

**4. BEECH HURST GARDENS, HAYWARDS HEATH, WEST SUSSEX**  
**CHARITY NO: 305202**  
**PROPOSED LEASEHOLD DISPOSAL AND AUTHORISATION OF FUNDS TO**  
**BE ALLOCATED TO A BEECH HURST CELEBRATION PARTY**

**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:

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

- 1.4 The Charity was constituted by a Declaration of Trust dated 2nd March 1950 when Beech Hurst 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.
- 1.5 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 1<sup>st</sup> 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.

## **2.0 SUMMARY**

This report updates the Charity Trustees on the progress of the Beech Hurst Kiosk project; informs on the outcome of statutory consultation; provides information on offers received in response to an advertisement asking for rental offers for the new kiosk at Beech Hurst Gardens; recommends proceeding with the grant of a 2 year lease to the best rental offer received, following the refurbishment of the kiosk as previously approved by the Charity Trustees; and seeks authority to allocate £2000 to the costs of Haywards Heath Town Council organising a celebration party in the gardens for the residents of Haywards Heath on behalf of the Charity.

## **3.0 PURPOSE OF REPORT**

3.1 The purpose of this report is to:

- (a) update the Charity Trustees on the outcome of the public consultation required under the Charities Act 2011 and the Local Government Act 1972;
- (b) consider the proposals received from three potential tenants in response to the Charity Trustees advertisement seeking expressions of interest in operating the new kiosk and select the successful bidder;
- (c) authorise the grant of a 2 year lease to the successful bidder; and
- (d) authorise the expenditure of £2000 from the Charity's surplus income towards the funding of the Beech Hurst Gardens Celebration Party for the residents of Haywards Heath to celebrate the opening of new facilities at the Gardens to be organised by and in cooperation with Haywards Heath Town Council.

## **4.0 BACKGROUND**

4.1 At the meeting of the Charity Trustees held on 21<sup>st</sup> November 2012 the Charity Trustees resolved to use £45,000 of surplus charity funds to deliver improvements to Beech Hurst Gardens and more specifically to renovate the Beech Hurst Kiosk to extend the internal accommodation, install a kitchen, WC and some indoor and outdoor seating and to use £34,000 of surplus charity funds to improve the play area.

At the meeting for the Charity Trustees held on 24<sup>th</sup> July 2013 the Charity Trustees were informed of proposals to let the new kiosk to be run on a concession basis with associated disabled toilet facilities.

At the meeting of the Charity Trustees held on 18<sup>th</sup> December 2013 the Charity Trustees considered a further report on the Beech Hurst Kiosk project following a tender process and resolved to use an additional £15,000 of surplus charity funds to deliver the Beech Hurst Kiosk project.

The Charity Trustees advertised their intention to dispose of the kiosk by way of a short lease pursuant to Section 121 of the Charities Act 2011 and section 123 of the Local Government Act 1972 in the Mid Sussex Times on 21<sup>st</sup> and 28<sup>th</sup> November 2013 with a closing date for representations of 23<sup>rd</sup> December 2013. No objections or representations were received in response to those advertisements.

The Charity Trustees advertised in the Mid Sussex Times on 30<sup>th</sup> January 2014 for expressions of interest in operating to the Kiosk.

Interested parties viewed the kiosk and offers were subsequently received. Additionally we invited Mitchells and Butler, who operate the Harvester restaurant within the gardens, to submit an offer but they have confirmed that they have no interest in the property.

Three offers were received:

1. Bidder A: A husband and wife team. A lease for 2 years at a rent of £400 per calendar month on Full Repairing and Insuring terms. The café would operate all year round and subject to planning constraints. This operator would like to open from 7am to 7pm and additionally sell a small amount of local treats and children's park toys. This use would be entirely ancillary to the main café use (less than 10%). The husband has experience running his own business for a number of years and has suggested his rent to be reviewed at the end of the first year of trading.
2. Bidder B runs a local tearoom close to Haywards Heath and has offered to take a lease of 2 – 3 years at a rent of £300 per calendar month. Bidder B would open Tuesday – Sunday 8.30am – 6.30pm all year except for 3 weeks post Christmas. The café would operate as a tearoom.
3. Bidder C has offered to take a lease of 2 years at £200 pcm as a café open for 10 months a year, variable opening times to suit the season. Bidder C has some experience within the catering industry and of running a business..

The bids have been considered by a qualified surveyor who recommends proceeding with Bidder A, as this represents both the best rental offer from a tenant with sound and demonstrable business experience. It is recommended that the Charity Trustees offer a lease on the following terms:

**Term** - 2 years from a date to be agreed with Bidder A;

**Rent** - at the annual rent proposed by bidder A, subject to review after one year in line with uplift in the CPI;

**Utilities and services** - the tenant to be responsible for all outgoings relating to the property e.g. water rates, sewerage charges, electricity, gas and NNDR;

**Repairs** – the tenant to be responsible for all internal and non-structural repairs, decoration and maintenance. The landlord responsible for all structural repairs.

**Landlord and Tenant** – the lease to be excluded from the statutory protection afforded to business tenants under the Landlord and Tenant Act 1954; and  
Such other terms as are usually included in a lease of this type.

It is considered that this is the best offer received and represents a good rental offer for a property of this type in this location. By advertising the property in the local press, it has been shown that the local market has been tested and all potentially interested parties given the opportunity to express any interest.

It is further proposed that the new facilities at the Gardens be promoted via a Celebration Party to be organised by Haywards Heath Town Council and part funded from surplus charity income in the sum of £2000.

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

- 5.1 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 or detrimental to the interest of the Council. These rules also apply to any Charity Trustee who is also a member of another local authority such as a Town or Parish Council.
- 5.2 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. By virtue of a Scheme made by the Charity Commissioners on 1<sup>st</sup> March 1996, the Charity Trustees require the prior written consent of the Charity Commissioners to the grant of the proposed lease.
- 5.3 The fact that the land is charity land does not prevent all or part of the land from being leased out by the Charity. As the proposed lease is for a term of less than 7 years there is no requirement for a report of recommendation from an independent surveyor, engaged exclusively by the Charity Trustees to advise them as to the appropriateness of the level of rental. However, the Charity Trustees must be advised by a person, who is reasonably believed by the Charity Trustees to have the requisite ability and practical experience to provide competent advice on the proposed lease, and the Charity Trustees must decide that they are satisfied, having considered that person's advice, that the terms on which the lease is proposed are the best that can be reasonably obtained for the Charity. The author of this report is a qualified chartered surveyor with 19 years practical experience.
- 5.4 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.
- 5.5 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.

5.6 Given that no objections have been received the Charity Trustees need only be concerned that the terms of the lease are the best that can reasonably be obtained.

5.7 The Charity Trustees do not have the power to donate the Charity's money to the Town Council, but the Charity Trustees may authorise the expenditure of £2000 from surplus charity funds to engage the Town Council to organise and manage a celebration party promoting the Charity and the new facilities at Beech Hurst Gardens on behalf of the Charity Trustees.

## **7.0 OTHER OPTIONS CONSIDERED**

7.1 A short term hire agreement has been ruled out as not being cost effective or providing a good return and secure income to the Charity having invested in the renovation of the kiosk.

7.2 As previously mentioned the Harvester has been approached to include the kiosk within their leasehold demise or grant a further lease. However they were not interested in pursuing this proposal.

## **8.0 FINANCIAL IMPLICATIONS**

8.1 The proposed lease provides an additional income to the Charity of £4800 per annum, rising in the second year in reference to the CPI.

## **9.0 RISK MANAGEMENT IMPLICATIONS**

In the event of the business not succeeding, the kiosk can be taken back and re-let. It is therefore not considered to be a high risk.

## **10.0 EQUALITY AND CUSTOMER SERVICE IMPLICATIONS**

The renovations provide a new disabled W.C. facility in the park and provide a refreshment facility /offer which can be accessed/used by a wider range of park users both in terms of longer opening hours, price range and nature of food and drinks sold. This will result in a wider range of people having access to amenities and facilities and will have a positive impact on equality and customer service.

## **11.0 OTHER MATERIAL IMPLICATIONS**

The new café in the park will provide a vibrant new addition and facility to the Gardens in conjunction with the new play facilities which will be incepted this spring.

## **12.0 RECOMMENDATIONS**

The Charity Trustees are recommended to:

- (a) Authorise the Charity Trustees' Solicitor to apply for consent from the Charity Commissioners to the grant of a lease to Bidder A;**
- (b) Subject to (a) above authorise the Charity Trustees' Solicitor to grant a lease of the new Beech Hurst Kiosk to Bidder A on the terms mentioned in this report and such other terms as the Charity Trustees' Solicitor considers appropriate; and**
- (c) Allocate £2000 of surplus charity funds as a contribution towards the costs incurred by Haywards Heath Town Council in organising and delivering a Beech Hurst Gardens Celebration Party for the residents of Haywards Heath promoting the new facilities on behalf of the Charity Trustees.**

## **13.0 BACKGROUND PAPERS**

Previous minutes to meeting of 21st November 2012, 24th July 2013 and 18th December 2013