

**3. RICHARD WORSLEY RECREATION GROUND (also known as Cuckfield Recreation Ground) CHARITABLE TRUST, CUCKFIELD, WEST SUSSEX  
CHARITY NO: 206789  
PROPOSED LEASE DISPOSALS**

**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:

	Mandy Thomas-Atkin (Chairman)	
	Gordon Marples (Vice-Chairman)	
Jonathan Ash-Edwards	Bruce Forbes	Gary Marsh
Simon Banham	Richard Goddard	Peter Martin
Stephen Barnett	Susan Hatton	Edward Matthews
Andrew Barrett-Miles	Ginny Heard	Simon McMenemy
Richard Bates	Christopher Hersey	Pru Moore
Edward Belsey	Margaret Hersey	John O'Brien
Margaret Belsey	Catrin Ingham	Peter Reed
Liz Bennett	Anne Jones	Robert Salisbury
Katy Bourne	Denis Jones	Susan Seward
Heidi Brunsdon	Graham Knight	Ian Simpson
Jack Callaghan	Jim Knight	Christopher Snowling
Cherry Catharine	Jacqui Landriani	Dick Sweatman
Phillip Coote	Andrew Lea	Colin Trumble
Mims Davies	Mike Livesey	Neville Walker
John de Mierre	Andrew MacNaughton	Garry Wall
David Dorking	Bob Mainstone	Norman Webster
Kathleen Dumbovic	Natalie March	Emily White
Tim Farmer		

- 1.4 The Charity was constituted by Conveyance dated 1<sup>st</sup> July 1920 when the Park was gifted to the Council's predecessor, the Urban District Council of Cuckfield, by Frances Pendleburg Worsley to be administered by the Council upon charitable trust.
- 1.5 The object of the Charity is the provision of a Public Recreation Ground for the use and benefit of the inhabitants of the former Urban District of Cuckfield and the Parish of Cuckfield Rural, and as a perpetual memorial to her late husband, Richard Worsley, who died on the 9<sup>th</sup> November 1916, and as a memorial to those who gave their lives in the Great War 1914-18. The Council's powers of management are restricted to using the property for charitable purposes. By virtue of a Scheme made by the Charity Commissioners on 15<sup>th</sup> May 2000, the Council now has limited power, subject to complying with charity law and the prior written consent of the Charity Commissioners, to let part of

the Charity's property provided that this will not unduly interfere with the objects of the Charity.

- 1.6 The grounds to this popular and well used venue are regularly maintained by the District Council's grounds maintenance contract. Income was generated from pitch and event hire, hire of the tennis courts and ground rental for the tennis pavilion. The income generated contributed to the grounds maintenance and upkeep of the tennis courts, pavilion, playgrounds and paddling pool.
- 1.7 The purpose of this reports is to consider a request from Cuckfield Lawn Tennis Club who desire to take a lease of the three tennis courts at the Park outlined in red on the attached plan and a new lease of the land adjacent to the tennis courts, on which the Cuckfield Lawn Tennis Club's pavilion is situated, at a revised rent.

## **2.0 BACKGROUND**

- 2.1 Cuckfield Lawn Tennis Club ("the Club") have occupied a small parcel of land adjacent to the tennis courts since 1962 under the terms of a ground lease, on which they have built a club house. The club house is a single storey clean and well maintained building.
- 2.2 The three courts are currently used by both the general public and the Club.
- 2.3 The Club would like to improve the condition of the courts in order to retain younger members and increase the membership, standard and reputation of the Club.
- 2.4 The Club feel that some members of the general public are abusing the Council's online booking system, through which casual sessions of hire may be booked, and using the courts free of charge.
- 2.5 The Club also states that when not in use for tennis the courts are being used to play football on/skateboarded on by youths, which is causing bad feeling with local residents, potentially causes damage to the courts and is hard to manage under the current arrangements.
- 2.6 The Club's expectations for the maintenance of the courts and the finances available to MSDC, who subsidise the Charity, to undertake the works are not compatible.
- 2.7 The Club have submitted a comprehensive business plan detailing how they would like to structure the Club in the future and a cash flow forecast detailing how they would finance any maintenance/resurfacing.

The Club's proposals for their future offer are:

1. The club must become more family friendly;
2. Development of the junior and youth policy;
3. Public playing time must be available but not for free;  
A number controlled lock will be fitted to the courts and a code issued on payment of the hire fee;
4. Include the residents who back onto the courts in any change,( reduced membership to these houses, commitment not to apply for floodlights, restricted opening times for the bar);
5. Promotion of the courts for public use;
  - The website would show public, team, junior, family and team availability times and would also be posted on the court doors with advice as to how to book a court.
  - Turn up and play days for those without access to the internet.
  - Wider advertising of the facilities in neighbouring villages.

- Advertising and opportunity to hit the ball from the automatic training machine at the Cuckfield Cuckoo Fair Day, to increase public awareness of the facilities.
- It is hoped that fees could be reduced which would make membership more economical than casual play.

The club has no plans to increase the time allocated to its club nights

The total forecast cost of maintaining the 3 courts is £186,650. The 30 year forecast shows that with the current Membership of 110 paying £60 per annum into a sinking fund would be sufficient to cover this cost.

The club also has access to additional resources, should they be necessary from Subscriptions, public booking fees and interest on its Capital.

- 2.8 MSDC does not have the funds available to resurface the courts and as the Charity does not have any surplus or reserves neither do the Charity.

### **3.0 LEGAL ADVICE TO THE CHARITY TRUSTEES**

- 3.1 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.
- 3.2 Charity Trustees have general powers under the Trusts in Land and Appointment of Trustees Act 1996 to sell or grant leases of land owned by or held in trust for a charity. 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.
- 3.3 The fact that the land is charity land does not prevent all or part of the land from being leased out by the Charity. Subject to the Charity Trustees complying with the provisions of Section 119 of the Charities Act 2011 they can upon the recommendation of an independent surveyor, engaged exclusively by the Charity Trustees to advise them, decide to lease part of the Charity's land. 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 lease out the land.
- 3.4 Section 121 of the Charities Act 2011 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. Section 121 of the Charities Act 2011 provides that where land is held by or in trust for a charity, and the trusts on which it is so held stipulate that it is to be used for the purposes, or any particular purpose of the charity the land must not be sold, leased or otherwise disposed of unless the charity trustees have first given public notice of the proposed disposition, inviting representations to be made to them within a time specified in the notice, which must be not less than one month from the date of the notice, and must then take into consideration any representations made to them about the proposed disposition.

- 3.5 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 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.
- 3.6 This being the case, it will be necessary for the Charity Trustees to advertise the intention to grant the proposed lease to the Club and to consider any objections received.
- 3.7 In order to comply with the requirements of Section 119 of the Charities Act 2011, the Charity Trustees must obtain valuation advice from a suitably qualified surveyor, who must prepare a report for the Charity Trustees in accordance with the requirements of the Charities (Qualified Surveyors Reports) Regulations 1992. The requirements of those regulations are set out in brief in Appendix 1 to this report.

#### **4.0 INDEPENDENT SURVEYOR'S REPORT**

4.1 An independent surveyor's report has been commissioned and completed by the District Valuer, at the expense of the Club, but solely for the benefit of the Charity Trustees. The relevant sections of the report are set out below.

4.2 The Charity's Surveyor's report is based on the following assumptions:

Four yearly upward only annual linked rent reviews in line with CPI.

The market rent is apportioned £1,000 per annum for tennis courts and £250 per annum for the pavilion ground rent.

The Pavilion is used solely by members of the Tennis Club.

1/3 of the playing time is made available for use by non-Tennis Club members.

The Tennis Club would be entirely responsible for insurance and maintenance/repair of the courts and the land.

Term 28 years.

4.3 The proposed terms mirror the assumptions in the Independent Surveyors report.

A term of 28 years has been adopted to enable the costs to be amortised.

Index Linked rent reviews are to be adopted due to the costs that would be incurred in third party rent review negotiations when considered against the annual rent and the lack of comparable evidence that is available.

#### **5.0 OTHER OPTIONS CONSIDERED**

5.1 We have not openly marketed the tennis courts "to let" but due to the Tennis Clubs existing occupation of the adjoining site we consider them to be a "special purchaser".

- 5.2 There are no other uses for the land, the land is held upon trust as a recreation ground for the benefit of the public at large; we cannot use the land for any other purpose. The current membership and use of the Tennis Courts demonstrates that there is a demand for tennis courts in this location.

## **6.0 FINANCIAL IMPLICATIONS**

- 6.1 On average we have taken approx. £5000 per year from these courts over the past three years. Club Season Tickets are our primary source of income.
- 6.2 Over the same period, pro rata expenditure for the tennis courts has been approx. £4000 per annum taken into consideration routine maintenance and annualised capital costs. This includes annual cleaning, maintenance and equipment costs as well as built-in costs for re-surfacing (which would take place over a ten-year period).
- 6.3 On average therefore the income to the Charity per annum is £1000 after costs. The terms of the lease are such that the rent of £1000 would ensure no loss of income, and no risk of un-budgeted repairs needing to be paid for by the Charity.
- 6.4 The Pavilion is currently subject to a historic agreement from October 1962 at 5p per annum charged this is to be increased to £250 per annum as part of the re-gearing of the lease and resulting in a small additional income.

## **7.0 RISK MANAGEMENT IMPLICATIONS**

Any risk is considered minimal and there is considered to be benefit in the Club taking over the health and safety and maintenance obligations of the facility.

## **8.0 EQUALITY AND CUSTOMER SERVICE IMPLICATIONS**

No Equalities Impact Assessment has been carried out specifically for this proposal as there is no intention to alter the existing facilities and the availability of the courts for public use. The proposed lease will contained provisions to ensure continued availability of the courts for use by the public and regulations of charges for public use.

## **9.0 OTHER MATERIAL IMPLICATIONS**

- 9.1 Concerns have been raised about the adequacy of car parking in the recreation ground car park, which is small and has limited turning. There is limited scope to address these concerns, which are not overly significant and the Club have been made aware of these concerns, which the Club have responded to pointing out that both members other users are predominantly locals who walk to the courts and therefore do not use the car park. The Club are seeking to encourage more children to play, but it is likely that these will be dropped off and collected or walk. The Club are very aware of the issues with parking on a site shared with football and have no desire to add to the problem or create problems for their members which would ultimately cause membership to fall.
- 9.2 The site is surrounded by residential properties and there have historically been issues with neighbours complaining about noise from the courts. The club are keen to implement a more robust booking system so that only people that pay to use the courts are able to access the site they feel that this will reduce issues with neighbours as players will be better monitored and more accountable.

## **10.0 RECOMMENDATIONS**

*The Charity Trustees are recommended to:*

**10.1** *Note the contents of this report and the Independent Surveyor's report;*

**10.2** *Authorise the Charity Trustees' Solicitor, subject to complying with Section 121 of the Charities Act 2011 and Section 123 of the Local Government Act 1972 and reporting back to the Charity Trustees, the Club paying the Charity's legal, property and other costs, to lease the site of the tennis courts and the site of the tennis pavilion on the terms set out in this report and the Independent Surveyor's report and on such other terms as the Charity Trustees' Solicitor recommends or considers appropriate.*

## **11.0 BACKGROUND PAPERS**

None

## APPENDIX 1

### INFORMATION TO BE CONTAINED IN, AND MATTERS TO BE DEALT WITH BY, QUALIFIED SURVEYORS' REPORTS

1.—(1) A description of the relevant land and its location, to include—

- (a) the measurements of the relevant land;
- (b) its current use;
- (c) the number of buildings (if any) included in the relevant land;
- (d) the measurements of any such buildings; and
- (e) the number of rooms in any such buildings and the measurements of those rooms.

(2) Where any information required by sub-paragraph (1) above may be clearly given by means of a plan, it may be so given and any such plan need not be drawn to scale.

2. Whether the relevant land, or any part of it, is leased by or from the charity trustees and, if it is, details of—

- (a) the length of the lease and the period of it which is outstanding;
- (b) the rent payable under the lease;
- (c) any service charge which is so payable;
- (d) the provisions in the lease for any review of the rent payable under it or any service charge so payable;
- (e) the liability under the lease for repairs and dilapidations; and
- (f) any other provision in the lease which, in the opinion of the surveyor, affects the value of the relevant land.

3. Whether the relevant land is subject to the burden of, or enjoys the benefit of, any easement or restrictive covenant or is subject to any annual or other periodic sum charged on or issuing out of the land except rent reserved by a lease or tenancy.

4. Whether any buildings included in the relevant land are in good repair and, if not, the surveyor's advice—

- (a) as to whether or not it would be in the best interests of the charity for repairs to be carried out prior to the proposed disposition;
- (b) as to what those repairs, if any, should be; and
- (c) as to the estimated cost of any repairs he advises.

5. Where, in the opinion of the surveyor, it would be in the best interests of the charity to alter any buildings included in the relevant land prior to disposition (because, for example, adaptations to the buildings for their current use are not such as to command the best market price on the proposed disposition), that opinion and an estimate of the outlay required for any alterations which he suggests.

6. Advice as to the manner of disposing of the relevant land so that the terms on which it is disposed of are the best that can reasonably be obtained for the charity, including—

- (a) where appropriate, a recommendation that the land should be divided for the purposes of the disposition;
- (b) unless the surveyor's advice is that it would not be in the best interests of the charity to advertise the proposed disposition, the period for which and the manner in which the proposed disposition should be advertised;
- (c) where the surveyor's advice is that it would not be in the best interests of the charity to advertise the proposed disposition, his reasons for that advice (for example, that the proposed disposition is the renewal of a lease to someone who enjoys statutory protection or that he believes someone with a special interest in acquiring the relevant land will pay considerably more than the market price for it); and
- (d) any view the surveyor may have on the desirability or otherwise of delaying the proposed disposition and, if he believes such delay is desirable, what the period of that delay should be.

**7.—(1)** Where the surveyor feels able to give such advice and where such advice is relevant, advice as to the chargeability or otherwise of value added tax on the proposed disposition and the effect of such advice on the valuations given under paragraph 8 below.

(2) Where either the surveyor does not feel able to give such advice or such advice is not in his opinion relevant, a statement to that effect.

**8.** The surveyor's opinion as to—

- (a) the current value of the relevant land having regard to its current state of repair and current circumstances (such as the presence of a tenant who enjoys statutory protection) or, where the proposed disposition is a lease, the rent which could be obtained under it having regard to such matters;
- (b) what the value of the relevant land or what the rent under the proposed disposition would be—
  - (i) where he has given advice under paragraph 4 above, if that advice is followed; or
  - (ii) where he has expressed an opinion under paragraph 5 above, if that opinion is acted upon; or
  - (iii) if both that advice is followed and that opinion is acted upon;
- (c) where he has made a recommendation under paragraph 6(a) above, the increase in the value of the relevant land or rent in respect of it if the recommendation were followed;
- (d) where his advice is that it would not be in the best interests of the charity to advertise the proposed disposition because he believes a higher price can be obtained by not doing so, the amount by which that price exceeds the price that could be obtained if the proposed disposition were advertised; and
- (e) where he has advised a delay in the proposed disposition under paragraph 6(d) above, the amount by which he believes the price which could be obtained consequent on such a delay exceeds the price that could be obtained without it.

**9.** Where the surveyor is of the opinion that the proposed disposition is not in the best interests of the charity because it is not a disposition that makes the best use of the relevant land, that opinion and the reasons for it, together with his advice as to the type of disposition which would constitute the best use of the land (including such advice as may be relevant as to the prospects of buying out any sitting tenant or of succeeding in an application for change of use of the land under the laws relating to town and country planning etc.).