

## **Planning Enforcement Briefing Report**

Site: Bath Recreation Ground

Issue: Failure to comply with planning condition requiring removal of the East Stand

Date of Briefing Report: 18<sup>th</sup> June 2021

### **Introduction**

This report is intended to provide an update to the Planning Committee in respect of the recent announcement by Bath Rugby that they will be breaching their planning condition pertaining to removal of the East Stand at the end of the 2020/21 premiership rugby season. This report is for information only and is not seeking a determination, decision, or other resolution from the Planning Committee.

### **Background**

On the 14<sup>th</sup> June 2021 Bath Rugby issued a public statement on their website (<https://www.bathrugby.com/club-news/east-stand-notice/>) (set out in full in the annex to this report) advising that due to circumstances beyond their control they would not be able to remove the temporary east stand by the end of the 2020/21 Premiership Season. Bath Rugby, in their statement acknowledge they will not be able to comply with a planning condition secured under the relevant permission for the east stand.

The circumstances by which Bath Rugby cannot comply with the condition relate, according to Bath Rugby, to an impending breach of contract by the owners of the East Stand who lease it to the Club and who are unable to fulfil their contract to remove it for the required period. The Owners of the stand have apparently issued a notice to the Club advising as such. Officers have not seen the notice

### **Relevant Condition**

The condition in question is condition 2 of planning permission 20/00135/VAR which states:

“The construction of the temporary East Stand seating and associated facilities including access stairs shall not commence more than 4 weeks before the first Home game of each rugby Premiership season. With the exception of summer 2020, the East Stand shall not be used for more than 39 weeks from the date it is first brought into use each season and the East Stand structures and associated facilities including access stairs shall be entirely removed from the site not later than 3 weeks after the last Home game of the rugby Premiership season

Reason: In the interests of the use, character and appearance of the site as recreational open space within the Conservation Area and World Heritage Site and the setting of listed buildings. The exception of summer 2020 is due to the unprecedented circumstances relating to the COVID-19 crisis and the need to retain flexibility during this period of uncertainty.”

### **Breach of Condition**

The last home game of the 2020/21 premiership season was played on the 12<sup>th</sup> June 2021. In accordance with the requirements of Condition 2 above, the east stand should be removed before the 4<sup>th</sup> July 2021. Notwithstanding the confirmation from

the Club that they will not remove the stand, it is important to note that until the relevant date passes there is no breach of condition.

With regard to when the club can re-construct the east stand, the 2021/22 fixtures list has yet to be published therefore it is unknown when the first home game will be played however the premiership resumes on the 17<sup>th</sup> September 2021. In the event Bath Rugby's first home game of the 2021/22 season is scheduled for the opening day of the season, in accordance with the requirements of Condition 2, construction of the East Stand may commence on the 20<sup>th</sup> September 2021.

Officers have phoned Bath Rugby but were unable to make contact.

### **Enforcement**

This is an unusual situation because the breach of condition is anticipated but has not yet happened. It is important to emphasise that planning enforcement action is discretionary. All decisions must be taken at the right time and on the basis of the most comprehensive information available. At all times the Council must follow planning law (principally the Town and Country Planning Act 1990) and apply national and local planning policy. Nothing in this report should be interpreted as in any way committing the Council to or preventing the Council from pursuing a particular course of action.

Although the Council is not currently in a position to make any formal decisions, it is possible for officers to give members an indication, on the basis of current information, about how the first stage of the matter might proceed.

Given the stand's location within the heart of the World Heritage Site and the unique nature of the situation, officers anticipate giving the breach the highest degree of priority. The first step in the process would be to investigate the reasons given by Bath Rugby for failing to comply with the condition. To that end, officers anticipate serving an immediate Planning Contravention Notice ("PCN") under section 171C of the Town and Country Planning Act 1990. A PCN would require Bath Rugby to provide detailed information about the circumstances of the breach and the assertion that the breach is beyond the control of the Club. The service of a PCN does not affect any other power exercisable in respect of any breach of planning control. A person served with a PCN is liable to prosecution if they do not comply with a PCN within 21 days. It is also an offence to provide false or misleading information in response to a PCN. A PCN therefore obliges the recipient to truthfully answer formal questions about the breach of planning control and there are criminal sanctions for failing to comply.

It is anticipated that officers will consider the reply to the PCN before moving on to consider whether it is expedient to take enforcement action. It is not possible at this stage to provide a view on the merits of any particular enforcement option until the breach has both occurred and been fully investigated.

### **Recommendation**

Members are advised to note the report.

Annex1

14 June 2021

**We regret to announce that circumstances beyond our control mean that we are unable to comply with the planning condition which requires the East Stand at the Rec to be removed for a small number of weeks this summer.**

The condition states that in the three weeks following the final fixture at the Rec, the stands must be removed, and that the reconstruction must not commence more than four weeks before the first home game of the new season.

Arena Group, the company that owns and leases the east stand structure to the club, has issued an official notice to Bath Rugby informing of an impending breach of contract. The notice confirms that it has been impossible to plan, schedule, recruit, and train staff throughout the pandemic causing an extreme shortage of specialist construction teams. As a result, Arena Group's operational capacity is severely limited meaning the east stand can no longer be dismantled and re-erected safely this summer.

Earlier this year, the club shared a number of concerns with B&NES as part of a detailed application (since withdrawn) requiring the east stand to remain in situ throughout the summer months. One concern noted the availability of skilled contractors following a year of crisis for the construction industry. Unfortunately, these concerns have now become a very real reality through circumstances beyond the club's and Arena Group's control.

In their communication with the club, Arena Group went on to state that the health and safety of their staff and clients is paramount. Furthermore, due to the complex nature of the east stand structure, Arena Group are unable to subcontract this work, always requiring full quotas of experienced crews and approved staff to guarantee a safe working environment.

Alex Cohen, Bath Rugby's Chief Operating Officer, commented: "The club has worked with Arena Group to exhaust all possible avenues to facilitate the dismantling of the east stand this summer however, the company has confirmed that due to the unique circumstances of the pandemic they are unable to meet their commitment in terms of the dismantle and re-rig of the east stand at the Rec during the pending summer months.

"We value our long-standing relationship with Arena Group and understand their position, however, we cannot hide our disappointment of the impact this now has on our club. We would like to offer our sincere apologies to all concerned."

