

**REPORT OF THE KENSINGTON DRAGONS FOOTBALL CLUB PROPOSALS -TO  
BUILD A NEW HYBRID GRASS PITCH AND REFURBISH THE ALL-WEATHER  
PITCHES AT WORMWOOD SCRUBS**

**29<sup>th</sup> January 2020**

**Report to Wormwood Scrubs Charitable Trust Committee**

**Report Author:**  
Nigel Brown, Advisor to the Trust

**Contact Details:**  
E-mail: [nigel.brown@lbhf.gov.uk](mailto:nigel.brown@lbhf.gov.uk)

## **1. EXECUTIVE SUMMARY**

- 1.1. The report summarises the options and possible next steps available to the Trust in relation to the proposals outlined by Kensington Dragons Football Club (KDFC) to provide improved grass pitches adjacent to Linford Christie Stadium (LCS) as well a new hybrid pitch next to Linford Christie Stadium (LCS).
- 1.2. At the Wormwood Scrubs Charitable Trust Committee (WSCTC) meeting on 26<sup>th</sup> June 2019, initial KDFC proposals were outlined and the Trust requested Council officers (on the Trust's behalf) to secure more detailed heads of terms. This report sets out further details obtained from KDFC and a draft Heads of Terms is appended as Appendix A.
- 1.3. At the last WSCTC, KDFC asked the Council to consider making a financial contribution to KDFC project. Please note this was unintentionally incorrectly recorded and it was intended the Trust were being asked to consider a financial contribution by KDFC. This report provides information regarding the funding of the KDFC project and the options available to the Trust.
- 1.4. In line with their remit to obtain further detail on the proposals, Council officers (on behalf of the Trust) have also sought specialist legal advice on the charity law implications of the proposals. It has been advised that Charity Commission consent/approval will need to be sought in relation to these proposals. This report sets out details of the next steps required below.

## **2. NEXT STEPS**

The Wormwood Scrubs Charitable Trust Committee (WSCTC) are asked to consider:

- 2.1. whether it wishes, in principle, to proceed with the KDFC Project as outlined as option 3 in paragraph 7, considering the charity law implications;

- 2.2. subject to approval of the Trust in paragraph 2.1, to request Council officers on behalf of the Trust can approach the Charity Commission to seek the necessary consents and authorities as outlined in paragraph 4.2;
- 2.3. subject to approval of paragraphs 2.1 and 2.2, requesting Council officers (Assistant Director of Growth and Head of Asset Strategy & Property Portfolio) to act on behalf of the Trust to further progress the heads of terms as outlined in the draft version contained in appendix A; and
- 2.4. subject to approval of paragraph 2.1 and 2.2 and full due diligence outlined in paragraphs 2.5 and 2.6, to agree the principle of a financial contribution in the project up to £350,000 as outlined under Option 3 in paragraph 7 (subject to full due diligence being undertaken in paragraphs 2.5 and 2.6).
- 2.5. subject to approval of paragraph 2.1 and 2.2, for Council officers on behalf of the Trust to seek a detailed business case from KDFC; KDFC to provide full financial information on funding for the project and full detailed specification of the works to be undertaken in respect of the project.
- 2.6.1 subject to approval of paragraph 2.1 and 2.2, decide how it would like to proceed with local resident consultation for proposed KDFC project.

### **3. KDFC PROPOSAL**

- 3.1. KDFC commissioned proposals to upgrade existing pitches adjacent to Linford Christie Stadium (LCS) as well as providing a new hybrid all weather pitch. The preliminary cost plan for all the works are in the region of £1.5 million. KDFC have undertaken preliminary surveys, at no cost to the Trust. KDFC will need to undertake further due diligence and bear costs on preparing a full specification of works, provide a detailed financial business case including funding profiling. Before KDFC embark on further expense, they seek WSCTC approval to the draft heads of terms (see appendix A) and agree to next steps.
- 3.2. KDFC have provided more details of their funding since June 2019. They have secured £1 million funding but haven't provided full details of this to date. This still leaves a shortfall which would need to be met by further KDFC fundraising, grant applications and other contributions. In order to produce a funding plan KDFC have requested the Trust confirm their contribution and advised they seek a maximum contribution of £350,000. KDFC would need to outline their proposals for the additional funds that have not been successfully secured for the project.
- 3.3. It is proposed the Trust would grant, for a peppercorn, a 25-year lease of the new hybrid pitch (as shown red on the attached plan in appendix B) and there would be wider community and sports access to the pitch as outlined in the heads of terms at appendix A. The Trust would be obliged to update, refurbish and repair all the other pitches as outlined in green on the plan (appendix B)

## **4. CHARITY LAW CONSIDERATIONS**

- 4.1. Due to the nature of these proposals, there are 2 factors which mean that the Trust cannot simply take a decision to proceed with the project of its own volition: the fact that the land is designated land and the lease is for 25 years mean that specific procedures set out in the Charities Act 2011 must be complied with.

### **4.1.1. Designated land**

4.1.1.1. As the Scrubs is designated land (land which is required by the Trust's governing document to be used for particular purposes i.e. the exercise and recreation of the of inhabitants of Hammersmith and Fulham), the Charity Commission would usually be required to make a Scheme if the disposal is for over 2 years and the land is not being replaced.

4.1.1.2. However, where the proportion of the land being disposed of is so small that it doesn't affect the charity's ability to further its purposes (as appears to be the case here) it is likely that the charity can still dispose of the land without the need for a scheme) subject to obtaining a surveyors' report (if relevant – see below).

4.1.1.3. Regardless of whether a Scheme is required, where designated land is being disposed of and not replaced, the disposal must be advertised by public notice for at least a month. A charity can apply to the Charity Commission for a waiver of this requirement which will be at the Charity Commission's discretion. While the disposal of a small proportion of designated land is an example of situation where the requirement might be waived, each application is decided on its own merits. It should be noted that the Charity Commission may take up to a month to respond to the waiver request.

### **4.1.2. Surveyors Report**

4.1.2.1. In addition to the above, the Trust would not be able to proceed with the lease without the consent of the Charity Commission unless:

4.1.2.1.1. it complies with the provisions of s117 (b) (i) of the Charities Act 2011 which requires the Trust to obtain a surveyor report to confirm that the terms of the lease are the best that could reasonably be obtained; or

4.1.2.1.2. it is disposing of the land to a charity with similar objects.

4.1.3. Although the Kensington Dragons are also a registered charity and their activities appear to football related, their formal charitable objects are very wide:

*"The Charity's objects are to promote all purposes recognized as charitable under the laws of England and Wales and (without limitation):*

*1. To promote community participation of, primarily, children and young people regardless of race, sex, creed, financial means or social and economic circumstances in healthy recreation in particular by the provision of facilities for the playing of association football ("football") and other sports capable of improving health ("facilities" means any of land, buildings, equipment and organizing sporting activities); and*  
*2. To advance the education of children and young people so that they might grow to maturity as individuals, become responsible members of society and their conditions of life may be improved."*

4.1.4. On this basis, they are not the same as or similar to the Trust's objects and it is unlikely that the Trust would be exempt from the requirement to obtain a surveyors report to confirm that it had obtained best value for the lease. Again, the Charity Commission may waive this requirement where the disposal is to another charity with wider objects in certain circumstances, but this will be on a case by case basis.

4.2. It is suggested that if WSCTC are minded to continue exploring the KDFC project it has 2 options:

4.2.1. consider instructing the Council to contact the Charity Commission on the Trust's behalf to confirm its intention to dispose of a small proportion of the designated land and comply with the Charities Act 2011 requirements regarding public notice of designated land and obtaining a surveyor's report; or

4.2.2. consider instructing the Council to contact the Charity Commission to set out the plans in full and establish if they would be minded to grant a waiver of the requirement to advertise the disposal of the designated land and for the requirement to obtain a surveyors report on the basis that the disposal is to another charity carrying out similar activities (albeit their objects are wider) and the proposed disposal is by a time limited lease with a break clause.

## **5. OTHER RELEVANT CONSIDERATIONS**

The Trust has an obligation to 'Barclays spaces for sport programme', which provided funding for the existing all-weather pitches. The agreement includes a clause to keep the facilities in 'good repair and condition' until at least 2026. Currently the playing surface needs refurbishment, but no budget has been identified for this. WSCTC requested an estimate from Council officers and the estimated cost of the works is in excess of £100,000.

5.1. The Trust has asked the Council's leisure officers for their views on proposal and some were set out in the Managers' report to the WSCTC in June 2019. The proposal will mean fewer all-weather pitches than currently, but a full-sized Hockey pitch has been allowed for and one five a side court will be

suitable for netball. The baseball cage will have to be relocated and a compromise may have to be reached between a suitable surface for competitive Hockey and hiring out the pitches for football and other sports. The proposal has been revised to ensure no impact on the operation of the Idverde Grounds maintenance yard. There may be localised disruption to park users and residents during construction. The proposals would not require planning permission and the Council's planning officer has issued a certificate of lawfulness and secured advice to protect the trees to the eastern part of the site.

- 5.2. WSCTC previously considered (at its March 2019 and June 2019 meetings) the wider outcomes of the LCS public consultation. A report is being tabled at WSCTC on 29 January 2020 to provide an update on the business case work.

## 6. POTENTIAL RISKS

- 6.1. There are some crucial elements of the heads of terms that may have potential financial impact to the Trust following public consultation about LCS and considered by the Trust in March and June 2019. If the Trust did agree to KDFC proposals then this may affect wider LCS proposals. The draft heads of terms have been prepared so if future LCS proposals did progress then this may mean the sports facilities as outlined in the plan (appendix B) are affected.
- 6.2. If LCS proposals did come forward and the footprint covered the current sports pitches and the new hybrid pitch (as outlined edged green) in appendix B, then the draft heads of terms allow the lease to be terminated.
- 6.3. Firstly, the Trust would seek to re-provide the sports facilities at its cost. The total cost could be circa £1.5 million. In wider LCS proposals these provisions may be re-provided.
- 6.4. Secondly, if WSCTC decided not to re-provide these facilities, as outlined in paragraph 6.3 above, then a suggested compensation mechanism has been outlined. The level of compensation payable by the Trust to KDCC would be based on the total investment made by KDFC (net of any Trust financial contribution) and this is reduced by 4% per annum over the 25-year period (e.g. lease length).
- 6.5. The table below shows the potential compensation/re-payment paid to KDFC if wider LCS proposals did come forward and all the facilities within the green line in plan 1 (appendix B) could not be re-provided. This would be the result of the termination of the lease (25 years proposed) if any wider development at LCS were to occur.
- 6.6.

If the 25-year lease was terminated (indicative dates shown for calculation purposes)	Percentage of total investment to be repaid by the Trust to KDFC	Financial sum to be re-paid (maximum) by Trust to KDFC
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only depending on when lease terminated)	Assumed KDFC investment £1.2 million	
Year 4	84%	£1,008,000
Year 10	60%	£720,000
Year 20	20%	£244,000

## 7. ANALYSIS OF OPTIONS

7.1. The Trust has various options, and these are outlined below.

7.1.1. OPTION 1: A do-nothing approach would mean a continued patching of the carpet surfacing. This would not improve facilities and there is an obligation by the Trust to keep the facilities in '*good repair and condition*' until at least 2026 following the previous funding. The all-weather pitch carpet has reached the end of its life expectancy. There is a likelihood the pitches may have to close as they are not fit for purpose.

7.1.2. OPTION 2: The Trust could consider undertaking all the works proposed by KDFC itself and the initial estimates of this are circa £1.5 million. This would require seek the Trust to secure external funding or other sources to completely fund the project. The Trust do not have unreserved funds to fund this project.

7.1.3. OPTION 3: The KDFC proposal secures significant capital investment and improves provision of facilities, including a hybrid pitch to allow more senior league football for junior and senior teams. This option also builds on wider sports use of facilities ahead of a potential long-term solution for LCS. The Trust are being requested to provide funds of up to £350,000 to the project.

## 8. CONSULTATION

8.1. No formal consultation has been undertaken to date, but proposals have been discussed at previous WSCTC meetings.

8.2. KDFC have consulted informally but there has been no formal local resident consultation by the Trust.

## 9. LEGAL IMPLICATIONS

Please refer to the Charity law implications set out above and these comments have been provided by Bevan Brittan.

## 10. FINANCIAL IMPLICATIONS

## 9.1 Council implications/comments on the Trust reserves.

As reported separately in the Trust's Statement of Accounts, the unaudited 2018/19 accounts state that the Trust's closing unrestricted funds total £742,189. Historically Trust's has operated with an annual deficit, given normal operations as shown in the table below:

	2018/19	2017/18	2016/17	2015/16	2014/15	2013/14	2012/13
Summary of Financial Position	£'000	£'000	£'000	£'000	£'000	£'000	£'000
Total Incoming Resources	1,060,141	1,072,295	698,745	678,572	717,972	638,525	546,201
Total Resources Expended	-833,197	-774,332	-736,084	-737,772	-724,506	-717,576	-717,853
Net outgoing (-)/Incoming resources	226,945	297,963	-37,339	-59,199	-6,534	-79,051	-171,652

9.2 Exceptional income was in 2017/18 and 2018/19. This includes a lump sum payment from UK Power Networks for use of the Scrubs and from the Kensington Aldridge Academy's (KAA) occupation of the temporary. Options for achievement of an annual break-even financial position once exceptional income from KAA ends are largely in the planning stage at present. KAA's current lease expires in July 2020. At the next Trust meeting, a decision will be considered if there if a further lease extension to KAA will be considered from July 2020 to July 2021.

## BACKGROUND PAPERS USED IN PREPARING THIS REPORT

Managers' report – WSTCC June 2019

### LIST OF APPENDICES - OPEN

APPENDIX A - Heads of terms

APPENDIX B - Plan