

CHEPPING WYCOMBE PARISH COUNCIL

AMENITY LAND COMMITTEE

APPENDICES

TUESDAY 7 SETEMBER 2010

AGENDA ITEM	APPENDIX	APPENDIX PAGE NUMBER
3 TYLERS GREEN COMMON	A <u>Tracks, Crossings and Parking on Tylers Green and Totteridge Commons: Review of Policy</u> Current Policy: TG and Totteridge Commons	2
3 TYLERS GREEN COMMON	B <u>Tracks, Crossings and Parking on Tylers Green and Totteridge Commons: Review of Policy</u> Draft New Policy: prepared by the Council's Solicitors (submitted to the Council on 24 June 2010)	3
5 FENNELS WOOD	C <u>Fennels Wood: Review of Licence</u> Allan Janes Solicitors letter to the Parish Council of 8 June 2009 together with enclosed Licence Agreement of 3 April 2000	4-11
6 COMMITTEE FINANCES	D Detailed Income and Expenditure Report	12-13
6 COMMITTEE FINANCES	E Council's Ear-Marked Reserves	14

APPENDIX A

"Tylers Green and Totteridge Commons

These sites were purchased by the Parish Council who, as part of the terms of sale, agreed to honour existing rights.

To protect the land from possible future residential development, the Council subsequently registered them as Village Greens. Although described as 'Tylers Green and Totteridge Commons' these have never been 'common land' in law and the Council has allowed unhindered access to adjacent properties, including new or rebuilt houses, that have no other access except over the Green.

Over the past few years, access over common land and Village Greens has become a national issue, particularly since it was being suggested that technically nobody had the right to drive vehicles over a Village Green, even to access their homes or to provide services to them. There were also suggestions that landowners and trustees could sell licences, but this too was disputed.

The Parish Council took advice and determined that as the law was unclear and being contested in the Courts, with Central Government suggesting that it might also legislate, this Council should wait for some clarification before deciding what action to take.

The Council wishes to protect the amenity value of the area, but feels it also has an obligation to honour access rights, both those inherited at the time of purchase by the Council and prescriptive rights gained since then by the unchallenged use of the tracks.

The Council believes it can now best achieve both of these aims by seeking to exclude the tracks and access crossings from the registration, an option that was available to the Council initially, but not implemented at that time. The Council is advised that this is a feasible option for resolving the problem.

If the Council is successful in deregistering the tracks and crossings the concerns of affected residents will be put to rest, the commercial rights that the Parish Council has as landowner will be clarified and the Council will be enabled to protect the Village Greens for future generations."

Chepping Wycombe Parish Council Tylers Green and Totteridge Commons

These areas were purchased by the Parish Council many years ago and they form important and unique amenities for local residents.

In the 1970s, along with very many areas across England used for recreation since time immemorial, they were registered as Village Greens under the Commons Registration Act 1965 in order to conserve them.

Although known as "Commons" they are not, and have never been, common land as such but are greens.

As registered Village Greens, they enjoy special legal protections. These include the fact that it is a criminal offence to drive on a village green, park on a village green and encroach upon or damage a village green by, for example, digging it up or covering it with tarmac or similar surfacing material. This means that no building can take place, neither can new drives or accesses be created except in very exceptional circumstances.

The various tracks and pathways forming part of Tylers Green Common are also registered as green. The Parish Council as owner and custodian of the greens has to balance its legal duties to take care of them with the fact that owners of properties abutting the greens need to get in and out of their properties to the surrounding main roads.

The legality of access over and parking on the greens becomes an issue when those with properties concerned are sold or mortgaged. In these circumstances, the Parish Council will do its best to assist and certainly to honour access rights inherited by it at the time of its purchase of the greens and, in the right circumstances, in relation to prescriptive rights gained since then by unchallenged use of the greens for access and/or parking. Usually, a purchaser or lender of the property concerned will need to show to his buyer or lender written evidence of the access or parking rights, usually in the form of a formal, legal Deed given by the Parish Council. The Parish Council looks at each case on an individual basis and takes the advice of its solicitor. The expense of this exercise is met by the owner of the property concerned because it is for the benefit of the property owner, not the Parish Council.

The Parish Council is therefore under no obligation to allow new accesses, driveways, changes to existing accesses or driveways (such as relocation or enlargement) or parking but will consider them and might permit them in limited cases on open market commercial terms and in circumstances where it can comply with its legal obligations relating to the greens and as a public body.

09 JUN 2009

Clerk to Chepping Wycombe Parish Council
Council Office
Cock Lane
Tylers Green
Penn
Bucks HP10 8DS

21 - 23 Easton Street
High Wycombe
Buckinghamshire
HP11 1NT

Tel: 01494 521301
DX: 4402 High Wycombe
Web: www.allanjan.es.com

Departmental fax:

01494 442315

Your reference:

Our reference:

AOS/jm/OLS7/1

Date:

08 June 2009

Dear Sirs

Gwendoline Olsen Deceased
Fennels Wood, Flackwell Heath

We act on behalf of the Personal Representatives of the late Gwendoline Olsen, who sadly died on 25th April 2009. We enclose a certified copy of her death certificate for noting and return.

In respect of the land at Fennels Wood, Flackwell Heath, we are aware that an Agreement dated 3rd April 2000 exists and enclose a copy of the same for ease of reference.

We should be grateful if you would note the interest of the Personal Representatives and direct all future communications to them.

Yours faithfully



Allan Janes LLP

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Email: annabel.o'sullivan@allanjan.es.com

Members: Clive JG Hitchen BA Peter G Collier LL.M. Nicholas J Morrison LL.B. Managing Partner R Iwan Emanuel BA
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CERTIFIED COPY
Pursuant to the Births and



OF AN ENTRY
Deaths Registration Act 1953

BAH 798111

DEATH		Entry No. 245
Registration district Buckinghamshire		Administrative area
Sub-district Buckinghamshire		County of Buckinghamshire
1. Date and place of death Twenty-fifth April 2009 Wycombe Hospital High Wycombe		
2. Name and surname Gwendoline OLSEN		3. Sex Female
		4. Maiden surname of woman who has married ANDERSON
5. Date and place of birth Seventeenth June 1919 Stokenchurch Buckinghamshire		
6. Occupation and usual address Landlord (retired) Widow of William OLSEN United States Air Force Garda House The Common Stokenchurch Buckinghamshire		
7.(a) Name and surname of informant Linda Jane BLAY		(b) Qualification Causing the body to be cremated
(c) Usual address Allan Janes LLP 21-23 Easton Street High Wycombe Buckinghamshire		
8. I certify that the particulars given by me above are true to the best of my knowledge and belief Linda Blay Signature of informant		
9. Cause of death I (a) Congestive Cardiac Failure II Acute on Chronic Renal Failure Certified by Lauren Green BM (Southampton)		
WE HEREBY CERTIFY THIS TO BE A TRUE COPY OF THE ORIGINAL Dated 07-05-09 <i>Allan Janes LLP</i> ALLAN JANES LLP Solicitors 21-23 Easton Street High Wycombe Bucks. HP11 1NT		
10. Date of registration Twenty-eighth April 2009		11. Signature of registrar S G Venn Registrar

Certified to be a true copy of an entry in a register in my custody.

sgv

*Superintendent Registrar
*Registrar

Date 28th April 2009

*Strike out whichever does not apply

System No. 507/2001 **CAUTION** THERE ARE OFFENCES RELATING TO FALSIFYING OR ALTERING A CERTIFICATE AND USING OR POSSESSING A FALSE CERTIFICATE. ©CROWN COPYRIGHT

WARNING: A CERTIFICATE IS NOT EVIDENCE OF IDENTITY.

DATED 3 April 2000

GWEN OLSEN (1)

CHEPPING WYCOMBE PARISH
COUNCIL (2)

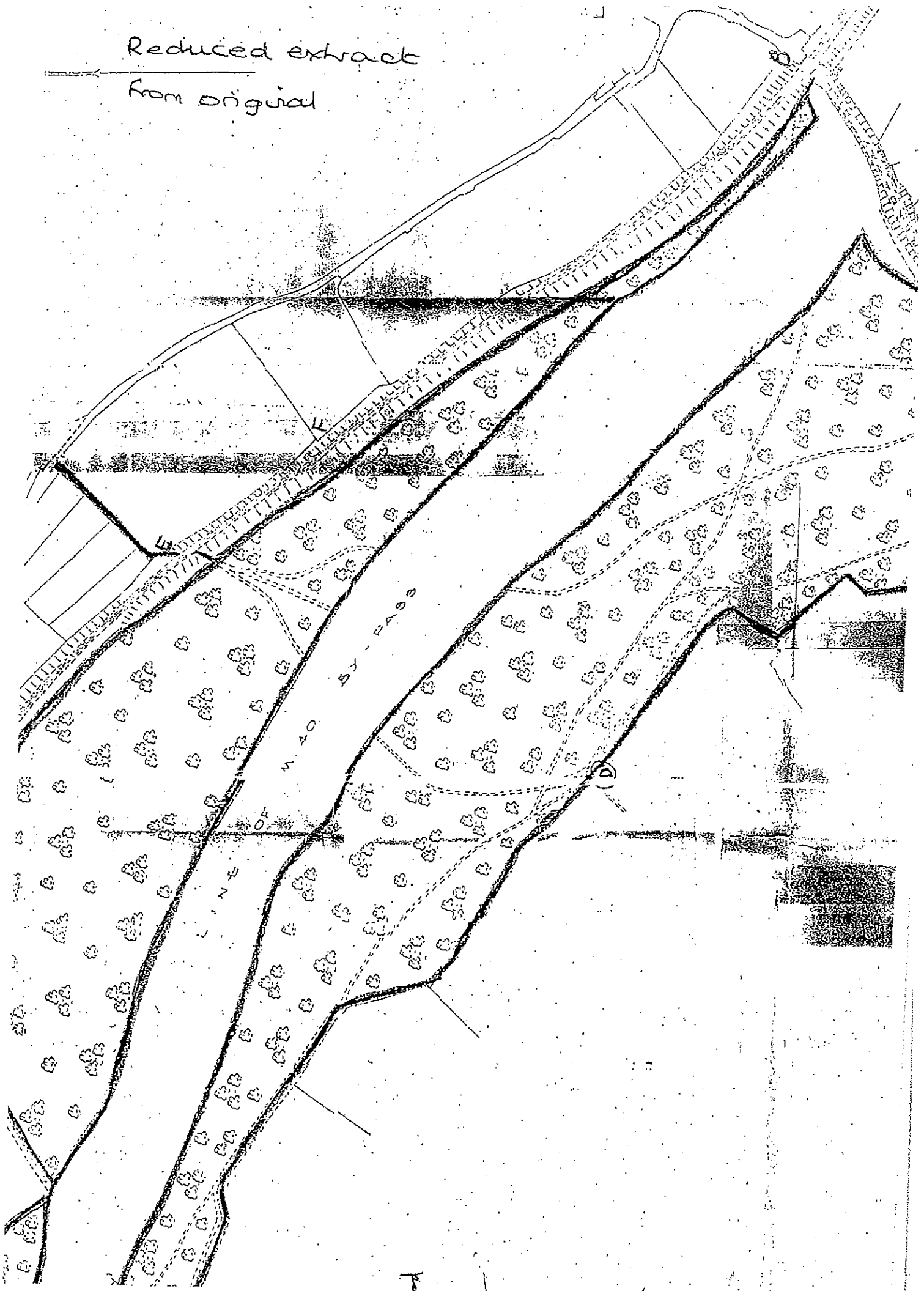
AGREEMENT

re Fennels Wood, Flackwell Heath

Allan Janes
21-23 Easton Street
High Wycombe
Bucks HP11 1NU

DLHengrossment
SW/AGREEMENTS/Licence for Mrs Olsen

Reduced extract
from original



THIS AGREEMENT is made the 2nd day of April 2000

BETWEEN:

- (1) "the Owner" MRS GWEN OLSEN of Garda House, Stokenchurch, Bucks, HP14 3UD and
- (2) "the Council" CHEPPING WYCOMBE PARISH COUNCIL the address of whose Clerk is Council Office, Cock Lane, Tylers Green, Penn, Buckinghamshire HP10 8DS

IT IS NOW AGREED as follows: -

1. Definitions and interpretation.

In this agreement the following expressions have the meanings given in this clause

- 1.1 "The Woodland" means the parcels land edged red on the attached plan
- 1.2 "The Accessways" means the roads, paths and footpaths the use of which is necessary to obtain access to and egress from the Woodland or those of them that afford reasonable access and egress thereto and therefrom and that the Owner from time to time in her absolute discretion designates on 28 days notice to the Council
- 1.3 The clause and subclause headings do not form part of this agreement and must not be taken into account in its construction or interpretation.
- 1.4 "The Licence Fee" means two hundred and fifty pounds (£250) per annum payable yearly in advance
- 1.5 "The Licence Period" means the period from the date of this agreement until the date on which the Council's rights under clause 2 THE LICENCE are determined in accordance with clause 4.1 DETERMINATION
- 1.6 Any reference in this agreement to a clause or subclause without further designation is to be construed as a reference to the clause or subclause of this agreement so numbered
- 1.7 "VAT" means value-added tax or any other tax of a similar nature

2. THE LICENCE

Subject to clauses 3 COUNCIL'S UNDERTAKINGS and 4 GENERAL, the Owner gives the Council the right, for the Licence Period, in common with the Owner and all others authorised by the Owner so far as is not inconsistent with the rights given: -

- 2.1 to have access to the Woodland for the purpose of removing rubbish and keeping tidy the Woodland
- 2.2 to grant public pedestrian access only along the existing woodland paths the position of which shall be agreed between the Council and the Owner and clearly marked with signs provided and maintained by the Council.
- 2.3 to install gates and stiles at the Councils expense in locations approved by the Owner including a gate for vehicles at the point marked "D" on the Plan

This Licence is granted subject to all rights reservations and easements at present existing on the Woodland

3. THE COUNCIL'S UNDERTAKINGS

The Council agrees and undertakes as set out in this clause 3

3.1 The Licence Fee

The Council must pay the Licence Fee, together with any VAT, to the Owner in advance on the 1st January in each year.

3.2 Condition of the Woodland

- 3.2.1. The Council must keep the Woodland clean and tidy and clear of rubbish and dispose of any such material and to take such action as may be possible against offenders in this respect
- 3.2.2. The Council shall apply its bylaws to the Woodland to secure adequate powers of control for the protection of the Woodland
- 3.2.3. The Council shall use its best endeavours to prevent damage to all trees including saplings
- 3.2.4. The Council shall carry out any repairs that are necessary to any boundary fences erected by the Council
- 3.2.5. The Council shall maintain all gates and stiles erected or installed by the Council

3.3 Signs and notices

The Council must not display any signs or notices at the Woodland without the prior written consent of the Owner

3.4 Nuisance

The Council must not use the Woodland or the Accessways in such a way as to cause any nuisance, damage, disturbance, annoyance, inconvenience, or interference to the Woodland or adjoining or neighbouring property or to the owners, occupiers or users of any adjoining or neighbouring property

3.5 Indemnity

The Council must indemnify the Owner, and keep the Owner indemnified, against all losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability arising in any way from this licence, any breach of the Councils undertakings contained in this clause or the exercise or purported exercise of any of the rights given in clause 2 THE LICENCE

3.7 Owners rights

The Council must not in any way impede the Owner, or his servants or agents, in the exercise of his rights of possession and control of the Woodland and every part of the Woodland.

3.8 Statutory requirements and insurance

The Council must not do anything that will or might constitute a breach of any statutory requirement affecting the Woodland or that will or might wholly or partly vitiate any insurance effected in respect of the Woodland from time to time.

3.9 Owner's costs

The Council must pay to the Owner on demand, and indemnify the Owner against, all costs, expenses of professional advisers and agents, including any VAT, incurred by the Owner in connection with the preparation, negotiation and completion of this agreement.

4. GENERAL

4.1 Determination

The rights granted in clause 2 THE LICENCE are to determine – without prejudice to the Owner's rights in respect of any breach of the undertakings contained in clause 3 – COUNCIL'S UNDERTAKINGS – on the earlier of the following dates:

4.1.1. immediately on notice given by the Owner at any time following any breach by the Council of its undertakings contained in clause 3 COUNCIL'S UNDERTAKINGS, and

4.1.2 on not less than 6 months notice given by the Owner or the Council to the other party to expire on the last day of a month or

4.1.3 10 years from the date of this agreement

4.2 Assignment prohibited

The benefit of this licence is personal to the Council and not assignable, and the rights given in clause 2 of THE LICENCE may only be exercised by the Council, council employees and the public pedestrians under clause 2.2

4.3 Warranty excluded

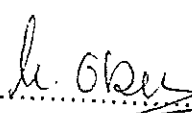
The Owner gives no warranty that the Woodland is legally or physically fit for the purposes specified in clause 2 THE LICENCE

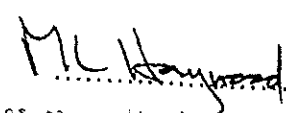
4.5. Notices

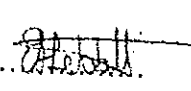
All notices given by either party pursuant to the provisions of this agreement must be in writing, and are to be sufficiently served if delivered by hand or sent by registered post or recorded delivery, or sent by fax provided that a confirmatory copy is delivered by hand or sent by registered post or recorded delivery on the same day, to the other party at his last known address or at his registered office.

SIGNED by
GWEN OLSEN

SIGNED on behalf of
CHEPPING WYCOMBE
PARISH COUNCIL


.....


.....
MRS. M. L. HAYWOOD


.....
MRS. E. S. TEBBUTT

		Actual Current Mth	Actual Year To Date	Current Annual Bud	Variance Annual Total	Committed Expenditure	Funds Available
<u>Amenity Land</u>							
101	<u>GEN AMENITY AREAS</u>						
4013	RENT	0	0	15	15		15
4029	BENCHES AND SIGNS	0	0	1,000	1,000		1,000
4037	GROUNDS MAINTEN'CE	0	636	340	-296		-296
4041	EQUIPMENT HIRE	0	266	0	-266		-266
4061	PARTNERSHIP WORKING	-1,935	0	0	0		0
	GEN AMENITY AREAS:-Expenditure	-1,935	903	1,355	452	0	452
1001	INCOME - RENTS	0	20	690	-670		0
1003	INCOME - FEES	0	1,000	0	1,000		0
	GEN AMENITY AREAS :- Income	0	1,020	690	330		
	Net Expenditure over Income	-1,935	-117	665	782		
102	<u>FENNELS WOOD</u>						
4013	RENT	0	0	250	250		250
4016	PREMISES HIRE	0	58	0	-58		-58
4046	SMALL TOOLS & EQUIPT	0	29	0	-29		-29
4056	LEGAL FEES	0	50	0	-50		-50
4059	FORESTRY FEES	0	250	0	-250		-250
	FENNELS WOOD:-Expenditure	0	387	250	-137	0	-137
	Net Expenditure over Income	0	387	250	-137		
103	<u>RAILWAY LAND</u>						
4037	GROUNDS MAINTEN'CE	0	0	1,057	1,057		1,057
	RAILWAY LAND:-Expenditure	0	0	1,057	1,057	0	1,057
	Net Expenditure over Income	0	0	1,057	1,057		
104	<u>KINGSWOOD</u>						
4023	STATIONERY & PRINT'G	0	0	52	52		52
4036	PROPERTY MAINTEN'CE	0	400	0	-400		-400
4037	GROUNDS MAINTEN'CE	0	0	3,514	3,514		3,514
4038	MAINTENANCE CONTRACT	0	0	2,800	2,800		2,800
4059	FORESTRY FEES	0	0	4,732	4,732		4,732
	KINGSWOOD:-Expenditure	0	400	11,098	10,698	0	10,698
1001	INCOME - RENTS	0	-60	0	-60		0
1002	INCOME - PERMITS	0	47	0	47		0

Month No : 5

Committee Report

	Actual Current Mth	Actual Year To Date	Current Annual Bud	Variance Annual Total	Committed Expenditure	Funds Available
1005 INCOME - WOOD SALES	0	561	0	561		0
1077 GRANTS RECEIVED	0	0	4,000	-4,000		0
1079 OTHER COST RECOVERED	0	0	20	-20		0
KINGSWOOD :- Income	<u>0</u>	<u>548</u>	<u>4,020</u>	<u>-3,472</u>		
Net Expenditure over Income	<u>0</u>	<u>-148</u>	<u>7,078</u>	<u>7,226</u>		
<u>105 TYLERS GREEN COMMON</u>						
4014 ELECTRICITY	0	22	84	62		62
4037 GROUNDS MAINTEN'CE	0	0	841	841		841
4912 TG COMMON MANAGEMENT	0	0	2,000	2,000		2,000
TYLERS GREEN COMMON:-Expenditure	<u>0</u>	<u>22</u>	<u>2,925</u>	<u>2,903</u>	<u>0</u>	<u>2,903</u>
1001 INCOME - RENTS	0	50	0	50		0
1002 INCOME - PERMITS	0	31	749	-718		0
1004 INCOME - SERVICE CHS	0	0	82	-82		0
1078 MAINT COST RECOVERED	0	0	50	-50		0
TYLERS GREEN COMMON :- Income	<u>0</u>	<u>81</u>	<u>881</u>	<u>-800</u>		
Net Expenditure over Income	<u>0</u>	<u>-59</u>	<u>2,044</u>	<u>2,103</u>		
<u>106 WIDMER POND</u>						
4012 WATER	0	201	540	339		339
4037 GROUNDS MAINTEN'CE	0	0	158	158		158
WIDMER POND:-Expenditure	<u>0</u>	<u>201</u>	<u>698</u>	<u>497</u>	<u>0</u>	<u>497</u>
1004 INCOME - SERVICE CHS	0	0	270	-270		0
1079 OTHER COST RECOVERED	0	0	286	-286		0
WIDMER POND :- Income	<u>0</u>	<u>0</u>	<u>556</u>	<u>-556</u>		
Net Expenditure over Income	<u>0</u>	<u>201</u>	<u>142</u>	<u>-59</u>		
Amenity Land :- Expenditure	-1,935	1,912	17,383	15,471	0	15,471
Income	0	1,649	6,147	-4,498		
Net Expenditure over Income	<u>-1,935</u>	<u>264</u>	<u>11,236</u>	<u>10,973</u>		

	RESERVES 2008/09			RESERVES 2009/10			RESERVES 2010/11			
	ALLOCATION	SPEND	AS AT	ALLOCATION	SPEND	AS AT	ALLOCATION	SPEND	AS AT	
	2008/09		31/03/2009	2009/10		31/03/2010	2010/11		31/03/2011	
EARMARKED RESERVES										
SMALL RIDE ON MOWER	600		2,400	350		2,750	350		3,100	
RIDE ON MOWER	1740		11,834	4,083		15,917	6,817	-23245	0	
LORRY	500		1,000	2,444		3,444	2,444		5,888	
UTILITY VEHICLE	1283		5,797	1,926		7,723	1,926		9,649	
TRACTOR	3007		8,568	2,608		11,176	2,608		13,784	
VEHICLE RESERVE	322	7130	0	29,599	11,411	0	41,010	14,145	-23245	32,421
SIDE FLAIL	400		2,614	627		3,241	627		3,868	
DRAWN FLAIL	305		1,426	107		1,533	107		1,640	
PLANT RESERVE	323	705	0	4,040	734	0	4,774	734	0	5,508
COMPUTERS	550		2,092	600		2,692	600		3,292	
EQUIPMENT	1050		4,050	1,080		5,130	1,000		6,130	
OFFICE EQUIP RESERVE	324	1600	0	6,142	1,680	0	7,822	1,600	0	9,422
AMENITY LAND										
COCK LANE RECYCLING	329	1,000	1,000		-1,000	0			0	
RAILWAY LAND TREES	367	0	1,000	0		1,000			1,000	
KINGSWOOD IMPROVEMENTS	368	8,650	8,650			8,650			8,650	
TG COMMON MANAGEMENT	331	3,000	3,000	2,000		5,000	2,000		7,000	
TG COMMEMORATIVE TREES	332	1,900	1,900			1,900			1,900	
WIDMER POND IMPROVEMENT	369	3,000	0	4,000	1,500		5,500		5,500	
LEISURE FACILITIES										
NEW PAVILION DEREHAMS	363	5,000	9,000	0		9,000	0		9,000	
DEREHAMS REJUVENATION	362	7,000	-2,700	7,300	5,000	12,300	1,500		13,800	
BASKETBALL	364	0	1,000		-1,000	0			0	
ST BIT CAR PARK	350		0			0			0	
GREEN DRAGON FENCE	370	3,500	-4,070	4,350		4,350			4,350	
PLAY EQUIP RESERVE	325	3,000	12,000	3,000		15,000	3,000		18,000	
WORKS SERVICES AND PLANNING										
WARDEN'S HOUSE	359		0			0			0	
OFFICE REFURBISHMENT	372		1,270		-1,270	0			0	
ALTONA TREES & EXTENSION PATH	361	5,000	5,860	3,000		8,860	4,500		13,360	
COCK LANE CEMETERY TRACK	366	5,000	7,586	5,000		12,586	3,500		16,086	
CHURCHYARD ST MARGARET & ST PETER'S WALL	321	1,560	10,000	5,000		15,000	5,000		20,000	
BENCHES & SIGNS	354	2,890	2,890			2,890			2,890	
STREET LIGHTING	351	14,000	14,000	10,000		24,000	7,000		31,000	
FINANCE & GENERAL PURPOSES										
DEED OF GRANT	357		10,200			10,200			10,200	
LEGAL FEES	371		0			0	7,000	-7000	0	
ADJUSTMENTS	9066						8,000	-1500	6,500	
TOTAL EXCEPTIONAL ITEMS		64,500	-6,770	105,006	34,500	-3,270	31,230	41,500	-8500	33,000
TOTAL EARMARKED RESERVES		73,935	-6,770	144,787	48,325	-3,270	189,842	57,979	-31745	216,076
GENERAL RESERVE		1,635	0	92,263	-13,792	78,471	-6,012		72,459	
TOTAL RESERVES		75,570	-6,770	237,050	34,533	-3,270	268,313	51,967	-31745	288,535
Target for General Reserve (25% net expenditure) suggested						84,990			84,450	
Target for General Reserve (25% expenditure) per Purple Book						94,614			92,965	
Deficit/Surplus						-6,519			-11,991	
Deficit/Surplus						-16,143			-20,506	
% Deficit/Surplus						-8%			-14%	
% Deficit/Surplus						-19%			-24%	
General reserves are 11,991 below the suggested expenditure targets.										
This is mainly because a Legal Fee Earmark reserve had to be created for exceptional circumstances										
This attributes for 7,000 of the underspend. If this were ignored, the % deficit would be 6% which is closer to the target than last year.										