

Bath & North East Somerset Council

MEETING/ DECISION MAKER:	Alice Park Trust Sub Committee	
MEETING/ DECISION DATE:	25 June 2018	EXECUTIVE FORWARD PLAN REFERENCE:
TITLE:	Patio area around café update	
WARD:	Lambridge	
AN OPEN PUBLIC ITEM		
List of attachments to this report: Appendix 1 – Plan of lease area Appendix 2 – Grounds maintenance layer Appendix 3 – Aerial view		

1 THE ISSUE

- 1.1 During the last Alice Park Trust sub-committee meeting on 23 April 2018, representation was made by Alice Park café proprietor Mr Tony Hickman regarding his use of a grass area adjacent to his area of leased land on occasions during the summer (and winter) for parties and putting up a marquee for the Christmas market, charity marquees, DJ and acoustic performances.
- 1.2 At the meeting Mr Hickman explained that over the past nine years he had been under the impression that the area up to the end of the fence, just beyond the patio was included in “his area”.
- 1.3 Mr Hickman went on to offer Alice Park Trust a one off payment of £250 to allow him use of this area as if it were part of his current lease.
- 1.4 Mr Hickman’s lease (renewed on 4 September 2014), details his leased area to comprise of the Tea Chalet and 2 areas adjacent this (marked in blue in Appendix 1).
- 1.5 He has rights to use the areas marked in blue and as detailed in The Second Schedule of the lease ‘for placing tables, chairs and umbrellas only’. The second of these areas (furthest from the chalet) is up to the fence that contains the patio but is not beyond the fence that contains patio (i.e. is not onto the grass).

- 1.6 The Fourth Schedule of the lease (Regulations) states; point 3 'no sound amplification equipment shall be used in a manner which is audible outside the premises'; point 8 'no events may take place without first being authorized by the landlords events team'; point 9 'no marquees, tents or temporary structures are to be erected in any part of the park without express written permission from the parks manager or events team of the landlord etc'.
- 1.7 Whilst the use of the grass area seems harmless enough, it is not included in Mr Hickman's lease area, his lease expressly does not permit temporary structures to be used without permission and therefore his unpermitted use of it is likely not insured. As landlords, I would be concerned that knowledge of this occurrence creates liabilities upon the landlords should an incident occur through poor set up of items upon the landlords land (gazebo's and bouncy castles etc notoriously leave the ground in windy weather).
- 1.8 Similarly, offering DJ and acoustic performances may not be permitted as there should be no sound amplification that is audible outside the premises.
- 1.9 Please see <http://www.alicepark.co.uk/for-hire> for details of cafe offers and prices

2 RECOMMENDATION

- 2.1 That the café concession is notified of the breaches of lease conditions and is required to work within the lease perimeters going forward (or actions should be taken to terminate the lease).
- 2.2 That a one off payment of £250 should be refused as would not sufficiently reflect the market rate of the land and its regular use by the concession. It would not actually cover the cost of the legal work in varying the lease details that are needed to formalise the arrangement and protect the landlords from the unauthorised use.
- 2.3 That consideration be given to temporary hire of the land by the concession consistent with any other event organiser and through the event team to ensure landlord liabilities are addressed. Small hires of land adjacent to and to facilitate events based at the cafe can be discretionarily agreed at a rate of £2.00 per day per m2.

3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 Charge rates to the café must be reasonable as the vibrancy created by the café is of huge value to the park in general. A charge rate of £2.00 p/m2 is benchmarkable to others (Cambridge City Council) as a temporary hire rate and seems reasonable when compared to the financial benefit being derived from the concessions website.
- 3.2 The maintenance of the park is already in a financial deficit position as 'the income from the Endowment and arising from the Trust Property is currently insufficient to maintain the park without a subsidy from B&NES'.
- 3.3 To improve the quality and attractiveness of the park all those deriving an income from it must equitably contribute towards its upkeep.

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

- 4.1 The Council is sole corporate trustee of the Alice Park Trust. The Alice Park Trust's Sub-Committee's terms of reference are to undertake the operational management functions in respect of the Alice Park site and its resources, in accordance with Trust's objects and the duties it owes pursuant to the Charities legislation.
- 4.2 Members in their capacity as Trustee must administer the Trust in good faith, abiding strictly to the objects of the Trust and administering the Trust for the benefit of the public which may at times conflict with the interests of the Council.
- 4.3 The objects of the trust require the land bequeathed to be used as a public park and children's recreation ground. The Sub-Committee must consider whether any proposed use falls within the trust's objectives, and if so whether to permit the use requested. If it permits the use then it must decide on what terms, in order to ensure effective use of the park whilst minimising any conflict between the different uses to which the park is subject to under the terms of the trust deed.
- 4.4 One important consideration for the Alice Park Trust Sub-Committee to consider, when deciding upon the issue of expenditure, is that the income from the Endowment and arising from the Trust Property is currently insufficient to maintain the park without a subsidy from B&NES and therefore a very clear plan to fund future expense will be required.
- 4.5 A charity cannot dispose of an interest in land without obtaining and considering a surveyors report pursuant to S.36 (3) Charities Act 1993 where the disposal is by way of lease for 7 years or more or, where the lease is for less than 7 years then pursuant to S.36 (5), by obtaining advice from a person who the trustees believe has the requisite ability and practical experience to provide them with competent advice. In addition in either case the trustees must also be satisfied that the terms of the disposition proposed are the best that can be obtained for the charity.

5 THE REPORT

- 5.1 That the Alice Park Trust sub-committee agree a £2.00 p/m² rate for additional land hire (land hire is not subject to vat).
- 5.2 That events are notified and the land is booked via the B&NES event team which will be subject to an administrative charge (reduced for multi-events)

6 RATIONALE

- 6.1 The Trust must work within its and the Councils financial constraints.

7 CONSULTATION

- 7.1 Finance and Legal Officers have had opportunity to review and input into this report.

8 RISK MANAGEMENT

- 8.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

Contact person(s)	<i>Mark Cassidy 01225 396811</i>
Background papers	<i>N/A</i>
Please contact the report author if you need to access this report in an alternative format	

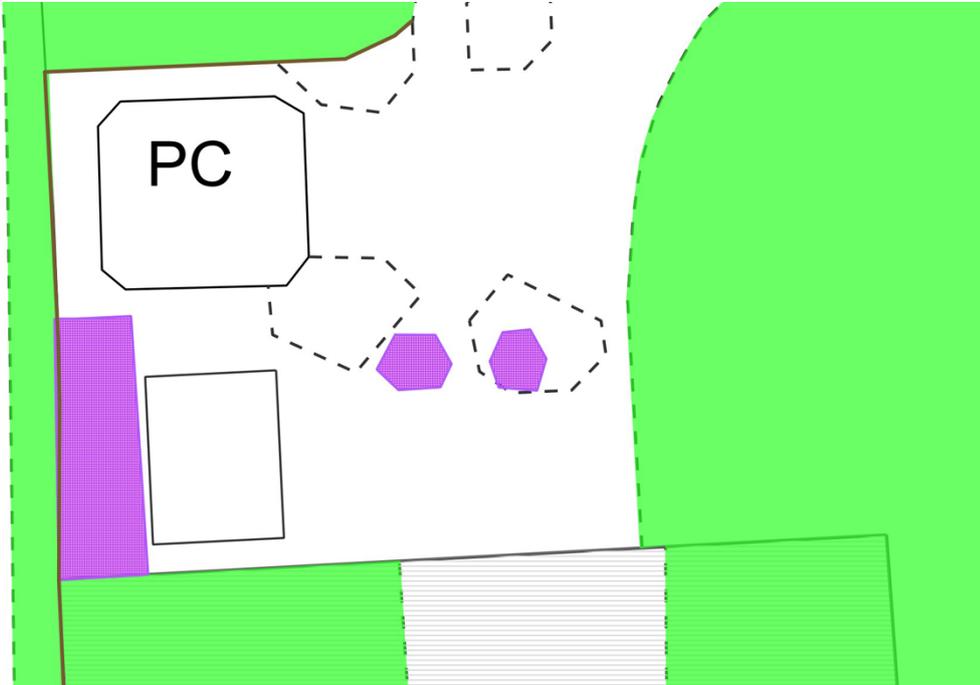
Appendix 1

Lease areas, *note; details of the Second Schedule of the lease reads: 'a right to use the areas marked blue for the placing of tables, chairs and umbrellas only'.



Appendix 2

Grounds maintenance layer showing proximity of grass areas to lease areas (there is a fence between areas marked in blue in appendix 1 and the grass area in green below). Therefore yes, Mr Hickman has use up to the fence.



Appendix 3

An aerial view showing Mr Hickman's area being up to fence but appears to show a gazebo structure outside of this area on the grass.

