

**REPORT ON:** Lease with Odiham Tennis Club

**WRITTEN BY:** Sarah Weir

**MEETING DATE:** 30 April 2019

**AGENDA ITEM:** Amenity 146/18

As per the committee's request, the solicitor has updated the lease to include the removal of the floodlights as long as they don't cause damage to OPC's property (item 27.2).

The solicitor has advised that amending the plan to agree with the one that was used before would be quite difficult and in the circumstances they propose the attached plan which has been sent to the tennis club.

If the committee is happy that the lease is ready for signing by OPC, Cllrs Robinson-Giannasi and Worboys were appointed previously to sign it on behalf of OPC.

**Date**

**2019**

**ODIHAM PARISH COUNCIL (1)  
as Trustee of Odiham Sports Centre Trust**

**ODIHAM TENNIS CLUB LTD (2)**

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**LEASE**

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**Odiham Tennis Club  
Buryfields Odiham Hampshire RG29 1NE**

**Bates Solicitors Limited**

**67 Fleet Road  
Fleet  
Hampshire  
GU51 3PJ**

**[www.batessolicitors.co.uk](http://www.batessolicitors.co.uk)**



<b>LR1. Date of Lease</b>	<b>2019</b>
<b>LR2. Title Number(s)</b>	<p><b>LR2.1 Landlord's Title Number(s)</b>  <i>Title No(s) out of which this lease is granted. Leave blank if not registered</i></p> <p><b>LR2.2 Other Title Number(s)</b>  <i>Existing title number(s) against which entries of matters referred to in LR9, LR10, and LR13 are to be made</i></p>
<p><b>LR3. Parties to this Lease</b>  <i>Give full names, addresses and company's registered number, if any, of each of the parties. For Scottish companies use an SC prefix and for limited liability partnerships use an OC prefix for foreign companies give territory in which incorporated.</i></p>	<p><b>Landlord</b>  ODIHAM PARISH COUNCIL of The Bridewell, The Bury, Odiham, Hook, Hampshire RG29 1NB as Trustee of Odiham Sports Centre Trust</p> <p><b>Tenant</b>  ODIHAM TENNIS CLUB LTD, Company Number [ ] whose registered office is at 31 Manley James Close, Odiham, Hampshire RG29 1AP</p> <p><b>Other Parties</b>  none</p>
<p><b>LR4. Property</b>  <i>Where there is a letting of part of a registered title, a plan must be attached to this lease and any floor levels must be specified</i></p>	<p><b>In case of a conflict between this clause and the remainder of this lease then, for the purposes registration, this clause shall prevail.</b>  See Schedule 1 of this Lease</p>
<p><b>LR5. Prescribed statements etc</b></p> <p><i>In LR5.2 omit or delete those Acts which do not apply to this lease</i></p>	<p><b>LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003</b></p> <p><b>LR5.2 This lease is made under, or by reference to, provisions of:</b>  <del>Leasehold Reform Act 1967</del>  <del>Housing Act 1985</del>  <del>Housing Act 1988</del>  <del>Housing Act 1996</del></p>
<b>LR6. Term for which the Property is leased</b>	The term as specified in this Lease in paragraph 1 ( <i>Definitions</i> )

<p><i>NOTE: The information you provide, or refer to, here will be used as part of the particulars to identify the lease under rule 6 of the Land Registration Rules 2003</i></p>	
<p><b>LR7. Premium</b></p>	<p>none</p>
<p><b>LR8. Prohibitions or restrictions on disposing of this Lease</b></p>	<p>This lease contains a provision that prohibits or restricts dispositions.</p>
<p><b>LR9. Rights of acquisition etc</b>  <i>Insert the relevant provisions in the sub-clauses or refer to the clause, schedule or paragraph of a schedule in this lease which contains the provisions</i></p>	<p><b>LR9.1 Tenant's contractual rights to renew this Lease, to acquire the reversion or another Lease of the Property, or to acquire an interest in other land:</b></p> <p>none</p> <p><b>LR9.2 Tenant's covenant to (or offer to) surrender this Lease:</b></p> <p>none</p> <p><b>LR9.3 Landlord's contractual rights to acquire this Lease:</b></p> <p>none</p>
<p><b>LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property.</b>  <i>Insert the relevant provisions in the sub-clauses or refer to the clause, schedule or paragraph of a schedule in this lease which contains the provisions</i></p>	<p>none</p>
<p><b>LR11. Easements</b></p> <p><b>LR12. Estate rent charge</b></p>	<p><b>LR11.1 Easements granted by this lease for the Benefit of the Property:</b>  As set out in Schedule 1 of this lease</p> <p><b>LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property:</b>  As set out in Schedule 3 of this lease</p> <p><b>LR12.</b></p> <p>None</p>



<b>burdening the Property</b>	
<p><b>LR13. Application for standard form of restriction</b></p> <p><i>Set out the full text of the standard form of restriction and the title against which it is to be entered. If you wish to apply for more than one standard form of restriction use this clause to apply for each of them, tell us who is applying against which title and set out the full text of the restriction you are applying for.</i></p> <p><i>Standard forms of restriction are set out in Schedule 4 to the Land Registration Act 2002</i></p>	N/A
<p><b>LR14. Declaration of trust where there is more than one person comprising the Tenant</b></p> <p><i>If the Tenant is one person, delete all the alternative statements</i></p> <p><i>If the Tenant is more than one person, complete this clause by deleting all inapplicable statements</i></p>	<p><del>The Tenant is more than one person. They are to hold the Property on trust for themselves as joint tenants.</del></p> <p><b>OR</b></p> <p><del>The Tenant is more than one person. They are to hold the Property on trust.</del></p>

## **Lease of land to unincorporated association**

### *Date and parties*

THIS LEASE is made on (date) 2018 between ODIHAM PARISH COUNCIL of The Bridewell, The Bury, Odiham, Hook, Hampshire RG29 1NB as Trustee of Odiham Sports Centre Trust ('**Landlord**') and ODIHAM TENNIS CLUB LTD, incorporated and registered in England and Wales with company number [ ] whose registered office is at 31 Manley James Close, Odiham, Hook, Hampshire RG29 1AP. ('**Tenant**').

### **Part 1: Introduction**

#### *Definitions*

1 In this lease the following terms shall have the following meanings unless the context otherwise requires:

#### **'Access Track'**

means the track to and from Buryfields coloured brown on the Plan

#### **'Commencement Date'**

The date hereof

#### **'Legal Obligation'**

means any present or future statute, statutory instrument or bylaw, or any present or future regulation, order, direction, code of practice or requirement of any statutory, public, local or other competent jurisdiction insofar as it relates to the Property or to its occupation or use irrespective of the person on whom the obligation is imposed.

#### **'Payment Dates'**

means every 1<sup>st</sup> April.

#### **'Permitted Use'**

means the use of the Property for the normal activities of a tennis club and ancillary purposes.

#### **'Plan'**

means the plan annexed hereto

#### **'Property'**

means the property described in schedule 1 and where the context so permits or requires any part of it.

#### **'Rate of Interest'**

means an annual rate equal to 4% plus the base rate from time to time in force of Barclays Bank plc or (if the base rate ceases to exist) such other rate of interest as is most closely comparable to the Rate of Interest to be agreed between the parties or in default of agreement to be determined by the Landlord's surveyor from time to time acting as an expert and not as an arbitrator.

**'Rent'**

means the annual rent of £5.00 (Five pounds) during the Term and proportionately for a shorter period.

**'Rights Granted'**

means the rights described in schedule 2.

**'Rights Reserved'**

means the Landlord's rights described in schedule 3.

**'Service Channels'**

means all conducting media for the passage of drainage, water, electricity, telecommunications and other services including all conduits, cisterns, pipes, wires, cables, sewers, drains, mains ducts, gutters, watercourses and channels.

**'Schedule of Condition'**

Means the schedule signed by the parties annexed to this lease and marked "Schedule of Condition"

**'Term'**

means 25 (twenty-five) years from and including the Commencement Date and any period holding over or extension or continuation of the term whether by statute or common law.

**'clause' and 'schedule'**

mean respectively clauses or schedules in this lease.

***Interpretation***

2.1 Except where the context renders it absurd or impossible every reference to any party to this Lease shall include his or her successors in title and personal representatives, by and against whom this agreement shall be enforceable as if they had been originally named as parties.

2.2 In this Lease:

- words expressed in any gender shall where the context so requires or permits include any other gender;
- words importing persons shall include bodies corporate and partnerships and other incorporated bodies and vice versa;
- words expressed in the singular shall where the context so requires or permits include the plural; and
- where any party is more than one person:
- that party's obligations in this Lease shall take effect as joint and several obligations;
- anything in this Lease which applies to that party shall apply to all of those persons collectively and each of them separately;



- the benefits contained in this Lease in favour of that party shall take effect as conferred in favour of all of those persons collectively and each of them separately; and
- the receipt of the survivor of joint holders of this Lease shall be a good discharge to the Landlord.

2.3 The headings to clauses are inserted for ease of reference only and shall not affect the construction of this Lease.

2.4 References in this Lease to anything which any party is required to do or not to do shall include their acts, defaults and omissions, whether:

- direct or indirect;
- on his own account; or
- for or through any other person; and
- those which he permits or suffers to be done or not done by any other person.

2.5 The effect of all obligations affecting the Tenant under this Lease is cumulative and no obligation shall be limited or modified by any other of those obligations unless there is in this Lease an express limitation or modification.

## **Part 2: Grant to Tenant**

### *Letting*

4 The Landlord lets and the Tenant takes the Property subject to the Rights Reserved and with the Rights Granted at the Rent and on the terms set out in this lease.

### *Commencement and notice for termination*

5 This tenancy starts on the Commencement Date and will remain in force for the Term

### *Quiet enjoyment*

6 The Landlord agrees that if the Tenant pays the Rent and other money payable under this agreement and complies with all their obligations under it they may quietly hold and enjoy the Property during the Term without any interruption or disturbance by the Landlord or any person claiming under or in trust for them.

## **Part 3: Landlord's rights**

### *Landlord's access to property*

7 The Tenant shall give the Landlord, or anyone authorised by them in writing, access to the Property on reasonable notice and at reasonable times during the day (except in emergencies) for the purposes of:

- ascertaining whether the Tenant is complying with the covenants and conditions on its part contained in this lease;
- doing works which the Landlord is required or permitted to do under this lease;
- complying with any statutory obligation;
- affixing to the Property a notice that it is to be let or sold;
- viewing the Property as a prospective buyer or mortgagee or, during the last six months of the Term only, as a prospective tenant;

- valuing the Property; or
- inspecting, cleaning, decorating, maintaining or repairing neighbouring property, or any Service Channels serving neighbouring property.

subject to the conditions that the person exercising the rights:

- causes as little damage to the Property and inconvenience and obstruction as possible; and
- makes good or compensates the Tenant in full for any damage to the Property caused by doing so.

#### **Part 4: Rent and other financial provisions**

##### *Rent*

8 The Tenant shall pay to the Landlord the rent of £5.00 (Five pounds) in advance and without deduction every Payment Date.

##### *Tenant to pay outgoings*

9 The Tenant shall pay all charges (including rentals) for all water, gas, electricity, telecommunications, non-domestic rates and other services supplied to or used at the Property during their occupation of the Property and compensate the Landlord in full on demand for any liability for them.

10 The Tenant shall pay all reasonable and proper costs (including solicitor's and surveyor's charges and disbursements) properly incurred by the Landlord in connection with:

- any application for any approval or consent pursuant to the covenants contained in this lease;
- any valuations made for the purposes of this lease; and
- any steps or proceedings or the service of any notice under sections 146 or 147 of the Law of Property Act 1925 whether or not any right of re-entry or forfeiture has been waived by the Landlord or avoided otherwise than by relief granted by the Court.
- the recovery or attempted recovery of arrears of Rent or of any other amounts payable by the Tenant under this lease.

##### *Abatement of rent*

11 If the Property or access to it is destroyed or damaged (except as a result of any act or default of the Tenant) so as to render it unfit for occupation the Landlord shall allow to the Tenant an abatement of the Rent proportionate to the extent of the destruction or damage:

- until it is made fit for occupation; or
- for a period of two years

whichever is the earlier

##### *Interest*

12 If any money payable by the Tenant to the Landlord under this Lease is not paid within fourteen days of the due date, the Tenant shall pay to the Landlord interest on it (after as well as before any demand for payment or judgment):

- on demand;

- at the Rate of interest;
- from the due date until it is paid in full; and
- if not paid on demand compounded quarterly on every 31 March, 30 June, 30 September and 31 December.

## **Part 5: Structure and maintenance**

### *Not add to or alter property*

14 The Tenant shall not make alterations or additions to the Property or to land outside the perimeter fence without first obtaining the Landlord's written consent.

### *Maintain whole property*

15 The Tenant shall keep the Property in good and tenantable repair except that the Tenant shall not be required to put the Property into any better state of repair or condition than it was in at the date of this lease as evidenced by the Schedule of Condition.

### *Access Track*

16 The Tenant will maintain and repair the Access Track jointly with the occupiers of the adjoining Bowls Club contributing 50% of the cost of such works (the Landlord hereby consents to the Access Track being resurfaced with tarmacadam).

### *Rubbish*

17 The Tenant shall keep the Property free from all rubbish and litter and make proper arrangements for the disposal and removal of all rubbish and litter.

## **Part 6: Insurance**

### *Tenant to insure*

18.1 The Tenant shall insure the Property and keep it insured against the risk of loss or damage by fire, lightning, explosion, aircraft (including articles dropped from aircraft), riot, civil commotion, malicious persons, earthquake, storm, tempest, flood, terrorism, bursting or overflowing of water pipes and other apparatus and impact by road vehicles public liability cover of not less than £5,000.000 and such other risks for its full reinstatement value in accordance with clause 18.2.

18.2 The amount of the insurance shall be the full cost of completely reinstating the Property and shall include:

- architects' and surveyors' and all other professional fees;
- two years' rent;
- the cost of demolition and site clearance; and
- escalation of all costs between the date of destruction or damage and the date of reinstatement.



18.3 The policy or policies shall be placed with an insurance company or with underwriters approved by the Landlord and the Tenant will procure that the Landlord's interest is noted thereon either specifically or generally.

18.4 The Tenant shall pay all premiums and make any other payments necessary to effect and maintain the policy or policies within seven days after they become due and forward a copy of the same and the receipt for each such payment to the Landlord on demand and following any renewal of the policy or policies.

18.5 The Tenant shall apply all money received from the insurers of any policies of insurance effected under clause 18.1 in reinstating the Property as soon as is practicable (making up any deficiency out of his own moneys), if:

- there is any loss or damage against which the Tenant has covenanted to effect insurance; and
- the lease is not terminated under any provision in it for termination on the Property becoming unfit for use because of destruction or damage.

18.6 The Tenant shall pay to the Landlord on demand an amount equal to all moneys which the Tenant is unable to recover from his insurer and all losses charges costs and expenses incurred as a result of:

- any act, default or omission of the Tenant or anyone at the Property with its express or implied authority; or
- the imposition by the insurer or the reasonable acceptance by the Tenant of an obligation to bear part of an insured loss (commonly called an excess).

18.7 If the rebuilding or reinstatement of the Property or any part of it proves impossible or impracticable any money received under the policy or policies of insurance effected under clause 18.1 shall be divided between Landlord and Tenant in the proportions which the value of their respective interests in the Property bear to one another at the time of the event giving rise to its payment such proportions to be determined in the event of dispute under the provisions of the Arbitration Act 1996 (or any statutory modification or re-enactment of it for the time being in force) by a single arbitrator to be appointed by agreement between Landlord and Tenant or in default of

agreement by the President for the time being of the Royal Institution of Chartered Surveyors making the appointment at the request of either party.

## **Part 7: Use and occupation**

### *Use*

19.1 The Tenant shall not use the Property except for the Permitted Use.

19.2 The Tenant shall not use the Property for:

- any offensive, noisy, dangerous, illegal, immoral or improper purposes;
- keeping live birds or animals; and

19.3 shall not (save with the consent in writing of the Landlord) use the Property for:

- public meeting; or
- any sale by public auction.

19.4 The Tenant shall not reside at or sleep on the Property.

19.5 The Tenant shall use its reasonable endeavours not to allow the Access Track to be obstructed or used for parking so that it is kept clear at all times.

19.6 The Landlord and Tenant agree that members of the community shall be entitled to use one of the courts on an equal basis with members, but excluding periods when the court is being used for tournaments, subject to approval by the Executive Officer.

19.7 The Tenant will report the receipts generated from public access annually on each anniversary of the Term.

### *No nuisance by the Tenant*

20 The Tenant shall not do anything on the property which is or might be a nuisance or annoyance to the Landlord or their tenants or the owners or occupiers of any adjoining or neighbouring property.

### *No underletting or assignment*

21.1 The Tenant shall not assign, underlet or otherwise share or part with possession of the Property except (after first obtaining the Landlord's written consent not to be unreasonably withheld or delayed):

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21.2 Without reference to the Landlord the Tenant may from time to time hire out the Property for charitable, religious or educational purposes and to its own members, local residents, clubs and groups for not more than 12 hours at any one time PROVIDED THAT no relationship of landlord and tenant is created.

### *Notice of dealing*

22. Within one month after:



22.1 every assignment, change in the Constitution of the Club or other devolution of the Property, the Tenant shall:

- give written notice of it to the Landlord;
- produce to them the original or a certified copy of the document effecting or evidencing the change or devolution; and

22.2 every AGM produce a copy of the minutes to the Landlord

## **Part 8: Compliance with authorities**

### *Compliance with law*

23 For the purpose of their use of the Property the Tenant shall at their own expense:

- obtain all necessary consents from every competent authority;
- comply with all relevant statutes and regulations and requirements of every competent authority;
- on demand by any relevant authority discontinue their use of the Property and remove from it anything which the authority requires to be moved;
- produce to the Landlord on demand evidence of their compliance with this clause; and
- compensate the Landlord in full on demand for all liability resulting from any failure by the Tenant to comply with any obligation under this clause.

### *No planning application without Landlord's consent*

24 The Tenant shall not make any application for planning permission in respect of the Property without first obtaining the Landlord's written consent and (if the Landlord attaches any conditions to the consent) not to apply for any planning permission except in accordance with those conditions.

### *Work directed by authority*

25.1 If the Tenant becomes aware of any Legal Obligation it shall:

- notify the Landlord of it;
- comply with it; and
- compensate the Landlord in full on demand for any liability for it.

25.2 The Tenant shall not be under any obligation to the Landlord under this clause to comply with any Legal Obligation if the Landlord has:

- requested them in writing not to comply with it; and
- agreed to compensate them in full on demand for any liability for any failure to comply with it.

### *Evidence of Tenant's compliance*

26 The Tenant shall on demand produce to the Landlord or as it directs all certificates, plans, documents and other evidence as the Landlord requires in order to satisfy itself that the Tenant has complied with clause 25.

## **Part 9: Termination**

### *Yield up*

27.1 At the end of the Term the Tenant shall return the Property to the Landlord in the state and condition in which this lease requires the Tenant to keep it.

27.2 The landlord hereby agrees that at the end of the term the tenant may remove the floodlights erected on the Property PROVIDED THAT this doesn't cause any damage to OPC's property by such removal.

#### *Re-entry*

28. This lease comes to an end if the Landlord forfeits it by entering any part of the Property, which they are entitled to do whenever:

28.1 any payment of the Rent is thirty days overdue, even if it was not formally demanded;

28.2 if the Tenant cease to occupy the Property;

28.3 the Tenant have not complied with any of the terms in this lease;

28.4 If any steps are taken for the dissolution of the Club other than the voluntary winding up solely for the purpose of amalgamation or reconstruction of a solvent company..

### **Part 11: Administrative and miscellaneous**

#### *Transmission of notices*

29 The Tenant shall immediately send to the Landlord a copy of any notice received by them affecting or likely to affect the Property.

#### *Service of notices*

30.1 Any notice given under this lease shall be in writing and may be served:

- personally;
- by registered or recorded delivery mail; or
- by any other means which any party specifies by notice to the others.

30.2 Each party's address for the service of notice shall be their above mentioned address or such other address as they specify by notice to the others.

30.3 A notice shall be deemed to have been served:

- if it was served in person, at the time of service; and
- if it was served by post, 48 hours after it was posted.

30.4 No notices may be served by email or facsimile transmission.

#### *No agreement for lease*

31 The Landlord and the Tenant certify that there is no agreement for lease to which this lease gives effect.

#### *Schedule 1 - The Property*

**ALL THAT** piece or parcel of land more particularly shown edged red on the Plan together with the pavilion, the perimeter fence, flood lights (including the area one metre square around each light standard) erected thereon or some part thereof and known as Odiham Tennis Club

#### *Schedule 2 - Rights Granted*

The right (in common with the Landlord and all other persons having similar rights) for purposes connected with the use of the Property under this lease:

- to use the Access Track leading from the Property to Buryfields and shown coloured brown on the Plan for pedestrian access, those vehicles dropping off disabled club members, tennis players, or visitors with a disability, and service vehicles only;
- to connect to and use the Service Channels in, under or passing through the Landlord's neighbouring property; and
- to enter the Landlord's neighbouring property for the purpose of inspecting, cleaning, decorating, maintaining or repairing the Property and the Service Channels serving it.
- to enter upon the Access Track jointly with the occupier of the adjoining Bowls Club, or anyone authorised by them, in order to maintain the track under clause 16.

This right of entry is given on the condition that the persons exercising it cause as little damage to any adjoining and neighbouring land and inconvenience and obstruction as practicable and make good or compensate the Landlord and /or any owners or occupiers of any adjoining or neighbouring land in full for all damage caused in the exercise of such right.

#### *Schedule 3 - Rights Reserved*

The right for the Landlord and all others having similar rights:

- to enter the Property for the purposes of exercising his rights under clause 28;
- to connect to use, maintain, renew, alter and replace all Service Channels in, under or on the Property now or in the future.

Signed as a deed by

-----  
on behalf of ODIHAM PARISH COUNCIL

in the presence of:

-----  
Witness Signature

Name

Address

Occupation

Signed as a deed by

\_\_\_\_\_

on behalf of ODIHAM PARISH COUNCIL

in the presence of:

\_\_\_\_\_

Witness Signature

Name

Address

Occupation

Signed as a deed by ODIHAM

TENNIS CLUB LTD acting by

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

directors

in the presence of:

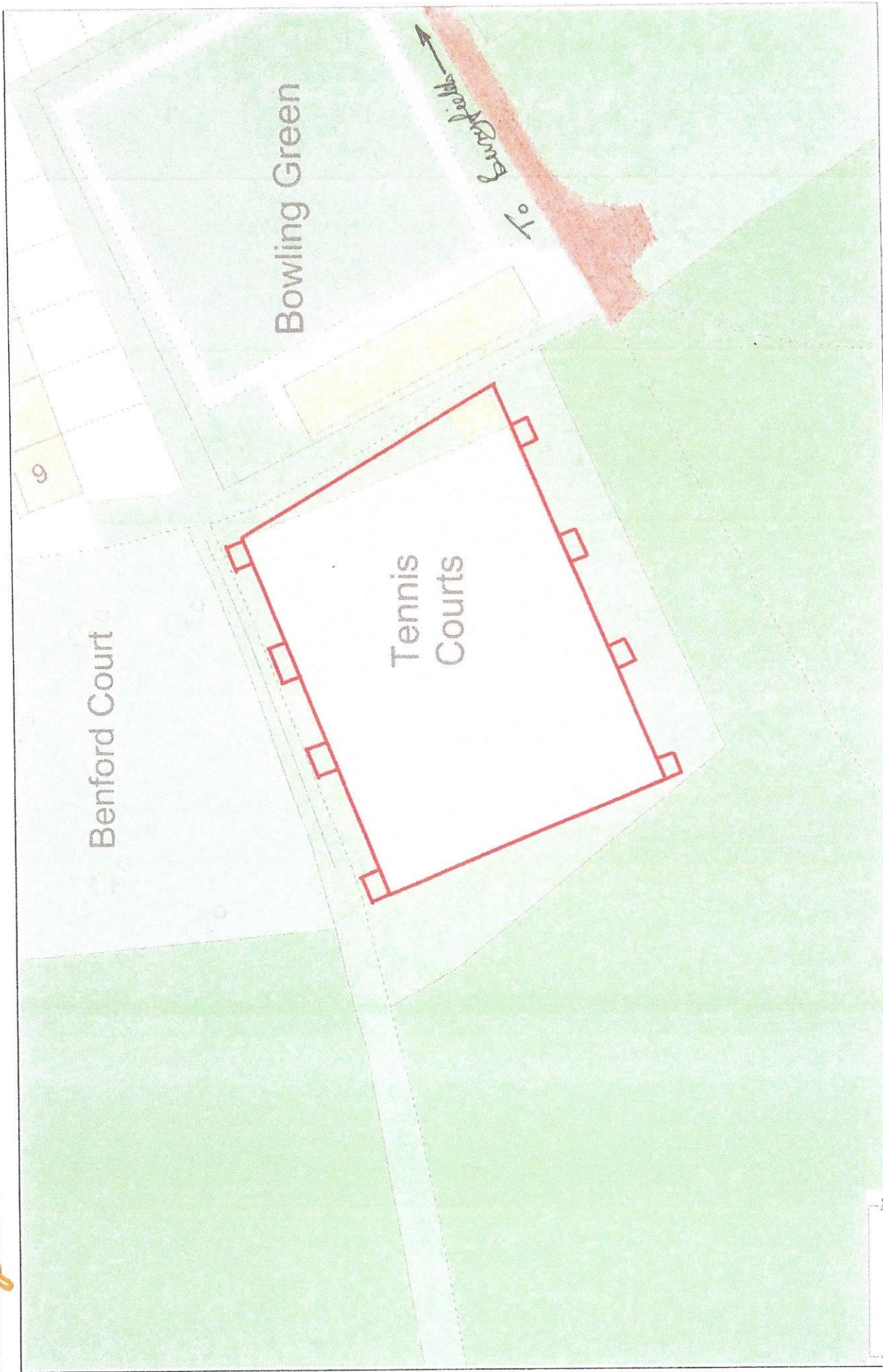
-----  
Witness Signature

Name

Address

Occupation





**REPORT ON:** Correspondence from the Chairman of the Mildmay Court Residents Association

**WRITTEN BY:** Sarah Weir

**MEETING DATE:** 30 April 2019

**AGENDA ITEM:** Amenity 147/18

As per the committees request at the previous meeting, a letter was sent to the Chairman of the Mildmay Court Residents Association asking them to reimburse OPC for the cost to remove the fence and gate erected on OPC's land in error.

The response is attached from the Chairman, who states that there is no obligation on Mildmay to consider the invoice and no legal obligation to discharge it.

The chairman of the association has also written to all committee members on 23 April, noting that he believes that the legal boundary between the two titles has not yet been determined and that OPC's contractor who installed OPC's fence was not working to a legal boundary. He finished the letter stating that Medalstable Ltd and Mildmay Court Residents Association each reserves respectively it's right to remove any newly erected fence at its discretion and without further notice to OPC.

The committee needs to remember that the HM Land Registry supported the land surveyor's conclusion that the fence and gate erected by the Mildmay Residents Association was on OPC's land.

The committee may wish to respond to both item of correspondence in one letter.



Mildmay Court  
Odiham  
4/4/19

Dear Chairman and Executive Officer,

I refer to your letter addressed to me dated 20/3/19. As OPC know the legal boundary between land owned by Mildmay and by OPC has not yet been determined. The reasons for that have been set out in my letter to the Amenity Committee and the Executive Officer dated 12/2/19, currently therefore there is no obligation on Mildmay to consider the invoice attached to your letter and no legal obligation to discharge it.

Yours

A black rectangular redaction mark covering the signature of the sender.

Chairman of the Amenity Committee and Executive Officer  
Odiham Parish Council,  
The Bury  
Odiham.

**REPORT ON:** Legal advice on the headstone installed in the cemetery without permission

**WRITTEN BY:** Sarah Weir

**MEETING DATE:** 30 April 2019

**AGENDA ITEM:** Amenity 148/18

At the previous meeting the committee were made aware that a headstone has been installed in the cemetery after OPC refused permission for it and it appears to have not been installed by a registered stonemason. The committee expressed concern that if this has been installed by the family, it could be a health and safety risk of injury to staff, contractors and visitors to the cemetery. It was agreed at the meeting to write a final letter to the owner of the exclusive rights expressing concern and advising them that if the headstone isn't removed within 21 days, then the council will have no choice but to pay a stone mason to remove it and take it away.

After the meeting, I was asked to seek legal advice about various concerns, which has now been received as follows:-

**1. Can OPC enforce its rules?**

OPC is the 'Burial Authority' in accordance with section 214(1) of the Local Government Act 1972. As Burial Authority, OPC has an extensive range of management powers under the Local Authorities Cemeteries Order 1977 (LACO). Section 3 gives OPC a power to do all such things as they consider necessary or desirable for the proper management, regulation and control of a cemetery. Where this involves removing a memorial, there is a right under section 14 for OPC to claim back the expenses incurred in doing so from the person who placed the memorial:

***Cost of removal of unauthorised memorials***

*14. If a burial authority remove from a cemetery any tombstone or other memorial placed therein otherwise than in the exercise of a right granted by, or otherwise with the approval of, the burial authority or any predecessor of theirs, the burial authority may recover the cost thereby incurred by them—*

- (a) from the person to whose order the tombstone or memorial was placed;*
  - (b) within two years from the placing of the tombstone or memorial, from the personal representative of such person,*
- as a simple contract debt in any court of competent jurisdiction.*

On that basis, I believe that OPC are fully entitled to enforce the cemetery rules and remove the memorial.

**2. Is there legal grounds to challenge the removal?**

Schedule 2, Part 1 of LACO states:

*1. No burial shall take place, no cremated human remains shall be scattered and no tombstone or other memorial shall be placed in a cemetery, and no additional inscription shall be made on a tombstone or other memorial, without the permission of the officer appointed for that purpose by the burial authority.*

**I therefore think that the placement of the memorial without permission would be unlawful** and would allow OPC to use their powers to remove it. In addition, the basis for the removal would appear to be fully covered in the Cemetery Rules which those using the cemetery agree to before a burial takes place. Unless the rules or the removal decision could be considered irrational or



unreasonable for some reason which is not currently obvious, it would not seem to be specifically open to challenge.

**3. Is there a potential legal challenge not removing it – from anyone who has picked the cemetery because of the rules or the environment that it offers?**

LACO does place an obligation upon OPC to keep the cemetery in good order or repair. **If the unauthorised memorial could be considered to put this at risk then it could, theoretically I think, lead to a challenge.** However, it seems to me that the memorial would have to be really quite an eyesore or to adversely affect the operation of the cemetery. LACO also gives OPC a number of quite specific powers, but rather general duties and it is normally very difficult to challenge an authority for not exercising a power which has been left to their discretion by the legislation.

**4. Is there any legal consequence for us ignoring that the headstone has not been correctly installed by a licensed stone mason, i.e. health and safety?**

OPC as 'occupiers' of the cemetery (in legal terms, not literally) would have a duty to visitors to the cemetery to ensure that they are reasonably safe when on the site. Should someone be injured due to a poorly constructed memorial then a claim could possibly be made against OPC. However, where someone has placed the memorial without OPC's permission, I think the person placing the stone could also find themselves as targets for a claim in those circumstances. I think it might make sense to assess the risk of injury that could be caused by any unauthorised memorials when they are first identified. That would go some way towards OPC covering themselves in the event of a problem.

**5. Could we be accused of not enforcing the rules on other plots with, where for example, rules were different and curbs sets have been installed and a claim for victimisation thrown at us?**

I think that it is an adequate response to say that the rules were different at the time that each object was placed. Those making use of the cemetery are bound by the rules at that time (and confirm their agreement to them) rather than by the rules that come into force later. As mentioned above, many of the powers granted by LACO are discretionary and it would be difficult to challenge a decision to use or not use those powers, unless that decision was unreasonable or irrational in some way.

**I hope that helps. It is obviously going to be a very sensitive topic, but with such a clear breach of the rules, I think OPC would be fully justified in taking action.**

I have also contacted our insurance company who have advised the following:-

*Firstly, we would always recommend that the Parish Council take advice from a third party to fully appreciate their legal position which I can see you have done. This is great.*

*We agree with the points made in the email from your legal counsel and agree with their assessment of potential liability.*

*From our point of view, we expect all gravestones (and any installation for that matter) to be installed by professional third parties of the specific trade. This, to us, ensures that the articles are durable and safe. It also means that should they fail and cause injury, it is likely that the Parish Council's insurer (us in this instance) would be able to pass the claim to the professional third party's insurer and have their insurance company deal with it. This is good from our point of view but also from the Parish Council's as it means that their own claims experience won't be negatively affected.*



*It is obviously something of a very sensitive nature which we cannot become involved with as it sits outside of our remit. However, hopefully the above is helpful and clarifies our thoughts on the matter.*

Whilst this is a very sensitive, distressing situation, the committee have already agreed to the removal of the headstone by a stonemason if it isn't removed by the owner of the exclusive rights.

The response from the legal advisor states that the placement of a memorial without permission is unlawful. They also state that OPC has a duty to visitors to ensure that they are reasonably safe when on site. Should someone be injured then a claim could possibly be made against OPC and possibly against the person who has installed the memorial. Perhaps this should be forwarded onto the owner of the exclusive rights so that they are aware of this?

The insurance company have stated that they expect all gravestones to be installed by a professional third party of the specific trade, which ensures that the articles are durable and safe. My concern is that if action as previously agreed is not taken and something were to happen; OPC may encounter problems with any claim as it is clearly something we are aware of.

Perhaps the committee should consider roping off this headstone to warn every one of the potential hazard and also consider that as we have a right to claim the cost for removal of the headstone from the person who placed it, we do this.