

3. BEECH HURST GARDENS CHARITABLE TRUST, HAYWARDS HEATH, WEST SUSSEX - PROPOSED WORKS TO THE GARDENS AND CESSATION OF PITCH AND PUTT FACILITY AND REQUEST TO THE COUNCIL TO USE OF PARKING ENFORCEMENT POWERS TO REGULATE USE OF THE CAR PARK AT BEECH HURST.

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 Jane Keel (Chairman)
Mrs Sophia Harrison* (Vice-Chairman)

Jonathan Ash-Edwards	Bernard Gillbard	Mike Livesey
Mrs Margaret Baker	Mrs Jean Glynn	Andrew MacNaughton
Mrs Irene Balls	Brian Hall	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	Mrs Margaret Hersey	Peter Reed
Mrs Brenda Binge	Chris Jerrey	Mrs Heather Ross
Andrew Brock	Mrs Anne Jones	Mrs Susan Seward
Mrs Heidi Brunson	Jim Joyce-Nelson	Christopher Snowling
Clive Chapman	Mrs Susanna Kemp	James Temple-Smithson
Jack Callaghan	Edward King	Mrs Mandy Thomas-Atkin
Patrick Cutler	Graham Knight	Julian Thorpe
Ian Dixon	Mrs Jacqui Landriani	Garry Wall
Mrs Kathleen Dumbovic	Andrew Lea	Mike Watts
Mrs Gina Field		

2.0 BACKGROUND

2.1 At the last Charity Trustee meeting held on 22nd July 2009, the Charity Trustees considered the annual operation report and charity accounts covering all the charity sites managed by the Council in the District. Appendix 1 gives an extract from that report as it pertained to Beech Hurst Gardens and the Charity Trustees should have particular regard to paragraph 2.2.1 and 2.2.2 which briefly sets out the main provisions of the Charity's constitution and objects of the Charity as detailed in the Declaration of Trust dated 2nd March 1950. In particular the Charity Trustees need to be aware that the Declaration of Trust provides that the Beech Hurst shall be held by

the Charity Trustees to be used and enjoyed in perpetuity by the inhabitants of the Haywards Heath for the charitable purposes specified in paragraph 2.2.2 of Appendix 1 and that the Declaration of Trust contains an express proviso that the Beech Hurst Gardens shall not be used for any purpose other than a charitable purpose and in particular shall not be used by the Council for offices or for the administrative purposes of the Council.

- 2.2 Since that report there are other developmental and operational matters that properly need to be considered by the Charity Trustees. This report seeks to gain approval to these developmental proposals and to advise the Charity Trustees of other operational matters

3.0 DEVELOPMENTAL PROPOSALS AND FURTHER OPERATIONAL INFORMATION

- 3.1 Charity Trustees will be pleased to hear that the 2009 application for a Green Flag was successful and this is now flying at the entrance to the Gardens.
- 3.2 The existing nine-hole pitch and putt course was closed at the end of the 2009 summer season and will not be re-opened in 2010. The course usage has fallen to an extent where the course is now heavily subsidised and does not generate a net income. This downward trend is due to the other more suitable golfing facilities in the surrounding area e.g. at Cuckfield and Burgess Hill. There have also been on-going concerns regarding the safety of this course as it sits in a relatively small land area and several golf-related accidents have occurred over recent years.
- 3.3 It is proposed that this golf facility is replaced with a much smaller 'mini-golf' facility that will provide a net income to the Charity as well as provide a welcomed additional leisure facility for the users of the gardens. It is intended that the chosen mini-golf company be given a 15-year lease and they will be responsible for constructing the facility and then managing it. Officers will also investigate the possibility of other facilities such as the tennis courts being leased out and if this is likely then it will be reported in a subsequent report.
- 3.4 It is also proposed to construct a new jogging trail to assist with the training of local athletic clubs as well as providing a facility for all to enjoy and benefit from. The proposed track will pass over some land at Beech Hurst that is not charity land – Appendix 2 shows the layout of this proposed new facility.
- 3.5 In an effort to increase leisure activities within the park it is intended to apply for a premises licence either during 2010 or 2011 and then look to dedicating part of the gardens to a performance area for theatre and music. Current trends for how communities wish to use their leisure time has shown that there is demand for a wider scope of entertainment within public green spaces. This change in how people wish to use their public green spaces is in response to government initiatives to encourage healthy lifestyles and communities growing awareness for the environment. The layout and facilities of Beech Hurst Gardens provides an ideal location to accommodate such demand. Appendix 3 gives an outline of how this facility could be incorporated into the park setting
- 3.6 The Council's officers responsible for the day to day management Beech Hurst Gardens on behalf of the Charity Trustees have received a number of complaints from members of the public, users of the recreational facilities at Beech Hurst Gardens and the operators of Beech Hurst Restaurant that the car parking facilities within Beech Hurst Gardens are very congested and that members of the public

wishing to visit the Park find it very difficult to find anywhere within the car park during the day. Investigations have revealed that a significant number of motor vehicles are being parked in the Park's car park from very early in the morning until early evening and that the most likely cause is commuters parking at Beech Hurst Gardens and then walking to Haywards Heath Station for onward travel to London with the result that a significant part of the limited available car parking at Beech Hurst is being taken up as free commuter parking.

- 3.7 There are similar problems at other leisure site parking areas in the Town with the result that the Council's Parking Service is currently reviewing the Council's controlled parking in Haywards Heath with a view to implementing parking controls at other existing free parking site such as the Dolphin Leisure Centre and Clare Hall, which is likely to displace some of the current commuter free parking onto other sites including Beech Hurst. In view of the current parking problems at Beech Hurst and the likely impact of the car parking review, it seems that some form of parking control at Beech Hurst to ensure that genuine users of the Park are able to park in the car park provided for that purpose would be appropriate.
- 3.8 It is therefore, proposed that the Charity Trustees formally request the Council to exercise their powers to control off-street parking and implement a scheme of disc parking at Beech Hurst Gardens with appropriate penalties for overstay to prevent commuters from exploiting the free parking at Beech Hurst to the detriment of genuine users of the Park and the operators of Beech Hurst Restaurant.

4.0 ADVICE TO THE CHARITY TRUSTEES

- 4.1 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 and the Charity's constitution and objects. In addition to the restrictions set out in the Declaration of Trust, Beech Hurst Gardens is also subject to a Scheme made by the Charity Commission 1st March 1996, which restricts the Charity Trustees' powers of management. In particular the Scheme provides that the Charity Trustees may only let parts of the Charity's property that are not for the time being required for use for the objects of the Charity and then subject to the following conditions:
- (a) the use of the remainder of the land and buildings belonging to the Charity for the objects of the Charity shall not be unduly interfered with;
 - (b) the prior consent in writing of the Charity Commission shall be obtained; and
 - (c) the restrictions on disposition imposed by section 36 of the Charities Act 1993 shall be complied with unless the disposition is exempt from such restrictions under section 36(9) (b) or (c) or section 36(10) of that Act.
- 4.2 Section 36 of the Charities Act 1993 imposes restrictions on the disposition of the Charity land. The Charity Trustees must before entering into the grant of a lease of the Charity's land obtain and consider a written report on the terms of the proposed lease from an independent surveyor, engaged exclusively to advise them, and they must also advertise the proposed lease for a period and in such a manner as the surveyor recommends and they must consider any objections to the proposed lease received from members of the public. The Charity Trustees must also decide that they are satisfied, having considered the surveyor's report, that the terms of the

proposed lease are the best that can reasonably be obtained and are in the best interests of the Charity. The report must be prepared in accordance with the Charities (Qualified Surveyors' Reports) Regulations 1992 and in this regard the Council's property section cannot provide the advice required.

- 4.3 Usually compliance with Section 36 of the Charities Act 1993 would be sufficient, however, the Charities Act 1993 empowers the Charity Commission, which has concurrent jurisdiction with the High Court, to impose additional restrictions that it considers appropriate. By virtue of the Scheme made by the Charity Commission 1st March 1996, the prior written consent of the Charity Commission will also be required. It will be necessary to comply with all statutory requirements prior to seeking the Charity Commission's consent.
- 4.4 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 interests 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 or detrimental to the interests of the Council.
- 4.5 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 be necessary for the Council, as Charity Trustee to comply with the provisions of the Local Government Act 1972, in particular Section 123(2A), which requires the Council, as Charity Trustee, to advertise the proposed disposal of an area of land consisting or forming part of an open space for two consecutive weeks in a local newspaper and for the Council, as Charity Trustee, to consider any objections received from members of the public. If there are objections to the proposed lease the Council must consider those objections very carefully and should only authorise the proposed lease if those objections are insubstantial and it is in the public interest to disregard them.
- 4.6 Although the Charity has some income generating capacity, the Charity Trustees will be aware from the Charity's Annual Accounts 2008/2009 that the Charity's expenditure exceeds its income and therefore, it will only be possible for the Charity Trustees to proceed with the grant of the lease contemplated in paragraph 3.3 of this report 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 and the costs of complying with the Charities Act 1993 and the Local Government Act 1972. It is possible to combine the advertisement required under the Charities Act 1993 with the advertisement required under Section 123 in order to reduce costs.
- 4.7 The Charity Trustees could elect to impose their own parking restrictions, but this would present issues around enforcement, as the Charity does not have any resources to provide such controls. There are two potential options for controlling car parking at Beech Hurst:
 - (i) It would be open to the Charity Trustees to negotiate arrangements with the operators of Beech Hurst Restaurant for them to impose and enforce parking restrictions, but that is likely to have significant cost implications, as the car park is not included within the land leased to the operators of Beech Hurst

Restaurant and will require the Charity Trustees to either vary the terms of the lease to include the car park and its management or enter into some form of contract for services with the operators of Beech Hurst Restaurant for the management of the car park. In either case, protracted negotiations are likely to be necessary, which could delay implementation

- (ii) It would be open to the Charity Trustees to ask the District Council to implement and enforce parking restrictions at Beech Hurst Gardens car park as part of its review of car parking in Haywards Heath and the inclusion of Beech Hurst Gardens car park within its off-street parking places order on a nil cost basis with any profits over and above the costs of providing the service arising from parking fees being paid to the Charity.

5.0 FINANCIAL IMPLICATIONS

- 5.1 The proposed works will be financed through investment in the Charity by the Mid Sussex District Council donating a combination of revenue and suitable Section 106 developer contributions estimated at £50,000 and as appropriate, subject to negotiating terms, third party investment. The closure of the golf facility will reduce the Charity reliance of the subsidy donation from Mid Sussex District Council by an estimated £11,700.00 per annum. It is intended that the mini golf should be run as a concession, income generated from the use of the facility will depend on negotiation of contributions for the operator based on expected use. These figures will not be available until an agreement has been made to proceed with the negotiation.

Running trail £20,000

Mini-golf £30,000

6.0 RECOMMENDATIONS

The Charity Trustees are recommended to:

- (a) Note the contents of this report;***
- (b) Approve the changes to the facilities proposed in this report;***
- (c) Authorise the Solicitor to: the Council to obtaining independent valuation advice; comply with the requirements of the Charities Acts and the Local Government Act as detailed in the Advice to the Charity Trustees set out in part 4 of this report, and a to report back to the Charity Trustees with regard to the leasing additional parts of Beech Hurst for the purposes outlined in this report;***
- (d) Authorise the Head of Leisure and Sustainability to seek expressions of interest for the operation of the mini-golf concession and/or operation of the tennis courts identified in this report and report back to the Charity Trustees;***
- (e) Authorise the Head of Leisure and Sustainability to apply for a premises licence and to dedicate part of the park edged in red on the plan in Appendix 3 as a performance area for theatre and music; and***
- (f) Request the Head of Leisure and Sustainability to include Beech Hurst Gardens car park in its review of off-street parking in Haywards Heath and authorise the Head of Leisure and Sustainability to implement a***

scheme of disc parking at Beech Hurst Gardens with appropriate penalties for overstay to prevent commuters from exploiting the free parking at Beech Hurst Gardens through the inclusion of Beech Hurst Gardens car park in the District Council's Off-street Parking Places Order on a nil cost basis with any profits over and above the costs of providing the service arising from parking fees being paid to the Charity.

Background Papers

Beech Hurst Files

Appendix 1

Extract from 22nd July 2009 report

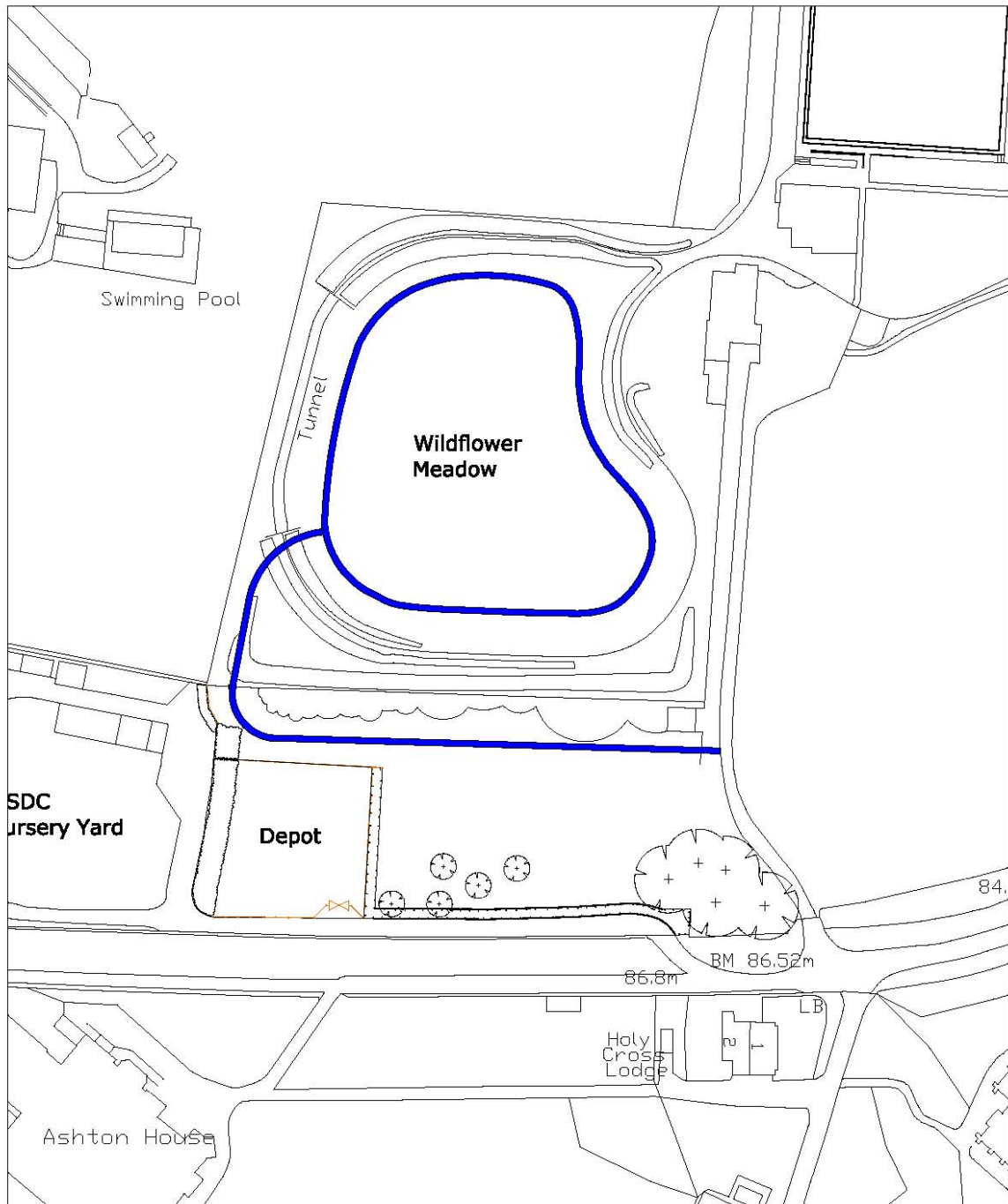
2.2 Beech Hurst Gardens, Haywards Heath – Charity No:305202

- 2.2.1 The Charity was constituted by a Declaration of Trust dated 2nd March 1950 when Gardens were gifted to the Council's predecessor, the Urban District Council of Cuckfield, by the trustees of the late William Johnson Yapp to be administered by the Council upon charitable trust.
- 2.2.2 The object of the Charity is the provision of a public park and recreation ground for the benefit of the inhabitants of Haywards Heath. The trustees powers of management are very restrictive and are limited to providing facilities for the use and enjoyment of the inhabitants of Haywards Heath for educational, scientific, cultural or recreational purposes and for any of the charitable purposes set out in section 4 of the Physical Training and Recreation Act 1937 and not for any purposes that are not charitable. By virtue of a Scheme made by the Charity Commissioners on 1st March 1996, the Council now has the power, subject to complying with charity law and the prior written consent of the Charity Commissioners, to sell or let part of the Charity's property provided that this will not unduly interfere with the objects of the Charity.
- 2.2.3 These gardens represent a major park for the town of Haywards Heath, while attracting visitors from outside the district. Regular maintenance has provided a high quality facility. A User Group is now well established. There have been further improvements to the borders and accessibility within the site as well as re-construction of the pergola feature that had reached the end of its useful life. The site was subject to another application for 'Green Flag' status during the year (results anticipated July 2009).
- 2.2.4 The fourth year's trading figures for the Family Restaurant were again somewhat disappointing reflecting the economic conditions and so only the base rent was collected with no supplementary turnover rent for this period.
- 2.2.5 The restaurant complex at Beech Hurst leased to Whitbread PLC on 6th October 2003 was assigned to Mitchells and Butlers Retail Ltd on 4th January 2007. This followed a resolution made at the annual Charity Trustees meeting held on 27th September 2006.
- 2.2.6 Following a request from Mitchells and Butlers Retail Ltd to re-brand the Restaurant Complex the Charity Trustees considered a report on 27th February 2008 when they authorised the Solicitor of the Council to grant landlord's consent to minor alterations including the erection of new signage necessary to complete the re-branding exercise. These works were satisfactorily carried out.
- 2.2.7 Income was also generated from a number of leases and licences on the site, hirings of the pitch and putt golf course, temporary refreshments from the site kiosk, tennis courts and rental from the cottages. This income contributed to the upkeep of the grounds and necessary building repairs. The site has been regularly maintained.
- 2.2.8 The cottages at Beech Hurst are let on Assured Shorthold Tenancy Agreements. All five cottages are currently let and the rents have been slightly increased following a recent rent review.

Under the terms of the Assured Shorthold Tenancy Agreement, the Council is responsible for the maintenance/repair of the structure and interior of the premises as well as any installations provided for space, heating and sanitation and for the supply of water, gas and electricity. The tenant is responsible for keeping the garden and interior of the premises in a good and tidy condition. The Council have a five-year 'repairs and renewals programme' that covers backlog and essential repairs to the cottages.

Appendix 2

Plan of Jogging Track



Beech Hurst Gardens: Fitness Track

 355m Length

(the circular track is 214m length with the access track being 140m length)



**Tarmac
(Hard Surface)**

An even surface allowing for speed and puts less strain on the Achilles tendon than a softer surface.



**Beech Hurst
Gardens**

Fitness Facility Proposal



Scale: 1:1000 @ A4

Drawn By: CMC

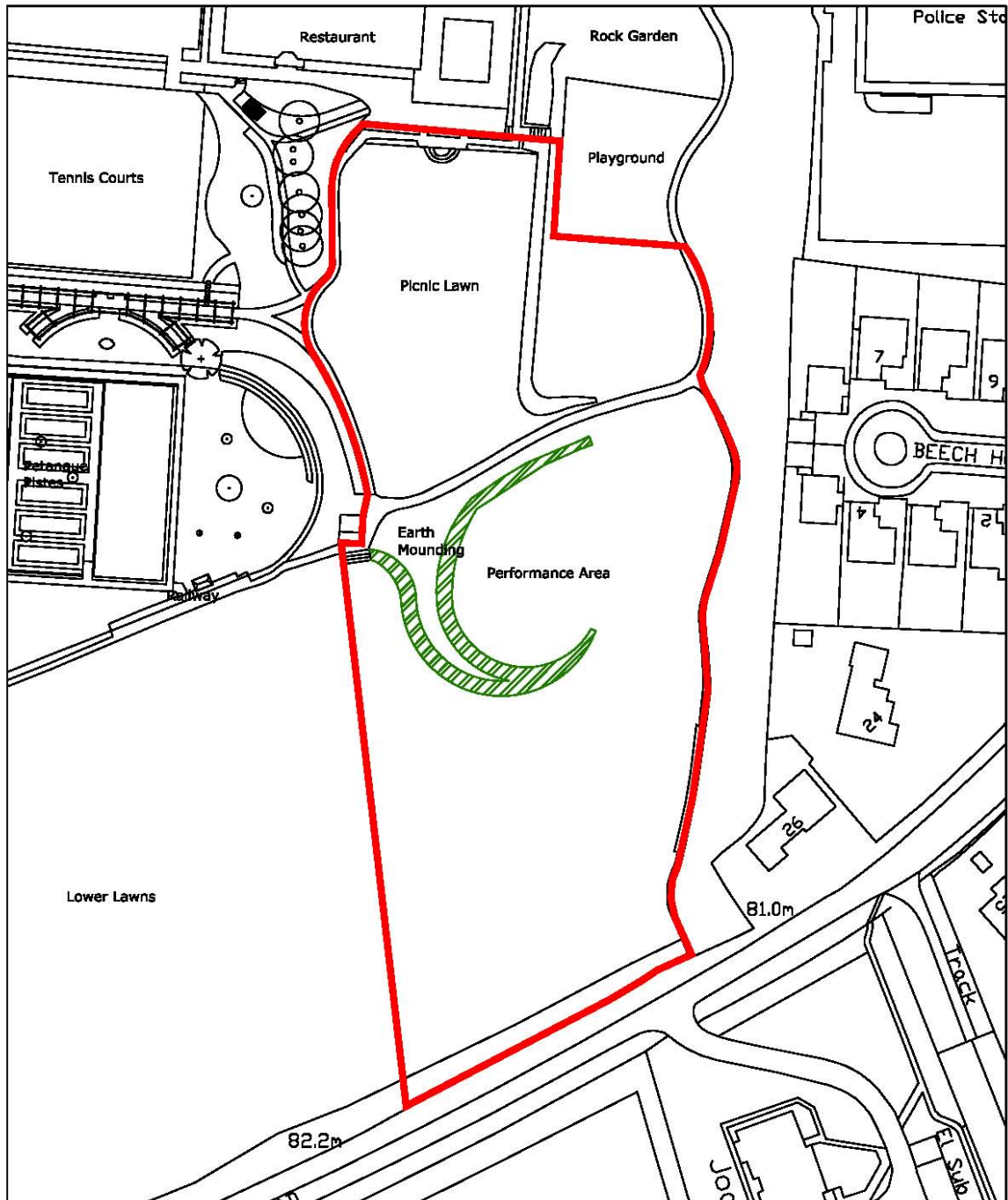
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Drawn For: Mid Sussex District Couc

Dwg No: 002BHfit.p

Appendix 3

Potential layout of performance area



<p>Beech Hurst Gardens: Premises Licence</p> <p> Proposed Premises Licenced Area</p> <p> Earth Mounding for Proposed Performance Area</p>	<p> Beech Hurst Recreation Ground</p> <p>MID SUSSEX DISTRICT COUNCIL Premises Licence Proposals</p>	
	<p>Scale: 1:1000 @ A4</p>	<p>Date: 20/03/10</p>
<p>Drawn By: CMC</p>	<p>Dwg No: 001BHper.a</p>	
<p>Drawn For: Mid Sussex District Council</p>	<p></p>	