



29 January 2014

BY EMAIL AND BY POST

Ref: FOI 13-047

Dear 

Thank you for your request for information dated 7 December 2013, received by the London Legacy Development Corporation (the Legacy Corporation) on 13 December and we sought an extension of time to respond to your initial request.

You made the following request:

“Bearing in mind that London Legacy Development Corporation has had the intention of acting as a private market operator in respect of negotiations to do with the future use of the Olympic Stadium:

- 1. Please provide evidence of due diligence in respect of ensuring that the selection of West Ham United as the principal concessionaire for the Olympic Stadium followed a process which was open, fair and non-discriminatory.*
- 2. Please also provide evidence that a full market price has been achieved for the concession to West Ham United with details of how a market price was established.*
- 3. In circumstances where State Aid is found to exist after the event certain measures become necessary. Please provide details of any risk assessment undertaken in this regard with details of any remedial strategy should State Aid be uncovered.*

In circumstances where State Aid does exist the EU Commission's recent decisions on State Aid and Football Clubs provide useful guidance and the Commissioner has made it clear that in order for State Aid to be compatible with the Common Market the use of a facility must be open to any user on non-discriminatory terms and subject to market prices. With these and other relevant factors in mind please answer the following questions:

4. *Has public co-financing of the Olympic Stadium been restricted to what is essential?*
5. *In respect of concessions have measures been taken to ensure that no cross-border distortion in respect of fair competition has come into being?*
6. *Does the agreement with West Ham provide exclusivity over use of the Olympic Stadium (for example by number of days, or by sport, or by time of day, week, month or year)?*
7. *Does the option exist for another football club to become a concessionaire or tenant within the Olympic Stadium whilst West Ham is in occupation? If so are there any restrictions on this (for example based on the competitive level of such a club or based on gender)?*
8. *Does the option exist for a professional club of another sport to become a concessionaire or tenant of the Olympic Stadium whilst West Ham is in occupation (for example an NFL team or a rugby team)?*
9. *Is it possible for a foreign sports team to become a concessionaire or tenant of the Olympic Stadium during West Ham's tenure as concessionaire (i.e. a team that competes in a foreign competition)?*
10. *What possibilities exist for the sale of the Olympic Stadium to a third party or must it remain a public asset and if so how is this guaranteed?*
11. *What measures are in place in respect of circumstances where West Ham enters administration during the concession term?"*

I have set out below some short comments and our answers to each one of your questions following your order:

By way of introduction, the Legacy Corporation has always had the intention of acting as a operator/investor in respect of making the Stadium available to an anchor tenant/concessionaire and to any other future users and concessionaires, subject to the Community uses of the Stadium that we and the E20 Stadium LLP (a limited liability partnership, the members of which are the Legacy Corporation and Newham Legacy Investments Limited (NLI) - a wholly owned subsidiary of Newham London Borough Council), are committed to provide.

The Legacy Corporation, being mindful of the UK taxpayer monies invested in the Stadium, was committed to strike a fully commercial deal with the successful bidder emerging from the formal, open and competitive process that it decided to follow for selecting the anchor tenant/concessionaire. Any party wishing to bid for the main/anchor Stadium concession, including football and sports clubs, entertainment or education providers, etc, had the opportunity to do so.

The Legacy Corporation has successfully negotiated and finalised a commercial deal with West Ham United FC (WHU FC) that ensures that WHU FC covers the cost of their event day usage and makes a significant and proportional contribution to the operating costs of the Stadium.

In light of the above we now turn to address your individual questions:

Item 1: Please provide evidence of due diligence in respect of ensuring that the selection of West Ham United as the principal concessionaire for the Olympic Stadium followed a process which was open, fair and non-discriminatory.

Answer 1: The Legacy Corporation confirms that the process followed was widely advertised, open to all interested parties, fair and non-discriminatory, in full accordance with the relevant legislation and met the relevant guidelines of the European Commission on State aid in the area of public financing of sport facilities as they have emerged from its case law. The Legacy Corporation engaged leading City of London legal and financial experts to structure the process in a robust and compliant way and used qualified independent evaluators to assess the tenders received. The Pre-Qualification Questionnaire (PQQ) and Invitation to Tender (ITT) were available to any party signing a confidentiality undertaking, after a notice was posted on the Official Journal of the European Union. The ITT set out detailed information on the project and the process, including the evaluation criteria to be used to rank the bidders and appoint the successful concessionaire(s).

Item 2: Please also provide evidence that a full market price has been achieved for the concession to West Ham United with details of how a market price was established.

Answer 2: The purpose of running a well advertised competition that was open to all interested parties, fair and non-discriminatory, in full accordance with the relevant legislation was to provide the market with an opportunity to price their proposed use of the Stadium.

Market price is based on the price at which a good or service can be bought or sold at a particular time, and takes into consideration the forces of supply and demand to ascertain the price the market is prepared to pay for that good or service. In this instance, the goods in question were the use of Stadium after it had been transformed into a multi-use Stadium. The Stadium that was offered to the market to tender for use would have a capacity of up to 60,000, a retained athletics track, roof covering all seating and enhanced hospitality provision (amongst other things).

This was the baseline scheme as set out in the PQQ and ITT document which was open to any party to view, bid against and be granted a Concession Agreement, subject to the terms of the public competitive procurement process.

Over the course of finalising the Concession Agreement with WHUFC as part of the process set out in the ITT, the Legacy Corporation secured further commercial advantages which improved the original terms proposed by the WHUFC.

As part of the competitive process the Legacy Corporation conducted a significant amount of work to benchmark the payments proposed by WHUFC for use of the Stadium against other similar arrangements between public bodies which own football stadia and their football clubs tenants. This fed into the subsequent negotiations with WHUFC to ensure WHUFC was paying market rental rate.

Item 3: In circumstances where State Aid is found to exist after the event certain measures become necessary. Please provide details of any risk assessment undertaken in this regard with details of any remedial strategy should State Aid be uncovered.

Answer 3: There is no State aid in this instance and the Legacy Corporation has submitted enough information to the European Commission to this effect, having undertaken State aid analysis at all junctures of the competitive process.

However, to answer your hypothetical question were State aid to be found (for reasons unknown to us), the UK Authorities that approved the public financing of the transformation of the Stadium would submit a formal notification to the European Commission with a request to approve the “state aid found” under the relevant EC Treaty provisions.

In circumstances where State Aid does exist the EU Commission's recent decisions on State Aid and Football Clubs provide useful guidance and the Commissioner has made it clear that in order for State Aid to be compatible with the Common Market the use of a facility must be open to any user on non-discriminatory terms and subject to market prices. With these and other relevant factors in mind please answer the following questions:

Item 4: Has public co-financing of the Olympic Stadium been restricted to what is essential?

Answer 4: The public co-financing was limited to what was necessary to transform the Olympic Stadium from its Games mode to a landmark, multi function / multi use venue capable of hosting, winter sports, athletics, cultural, community and corporate events and activities.

Item 5: In respect of concessions have measures been taken to ensure that no cross-border distortion in respect of fair competition has come into being?

Answer 5: The Legacy Corporation on behalf of the public owners of the Stadium is committed to making the Stadium available to any prospective users with a robust commercial and financially viable proposal, subject to certain conditions, in order to ensure that the user has met the Legacy Corporation’s Policy Objectives and Priorities in the area and on the basis that any professional user of the Stadium pay market based rental for their use. That being so, the future Operator of the Stadium (the procurement of which was launched in early January 2014 under an EU/EEA-wide and internationally (Financial Times) advertised competition), will be able to consider domestic and cross-border expressions of interests on behalf of and under the broad instructions of the owners of the Stadium. This will also meet the requirements of the European Commission’s case law and guidance in the area of publicly financed sport facilities.

Item 6: Does the agreement with West Ham provide exclusivity over use of the Olympic Stadium (for example by number of days, or by sport, or by time of day, week, month or year)?

No, the agreement with WHUFC does not provide exclusivity over the use of the Stadium but WHUFC fixtures do have precedence during the football season. The Stadium, when its transformation is complete, will be available to other domestic and international users, subject to prior commitments and timetable requirements. For example, UK Athletics (UKA) has use of the Stadium each year from the end of June to the end of July under the terms of a 50-year Access Agreement. The Stadium will host 5 matches during the 2015 Rugby World Cup. The International Association of Athletics Federations (IAAF) World Athletics Championship and IPC World Championships will be held at the Stadium in 2017. The future Operator of the Stadium has a clear mandate to maximise use and commercial returns from the use of the Stadium.

Item 7: Does the option exist for another football club to become a concessionaire or tenant within the Olympic Stadium whilst West Ham is in occupation? If so are there any restrictions on this (for example based on the competitive level of such a club or based on gender)?

Yes, the option exists for another football club to become a concessionaire or tenant within the Olympic Stadium whilst WHUFC is in occupation.

There would be caveats to use based on governing body rules, business cases and financial viability, any existing agreements or any E20 Stadium LLP Board conditions or approvals.

Item 8: Does the option exist for a professional club of another sport to become a concessionaire or tenant of the Olympic Stadium whilst West Ham is in occupation (for example an NFL team or a rugby team)?

Yes, the option does exist for a professional club of another sport to become a concessionaire or tenant of the Stadium whilst WHUFC is in occupation.

There would be caveats to use based on that party's governing body rules, business cases and financial viability, any existing agreements or any E20 Stadium LLP Board conditions or approvals.

Item 9: Is it possible for a foreign sports team to become a concessionaire or tenant of the Olympic Stadium during West Ham's tenure as concessionaire (i.e. a team that competes in a foreign competition)?

Yes, is it possible for a foreign sports team to become a concessionaire or tenant of the Stadium whilst WHUFC is in occupation.

There would be caveats to use based on that party's governing body rules, business cases and financial viability, any existing agreements or any E20 Stadium LLP Board conditions or approvals.

Item 10: What possibilities exist for the sale of the Olympic Stadium to a third party or must it remain a public asset and if so how is this guaranteed?

At this time, the Stadium is a public asset and there are no plans for its sale. The Legacy Corporation on behalf of the public owners of the Stadium cannot speculate on the possibility of this happening sometime in the future.

Item 11: What measures are in place in respect of circumstances where West Ham enters administration during the concession term?

We confirm that the Concession Agreement with WHUFC contains the market-standard provision which provides protection to E20 Stadium LLP by giving it the right, at its discretion, to terminate the Concession Agreement if there is an order for the winding up, administration or dissolution of WHUFC.

If you are unhappy with our response to your request and wish to make a complaint or request a review of our decision, you should write to:

Executive Director of Finance and Corporate Services

London Legacy Development Corporation
Level 10
1 Stratford Place
Montfichet Road
London
E20 1EJ

Please note: complaints and requests for internal review received more than two months after the initial decision will not be handled.

If you are not content with the outcome of the internal review, you may appeal directly to the Information Commissioner at the address given below. You should do this within two months of our final decision. There is no charge for making an appeal.

Further information on the Freedom of Information Act 2000 is available from the Information Commissioner's Office:

Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Telephone 08456 30 60 60 or 01625 54 57 45

Website www.ico.gov.uk

Yours sincerely



FoI / EIR Co-ordinator