

Appendix 6

Legal Services
White Cliffs Business Park
Dover
Kent CT16 3PJ

Telephone: (01304) 821199
DX: 6312 Dover
Minicom: (01304) 820115
Website: www.dover.gov.uk

Direct line: 01304 872347
e-mail: Beverley.dempster@dover.gov.uk
Our ref: L/BD/GEB/PROP006094
Your ref:
Date: 5 November 2019

Dear Sir/Madam

Proposed Lease of Part of the Pavilion at Marke Wood recreation ground Walmer

Dover District Council is Trustee for the registered charity known as the Charity of Frederick Franklin for a Public Park. The charity is administered and governed in accordance with the Charity Commission scheme dated, 22 April 2002.

Forming part of the charity are the grounds known as, Marke Wood recreation ground. We have received various objections in relation to the proposed grant by the Trustee, to lease part of the pavilion at Marke Wood and we write to you now to seek to address the concerns that have been raised.

For clarity the charities objectives are set out in the scheme as:

- (1) The object of the charity is, in the interests of social welfare, the provision of or to assist in the provision of facilities for recreation or other leisure time occupation to improve the conditions of life for the inhabitants of the area of benefit without distinction of political, religious or other options.***
- (2) Subject to the provisions of clause 8 of this scheme the land identified in parts 2 and 3 of the schedule to this scheme must be retained by the trustee for use as a recreation ground.***

Marke Wood is the land identified in part 2 of the schedule referred to above and is used currently and will be continued to be used as a recreation ground.

Clause 8 of the scheme permits the Trustee to let and otherwise manage all the land and buildings at Marke Wood during such periods as they are not occupied for the purposes thereof, provided they comply with the usual restrictions imposed on them as a result of being a charity. They would include any statutory requirements, any requirements under the scheme and any general good practice requirements such as taking account of any local opposition for the future use of the property. Any decision must be also be appropriate and in the best interests of the charity.

As stated above, the Trustee is keen to address the objections and resolve the concerns in so far as it can. Taking the objections in turn, please see the responses below:

Objections and responses

1. **Objection:** The proposal will deprive the inhabitants of the use of the pavilion.

Response: The use of the pavilion has diminished in the last 18 months to 2 years, despite being available to any person(s) booking any of the football pitches. Even when booked, the use requested of the pavilion was solely for its changing facilities when the pitches are in use.

The bookings for the pitches and the pavilion appear to have diminished when the local (Deal) football league collapsed. The only online booking received for the football pitches in September for instance, were by the club who wish to take up a lease of part of the pavilion.

The Trustee is permitted under clause 8(2) of the scheme to consider letting the land and buildings during such periods as they are not in occupation, as outlined above. The Charity Commission may decide any question put to them under the scheme concerning the interpretation of the scheme or the propriety or validity of anything done or intended to be done under it. With that in mind, the Trustee wrote to the Charity Commission to enquire whether the substantive disuse of the pavilion amounts to a period of no occupation.

The Charity Commission have confirmed that they agree with this interpretation. Their view is subject to the Trustee following all the usual procedures set out in paragraph 5 above.

To put the above into context, the Trustee is permitted, subject to following correct procedures to let the pavilion, if it considers the letting, to be in the best interests of the charity.

The current proposal for the letting of the pavilion is not for exclusive use of the entire building. The toilets and changing rooms would still be available for use by other users who wished to book any of the other pitches that will also still be available.

2. **Objection:** The proposal is a breach of the charitable trusts; the grant of a lease is not a charitable purpose and is therefore not permitted under the Charity Commission rules.

Response – We believe this objection has been responded to in answering the above objection. However, we would further add that at the point the Trustee has concluded that the pavilion is under occupied and is therefore not being used for the purpose intended, it is within their power and indeed they have a duty, to consider what would be in the charities best interests.

The club that has an interest in taking up a lease of part of the pavilion, will invest their own funds in carrying out works to the pavilion and a market rent would be sought if the Trustee decides to grant the lease. The club will also be providing sporting facilities to the local community.

These are all factors that the Trustee must consider when considering whether to grant a lease or not.

3. **Objection:** The Proposal would require a planning application for A4 use; the residents are concerned about consumption of alcohol; the Proposal is contrary to the safer Stronger Communities Partnership Plan.

Response: The current use of the pavilion and toilets is as a private sports and social club and does not permit for use as a drinking establishment. The Trustee accepts that the local community wish to set the standards and behaviours that they wish to see in their community. Any lease to the club will not permit the sale of alcohol.

4. **Objection:** The Proposal is contrary to the Open Spaces Act 1906.

Response: The open spaces legislation is not relevant to the Marke Wood Recreational Grounds. Dover District Council holds the park land on charitable trust. The prohibition on the disposal of open space land does not apply.

The park is designated as open space under the Council's Planning Policy, but this is not relevant to this matter at hand as it is only to limit proposals for developments that would result in a loss of open space. No such proposal has been made by the club.

5. **Objection:** The Proposal will mean the loss of use of the pavilion.

Response: The Proposal will give the club the use of part of the pavilion, however it is not intended that the proposal will include all of the changing rooms, which will continue to be available for use by the public via the online booking system.

6. **Objection:** The Proposal will deprive the inhabitants of using the football pitches.

Response: The Proposal does not include exclusive use of all of the football pitches. These will continue to be available for use by booking online at:

<https://bookwhen.com/doverdc#focus=ev-skt6-20191102100000>.

7. **Objection:** The grant of a lease is a significant private advantage.

Response: It is not fully understood what this query relates to. The land, if let, will be let pursuant to the provisions of the scheme, which, as explained above, permits the letting of land when it has been determined by the Trustees that the land is not being used for the purpose intended.

We are happy to go over this point if the objection is clarified.

8. **Objection:** Is the proposal in the best interests of the Charity?

Response: The Trustee will consider all of the information provided to it when they meet to discuss this matter. Their decision will be documented and will include giving their reasons why they think their decision to grant the lease or not is in, what they believe to be, the best interests of the charity.

Thank you for taking the time to write to the Council and to help the Trustees understand the issues that are important to the community.

The Trustee hopes that the responses have answered the queries and objections raised. If you have any further queries, or would like to discuss the matter further, please do not hesitate to e-mail propertyservices@dover.gov.uk.

Yours faithfully

Beverley Dempster (Solicitor - Legal Services Manager)
for Harvey Rudd, Solicitor to the Council