

READING BOROUGH COUNCIL

REPORT BY ASSISTANT DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

TO:	Mapledurham Playing Fields Trustees Sub-Committee		
DATE:	7th APRIL 2022		
TITLE:	MAPLEDURHAM PLAYING FIELDS DEED OF DEDICATION		
LEAD COUNCILLOR:	COUNCILLOR EDWARDS	PORTFOLIO:	MAPLEDURHAM PLAYING FIELDS CHAIR OF TRUSTEES
SERVICE:	MAPLEDURHAM PLAYING FIELDS	WARDS:	MAPLEDURHAM
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1. PURPOSE AND SUMMARY OF REPORT

- 1.1 To update the Trustees Sub Committee on progress being made to complete the Deed of Dedication.
- 1.2 A report was submitted by The Chief Valuer to the Mapledurham Playing Fields Trustees Sub Committee on 11th October 2016 in respect of the Fit4All Proposal for Mapledurham Playing Fields Foundation.
- 1.3 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.
- 1.4 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 18th February 2019.
- 1.5 The revised planning application was granted on 25th February 2019.
- 1.6 The Sub Committee at its meeting of 7th 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

- 1.7 A report was submitted by the Assistant Director of Legal and Democratic Services to the Mapledurham Playing Fields Trustees Sub Committee on 15th October 2019 setting out a draft Deed of Dedication for Mapledurham Playing Fields, which was attached to the report.
- 1.8 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.
- 1.9 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.
- 1.10 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.
- 1.11 The decision of the Sub-Committee on 15th 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.**

- 1.12 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
- 1.13 The decision of the Sub-Committee on 10th February 2020 is set out below.
- (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) The Sub-Committee note that a revised draft Deed of Dedication has been negotiated and approved by FIT.
 - (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.
- 1.14 The agreed revised draft Deed of Dedication is attached to this report as Appendix 1.
- 1.15 An alternative Deed of Dedication ("The WADRA draft") has been sent to the Trustees on 29th September 2021 by Warren and District Residents Association (WADRA) as an alternative to the one negotiated and advised upon by Veale Wasbrough Vizards (VWV) and considered and agreed to by the Trustees Sub Committee.
- 1.16 A report was submitted to the Mapledurham Management Committee on 13th October 2021. A copy of the WADRA draft was appended to the report and a copy of the document showing the tracked changes is attached at Appendix 2 to this report.
- 1.17 The WADRA draft had a number of amendments which included: adding a clause not permitting use of the property exclusively by and for the benefit of the Heights Primary School; removing the section referring to the erection of any buildings or structures on the property that would result in the total area of such buildings or structures exceeding 4% of the total area of the property and instead specifying no new buildings or structures beyond those existing at the date of the deed and no fencing off any part of the property; involvement of members of the Management Committee in a number of clauses and amendments to the section on replacement property.
- 1.18 WADRA felt that more protection for the recreation ground was needed than that afforded by the agreed Deed of Dedication although it must be appreciated that a total prohibition proposed in the WADRA draft deed would prevent anything being added to the recreation ground in the future. If a deed such as this had originally been in place, the Tennis Club

would not have been able to make its changes, and in future, no new buildings or structures of any description would be allowed, even storage, lighting, or any other structures considered necessary for the operation of the playing fields.

- 1.19 It was explained to the Committee that Officers and VWV had so far advised the Trustees that the deed was an appropriate balanced draft for the Trustees to be able to enter into, and Officers were keen to obtain further information from WADRA about the reasoning behind the proposals in the alternative deed so that Officers could get further advice from VWV before reporting back to the Trustees.
- 1.20 Officers noted in response to the proposal by WADRA that prohibited the use of the playing fields by the Heights Primary School that the school already had the right to use the sports pitches as set out in the lease and Community Use Agreement
- 1.21 Officers pointed out that the overriding principle for the Trustee was that it had to act in the best interest of the charity.
- 1.22 While it is understandable that residents might want the playing fields to be “frozen in time” a recreation ground was a dynamic entity and changes that could improve the ground for the beneficiaries should not be prevented by introducing absolute prohibitions.
- 1.23 The Management Committee considered whether there were any of the amendments in the WADRA draft that they thought would be acceptable to include in the approved deed.
- 1.24 Martin Brommell of WADRA addressed the Committee in support of the WADRA draft, stressing the importance of maintaining the playing fields’ original character as a rural recreation ground, pointing out the space already lost to the school development and the potential problems if people wanted to use the fields at times when the school had exclusive use of pitches and the importance of preventing any further development on this greenfield site, even if that meant storage could not be provided. Mr Brommell said that he would be happy to arrange a meeting between WADRA, their legal advisor, Chris Brooks and VWV to discuss the proposed amendments contained in the WADRA draft.
- 1.25 The Committee discussed the WADRA draft with most members expressing the view that, whilst the principle and reasons behind the proposal were understood, the proposed WADRA draft was too restrictive and prescriptive, including it preventing creation of storage and the specific reference to the Heights Primary School.
- 1.26 **The decision of the management committee meeting of 13th October 2021 is set out below**

Resolved

- (1) That the report and the current position be noted;
- (2) That the alternative Deed of Dedication submitted by WADRA not be supported in its current form;
- (3) That Chris Brooks organise a meeting with WADRA and VWV to discuss the suggested amendments to the Deed of Dedication;
- (4) That the development of a formal agreement with Caversham Treants FC to complement the Deed of Dedication be endorsed;

1.27 A report on the Deed of Dedication is to be considered by the Mapledurham Management Committee at its meeting of 29th March 2022. Officers will verbally report the outcome of the decision of that meeting to this committee.

2. RECOMMENDED ACTION

- 2.1 That the Sub-Committee notes the current position in particular paragraph 4.2 of this report and also the response dated 24th March 2022 by Martin Brommell on behalf of WADRA as set out at Appendix 3;**
- 2.2 That the Sub-Committee reaffirms the decision of the Trustee Sub Committee of its meeting of 10th February 2020.**

3. POLICY CONTEXT

- 3.1 Reading Borough Council holds The Trust Land in its capacity as Charity Trustee. The 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."
- 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 duties and powers of the Management Committee are:
 - a) The Committee will exercise a general supervision over the activities at the playing fields and ensure that the objects of the charity are achieved.

- b) The Committee shall conform to the regulations and practices of Reading Borough Council with regard to finance and the conditions of service of employees.
- c) Subject to the objects of the charity and to the Reading Borough Council's statutory and financial requirements, the Management Committee shall determine the charges to be applied to the hire of the Pavilion.
- d) The Committee shall review on a regular basis the terms and conditions for lettings and monitor the bookings received and the use of the Pavilion.

4.0 THE PROPOSAL

4.1 Current position

The current position is the revised draft Deed of Dedication was approved by the Trustee Sub Committee at its meeting of 10th February 2020.

4.2 The Proposal

Officers met with WADRA and its solicitor on 28th February 2022 to discuss the proposed amendments to the put forward We discussed the amendments made to the draft deed of dedication by WADRA. No substantive additional evidence was presented to support the amendments proposed by WADRA.

Officers recommend rejecting the amendments on the basis they are not required by FIT and are not appropriate given the position of the Council as trustee of the Recreation Ground Charity.

Officers have written to WADRA on the 5th March 2022 and 17th March 2022. A response was received on 24th March 2022 from WADRA a copy of which is annexed to this report (Appendix 3).

My comments on the proposed amendments by WADRA in the WADRA draft utilising the numbering of the WADRA draft are as follows:-

Clause 3.1 WADRA would like the ground to be open at all times to the inhabitants of the parish and borough. This is not accepted because it would arguably prevent the trust from temporarily closing off areas for maintenance and it would also prevent the proposed use of the football pitches - which would not be available for general use by all inhabitants whilst they are rented out.

WADRA has also included a direct prohibition on the use of the Property exclusively by and for the benefit of the school. This is not accepted firstly because it is not necessary as it would clearly breach the existing wording in this clause - and secondly because it could cause issues with the grant of any temporary licences to the school to exclusively use the football pitches or other areas. As mentioned above the terms of the lease to the school and the community Use agreement affords the school the use of one of the playing fields.

Clause 3.3 WADRA has included wording that the grant of any licence to a third party which complies with the restrictions in clauses 3.2, 3.4 and 3.5 and which enables the use of the Property solely for the Purpose does not require consent. This is not accepted as FIT has previously insisted that the position on licences should remain silent in the deed. It is intended to conclude the proposed lease/licence and management agreement to the football club and any agreed arrangement in respect of the request from WADRA for a container to be placed on the recreation ground.

Clause 3.4 and 3.5 WADRA has amended the above two clauses to an absolute restriction on the erection of any new buildings or structures. This is impractical and is not accepted. It would prevent the trust from replacing any of the existing buildings or structures or constructing anything which may actually benefit the land such as sheds for maintenance equipment and public toilets. This would inhibit the trustees potentially acting in the best interests of the charity and beneficiaries.

Clause 3.6 WADRA has included a requirement for "all members of the Mapledurham Playing Fields Management Committee" to also be informed of the matters referred to in the clause. On the basis that the Management Committee is acting on a delegated basis with limited terms of reference it is not appropriate for it to acquire direct rights under the deed (to which the members of the Management Committee are not parties in any event), and therefore I do not recommend acceptance of this proposed amendment.

Clause 3.11 Please note that WADRA also wants the right for themselves and FIT to make reasonable representations in respect of any of the above clauses which the Council as trustee of the Charity must have regard to and take into account and for FIT and the Council (as trustee) to be under an obligation to inform the Management Committee of any advice and recommendations which FIT make to the Trust. FIT has not sought these rights and obligations for itself and as already stated the Management Committee has specific delegated terms of reference from the Council as trustee of the Charity. The Management Committee has the opportunity to make representations as to date all reports that have been considered by the Trustee Sub Committee has been considered first at a public meeting of the management committee. I do not consider it appropriate for the Council as trustee to fetter its discretion.

Clause 3.7 WADRA wants the members of the Management Committee to be provided with this information. The Council as trustee of the Charity should maintain its discretion as to what information to share with the members of the Management Committee (as its delegates). Therefore I do not accept the proposed amendment.

Clause 3.9 WADRA want the Council as trustee of the charity to have an obligation to consider the recommendations of any member of the Management Committee. This is not acceptable and not agreed. It is not appropriate for a single member of the Management Committee to make his or her own recommendations but in any event, and if the Council wants to receive recommendations from the Committee

this should happen via its terms of reference and not via a deed to which the members of the Committee are not parties.

In conclusion I am not able to accept or recommend the proposed amendments principally as WADRA are seeking a prohibition of matters that should reasonably allow some degree of flexibility and introducing the Management Committee and/or WADRA into the document which is unacceptable for the reasons given.

I have been asked by WADRA to explore the implications of first registration of the Recreation Ground. There is likely to be a cost to first registration of the freehold title.

Officers are aware of the negative views held by WADRA of the Charity Commission and Fields in Trust.

In order to allay the reservations and concerns held by WADRA in respect of FIT I have provided the objects of FIT and extract from the Fit website to WADRA. I have not received a response from WADRA. I refer Councillors to the objects of FIT below and also an extract from the FIT website which should provide confidence that the deed of dedication as agreed by the Trustee Sub Committee affords additional protection to the Recreation Ground as does FIT via its objects with which it is legally obliged to comply.

While it may not be accepted by WADRA it is very important that flexibility is built into the Deed of Dedication as envisaged below in the extract below from Fields in Trust website. A total lack of flexibility and the prohibitions as envisaged by WADRA may well mean the Trustees are not able to act in the best interest of the Charity which is a fundamental charitable responsibility.

Fields in Trust

Charitable objects

To provide and maintain and to promote and assist in the provision and maintenance of playing fields, recreation grounds, playgrounds, open spaces and other facilities for play and recreation for the benefit both of the community at large and of persons who by reason of their youth, age infirmity, disablement, poverty or social and economic circumstances have special need of such facilities, with a view to improving their conditions of life

EXTRACT FROM THE FIELDS IN TRUST WEBSITE

The Deed of Dedication

Robust protection

In protecting land, Fields in Trust will work with the landowner to draw up an agreement that provides sufficient protection, but which takes account of local

circumstances. It is for this reason that each Deed will often be unique to the specific space.

Once completed the restriction within the Deed is registered with the Land Registry, meaning any check that is made on the land will highlight the protection that is on it and prevent disposal, generally meaning sale or lease, without the consent of Fields in Trust. A Deed can either be charitable or non-charitable. If it is the former then both Fields in Trust and charity law will ensure the protection, whilst if it is the latter then Fields in Trust will ensure the protection.

Flexible protection

We do recognise that circumstances can change, however, and for this reason the Deed does have a certain level of flexibility built into it. In general, changes to the space which are ancillary to its use - i.e. supporting the primary activities taking place - are usually fine and do not require our consent. Anything which is not ancillary to a space's use, such as buildings, commercial leases and changes of use, can be permissible but generally require our consent. A landowner can seek this consent by making an application through our Field Change Request procedure, with any such applications being considered by our experienced Land and Planning Committee of Trustees.

5. LEGAL IMPLICATIONS

- 5.1 Specialist advice has been sought from VWV on the Deed of Dedication and the amendments proposed by WADRA in the WADRA draft.

6. FINANCIAL IMPLICATIONS

- 6.1 If first registration of the freehold title of the recreation ground is to be progressed there will be a registration fee determined by HM Land Registry. Otherwise there are no financial implications in entering into the Deed of Dedication.