

## **7. ST JOHN'S PARK CHARITABLE TRUST, BURGESS HILL, WEST SUSSEX - CHARITY NO: 305189 - PROPOSED 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. This includes the land at St John's Park Burgess Hill where the pavilion stands and this report requests authority to grant a lease of part of the pavilion building and the existing double practice net facility to the cricket club.
- 1.2 The Council as Trustee comprises all the current 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:-

#### Councillors:

Jonathan Ash-Edwards	Bruce Forbes	Norman Mockford
Andrew Barrett-Miles	Claire Fussell	Pru Moore
Edward Belsey	Steven Hansford	Howard Mundin
John Belsey	Sue Hatton	Kirsty Page
Margaret Belsey	Ginny Heard	Geoff Rawlinson
Liz Bennett	Chris Hersey	Peter Reed
Michelle Binks	Margaret Hersey	Robert Salisbury
Anne Boutrup	Colin Holden	Linda Stockwell
Pete Bradbury	Anne Jones MBE	Dick Sweatman
Heidi Brunsdon	Jim Knight	Mandy Thomas-Atkin
Cherry Catharine	Jacqui Landriani	Colin Trumble
Richard Cherry	Andrew Lea	Neville Walker
Rod Clarke	Anthea Lea	Garry Wall
Phillip Coote	Judy Llewellyn-Burke	Anthony Watts-Williams
Ruth de Mierre	Andrew MacNaughton	Norman Webster
Tony Dorey	Gordon Marples	John Wilkinson
David Dorking	Gary Marsh	Peter Wyan
Sandy Ellis	Edward Matthews	

- 1.4 The Charity's property comprises only the eastern half of St John's Park. The Charity was constituted by a Conveyance dated 24<sup>th</sup> April 1891 when the eastern half of 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 Section 5 of the Charities Act 2011 which replaced The Recreations Charity Act 1958.

- 1.6 The grounds of the well-used venue are regularly maintained by the Council's grounds maintenance contractor. Income is generated from the pitch hire and the pavilion hire and these hire charges contribute towards the grounds maintenance and upkeep of the Charity's Property.

## **2.0 PURPOSE OF REPORT**

2.1 The purpose of this report is to:

- (a) update the Charity Trustees on the position since the last report on 15<sup>th</sup> April 2015;
- (b) consider any objections and representations received in response to the statutory advertisements placed in the Mid Sussex Times on 27<sup>th</sup> July and 3<sup>rd</sup> August 2017 by the Charity Trustees pursuant to the statutory requirements of Section 123 of the Local Government Act 1972 and Section 121 of the Charities Act 2011; and
- (c) seek Charity Trustees authority, in the light of any objections and representations received, for the Charity's solicitor to grant a lease of those parts of the Pavilion edged in red on the pavilion layout plan attached to this report at Appendix B ("the Pavilion Floor Plan") and the site of the Double Net Practice Facility situated on the Charity's land shown edged in red on the site plan attached to this report at Appendix A ("the Site Plan") together with the grant of ancillary rights to maintain and use the wicket area shown edged in blue on the Site Plan to the Burgess Hill Cricket Club on the terms set out in this report and recommended in the Independent Surveyor's Report to enable to continue to operate as a cricket club at the Park.

## **3.0 BACKGROUND**

3.1 At the meeting of the Charity Trustees held on 25 September 2013, the Charity Trustees received a report on the activities of Burgess Hill Cricket Club ("the Club"), which was founded in 1872 and has been based at St John's Park, Burgess Hill where the Club hires the cricket facilities provided by the Charity including a practice net, a cricket pavilion and a cricket ground under the terms of the Council's standard conditions of hire.

The report explained that the Club is a successful cricket club with aspirations to progress further in the league, but in order to do so the Club needed to improve the facilities at the Park. The report sought Charity Trustees' approval for the Club to remove the old practice net facility provided by the Charity and to replace it with a new double net practice facility, for which planning permission has already been obtained from the Local Planning Authority under reference 13/00059/FUL; and to seek agreement, in principle, to the grant of a lease of that part of the Park upon which the double net practice facility would be erected, subject to complying with the requirements of the Charities Act 2011 and the Local Government Act 1972, and the results of complying to be reported to a further meeting of the Charity Trustees.

The Charity Trustees resolved that:

- (a) the contents of the report be noted;

- (b) the grant of the lease of land edged in red on the plan in appendix A of the report to the Club be agreed in principle;
- (c) 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 lease of land edged in red on the plan at Appendix A of the report, in accordance with Section 121 of the Charities Act 2011 and section 123 of the Local Government Act 1972; and
- (d) the Charity Trustees' Solicitor be authorised to obtain a report and recommendation on the main terms of the lease from an independent surveyor, in accordance with Section 119 of the Charities Act 2011 and report back to the Charity Trustees, as to the public response to the proposal and the main terms of the lease.

3.2 At the meeting of the Charity Trustees held on 15 April 2015, the Charity Trustees received a further report updating the Charity Trustees on the progress of granting the Club a lease of the double net practice facility to be erected on the Park by the Club. Report advised the Charity Trustees that the new practice net facility will be slightly larger to accommodate improvements in safety and will comprise a lockable cage structure designed to reduce vandalism and that unlike the present facility the public would not be able to gain access to and use the facility while secured, but the Club would be encouraged to make the facility available for wider use where possible. The report also detailed terms of the proposed lease.

The Charity Trustees resolved to note the contents of the report and the proposal to allow the Club to occupy the site of the double net practice facility under a licence pending the completion of the proposed lease.

3.3 In the course of progressing this matter it has become apparent that the Club's use of the pavilion is very significant and that the Club has exclusive use of parts of the pavilion namely, a bar area, some storerooms and the main changing rooms. Such occupation should be regularised by way of a lease and it is now therefore, proposed that in addition to leasing to the Club that part of the Charity's land that is now occupied by the double net practice facility, the Charity also lease those parts of the pavilion that are presently occupied by the Club, and to incorporate within the lease the grant of ancillary rights to maintain and use the cricket square/wicket, which is already maintained by the Club to comply with their league requirements.

3.4 In line with the Charity Trustees' previous instructions to agree heads of terms of the lease of the site and the practice net facility, officers have taken the opportunity to agree heads of terms for a combined lease of part of the Pavilion and the site of the double net practice facility. The proposed main lease terms are as follows:

- a. Premises: those parts of the Pavilion shown edged in red on the Pavilion Floor Plan and the land edged in red on the Site Plan;
- b. Common Shared Space: those parts of the Pavilion shown hatched in blue on the Pavilion Floor Plan
- c. Lease Term: 10 years from and including 29 September 2016;
- d. Rent: £3,500 per annum subject to upwards only review on 29 September 2021 in line with the uplift in Retail Prices Index (all items). The rent is inclusive of services (utilities e.g. electricity, water, gas and sewerage charges);

- e. Repairs and Decoration: The landlord, e.g. the Charity shall be responsible for the main structure of the Pavilion including all maintenance and repair, and external decoration of the main structure, together with the maintenance, repair and decoration of the common shared space within the Pavilion hatched in blue on the Pavilion Floor Plan and public conveniences located in the south west corner of the Pavilion. The tenant e.g. the Club shall be responsible for the maintenance and repair, and decoration of the internal parts of the Pavilion edged in red on the Pavilion Floor Plan. The Club shall be solely responsible for the maintenance and repair of the double practice net facility located on the land edged in red on the Site Plan and for the maintenance and repair of the cricket table/wicket edged in blue on the Site Plan;
- f. Use of the Premises: the Club shall have exclusive occupation of the Premises and, subject to pre-booking, use of the Common Shared Space at no additional cost on permitted days between April and September;
- g. Use of the cricket table/wick and cricket outfield, and use of the double practice net facility: the Club shall be permitted to use these, subject to pre-booking and payment of the relevant standard hire charges set out in the Mid Sussex District Council's hire charges booklet and compliance with the Mid Sussex District Council's recreation ground bye-laws on permitted days between April and September.
- h. Buildings Insurance: the landlord will be responsible for insuring the Pavilion against the usual risks and the costs of the Landlord insuring the Premises is included in the rent;
- i. Contents Insurance etc.: the Club will be responsible for insuring the Club's property and the contents of the Premises and for maintaining public liability insurance in respect of the Club's occupations and use of the Premises, the Common Shared Space and the Park;
- j. Landlord and Tenant Act: the Lease is to be excluded from the statutory protection afforded to tenants under sections 24 to 28 of the Landlord and Tenant Act 1954; and
- k. Costs: the Club shall pay the Charity's legal and other expenses estimated in the region of £1250 and the costs of the statutory advertisement pursuant to the Charities Act and the Local Government Act.

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

- 4.1 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.
- 4.2 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.

- 4.3 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 that Charity Trustees would have to conclude the land was surplus to the requirements of the Charity and that it is in the best interest of the Charity to lease out the land.
- 4.4 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.
- 4.5 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.
- 4.6 It is worth mentioning the Council's powers, and by implication the Charity Trustees' powers, under section 76 of the Public Health Acts Amendment Act 1907, which provides that a local authority shall, in addition to any powers under any general Act, have the power in respect of any public park or pleasure ground provided by them or under their management and control to set apart such part of a park or ground for the purposes of cricket, football, or any other game or recreation provided that doing so does not contravene any covenant or condition subject to which a gift of a public park has been made without the consent of the donor or any other person or persons entitled in law to the benefit of such covenant or condition. The provision of facilities for the playing of cricket does not contravene any covenants or conditions of the trust and therefore, the Charity Trustees are able to authorise the provision of such facilities in St John's Park including the part held upon Charitable Trust.

The exercise of section 76 powers is subject to the provisions of section 52(3) of the Public Health Act 1961, which provides that the local authority must not set aside more than one-third of the area of any park or ground and must not set apart more than one-quarter of the total area of all parks and grounds provided by them or under their management and control, and the local authority must be satisfied that, in

exercising their powers, they have not unfairly restricted the space available to the public for informal games and recreations. The Club has paid cricket at the Park for over 150 years without complaint from persons entitled to enjoy the Park and the areas that will be exclusively occupied by the Club do not exceed or even come anywhere near breaching the statutory limitations imposed, and this being the case, the Charity Trustees may conclude that leasing the Premises and continuing the use of the Park by the Club does not unfairly restrict the space available for use by the beneficial class entitled to enjoy the Park.

- 4.7 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. This has been done and the surveyors report is a background paper published on the web site.

## **5.0 SECTION 121 AND 123 ADVERTISEMENTS AND OBJECTIONS**

- 5.1 The proposed lease of part of the Pavilion and the site of the double net practice facility was advertised in the Mid Sussex Times, in accordance with the requirements of Section 121 of the Charities Act 2011 and Section 123 of the Local Government Act 1972 and members of the public had until 29<sup>th</sup> August 2017 to lodge their objections and representations. No objections or representations were received and therefore, the Charity Trustees have none to consider.

## **6.0 INDEPENDENT SURVEYORS' REPORT**

- 6.1 An independent surveyors' report has been commissioned and completed by the District Valuer, at the expense of the Council, but solely for the benefit of the Charity Trustees. The relevant sections of the report are set out below. The full report is published on the web site.
- 6.2 Paragraph 4.3 of the report set out the market rent and confirms this to be £3,500 for the lease being granted.
- 6.3 Paragraph 4.7 of the report the Charity's Independent Surveyor confirms that, in his opinion, the terms upon which the proposed lease is to be granted to the Club is at an appropriate level of market rent and that the proposed terms as a whole are in the best interests of the Charity. It is therefore, reasonable for the Charity Trustees to conclude that the proposed lease of the Premises to the Club are the best that can be reasonably obtained and that granting the proposed lease is in the best interest of the Charity.

## **7.0 OTHER OPTIONS CONSIDERED**

- 7.1 The Club to continue to hire the cricket facilities and the Pavilion under the terms of the Council's casual and regular hire arrangements, but that could inadvertently create rights in the Charity's land that are not in the best interests of the Charity.
- 7.2 The Club to cease their exclusive occupation of part of the Pavilion, but that would likely result in the demise of the Club; the loss of a valued community group and loss of income to the Charity.

## **8.0 FINANCIAL IMPLICATIONS**

- 8.1 The proposed lease provides as additional income to the Charity of £3,500 per annum, with potential to increase in on 29 September 2021 when the rent is due for review.

## **9.0 RISK MANAGEMENT IMPLICATIONS**

- 9.1 Failing to regularise the Club's occupation of part of the Pavilion through the grant of a lease excluded from the provisions of sections 24 to 28 of the Landlord and Tenant Act 1954 when granting the lease of the site of the double net practice facility, could result in the Club acquiring rights over the Charity's land that are not intended or desirable given the nature of the Pavilion and its location, and the purpose of the Charity.

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

- 10.1 The recommendations contained in this report do not have an adverse or negative impact on Equality and Customer Service, but failing to regularise the Club occupation of the Pavilion might.

## **11.0 RECOMMENDATIONS**

*The Charity Trustees are recommended to:*

- 11.1 *Note the absence of any responses to the statutory advertisements placed in the Mid Sussex Times on 27<sup>th</sup> July and 3<sup>rd</sup> August 2017 giving notice of the Charity Trustees' intention to grant the proposed lease; and note and consider the proposal set out in paragraph 3.4 of this report, and the Independent Surveyor's Report; and***
- 11.2 *If, having considered this report the Charity Trustees' consider that it is in the best interests of the Charity to grant the proposed lease to the Club, then subject to the Club agreeing to pay the Charity's legal and other costs including the costs incurred in complying with the Charity Trustees' statutory obligations, authorise the Charity Trustees' Solicitor to grant the lease on the terms set out in this report and on such other terms as the Charity Trustees' Solicitor recommends or considers appropriate.***

## **Background Papers**

Valuation report undertaken by the District Valuer  
The Council's legal file and Deeds relating to the Charity