

**BEECH HURST GARDENS CHARITABLE TRUST, HAYWARDS HEATH, WEST SUSSEX
(CHARITY NUMBER 305202) - GRANT OF A 5 YEAR LEASE TO THE KIOSK TENANT**

REPORT OF: DIRECTOR OF PEOPLE AND COMMERCIAL SERVICES

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Report to: Charity Trustees
13th December 2023

Purpose of Report

To provide the relevant information to allow the Committee to consider granting a new lease of the kiosk located in Beech Hurst Gardens.

Recommendations

- 1. The Beech Hurst Gardens Charitable Trust is recommended to grant a lease of the Kiosk, edged in red on the layout plan attached to this report at Appendix I, to the proposed new tenant SUBJECT TO the Solicitor to the Trust being satisfied that no objections or representations are received during the relevant period which would give rise to a material concern to the Trust.**
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Background

2. The previous Kiosk tenant, Joanna Collins, was granted a new five-year lease from 31 March 2023 with the option to break on 3-month notice. She gave three months' notice to terminate in July and the kiosk is now vacant.
3. The kiosk has been advertised on the open market for lease by the Council's appointed agents, Crick May. After receiving a number of proposals and assessing all interested parties, a new prospective Tenant has been selected as a suitable candidate. They have offered a competitive market rental and have experience in running cafes with a seasonal Hire Agreement at Cuckfield Recreation Ground. The operator is experienced in marketing, social media and brand presentation, and will be providing food and drink offer of teas, coffees, pastries, sausage rolls, ice creams all from local suppliers where possible.
4. A toilet is located within the kiosk, disabled access from outside, with baby changing facilities. The toilet is available for use by the public when the kiosk is open. Maintenance and cleaning are 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.
5. 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. A rent-free fitout period of three weeks to enable the Tenant to take possession of the premises and complete minor refurbishment and preparation works prior to opening;
- d. Rent: £4,000 per annum excl. VAT (payable monthly).
- e. The rent is exclusive of services (utilities e.g., electricity, water, gas and sewerage charges); the tenant is responsible for all outgoings.
- f. 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.
- g. Break Option: There shall be a three-month rolling break clause.
- h. Buildings Insurance: the landlord will be responsible for insuring the Kiosk against the usual risks and the costs of the Landlord.
- i. 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
- j. 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.
- k. Deposit: The Tenant will pay a rental deposit to be held in the event that the rent is not paid, or any reinstatement works are required on lease expiry, to be refunded back at the end of the lease if it was not required.

Legal Advice to the Charity Trustees

6. 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.
7. 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.

8. 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.
9. 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.
10. 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.

Section 121 and 123 Advertisements and Objections

11. The disposal of the kiosk for the previous lease to Joanna Collins commencing 31 March 2023 for a term of five years was advertised in accordance with Section 121 and 123 of the Local Government Act and no objections were received.
12. The prospective new Tenant Kim Gibson would like her lease to commence in January 2023 and because the immediately preceding Charity Trustee Committee Meeting is to be held on 13th December 2023, the proposed lease of the kiosk will be advertised in the Mid Sussex Times in accordance with the requirement of Section 121 of the Charities Act 2011 and Section 123 of the Local Government Act 1972 from 23rd November 2023 for a two week period and members of the public will have a two week period following that for objections or representations to be received.
13. The last date for objections will therefore be 20th December 2023 which is after the date of this meeting. However, the Charity Trustees are asked to consider this matter on the basis that no objections or representations are received as no objections were previously for the same lease term and use of kiosk as a café.

Policy Context

14. This project contributes to achieving the Council's policies as it is supporting a community service and provides facilities for the use and enjoyment of the inhabitants of Haywards Heath for recreational purposes.

Other Options Considered

15. 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.

Financial Implications

16. The proposed lease will provide an income to the Charity of £4,000 per annum over the 5-year term. This is an increase of £1,184 per annum when compared with the previous Tenant.
17. The proposed lease will save the Charity the costs of utilities, cleaning and maintaining the public toilets within the kiosk building.
18. The Tenant will pay the cost incurred for Section 121 of the Local Charities Act 2011 and Section 123 of the Local Government Act 1972 advertising.
19. The Council will bear their own Legal and Surveyor fees.

Risk Management Implications

20. The risk of not approving this new lease is that the kiosk remains vacant and could become more attractive for anti-social behaviour which would be detrimental to the location and surrounding tenants. This may result in vandalism or damage which would become a financial burden to the Council to control and rectify.

Equality and Customer Service Implications

21. Approving this new lease will ensure that a café service continues to be provided to the community who utilise Beech Hurst Gardens.

Sustainability Implications

22. The proposed new Tenant utilises local suppliers where possible.

Appendices

- Appendix A - Plan 1 – Beech Hurst Kiosk – Lease Plan

Background Papers

None.