

READING BOROUGH COUNCIL

REPORT BY HEAD OF LEGAL AND DEMOCRATIC SERVICES AND CHIEF VALUER

TO:	THE HEIGHTS FREE SCHOOL SUB-COMMITTEE			
DATE:	11 OCTOBER 2016	AGENDA ITEM: 4		
TITLE:	PROPOSAL FROM THE EDUCATION FUNDING AGENCY			
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 Minute 3 of the Sub-Committee's meeting on 12 July 2016, this report advises the Sub-Committee of a revised proposal which has been received from the Education Funding Agency (EFA) in respect of the acquisition of part of Mapledurham Recreation Ground/Playing Fields (the Ground) for the purpose of building a new school for The Heights Free School.
- 1.2 The Sub-Committee had delegated authority, with the support of Officers, to discharge the Council's functions as sole charity trustee for the Recreation Ground Charity at Mapledurham (the Charity), and has a duty to make all decisions in what it considers to be the best interests of the Charity in order to advance its charitable objects. Therefore, any decision made in respect of the EFA proposal must be in line with all relevant charity law and other legal restrictions.
- 1.3 The EFA proposal is that the school will require the transfer of 1.231 acres of land at the Ground, within a total specified area of 2.7 acres. This wider area is shown on the **attached plan (Appendix 1)**, hatched green within a red boundary.
- 1.4 The revised EFA proposal is at **Appendix 2**. Within its submission the EFA has identified a draft initial layout (Fig. 1 of Appendix 2) showing the indicative area of where the 1.231 acres will be located. It has also confirmed that the EFA has no intention of building in a way that inhibits access to the pavilion or playing fields. However it is possible that during the planning process and further detailed SI the layout of the school may need to change, albeit that it would always remain within the 2.7 acre site.
- 1.5 Despite being asked to do so, the EFA have not been prepared to confirm where the 1.231 acres of land they require for the school will be located within the wider area. This is because they consider that the greater area of 2.7 acres provides them with some flexibility should some changes be needed to the initial design lay-out, for example following intrusive survey works.
- 1.6 The revisions made by the EFA to the proposal considered by the Sub-Committee in July 2016 are as follows:

- The 2.7 acre area requested has been re-drawn to provide for at least a 3 metre gap between the site and the existing Pavilion and tennis courts (see Appendix 1).
 - The school hall and MUGA will be available for community use, subject to charges to users at affordable rates.
 - The Charity will provide the school with access to one sports pitch, for which it will pay a nominal usage charge, which meets the Grass Pitch Quality Standard. There is an obligation on the Charity to bring one pitch up to the Grass Pitch Quality Standard (which can be reviewed on the FA website).
 - Recognition that the future management arrangements for the Ground will be for the Council as trustee of the Charity to determine, and reiteration that the school will be willing to cooperate with any such arrangements put in place.
- 1.7 The EFA proposal includes a total payment from the EFA to the Charity of £1,360,000 (£1.36M). In this regard, the EFA consider the purchase price for the unspecified 1.231 acre site to be £30,775 (at £25k an acre based on their Red Book Valuation).
- 1.8 The EFA proposal was made on the basis that it was open for acceptance for a period of 16 weeks, until 14 October 2016. Therefore the EFA are looking for the Council, as trustee of the Charity, to make a decision on the proposal by this date. EFA are aware that it is impossible for a final decision to have been reached by 14 October 2016 because much information is still outstanding and a process of consultation (with the public and the Charity Commission) is required. However, they have a timetable for applying for planning permission in order to get the school ready for occupation in September 2018 which requires a decision "in principle" by 14 October 2016 so that they can proceed with design work and the planning application. If the Sub-Committee's decision is to progress the EFA offer, then the Charity will not be contractually committed to proceed with the sale until contracts have been exchanged and the EFA will have to take comfort from the Sub-Committee's approval to proceed, subject to such conditions as the Sub-Committee deem appropriate.
- 1.9 The EFA are prepared to accept a condition that, once the site design has been confirmed as part of the planning application, the Sub-Committee has 12 weeks (from receipt of the site plans) to comment on and finally agree the 1.231 acre area and associated access to the school and access during the construction period; and to consult with the beneficiaries upon the scheme. The Sub-Committee may impose any other conditions they feel necessary on their "in principle" decision on the EFA's proposal.
- 1.10 On 29 September 2016, the Chair received a letter from Gordon Watt, Chairman of the Mapledurham Playing Fields Foundation, setting out and attaching what is described as an alternative proposal to that submitted by the EFA, under the heading 'Fit4All'. This is to undertake the enhancement, management and operation of the Mapledurham playing fields with a 25 year lease. This is **Appendix 4**.

NB - a more detailed proposal on 'Fit4All' was received from Mr Watt on the day of publication of this report, and this will be the subject of a further report to the Sub-Committee, which will follow, under a separate agenda item.

- 1.11 The following documents are attached:

Appendix 1 - Revised plan showing boundary change to 2.7 acre site
Appendix 2 - Revised EFA Proposal

Appendix 3 - A new home for The Heights - Consultation Proposal by The Heights Free school for a site at the Mapledurham playing Fields

Appendix 4 - Mapledurham Playing Fields Foundation - letter dated 29 September 2016 and enclosed leaflet onm 'Fit4All'.

- 1.12 The Sub-Committee should read this report in conjunction with the report by the Leisure and Recreation Manager on the impact of the EFA proposal on the Ground and Pavilion which is also on tonight's agenda; and also the latest proposal on 'Fit4All', referred to above, which will be the subject of a further report, to follow, on the agenda. No decision should be taken until both have been considered.

2. RECOMMENDED ACTION

2.1 That the EFA revised offer, at Appendix 2, be received.

2.2 That the EFA be informed that there is a lack of clarity within its proposals which results in the members of the Sub-Committee being asked to make a decision without full facts of the effect of the proposal on the Ground, in particular concerning the location of the 1.231 acres that it is proposed to be transferred for the school site, and its impact on the playing areas and sports pitches at the Ground.

2.3 That, notwithstanding this unsatisfactory circumstance, if the Sub-Committee is satisfied that, in principle and without creating any binding legal commitment, the EFA'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) the Sub-Committee advise the EFA that they are prepared to continue to discuss the revised proposal, subject to the EFA:

2.3.1 Clarifying the location of its 1.231 acre site at the earliest opportunity.

2.3.2 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.

2.4 That, subject to the EFA carrying out the actions identified in section 2.3 above, the Sub-Committee should:

2.4.1 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 EFA proposal (including in particular any enhancement of the amenity value attributable to the EFA proposal).

2.4.2 Consult with the public and the Charity's Management Committee on the basis set out in section 8 of this report.

2.4.3 Consult with the Charity Commission on the basis set out in section 8 of this report.

2.5 That it be noted that a further submission regarding the Ground is expected to be made by representatives of the Mapledurham Playing Fields Foundation and that the Sub-Committee will consider any proposal if it is made.

3. POLICY CONTEXT

- 3.1 Reading Borough Council holds the Ground in its capacity as charity trustee of 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. This duty applies in respect of the sub-committee's consideration of the proposal submitted by the EFA which is referred to in paragraph 4 below.

- 3.3 At its meeting on 10 July 2016 this Sub-Committee resolved:

- (1) That the EFA proposal be considered in more detail, with the benefit of independent professional property and legal advice with a view to deciding whether to accept or reject the offer set out in the proposal;
- (2) That further meetings of the Sub-Committee be arranged to consider these matters in public, with independent legal and property advice; and
- (3) That officers seek confirmation from the EFA that it will meet the cost of obtaining independent legal and property advice for the purpose of reaching an informed decision on the proposal.

- 3.4 With regard to (3) above, the EFA have agreed to instruct their solicitors to provide an undertaking to meet the cost of obtaining legal and property advice up to an agreed maximum of £20,000 plus VAT in respect of the Charity's legal costs; and up to £7,500 plus VAT in respect of the Charity's property costs. The EFA has not agreed to cover further costs at the moment, and any further requests will need to be made and approved following the Sub-Committee meeting, the Sub-Committee should take this position into consideration when reviewing the EFA proposal.

4. THE POSITION

4.1 Revisions to Original EFA Proposal

Since your last meeting, Officers have been in regular contact with the EFA regarding their original proposal to get the EFA to clarify its proposals so that they can be considered by the Sub-Committee. The salient areas are as follows:

4.1.1 The actual area which is required

Whilst the EFA has confirmed that the extent of the fenced area for the school is 1.231 acres it has not been able to give a categorical assurance where this will be located within the larger 2.696 acres. The EFA has however advised that pedestrian

access would be available from the current pavilion to the Ground. The indicative 1.231 area is shown on the original consultation document and this will be the basis of any consultation. However this plan appears to identify that a larger area than the 1.231 acres will in effect be 'sterilised' ie the rear boundary of the school does not appear to abut the current boundary thereby leaving an area which will have minimum amenity value [and which will become a maintenance liability].

The proposal would appear to affect 2 existing pitches as shown at Appendix 2. However in the event that the 1.231 acre site requirement is amended then upto 3 pitches may be affected. There are no proposals within the EFA submission for these to be replaced - please see Leisure & Recreation Manager's report elsewhere on today's agenda. The Sub-Committee needs to know as a matter of urgency how many of the existing pitches will be affected before carrying out the consultation and before a valuation can be undertaken regarding the amenity of the land to be lost.

4.1.2 Access to the proposed school site

The EFA has advised that it is proposed to use the existing access way to service the site. The EFA advise that the actual works required to the access road will only be finalised if a planning application is submitted. This may involve widening of the access road and/or providing passing bays and provision of pedestrian access.

The EFA advise that use of the school car park (within the 1.231 acres) may be used after school hours and during holidays. In addition the EFA may upgrade the existing car park (outside the 1.231 acres) to allow for parent parking. The EFA will need to confirm what works it expects the Charity to carry out.

4.1.3 The sum of £1.36M

This will be ring-fenced for use by the Charity. However the EFA has decided that the new school will require access to a pitch to carry out its curriculum and that the school will pay a nominal charge; and the EFA has also advised that whilst the sum of £1.36m is available for the Charity, it is also subject to the Charity upgrading a pitch to enable the school to use it. The cost of this is currently being obtained. Please also see the Leisure & Recreation Manager's report on today's agenda.

4.1.4 Community Use of School Hall and MUGA

The EFA has confirmed that the school will allow the proposed MUGA and hall to be used by the community outside school use at a cost which has yet to be advised but which will be at a level to cover the school's costs.

4.1.5 Building Works

If the proposal by the EFA for the school proceeds then the school will need to be constructed. Any construction process is likely to disrupt access to the playing fields and also may compromise use of additional pitches during the construction period. The EFA is unable to advise of the details of construction and additional effect on the land required. However, a licence to occupy for a short period would not constitute a disposal for which the Charity Commission's consent or a surveyor's report would be required.

It is believed that the EFA's money offer will be inclusive of any licence fee.

4.2 Other Updates

4.2.1 Advisors

The EFA has confirmed that it will pay the Charity's legal and surveyor's fees up to a maximum of £20,000 plus VAT in respect of the Charity's legal costs; and up to £7,500 plus VAT in respect of the Charity's property costs whether the matter reaches completion or not. Further costs are likely to be incurred if the EFA proposal proceeds, and further requests will need to be made and approved by the EFA.

The Trustees have appointed Bruton Knowles, following a competitive process, to advise on the following:

- Reviewing the offer/heads of terms made by the EFA.
- Providing strategic advice and negotiate the offer made by the EFA.
- Providing a report in compliance with The Charities (Qualified Surveyors' Reports) Regulations 1992 for the consideration of the Sub-Committee to enable a decision to be made on whether the proposed disposal is in the best interests of the Charity.
- Providing a report on the amenity value of the part of the Ground which would not be purchased by the EFA to enable the Sub-Committee to assess the scope for advancing the Charity's objects (and its beneficiaries) if the Sub-Committee were to accept the EFA's offer, compared with the amenity value of the Ground if the EFA's offer is not accepted.
- Attending meetings of the Sub-Committee and beneficiaries to answer questions on the proposed disposal.

4.2.2 'Fit4All'

Officers have met with representatives of the Mapledurham Playing Fields Foundation (MPFF) - a new charity formed in June 2016 who have advised that they are preparing an alternative proposal for the Playing fields. The Chairman, Gordon Watt, wrote to the Chair of the Sub-Committee on 29 September 2016, enclosing a leaflet on 'Fit4All' which proposes that the Foundation undertakes the enhancement, management and operation of the Ground with a lease for 25 years: both are attached at **Appendix 4**.

MPFF's objects are:

"To provide or assist in the provision of facilities at Mapledurham playing fields in the interests of social welfare for recreation or other leisure time occupation of individuals who have need of such facilities by reason of their youth, age infirmity or disability, financial hardship or social circumstances with the object of improving their conditions of life".

The representatives have asked if the EFA proposal could be delayed pending the submission of their proposals later this year. The Sub-Committee is asked to note the position and confirm that once received it will consider a proposal from the MPFF [but Officers do not consider that it is in the best interests of the Charity to delay proceeding with the EFA proposal].

As explained at para. 1.10 above, a more detailed proposal on 'Fit4All' was received from Mr Watt on the day of publication of this report, and this will be the subject of a further report to the Sub-Committee, which will follow, under a separate agenda item.

4.2.3 Asset of Community Value

The Mapledurham Pavilion, access road and car park is now an Asset of Community Value. It should be noted that under the Localism Act the proposals from the EFA would not trigger a disposal.

5. **IMPACT ON MAPLEDURHAM RECREATION GROUND**

- 5.1 There is a separate report on tonight's agenda, from the Leisure and Recreation Manager, which explores the possible impact of the EFA proposal on the Ground and Pavilion. This cross-refers to the EAF proposal, and should be read in conjunction with this report, before the Sub-Committee takes a decision on the EFA's proposal.

6. **DECISION**

- 6.1 In line with the duty to act in the best interests of the Charity mentioned above, the Sub-Committee is asked to consider and decide on the most appropriate response to the EFA proposal at this stage.
- 6.2 The EFA has made it clear that it is unable to provide further information on the exact location of the school and access arrangements until such time as it proceeds through the planning process. This leaves the Sub-Committee in a position where you are being asked to agree to a proposal whilst not being in full possession of all of the facts.
- 6.3 The valuation of the school site may change when the exact location of the school is known, and there is a clearer understanding of the number of existing pitches which will be affected by it.
- 6.4 The EFA has also advised that it will not proceed to further work unless the Sub-Committee agrees, in principle, that the proposals are in the best interest of the Charity.
- 6.5 The Sub-Committee should refer to paragraph 9, and in particular para. 9.3, in respect of the decision you are being asked to make in respect of the EFA proposal.

7. **COMMUNITY ENGAGEMENT AND INFORMATION**

- 7.1 In February and March 2016, the Council (as local education authority) undertook a public consultation exercise on behalf of, and at the request of, the EFA, in respect of five sites proposed by the EFA for the new The Heights Free School. The results of this consultation were handed to the EFA.
- 7.2 The outcome of the consultation is set out in the EFA proposal, at appendix 1: see para. 2.
- 7.3 This report is recommending that the Trustees advise the EFA that they are prepared to continue to discuss the revised proposal, and to consult on it in line with the requirements of the Charities Act 2011. This will require the Council, as trustee of the Charity, to undertake the following consultation:

- (1) Under section 121 of the Charities Act 2011, the Sub-Committee should give public notice of any proposal to dispose of part of the Ground and invite representations from the public which it should then consider before taking any final decision. This consultation should allow for at least 1 month during which

representations can be made, but Officers recommend that a period of 6 to 8 weeks would be appropriate.

(2) Officers also recommend that the Sub-Committee should consult with the members of the Charity's Management Committee in relation to any proposal. This consultation should be carried out during the period of public consultation.

7.4 As indicated at section 8.6 of this report, the Charity Commission should also be consulted in relation to any proposal to dispose of part of the Ground or use by the school.

7.5 The consultations should make clear that any amendments that the EFA are obliged to make to the site plan and designs submitted at the request of planning officials, the planning committee, or statutory consultees as evidenced through documentation, will be subject to approval by the Sub-Committee but will not trigger a further consultation providing that the build area remains within the designated 2.7 acres.

8. EQUALITY IMPACT ASSESSMENT

8.1 Under the Equality Act 2010, Section 149, a public authority 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.

8.2 The Charity will not carry out an Equality Impact Assessment at this stage. When the EFA has confirmed the location of the 1.231 acre site and the consultation has been carried out an Equality Impact Assessment will be carried out.

9. LEGAL IMPLICATIONS

9.1 As indicated earlier in this report, the Sub-Committee has been delegated the power to consider the EFA proposal by the Council acting in its capacity as sole corporate trustee of the Charity.

9.2 The principal duty owed by the Council (and therefore the Sub-Committee) in relation to consideration of the EFA proposal is whether it is 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 for use by the school is effectively to decide whether or not the EFA proposal will (or will not) enhance the amenity value of the Ground for the Charity's beneficiaries, taking into account 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 EFA 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.

9.3 As indicated earlier in this report, Officers' recommendation is that the terms of the EFA's offer are not sufficiently clear to enable the Sub-Committee to make a decision to dispose of part of the Ground on the basis set out in paragraph 9.2. The decision for the Sub-Committee is therefore whether they now consider:

(1) that the EFA offer as it has currently been articulated is not in the best interests of the Charity (i.e. because it does not enhance the amenity value of the Ground or, in line with Officers' recommendation) and should not therefore be proceeded with any further **(option (1))**; or

- (2) that the EFA's offer is, in principle and without creating any binding legal commitment, 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, subject to the conditions recommended by Officers (and any other conditions the Sub-Committee thinks are appropriate and necessary) (option (2)).
- 9.4 The Sub-Committee should take into account that there is a specific requirement under the Charities Act 2011 (section 117) which means that the Sub-Committee could not decide to enter into any legally binding agreement to sell part of the Ground for the purposes of the school 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 are the best which are reasonably obtainable for the Charity. Bruton Knowles have been instructed to prepare a report for the Sub-Committee on this aspect as well as in relation to the amenity value of the part of the Ground which would not be purchased by the EFA, taking into account the proceeds of sale available to the Charity. Any proposed disposition must be advertised in accordance with any recommendations in the report (unless the report advises that such advertisement would not be in the interests of the Charity). This provision will be relevant in due course if the Sub-Committee decides to pursue option (2), albeit subject to the clarification by the EFA recommended by Officers.
- 9.5 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. This provision will also be relevant in due course if the Sub-Committee decides to pursue option (2), albeit subject to the clarification by the EFA recommended by Officers.
- 9.6 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 unless the proceeds of sale are used to purchase replacement property with an equivalent or enhanced amenity value (which is not proposed by the EFA) or, in line with the Charity Commission's own guidance, if the disposal is of only a small proportion of the Charity's land that will not affect its ability to carry out its charitable recreational object (when the Charity may be able to dispose of the land using the statutory power of disposal under the Trusts of Land (Appointment of Trustees) Act 1996). The Charity Commission will therefore need to authorise a disposal of part of the Ground for use by the school, unless the Commission accepts that the part of the Ground being disposed of is "small" and will not affect the Charity's ability to carry out its object. In either case, therefore, the Charity Commission must be consulted in relation to any proposal to dispose of part of the Ground and will expect that to have happened before any final decision to dispose of part of the Ground to the EFA is taken by the Sub-Committee. Again, this is relevant if the Sub-Committee decides to pursue option (2), albeit subject to the clarification by the EFA recommended by Officers.
- 9.7 In reaching the decision referred to in section 9.3 above, the members of the Sub-Committee have a number of obligations:
- (1) They must act in good faith and exclusively in the interests of the Charity i.e. in a way which they honestly believe to be in the Charity's best interests.

- (2) They must act within their powers (as explained in section 9.6 above, the Charity Commission will need to be consulted in relation to this should the Sub-Committee be minded to pursue option (2) and may need to authorise any disposal).
- (3) They must ensure that they have any legal, property or other advice they consider is required in order to inform and support their decision-making. The Sub-Committee should have regard to this report (including the legal advice set out in it), the Appendices to this report, and the report by the Leisure and Recreation Manager on the impact of the EFA proposal on the Ground and Pavilion which is also on tonight's agenda. The Sub-Committee should also consider whether there is any other advice they believe is required before making a decision.
- (4) They must ensure that they are adequately and properly informed and have all relevant information.
- (5) They must ensure that they 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 EFA 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 EFA 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 EFA's proposal in line with option (2) above will incur any cost for the Charity.
 - The Charity Commission's guidance on public benefit, which is relevant to most 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) They 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 by the Council as local education authority at the behest of the EFA).
- (7) They 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 EFA'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.
- (8) They 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.

- 9.8 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

- 9.9 The same (or similar) considerations to those outlined above in section 8 will apply to any subsequent decision by the Sub-Committee to enter into a binding agreement with the EFA to dispose of part of the Ground for the purposes of the school. As indicated above, the decision Officers consider the Sub-Committee should make at this stage is whether or not, in the light of the information which is available at this stage, the EFA proposal 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 should therefore be pursued, subject to the conditions recommended by Officers.

10. FINANCIAL IMPLICATIONS

- 10.1 The EFA proposal includes a financial offer of £1.36M.
- 10.2 If the EFA proposal is ultimately accepted then these funds will belong to the Charity and must be applied solely and exclusively to meet the charitable, recreational object of the Charity. An understanding of how those funds could be applied is therefore an intrinsic part of assessing whether the EFA 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 (as referred to in section 8.3 above).
- 10.3 Officers recommend that the Sub-Committee should cross-refer to the separate report prepared by the Leisure Manager on tonight's agenda on the impact on the EFA Proposal on the Ground and pavilion, which sets out two costed scenarios for ways in which the proceeds of disposal currently on offer from the EFA could be used to enhance the amenity value of the Ground. The Sub-Committee will note that the impact on amenity value appears to depend to a significant extent on that part of the Ground which is actually used to build the school within the total area specified by the EFA of 2.7 acres (see section 1.3 above). Officers' view is that this will need to be addressed by Bruton Knowles in preparing their report in relation to the Ground.

11. BACKGROUND PAPERS

- 11.1 [Structural survey of Mapledurham Pavilion January 2016]
- 11.2 Appendix 1 - Revised plan
- 11.3 Appendix 2 - EFA Proposal
- 11.4 Appendix 3 - A new home for the heights - Consultation Proposal
- 11.5 Appendix 4 - 'Fit4All' - Letter and leaflet of 29 September 2016 from Gordon Watt