

READING BOROUGH COUNCIL

REPORT BY HEAD OF LEGAL AND DEMOCRATIC SERVICES AND  
VALUATION ADVISER

TO:	MAPLEDURHAM PLAYING FIELDS TRUSTEES SUB-COMMITTEE		
DATE:	20 JUNE 2018	AGENDA ITEM:	6
TITLE:	THE HEIGHTS PRIMARY SCHOOL - UPDATE FOLLOWING PLANNING COMMITTEE AND CONSULTATION ON MASTERPLAN		
LEAD COUNCILLORS:	COUNCILLOR EDWARDS	PORTFOLIO:	MAPLEDURHAM PLAYING FIELDS CHAIR OF TRUSTEES
SERVICE:	TRUSTEE OF CHARITY	WARDS:	MAPLEDURHAM
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1. PURPOSE AND SUMMARY OF REPORT

- 1.1 Further to Minutes 7-9 of the Mapledurham Playing Fields Trustees Sub-Committee's meeting on 9 January 2018, this report updates the Trustees on:
- The planning application which was considered by the Local Authority's Planning Applications Committee on 4 April 2018;
  - The Landscape Master Plan for the Mapledurham Playing Fields ('the Ground');
- 1.2 The Planning Applications Committee considered the planning application submitted by the Education & Schools Funding Agency (ESFA) at its meeting on 4 April 2018. This was the subject of an objection by Sport England, to the Secretary of State. The Committee resolved to grant permission, subject to:
- the outcome of the Sport England call-in request to the Secretary of State;
  - planning permission to be dependent on the completion of a Section 106 legal agreement/unilateral undertaking to secure the Heads of Terms set out in the report, as amended by the Committee.
- 1.3 The Secretary of State gave notice, on 4 May 2018, that he would not be calling in the planning application.
- 1.4 This report must be read in conjunction with the report on tonight's agenda on the "Landscape Master Plan and Options Report" which you required to be produced at Minute 8 of your last meeting. This includes an evaluation of which of the three options identified at that meeting will best enhance the amenity value of the

Ground for the beneficiaries of the Ground. The three options are:

- The status quo
  - The proposal submitted by the ESFA to re-locate The Heights Free School (the School) to the Ground
  - The 'Fit4All' proposal made by the Mapledurham Playing Fields Foundation (MPFF)
- 1.5 The Landscape Master Plan is attached at **Appendix A** to the Options Report. This also gives details of consultation undertaken with the stakeholder groups identified at Minute 8 of your last meeting, and sets out and provides an officer comment on the responses received at **Appendices D and F**.
- 1.6 Having considered the Landscape Master Plan and Options Report, the consultation responses and the officer comments on them, in coming to a decision on whether the ESFA proposal offers the best option to enhance the amenity value of the Ground for the benefit of the Charity's beneficiaries, the Sub-Committee should also have regard to:
- a) The Heads of Terms for the lease with the Secretary of State, as reported to your meeting on 20 November 2016  
<http://www.reading.gov.uk/media/6539/Item-6/pdf/item06.pdf>
  - b) The Property Report prepared by Bruton Knowles, reported to your meeting on 20 December 2016  
<http://www.reading.gov.uk/media/6539/Item-6/pdf/item06.pdf>
  - c) The regulatory advice from the Charity Commission, reported to your meeting on 9 January 2018 and summarised in paras. 7.7 to 7.8 of Legal Implications below  
[http://www.reading.gov.uk/media/8120/Item-5-and-appendices/pdf/Item5\\_and\\_appendices.pdf](http://www.reading.gov.uk/media/8120/Item-5-and-appendices/pdf/Item5_and_appendices.pdf)
  - d) The Community Use Agreement with the Secretary of State for Housing, Communities & Local Government for the School's occupation of the Ground : this will be tabled to your meeting
- 1.7 Concerns have been expressed by some users of the Ground about the composition and role of the Mapledurham Playing Fields Management Committee. This report recommends that the officers institute a review the remit and membership of the Management Committee and report back to a future meeting.

## 2. RECOMMENDED ACTION

- 2.1 That the decision of the Local Planning Authority (LPA) to pass a resolution to grant planning consent for a new school at Mapledurham Playing Fields, subject to conditions; and the decision of the Secretary of State not to call in the determined planning application, be noted;
- 2.2 That the Landscape Master Plan and Options Report (including the Landscape Master Plan) be considered in the light of the consultation with stakeholder groups and the terms of the Community Use Agreement to be tabled at your

meeting and, in the light of this consideration, the Sub-Committee is asked to decide whether:

- 1) the ESFA proposal still offers the best option to enhance the amenity value of the Ground for the benefit of the Charity's beneficiaries and, if it does;
- 2) to enter into a unilateral undertaking to enable the Section 106 Agreement to be concluded, subject to heads of terms as envisaged by the Local Planning Authority;

2.3 That in the event that the Sub-Committee decides (in line with paragraph 2.2 above) that the ESFA proposal still offers the best option to enhance the amenity value of the Ground for the benefit of the Charity's beneficiaries, the Sub-Committee is asked to decide whether, taking into account the Heads of Terms for the proposed lease to the Secretary of State for Housing, Communities & Local Government, the Community Use Agreement and the Property Report, the terms of the disposal by way of lease to the ESFA are the best which are reasonably obtainable for the Charity.

2.4 That in the event that the Sub-Committee agrees (in line with paragraph 2.3 above) that the terms of the disposal by way of lease to the Secretary of State are the best which are reasonably obtainable for the Charity, the Head of Legal & Democratic Services be instructed to consult with the Charity Commission in relation to the basis for the proposed disposal to the ESFA and, after taking into account any regulatory advice or guidance the Commission may have to offer, be authorised to take all and any such steps as are required in order to facilitate such disposal.

2.5 That the Head of Legal & Democratic Services be instructed to review the remit and membership of the Management Committee and to report back to the Sub-Committee on the options that could be adopted in relation to the composition of the Management Committee.

### 3. POLICY CONTEXT

3.1 Reading Borough Council holds the Ground in its capacity as charity trustee (Trustee) of the Charity (the Charity). The Charity is registered with (and therefore regulated by) the Charity Commission. The charitable object of the Charity is:

"the provision and maintenance of a recreation ground for the benefit of the inhabitants of the Parish of Mapledurham and the Borough of Reading without distinction of political, religious or other opinions."

The beneficiaries of the Charity, therefore, are the inhabitants of the Parish of Mapledurham and the Borough of Reading. The Ground is an asset of the Charity and is held "in specie" i.e. specifically in order to advance the Charity's object.

3.2 The Sub-Committee has delegated authority, with the support of the Officers, to discharge Reading Borough Council's functions as charity trustee of the Charity. The Sub-Committee has a duty to make all decisions in what it considers to be the best interests of the Charity and in order to advance the object referred to above and any such decision must be in line with all relevant charity law and

other legal restrictions.

3.3 At its meeting on 11 October 2016 this Sub-Committee resolved, *inter alia*:

- (3) That notwithstanding this unsatisfactory circumstance, the Sub-Committee is satisfied that, in principle and without creating any binding legal commitment, the ESFA's revised offer is capable of being in the best interests of the Charity (i.e. because it is considered to be capable of enhancing the amenity value of the Ground) and accordingly advises the ESFA that they are prepared to continue to discuss the revised proposal, subject to the ESFA:
  - (i) Clarifying the location of its 1.231 acre site at the earliest opportunity.
  - (ii) Seeking planning consent for its proposed development on the Ground in consultation with the Sub-Committee on the likely effect of the various design options upon the amenity value of the Ground, so that the planning application that is submitted is acceptable to the Sub-Committee.
- (4) That, subject to the ESFA carrying out the actions identified in resolution (3) above, the Sub-Committee shall:
  - (i) Obtain and consider a report from Bruton Knowles pursuant to section 117 Charities Act 2011, which should also address the amenity value of the Ground in respect of (and as a consequence of) the ESFA proposal (including in particular any enhancements of the amenity value attributable to the ESFA proposal)
  - (ii) Consult with the public and the Charity's Management Committee on the basis set out in section 8 of the report.
  - (iii) Consult with the Charity Commission on the basis set out in section 8 of this report.

3.4 At its meeting on 20 December 2016, the re-named Sub-Committee resolved, *inter alia*:

- (4) That, taking into account the Property Report, the Amenity Report and the legal advice and other information set out in the report, the ESFA's offer is, subject to contract, capable of being in the best interests of the Charity (i.e. considered to be capable of enhancing the amenity value of the ground) and should therefore be pursued in line with the Heads of Terms;
- (6) That the Head of Legal and Democratic Services be instructed to:
  - (i) implement a consultation with the Charity's beneficiaries and Management Committee, as anticipated by the heads of Terms;
  - (ii) consult with the Charity Commission, as anticipated in the Heads of Terms;

3.5 At its meeting on 21 June 2017 the Sub-Committee resolved as follows:

- (1) That the Sub-Committee notes and accepts the officer comments on the Planning Statement [appended], set out in para 4.4 of the report, regarding the Planning Application and Planning Statement and their likely effect upon the amenity value of the Ground, and agrees that subject to those matters being addressed, the Planning Application which is proposed to be submitted by the ESFA is acceptable to the Sub-Committee;
- (2) That the comments on the public consultation document at [Appendix 1 to this report] be noted and that officers be authorised to progress the consultation, subject to the final document being agreed by members of the Sub-Committee via e-mail communication.
- (3) That it be noted that the legal challenge referred to in paragraph 1.3 of the report had been unsuccessful and that the Complainant had agreed to pay the Council's legal costs.
- (4) That the outcome of a complaint made to the Charity Commission in respect of the Council's role as Trustee of the Charity (as referred to in paragraphs 1.3 and 8.8 of the report) be noted.

3.6 In relation to the above extracts from the Minutes of the Sub-Committee, please note that the former Education Funding Agency has recently been re-named the Education & Skills Funding Agency ("ESFA"). The references above to the ESFA refer to it in its previous nomenclature.

3.7 At its meeting on 9 January 2018 the Sub-Committee resolved as follows:

Minute 7:

- (1) That the Consultation Document, Mapledurham Playing Fields Consultation: Have Your Say, attached to the report at Appendix 1, and the process and timetable for the consultation exercise with the Beneficiaries of the Trust, undertaken over the summer of 2017, be noted; and the high level of response be welcomed;
- (2) That the methodology used for the evaluation of the responses, attached to the report at Appendix 2, be endorsed;
- (3) That the analysis of the consultation responses, attached to the report at Appendices 3 and 4, be received and considered, in particular the fact that over four-fifths of the Beneficiaries who responded believed that investing the £1.36M lease premium from the ESFA into the Ground would improve the amenity value of the Playing Fields even with the loss of open space to the proposed school;
- (4) That the equality impact assessment, attached to the report at Appendix 5, be received, and its conclusion be noted that the proposal would not have a negative impact on any of the groups protected by the Equality Act 2010, subject to the implementation of some mitigation measures;

- (5) That the regulatory advice of the Charity Commission, set out in a separate report to this Sub-Committee, be considered.

Minute 8:

- (1) That the Officers advising the Sub-Committee be instructed:
  - i) to prepare a "masterplan" for the Recreation Ground which identified on an indicative basis how the ESFA lease premium could be applied if the ESFA proposal were to be accepted (in line with the Charity Commission's guidance on this); and
  - ii) to prepare an options report, which taking into account the masterplan, enabled the Sub-Committee to evaluate the impact of the three options on the amenity value of the Ground for beneficiaries of the Charity.
- (2) That with regard to the above, the Officers should:
  - i) consult with the Mapledurham Playing Fields Management Committee on the outcome of the public consultation exercise, the options report and the masterplan;
  - ii) engage with the ESFA in relation to the master plan, the Community Use Agreement, any section 106 requirements and any planning mitigation;
  - iii) engage with the Caversham Trents Football Club on the level of sports provision and the playing pitch strategy that could be included in the masterplan;
  - iv) engage with the trustees of the Mapledurham Playing Fields Foundation in relation to that part of the options report which addressed the Fit4All proposal;
  - v) engage with such other stakeholders as the Officers may consider appropriate.
- (3) That a further meeting of this Sub-Committee be held in February 2018 to consider the master plan and options report, subject to engaging with the bodies identified above, whose views should be reported to the next meeting of the Sub-Committee.

Minute 9

- (1) That Officers produce a costed landscape master plan to enable consideration and evaluation of the ESFA proposal;
- (2) That Officers engage with Caversham Trents Football Club, the ESFA, the Mapledurham Playing Fields Management Committee and other relevant stakeholders in relation to the master plan.

#### 4. PLANNING APPLICATION

- 4.1 The ESFA submitted their Planning Application and associated documentation to the Local Planning Authority (LPA) in June 2017. This application was considered by Planning Application Committee at its meeting on 4 April 2018 and was granted subject to the signing of a S106 Agreement.

- 4.2 One of the major concerns related to mitigation: i.e. to ensure that the removal of 1.231 acres from the Playing Fields for education use did not detrimentally affect the provision of sport on the playing field. An objection to the mitigation measures was submitted by Sport England.
- 4.3 Notwithstanding the objection, consent was granted by the LPA subject to EFSA contributing £375k for the mitigation. Please note that this £375k is in addition to the £1.36m which has already been agreed by this Sub Committee. (Note para 4.4 of the report to Sub-Committee on 9 January 2018, which confirmed this). However for the planning consent to be granted, two issues need to be resolved:
- a) the Secretary of State needed to advise whether the objection from Sport England can be overruled;
  - b) to enable the £375k to be spent it will be necessary for a S106 agreement to be entered into and this will need to be entered into via a Unilateral Undertaking by the Trustees.
- 4.4 The Secretary of State gave notice, on 4 May 2018 that he would not be calling in the LPA's determination of the ESFA planning application. This overruled the objection from Sport England as the LPA could now implement its decision to grant consent.
- 4.5 The members of the Sub-Committee are therefore asked to decide, subject to your consideration of the Landscape Master Plan and Options Report (including the Landscape Master Plan) and the consultation on it, whether you are prepared to enter into the Unilateral Undertaking to enable the planning consent to be granted; and, subject to consulting with the Charity Commission, to enter into an agreement with the ESFA to lease the area of 1.231 acres of the Ground, previously identified, for the construction of a new school building for the School to enable it to relocate to the Ground. The relevant considerations are set out in more detail below.

## 5. LANDSCAPE MASTER PLAN AND CONSULTATIONS

- 5.1 Following on from the last Sub-Committee meeting and the determination of the Planning application by the LPA, a Landscape Master Plan has been prepared, as described in and attached to the accompanying report on tonight's agenda.
- 5.2 The Landscape Master Plan could not be finalised until after the planning application had been determined as that process established the views of the LPA regarding the level of mitigation required if the school was to be constructed. The Master Plan takes into account the wishes of the beneficiaries following the public consultation exercise which was undertaken last year, the outcomes of which were noted at the 9 January 2018 Sub-Committee meeting.
- 5.3 Members of the Sub-Committee will be aware that the £1.36m consideration which is to be paid by ESFA to the Trustees is for the improvement of the Ground, whilst the additional £375k sum agreed by the LPA is for mitigating the impact of the School's relocation to the Ground. It therefore makes sense for the Sub-Committee to consider the Landscape Master Plan, taking into account mitigation as well as improvement, to ensure that any monies which are spent provide best value and

provide the best outturn.

- 5.4 The accompanying report includes an evaluation of the three options to enhance the amenity value of the Ground for the beneficiaries of the Charity, identified in para 1.4 above.
- 5.5 The Landscape Master Plan has been the subject to consultation with stakeholders in the Ground, to whom it was circulated for comment on 14 May 2018. More details are given in the accompanying report and its attachments, which include the results of the consultation exercise and officer comments on them.
- 5.6 The Landscape Master Plan includes costed proposals for the mitigation and enhancement / improvement works proposed in it, including provision for future maintenance.
- 5.7 A fundamental part of the ESFA proposal is the Community Use Agreement which will give beneficiaries the right to use the new MUGA, Hall and School car park outside of School hours. The Community Use Agreement will also give the ESFA the right to use the existing car park as well as the football pitches during school hours. The current proposals (which are still subject to some negotiation) will be tabled at your meeting. These identify when facilities will be made available, together with the principles that will apply to charging for the use of facilities.
- 5.8 Members of the Sub-Committee are asked to consider the Landscape Master Plan Options Report (including the Landscape Master Plan and the content of the Community Use Agreement; and if, in the light of this consideration, you determine that the ESFA proposal continues to offer the best option to enhance the amenity value of the Ground for the benefit of the Charity's beneficiaries, then members of the Sub-Committee are invited to instruct Officers:
  - 1) to enter into a unilateral undertaking to enable the Section 106 Agreement to be concluded, subject to heads of terms as envisaged by the Local Planning Authority;
  - 2) to consult with the Charity Commission in relation to the basis of the proposed disposal to the Secretary of State and, after taking into account any regulatory advice or guidance the Commission may have to offer, take such steps as are required in order to facilitate such disposal.
- 5.9 In taking a decision to dispose of part of the Ground to the Secretary of State for the School, you must also have regard to the Legal Implications set out in paragraph 7 below and, in particular, the specific requirement under the Charities Act 2011 (Section 117) which means that the Sub-Committee as Trustee cannot decide to enter into any legally binding agreement to sell or dispose of part of the Ground without having first obtained a report on the proposed disposition from a qualified surveyor and that, having considered that report, being satisfied that the terms of the sale or disposal are the best which are reasonably obtainable for the Charity. The Sub-Committee has previously taken into account the advice set out in the Property Report prepared by Bruton Knowles (and referred to in paragraph 7.3) and concluded that the ESFA's offer was, subject to contract, capable of being in the best interests of the Charity (i.e. because it is considered to be capable of enhancing the amenity value of the Ground). In taking any decision to dispose of part of the Ground to the Secretary of State in line with the ESFA proposal, the Sub-Committee is therefore

asked to decide whether, taking into account the heads of terms for the proposed lease to the Secretary of State, the Community Use Agreement and the Property Report, the terms of the disposal by way of lease to the Secretary of State are the best which are reasonably obtainable for the Charity.

- 5.10 Concerns have been expressed by some current users of the Ground regarding the composition and role of the Management Committee. It currently has 3 Borough Councillors, a representative from the users and one from the Parish of Mapledurham. Concern has been expressed that the membership should be expanded to widen the representation of users. It is considered that this is a reasonable request and that further work should be undertaken to review the membership and also investigate further the legal process for amending the membership. It is recommended that Officers are instructed to review the remit and membership of the Management Committee and to report back to the Sub-Committee on the options that could be adopted in relation to a reconstitution of the Management Committee.

## 6. EQUALITY IMPACT ASSESSMENT -

- 6.1 Under the Equality Act 2010, Section 149, a public authority must, in the exercise of its functions, have due regard to the need to—
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 6.1 In this regard you **must** consider whether the decision will or could have a differential impact on: racial groups; gender; people with disabilities; people of a particular sexual orientation; people due to their age; people due to their religious belief.
- 6.3 An equality impact assessment was considered by the Sub-Committee on 9 January 2018. This concluded that the proposal will not have a negative impact on any of the groups protected by the Equality Act 2010 subject to implementation of some mitigation measures, details of which are set out in the Landscape Master Plan and the options report elsewhere on tonight's agenda together with an updated EIA. An updated EIA is attached to the Options report.

## 7. LEGAL IMPLICATIONS

- 7.1 The Sub-Committee has been delegated the power to consider the ESFA, MPFF and status quo options by the Council acting in its capacity as sole corporate Trustee of the Charity.
- 7.2 The principal duty owed by the Council (and therefore the Sub-Committee) in relation to consideration of the options referred to above is to decide whether (and to what extent) they are in the best interests of the Charity and its beneficiaries. Because the Ground is held "in specie" for the purposes of recreational use by the Charity's beneficiaries, the duty owed in relation to a

decision to dispose of part of the ground by way of a lease for use by a school or (as the case may be) by MPFF is effectively to decide whether or not the relevant proposal will (or will not) enhance the amenity value of the Ground for the Charity's beneficiaries and to what extent each proposal will enhance such value, taking into account (in the case of the ESFA proposal) both the loss of amenity value for the beneficiaries attributable to the disposal of part of the Ground to be used by the school, and whether the ESFA proposal (and in particular the price it has offered) will enable the amenity value of the part of the Ground which is not sold for the purposes of the school to be enhanced.

- 7.3 The Sub-Committee, at its meeting on 20 December 2016, and having taken into account the Property Report, the Amenity Report and the legal advice and other information presented to you at that meeting, took the decision that the ESFA's offer was, subject to contract, capable of being in the best interests of the Charity (i.e. because it is considered to be capable of enhancing the amenity value of the Ground) and should therefore be pursued in line with the Heads of Terms, subject to the ESFA providing an additional undertaking in respect of the Charity's costs which the Sub-Committee noted had been agreed for up to £35,000.
- 7.4 There is a specific requirement under the Charities Act 2011 (Section 117) which means that the Sub-Committee as Trustee cannot decide to enter into any legally binding agreement to sell or dispose of part of the Ground without having first either obtained the consent of the Charity Commission or having obtained a report on the proposed disposition from a qualified surveyor and that, having considered that report, being satisfied that the terms of the sale or disposal are the best which are reasonably obtainable for the Charity. The Property Report considered at your meeting on 20 December 2016 addressed this requirement in respect of the ESFA proposal, as well as addressing the amenity value of the part of the Ground which would not be purchased by the ESFA, taking into account the proceeds of disposal available to the Charity. The Sub-Committee should note that, for the reasons set out in the Property Report, the authors Bruton Knowles did not advise that the grant of a lease in line with the Heads of Terms should be advertised.
- 7.5 There is also a specific requirement under the Charities Act 2011 (Section 121) in relation to "specie" land that any proposal to dispose of it must be notified and any representations received in response are considered. This requirement applies to the Charity. Any disposal of the Ground must therefore be subject to this process of consultation, which took place in Summer 2017.
- 7.6 The Sub-Committee should also take into account that the Council (as Trustee) does not have an express power to sell any part of the Ground under the scheme of the Charity Commission which regulates the Charity. A further scheme may be required unless the statutory power of disposal under the Trusts of Land (Appointment of Trustees) Act 1996 is available. The Charity Commission will need to be consulted in relation to the disposal of all or part of the Ground. It is therefore proposed that, if the Sub-Committee decides that the ESFA proposal continues to be in the best interests of the Charity and its beneficiaries, the Commission will be consulted prior to any disposal of part of the Ground to the ESFA.

- 7.7 The Charity Commission wrote to the legal advisors to the Council (acting as Trustee) on 9 March 2017, concluding as follows:

*"The transfer proposal relates to an offer by ESFA to have transferred to it a parcel of land currently held in trust (1.231 acres of the 27 acre site, which represents 4% or thereabouts of the whole) under a lease for a term of 125 years in order to build a free school. The ESFA land, if transferred, will not be available to further the objects of the Charity. Under the proposal, however, the Charity stands to obtain a significant amount of money (in the order of £1,360,000) which could be used to enable it to further its objects, in return for the loss of a relatively small area of its land. We are therefore satisfied that the decision to explore the proposal is a decision that a reasonable body of trustees might make."*

- 7.8 A meeting with the Charity Commission was held, at its request, following the conclusion of the consultation exercise, on 10 November 2017. The Charity Commission subsequently wrote to the Council as Trustee with regulatory advice, as reported to the Sub-Committee on 9 January 2018. The summary of that advice, as given in the report to the January Sub-Committee, is set out below:

- (1) The Charity Commission is satisfied that the trusteeship of the Charity has been properly delegated by full Council, through the Policy Committee, to the Sub-Committee. Therefore the Sub-Committee has delegated authority to make a decision on the options referred to above.
- (2) The Charity Commission is satisfied that the Trustee has addressed all of the elements of decision-making, in terms of:
  - Identifying and informing itself on factors relevant to making a decision, including holding a detailed public consultation exercise
  - Identifying and not considering factors that are irrelevant
  - Identifying and mitigating potential conflicts of interest
- (3) The Charity Commission is satisfied that the Sub-Committee has undertaken a proper process of preparing to make a decision. It is also satisfied that the three options identified above are within the range of decisions a reasonable trustee could take.
- (4) In terms of relevant factors, the Charity Commission has advised that the Trustee needs to carry out further consideration of 'impact' of the options, in order to make a fully informed decision that both recognises and weights relevant factors. This is to establish both whether each option represents a net benefit to the Charity, or has a negative impact (so that the Sub-Committee is able to "weigh" them) and to assess whether the net effect on the use of the land for recreational purposes is so limited in terms of loss of amenity, or represents a net gain in amenity, to enable the Sub-Committee to properly exercise the power available to it under Section 6 of the Trusts of Land and Appointment of Trustees Act 1996. In response to this advice, the Sub Committee previously decided to instruct the preparation of the Landscape Master Plan and the Landscape Master Plan and Options Report which appears elsewhere on the agenda for this meeting.
- (5) For the avoidance of doubt, the Charity Commission letter makes clear that this

includes the option of disposal to the ESFA, subject to the Sub-Committee gathering further information to inform itself more fully on the impact of this option. The Commission has stated that there would have to be a very significant, and so far unidentified, negative impact from this option to change the conclusion that this appears to be a reasonable option to consider.

(6) The Charity Commission letter explains in more detail its thinking about the consideration of impact. It accepted that the Sub-Committee had identified and was aware of most of the negative impacts associated with the ESFA proposal. Some impacts were still to be quantified as they were contingent on what was put into the Community Use Agreement and its associated heads of terms. The Charity Commission also identified that the Sub-Committee did not yet have a clear plan for the use of the £1.36M premium for the lease that has been offered by the ESFA. The Charity Commission advised that the Sub-Committee should develop a clear indicative plan based on what it was aiming to achieve, in terms both of tangible facilities and actions and reasonable projections of consequent recreational usage by beneficiaries of the Charity. The Commission advised that this need not equate to a full "business plan", with full costings for implementation, but a scoping exercise to evaluate one, or possibly more, set of options for using the premium in terms of the recreational benefits that might be achieved. This advice is reflected in the Sub-Committee's instruction to prepare the Landscape Master Plan and the Landscape Master Plan and Options Report which appear elsewhere on the agenda for this meeting.

(7) In conclusion, the Charity Commission letter stated that, at that stage, it could not offer a view on whether the Trustee is able to rely on Section 6 of the 1996 Act to grant a lease to the ESFA, if that is the decision ultimately taken by the Sub-Committee. If this power cannot be used, then the Sub-Committee would need to apply to the Charity Commission to make a disposal: this would be by means of a scheme under Section 62 of the Charities Act 2011. But the Charity Commission advised that, provided the Sub-Committee has completed the process of decision making to confirm and demonstrate that the ability to implement the ESFA proposal is in the interests of the Charity, then the Commission was likely to give the authority requested.

#### Conflict of Interest

7.9 The Charity Commission has also previously received and considered a complaint made to them about the Council's approach to managing its conflicts of interest on the prospective transfer of part of the Ground to the ESFA, including the establishment of this Sub-Committee to manage the conflict. As officers understand it, the argument put to the Charity Commission was that the Council as Trustee of the Charity is unable to make a valid decision because the inherent conflict is so pervasive that it is impossible for the Trustee to make an un-conflicted decision. On this matter, the Charity Commission, in its letter of 9 March 2017, concluded as follows:

*"Having considered the available information, we do not agree that the conflicts of interest are so persuasive [sic] that they cannot be managed. You have provided evidence to indicate that the Trustee has taken appropriate steps to manage the conflict"* [Please note that this was subject to a point made about Councillor Edwards also being a member of the Council's Adult Social Care, Children's Services and Education Committee. Councillor Edwards stepped down from that Committee from 27

January 2017].

*The Commission is of the view that the subcommittee can make a delegated decision that will be a valid decision if they ensure they act in accordance with their legal duties to take into account all relevant matters, including appropriate professional advice (including legal and chartered surveyor advice), and to also bear in mind the responses to public consultation and any issues or steps that arise as a consequence. In addition all irrelevant matters must be ignored."*

### Obligations as Trustee

7.10 In reaching any decision in relation to the Charity, the members of the Sub-Committee when performing the Council's function as Trustee have a number of obligations:

- (1) You must act in good faith and exclusively in the interests of the Charity i.e. in a way which you honestly believe to be in the Charity's best interests.
- (2) You must act within your powers (further consultation with the Charity Commission will be required if the Sub-Committee decides to authorise any disposal of land at the Ground to the ESFA).
- (3) You must ensure that you have any legal, property or other advice you consider is required in order to inform and support your decision-making. The Sub-Committee should also consider whether there is any other or further advice you believe is required before making a decision.
- (4) You must ensure that you are adequately and properly informed and have all relevant information.
- (5) You must ensure that you take into account all relevant factors. Such factors will only relate to the Charity and its ability to advance its charitable, recreational object. Such relevant factors include:
  - The risks associated with the ESFA proposal and, in particular, whether a decision to dispose of part of the Ground will negatively impact on the Charity's ability to advance its charitable, recreational object.
  - The benefits associated with the ESFA proposal and, in particular, whether a decision to dispose of part of the Ground will positively impact on the Charity's ability to advance its charitable, recreational object (and, if so, whether this outweighs any negative impact and can be justified in the best interests of the Charity).
  - Whether progressing the ESFA's proposal will incur any cost for the Charity.
  - The Charity Commission's guidance on public benefit, which is relevant to decisions taken by charity trustees:

<https://www.gov.uk/government/publications/public-benefit-the-public-benefit-requirement-pb1/public-benefit-the-public-benefit-requirement>

(6) The same relevant factors will apply in relation to the consideration of the

other options (being maintaining the status quo and the Fit4All proposal) that the Sub- Committee are asked to consider at the meeting.

- (7) You must not take into account any irrelevant factors. In particular, the Sub-Committee must not take into account the interests of the Council as local education authority or planning authority, nor any interest that the public will or may have in the provision of education to local children (including the results of the public consultation previously carried out the Council as local education authority at the behest of the ESFA).
- (8) You must manage conflicts of interest. The Sub-Committee has been established with delegated powers in order to manage the potential conflicts of duty that may otherwise arise for members and officers of the Council in relation to the Charity and the ESFA's proposal. Any role played by any member of the Sub- Committee which may relate to the Charity in any other respect or may conflict with their role as a member of the Sub-Committee should be declared at the outset of the Sub-Committee meeting.
- (9) You must make a decision that falls within the range of decisions a reasonable trustee body could make. This is in line with the Charity Commission's guidance on decision-making.
- (10) You should take into account the view expressed by the Commission referred to in paragraph 7.9 above.

7.11 Each of these considerations is set out in more detail in the Charity Commission's guidance on decision-making by charity trustees (CC27). This makes it clear that some of these factors are inter-related e.g. a member of the Sub-Committee who takes into account the interests of the Council as local education authority is unlikely to be acting in good faith and solely and exclusively in the best interests of the Charity. The Commission's guidance is available here:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/476870/CC27.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476870/CC27.pdf)

#### 7.13 Disposal

7.13.1 Should, having considered the position in the light of the legal advice set out above, the Sub Committee wish to proceed with a disposal to the EFSA in accordance with the previously agreed heads of terms then it is recommended that the Sub Committee should authorise the Officers to consult with the Charity Commission in relation to the basis for the proposed disposal to the ESFA and, after taking into account any regulatory advice or guidance the Commission may have to offer, take all and any such steps as are required in order to facilitate such disposal.

### 8. FINANCIAL IMPLICATIONS

8.1 The financial implications of the options open to the Sub-Committee in relation to the Ground must be taken into account by the Sub-Committee when they are in a position to review the options report and Landscape Master Plan, elsewhere on tonight's agenda.

## 9. BACKGROUND PAPERS

The documents to which the Sub-Committee should refer, and which have been relied upon in the preparation of this report, are noted in paras. 1.5 and 1.6 above. They are either attached to reports to tonight's meeting, or are already published on the Council's website and hyperlinks have been provided to them and hard copies will be available at your meeting.