Incorporation and property transfer: Questions and answers

What's happening with the redevelopment?

Many members have rightly been asking why there has been no progress since the council proposed that the club should become a limited company (incorporated) before options for redevelopment are voted on. The council members fully share your frustration on this matter and it is not a situation of its making.

Why do we need to become a limited company?

Incorporation reduces our exposure to risk and is recommended by our professional advisers. The Lawn Tennis Association states that unincorporated status is not suitable for clubs such as ours that employ staff, own significant assets or enter into major contracts. Sport England highlights the risks we may face without being incorporated, particularly in relation to personal liability. On the positive side, as Duffield Rackets and Fitness Limited (DRF Ltd), we would be able to directly hold the site in the club's name; this would make any redevelopment easier to manage and would facilitate grant applications.

Why is the club not already the legal owner of the property?

The former squash and tennis clubs were unincorporated associations. As such they were not recognised as legal entities and so were unable to own property in their own names. This is still the case with our newly merged club, Duffield Rackets and Fitness.

When the tennis and squash clubs wanted to buy the property in 1960, they set up a holding company (Duffield Sports Club Limited, DSCL) to buy and hold the property on their behalf. The members of both clubs lent the funds to buy the premises for the princely sum of £3,500.

How does DSCL work?

DSCL has a board of 10 directors who each hold one share in the company on behalf of the members - five are nominated from tennis and five from squash. Two new squash shareholder-directors were recently appointed to replace long-standing members of the former squash club. However, the DSCL board has rarely met and has never had any role in the governance or day-to-day running of either of the former racket clubs or the newly merged club. The clubs themselves always paid all expenses relating to the property, including insurance, and this practice continues with the merged club.

How does the club take ownership of the property?

In preparation for possible incorporation, the Council asked the current shareholder-directors of DSCL to agree to transfer the property to what would be DRF Ltd., if incorporation is approved by members. The five shareholder-directors from squash have said they are unwilling to do this. They dispute that they are holding their shares for the benefit of the Club's members and therefore must follow the members' wishes. Broadly, they see themselves as having the authority to act independently of the members of the Club or its democratically elected council.

What has the Council done about this?

Several attempts have been made to reasonably resolve this disagreement over many months, all to no avail. The council has therefore been unable to proceed with incorporation or to bring the various redevelopment options to the membership for a democratic vote. As a last resort to try to resolve this deadlock, the council has sought the opinion of a specialist barrister with expertise in Company and Trust law to clarify the relationship between DSCL and the merged club.

What did the barrister say?

The Counsel's Opinion states that the shareholder-directors of DSCL hold the property in a *'bare trust'* on behalf of club members. They do not have the authority to act independently of the membership, and so must follow the members' wishes.

This Opinion has been shared with all ten shareholder-directors of DSCL, but the five from squash have still refused to agree to a transfer of the property.

What will the Council do now?

The next step is to call an EGM to ask members to vote on a number of resolutions which, if passed, will enable Duffield Rackets and Fitness to become a limited company and require the DSCL squash shareholder-directors to take the necessary steps to transfer the club assets from DSCL to the new company. **This EGM will only cover these specific items** and will be in advance of a vote on redevelopment options, which will require a further EGM.

There will be an announcement shortly setting a date for the EGM and outlining the key resolutions to be discussed. Further information about incorporation and the asset transfer will be provided at this time. The redevelopment options will not be subject to a vote at this meeting.

Voting will be via email, proxy or by ballot at the EGM and it is imperative for the future of the club that you cast your votes.