

READING BOROUGH COUNCIL

REPORT BY HEAD OF ECONOMIC & CULTURAL DEVELOPMENT AND VALUATION ADVISOR

TO:	MAPLEDURHAM PLAYING FIELDS TRUSTEES SUB-COMMITTEE		
DATE:	22 OCTOBER 2018	AGENDA ITEM:	6
TITLE:	UPDATE ON THE ADVICE FROM THE CHARITY COMMISSION		
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 Following the decisions taken by this Sub-Committee at its meeting on 20 June 2018, including the decision that the grant of a 125 year lease to the Secretary of State for Housing, Communities and Local Government (the "Lease") of part of the Recreation Ground would best enhance the amenity value of the Ground for the benefit of the Charity's beneficiaries, the Head of Legal & Democratic Services has consulted with the Charity Commission in relation to the proposed grant of the Lease.
- 1.2 This Sub-Committee also resolved on 20 June 2018 to instruct the Head of Legal & Democratic Services to take all and any such steps as are required in order to facilitate the grant of the Lease to the Secretary of State, having first taken into account any regulatory advice or guidance the Commission may have had to offer.
- 1.3 This purpose of this report is to update members of the Sub-Committee in relation to the steps taken since their last meeting.
- 1.4 The Sub-Committee will be aware from another report on the agenda this evening that Mr Martin Brommell has applied (on behalf of the Mapledurham Playing Fields Action Group) to the High Court for a judicial review of the decision taken by the Council (as planning authority) to grant planning permission for the construction of The Heights Free School on part of the Ground. This is due to be heard by the High Court on 20 November 2018.

2 RECOMMENDED ACTION

2.1 The Sub-Committee is asked to resolve that Officers be authorised to:

2.1.1 Negotiate and agree the terms of the agreement for lease ("AFL"), community use agreement ("CUA") and Lease on the basis proposed in Section 4;

- 2.1.2 Arrange for the AFL to be entered into by the Council as trustee of the Charity;
- 2.1.3 Subject to the resolution of the judicial review proceedings on a basis which Officers consider enables the Council as trustee of the Charity to properly grant the Lease, to arrange for the Lease and CUA to be entered into by the Council as trustee of the Charity;
- 2.1.4 Take all other such steps as Officers consider to be reasonably necessary to implement the decisions taken by the Sub-Committee on 20 June 2018;
- 2.1.5 Report back to the Sub-Committee on the completion of the AFL, CUA and Lease and on any other issues which Officers consider should be brought to the attention of the Sub-Committee;
- 2.1.6 Report back to the Charity Commission on such milestones and other developments as Officers consider appropriate.

3 Charity Commission

- 3.1 Following the Sub-Committee's meeting on 20 June 2018, the Head of Legal & Democratic Services instructed VWV (external solicitors advising the Council as trustee of the Charity) to write to the Charity Commission to notify them of the decisions taken by this Sub-Committee and to seek their views and advice on the power of disposal exercisable by the Council (as trustee of the Charity) in order to grant the Lease.
- 3.2 Members of the Sub-Committee will recall from previous advice given by Officers that the grant of the Lease was always intended to be subject to the views and (if necessary) the consent of the Charity Commission, so that a process of consultation with the Commission would be required.
- 3.3 Having reviewed all of the material supplied to the Sub-Committee prior to their meeting on 2018 and the decisions taken at that meeting, the Commission have now confirmed that:
 - a) They agree that the Council (as trustee of the Charity) can rely upon the statutory power of disposal conferred by section 6 of the Trusts of Land and Appointment of Trustees Act 1996 ("TLATA") in order to grant the Lease to the Secretary of State; and
 - b) They also agree that the Council (as trustee of the Charity) has complied with the statutory requirement under section 121 of the Charities Act 2011, so that no further publication of the proposal to grant the Lease is required.
- 3.4 This advice was issued as "regulatory advice" pursuant to section 15 of the Charities Act 2011.
- 3.5 The Charity Commission also advised that the Council (as trustee of the Charity) does not need the Charity Commission's consent to grant the Lease and that the Charity Commission will now close its regulatory authority case in relation to the Charity. The Charity Commission will not be pro-actively monitoring the implementation of the decision to grant the Lease but has suggested that this Sub-Committee may wish to notify them of any key developments and milestones. Officers suggest that this would be appropriate.
- 3.6 The Charity Commission's advice means that, subject to the points raised below, the Sub-Committee is now in a position (under charity law) to grant the Lease.

4 Discussion with the Education and schools funding Agency (ESFA)

- 4.1 In line with the Sub-Committee's decisions at their meeting on 20 June 2018, the Head of Legal & Democratic Services has engaged with the ESFA (on behalf of the Secretary of State) in order to seek to agree the arrangements for the grant of the Lease. The implementation of those arrangements will be subject to the outcome of Mr Brommell's application of judicial review.
- 4.2 Subject to this, Officers propose that:
- 4.2.1 An AFL and form of Lease should now be negotiated and agreed with the ESFA. The Lease should be substantially in the form of the draft lease previously provided to and approved by the Sub-Committee and in line with the non-legally binding heads of terms previously entered into with the ESFA.
 - 4.2.2 The AFL should be entered into as soon as possible, but the grant of the Lease will be subject to the judicial review proceedings having been completed (and assuming of course that Mr Brommell's application fails).
 - 4.2.3 A CUA for use of the Free School's facilities will be entered into with the School and the agreed form will be annexed to the AFL.
 - 4.2.4 The AFL and Lease should both be entered into by the Council as Charity trustee of the Charity in reliance on the general power conferred by TLATA to dispose of land.
 - 4.2.5 The premium of £1.36m due from the Secretary of State in respect of the grant of the Lease will be paid on completion of the Lease.
 - 4.2.6 Provisions will be agreed with the ESFA in relation to the consequences of any legal challenge being brought in relation to the entry into the AFL and/or the grant of the Lease.

5. POLICY CONTEXT

- 5.1 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 specie" i.e. specifically in order to advance the Charity's object.

- 5.2 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 its beneficiaries 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.

- 5.3 At its meeting on 20 June 2018 the Sub-Committee resolved as follows:

- 5.3.1 That the decision of the Local Planning Authority (LPA) to pass a resolution to grant planning consent for a new school at Mapledurham Playing Fields, subject to conditions; and the decision of the Secretary of

State not to call in the determined planning application, be noted;

- 5.3.2 That the Landscape Master Plan and Options Report (including the Landscape Master Plan) be considered in the light of the consultation with stakeholder groups and the terms of the Community Use Agreement to be tabled at your meeting and, in the light of this consideration, the Sub-Committee is asked to decide whether:
- 5.3.3 the ESFA proposal still offers the best option to enhance the amenity value of the Ground for the benefit of the Charity's beneficiaries and, if it does;
- 5.3.4 to enter into a unilateral undertaking to enable the Section 106 Agreement to be concluded, subject to heads of terms as envisaged by the Local Planning Authority;
- 5.3.5 That in the event that the Sub-Committee decides (in line with paragraph 2.2 above) that the ESFA proposal still offers the best option to enhance the amenity value of the Ground for the benefit of the Charity's beneficiaries, the Sub-Committee is asked to decide whether, taking into account the Heads of Terms for the proposed lease to the Secretary of State for Housing, Communities & Local Government, the Community Use Agreement and the Property Report, the terms of the disposal by way of lease to the ESFA are the best which are reasonably obtainable for the Charity.
- 5.3.6 That in the event that the Sub-Committee agrees (in line with paragraph 2.3 above) that the terms of the disposal by way of lease to the Secretary of State are the best which are reasonably obtainable for the Charity, the Head of Legal & Democratic Services be instructed to consult with the Charity Commission in relation to the basis for the proposed disposal to the ESFA and, after taking into account any regulatory advice or guidance the Commission may have to offer, be authorised to take all and any such steps as are required in order to facilitate such disposal.
- 5.3.7 That the Head of Legal & Democratic Services be instructed to review the remit and membership of the Management Committee and to report back to the Sub-Committee on the options that could be adopted in relation to the composition of the Management Committee.

6. Background

- 6.1 See purpose and summary of this report

7. LEGAL IMPLICATIONS

- 7.1 The legal implications are contained within the body of the report.

8. FINANCIAL IMPLICATIONS

There are no direct financial implications.

9. BACKGROUND PAPERS

The Landscape Master Plan - 20 June 2018

Options Report - 20 June 2018

The Heads of Terms for the lease with the Secretary of State, as reported to your meeting on 20 November 2016

<http://www.reading.gov.uk/media/6539/Item-6/pdf/item06.pdf>

- a) The Property Report prepared by Bruton Knowles, reported to your meeting on 20 December 2016
<http://www.reading.gov.uk/media/6539/Item-6/pdf/item06.pdf>
- b) The regulatory advice from the Charity Commission, reported to your meeting on 9 January 2018 and summarised in paras. 7.7 to 7.8 of Legal Implications below
http://www.reading.gov.uk/media/8120/Item-5-and-appendices/pdf/Item5_and_appendices.pdf
- c) The Community Use Agreement with the Secretary of State for Housing, Communities & Local Government for the School's occupation of the Ground