

Fao: (Redacted)

Cc: (Redacted)

Construction of new velodrome / New build Cathays High

As you are aware the relocation of the velodrome was included in the school expansion proposals. The school plans are reliant on the velodrome project proceeding and the velodrome project is reliant on the school project proceeding.

Both projects are intrinsically linked, meaning issues that affect one will directly impact on the progression of the other.

Below are a number of issues that still need resolving before any demolition, site clearance and construction works on either project can commence;

1).Charity Commission Involvement

The existing velodrome cannot be cleared for demolition until the Charity Commission have made a ruling on whether the Maindy Park covenant can be removed or amended.

The Commission have confirmed that the Council themselves have not yet made a final decision on whether they will be seeking to change the covenant.

If the Council do decide to proceed, they will have to make a formal application to the Commission. There is no guarantee that the Commission will approve this request.

Furthermore, the Council's solicitor Richard Crane has confirmed that any proposals concerning the Charity's land will need to be consulted upon as the Council (as trustee) is required by law to advertise the proposal under section 121 (2) of the Charities Act 2011 seeking representations.

Mr Crane also states that only once any representations have been considered can the Council proceed to a formal decision (as trustee) to release the land.

This decision will then be subject to gaining the approval of the Charity Commission.

The new velodrome proposals are reliant upon the decommissioning of the existing facility.

If it stays there will no longer be a case for the new velodrome.

Equally, no works can commence on the school expansion until covenant public consultation has taken place and Charity Commission approval obtained.

2. School Planning Application

The new velodrome project is reliant upon a new Cathays High School expanding onto the Maindy site, however a planning application for the new school has yet to be submitted.

Works at the ISV cannot commence until the school planning application has been approved as well as other inter-related factors being addressed and resolved, not least the issue of the covenant.

3. 21st Century Schools Funding

Even if planning permission is obtained for the new school, Cardiff Council still have to obtain funding from the Welsh Government for the project to proceed.

The use of a large quantity of education monies to part pay for the new velodrome and demolition of the existing community facility will be a very contentious issue.

We anticipate that the WAG will call in the plans.

Again, the school (and the interlinked new velodrome) cannot be built until these issues are overcome.

To qualify for 21st Century Schools funding, the proposed new school will have to be compliant with 21st Century Schools guidelines.

The available land over both the current school and Maindy Parks sites is only 46,000 square metres.

The 21st Century Schools building bulletin details the MINIMUM requirement for a 1,400 pupil school as being 100,000 square metres.

Even allowing for the ability (under constrained site guidance) to double count outdoor artificial sports areas, 46,000 square metres is way below the minimum requirement to be 21st Century Schools compliant.

The scrutiny committee questioned Councillor Sarah Merry if there was sufficient land to be compliant. Councillor Merry assured them there is enough land, but did not provide any figures or a breakdown of intended land usage to back up this claim.

Due to the challenging topography of the Maindy Site (steeply sloping and uneven), the land available figures will need to be reduced.

Some areas of the site will be unsuitable for both building works and outdoor sports, play and recreation areas and will realistically need to be deducted from the 46,000 square metres figure.

We do not understand how the council can successfully apply for 21st Century funding when there is insufficient land available to be compliant?

4. Velodrome Business Case

The presentation of the full business case has been delayed until after the local elections.

There is no guarantee that the business case will succeed especially since construction costs have increased and velodrome business case is now being incorporated into the wider ISV business case.

The school expansion is reliant on the business case for the new velodrome succeeding.

If the new velodrome case fails Maindy Velodrome will stay meaning the school cannot expand onto the Maindy site and the existing velodrome stays.

5. Concerns over Track Design

The proposed steepness of the new velodrome banking would make the new facility un-useable by a large proportion of current users and the majority of cyclists, not least a large proportion of members from the major stakeholders club.

The proposed banking of the new velodrome (28 or 32 degrees) would mean it could only be used by track bikes and would be age restricted.

The letter of concern and subsequent meeting with clubs and governing bodies made clear that the new design as it stands will not be suitable as a replacement for Maindy.

Those with the relevant technical knowledge at the meeting stated the banking had to be 20 degrees or less in order to replicate all the current uses by all users at the existing velodrome.

A track of 28 or 32 degrees would not be “suitable for all ages, abilities and types of bikes” as per both the brief and publicity issued and assurances given by the council.

All 5 points detailed above in respect of the school and proposed new velodrome need to be resolved prior to any works commencing on either the school or velodrome projects.

Additionally, a significant area of concern is the Council’s repeated failure to address a clear conflict of interest whilst it continues to act as trustee of Maindy Park Charity.

A recent verbal announcement was made by leader of the Council, Cllr Huw Thomas for the Council to take possession of Maindy Park for use as a local education authority games area.
[2 April 2022 Cardiff Transformed¹]

While we are yet to see anything in writing, it would appear that the Leader of the Council is now proposing that Maindy Park cease to be available for recreation and leisure time occupation by the residents of Cardiff and, instead, a substantial majority of the land protected by charitable covenant be given over to the Council to be used for school sports grounds.

As you legal team should know from the guidance issued jointly by the Charity Commission and the Local Government Association ² ³ to assist local authorities where they are a trustee, such a huge change with a major adverse effect on the local community requires charity law and guidance to be followed.

One of the examples ² “Fictional Case Study B – Touchline District Council” is virtually identical to the situation which currently exists in respect of Cardiff Council and Maindy Park.

Indeed, the guide³ is explicit in relation to land transactions:

“However, a charity cannot generally transfer its property to a non-charitable body or for a non-charitable purpose – e.g. charity land could not be transferred to a local authority to form part of its statutory property, even if it were to be used for purposes similar to those formerly undertaken by the charity.” (page 5)

The helpful checklist also makes clear:

“3. Do you need to manage a possible conflict of interest arising because the Council is both the charity trustee and a local authority with an interest in the land in its statutory capacity?”

4. Have you involved the local community in the proposals to transfer the land?” (page 5)

As is well documented, the Council has a clear conflict of interest and there continues to be a lack of transparency around the decision-making as the charity trustee.

Furthermore, there has been no consultation by the Maindy Park trust with the local community about the Council’s intent to take possession of the covenanted land to form part of its statutory property.

¹. source: https://www.thenational.wales/news/20041588.cardiff-council-leader-challenged-city-region-low-pay-boast-maindy-velodrome/?fbclid=IwAR1MQeeINSiPUKEfMr5mn8dh2X1i8HIA2-gzlmfAhOWCRFN_VDxGwwwZXNY

². Councillors’ guide: to a council’s role as a charity trustee

³. Local authorities as trustees

[2 & 3 both available on this weblink:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/352409/Local_authorities_as_charity_trustees.pdf]

To sum up, the Council are proposing to take approximately two thirds of the covenanted charity land for school playing grounds to which there would be no public access for most of the day during the school year and, probably with school clubs and fixtures etc. many evenings and weekends.

This would impact hugely on the local community and Cardiff residents with the loss of a large area of open green space.

Other than leaving the community only a third of the existing site, there has been no mention of any replacement local green spaces to compensate for the two thirds that would be lost.

Cardiff Council as trustee would most certainly not be acting in the best interests of the charity as the land is for recreation and leisure time use by the beneficiaries.

Replacing Maindy Park with multi use games areas does not relieve the Council of the legal obligations it has as charity trustee to protect the covenanted land from use by the council for school sports.

In conclusion, we have evidenced that there are a number of areas that impact on if and when construction for both projects can begin.

We would like assurances in writing that until *all* these issues have been resolved no demolition, clearance, site preparation or construction work can commence on Maindy Park or at the proposed new velodrome site.

Names - Submitted for a Reply: (Redacted)

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