

**3. RICHARD WORSLEY RECREATION GROUND (also known as Cuckfield Recreation Ground) CHARITABLE TRUST, CUCKFIELD, WEST SUSSEX
CHARITY NO: 206789
PROPOSED LEASE DISPOSALS**

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:

Gordon Marples (Chairman)
Peter Reed (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	Robert Salisbury
Liz Bennett	Anne Jones	Susan Seward
Pete Bradbury	Denis Jones	Ian Simpson
Heidi Brunsdon	Graham Knight	Christopher Snowling
Jack Callaghan	Jim Knight	Dick Sweatman
Cherry Catharine	Jacqui Landriani	Many Thomas-Atkin
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 The Charity was constituted by Conveyance dated 1st July 1920 when the Park was gifted to the Council's predecessor, the Urban District Council of Cuckfield, by Frances Pendleburg Worsley to be administered by the Council upon charitable trust.
- 1.5 The object of the Charity is the provision of a Public Recreation Ground for the use and benefit of the inhabitants of the former Urban District of Cuckfield and the Parish of Cuckfield Rural, and as a perpetual memorial to her late husband, Richard Worsley, who died on the 9th November 1916, and as a memorial to those who gave their lives in the Great War 1914-18. The Council's powers of management are restricted to using the property for charitable purposes. By virtue of a Scheme made by the Charity Commissioners on 15th May 2000, the Council now has power, subject

to complying with charity law and the prior written consent of the Charity Commissioners, 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 Council's grounds maintenance contract. Income is generated from pitch and event hire, hire of the tennis courts and ground rental for the tennis pavilion. The income generated contributed to the grounds maintenance and upkeep of the tennis courts, pavilion, playgrounds and paddling pool.
- 1.7 The purposes of this report are to:
- (a) reconsider a request from Cuckfield Lawn Tennis Club ("the Club" who desire to take a lease of the three tennis courts at the Park outlined in red on the attached plan ("the Tennis Courts") and to renew their lease of the land adjacent to the tennis courts, on which the Club's pavilion is situated, at a revised rent; and
 - (b) seek the Charity Trustees agreement, in principle, to the grant of the leases mentioned in (a) above on the terms recommended in this report, subject to complying with the public consultation requirements of the Charities Act 2011 and the Local Government Act 1972 and reporting back to the Charity Trustees on the outcome of public consultation and for formal authority to grant those leases.

2.0 BACKGROUND

- 2.1 This is the second time that this proposal has been presented to the Charity Trustees. Clarity was sought by Charity Trustees on a number of matters pertaining to the process of disposing of Charity land and the detail of future management/control of the Tennis Courts by Club should the recommendation that a lease to the Club be progressed.

This paper seeks to address concerns raised by the Charity Trustees and to ascertain if there is merit in progressing the proposal by which the Club would take over the responsibility for running the Tennis Courts, as a public facility, from Mid Sussex District Council, who currently manage the facility on behalf of the Charity, through an appropriate lease and subject to appropriate safeguards to ensure that the facility remains available for public use on terms no less favourable than those currently enjoyed.

- 2.2 Should the proposal be deemed acceptable, in principle, by the Charity Trustees, it will then be necessary to undertake public consultation on the proposed change to the management arrangements by advertising the Charity Trustees' intention to grant the proposed lease to the Club in the Mid Sussex Times, to afford members of the beneficial class and the public generally the opportunity to raise any objections, and for the Charity Trustees to consider a further report before making a final decision. In this regard, please see part 3 of this report.
- 2.3 The Club have occupied a small parcel of land adjacent to the Tennis Courts since 1962 under the terms of a ground lease, and upon which they have built a club house. The club house is a single storey clean and well maintained building.
- 2.4 At present the demographic of the Club largely falls into the senior citizen category. The Club would like to increase younger membership.

- 2.5 Attached is a schedule of the fees that the Club is proposing. It illustrates that under their proposed fee structure, in the first full year of joining, all memberships (with the exception of the Senior Citizens) would pay less than they would under the Council's fee structure.
- 2.6 The Council currently runs an introductory "taster" rate for new season ticket holders, which is 50% of the Council's standard fee. The Club intends to offer a similar incentive, but the fee would be 75% of their proposed standard rate, which, as noted above, is lower than the Council's current fee structure. This would offer families with two or more children greater savings, but, during the introductory period, would mean that the other membership charges are between £2.50 and £35.75 per annum more expensive, with the senior citizens paying the most.
- 2.7 As previously noted, the Clubs membership, is currently largely made up of Senior Citizens. The Club's committee, which is largely represented by this age group, have set the pricing on the basis that they would be prepared to pay higher fees to encourage younger people to join the Club.
- 2.8 The Tennis Courts are currently used by both the general public and the Club.
- 2.9 The Club is currently allocated dedicated playing times and Club members are able to book additional playing time through their season ticket membership. The Tennis Courts are open between 9 am and 9 pm during the summer equating to 252 one hour court sessions per week. The Club is currently allocated 6pm- 9pm Tuesday, Thursday and Friday evening plus Saturday afternoon for club days, Wednesday evening 3pm -6pm is currently reserved for Junior coaching.
- This is 51 sessions for exclusive use by Club members.
- In addition the Club has 2 courts reserved on Saturday mornings and 2 courts on Sunday mornings for matches; an additional 14 sessions.
- In total under the present arrangements the Club reserves 65 sessions out of the 252 (26%) leaving 74% availability for casual play.
- The proposal does not change this and safeguards will be incorporated into any lease to ensure that changes require the Charity Trustees' approval.
- 2.10 The Club feel that some members of the general public are abusing the Council's online booking system, through which casual sessions of hire may be booked, and using the courts free of charge because of ineffective security and a lack of on-site presence. They intend introducing a new online booking system and have the additional benefit of being "on-site" to police the use and booking of the courts.
- 2.11 For the year ending March 2013 £221.25 of income was generated from "casual hire" of the Tennis Courts. The majority of income generated comes from season ticket sales via the Club.
- 2.12 The Council currently charge a rate of £7.80 per hour per court. The club do not intend to charge as much as this for casual hire of the courts, and anticipate their fee being £6 per hour.
- 2.13 The Club also states that when not in use for tennis the Tennis Courts are being used to play football on/skateboarded on by youths, which is causing bad feeling with local residents, potentially causes damage to the Tennis Courts and is hard to

manage under the current arrangements. The Club would like to improve the condition of the Tennis Courts in order to retain younger members and increase the membership, standard and reputation of the Club.

- 2.14 The proposal includes a rolling maintenance program and budgets for resurfacing of the Tennis Courts as well as the installation of a new entry system to prevent unauthorised access.
- 2.15 The Club's expectations for the maintenance of the Tennis Courts and the finances available to the Council, who subsidise the Charity, to undertake the works are not compatible.
- 2.16 The Club have submitted a comprehensive business plan detailing how they would like to structure the Club in the future and an indicative cash flow forecast detailing how they would finance any maintenance/resurfacing.

The Club's proposals for their future offer are:

1. The club must become more family friendly.
 2. Development of the junior and youth policy.
 3. Public playing time must be available to all but not for free.
A number controlled lock will be fitted to the courts and a code issued on payment of the hire fee.
 4. Include the residents who back onto the courts in any change,(reduced membership to these houses, commitment not to apply for floodlights or an air dome over the courts, restricted opening times for the bar)
 5. Promotion of the courts for public use a new website would show public, team, junior and family availability times and would also be posted on the court doors with advice as to how to book a court.
 6. Turn up and play days would be available for those without access to the internet.
 7. Wider advertising of the facilities in the neighbouring villages.
 8. Incentives such as the opportunity to hit the ball from the automatic training machine at the Cuckfield Cuckoo Fair day, have been adopted to increase public awareness of the facilities.
- 2.17 The total forecasted costs of maintaining the Tennis Courts is £111,760. The 28 year forecast shows that with the current Membership of 80 paying £70 per annum into a sinking fund would be sufficient to cover this cost.
 - 2.18 Any increase in the number of members could either be used to increase the fund or reduce the annual contribution.
 - 2.19 The Club runs some profitable social events and any income generated from these events would also be added to the general fund.
 - 2.20 The Club also has access to additional resources, should they be necessary from subscriptions, public booking fees and interest on its Capital.
 - 2.21 The Council does not have the funds available to resurface the Tennis Courts and as the Charity does not have any surplus or reserves and neither does the Charity.
 - 2.22 The Club is proposing to change its status to a Charitable Company limited by guarantee which will enable it to access grants that are not available to the Council. As a Charity, the Club would have to operate for public benefit and this will provide an additional safeguard.

3.0 LEGAL ADVICE TO THE CHARITY TRUSTEES

- 3.1 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 Trustees who is also a member of another local authority such as a Town or Parish Council.
- 3.2 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.
- 3.3 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.
- 3.4 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.
- 3.5 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.

- 3.6 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.
- 3.7 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 will be made available to Trustees should they be requested.

4.0 INDEPENDENT SURVEYORS REPORT

- 4.1 An independent surveyors report has been commissioned and completed by the District Valuer, at the expense of the Club, but solely for the benefit of the Charity Trustees. Copies of the full report can be provided to the Charity Trustees under separate cover.
- 4.2 The Charity's Surveyor's report sets out the recommended market rent for the property, which is apportioned between the ground rent for the land occupied by the pavilion and the three tennis courts, assuming a new 28 year lease is granted and that the agreement includes the provision for an annual index linked rent review.
- 4.3 It would be that any proposed terms mirror the recommendations in that report.

5.0 OTHER OPTIONS CONSIDERED

- 5.1 We have not openly marketed the Tennis Courts "to let" but due to the Club's existing occupation of the adjoining site we consider them to be a "special purchaser".
- 5.2 There are no other uses for the land, the land is held upon trust as a recreation ground for the benefit of the public at large; we cannot use the land for any other purpose. The current membership and use of the Tennis Courts demonstrates that there is a demand for tennis courts in this location.

6.0 FINANCIAL IMPLICATIONS

- 6.1 On average we have taken approx. £5000 per year from the Tennis Courts over the past three years. Club Season Tickets are our primary source of income.
- 6.2 Over the same period, pro rata expenditure for the Tennis Courts has been approx. £4000 per annum taken into consideration routine maintenance and annualised capital costs. This includes annual cleaning, maintenance and equipment costs as well as built-in costs for re-surfacing (which would take place over a ten-year period).
- 6.3 On average therefore, the income to the Charity per annum is £1000 after costs. The terms of the lease are such that the rent of £1000 would ensure no loss of income, and no risk of un-budgeted repairs needing to be paid for by the Charity.
- 6.4 The Pavilion is currently subject to a historic agreement from October 1962 at 5p per annum charged this is to be increased to £250 per annum as part of the re-gearing of the lease and resulting in a small additional income.
- 6.5 The proposals submitted by the Club show that after the first year's membership the majority of the public would benefit from paying lower fees to play tennis than they would currently pay under the Council's fee structure.

7.0 RISK MANAGEMENT IMPLICATIONS

Any risk is considered minimal and there is considered to be benefit in the Club taking over the health and safety and maintenance obligations of the facility. It is anticipated that there would be a transitional period during which the booking and maintenance would be transferred to the club during this period the experience and knowledge of the relevant Council Officers would be available to assist the club and ensure that it is aware of and adhering to its obligations.

8.0 EQUALITY AND CUSTOMER SERVICE IMPLICATIONS

No Equalities Impact Assessment has been carried out specifically for this proposal as there is no intention to alter the existing facilities and the availability of the courts for public use. The proposed lease will contain provisions to ensure continued availability of the courts for use by the public and regulation of charges for public use.

9.0 OTHER MATERIAL IMPLICATIONS

9.1 Concerns have been raised about the adequacy of car parking in the recreation ground car park, which is small and has limited turning. There is limited scope to address these concerns, which are not currently overly significant as the majority of players walk to the courts. However, the Club have been made aware of these concerns and the fact that there will be no car parking demised to the Club should a lease be agreed. The Club are seeking to encourage more children to play, but it is likely that these will be dropped off and collected or will walk there. The Club are very aware of the issues with parking on a site shared with football and have no desire to add to the problem or create problems for their members which would ultimately cause membership to fall.

9.2 The site is surrounded by residential properties and there have historically been issues with neighbours complaining about noise from the courts. The Club are keen to implement a more robust booking system so that only people that pay to use the courts are able to access the site they feel that this will reduce issues with neighbours as players will be better monitored and more accountable.

9.3 The following undertakings have been provisionally agreed with the Club as being essential to any lease/disposal being considered:

The lease will include an absolute prohibition against alterations during the lease period, ensuring that, for example but not limited to, there will be no application for floodlighting or covers over the Tennis Courts being sought.

The Club have obtained quotes from Pro-line Tennis Courts in East Grinstead to support the budgeted figures for annual maintenance and resurfacing.

Research and discussions with the Council's outdoor leisure team, are on-going with regard to the optimum method for securing the site yet enabling access for players.

The Club are currently allocated dedicated playing times and members are able to book additional court time through their season ticket membership. The Tennis Courts are open between 9 am and 9 pm during the summer equating to 252 one hour court sessions per week. The club is currently allocated 6pm- 9pm Tuesday,

Thursday and Friday evening plus Saturday afternoon for club nights, Wednesday evening 3-6pm is currently reserved for Junior coaching.

This is 51 sessions for exclusive use by club members.

In addition the club has 2 courts reserved on Saturday mornings and 2 courts on Sunday mornings for matches, equating to 14 additional sessions.

In total under the present arrangement the club reserves 65 sessions out of the 252 (26%) leaving 74% availability for casual play.

This club/public playing time ratio is not proposed to change. Should it subsequently be agreed that a lease is granted, the documents will be drafted to ensure that the commitment to continue to provide this level of public playing time is adhered to.

It is also proposed that the lease would provide that the fee structure would not exceed the Council's fee structure for tennis courts without the Charity Trustees' consent

Any lease of the Tennis Courts will be excluded from the statutory protection afforded to business tenant's by the Landlord and Tenant Act 1954 and will contain provisions that entitle the Charity Trustees to terminate the lease in the event of a material breach of the lease terms and conditions.

To be fair and equitable to the Club, the break provisions will provide for notice of any breach to be given to the Club stating the nature and extent of the breach. The Club will be afforded a reasonable period of time, having regard to the nature and extent of the breach to remedy the breach. If they fail to remedy the breach the Charity Trustees will be entitled to determine the lease.

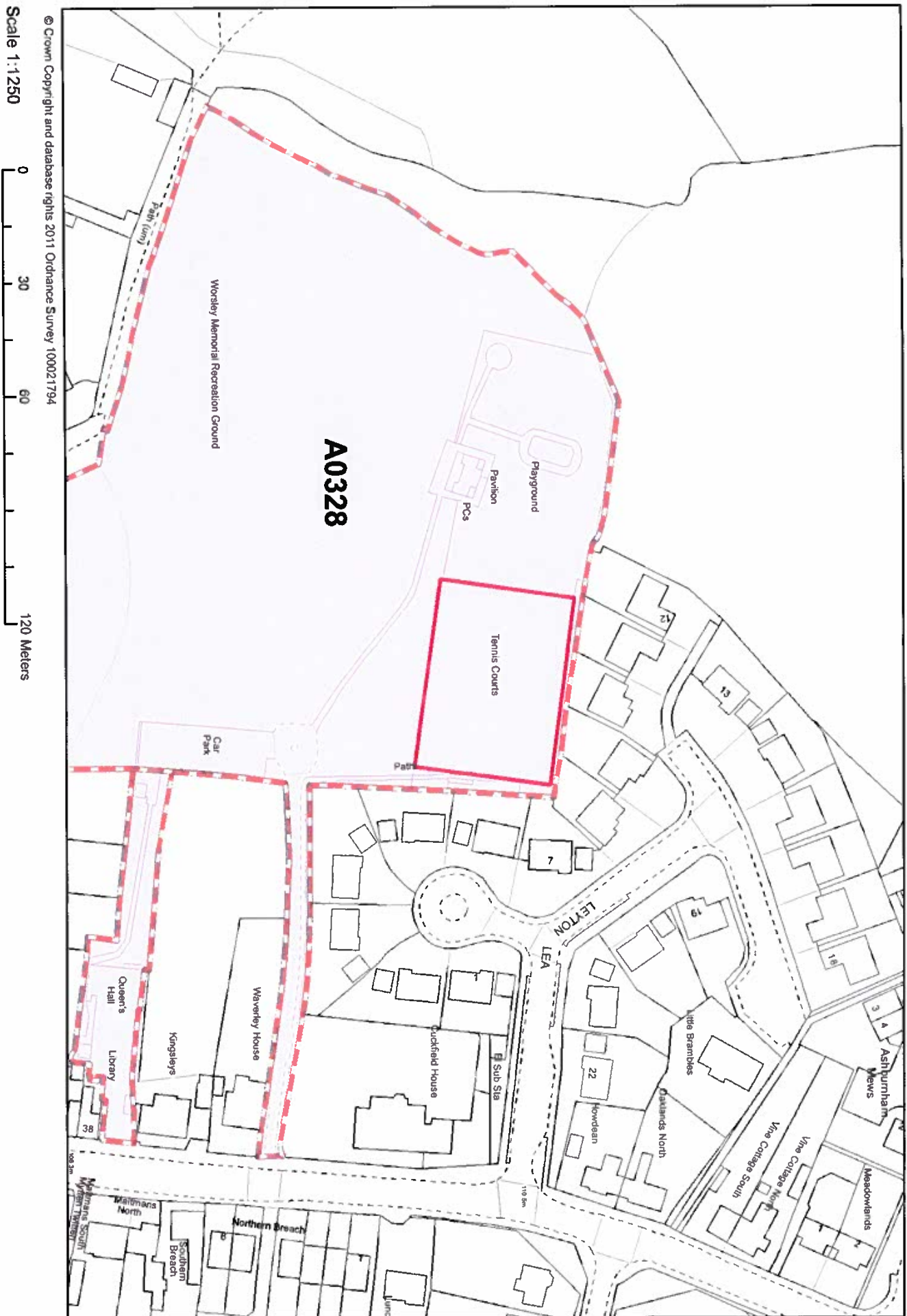
10.0 RECOMMENDATIONS

The Charity Trustees are recommended to:

- 10.1 Note the contents of this report and the Independent Surveyor's report, and agree, in principle, to the grant of the leases of the Tennis Courts and the Tennis Club Pavilion to the Club; and**
- 10.2 Subject to the Club paying the costs of so doing, authorise the Charity Trustees' Solicitor, to advertise the Charity Trustees' intention to grant the leases of the Tennis Courts and the Tennis Club Pavilion in accordance with Section 121 of the Charities Act 2011 and Section 123 of the Local Government Act 1972, and report back to the Charity Trustees, as to the public response to the proposal.**

Background Papers

Valuation report undertaken by DVS Property Specialists
Cuckfield Lawn Tennis Club Business Plan
The Council's legal file and Deeds relating to the Charity.



**4. ST. JOHNS PARK CHARITABLE TRUST, BURGESS HILL, WEST SUSSEX
CHARITY NO: 206789
PROPOSED 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:

	Gordon Marples (Chairman)	
	Peter Reed (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	Robert Salisbury
Liz Bennett	Anne Jones	Susan Seward
Pete Bradbury	Denis Jones	Ian Simpson
Heidi Brunsdon	Graham Knight	Christopher Snowling
Jack Callaghan	Jim Knight	Dick Sweatman
Cherry Catharine	Jacqui Landriani	Mandy Thomas-Atkin
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 The Charity's property comprises only the eastern half of the park. The Charity was constituted by a Conveyance dated 24th 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.

1.7 The purposes of this report are to:

- (a) to seek authority from the Charity Trustees to grant permission to the Burgess Hill Cricket Club ("the Club") to remove the existing practice net facility constructed by the Council in circa 1998 and to construct in its place a new double net practice facility at St Johns Park, Burgess Hill pursuant to the planning permission issued by the Local Planning Authority under planning reference 13/00059/FUL; and
- (b) seek the Charity Trustees agreement, in principle, to the grant of a lease of the land edged in red on the attached plan, being the site of the new double net practice facility, to the Club on terms of be recommended by an independent surveyor, subject to complying with the public consultation requirements of the Charities Act 2011 and the Local Government Act 1972 and reporting back to the Charity Trustees on the outcome of public consultation and the detailed terms of the lease, and for formal authority to grant the lease.

2.0 BACKGROUND

2.1 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.

2.2 The Club hires the cricket facilities and the pavilion under the terms of the Council's casual and regular hire arrangements and maintains an artificial cricket table on the Park to meet their league requirements. Permission was granted for the provision of the artificial cricket table 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 table.

2.3 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.

3.0 PROPOSAL

3.1 The proposal is to grant the Club a lease of the land edged and cross hatched in red on the plan in appendix A, to the Trustees of the Club, together with permission to replace the existing double net practice facility with the new double net practice facility, as shown on the indicative drawing in appendix B at the Club's sole expense. The aim is to put the Club on the same footing as Cricket Clubs located on the Council's land where permanent enclosed facilities are leased to Clubs with ancillary rights in respect of unenclosed areas with clear responsibilities when using the Park that benefit the Clubs, the Council and members of the public.

3.2 Should the proposal be deemed acceptable, in principle, by the Charity Trustees, it will then be necessary to undertake public consultation by advertising the Charity Trustees' intention to grant the proposed lease to the Club in the Mid Sussex Times to afford members of the beneficial class and the public generally the opportunity to raise any objections, and for the Charity Trustees to consider a further report before making a final decision. In this regard, please see part 4 of this report. A report prepared in accordance the requirements of the Charities (Qualified Surveyors Reports) Regulations 1992 will be obtained and noted in any further report to the Charity Trustees on this matter.

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 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. 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.

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 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.

4.4 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.

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 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.

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. The requirements of those regulations are set out in brief in Appendix C to this report.

5.0 OTHER OPTIONS CONSIDERED

5.1 Do nothing.

6.0 FINANCIAL IMPLICATIONS

6.1 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.

7.0 RISK MANAGEMENT IMPLICATIONS

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.

8.0 EQUALITY AND CUSTOMER SERVICE IMPLICATIONS

8.1 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.

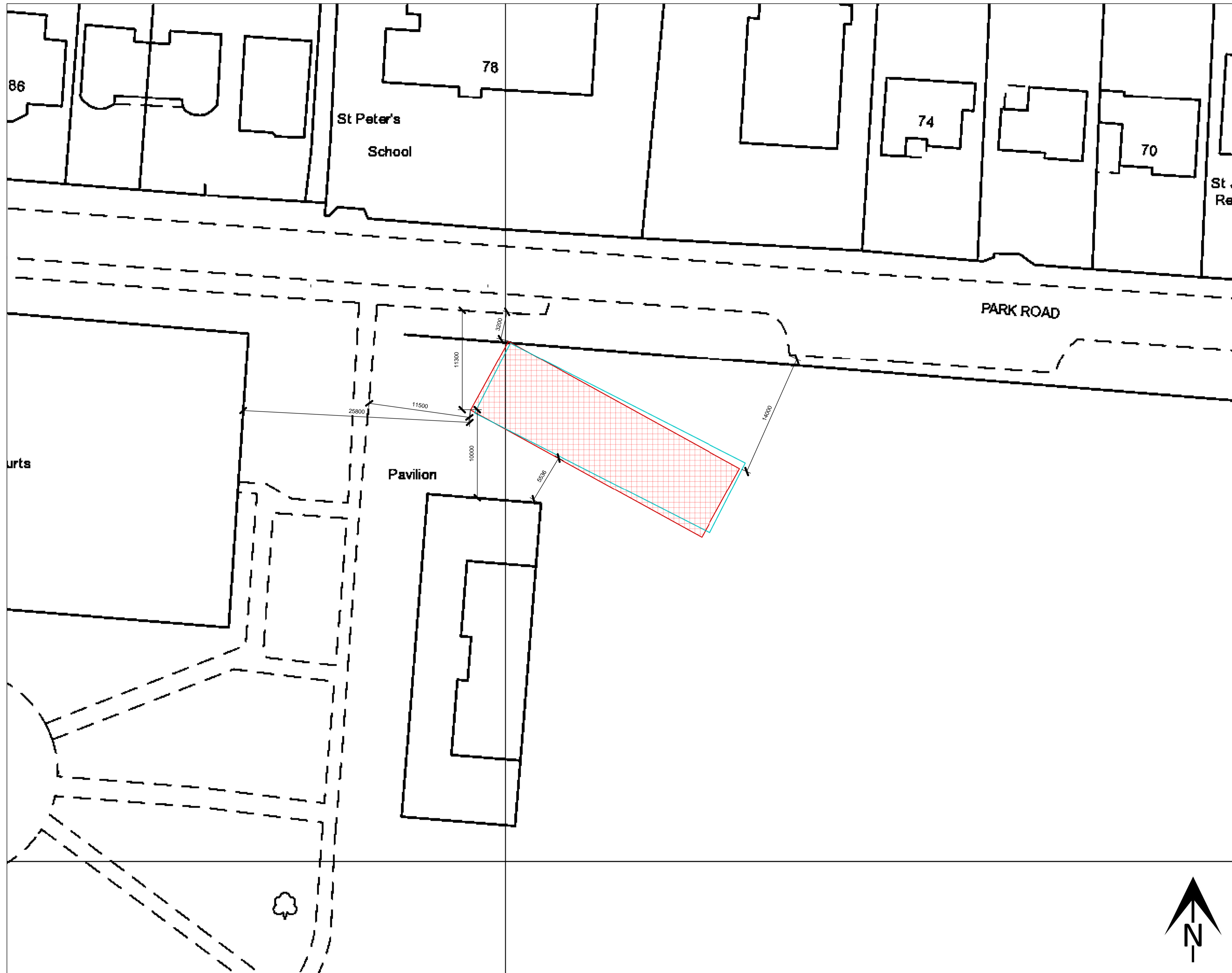
9.0 RECOMMENDATIONS

The Charity Trustees are recommended to:

- 10.1 Note the contents of this report and agree, in principle, to the grant of the lease of the land edged in red on the plan in appendix A to the Club; and**
- 10.2 Subject to the Club paying the costs of so doing, authorise the Charity Trustees' Solicitor, to advertise the Charity Trustees' intention to grant the lease of land edged in red on the plan at Appendix A in accordance with Section 121 of the Charities Act 2011 and Section 123 of the Local Government Act 1972, and obtain a report and recommendation on the main terms of the lease from an independent surveyor in accordance with the 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.**

Background Papers

None



NOTES:-

nottssport 
 Synthetic Surfacing

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

Burgess Hill Cricket Club

Double Lane Practice Facility

Block Plan

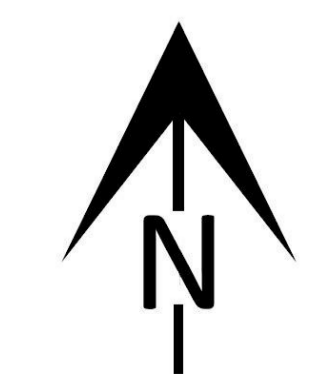
Date 22/01/13

Drawn by JP

Checked by JP

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NOTES:-

nottssport///:
Synthetic Surfacing

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

Burgess Hill Cricket Club

Double Lane Practice
Facility

Artist Impression

Date 22/01/13

Drawn by JP

Checked by JP

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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.).