

**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:

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

- 1.4 The Charity was constituted by Conveyance dated 1st 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 9th 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 15th May 2000, the Council now has power, subject to complying with charity law and the prior written consent of the Charity Commissioners, to let parts 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 Council's grounds maintenance contract. Income is 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 purposes of this report are to:
- (a) consider any objections received in response to the statutory advertisements placed in the Mid Sussex Times pursuant to the requirements of Charities Act 2011 and the Local Government Act 1972; and
 - (b) to confirm, in the light of the objections received, the Charity Trustees authority to the grant of a lease of the three tennis courts at the Park outlined in red on the attached plan ("the Tennis Courts") and to renew the lease of the land adjacent to the tennis courts, on which the Club's pavilion is situated, at a revised rent on the terms recommended in this report and the independent surveyor's report as detailed in the Heads of Terms for these two proposed leases at Appendix B and C.

2.0 BACKGROUND

- 2.1 At the meeting of the Charity Trustees held on 25th September 2013, the Charity Trustees considered a report on the future management of the Tennis Courts by Cuckfield Lawn Tennis Club ("the Club") and resolved that:
- (1) the contents of the report and the Independent Surveyor's Report be noted;
 - (2) the grant of the leases of the Tennis Courts and the Tennis Club Pavilion to the Club be agreed; and
 - (3) subject to the Club paying the costs of so doing, the Charity Trustees' Solicitor be authorised to advertise the Charity Trustees' intention to grant the leases of the Tennis Courts and the Tennis Club Pavilion in accordance with Section 121 of the Charities Act 2011 and section 123 of the Local Government Act 1972 and to report back to the Charity Trustees, as to the public response to the proposal.
- 2.2 The proposed leasehold disposals by the Charity Trustees were advertised in the Mid Sussex Times on 3rd October 2013 and 10th October 2013 and one representation was received by the date specified in the advertisements and is annexed to this report at Appendix A. The club changed its name and it is a requirement that the name of the tenant is stated in the advertisement. The proposed leasehold disposals were re-advertised on 30th January 2014 and 6th February 2014 and no representations were received in response to the second advertisements.
- 2.3 The Club have occupied a small parcel of land adjacent to the Tennis Courts since 1962 under the terms of a ground lease, and upon which they have built a club house. The club house is a single storey clean and well maintained building.
- 2.4 At present the demographic of the Club largely falls into the senior citizen category. The Club would like to increase younger membership.
- 2.5 The Tennis Courts are currently used by both the general public and the Club.

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. These rules also apply to any Charity Trustees who is also a member of another local authority such as a Town or Parish 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 The Charity Trustees will note that the letter received in response to the statutory advertisements does not actually object to the grant of the leases, but merely raises concerns about the future management and use of the facilities. It is intended that the leases will contain robust provisions to address concerns already raised by the Charity Trustees, which will address the concerns raised in the letter of representation received. The leases will also be subject to a break option that entitles the Charity Trustees to bring that leases to an end in the event of persistent breaches. In both cases, the Club will be afforded the opportunity to remedy breaches before the option to break is exercised.
- 3.7 The Scheme made by the Charity Commissioners on 15th May 2000 stipulates that the Charity Trustees must apply to them for permission grant leases of part of the Charity's land and therefore, it will be necessary to seek their authority before completing the leases.

4.0 INDEPENDENT SURVEYORS REPORT

- 4.1 An independent surveyors report was commissioned and completed by the District Valuer, at the expense of the Club, but solely for the benefit of the Charity Trustees. Copies of the report were provided to the Charity Trustees when they considered this matter in September 2013 and are available on the charity reports section of CMIS or on request. The proposed terms mirror the recommendations in that report.

5.0 OTHER OPTIONS CONSIDERED

- 5.1 We have not openly marketed the Tennis Courts "to let" but due to the Club's 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 the income to the Charity per annum is £1000 after costs. The terms of the lease to be signed for £1,000 per annum mean that there is no loss of income to the Charity, and no risk of un-budgeted repairs needing to be paid for by the Charity.
- 6.2 The Pavilion is currently subject to a historic agreement from October 1962 and charged at 5 pence per annum; 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.
- 6.3 The proposals submitted by the Club show that after the first year's membership the majority of the public would benefit from paying lower fees to play tennis than they would currently pay under the Council's fee structure.

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. It is anticipated that there would be a transitional period during which the booking and maintenance would be transferred to the club during this period the experience and knowledge of the relevant Council Officers would be available to assist the club and ensure that it is aware of and adhering to its obligations.

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 contain provisions to ensure continued availability of the courts for use by the public and regulation of charges for public use.

9.0 OTHER MATERIAL IMPLICATIONS

- 9.1 The lease will include an absolute prohibition against alterations during the lease period, ensuring that, for example but not limited to, there will be no application for floodlighting or covers over the Tennis Courts being sought.

- 9.2 In total under the present arrangement the club reserves 65 sessions out of the 252 (26%) leaving 74% availability for casual play. This club/public playing time ratio is not proposed to change.
- 9.3 Any lease of the Tennis Courts will be excluded from the statutory protection afforded to business tenants by the Landlord and Tenant Act 1954 and will contain provisions that entitle the Charity Trustees to terminate the lease in the event of a material breach of the lease terms and conditions.

10.0 RECOMMENDATIONS

The Charity Trustees are recommended to:

- 10.1** *Note and consider the response to the statutory advertisements placed in the Mid Sussex Times on 3rd October 2013 and 10th October 2013 giving notice of the Charity Trustees intention to grant the leases to the Club at Appendix A;*
- 10.2** *Confirm the Charity Trustees authority to grant the leases on the terms recommended in the report to the Charity Trustees considered on 25th September 2013 and the Independent Surveyor's Report as detailed in the Heads of Terms annexed to this report at Appendix B and C;*
- 10.3** *Authorised the Charity Trustees' Solicitor to apply to the Charity Commission for consent; and,*
- 10.4** *Subject to the Club paying the Charity's legal and other costs, upon receipt of the Charity Commission's consent, authorise the Charity Trustee's Solicitor to grant the leases to the Club on the terms set out in the Heads of Terms annexed to this report and on such other terms as the Charity Trustees' Solicitor recommends.*

Background Papers

Valuation report undertaken by DVS Property Specialists
Copy of letter from Mr and Mrs D.W. Curtis-Brignell
Heads of terms as agreed with Cuckfield Lawn tennis club for two leases.

Mr T Clark
Solicitor to the Council
Mid Sussex District Council
Oaklands Road
Haywards Heath
West Sussex RH16 1SS



4 October 2013

Dear Mr Clark

Reference: TC/JS/Cuck

Further to the notice in the Mid Sussex Times dated 3rd October 2013 we wish to write with reference to the proposal to grant leases to Cuckfield Tennis Club of land at Richard Worsley Recreation Ground.

As our property is directly adjacent to the tennis courts we would like to make the following comments:

We would support any change of management which would result in the improvement in the way that these tennis courts are "managed" insofar as the current inadequate arrangements and method of "securing" the courts allows people to play outside of the official opening times (e.g. 8am on a Sunday and late into the evening). As a result of the courts being unsupervised it is a regular occurrence for people to play ball games other than tennis on these courts, including football.

We would not support any granting of leases without an assurance that the Cuckfield Tennis Club will respect the close proximity of residents and their right to enjoy the amenity of their own gardens. It is not uncommon in the summer months for their members to engage in after-match liquid refreshment (and the associated loud conversations) outside of the Pavilion and extending well after dark.

We would not support any granting of leases without an assurance that there will be no future application to extend the opening times of the courts by the installation of floodlighting.

Yours sincerely

A solid black rectangular box redacting the signature of Mr and Mrs D W Curtis-Brignell.

Mr and Mrs D W Curtis-Brignell

Cuckfield Tennis Courts, Richard Worsley Recreation Ground
Cuckfield

Heads of Terms for Lease to Cuckfield Tennis Club - Subject to Contract

- Landlord:** Mid Sussex District Council as Trustees of Richard Worsley Recreation Ground (also known as Cuckfield Recreation Ground) Charitable Trust, Cuckfield, West Sussex, (Charity No:206789)
- Tenant:** Cuckfield Lawn Tennis Club
- Premises:** Land at Richard Worsley Recreation Ground (also known as Cuckfield Recreation Ground) Charitable Trust, Cuckfield, West Sussex edged red on the attached plan.
- The Building:** means any building now or at any time hereafter erected on the whole or part of the land.
- Term:** From 1st April 2014 to 31st March 2042.
- Security of Tenure:** The Lease to be contracted out of the security of tenure provisions of sections 24-28 of Part 2 of the Landlord & Tenant Act 1954
- Rent:** £250 per annum, payable quarterly in advance (to be apportioned from 1st April to 24th March)
- Rent Review:** Every 4 years in line with RPI.
- Use:** To use as a tennis pavilion in connection with the activities of the Tenant and for no other purpose.
- Repairs:** The Tenant to keep the premises in a good state repair at all times.
- Alterations:** Not to extend or alter the structure of the pavilion in any manner.

Not to make any internal non-structural alterations to the building without the previous written consent of the Council not to be unreasonably withheld.
- Insurance:** The Tenant to insure the premises.

The Tenant shall maintain public liability insurance in the sum of £10 million and shall indemnify Landlord against all claims or losses as a result of the use of the premises and associated rights

Alienation: Not to assign or sub-let the whole or any part of the premises without the previous written consent of the Landlord such consent not to be unreasonably withheld.

Outgoings: The Tenant to pay business rates, utility bills and all other outgoings

Other: Landlord's rolling break option on 6 months' notice, subject to the Landlord giving the tenant notice of its intention to exercise the break.

The notice will stipulate the reasoning behind the decision to exercise the break option which will be based on an apparent or material breach of specific conditions. Failure to remedy the breach would result in the break option being exercised.

Costs: Each party to pay their own costs in the preparation of this agreement.

Cuckfield Tennis Courts, Richard Worsley Recreation Ground
Cuckfield

Heads of Terms for Lease to Cuckfield Tennis Club - Subject to Contract

Landlord:	Mid Sussex District Council as Trustees of Richard Worsley Recreation Ground (also known as Cuckfield Recreation Ground) Charitable Trust, Cuckfield, West Sussex, (Charity No:206789)
Tenant:	Cuckfield Lawn Tennis Club
Premises:	The 3 (three) tennis courts at Richard Worsley Recreation Ground (also known as Cuckfield Recreation Ground) Charitable Trust, Cuckfield, West Sussex edged red on the attached plan
Term:	From 1 st April 2014 to 31 st March 2042.
Security of Tenure:	The Lease to be contracted out of the security of tenure provisions of sections 24-28 of Part 2 of the Landlord & Tenant Act 1954
Rent:	£1,000 per annum, payable quarterly in advance on the usual quarter days (to be apportioned from 1 st April to 24th March)
Rent Review:	Every 4 years in line with RPI.
Use:	To use as tennis courts in connection with the activities of the Tenant and for no other purpose.
Repairs:	The Tenant to keep the premises in repair.
Alterations:	Prohibited.
Insurance:	The Tenant to insure the premises. The Tenant shall maintain public liability insurance in the sum of £10 million and shall indemnify Landlord against all claims or losses as a result of the use of the premises and associated rights
Alienation:	Not to assign or sub-let the whole or any part of the premises.
Outgoings:	The Tenant to pay business rates, utility bills and all other outgoings
Other:	Landlord's rolling break option on 6 months' notice, subject to the Landlord giving the tenant notice of its intention to exercise the break.

The notice will stipulate the reasoning behind the decision to exercise the break option which will be based on an apparent or material breach of specific conditions. Failure to remedy the breach would result in the break option being exercised.

Playable time: 9am to 9pm daily, subject to seasonal conditions.

Public Playing Time: Subject to the following, not less than 74% of Playable Time.

Public bookable times:

9am to 9pm Mondays (3 courts)

9am to 6pm Tuesday, Thursday, Friday. (3 Courts)

9am to 3pm and 6pm to 9pm Wednesday. (3 Courts)

9am to 12pm (1 court available) and 6pm to 9pm Saturdays.
(3 Courts)

9am to 9pm Sundays (1 court available).

Club bookable times:

6pm to 9pm Tuesday, Thursday and Friday (3 Courts)

12pm to 6pm Saturday (3 Courts)

3pm to 6pm Wednesday (3 Courts)

9am to 12pm (2 courts reserved) Saturday

10a m to 12pm (2 courts reserved) Sundays.

In total the tenant reserves 66 sessions out of the 252 available sessions. Equating to 26% use by the club and 74% availability to the public.

The Tenant will covenant to adhere to the programme of Public and Club Bookable Playing Time, changes subject to Landlord's consent not to be unreasonably withheld.

Club Members are entitled to book court time during public sessions but the same booking rules must apply to both Club Members and the general public. Club Members are not to be given preference and courts cannot be booked more than 6 weeks in advance.

- Fee Structure:** The fee structure offered by the tenant for the use of the courts is not to exceed the Council's published fee structure for the tennis courts, without landlord's consent.
- Site Security:** The demise is to remain secured at all times with a new entry system to be installed, maintained and managed by the tenant.
- Costs:** Tenant to pay the Council's legal and property costs and disbursements.