

## **6. BEECH HURST GARDENS CHARITABLE TRUST, HAYWARDS HEATH, WEST SUSSEX (CHARITY NUMBER 305202)**

### **PART I. RENEWAL OF THE IRRIGATION SYSTEM AT BEECH HURST BOWLS CLUB IN BEECH HURST GARDENS; AND RENEWAL OF THE CAR PARK SURFACE IN FRONT OF BEECH HURST COTTAGES**

### **PART II. GRANT OF A 5 YEAR LEASE TO THE KIOSK TENANT**

#### **1.0 INTRODUCTION**

- 1.1 The Council is a trust corporation and is appointed the Trustee of the above Gardens.
- 1.2 The Council as Trustee comprises all the Members of the Council. Members of the Council are the managing trustees of the Charities.
- 1.3 These Members are set out below:-

Councillor Bruce Forbes  
Councillor Colin Trumble

#### Councillors:

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

- 1.4 Beech Hurst Gardens Charitable Trust (“the Gardens”) was constituted by a Declaration of Trust dated 2<sup>nd</sup> March 1950.
- 1.5 The objects of the Charity are 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. Trustees should note that the gardens are not run by, or for, the Council.

#### **2.0 PURPOSE OF REPORT**

- 2.1 The report is in two parts, as follows:

Part I: To seek the Charity Trustees’ approval to:

- (a) Spend up to £8,000 from the Trust's funds to replace the water irrigation system and trench protectors at Beech Hurst Bowling Club.
- (b) Spend up to £25,000 to renew and replace the car parking in front of Beech Hurst Cottages.

Part II: To:

- (a) consider any objections and representations received in response to the statutory advertisements placed in the Mid Sussex Times on 3rd May and 10th May 2018 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
- (b) seek authority, in the light of (a) above for the Charity's solicitor to renew the tenancy and grant a lease of a Kiosk (edged in red on the plan attached to this report at Appendix II) to the existing tenant, on the terms set out in this report.

### **3.0 BACKGROUND AND PROPOSALS**

#### **PART I: RENEWAL OF THE IRRIGATION SYSTEM AT BEECH HURST BOWLS) IN BEECH HURST GARDENS; AND RENEWAL OF CAR PARK SURFACE IN FRONT OF BEECH HURST COTTAGES**

- 3.1 At the meeting of the Charity Trustees held on 27 September 2017, it was resolved that up to £8,000 could be spent to upgrade the water irrigation tank for the Beech Hurst Bowling Club. This has now been completed, however the irrigation system has now failed due to age and obsolescence, and another £8,000 is required to replace this system. It will be appreciated that it is essential that the greens are well kept in order to make the game playable.
- 3.2 The resident's car park in front of the cottages has reached the end of its useful life, and therefore requires to be replaced. It is proposed to renew the car park surface in order to improve the parking and, incidentally, the drainage in this area. The proposals will allow residents to safely park their vehicles within allocated parking bays, and are estimated to cost less than £25,000 following procurement.
- 3.3 Officers are requesting the total sum of £33,000 to carry out the works as scheduled above.

#### **PART II. GRANT OF A 5 YEAR LEASE TO THE KIOSK TENANT**

- 3.3 The Kiosk tenant, Ms J. Collins, was initially granted a Licence to occupy followed, subsequently, by a two year Lease from 31/03/2016. The Kiosk opened in 2015 as a café and sells Drury's teas and coffees, Bennett's scoop ice cream, cold drinks, milk shakes, cookies and, to a lesser degree, cream teas, toasted sandwiches and cakes. During the period above, the existing operator has found that Kiosk takings are particularly dependent on the weather and operations of Beech Hurst Miniature Railway. (During 2018 the miniature railway will operate from 14:00 to 17:00 on weekends from 31 March to 30 September plus Bank Holidays and special event days). Café takings drop considerably when the trains are not running and, during the week, daily takings can be as low as £30.
- 3.4 A toilet is located in the Kiosk, with disabled access from outside, and baby changing facilities and a bin for nappies. The toilet is available for use by the public when the

Kiosk is open. Maintenance and cleaning is undertaken by the Kiosk operator who is liable for the cost of the hot and cold water supply and hand basin. Equivalent facilities being part of the community toilets scheme in other locations within Haywards Heath would receive a payment of approximately £500 p.a.

3.5 Officers have agreed Heads of Terms with the existing tenant for a new 5-year lease as below:

- a. Premises: the Kiosk shown edged in red on the Site Plan;
- b. Lease Term: 5 years from the lease commencement date;
- c. Rent: £2,400 per annum excl. VAT (payable monthly).
- d. The rent is exclusive of services (utilities e.g. electricity, water, gas and sewerage charges); the tenant is responsible for all outgoings.
- e. Repairs and Decoration: the tenant to be responsible for all internal and non-structural repairs, decoration and maintenance. The Landlord to be responsible for all structural repairs.
- f. Break Option: There shall be a mutual rolling break option that entitles the Charity Trustees and the tenant to terminate the lease on giving the other not less than 3 months' notice.
- g. Buildings Insurance: the landlord will be responsible for insuring the Kiosk against the usual risks and the costs of the Landlord.
- h. 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
- i. Costs: The tenant will be responsible for the professional fees and the cost 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 relevant provisions of the Charities Act 2011 they can grant leases of parts of the Charity's land. In the case of proposed long leases of 7 years or more, the relevant provisions are contained in Section 119 of the Charities Act 2011, which provides that 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 the case of a proposal to grant a short lease for a term of less than 7 years, the relevant provisions are contained in Section 120 of the Charities Act 2011, which provides that they can upon the recommendation of a person who is reasonably believed by the trustees to have the requisite ability and practical experience to provide them with competent advice on the proposed terms of the lease, decide to grant a short lease of part of the Charity's Land. In either case, 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 on the terms proposed.
- 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.

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

- 5.1 The proposed lease of the Kiosk was advertised in the Mid Sussex Times on 3<sup>rd</sup> and 10<sup>th</sup> May 2018, 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 4<sup>th</sup> June 2018 to lodge their objections and representations.
- 5.2 No objections or representations were received and therefore, the Charity Trustees have none to consider.

## **6.0 FINANCIAL IMPLICATIONS**

- 6.1 The renewal of the water irrigation and trench protectors will help to reduce the running and future maintenance costs of the irrigation system.
- 6.2 The cost to resurface the car park will be in the region of £25,000.

- 6.3 The total costs can be met from the Beech Hurst charity surplus.
- 6.4 The proposed lease of the kiosk will provide an income to the Charity of £2,400 per annum over the 5 year term.

## **7.0 RISK MANAGEMENT IMPLICATIONS**

- 7.1 All work will be done in a safe and professional manner by qualified contractors, subject to procurement, and taking full regard of the potential hazards through their own risk assessment and method statements.
- 7.2 Failing to regularise and renew the occupation of the existing tenant through the grant of a lease excluded from the provisions of sections 24 to 28 of the Landlord and Tenant Act 1954, could result in the tenant acquiring rights over the Charity's land that are not intended or desirable given the nature of the Kiosk and its location, and the purpose of the Charity.

## **8.0 EQUALITIES AND CUSTOMER SERVICE IMPLICATIONS**

- 8.1 The recommendations contained in this report do not have an adverse or negative impact on Equality and Customer Service, however, failure to undertake refurbishment and improvement work to the cottages and Bowling Green facility might.

## **9.0 RECOMMENDATIONS**

**Part I. The Charity Trustees are recommended to authorise the use of the Trust's funds to:-**

- 9.1 **Spend up to £8,000 to replace the water irrigation system and trench protectors at Beech Hurst Bowling Club.**
- 9.2 **Spend up to £25,000 to renew and replace the hard landscape on the residents' car park around Beech Hurst Cottages.**

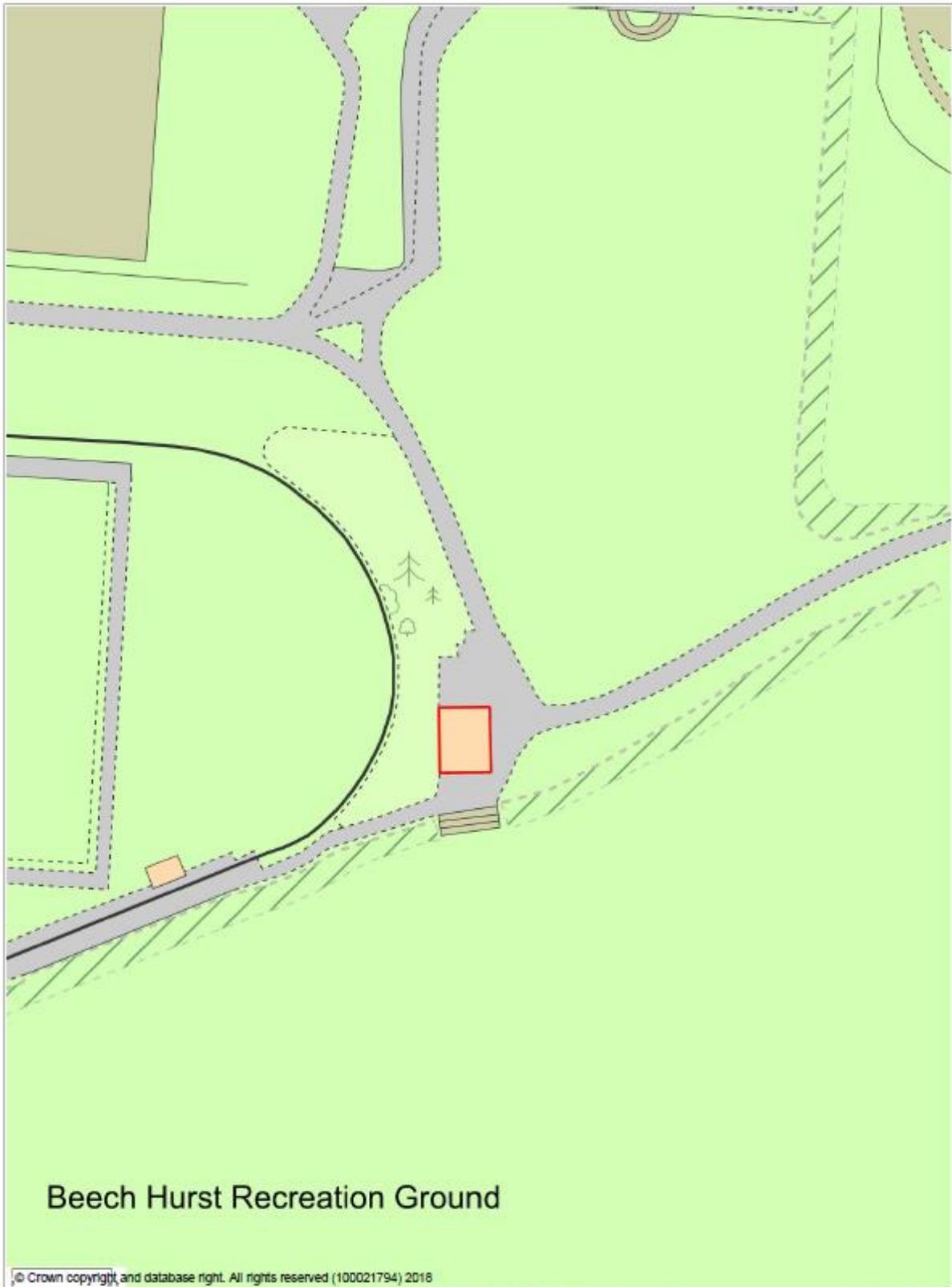
**Part II – The Charity Trustees are recommended to:**

- 9.2 **grant the proposed lease to the Tenant, Ms Joanna Collins, and subject to the tenant 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.**

**APPENDIX I - KIOSK LOCATION PLAN**

Title: Haywards Heath - Kiosk  
Comment: Beech Hurst Gardens Kiosk shown edged red

**MID SUSSEX DISTRICT COUNCIL**



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Map Centre (Easting:Northing): 532361:123793

Scale: 1:500