

**BEECH HURST GARDENS CHARITABLE TRUST, HAYWARDS HEATH, WEST SUSSEX
(CHARITY NUMBER 305202)**

GRANT OF A 5 YEAR LEASE TO THE KIOSK TENANT

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)*

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

- 1.4 Beech Hurst Gardens Charitable Trust (“the Gardens”) was constituted by a Declaration of Trust dated 2nd March 1950 when Gardens were gifted to the Council’s predecessor, the Urban District Council of Cuckfield, by the trustees of the late

William Johnson Yapp to be administered by the Council upon charitable trust. The objects of the Charity are the provision of a public park and recreation ground for the benefit of the inhabitants of Haywards Heath. The trustees powers of management are very restrictive and are limited to providing facilities for the use and enjoyment of the inhabitants of Haywards Heath for educational, scientific, cultural or recreational purposes and for any of the charitable purposes set out in section 4 of the Physical Training and Recreation Act 1937 and not for any purposes that are not charitable. There is an express provision that prohibits use of the Charity's property by the Council for the discharge of its functions as a local authority.

2.0 PURPOSE OF REPORT

To authorise the Charity's solicitor, in the light of any objections and representations received, to

- (a) Grant a lease of the Kiosk, edged in red on the layout plan attached to this report at Appendix I, to the existing tenant.**

3.0 BACKGROUND AND PROPOSALS

- 3.1 The Kiosk tenant, Ms Joanna Collins, was initially granted a Licence to occupy followed, subsequently, by a two-year Lease from 31/03/2016 and then a five-year lease from 31/03/2018 during which she then exercised the break clause provision due to difficulties during Covid, but re-entered into a lease again from 27 August 2020 until the expiry of the current term.

The Kiosk opened in 2015 as a café and sells Drury's teas and coffees, Bennett's scoop ice cream, cold drinks, milk shakes, cookies and, to a lesser degree, cream teas, toasted sandwiches and cakes.

Whereas Beech Hurst Park is busy in the spring / summer, autumn / winter is tougher with fewer people using the park. Most of her trade comes from people attending the model railway. She receives limited walk up from the tennis courts and bowls club.

Joanna is very familiar with the customers and local market, and whilst she has dabbled with various food options, she now limits sales to tea / coffee, soft drinks, cakes and snacks having found that pastries, sandwiches and panini's do not really sell.

Officers have agreed a modest increase on the existing rent due to current challenges with rising costs of utilities, stock and the economy generally.

- 3.2 A toilet is located within the kiosk, disabled access from outside, with baby changing facilities and a bin for nappies. The toilet is available for use by the public when the kiosk is open. Maintenance and cleaning is undertaken by the kiosk operator who is liable for the cost of the hot and cold water supply and hand basin. Equivalent facilities in other locations within Haywards Heath (community toilets scheme) would receive a payment of approximately £500 p.a.
- 3.3 Officers have agreed heads of terms for a new 5-year lease on the following terms:
- a. Premises: the Kiosk shown edged in red on the Leased Plan (Appendix 2);
 - b. Lease Term: 5 years from the lease commencement date;
 - c. Rent: £2,816 per annum excl. VAT (payable monthly).

- d. The rent is exclusive of services (utilities e.g., electricity, water, gas and sewerage charges); the tenant is responsible for all outgoings.
- e. Repairs and Decoration: the tenant to be responsible for all internal and non-structural repairs, decoration and maintenance. The Landlord to be responsible for all structural repairs.
- f. Break Option: There shall be a 3 month rolling break clause.
- g. Buildings Insurance: the landlord will be responsible for insuring the Kiosk against the usual risks and the costs of the Landlord.
- h. 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
- i. Costs: The tenant will be responsible for the professional fees and the cost of the statutory advertisement pursuant to the Charities Act and the Local Government Act.

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.
- 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.

5.0 SECTION 121 AND 123 ADVERTISEMENTS AND OBJECTIONS

- 5.1 The proposed lease of the kiosk was advertised in the Mid Sussex Times, 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 9th March 2023 to lodge their objections and representations. No objections or representations were received and therefore, the Charity Trustees have none to consider.

6.0 FINANCIAL IMPLICATIONS

- 6.1 The proposed lease will provide an income to the Charity of £2,816 per annum over the 5 year term.
- 6.2 The proposed lease will save the charity the costs of cleaning and maintaining the public toilets within the kiosk building.
- 6.3 All fees and charges, Legal & Surveyors incurred in granting the new lease will be paid by the Tenant.

7.0 RISK MANAGEMENT IMPLICATIONS

- 7.1 This offer is recommended as the existing operator is committed in providing this facility going forward and provides a good quality and popular facility.
- 7.2 The alternative to approving the new lease is a casual hire arrangement (on an hourly, daily or weekly basis) which gives less assurance of a facility being provided at all, let alone on a regular or reliable basis. This is still an option but not one we could recommend.
- 7.3 Failing to regularise and renew the occupation of the existing tenant through the grant of a lease excluded from the provisions of sections 24 to 28 of the Landlord and Tenant Act 1954, could result in the tenant acquiring rights over the Charity's land that are not intended or desirable given the nature of the Kiosk and its location, and the purpose of the Charity.

8.0 EQUALITIES AND CUSTOMER SERVICE IMPLICATIONS

- 8.1 The recommendations contained in this report do not have an adverse or negative impact on Equality and Customer Service, however, failure to grant a new lease of the kiosk might.

9.0 RECOMMENDATIONS

The Charity Trustees are recommended to:

- 1. Grant Consent to Alter the external seating area, signage and redecoration*

APPENDICES:

- 1. PLAN 1 – BEECH HURST KIOSK – LOCATION PLAN**
- 2. PLAN 2 – BEECH HURST KIOSK – LEASED PLAN**