

Agenda item:

Title of meeting: Scrutiny Management Panel – Call-In

Date of meeting: 30 October 2012

Subject: Decision to approve Fatcher School Foundation Charitable Scheme – Scrutiny Call In

Report by: City Solicitor

1. Purpose of report

- 1.1. To provide a background to the above decision to appoint trustees to the charitable scheme (approved by those proposed trustees on 23 July 2012), and to register a charge in relation to the Fatcher School Foundation which took place on 3 October 2012, and to comment upon the call-in.

2. Call-In and alternative decision

- 2.1. It is noted that this decision is called-in, in accordance with part 3 of the Constitution of the Council, with the following reasons given:

inadequate information was given to enable the decision to be taken.

- 2.2. The proposed alternative decision is:

"to [have] defer[ed] the decision until the information from the Charity Commission was known."

3. Background

- 3.1. The Fatcher School was a school for disabled children and also a registered charity. It was recognised that it was outdated and the site was sold for redevelopment several years ago. The land value of the site (some £2m) passed under the Elementary Education Act and was subsequently, by operation of law (by virtue of the Elementary Education Act 1870) held on trust by the Council. Regrettably the Council did not liaise with the Charity Commission (whose permission ought to have been sought for the disposal of the site as charity property).

- 3.2.** Accordingly, the Council was in breach of trust law and as a result it was important to take steps to regularise the situation by:
- 3.2.1. Approaching the charity commission to give assurances as to the Council's commitment to take steps to resolve the breach (and thereby avoid any immediate investigation and enforcement action being instigated);
 - 3.2.2. Preparing a Charitable Scheme;
 - 3.2.3. Gaining the approval of the trustees of that scheme;
 - 3.2.4. Obtaining any necessary authorisation from the Council (acting by its Cabinet)
 - 3.2.5. Confirming with the Charity Commission that the Scheme may be made.

Council's representation to the Charity Commission

- 3.3.** The Charity Commission acknowledged that the Mary Rose School (which was built with the proceeds of the sale of the Futcher School trust asset) to be a modern and good school for disabled children. In order to release the funds from the sale of the Futcher School into the Council's education budget to cover some of the construction costs of the new school the Charity's interest in the Mary Rose School needed to be formalised.
- 3.4.** The Council had some debate with the Charity Commission about how this could be achieved and took advice that, the most tax-efficient means of doing so (avoiding stamp duty land tax being incurred) would be for the Charity to take a legal charge over the Mary Rose School at a percentage in accordance with their contribution (that is in the region of 20%).
- 3.5.** The Charity Commission then prepared a draft scheme which renamed the existing charity as the Futcher School Foundation, sets out the charitable objects of the charity and also how the charity's property must be used. In addition it provided for the replacement of the Council (which is currently the sole trustee) by a board of trustees who needed to be nominated and appointed.

Meeting of the proposed trustees

- 3.6.** Following a number of logistical difficulties, a meeting took place on 23rd July, attended by four of the five proposed trustees. Those trustees formally agreed the terms of the scheme. In addition they also each signed a trustee declaration so that their appointments could be approved by the Charity Commission and the details entered on the Charity Commission database. The fifth trustee was seen subsequently and also accepted the scheme and signed the trustee declaration form. The trustees details are now included on the website.
- 3.7.** It is important to note that the Charity Commission were particularly concerned that the Council regularised the breach and emphasised to officers the need for the above meeting to take place without delay. Initially, the Charity Commission had insisted on all proposed trustees attending the meeting, however, when challenged on the point they later agreed that those unable to attend as a result of

unforeseen circumstances could approve the scheme independently of the meeting.

- 3.8.** The minutes of the meeting, a draft of which is attached at annex A, record that the trustees resolved to approve the scheme. The minutes also record queries that were raised, and answered. It is important to note that the resolution to approve the detail of the trust scheme was a matter for the trustees. This approval occurred in the meeting of 23 July 2012.

Decision of the executive

- 3.9.** The approval of the Council's executive was required in relation to the proposed appointment of trustees, and the registration of charge against the property.
- 3.10.** The decision of the executive was limited to the above matters. It did not extend to decisions made or to be made in relation to day to day disbursement questions, which fall to the trustees to decide upon under the trust.

4. Additional information from the Charity Commission

- 4.1 Officers do not have any record of having been asked to seek additional information of the Charity Commission.

5. Proposed deferral of decision

- 5.1 It was important to proceed to make the Charitable Scheme approved by the Trustees and to act expeditiously. The Charity Commission have made it clear that they would institute a formal investigation if the Council remained in breach of trust law.

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Signed by City Solicitor

Appendices:

Appendix A

Draft minutes of 23 July 2012 meeting of proposed trustees