

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.

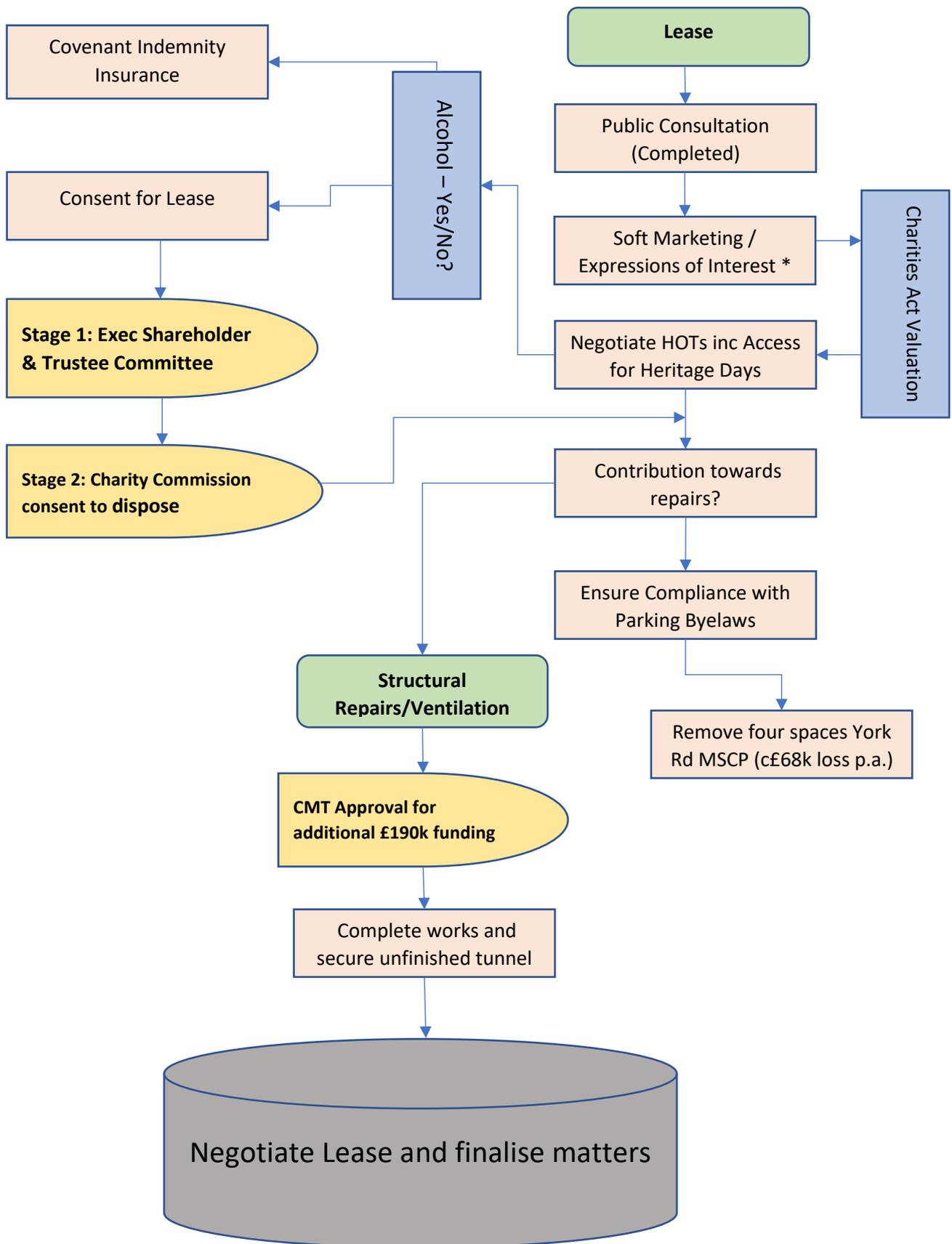
Consent for any Lease (disposal) will need to be sought firstly from the Executive Shareholder and Trustee Committee and then from the Charity Commission itself. However, this cannot be undertaken before the following is known:

- 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.