

Divisions Affected – All

CABINET

19 September 2023

Proposal from Oxford United to Oxfordshire County Council as Landowner

Report of Place Overview & Scrutiny Committee

RECOMMENDATION

1. The Cabinet is **RECOMMENDED** to —
 - a) Agree to respond to the recommendations contained in the body of this report, and
 - b) Agree that relevant officers will continue to update Scrutiny for 12 months on progress made against actions committed to in response to the recommendations, or until they are completed (if earlier).

REQUIREMENT TO RESPOND

2. In accordance with section 9FE of the Local Government Act 2000, the Performance and Corporate Services Overview & Scrutiny Committee requires that, within two months of the consideration of this report, the Cabinet publish a response to this report and its recommendations.

INTRODUCTION AND OVERVIEW

3. At its meeting on 13 September 2023 the Place Overview and Scrutiny Committee considered a report on the use of council-owned land south of Kidlington roundabout (known as the 'Triangle') for the potential development of a new stadium by Oxford United Football Club (OUFC). The report included the findings from a public engagement exercise conducted in June and July 2023 on the responses by the club to the seven strategic priorities set by the Council for the use of the land.
4. The Committee would like to thank Cllr Liz Leffman, Leader of the Council, Cllr Calum Miller, Cabinet portfolio holder for Finance, Glynis Phillips, Cabinet portfolio holder for Corporate Services, Martin Reeves, Chief Executive, Vic Kurzeja, Director of Property Services, Susannah Wintersgill, Director of

Communications, Strategy and Insight, Carole Stow, Engagement and Consultation Manager, and Paul Grant, Head of Legal, for preparing and introducing the report, and for attending to answer questions. Thanks also go to Anita Bradley, Director of Law and Governance, for providing in-person legal advice to the meeting. Similarly, thanks go to Westco Communications, the independent company who undertook the engagement on the Council's behalf, for sending Simon Jenkins, Director of Communications, and Rishi Moulton, Head of Insight and Data, to explain how the engagement process was undertaken, provide headlines from it, and answer technical questions on it.

5. This report is atypical of a Scrutiny report to Cabinet. Overwhelmingly, Scrutiny exists to hold Council decision-makers to account and to make non-binding recommendations as to how policy could be improved. Rather than intervening on the officers' recommendation to Cabinet, the Place Overview & Scrutiny Committee (a non-political, cross-party function of the Council), included this item on its agenda to scrutinise the process leading up to a decision (as set out in paragraph 7 below) in order to provide assurance that the process leading up to the officer recommendation had been followed robustly and fairly. As much as communicating the views of the Committee to Cabinet, this report seeks to provide public assurance that such scrutiny has occurred.
6. It should be noted that the Committee heard the views of local Councillor, Cllr Middleton, and a member of the public, Suzanne McIvor (speaking on behalf of the Friends of Stratfield Brake), and had access to the publicly available summary by OUFC concerning the legal position in relation to the stadium, as well as written comments made by the local parish council, Kidlington Parish Council made in addition to their response to the engagement exercise.

SUMMARY OF PRESENTATION

7. Introducing the item, the Chair explained to the Committee that the meeting was not to agree that the stadium should be built or not. It was to consider:
 1. whether due process had been followed;
 2. whether a case has been made for sale or leasehold; and
 3. the seven strategic priorities informing the decision.
8. The Committee and those attending were reminded that the Committee was not a Planning Committee, and that indeed the Council was not the relevant Planning Authority. As an advisory Committee, no legal decisions could be taken by the Committee itself but there was benefit and public interest in highlighting to Cabinet particular aspects of the issues under consideration which would help further inform its decision. Topics for members to keep in mind were whether the engagement was fair, whether the Council had missed anything, and whether the papers were a fair and balanced representation of the evidence.
9. The Committee were taken through the consultation findings by Westco, a communications and engagement company commissioned by the Council to

undertake the engagement on the extent to which the Council's seven strategic priorities for a possible land transfer would be addressed. All aspects of the engagement, from question design, coding, analysing and reporting on results, were the responsibility of Westco on behalf of the Council. Measures had been taken to verify the data to ensure its robustness and accuracy.

10. In total, 5,441 people and organisations responded to the survey. Of these, 71% were residents of Oxfordshire, with 23% registered as living outside. Of those from within the county, 31% lived within an approximate 2-mile radius of the proposed stadium site, and 40% outside that area. Overall, 53% of respondents identified as being supporters of the football club. Across all residents in Oxfordshire, the most important of the strategic priorities were 'improving the infrastructure and connectivity in this location', 'enhancing inclusive facilities for local sports groups', and 'maintaining a green barrier between Oxford and Kidlington'. Very different levels of support were, for this last priority, evident between those living within two miles of the site and those further away, with almost two thirds living nearby highlighting it as a key priority, yet only approximately a quarter of those further away doing so. Similar differences could be seen in the other strategic priorities.
11. The Committee was presented with data showing that the assessment by respondents of whether OUFC's proposals would address the different strategic priorities were sharply divided, with those living closest to the Triangle being doubtful, and those living further away being in agreement. The greatest areas of doubt expressed by local residents were whether the green barrier between Oxford and Kidlington would be retained, and whether the proposals would significantly improve the infrastructure and connectivity of the area. OUFC supporters and those living outside a two-mile radius were supportive of the football club's proposals in relation to how well they would address the Council's strategic priorities. Free text comments in the engagement were primarily (in descending order): expressions of support, concerns over traffic and congestion, loss of green belt and the impact on nature, the importance of supporting OUFC for the benefit of Oxford and the county, and parking concerns for local people.
12. Martin Reeves, Chief Executive of the Council, was invited to comment. He drew to the Committee's attention the fact that the Council had been undertaking engagement on this issue for the past two and a half years, with over 3700 people and organisations having been engaged in 2021 prior to the most recent exercise. It was clear that strong but disparate views were held on both sides and that officers were highly cognisant of this fact and respectful of the wide range of opinions.
13. Susannah Wintersgill, Director of Communications, reminded the Committee of the process undertaken to reach the current point. OUFC had approached the Council in March 2021 with a proposal to build a new stadium on land owned by the Council near Kidlington. The licence for the club's current home, the Kassam Stadium, would run out in June 2026. The Council had not considered divesting itself of the Triangle prior to the club's approach. The Council identified six strategic priorities against which to test the club's proposal. Following

feedback from the public and stakeholders, these were updated and extended to seven. For clarity, the degree to which the club's proposal would address the council's priorities would inform the decision whether to progress the proposed land transaction; they would not form any part of the Planning process, which would be undertaken separately by Cherwell District Council as the local planning authority.

14. Further background was provided around the Council's process of engagement, which began in January 2022, seeking to establish whether there was public support to enter discussions with OUFC about a potential land transfer and whether the Council's priorities were the right ones. This received over 3,700 responses. The next phase in April and May 2023 involved more targeted stakeholder engagement, when 11 independently facilitated stakeholder meetings were held. The most recent phase took place between June and July 2023 following the receipt of more detailed information by OUFC, allowing the public to have their say on whether they felt the council's priorities had been addressed by the club. To support those without access to digital communications five public exhibitions were held around the area, to which 293 people came. A dedicated website provided updates on the negotiations; the survey and more detailed information was hosted on the Let's Talk website. Every household within an approximate two-mile radius of the proposed site had been delivered a leaflet with more information.
15. Vic Kurzeja, Director of Property Services, explained to the Committee the process of how the Council had assessed OUFC's response to the council's strategic priorities. In total, eight officers with relevant specialist knowledge and experience had been responsible for assessing the responses and making a judgement on the degree to which they met the strategic priorities. This was different to the judgement that would be made in relation to the statutory planning process and was based solely on the information provided by the club. Where possible, assessments were made on quantifiable information – for example, around biodiversity net gain. Where quantifiable information was not available officers referred to industry standards, where available, and if not, relied on their own professional expertise.
16. Should the land transfer be approved by Cabinet, the officers' preferred option would be a freehold transfer as opposed to a leasehold one. The rationale for this was based on a number of factors: best value, avoiding financial risk and removing ongoing management requirements for the Council, all of which would be more problematic under a leasehold arrangement. Particularly, future market conditions could change, and there was always the possibility of non-payment of rent in the future, which introduced uncertainty and risk to the transfer if done on a leasehold basis.
17. The long-term use of the land was an important consideration and the steps to ensure suitable future use were explained to the Committee. A covenant would set aside the use of the land for football/community sports and leisure/sports stadia in perpetuity, with limited ancillary commercial use (including a conference centre and hotel) within the stadium footprint. The council's seven priorities would be enforced by being turned into practical, measurable steps,

with a timescale for them to be achieved and a timescale for the achievement to be sustained. The steps would be set out in a Collateral Agreement between the Council and OUFC. The Council would impose a requirement (enforced by way of a restriction on the freehold title) that, if the site were sold on to a different owner, the new owner would enter identical obligations with the Council.

18. Concerning the area of woodland separating the Triangle from land owned by Exeter College to the south, the Council had no intention to sell now or in the future – it would remain a county council asset in perpetuity. Likewise, the site owned by Exeter College did not form part of the stadium plans. This had been confirmed by the club.

SUMMARY OF DISCUSSION

19. The following summarises the issues which were explored by the Committee in response to the presentation and report, bar those areas on which it does wish to make formal recommendations to the Cabinet, which are detailed further below. These discussions explored:

19.1 The contribution made by the Friends of Stratfield Brake.

The Committee noted that the Friends of Stratfield Brake had raised important questions and suggested that the Cabinet should be sure to have considered responses to the issues raised. Likewise, alternative proposals put forward should equally be considered. The Committee did establish, as per one of the earlier questions posed, the legal entity with which the Council would be dealing. It was confirmed that any legal agreement would be with Oxford United Football Club as a limited company.

19.2 Issues around the strategic priorities and the Council's judgement as to whether OUFC's proposals addressed them.

The questions around this were threefold. Firstly, how the priorities had originally been determined. It was confirmed that the priorities had been drafted by officers and approved for public engagement by Cabinet in January 2021. Following the public engagement, they had been amended and the number expanded to better reflect the concerns expressed.

The second and third queries were challenges as to how the Council had reached their conclusions that the OUFC proposals had addressed specific strategic priorities. It was suggested that believing Priority 4 ('Significantly improving the infrastructure connectivity in this location, improving public transport to reduce the need for car travel as far as possible, and to improve sustainable transport through increased walking, cycling and rail use') had been mostly addressed was somewhat credulous. OUFC's undertaking that it would 'achieve 90% sustainable travel modes in due course' was questionable, in light of the absence of more detailed information about how they would do so, the dates they would do so by and interim targets. Likewise, the second challenge was over 'improving public access to high-quality nature and green spaces.'

Specifically, whether the priority was indeed addressed simply by creating access to a field without current public access. In response to both officers explained that traffic issues and biodiversity net gain and access would be material planning considerations, where OUFC would have to convince the Planning Authority of their deliverability in order to receive planning permission to develop the stadium and would be expected to form conditions for its completion. OCC will be a statutory consultee to any future planning application and as the relevant Highway authority will provide detailed responses to these aspects of the application. This mechanism would safeguard concerns over these issues. One useful fact established was that the public would be able to enjoy full access to the area outside the stadium at all times throughout the year.

19.3 The benefit to the local community.

With the undertaking that the capital receipt from any sale would be put to the benefit of the local community the Committee sought clarification on this process and how 'local community' would be defined. The Council would be informed by a number of factors, including our Voluntary and Community Sector (VCS) strategy and Community Asset Transfer (CAT) policy and would work to identify the service needs in the local area, including working with other local authorities – districts and parishes. .

19.4 The workings of the public engagement.

The Committee posed questions around two primary issues on this. Firstly, noting that the responses, by being open, were likely to have been answered by those most engaged and invested in the issue, and that the results therefore did not have anything to say about what the typical resident thought. This was noted by officers, and it touched on an area of ongoing work for the Council. However, in this instance understanding the specific characteristics of respondents was material in understanding the broad range of views on this issue. The second issue was the process of verification of results, specifically whether the use of template responses had been picked up. Westco confirmed that 99 duplicate responses had been identified and expunged, but largely these were due to people updating their responses, with the later ones being kept. All free-text responses had been read and analysed and the presence of copy and paste responses had not been detected.

19.5 How the proposed valuation was arrived at.

Following the question, the process was explained. Valuation of this land is challenging on the basis that the circumstances of its sale are unique. Were it not for OUFC's approach to the Council, it would not be up for sale. Consequently, there is no open market valuation which would inform the Council. The Council had approached two professional surveyors, outlining the type, location and size of the land for sale, the specific circumstances of the sale, and the expected covenants, restrictions and priorities for the Council. Based on the closest comparators both firms confirmed that the price agreed was fair and that the Council had met its statutory obligations to achieve best value.

20. To allow for consideration of those reports which were legally exempt from public disclosure, the Committee entered confidential session, necessitating the departure of members of the public. Detailed commentary on the nature of the discussion clearly cannot be provided, but the Committee raised questions relating to the financial and legal aspects of the possible transaction in greater depth. In particular, this focused on whether it believed OUFC was unable to remain at the Kassam beyond June 2026.

OVERALL CONCLUSION

21. The Place Overview & Scrutiny Committee is clear in its understanding that it was not making a decision on whether or not Oxford United Football Club (OUFC) should be permitted to build a new stadium at the Triangle. Cabinet itself, when it takes its decision on 19 September 2023, will be deciding whether or not to approve the transfer of the land to the club. The stadium would only be built if planning permission were granted by Cherwell District Council and if OUFC meets various conditions.
22. The Committee was convinced that the engagement process had been thorough, intensive and extensive. The Committee also considered that the process had been fair and equitable, with officers making sound assessments against the seven strategic priorities.
23. The Committee is satisfied by the evidence before it that it is true that OUFC is unable to remain at The Kassam Stadium after June 2026.
24. To ensure the Cabinet makes a fully informed and considered decision the Committee makes two formal recommendations below.

RECOMMENDATIONS

25. The core concern of the Committee related to the efficacy of safeguards to ensure that the Council's interests and priorities would be upheld if it relinquished ownership of the Triangle. The Committee expressed concerns over whether the safeguards put in place by the council could be bypassed by a future transfer of ownership, whether they could be undermined by the club becoming insolvent, and the consequences of the council having to invoke enforcement mechanisms.
26. The primary means of safeguarding the Council's interests following a sale would be through the means of freehold covenants. The covenants would be tied to the land, and not the specific owner, meaning any future owners would also be tied to the requirements specified, which involved a collaboration agreement. The terms of this agreement would commit the Council and the landowner to work together to take steps to set goals as to the fulfilment of the

strategic priorities. These could not be identified at the present time because, until planning permission were granted, the exact proposal is uncertain. The planning process itself would also likely create planning conditions relating to a number of the strategic priorities, adding a further source of security. The Council would expect to monitor these through an annual report and, in the event of any breach, could seek enforcement action or remedy through the courts.

27. Whilst the Committee welcomed these safeguards, it did nevertheless have concerns. For example, the cost of taking enforcement action could be considerable. Equally, there would be a risk that the Council might not win. In the event that the club went into administration, it could be possible that the Council would need to take back the land and would be exposed to the liability of making it good even after administrators had extracted the maximum value from the buildings present. In view of this, the Committee discussed whether requiring money to be held in an escrow account would be wise. This would mean the provision by the club of some funds in an account, which could be called upon in certain circumstances to cover the cost of rectifying potential future issues. It was advised that, while it is a potential option, the question of how much the Council is willing to give up in order to secure the surety provided by an escrow account is a matter for commercial negotiation and judgement on the efficacy of alternative mitigations.
28. The Committee sees the sense in this response, but feels it is important to highlight to Cabinet the uncertainty which exists in the future, and to have a clear grasp on the risks it is assuming in the short, medium and long-term.

Recommendation 1: That Cabinet should fully understand the short-, medium-, and long-term impacts of the covenants proposed, including any future financial risks.

29. One of the issues the Committee was asked to provide assurance on was the recommendation of a freehold sale rather than a leasehold agreement. Some discussion of this did take place within the confidential session. No exempt annex to this report is attached, meaning specifics are not provided as this would require the disclosure of exempt information. The Committee was, however, satisfied by the overall case for a freehold sale being the preferred option.
30. The Committee posed two areas of challenge over the leasehold vs freehold decision. The first related to the question of which party the decision would be optimal for – the Council or the residents. Given that the main reasons to recommend a freehold sale over a leasehold agreement were the reduction in financial risk and ongoing management commitments to the Council, it was asked what the benefit for residents might be. It was put to the Committee in response that nationwide there had been much discussion about the relative merits of disposal of land through freehold or leasehold agreements by local authorities and the impacts each course of action had. The Council had sought to learn from the experience of others.

31. The second issue was over whether disposal by freehold truly did mitigate the Council's level of risk as much as imagined owing to residual risks. For example, non-compliance with the terms of the covenant would not be prevented under a freehold sale. Instead, they would allow for the Council to take remedial action through the courts. This action could, however, involve a high financial cost and accordingly was a risk. This was not reflected in the advice provided by officers.
32. In response it was suggested that these were different types of risk. Direct legal and financial risks, such as non-receipt of rent or the need to undertake maintenance of the grounds under a leasehold would be controlled and reduced. However, it would not be possible to de-risk any transaction entirely. These residual risks were more indirect and likely to involve reputational risk - were the breaches so egregious such as that the Council would feel pressure from the public that it had to intervene to correct them, notwithstanding the cost. Though they were real, these risks were further removed and more difficult to control.
33. The Committee acknowledges this distinction, but it does not obviate its original point that the claimed reduction in risk does not mean full de-risking and that ongoing risks, albeit of a different nature and with greater flexibility of response, remain. This fact should be an important consideration for the Cabinet when deciding between the two disposal models.

Recommendation 2: That Cabinet should pay particular attention to the question of whether freehold or leasehold was most appropriate taking account of the difference between legal and reputational risk.

FURTHER CONSIDERATION

34. The Committee does not expect to consider this item again during the current civic year.

LEGAL IMPLICATIONS

35. Under Part 6.2 (13) (a) of the Constitution Scrutiny has the following power: 'Once a Scrutiny Committee has completed its deliberations on any matter a formal report may be prepared on behalf of the Committee and when agreed by them the Proper Officer will normally refer it to the Cabinet for consideration.'
36. Under Part 4.2 of the Constitution, the Cabinet Procedure Rules, s 2 (3) iv) the Cabinet will consider any reports from Scrutiny Committees.

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Annex: Pro-forma Response Template

Background papers: None

Other Documents: None

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