

READING BOROUGH COUNCIL

REPORT BY HEAD OF LEGAL AND DEMOCRATIC SERVICES AND CHIEF VALUER

TO:	MAPLEDURHAM PLAYING FIELDS TRUSTEES SUB-COMMITTEE		
DATE:	21 June 2017	AGENDA ITEM:	5
TITLE:	THE HEIGHTS PRIMARY SCHOOL - PLANNING APPLICATION AND CONSULTATION		
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 5(3) of the Heights Free School Sub-Committee's meeting on 11 October 2016, this report has attached the Planning Statement for The Heights Primary School, prepared for the Education Funding Agency (EFA) by TP Bennett in March 2017. This is to permit the Sub-Committee to see the intended location of the 1.231 acre site for the school at the Mapledurham Playing Fields, and to be satisfied that the application is acceptable to the Council as Trustee of the Recreation Ground Charity. The Planning Statement is attached at **Appendix A**. It may be cross-referred to a more detailed set of planning application documents which can be accessed through the following dropbox:
<https://www.dropbox.com/sh/ef6mb1glqksjqbe/AAAM-INson7PxfJ6SivwvQrxa?dl=0>
- 1.2 Further to Minute 11(6) of the re-named Mapledurham Playing Fields Trustees Sub-Committee meeting on 20 December 2016, the report further has attached the draft consultation document on the EFA's proposal to purchase 1.231 acres of land at Mapledurham Playing Fields and Recreation Ground (the Ground) for the purpose of building a new school for The Heights Free School This is currently work in progress and is being prepared by officers with help from Veale Wasborough Vizards LLP (VWV), who are providing legal advice to the Council as Trustee on the EFA proposal., It is attached at **Appendix B**. The Charity Commission will be made aware of the consultation document and method of consultation and any issues or feedback raised by them will need to be taken into account.
- 1.3 Under Legal Implications, the report updates the Sub-Committee on the view taken by the Charity Commission on 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 EFA, including the establishment of this Sub-Committee to manage the conflict. Proceedings were also commenced in the High Court on 12 December 2016 to remove the Council as Trustee of the Charity. The Claimant has withdrawn the proceedings and has agreed pay the Council costs in defending the proceedings.

- 1.4 The EFA's proposal and offer were reported to the Sub-Committee at its meeting on 20 December 2016. They were that the Secretary of State for Communities and Local Government (acting by the EFA) will acquire a 125 year lease of 1.231 acres of land at the Ground, in the sum of £1.36M. The Sub-Committee resolved, at Minute 11(4) that the EFA's offer was, subject to contract, capable of being in the best interests of the Charity (ie considered to be capable of enhancing the amenity value of the Ground) and should therefore be pursued in line with the Heads of Terms which were also submitted to that Sub-Committee meeting.
- 1.5 The Council has also received an alternative proposal headed 'Fit4All' from the Mapledurham Playing Fields Foundation, which was the subject of reports to both of your above-mentioned meetings. A copy of the Fit4All proposal is attached at Appendix C.

2. RECOMMENDED ACTION

- 2.1 That the Sub-Committee notes the officer comments on the Planning Statement (Appendix A), set out in para 4.4 below, and considers the Planning Application the Planning Statement and their likely effect on the upon the amenity value of the Ground so that the Planning Application which is proposed to be submitted by the EFA is acceptable to the Sub-Committee;
- 2.2 That the Sub-Committee notes and comments on the public consultation document at Appendix B and agrees that officers progress this, subject to the final document being agreed by members of the Sub-Committee via e-mail communication, and taking into account any comments that the Charity Commission may make.
- 2.3 That the Sub-Committee notes that the legal challenge referred to in paragraph 1.3 was unsuccessful and that the Complainant has agreed to pay the Council's legal costs.
- 2.4 That the Sub-Committee notes 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).

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 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) and accordingly advises the EFA that they are prepared to continue to discuss the revised proposal, subject to the EFA:

(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 EFA 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 EFA proposal (including in particular any enhancements of the amenity value attributable to the EFA 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 as follows:

(4) That, taking into account the Property Report, the Amenity Report and the legal advice and other information set out in the report, the EFA'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;

4. PLANNING APPLICATION

4.1 The EFA submitted their planning Documentation and associated documentation to the Trustees on 28 March 2017.

4.2 The following detailed documents have been prepared and are available by dropbox: <https://www.dropbox.com/sh/ef6mb1qlgksjqbe/AAAM-INson7PxfJ6SivvwQrxa?dl=0>

- Application Drawings (David Miller Architects), including landscaping proposals (Ryder Landscape Consultants)
- Design and Access Statement (David Miller Architects)
- Planning Statement (tp bennett)
- Sports Pitches Agronomic Assessment (Tom O'Hare)
- Transport Assessment (MLM)
- Framework School Travel Plan (MLM)
- Energy Statement (BSD)
- Sustainability Statement (BSD)
- BREEAM Pre-Assessment Report (ZED)
- Flood Risk Assessment (CampbellReith)
- Surface Water Management Plan (CampbellReith)
- Archaeological Desktop Study (Oxford Archaeology)
- Contamination Desktop Study (RPS)
- Noise Assessment (Accon UK for CampbellReith)
- Air Quality Assessment (Accon UK for CampbellReith)
- Arboricultural Planning Statement, incorporating Arboricultural Impact Assessment (ADAS)
- Preliminary Ecological Appraisal (CampbellReith)
- Phase 1 Preliminary Risk Assessment and Phase 2 Environmental and Geotechnical Site Investigation Report (RPS)
- Utilities Statement (BSD)
- Statement of Community Involvement (tp bennett) (not yet completed)

These documents are largely finalised but remain in draft pending the outcome of the Sub-Committee's consideration. Hard copies will be circulated to Sub-Committee members on request. Officers understand that the planning application will be submitted on-line.

4.3 The accompanying Planning Statement, prepared for the EFA by TP Bennett, is at **Appendix A**. This includes, at para. 3.1.2, the site location map, with the site propped for the school shown outlined in blue. It comprises the north-western corner of the Mapledurham Playing Fields (MPF), together with the access road from Upper Woodcote Road and the informal car park adjoining the current Mapledurham Playing Fields Pavilion.

4.4 TP Bennett have asked that the Sub-Committee's attention is drawn to the following issues:

- (1) *"The land proposed to be purchased from the [Charity] (edged blue on the site location plan) forms only part of the application site. The formal application site also includes the access road from Upper Woodcote Road, the MPF car park, and land in the northwestern corner of the site; works are proposed to widen the access and to improve the car park. The EFA will therefore need to serve notice on RBC as Trustee [of the Charity] (under the planning regulations) when it submits the application."*

Officer view: as regards works to the access road and car park - need to ensure that the EFA is paying for this work and does not form part of the £1.36m payment.

- (2) *"The area of land in the northwestern corner of the MPF site falls outside the school boundary. The intention at this stage is to fence off this area. It may be that this land could provide additional MPF or school parking."*

Officer view: the land cannot be fenced off but must continue to form part of the land enjoyed by the public. It may be the case that the land will be used in the future for overspill car parking.

- (3) *"RBC Core Strategy Policy CS28 states that development of designated open space land may exceptionally be allowed if recreational enhancements outweigh the loss of open space. The Planning Statement includes a list of possible enhancements to the MPF recreational facilities that would be enabled through the purchase of the site by the EFA. The detail of such enhancements is clearly a matter for the [Charity] and its beneficiaries, but it is likely that RBC as Local Planning Authority (LPA) will seek to link their delivery to the school development by way of planning obligation (ie S106 agreement). It may be that the sub-committee uses its forthcoming consultation to canvass views on what these improvements should comprise and share them with the LPA [local planning authority] accordingly."*

Officer view: The EFA has only asked the Council as Trustee of the Charity to improve one pitch. The Trustees have agreed to carry out this work. Other enhancements which may be undertaken will be the decision of the Trustees and not the Local Planning Authority.

- (4) *"The [Charity] will be seeking the authority of its beneficiaries shortly to allow sale of the school site to the EFA. This exercise will likely overlap with the planning application process. The EFA intends arranging an exhibition after Easter to enable local people to view the application proposals in detail. The EFA envisage this would be on two weekday evenings (say 4-7.30pm), one at a venue near the MPF, the other at a town centre location. There would also be relevant announcements in the press and social media."*

Officer view; The legal requirement under the Charities Act 2011 is to seek representations from the Charity's beneficiaries (rather than their authority), which will be dealt with via the proposed consultation. The town centre venue should ideally be Caversham town centre.

4.5 Representatives from the EFA will be present at the Sub-Committee meeting to talk to their planning application and associated documents, and to answer questions.

4.6 In line with their decision at their meeting on 11 October 2016 (as referred to in paragraph 3.3 of this report), the members of the Sub-Committee are asked to consider the Planning Statement and planning application and their likely effect on the upon the amenity value of the Ground so that the planning application which is submitted is acceptable to the Sub-Committee. In doing so, the members of the Sub-Committee must not take into account the interests or policy of the Council as local planning authority, nor as local education authority.

4.7 In this regard, the sort of planning issues which it may be appropriate for the Sub-Committee to consider are listed below:

- Access road to the site
 - to be ungraded to allow two-way traffic

- improved lighting and security
 - emergency access to site
- Car park at playing fields
 - to be upgraded and resurfaced
 - possible capacity issues if shared with school
 - improved lighting and security
 - use of land owned by the Council outside the area owned by the Charity for overspill parking
- Site location
 - The site has moved to the North East however the movement is not considered material
 - Within 1.231 acres
 - Precludes the envisaged extension of the Pavilion
- Impact on playing fields
 - School MUGA
 - Loss of 5-a-side pitches
 - Boundary treatments
 - Loss of trees
 - Impact on visual amenity
 - Greater use of playing fields arising from increased footfall to school
- Community Use Agreement
 - School grounds and facilities
 - School hall
 - Disability access / use of facilities

4.8 These issues can be cross-referred to the consultation document at **Appendix B**.

5. CONSULTATION DOCUMENT

5.1 A detailed public consultation proposal is being prepared by officers and VWV and is attached in draft at **Appendix B** for consideration. The purpose of the consultation proposal is to seek the views of the Beneficiaries of the Charity on four issues:

- 1) If the Council were to grant a lease to the EFA as Trustee of the Charity, how should it consider applying the premium of £1.36M in order best to enable the Charity to use the Ground for recreation?
- 2) Is the grant of the lease to the EFA likely to enhance the amenity value of the Ground for Beneficiaries?
- 3) Or should RBC prefer the Fit4All proposal made by the Mapledurham Playing Fields Foundation?
- 4) If the lease is granted to the EFA, should the Council take steps to impose a legal restriction on the remainder of the Ground in order to ensure that it can only be used by the Charity for recreational purposes in the future?

These issues are expanded and commented upon in the introduction to the draft consultation document at Appendix B.

5.2 The Beneficiaries of the Charity are the inhabitants of the Parish of Mapledurham and the Borough of Reading without distinction of political, religious or other opinions.

5.3 The Amenity Report prepared for the Sub-Committee's meeting on 20 December 2016 commented on how the funds received from the EFA could be applied in order to enhance amenity value. Officers consider that this is a matter that should be consulted upon with the Charity's beneficiaries as part of the wider consultation on

the EFA's proposal that will be carried out and considered by the Sub-Committee prior to any exchange of contracts with the EFA.

5.4 The Sub-Committee will be aware that the Council has, since the 1980s, established the Mapledurham Playing Fields Management Committee (MPFMC), which exercises a general supervision over the activities at the playing fields and ensures that the objects of the charity are achieved. MPFMC has a specific function to ensure that adequate consultation is carried out with the users of the playing fields by liaison with the Ground's Users' Organisations, with whom it shall organise a meeting at least once a year.

5.5 The Sub-Committee is asked to consider the following proposals for the process and timetable for consultation with the Beneficiaries (and others):

1. Meet wider user groups representative (Week 1)

Launch

Workshop to launch consultation

- Friends of Mapledurham Playing Fields
- Caversham Trents Football Club
- Mapledurham Lawn Tennis Club
- User Representatives
- RBC Parks
- Users of Pavilion
- Mapledurham Playing Fields Management Committee
- Fit4all

2. Publish consultation on line (RBC website) and distribute leaflets to residents living in Mapledurham Parish and Mapledurham ward, advertise consultation on Council website and notify local press. Note that the Beneficiaries are all residents in Reading not just those who live in Mapledurham ward. (Week 1)

3. Exhibition at 1 site (Caversham Library) (Week 5)

4. Consultation closes (Week 7)

5. Report findings to Management Committee (Week 9)

6. Report findings to Sub-Committee (Week 10)

5.6 The above consultation process will be organised and coordinated by Ben Stanesby, Recreation Manager. He and the other officers supporting the Sub-Committee will report back to the Sub-Committee on the outcome of the exercise.

5.7 The draft consultation document may change to reflect any comments received from the Charity Commission.

5.8 The consultation will be through the Council's website. It will be the subject of a Council press release, and advertised through the website, and in Council buildings and amenities in Caversham, including Caversham Library, local community and children's centres, community notice boards, and parks and playgrounds. Details will also be circulated to all libraries and schools in Reading.

5.9 A Leaflet will be distributed by post to the properties in the Parish of Mapledurham and to properties that lie within 400 metres of Mapledurham Recreation Ground.

- 5.10 The consultation will give details of both the EFA and Fit4All proposals, and seek views on both (issue 3).

6. COMMUNITY ENGAGEMENT AND INFORMATION

- 6.1 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.

- 6.2 At your meeting on 20 December 2016 you were told that if the decision of the Sub-Committee was to proceed with the EFA's proposal, the Council, as trustee of the Charity, would need 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 recommended 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.

- 6.3 The Charity Commission has been consulted in relation to the EFA's proposal, and will be consulted on the consultation document at Attachment B.

- 6.4 The process and timetable for consultation with Beneficiaries is set out in para. 5.4 above.

7. EQUALITY IMPACT ASSESSMENT

- 7.1 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.

- 7.2 An Equality Impact Assessment will be carried out when the consultation with the Charity's beneficiaries and Management Committee has been carried out.

8. LEGAL IMPLICATIONS

- 8.1 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.

- 8.2 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 by way of a lease 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.

- 8.3 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 EFA'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 EFA providing an additional undertaking in respect of the Charity's costs which the Sub-Committee noted had been agreed for up to £35,000.
- 8.4 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 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. The Property Report considered at your meeting on 20 December 2016 addressed this requirement, as well as addressing the amenity value of the part of the Ground which would not be purchased by the EFA, 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 do not advise that the grant of a lease in line with the Heads of Terms should be advertised.
- 8.5 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.
- 8.6 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.
- 8.7 Since your last meeting the Charity Commission has written 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 EFA 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 EFA 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."

Conflict of Interest

- 8.8 The Charity Commission has also 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 EFA, 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 (please see **Appendix D**), 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

- 8.9 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 (and as explained above, the Charity Commission will again need to be consulted if, following consultation, the Sub-Committee be minded to authorise any disposal of land at the Ground to the EFA).
 - (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 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 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) 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 EFA).

(7) 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 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) 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.

(9) You should take into account the view expressed by the Commission referred to in paragraph 8.8 above.

8.10 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

8.11 The same (or similar) considerations to those outlined above will apply to any subsequent decision by the Sub-Committee to enter into a binding agreement with

the EFA to grant a lease of part of the Ground for the purposes of the school. As indicated above, the decision Officers consider the Sub-Committee should make at every stage is whether or not, in the light of the information which is then available, 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 any conditions recommended by Officers.

8.12 Fields in Trust

8.12.1 An approach has been received from Fields in Trust, (a successor organisation to the NPFA) regarding the possibility of the Trustees entering into a Deed of Dedication in respect of this site. This would place a restriction on the site in perpetuity, further supporting the object of the charity.

8.12.2 Provisions of the Deed of Dedication could however still allow the Trustees to dispose of charitable land, however the consent of FIT would also be required, which would involve replacement land and a further Deed of Dedication for that replacement land.

8.12.3 Charity commission Consent would also be required before a Deed could be entered into.

8.12.4 Officers believe however that this additional restriction should be considered further and should form part of the consultation process.

9. **FIT4ALL PROPOSAL**

9.1 The financial elements of the Fit 4 All proposal are predicated on the group being able to:

9.1.1 Access bank funding to meet a shortfall for funding its proposed works to the pavilion, estimated at £75,000 which assumes that WADRA and the S106 payment monies amounting to £185,000 are released - the group has advised that the loan application cannot be made until such time as a decision is taken by the Trustees to proceed with its proposal.

9.1.2 Obtain annual funding from Reading Borough Council in the sum of £21,000 per annum. This will require a decision by the Council's Policy Committee and is not something that this sub committee has the power to agree to.

The Fit 4 All proposal also assumes that the cost of repairs to the pavilion is in the region of £266,000 the latest estimate is that this sum may not be sufficient to restore or replace the pavilion.

10. **FINANCIAL IMPLICATIONS**

10.1 The EFA proposal includes a financial offer to pay a lease premium of £1.36M.

10.2 The lease premium 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 The Amenity Report to your meeting on 20 December 2016 commented on how the funds received from the EFA could be applied in order to enhance amenity value. Officers consider that this is a matter that should be consulted upon with the Charity's beneficiaries as part of the wider consultation on the EFA's proposal that will be carried out and considered by the Sub-Committee prior to any exchange of contracts with the EFA.
- 10.4 The question of how any funds which may ultimately be received from the EFA should be applied will be considered by a future meeting of this Sub-Committee, taking into account the outcome of the consultation with the Charity's Beneficiaries. The decision taken by the Sub-Committee on 20 December 2016 was that it was satisfied that the lease premium was capable of enabling 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 8.2 above) and that it was therefore capable of being in the interests of the Charity, albeit that any specific enhancements will need to be decided upon by the Sub-Committee in due course.
- 10.5 The Sub-Committee should note that, as local authority, Reading Borough Council has committed £85,000 of section 106 monies to the refurbishment of the Pavilion. The Warren and District Residents Association (WADRA) has indicated that it has in the region of £95,000 available to enhance the facilities at the Ground, but that it will not make these funds available if the EFA proposal proceeds.

11. BACKGROUND PAPERS

- Appendix A - The Heights Primary School - Planning Statement - TP Bennett for Education Funding Agency
- Appendix B - Draft consultation document & flyer
- Appendix C - Fit4All Proposal
- Appendix D - Recreation Ground Charity (Mapledurham) - 304328 - Letter from Charity Commission to VVV