

**3. BEECH HURST RESTAURANT, BEECH HURST GARDENS, BUTLERS GREEN ROAD, HAYWARDS HEATH – REQUEST FOR LANDLORD’S CONSENT TO ALTERATIONS TO THE BUILDING AND NEW SIGNAGE
REPORT TO CHARITY TRUSTEES OF THE BEECH HURST GARDENS CHARITABLE TRUST-305202**

REPORT OF: Name, Tom Clark, Solicitor to the Council
Email: Philipm@midsussex.gov.uk Ext:- 7451
Wards Affected: Haywards Heath - Lucastes
Key Decision No

Purpose of Report

1. The purpose of this report is to consider a request from the operators of Beech Hurst Restaurant for Landlord’s consent to proposed alterations to Beech Hurst Restaurant and the provision of new signage advertising the business.

Recommendation:-

2. **It is recommended that the Charity Trustees:**

Approve the proposed alterations to the building and the new signage subject to Mitchells & Butlers Retail (no.2) Limited paying the legal and other costs associated with grant of a Licence to Alter; and

Authorise the Solicitor to grant Landlord’s consent for the proposed alterations and new signage on appropriate terms.

Background

3. The Charity was constituted by a Declaration of Trust dated 2nd March 1950 when 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.

The Council being a trust corporation, by virtue of the Local Government Acts, is the Trustee of the Beech Hurst Gardens Charity and is appointed the Charity Trustee pursuant to Section 210 of the Local Government Act 1972 by virtue of being the statutory successor to the Urban District Council of Cuckfield.

Mid Sussex District Council (as Charity Trustee of Beech Hurst Gardens Charity – Charity Number 305202) granted Whitbread Group plc a lease of the Restaurant Premises for the term of 125 year from 6th October 2003.

In September 2006 the Charity Trustees considered a report detailing a request from Whitbread Group plc for Landlord’s consent to assign the Lease of Beech Hurst Restaurant to Mitchells & Butlers Retail (no.2) Limited, who manage over 2000 pubs and restaurants in the UK, including leading retail brands such as Harvesters, Toby Carvery, Vintage Inns, Ember Inns and O’ Neils. As such consent cannot be unreasonably withheld or delayed and as Mitchells & Butlers Retail (no.2) Limited had sufficient covenant strength to meet the terms of the Lease the Charity Trustees authorised the Council’s Head of Legal Services to grant a Licence to Whitbread Group plc permitting them to assign the Lease of the Beech Hurst Restaurant was assigned to Mitchells & Butlers Retail (no.2) Limited for the residue of the terms of the Lease on the 4th January 2007.

Mitchells & Butlers Retail (no.2) Limited would like to re-brand their operation at Beech Hurst Restaurant to a “Harvesters”, which the Council is advised is one of their most successful brands and one, which will be most appropriate for this site.

In order to successfully re-brand their existing operation to a “Harvesters” restaurant, Mitchells & Butlers Retail (no.2) Limited need to make a number of alterations to the building and provide new signage, which under the terms of the lease requires Landlord’s consent. The lease provides that Landlord’s consent cannot not to be unreasonably withheld or delayed.

Mitchells & Butlers Retail (no.2) Limited have obtained the planning permission from the Local Planning Authority for the proposed alterations to the building and the new signage and all that they require now is Landlord’s consent in order to implement their proposals.

Operational Implications

4. The Council’s Head of Leisure and Outdoor Operations and the Council’s Corporate Property Manager have considered the alterations and subject to some minor amendments, which will be required as a condition of granting Landlord’s consent they have no objection to Mitchells & Butlers Retail (no.2) Limited proposals. The proposals are considered to add interest to the front of the building and will improve its appearance from the road.

The proposed alterations are to the northern elevation to the building and essentially consist of creating a new entrance at the front of the building and creation of a new gabled roof and windows on entrance.

The new signage consists of externally illuminated and non-illuminated building and freestanding signs.

Under the terms of the Lease the Charity receives a percentage of the business turnover where that turnover percentage exceeds the basic rent. It is therefore, in the best interests of the Charity that Mitchells & Butlers Retail (no.2) Limited’s business operations at Beech Hurst restaurant are as successful possible and these alterations are considered necessary to enable Mitchells & Butlers Retail (no.2) Limited to improve the customer experience and trading potential of Beech Hurst Restaurants.

The Council’s Legal Officer’s Comments

5. The Lease provides that Landlord’s consent cannot be unreasonably withheld or delayed. What this means is that the Landlord cannot withhold consent unless it is reasonable to do so and must not delay in coming to a decision. The rules on what is and is not reasonable are complex, but generally speaking it would not be reasonable to withhold consent unless the alterations would adversely affect the Landlord’s interest in the reversion of the Lease. In light of the comments from the Head of Leisure and Outdoors Operations and the Council’s Corporate Property Manager set out in 4 above it would not be reasonable to withhold consent and the Charity Trustees are advised to approved the recommendation.

Financial Implications

6. There are no financial implications other than those discussed in this report.

Other Material Implications

7. There are none other than those discussed in this report.

Officers Consulted in the Preparation of this Report

Christopher Coppens – Property Lawyer