

**ST JOHN'S PARK CHARITABLE TRUST, BURGESS HILL, WEST SUSSEX - CHARITY  
NO: 305189 - PROPOSED 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:-

Councillor Margaret Belsey (Chairman)  
Councillor Phillip Coote (Vice-Chairman)

Councillors:

G Allen	S Hatton
J Ash-Edwards	J Henwood
R Bates	S Hicks
J Belsey	S Hillier
A Bennett	T Hussain
L Bennett	R Jackson
A Boutrup	J Knight
P Bradbury	C Laband
P Brown	Andrew Lea
H Brunsdon	Anthea Lea
R Cartwright	J Llewellyn-Burke
P Chapman	G Marsh
E Coe-Gunnell White	J Mockford
R Clarke	A Peacock
M Cornish	C Phillips
R Cromie	M Pulfer
J Dabell	R Salisbury
B Dempsey	S Smith
R de Mierre	A Sparasci
J Edwards	L Stockwell
R Eggleston	D Sweatman
S Ellis	C Trumble
A Eves	R Whittaker
B Forbes	R Webb
L Gibbs	N Webster
I Gibson	N Walker

- 1.4 The Charity's property comprises only the eastern half of St John's Park. The Charity was constituted by a Conveyance dated 24th April 1891 when the eastern half of 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, shown edged green on the Site Location Plan, Appendix A.1, 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.
- 1.6 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 25 July 2018;
- (b) consider any objections and representations received in response to the statutory advertisements placed in the Mid Sussex Times on 26<sup>th</sup> August and 2<sup>nd</sup> September 2021 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 those parts of the Pavilion edged in red on the plan attached to this report ("Floor Plan") and the site of the Double Net Practice Facility situated on the Charity's land shown edged in red on the ("Site Location Plan"), together with the grant of ancillary rights to maintain and use the wicket area shown edged in blue on the Site Location Plan Appendix A.1 and the cricket outfield edged in blue on the Burgess Hill Cricket Club Plan Appendix A.2, to the Trustees of Burgess Hill Cricket Club on the terms set out in this report and recommended in the Independent Surveyor's Report to enable the Club 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 25 September 2013, the Charity Trustees received a report on the activities of Burgess Hill Cricket Club ("the Club"). The Club founded in 1872 and is 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.

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. It also 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 plan in appendix A1 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 plan at Appendix A1 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.

3.2 At the meeting of the Charity Trustees held on 15 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. However, 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.

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.

3.3 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. Such occupation should be regularised by way of a lease and it is now therefore, proposed that in addition to leasing to the Club that part of the Charity's land that is now occupied by 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 – Appendix A.1, which is already maintained by the Club to comply with their league requirements and the cricket outfield edge in blue on the plan marked "Burgess Hill Cricket Club" - Appendix A.2.

- 3.4 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 for a combined lease of part of the Pavilion, the score board, and the site of the double net practice facility and ancillary rights to use and maintain the wicket the cricket outfield. 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: 15 years from the lease commencement date;
  - c. Rent: £1,900 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 relief from Officers' professional fees and other costs. The professional 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.

#### **4.0 LEGAL ADVICE TO THE CHARITY TRUSTEES**

- 4.1 The Charity Trustees need to be aware that, in view of their dual roles as Charity Trustees and Members of the Council there is the potential for a conflict of interest. The Charity Commission is fully aware of this potential and has issued guidance to local authority Charity Trustees reminding them of their fiduciary duty as Charity Trustees. The guidance says that local authority Charity Trustees have an overriding duty to act in the best interests of the Charity when dealing with property vested in local authorities as Trustee. If there is a conflict between the interests of the Charity and the interest of the Council they must disregard the interests of the Council and make their decisions as Charity Trustees in the best interests of the Charity even if that will be inconvenient to or detrimental to the interest of the Council. These rules also apply to any Charity Trustee who is also a member of another local authority such as a Town or Parish Council.
- 4.2 Charity Trustees have general powers under the Trusts in Land and Appointment of Trustees Act 1996 to sell or grant leases of land owned by or held in trust for a charity. However, those powers cannot be exercised in breach of trust. Further, Charity Trustees powers of disposal are permissive and therefore, must be exercised strictly in accordance with any limitations or restrictions imposed by statute. The provision of facilities to play organised sports within the Park are within the trusts of the Charity by virtue of the provisions of Section 5 of the Charities Act 2011, provided that doing so does not unduly restrict or prevent use of the Park by members of the public at large.
- 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 that Charity Trustees would have to conclude the land was surplus to the requirements of the Charity and that it is in the best interest of the Charity to lease out the land.
- 4.4 Section 121 of the Charities Act 2011 provides that where land is held by or in trust for a charity, and the Trusts on which it is so held stipulate that it is to be used for the purposes, or any particular purpose of the charity the land must not be sold, leased or otherwise disposed of unless the charity trustees have first given public notice of the proposed disposition, inviting representations to be made to them within a time specified in the notice, which must be not less than one month from the date of the notice, and must then take into consideration any representations made to them about the proposed disposition.

- 4.5 Land set out as a public park or recreation ground constitutes open space. Owing to the dual roles of the Council as a local authority and as a trust corporation, it will also be necessary for the Council, as custodian Charity Trustee to comply with the statutory requirements relating to the disposal of open space contained in Section 123 of the Local Government Act 1972, which provides that a local authority may not either sell any land or grant a lease of any land consisting of or forming part of an open space without first advertising the proposed sale or lease for two consecutive weeks in a local newspaper circulating in the area in which the land is situated and then consider any objections received in response to those advertisements. If there are objections to the proposed sale or lease the Council must consider those objections carefully and should only authorise the proposed sale or lease if those objections are insubstantial and it is in the public interest to disregard them.
- 4.6 It is worth mentioning the Council's powers, and by implication the Charity Trustees' powers, under section 76 of the Public Health Acts Amendment Act 1907, which provides that a local authority shall, in addition to any powers under any general Act, have the power in respect of any public park or pleasure ground provided by them or under their management and control to set apart such part of a park or ground for the purposes of cricket, football, or any other game or recreation provided that doing so does not contravene any covenant or condition subject to which a gift of a public park has been made without the consent of the donor or any other person or persons entitled in law to the benefit of such covenant or condition. The provision of facilities for the playing of cricket does not contravene any covenants or conditions of the trust and therefore, the Charity Trustees are able to authorise the provision of such facilities in St John's Park including the part held upon Charitable Trust.

The exercise of section 76 powers is subject to the provisions of section 52(3) of the Public Health Act 1961, which provides that the local authority must not set aside more than one-third of the area of any park or ground and must not set apart more than one-quarter of the total area of all parks and grounds provided by them or under their management and control, and the local authority must be satisfied that, in exercising their powers, they have not unfairly restricted the space available to the public for informal games and recreations.

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.

- 4.7 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.

## **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 26th August and 2nd September 2021, 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 26th September 2021 to lodge their objections and representations. 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 as of September 2021 and completed by Flude Commercial on 1 October, at the expense of the Council, but solely for the benefit of the Charity Trustees. The relevant sections of the report are set out below. Copies of the full report are not annexed to this report, but will be available to the Charity Trustees as a background paper.
- 6.2 The Independent Surveyor confirms that in her opinion, the market rent for the Premises is £1,900 per annum (inclusive of services and buildings insurance). It is therefore, reasonable for the Charity Trustees to conclude that the proposed lease of the Premises to the Club represents the best consideration that can be reasonably obtained, and that granting the proposed lease is in the best interests of the Charity.

## **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.

## **8.0 FINANCIAL IMPLICATIONS**

- 8.1 The proposed lease provides an additional income to the Charity of £1,900 per annum, with potential to increase on the fifth anniversary of the term in 2027 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:*

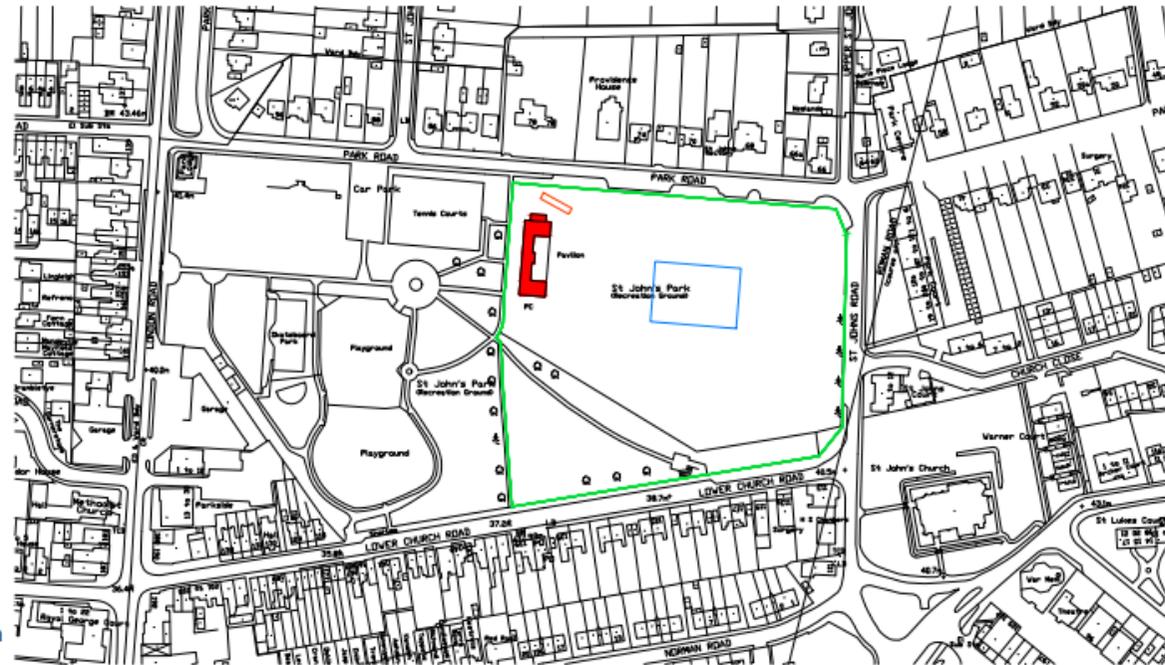
- 11.1** *Note the absence of any responses to the statutory advertisements placed in the Mid Sussex Times on 26<sup>th</sup> August and 2<sup>nd</sup> September 2021 giving notice of the Charity Trustees' intention to grant the proposed lease; and note and consider the proposal set out in paragraph 3.4 of this report, and the Independent Surveyor's Report; and*
- 11.2** *If, having considered this report and the Independent Surveyor's Report the Charity Trustees' consider that it is in the best interests of the Charity to grant the proposed lease to the Club, then 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 and the Independent Surveyor's Report and on such other terms as the Charity Trustees' Solicitor recommends or considers appropriate.*

### **Background Papers**

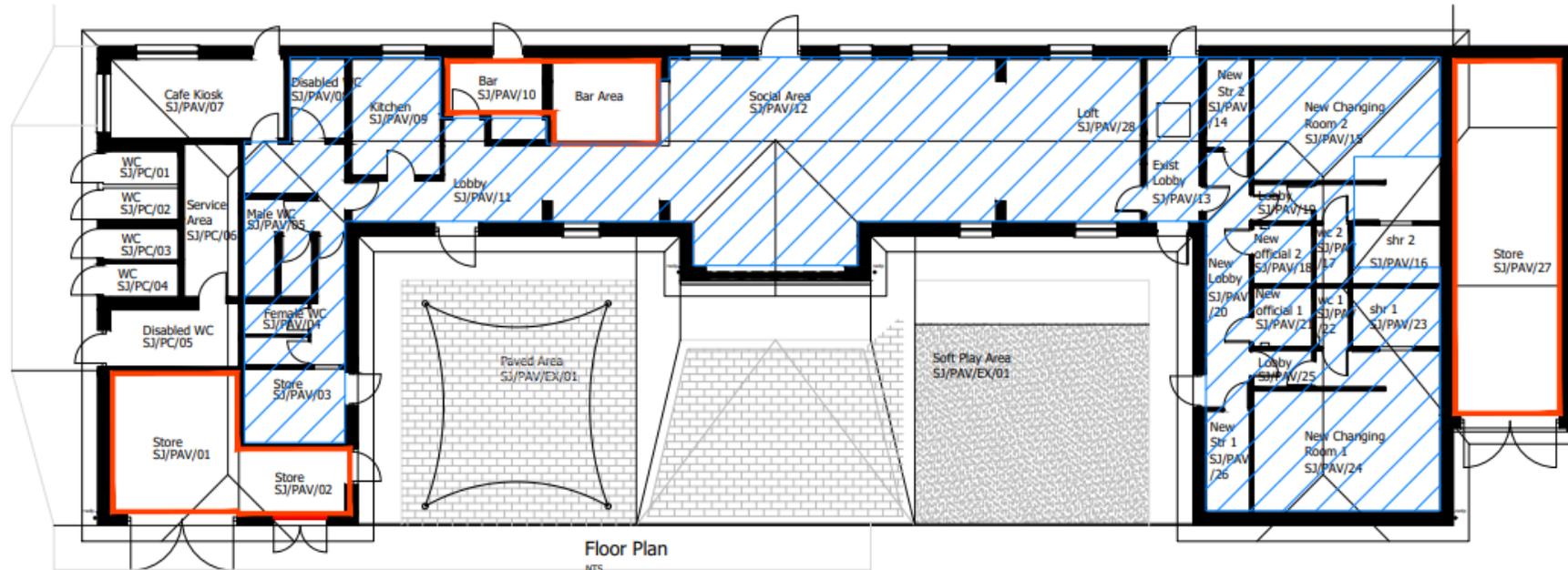
Valuation report undertaken by Rebecca Lewis of Flude Commercial  
The agreed Heads of Terms summarised in paragraph 3.4



Photographic Elevation



Site Location Plan  
Scale 1:2500



Floor Plan  
NTS



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Rev	Date	Description	Int

**MID SUSSEX DISTRICT COUNCIL**

Project Address:

St John's Park  
Burgess Hill  
West Sussex  
RH15 9AA

Project Title:  
N/A

Drawing Title:  
Site Location Plan  
Floor Plan  
Drawing Ref:

Scale: AS SHOWN  
Date: March 2021  
Revision:

Drawn By: PRW  
Dept: CE&F  
Checked By:

Burgess Hill Cricket Club - Apr - Sept

Mid Sussex District Council

Author: S. Brown

Date: 27/04/2021

