

3. BROOKLANDS PARK CHARITABLE TRUST, EAST GRINSTEAD, WEST SUSSEX PROPOSED LAND SWAP

1.0 INTRODUCTION

- 1.1 The Council being a trust corporation, by virtue of the Local Government Acts, is the Trustee of any land gifted to the Council upon charitable trust and is appointed the Trustee pursuant to Section 210 of the Local Government Act 1972 by virtue of being the statutory successor to the Cuckfield Urban District Council, the Cuckfield Rural District Council, the Burgess Hill Urban District Council and the East Grinstead Urban District Council.
- 1.2 The Council as Trustee comprises all the Members of the Council, who by virtue of their office as Members of the Council are the managing trustees of the Charities vested in the Council. Members of the Council receive specific training on their roles and responsibilities as Charity Trustees as part of their Member training.
- 1.3 The names of members of the Council who currently serve as a charity trustee are set out in the table below:

Mrs Margaret Hersey (Chairman)
Clive Chapman (Vice-Chairman)

Jonathan Ash-Edwards	Mrs Jean Glynn	Mike Livesey
Mrs Margaret Baker	Brian Hall	Andrew MacNaughton
Mrs Irene Balls	Mrs Sophia Harrison	Gordon Marples
Mrs Eileen Balsdon	Mrs Dorothy Hatswell*	Gary Marsh
Stephen Barnett*	Mrs Susan Hatton*	Peter Martin
Andrew Barrett-Miles	Paddy Henry	Edward Matthews
Richard Bates	Mrs Janice Henwood	Mrs Pru Moore
John Belsey*	Christopher Hersey*	Ian Pearce
Mrs Liz Bennett*	Chris Jerrey	Peter Reed
Mrs Brenda Binge*	Mrs Anne Jones	Mrs Heather Ross
Andrew Brock*	Jim Joyce-Nelson*	Mrs Susan Seward
Mrs Heidi Brunsdon*	Mrs Jane Keel	Christopher Snowling
Jack Callaghan	Mrs Susanna Kemp	James Temple-Smithson
Patrick Cutler	Edward King	Mrs Mandy Thomas-Atkin
Ian Dixon	Graham Knight	Julian Thorpe
Mrs Kathleen Dumbovic	Mrs Jacqui Landriani	Garry Wall
Mrs Gina Field*	Andrew Lea	Mike Watts
Bernard Gillbard		

- 1.4 The purpose of this report is to inform the Charity Trustees of the recently established status of that part of Brooklands Park, East Grinstead, edged in blue on the plan, as a charitable trust; to advise the Charity Trustees on the current condition of that part of the Trust's land hatched in blue on the plan, being the site of the Lido, (the Lido Site) and various technical issues and difficulties associated with the Lido Site; and
- 1.5 To seek authority for the Charity's Solicitor to enter into negotiations with the Charity Commission and the Council for the exchange the Lido Site for all or part of the Council's land edged in red on the plan.

2.0 BACKGROUND

- 2.1 East Grinstead Urban District Council acquired Brooklands Park, East Grinstead edged in red and blue on the plan in several parts between 1906 and 1920.

- 2.2 That part of Booklands Park edged in blue on the plan was acquired by East Grinstead Urban District Council on 4th July 1906 when the land was gifted to them by Sir Thomas Henry Brooke-Hitching to be held upon trust for the purposes of providing a public park and recreation ground for the benefit of the inhabitants of East Grinstead, the neighbourhood and the public generally.
- 2.3 That part of Brooklands Park edged in red on the plan was acquired by East Grinstead Urban District Council on 14th April 1920, together with other land for housing purposes. At some point in time the land was appropriated East Grinstead Urban District Council to use as a public park and recreation ground as an extension to Brooklands Park.
- 2.4 Since the closure of the Lido many years ago the Lido Site has fallen into a poor condition. The surrounding area has become an eyesore and a magnet for vandals. Owing to its general terrain and heavy undergrowth the area to the north east of the Lido has attracted further anti-social behaviour. Members of the Property Working Group and Ward Councillors will recall from the tour of the District in early 2008 that the site was visited at that time and found to be in a very depressed state and that some form of small scale development would greatly improve that area of the Park.
- 2.5 The Council's Property Lawyer was asked to advise on whether there are any restrictions affecting the title to the Lido Site. Upon examination of the deeds and reviewing the latest case law the Council's Property Lawyer concluded, from the wording of the deed gifting the land to the East Grinstead Urban District Council and the powers of the Council, at that time, that:
- (a) the land edged in blue on the plan including the Lido Site had been gifted to the Council to be held upon charitable trust for use in perpetuity by the inhabitants of East Grinstead as a public park and recreation ground.
 - (b) the Council do not have any powers that enable the Council to unilaterally vary or extinguish trusts affecting land gifted to the Council and the Council cannot act in breach of trust in managing such property, and therefore, the trust is legally binding upon the Council.
 - (c) even if the Council were able to overcome the trust and sell part of the land for purposes other than as public park or recreation ground the proceeds of the sale would not belong to the Council and could not be expended by the Council, but would be held upon trust to be placed on deposit and the income applied to the running and maintenance costs of the remainder of the land comprised within the trust.
- 2.6 As a result of the Council's Property Lawyer's advice the Council has sought Counsel's opinion on the nature of the trust. Counsel's initial view was that the deed gifting the land to East Grinstead Urban District Council did not create a trust, but on further examination Counsel concluded that it could and that a declaration of the court would be necessary to determine the issue. Counsel advised that before seeking a declaration of the court, the Council should seek the views of the Attorney General.
- 2.7 The Attorney General has been consulted and she has taken the view that the deed gifting the land to East Grinstead Urban District Council does establish a charitable trust and that if the Council is minded to seek a declaration of the court, the Attorney General will, as protector of the public interest in the due performance by public bodies of their statutory and public duties, contend that the land is held upon charitable trust and that the Attorney General should be named as defendant in any application for a declaration of the court. An application to the court contested by the Attorney General has significant costs implications and the Council is considering its position. In the meantime, to protect the Council from

any possible breach of trust, the Council must treat that part of Brooklands Park edged blue on the plan including the Lido Site as charitable trust land.

3.0 ADVICE TO THE CHARITY TRUSTEES

- 3.1 Charity Trustees have general powers under the Trusts in Land and Appointment of Trustees Act 1996 to sell or grant leases of land. However, those powers cannot be exercised in breach of trust. Further, Charity Trustees' powers of disposal are permissive and therefore, must be exercised strictly in accordance with any limitations or restrictions imposed by statute. Section 36 of the Charities Act 1993 imposes restrictions that prohibit the sale of property forming part of the permanent endowment of the Charity without the consent of the court or the Charity Commission. It also imposes similar restrictions on dispositions to connected persons. The Council is a connected person.
- 3.2 The fact that the land is charity land does not prevent all or part of the land from being sold by the Charity for development. Subject to the Charity Trustees complying with the provisions of Section 36 of the Charities Act 1993 they can upon the recommendation of an independent surveyor, engaged exclusively by the Charity Trustees to advise them, decide to sell all or part of the land for development. In doing so the Charity Trustees would have to conclude the land was surplus to the requirements of the Charity and that it is in the best interests of the Charity to sell the land.
- 3.3 Owing to the Charity Trustees dual roles as Charity Trustees and Members of the Council and the absence of any express powers of disposal in the Charity's governing instrument, it will be necessary to obtain a Scheme from the Charity Commission authorising any disposal and in particular any exchange of land between the Charity and the Council. The Charity Commission is charged with the protection of Charities and their assets and therefore, the consent of the Charity Commission for a simple disposal of part may not be forthcoming. Even if it were, any proceeds from the disposal will be ring-fenced for investment for the benefit of the remainder of the Charity's land.
- 3.4 A possible solution to the problem identified in paragraph 5.3 of this report would be an exchange of the Lido Site for all or part of the Council's land edged red on the plan, which would then form part of the Charity's land and be held by the Council upon charitable trust as a public park and recreation ground. As long as the land given in exchange by the Council is of equivalent size and value to the Lido Site an exchange of land is likely to be more acceptable to the Charity Commission as opposed to an outright disposal of Charity Land.
- 3.5 As the Charity does not have any income generating capacity and no other financial resources it will only be possible for the Charity Trustees to proceed with the recommendation if the Council agrees to bear all costs associated with this report including the costs of appointing an independent surveyor to advise the Charity Trustees on any land exchange.
- 3.6 The Charity Trustees need to be aware that, in view of their dual roles as Charity Trustees and Members of the Council there is the potential for a conflict of interest. The Charity Commission is fully aware of this potential and has issued guidance to local authority Charity Trustees reminding them of their fiduciary duty as Charity Trustees. The guidance says that local authority Charity Trustees have an overriding duty to act in the best interests of the Charity when dealing with property vested in local authorities as Trustee. If there is a conflict between the interests of the Charity and the interest of the Council they must disregard the interests of the Council and make their decisions as Charity Trustees in the best interests of the Charity even if that will be inconvenient to detrimental to the interest of the Council.

- 3.7 Land set out as a public park or recreation ground constitutes open space. Owing to the dual roles of the Council as a local authority and as a trust corporation, it will also be necessary for the Council, as custodian Charity Trustee to comply with the statutory requirements relating to the disposal of open space contained in Section 123 of the Local Government Act 1972, which provides that a local authority may not either sell any land or grant a lease of any land consisting of or forming part of an open space without first advertising the proposed sale or lease for two consecutive weeks in a local newspaper circulating in the area in which the land is situated and then consider any objections received in response to those advertisements. If there are objections to the proposed sale or lease the Council must consider those objections carefully and should only authorise the proposed sale or lease if those objections are insubstantial and it is in the public interest to disregard them. This being the case, it will be necessary for the Charity to advertise the intention to dispose of Lido Site.

4.0 FINANCIAL IMPLICATIONS

- 4.1 There are none.

5.0 RECOMMENDATIONS

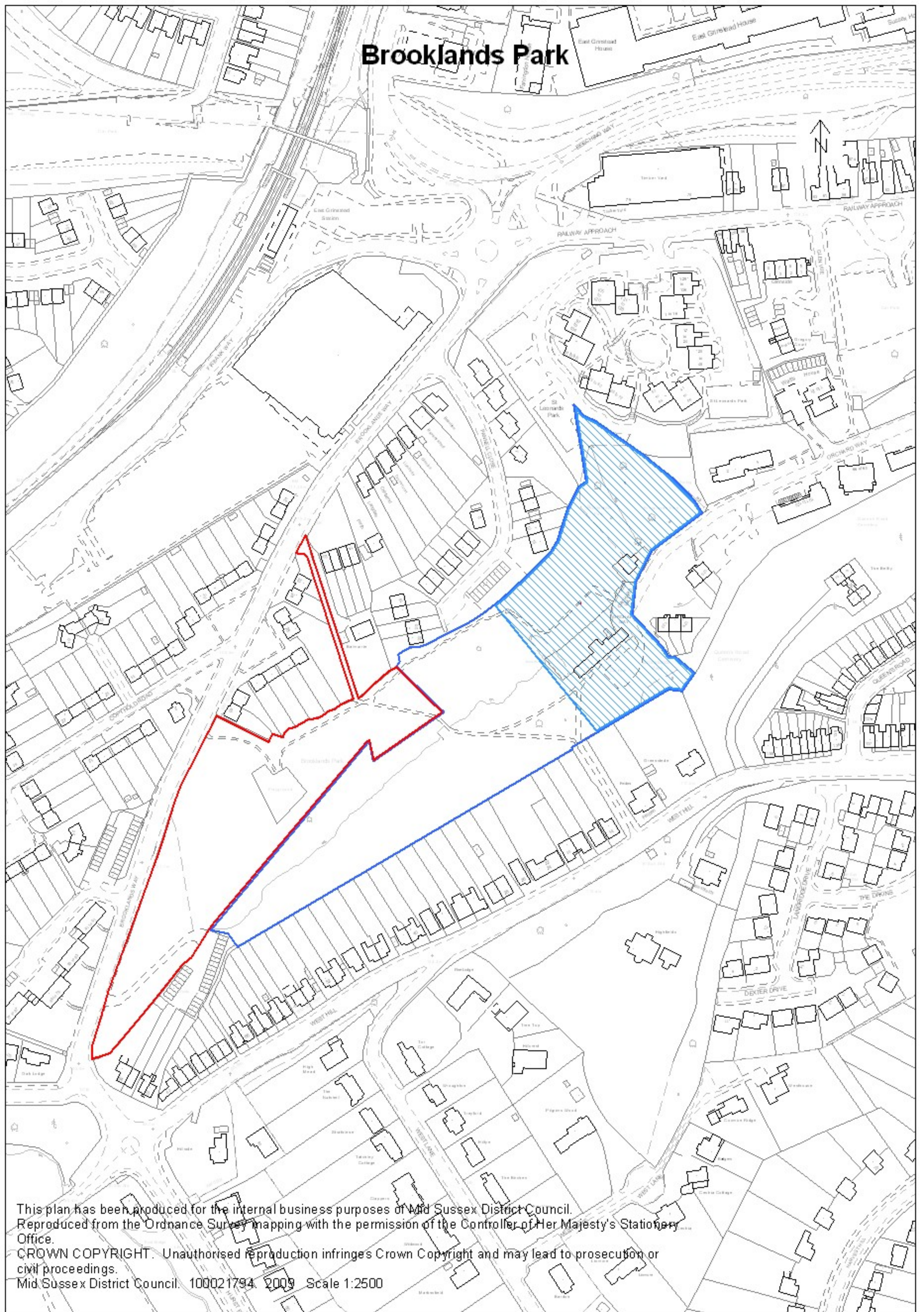
The Charity Trustees are recommended to:

- 5.1 **Note the contents of the report.**
- 5.2 **If they consider it in the best interests of the Charity to do so, authorise the Charity's Solicitor to enter into discussions with the Charity Commission concerning the status of the Lido Site; and, subject to complying with the Charity's statutory obligations concerning the disposal of charity land, the consent of the Charity Commission and further reports to the Charity Trustees, to enter into negotiations with the Council for the exchange of all or part of the Council's land at Brooklands Park for the Charity's Lido Site.**

Background Papers

The Council's legal file and Deeds relating to the Lido Site.

Brooklands Park



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