

3. BROOKLANDS PARK CHARITABLE TRUST, EAST GRINSTEAD, WEST SUSSEX PROPOSED LAND DEVELOPMENT/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:

Mandy Thomas-Atkin (Chairman)
Gordon Marples (Vice-Chairman)

Jonathan Ash-Edwards	Bruce Forbes	Gary Marsh
Simon Banham	Richard Goddard	Peter Martin
Stephen Barnett	Susan Hatton	Edward Matthews
Andrew Barrett-Miles	Ginny Heard	Simon McMenemy
Richard Bates	Christopher Hersey	Pru Moore
Edward Belsey	Margaret Hersey	John O'Brien
Margaret Belsey	Catrin Ingham	Peter Reed
Liz Bennett	Anne Jones	Robert Salisbury
Katy Bourne	Denis Jones	Susan Seward
Heidi Brunsdon	Graham Knight	Ian Simpson
Jack Callaghan	Jim Knight	Christopher Snowling
Cherry Catharine	Jacqui Landriani	Dick Sweatman
Phillip Coote	Andrew Lea	Colin Trumble
Mims Davies	Mike Livesey	Neville Walker
John de Mierre	Andrew MacNaughton	Garry Wall
David Dorking	Bob Mainstone	Norman Webster
Kathleen Dumbovic	Natalie March	Emily White
Tim Farmer		

- 1.4 At the meeting of the Charity Trustees held on 11th March 2009, the Charity Trustees authorised the Charity's Solicitor to enter into discussions with the Charity Commission concerning the status of the Lido Site (the minutes of meeting of the Charity Trustees of 11th March 2009 refers).
- 1.5 At the meeting of the Charity Trustees held on 21st October 2009, the Charity Trustees authorised the Charity's Solicitor to (a) register the Charity with the Charity Commission, (b) instruct an independent surveyor to advise the Charity Trustees on whether or not it is in the best interests of the Charity to exchange that part of the Charity's land hatched in blue on the attached plan (the Lido Site) for all or part of the Council's land edged in red on the attached plan; and (c) subject to the independent surveyor's advice, that it would be in the best interest of the Charity to exchange the land, to advertise and otherwise comply with the Charity Trustee's obligations under the Charities Act, 1993 prior to reporting back to the Charity Trustees for a final decision on the recommended terms of the exchange.

2.0 BACKGROUND

- 2.1 At the meeting of the Charity Trustees held on 11th March 2009, the Charity Trustees considered a report from the Charity's Solicitor concerning the status of Brooklands Park, East Grinstead. The report set out the background to the East Grinstead Urban District Council's acquisition of Brooklands Park between 1906 and 1920 and informed the Charity Trustees that the part of Brooklands Park edged in blue on the attached plan is held upon charitable trust of which the land hatched in blue forms part.
- 2.2 The report highlighted the condition, at that time, of that part of the Trust's land hatched in blue on the plan, being the site of the former Lido ("the Lido Site"), informed the Charity Trustees of significant issues affecting the amenity of the land and a number of technical issues and difficulties associated with the Lido Site.
- 2.3 The report set out the Charity Trustees powers and legal duties in relation to the land; offered a potential solution and sought authority for the Charity's Solicitor to enter into negotiations with the Charity Commission and Mid Sussex District Council for the exchange of the Lido site for all or part of the Mid Sussex District Council's land edged in red on the attached plan.
- 2.4 At the meeting of the Charity Trustees held on 21st October 2009, the Charity Trustees considered a report from the Charity's Solicitor updating them on the negotiations with the Charity Commission. The report detailed the Charity Commission's advice, which concerned registration of the Charity at the Charity Commission and the issues that must be considered by the Charity Trustees before deciding whether or not do an exchange of land. The report also reiterated the Charity Trustee's powers and obligations by reference to the report of 11th March 2009.

3.0 REGISTRATION

- 3.1 The Charity is not yet registered, but registration is a formality. The Charity's Solicitor considers that it is prudent to consider the advice of the Independent Surveyor before obtaining registration.

4.0 LEGAL ADVICE TO THE CHARITY TRUSTEES

- 4.1 The Charity Trustees' powers and obligations under the Charities Act 1993 are set out in Section 3 of the report of 11th March 2009. The most pertinent elements of that advice are set out in the report of 21st October 2009 and below:
- 4.1.1 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. Section 36 of the Charities Act 1993 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. It also imposes similar restrictions on dispositions to connected persons. The Council is a connected person.
- 4.1.2 The fact that the land is charity land does not prevent all or part of the land from being sold by the Charity for development, but guidance from the Charity Commission stipulates that this should only be done where either the land being disposed of is surplus and the disposal be detrimental to the interest of the Charity or suitable replacement land can be acquired. Subject to the Charity Trustees complying with the provisions of Section 36 of the Charities Act 1993 they can upon the recommendation of an independent surveyor, engaged exclusively by the

Charity Trustees to advise them, decide to sell all or part of the Charity's land for development. 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 sell the land.

- 4.1.3 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.
- 4.1.4 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. This being the case, it will be necessary for the Charity Trustees to advertise the intention to dispose of Lido Site.
- 4.2 In order to comply with the requirements of the Charities Act 1993, 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 1 to this report.
- 4.3 Given the potential conflict of interest for Members, there is a similar potential conflict of interest for officers. With this in mind the Charity's Solicitor has established a project team comprising Christopher Coppens – Property Lawyer, Joanna Steadman – Senior Property Officer, Franca Currall – Solicitor and David Waite – Property Manager. Christopher Coppens and Joanna Steadman have been appointed to the team to represent the interests of the Charity Trustees and Franca Currall and David Waite have been appointed to represent the interests of the Council.
- 4.4 In accordance with the instructions of the Charity Trustees Mr James Tillard MRICS of RH & RW Clutton LLP Chartered Surveyors was appointed to prepare a report in accordance with the Charities (Qualified Surveyors Reports) Regulations 1992. In the report to the Charity Trustees of 11th March 2009 it was suggested that a possible option for the Charity Trustees would be an exchange of the Lido Site for all or part of the Council's land edged red on the plan, which would then form part of the Charity's land and be held by the Council upon charitable trust as a public park and recreation ground. Given the Charity Commission's comments, as detailed in the report of 21st October 2009, Mr Tillard was instructed to advise the Charity Trustees on the following options:

Option 1 - An exchange of land whereby the Charity Trustees transfer their interest in the land hatched in blue on the plan to the Council in exchange for the Council's interest in the land edged in red on the plan.

Option 2 - A sale whereby the Charity Trustees sell the land hatched in blue on the plan and the Charity Trustees purchase the Council's land edged in red on the plan at full market value using some or all of the proceeds of sale.

Option 3 - A joint venture whereby the Council obtains planning permission for development of the land hatched in blue on the plan. The Charity Trustees sell the land hatched in blue on the plan with the benefit of planning permission and the Charity Trustees purchase the Council's land edged in red on the plan at full market value plus the costs incurred by the Council in securing planning permission for the development of the land hatched blue on the plan.

Any other options that the surveyor may consider appropriate or advisable for consideration by the Charity Trustees.

5.0 INDEPENDENT SURVEYORS REPORT

5.1 The relevant sections of the report are set out below. Copies of the full report have been provided to the Charity Trustees under separate cover.

5.2 The Charity Trustees' surveyor's report contains the following observations on the options mentioned in paragraph 4.4 of this report:

Option 1

In the absence of any known realisable planning potential of the hatched land, we do not believe a straight exchange is the most appropriate option or that it is particularly realistic given the different characteristics and values of the two pieces of ground (as explained under Option 2), unless the District Council is in effect able to 'gift' the difference.

Any transfer on this basis would need to have a 'Memorandum of Understanding', or more formal overage clause if required by the Trustees, detailing the transfer of net sums realised from any future development gain on the blue hatched land on terms to be agreed to protect the Trustees.

Option 2

To consider a sale of the blue hatched land and the purchase of the red land, we need to look at their individual values.

Market evidence of comparable sales of similar pieces of ground is extremely scarce emphasising the need for greater caution.

Taking each piece separately as they exist today without the benefit of any consent for alternative uses, and ignoring any potential for alternative uses as well, but subject to the restraints on use affecting them separately and jointly, we believe the freehold market values with vacant possession to be:

<i>The red land</i>	<i>£13,800</i>
<i>The blue hatched land</i>	<i>£ 9,250</i>

The same comments under Option 1 however would apply here again with regard to the reservation of benefit from a sale of the blue hatched area. As stated earlier the valuation date is the date of this report.

This Option however envisages a sale to a third party for them to realise the development gain. This is unlikely to be so attractive to developers or result in the same return to the Trustees had the Council initiated the planning gain themselves.

Option 3

This raises the very important potential of an alternative use being found for the hatched land by the Council themselves before any transfer and therefore we now recommend there should be a detailed investigation into the feasibility of this.

At this stage, we do not see how a reliable market value on an unknown development proposal could be put forward in the absence of any approved scheme and therefore cannot comment further. It is however going to be significantly higher than the existing use value.

The proposal put forward therefore under this Option is the most attractive for the Trustees, as they will incur no costs themselves but yet potentially realise greater funds which could be invested to improve facilities for the community in the red land and the retained blue land. Furthermore it would appear to be the least complicated, however it does rely on time not being of the essence for the transfer of the hatched area.

It is important however that any proposed future development does not have a direct detrimental effect on the remainder of Brooklands Park.

The purchase of the red land under this Option will also satisfy the Trustees' need to find replacement park land when the hatched land is sold away immediately and as required before any development begins on the ground.

It should also be appreciated that in arriving at the value of the land outlined in red we have followed the RICS guidelines and have ignored, insofar as may exist at all, any 'marriage value' due to the adjoining retained land being already owned by the Trustees. Likewise we have also ignored in our valuation of the red land that its release is what will facilitate the blue hatched land to be developed. This transfer of the land outlined in red to the Trustees may we assume partially relieve the Council of funding the full management of the site and this in our opinion would far outweigh any marriage value increment. This also reinforces the preference of Option 3 as in the absence of any funds being held presently by the Trustees any earlier exchange of the pieces of ground could present management problems.

No consent realisable

There is a further situation that needs addressing, being that it is not feasible to obtain planning consent for any development on the hatched land. In the event Option 1 would then look attractive to the Trustees as it is assumed there would be no other third party buyers for the hatched land, subject to our earlier comments on this.

5.2 The Charity's Surveyor's report contains the following recommendation:

Brooklands Park is a very attractive area of open space in this town providing an enormous benefit to the local community. There are considerable advantages for the Trustees with the proposed disposition of the hatched land and in particular relieving themselves of potential problems faced by owning it in its current state and the benefits of seeing the overall area improved in connection with their acquiring the red land and protecting it in perpetuity.

We would accordingly recommend the Charity Trustees accept the proposal for the disposition of the hatched area under Option 3 in this report. It is appropriate that we should also reserve the right to comment further to the Charity Trustees on whatever is finally agreed between the parties.

6.0 FINANCIAL IMPLICATIONS

- 6.1 As the Charity does not have any income generating capacity and no other financial resources it will only be possible for the Charity Trustees to proceed if the Council bears the costs of pursuing Option 3. These costs will be between £6,000 and £10,000.
- 6.2 The present costs of maintaining Brooklands Park are £40,000 per annum. Depending on the net realisable value of the hatched land when sold with the benefit of outline planning permission for housing, the Charity will be endowed with significant investment funds, the income of which can be used to defray the costs of maintaining the Charity's land. Option 3 will therefore, likely benefit both the Charity and the Council.

7.0 RECOMMENDATIONS

The Charity Trustees are recommended to:

- 7.1 *Note the contents of this report and the Charity Trustees' Surveyor's report;*
- 7.2 *Pursue Option 3 as set out in paragraph 4.4.3 of this report; and*
- 7.3 *Authorise the Solicitor to the Charity Trustees to:*
- (a) instruct an independent planning consultant to prepare and pursue an application for outline planning permission for development of the hatched land for housing;*
 - (b) subject to the grant of planning permission for housing, market the hatched land on the open market with the benefit of outline planning permission;*
 - (c) subject to complying with Section 36 of the Charities Act 1993 (including obtaining a supplementary report from the Charity Trustees Independent Surveyor on the detailed terms of the sale) and Section 123 of the Local Government Act 1972 and reporting back to the Charity Trustees, sell the hatched land at the best price reasonably obtainable; and*
 - (d) subject to (a) to (c) above and to the Council bearing the in-house legal costs of connected with the sale and purchase to purchase the red land from the Council at the price of £13,800 plus an additional sum equal to:*
 - (i) the independent planning consultants costs incurred by the Council in securing planning permission for the hatched land;*
 - (ii) the costs of marketing the hatched land on the open market;*
 - (iii) the costs of complying with Section 36 of the Charities Act 1993;*
 - (iv) the costs of complying with Section 123 of the Local Government Act 1972; and*
 - (v) other reasonable costs associated with a sale of the hatched land.*

Background Papers

The Council's legal file and Deeds relating to the Lido Site.

APPENDIX 1

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.

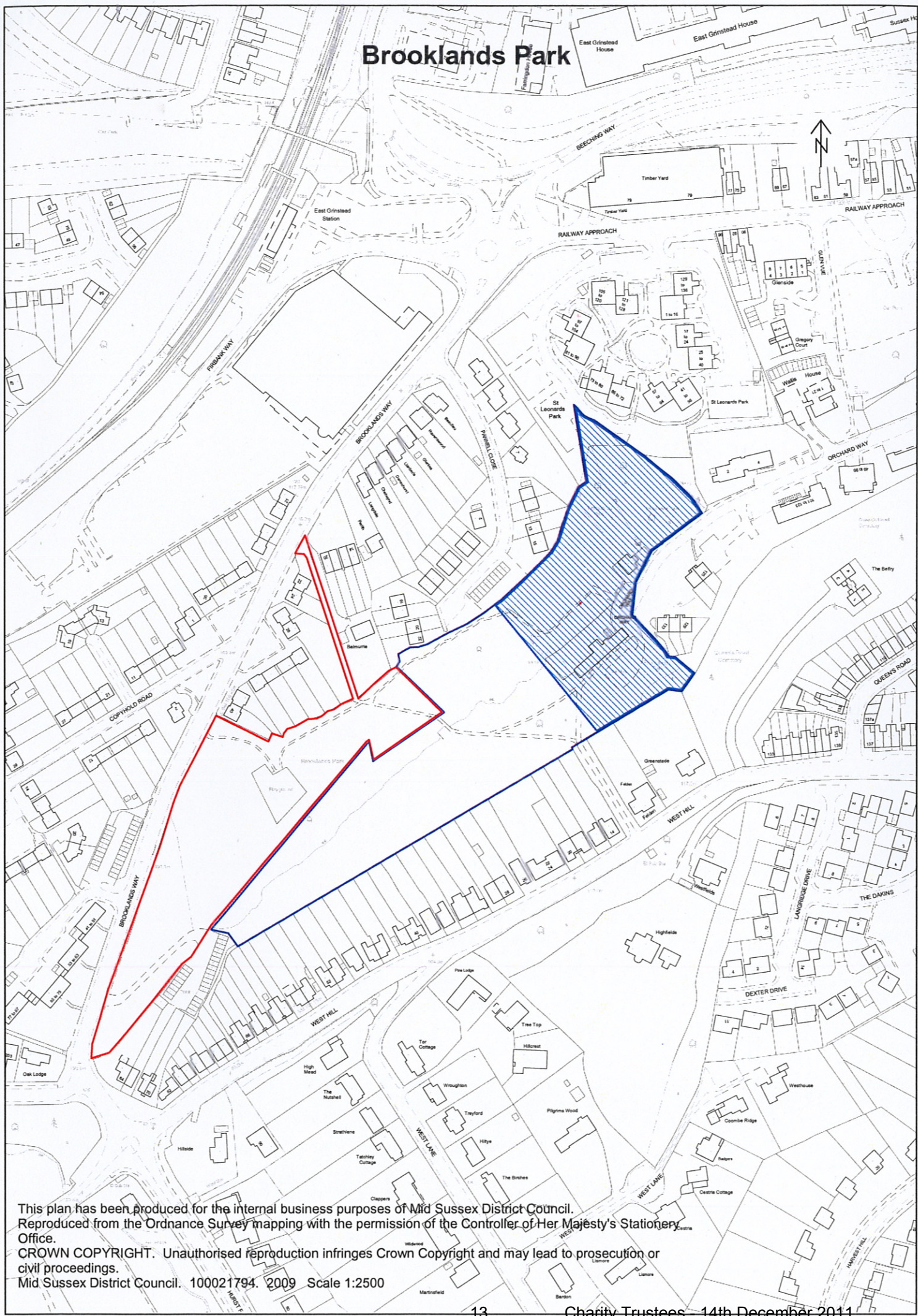
(2) Where either the surveyor does not feel able to give such advice or such advice is not in his opinion relevant, a statement to that effect.

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.).

Brooklands Park

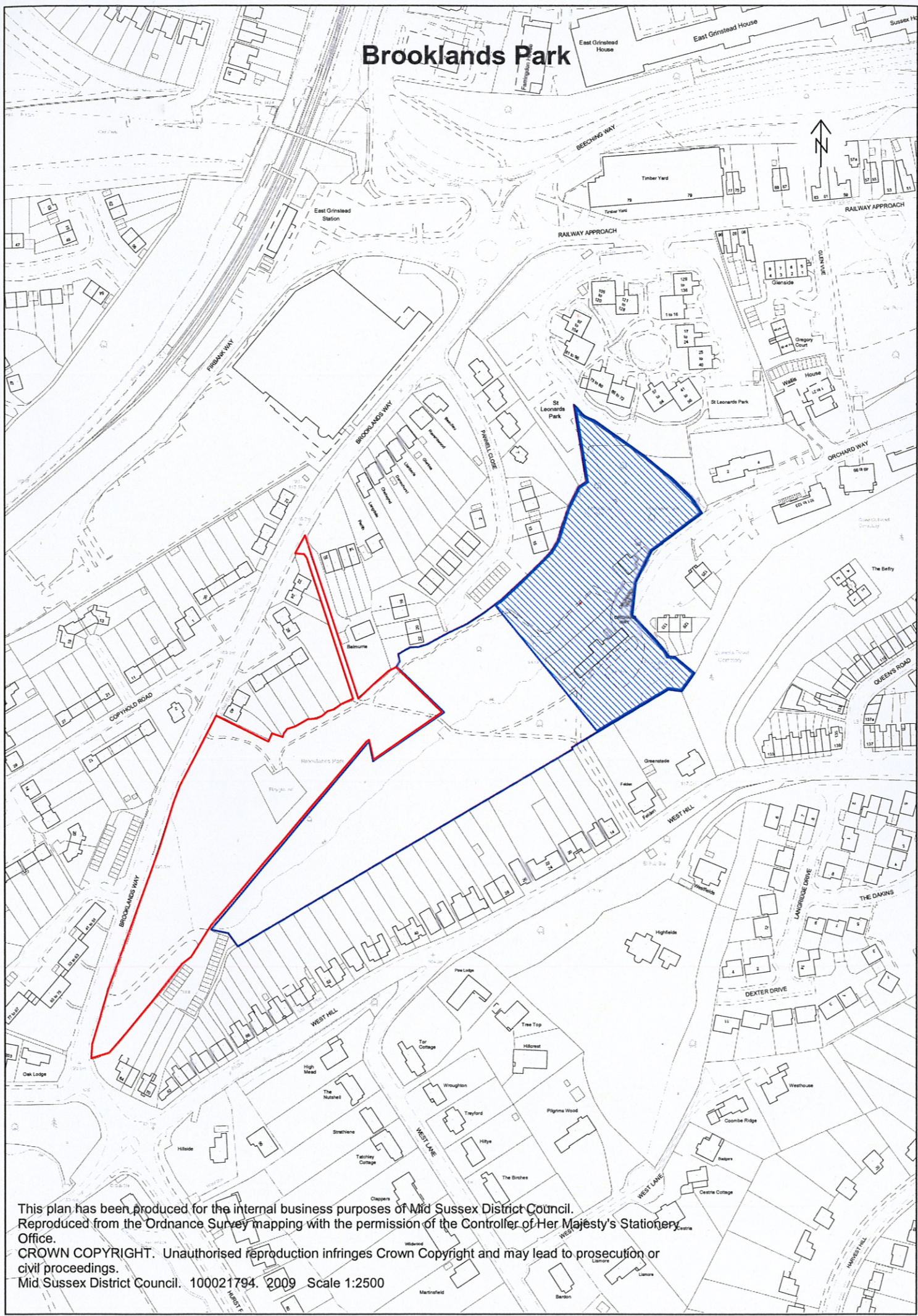


This plan has been produced for the internal business purposes of Mid Sussex District Council.
Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office.

CROWN COPYRIGHT. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings.

Mid Sussex District Council. 100021794. 2009 Scale 1:2500

Brooklands Park



This plan has been produced for the internal business purposes of Mid Sussex District Council.
Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office.

CROWN COPYRIGHT. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings.

Mid Sussex District Council. 100021794. 2009 Scale 1:2500