

DATED

LICENCE

relating to the

PLAY AREA FLETCHERS CROFT STEYNING

between

HORSHAM DISTRICT COUNCIL (1)

and

THE PARISH COUNCIL OF STEYNING (2)

Sharon Evans

Horsham District Council

Parkside

Chart Way

Horsham

West Sussex

RH12 1RL

Ref: VB/2000

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This licence is dated

2022

Parties

- (1) **HORSHAM DISTRICT COUNCIL** of Parkside, Chart Way, Horsham West Sussex RH12 1RL (“the Council”)
- (2) **THE PARISH COUNCIL OF STEYNING** of (“the Licensee”)

Agreed terms

1. Background

- 1.1 The Council is the freehold owner of the Council Land
- 1.2 The Council has agreed in consideration of the undertakings on the part of the Licensee herein contained to permit the Licensee to erect and maintain the Equipment upon the Play Area on the terms contained in this licence.

2. Interpretation

The following definitions and rules of interpretation apply in this licence.

2.1 Definitions:

Common Parts: such roads, paths, and other means of access in or upon the Council Land, (if any) the use of which is necessary for obtaining access to and egress from the Play Area as designated from time to time by the Council.

Competent Authority: any statutory undertaker or any statutory public local or other authority or regulatory body or any court of law or government department or any of them or any of their duly authorised officers.

Council: Horsham District Council acting in its capacity as Licensor (as opposed to a local authority) in connection with this licence.

Council Land: the land at Fletchers Croft Steyning West Sussex used as public open space and registered at HM Land Registry under title number WSX294881

Equipment: children’s play equipment and outdoor gym equipment

Licence Fee: £1 per annum (if demanded).

Licence Period: the period from and including [DATE] until the date on which this licence is determined in accordance with clause 5.

Necessary Consents: all consents, licences, permissions, certificates, authorisations and approvals whether of a public or private nature which shall be required by any Competent Authority to carry out the rights permitted by this licence.

Plan: the plan attached to this licence

Play Area: that part of the Council Land shown edged red on the Plan, including the outdoor gym area

Service Media: all media for the supply or removal of heat, electricity, gas, water, sewage, energy, telecommunications, data and all other services and utilities and all structures, machinery and equipment ancillary to those media if any and as are necessary for the Permitted Use.

Interpretation:

- 2.2 Clause headings shall not affect the interpretation of this licence.
- 2.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 2.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 2.6 Unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 2.7 Unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 2.8 A reference to **writing** or **written** excludes fax and e-mail.
- 2.9 Any obligation on a party not to do something includes an obligation not to allow that thing to be done and an obligation to use best endeavours to prevent that thing being done by another person.
- 2.10 References to clauses are to the clauses of this licence.

2.11 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2.12 A **working day** is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England .

3. The Licence

3.1 Subject to clause 4 and clause 5, the Council permits the Licensee (a) to erect Equipment in the Play Area for the free use at all times by the general public and consistent with use of the Council Land as public open space and (b) the right for the Licensee to enter the Play Area from time to time at all reasonable times during the Licence Period to inspect, maintain renew and replace Equipment [and (c) the right to use the Common Parts to gain access to and egress from the Play Area

3.2 The Licensee acknowledges that:

- (a) that no relationship of landlord and tenant is created between the Council and the Licensee by this licence;
- (b) the Council retains control and possession of the Play Area and the Licensee has no right to exclude the Council from the Play Area;
- (c) the licence granted by this agreement is personal to the Licensee and is not assignable and the rights given in clause 3.1 may only be exercised by the Licensee and its employees; and
- (d) without prejudice to its rights under clause 5, the Council shall be entitled at any time on giving not less than 4 weeks' notice to require the Licensee to transfer to alternative space elsewhere within the Council Land and the Licensee shall comply with such requirement; and
- (e) The Licensee solely is responsible for the Equipment and its maintenance at all times during the Licence Period and/or whilst on any part of the Council Land.

4. Licensee's obligations

The Licensee agrees and undertakes:

- (a) to pay:
 - (i) to the Licensor the Licence Fee payable (if demanded); and
 - (ii) to the relevant suppliers all costs in connection with the supply and removal of electricity, gas, water, sewage, telecommunications and data and other services and utilities to or from the Play Area;
 - (iii) To pay all rates and any other outgoings relating to the Play Area;

- (b) to erect the Equipment in accordance with the makers' instructions;
- (c) to maintain the Equipment in good and serviceable condition at all times;
- (d) to comply with all health, safety and applicable operational guidelines and to obtain any Necessary Consents;
- (e) to discharge all costs in connection with the provision erection and maintenance of the Equipment including making good any damage caused thereby;
- (f) to maintain and keep in good repair and condition the timber fencing of height three feet and six inches around the Play Area together with suitable gateways at the points shown marked "A" and "B" on the Plan;
- (g) to keep the Play Area clean, tidy and clear of rubbish and to cut the grass as often as necessary;
- (h) not to use or allow the Play Area and/or the Equipment to be used other than the purpose stated in clause 3.1;
- (i) not to make any structural alteration whatsoever to the Play Area;
- (j) not to make any alteration or addition whatsoever to the Play Area other than as allowed by clause 3.1;
- (k) not to display any advertisement, signboards, nameplate, inscription, flag, banner, placard, poster, signs or notices at the Play Area or elsewhere in the Council Land without the prior written consent of the Council such consent not to be unreasonably withheld or delayed;
- (l) not to do or permit to be done on the Play Area anything which is illegal or immoral or which may be or become a nuisance (whether actionable or not), annoyance, inconvenience or disturbance to the Council or to the general public;
- (m) not to cause or permit to be caused any damage to the Council Land including the Play Area;
- (n) not to obstruct the Common Parts, make them dirty or untidy or leave any rubbish on them;
- (o) not to apply for any planning permission in respect of the Play Area;
- (p) not to do anything that will or might constitute a breach of any Necessary Consents affecting the Play Area or which will or might vitiate in whole or in part any insurance effected by the Council in respect of the Council Land from time to time;
- (q) to observe any reasonable rules and regulations the Council makes and notifies to the Licensee from time to time governing the Council Land including the Play Area [and the Common Parts];

- (r) to leave the Play Area in a clean and tidy condition and to remove the Equipment and any goods from the Play Area at the end of the Licence Period;
- (s) to indemnify the Council and keep the Council indemnified against all losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability in any way arising from:
 - (i) this licence;
 - (ii) any breach of the Licensee's undertakings contained in clause 4; and/or
 - (iii) the exercise of any rights given in clause 3.1;
- (t) To insure and keep insured the Equipment and in addition to effect and maintain in an office of good repute, public liability and third party insurance in respect of the Play Area for a sum of not less than Ten Million Pounds (£10, 000,000) arising out of any one event or claim and to produce on demand to the Council the policy or policies of such insurance and the receipt for the current premiums payable thereunder.

5. Termination

5.1 This licence shall end on the earliest of:

- (a) [xxxxxxx 202[] (DEPENDS ON START DATE); and
- (b) the expiry of any notice given by the Council to the Licensee at any time on breach of any of the Licensee's obligations contained in clause 4; and
- (c) by at least six (6) months' notice by the Licensee to expire on the end of an anniversary of the commencement date of this licence; and
- (d) the expiry of not less than 6 months' notice given by the Council to the Licensee to expire at the end of five [5] years from the commencement of this licence, namely 202[7] in the event that the Council in its absolute discretion require the Play Area and/or Council Land for redevelopment.

5.2 Termination of this licence shall not affect the rights of either party in connection with any breach of any obligation under this licence which existed at or before the date of termination.

6. Notices

- 6.1 Any notice or other communication given to a party under or in connection with this licence shall be in writing and shall be given by hand or by pre-paid first-class post or other next working day delivery service at its principal place of business.
- 6.2 If a notice or other communication complies with the criteria in clause 6.1, it shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice or other communication is left at the proper address; or
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting.

6.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

6.4 A notice or other communication given under this licence is not valid if sent by e-mail or fax.

7. No warranties for use or condition

7.1 The Licensor gives no warranty that the Play Area possesses the Necessary Consents to operate in accordance with this licence.

7.2 The Council gives no warranty that the Play Area is physically fit for the purposes specified in clause 3.

7.3 The Licensee acknowledges that it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that may have been made by or on behalf of the Council before the date of this licence as to any of the matters mentioned in clause 7.1 or clause 7.2.

7.4 Nothing in this clause shall limit or exclude any liability for fraud.

8. Limitation of Licensor's liability

8.1 Subject to clause ~~8.2~~, the Council is not liable for:

- (a) the death of, or injury to the Licensee, its employees, customers, invitees or members of the general public to the Play Area; or
- (b) damage to any property of the Licensee or that of the Licensee's employees, customers, invitees or members of the public at the Play Area; or
- (c) any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by Licensee or the Licensee's employees, customers, invitees to or members of the public at the Play Area in the exercise or purported exercise of the rights granted by clause 3.

8.2 Nothing in clause 8.1 shall limit or exclude the Council's liability for:

- (a) death or personal injury or damage to property caused by negligence on the part of the Council or its employees or agents; or

- (b) any matter in respect of which it would be unlawful for the Council to exclude or restrict liability.

9. Third party rights

This licence does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this licence.

10. Governing law

This licence and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England Wales.

11. Jurisdiction

Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this licence or its subject matter or formation.

This licence has been entered into on the date stated at the beginning of it.

The **COMMON SEAL** of
HORSHAM DISTRICT COUNCIL

was hereunto affixed in the
presence of

.....
Authorised signatory

Robert Baxendale/Lauren Kelly

for and on behalf of

Sharon Evans

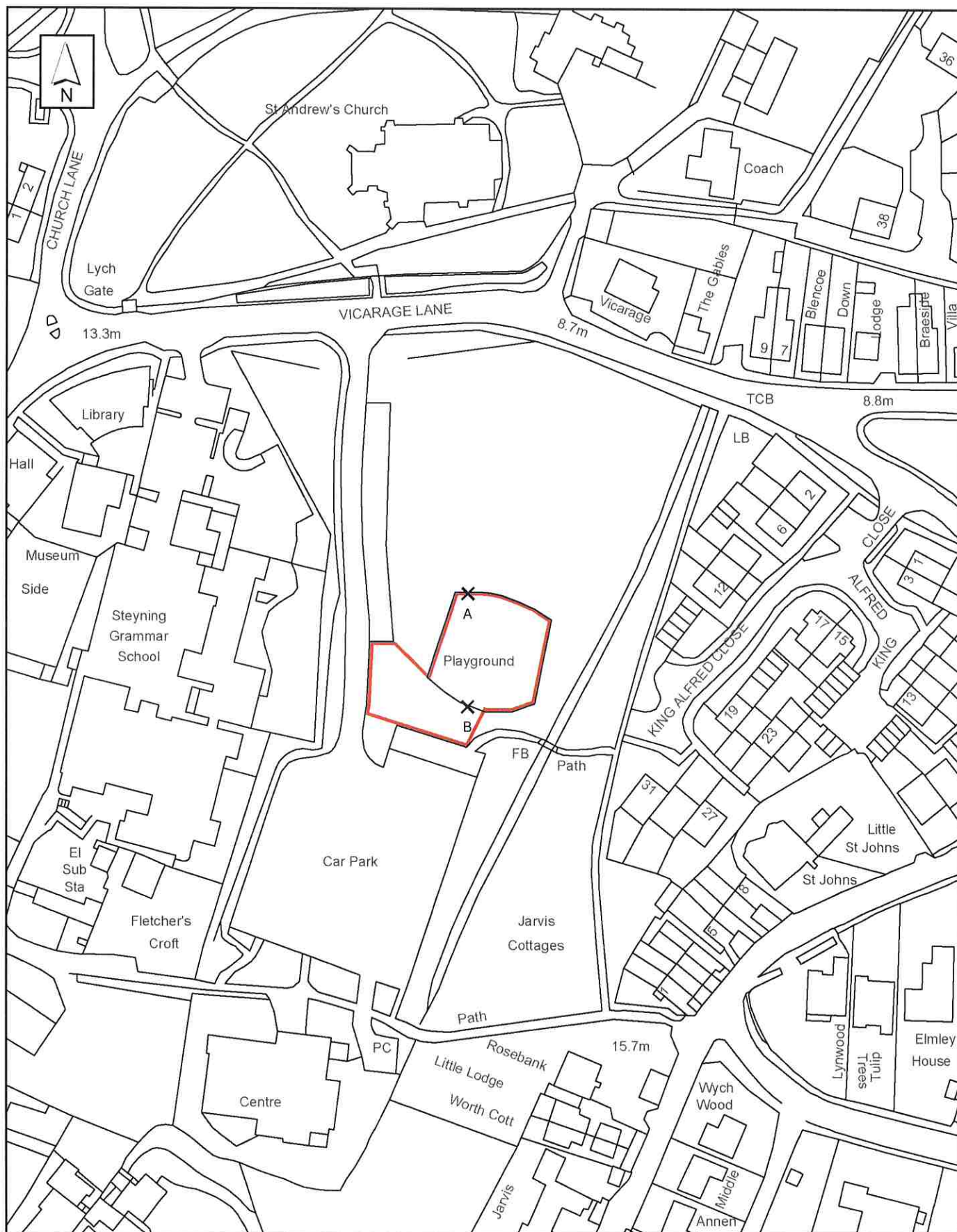
Head of Legal & Democratic Services & Monitoring Officer

THE COMMON SEAL of

THE PARISH COUNCIL of STEYNING **PLEASE COMPLETE AS APPROPRIATE**

Was hereunto affixed in the presence of:





Horsham District Council

Parkside, Chart Way, Horsham
West Sussex RH12 1RL.

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Fletcher's Croft Play Area, Steyning

Reference No :

Date: 17/12/2018

Drawing No :

Scale : 1:1250 (at A4)

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