the future. The aim is to give clarity to the beneficiaries, including many friends, supporters and volunteers who have given such tremendous support throughout the years - by providing an accurate account and dispel any misapprehensions.

1. *Background of the St. Briavels Assembly, Recreation & Reading Rooms Trust (SBAR):*

- 1.1.** The SBAR have been funded and run as a charity by unremunerated volunteers for almost 100 years on behalf of the local community, who are the named beneficiaries and include the parishioners of St. Briavels, and Hewelsfield & Brockweir. SBAR was founded for the provision of education, entertainment, and the arts.
- 1.2.** SBAR was built and donated by Capt. Octavius W. Andrews CBE, using money donated by his uncle, Charles Lord-Denton, circa 1924. The same benefactors also owned all of the adjacent Townsend Cottages and founded the neighbouring Almshouses from one large single plot of land.

2. *Background to Action by the Charles Lord-Denton Almshouses' trustees*

- 2.1.** In 2007, after decades of harmonious co-existence, the Almshouses trustees made an unexpected claim of ownership over the side path, that runs directly alongside the Assembly Rooms East wall, from the front terrace to the hall's side entrance. The SBAR Board of trustees are the legally incumbent custodians of the public building and its land, on behalf of the Charity Commission and the local community of two parishes who enjoy the benefit. The Board do not possess the prerogative to give up charity land that appears from the records to be in the ownership of the SBAR Trust.
- 2.2.** The SBAR archive holds several pieces of historic evidence to support its title including: the original 1924 sealed Charity Commission documents vesting a 28ft parcel of land the land 'between' the Almshouses and Recreation Room; previous agreements between the two charities over the path recorded in the 1960s minutes book; 1950s & 1960s surveyors' reports; an HMRC Valuation Office sketch with a letter of validity; several vintage photographs, and witness statements from life-long parishioners who used the path and side entrance from at least the 1950s to access the hall's side entrance; fire service correspondence regarding the introduced fire regulations requiring the side door and path to be upgraded in the 1960s for improved disabled and emergency access. This evidence was deemed sufficient by barristers and insurers to defend SBAR's ownership of the path and the contested existence of the side door, which was considered by surveyors to have most likely

existed from the original construction. The Almshouses had an adjacent parallel path a few feet away that is still in existence and use today.

- 2.3.** Various attempts were made to mediate and negotiate for several years after the Almshouses' Trustees made their claim, including offers by SBAR to share the path, and a grant of an unlimited legal easement at no cost, but, regrettably, without success. By 2019, after erecting a locked gate across it to prevent access to SBAR's oil tank, the Almshouses' trustees commenced legal action to claim ownership of this path - the Charity Commission writing at that time citing such action by one charity against another charity as '*deplorable*', (*British Diabetic Association v. Diabetic Society 1995*).
- 2.4.** The SBAR trustees have throughout sought and acted under the advice from all relevant authorities, including the Police, the Charity Commission, SBAR's insurers, SBAR's solicitors and legal counsel. Subsequent appraisal of SBAR's evidence by Counsel, (who act impartially with a duty only to the Court rather than the client) advised SBAR's insurers that there was sufficient good evidence to support a successful defence against the Almshouses trustees' claim. This advice triggered SBAR's insurers to authorise legal expenses cover to defend the claim in court. Without such authorisation, the SBAR's trustees would have been unable to defend the community's property on behalf of the public and the Charity Commission. SBAR trustees would anyway never contemplate legal action involving a fellow charity.

3. Summary of Court Case:

- 3.1.** The trial was held remotely on behalf of the County Court of Gloucester and Cheltenham from 26th to 28th April 2021, under unprecedented and challenging Covid conditions via a video link. Oral evidence was heard from both parties.
- 3.2.** As a part of the proceedings, the court ordered that an independent joint-party surveyor be appointed to measure the land. It was the joint surveyor's opinion that the boundary is the line parallel to the eastern flank wall at the Assembly Rooms at a distance of 0.24m from the base of that flank wall. The accuracy of the datum point used by the surveyor was vigorously challenged by the SBAR's barrister.
- 3.3.** Regardless of the joint-party survey findings and all SBAR evidence, the judge (a part-time Recorder) was not attracted to the joint surveyor's opinion on the point of boundary and decided instead that the boundary is the eastern flank wall of the Assembly Rooms Hall.
- 3.4.** The Recorder also made an injunction ordering SBARs use of the path to be an emergency exit only, and access to the SBAR oil tank to be subject to 7 days written notice. This means that the exit door from the Main Hall to the side path can no longer be opened, except during an emergency; thus, it is very important that all of our users and volunteers understand the terms of the injunction, and that, for instance, the door may not even be opened for ventilation under any circumstance; nor can the Almshouses' residents gain access into the Main Hall by that route anymore.

- 3.5.** CCTV protection over the side path and entrance had to be removed in accordance with the Almshouses' trustees' insistence.
- 3.6.** The alternative claim by SBARs barrister for a prescriptive right of way was dismissed.
- 3.7.** The SBAR Charitable Trust were ordered to pay all of the claimant's costs.
- 3.8.** As SBAR's prospects of succeeding at trial were assessed by a barrister ahead of the trial as having a greater chance of success than not, this outcome was unexpected. An application request made by the SBAR Trust's barrister for permission to appeal these decisions was dismissed.
- 3.9.** Advice was then sought on a further application for permission to appeal to the High Court. This available course of action was ultimately decided against by the trustees, due to potential further financial risk. For that reason alone, the SBAR Trustees made the very difficult but eminently diligent decision not to expose our community charity to the peril of any further unanticipated outcomes or potential costs, which will only put the Assembly Rooms at further risk.

4. *What are the consequences of this decision to the Assembly Rooms, the Almshouses residents, the allotment tenants - and the local community?*

- 4.1.** The Almshouses Trustees have now taken full possession of the side path, and erected a locked gate across it, regardless that it has been used by both trusts though mainly SBAR for over 50 years without hinderance. The Almshouses mainly used an adjacent path leading exclusively to their rear allotments and gardens.
- 4.2.** The original access to the path from the SBAR front terrace has had to be blocked off with a padlocked chain, to prevent anyone trespassing onto the Almshouses' property and thereby causing a breach of the Court injunction. This outcome seems to have little or no constructive consequence or advantage for the tenants who live in the Almshouses, or allotment holders, as they can no longer benefit from the safety and convenience of SBARs ramped disabled access to and from the Almshouses properties and gardens. This goes against an amicable written agreement reached between the trustees of the two charities in the 1960s.
- 4.3.** The Almshouses residents can no longer benefit from the protection afforded them and their properties by SBARs CCTV over the path, over which they were consulted and had unanimously approved, for their own security and safety. The Almshouses trustees would become fully responsible for all safety and security matters concerning the path.
- 4.4.** Legal costs are expensive and the final bill may exceed £100,000. The exact amount will not be known for some months probably, but it is clear that a very significant burden will fall on SBAR's finances beyond our insurers' indemnity. The trustees maintain that SBAR's income is for the benefit of the community and none has ever been spent on matters of litigation. Regrettably, the Court ruling now makes it inevitable that the SBAR Trust will have to fund this debt.

- 4.5.** To stress a point already made above, at all times in this unfortunate affair, the trustees had sought and followed carefully the professional advice of the Charity Commission (in carrying out their duty to defend the assets of the Trust); SBAR's insurers; and its insurance-appointed lawyers, including upon whether to defend the claim or not. Throughout the case, the Trust had been assured of a good chance of success, by that advice. However, financial prudence dictates that the SBAR Board of trustees should manage the current outcome with no further legal proceedings on the particular matter, and strongly believe the beneficiaries would agree with this caution.
- 4.6.** Unfortunately, all that the Almshouses trustees' legal action has achieved is to impose upon the Assembly Rooms - regarded as an essential asset to the community, a very serious debt of legal costs that primarily only benefits the lawyers. In return for this huge cost to a small neighbouring charity, the Almshouses' trustees control a narrow stretch of concrete, the opening of a side door, and access to the SBAR oil tank.
- 4.7.** The SBAR trustees do not believe that the Almshouses' trustees appreciated or envisaged the wider ramifications and detrimental impact their actions would have on a neighbouring small charity. There are clearly no "winners" from such a situation, and no pleasure or pride can be taken from one charity causing another charity such financial harm, or endangering a vital community facility, let alone the number of resultant unforeseen consequences to others.
- 4.8.** As a consequence of these proceedings, the SBAR trustees will seek to ensure that the resultant debt is properly managed and will launch a Development Fund appeal for donations and bequests from the many beneficiaries, well-wishers and supporters. Indeed, hundreds of pounds have already been generously donated towards SBARs' legal costs. There will also be a "Patrons Fund" and other funding initiatives to manage this new financial charge. In the meantime, the trust will reassess its finances accordingly.

5. *St. Briavels Assembly Rooms Charitable Trust legal action to restore accesses to the SBAR buildings, blocked by new owners of 1 & 2 Townsend Cottages 2016 – 2020.*

- 5.1.** In 2020, after frequent attempts to find a peaceful resolution in defending the trust's accesses from the buy-to-let owners of neighbouring 1 & 2 Townsend Cottages, the trustees were forced to commence legal proceedings. The blockades began in 2016 when the new owners obstructed accesses and existing rights of way all around the trust's buildings. The obstructions included: the installation of a padlocked gate across the bottom of the stairwell access to SBARs Reading Room; a fence panel across the ramped disabled front access to the trusts' front entrance; 2 locked gates on the yard between the properties over a pre-existing right of way to the Reading Room passage way and rear; doors into the kitchen and store room; parked vehicles on the yard blocking 3 access doorways.
- 5.2.** The matter was eventually settled out-of-court by a binding court order, the result principally being that all these obstructions had to be removed and these accesses and rights of way restored, and attempts to take over some of SBARs buildings was withdrawn. In return, the SBAR Trust offered to restrict the use of the rarely used

rear path of the Reading Room. A donation from SBARs insurers was also made towards their costs, as they were not insured. As there is considerable misinformation circulating regarding this, the details of this agreement and the Rights of Way belonging to the SBAR trust are as follows: -

- 5.3.** A Right of Way for SBAR is confirmed from the road to the Reading Room steps across the drive of Number 1 Townsend Cottages, following the side wall of the Assembly Rooms. A fence has been erected by the landlords to indicate the pathway.
- 5.4.** An unobstructed Right of Way for SBAR is confirmed from the foot of the ramp in front of the foyer to the access path to the Reading Room steps, thus avoiding any need to step into the road at that point.
- 5.5.** A Right of Way for SBAR is confirmed from the road, going through the front gates of 1, Townsend Cottage, which must remain unlocked – and crosses over the yard to reach the kitchen and store room doorways situated in the tunnel archway of the Reading Room building, behind of Townsend Cottages. This is restricted to trustees, agents (including volunteers and tradespeople), and anyone with a genuine need to use the route (such as delivery to the kitchen or maintenance), between the hours of 7am and 10pm. However, the route can be used in an emergency 24 hours a day.
- 5.6.** The landlords were to remove all pertinent obstructions to these routes and accesses to SBAR and the Reading Room buildings, except for a gate which was permitted by SBAR to remain for child and pet safety. This gate is to remain unlocked at all times.
- 5.7.** No parking is permitted on the yard of 1, Townsend Cottage.
- 5.8.** The SBAR Trust is content to agree to restrict the use of the rarely used path at the rear of the Reading Room, which is reached via the tunnel, to those of statutory rights of access under the Neighbouring Land Act, for maintenance and repair.
- 5.9.** As part of the out-of-court settlement, the Assembly Rooms trustees' insurers offered to meet 50% of the landlords' costs as a goodwill contribution, as the landlords did not have the benefit of legal expenses insurance. The overall costs should be covered by insurance, though the final specific costs have yet to be agreed by the insurers and barristers.
- 5.10.** Overall, the SBAR trustees regard this legally binding agreement as a very satisfactory outcome. Apart from item (5.8) above, which was of the least practical consequence to SBAR, by carrying out their legal obligation the trustees have successfully retained, clarified, and secured the legal rights of access that it set out to achieve, for the benefit of the Parishioners and all beneficiaries. This is without depriving the SBAR Trust of any assets or significant usage.

In Summary and the Future:

Throughout these challenges, the trustees have remained steadfast in their duty as custodians to protect and defend the community buildings, acting solely under the auspices and direction from the Charity Commission and all other relevant authorities.

Having successfully restored and concluded the Assembly Rooms rights of way and title in perpetuity, the trustees are unanimous in a determination to ensure that the Assembly Rooms becomes fully operational as quickly as possible, post Covid restrictions. The trustees will continue to carry out the social and educational objectives of the original Trust.

The SBAR trustees carry out their duties without reward at all and at great personal cost. There is no prestige to be gained whatsoever by any of the trustees. It is purely public duty and a strong sense of community that motivates the individual trustees, whatever the trials and tribulations they have had to endure.

Steering the Assembly Rooms through this most challenging and difficult phase whilst concurrently raising c.£400,000 to renovate the dilapidated buildings into a highly desirable modern public venue, marking singularly its most successful phase, is something the trustees are unashamedly very proud of, on behalf of their community.

As a prestigious key asset in the fabric of the wider local community, St. Briavels Assembly Rooms will continue to provide a vital contribution for many years to come.

COMMENDATIONS:

On behalf of all of those who benefit from our wonderfully restored Assembly Rooms, the Trustees wish to commend - and offer sincere heartfelt gratitude, to all of the hard-working volunteers and supporters, past and present, for their commitment, incredible selfless service, and donations. Without this essential contribution the SBAR would not be the glorious venue that it has become.

The honesty, integrity and courage of life-long and long-standing local residents, who came forward to defend the Assembly Rooms in these proceedings, will be forever noted and honoured in our archives. You are to be congratulated by all.

The trustees are pleased that these resolutions have been reached at last, providing clarity, certainty and a platform for future harmony.

Finally, a huge debt of gratitude is owed to Grace Bensted, our retiring Chairman, for her commendable 17-year dedication and contribution to restoring and defending the Assembly Rooms. During this time Grace has led the Assembly Rooms Trust with decorum, dignity, modesty and grit. It is most fitting that she retires having delivered all that she set out to achieve, for the benefit of all. Many thanks, and best wishes for a well-deserved happy retirement!