



# Bath Heritage Watchdog

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APPLICATION NUMBER: 23/03558/EFUL

ADDRESS: Bath Recreation Ground, Pulteney Mews

PROPOSAL: Full planning application for demolition of existing Clubhouse, west stand retained wall, and ancillary structures. Removal of all existing temporary structures. Phased comprehensive redevelopment to provide a new sporting, cultural and leisure stadium with hybrid sports pitch, including the retention of and refurbishment and extension to the South Stand, and construction of new permanent North, East and West Stands. Phased construction including the retention and relocation of temporary east stand to facilitate playing of sport during construction. Stadium to include ancillary facilities and structures including changing rooms, flood lights, television screens, scoreboards, camera gantries, media suite, matchday food and beverage outlets and hospitality suites, conference / function / banqueting / hospitality spaces, service and kitchen areas, flexible multi-use areas, offices, storage, plant and substation. Hard and soft landscaping works, flood alleviation works, tree planting, new steps and platform lift, infrastructure works, temporary construction compound and all associated construction works and operations

CASE OFFICER: Gwilym Jones

DATE: 24 October 2023

COMMENT: STRONG OBJECTION

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Bath Heritage Watchdog strongly objects to this application, both because of what the application proposes and for the lack of accuracy in some of the claims put forward.

## World Heritage

In 1984 the United Kingdom ratified the 1972 UNESCO *Convention concerning the Protection of the World Cultural and Natural Heritage* (normally referred to as the World Heritage Convention). The “State Party” that UNESCO was informed to communicate with was the Department for Culture, Media and Sport (DCMS).

The city of Bath in its entirety was inscribed as a World Heritage Site in 1987. It is the only complete city inscribed in the UK.

UNESCO also inscribed Bath as a Great Spa Town in 2021. This was an extremely rare occurrence, making Bath unique in the UK, being the only place with concurrent inscriptions. To avoid complications of having more than one World Heritage Management Plan and confusion about which World Heritage Site would be affected by changes, UNESCO decided “the boundary of the existing (1987) World Heritage Site is retained to serve as the nominated property in The Great Spas of Europe, of which Spa of Bath is one of the most outstanding”.

The Great Spas of Europe World Heritage Site consists of 11 spa towns in 7 European countries. The OUV for the Great Spas WHS lays considerable emphasis on the “therapeutic landscape” and Bath’s integration “into an overall urban context that includes a carefully managed recreational environment of parks, gardens, promenades, sports facilities, woodland walks and rides. These buildings connect visually and physically with their picturesque setting of idealised nature” and they “were designed to respect and intermingle with nature”.

The settings of both have a common feature that the views across are part of the landscape and the landscape is considered as an integral part of the World Heritage Sites. UNESCO have ruled therefore that both the inscriptions benefit from this common feature, and would be similarly at risk from inappropriate developments. In simple terms, both remain inscribed or both lose the inscription. The impact of losing Bath’s World Heritage inscriptions on the 10 other spa towns must be an important consideration.

The *Operational Guidelines for the Implementation of the World Heritage Convention* includes guidance on the protection and management of World Heritage Sites, and the guidance is updated from time to time. In 2021 it became a mandatory requirement in UNESCO’S Operational Guidelines for the Implementation of the World Heritage Convention for Heritage Impact Assessments (HIAs) to be undertaken in line with formal Guidance, (para118bis<sup>1</sup>) introduced in 2021. However, in this case, no HIA has been provided on the planning files covering the expectations in footnote 1 which expects it to provide a formal appraisal of the impact of the proposals on the attributes of OUV. The assessments are inadequate, because despite the WHS being the entire city, the planning application concentrates on a 500m zone and even that is incomplete.

The construction of the proposed stadium would have a major impact on the views that the tourists want to see. From Grand Parade there is currently a full circle panoramic view of the city and it’s setting. With the stadium built the hillside in that direction is either completely obliterated or at best half obscured. The view of St Mary’s, Bathwick disappears and the extent of the Bathwick estate cannot be seen. The views from the Orange Grove (a Scheduled Ancient Monument) and along Johnstone Street (where the montage looks inaccurate because the typical viewpoint is looking over the railings at the end) are similarly affected. From Vane Street the stadium removes the whole view of the city and emphasises the adverse impact on the reduction to what the application refers to as “the outfield” (ie the remaining green space of the Rec). From Alexandra Park the view the greenery of the Recreation Ground is completely lost.

The views from the Rec are also important. The supporters in the stadium will lose the current views of the Abbey and Empire Hotel, as will the television cameras during televised matches.

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1 “These assessments should serve to identify development alternatives, as well as both potential positive and negative impacts on the Outstanding Universal Value of the property and to recommend mitigation measures against degradation or other negative impacts on the cultural or natural heritage within the property or its wider setting.”

In short, the physical barrier of the stadium would divorce the 18<sup>th</sup> Century part of Bath from the later developments on the southern slopes. It will be very damaging to the OUV.

It would be wrong to leave the subject of the World Heritage inscriptions without also mentioning the criticisms of ICOMOS.

To preserve the Outstanding Universal Value of The City Of Bath, ICOMOS want: “Visual Connectivity” because new developments within the WHS must not reduce the visual connection to the natural landscape; “Scale and Proportion” so as to maintain human proportions; “appropriate Density and Volume” so that a development should sit harmoniously within its landscape and not to impact on the outstanding Universal Value of the WHS, its integrity and on important views across the WHS as well as to and from the development. Those are the views that underlie the Statement of Outstanding Universal Value of Bath, where “the landscape is considered as an integral part of the architecture of the 18th century city. The organic connection of buildings and natural environment is exemplified by the surrounding landscape forming the wider setting of the city, particularly important for its aesthetic beauty and drama.”

ICOMOS also clarify that it is a distinctive attribute of The Great Spas of Europe (of which Spa of Bath is one of the most outstanding) that the urban space connects physically and visually with their picturesque setting of idealised nature, a green environment used regularly for exercise as a contribution to the therapy of the cure, and for relaxation and enjoyment. The Rec is not specifically named but it neatly fits the description “green environment used regularly for exercise” because the 1956 Conveyance stipulated that it was “for use as outdoor recreational facilities for the benefit of the public at large and in particular for use for games and sports of all kinds, tournaments, fêtes, shows, exhibitions, displays, amusements, entertainments or other activities of a like character”.

In World Heritage terms the “State Party” is DCMS. To them is directed “ICOMOS urges again the State Party to suspend the implementation of the “Bath and North East Somerset Local Plan 2011 - 2029” and to rework it in strict accordance with:

- the recommendations of the 2008 Reactive Monitoring mission report,
- the recommendations of the World Heritage Committee in 2009,
- the Supplementary Planning Document (SPD) in 2008 for BWR and the Bath Building Heights Strategy.”

This is the conclusion drawn from the disparity between the stated policy “There is a strong presumption against development that would result in harm to the Outstanding Universal Value of the World Heritage Site, its authenticity or integrity” and the recent plan update which ICOMOS believe unacceptably dilutes the protections previously offered by the individual policies.

This attempt by ICOMOS to get DCMS to override the Local Plan Update is a very clear indication that they regard both WHS inscriptions as seriously at risk from the council’s attitude to preserving the OUV from inappropriate developments, such as this one.

## **Historic Environment**

Although the Rec is treated as just being the area covered by the planning applications, it is a wider area which the then council purchased in 1956 as open land with protective Covenants. This is expanded in the Legal Constraints section below. Despite the Covenants, the council as landlord allowed the Leisure Centre to be built on part of the Rec, and a commercial enterprise (Bath Rugby) was given a long lease for the private use of another part of the Rec.

Within that wider area the Grade II listed cricket pavilion is mentioned in the planning application and then ignored because it is outside the “development site” yet the setting of the pavilion will be adversely impacted by the proposed change to the rest of the Recreation Ground.

The other significant impact is to the President’s Lounge. It is wrongly described as “basements built for the continuation of Johnstone Street” despite the proper description being in the Historic England register as “a very unusual survival of a late C18 lime kiln in a city centre setting” further clarified by “Square lime kiln with buttresses on either side of the fire hole, now the entrance”. Despite being inside the “development site” it loses its significance by the North Stand being built right up to it; and because the stand would be substantially higher than the former kiln it will be almost impossible to actually see the structure, let alone understand and appreciate it’s significance.

## Legal Constraints

In 1956, the then council bought the Recreation Ground "an area of Sixteen acres two roods and eleven perches or thereabouts and known as The Bath and County Recreation Ground", which translates to about 80858 square yards, 67608 square metres and approximately 6.76 Hectares. The Conveyance included a restrictive covenant:

*‘THE Corporation will not use the Recreation Ground otherwise than as an open space and will so manage let or allow the use of the ground for the purposes hereinbefore mentioned as shall secure its use principally for or in connection with the carrying on of games and sports of all kinds and will not show any undue preference to or in favour of any particular game or sport or any particular person club body or organisation.*

A High Court Judgment in 2002 decreed it to be charitable land and a later Tribunal looking into the application of the Charities Act 2011 identified the construction of the Leisure Centre on part of the land and the 1995 lease on another part to a business as potential Breaches of Trust which were not investigated further<sup>2</sup>, but the boundary of the land in question was very clearly the entire area of the Bath Recreation Ground covered by the 1956 Conveyance. A later hearing, dealing with an appeal, revealed that there was nothing in Charity Law that allowed the potential Breaches of Trust to be pursued, and there was no benefit from challenging the Leisure Centre, so that it could remain in place until it reached the end of its useful life and then it cannot be replaced, the area it covered should revert to the required open space. The 1995 lease might possibly be ruled unlawful, but it would have to be challenged under the Landlord and Tenant Act not the Charities Act.

The 2014 Tribunal was again only looking at the application of the Charities Act, and tied up some of the remaining ambiguities. It ruled that although the Covenants exist, the Charity Commission is free to choose whether or not they are mentioned in their Scheme but “*this finding does not mean that those covenants are not enforceable in law. The covenants and conditions are to be interpreted and enforced as a matter of property law.*” It ruled that unless legally challenged the 1995 lease should remain, but apart from an East Stand permitted on a specific additional area for 9 consecutive months of each year the lease cannot be extended in area or duration, and although the Scheme allows the possibility of a land swap, the land that can be swapped is restricted to the area covered by the 1995 lease, and the swap must expire when the 1995 lease expires or is cancelled at an earlier date.

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2 “That conclusion in no way pre-empts the question whether the actual uses to which the claimant has put the Recreation Ground, in particular the most recent letting of the football ground, are compatible with the charitable trusts. That is a question which this judgment does not seek to answer.”

For the purposes of the Public Trustee Act 1906, the Custodian Trustee was confirmed as the Official Custodian Of Charities, and the Managing Trustees were identified by name rather than the business identity. The Managing Trustees are required by the Act to deliver the Objects of the Charity (charity 1173521-1):

(a) the property of the Charity is maintained, equipped and otherwise laid out as the Trustees shall think fit for use principally for games and sports of all kinds and for tournaments, fetes, shows, exhibitions, displays, amusements, entertainments or other activities of a similar kind which advance the Objects;

(b) the Charity shall not show any undue preference in favour of any particular game or sport or to any particular person, club, body or organisation; and

(c) the Charity shall not use the Bath Recreation Ground otherwise than as an open space.

Given that the planning application would give permission for an area which by its own admission would leave insufficient remaining area for many other sporting usages, the Managing Trustees are legally obliged to not show undue preference, and to only use that area outside the part covered by the 1995 lease as an open space. There is an immediate conflict between the planning acts and the Charities Act and the Public Trustee Act.

Policy B(2)b of the Local Plan regarding a stadium requires all '*unique legal issues and constraints*' to be resolved, and the legal conflicts show that they are not. Indeed, the Object of the Charity remains a permanent constraint confirmed by a court ruling that anything outside the area identified in the 1995 lease must remain an open space, and on expiry of the lease that area too must revert to an open space. The 1995 lease itself is able to be challenged under property law according to the various Tribunal hearings.

## Flooding

The Recreation Ground is in Flood Zone 3B according to the Environment Agency and in Flood Zone 3A according to B&NES (the reason for the difference has not been explained, and the Secretary of State will heed the Environment Agency's choice). Certainly a photo of the result of one day of torrential rain did cause it and the public path beside the rugby ground (see photo) to become impassable for a while. There have been pictures seen elsewhere showing the Rec itself flooded at that time.



The planning application proposes to raise the pitch, which will displace the flood storage to elsewhere. The application admits that by building the stadium and raising the pitch height, the flood storage volume will be reduced. and proposes to compensate by lowering the surface elsewhere on the Rec.

It is Government policy that compensation for loss of storage capacity in Flood Zone 3 areas cannot be provided in Flood Zone 3 land, yet that is exactly what the planning application is proposing. The Environment Agency would almost certainly ask the SofS to call in the decision if this suggested compensation is accepted.

With compensatory storage capacity not possible using Flood Zone 3 land, the volume of water displaced by the stadium and pitch has to go somewhere. There should therefore be evidence of flood modelling upstream, downstream and in the immediate vicinity to allow the impact to be considered, and this has not been supplied.

Flood Zone 3 requires a sequential test to be carried out, especially if the proposals involve a reduction in flood storage as this one does. A sequential test is therefore mandatory yet the issue has been dismissed as not being required because the site is already used for 'commercial and recreational', despite the proposed use of the stadium including educational purposes which are totally ruled out in Flood Zone 3 in the Government guidelines.

The pitch area is to be raised then covered in plastic grass stitched into the root zone by polyethylene fibres. The higher level and the root zone itself is to be created from end-of-life tyres (some 20,000 of them) ground into 120 tonnes of crumb and dust. In a Flood Zone 3 area adjacent to a river, this must be an environmental offence when the dangers from microplastics entering the food chain via water courses have been emphasised in the news recently. It is also possible that some of the dust might be released from the pitch into the air and breathed in as the pitch deteriorates over time.

Also, a typical artificial pitch has a life of perhaps 10 years or so depending on usage and removing and replacing it creates an environmental disposal and replacement manufacture problem, whereas natural grass can be mown and the clippings composted to reusable mulch for much longer than that. That leaves an unanswered question of who pays for the pitch renewal? By claiming it is "a stadium for Bath", are the applicants expecting the Trustees of the Rec to fund it rather than Bath Rugby? Likewise, who will maintain the landscape planting and the "green wall"?

## **Design**

The OUV of Bath recognises the importance of a homogeneous appearance and this is achieved in part by style and in part by a limited palette of materials. Against that expectation the stadium uses materials that are alien to Bath, which are high embodied energy compared to natural stone and slate, which is not ideal when there is a climate emergency.

The roofs are long and featureless, so that from views from the middle distance they look badly out of place among the more traditional roofs on the buildings that surround the Rec.. As a minimum they need some decorative features that will assist them to blend in.

Metals and glass are highly reflective and no consideration seems to have been given to whether those reflections might create a nuisance to the surroundings. Unlike the current rugby facilities where there is very little light spill except when there is a match, the claim that the stadium would enable other uses coupled by the number of windows allowing light inside to spill out would create a more constant problem and it could interfere with the bats that are known to follow the river corridor and feed on insects in the green areas along it.

The other feature of the OUV is the expectation that new developments should have a "human scale" to sit comfortably alongside the Georgian structures. The proposed stadium will appear far too tall from many local viewpoints, particularly from the riverside path, the Beazer maze and Spring Gardens Road. The building heights strategy should not allow the listed Cricket Pavilion to be so badly dwarfed. The claims in the application that there would be a "minor negative impact" on the WHSs are not correct.

This application set (EFUL and LBA) need to be brought specifically to the attention of ICOMOS, because it is their opinion which counts most, and Bath has already been given warnings of serious negative impacts on the OUVs..

The planning applications make repeated reference to the stadium being for community use, including music concerts, theatre productions, E sports, American Football, culture & food events, but the stadium has more limited access than other locations in Bath which can (and do) offer similar facilities, and there is no assurance that they would prefer the stadium.

Mention is made of learning and non-residential institutions. These are not clarified so that the reader knows exactly what is proposed, but such uses are banned in Flood Zone 3 locations and the Environment Agency closely monitors Flood Zone 3 expectations, so these are fictional claims.

There are other contradictory claims in the documentation too, For instance it is claimed that 'Premiership Rugby' requires the expansion to 18,000, when a check reveals that Premiership Rugby requires a minimum of only 10,000, and of the 11 teams they name (including Bath), 8 of them host 16,000 or fewer. Our straw poll of spectators who regularly watch matches reveals that even at the current capacity of 14,500 there are normally spare seats available. It does look as though the 18,000 figure is being used to justify a bigger footprint on the Rec than is really needed.

However the most obvious contradiction is that the claim is made that there will be no material reduction in the capability and flexibility of the outfield, when elsewhere is the statement that if the stadium is permitted there will not be enough room for a rugby pitch in the outfield. So the land which the Trustees are required by the Objects of the Charity to ensure that "the property of the Charity is maintained, equipped and otherwise laid out as the Trustees shall think fit for use principally for games and sports of all kinds" won't even be left with the space to mark out a temporary sports pitch.

The overall impression left is that the claims for "a stadium for Bath" with a myriad of other uses are just to create an argument for permitting it, when the reality is that the site isn't ideal for any of them and the stadium is just a stadium for Bath Rugby.

## **Conclusion**

Now that ICOMOS on behalf of UNESCO have already warned DCMS that the recently updated Local Plan is now inadequate for protecting the World Heritage Sites and that other planning applications if permitted would have a seriously negative effect on the OUVs and put the World Heritage Inscriptions at risk, permitting this application will be the death knell for the city and both World Heritage statuses.

The application benefits the club's owner and a very narrow section of the population, yet the Rec is charitable land for the benefit of the public at large. The Trustees are empowered by court judgments and are under a legal obligation to deliver the Objects of the Charity, and a planning permission that makes that legal obligation impossible to deliver would create a legal minefield, which could include the Local Planning Authority trying to explain why granting planning permission is not Contempt of Court.

There are specific planning reasons why the application must be refused.

The application is contrary to:

- Section 16 of the Planning (Listed Buildings & Conservation Areas) Act 1900;
  - NPPF Sections 12 (Well designed places), 14 (Flooding) and 16 (Preserving the historic environment);
  - The City of Bath World Heritage Site Setting SPD
  - The Bath Citywide Character Appraisal SPD
  - Local Plan Policies D1, D2, D3, D4, D5, D10, HE1, B4 NE2, NE2A LCR1, LCR2, LCR6, SR1A, CR1, CR2;
- and, and therefore should be refused.