



**Lord Agnew Kt DL**

Parliamentary Under-Secretary of State for the School System  
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Councillor Deborah Edwards  
Reading Borough Council,  
Civic Offices, Bridge Street  
Reading  
RG1 2LU

21<sup>st</sup> December 2017

Dear Councillor Edwards,

As you know, The Heights Primary School in Caversham opened in September 2014 on a temporary site. The school made an excellent start and is very popular with parents; I am delighted that it secured an outstanding rating by Ofsted.

The plan to invest in the proposed permanent site, Mapledurham Playing Fields, is of huge benefit to the school and the wider community. I am, however, gravely concerned for the school's future because of the ongoing uncertainty about whether your sub-committee will agree to the sale of the land proposed.

Whilst I appreciate that an appropriate and transparent process must be followed and that clearances are required from the Charity Commission, there can be no rationale for consideration of our offer taking nearly 18 months. I would welcome your reassurance that the decision making process is being sufficiently resourced and also for your suggestions about how the proposed timetable you have now shared with officials can be accelerated. I have asked my office to book a call with you.

I am sure you will agree that it is in all our interests to conclude this process as quickly as possible as it is causing distress to your beneficiaries, residents, parents, staff and children at the school.

I fully appreciate that the decision of the sub-committee can only relate to the benefits for sport and leisure on the fields and is subject to Charity Commission clearance. I also fully understand that the decision may well not ultimately be in our favour but what the school, pupils and parents need is certainty as soon as possible.

Yours sincerely,

THEODORE AGNEW



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Lord Agnew  
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Your Ref:  
My Ref: de/cjb/am  
Date: 9 January 2018

Dear Lord Agnew

### **Mapledurham Playing Fields and The Heights Free Primary School, Caversham**

Thank you for your letter of 21 December 2017 which was received on 5 January 2018, the contents of which are noted.

As I am sure you have been made aware by your civil servants, Reading Borough Council holds the Mapledurham Playing Fields (the "Ground") on a charitable trust for the provision and maintenance of a recreation ground for the benefit of the inhabitants of the parish of Mapledurham and the Borough of Reading. A school is not compatible with this charitable objective. The Ground itself is both permanent endowment and "specie" property, and any grant of a lease to ESFA, if that is what the Council as Trustee decides to do, will require the approval, as opposed to the "clearance", of the Charity Commission.

In such a circumstance, the form that that Charity Commission approval takes will depend upon the Commission's assessment of the impact of the grant of the lease on the amenity value of the Ground. If they conclude that the impact is small, they are likely to advise that the Council as Trustee may rely upon a statutory power under the Trusts of Land Act 2000. If they conclude that the impact is not small, they will need to make a scheme using their own powers under the Charities Act 2011.

As well as needing to be able to assess the impact of the grant of the lease on the amenity value of the Ground, the Commission will also make an assessment of the decision-making process that has been carried out by the Sub-Committee to whom the Council has delegated the power to consider the grant of the lease to the ESFA as Trustee. The purpose of this delegation has been to separate the decision-making role of the Council as Trustee from the authority's other statutory roles, including those of local education authority and planning authority, to avoid any suggestion that the interests of the Council as Trustee have been conflicted by the consideration of matters that are irrelevant to that role. This includes the specific education issues that you have raised in your letter.

The purpose of the meeting which officers advising the Trustees were invited to attend by the Commission was to assess the decision making to date and to give advice on the process going forward. The Charity Commission in its letter of 20 November 2017 confirmed that it is satisfied "that the Trustee has addressed all the elements of decision making" in terms of:

1. identifying and informing itself on factors relevant to making a decision, including holding a detailed public consultation exercise,
2. identifying and not considering factors that are irrelevant,
3. identifying and mitigating potential conflicts of interest.

In addition the Commission in its regulatory advice which has been issued to the Sub-Committee, and which has been shared with the ESFA, confirmed the steps which they expect the Sub-Committee to take going forward. In particular, the Commission expect the Sub-Committee to assess all of the options open to them in relation to the Ground (this is not just the ESFA proposal, but also a competing proposal put forward by another locally-based charity and looking at the status quo). They also require the Sub-Committee to prepare a master plan in relation to the way in which the lease premium could be applied to enhance the amenity value of the Ground.

The proposed grant of a lease to the ESFA is highly contentious and is actively opposed by a number of local residents, including the Trustees of the local charity I have mentioned. A significant number of complaints have already been made to the Charity Commission, hence their active regulatory interest in the Sub-Committee's decision making process to date and going forwards.

Your civil servants will no doubt have made you aware that one of the opponents of the proposed grant of the lease to the ESFA has already sought to take proceedings in the High Court against the Council to seek to have it removed as Trustee, which we successfully defended.

I note that you acknowledge that "an appropriate and transparent process must be followed and that clearances are required from the Charity Commission". It is imperative that proper legal and procedural advice is given to the Sub-Committee to allow its members to take a decision which is in line with charity law.

This means that the Sub-Committee must consider all relevant information and no irrelevant information. I am surprised that your civil servants have not advised you that the issues you raise concerning the school are irrelevant to the decision that the Council as Trustee has to take in respect of the ESFA proposal.

Further, I do not agree with your wide ranging statement that "there can be no rationale for consideration of our offer taking nearly 18 months". For the avoidance of doubt the steps that have been taken by the Sub-Committee in order to comply with charity law and all relevant regulatory requirements are as follows:

1. The amended ESFA proposal was considered by the Sub-Committee on 20 December 2016
2. At that meeting the Sub-Committee made an in principle decision that the ESFA proposal is capable of being in the best interests of the charity

3. That meeting instructed officers to implement a consultation and consult with the Charity Commission
4. The ESFA did not submit its Planning Statement for The Heights Primary School until March 2017, having been asked to do so by the Sub-Committee in October 2016
5. The calling, in April 2017, of a general election on 8 June 2017 introduced a lengthy purdah period, which had the effect of delaying the Sub-Committee's consideration of the Planning Statement until 21 June 2017.
6. The preparatory work was carried out in relation to the consultation which commenced on 14 July 2017 and ran for 10 weeks until the 25 September 2017: the response to the consultation was significant and required a great deal of work to complete the analysis
7. Officers intended to take a report on the analysis of the consultation to the Sub-Committee on the 25 October 2017
8. On 9 October 2017 the Charity Commission wrote to the Sub-Committee requesting a meeting. The Charity Commission specifically requested that the consultation was not taken to the Sub-Committee until the meeting had taken place
9. The meeting took place on 10 November 2017 and the Charity Commission issued its regulatory advice on 20 November 2017. This suggested that there were further steps that the Council as Trustee needed to take before it could be in a position to take a decision on disposal
10. The Sub-Committee is meeting on 9 January 2018 to receive the results of the consultation, to consider the regulatory advice from the Charity Commission regarding making a decision on the ESFA proposal, and to agree the production of a landscape masterplan to determine how a premium from the ESFA could be used to enhance the amenity value of the ground.

In respect to your statement, "I would welcome your reassurance that the decision making process is being sufficiently resourced", I can confirm I am confident that the Trustee decision-making process is being sufficiently resourced by officers of the Council, supported by the external legal advisers Veale Wasborough Vizards who have provided expert charitable legal advice which has ensured regulatory compliance, and the property advisers Bruton Knowles who produced the property report pursuant to Section 117 of the Charities Act 2011.

As you have raised the issue of sufficient resource, the ESFA has previously given the Council as trustee a limited undertaking for costs which has not covered the cost of the legal and property advice that the Council and the Sub-Committee has required to date in order to progress matters this far. In terms of resource going forward it would be of assistance if you are able to instruct your civil servants to provide a further undertaking for costs in order to progress the project.

With regard to your statement, "I have asked my office to book a call with you", I do not consider it appropriate to discuss this matter with you as you suggest, particularly as you have raised a number irrelevant factors such as the perceived delays "causing distress to your beneficiaries, residents, parents, staff and children at the school", and that you are concerned "for the school's future because of the ongoing uncertainty about whether your Sub-Committee will agree to the sale of the land proposed." I have explained above why it is not appropriate for the Council as Trustee to take these irrelevant factors into consideration as part of its decision-making.

In terms of your statement as to "suggestions about how the proposed timetable you have now shared with officials can be accelerated", you will be aware from the reports to the Sub-Committee on 9 January 2018 that the recommendation is for officers to prepare a landscape masterplan which identifies on an indicative basis how the ESFA premium could be applied and an options report which will enable the Sub-Committee to evaluate the impact of the options on the amenity value of the Ground for the beneficiaries in accordance with the Charity Commission regulatory advice.

It would be helpful for the ESFA planning application to be determined as soon as possible. You will see from the indicative timetable that the final decision of the Trustees in respect of the revised proposal is scheduled to take place after the ESFA planning application has been determined. In this regard, and for your information, the Council officers advising the Sub-Committee are set to meet with the ESFA's planning consultants and the Council's Planning Section on 11 January 2018 to discuss the Section 106 planning obligation and heads of terms, how the school's impact may be appropriately mitigated, and to ensure that the Council as Trustee has sufficient flexibility to spend the ESFA lease premium.

Finally, I am arranging for your letter and this response to be made available to all members of the Sub-Committee at its meeting on 9 January 2018, and to members of the press and public in attendance, so that they may all be aware of it and how I am responding to you. I will also send a copy of both letters to the Charity Commission.

Yours sincerely



**Deborah Edwards**  
Chair, Mapledurham Playing Fields Trustees Sub-Committee