

Dear Ian

Please be advised that the Sports clubs have sought legal advice from Kitching Walker Solicitors and have provided the following comments and dissections:

The Leases are far too complicated and it would be more suitable to adopt the basic and simple Law Society Business Lease of Part, which can be adapted more readily than the documents provided.

Revisions to the Leases for Bowling Club, Tennis and Squash Premises

1) The Contractual Term (clause 1.40) needs to be clarified. The suggested period is 25 Years

Previous dialogue in this respect:

Q 1.7 'Contractual Term' - The squash club have asked if this can be longer than 25 years or if the lease will need to be renewed at 25 years in which case will this incur the full solicitors fees for the same?

A I have used a conventional term of 25 years. However, if you are content with a longer term, then (say) 50 years would be fine. A term can be extended by a further lease or a deed of variation or statutorily under the Landlord and Tenant Act 1954 and just by letting it to continue at the end of the term. As I said before, if the organisation wanted grant aid, Sport England and other bodies normally require 25 years unexpired documented by deed as the grant conditions last for 25 years.

2) The Clubs would require a Tenant's right to break every five years.

3) As clause 1.32 it should read as follows:

"The Rent means a peppercorn per year." There should be no review.

Previous dialogue in this respect:

Q 1.32 'The Rent' should a value of £1 be applied as the peppercorn rent?

A a peppercorn rent does connote a value even if it is nominal. You would not expect to collect it!

4) At clause 2.1 the Rent is in equal monthly instalments. This obviously needs removing as it is a peppercorn rent.

5) Clause 3.1.2 – this should refer to the annual levy charges, not service charges.

6) Regarding Clause 3.2, none of the clubs are registered for value added (VAT) so this is irrelevant.

7) At clause 3.2.1.2, it is not clear quite how you charge VAT on a peppercorn!

8) Clause 3.4.1 – No Schedule of Condition has been provided. Wording revised to '.. in good condition.'

9) Clause 3.5.3.2 should read "construct any additional building or structure on the premises *without the Landlord's prior written approval which shall not be unreasonably withheld or delayed.*"

10) Clause 3.6.2 – Remove this clause. The Town Council does not wish to prohibit the clubs from advertising. All clubs need to advertise for members and particularly the football club use the advertising hoardings on the edge of the football pitch so it would not be equally representative to restrict the other clubs from erecting any banners.

11) Clause 3.7.2.4 – Remove this clause. These reports can be costly and this is unnecessary. Each of the clubs works hand in hand with the respective sporting authority/federation and complies with their risk assessment and safety criteria.

- 12) Clause 3.8.2 – replace “immediately” with “as soon as reasonably practicable”.
- 13) Clause 3.14.1 – remove “or impliedly” and “under his control”.
- 14) Schedule 3, clause 1 - all the facilities at the sports field including the courts (Tennis and Squash), bowling club facilities and the pitch are used for fitness activities. Please amend this clause to include any type of fitness/recreational activity, insert a clause which confines activities within certain parameters e.g. s 19(1)(a), (b) and (d) of the Local Government (Miscellaneous Provisions) Act 1976 (with consent).

Previous dialogue in this respect:

Q 1.25 'The Permitted Use' can this be broadened to encompass sports and leisure activities - this would allow for variations of the sports e.g. racket ball, hand ball, ten pin bowling etc, all of which are variations of the sports presently represented and practised at the sportsfield.

A I have confined each sports club's activities to its chosen sport. There are several options here: I could just insert a clause which makes the consent of the Council necessary or to confine it within certain parameters e.g. s 19(1)(a), (b) and (d) of the Local Government (Miscellaneous Provisions) Act 1976 (with consent). The Council would not make the use so wide as either to create value in the lease (in which case questions could be asked about the granting of a valuable asset) or to allow the premises to be used in an uncontrolled way or violating the sporting ethos of the site. I suggest the s 19 approach.

- 15) Schedule 3, clause 1 - would it be possible to revise this to the effect of “The Tenant may subject to the obligations elsewhere in the Lease hold social functions connected with its activities together with other social functions in compliance with the Local Authority licensing regulations.” As previously discussed the clubs apply for TENS in the event that they are holding an event and the Town Council does not wish to restrict this activity.

Previous dialogue in this regard:

Q Schedule 3 1 - would it be possible to remove the limitation of 10 social functions, as any functions must have the requisite licence from RDC so provided a licence is provided the number of 'social' events is of little concern to the Council. Alternatively would it be acceptable to remove this sentence altogether?

A My proposed restriction on social events is two-fold: first is to exercise control and to confine the use to the Permitted Use and not for a plethora of ancillary uses or a drinking den and second is to protect local residents from unnecessary noise and disturbance - I agree that there are other clauses in the lease e.g. cl 3.10.1 (nuisance) which provide protection of a general nature - how do you want to play this - delete the restrictions?

- 16) Schedule 3, clause 4 – is there any necessity to stipulate timescales? Sporting activities are largely dependent on weather and daylight hours and it would not be conducive to apply additional restrictions. Please remove this clause.

- 17) Clause 7.7

Q 7.7 Notices:

are the wordings in this section adequate if the club want to terminate the agreement because it is no longer viable to operate as a club? (Question posed by the Squash Club)

How do the Trustees resign? (Question posed by the Squash Club)

A A lease can be brought to an end by several different means:

forfeiture by the landlord for breach or semi breach - the dissolution of the club for example, mutually agreed surrender by deed (which may or may not have value), by the operation of a break clause (say) after

five years or 10 years (this would be without liability on either side), by operation of law e.g. the handing back of keys, (theoretically this would leave in place liabilities accruing), an early termination by notice. Funding bodies take the view that leases having break clauses (at (say) five years) or notice (say) of 12 months effectively reduces the length of the lease to the notice period (five years or 12 months in the examples which I have given).

With regard to the trustees and their liabilities, in a private trust the replacement of trustees has to be evidenced by a deeds of resignation and of appointment and the Land Registry would expect to see a full devolution of title. However, trustees of unincorporated clubs are transient, retiring and being appointed at AGMs of the club. The Land Registry is content to accept evidence of the appointment of the then current trustees, e.g. by minute, should the need for such evidence arise e.g. on a deed of variation or a deed of surrender or the grant of a new lease. While not wrong to inform the Land Registry of a change of trustees whenever it happens, it is generally acceptable to wait for a particular event. The Land Registry does however encourage changes of address for the contact to be recorded - it can be done free. There are various ways in which trustees can be protected from personal liability (if that is their concern) - we could make their liability joint rather joint and individual and we could limit the liability to the assets of the club. Happy to do both if that is your wish.

Please could you make the Trustees liability joint and limit the liability to the assets of the club.

18) Schedule 3, clause 5.3 – this is uncontrollable and must be removed.

19) Schedule 4 – Remove

#### Tennis Club lease

1) Clause 3.3.1 is irrelevant for the Tennis Club.

2) With regards to the Tennis Club lease, the only structure on the property is a hut, the tennis courts and fencing surrounding the courts. This brings into question the extent of clause 5.5.2 – obligations to reinstate.

#### Cricket and Football Club Pitch licence and Pavilion licence

It is unclear why two licences are needed for the pavilion and the football pitch. Can the licence to use the pavilion be incorporated into the pitch licence?

#### Pitch Licence

1) Definitions 1.5 and 1.6 and Schedule 4 season dates need to be completed as follows, The Town Council does not want to restrict the access to specific dates and times:

'Cricket season' means the period from 1 April to 31 August

'Football season' means the period 1 September to 31 May

Reference to the relevant sport and season dates must be consistent throughout the licence.

2) Definition 1.9 does not tally with clause 5, which is about assignment or sharing

3) Definition 1.11 'the Permitted Times' means the season dates set out in the schedule to this Licence

4) Definition 1.15.1 - all the facilities at the sports field including the courts (Tennis and Squash), bowling club facilities and the pitch are used for fitness activities. Please amend this clause to include any type of fitness/recreational activity.

- 5) Definition 1.17 – remove any reference to VAT. There is constant reference to VAT throughout these documents but VAT is not applicable to any of the sports clubs.
- 6) Clause 2.1 remove 'within the Permitted Hours'
- 7) Clause 3.1 The Licence fee will be a peppercorn rate as per the leases
- 8) Clause 3.2 Remove
- 9) Clause 3.5 Remove this is out of any control
- 10) Clause 3.6 Remove. It is often necessary for vehicles to be parked on the grass and events such as car boot sales necessitate this.

Previous dialogue in this respect:

Queries raised by the cricket club for application to both cricket and football licences.

Q No vehicles allowed to park on the grass.

This affects spectators and removes the chances of running car boot sales and fetes at the field. The vast majority of sportsfields in the local area do in fact allow cars to park on the grass in order to watch football and/or cricket. Could this be removed?

A Ian Davison: I assume that the comments relate to the form of licence for the field and that the club has been looking at the version drafted with the football club in mind.

- 11) Clause 3.7 depending on the league it is sometimes a requirement to charge spectators to enter the field to watch matches. Additionally the Town Council have authorised the charging by the pitch clubs for car parking at specific events, expressly with their permission, e.g the Tour de Yorkshire on 1<sup>st</sup> May.
- 12) Clause 3.10.3 Remove – as with the leases this is impossible to enforce.
- 13) Clause 3.11 should start 'As soon as is practicably possible' and should finish 'at the discretion of the Licensee pay to the Licensor'.
- 14) Clause 3.12 should read “exercise the Rights and *must make best endeavours* to ensure that all members”.
- 15) At Clause 3.13 please add “in writing” at the end.
- 16) Clauses 3.14 and 3.15 Remove, these restrict the enjoyment by the Licensee.
- 17) Clause 3.19 remove all 'purported exercise'.
- 18) Clause 3.21 – could this not simply read 'the Licensee must effect and throughout the Licence Period keep in force a policy of public liability insurance and must make available to the licensor on reasonable demand a copy of the policy or a summary of its terms and a copy of the current premium receipt'.
- 19) Clause 6 should read '15 working days'.
- 20) Clause 7 Remove.
- 21) Is 7 required at clause 9? Please clarify when is the specific end time if the Licence period.
- 22) At clause 10.4 please add “reasonably” after Licensor on the first line.

- 23) As rights are non exclusive there should be some provision to the effect that the Town Council will impose similar rights and restrictions on other users and shall not grant any other Licence that may prevent the free use of the rights by the Club. i.e. how do the Leases tie in with the licences?
- 24) Please add a Clause 17 for Quiet Enjoyment.

#### Pavilion Licence

- 1) 'Licence Fee' is a peppercorn rate.
- 2) The Licence Period as with the Contractual Term of the leases needs to be specified.
- 3) 'Permitted Hours' – this is stipulated by the season dates. The Town Council does not want to restrict the access to specific dates and times:
- 4) 'Cricket season' means the period from 1 April to 31 August
- 5) 'Football season' means the period 1 September to 31 May
- 6) Clause 3.4 should be reciprocated for the benefit of the Licensee.
- 7) Clause 4.3 the licence fee is a peppercorn rate and therefore no review is applicable. Please Remove
- 8) If Clause 5.1 is to remain a Schedule of Condition should be agreed and annexed. There should be a specific obligation on the Licensor to maintain the exterior and structure.
- 9) Clauses 5.1.3, 5.1.4, 5.1.5 are obligations relating to no-exclusive rights. These must be specified for the duration of the clubs occupation of the premises each season.
- 10) Clause 5.1.7 This is covered by 5.1.8. Remove.
- 11) Clause 5.1.9 Remove
- 12) 5.1.12 please reword this as follows: 'Ensure that the Building is kept secure by locking doors and windows when the Licence Area is not in use'.
- 13) Clause 6 please add 'invitees'.
- 14) Clause 7 should read "15 days"
- 15) Clause 8 Remove
- 16) Clause 11.4 - "if the Licensor *reasonably* considers.."
- 17) Clause 12 – Remove. This is not deemed to be acceptable.
- 18) Please add a Clause 18 for Quiet Enjoyment.

I do hope I have relayed the information with accuracy and clarity. If it is possible to combine the pitch and pavilion licence this would be preferable to two separate agreements. If you could apply these revisions to each of the leases and the licences

There will be a meeting of the Play Areas and Sports committee on Thursday 17<sup>th</sup> March at which the leases and licences will be considered. It would be greatly appreciated if you would submit the revised documents to me by the aforementioned date.

I look forward to hearing from you.

Regards

Lisa

Please be advised that I will be in the office from 9am to 1pm tomorrow, Thursday 11<sup>th</sup> March and then in the mornings on Tuesday to Thursday next week.

Ms L Bolland  
Clerk to Kirkbymoorside Town Council  
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By Hand

4<sup>th</sup> March 2016

Dear Lisa

**Re: Kirkbymoorside Tennis Club**

Finally I have had chance to look through the documents (busman's holiday)!

I will deal with the Tennis Lease first. My first observation would be go back to the Solicitors and ask them to distribute a basic and simple Law Society Business Lease of Part, which can be adapted much more readily than expected. This Lease is far too complicated and a classic 'sledge hammer to crack a nut'. If I am dissecting the Tennis Lease it would be as follows [at the moment there is no way I am putting my name to this] :-

1. Please can you ask the Solicitors to clarify the Contractual Term. Should this be 25 years? Is this what was agreed?
2. The Club would require a Tenant's right to break every five years.
3. At clause 1.32 it should read as follows:-  
"The Rent means a peppercorn per year". There should be no review.
4. At clause 2.1 the Rent is in equal monthly instalments. This obviously needs removing as it is a peppercorn rent.
5. Clause 3.1.2 – please can you clarify the service charge.
6. Regarding clause 3.2, the Tennis Club is not registered for value added tax (VAT) so this is irrelevant.
7. At clause 3.2.1.2, I am not sure quite how you charge VAT on a peppercorn!
8. I believe clause 3.3.1 is irrelevant for the Tennis Club.

**PARTNERS**  
LESLEY TEMPLE  
SALLY R. HARRISON LL.B. (Hons)  
STUART G. TEMPLE LL.B. (Hons)

**ASSISTANT SOLICITORS**  
SALLYANN MELLIS-SAWYERS B.A. (Hons)  
RICHARD SCOTT B.A. (Hons)



9. Clause 3.4.1 – is there a Schedule of Condition?
10. Clause 3.5.3.2 should read “construct any additional building or structure on the premises *without the Landlord’s prior written approval which shall not be unreasonably withheld or delayed*”
11. Clause 3.6.1.2 – the following to be added “*which shall not unreasonably withheld or delayed*”.
12. Clause 3.6.2 – why is there advertising trying to be prohibited. All Clubs need to advertise for members and particularly the Football Club use the advertising hoardings on the edge of the football pitch. Would a banner on the side of the courts be excluded by this?
13. Clause 3.7.2.4 – these can be costly and this is really unnecessary. The Tennis Club work hand in hand with the LTA and do risk assessment each year.
14. Clause 3.8.2 – please replace “immediately” with “as soon as reasonably practicable”.
15. At clause 3.14.1 – please remove “or impliedly” and “under his control”.
16. Are the Solicitors that the only structure on the property is the hut, courts and the fencing? It would appear from some of the clauses that they believe the Club has a sports stadium on there! This also brings into question clause 5.5.2 – obligations to reinstate.
17. The entry at clause 7.6.1 raises the question what if the Club were to do improvements to the property/hut. As you are aware the Tennis Club has recently had extensive work done on the courts themselves, following a grant from the local authority.
18. In respect of clause 1 in Schedule 3, the courts are occasionally used for fitness activities and not specifically tennis in its traditional form. Please can this be amended to include any type of physical activity.
19. Clause 4.1 is unworkable. Currently there is no restriction on use, tennis often runs on finishing towards 10.00 p.m. in summer and often people want to play at the courts prior to work in the summer. Please can you clarify why specific timescales are required for this?
20. Clause 5.3 of Schedule 3 is uncontrollable and must be removed.
21. Although smoking is becoming less prevalent in society, often visiting members from other teams want to have a cigarette. Please remove Schedule 4.

Re: the Licences

Please can you clarify why two licences are needed for the pavilion and the football pitch?  
Can the Licence to use the pavilion be incorporated into the pitch Licence.†

I now turn my attention to the Licence used for the football pitch at Kirkbymoorside as follows:-

1. The Licence needs Schedule 4 permitted times to be completed.
2. Is 1.15.1 a wide enough remit, there may be other activities that are ancillary to the activities of the Club.
3. There is no plan attached.
4. Definition at 1.9 does not tally with clause 5, which is about assignment or sharing.
5. Please amend 1.2 to include "after an obligation to use best endeavours to".
6. Please confirm why the Licence is none exclusive as point 2.1.
7. There is constant reference to VAT. Is VAT likely to be payable?
8. Regarding 3.5, is this enforceable and how does this sit with insurers.
9. Regarding 3.6, through my knowledge of the Sportsfield cars often park on the grass, is this enforceable. Often the car park is full necessitating people to park on the grass.
10. In respect of 3.1 and 3.7, sometime the Football Club did start charging for spectators to enter the field to watch the football. This came to an end when they moved out of that specific league, as it was a requirement of that league that a fee should be charged.
11. Clause 3.10.3 needs removing, again like the Tennis Club, this is impossible to enforce.
12. Clause 3.1 should start as soon as is practically possible and should finish "at the discretion of the Licensee pay to the Licensor".
13. Clause 3.1.2 should read "exercise the rights *and must make best endeavours* to ensure that all members".
14. At 3.3.1 please add "in writing" at the end.
15. Regarding 3.14 and 3.15, I believe restricts the enjoyment by the Licensee.
16. At 3.19 please remove all purported exercise.
17. At 3.21 – is this not just Public Liability Insurance?
18. Clause 6 should read "15 working days".
19. Is 7 required at clause 9? Please clarify when is the specific end time of the Licence period.
20. At clause 10.4 please add "reasonably" after Licensor on the first line.
21. Please add a clause 17 for quiet enjoyment.
22. As rights are non-exclusive there should be some provision to the effect that the Town Council will impose similar rights and restrictions on other users and shall not grant any other Licence that may prevent the free use of the rights by the Club. Basically what we are asking is how the Leases tie in with the Licences?

