

Federation of Bath Residents' Associations (FoBRA) **Comments on proposals for a stadium on the Bath Recreation Ground**

1. At the FoBRA Committee meeting on 22 January 2019, Residents' Association representatives discussed the latest consultation on the outline proposals (pre-application stage) for the development of a 'Stadium for Bath' on the Bath Recreation Ground. As expected, comments were wide-ranging, thoughtful, apolitical and substantive. Hitherto FoBRA has not submitted a position on the development of the Recreation Ground, but the opinion of our members is that we should now do so.
2. FoBRA has welcomed the consultation on the new stadium, and members participated in the workshops held last year and earlier this year. Like, we suspect, most Bathonians and indeed the Bath Preservation Trust (BPT), most of our members support Bath Rugby's objectives and acknowledge the economic benefit that its presence brings to the city. However, FoBRA members would be concerned if the proposed changes significantly affected the outstanding heritage of Bath; or caused all city residents, not just those local residents who are neighbours of the Rec, to suffer further noise, nuisance, increased traffic movement and pollution this proposal will likely bring to our city.

Legal and ownership issues

3. The Bath Recreation Ground ('the Rec') is owned by the Bath Recreation Ground Trust Ltd, a charitable body having the Objects of: 'The provision, with or without charge, of land in or near Bath, including but not limited to the Bath Recreation Ground, for use as outdoor recreational facilities for the benefit of the public and in particular for use for games and sports of all kinds and events or other activities and the maintenance of such land provided that (I) there is no undue preference to any particular game or sport or any particular person or organisation, and (II) the charity shall not use the Recreation Ground otherwise than as an open space.'¹ However, the Charity Tribunal in 2016 ruled that the Trust had all the powers of an absolute owner and could lease or sell more or all of the Rec, and could also acquire additional land in or near Bath for outdoor recreation.
4. ARENA 1865 Limited is a private company incorporated in the UK in 2010 to project-manage the construction of a new arena for Bath Rugby at the Recreation Ground in Bath. Companies House lists five Directors, two of whom are based in Switzerland and three in the UK². Two persons are listed as having significant control over ARENA 1865; one a Bermuda-based bank, the other a Mr Pascal Hammerer, a French national resident in the Bahamas. 'Stadium for Bath' is 'the project which brings together Bath Rugby, Bath Rugby Foundation and Arena 1865'³. The ultimate ownership (and therefore control) of the stadium once constructed is not currently clear, though may be in the course of revision.
5. The legal constraints on the Recreation Ground Trust by virtue of the original covenant of 1922 whereby the Rec was conveyed to the people of Bath, and the 1956 covenant conveying the Rec in trust to Bath City Council and the citizens of Bath, have been a matter of some

¹ <http://beta.charitycommission.gov.uk/charity-details/?regid=1094519&subid=0>

² <https://beta.companieshouse.gov.uk/company/07328695>

³ <https://www.stadiumforbath.com/about/project-group/>

dispute, which is briefly summarised at Annex A. FoBRA has not taken any part in or position on this matter.

Under-Pitch Car Park

6. One of FoBRA's principal concerns is the inclusion in the current proposal of short-term parking for some 700 cars under the pitch. This parking space would be available all year, except on match days. The creation of 700 additional parking spaces in the central area of the city would substantially increase traffic flows throughout the city. There would be a major local impact on Pulteney Road (the A36 through route) and North Parade Road and their junction, which even now is regularly blocked by traffic backing up from the west, and increased traffic movement and pollution in Great Pulteney Street and neighbouring streets and roads. This proposal is in direct conflict with the Council's Transport Strategy for Bath, adopted with all-party support in 2014, the principal aim of which is to reduce traffic, especially in the city centre. It is also contrary to the 2018 BANES Parking Strategy, which calls for no increase in parking provision in Bath. We are sceptical about the claims made that a car park in this location would reduce cross-city traffic. This car park would act as a magnet for commuters and visitors, contrary to the general strategy of discouraging private car usage for travel into the city centre. With so many spaces available, many may choose to use it rather than the Park-and-Ride.

7. On match days, the parking would not be available for public use, so the city would have to accommodate elsewhere those of the additional 4000 spectators who chose to drive into Bath, adding to the already heavy pressure on city parking, on congestion and air pollution.

8. It is well established that parking spaces attract traffic, and it is most likely that the creation of these spaces would lead to an increase in the total number of cars parking in Bath. It has been argued that drivers would use this parking *instead of* existing parking spaces in the city centre. We very much doubt that those spaces would be left unfilled, but if that were the case, the Council would lose substantial revenue. Such loss of Council revenue would be a matter of considerable concern to FoBRA members as Council Tax payers, because the Council would need to find alternative sources of revenue to make up the shortfall.

Height and mass of the proposed stadium

9. FoBRA is concerned about the serious potential harm created by the height of the East and West Stands, resulting in the loss of views not only from Grand Parade to the hills and terraces of Bathwick and Claverton, but also those of the Abbey from Bathwick. The overall bulk of the stadium would affect views of the city from the surrounding hills. These iconic views are an important part of the Outstanding Universal Values (OUV) of the Bath World Heritage Site. There are as yet no verified Landscape Visual Impact Assessment (LVIA) views by which to judge the proposal.

10. This issue is directly related to the under-pitch car park proposal. The height could be significantly reduced, whilst still retaining the benefit of raising the level of the pitch to just above flood level, if this car park were excluded. It may be that, even so, the loss of some existing views could be inevitable but this, as BPT has suggested, would need to be mitigated by the very highest quality of design in form, detailing and materials. It would be helpful if clarification could be provided about whether the additional height created by the void for the car park/flood capacity is necessary for a functional sports stadium, or whether it is, as we suspect, primarily for revenue generation and the creation of the market area.

11. FoBRA welcomes the fact that the the Department for Digital, Culture, Media and Sport (DCMS) and Historic England have been informed of this proposed development, which has the potential to affect the OUV of the City of Bath World Heritage Site. DCMS in turn has informed

UNESCO. Bath's World Heritage Site status is both a privilege and a duty, not to be cast aside or compromised lightly. The city's WHS status is also important to Bath as a visitor destination.

Environmental intrusion

12. The existing floodlighting causes widespread and intrusive spillage far outside the grounds. We acknowledge that higher lighting masts could focus illumination more effectively across the playing area, but the opportunity of redevelopment should be used to find the optimum set-up: if possible, units incorporated into the new stands or, if not, then the slimmest and most elegant profile obtainable.

13. Stadium for Bath intends to use the stadium for much more than Bath Rugby matches. The arena/stadium will offer a year-round entertainment, community, cultural and retail venue generating revenue for a private offshore trust (on land gifted to the citizens of Bath for open air, participatory, amateur sport). Such events could cause serious disturbance and noise nuisance to residents in the neighbouring areas. The frequency and type of other activities expected to take place in the stadium, and their likely impact, must be known before the plans are finalised. There should also be legally enforceable constraints on number and type of events to prevent nuisance.

14. Flooding: see para 10 above.

15. Air Pollution: Under the Bath Rugby proposals there will be an increase in air pollution in areas that already exceed safe levels. See paras 2 and 6 above.

16. Data and Openness: Sharing of data is a must.

River Frontage and Market Hall

17. While FoBRA welcomes the opening up of the river frontage to greater public use and activity, it wholeheartedly agrees with BPT who are unconvinced whether in current market conditions the city or indeed its visitors could sustain the market hall without adversely impacting on existing retail shops and hospitality traders in Bath. The current Options draft of the Local Plan sees no requirement for significant extra retail. As BPT have said, and we agree, any permanent retail in this site would be competitive to the city centre rather than complementary.

Temporary use of remainder of the Rec during development

18. FoBRA understands that Stadium for Bath's preferred option is to build a temporary stadium at the Rec. However, the disruption to local residents and the loss of amenity to the wider community from having a temporary stadium sited immediately adjacent to what would be a vast building site for almost two years, and longer if there are delays to the build of the new stadium, would be significant and would be unacceptable to FoBRA members. We are also concerned that, if other sporting activities were to have to relocate from the Rec during construction, they might decide to remain at their 'temporary' locations, leading to the loss from the Rec of the very activities that it was created to promote and sustain. This in turn could lead to pressure to develop the Rec for other, commercial, uses.

Legal issues

Ownership of the Stadium

The Stadium/arena would be a commercial development which would have to make an economic rate of return. At present there is little clarity as to who the ultimate beneficial owners of a stadium/arena would be, and therefore who would exercise control of it. The following issues have been suggested:

- Arena 1865 has been set up to own and develop the stadium.
- Companies House lists five directors, two of which are based in Switzerland and three in the UK.
- This may imply that Arena 1865 is tax resident in the UK.
- None of the directors of Arena 1865 is listed as a person with "significant influence or control" over Arena 1865.
- Two persons are listed as having significant control over Arena 1865. One is by virtue of his or her influence over the trustees of a trust, and the other is a bank that owns 75% of the shares. The individual is based in the Bahamas and the bank is based in Bermuda.
- Arena 1865 therefore appears currently to be controlled from a company law perspective either in the Bahamas or Bermuda.
- The ultimate beneficiaries of ownership will be beneficiaries under the trust.
- Ownership could change before the stadium is built, or thereafter. The stadium ownership could change either by direct sale or by securitisation. There would be no guarantee who future owners might be.

Ownership of the Recreation Ground

There are covenants which cover the use of the lands conveyed in 1922. There is a legal process with local residents taking place currently to try and have these covenants put aside. This covenant situation is further confused because in 1956 the Rec was conveyed to Bath City Council and its citizens, and the 1956 transfer repeated the 1922 covenants. There is a view that the 1956 covenant may still be valid. BANES Council, as the successors of Bath City Council, should state their legal opinion on the 1956 Covenant and might have a duty to enforce it.