

**5. ST. JOHNS PARK CHARITABLE TRUST, BURGESS HILL, WEST SUSSEX  
CHARITY NO: 206789  
NEW PRACTICE NET FACILITY AND LEASE DISPOSAL**

**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's property comprises only the eastern half of the park. The Charity was constituted by a Conveyance dated 24<sup>th</sup> April 1891 when the Park was gifted to the Council's predecessors, the Burgess Hill Local Board, upon charitable trust.
- 1.5 The object of the Charity is the provision of a Public Park and Pleasure Ground for the benefit of the inhabitants and visitors to St John's Common. The Council's powers of management are restricted to using the property for charitable purposes within the meaning of the Recreational Charities Act 1958 now the Charities Act 2011. By virtue of the Trusts in Land and Appointment of Trustees Act 1996, the Council now has power, subject to complying with charity law 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 District Council's grounds maintenance contractor. Income is generated from pitch hire and pavilion hire and contributes towards the grounds maintenance and upkeep the Charity's property.

## **2.0 SUMMARY**

- 2.1 This report updates the Charity Trustees on the position since the last report on 25<sup>th</sup> September 2013.

## **3.0 PURPOSE OF THE REPORT**

- 3.1 This section of the report seeks to:
- i. Provide an update of the position regarding the granting of a lease to the Burgess Hill Cricket Club to erect new cricket practice nets.

## **4.0 BACKGROUND**

- 4.1 The Club was founded in 1872 and is based at St Johns Park, Burgess Hill. The Park has an existing double net practice facility, approximate location of which is indicated edged in blue on appendix A that was erected by the Council in circa 1998, which is well used and is in urgent need of replacement.
- 4.2 The Club hires the cricket facilities and the pavilion under the terms of the Council's casual and regular hire arrangements and maintains a grass cricket square with a synthetic strip on one side on the Park to meet their league requirements. Permission was granted for the provision of the cricket square by the Club in circa 1998 when the existing practice net facility was provided by the Council and the Club has a licence agreement to maintain the cricket square.
- 4.3 The proposed new double net practice facility will be slightly larger than the existing net facility in order to accommodate improvements in safety and will comprise a lockable cage structure designed to reduce vandalism. Unlike the present facility the public will not be able to gain access to and use the facility while it is secured. The Club will however be encouraged to have events to enable the public to participate in taster events.
- 4.4 The Charity Trustees report dated 25/09/2013 gave authority to remove the existing cricket practice nets previously erected by the Council and construct a new double net practice facility. It also gave consent to grant a lease for the new practice nets subject to reporting back to the Charity Trustees.
- 4.5 Following the recent discharge of the planning requirement (under planning reference 13/00059/FUL) relating to noise, in January this year, the Club now wish to progress with the erection of the nets in order to be ready for the cricket season.
- 4.6 Terms have been sent to the club for a 28 year lease at a rent of £500 per annum outside the provisions of the Landlord and Tenant Act 1954 with 5 yearly rent reviews to the Consumer Prices Index. The club would be responsible for maintaining the nets, but would also have responsibility for maintaining the existing cricket square and wickets.

## **5.0 PROPOSAL**

- 5.1 Subject to provisional agreement to the heads of terms of the lease, it is proposed to permit the Club to carry out the works to demolish the existing nets and erect new nets under a licence for occupation pending completion of the lease.
- 5.2 Lease terms once agreed will be reported back to the Trustees at the next meeting in June for final approval, together with a report from an independent Chartered Surveyor complying with the requirements of the Charities (Qualified Surveyors Reports) Regulations 1992. The property will also be advertised under Section 121 of the Charities Act 2011 and Section 123 of the Local Government Act 1972.
- 5.3 Such a licence will be for a period of one year but otherwise on the same terms at the proposed lease. The licence will be able to be terminated by either party upon one month's notice.

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

- 6.1 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 Trustee who is also a member of another local authority such as a Town or Parish Council.
- 6.2 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. The provisions of facilities to play organised sports within the Park are within the trusts of the Charity by virtue of the provisions of the Charities Act 1958.
- 6.3 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.
- 6.4 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.

- 6.5 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.
- 6.6 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.
- 6.7 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 C to this report.

## **7.0 OTHER OPTIONS CONSIDERED**

- 7.1 Do nothing.

## **8.0 FINANCIAL IMPLICATIONS**

- 8.1 It seems unlikely that the Club will be willing to fund a new practice net facility without having some degree of control over it. If the present practice net facility is not replaced with a suitable new one, it is likely that use of the Park for cricket will diminish and the Charity Trustees will likely lose valuable income arising from the Club's use of the Park and the pavilion hire. The costs of complying with the requirements of the Charities Act 2011 and the Local Government Act 1972 will be borne by the Club.

## **9.0 RISK MANAGEMENT IMPLICATIONS**

- 9.1 Construction of the new nets, will lead to a temporary disturbance to the Park as a temporary access route and compound for site traffic, plant and materials, but this will be set out in an agreement, which will require full reinstatement of the Park to its original condition where such disturbance takes place.

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

- 10.1 An impact assessment for the operation of Parks and Open Spaces was produced in December 2012, and it was reviewed as it relates to this project in July 2013. No significant issue have arisen from this proposal, however officers will need to agree a specific approach with the Club over the movement of construction plan and materials, as the adjacent footpath is very popular with wheelchair users crossing the Park.

## **11.0 RECOMMENDATIONS**

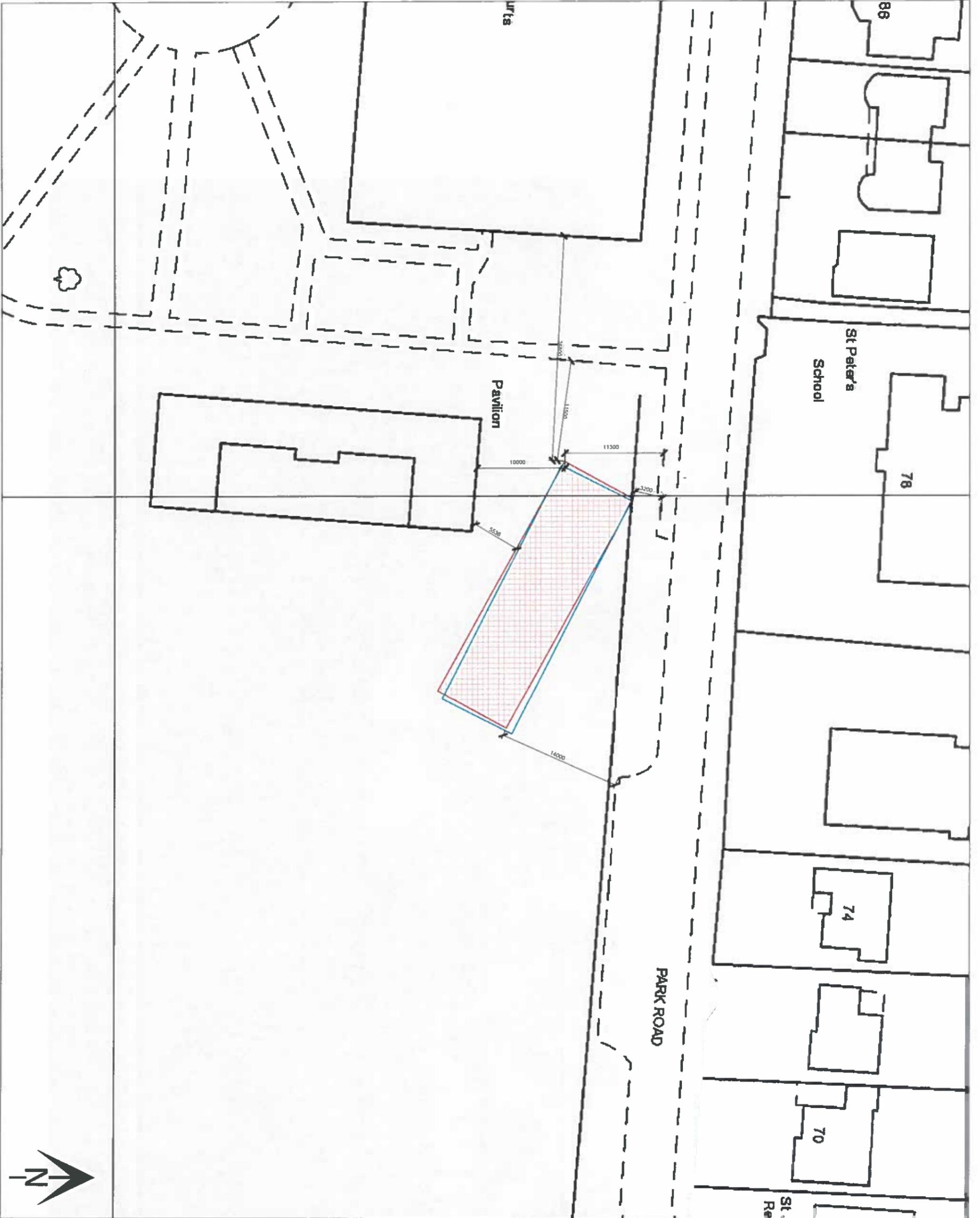
- 11.1 The Charity Trustees are recommended to:

Note the contents of this report and the proposal to allow occupation under a licence pending the completion of the proposed lease.

### **Background Papers**

Minutes of the meeting on 25<sup>th</sup> September 2013.

APPENDIX A



NOTES:

<p><b>nottsport</b> Synthetic Surfacing</p> <p>Technical Services Innovation House Magdal Park Leicester LE17 4XN United Kingdom</p>	
<p>Burgess Hill Cricket Club</p> <p>Double Lane Practice Facility</p>	
<p>Block Plan</p>	
Date	22/01/13
Drawn by	JP
Checked by	JP
<p>NSBHCC003</p>	
Scale	1 : 200



NOTES -

Technical Services  
 Innovation House  
 Magna Park  
 Lutterworth  
 Leicestershire  
 LE17 4XN  
 United Kingdom

**notissport**///:  
 Synthetic Surfacing

**Burgess Hill Cricket Club**  
**Double Lane Practice Facility**

**Artist Impression**

Date **22/01/13**  
 Drawn by **JP**  
 Checked by **JP**

**NSBHCC004**  
 Scale

## APPENDIX C

### 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.).