

5. ST JOHN'S PARK CHARITABLE TRUST, BURGESS HILL, WEST SUSSEX CHARITY NO: 305189 - PROPOSED LEASE DISPOSAL

1.0 INTRODUCTION

- 1.1 The Council is a trust corporation and is appointed the Trustee of the above Park.
- 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 The Charity's property comprises only the eastern half of St John's Park; constituted by a Conveyance dated 24th April 1891 when it was gifted to the Council's predecessors, the Burgess Hill Local Board, upon charitable trust.
- 1.4 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 (marked in red on the Site Location Plan in Appendix A) for charitable purposes within the meaning of Section 5 of the Charities Act 2011, which replaced the relevant provisions of the Recreational Charity Act 1958.
- 1.5 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 15th April 2015;
 - (b) consider any objections and representations receive in response to the statutory advertisements placed in the Mid Sussex Times on 27th July and 3rd 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, for the Charity's solicitor to grant a lease of parts of the Pavilion building (shown as edged in red on the Floor Plan in Appendix A); the site of the Double Net Practice Facility situated on the Charity's land (shown as edged in red on the Site Location Plan in Appendix A), together with the grant of ancillary rights to maintain and use the wicket area (shown as edged in blue on the Site Location Plan in Appendix A) to the Burgess Hill Cricket Club on the terms set out in this 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 25th September 2013, the Charity Trustees received a report on the activities of Burgess Hill Cricket Club ("the Club"), founded in 1872 and 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.

3.2 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 sought 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 reporting back 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 Site Location 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 Site Location 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.
- 3.3 At the meeting of the Charity Trustees held on 15th 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. The 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 the terms of the proposed lease.
- 3.4 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.
- 3.5 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, and some storerooms (edged red on the Floor Plan). Such occupation should be regularised by way of a lease and it is therefore proposed that in addition to leasing to the Club 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 (edged blue on the Site Location Plan) which is already maintained by the Club to comply with their league requirements.

3.6 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 revised heads of terms, as shown on Appendix B, 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 Floor Plan and the land edged in red on the Site Location Plan;
- b. Lease Term: 10 years from the lease commencement date;
- c. Rent: £1,800 per annum exclusive of VAT and paid quarterly in advance.
- d. The rent is exclusive of services (utilities e.g. electricity, water, gas and sewerage charges);
- e. Rent review in year 5 of the term and subject to upwards only review in line with the uplift in Retail Prices Index (all items).
- f. Repairs and Decoration: The landlord, (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 Floor Plan and public conveniences located in the south west corner of the Pavilion. The tenant (the Club) shall be responsible for the maintenance, decoration and to keep in good repair of the internal parts of the Pavilion edged in red on the 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 Location Plan and for the maintenance of the electronic score board. The Club are also responsible to maintain the cricket table/wicket edged in blue on the Site Location Plan;
- g. Use of the cricket table/wicket and cricket outfield: 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;
- 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 Charity's Solicitor and the Charity's Surveyor have standard charges that apply to property transactions such as this. The Club is granted a credit of £1,000 legal fees and £1,000 surveyor's fees, which offers local community groups to relief from professional fees and other costs. The fees and the cost of the statutory advertisement pursuant to the Charities Act and the Local Government Act are deducted from the credit allowance. If the combined legal, property and statutory compliance costs exceed £2,000, the Club will be responsible for the excess.

The cost associated with the Section 123 advertisement costs will be deducted from the credit.

- 3.7. The Heads of Terms, which form the basis of the agreement between the Charity and the Club, have been agreed by the Club and are enclosed on Appendix B.

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.
- 4.3 The Club has played 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.
- 4.4 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. This has been completed and is reported below.

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 on 27th July and 3rd August 2017, 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 29th August 2017 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 INDEPENDENT SURVEYORS' REPORT

6.1 An independent surveyors' report has been commissioned and completed by the District Valuer, solely for the benefit of the Charity Trustees. .

6.2 The Independent Surveyor's Report advises that the rent of £1,800 per annum (inclusive of services and buildings insurance) is appropriate and would comprise best consideration. This has now been agreed by both parties as evidenced in the heads of terms referred to above.

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.

7.3 Neither of these options is recommended to the Trustees.

8.0 FINANCIAL IMPLICATIONS

8.1 The proposed lease provides an income to the Charity of £1,800 per annum, with potential to increase in on 29th September 2021 when the rent is due for review. Utilities are included in the hire costs that the Club pay the Council. The costs to the Charity of applying the District Council legal and property costs allowance will be met by the District Council.

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 27th July and 3rd August 2017 giving notice of the Charity Trustees' intention to grant the proposed lease; and;*
- 11.2** *subject to the Club agreeing to pay 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.*

Background Papers

The Council's legal file and Deeds relating to the Charity

Surveyors Report