

**4 BEECH HURST GARDENS, HAYWARDS HEATH, WEST SUSSEX
CHARITY NO: 305202
PROPOSED LEASEHOLD DISPOSAL AND AUTHORISATION OF FUNDS TO
THE BEECH HURST KIOSK**

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

2.0 SUMMARY

- 2.1 This report updates the Charity Trustees on the position of the Beech Hurst Kiosk since the last report on 23rd July 2014, provides information on 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.

3.0 PURPOSE OF REPORT

- 3.1 The purpose of this report is to:
- i. Update the Charity Trustees on the outcome of offering a lease of the Beech Hurst Kiosk to the individual as authorised in the previous Charity Trustees meeting of 23rd July 2014.
 - ii. Consider the proposals received from one potential tenant in response to marketing of the premises.
 - iii. Authorise the grant of a 2 year lease to the successful bidder with a licence being offered until the lease can be completed.
 - iv. Authorise the expenditure of £800 to place picnic benches under the tree adjoining the kiosk which could be used by customers of the kiosk and £3120 for replacement of the window shutters which cannot all be opened at once with a roller shutter. All costs are exclusive of VAT.

4.0 BACKGROUND

- 4.1 At the meeting of the Charity Trustees held on 21st 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, a disabled access WC and some indoor and outdoor seating and to use £34,000 of surplus charity funds to improve the play area.

- 4.2 At the meeting for the Charity Trustees held on 24th 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.
- 4.3 At the meeting of the Charity Trustees held on 18th 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.
- 4.4 A further report to the Charity Trustees on 23rd July 2014 committed an additional £11,000 for Beech Hurst kiosk. This was due to a change in specification of the disabled access ramp to reduce damage to tree roots in the area and longer runs of drainage being required to connect to the mains due to infrastructure not being present.
- 4.5 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 21st and 28th November 2013 with a closing date for representations of 23rd December 2013. No objections or representations were received in response to those advertisements.
- 4.6 The Charity Trustees advertised in the Mid Sussex Times on 30th January 2014 for expressions of interest in operating to the Kiosk.
- 4.7 Interested parties viewed the kiosk and offers were subsequently received. Additionally, Mitchells and Butler, who operate the Harvester restaurant within the gardens, were also invited to submit an offer but they have confirmed that they have no interest in the property.
- 4.8 Three offers were received which were put forward at the Trustees Meeting on 9th April 2014 with the recommendation to grant a 2 year lease to the successful bidder which was subsequently approved.
- 4.9 A further report was submitted to the Trustees on 23rd July 2014 following the withdrawal of the successful and second highest bidders with a recommendation to grant a 2 year lease to the remaining applicant. The applicant was, however, unable to commit to opening towards the end of the summer and declined taking the premises on a casual hire basis.
- 4.10 Since then the property has been further marketed and despite a number of people showing initial interest, there has only been one formal offer submitted for the premises:
- 4.10.1 Bidder A proposes to open the kiosk as a café selling teas, coffees, homemade cakes and ice creams. The café would be open all year round with the applicant running the business themselves together with a part time helper. The premises would be open from 9 am to 5:30 pm during the summer months and weekends and to 4 pm during winter. A suitable business plan has been provided.
- 4.10.2 The café's unique selling point would be the sale of Drury's teas and coffees, light meals and afternoon teas with homemade cakes. The business would be marketed by means of online marketing, advertising in local magazines and newspapers, promotions and loyalty cards. It is proposed that the customers would be dog walkers, parents with children, and some local businesses.

4.10.3 The proposed use falls within the existing planning consent.

4.11 It is therefore recommended that the Charity Trustees offer a lease to Bidder A on the following terms:

- i. Term: 2 years.
- ii. Rent: £4,200 p.a. exclusive, payable monthly (i.e. £350 per month).
- iii. A rent review after the first year being increased by reference to the Consumer Prices Index.
- iv. Utilities and services: The tenant to be responsible for all outgoings relating to the property e.g. water sewerage charges and electricity (and any other relevant outgoings).
- v. Repairs: the tenant to be responsible for all internal and non-structural repairs, decoration and maintenance. The Landlord to be responsible for all structural repairs.
- vi. Landlord and Tenant: The lease to be excluded from the statutory protection afforded to business tenants under the Landlord and Tenant Act 1954.
- vii. A 6 month rolling break clause.

4.12 The offer is recommended as the applicant is committing to provide the facility being open throughout the year and committing to a minimum 2 year term. The alternative is a casual hire arrangement (on an hourly, daily or weekly basis) which gives less assurance of a facility being provided on a regular and reliable basis. This is always still an option.

4.13 In order to facilitate the grant of a lease of the premises it will be necessary to advertise this intention in a local newspaper for 2 consecutive weeks to comply with the provisions of Section 123 of the Local Government Act 1972. Prior to granting the lease the applicant has advised that they would be prepared at their own risk to take a 4 month licence for occupation as a trial run. In view of the need to get the premises up and running as soon as possible, a licence for occupation will be issued after 16th April. Such a licence will be at the same amount of £350 per month and the licensee would still be required to comply with the main lease terms such as payment of rent and outgoings and keeping the premises in its existing condition.

4.14 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.

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 1st 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 The Charity Trustees may authorise the expenditure of £800 and £3120 from surplus charity funds to purchase picnic benches and roller shutters. These will add to the facilities at Beech Hurst Gardens.

6.0 OTHER OPTIONS CONSIDERED

- 6.1 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.
- 6.2 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.

7.0 FINANCIAL IMPLICATIONS

- 7.1 The proposed lease provides as additional income to the Charity of £4200 per annum, rising in the second year in reference to the CPI.

8.0 RISK MANAGEMENT IMPLICATIONS

- 8.1 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.

9.0 EQUALITY AND CUSTOMER SERVICE IMPLICATIONS

- 9.1 The granting of a lease will 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.

10.0 OTHER MATERIAL IMPLICATIONS

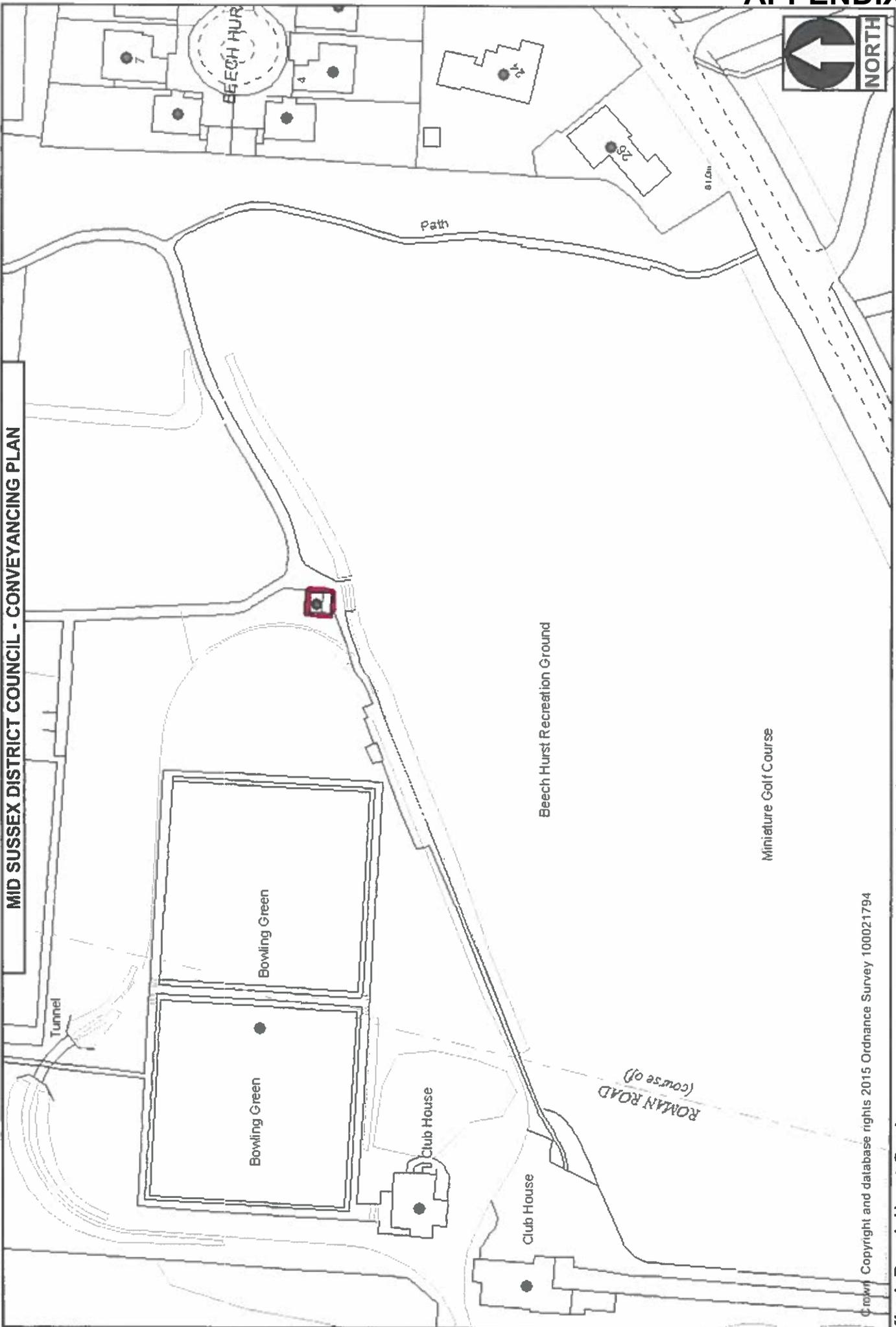
- 10.1 The new café in the park will provide a vibrant new addition and facility to the Gardens in conjunction with the new play facilities.

11.0 RECOMMENDATIONS

- 11.1 The Charity Trustees are recommended to:
- i. Authorise the Charity Trustees' Solicitor to apply for consent from the Charity Commissioners to the grant of a lease to Bidder A;
 - ii. 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
 - iii. Allocate £800 of charity funds as a contribution towards the costs to purchase picnic benches and £3120 for roller shutters which will add to the facilities at Beech Hurst Gardens.
 - iv. In the interim, grant a licence to Bidder A to use the premises at £350 per month.

12.0 BACKGROUND PAPERS

- 12.1 Previous minutes to meeting of 21st November 2012, 24th July 2013 and 18th December 2013, 9th April 2014 and 23rd July 2014..



KIOSK UNIT
BEECH HURST PARK
HAYWARDS HEATH, WEST SUSSEX RH16 3PB

