

WORMWOOD SCRUBS CHARITABLE TRUST – LINFORD CHRISTIE OUTDOOR STADIUM OUTLINE BUSINESS CASE

Report to Wormwood Scrubs Charitable Trust Committee

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Executive Summary

1. The Linford Christie Outdoor Sports Stadium (Stadium) is an aging facility and does not meet the requirements of its tenants or of other users. Significant investment is required to maintain and improve the Stadium facilities. The Trust and the Council currently subsidise the operation of Stadium by providing revenue support and a limited amount of capital investment. Without the Council's subsidy the Trust would be reliant on its own income and reserves. The Trust has limited capital available to invest into the Stadium site and improve the facilities, so it has reviewed a number of options for the future of the site.
2. Following an initial options appraisal, a number of reports to the Trust Committee and a public consultation process, IPW were appointed following approval by the Chair of the Trust Committee in October 2019 to produce an outline business case (OBC) and make a recommendation to the Trust as to how it could proceed.
3. The OBC has been completed and recommends redevelopment of the site to produce replacement community facilities funded through disposal of the Stadium site on a long lease for enabling development. This should be secured through a developer partner and a procurement process should be undertaken to select the partner.

Recommendations

That the Wormwood Scrubs Charitable Trust Committee:-

1. Approves the Outline Business Case in Appendix 1.
2. Reject options one and two, as set out in this report and the OBC.
3. Approves options three, four and five as set out in this report and the OBC.
4. Approves moving to a procurement process to select a developer partner for the redevelopment of the Stadium site on the basis outlined in this report and including the options set out in recommendation three above.
5. Approves funding the costs of the procurement process from the remaining £243,000 CIL funding provided by the Council at the start of the business case process, subject to Council approval for continued use of this CIL funding.

6. Delegates authority to the Trust Manager acting on behalf of the Trust to develop a procurement strategy, procurement documents and to complete a procurement process, and to return to the Trust Committee on completion to consider the outcome of the procurement exercise and to appoint a partner for for the Stadium site.
7. Notes the requirements in relation to conflict of interests and decision-making procedures set out in this report.
8. Delegates authority to the Trust Manager to liaise with the Charity Commission in relation to the Trust's decision-making process in connection with the future of the Stadium site and related matters and following those discussions prepare a report to the Trust setting out the nature of the discussions and the advice of the Charity Commission.

Background

9. What is now known as the Linford Christie Outdoor Sports Stadium was erected on the Scrubs in the 1960s by the GLC, occupying about 8% of the Charity's land. Since then the Council has operated the Stadium on behalf of the Trust. The Trust is the owner of the site and the Stadium, and the Trust Committee has delegated authority to make decisions on behalf of the Council in its role as Trustee.
10. The cost of running the Stadium (c. £290,000 per year) is absorbed by the Council, save for a capped re-charge of £31,500 to the Trust, and some adhoc spending. The income generated, however, is not accounted for by the Trust but is used to offset the Council's expenditure.

Table ES1 Summary financial performance of LCOSS (2016/17 to 2019/20)

Activity	2016/17	2017/18	2018/19	2019/20*
Fees and Charges	£168,000	£123,000	£99,000	£113,000
Total Income	£168,000	£123,000	£99,000	£113,000
Salaries	£159,000	£164,000	£170,000	£181,000
Stadium Running Costs	£38,000	£80,000	£46,000	£67,000
Maintenance and Equipment	£61,000	£11,000	£46,000	£35,000
Support Services	£57,000	£41,000	£83,000	£3,000
Misc.	£3,000	£2,000	£5,000	£8,000
Capital Charges	£140,000	£145,000	£136,000	£136,000
Total Expenditure	£458,000	£443,000	£486,000	£430,000
Cost to Trust	£32,000	£32,000	£32,000	£32,000
Cost to Council	£258,000	£288,000	£355,000	£285,000

* Forecast figures

NB Figures are rounded

11. The income generated from the Stadium does not cover its costs. The Council subsidises the running costs. The Stadium is in poor condition and requires capital investment. The background on this and the options that the Trust could consider were set out in reports on 22nd June 2017 and 19th December 2018.
12. In 2019, the Trust Committee therefore delegated authority to officers to commission a public consultation and outline business case on their behalf to consider options for the Stadium's future.
13. A public consultation has taken place outlining three broad options:
 - I. **Do nothing** (which will require a substantial increase in income if the Charity is to survive beyond its current reserves); or
 - II. **Enhance the current facilities** (which involves improvements to the existing Stadium); or
 - III. **A “large scale intervention”** (which could involve the construction of a new stadium or venue accommodating 35,000 or more people)
14. Over 8,782 completed questionnaires were received and 13 responses not using the online or paper forms, with over 80% of respondents supporting the Trust or the Council completing a “large scale intervention” (option 3 above) as their preferred option. The consultation responses also showed support for the Trust or the Council to consider making provision for professional and community sports, and as a venue for major entertainments.
15. The Trust Committee considered reports on these matters on 13th March and 26th June 2019.
16. In order for the Trust to understand the options in more detail before making any decision to proceed further, it delegated authority to officers to commission consultants to deliver an outline business case on the options for the Stadium.
17. The Trust wishes to see the re-provision of high-quality athletics and sports equipment, but currently lacks the revenue and capital resources to achieve this. The OBC has followed a Treasury five case business case process, looking at strategic, economic, financial, commercial and management cases for intervention and how the Trust might achieve its objectives.

Summary of the OBC

18. The OBC is included as an appendix to this report, but a brief summary is provided below.
19. The strategic case remains very strong, as there is a clear need for quality sports and leisure facilities in the borough, and the current facilities serve a key strategic need especially the athletics facilities. However, they do not meet user requirements from either tenants or the wider user base, meaning there is a real need for investment.

20. The Stadium is an important strategic asset for Hammersmith & Fulham borough, and a key part of the Trust's charitable remit. The current facilities are tired and are not sustainable financially in their current form (even before the financial and facility closure challenges created by COVID 19) – requiring a significant annual subsidy from the Trust and Council, plus additional capital investment.
21. Without the short-term revenues created by the lease of part of the Scrubs to Kensington Aldridge Academy, the Trust will return to being in an annual shortfall with expenditure exceeding income. With the ongoing impact of austerity cuts, before the financial challenges created by COVID-19, the Council (outside of its role as corporate trustee of the Trust) has confirmed that it must - understandably - focus on the sustainable management of its finances. On this basis, and despite the sporting benefit that the current uses bring even with ageing facilities, the Council has confirmed that it does not have an appetite to invest major capital or continued revenue to support facilities at the Stadium site that do not generate a direct economic return.
22. There is a clear strategic case and significant public support, for making a major intervention at the Stadium site that can deliver strategic, economic and financial benefit for the Trust with the potential to fund other interventions consistent with each party's objectives. The OBC has considered a number of potential options, though there is scope for alternative amalgamations and configurations of facilities to be created.
23. Since the Trust and Council are not anticipating an application for government funding, the specific requirements of a Treasury-compliant OBC are not directly applicable. However, IPW. have used this structure as the basis for preparing the analysis in the OBC to highlight the key strategic, economic, commercial, financial and management implications as the Trust considers the optimum long-term solution for the Stadium site to deliver on their aspirations.
24. The analysis completed in the course of the OBC has highlighted the challenges inherent in balancing the need to generate the (capital and revenue) investment necessary to deliver quality, long-term sports uses at on the Stadium site with a wish to minimise development at the site. In essence, the Trust must consider a spectrum/ continuum from zero to maximum investment that can be leveraged (financial benefit) against an associated compromise of preserving the Scrubs as it is currently.
25. The Trust could continue to operate as it is currently and, should Council funding fall away as it cannot continue to be sustained, use fundraising efforts in addition to its commercial activities in order to maintain the status quo or invest in enhancements. However, this is not considered to be sustainable in the long-term, nor to have the potential to significantly improve the quality of provision available.
26. In essence, the provision and maintenance of an environment that is conducive to sports and leisure activity, including the ongoing maintenance of

the Scrubs itself, is not anticipated to be achievable without encouraging outside investment in uses that may ultimately reduce the total amount of publicly-available sports and leisure space at the Stadium site.

27. It is anticipated that the private sector will bring the necessary funding to deliver a project (at minimal/ no risk to the partners unless in exceptional circumstances with appropriate potential returns) and achieve financial improvement at the Stadium site in the form of removing the need for an external subsidy.

28. In order to ensure any sporting facilities can be sustainable there is a requirement for interventions that generate new capital and revenue.

29. The shortlist of options was refined to the following:

1. Business as Usual (BAU)/Do Nothing
2. Do Minimum
3. Athletics & sports centre including pitch hub
4. Athletics and major indoor arena
5. Athletics and professional sport stadium

30. The Do Minimum/BAU option (**option 1 and option 2**) would deliver improvements at the site, specifically around enhancing the football facilities and facilitating the potential for KDFC to achieve promotion further up the leagues (subject to on field performance) and driving higher projected revenues from the improved STP provision. However, it is projected to still require an operational subsidy on completion and, although KDFC is proposing to invest a sizeable sum (relative to their revenues/ operations) there is still a significant capital requirement for the Trust/ Council to meet.

31. The Do Minimum/BAU option is therefore considered unsustainable and the projections prepared have identified potential that the overall operating position will only worsen over time, further increasing the subsidy requirement on the Trust.

32. Consultation has identified multiple credible potential investors/ developer partners/ end users to suggest that a major development can be delivered without requiring the Trust or Council to provide a grant. The specific appeal of the Stadium site and its location is such that the economics work for these prospective partners in a way that would not be elsewhere in a less significant and appealing market, for example:

- Imperial College has a strategic requirement for new sports facilities to serve its central campus and appeal to current and prospective students that goes beyond the pure investment return associated with sports facilities
- QPR have a specific strategic need for a new stadium in their current catchment area and as a major professional club require a new long-

term home to enable them to be sustainable as a business in the long-term, beyond the headline returns achievable purely from the operation of a stadium

- Multiple arena developers/ operators have significant appetite for a new venue in London, and in West London in particular. While arenas would typically require capital grant funding from the public sector, the particular economics of the London market (and the levels of corporate demand, sponsorship opportunities and latent promoter/ event need) are such that a new venue could potentially be deliverable without any public funding

33. **Options 3, 4 and 5** are all projected to have a more significant impact and be more financially sustainable/ generate potential revenue for the Trust. However all of these options necessitate the development of new buildings on the Stadium site, which runs contrary to the current MOL designation and as such will require a clear planning case based on Very Special Circumstances (VSC) that might be supported on this site.

34. **Option 3** could deliver enhanced sports facilities through a deal with Imperial College. While the facilities would primarily be for the use of its students, Imperial College intends to also make the facilities available for other club use (for Thames Valley Harriers and KDFC, for example) and for public use/ hire. While the facilities are expected to only achieve a relatively small operating surplus (before lifecycle), Imperial has other strategic reasons to pursue and develop this option, in consolidating its sports provision closer to its campus hub.

35. **Option 4** (major indoor arena) and **option 5** (professional sports stadium) have the potential to generate higher levels of revenue and greater returns for the Trust, which in turn can be invested in securing significant community benefit in line with the Trust's charitable objectives. Both options secure a long-term, improved athletics solution but we anticipate that the Trust may also seek to invest any receipts on also supporting its objectives beyond the red line boundary of the Stadium site. Option 4 is projected to have the highest economic impact of any of the options.

36. The analysis undertaken has particularly highlighted that there are multiple potential development uses that have scope to meet planning requirements (though noting that any development on MOL is likely to be highly challenging) and generate significant returns that can safeguard the retention of sporting facilities on the Stadium site and also be used beyond the site to drive additional benefit for the Borough.

37. While the commercial/ financial implications of any deal for the Trust would need to be weighed against the social, community and sporting factors that can be influenced with additional revenue, the analysis suggests that there is significant scope to achieve significant returns which could be re-invested elsewhere, were the Trust so minded.

38. The OBC highlights however that there are significant planning and transport challenges associated with developing Option 4 and Option 5.

Recommended Next Steps

39. The OBC recommends moving to the next stage – procuring a partner to secure the community and project benefits, on the basis of allowing proposals that reflect options 3, 4 and 5 to come forward for evaluation.

40. The analysis that IPW have completed has illustrated the significant complexity associated with the development decision and the likely compromises that the Trust will have to consider in seeking to secure a sustainable outcome for the Stadium site and the Trust that facilitates sporting and recreational use of Wormwood Scrubs.

41. Given the range of considerations, benefits and compromises available under the alternative options, IPW believe that the Trust should seek to deliver a competitive procurement process to secure a partner for the development of the Stadium site, rather than specifying a single particular outcome. The latter approach would limit flexibility and creativity and, in all likelihood, the quality and competitiveness of the outcomes generated.

42. Within this process, prospective partners would be encouraged to come forward with their own proposals (be they in line with the options considered in greatest detail in this report) for the Stadium site, that deliver on the community, sporting, social and financial requirements of the Trust.

43. The OBC process has identified significant demand from venue developers/operators, sports clubs and other current and prospective future users of the Stadium site. On this basis, IPW are confident that were a development opportunity to be marketed there would be very strong interest from a range of potential partners with the financial wherewithal to bring forward a scheme.

44. In order to alleviate the financial burden on the Trust, and given the likely lead-in period associated with developing the ultimate scheme, securing planning consent and building the facilities themselves, IPW recommend moving swiftly to the procurement phase. Despite the current economic challenges, strong levels of demand have been expressed in the course of this OBC from multiple credible developers/operators – and a clear appetite to move forward swiftly.

45. Any procurement competition would follow a Public Contracts Regulations 2015 (PCR) procurement process, to achieve the necessary levels of rigour required by the Trust. In order to deliver this process, the Trust will require external support to manage the competition in line with procurement best practice, following a competitive dialogue process.

46. Trust officers will engage consultants for the next stage of the process to support creation of documentation, planning and project management.

47. A clear procurement process will require the development of robust evaluation criteria and weightings to ensure that the Trust achieves its objectives. These criteria will require further development in consultation with the Trust Committee, but they would be expected to align closely with the Trust's overall objective of providing for the physical exercise and recreation of London. Examples of the type of criteria and objectives that could be considered are set out below, although these require further refinement before a process can begin.

48. Social and community benefits

1. Provision of an athletics track and field, accessible to the public and for the use of Thames Valley Harriers
2. Provision of football facilities accessible to the public and for the use of KDFC
3. Safeguarding ongoing access to facilities for existing user groups
4. Respect and preserve the Scrubs and its public users
5. Provide new changing facilities for teams using the Scrubs sports pitches
6. Provide additional opportunities for community use and engagement
7. Not disturb the operation of Hammersmith Hospital and the Pony Club

Financial/ commercial benefits

8. Ensure the Trust's long-term financial sustainability so that it can continue to preserve and maintain the Scrubs
9. Potential to generate income for the Trust in the long-term, so that any changes are financially sustainable
10. Secure additional contributions to achieve wider benefits beyond the Scrubs and across/ beyond the Borough

Legal Comments

Trust Committee

49. The Council is appointed as trustee for the WSCT pursuant to the Wormwood Scrubs Act 1879. In accordance with section 101 of the Local Government Act 1972 (LGA 72) the Council has arranged for its responsibilities as trustee to be discharged by the Wormwood Scrubs Charitable Trust Committee. Under the LGA 72 the Trust Committee is further able to delegate authority to take decisions as a trustee to Officers of the Council.

50. The Trust Committee is a formal committee of the Council and must comply with the legislation applicable to Council committees as well as the Council's constitution.

51. The objects of the Trust are set out in the Wormwood Scrubs Act 1879. They state that:

“The Metropolitan Board of Works shall hold the Scrubs upon trust to enable the same (except the portion or portions excepted as herein-after mentioned) to be used for such military purposes, whether camps, reviews, drills, training, exercising, firing, rifle ranges, or other whatsoever, as the Secretary of State for War from time to time directs, and subject as aforesaid, shall hold the Scrubs upon trust for the perpetual use thereof by the inhabitants of the metropolis for exercise and recreation.”

52. It is important that the Trust Committee understands who the “inhabitants of the metropolis” are. Those inhabitants are the beneficiaries and the Council (as corporate trustee, acting through the Trust Committee for this purpose) holds the land on their behalf. The Trust Committee should therefore be considering the interests of the beneficiaries of when they take decisions.

53. The objects have not changed since 1879. In 1879, the Metropolitan Board of Works was the main body responsible for the government of “metropolis” of what is now known as “Inner London” and which includes Hammersmith and Fulham. It is therefore reasonable to assume that the inhabitants of the “metropolis” are the inhabitants of “Inner London” at the very least rather than just those in the Borough of Hammersmith & Fulham. On this basis, it means that when taking decisions in the interests of the beneficiaries, the Trust Committee is not restricted to the interests of the residents of Hammersmith & Fulham Borough, but the interests of inhabitants from across Inner London who may have access to the Scrubs should be taken into account.

Decision making process

54. The Trust Committee will need to consider the OBC and make a decision on how to proceed. When considering and making a decision on the OBC (and when making any decisions in relation to the Trust), the Trust Committee should take into account the Charity Commission’s guidance on decision making (see It’s your decision: charity trustees and decision making (May 2013)). This guidance provides that when making decisions trustees must:

- act within their powers;
- act in good faith and only in the interests of the charity;
- make sure that they are sufficiently informed;
- ignore any irrelevant factors;
- manage conflicts of interest;
- make decisions that are within the range of decisions that a reasonable trustee body would make.

55. Although the individuals who make up the Trust Committee are not trustees, but are making decisions for the Council in its capacity as corporate trustee of the Trust, they should still follow and comply with Charity Commission guidance and charity law when carrying out actions or making decisions as the Trust Committee.

Acting within the powers of the Trust and in good faith

56. The Trust Committee can only make a decision which is consistent with the Trust's objects (see paragraph 48 above) and powers granted pursuant to its governing document and Charity law.

57. As trustee, the Council has all the powers of an absolute owner of land in its capacity as a trustee by virtue of section 6(1) of the Trusts of Land and Appointment of Trustees Act 1996 save to the extent that the 1879 Act provides to the contrary (see section 6(6) of the 1996 Act).

58. While the 1879 Act does not explicitly prohibit the sale of the Scrubs in whole or in part, such a prohibition is inherent in the scheme of the statute and therefore no sale could occur without a scheme of the Commission approved by a Minister and laid before both Houses of Parliament (see section 73 of the Charities Act 2011). However, it doesn't appear that the 1879 Act as prevents the Council from leasing part of the Scrubs and therefore the Council (as trustee) has power to grant leases by reason of section 6(1) of the 1996 Act.

59. Although there are no governance provisions in the Governing Document of the Trust, the Trust Committee should ensure that they are complying with the powers delegated to them in their Terms of Reference and Scheme of Delegation. In particular, the Trust Committee needs to decide whether the arrangements that have been put in place (i.e. setting up the the Trust Committee in line with Charity Commission recommendations and the Scheme of Delegation and Terms of Reference and the membership of the Trust Committee) are sufficient to deal with any conflicts of interest.

60. When making the decision regarding the OBC, the Trust Committee must ensure that it is within the powers of the Council as trustee (as set out above) and that it is in the best interests of the Trust.

61. Options 3, 4 and 5 contemplate substantial redevelopment of the Scrubs. While (as set out above) this is within the Council's powers as trustee (as they have all the powers of the absolute owner of the land) including the ability to lease the Stadium, it must be clear that this is in pursuit of the Trust's objects (as set out in paragraph 51).

62. As the Trust is required to hold the Scrubs for "*perpetual use thereof by the inhabitants of the metropolis for exercise and recreation*" the Trust Committee needs to consider how each of the options outlined above achieve this. The Stadium in its current guise is not open land and therefore the Trust's objects are achieved through holding professional sports events which allow for the attendance of spectators (recreation of the inhabitants of the metropolis) and

through the hiring out of the various connected sports pitches and facilities (exercise of the inhabitants of the metropolis). While Options 3, 4 and 5 meet the objects in a similar way through the allowing the attendance of spectators to concerts or sporting events and hiring out of facilities, the Trust Committee should ensure it understands the detail of the options and how those options specifically discharge the Trust's objects.

63. When a decision has been made about which option to pursue, (on completion of the procurement selection) it will be prudent to go back to the Charity Commission and inform it of the decision that has been made and the proposed next steps. It is at this stage that the Charity Commission may look into how and why the Trust Committee came to this decision and whether a Scheme or Order will be required.

Trustees to be sufficiently informed

64. It will be for the Trust Committee to decide what the relevant factors are, in light of the circumstances existing at the time when taking the decision on the OBC. The Charity Commission's 2013 guidance referred to above provides that the relevant factors (many of which are considered above) could include:

- is the decision in the best interests of the charity?
- is the decision consistent with the objects?
- have the trustees had regard to the Charity Commission's public benefit guidance?
- do the trustees have the relevant powers?
- have alternatives been considered?
- have they taken professional advice?
- the risks/benefits of the proposed decision?
- the reputational risks?
- will the decision affect the future ability of the charity to carry out its objects?
- does the charity have sufficient funds to carry through the decision?
- has there been consultation?
- will there be an opportunity to withdraw from the decision at any stage?

65. The Trust Committee will need to consider - in the circumstances existing at the time - which factors are irrelevant. This is closely linked with conflicts of interest/loyalty and essentially requires the Trust Committee to identify and disregard any factors which may affect their ability to make an objective decision. This could include their role as an employee of the Council, their personal preference (as a local resident) or the opinions of families and friends regarding the future of the Stadium or any knowledge of the preference of Senior Council Officers.

Within the range of decisions a reasonable trustee body could make

66. If the Trust Committee has followed the relevant guidance and can evidence that it has complied with trustee duties appropriately, it is likely that decision

will be within the range of decisions that a reasonable trustee would or could have made.

Charity Commission requirements for the disposal of the land

67. The Scrubs (and therefore the site that the Stadium sits on) is designated land (land which the governing document stipulates must be used for the purposes of the Trust). As a result the Trust will need to comply with the provisions of the Charities Act 2011 regarding the disposal of designated land. There are also certain provisions in the Charities Act 2011 regarding the disposal of land by “longer lease” (leases for more than 7 years) which will also need to be complied with. The details of these are set out below.
68. Section 117 of the Charities Act generally prevents charities from disposing of charity land without an order of the court of the Charity Commission unless the disposal is exempted by this section and the relevant requirements have been complied with.
69. Where a charity is disposing of property by way of a “long lease” it may be exempted from the general prohibition if it complies with the requirements of section 119(1) of the Charities Act 2011
70. Section 119(1) provides that trustees must (before entering into any agreement for disposal):
 - obtain and consider a written report from a qualified surveyor;
 - advertise the disposal following advice from the surveyor; and
 - decide that they are satisfied that the proposed terms are the best that reasonably be obtained in the circumstances of the disposal.
71. In addition, as the Trust would be disposing of designated land, it would need to comply with section 121 of the Charities Act 2011 which provides that public notice inviting representations must be given for at least a month and any representations about the proposed disposition must be taken into account.
72. Usually, the disposal of designated land by the means of a lease of longer than 2 years will require a scheme granted by the Charity Commission. However, as the Stadium site only comprises of a small part of the overall Scrubs, its disposal will not affect the ability of the Trust to carry out its purposes, it has the power to make such a disposal and the Trust has taken legal advice, the Charity Commission are unlikely require a scheme. However, it would still be advisable to contact the Charity Commission and set out the steps taken to confirm that no orders are required before the final disposal is made.
73. The documents for the disposals of the land must contain certain statements (known as certificates) made by the trustee(s) including:
 - whether the land is held by the charity or on trust for the charity; and

- where the transaction is subject to the statutory requirements or whether the charity is exempt or the transaction comes within section 117(3) of the Charities Act 2011.

Budgets

74. The Council approved the use of £397,000k of CIL funding to be awarded to the Trust to develop the business case. To date, £154,500 has been expended. This leaves £243,000 of budget which is sufficient to complete a procurement process should the Trust Committee approve this recommendation.