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Contact Officer:

John Armstrong, Democratic & Electoral
Services Manager

15 November 2021

Dear Councillor

Your attendance is requested at a meeting of the **EXECUTIVE SHAREHOLDER AND TRUSTEE COMMITTEE** to be held in the Council Chamber, Millmead House, Millmead, Guildford, Surrey GU2 4BB on **TUESDAY, 23 NOVEMBER 2021** at 6.00 pm.

Yours faithfully

James Whiteman
Managing Director

MEMBERS OF THE EXECUTIVE SHAREHOLDER AND TRUSTEE COMMITTEE

Chairman:

Councillor Joss Bigmore (Leader of the Council)

Vice-Chairman:

Councillor James Steel

Councillor John Redpath

Substitute Members:

Councillor Tim Anderson

Councillor Julia McShane

Councillor John Rigg

WEBCASTING NOTICE

This meeting will be recorded for live and/or subsequent broadcast on the Council's website. The whole of the meeting will be recorded, except where there are confidential or exempt items, and the footage will be on the website for six months.

If you make a representation to the meeting you will be deemed to have consented to being recorded. By entering the Council Chamber, you are also consenting to being recorded and to the possible use of those images and sound recordings for webcasting and/or training purposes.

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QUORUM 3



THE COUNCIL'S STRATEGIC FRAMEWORK (2021- 2025)

Our Vision:

A green, thriving town and villages where people have the homes they need, access to quality employment, with strong and safe communities that come together to support those needing help.

Our Mission:

A trusted, efficient, innovative, and transparent Council that listens and responds quickly to the needs of our community.

Our Values:

- We will put the interests of our community first.
- We will listen to the views of residents and be open and accountable in our decision-making.
- We will deliver excellent customer service.
- We will spend money carefully and deliver good value for money services.
- We will put the environment at the heart of our actions and decisions to deliver on our commitment to the climate change emergency.
- We will support the most vulnerable members of our community as we believe that every person matters.
- We will support our local economy.
- We will work constructively with other councils, partners, businesses, and communities to achieve the best outcomes for all.
- We will ensure that our councillors and staff uphold the highest standards of conduct.

Our strategic priorities:

Homes and Jobs

- Revive Guildford town centre to unlock its full potential
- Provide and facilitate housing that people can afford
- Create employment opportunities through regeneration
- Support high quality development of strategic sites
- Support our business community and attract new inward investment
- Maximise opportunities for digital infrastructure improvements and smart places technology

Environment

- Provide leadership in our own operations by reducing carbon emissions, energy consumption and waste
- Engage with residents and businesses to encourage them to act in more environmentally sustainable ways through their waste, travel, and energy choices
- Work with partners to make travel more sustainable and reduce congestion
- Make every effort to protect and enhance our biodiversity and natural environment.

Community

- Tackling inequality in our communities
- Work with communities to support those in need
- Support the unemployed back into the workplace and facilitate opportunities for residents to enhance their skills
- Prevent homelessness and rough-sleeping in the borough

A G E N D A

ITEM NO.

1 APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTES

2 DISCLOSURE OF INTERESTS

In accordance with the Councillors' Code of Conduct, a councillor is required to disclose at the meeting any disclosable pecuniary interest (DPI) that they may have in respect of any matter for consideration on this agenda. Any councillor with a DPI must not participate in any discussion or vote regarding that matter and they must also withdraw from the meeting immediately before consideration of the matter.

If that DPI has not been registered, the councillor must notify the Monitoring Officer of the details of the DPI within 28 days of the date of the meeting.

Councillors are further invited to disclose any non-pecuniary interest which may be relevant to any matter on this agenda, in the interests of transparency, and to confirm that it will not affect their objectivity in relation to that matter.

3 MINUTES (Pages 5 - 6)

To confirm the minutes of the meeting of the Committee held on 24 August 2021 as a correct record.

4 * STRUCTURAL REPAIRS TO FOXENDEN TUNNELS (Pages 7 - 18)

Key Decisions:

Any item on this agenda that is marked with an asterisk is a key decision. The Council's Constitution defines a key decision as an executive decision which is likely to result in expenditure or savings of at least £100,000 or which is likely to have a significant impact on two or more wards within the Borough.

Under Regulation 9 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, whenever the Executive intends to take a key decision, a document setting out prescribed information about the key decision including:

- the date on which it is to be made,
- details of the decision makers,
- a list of the documents to be submitted to the Executive in relation to the matter,
- how copies of such documents may be obtained

must be available for inspection by the public at the Council offices and on the Council's website at least 28 clear days before the key decision is to be made. The relevant notice in respect of the key decisions to be taken at this meeting was published on 26 October 2021.

**Please contact us to request this document in an
alternative format**

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EXECUTIVE SHAREHOLDER AND TRUSTEE COMMITTEE

- * Councillor Joss Bigmore (Chairman)
- * Councillor Jan Harwood (Vice-Chair)
- * Councillor James Steel

*Present

11 APOLOGIES FOR ABSENCE

Apologies were received from Councillor John Redpath who was replaced at the meeting by Councillor James Steel.

12 DISCLOSURE OF INTERESTS

There were no declarations of interest.

13 MINUTES

The minutes of the meeting held on 4 March 2021 were agreed as a correct record. The Chairman signed the minutes.

14 EXCLUSION OF THE PUBLIC

RESOLVED:

That under Section 100A(4) of the Local Government Act 1972 (as amended) and Regulation 5 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, the public be excluded from the meeting for consideration of agenda item 5 on the grounds that it would involve the likely disclosure of exempt information as defined in paragraph 3 Part 1 of Schedule 12A to the Act.

15 SUTHERLAND MEMORIAL PARK - CRICKET PAVILION

The Chairman of the Committee introduced the report.

The Cricket Pavilion at Sutherland Memorial Park was used by Sunshine Nursery (Guildford) Limited and the Guildford City Youth Project who played Cricket on the park.

The pavilion had been used by both parties for a considerable length of time and payment was made to the Parks and Countryside team on a per use/hire basis.

If the Council wished to retain the nursery's usage, then this position needed to be regularised by way of a licence in order to protect the Council's interest and an application made to the Charity Commission to extend the charitable objects to include "educational purposes".

Consequently, the Committee,

RESOLVED:

- 1) That the Head of Asset Management be authorised to grant a licence to Sunshine Nursery (Guildford) Limited in respect of their use of the Cricket Pavilion at Sutherland Memorial Park.
- 2) That the Council applies to the Charity Commission to extend the charitable objects of the Burpham War Memorial Trust to include “educational purposes”.
- 3) That Guildford City Youth Project be permitted to continue to hire the pavilion when required using existing hire arrangements, outside of the Nursery operating hours.

Reasons:

- 1) To regularise the usage of the pavilion, secure the ongoing community amenity and protect the Council’s interests. Regularising the nursery’s occupation will protect the Council as currently the responsibilities between the Landlord and the nursery are not clearly defined and as such there are risks regarding liability should an accident occur.
- 2) To fulfil the Council’s charitable trustee duties.

The meeting finished at 6.10 pm

Signed

Chairman

Date

Executive Trustee and Shareholder Committee Report

Ward(s) affected: Holy Trinity

Report of Director of Strategic Services

Author: Darren Burgess, Building Surveyor Manager

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Email: darren.burgess@guildford.gov.uk

Lead Councillor responsible: Tim Anderson

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Date: 23 November 2021

Structural Repairs to Foxenden Tunnels

Executive Summary

Foxenden Tunnels is a large World War II air raid shelter located beneath Allen House Grounds and accessed from the lowest level of the adjacent York Road multi-storey car park.

The tunnels are in a very poor condition. They've been sealed up for several years, which has caused substantial moisture build up and consequently, the original structural steelwork has deteriorated to the point of concern for safety.

A capital budget of £110k for repairs was approved in 2019 but following specification and tendering of the required works, was found to be inadequate. As a result of the repair work being more complicated than originally envisaged and the impact of the Covid-19 pandemic, the cost to implement all of the work is now likely to be in excess of £300k.

An approximate assessment of the likely rental income that the asset could generate has determined that the outlay that would be required on repairs is not justified at this time.

A number of alternative options have been considered. The first was to undertake only the bare minimum of work required to keep the structure safe, but this does not present a significant saving nor would enable it to be used in a meaningful way. The second was to do nothing, which has been assessed as presenting minimal risk whilst only incurring a minimal outlay to undertake regular inspections.

The structure is a local curiosity but not considered to be of historical significance in the national context. It is not formally recognised as either a Listed Building or Scheduled Ancient Monument. It is not, therefore, subject to the statutory obligations to repair that come with those classifications.

Recommendation to Committee

That the Committee approves the recommendation to mothball the asset whilst undertaking annual inspections to ensure its continuing safety, and to review the position in five years' time.

Reason(s) for Recommendation:

The recommendation is based on a financial analysis of the cost of repairs, the likely rental income and potential loss of income from parking to provide safe access to support a commercial letting.

Is the report (or part of it) exempt from publication?

No

1. Purpose of Report

- 1.1 To seek approval for a course of action that will see Foxenden Tunnels formally mothballed in the face of rising repair costs.

2. Strategic Priorities

- 2.1 The proposal contained within this report is not specifically associated with any strategic priority. It is, instead, offered as a pragmatic solution to an asset maintenance issue that is facing significant costs.

3. Background

3.1 Introduction

Foxenden Tunnels is a large World War II air raid shelter located beneath Allen House Grounds and accessed from the lowest level of the adjacent York Road multi-storey car park.

The structure has been closed for some years following concerns being raised about its' safety and a capital bid was made in 2019 to fund repairs.

That work was specified and tenders obtained, but the costs far exceeded what was originally envisaged.

Following discussion with CMT in 2020, further information was requested with regards to a business case to assess the likely value of any letting and the consequences of not doing any repairs and effectively abandoning the asset.

3.2 Current Position

The tunnels are in a very poor condition. They've been sealed up for several years and consequently, moisture levels have increased enormously. This, in turn, has resulted in significant decay to a series of steel beams that support the tunnel junctions and any timber within the tunnels has completely rotted away.

In 2019, a capital bid was submitted and approved to carry out repairs for the sum of £110k. One of the prime causes of the structural deterioration is lack of ventilation and the proposed repair scheme included installing a mechanical ventilation system to address this. The rest of the works comprise replacing all of the steel beams with new galvanised equivalents, installation of some emergency lighting and new steel doors (which have already been completed).

Of the original budget, approximately £40k has currently been either committed or spent, with around £70k remaining. However, we received tenders in early 2020 for the outstanding work, which are in the region of £240k. The difference is attributable to the work being much more complicated than originally envisaged, requiring a number of very specialist contractors and techniques. Along with design fees, various specialist testing works (lead paint, air quality, Radon gas) and the fact that the scheme was designed before the impact of Covid-19 means that the total cost to implement all of the work will now likely be in excess of £300k.

During the most recent period of lockdown, the tunnels (and York Road car park generally), have been subjected to repeated and sustained acts of vandalism. Access has been gained to the tunnels on two occasions and the recently replaced doors have been damaged beyond repair. They have currently been welded shut to prevent further access and heavier duty replacements have been ordered. The police have been informed but at the time of writing no arrests have been made.

3.3 Planning Status

The structure is a local curiosity but not considered to be of historical significance in the national context. As such, whilst it is locally listed by our planning team, it is not formally recognised as either a Listed Building or Scheduled Ancient Monument. It is not, therefore, subject to the statutory obligations to repair that come with those classifications.

3.4 Revenue Earning Potential

In the past, the tunnels were periodically opened to limited numbers of visitors by the Heritage team and the work described above would enable this sort of activity again. However, the site is never going to be a tourist attraction in the conventional sense due to both its location and physical limitations on access. The latter completely precludes access to wheelchair users, for example. As such, there is very limited potential to generate any meaningful income from this activity.

Assessing the potential for leasing the asset to a third party for commercial purposes is proving to be problematic, partly due to its unique nature but also partly due to restrictive covenants to its usage as a result of it being directly beneath Allan House Grounds. As a consequence of the former, numerous agents have declined to provide a valuation. A very approximate calculation based on the useable floor area yields an estimated income of around £11k p.a. but the restrictive covenants impose some significant barriers to agreeing

favourable lease terms. Additionally, there are potentially substantial costs associated with the loss of parking spaces that would be necessary to provide safe access. Appendix 1 contains a more detailed summary of these issues, but officers have concluded that the asset is very unlikely to generate sufficient income to justify the outlay on repairs and loss of income from parking. The only way to establish its likely value more accurately is to conduct a marketing exercise. This, however, runs the risk of reputational damage to the Council if it were then decided not to proceed and will, in itself, incur additional costs.

3.5 Works Costs and Consequences

Since this issue was first discussed with CMT, officers have now obtained a detailed geological report on the condition of the tunnels, specifically to address the question of what would be the consequences of not undertaking any repair work at all. The conclusion of that exercise is that the tunnels are generally considered to be in good condition and are not at risk of significant collapse in the short term. However, it was not possible to state with any certainty for how long that assessment would remain valid, and it was recommended that they be re-inspected at least annually if no work is to be undertaken at this time.

During the design phase for the proposed works, it was discovered that there is a small risk of exposure to Radon gas in the tunnels, which is mildly radioactive. It is not an immediate concern as it only poses a health risk over very long periods of exposure, but if the tunnels were to be put to a more permanent use then it is recommended that a monitoring system is installed. However, the standard mitigation for Radon gas is ventilation, which is part of the proposals anyway and so the risk is very low.

Given all of the above, the options on how we could proceed are as follows:

1. Increase the budget available to approximately £300k (an additional £190k over that already allocated) and undertake all of the work as originally envisaged. This would make the structure accessible for small scale visits as before and open the possibility of some limited commercial use.
2. Install only the ventilation and lighting equipment and undertake some temporary propping, which would still require an additional budget of £120k over that already allocated. This would prevent further significant deterioration and defer the need to spend more until a later date. However, this option effectively only saves the cost of the steelwork repairs as the site setup requirements are a significant portion of the overall project cost. It may enable some limited use in terms of small-scale visits but would not enable any other use or access. There will be a degree of ongoing maintenance required to the ventilation system and the cost of any permanent repairs will increase over time.
3. Do nothing and allow the structure to continue to deteriorate. As described above, whilst this is a low-risk option engineers have recommended that we undertake an annual geological inspection to confirm the structure's

continued stability. There will be an ongoing revenue cost of approximately £6.5k p.a. for the inspection itself.

On the basis of our financial assessment and technical advice from engineers, officers recommend that Option 3 is the best course of action.

4. Consultations

- 4.1 The proposals contained within this report were considered by CMT on 13th July 2021. CMT agreed to support Option 3 with the addition of a five year review on the need or desire to undertake any remedial works.

5. Key Risks

- 5.1 The only risk of any consequence of proceeding with the recommended option is that the tunnels do, at some point, suffer a significant failure and collapse. The advice that we have received from geological engineers is that this is unlikely in the short term. Furthermore, they advise that even if a collapse were to occur, it would not be detrimental to the surroundings, either York Road car park or Allen House grounds above.

The potential for collapse is to be mitigated by regular inspection.

6. Financial Implications

- 6.1 If the recommended option were agreed then the remaining portion of the already approved capital budget can be released as it will no longer be required.

The recommendation for an annual inspection by engineers will attract a revenue cost of approximately £6.5k p.a., rising with inflation. Officers have assessed that this can be funded from the existing General Fund asset maintenance budget

7. Legal Implications

- 7.1 No legal implications apply.

8. Human Resource Implications

- 8.1 No relevant HR implications.

9. Equality and Diversity Implications

- 9.1 This duty has been considered in the context of this report and it has been concluded that there are no equality and diversity implications arising directly from this report.

10. Climate Change/Sustainability Implications

- 10.1 There are no relevant climate change/sustainability implications

11. Executive Advisory Board comments

The proposals were then considered by the Executive/Management Liaison Group on 1st September 2021. The Liaison Group reluctantly felt that under the current financial circumstances it would be better to go with the recommendations of the report.

12. Summary of Options

12.1 There are three options, as follows:

1. Increase the existing budget by a further £190k to enable the repair work as originally envisaged to be undertaken.
2. Increase the existing budget by a further £120k to enable the bare minimum repair work to be implemented but without the potential for further use.
3. Do not undertake any further work and return what remains of the existing approved budget. Implement an annual inspection regime to warn of any significant issues but to otherwise mothball the asset.

Given the anticipated low rental yield and the potentially high cost of providing safe access, officers recommend that Option 3 is the best course of action.

13. Conclusion

13.1 Foxenden Tunnels are proving to be an expensive asset to maintain with only very limited scope to generate a return on any investment. They are a local curiosity but are difficult to put to any practical use. Given the lack of any planning imperative to maintain them, the anticipated low rental yield, and the potentially high cost of providing safe access, officers recommend that they be mothballed for the foreseeable future.

This course of action is to be tempered by an annual inspection by engineers to warn of any significant changes to the structure that we may need to be aware of. In addition, the asset is to be reviewed five years to assess whether circumstances have changed sufficiently to warrant a different course of action.

14. Background Papers

None.

15. Appendices

Appendix 1 describes the barriers to commercial uses that result from its location beneath Allen House Grounds and the associated restrictive covenants.

Appendix 1 –Barriers to Commercial Uses

Foxenden Deep Shelter was constructed in 1941 and is located beneath Allen House Grounds. There are a number of obstacles to letting this asset on a commercial basis including restrictive covenants, the need to obtain approval from the Charity Commission and its' access via York Road car park.

Allen House Grounds was gifted to the Council in 1914 and the Shelter is subject to the same restrictive covenants and charitable status as it is directly below. These restrictions include a prohibition on the sale, production and consumption of alcohol.

In September 2017, Silent Pool Distillery enquired about using the Shelter for whiskey maturation and trade tastings. Following a visit in November 2017, Silent Pool submitted an expression of interest. Their proposals are only in outline form, but Silent Pool would require a lease of at least 25 years. There have also been previous enquiries about the use of the Shelter from other parties.

The Executive Shareholder and Trustee Committee were consulted on removing the restrictions on the title with the Charity Commission. The Council undertook a 4-week public consultation on behalf of the charitable trust, which ran from 8 October 2018. The consultation asked for public views on 3 options relating to the charity commission application. 32 responses were received, and the majority favoured the Council proceeding with an application to remove the covenants, so they do not apply to Allen House Grounds or Foxenden Deep Shelter

The Charity Commission was initially approached to request the removal of the restriction on the title, following the consultation. They advised that consent would be required from the beneficiary of the covenant to remove it. However, we have no details about who that beneficiary is and the likelihood of tracing them is considered to be virtually impossible. External solicitors advised we take out Covenant Indemnity Insurance, which would insure the Council against any future claim in relation to breaching the covenants relating to alcohol as result of leasing the tunnels. This is the quickest and most straightforward way of dealing with the covenants. The Charity Commission have simply stated that it is up to the Trustees (Executive Shareholder and Trustee Committee) to decide what is in the best interest of the land.

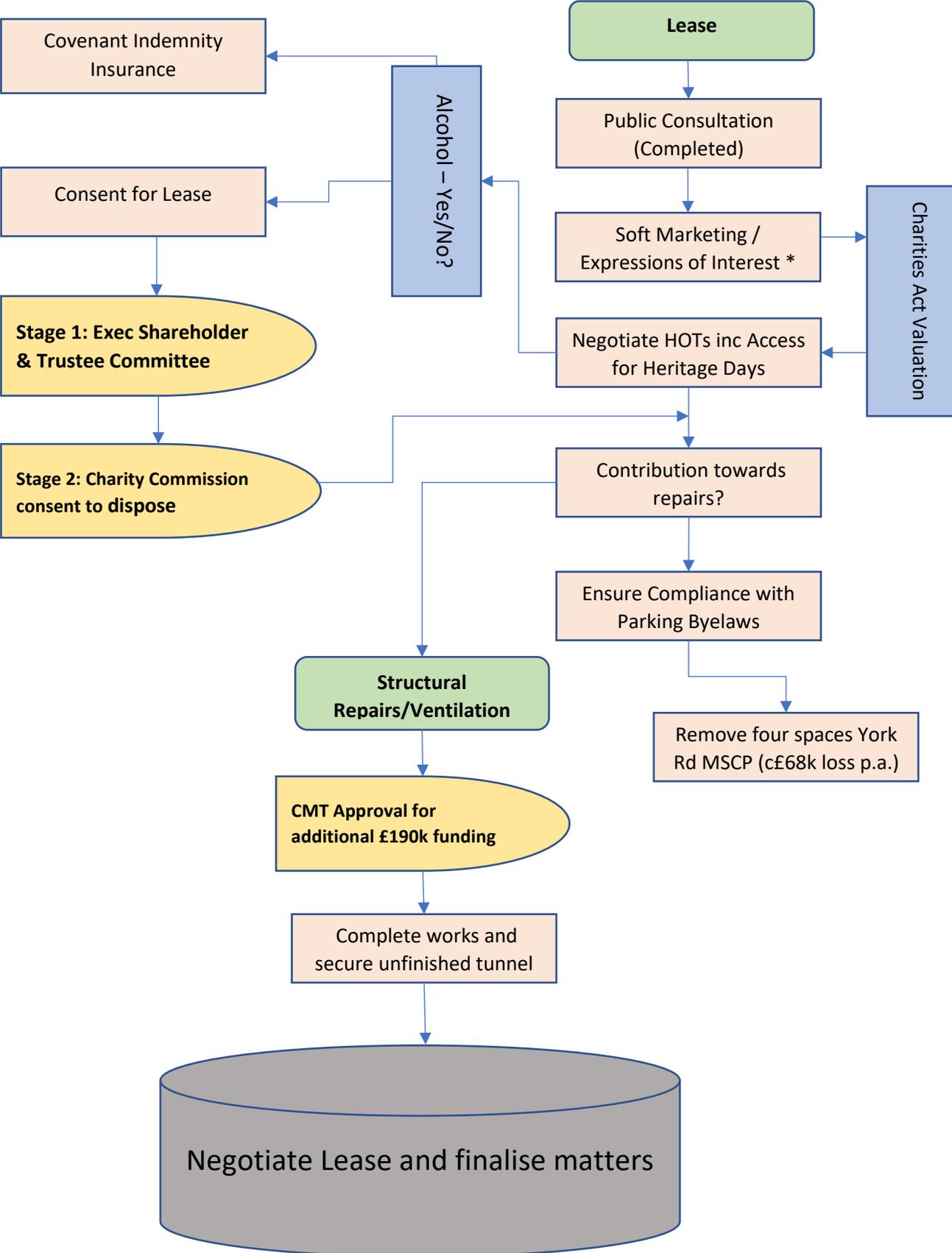
Consent for any Lease (disposal) will need to be sought firstly from the Executive Shareholder and Trustee Committee and then from the Charity Commission itself. However, this cannot be undertaken before the following is known:

- 1) What the trustees' proposal is for the land – what it will be used for, who it will be let to (i.e., what kind of organisation) and on what terms (rent, term of tenancy, who is responsible for what)? Is it actually a 'disposal' or just a short term let? Charity Commission requirements are different depending on those circumstances.
- 2) Why this is necessary and in the best interests of the trust?
- 3) The Charities Act 2011 also requires a compliant valuation, which will need to be completed alongside this.

The complexity of this process is illustrated by the flow chart below.

Whilst the Charities Act requires a valuation, due to the specialised nature of the asset it is proving almost impossible to value; many agents have already declined to complete the valuation for this reason. Therefore, expressions of interest and a soft marketing exercise will need to be undertaken to establish the value and outline heads of terms before requesting consent. Given the issues officers are currently having with trying to manage Silent Pools expectation for this site, there is a concern that the Council would suffer reputational damage if they were to soft market the site and then not proceed with a letting.

Finally, in order to facilitate commercial use of the structure, it will be necessary to take four car parking spaces out of circulation in York Rd MSCP to provide access and emergency egress to and from the tunnels. The spaces generate up to £17k each p.a., which would mean an overall loss of up to £68k p.a. We would need to ensure that the Parking Byelaws are also observed.



* No agent will value the property due to its specialised nature.

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