

READING BOROUGH COUNCIL

REPORT BY ASSISTANT DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

<b>TO:</b>	<b>MAPLEDURHAM PLAYING FIELDS TRUSTEES SUB-COMMITTEE</b>		
<b>DATE:</b>	<b>10 FEBRUARY 2020</b>		
<b>TITLE:</b>	<b>MAPLEDURHAM PLAYING FIELDS - DEED OF DEDICATION</b>		
<b>LEAD COUNCILLOR:</b>	<b>COUNCILLOR EDWARDS</b>	<b>PORTFOLIO:</b>	<b>MAPLEDURHAM PLAYING FIELDS CHAIR OF TRUSTEES</b>
<b>SERVICE:</b>	<b>TRUSTEE OF CHARITY</b>	<b>WARDS:</b>	<b>MAPLEDURHAM</b>
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**1. PURPOSE AND SUMMARY OF REPORT**

- 1.1 A report was submitted by The Chief Valuer to the Mapledurham Playing Fields Trustees Sub Committee on 11<sup>th</sup> October 2016 in respect of the Fit4All Proposal for Mapledurham Playing Fields Foundation.
- 1.2 When considering the above report in discussion, the Sub-Committee noted the concerns of local community representatives regarding the potential precedent for further development that could be implied if the Charity permitted the sale of part of the Playing Fields for a school site. Officers committed to investigate and report back to the Sub-Committee on the implications should a deed of dedication be entered into.
- 1.3 The Agreement for Lease and the Lease made between the Reading Borough Council acting in its capacity as sole managing trustee of the Mapledurham Recreation Ground Charity and The Secretary of State for Housing Communities and Local Government of the part of Mapledurham Playing Fields were entered into on the 18<sup>th</sup> February 2019.
- 1.4 The revised planning application was granted on 25<sup>th</sup> February 2019.
- 1.5 The Sub Committee at its meeting of 7<sup>th</sup> May 2019 resolved as follows:-

That the Sub Committee note the report and authorise Officers to formally investigate the implications of the charity entering into a deed of dedication and to liaise with Fields in Trust (FIT) and (if necessary) the Charity Commission regarding entering into a deed of dedication in respect of the Mapledurham Recreation Ground Charity

- 1.6 A report was submitted by the Assistant Director of Legal and Democratic Services to the Mapledurham Playing Fields Trustees Sub Committee on 15<sup>th</sup> October 2019 setting out a draft Deed of Dedication for Mapledurham Playing Fields, which was attached to the report.
- 1.7 The report noted that at its previous meeting of 7 May 2019 the Sub-Committee had authorised officers to investigate the implications of the charity entering into a deed of dedication, and liaise with Fields in Trust (FIT) and the Charity Commission regarding entering into a deed of dedication in respect of the Mapledurham Recreation Ground Charity. The Council's external Legal advisers Veale Wasborough Vizards (VWV) had obtained and reviewed FIT's standard draft deed of dedication and made a number of changes to it to reflect the Council's role as trustee of the Charity. The resulting draft Deed was attached to the report of 7 May 2019.
- 1.8 The report summarised the key undertakings included in the draft Deed and explained that it essentially provided for the Council (as trustee of the Charity) to undertake that it would not take certain steps in relation to the Ground, including disposal of all or part of the Ground by way of sale or the grant of a long lease to a third party, or building new buildings on the Ground for anything other than the Charitable Purpose, without the consent of FIT.
- 1.9 The Sub-Committee were asked to consider whether pursuing the draft Deed would be in the best interests of the Charity, and if so to authorise officers to discuss the detail of the terms with FIT and also seek the views of the Charity Commission.
- 1.10 The decision of the Sub-Committee on 15<sup>th</sup> October 2019 is set out below:

**Resolved -**

- (1) That seeking to negotiate a draft of the Deed with FIT be agreed as being in the best interests of the Charity and its beneficiaries;**
  - (2) That the Assistant Director of Legal & Democratic Services be authorised to progress negotiations with FIT, with a view to presenting a final draft for consideration and (if thought fit) approval by the Sub-Committee;**
  - (3) That the Assistant Director of Legal & Democratic Services be authorised to seek the views of the Charity Commission on the entry into the Deed and to confirm the position to the Sub-Committee in advance of any decision to enter into a Deed.**
- 1.11 The draft Deed of Dedication submitted to the Sub-Committee meeting of 15<sup>th</sup> October 2019 is attached to this report at Appendix 1.
  - 1.12 The Council's External Legal advisers (VWV) have negotiated with FIT as authorised by the Sub Committee and have agreed a revised draft deed of dedication in principle with FIT. The agreed revised draft Deed of Dedication is attached to this report as Appendix 2.

## 2 RECOMMENDED ACTION

- 2.1 The Sub Committee note VWV have sought the views of the Charity Commission on the entry into the Deed and confirm in paragraph 5.3 of this report that the Council as trustee will be acting properly in deciding to enter into the deed.
- 2.2 The Sub-Committee note that a revised draft Deed of Dedication has been negotiated and approved by FIT.
- 2.3 The Sub-Committee note the advice in this report and authorise officers to enter into the Deed of Dedication as set out in Appendix 2 subject to any changes that may be required in order to reach agreement with FIT as the officers consider necessary and appropriate.

## 3. POLICY CONTEXT

- 3.1 Reading Borough Council holds the Ground in its capacity as charity trustee ("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 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 The draft deed of dedication (the "**Deed**") which is annexed to this report is made between Reading Borough Council (acting as trustee of the Recreation Ground Charity) (the "**Council**") and the National Playing Fields Association (which operates under the name "Fields in Trust" or "**FIT**"). The Official Custodian for Charities is also a party to the draft Deed it holds legal title to the recreation ground at Mapledurham (the "**Ground**"). The draft Deed relates only to part of the Ground and excludes the part of the Ground which has previously been leased for use by The Heights Primary School.

## 4. BACKGROUND

- 4.1 A previous report prepared for this Sub-Committee in 2017 identified the possibility of making the Mapledurham Playing Fields subject to a "deed of dedication" in favour of Field in Trust.

- 4.2 FIT is the working name of the National Playing Fields Association, which is a registered charity. It is understood that FIT has entered into deeds of dedication in relation to other pieces of charitable and local authority land.
- 4.3 The main purpose of a deed of dedication is to make land subject to a binding covenant which prevents the sale or disposal of property without the consent of FIT, so that there is a third party capable of vetoing a sale or other disposal of the land in certain circumstances.
- 4.4 As part of the process of consultation carried out in advance of the decision to lease part of the Ground for use by the School, the Council consulted with beneficiaries of the Charity on the proposal that it should discuss with FIT the possibility of entering into a deed of dedication in order to give some assurance about the future disposal or development of the remainder of the Ground. The results of that consultation suggested that a majority of beneficiaries thought that this proposal should be taken forward.

## 5. CURRENT POSITION

- 5.1 The Council's External Legal advisers (VWV) have negotiated with FIT as authorised by the Sub Committee and have agreed a revised draft deed of dedication in principle with FIT. The agreed revised draft Deed of Dedication is annexed to this report as Appendix 2.
- 5.2 VWV have consulted with the Charity Commission on the amended draft Deed. The Charity Commission acknowledged that other Charities (including other Councils acting as trustee) have entered into similar arrangements. The Charity Commission confirmed that it would be appropriate for the Council (as trustee) to rely upon VWV's advice.
- 5.3 VWV advice is that, taking into account the wide consultation that was carried out amongst the public and the amendments to the draft deed that have been agreed with FIT, the sub-committee are able to decide to enter into the deed if they conclude (as they have already done) that this is in the best interests of the charity and its beneficiaries. VWV have confirmed that in its view the Council will be acting properly in deciding to enter into the deed.
- 5.4 The revised draft Deed essentially provides for the Council (as trustee of the Charity) to undertake that it will not take certain steps in relation to the Ground, or that it will only do so with FIT's consent.
- 5.5 The intention is that these undertakings will last in perpetuity.
- 5.6 The key undertakings (which are all set out in clause 3 of the draft Deed as amended) are:
- 5.6.1 Not to use the Ground for any purpose other than as a recreation ground for the benefit of those who live in the Parish of Mapledurham and Borough of Reading (the "Purpose") For the avoidance of doubt, the Purpose shall include outdoor recreation and any use and buildings that are ancillary to the Purpose. The amended Purpose is consistent with the

legal obligation the Council owes as charity trustee of the Charity in any event because it matches the scope of the Charity's objects.

5.6.2 Not to allow third parties to use the Ground for anything other than the Purpose without FIT's consent. Again, this is consistent with the charitable objects of the Charity.

5.6.3 Not to sell, lease or otherwise dispose of all or part of the Ground without the prior written consent of FIT. FIT undertakes not to unreasonably withhold its consent to a disposal of all or part of the Ground where the proceeds of sale are to be used to buy replacement property of equivalent or larger size with equivalent or improved amenity value and which is made the subject of another deed of dedication or where there is a free transfer to another charity which will enter into a deed of dedication with FIT. The revised Deed of Dedication also prevents the grant of licences from being a "disposal", on the basis that the Council will routinely wish to licence users of the Ground to use it and FIT's consent should not be required in order to do that.

5.6.4 Not to construct (or allow a third party to construct) buildings or structures on the Ground (or make material alterations to them) for any use other than the Purpose without FIT's consent.

5.6.5 Not to construct (or allow a third party to construct) buildings or structures on the ground where their area would exceed 4% of the total area of the Ground. Please note the reduction of the above percentage from 20% in the draft submitted to the Sub Committee on 15<sup>th</sup> October 2019 to 4% in the revised deed of dedication in Appendix 2.

5.7 Taken together, these provisions would mean that the Council could not in the future:

5.7.1 Dispose of all or part of the Ground by way of sale or the grant of a lease to a third party without FIT's consent (unless to buy replacement property or to another charity, as above). This would include a sale to e.g. a developer which would generate a capital sum that could be used to enhance the amenity value of the remainder the Ground.

5.7.2 Build new buildings on the Ground for anything other than the Purpose (which seems to us to be unlikely in any event) or for the Purpose but outside the 4% total area restriction.

5.7.3 Use or allow the Ground to be used for anything other than the Purpose without FIT's consent (which would not be consistent with the objects of the Charity in any event).

## **6. DECISION FOR THE SUB-COMMITTEE**

6.1 Having considered the above the decision for the Sub-Committee in relation to the revised Deed of Dedication is whether it is in the best interests of the Charity and its beneficiaries to add a requirement for FIT's consent to any disposal of part or all of the Ground in the future is in the best interests of those beneficiaries.

- 6.2 Effectively, the revised Deed of Dedication would enable FIT to make a judgement about this in addition to the Council (although the Sub-Committee should note that we have amended the draft Deed to make it clear that, in doing so, FIT must act in the best interests of the Charity, rather than in order to advance its own objects or policy subject to the duty of FIT's trustees to perform its charitable objects).
- 6.3 The requirement for consent is of course how FIT operates in order to prevent recreational land from being used for purposes other than recreation, but the Sub-Committee should consider whether the benefits of the draft Deed (in terms of a check and balance against future disposal and a degree of greater certainty about this) outweigh the disadvantages (being the main disadvantage is that the Council will lose a degree of discretion and flexibility in relation to the future).
- 6.4 There is a wider potential legal issue around the surrender by any charity trustee of its discretion, which can in certain cases be inconsistent with its duties. We have raised this with FIT, who do not regard it as an issue. VWV have sought the opinion of the Charity Commission on the revised Deed of Dedication to give the Charity Commission an opportunity to comment on the revised Draft Deed and raise any objection to the proposal.

## **7. OTHER PROVISIONS**

- 7.1 The Sub-Committee should note that there are other provisions in the revised Deed of Dedication that are relevant:
- 7.1.1 The revised Deed of Dedication imposed an obligation on the Council as trustee to maintain the Ground. We have made this subject to the availability of funding and the exercise of the Council's discretion as trustee, on the basis that the draft Deed should not create a financial obligation on the Council (whether as trustee of the Charity or as local authority) in favour of FIT.
- 7.1.2 The revised Deed of Dedication obliges the Council (as trustee) to provide information in response to any reasonable request from FIT.
- 7.1.3 The Council is also obliged to consider any advice given by FIT (this would not be binding on the Council and we have also provided that this is subject to the Council's overriding duty as charity trustee, which includes a duty to make independent decisions).
- 7.1.4 FIT is entitled to erect notices at the Ground confirming its involvement.
- 7.2 To reflect the intentions of the deed, the Ground will be dedicated as a recreation ground and the site will be titled a Field in Trust Protected Site.

## **8. EQUALITY IMPACT ASSESSMENT**

- 8.1 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.

8.2 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.

8.3 An updated equality impact assessment (EIA) was undertaken and reported to the June 2018 Trustee Sub-Committee. There has been no material change to the proposals being made and the EIA remains valid.

## 9. FINANCIAL IMPLICATIONS

9.1 Following the grant of the revised planning permission the planning contribution payable under the S106 Agreement of £380,000 has been received by the Council.

9.2 The 20<sup>th</sup> June 2018 Sub Committee approved the proposal from the Council to spend the £375k of S106 mitigation funding for works to the playing field to mitigate the presence of the proposed school on the site.

9.3 The premium of £1.36m was paid on the grant of the above Lease and was released to the Council on 19<sup>th</sup> August 2019.

## 10. LEGAL IMPLICATIONS

10.1 The legal implications are contained in the paragraphs 5, 6 and 7 of the report

10.2 In reaching any decision in relation to the Charity, the members of the Sub-Committee are reminded that when performing the Council's function as Trustee they 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.

(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.

(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.

- (6) You must not take into account any irrelevant factors.
- (7) You must manage conflicts of interest.
- (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.

10.3 Each of these considerations is set out in more detail in the Charity Commission's guidance on decision-making by charity trustees (CC27). The Commission's guidance is available here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/583855/CC27\\_new.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/583855/CC27_new.pdf)

## **11. BACKGROUND PAPERS**

- 11.1 Mapledurham Playing Fields Trustees Sub-Committee - 20<sup>th</sup> June 2018.
- 11.2 Mapledurham Playing Fields Trustees Sub-Committee - 9<sup>th</sup> January 2018.
- 11.3 Mapledurham Playing Fields Trustees Sub-Committee - 22<sup>nd</sup> October 2018.
- 11.4 Mapledurham Playing Fields Trustees Sub-Committee - 15<sup>th</sup> October 2019
- 11.4 Oxford Archaeology report - August 2018
- 11.5 Mapledurham Playing Fields Trustees Sub-Committee 7<sup>th</sup> May 2019
- 11.6 Landscape master plan 2018