



Moore Stephens Olympic Stadium Review

November 2017

Contents

Glossary	2
Introduction	4
Timeline of events	11
Executive Summary	14
Phase 1 – The ODA athletics legacy plan	21
Phase 2 – OPLC re-establish the legacy plan	37
A – OPLC’s re-examination of legacy options	42
B – First competition resulting in selection of West Ham United / Newham as preferred bidders	54
Phase 3 – Legacy plan changed again	64
A – Cancellation of West Ham/Newham bid and decision to keep the Stadium in public hands	71
B – Evaluation of legacy options	86
C – Second competition resulting in selection of West Ham United as preferred bidder	93
Phase 4 – Transforming the Stadium	121
Phase 5 – Operating the Stadium	138
Conclusion	161
Lessons Learned	163
Appendix 1 – Interviews, submissions and those who did not respond	166

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Glossary

Bodies

BOA	British Olympic Association
CAFC	Charlton Athletic Football Club
DCLG	Department for Communities and Local Government
DCMS	Department for Culture, Media & Sport
E20	E20 Stadium Limited Liability Partnership
FAPL	Football Association Premier League
GLA	Greater London Authority
GOE	Government Olympic Executive
HMT	Her Majesty's Treasury
IAAF	International Association of Athletics Federations
IOC	International Olympic Committee
LBN	London Borough of Newham
LLDC	London Legacy Development Corporation
LOCOG	London Organising Committee of the Olympic Games and Paralympic Games Limited
LOFC	Leyton Orient Football Club
LS185	LS185 LLP (stadium operator, subsidiary of Vinci)
MCFC	Manchester City Football Club
MDC	Mayoral Development Corporation
MLB	Major League Baseball
NLI	Newham Legacy Investments
ODA	Olympic Delivery Authority
OPLC	Olympic Park Legacy Company
OPRG	Olympic Park Review Group
THFC	Tottenham Hotspur Football Club
UKA	UK Athletics
WAC	World Athletics Championships
WHU	West Ham United Football Club
WHU-LBN	Consortium of West Ham United Football Club and London Borough of Newham

Terms

Business Case	<p>A Business Case is used as a basis for making decisions regarding options.</p> <p>There are two stages:</p> <ul style="list-style-type: none"> • an early stage evaluation covering the first stages of the appraisal process (Outline Business Case) • A Full Business Case which goes further than the Outline Business Case in recommending an option for the project.
Net Present Cost (NPC) or Net Present Value (NPV)	The value, as of a specified date, of future cash inflows less all cash outflows (including the cost of investment) calculated using an appropriate discount rate. (Definition from International Valuation Standards Council)
Business Plan	A business plan sets out forecasts for income and expenditure for a defined period, and the assumptions that support these.
First competition	The bid process, run by OPLC from September 2010, seeking an anchor tenant on a leasehold basis
Second competition	The bid process run, by OPLC and subsequently LLDC from December 2011, seeking a tenant on a concession basis
Optimism bias	The demonstrated systematic tendency for appraisers to be over-optimistic about key project parameters, including capital costs, operating costs, works duration and benefits delivery. (Definition taken HM Treasury Green Book)

Introduction

Disclaimer

This report is made solely to the Greater London Authority (GLA). Our work has been undertaken so that we might investigate and report to the GLA those matters we are required to report to them pursuant to our Letter of Appointment dated 22 February 2017 (our “Review”) and for no other purpose. This report is not intended for use by any other party (and has not been prepared nor our work conducted with any other party in mind). To the fullest extent permitted by law, neither we, nor our partners or staff accept or assume responsibility or liability to anyone other than the GLA, for our work, for this report and the contents therein, or for the opinions we have formed.

This report contains information obtained or derived from a variety of sources. The scope of our work has been limited by the restricted access to information and management, the limited time available and unaudited information being made available to us. We have not sought to establish the reliability of those sources nor verified the information so provided. Accordingly no representation or warranty of any kind (whether express or implied) is given by Moore Stephens to any person (except to GLA under the relevant terms of the Engagement) as to the accuracy or completeness of the report. Moreover the report is not intended to form the basis of any investment decisions and does not absolve any third party from conducting its own due diligence in order to verify its contents. For the avoidance of doubt this Engagement is not an assurance engagement or an audit and Moore Stephens is not providing assurance nor are the services being performed in accordance with the International Standard on Assurance Engagements 3000 (ISAE 3000) or the International Standards on Auditing.

Once we have provided our report to the GLA in respect of the Review and Moore Stephens will have no further direct responsibility to report in relation to those matters. We shall not be under any obligation to update the report or to take account of events occurring after the report has been issued in its final form. We have no responsibility to respond to questions on the contents of this report, other than at the direction of the GLA.

The content included within this report represents facts at the time, not the current position. This is especially relevant in the earlier stages of the project, where references are to facts relevant at the time decisions were made.

Scope of work

The Greater London Authority (GLA) on behalf of the Mayor of London commissioned a detailed investigation into the London Stadium in light of the real cost of transforming the Stadium from a temporary athletics venue into a permanent venue capable of hosting football and other sporting and cultural events, and the cost of operating the venue.

The purpose of the investigation is:

- To provide a narrative explanation of the history of the London Stadium, including all relevant construction, financial and operational arrangements, with a particular focus on the stadium’s conversion into a multi-use arena and the subsequent negotiations and arrangements
- To confirm the key decision points and contractual commitments made, including the financial and operational projections that informed the significant investment of public money into transformation works and who was responsible for them
- To assess whether the work leading to the decisions and commitments made was sufficiently robust and subject to appropriate levels of due diligence and negotiation to ensure that value for money was achieved for the taxpayer after taking into account the legacy objectives and expected benefits
- To report on the stadium’s financial viability in terms of an assessment of the ongoing and future operating costs and income of the current working arrangements

- To identify any lessons that can be learned
- To work with all relevant organisations to obtain evidence for this work, reporting any lack of co-operation to the Mayor's office
- To produce a report for publication.

The GLA required the report to cover three distinct phases in the genesis and life of the Stadium:

1. The Olympic bodies' original decision making in determining the design and nature of the Stadium built for the Games and what thought was given to how the Stadium would be used post-Games
2. The decision making of the London Legacy Development Corporation (LLDC) and its forebears in the tendering for and delivery of the Stadium transformation in light of the original design and its legacy objectives
3. Decisions pertaining to the current operational arrangement for the Stadium, including those made by LLDC, London Borough of Newham (LBN) and E20 Stadium LLP (E20), and those taken by Her Majesty's Government and the GLA such as hosting the 2015 Rugby World Cup and the 2017 World Athletics.

In order to provide additional clarity and to identify the key decision and transition points in the process, we have subdivided these phases into five phases. These map into the GLA's three phases as follows:

Table 1 – Comparison of project phases

GLA	Moore Stephens
1. The Olympic bodies' original decision making in determining the design and nature of the Stadium built for the Games and what thought was given to how the Stadium would be used post-Games	Phase 1 - The ODA athletics legacy plan
2. The decision making of LLDC and its forebears in the tendering for and delivery of the Stadium transformation in light of the original design and its legacy objectives	Phase 2 – Olympic Park Legacy Company (OPLC) re-establish the legacy plan A – OPLC's re-examination of legacy options B – First competition resulting in selection of West Ham United (WHU) / LBN as preferred bidders Phase 3 – Legacy plan changed again A – Abortion of first competition and decision to keep Stadium in public hands B – Evaluation of legacy options C – Second competition resulting in selection of WHU as first ranked bidder Phase 4 – Transforming the Stadium
3. Decisions pertaining to the current operational arrangement for the Stadium, including those made by LLDC, LBN and E20, and those taken by Her Majesty's Government and the GLA such as hosting the 2015 Rugby World Cup and the 2017 World Athletics	Phase 5 – Operating the Stadium

As the above table shows, the bulk of the work carried out, and therefore the main focus of the investigation has been on the decision making of LLDC and its forebears.

For each of these five phases, we have identified and described the main events and decision points and have included the justification for the decisions made, from the point of view of the decision making bodies. We have then included our evaluation and opinion of the events and the decisions made, critiquing where appropriate.

The level of work to be carried out in relation to future operating costs and income has been reduced by mutual agreement with GLA. This is because E20 has engaged a major accounting firm to undertake a financial review of E20's activities, performance and prospects.

Evidence base for work

As part of the scope, we were instructed:

- To work with all relevant organisations to obtain evidence for our work, reporting any lack of co-operation to the Mayor's office

We identified that in order to gain the necessary evidence to fulfil the scope set out, we would need to:

- Review the Board minutes and supporting papers of the relevant bodies
- Review underlying documentation held by the relevant bodies
- Interview key Board members and management to further understand the process and background to decisions made

The process of obtaining the required papers was not straightforward. In fact, it proved a very time-consuming and frustrating process. We identified a need to obtain papers from the key bodies involved, which included ODA, DCMS, GLA, OPLC, LLDC and E20, as well as their auditors and advisors who were directed by the GLA to speak to us.

Despite our requests, full ODA and DCMS papers and information were not forthcoming. We were provided with only limited and redacted papers for ODA. While these papers were sufficient for us to understand the chain of events and the reasons behind the decisions taken, more detail may have proved helpful. When we requested further information from DCMS in relation to the decision to abort the first competition, it took several requests and even then we were provided with only one high-level paper, with no further detail, analysis or explanation.

For OPLC, LLDC and E20, Board and Committee minutes and papers were received early on, although there were several items, including papers for whole meetings, missing. This took several requests to resolve. While the Board and Committee papers were received after a moderate struggle, obtaining all papers held by LLDC proved even more difficult and time consuming. Despite several requests, we did not receive all documents held by LLDC until November 2017. These documents amounted to in excess of 14,000 files.

In terms of auditors and advisors, EY (who act as auditors for LLDC and E20) were very co-operative and we spoke to them soon after contact was made.

The time-consuming nature of these requests, and the delays in receiving information, which in some cases spanned months, has caused the process, and hence the delivery of this final report, to be delayed.

We also experienced some delays in the interview process, with some key individuals either declining to partake or not responding to our requests to do so. We have listed out all those contacted for interview in Appendix 1. We are very grateful to those that gave their time to take part in adding to this review process.

Summary of phases

Phase 1

In the run up to the Games, the inevitable focus of was on delivery of venues, including the Stadium, and this was the fundamental objective of the ODA. The ODA decided that the Stadium would be designed and built as an 80,000 seat stadium for the Olympic and Paralympic Games, and then deconstructed into a 25,000 seat bowl to be used for athletics (the ODA Base Case). The upper levels of the Stadium, including the seating and roof, would be temporary and removed post-Games.

Phase 2

The OPLC was established in May 2009, with a remit of planning, development, management and maintenance of the Olympic Park, i.e. establishing a legacy for the Park and its venues.

The OPLC re-examined the legacy options for the Stadium in mid-2010, considering a range of options and comparing them against five set legacy objectives:

- to achieve a viable long term solution for the Olympic Stadium that was deliverable and provided value for money;
- to secure a partner with the capability to deliver and operate a legacy solution for a venue of the Stadium's size and complexity;
- to re-open the Stadium for operational use as soon as possible following the 2012 Games;
- to ensure the Stadium remained a distinctive physical symbol supporting the economic, physical and social regeneration of the area; and
- to allow flexible usage of the Stadium, accommodating a vibrant programme of events allowing year round access for schools, the local community, the wider public and elite sport.

This exercise, preceded by soft market testing which identified that the ODA Base Case was not attractive to potential tenants, identified a shortlist of options which were then evaluated against a range of financial and economic criteria.

The shortlisted options were:

1. Mothball (HM Treasury 'Do minimum' option)
2. 25,000 Seats - ODA Transformation Scope (ODA Base Case - Baseline Scheme)
3. Multi-sport athletics Stadium (UKA compliant)
4. New Purpose Built Football Stadium
5. Multi-sports Stadium with Lease to Sports Club Anchor Tenant

While the Multi-sports Stadium with Lease to Sports Club Anchor Tenant was among the more expensive options in terms of Net Present Cost (which included expected capital costs and operating surpluses/(deficits)), it was considered to have the greatest non-monetary benefits, including sustainability, accessibility, range of uses and impact on regeneration and integration.

As such, as of July 2010, OPLC concluded that the Multi-sports Stadium with Lease to Sports Club Anchor Tenant (option 5) was the best option. The revised plan was for a Stadium with 60,000 seats, roof coverage for all spectators and a warm up track. The OPLC decided to pursue a competition to find an anchor tenant who would, under a long lease arrangement, operate all activities and thus bear the risk and reward of operating the stadium on a commercial basis.

In September 2010, bids were received, with the two shortlisted bids received from consortiums led by football clubs, WHU and Tottenham Hotspur (THFC). These two bids were very different in their plans for the Stadium.

WHU (in partnership with LBN) proposed to keep the Stadium largely as it was, including keeping the running track around the outside on a permanent basis. The transformation works for this option were expected to cost in the region of £95m.

THFC proposed to demolish the current Stadium and replace it with a purpose-built football stadium. There would be no athletics track and, in order to fulfil the athletics legacy, they would regenerate the Crystal Palace stadium. The transformation works for this option were much higher, at around £300m.

In both options, the Stadium would effectively be transferred to the anchor tenant, under a leasehold arrangement, who would have responsibility for transforming and operating the Stadium. The public sector contribution to transformation works for both options would be fixed at £35m. OPLC would remain the freeholder, and would receive lease payments.

Following a rigorous evaluation process of the respective merits and demerits of each bid outlined in detail, with a broad assessment of key risks, a decision was made by OPLC in February 2011 to select the joint bid by WHU and the LBN (the “WHU-LBN” bid) as the preferred option.

Under this leasehold structure, the costs of transformation and operation would be borne by WHU-LBN, and therefore the transformation and operational risks were substantially transferred from OPLC to WHU-LBN.

Phase 3

From February 2011, negotiations took place between OPLC and the WHU-LBN. The process, however, was subject to legal challenge from unsuccessful bidders and an anonymous State Aid complaint. Taking a risk-averse response, it was decided by OPLC that while these legal complaints, particularly in relation to State Aid, were live, no progress should be made in relation to development of the Stadium; the process was put on hold. At around this time, it was also decided to bid to host the 2017 World Athletics Championship in the Stadium.

One of the key requirements set out at the start of the competition process was that the Stadium needed to re-open with the rest of the Park in 2014. In late September and early October 2011, with the legal issues ongoing and causing “legal paralysis”¹, and the delays and uncertainty these caused to the overall delivery timetable, the bid process was aborted. At the same time it was announced by OPLC and the Mayor of London that a new competition would be run, but under a different operating structure as the stadium would remain in public ownership. Under this arrangement, OPLC would retain a greater degree of day to day control and users would pay for their use of the Stadium. Given that the Stadium would be retained as a public asset, the liability for transformation and future running costs for the Stadium would fall to the public.

After the abortion of the first competition and the public ownership announcement, different options for the design and structure of the Stadium were examined.

In addition to the mothball option, and the ODA base case (25,000 seat athletics bowl) OPLC also considered:

- 60,000 Seats – Enhanced Multi-Use Stadium: Convert to 60,000 seat stadium with full roof - suitable for Premier League football, athletics, concerts and WAC
- 60,000 Seats – Multi-Use Stadium: Convert to 60,000 seat stadium with existing roof - suitable for non PL football, athletics and concerts. Does not meet WAC requirements
- 80,000 Seats – Multi-Use Stadium (Temporary): No structural change from Olympic mode. Does not meet WAC requirements and would require upgrade for WAC

¹ Statement by Sports Minister Hugh Robertson on 11 October 2011

From these, the Enhanced Multi-Use Stadium option was selected. It was projected to have a capital cost of £112m, but this was said to be partially offset by annual operating surpluses of £3m². On that basis, this option had the second lowest Net Present Cost, after the mothball option. This, coupled with the non-monetary benefits and the fact that this was the only option that would allow the World Athletics Championships to be held in the Stadium, meant this option was selected as the basis for the second competition to find stadium users.

The second competition was launched in December 2011. This would be a straightforward competition for one or more users, the specification being a 60,000 seat capacity with a full, permanent roof, enhanced hospitality facilities, permanent toilets, catering and turnstiles. A total of 16 expressions of interest were registered which materialised into four bids. Once again WHU was selected as the first ranked bidder in December 2012, after which negotiations commenced.

During the bidding process itself, the LLDC was established, replacing OPLC. Whereas OPLC was 50% owned by Central Government, LLDC was fully owned and controlled by the GLA. Also during this time, the longstanding Chair and Chief Executive of OPLC were replaced. A new special purpose vehicle (SPV) was also established (in July 2012) as a joint venture between LLDC and LBN (through a subsidiary called Newham Legacy Investments (NLI)) to manage the stadium.

While in the first competition, and the initial stages of the second competition, the plan was for the track to remain around the edge of the football pitch on a permanent basis, in their bid WHU required the seating to be brought forward to the edge of the pitch. This had two impacts:

- The need for retractable seating, so that athletics events could still be held in the summer, including the 2017 World Athletics Championships (which by this time had been awarded to London)
- To be compliant as a UEFA category 4 stadium, all seats are required to be covered by the roof, and so the roof needed to be extended to cover all seats in their forward position.

Both of these requirements would have a significant cost impact.

Following negotiations, the concession agreement with WHU was approved and signed in March 2013. The business case at the time, expected the transformation costs to be £190m (although this was based on limited design work) and the operating result to be a surplus of £3.2m before repair and maintenance expenditure.

Phase 4

When the transformation works started, not all of the design work had been completed and it quickly became clear that the transformation costs were going to be in excess of the budget previously set, as a result of three factors:

1. A decision was made to host games during the 2015 Rugby World Cup, which meant that the transformation works would need to be carried out in two parts, causing increased costs.
2. Furthermore, as the design work was completed and the existing roof was removed, it was identified that significantly more structural work would be required to support the new roof, which would become the largest cantilever roof in the world.
3. In the lead up to the Rugby World Cup, the seating contractor in charge of designing and installing the bespoke retractable seating solution anticipated to address the need for the seating to come forward for football use and back for athletics use, first experienced severe technical difficulties, and then went

² This £3m surplus excluded repair and maintenance expenditure

into administration. To meet the RWC timetable, a temporary manual fix had to be installed. This changed the seating solution from a retractable solution to relocatable.

These three factors, together with further acceleration required prior to final opening in summer 2016, meant that the transformation budget estimate of £190m was exceeded by £133m, with the total cost being £323m.

Phase 5

Rather than operating the Stadium itself, E20 appointed an operator, Vinci, which would operate the Stadium through a subsidiary called LS185 LLP (LS185). This appointment was made through a tender process.

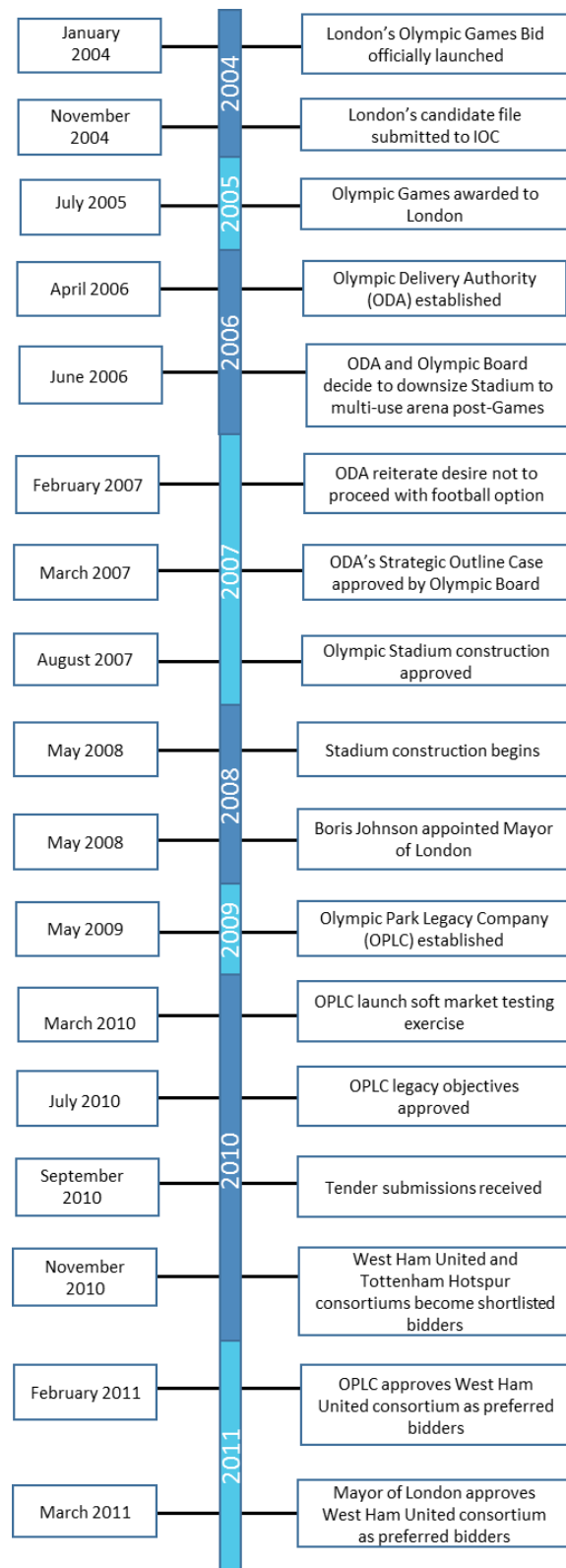
In the approved business case and subsequent business plans, there was a forecast operating surplus in excess of £3m for the stadium before repair and maintenance expenditure. This has not materialized, instead E20 is faced with substantial deficits. One analysis carried out by E20 shows that the cumulative forecast deficit over the first ten years is expected to be in excess of £140m. The March 2017 business plan forecasts the annual deficit to be as high as £20m in 2018, with the most positive year still expected to result in a deficit in excess of £10m.

The income and expenditure items that have differed most from amounts expected in E20 business plans are:

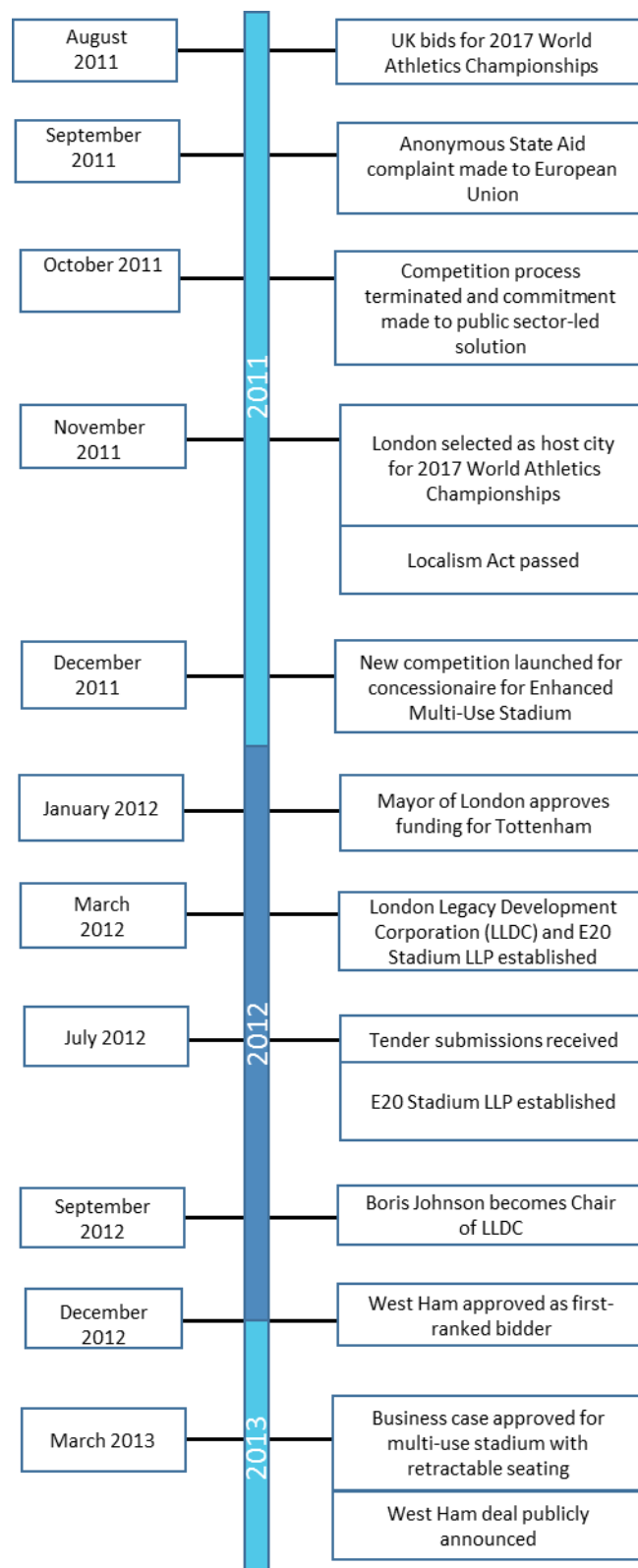
- The operating costs of the relocatable seating which now represent the largest annual expense to E20. These costs are in excess of £10m per annum, which is over 300 times greater than the figure budgeted (of £300k). This cost is not just limited to one year, but is an ongoing issue as the movement of seats is required every year, and this level of operating cost is not expected to be reduced without a new solution for seating being implemented, at considerable additional capital expense.
- The expected Stadium naming rights income (of £4m) per annum has not been achieved as no deal has been completed.
- The LS185 was expected to generate commercial income for E20, and this additional income was expected to exceed the cost paid to them as operator. In fact, the commercial income generated is far below the level expected and so the payments to the stadium operator represent a net cost to E20.

Timeline of events

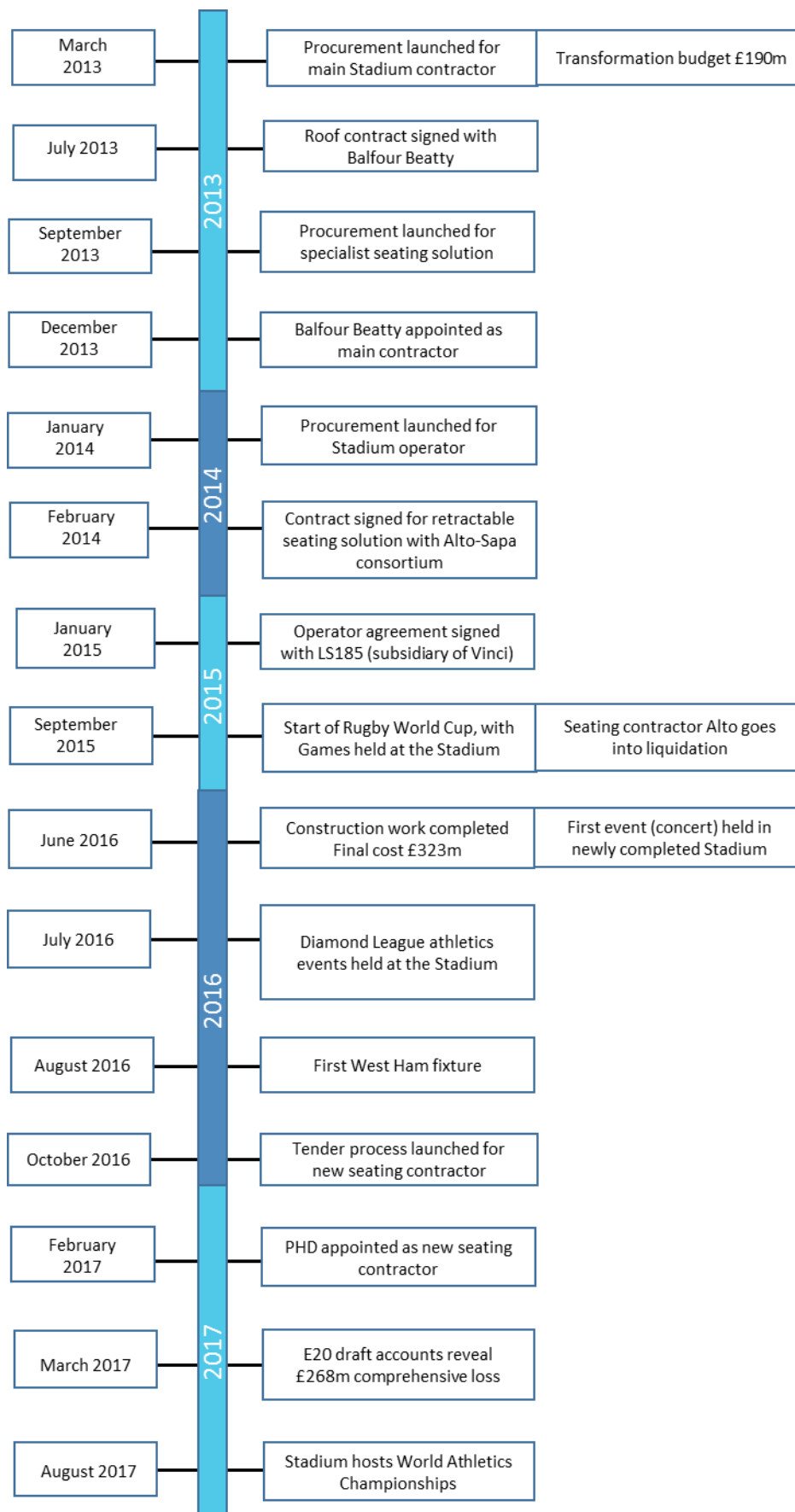
Figure 1 – Timeline of key events during the lifecycle of the Stadium



Moore Stephens Olympic Stadium Review



Moore Stephens Olympic Stadium Review



Executive Summary

Background

The Olympic Delivery Authority (the “ODA”) decided for the Olympic and Paralympic Games, the required stadium (“Stadium”) would be an 80,000 seat stadium, deconstructed into a 25,000 seat bowl to be used for athletics. In mid-2010, the Olympic Park Legacy Company (“OPLC”) re-examined the legacy options for the Stadium, concluding that a transformation to a multi-sports stadium with lease to a sports club anchor tenant was the best option. It then planned to transform the Stadium to a facility with 60,000 seats, roof coverage for all spectators and a warm up track.

OPLC pursued a competition and bids were received in September 2010, with the two shortlisted bids received from consortiums led by football clubs, West Ham United (WHU) and Tottenham Hotspur (THFC). In both options, the Stadium would effectively be transferred to the anchor tenant, who would have responsibility for transforming and operating the Stadium. The public sector contribution to transformation works for both options would be fixed at £35m.

In February 2011 OPLC selected the joint bid by WHU and the LBN (the “WHU-LBN” bid) as the preferred option. However, the process was subject to legal challenge from unsuccessful bidders and an anonymous State Aid complaint. OPLC decided that whilst these legal complaints, particularly in relation to State Aid, were live, no progress should be made in relation to development of the Stadium. At around this time it was also decided to bid to host the 2017 World Athletics Championship in the Stadium.

With the legal issues ongoing and the delays and uncertainty these caused to the overall delivery timetable, in early October 2011 the bid process was aborted. At the same time it was announced by OPLC and the Mayor of London that a new competition would be run, but that stadium would remain in public ownership, under a different operating structure. Under this arrangement, OPLC would retain a greater degree of day to day control and users would pay for their use of the Stadium. Given that the Stadium would be retained as a public asset, the liability for transformation and future running costs for the Stadium would fall to the public.

The second competition, launched in December 2011, was a straightforward competition for one or more users, the specification being a 60,000 seat capacity with a full, permanent roof, enhanced hospitality facilities, permanent toilets, catering and turnstiles. Four bids were received and once again WHU was selected as the first ranked bidder in December 2012, after which negotiations commenced. Following negotiations, the concession agreement with WHU was approved and signed in March 2013. The business case at the time, expected the transformation costs to be £190m (although this was based on limited design work) and the operating result to be a surplus of £3.2m before repair and maintenance expenditure.

However, when the transformation works started, not all of the design work had been completed and it quickly became clear that the transformation costs were going to be in excess of the budget previously set. Together with further acceleration required prior to final opening in summer 2016, the transformation budget estimate of £190m was exceeded by £133m, with the total cost being £323m.

Rather than operating the Stadium itself, the public sector Stadium owner (“E20”) appointed an operator, Vinci, through a tender process. In the approved business case, there was a forecast operating surplus in excess of £3m for the stadium, before repair and maintenance expenditure.

This has not materialised, and instead E20 is faced with substantial deficits. The cumulative forecast deficit over the first ten years is expected to be in excess of £140m. The March 2017 business plan forecasts the annual deficit to be as high as £20m in 2018, with the most positive year still expected to result in a deficit in excess of £10m.

Our scope

The Greater London Authority (GLA) on behalf of the Mayor of London commissioned Moore Stephens to carry out “a detailed investigation into the London Stadium in light of the real cost of transforming the Stadium from a temporary athletics venue into a permanent venue capable of hosting football and other sporting and cultural events, and the cost of operating the venue”.

The purpose of the investigation is:

- To provide a narrative explanation of the history of the Stadium including all relevant construction, financial and operational arrangements, with a particular focus on the Stadium’s conversion into a multi-use arena and the subsequent negotiations and arrangements
- To confirm the key decision points and contractual commitments made, including the financial and operational projections that informed the significant investment of public money into transformation works and who was responsible for them
- To assess whether the work leading to the decisions and commitments made was sufficiently robust and subject to appropriate levels of due diligence and negotiation to ensure that value for money was achieved for the taxpayer after taking into account the legacy objectives and expected benefits
- To report on the stadium’s financial viability in terms of an assessment of the ongoing and future operating costs and income of the current working arrangements
- To identify any lessons that can be learned
- To work with all relevant organisations to obtain evidence for this work, reporting any lack of co-operation to the Mayor’s office
- To produce a report for publication.

The GLA required the report to cover three distinct phases in the genesis and life of the Stadium:

1. The Olympic bodies’ original decision making in determining the design and nature of the Stadium built for the Games and what thought was given to how the Stadium would be used post-Games
2. The decision making of the London Legacy Development Corporation (LLDC) and its forebears in the tendering for and delivery of the Stadium transformation in light of the original design and its legacy objectives
3. Decisions pertaining to the current operational arrangement for the Stadium, including those made by LLDC, London Borough of Newham (LBN) and E20 Stadium LLP (E20), and those taken by Her Majesty’s Government and the GLA such as hosting the 2015 Rugby World Cup and the 2017 World Athletics.

Our findings

The Olympic Board was aware of the difficulties associated with stadia and their tendency to become underused ‘white elephants’ after Olympic Games (“Games”) have ended. Unfortunately time pressure and the Olympic Games budget made it challenging to agree a stadium design capable of facilitating a legacy supported by all, because such design options were too time consuming to agree, or too expensive to reach terms on (given the already escalating Olympic Games budget) and could conflict with legacy commitments made as part of the Olympic bidding process.

In the Games planning phase, time ran out before the challenges could be addressed. Rather than agreeing to build a stadium that, post-Games, could be readily converted to an alternate use, the Games Stadium (“the Stadium”) was designed to be temporary and solely athletics focused, and thereby was intrinsically unsuitable for any alternative use in the absence of substantial expenditure.

The plan, post-Games, was that the Stadium's legacy cost burden would be reduced by the Stadium itself being dismantled to become a shadow of its Olympic Games self (from 80,000 seats to 25,000 seats) and without a roof. The suggestion at the time that alternative uses could be retrofitted should therefore be understood, in reality, to mean that post-Games uses would require substantial expenditure, there being almost no aspect of the Stadium as it had stood that would have been retained unchanged.

Not unreasonably, as the planning for the Games progressed and as public and Government focused on the Olympics and the promotion of the UK intensified, no-one was really content with the Stadium's proposed legacy. In our opinion the original legacy plan appears to have been a stop-gap measure, as from the outset it was planned for a limited athletics use only, and time and budgetary pressures meant that no changes in design could be made to accommodate other commercially viable future uses.

The Stadium's legacy was therefore revisited and thoroughly re-examined, principally by OPLC in 2010. This re-examination confirmed the expectation which had, in substance, been known from the outset, but had been an inconvenient and difficult fact, namely only a Premier League football club could sustain the level of footfall and usage, on a regular basis, necessary to prevent the Stadium becoming an underused 'white elephant' and a drag on the development of the Park and its surroundings.

OPLC's conclusion after extensive work and a tender competition, that only an anchor occupant of the scale of a Premier League football club could sustain the Stadium at its Olympic scale and capacity is, in our opinion, well supported. OPLC also concluded that the best course would be for a football club to "take over" the Stadium, i.e. to effectively "own", transform and operate it (whether literally or under a long lease). This conclusion was also, in our opinion, well founded from the perspective of removing the burden of transformation and operation from the public sector.

OPLC then faced a choice between two offers at the scale needed, one from West Ham United ("WHU") in conjunction with London Borough of Newham ("LBN"), the other from Tottenham Hotspur ("THFC"). Both sets of bids represented viable options to continue a legacy on the site of the Olympic Stadium, although had different proposals on how this legacy would be achieved.

Ultimately, WHU-LBN's bid won the first competition process, in part because it offered to retain an athletics legacy at the Stadium by retaining the running track, whereas THFC's bid did not. THFC's proposals to relocate athletics to Crystal Palace, to demolish the Olympic Stadium and literally to build a new Stadium from the ground up, were considered less convincing and less publically acceptable.

Given that the Olympic Stadium was built to be temporary and little of it could remain without change in any subsequent redevelopment, THFC's proposal was not as radical as it may have sounded. Nevertheless, part of the reason it did not find favour was probably because, to propose demolition of the iconic venue, so soon after the Games, was likely to be very unpopular with the public at the time.

It is interesting to note that THFC's redevelopment proposal was costed at £323m for a Stadium designed and constructed for football use, a figure to which this summary will return.

WHU-LBN's bid in the first competition was approved and was being progressed until a number of legal challenges were received; namely two Judicial Reviews and a State Aid complaint. The challenges themselves were expected and had to some degree been planned for. However, the combination of challenges and their impact when actually received was not entirely as expected, as the Government and the Mayor had subsequently decided to bid for the 2017 World Athletics Championship ("WAC"). The consequence of this bid was that whilst, conceivably, the legal challenges could be met and the cases might be capable of being won, the bid for the WAC would founder in the meantime on the uncertainty created by those challenges.

Accordingly, the decision was taken (after significant discussion amongst the various public sector bodies) that there was no practical option other than to abort the competition. Until that point, WHU were set to be the anchor tenant of the Stadium (with preserved Athletics legacy). Under this arrangement, WHU-LBN would have carried many of the risks of owning an asset including its maintenance, development and operational costs.

It is at this point in October 2011 that, from a public sector and public expectation point of view, that matters went awry in our opinion. Hard on the heels of the decision to cancel the competition and abort the first competition (and therefore end negotiations with WHU-LBN), there followed the decision to adopt a “Public Sector Stadium” model. Under this approach, the Stadium would be owned, transformed and operated by the public sector, with its users (whether athletics, concerts, or football), being conceptually licensees rather than exclusive occupiers.

This second decision, to adopt the Public Sector Stadium / Concessionaire model, need not have followed upon the decision to cancel the competition. A clear decision had been taken previously that the best option for a large multi-use stadium was for the risks of transformation and operation (which were considered to be high) to be borne by the private sector not by OPLC. This second decision therefore represented a complete change in ownership and operation, when it may have been possible to run a new competition for a private sector tenant, on different terms to avoid the issue of State Aid or other legal issues. However, this would have taken time and against the background of (i) the desire to have the Stadium converted and reopened, ideally by August 2014 and (ii) the certainty of solution needed to help the WAC bid succeed, the revised model was adopted and a new competition for Stadium occupiers was launched (“second competition”).

It was said, within OPLC, that the alternative ownership and operating model, upon which the second competition was based, was expected broadly to have the same financial outcome as the first (albeit, hopefully, without multiple legal challenges).

Unfortunately, in our opinion, that assumption and expectation was flawed from the outset. It was not possible to ‘re-run’ a competition which had already occurred, as if it had not happened. More particularly, the bidders did not see it that way and, furthermore, did not see why they should not significantly change their bids in response to the changed terms and circumstances of the second competition.

More problematically, the internal work and analysis of OPLC had, in our view, previously focused on the structure and approach it had, until that point, determined was appropriate i.e. that which led to the WHU-LBN first round agreement. As a result, OPLC’s thinking behind a Public Sector Stadium / Concessionaire model was in our opinion not fully developed at that time.

OPLC was required in short order to pivot to face a completely different scenario: a huge capital project, a complex usage structure and agreement and complex operational requirements, all to be executed at public expense and risk. In substance the issues and challenges which face football clubs as owner operators of 60,000 – 85,000 seater Stadiums were to become OPLC’s challenge.

During the time the second competition was open OPLC changed its legal form, becoming in March 2012, a Mayoral Development Corporation under the then-Mayor, Boris Johnson. Its chair Baroness Margaret Ford and its Chief Executive, Mr Andrew Altman, departed shortly thereafter. Within months its new Chair, Mr Daniel Moylan also departed and was replaced by the then-Mayor Boris Johnson in September 2012. It is perhaps reasonable to ask whether in the course of these changes, key knowledge and understanding was lost.

The newly formed London Legacy Development Corporation (“LLDC”) was now in the midst of a second competition to find occupiers for the Stadium and matters did not go to everyone’s expectation. THFC had decided not to bid to use the Stadium, relatively few of the bids received were credible and, reasonably eliminating those which were not, it was a very short list, leaving WHU in pole position.

WHU presumably understood this, its bid in the second competition was, in our opinion, significantly less favourable than its first (no criticism should be levelled at WHU for this, it played by the rules that OPLC set for the second competition). LLDC reviewed the bids received and, from a narrowed field concluded, in our view, correctly, WHU’s offer was the strongest.

However, at this point it appears that a key question was not asked, namely “*on the terms offered, should the Stadium be granted at all*”. We consider this to be a key issue as, unless one is prepared to countenance a no deal option, any negotiation is always going to be difficult and potentially expensive.

LLDC was aware of the change in the nature of its offer, namely on a concession rather than a leasehold basis. Nonetheless, it expected that the offers received and their requirements would be similar to the first competition. However, in their second bid, WHU made a fundamental change, requiring that seating be within 16.9m of the edge of the pitch, which had costly consequences. To meet this requirement and to be able to host athletics events, the seating had to be moveable; in addition, all seating had to be covered, and therefore the roof would need to be extended significantly.

Theoretically, LLDC had the power to say, or perhaps to threaten “no deal” in response to this bid. However, in the context of the LLDC’s intent that the Stadium would not be a ‘white elephant’ with no permanent user, it appears that it did not have the desire to take this stance.

This is critical because it meant that LLDC’s negotiations with WHU started from a poor position. Rather than observing that WHU’s second competition bid was significantly worse than the first and seeking to revert to terms having a much better value, the negotiation started from WHU’s lowered second competition bid.

Whilst legally it may be that this approach to WHU’s second competition bid cannot be criticised, it created a poor commercial outcome because, in our opinion, LLDC mis-appraised the likely cost implications and associated risk.

It will be recalled that, for a reconstructed Stadium aligned for football usage, THFC’s first competition bid was costed at £323m, whereas LLDC costed the Stadium transformation required to meet WHU’s bid requirements at £190m. In our opinion, adjusting for the matters where, at the time of the estimate, costs were particularly uncertain (as the design work was not sufficiently complete to enable a fixed price contract as discussed further in the report), WHU’s proposal would likely have been costed at £250m-£300m.

Had the significant uncertainties in the design of the Stadium been resolved, and taking into account subsequent changes to accommodate suspension of works for the Rugby World Cup and other agreed variations to increase the long term value of the Stadium, its ultimate cost of £323m does not significantly differ from the cost which may have been expected at the time that the deal with WHU was sealed.

In addition, that same cost is in line with the cost forecast by THFC in the first competition. This is not entirely unexpected given the Stadium has effectively been rebuilt, although its skeleton and shape have been retained. Therefore, the problem that the public perceives in the Stadium transformation having “cost far more” than expected is, in reality, an issue with the expectation set. In our opinion, the eventual cost of the Stadium transformation is what it should have been expected to cost following the second competition.

That is not to say that the deal with WHU was, setting aside the capital transformation costs of £323m, otherwise a good deal for the public. Under the structure of the second competition all risks and ongoing costs (both capital and operating) were to be borne by the public sector. These risks were embedded in the structure of the second competition, rather than purely a consequence of the terms of WHU's bid.

In principle, LLDC could have sought to ensure that WHU paid fixed rent or usage fees equal to or in excess of the costs occasioned by WHU's use of the Stadium, even if to achieve that, it would have meant offering WHU other specific items to exploit for WHU's commercial benefit.

The fact that under WHU's second competition bid it would not bear any Stadium operating costs should have led to a substantially increased rent or usage fees (in comparison to the first bid), but no such increase was obtained. Unfortunately, partly in our opinion as a result of underestimating the Stadium operating costs whilst occupied by WHU and partly because LLDC over estimated its other income sources, LLDC's approach to the negotiations led to rent and usage fees below the level required to cover costs.

LLDC took a commercial risk that, it could obtain other non-WHU incomes from its operation of the Stadium (a risk bearing activity, with many moving parts and the potential to make substantial losses). Implicitly, LLDC assumed that it could itself derive a return greater than that obtainable by having WHU do those same things in exchange for income from and cost recharges to WHU. .

Specifically, LLDC retained the naming rights for the Stadium, income from beverage and catering (but not from hospitality suites) and similar rights, but also retaining all of the associated costs and risks. Whilst that approach is fully aligned with the Public Sector Stadium / Concessionaire model, we consider that it is towards the extreme end of its implementation, because as implemented essentially all risk of loss then sits with LLDC.

Conceivably, there may have been negotiated a 'half-way house' which ensured that LLDC did not bear the costs directly arising from WHU's use of the Stadium (such as policing and Stadium maintenance / upgrading to meet current Stadium standards) as is further discussed in this report.

Similarly, LLDC might have negotiated the grant to WHU of the benefit of a naming rights deal, in exchange for a fixed additional income representing a good proportion of its anticipated value, as that would have de-risked the Stadium's income streams and de-risked the potential to incur substantial losses. WHU in fact offered to exploit the naming rights and to split the proceeds with LLDC, but this option was declined.

In our opinion, in a negotiation with WHU these items could have been beneficial to both parties (as WHU would have been expected to want commercial opportunities to exploit) and LLDC could have thereby converted risky and variable income and risky and variable costs to predictable and manageable sums.

However, apparently because LLDC's projections of the performance of the Stadium were favourable, it did not seek these things; rather it sought matters aligned with its agenda at the time, i.e. certainty of timescale, of delivery and direct control.

In terms of presentation, that decision was in the short term favourable; the WAC was won and delivered, the Rugby World Cup was staged, the Olympic Park and the Stadium continued to reflect the success of the Games and, doubtless, assisted in the continued development of East London. However, as a matter of longer term consequences, LLDC's decision to adopt WHU's bid in the second competition with relatively few changes of significance has proved expensive.

LLDC entered into an arrangement with WHU which, when implemented, generated substantial losses (with no present prospect of significant improvement in the future). It nevertheless believed it had achieved a good commercial deal with WHU from which, assuming income from naming rights and other events, would generate annual surpluses.

The potential for these losses was, in our opinion, a foreseeable risk. In addition, we also consider it was foreseeable that certain aspects of the arrangements could go wrong in the way that subsequently occurred. As described above, had an appropriate analysis of WHU's bid in the second competition been completed, we consider it should have been plain to LLDC at the time quite how much risk it would be taking and the degree to which LLDC would be relying on (i) its estimates of *uncertain* forecasts of future performance and (ii) successful execution of a challenging model of ownership and operation.

Despite the lack of direct value for money obtained, it may have been the correct decision to transform the Stadium for the cost at which it was transformed. Indeed, had the likely cost been better appreciated at the time, it may nevertheless have been approved (the Stadium is a tell-tale for the success of the Park and when the Stadium prospers it is likely that the surrounding area prospers). No-one will be able to fully determine whether this is so for a number of years.

However, in our opinion, the decision to transform the Stadium and to contract with WHU was made on incorrect financial estimates and an insufficient appreciation of the critical commercial and financial risks. It is our opinion that the financial estimates were incorrect not because they were estimates, but because there were errors in their calculation, compilation and presentation.

Whilst it is important to learn lessons from the past, the continuing losses now generated by the Stadium of between £10m and £20m per year and the onerous liabilities associated with the Stadium's operation (as set out in the LLDC and GLA accounts and those of E20 LLP, which are shortly to be published) ought now to be the focus. This is because the Stadium transformation cost is a "sunk cost", expended in the past, and we consider that there are likely to be benefits to the surrounding area as a result of this transformation.

The WHU agreement, resulting from its bid in the second competition, does not recover from WHU by way of rent and other charges a sum sufficient to cover the associated running costs of the Stadium, nor a return on the capital cost of the Stadium transformation.

Presently, the investment by the public purse in the Stadium transformation is not only unlikely ever to be recovered, it will on present figures be likely to worsen year by year at the rate of some £10m to £20m per year, due to expected operating losses.

The physical Stadium and its developmental and economic legacy is clear; however, the public purse which took the risks to create it has not yet seen a direct reward from the operation of the Stadium. Resolution of that issue is not a matter for this report.

Phase 1 - The ODA athletics legacy plan

Summary

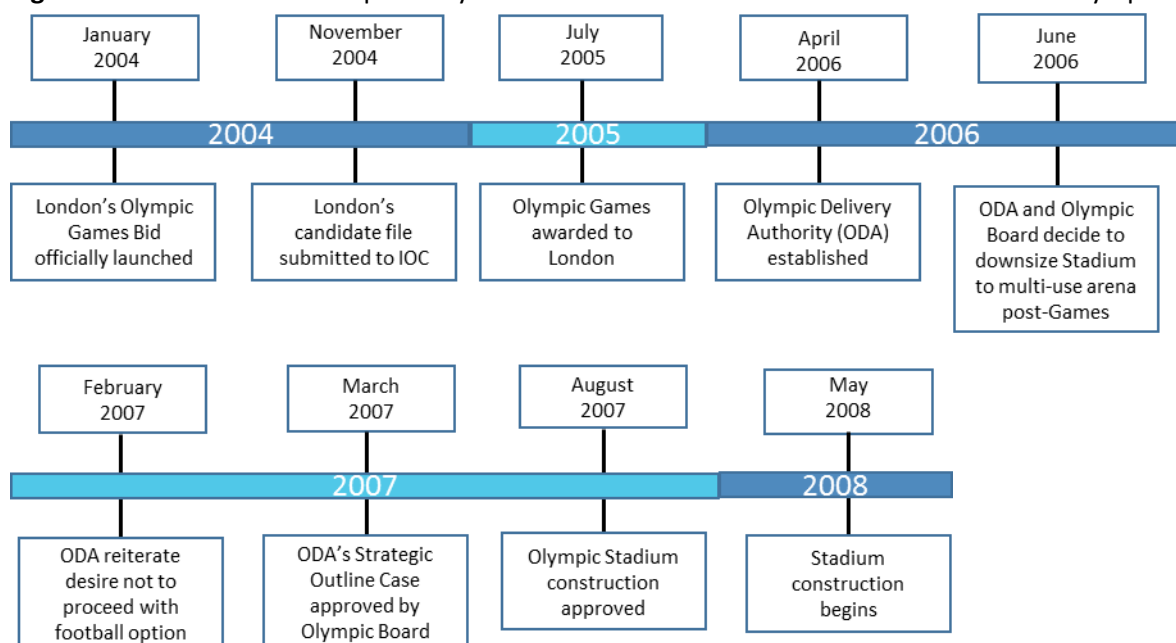
Key Decisions

In 2006/07, a decision was taken by the ODA and the Olympic Board to construct a largely temporary 80,000 venue for the London 2012 Olympic Games, subsequently referred to as the ODA Base Case. This was unanimously approved by the Olympic Board. Following the Games, the top two tiers of the arena would be dismantled to leave a 25,000 athletics venue with partial roof coverage. This decision was exactly in line with the plan for the Stadium set out in the candidate file as part of the bid in 2004.

Due to the limitations in documents we have received, our review in this part pertains to this original decision taken by the ODA and Olympic Board. We have not been provided with adequate information to assess the decision making relating to the original commitments made in London's Olympic bid.

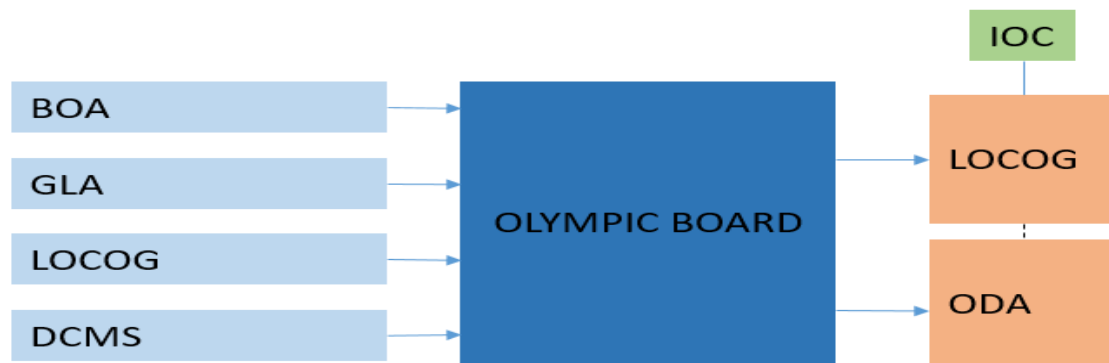
Chronology

Figure 2: Timeline of events up to May 2008 when construction first commenced on the Olympic Stadium



Bodies Involved

Figure 3: Key bodies involved



Public Perception and Press Extracts

<http://www.bbc.co.uk/news/uk-england-london-11341117> - 17 September 2010

A plan to downsize the Olympic Stadium after the 2012 Games is "flawed" and "not in the interests of the East End", a London Assembly committee has said. Put simply, an elite 25,000-seat athletics stadium is not, and was never going to be, in the long-term interests of the East End or of the taxpayer.

<http://www.placemakingresource.com/article/916127/leader---track-turn-legacy-ball-chain> - 29 June 2009

The centrepiece of the event, the 70,000 capacity main Olympic stadium, is half-built but already looks impressive. It could be a major visitor attractions for often overlooked east London. But Lord Coe, who eyes the top job at the track and field-obsessed International Olympic Committee, has made sure that it will be senselessly slashed in size to a 25,000 facility for athletics. Rumours emerged last week that the LDA is now considering reversing its decision to cut capacity that far. But the running track will remain. Athletics is not a major spectator sport in England, a nation that prefers sports with balls and teams. Had Coe been sensible, he may have been able to negotiate a deal with, say, West Ham United, to bring Premier League football to the post-Olympic Park.

<https://www.theguardian.com/sport/2016/nov/05/xxxx> - 5 November 2016

One overlooked factor is the extent to which that original stadium, which eventually cost £429m, was to all intents and purposes entirely temporary, storing up trouble for the future....Once the decision was made to press ahead with a stadium that could be converted into a smaller athletics venue but would be hugely challenging as a football arena, partly because of distaste at the idea of Premier League clubs getting their hands on a public asset for nothing but also the promises made to the International Olympic Committee to win the bid, the die was cast."

Olympic Review House of Commons - 12 December 2012

Dennis Hone "we went to the market, we talked to a number of football clubs and there was no substantive offer. We would then have been building blind with no tenant. I really have to re-emphasise that. That was the decision of the Olympic board, looking at all of those factors and all of those uncertainties on how to move forward."

What happened?

The Bid

The bid for the London 2012 Games was developed in 2003 and 2004 and submitted in November 2004 by London 2012 Ltd, a joint venture vehicle whose members were the DCMS, the BOA and the GLA. The bid document, referred to as the candidate file, clearly set out the plan for the Stadium for the Games and for the post-Games legacy. This was to construct a 80,000 seat capacity stadium for the Games itself, converting into a 25,000 seat athletics stadium post-Games. Responsibility for delivering the Stadium and legacy plans was subsequently passed to the ODA.

The ODA

The ODA was established under the London Olympic Games and Paralympic Games Act 2006.

As set out in the explanatory note to the Act, its function was to do anything necessary or expedient for the purpose of:

“• preparing for the London Olympics,

- making arrangements in preparation for or in connection with the use or management before, during or after the Games of premises and facilities acquired, constructed or adapted in preparation for the Games, or*
- ensuring that adequate arrangements are made for the provision, management and control of facilities for transport in connection with the Games.”*

Its key objectives as set out in its Project Management Framework were the following:

“Create infrastructure and facilities associated with the Games venues to time and agreed budget in accordance with the principle of sustainable development

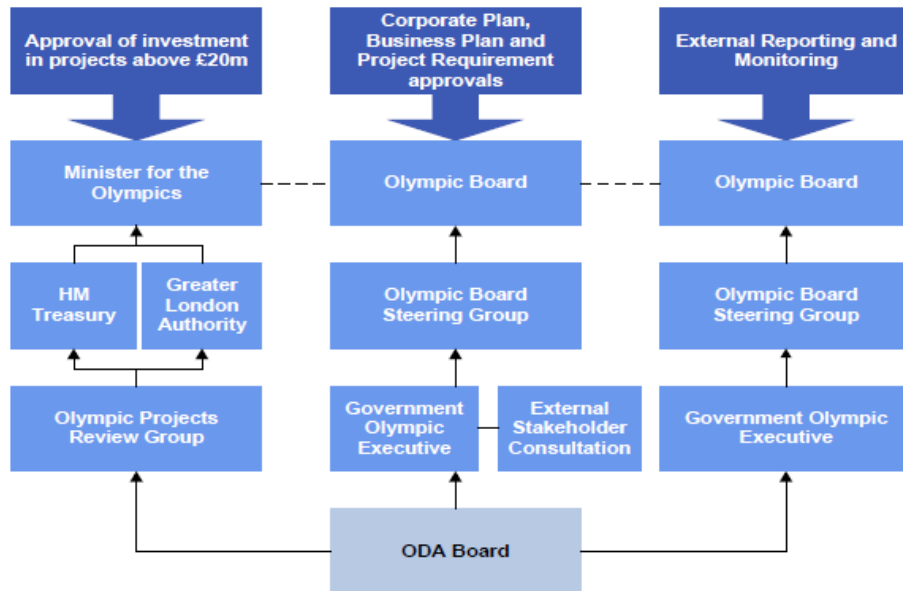
Deliver Olympic and Paralympic venues to time, to design and building specification and to agreed budget, providing for agreed legacy use

Deliver necessary transport infrastructure for the Games, and devise and implement effective transport plans which provide for legacy use

Deliver agreed sustainable legacy plans for the Olympic Park and all venues.”

The ODA Governance Framework, published in October 2011, outlines the governance structure. “*The ODA is accountable to the Minister for the Olympics via the Government Olympic Executive (DCMS) and through it the Olympic Board and other ODA funders*”:

Figure 4: An extract from the ODA Governance Framework



Chronology of the ODA Decision

Faced with a timetable which was already challenging, the ODA were clearly mindful of the fact that failure to deliver the stadium on time would cause catastrophic reputational damage. Such had been the case, albeit on a smaller scale, with the 2005 World Athletics Championships where London was forced to cancel its commitment to hosting the event.

An initial lack of interest by Premiership football clubs changed with WHU’s late renewed interest following a takeover in mid-2006, but the timeframe in which this happened and the associated requirement to revisit the design brief (see below) created a risk of missing key deadlines, and this risk was not tolerable to the ODA. This was outlined in a briefing to the Mayor in February 2007, where he was warned that “any reopening of debate on an alternative legacy use would be highly detrimental to effective delivery of the Olympic project.” These pressures clearly contributed to the ODA’s decision in February 2007 that “*premiership football requirements would have to be built into the stadium post Games.*”³

The Mayor was also warned in his briefing notes in June 2006 that combining football and athletics “*is recognised to be a sub-optimal option in that there are no successful examples of combining athletics and football stadiums with their very different sight lines and requirements*”. Providing a solution to the contrasting sight lines would cause a more complex design for a Stadium which had a tight construction window.

³ Olympic Delivery Authority Report to Olympic Board - OB(15) 03 – Stadium, 07/02/2007

Following preliminary project development and options work, undertaken by the ODA in early 2006, working closely with DCMS, four potential options for the Stadium were put forward and considered at the ODA Board meeting of 29 June 2006:

1. 80,000 seat Olympic stadium, 20,000 seat athletics legacy with facility to install additional temporary seating for major events (e.g European or World Athletics Championships) – the “Base Case”;
2. 60,000 seat football Stadium, with a separate 20,000 seat athletics track in Olympic Park;
3. 60,000 seat football Stadium, with a separate 20,000 seat athletics track at Crystal Palace; and
4. 60,000 seat football and athletic stadium (combined).

Table 2 – Summary of option evaluation

Option	Legacy	Accept or reject	Reason for decision
1	20,000 – 25,000 seat athletics facility	Accept	Meets all objectives
2	60,000 seat football, separate 20,000 seat athletics stadium on the Olympic Park	Reject	Too expensive and risks of delays
3	60,000 seat football, separate 20,000 seat athletics stadium at Crystal Palace	Reject	No athletics legacy in Olympic Park , also expense and risk
4	60,000 football and athletics (combined)	Reject	Too expensive and risks of delays

Option 1 accorded with the Candidate File presented as part of the Olympic Bid, and so was the preferred option.

The reasons presented in their report to the Olympic Board on 7 February 2007 detail why alternative legacy options were not pursued:

“Option 2 was eliminated on financial/VFM grounds and on risk - complex solution technically to deliver, complexities over specification for football club ‘client’, time required to get commercial agreement with football club, State Aid issues, town planning issues, would require additional land take in Olympic Park etc - all of which could jeopardise successful delivery of the project to time and cost.

Option 3 was eliminated as it did not meet the aspirations outlined in London’s Candidate File for an athletics legacy and would also attract similar potential difficulties as outlined for Option 2 above.

Option 4 was eliminated on financial/VFM grounds and on risk grounds (State Aid issues, complexities over specification for football club ‘client’, compromise solution for football, time required to get commercial agreement with football club, does not accord with new masterplan).”

Subsequent to these decisions, the ODA Board was presented at its meeting on 29 June 2006 with headline issues in relation to athletics venues:

- *“athletics venues lose money – securing an anchor tenant if possible & compiling an event schedule and optimising usage is critical to the overall revenue position;*
- *most facilities of this nature require subsidy to break even;*
- *the provision of an adequate sinking fund allowance is often ignored; and*
- *there are financial advantages to using Trustco/Non-Profit Distributing Organisation structure.”*

At the Olympic Board meeting in November 2006 the British Olympic Association sought clarity on the position in relation to legacy, following speculation in the press. The Board formally re-iterated its position in support of the 80,000 to 20/25,000 legacy stadium.

High level business planning carried out in conjunction with a Big 4 accounting firm, PwC, showed that an ongoing revenue subsidy of between £700K and £1m would be required annually, with the position within this range dependent on whether an anchor tenant (e.g. a rugby club) could be secured. It was also noted that some additional revenue could be generated through the use of the stadium for cultural and other events.

As a result of the identified need for ongoing subsidy, studies were launched to identify how to minimise the costs involved and maximise revenues, with the results presented to the ODA Board on 25 January 2007. These focused on having a Premiership rugby club and/or a League football club to occupy the Stadium, as joint tenants with UK Athletics. It was noted that there were UK precedents to this ground sharing, with many examples of football and rugby sharing facilities, e.g. London Irish RFC and Reading FC at the Majeski Stadium, and Saracens RFC and Watford FC at Vicarage Road.

To substantiate the case for the three sports sharing, an annual event calendar was prepared, working closely with UK Athletics and the potential occupiers (non-premiership football and rugby) who expressed a strong interest in potentially locating to the stadium post Games. These occupiers confirmed that they were confident that arrangements could be put in place to allow a shared facility, though they did flag a number of practical issues which would need to be considered further.

A business plan was prepared, with a “worst case” scenario being to secure an athletics-only legacy use of the stadium. This scenario required an annual subsidy of circa £1m, rising to £1.2m in year 5, excluding repair and maintenance costs. The business plan then explored the impact of adding in rugby or football (non-premiership) uses, as well as combining all three sports - the tripartite company option. The business case then added in other potential income from space within the stadium that could be used for other uses – schools, conference facilities, commercial leisure and retail – but the instruction was to take a cautious view on this. There were also a number of potential “upsides” e.g. naming rights for the stadium, business rate relief, parking revenue, etc which were not been taken into account. When the numbers are looked at in total, including all possible “upsides”, there was considered to be a strong potential for the facility to breakeven and even tip into generating a surplus.

Based on the need to apply a cautious approach to the figures, while the base case put forward was based on the tri-partite model, it assumed revenue figures that did not include additional commercial revenues for the build envelope area. The outcome of this was to leave a base case annual deficit of circa £300k in years 3, 4 and 5 of operation.

Table 3 – Financial Summary of PMP work

Scenario (£000's)	Operating Scenario Surplus/(cost)					
	Year 1 (2014)	Year 2 (2015)	Year 3 (2016)	Year 4 (2017)	Year 5 (2018)	Total
1. Athletics only	(1,076)	(1,103)	(1,125)	(1,155)	(1,187)	(5,646)
2. Athletics plus football	(601)	(442)	(73)	7	81	(1,028)
3. Athletics plus rugby	(605)	(471)	(107)	(37)	27	(1,193)
4. Tripartite company	(262)	(53)	420	511	597	1,213
Base Case	(666)	(562)	(280)	(283)	(288)	(2,089)

Consideration of Premiership Football Use

Between January and July 2006 commercial negotiations were led by DCMS (supported by PwC) with two Premiership football clubs in order to pursue the prospect of one of the clubs taking ownership or a long lease in the legacy Olympic Stadium. The clubs were asked to submit their final offers by July 2006 but no responses were received.

Following the takeover of WHU in late 2006, the club expressed renewed interest to be involved in the legacy stadium. Following receipt of a letter from WHU on 4 December 2006 and a specific request from DCMS, ODA reopened discussions with WHU. These discussions were led by the ODA at a senior level.

According to the ODA and the Olympic Board, the fundamental principle underlying these discussions was that the ODA could not do anything which could delay the current design development and tendering process, as this could jeopardise the delivery of the stadium in time for the Olympic Games. This meant that the premiership football requirements would have to be built into the stadium post Games.

WHU formally confirmed their position in a letter dated the 17th January. The Olympic Board minutes of 7 February 2007 summarised WHU's position as follows:

- Retrofitting the stadium after the Games is not a cost effective option. The design brief needs to be amended to suit premiership football and the core facilities and "enhanced scope" required to accommodate this would have to form part of the base brief, e.g. under pitch heating, retractable seating, hospitality areas, redesigned roof, etc.
- WHU will not occupy the stadium if a running track is a permanent fixture. Stand seating must cover the athletic track for a majority of the year (about 20-25,000 seats) and the roof must be redesigned to the scope of this extended seating i.e. a much more extensive legacy roof structure. The stand capacity is to be 60,000 seats, which includes the seating covering the running tracks. This means that the remaining seating left over from the 80,000 Olympic requirement would be somewhere around 40-45,000.
- The retractable seating would cover the athletic tracks for the entirety of the football season leaving approximately 3-4 months when, subject to not clashing with WHU fixtures, it would be available for athletics for up to 18 events. These events would be subject to WHU's approval. Other events may be accommodated but these would be at WHU's discretion and potentially chargeable.
- A minimum of 500 and a preference for 1,000 car parking spaces, plus coach and broadcast areas.

In response to the impracticality of the need for regular access to the track for athletics training, WHU suggested an alternative solution in their letter. This alternative solution was to convert the stadium post-Games for a football only use, and to build a separate athletics facility around the site of the warm up track. This was very similar to Option 2 which had already been considered and rejected by the Olympic Board.

The Olympic Board summarised WHU's proposal as a purchase of the Olympic Stadium by a private company which would then take responsibility for future operating and maintenance costs. In this arrangement, WHU would control access to the stadium and would provide very limited access for a few elite athletics events. It rules out the daily use of the stadium for schools, community groups and athletics training.

The WHU proposal raises a number of issues, many of which were similar to those discussed by the Olympic Board in mid-late 2006:

- *"The programme to deliver the Olympic Stadium in time for test events and the Games is becoming increasingly challenging. To meet this deadline the ODA is managing an already accelerated design and procurement programme. There is no time to twin-track designs. A clear decision is needed from the stakeholders so that the base brief can be frozen and a substantive start made on the RIBA Stage B design. Continuing uncertainty will have very real capital cost implications and significantly increase risk – financial and programme. It also increases the risk of Team McAlpine walking away.*
- *WHU's proposal requires the brief to be amended and the scope extended. The ODA is working on the current designs to bring them back within budget and programme. Any significant addition to the base scope would undermine this process. In addition, WHU will require significant input into the detailed design and development of the stadium – this will add significant complexity to an already challenging design management process and programme.*
- *WHU's proposals are not compliant with the commitments set out in the Host City Contract. Formal approval to any material changes in the contract need to be agreed by the stakeholder and the IOC. However three of the key Olympic stakeholders do not support this option and even if they could be persuaded to support the WHU proposal, it could take many months to achieve an agreement.*
- *WHU's proposal is an indicative offer. It would take 6-8 weeks to reach detailed Heads of Terms and say another six months to reach a binding legal/commercial position. There are however a number of significant risks to achieving a secure position with WHU and it is unlikely that this position could be reached before contracts have to be let and a start made on site."*

WHU's assertion that their requirements could not be met by retrofitting and that they would only be interested in doing a deal if the pre-Games base build changed meant that discussions were concluded with no deal being agreed.

Consideration of the 25,000 capacity stadium for athletics use

The facilities relating to the athletics stadium, and its capacity and capability to host future athletics events was discussed in detail by the ODA Board on 25 January 2007.

The 25,000 legacy stadium would have the capacity and facilities to host Grade 1 (Category Two), IAAF certification events. This means that it would be able to host IAAF events, including Grand Prix, Golden League and the World Cup. Events of this level have been staged at Crystal Palace. While this category of event requires a warmup area provision, these requirements are not the provision of a full 400m track. This provision of a smaller warmup facility could be accommodated within the vicinity of the stadium and formed part of the "base case".

However, the 25,000 legacy stadium would not be capable of hosting Category One level events, including World and European Championships. Events of this category require a stadium seating capacity of up to 50,000 seats as well as provision of full IAAF compliant warm-up facilities. These warm-up facilities constitute a 400m

six lane warm-up track, throws field and associated athlete preparation facilities. Furthermore, the warmup facility should be in a similar orientation to the main competition track Stadium and preferably needs to be immediately adjacent to the Stadium itself.

Plans were set out for four potential locations for a Category One warm up facility and these were reviewed by UK Athletics. The positions required further analysis to determine the deliverability and cost implications – both in terms of the direct cost of providing and operating/maintaining such a facility as well as the indirect costs i.e. the opportunity cost of valuable riverfront land that will not be available for mixed use development. The preferred option at this stage, a site adjacent to the main stadium, necessitated that high value development land be quarantined.

Work was also carried out to determine the cost of providing flexibility in the legacy stadium design, to allow the capacity to be raised from 25,000 to 50,000 when required. However, as this was said to carry a capital cost premium it was not included in the stadium “base case”.

While discussions with WHU were ongoing in January 2007, UK Athletics stated that the Premiership football requirements would conflict with its needs, and that if a 60,000 stadium with a track covered by seats was the preferred option then it would want to re-evaluate Crystal Palace.

Justification for decisions made

This section explores the reasons which we understand led to the decision to pursue a 25,000 legacy athletics venue – the ODA Base Case. The other option considered at this time was a 25,000 seat athletics venue combined with non-Premier League football and Premiership Rugby.

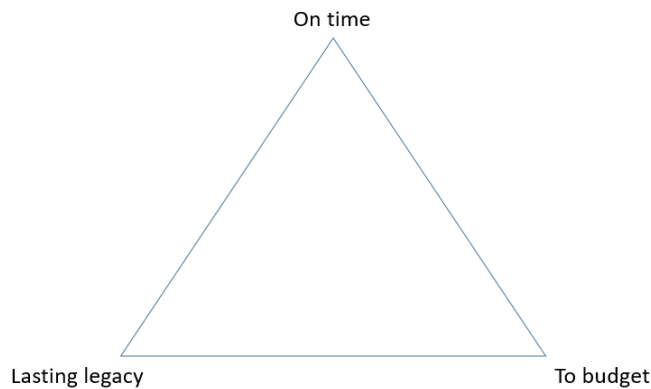
Table 4: Scope of Stadium Business Case

Development/ Construction	Overlay/ Operation	Transformation	Legacy
Design, construction and commissioning of 80,000 seat Stadium for the Games	Fitting out of LOCOG overlay works, test events, facilities management and Olympic/Paralympic Games	Dismantling of 55,000 seats, provide partial roof and fit-out for 25,000 seat IAAF athletics facility	Operation and further development of facility for additional uses

ODA's mission

The ODA's Annual Report and Accounts 2006-2007 detail that their mission is *"To deliver venues, facilities, infrastructure and transport for the London 2012 Olympic and Paralympic Games on time, to budget and to leave a lasting legacy."* Their decisions in relation to the Stadium were based on these three aspects.

Figure 5: The three aspects of the ODA's overall mission.



i) *On time*

In light of its late foundation in April 2006, the ODA was presented with a narrow window to deliver a stadium which would have to be ready for test events by 2011. The ODA aimed to achieve practical completion by February 2011 at which point handover to LOCOG would occur. LOCOG was the organisation responsible for overseeing the planning and development of the Games, whereas ODA was responsible for delivering venues.

In the ODA Board meeting of 29 June 2006, the timeframe was discussed, setting out approximate timescales for each stage of the process. As set out, this would mean that the design process would need to start a minimum of 5 years from the start of the Games, and construction a minimum of 4 years prior to the start.

"The overall delivery programme for the Main Stadium will require an estimated:

- *8-9 months to appoint an integrated delivery team;*
- *Not less than 18 months for design, development and detailed cost planning;*
- *30 to 36 months for construction; and*
- *Up to 15 months for commissioning, test events and installation of Olympic overlay."*

At this stage the Stadium was on the critical path. The programme was already accelerated and there was no time to increase the scope to accommodate a Premiership option if the Stadium was to have any chance of being delivered on schedule or on budget. Continued uncertainty over the base brief for the Stadium became the most significant risk on the project register, with the threat of this undermining the successful delivery of the whole project in time for the Games.

ii) *To budget*

The ODA Base Case put forward a low cost solution through the provision of various temporary elements which could be dismantled post-Games to limit costs. This aimed to achieve construction within a capital budget of £422m excluding VAT.

This budget consisted of construction and dismantling costs of £272m, with the further £150m primarily in relation to contingency and inflation. The £272m costs were split as follows:

Table 5: Budgeted cost of Olympic Stadium construction

Stage	Cost
Construction phase pre-Games	£244m
Transformation phase post-Games	£28m
Total	£272m

The budget for the original Stadium included in London's bid documents was said to be £280m.⁴ As such, the ODA Base Case already represented an increase of 50% over and above the original budgeted cost. There was limited scope for a larger permanent venue within the £9.325 billion budget set aside for the games announced on 15 March 2007.

A Mayoral briefing document from June 2006 shows that a mixed use stadium with athletics and football would have *"cost a minimum of an additional £70 million"*.

Providing a reduced capacity post-Games would also ensure lower ongoing maintenance costs compared to an 80,000 seat venue. The ODA's 2007 Business Case outlined that the operational costs up to 2025 for the ODA Base Case solution would be around £22.8m. A 25,000 seat athletics stadium combined with non-Premier League football and Premiership Rugby, on the other hand, would incur costs of £32.3m, albeit with higher revenues.

It was noted at the Olympic Board meeting of 7 February 2007 that any delays beyond the original contract period could attract direct costs approaching £5m a month as a minimum. Indirect costs would also be encountered. These would include substantial acceleration costs to recover and maintain the completion date. This acceleration would not be recovered within a single month but could take several months, resulting in a risk that the completion date was missed. In addition to preliminary items, costs would also be incurred due to the need to remedy any impact of the delays on the neighbouring works such as the bridge, utility and infrastructure installations.

Based on the stated cost of delays, timely delivery became increasingly more important. The main advantage presented by the ODA Base Case was its simplicity. This helped ensure a timely delivery which would have been complicated by pursuing a football / athletics dual use which, as described, may have led to significant additional costs from delays. David Luckes, commissioned by the BOA to write a feasibility study for the 2012 Games bid, explained in a 2013 House of Lords' Select Committee meeting that the proposal *"had roots in practicality and deliverability"*. This was particularly necessary given the *"air of scepticism both from the international sporting community and the British public"* following the difficulties experienced in previous large scale projects including Wembley Stadium and the Millennium Dome.

⁴ London Assembly Report, Update on the Assembly's Olympic Games and Paralympic Games Scrutiny Work Programme, 26/02/2008

iii) *Leave a lasting legacy*

Per the ODA's Business Case in July 2007, the legacy objective for the Stadium, was that it would be *"highly valued by the local community, sports community, business community and local authority in terms of the quality of the amenity, its accessibility and its ongoing viability as a business."*

In order to fulfil this, the ODA were particularly wary of leaving a stadium which would not be used frequently – a *"white elephant."* In their report to the Olympic Board on 18 October 2007, they outlined the fact that *"we have a guiding principle of 'no white elephants'"*.

Given the limited interest from football clubs at the time and their failure to commit any funding towards the Stadium, David Goldstone describes that any proposal to include football would have been *"slightly speculative"* and may have *"risked it being a white elephant."*⁵

As such, the ODA Base Case incorporated a stadium design to offer maximum flexibility for future uses to guarantee high usage. They pursued a concept of a *"Living Stadium"* which would *"be flexible enough to host concerts, cultural, community, educational and other sporting events, as well as providing space for the London Olympic Institute proposed in London's bid"*.⁶

The Stadium would be reduced in capacity post-Games, on the basis that athletics, unlike football, is not the main sport in the UK and as such attracts smaller audiences. Keith Mills, deputy chairman of London 2012 explained that:

*"We're not short of stadiums, but we are short of an athletics stadium and an athletics stadium doesn't have to be 80,000 seats...The bigger the stadium, the bigger the economic challenge. Because you go to an event and you put 25,000 people in an 80,000-seat stadium it looks lost."*⁷

This proposal would provide a genuine athletics legacy in the UK, which was much needed at the time. There was not such a need for football facilities given that the UK already boasted several world-class stadia including; Wembley, Old Trafford and the newly constructed Emirates Stadium.

Other - Bid Commitment

London's bid documents for the 2012 Games, submitted to the IOC in November 2004, had proposed an 80,000 seater stadium downsizing to 25,000 post-Games with athletics as its core use. The ODA were mindful of fulfilling these bid commitments. The promises made in the bid would have made it problematic to incorporate any alternative legacy, as was outlined by then Mayor Ken Livingstone:

"If I and Seb Coe said to the IOC 'we know we promised you an athletics stadium but we'd rather have West Ham in there as they'd make more money out of it', they would say 'we have a contract and you can get lost'".⁸

The ODA Base Case thus fulfilled the commitments outlined in London's original bid. Formal changes to the Stadium design would need to be ratified by the IOC.

⁵ Budget Monitoring Sub-Committee – Transcript of Item 6 – LLDC and the London Stadium, 14/12/2016

⁶ London 2012 Olympic Stadium - the "Living Stadium" Explanatory Document

⁷ http://news.bbc.co.uk/sport1/hi/olympic_games/8143452.stm

⁸ http://news.bbc.co.uk/sport1/hi/other_sports/olympics_2012/4854520.stm

Overall

As such, the ODA's decision to downsize to a 20,000 – 25,000 seat athletics facility was made due to the fact the other options they considered, each of which involved football, were not perceived to tie into their legacy objectives.

Meanwhile, the advantages put forward by the ODA in the July 2007 Business Case for pursuing the 20-25,000 athletics facility was that:

- *It "meets the commitments in the Candidate File made when London was awarded the 2012 Olympic Games, as it provides an athletics legacy in the Olympic Park.*
- *It satisfies the legacy requirement to provide a facility for mixed use in legacy.*
- *The transformation of the Stadium from an 80,000 capacity Olympic venue to an up to 25,000 capacity athletics venue is technically possible*
- *No anchor tenant means a decision on an owner / operator can be made at a later stage, once the Stadium facilities are more clearly understood."*

Our Evaluation

This section sets out our assessment of the ODA Base Case decision.

Summary

The fundamental objective for the ODA was to ensure the deliverability of the Stadium for the Games. This view is supported by Jonathan Stephens, Permanent Secretary at the Department for Culture, Media and Sport 2006-2013, who stated that *"the overriding priority when the decision was taken in 2007 was, rightly, to make sure that the stadium was built and fit for purpose for 2012; that was the overriding priority."*⁹

As such, the ODA irrefutably achieved its principal aim. However, the time constraints the ODA were under led to a quick-fix solution, providing a stadium which was unlikely to hold substantial attractiveness for potential tenants post-Games. Similarly, its proposal would not guarantee maximum footfall and year-round use for the Stadium which, in turn, would perceivably undermine the wider regeneration programme for the Olympic Park. As a result, this required the Stadium legacy solution to be revisited retrospectively to examine whether further objectives focused on maximising use and regeneration, while not representing a burden to the taxpayer, could be achieved or partially achieved.

Speculative proposal not designed for a specific tenant

The 2007 Business Case outlined that the Stadium could be used for a number of different uses, amongst them; football, rugby, concerts, community use and retail. However, the Business Case itself outlines that it *"does not define in detail how the legacy requirements will be delivered as these have not yet been fully defined."*

The failure to secure a future tenant contrasts directly with the example of the 2002 Manchester Commonwealth Games. This has subsequently been outlined in a London Assembly Report, "Legacy United":

"London's approach can again be contrasted with Manchester's experience with the 2002 Commonwealth Games. There was an agreement before construction began between the city council, the Games organisers and Manchester City Football Club that the stadium would be converted for use as Manchester City's new home ground. The club leases the stadium from the council, with an agreement to share the proceeds of ticket sales.

⁹ Olympic Review HoC, 12/12/2012

No such arrangement was made in London, and it is not clear if this type of agreement was ever discussed with potential Olympic Stadium tenants.”

Ultimately, attempts made to recruit a tenant early-on failed, as is eloquently summarised in the same London Assembly report:

“those initial attempts to recruit an anchor tenant to the stadium failed. While there will always [be] an element of risk in this process, the abundance of professional sports clubs that have shown an interest in the stadium – from 2006 to the present day – suggests there is demand for use of the stadium. The failure to reach agreement with any major tenant raises questions about whether there has been sufficient willingness among Olympic Board members to adapt plans for the stadium when required. It is also doubtful whether the Olympic Delivery Authority should ever have been given lead responsibility for recruiting future tenants – which it had during the most crucial period for the project – given that its primary role is to construct the venues, not to develop legacy plans.”

This inability to secure a legacy in advance undoubtedly increased the eventual costs of transforming the Stadium post-Games. An ODA report to the Olympic Board from 7 February 2007 acknowledges the fact that, *“retrofitting the stadium after the Games is not a cost effective option.”*¹⁰

It is also clear that the planned design of the Stadium post-Games did not help to attract future tenants. The below figures show the planned Olympic Stadium in its 80,000 seat Games set-up, and in the reduced capacity 25,000 format.

Figure 6 – Stadium plans for the Olympic Games (top) and post-Games (bottom). Source: bbc.co.uk/sport



¹⁰ Olympic Delivery Authority Report to Olympic Board - OB(15) 03 - Stadium

While the 80,000 capacity Stadium to be used for the Games is both large and has deliberate and iconic architecture, the legacy version was not held in high esteem. Based on the plans for the legacy version, it was described by David Bond at the BBC in his blog as a “*drab and characterless venue*” and by then-Mayor of London Boris Johnson in the Evening Standard as “*a dust bowl staging occasional athletics events*”.

Risk of a white elephant

Failure to secure a future tenant meant there was a high risk under the ODA Base Case that the Stadium would experience limited use in the future and be costly to maintain - a “*white elephant*”.

The Legacy United report cited the example of Crystal Palace, an athletics venue just eight miles from the Olympic Park with a 16,800 capacity, which is only full for a “*few days every year*.” There are limited Athletics events which can be staged. Crystal Palace is reported to have only staged two major events in 2009, occupying the stadium for just three days.¹¹

Additionally, the report pointed towards evidence which “*suggests that music, cricket and athletics would most likely be considered an occasional use for the stadium rather than providing a guarantee of regular, large events*.” This is in part based on the saturated London concert market with heavy competition between venues such as Wembley National Stadium, the O2, Wembley Arena.

Based on the fact the Stadium would only offer one covered stand and that these events (athletics, cricket, open air concerts) largely take place in the summer months, it is questionable whether the Stadium would have provided consistent high levels of visitors year round to deliver a genuine legacy. The lack of full roof coverage for spectators would also restrict the Stadium from hosting certain elite IAAF events.

Ongoing public subsidy

The combination of the above factors resulted in a likely scenario that the ODA Base Case would operate at a continuing deficit. The Economic Development, Culture, Sport and Tourism Committee outlined that:

“without a credible anchor tenant to bring regular foot-fall into the park there will be serious doubts as to the future financial viability of the venue and hence attractiveness of the park site to business investment”.¹²

Estimates made by the ODA anticipated that the Base Case would make an annual deficit around £2m over the first five years. However, this would increase significantly if additional tenants were not secured.¹³ In the case that the Stadium was used as an athletics venue alone, the business case anticipated that the deficit by 2025 would be some £15m.

Conclusion

Overall, while the ODA and Olympic Board considered a range of scenarios, including Premiership football with retractable seating, the conclusion at this stage was to proceed with the solution that represented the cheapest and safest option to guarantee successful delivery for the Olympics in 2012. While this may have been the ODA’s primary purpose, and the consequences of not meeting the Games timetable would have been severe, in our opinion more heed could have been paid to the legacy at the outset. Of the three aspects for which the ODA had responsibility, in our opinion the legacy option was given the lowest priority, and consequently less emphasis was given to securing a sporting legacy for the Stadium than the other two aspects.

¹¹ London Assembly - July 2009 Economic Development, Culture, Sport and Tourism Committee - Towards a Lasting Legacy, 01/07/2009

¹² London Assembly - July 2009 Economic Development, Culture, Sport and Tourism Committee - Towards a Lasting Legacy, 01/07/2009

¹³ ODA Board Briefing, OB(15)03, 07/02/2007.

The primary consideration in legacy terms at this point seems to have been not to contradict the promise made in the bid related to an athletics legacy within the Olympic Park.

This consideration, which was given at a time in which there were critical time pressures to deliver a suitable stadium for the upcoming Olympic Games, has in our opinion been a key contributor to the cost implications of converting the Stadium afterwards.

Mapped against the ODA objectives, the decision to build a temporary 80,000 seat stadium for the Games and convert to a 25,000 seat athletics bowl post-Games, can be clearly seen to be focused on timeliness and budget, with less view to a real viable and lasting legacy.

Phase 2 - OPLC re-establish the legacy plan

Summary

Key Decisions

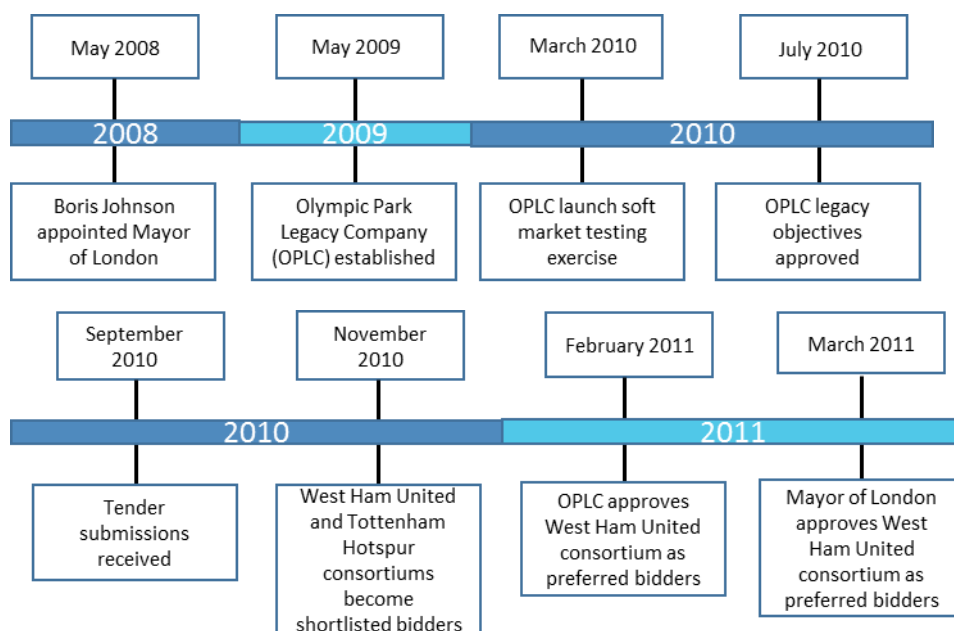
The OPLC re-examined the legacy options for the Stadium, moving away from the ODA Base Case to pursue a competition for a Multi-Sports Stadium with Lease to a Sports Club Anchor Tenant (Phase 2a).

The revised plans were for a stadium with 60,000 seats, roof coverage for all spectators and a warm up track. In those plans, the future tenant would operate all activities and thus bear the risk and reward of operating the Stadium on a commercial basis.

Following a competitive tender process, a decision was made to select as the preferred option the joint bid by WHU and LBN (Phase 2b).

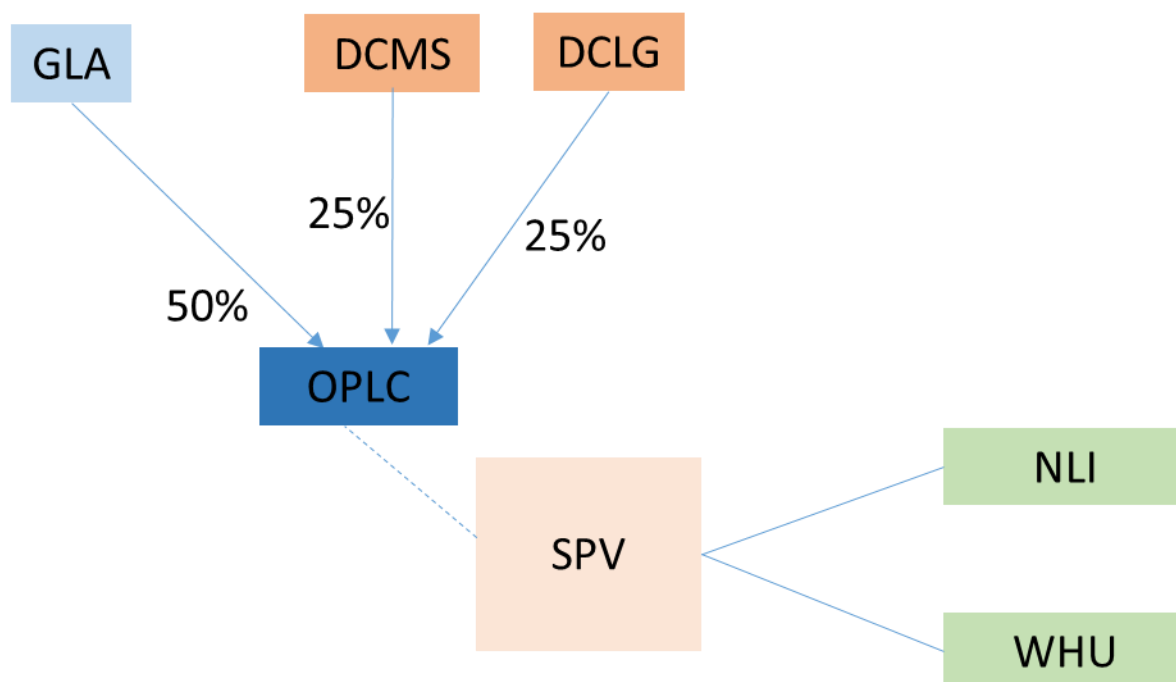
Chronology

Figure 7 – Timeline of events from May 2008 to March 2011



Bodies Involved

Figure 8 – Key bodies involved



Public Perception and Press Extracts

On change in legacy:

<http://www.skysports.com/olympics/news/15234/7523698/lawrence-slams-stadium-plans> - 16 February 2012

"In its present form with athletics only, it's definitely not viable. If you look at the 1928 stadium in Amsterdam, if you look at the Barcelona Olympic Stadium, if you look at Munich. All of these stadia require support from the state and have done in the long term. The stadium in Amsterdam is now nearly 80, maybe 90 years old and it still needs state support and as things stand the stand we will be supporting the Olympic stadium for the next 100 years."

<http://www.telegraph.co.uk/sport/olympics/8007296/London-2012-Olympics-London-Assembly-criticises-Olympic-Board-over-stadium-legacy.html> - 17 September 2010

Len Duvall, Committee Chairman, Economic Development, Culture, Sport and Tourism Committee *"The Olympic Board made the wrong decision when opting for an athletics legacy and that decision could have serious consequences for the OPLC and for whoever ultimately takes over the stadium...The only sustainable future for the stadium is regular, high capacity events and realistically that means football or rugby. Only then will we see a stadium that pays for itself and delivers a significant amount of local jobs....Put simply, an elite 25,000-seat athletics stadium is not, and was never going to be, in the long-term interests of the East End or of the taxpayer."*

On proposed WHU deal:

<http://www.bbc.co.uk/news/uk-england-london-12286340> - 26 January 2011

David Lammy, Labour MP for Tottenham: *"I haven't heard anything official but if this is right I think it is obviously the right decision....Their (West Ham's) bid in the end was for all London - and Londoners will be*

paying for this until 2017. Spurs' bid was for just one club....I hope we can get back to the White Hart Lane development which got planning permission just three months ago, for a brand new stadium with a capacity up to 56,000."

http://news.bbc.co.uk/sport1/hi/olympic_games/london_2012/9287645.stm - 14 December 2010

Group of UK Olympians including Kelly Holmes and Daley Thompson: "We urge the decision makers to ensure the track remains post 2012....[It would] bring to life a sporting promise made to a whole community for generations to come."

<http://www.bbc.co.uk/news/uk-england-london-12286340> - 26 January 2011

"Tottenham Hotspur's plans to dismantle the £500m Olympic Stadium and build a football ground are not supported by most Londoners, a BBC poll has found...Some 81% of Londoners were against the proposals to rip up the athletics track, according to the ComRes phone poll carried out for BBC London."

<https://www.theguardian.com/sport/2011/feb/09/west-ham-winning-battle-olympic-stadium> - 9 February 2011

"Tottenham's bid is based on ripping out the track and rebuilding a football stadium from scratch on the site while refurbishing the Crystal Palace athletics stadium as an alternative legacy. The political gamble involved in tearing down the stadium weeks after the 2012 Games may have weighed against Spurs....West Ham's proposals for legacy use by the community, combined with the fact that their vision was perceived to offer less risk of cost overruns or delays, may also have been among the decisive factors. Potential problems with redeveloping the site at Crystal Palace, which athletics chiefs have dubbed a "poor consolation prize", would also have been considered."

<http://www.dailymail.co.uk/sport/football/article-1347662/Spurs-fans-protest-Olympic-Stadium-advisor-voices-white-elephant-fears.html> - 16 January 2011

Ed Warner, UK Athletics Chairman, "The issue for me here is not about a home for athletics, it's about an Olympic track in an Olympic Stadium in an Olympic park...I'm looking at the Olympic Park Legacy Company to deliver an Olympic legacy, not just a football legacy in that park, which will be for generations to come. ...It's really going to be a community facility, and I believe that is what was planned all along....'I don't see what Olympic legacy there is in Tottenham's proposal. The track has to stay as an inspiration to young athletes for many generations ahead."

<http://www.telegraph.co.uk/sport/football/teams/tottenham-hotspur/8158416/Tottenham-fans-mobilise-to-say-No-to-Stratford-Hotspur-in-protest-to-2012-Olympic-Stadium-move.html> - 24 November 2010

"We don't want to go anywhere else, it's all about staying in Tottenham. Spurs is really embedded in the community. Tottenham is quite a deprived area and by pulling out, the long-term outlook for that area is relatively bleak."

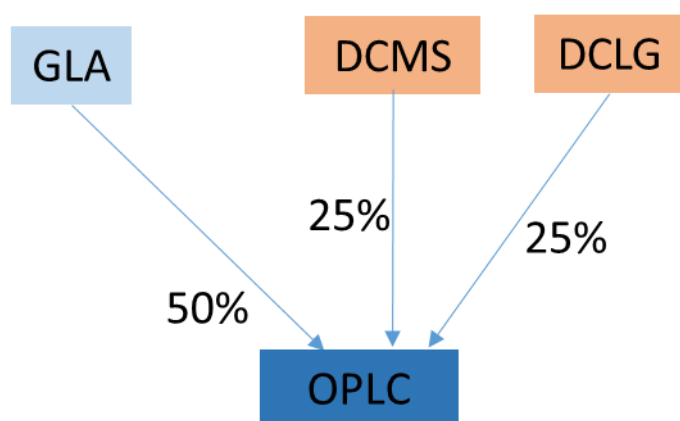
Background to the OPLC

The OPLC is “a public sector, not-for-profit company limited by guarantee with three founder members: the Mayor of London, Secretary of State for Communities and Local Government, and the Secretary of State for the Department for Culture Media and Sport. The Mayor owns 50% of the Company and the Government members jointly own the remaining 50%”¹⁴.

The remit of the OPLC is the post-Games planning, development, management and maintenance of the Olympic Park. Put simply, the OPLC is responsible for establishing the legacy of the Olympic Park after the 2012 Olympic Games.

The Company took on many of the responsibilities formally associated with the London Development Agency, who were originally responsible for the Olympic Park legacy masterplan through the Olympic Legacy Directorate.¹⁵ As such, land and assets within the Olympic Park pertaining to the LDA were transferred to OPLC.

Figure 9 – OPLC’s ownership structure



The strategic objectives of the OPLC were:

- a) To assist the Government and the Mayor of London in discharging the legacy commitments made in the bid to host the London Olympic and Paralympic Games;
- b) To secure the timely development of the Olympic Park as a high quality, sustainable mixed community;
- c) To promote social, economic and environmental benefits for local communities;
- d) To secure the long term development and management of the Olympic Park site and venues, in ways that provide lasting national and local sporting, cultural, education and leisure value and benefits, and preserve the Olympic heritage;
- e) To work with partners to contribute to long-term economic growth and prosperity in the wider area;
- f) To undertake all its functions in such a way as to maximise value for money and promote sustainable development, community involvement and equality of opportunity; and
- g) To facilitate the orderly transfer of property, assets and liabilities of the ODA on principles agreed by the Founder Members¹⁶.

¹⁴ Public Accounts Committee, Written evidence from the Olympic Park Legacy Company, 07/12/2011, <https://publications.parliament.uk/pa/cm201012/cmselect/cmpubacc/1716/1716we03.htm>

¹⁵ London Assembly Report, The Olympic Park Legacy Company’s Legacy Vision, 13/10/2010

¹⁶ Outline Business Case July 2010

The OPLC's functions were:

- “• Operations and stewardship of the Olympic Park: ensuring the Olympic Park with its world class venues and assets are well managed, maintained and utilised to their full potential.*
- Olympic Park development: developing the plans for the Olympic Park to create a new metropolitan centre for London and a diverse, vibrant community which will act as a catalyst for the regeneration of the Lower Lee Valley.*
- Marketing and promotion of the park: attracting private and public investment, engaging the local community and promoting the Park as one of the best places in the world to live, work, visit and enjoy sport and leisure.*
- Social community and economic programmes: working with partners to ensure that the Games and the redevelopment of the Olympic Park enable the Lower Lee Valley to become a location of choice, maximise benefits to local communities and catalyse wider regeneration and economic development.”¹⁷*

The OPLC was tasked with ensuring the legacy of the Olympic Park and Stadium. Its Chair, Baroness Margaret Ford, and Board were appointed by the Mayor and government. It was the Mayor's intention to transform the OPLC into a Mayoral Development Corporation based on the powers granted under the Localism Act 2011.¹⁸ This ability would enable the Mayor to have greater influence in decisions pertaining to the legacy of the Olympic Park and stadium.

¹⁷ London Assembly Report, The Olympic Park Legacy Company's Legacy Vision, 13/10/2010

¹⁸ London Assembly Report, The Olympic Park Legacy Company's Legacy Vision, 13/10/2010

Phase 2a – OPLC's re-examination of legacy options

What happened?

The OPLC was set up to establish a lasting legacy for the Olympic Park, including the Stadium. As part of this, it reviewed the existing legacy plan for the Stadium following political, public and media pressure to do so. As part of this, the OPLC undertook soft market testing and then established an outline business case to review the legacy options.

Political climate

The timing of the change in legacy intertwined with the establishment of OPLC and a change in political climate was not coincidental.

The appointment of Boris Johnson as Mayor of London in 2008 was a key trigger in the resurfacing of discussions over the Stadium legacy. Shortly after his appointment, the Mayor announced that *"this is still a story that is not closed; we should look at it and continue to explore all options."*¹⁹

Following the Mayor's appointment, the recently established OPLC began to explore commercially viable uses for the Olympic venues, as confirmed later on by OPLC Chair Baroness Margaret Ford (in 2011):

*"we were not here five years ago but when we came on to the scene two and a half years ago I felt we could enhance that, make it more commercially viable, and I wanted to see if we could put other sports and other activities in around that."*²⁰

The London Assembly recommended that the OPLC revisit the legacy plans so that the venues could generate revenue as well as bring substantial footfall to the park which would bring about a greater impact on the regeneration of the area. The London Assembly's assessment of the ODA Base Case was that it was *"flawed"*.

The Mayoral briefings show that he was instructed to note the *"unsatisfactory nature of the plans you [he] had inherited."* To put it more plainly, an article published in the Guardian claims that the Mayor's decision was cited for the fact that *"the LLDC [OPLC] was left with no choice but to undertake the expensive conversion scheme in an attempt to clean up the "mess" left by the previous Labour government."*

It subsequently became a pre-election Conservative party promise to revisit the Stadium legacy plans. In 2009, Hugh Robertson, the Shadow Minister for Sport and Olympics, outlined that the Conservative Party would revisit the Stadium legacy if they won the election and would consider using it as a football venue.

The then-Mayor of London, Boris Johnson, also recognised the possibility that by incorporating football into the Stadium it could be a potential venue for England's 2018 World Cup bid:

*"We are already a leading contender to have the 2018 World Cup...I think the stadium in the Olympic Park is well worth considering as an additional venue."*²¹

¹⁹ <https://www.theguardian.com/uk/2008/aug/21/olympics2012.olympics2008>

²⁰ Economy, Culture & Sport Committee -

<https://www.london.gov.uk/moderngov/documents/s6202/Olympic%20Stadium%20Legacy.pdf>, 08/11/2011

²¹ <http://news.bbc.co.uk/1/hi/england/london/8125959.stm>

Public Pressure

As previously noted, the facilities incorporated into the ODA Base Case restricted the Stadium use, preventing it hosting a variety of elite athletics events. This was due to a lack of certain facilities including warm-up track, broadcasting and hospitality areas, and event/security control specifications.²² As a result, the UKA were one of the main bodies who called for a rethink, as detailed in the OPLC Board minutes from 11th February 2011:

“Lack of warm up track means that the Stadium would not fully meet UK Athletics' (UKA) requirements for hosting elite events. As a minimum, UKA ideally would like the legacy Stadium to be fit for modern day competition use which means it needs a full roof, ancillary space for event control, back of house provision, warm up facilities for athletes and flexibility to expand for one off events. In June 2010, UKA confirmed in writing to the Company [OPLC] that there were important economic and operational arguments against the ODA base case scheme from a UKA perspective.”

Findings of the London Assembly were equally critical of the Stadium plans and urged for a review of the legacy solution.

“Despite the aspirations there is still no identified tenant to take over the management and maintenance of the Stadium post-Games. The Assembly has consistently expressed concern about the long-term future of the main stadium. For without a credible anchor tenant to bring regular foot-fall into the park there will be serious doubts as to the future financial viability of the venue and hence attractiveness of the park site to business investment. Lord Coe has consistently supported keeping the stadium with an athletic track. However, it is far from clear that such a sporting venue will be able to host events that regularly attract the hundreds and thousands of spectators required in order for it to be financially viable. Without decisive action the stadium is in danger of becoming a white elephant.”²³

Simultaneously, the legacy of the Olympic Stadium was the topic of intense public and political debate. Members of the public questioned the legacy, notably the decision to invest roughly £500m in building the Stadium only for 55,000 seats to essentially be ripped out in order to downsize to a 25,000 athletics venue.²⁴

Soft market testing

On 23 March 2010, the OPLC launched a three month long informal market testing (IMT) exercise to analyse future options for the long-term use of the Stadium. This gave the opportunity for candidates to put forward possible future uses for the Stadium. They were asked to choose between 5 possible configurations for the Stadium ranging from a 25,000 to 78,000 capacity.

This exercise demonstrated that there was limited interest from possible tenants in the ODA Base Case proposals and there was more demand for a larger stadium:

“The majority of respondents (who had specified a seating capacity) preferred a Stadium larger than the ODA base case scheme. The market testing also confirmed that there is a narrow range of viable uses for the legacy solution, given the limitation of the Stadium's Games-time design and in particular the ODA's decision not to provide a full roof for spectators...In short, no demand was forthcoming which featured athletics as the core proposition as this proposition is not commercially viable in a small stadium.”²⁵

²² Outline Business Case July 2010, p.56

²³ London Assembly - July 2009 Economic Development, Culture, Sport and Tourism Committee - Towards a Lasting Legacy

²⁴ London Assembly Plenary - Q&A session with ODA, 08/10/2008, Richard Bambrook: “so how do we justify the £500 million for this Stadium to rip out 55,000 seats?”

²⁵ Olympic Park Legacy Company Paper No 1 - Recommendation for Preferred Bidder, 11/02/2011, p.5

As outlined in Phase 1, the Base Case proved to be unattractive for future tenants.

Outline Business Case

Following the soft market testing, an Outline Business Case was prepared and presented to the OPLC Board in July 2010. Within this, the OPLC established its legacy objectives:

- *to achieve a viable long term solution for the Olympic Stadium that was deliverable and provided value for money;*
- *to secure a partner with the capability to deliver and operate a legacy solution for a venue of the Stadium's size and complexity;*
- *to re-open the Stadium for operational use as soon as possible following the 2012 Games;*
- *to ensure the Stadium remained a distinctive physical symbol supporting the economic, physical and social regeneration of the area; and*
- *to allow flexible usage of the Stadium, accommodating a vibrant programme of events allowing year round access for schools, the local community, the wider public and elite sport.*

This Outline Business Case then listed out a longlist of potential legacy solutions:

Table 6 – OPLCs long list of legacy options (July 2010 Outline Business Case)

Option	Features
1. Mothball (HMT 'Do Minimum')	<ul style="list-style-type: none"> 80,000 seats mothballed Seal off the Games-time Stadium following the removal of LOCOG overlay. Make the Stadium safe and provide any reinforcement of temporary Games-time structures Games-time roof with short-life elements removed (e.g. fabric roof covering) No operational use of stadium No stadium operator. Put in place minimum security and maintenance requirements. No warm up track
2. Transform to 25,000 Seats and Mothball	<ul style="list-style-type: none"> 25,000 seats Transform the Stadium in line with the ODA transformation scope and close and seal off the Stadium after transformation, making the Stadium safe Roof over west stand only No operational use of Stadium No stadium operator. Put in place minimum security and maintenance requirements. No warm up track
3. Demolish and Develop	<ul style="list-style-type: none"> No seats Demolish Olympic Stadium post-Games and develop the site with uses determined as part of the vision for the Olympic Park No roof No use of stadium No stadium operator No warm up track
4. 25,000 Seats – ODA Transformation Scope (Baseline scheme)	<ul style="list-style-type: none"> 25,000 seats This is the baseline scheme currently being provided by the ODA Transform the Stadium in line with the ODA transformation scope, removing upper bowl of 55,000 temporary seats. Roof over west stand only Primary athletics use of stadium and community events. Significant temporary facilities required to hold international athletics events. Possible lower league football club tenant. OPLC retains ownership of stadium and responsible for operations No permanent warm up track
5. 28,000 Seats – Enhanced ODA Transformation Scope	<ul style="list-style-type: none"> 28,000 seats Follows 25,000 ODA transformation scope but with the west stand retained with facilities for hospitality, broadcasting and event control included Roof covering west stand only Primary athletics use of stadium and community events. Significant temporary warm up facilities required to hold international athletics events. Possible lower league football club tenant. OPLC retains ownership of stadium and responsible for operations No permanent warm up track
6. 25,000 Seats – Roof Covering All Seating	<ul style="list-style-type: none"> 25,000 seats Follows 25,000 ODA transformation scope but with a full roof constructed. Roof covering all seating Primary athletics use of stadium and community events. Significant temporary facilities required to hold international athletics events. Possible lower league football club tenant. OPLC retains ownership of stadium and responsible for operations No permanent warm up track

<p>7. Multi-sport athletics Stadium (UKA compliant)</p>	<ul style="list-style-type: none"> • 25,000 seats and 3,000 additional seats due to retention of Games-time west stand VIP and hospitality area • This option is an enhancement of the ODA's Transformation Scope (Baseline scheme) to deliver a new home for athletics meetings that would meet UKA's requirements for an operational athletics stadium • This design is per the 25,000 ODA Transformation Scope (Baseline scheme) but with the west stand retained and its facilities for hospitality, broadcasting and event control included • Roof covering all seating • Programme of elite and community athletics, possible lease to other sport tenants – football, rugby and cricket. Concerts and other cultural events where commercially viable. • OPLC retains ownership of stadium and responsible for operations • Permanent warm up track built on site adjacent to the south east of the Stadium
<p>8. Transform to a 60,000 Seat Football/Athletics Stadium</p>	<ul style="list-style-type: none"> • c.60,000 seats • Demolish upper bowl of the Stadium and rebuild to a c.60,000 configuration • Roof covering for all seating • Programme of elite competition sport in the stadium – football and athletics and community sport on the warm up track • Likely to be leased to a sports club tenant • Permanent warm up track
<p>9. New Purpose Built Football Stadium</p>	<ul style="list-style-type: none"> • c.60,000 seats • Demolish the Stadium and rebuild a purpose built football stadium • Roof covering all seating • Football usage only • Lease to a football club • No athletics track in the Stadium. Athletics to be provided elsewhere • No warm up track
<p>10a. Multi-sports Stadium with Lease to Sports Club Anchor Tenant</p>	<ul style="list-style-type: none"> • c.60,000 seats, created by spacing out the Games-time seating arrangement • Retain Games-time Stadium structure and reconfigures it for sustainable, legacy use • Deconstruct part of the temporary Games-time structural elements and reinforce some temporary areas, where required to meet building design standards for permanent usage • Athletics track retained in stadium. • Roof covering all spectators • Elite (Premier League) football, international and national athletics events and concerts, where commercially viable. • Community use of the warm up track. • Leased to a sports club anchor tenant • Permanent warm up track
<p>10b. Multi-sports Stadium with Lease to an Operator</p>	<ul style="list-style-type: none"> • c.60,000 seats • Retain Games-time Stadium structure • Deconstruct part of the temporary Games-time structural elements and reinforce some temporary seating. • Athletics track retained in stadium. • Roof covering all spectators • Elite (Premier League) football, international and national athletics events and concerts, where commercially viable. • Community use of the warm up track. • Leased to an experienced venue operator • Permanent warm up track

<p><i>11. Retain and Operate Olympic Mode Structure with 80,000 Seats</i></p>	<ul style="list-style-type: none"> • <i>80,000 seats</i> • <i>No structural transformation from Olympic mode but reinforcement of temporary elements</i> • <i>Roof covering upper bowl for a temporary period to end of its useful life</i> • <i>International football and athletics events and concerts.</i> • <i>Community use of the warm up track</i> • <i>OPLC retains ownership of Stadium and is responsible for operations</i> • <i>Permanent warm up track</i>
<p><i>12. Excavate Below Athletics Track to Create Dedicated Football Stadium</i></p>	<ul style="list-style-type: none"> • <i>c.60,000 seats</i> • <i>Excavate below lower bowl to create additional seats closer to the playing field</i> • <i>Roof covering all spectators</i> • <i>Elite (Premier League) football, no athletics use.</i> • <i>Leased to a football club</i> • <i>No permanent warm up track</i> • <i>Athletics provision elsewhere</i>

Each of these options was evaluated against the five legacy objectives:

Table 7 – OPLC’s evaluation of long list legacy options

Option	Objective					
	<i>To achieve a viable long term solution for the Olympic Stadium that is deliverable and provides value for money.</i>	<i>To secure a partner with the capability to deliver and operate a legacy solution for a venue of the Stadium’s size and complexity.</i>	<i>To re-open the Stadium for operational use as rapidly as possible following the 2012 Games.</i>	<i>To ensure that the Stadium remains a distinctive physical symbol supporting the economic, physical and social regeneration of the surrounding area.</i>	<i>To allow flexible usage of the Stadium, accommodating a vibrant programme of events allowing year round access for schools, the local community, the wider public and elite sport.</i>	<i>Meets all objectives?</i>
1. Mothball (HMT ‘Do Minimum’)	X	X	X	X	X	X
2. Transform to 25,000 Seats and Mothball	X	X	X	X	X	X
3. Demolish and Develop	X	X	X	X	X	X
4. 25,000 Seats – ODA Transformation Scope (Baseline scheme)	✓	✓	✓	✓	✓	✓
5. 28,000 Seats – Enhanced ODA Transformation Scope	✓	✓	✓	✓	✓	✓
6. 25,000 Seats – Roof Covering All Seating	✓	✓	✓	✓	✓	✓
7. Multi-sport athletics Stadium (UKA compliant)	✓	✓	✓	✓	✓	✓
8. Transform to a 60,000 Seat Football/Athletics Stadium	X	✓	✓	✓	✓	X
9. New Purpose Built Football Stadium	✓	✓	✓	✓	✓	✓
10a. Multi-sports Stadium with Lease to Sports Club Anchor Tenant	✓	✓	✓	✓	✓	✓
10b. Multi-sports Stadium with Lease to an Operator	✓	✓	✓	✓	✓	✓
11. Retain and Operate Olympic Mode Structure with 80,000 Seats	X	X	✓	✓	X	X
12. Excavate Below Athletics Track to Create Dedicated Football Stadium	X	✓	✓	✓	X	X

Options 2, 3, 8, 11 and 12 were discarded as they did not meet all of the objectives and were not considered to offer viable solutions for the legacy Stadium.

The options which were considered to be very similar (options 4 and 6 for a 25,000 seat stadium and options 5 and 7 for a 28,000 seat stadium) were reconsidered with only one option for each to be carried forward to the shortlist. Options 4 and 7 were carried forward.

Option 10b was not progressed on the basis of the results of the market testing, which suggested that a Premier League Football Club would want to be the anchor tenant of its stadium and is unlikely to want to enter into any arrangement where it is the sub-tenant of a stadium operator.

Despite not being able to meet the legacy objectives Option 1 (“Mothball”) was retained for the short list to meet the requirements of HMT’s Green Book guidance.

This left a shortlist of options:

- Option 1 – Mothball (HMT ‘Do minimum’)
- Option 4 - 25,000 Seats - ODA Transformation Scope (Baseline scheme)
- Option 7 - Multi-Sport Athletics Stadium (UKA compliant)
- Option 9 - New Purpose Built Football Stadium
- Option 10a - Multi-Sports Stadium with Lease to Sports Club Anchor Tenant

The advantages and disadvantages of each of these options was weighed up, and then a further assessment carried out of the costs and revenues associated with each alternative.

Table 8 – OPLC’s financial and economic assessment of shortlisted options

	<i>Option 1 Mothball (HMT ‘Do Minimum’)</i>	<i>Option 4 25,000 Seats - ODA Transformation Scope (Baseline scheme)</i>	<i>Option 7 Multi-sport Athletics Stadium (UKA compliant)</i>	<i>Option 9 New Purpose Built Football Stadium</i>	<i>Option 10a Multi-Sports Stadium with Lease to Sports Club Anchor Tenant</i>
Economic benefits					
Capital costs	£3,572,800	£34,014,400	£58,337,440	£198,520,000	£87,939,040
Infrastructure costs	-	-	-	£2,878,000	£2,878,000
Cost of Alternative Athletics Provision	-	-	-	£37,810,000	-
Lifecycle costs	£1,301,000	£7,491,000	£11,012,000	£9,424,000	£21,921,000
Residual value	-	£20,320,000	£36,472,000	£126,239,000	£56,369,000
Net income / (loss) in steady state year (first 10 years) (£’m)	(£87,000)	(£848,000)	(£269,000)	-	-
Net income / (loss) in steady state year (after first 10 years) (£m)	(£87,000)	(£1,148,000)	(£577,000)	-	-
Wider Economic Benefits					
Annual Impact of Visitors	-	-	£158,000	£158,000	£631,000
One-off Impact of 2015 World Athletics Championships	-	-	-	-	£1,877,000

These inputs were used to calculate the net present cost (NPC) or net present value (NPV) of each of the options:

Table 9 – OPLC’s calculation of net present costs of shortlisted options

<i>Name</i>	<i>NPV / (NPC)</i>	<i>Rank</i>
<i>Option 1 – Mothball (HMT ‘Do Minimum’)</i>	<i>(£6,299,000)</i>	<i>1</i>
<i>Option 4 - 25,000 Seats ODA Transformation Scope (Baseline scheme)</i>	<i>(£50,715,000)</i>	<i>2</i>
<i>Option 7 - Multi-sport athletics Stadium (UKA compliant)</i>	<i>(£65,322,000)</i>	<i>3</i>
<i>Option 10a - Multi-sports Stadium with Lease to Sports Club Anchor Tenant</i>	<i>(£87,792,000)</i>	<i>4</i>
<i>Option 9 - New Purpose Built Football Stadium</i>	<i>(£228,847,000)</i>	<i>5</i>

The non-monetary benefits of each option were also considered. These included sustainability, stadium accessibility, range of stadium usage, regeneration and integration. The scoring of these was:

Table 10 – OPLC’s assessment scores for non-monetary benefits of shortlisted options

	<i>Weighting</i>	<i>Option 1 Mothball (HMT ‘Do Minimum’)</i>	<i>Option 4 25,000 Seats - ODA Transformation Scope (Baseline scheme)</i>	<i>Option 7 Multi-sport athletics Stadium (UKA compliant)</i>	<i>Option 9 New Purpose Built Football Stadium</i>	<i>Option 10a Multi-sports stadium with lease to sports club anchor tenant</i>
<i>Sustainability</i>	<i>40%</i>	<i>80</i>	<i>240</i>	<i>200</i>	<i>360</i>	<i>360</i>
<i>Stadium accessibility</i>	<i>15%</i>	<i>0</i>	<i>60</i>	<i>90</i>	<i>105</i>	<i>135</i>
<i>Range of Stadium usage</i>	<i>15%</i>	<i>0</i>	<i>75</i>	<i>90</i>	<i>90</i>	<i>135</i>
<i>Regeneration</i>	<i>15%</i>	<i>15</i>	<i>60</i>	<i>90</i>	<i>110</i>	<i>135</i>
<i>Integration</i>	<i>15%</i>	<i>0</i>	<i>60</i>	<i>105</i>	<i>90</i>	<i>135</i>
<i>Total</i>	<i>100%</i>	<i>95</i>	<i>495</i>	<i>575</i>	<i>765</i>	<i>900</i>
<i>Ranking</i>		<i>5</i>	<i>4</i>	<i>3</i>	<i>2</i>	<i>1</i>

In line with HMT “Green Book” guidance, these NPCs do not take account of the funding solution to the project, in particular the availability of private finance. Before selecting a preferred Option for the project, OPLC considered the financial and commercial implications of any proposed solution.

The rationale for Option 10a being the preferred solution was that it:

- Provides significantly greater non-monetary benefits than the other options, mainly through its accessibility to the community and its contribution to the wider regeneration of the surrounding area.
- Could be sustainable on an ongoing basis, if it does not require an ongoing subsidy and it will not require ongoing public resources for managing and operating the Stadium.
- Potentially releases a large development site in another part of London if it can attract a football club tenant who then redevelop their previous stadium.
- Has potential to maximise the financial benefits from the private sector development of residential and commercial property in the immediate surrounding areas of the Park.

Based on this, it was decided that the ODA Base Case should not be pursued given that:

“- The Stadium facilities and supporting infrastructure provided in the ODA transformation scope are not sufficient for international and major athletics events. Significant additional expenditure would have to be incurred for temporary infrastructure required to hold events of this nature which would make their viability questionable on an ongoing basis. No operational budget has been identified to cover these costs.

- A stadium of this size is likely to exclude an elite professional football club tenant on the grounds that the capacity is too small, there is no roof to cover all spectators and there is insufficient ancillary accommodation such as hospitality areas and spectator concessions.

- A stadium of this size may not attract high profile events. Indications from the market testing suggest it is unlikely to be an attractive prospect to a concert promoter on the grounds of the limited facilities and the alternative venues of similar capacity already available in London e.g. the O2.

- This stadium would not be an iconic feature of the legacy Park since it is not the same as in Games-time mode.

- This option will require significant ongoing public subsidy. It is unclear where this operational funding will be sourced from.

- There is a possible loss of impact and benefits from the Olympic Games through an unattractive legacy stadium.”

It is important to note that at this stage, the Stadium legacy plans would only be determined once the competition process was finalised. As such, regardless of the business case, the legacy plans were not yet set in stone.

Justification for decisions made

The need to re-evaluate the legacy options for the Stadium is broadly in line with our evaluation of the original ODA decision, notably that it seemed likely the ODA Base Case may experience infrequent use, combined with the fact that it would require ongoing public subsidy. This lack of use, and lack of a strong legacy symbol or valid legacy plan prior to the Games, proved unpopular with key political figures and stakeholders, as well as with the media.

David Bond, in his BBC Sport blog in January 2011 described what would be lost in the Base Case venue:

“Gone are the distinctive triangular floodlights which are now such a feature of the east London skyline. Gone also is the Meccano-style steel structure which boosts the basic concrete bowl of 25,000 into the 80,000-seat Olympic Stadium for the Games. Instead a tiny roof, which covers barely one 10th of the whole arena, is the only feature of an otherwise drab, characterless venue.”

It is widely accepted, including by the OPLC and LLDC Board members interviewed as part of our investigation, that the ODA Base Case was not a viable legacy solution, and so the OPLC had to revisit this decision and further explore legacy options. The political climate, and the involvement of the Mayor of London and the London Assembly, as well as UK Athletics’ call for a change all led to the need for OPLC to take action.

Once they had established their five legacy objectives, the OPLC needed to compare any proposed legacy solutions for the Stadium against these, which is precisely what they did. The OPLC were conscious not to narrow the playing field too far, and as such took the long list of ideas and proposed a shortlist with which to go out to tender, rather than specifying one final solution.

Our Evaluation

This section sets out our assessment of the decision to change the original legacy plans.

Summary

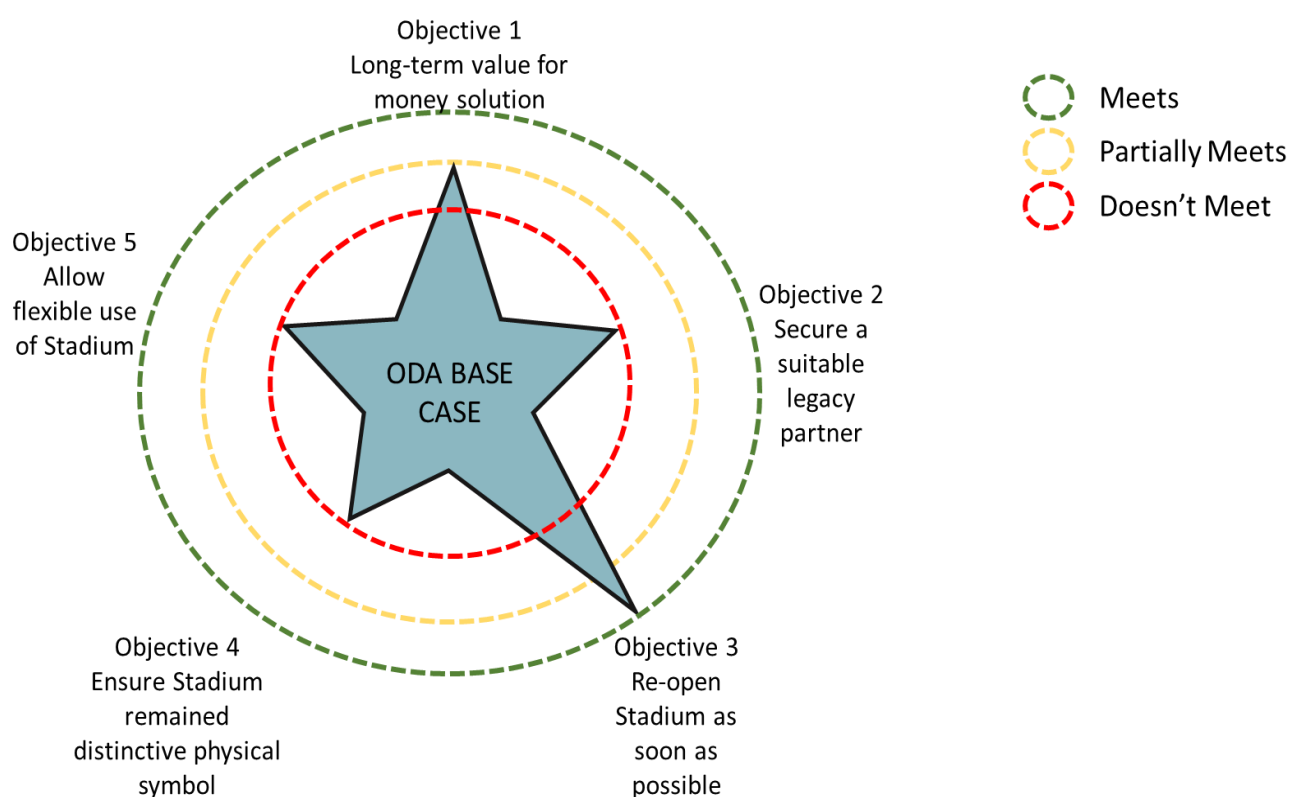
The decision to reverse the decision for the Stadium to be converted into a 25,000 seater athletics venue meant that the end usage of the Stadium would not be what it was intended for at the outset. This would inevitably result in costly transformation works.

However, we consider that this was a sensible, well thought out solution, given the range of scenarios considered and the evaluation of the costs and benefits associated with these. This is coupled with the view that the original legacy for the Stadium would be unlikely to have a sustainable future; referred to by one interviewee as a “*dust bowl*” solution. Accordingly, we consider the decision to abandon the Base Case was justified.

At this option analysis stage of the process, the source of funding was not taken into account. Nonetheless it was feasible that the risks associated with the transformation programme could be transferred to the private sector. An athletics only future could not sustain the Stadium, whereas a revised solution may have offered year-round use and increased footfall to the Olympic Park.

On the revised set of legacy objectives, the ODA Base Case was not satisfactory, as is demonstrated in the figure below, where we illustrate the Base Case against the legacy objectives:

Figure 10 - Our analysis of how the ODA objectives would have satisfied the legacy objectives



Whilst the OPLC followed a rigorous procedure to review the legitimacy of the ODA Base Case and to consider and evaluate other options, it did not consider the different ownership structures that could be applied to each option or the funding and allocation of risk associated with these. This was a deliberate policy in line with HMT “Green Book” guidance. This meant that the full financial and commercial implications of any proposed solution would be evaluated in their entirety later in the process.

Not analysing the funding at this point in the process meant that State Aid, and the risk associated with this in terms of invalidating or delaying any process, was not a priority consideration at this time. Whilst this is in line with “Green Book” guidance, a more considered approach would, in our opinion, have been to evaluate the likelihood of government funding and whether this could be deemed to constitute State Aid. This would have allowed the issue to be presented to the European Commission at an early stage.

Furthermore, as the different ownership structures were not considered, and the risks and rewards of each were not weighed against one another, it was therefore difficult (if not impossible) to know which would represent the best option. Option 10a was considered on the basis of a long-term anchor tenant, which represented a transfer of ownership. This was not contrasted with an option of having the same Stadium design kept in public ownership and rented out to a football club. While the overall construction and operational costs of these two options would be the same, the allocation of risks and rewards for each of the parties involved would be significantly different.

Phase 2b – First competition resulting in selection of West Ham United/Newham as preferred bidders

What happened?

Following the soft market testing exercise and the subsequent Outline Business Case, a bidding process was launched, with a pre-qualification questionnaire (PQQ) and a Memorandum of Information (MOI) published on 18 August 2010. Announcements were made in various national and international publications, and links to the documents were posted on the OPLC's website. An email was also sent to each party expressing an interest in the project during the previous soft market testing process, notifying them of the publication of the PQQ. The deadline for receipt of Bidders' completed PQQ submissions was 12:00 on 30 September 2010.

The aim of the evaluation process was to select a shortlist of suitable Bidders to enter into detailed negotiations with OPLC to become the tenant of the Stadium after the Games, by way of a long lease. PQQ submissions would be assessed to determine the basis of a viable and deliverable solution for the post-Games use of the Olympic Stadium.

Three Bidders submitted responses to the PQQ and all of the Bids were compliant with published requirements:

- A consortium of Tottenham Hotspur Football Club and AEG (THFC).
- A consortium of West Ham United Football Club and the London Borough of Newham (WHU-LBN).
- A consortium formed by International Stadia Group, HKS and CB Richard Ellis.

The Bids were initially assessed by the Evaluation Team in face-to-face sessions which took place between 4 October 2010 and 11 October 2010. A series of clarification questions were issued to Bidders by email on 11 October 2010. Each of the Bidders were also invited to make a presentation of their solution to a panel of the OPLC's senior staff, including the Chief Executive and Executive Director of Finance and Corporate Services and advisors, on 5 November 2010. The purpose of the presentations was to seek further clarification and detail on Bidders' responses.

Scores were awarded to each Bid (although presentations made by Bidders were not scored) and the OPLC Presentation Panel agreed on the shortlist of Bidders who would be selected to enter into formal negotiations with the OPLC. The shortlisted Bidders were:

- THFC
- WHU-LBN

The evaluation and negotiation stage continued through the end of 2010 and into early 2011. In February 2011 the OPLC Board named the consortium of LBN-WHU as the preferred bidder to become the anchor tenant. The Mayor approved the OPLC's recommendation to make WHU-LBN the preferred bidder through Mayoral Decision 776 on 2 March 2011.

Justification for decisions made

Comparison of bids

The table below summarises both shortlisted bids received and is an extract from the evaluation report assessed at the OPLC Board meeting on 2 February 2011; quotations in this section are from the same document, unless otherwise stated.

Table 11 – OPLC’s comparison of shortlisted bids

	THFC	WHU-LBN
<i>Tenant</i>	<i>A Newco to be 100% owned and guaranteed by Tottenham Hotspur plc.</i>	<i>A new Special Purpose Vehicle (SPV) established comprising LBN and WHU. No guarantee has been offered.</i>
<i>Proposed usage</i>	<p><i>The primary use of the stadium will be:</i></p> <ul style="list-style-type: none"> <i>Premier League Football</i> <i>Additional proposed use as part of the stadium scheme:</i> <i>AEG propose to deliver 10 non-football events per year in and around the stadium. These could include concerts and community events and festivals.</i> <i>The Tottenham Hotspur Foundation will be based at the stadium - scheme delivering educational and community work.</i> <i>A hotel and further class D Leisure will be delivered as part of the scheme.</i> <i>A visitor/sports attraction is proposed to the north of the stadium.</i> 	<p><i>The primary use of the stadium will be:</i></p> <ul style="list-style-type: none"> <i>Premier League Football</i> <i>21 athletic event days per year, both community and elite</i> <i>Additional proposed use as part of the stadium use:</i> <i>Live Nation proposes to deliver £1m of live events, based on three concerts, at the stadium.</i> <i>A sporting museum is proposed as part of the scheme.</i> <i>The bidder also proposes education and community use within the undercroft.</i> <i>A warm-up track could be included to the south of the Stadium.</i>
<i>Capital costs</i>	<i>The quoted stadium cost is £323m.</i>	<i>The quoted stadium cost is £95m.</i>
<i>Demise</i>	<i>The Olympic Stadium island site as proposed by the Company and an additional area to the south extended to 1.11 acres for outside broadcast vehicles and away fan coaches.</i>	<i>The Olympic Stadium island site as proposed by the Company; an area within this to the south of the stadium specifically designated for the community/warm up track.</i>

	THFC	WHU-LBN
Timing	<i>The bidder proposes the stadium will open for the 2015-16 football season.</i>	<i>The bidder proposes the Stadium will open for the 2014-15 football season.</i>
Proposed stadium Scheme offer	<i>A new purpose built football stadium following deconstruction of the current Olympic Stadium to podium level immediately following the 2012 Games. The bidder has also noted their interest in the use of land to the south of the stadium for development. Not required for upfront capital funding.</i>	<i>Retention of the Olympic Stadium for conversion to a multi-use Stadium for athletics, football and non-sporting events. The bidder proposes the provision of a community athletics track alongside the Stadium and has made reference to future enabling development proposals.</i>
Stadium capacity	60,600 seats	<i>Retention of Games-time capacity of c. 80,000 seats with a capacity of c. 60,000 for football matches.</i>
Cost breakdown	<p><i>The quoted cost of £323m is split as follows:</i></p> <ul style="list-style-type: none"> • £303m capital construction works • £12m Olympic Stadium deconstruction • £8m landscaping 	<p><i>The quoted cost of £95m is split as follows:</i></p> <ul style="list-style-type: none"> • £12m internal works • £15m roof and floodlights • £8.5m external works • £26m accommodation • £28.5m fees • £5m contingency fund
Additional information	<i>Concessions are housed within the stadium. Retail outlets are provided for within the stadium.</i>	<i>Concessions are housed outside of the Stadium. A gateway building, 100,000sq ft in size, is proposed as part of the Stadium. It is proposed that it will house a museum, shop, ticketing facilities, offices for WHU and LBN, offices for rent and a base for tours of the Stadium.</i>
Partners in the scheme	<i>Goldman Sachs (to raise funding for the scheme).</i>	<i>Westfield (a non-equity partner for the transformation of the Stadium). Live Nation (non-equity partner for the delivery of non-sporting events at the Stadium).</i>
Term of Lease	<i>250 years required by way of a 150 year term and a tenant option for extension of a further 100 years.</i>	<i>150 years.</i>
Proposal	<i>One Agreement for Lease extending to 35.1 acres and split into two areas, including an extra area of 1.1acres for outside broadcasting vehicles and away fan coaches.</i>	<i>Two agreements for lease: The first for the Stadium, surrounding operational area and warm up track. The second for the remainder of the island site.</i>
Lease granted To:	<i>A Newco 100% owned by Tottenham Hotspur plc.</i>	<i>The SPV formed by LBN and WHU.</i>
Rent to OPLC received from	<i>A Newco 100% owned by Tottenham Hotspur plc,</i>	<i>The SPV formed by LBN and WHU</i>
Sources of funding	<p><i>Debt: £210m</i></p> <p><i>Naming rights: £150m (NPV £95m)</i></p> <p><i>Public sector: £35m</i></p>	<p><i>Prudential borrowing from LBN: £40m</i></p> <p><i>Boleyn Ground: £20m</i></p> <p><i>Public sector: £35m</i></p>

	THFC	WHU-LBN
Naming rights and guarantees	<p>A letter from Barclays Capital and Goldman Sachs on the ability to raise the necessary funding has been provided by the Bidder. Indicative terms have been included as part of this.</p> <p>Tavistock Group will guarantee financing for any funding shortfall.</p> <p>Tavistock also guarantee the £150m naming rights.</p> <p>The Bidder has provided letters from HSBC and Citigroup confirming Tavistock's ability to guarantee funding up to £500m.</p>	<p>Naming rights of £3m per annum are split between the Club and SPV at £1m:£2m respectively.</p> <p>Prudential borrowing from LBN has been confirmed by a full Council meeting, subject to terms and completion of due diligence.</p> <p>The owners of WHU have guaranteed any shortfall in the £20m sale of the Boleyn Ground.</p> <p>The owners of the WHU have also guaranteed the rental income should the Club be relegated to the Championship.</p> <p>The Guaranteed Maximum Price of £95m for capital works is subject to procurement.</p> <p>Live Nation has supplied a letter of intent for £1m in annual concert revenue to the SPV.</p>
Public Sector funding	<p>The £35m ODA/OPLC transformation funding shall cover:</p> <ul style="list-style-type: none"> £12m for the deconstruction of the Olympic Stadium. £8m in landscaping. £15m for the proposed athletics legacy at Crystal Palace. <p>All public sector funding must be applied in a State Aid compliant manner.</p>	<p>The £35m ODA/OPLC transformation funding will contribute towards the Stadium scheme.</p> <p>All public sector funding must be applied in a State Aid compliant manner.</p>
Rent	<p>£500,000pa subject to CPI.</p> <p>Plus:</p> <p>£500,000pa in any season in which the Club plays a match in the Champions League.</p> <p>£250,000pa in any season in which the Club plays a match in the Europa League</p>	<p>The higher of £100,000pa or 10% of the annual surplus generated by the SPV for the duration of the loan.</p> <p>Rent payments will increase when the debt incurred through prudential borrowing is retired.</p>
Land payment/premium	<p>A sum of £10m will be paid upon signing the Agreement for Lease.</p> <p>A further payment of £15m will be paid when the Club plays its first competitive football match.</p>	<p>If WHU finish 10th or above in the Premier League, the rent payment to the SPV rises to £2.75m per annum</p>
Overage	<p>Overage payments to the Company are as follows:</p> <p>15%pa return on non-stadium related development.</p> <p>Receipts from development to be shared 50/50 with the Company.</p> <p>The Company as landlord retains approval of development plans proposed by the tenant.</p>	<p>Overage payments to the Company are as follows:</p> <p>Any development on the non-Stadium land within the demise is subject to Company agreement.</p> <p>The Company is free to develop the land if agreement between both parties cannot be reached.</p>

	THFC	WHU-LBN
<i>Athletics legacy</i>	<p><i>The Bidder proposes an athletics legacy be provided at Crystal Palace. The scheme will:</i></p> <p><i>Complete the stadium bowl with the addition of 9,500 seats to provide a 25,000 seat capacity;</i></p> <p><i>Have the potential to increase the capacity to 40,000 seats;</i></p> <p><i>Provide a new warm-up track at the site;</i></p> <p><i>Cover 9,500 seats with a roof; and</i></p> <p><i>Refurbish the existing indoor track at the site.</i></p>	<p><i>The Bidders proposal will:</i></p> <p><i>Retain the athletics track within the Stadium;</i></p> <p><i>Provide a warm-up track to the south of the Stadium for community and elite use; and</i></p> <p><i>Provide 21 days of elite and community use of the main Stadium per year.</i></p>
<i>Additional athletics legacy</i>	<p><i>The Bidder also proposes the following provision for athletics after 2012: £100,000 per year in funding for England Athletics associations.</i></p> <p><i>A Future Athletics Olympians fund worth £25,000 per year up to 2016. This fund aims to support up to five young athletes up to the 2016 Olympic Games.</i></p> <p><i>Athletics club partnerships to be developed worth £100,000 per year.</i></p>	<p><i>The following additional items are proposed as part of a potential athletics legacy provision: Newham Athletics Association is to relocate to the community track at the Stadium site. School athletics events will be hosted at the Stadium or community track. The School Olympics could be hosted at the Stadium or community track.</i></p>
<i>Community Legacy</i>	<p><i>The community legacy is based around the Club's already developed and highly successful Foundation.</i></p> <p><i>The Bidder will commit to legacy work in the 5 host Olympic Boroughs.</i></p> <p><i>The Spurs Learning Zone will be incorporated into the stadium.</i></p> <p><i>The Club will maintain its Foundation work in Haringey, Epping and Enfield, with an office retained at its current Haringey location.</i></p> <p><i>Approximately 20,000 free tickets to Tottenham Hotspur games will be provided to the local community per year.</i></p> <p><i>The Bidder will incorporate existing AEG job targets and apprenticeship schemes in its employment practices.</i></p>	<p><i>The community track will be open year-round. The Bidder proposes developing the Newham Legacy Trust to discharge funding from the SPV to the local community.</i></p> <p><i>Live Nation proposes £1m worth of events per year based on 2-3 events at the Stadium.</i></p> <p><i>The West Ham United Learning Zone will be incorporated into the Stadium.</i></p>

Evaluation of WHU-LBN bid

Figure 11 - Photo extract of planned WHU stadium from the OPLC Board presentation on 10 February 2011



WHU was deemed to meet all five of the objectives. Notably, their offer was said to provide:

“a multi-use, community focused Stadium with athletics at its core and would sustain the Olympic heritage of the site. The Stadium would accommodate a wide range of sporting and non-sporting activity due to the large field of play and Bidder 6’s existing and proposed programmes of events.”

The bid evaluation also cited the:

“real connection to the community that the Stadium development intends to serve, through its co-partnering with the London Borough of Newham and the existence of a community track adjacent to the Stadium. It also has an impressive partnering approach with Westfield and Live Nation, which should underpin delivery of the project and help to maximise the commercial elements”.

Additionally, the timeline for delivery and construction was perceived to be realistic and achievable, allowing an 8 month window to secure planning permission and 18 months to achieve the post-Games conversion programme.

Evaluation of THFC with AEG bid

Figure 12 - Photo extract of THFC stadium from the OPLC Board presentation on 10 February 2011.



THFC's bid, on the other hand, was assessed as only meeting three out of five objectives. It did not meet the following two objectives:

- *To re-open the stadium for operational use as rapidly as possible following the 2012 Games*
- *To allow flexible usage of the stadium, accommodating a vibrant programme of events allowing year-round access for schools, the local community, the wider public and elite sport.*

It failed the objective to “re-open the stadium for operational use as rapidly as possible following the 2012 Games” given that the proposed timescales were deemed to be “very tight” and in some cases “extremely optimistic”. Notably, their plans included a 22 month window for construction. In comparison, the Emirates Stadium took 30 months. Similarly, THFC allowed just 6 months to achieve planning permission ahead of a proposed 40,000 seater opening by 20 August 2014 with a full 60,000 seater solution by 31 July 2015. Overall, it was deemed that the “programme is not realistic, credible and deliverable,” and it did “not properly take account of the potentially significant risks that could arise at each key stage.” This was not considered to be an issue with the WHU-LBN bid.

It did not meet the objective for flexible usage given that it was purely focused on staging football, not allowing for community or multi-sport usage. As such, the Stadium would only be able to offer a “narrow range of uses, predominantly limited to people spectating at football and concerts.” The proposals put forward to transform Crystal Palace to provide an athletics legacy was said to be questionable with regard to “its acceptability to town planners and the significant temporary overlay and facilities that would be required for major events.” In several aspects the standard of facilities on offer was said to be lower than the ODA Base Case.

It was said that:

“little thought has been given as to how this proposal can and will encourage involvement and participation of the community from the Olympic Park Boroughs.”

The bid evaluation also noted that THFC's plans for Crystal Palace were *"inadequate and underfunded, and does not provide a long term, sustainable athletics legacy."* This was also supported by our interviews with OPLC Board members who referred to THFC's proposals for Crystal Palace as *"sketchy"*. Similarly, the evaluation report questioned THFC's commitment to moving to the Stadium given that they had recently obtained planning permission to develop their existing ground at White Hart Lane on 30 September 2010. Significant design work had already gone in to these proposals.

Similar questions were raised in the press:

*"Tottenham had been sniffing around an Olympic stadium application for some months, and its joint bid may have been seen by Haringey council as a tactical lever in the club's protracted White Hart Lane redevelopment negotiations. Given the huge amount of time and money the club has invested in those plans, staying in Tottenham remains the club's priority...The Tottenham-AEG bid for the Olympic stadium, said by a club insider to be "a sensible backup option" to White Hart Lane redevelopment".*²⁶

THFC's proposal was perceived by UKA to be *"completely unacceptable"* and would tarnish the legacy if the Olympic Park didn't leave anything tangible for athletics.²⁷ One source we spoke to informed us that from the OPLC perspective, THFC's plans were *"ridiculous"* in the sense that effectively they wanted to control whole stadium island site. On top of this, their plan to knock down the Stadium *"didn't feel good"*.

Notably, the THFC bid failed to gain support from their local MP, David Lammy. The MP threatened to find ways of preventing the club from using their current name if they were to move east and believed it was very important for the club to stay in their local community.²⁸ In terms of pure geography, WHU would be moving around 3.4 miles from their current home whilst THFC, in contrast, would be moving almost 6 miles.

Our Evaluation

This section sets out our assessment of the decision to appoint WHU-LBN as preferred bidder.

Summary

Based on the legacy objectives established, and comparison of the respective bids against these, we can understand why preferred bidder status was conferred on WHU-LBN. The decision clearly underwent a rigorous evaluation process with the respective merits and demerits of each bid outlined in detail, and with a broad assessment of key risks. Whilst one can debate what would have been the better offer, the WHU-LBN commitments to retain the athletics track were more aligned to fulfilling the legacy objectives than the THFC offer. Further, the WHU-LBN bid appeared to offer greater benefits for the local community, largely based on the involvement of LBN because LBN's involvement was predicated on *"significant, direct, community benefit for the residents of its Borough"*²⁹.

We consider that the arrangement would have represented a good deal for the taxpayer in which risks were substantially transferred from the public sector to WHU. Similarly, we recognise the weaknesses in THFC's bid, most notably that knocking down the Stadium shortly after the games may have caused a public outcry. WHU-LBN, in turn, were able to fulfil the Games legacy aspirations.

²⁶ <https://www.ft.com/content/16ac95fe-ccc3-11df-a1eb-00144feab49a>

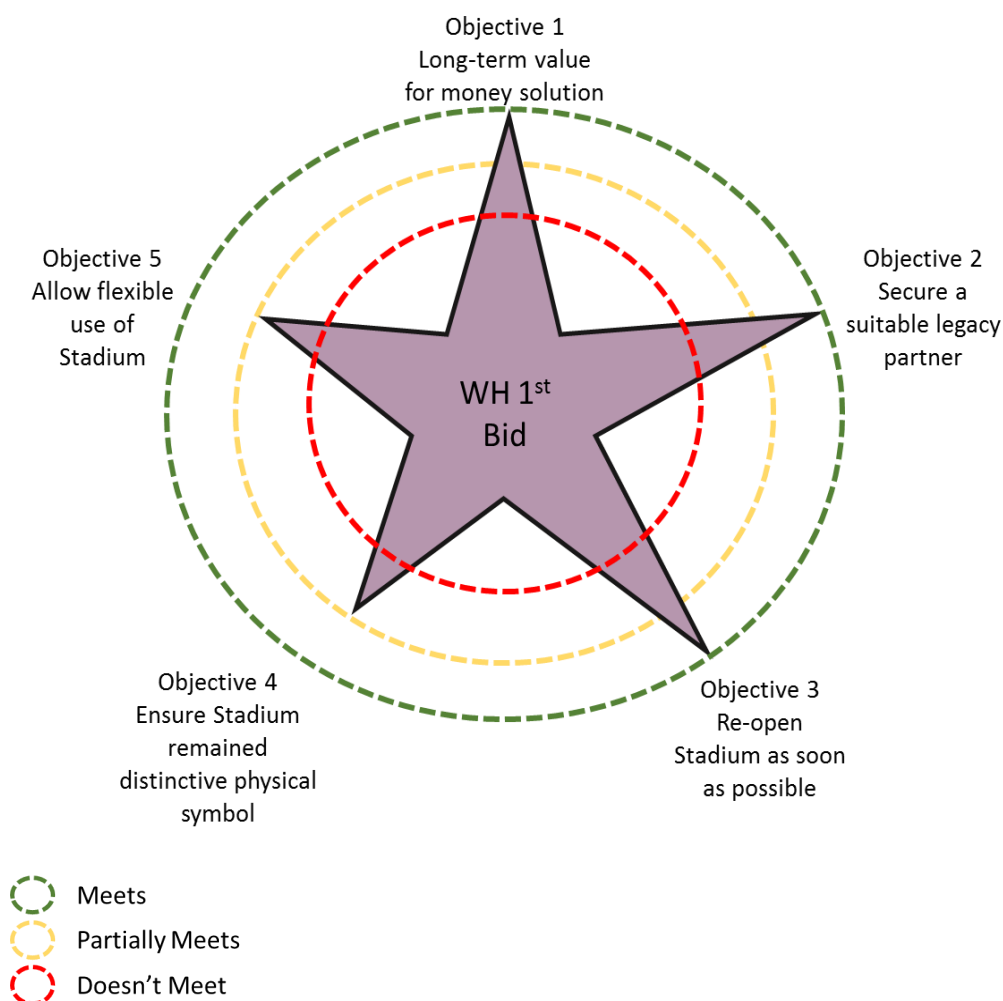
²⁷ http://news.bbc.co.uk/sport1/hi/olympic_games/london_2012/9287645.stm

²⁸ <https://www.theguardian.com/football/2011/jan/13/tottenham-stratford-hotspur-mp-david-lammy>

²⁹ OPLC Recommendation for Preferred Bidder 11 February 2011

As is demonstrated by the figure below, the WHU-LBN proposal would largely have satisfied the legacy objectives.

Figure 13 - Our analysis of whether the proposed WHU-LBN bid would have satisfied the legacy objectives



A Good Deal for the Taxpayer

The proposed deal ensured that the risks and rewards associated with the Stadium would be passed onto WHU. Thus, the bid fulfilled the Government's wishes, as explained by Baroness Margaret Ford to the London Assembly's Economy, Culture and Sport Committee:

*"where it can, to take things off the Government books and transfer risk and investment to the private sector where that is doable."*³⁰

Notably, this was because the bid made by WHU offered a fixed price contract for the construction program. Therefore, the public purse would bear no responsibility for cost overruns. WHU would also provide a minimum £20m capital contribution towards transformation. Additionally, WHU would pay a performance geared rent and crucially, would assume all responsibility for lifecycle, maintenance and match day costs.

As anchor tenant, custody of the Stadium would be passed to WHU-LBN for the life of the lease agreement. This means that all risks and rewards of operating the stadium would be borne by the anchor tenant, rather

³⁰ London Assembly's Economy, Culture & Sport Committee - <https://www.london.gov.uk/moderngov/documents/s6202/Olympic%20Stadium%20Legacy.pdf>

than by OPLC. Consequently, the ongoing cost of the Stadium to the public purse would be nil, and the rent received would go directly to the public purse without having to offset any costs.

The nature of the agreement on the transformation costs also limited the impact on public funds, with only the £35m central government funding to the ODA being needed. The cost of the transformation to OPLC was therefore nil.

While transferring custody of the Stadium could be seen to be writing off the original construction costs (and the additional £35m ODA contribution for transformation), there was to be no cost or risk going forward and so this solution represented a clean slate for OPLC.

Commitment to Athletics in the Stadium

During the options analysis carried out earlier in 2010, single use options for the Stadium were explored, both for athletics-only and football-only use. These potential solutions made the shortlist of options to be considered.

The decision to reject THFC's bid ultimately proved the last opportunity to pursue a single-use Stadium rather than a multi-use stadium combining football and athletics. The OPLC were fully aware of the risk this involved, as outlined by the London Assembly report:

*"They really are not compatible. The field of play for track and field is very different from the field of play for Premiership football."*³¹

Due to the different field of play the sightlines are very difficult to combine. However, in spite of the recognized risks of combining football and athletics, the OPLC justified the selection of the WHU-LBN bid based on its close alignment with the legacy objectives.

The WHU-LBN bid for a multi-use stadium was, put simply, a football stadium with an athletics track around the outside. While this represented the simplest and most cost-effective solution to combining football and athletics, it had its detractors. WHU had previously stated (back in 2007) that it would not move into a stadium with a permanent athletics track around the outside, and the club's fans wanted to sit closer to the pitch.

Whether or not this solution would have worked as a successful sporting venue in the long term is unknown – there are examples of this type of stadium working well (e.g. the Stadio Olimpico in Rome) and examples where these types of stadiums were accused of having a lack of atmosphere (e.g. Estadi Olímpic Lluís Companys in Barcelona). But based on the legacy objectives, and especially in terms of value to the taxpayer, we consider this to have been a credible solution, largely because of the transfer of risk from OPLC to WHU.

³¹ London Assembly Report - Legacy United

Phase 3 - Legacy plan changed again

Background

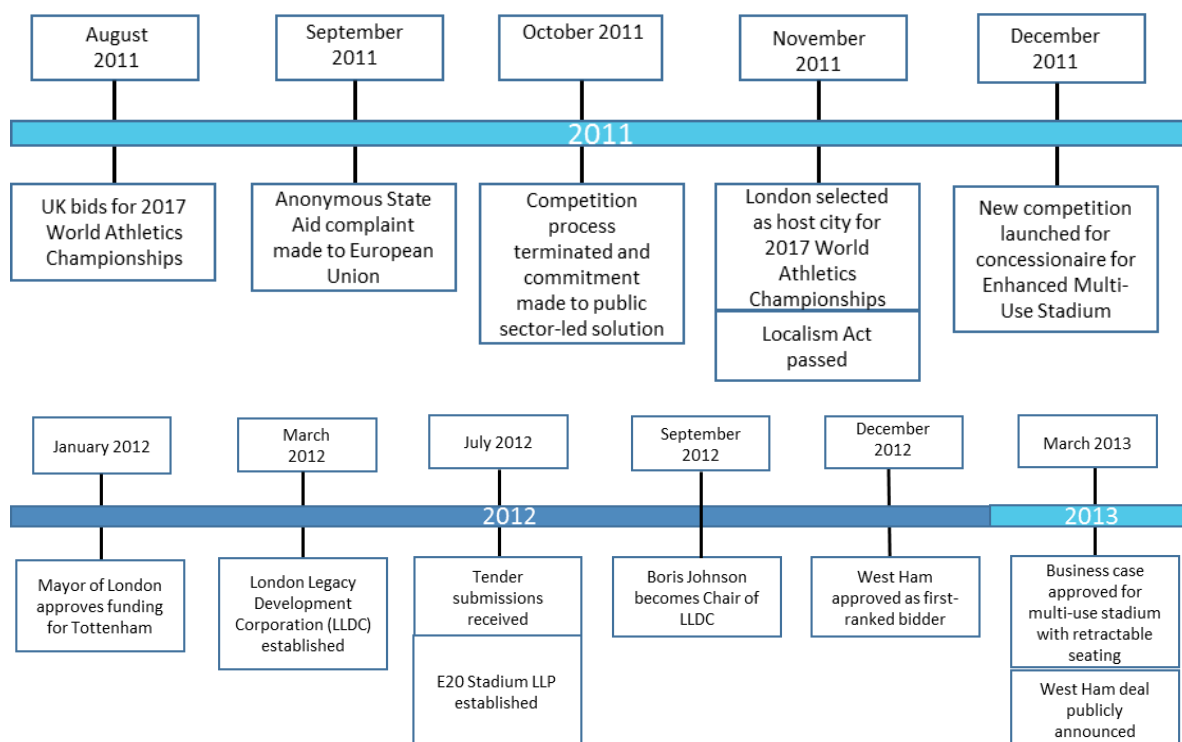
This phase will examine the decision taken by the OPLC to abandon the original competition process and retain the Stadium in public ownership (Phase 3a). It will then assess the decision to pursue an Enhanced Multi-Use Stadium (Phase 3b) and the subsequent concession agreement reached with WHU (Phase 3c).

The establishment of LLDC and decision to host the WAC are also examined.

This section explores the chronology of events, bodies involved and relevant press extracts.

Chronology

Figure 14 – Timeline of events from August 2011 to March 2013



Bodies involved

Figure 15 – Key bodies involved in OPLC (up to March 2012)

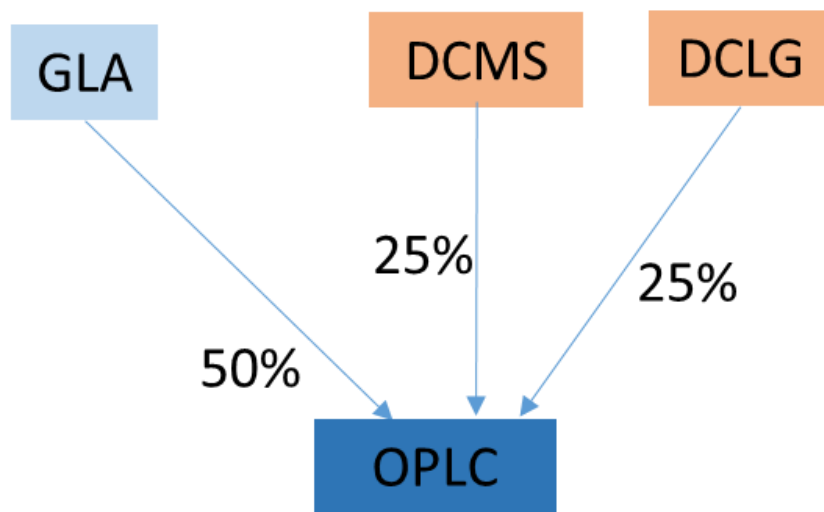
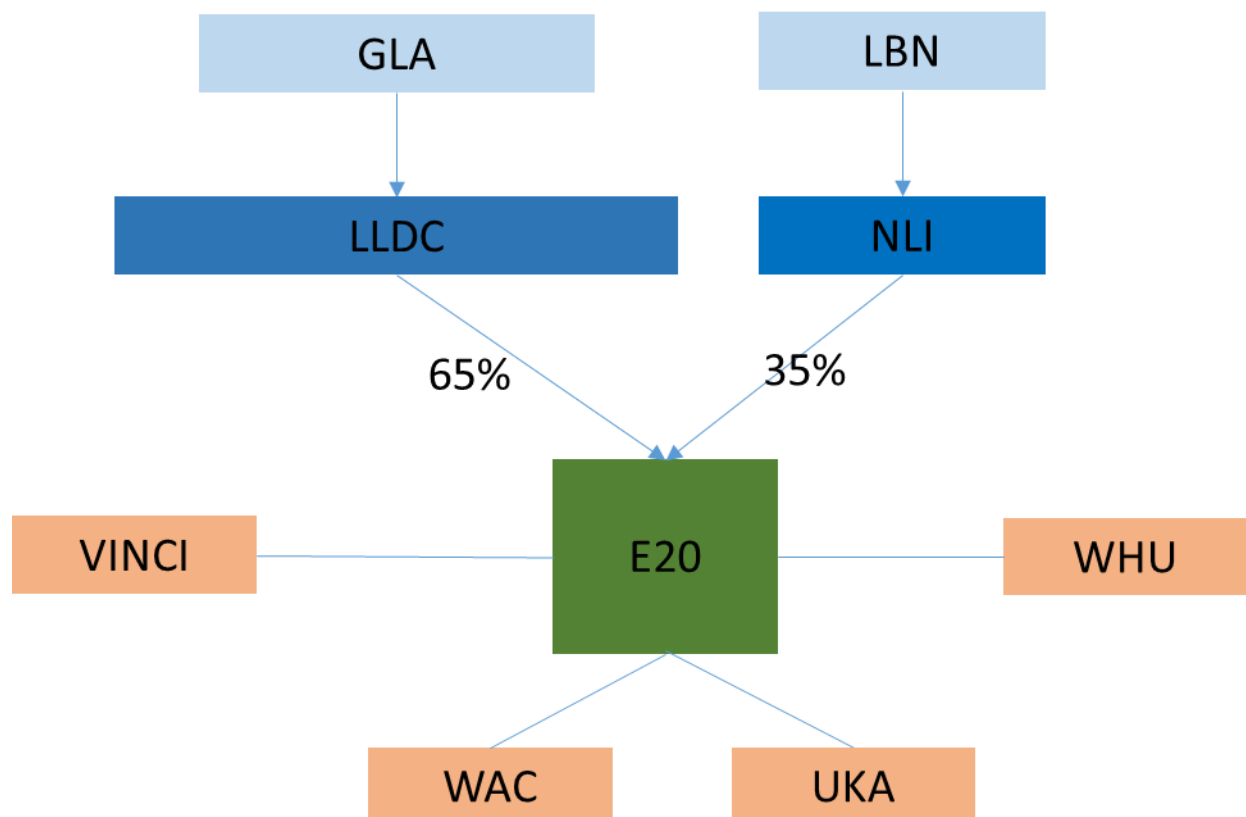


Figure 16 - Key bodies involved following creation of LLDC and E20 (in March/July 2012)



Background to LLDC

On 15 June 2010, the Mayor set out his proposals for devolution, calling for greater powers for the Mayor.³² One of his proposals was that the OPLC “*should be reconstituted as a Mayoral Development Corporation (MDC), reporting directly to the Mayor, and democratically accountable to Londoners through the Mayor.*”³³

This would be based on an Urban Development Corporation model and would enable the OPLC to report solely to the Mayor, rather than to government.

Subsequently, the Localism Act 2011 was passed. This gave the Mayor the power to designate any area of land in Greater London as a Mayoral Development Area (MDA) for the purposes of setting up a Mayoral Development Corporation (MDC) to encourage regeneration.³⁴

On 18 January 2012, the London Assembly gave approval to the Mayor’s proposal to designate the area of the Olympic Park and its surroundings as a Mayoral Development Area.

On 9 March 2012, the LLDC was formally established as a Mayoral development corporation for the Olympic Park and surrounding area through Mayoral Decision 971³⁵; assuming responsibility for the post-Games legacy.

LLDC was the first Mayoral Development Corporation (MDC). Its establishment as a MDC meant that it exercised more powers than the OPLC had, because it was also a planning authority.

As of 1 April 2012 the LLDC assumed all activities of the OPLC, and OPLC’s property rights, and liabilities were transferred to LLDC by a statutory transfer scheme.

On 12 September 2012, the then-Mayor of London, Boris Johnson, took charge of the LLDC by becoming the Chair of its Board, a position he would hold until March 2015. He replaced Daniel Moylan who had been appointed by the Mayor just three months earlier on 9 May 2012.

On announcing his intention on 12 September 2012 to oversee the process by overseeing LLDC’s Board, the then-Mayor said that:

“Securing the future of the Olympic and Paralympic legacy and building on the regeneration of east London is a matter of huge importance to me personally. It is vital that I continue to be at the forefront of the decision-making, driving forward the huge task of delivery. The chairmanship of the LLDC will enable me to do just that, building on what has already been achieved.”

³² The Mayor of London’s Proposals for Devolution, 15/06/2010, www.londoncouncils.gov.uk/node/7503

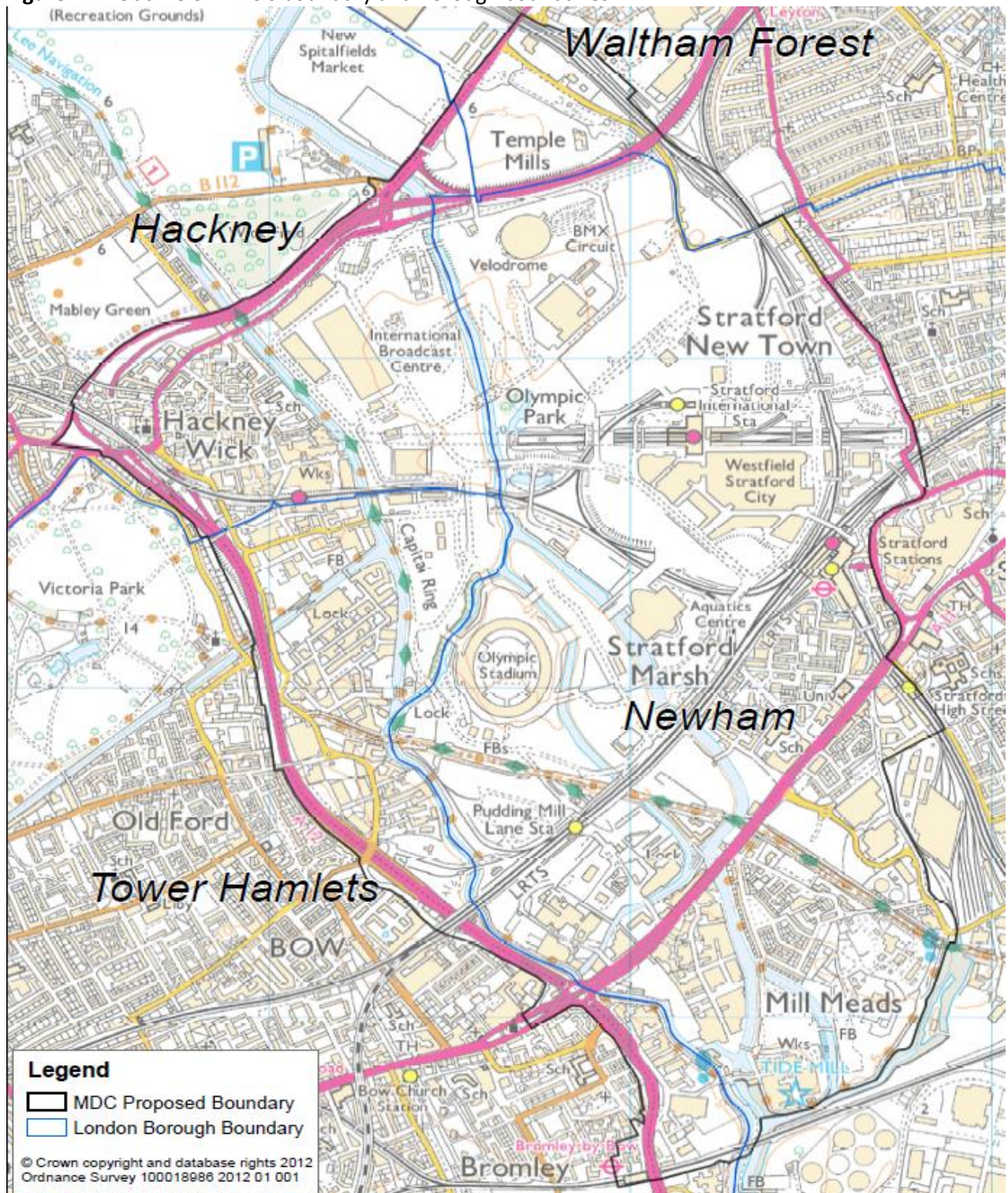
³³ The Mayor of London’s Proposals for Devolution, 15/06/2010, www.londoncouncils.gov.uk/node/7503

³⁴ London Assembly Report, Olympic Park Legacy Company, Report of Executive Director of Secretariat, 01/02/2012

³⁵ MD971, 03/07/2012

The boundary of the MDC is set out below³⁶:

Figure 17 – Outline of LLDC's boundary and Borough boundaries



³⁶ <https://www.london.gov.uk/LLDC/documents/s7758/04c%20Appendix%201%20-%20Map.pdf>

Background to E20

As will be explained in detail in this phase, following the decision to abort the first competition process and the commitment to a public sector solution to the Stadium, the LBN outlined its intent to contribute to the funding of the multi-use Stadium and entered into discussions with OPLC. It was decided that an SPV would be the most appropriate mechanism through which LBN would invest a total of £40m, through a subsidiary company called Newham Legacy Investments (NLI). Based on analysis carried out by PwC, Allen & Overy and LBN, a limited liability partnership (LLP) was deemed to be the most appropriate structure for the SPV.³⁸

The following points were agreed:

- *“The SPV will take a lease from the LLDC of the Stadium Island Site...It will be responsible for the day-to day operation of the Stadium: delivery [of] the Legacy Benefits through the SPV’s operations, and a programme of sports, community, cultural and commercial events, allowing year round community access, subject to the terms of the concession agreements entered into, or to be entered into by the SPV; running a full OJEU procurement process for a dedicated Stadium operator....; aiming to maximise the commercial elements of use of the Stadium; developing the Island Site, and managing the concession agreements entered into as part of the Stadium concessionaries’ competition.*
- *NLI and LLDC will, under the SPV Members’ Agreement, be required to commit investment funding to the transformation works for the Stadium....*
- *The governance arrangements for the SPV must be consistent with those of the LLDC and the arrangements between the LLDC and the GLA. To the extent that there are decisions in the Stadium process that do not require LBN’s involvement, it is intended that SPV governance arrangements will nonetheless reflect those of the LLDC to avoid, so far as is practicable, differences between the governance arrangements of the SPV and LLDC, particularly given that the SPV will be a subsidiary of the LLDC.”³⁹*

The SPV would not be involved in the evaluation and decision making relating to the Stadium competition process because the LBN was to have no ability to decide or influence the outcome of the Stadium concession competition. The SPV’s Board was to have no more than five members, OPLC (subsequently LLDC) nominating up to three and LBN up to two.⁴⁰

On 20 March 2012, the OPLC Board approved the recommendations made by OPLC’s Investment Committee regarding the establishment of an SPV, its structure and governance arrangements, and the basis of the financial arrangement with LBN.

Subsequently Mayoral consent was given under decision MD971 on 3 July 2012, for the LLDC to form a SPV with LBN for the operation for the post-Games Olympic Stadium. This consent gave approval for the LLDC *“forming and / or acquiring an interest in a limited liability partnership, E20 Stadium LLP, with Newham Legacy Investments Limited”*.

OPLC had previously noted that *“a publicly owned SPV will therefore be formed as the vehicle to deliver the post-Games Stadium; it will also help ensure the Stadium is integrated with the surrounding communities, can create strong linkages with local sport clubs educational bodies and contributes to local regeneration and social improvement aims.”⁴¹*

On 3 December 2013 a land transaction to grant a Lease from the Olympic Stadium to E20 was granted by the Executive Director of Housing and Land through Director Decision 1136.

³⁸ OPLC Board, Paper 8 – Stadium SPV paper final, 15/03/2012

³⁹ MD971, 03/07/2012

⁴⁰ OPLC Board, Paper 8 – Stadium SPV paper final, 15/03/2012

⁴¹ OPLC Board, Paper 8 – Stadium SPV paper final, 15/03/2012

Public Perception and Press Extracts

On WHU deal:

<http://www.independent.co.uk/sport/football/premier-league/seb-coe-boris-johnson-west-ham-scandalous-waste-752m-olympic-london-stadium-a7394186.html> - 2 November 2016

"West Ham United have paid £15m – the cost of an average midfield player – towards the £323m alteration costs to their new ground and are funding about £2.5m a year – the annual salary of an average midfield player – to help with the running costs."

<http://www.skysports.com/football/news/11685/10641786/london-stadium-conversion-cost-astronomical-says-commons-sports-committee-chairman> - 2 November 2016

"The big concern is does it look like, ultimately, the mayor of London was determined to get Premier League football into the Olympic Stadium at almost any cost? Because that is what it looks like now."

<http://www.dailymail.co.uk/sport/football/article-3208194/Karren-Brady-hits-Olympic-Stadium-critics-says-West-Ham-took-house-wanted.html> - 23 August 2015

Baroness Karren Brady *"anyone could have bought this. Leyton Orient, the Qataris, anyone. But nobody saw it, nobody saw the potential here. So roll back that movie without West Ham. Taxpayers' money would have poured into a big hole, been concreted over and never seen again....Now the stadium is nearly finished, everyone recognises what is here and says it's a steal. But it wasn't a steal when we were doing the negotiations, because where was the queue of rival buyers? Without West Ham this would have been pulled down..... Sometimes I feel like we took over a house that nobody wanted, did it up and made a fortune... Simply, without West Ham, this place would have been demolished and the Park would be done"*

<http://www.bbc.co.uk/sport/football/36046422> - 14 April 2016

Barry Hearn *"My dog could've done a better deal"*

<https://www.theguardian.com/football/2015/apr/20/west-ham-olympic-stadium-state-aid-question> - 20 April 2015

"Steve Clarke, of the Charlton Athletic Supporters Trust, said that they did not object to West Ham moving into the stadium but had a problem with the terms, which they argued would give West Ham an unfair advantage. "West Ham have been given an advantage not just against Charlton but against clubs across London and throughout the League. Their buying power in the transfer market will be instantly enhanced," he said, raising concerns that it would also enable the club to subsidise ticket prices and lure potential Charlton fans from across the river."

<https://www.theguardian.com/football/2016/apr/14/west-ham-deal-century-olympic-stadium> - 14 April 2016

"How West Ham struck the deal of the century with Olympic Stadium move: In bald terms, LLDC will take on all of the running costs from the corner flags to the stewards in return for £2.5m a year in rent (reduced by half in the event of relegation) and a one-off payment of £15m."

On THFC funding:

<http://www.bbc.co.uk/news/uk-england-london-15095674> - 28 September 2011

“Tottenham Hotspur Football Club has been offered a deal which could save it £17m, if it stays in north London. The Greater London Authority (GLA) and Haringey Council have offered to relieve the club of all community infrastructure payments that planners would normally require. The GLA's £8.5m contribution would fund regeneration in the Tottenham area, rather than the stadium itself. There is consent for a new stadium on the current White Hart Lane site.

Representatives of the GLA and Haringey Council have urged the club to press ahead with its plans for the venue at Northumberland Park. Tottenham wants to become the long-term tenant of the Olympic Stadium after next year's Games. The club mounted a legal challenge against West Ham's winning bid. It has won the right to a judicial review which is due to be heard on 17 October.”

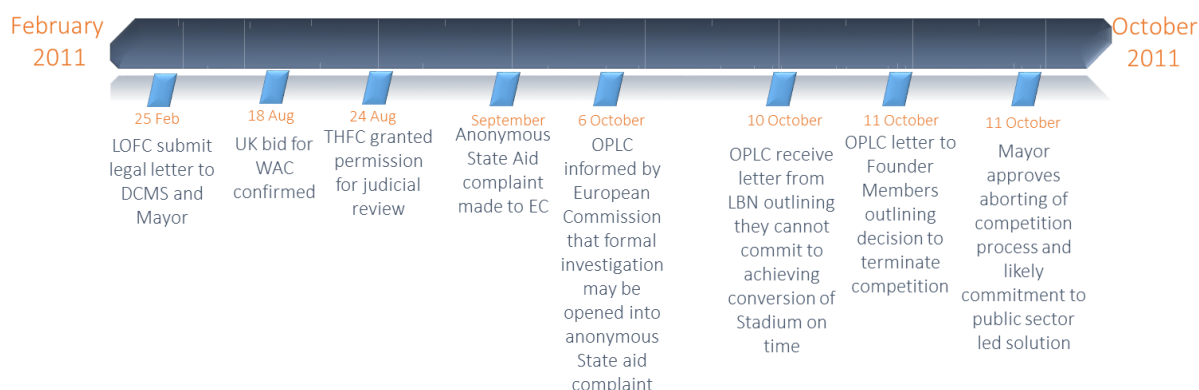
Phase 3a – Cancellation of West Ham United/Newham bid and decision to keep the Stadium in public hands

What happened?

This section explores the reasons which we understand contributed most to the aborting of the first competition process.

Detailed Timeline

Figure 18 – Detailed timeline leading to termination of competition process



Legal challenges

Following the announcement in early 2011 that the WHU-LBN consortium was the preferred bidder, there were a number of legal challenges raised. Three legal challenges were launched against granting future use of the Stadium to WHU-LBN by:

- THFC (judicial review)
- LOFC (judicial review)
- Anonymous complaint to European Commission alleging State Aid

i) Judicial Reviews

We understand one of the key elements of the objections received from LOFC and THFC was in relation to LBN's proposed £40m contribution towards the transformation costs of the Olympic Stadium. This raised questions about State Aid as it could be said to confer a competitive advantage on a private company, by use of public funds.

Barry Hearn, the Chairman of LOFC, in a letter to Boris Johnson on 15 February 2011, outlined that the decision to select WHU as future tenants would have *"a significantly detrimental impact and possibly grave implications on the future of Leyton Orient Football Club."*

The proposed deal involved WHU moving 2.2km from the LOFC stadium (at the time WHU's stadium was 4.7km away). In particular, LOFC were concerned by WHU's proposals to *"build a new fan base in the area."* According to a letter sent on behalf of LOFC by its lawyers Mishcon de Reya to Jeremy Hunt (Department for Culture, Media & Sport), Eric Pickles (Secretary of State) and Boris Johnson (then-Mayor of London) on 25 February 2011, this was Baroness Karren Brady's, the Vice-Chairman of WHU, stated intention.

The same letter alleged that the Premier League did not have the requisite permission to sanction the potential deal, as it had not taken the necessary steps to assure itself that the deal would not adversely affect LOFC. The Premier League rules outline that the Board should not consent to a move unless reasonably satisfied that such consent:

“6.5 Would not adversely affect Clubs (or Football League clubs) having their registered ground in the immediate vicinity of the proposed location.”

A judicial review was granted by the High Court and full hearing was scheduled for 18 October 2011 requiring the WHU-LBN bid to remain on hold.⁴⁸ Even if a ruling were to have been granted in OPLC’s favour, there would still be the possibility of appeals being lodged to the Court of Appeal and the Supreme Court following this date.⁴⁹

LOFC’s challenge to the Premier League was similarly scheduled for a decision in December 2011 but would also be subject to appeal processes.⁵⁰

Whilst we cannot comment on the legal basis of the challenges, it is clear that these challenges caused significant uncertainty and potential delay to the competition process.

ii) State Aid Complaint

On 6 October 2011, the OPLC were informed that the European Commission was considering opening a formal investigation into an anonymous complaint they had received regarding State Aid.⁵¹

The anonymous State Aid complaint to the European Commission cited three grounds:

1. The stadium lease contract has not been advertised on a fair and open market basis throughout the European Union.
2. There is the possibility of state subsidy accruing to private undertakings as a result of beneficial terms for the stadium lease.
3. There is the possibility of state subsidy arising as a result of financial support on preferential terms by state actors to private undertakings.

The complaint came in spite of the fact an OPLC Investment Committee meeting on the 14 April 2011 noted that their lawyers, Eversheds, *“are comfortable in the robustness of the process of recommending and approving the preferred Bidder.”*

Following the cancellation of the competition process, the Judicial Review and European Commission inquiries into the anonymous complaint were discontinued.

IAAF World Athletics Championships

In August 2011, the Mayor approved the GLA’s bid to host the 2017 World Athletics Championships in conjunction with UKA, DCMS, UK Sports and OPLC through Mayoral Decision 875.

The advice to the Mayor as part of Mayoral Decision 889 in October 2011 cited that the decision to abort the first competition:

“is centrally informed by the risks to the timely use and viability of the Olympic Stadium legacy, to the wider legacy of the Olympic Park, and proceeding with the preferred bidders under the current process, particularly in light of the bid to hold the 2017 World Athletics Championships at the Stadium.”

⁴⁸ <http://www.bbc.co.uk/news/uk-england-london-14646806>

⁴⁹ MD875 Part 2, 15/08/2011

⁵⁰ MD875 Part 2, 15/08/2011

⁵¹ NAO REPORT: Preparations for the London 2012 Olympic and Paralympic Games: Progress report December 2011

The bid to host the WAC was an influence in the decision to terminate the first competition. This is reinforced by the comments of the OPLC Board from 29th November 2011, which felt the cancellation of the process *“was seen as necessary to provide legal certainty on the future of the Stadium, given that that the Government and the Mayor were by then fully supportive of the UK Athletics bid to the IAAF to host the 2017 World Athletics Championships (WAC) in London.”*

The decision to host the WAC created pressures from the IAAF authorities to determine the legacy use of the Stadium and added a sense of urgency to the competition process. The ambiguity surrounding the competition process was perceived by the OPLC to potentially have an *“adverse impact”* on the bid to host the 2017 World Athletics Championships.⁵³ One interviewee described to us that it was clear that current litigation would not have been resolved quickly and, consequently, it would have been difficult to promise the availability of the Stadium to the IAAF. This would presumably have undermined the likelihood of bidding successfully for WAC 2017.

Mayoral Decision 875 references in relation to the judicial review challenge by THFC and LOFC that *“there is a very high chance that the issue would remain unresolved at the time of the expected announcement of the Host City for WCA 2017 in November 2011.”*

The legal advice at this point was that, following the decision to bid for the WAC, *“the OPLC must finalise negotiations with West Ham/ Newham”*.⁵⁴ As it was not possible to conclude the negotiations because of the ongoing legal issues, this advice may help to explain the timing of the decision to abort the process in October.

Decision to cancel

Following behind the scenes discussions, OPLC was notified by LBN on 10 October 2011 that LBN would be unable to commit to achieving the conversion of the stadium by the summer of 2014, as had been the original intention. This was outlined in a letter sent by Kim Bromley-Derry, Chief Executive of LBN.

Notably this letter cited that:

“it is the recently lodged anonymous complaint to the European Commission alleging State Aid, and Leyton Orient’s professed determination to notify the Commission, that seriously compromises the ability to deliver on the original commitments, so long as such complaints remain outstanding and unresolved.”

In a Special Board meeting on 10 October 2011, the OPLC Board asserted the need to abort the first competition and outlined that legacy options were likely to involve *“the retention of the Stadium in public ownership”*. It was noted that there had been *“considerable uncertainties and delays to the preferred bidder negotiations which are impacting upon the delivery of a stadium legacy”* and that the OPLC had *“therefore begun exploring alternative solutions led by OPLC to ensure that the stadium can be opened in 2014 and integrated with the wider Park”*.

The OPLC Board considered that, based on the letter from LBN, *“there were reasonable grounds for closing the current negotiations with the preferred bidder as due to legal challenges it was not now able to meet an objective set at the start of the bidding process to reopen the stadium for operational use as rapidly as possible following the 2012 Games, which the preferred bidder had committed to do in 2014”*.

⁵³ Preparations for the London 2012 Olympic and Paralympic games: Progress report Decembers 2011, National Audit Office, 6/12/2011.

⁵⁴ MD875 Part 2, 15/08/2011

As well as approving the termination of the current process, the Board also approved *“the exploration of alternative solutions whereby OPLC, either in sole control, or in partnership with the London Borough of Newham (but with OPLC always in a lead role and with controlling stake), assumes responsibility for the delivery of the solution.”*

The reasons put forward in the OPLC Board minutes are:

“To minimise risks of the delivery and operation of a multi-use stadium with athletics at its core with other uses including football (should this final point be legally and commercially possible), the Company wishes to move to a more certain and more legally robust solution. It also wishes to ensure public sector control of the delivery of the Stadium solution.... 5.4.1 The retention of the Stadium in public ownership to better ensure delivery of a long-term and sustainable legacy and integration of the Stadium with the wider Park. This will be achieved either by the Company on its own or OPLC with the London Borough of Newham with OPLC taking the lead role and stake.... The carrying out of the transformation works by OPLC; and.... A twin-track approach to resolving the end use for the Stadium which would include competitions to seek end users including a football tenant on market terms, and preserve the possibility of a revised business case option of a 60,000-seat option which will also maintain competitive tension in negotiations with end users.”

Subsequently, Andrew Altman, then-Chief Executive Officer of OPLC, announced in a letter to the Founder Members on 11 October 2011 that the OPLC Board had decided in a special meeting to terminate the current process, in light of the fact it was not possible to achieve the objectives established at the outset. The OPLC Board had resolved to explore alternative options for the future of the Stadium, most likely involving the *“retention of the Stadium in public ownership to better ensure delivery of a long-term, sustainable legacy”*.

That same letter highlighted the *“considerable uncertainty, risks and delays relating to the Current Process”* and stated the following reasons for aborting the process:

- *“The Company’s paramount objective to secure the legacy for the Stadium on time and, in addition, the commitments which have now been made in the recently submitted WAC bid...”*
- *A lack of progress in the commercial negotiations between the preferred bidder and the Company...*
- *The persistence of challenges from Tottenham Hotspur and Leyton Orient including the current judicial review proceedings have also exacerbated these uncertainties and delays”.*

On 11 October 2011, as part of Mayoral Decision 899, the Mayor ratified the decision already made by OPLC to:

“(a) terminate the current appointment process for the legacy use of Olympic Stadium conducted by OPLC; and

(b) explore alternative options to deliver the Stadium legacy.”

Fall back options considered prior to cancellation

During the first round competition and negotiations with WHU-LBN, the OPLC Board also considered fall back options, particularly in relation to timeframe and the perceived need to re-open in 2014 – this fall back project resulted in a draft report prepared by OPLC in July 2011.

The fall back options considered in that report were:

- **Primarily an athletics stadium**
 - Option A for the transformation scope which has a capacity of 25,000
 - Option B for a stadium which is capable of hosting international athletics events and has a capacity of 28,000.
- **A temporary solution with minimal investment to keep the stadium open in the Olympic mode** whilst a longer term solution is being sought. This option C would have an 80,000 capacity
- **A multi-sports stadium which retains the Olympic mode structure and has a capacity of 60,000.** A number of options were considered in terms of investment:
 - Option D: a budget of £35m is assumed (ie using the funding previously held by the ODA for transformation works)
 - Option E: a budget of £75m is assumed (ie using the funding previously held by the ODA and assuming that the Newham funding of £40m can be secured)
 - Option F: a budget is assumed which is sufficient to create a fully operational multi-use stadium suitable for a Premier League football club.

The July 2011 fall back report stated that, whilst there would be attempts to transfer or reduce risks, e.g. through capital cost or revenue contributions, *“in the fall back options, the public sector potentially retains:*

- *all the delivery risks of the transformation*
- *all the capital funding risks*
- *all the optional risks, including providing on-going subsidy in most options*
- *all the lifecycle risks.”*

While option F (multi-use stadium with a Premier League club) most closely resembled the solution being negotiated with WHU-LBN, it was identified that there would be a number of issues with pursuing this option:

- High capital costs, particularly in relation to the roof, which would need to be funded by the public sector;
- Lack of interested football clubs other than WHU;
- Limitations to what rent WHU would be willing to pay based on capital contribution, length of agreement and associated security, and league status.

The financial aspects of each option were also analysed:

Table 12 – OPLC’s financial analysis of options

	<i>Primarily an athletics stadium</i>		<i>Temporary solution</i>	<i>Multi-sports stadium, Olympic mode structure retained</i>		
	<i>Option A</i>	<i>Option B</i>	<i>Option C</i>	<i>Option D</i>	<i>Option E</i>	<i>Option F</i>
Capital cost	£49.6m	£81.9m	£15.4m	£34.5m	£74.6m	£140.5m
<i>Illustrative annual operating surplus/(deficit)</i>	(£0.8m)	(£0.3m)	(£1.0m)	(£0.3m)	0	£2.0m
<i>Annualised lifecycle costs</i>	(£0.3m)	(£0.4m)	(£1.2m)	(£1.5m)	(£1.5m)	(£1.5m)*
Estimated annual cost	(1.1m)	(£0.7m)	(£2.2m)	(£1.8m)	(£1.5m)	£0.5m

*If the tenant does not pay for lifecycle costs

This analysis suggested that Option F was the only option which would not require an operating subsidy, although clearly it had a much high capital cost than all other options. The report noted that before finalising the options, it would be important to undertake a NPV analysis, so that the full financial implication of the options could be understood.

The report also noted that in all options, except potentially Option F where capital funding from a football club was a possibility, all the capital costs would be borne by the public sector.

In the course of the fall back analysis, a number of other non-monetary factors were also considered by OPLC:

- Accessibility: this relates to both attendance at events held in the stadium and community access to the stadium and warm up track;
- Range of usage: this relates to the different types of events which are hosted;
- Catalyst for regeneration relates to the number of jobs created, whether pride and confidence is engendered; and
- Integration with the wider masterplan, including the timeframe for procurement and delivery.

Table 13 – OPLC’s analysis of non-monetary factors

	<i>Primarily an athletics stadium</i>		<i>Temporary solution</i>	<i>Multi-sports stadium, Olympic mode structure retained</i>		
	<i>Option A</i>	<i>Option B</i>	<i>Option C</i>	<i>Option D</i>	<i>Option E</i>	<i>Option F</i>
<i>Accessibility</i>	<i>Low</i>	<i>Medium</i>	<i>Medium</i>	<i>Medium</i>	<i>Medium</i>	<i>High</i>
<i>Range of usage</i>	<i>Low</i>	<i>Medium</i>	<i>Medium</i>	<i>Medium</i>	<i>Medium</i>	<i>High</i>
<i>Catalyst for regeneration</i>	<i>Low</i>	<i>Low</i>	<i>High</i>	<i>High</i>	<i>High</i>	<i>High</i>
<i>Integration (delivery timetable)</i>	<i>Summer 2014</i>	<i>January 2015</i>	<i>Summer 2013</i>	<i>January 2014</i>	<i>Summer 2014</i>	<i>Summer 2014</i>

Unsurprisingly, given what the stadium solution offered, Option F scored highly on each measure, although the options with the lowest capital costs could be delivered most quickly.

The fall back analysis noted that the relative level of risk for OPLC (in terms of planning, capital cost, delivery and operating/market risks) needed to be taken into consideration. The additional steps required from implementing the new approach, such as a new public sector procurement process to secure a contractor to deliver the transformation and an updated Business Case, would inevitably have an implication for the overall timing of the project delivery.

Examining Option F in more detail:

OPLC assumed the income and expenditure would be:

Table 14 – OPLC’s assumed operating income and costs for Option F

<i>Description</i>	<i>2014 £ 000</i>	<i>2015 £ 000</i>	<i>2016 £ 000</i>	<i>2017 £ 000</i>	<i>2018 £ 000</i>
<i>Athletics</i>	15	15	16	17	19
<i>T20 cricket</i>	0	63	63	63	63
<i>Concerts</i>	95	286	286	286	286
<i>Other events</i>	53	54	54	54	54
<i>Conference and banqueting</i>	14	45	45	45	45
<i>Rent from anchor tenant</i>	500	1,000	1,000	1,000	1,000
<i>Naming rights</i>	1,000	2,000	2,000	2,000	2,000
<i>Other income</i>	545	638	638	638	638
<i>Total operating income</i>	2,222	4,101	4,102	4,103	4,105
<i>Staff</i>	(271)	(325)	(325)	(325)	(325)
<i>Facilities management</i>	(601)	(801)	(801)	(801)	(801)
<i>Utilities</i>	(223)	(297)	(297)	(297)	(297)
<i>Other costs</i>	(589)	(664)	(665)	(665)	(666)
<i>Total operating costs</i>	(1,684)	(2,087)	(2,088)	(2,088)	(2,089)
<i>Operating Surplus/(Deficit)</i>	538	2,014	2,014	2,015	2,016

The risk evaluated by OPLC was:

Table 15 – OPLC’s assignment of risks for Option F

<i>Type of activity</i>	<i>Who bears the risk?</i>
<i>Asset ownership</i>	<i>OPLC</i>
<i>Transformation capital costs</i>	<i>OPLC (£35m previously allocated for the Stadium scheme to be delivered by the ODA), possibly a public sector loan (£40m subject to confirmation there are no State Aid issues), possible equity from a football club tenant (£20m from sale proceeds from current ground) with balance of £45.5m assumed to come from external or other public sector sources (as yet unidentified)</i>
<i>Ongoing capital costs (e.g. Lifecycle)</i>	<i>OPLC (no quantification)</i>
<i>Operating risk</i>	<i>OPLC (no quantification)</i>

The advantages and disadvantages of Option F were considered by OPLC in the fall back report to be:

Table 16 – OPLC’s assessment of advantages and disadvantages for Option F

<i>Advantages</i>	<i>Disadvantages</i>
<i>Iconic Games time structure is retained</i>	<i>Funding uncertain</i>
<i>Year round events profile which offers range of activities at venue</i>	<i>OPLC retains majority of risks, ie planning risk, capital costs, delivery risk. Some operating/market risk shared with commercial football tenant</i>
<i>Long term solution</i>	<i>If the anchor tenant is relegated, they may not be able to sustain the same level of rent.</i>
<i>Likely to generate a surplus each year, prior to payment of lifecycle and finance costs</i>	

Justification for decisions made

From the available Board minutes and papers, and discussions with OPLC Board members, it is apparent that there was a perceived need to keep the process moving forward and to establish certainty and control over the outcome and the timing. A number of factors contributed to uncertainty among key stakeholders and the decisions to abort the first competition process and to keep the stadium in public hands. These factors are set out and further explained below:

1. Legal challenges and the delays to the process
2. The need to re-open in 2014
3. The bid for the World Athletics Championships in 2017
4. The wider legacy regeneration programme
5. The perceived revenue benefits of public ownership

1. Legal challenges

Whether or not the legal challenges, including the issue of State Aid, would have been upheld, or if the OPLC would have won these challenges, is not certain, but the overall impression from interviewees was that the number of issues to contend with would have been difficult, and extremely time consuming, to deal with, significantly delaying the process.

In terms of State Aid specifically, it was felt by OPLC that it was important to find a solution which would not have any State Aid issue. The legal advice presented to OPLC in relation to this was to pursue a concession arrangement, rather than an anchor tenant arrangement. Under that structure the stadium would remain in public ownership and be ‘rented out’ on a concession basis to a tenant.

OPLC Board minutes record that under a concession arrangement:

“The aspects of the plan which give rise to State Aid issues are much narrower than in the current process. State Aid issues do not arise in relation to the public sector arrangements or the transformation works because control of both elements remains in the public sector. The risk of a challenge on State Aid grounds in relation to a lease to a football club and other end users is managed by stipulating they must be granted at a market rent/open market terms.”

2. Tight timescales

Announcements had been repeatedly made that the Olympic Park would re-open in 2014, and the prior (now cancelled) WHU-LBN bid was submitted on the basis that the Stadium transformation work would be completed within this timescale. The delays caused by the legal challenges, which OPLC considered could hold the process up for 18 months or more, meant that OPLC considered that action was required to meet the timescales it had imposed.

3. World Athletics Championships

One issue that arose repeatedly throughout the period leading up to the cancellation of the first competition was the ongoing bid to host the World Athletics Championships (WAC) in 2017.

A BBC Sport article on 11 October 2011 stated:

“The other catalyst for the U-turn is London's bid for the 2017 World Athletics Championships.

Last week's visit of the inspection team from the International Association of Athletics Federations (IAAF) was dominated by the continuing uncertainty over the stadium's future and, in particular, the running track.

With London facing a real contest against Doha in November's vote, the government and mayor wanted to send a strong message to the IAAF that they are committed to staging the event in the Olympic Stadium.”

Whilst the decision to bid for the WAC provided clarity on the capacity and scope to which the Stadium must be transformed post-Games, it also imposed additional requirements in order to be compliant with IAAF requirements. For example, commitments were made in bidding for the World Athletics Championships to provide full spectator roof coverage. It also ensured the running track would have to be retained.

This is referenced in the November 2011 Business Case:

“Securing the IAAF World Athletics Championships in 2017 has provided a significant boost to the future of the Stadium and provides clarity on the capacity and scope to which the Stadium must be transformed post-Games. For example, a commitment was made to the IAAF to provide full spectator roof coverage in the Stadium in order to fully address the IAAF's technical requirements. The provision of a full spectator roof will also mean the Stadium can be used year round for events, thus increasing its attractiveness to event promoters and prospective tenants and giving spectators the level of comfort expected in a modern stadium.”

By keeping the Stadium in public ownership, OPLC considered it would be able to ensure that the transformation satisfied the criteria for hosting the WAC. It also provided control and certainty to ensure that the Stadium would be ready for the WAC, regardless of whether or not a future anchor tenant had been found.

“The rationale behind the public sector retaining control of the Stadium is to fulfil a number of commitments, chief among them to ensure that the IAAF World Athletics Championships can be hosted at the Stadium in 2017.”⁵⁵

One interviewee confirmed to us that the WAC was a factor in the decision to commit to a public sector led solution to the Stadium. According to the interviewee, the Government wanted to make sure that London was able to deliver for the WAC, in light of the previous issue in 2005 where London had made a bid to host the WAC at Picketts Lock but was forced to renege on its hosting.

⁵⁵ OPLC Board minutes 20 March 2012

4. Wider regeneration programme

One interviewee explained to us that part of the decision to keep the Stadium in public ownership was to ensure: (a) the Stadium was completed to a high standard and (b) there would be significant future use.

This is referred to in OPLC Board minutes from 20 March 2012:

“By retaining public ownership of the Stadium, it can be better integrated into the wider Park and the long-term and sustainable legacy can be better delivered.”

Through continuing public ownership, rather than an asset disposal, the Government would be in control of the transformation programme and the ongoing operation, and thus could ensure that it became genuine multi-use arena for year-round use. The same level of flexibility was not perceived by OPLC to be available with a leasehold anchor tenant in place.

5. Perceived revenue benefits of public ownership

Both the fall back report produced while negotiations were underway with WHU-LBN and business cases produced after the decision was taken, outline that the Stadium was likely to have multiple revenue streams and overall would generate an operating surplus. Further, a briefing note to the Mayor of London from 13 October 2011, following the decision to keep the Stadium in public ownership outlines that:

“there is no reason to think this new approach will be more expensive for the public sector. It may involve a greater commitment up front, depending on the approach that now emerges, but if we are getting commercial rent it will also result in greater returns over the long term”.

It was presumed that the public sector would achieve greater or equal returns from the Stadium compared to the WHU-LBN bid from the first competition. Accordingly this may have been a factor in the decision to proceed by retaining public sector ownership.

Our Evaluation

Completeness of information and analysis

While analysis of alternative options carried out alongside the first competition negotiations with WHU-LBN showed that it might be possible to make an operating surplus from an alternative publicly owned and operated model, the risks associated with public ownership were acknowledged. As well as the risks associated with public sector ownership and operation, OPLC’s analysis also highlighted the lack of competition from other football clubs. Whilst this was factored into the quantification of a likely usage fee under the alternative public ownership model, the negotiating power that this position would give WHU was not fully recognised and therefore not considered.

Considering the importance of the decision – it led to an aborted process and the loss of the opportunity to take advantage of a financially viable solution – one would expect there to be a significant volume of analysis and discussion leading up to this decision, involving comparisons between the existing solution that was in progress and a potential alternative solution. This analysis should have covered all aspects of the options and the process, including risk, cost and timing. However, we have not been provided with any analysis going beyond a draft report which includes only high level considerations of capital and operating costs and other issues that might be encountered. It did not include any calculation of net present cost, and therefore did not allow for risks of different options to be factored into calculations.

The decision to abort the first competition process was made following due process by going through OPLC and to Founder Members for ratification, but these approvals appear not to have been made with a full consideration of costs and risks. The letter from OPLC to the Founder Members only outlines the difficulties with the ongoing process, without any reference to a new model or to the costs and risks involved with alternative structures.

Furthermore, the twin decisions to abort the first process and to keep the stadium in public hands were made simultaneously, rather than deciding to abort the existing WHU-LBN bid process and then carrying out a full analysis and evaluation of alternative options that could involve both the private and public sector, whilst making sure to avoid State Aid issues. Further, media reports from 11 October 2011 say that the then-Mayor Boris Johnson announced that “we will keep it [the Stadium] in public hands”. Accordingly, although the OPLC board minutes from 10 October 2011 outline that the plans are “likely to involve” the retention of the Stadium in public ownership, this public announcement appears to have represented an irrevocable commitment to pursue a public sector model.

Although a formal OPLC business case was raised in November 2011, this did not provide any consideration of whether the Stadium should be kept in public hands or an alternative model used, and by this time the first competition had been irreversibly aborted.

In fact, as outlined in the business case put forward, on 21 November 2011, the public sector led solution had already been committed to:

“The decision to terminate the previous process was accompanied by Founder Members’ and the Mayor’s public commitment to retain the athletics track in the Stadium and to deliver a public sector led solution.”

In our opinion, the decision to abort the first competition combined with the commitment to a public sector ownership model is the key turning point in relation to the Stadium. The time period from this decision up to the signing of the concession agreement with WHU is the key period in which significant future costs for the taxpayer were committed to. Decisions of this magnitude should be preceded by a formal business case, but this did not happen at this stage.

Liability for future costs

Given that the Stadium would be retained as a public asset, the substantial liability for transformation and future running costs for the Stadium would then fall to the public purse. This proved to be costly, as will be examined later (Phase 4).

The then-Mayor, Boris Johnson, is quoted in the media the day after the decision saying “We will keep it in public hands but we will effectively rent it to a football club, almost certainly West Ham, and that will cover the costs and I think it will be a very good deal for the taxpayer.”⁵⁷ In our opinion, the expectation that the rent would cover costs arose despite the fact that there was limited analysis and understanding of what the actual future costs would be at the time the decision was made.

There was a clear belief from the OPLC Board, the GLA, the Mayor and DCMS that a deal could be reached in a new competition under a public ownership model, similar to that being negotiated with LBN-WHU in the first competition before it was aborted. However, the situation after aborting the first competition and the decision to retain the Stadium in public ownership was very different.

⁵⁷ <http://www.telegraph.co.uk/sport/olympics/8819455/London-2012-Olympics-West-Ham-bid-again-as-Olympic-stadium-deal-collapses.html>

There are two main reasons for this change in situation:

1. Preparing a bid takes a lot of time, effort and money, and the first competition had eliminated a number of candidates, or at least made it clear that they would be highly unlikely to be successful. This was coupled with a number of public statements saying that WHU would be the likely winners in the second competition. It should have been evident at this stage that there would not be the same level of competition in a second competition.
2. The structure of the deal was going to be significantly different. Even though at this stage a concession arrangement had not been publicly discussed, the retention of the Stadium in public ownership meant that the sharing of risks and rewards in any new competition would be markedly different.

It appears that the decision to cancel the WHU-LBN first round process and adopt a public ownership model occurred despite the fact that there was no certainty what the future costs would be. A briefing note to then-Mayor of London Boris Johnson from 13 October 2011, following the decision to keep the Stadium in public ownership states that:

“it’s impossible to say at this stage what the capital conversion costs will [be] under our new approach, or precisely how they will be met. We do expect, though, that the £35m from the public sector funding package will still be available.”

Despite the lack of detailed analysis, or a comparison to the solution that was previously being negotiated with WHU-LBN, statements were made regarding the expected return and costs to the taxpayer, including the following from the same briefing note outlining that:

“there is no reason to think this new approach will be more expensive for the public sector. It may involve a greater commitment up front, depending on the approach that now emerges, but if we are getting commercial rent it will also result in greater returns over the long term...we always had some public money going into the conversion. It’s nonsense to say that this decision has ‘cost the public sector £95m’.”

This advice that “commercial rent” will result in “greater returns over the long term” appears odd given that the rental income proposed by WHU-LBN in the first competition was greater than the assumed rent under the public sector ownership solution (which at this time was only forecast at £1m) and in the first competition WHU-LBN assumed the lifecycle costs of the Stadium. The reduction in rent, coupled with increased capital costs, cannot result in “greater returns over the long term”. Similarly, it seems unusual not to include calculations to provide assurance to the Mayor as to the reasonableness of and rationale for such a decision.

It appears that the legitimacy of the advice that there was “no reason” to believe this would be more expensive for the public sector rested on the lack of detailed calculations or analysis. In our opinion, it would have been prudent to advise the Mayor that this decision may in fact cost the taxpayer significantly more, considering the key risks associated with construction, notably, the liability for cost overruns, had transferred from a private entity to the public sector and the ability of OPLC to obtain financial benefit had been diminished.

Mayoral Decision 899, signed on 11 October 2011 to approve the termination of the competition based on the OPLC's analysis, details within its financial comments that:

"There are no direct immediate financial implications from the GLA arising from this decision, but there will be a change in the type and quantum of the risks for which the public sector will be responsible in seeking proposed alternative solutions for the stadium. The GLA is currently jointly exposed with Government to any OPLC financial risk or future risk in its capacity as a Founder Member of the Company. The proposals for the establishment of a MDC from April 2012 mean that OPLC would become a functional body of the GLA and would therefore have sole exposure from that point to any potential financial risk of OPLC's, particularly as the MDC is expected to require ongoing subsidy from the GLA. OPLC will therefore need to set out clearly the potential financial impact and risks in developing an alternative solution and these will need to be reflected in the development of budget and business plans"

The opening part of the statement is true in the sense that the cost would not be realised in the immediate weeks and months, but the keeping the stadium in the hands of OPLC meant that OPLC (or one of its Founder Members) would have to bear the significant costs of transformation works and the later operating costs. This is because the ownership and operating structure had fundamentally changed. While the risk transfer was recognised, the scale of what this could mean was not.

Our opinion is that many of the costs and losses which subsequently arose from this decision were foreseeable at the time. Moreover, this would have been exposed if OPLC had sufficiently analysed the figures alongside the implications of public ownership. However, the fall back report only analysed costs and issues at a high level and stated the need for further analysis including net present value calculations. No net present value calculations were carried out, meaning that the opportunity to inject a differential risk approach was not taken.

Whilst the full costs of the transformation actually undertaken include significant additional scope, which may be considered to bring additional benefit, the first deal would have cost the £35m of public money (the £35m ODA fund only, as the £40m loan from LBN was repayable,) whereas the transformation costs alone of the second deal cost the public £292m (see Phase 4 for full details). As it transpired, the £95m quoted as "nonsense" in the briefing to the Mayor turned out to be a vast understatement of the cost to the public purse.

Government Change of Heart?

Discussions with one interviewee suggested the primary reason for the aborting of the deal and the decision to keep public ownership of the Stadium was the fact that the Government and Mayor changed their minds, deciding that full control of the Stadium should not be passed over to a football club. This was described by the interviewee as a "uniform view" and it was believed that keeping the Stadium in public hands would maximise legacy and regeneration benefits for the Olympic Park as a whole.

We have not identified any documented minutes or correspondence to confirm there was a "change of heart" but we note that the documented analysis leading up to the decision is extremely limited for a decision of such consequence.

World Athletics Championships bid

The reason for the cancellation of the first bid process with WHU-LBN was summarised some time later in a subsequent business case in March 2013:

"The decision to stop the process was seen as necessary to provide legal certainty on the future of the Stadium, given that that the Government and the Mayor were by then fully supportive of the UK Athletics bid to the IAAF to host the 2017 World Athletics Championships (WAC) in London."

Whilst it is clear that the legal uncertainty over the position of the Stadium was considered to detract from London's bid, there was also a question in relation to the satisfaction of the technical requirements to host this Category 1 athletics event. There is limited evidence available to us to determine whether or not the WHU-LBN bid could have fulfilled the precise requirements for the 2017 WAC. This is therefore a feasible alternative motive for the decisions; to be in control of the transformation project to ensure commitments are fulfilled, as outlined previously (Justification – Phase 3a).

A requirement of the WAC per the Technical Delegates Guidelines, December 2013 is to have *"a roof covering all the seating."* We note that the original WHU-LBN bid would provide a fabric roof which would not have covered the front 5 rows of seats. The following specifications are included in the original WHU-LBN bid regarding the roof;

"existing roof structure and covering retained with no allowance for additional treatment / upgrade...no allowance for strengthening to existing compression truss; no allowance for enhancing existing foundations as a result of roof extension."

We are not aware whether in the aborted WHU-LBN bid, negotiations had changed this. However, in the event the roof for the WAC in 2017 was permanent rather than fabric and involved significant compression truss strengthening, costing significantly more than the £14.6m provided in the WHU-LBN bid documents (see Phase 4 for details). The London 2017 WAC website itself emphasised the *"spectacular new roof to ensure an even more amazing acoustic atmosphere and cover against inclement weather"*.

A paper, prepared by representatives from DCMS to inform views on risks to the Government and the GLA arising from signing the bid documents for the WAC, outlines that:

*"The legacy plans for the Olympic Stadium satisfy the IAAF's stated requirements however these plans are not yet fully legally binding."*⁵⁹

It is possible that this is an area in which there was a *"lack of progress in commercial negotiations between preferred bidder and the Company"*, one of the reasons cited in a letter from the OPLC to the Founder Members on 11 October 2011 in which they requested approval to abort the competition process.

Prematurely aborted

We are not in a position to explore the legal aspects of the State Aid challenges. Nonetheless, we are aware that the legal advice given at the time to the OPLC stated that any bid should be compliant with State Aid regulations.

The evaluation report, based on the advice received from Eversheds stated that the WHU-LBN offer was likely to be State Aid compliant subject to further clarification:

*"The bidder has confirmed Newham's loan is to be on commercial terms and the stadium development SPV is a 50/50 company between Newham and West Ham. There is further clarification to be developed if they are appointed as preferred bidder but if the clarification is provided then this proposal offers robust arguments on a risk assessed basis that the bid is State Aid compliant."*⁶⁰

Furthermore OPLC Investment Committee Board Minutes from 14th April 2011 state that lawyers Eversheds were, *"comfortable in the robustness of the process of recommending and approving the preferred Bidder"*.

⁵⁹ DCMS Paper – "Paper to inform views on Risks to Government and the GLA arising from signing the bid documents for the 2017 World Athletics Championships"

⁶⁰ Olympic Park Legacy Company Paper No 1 - Recommendation for Preferred Bidder, 11/02/2011, p.22

With the benefit of hindsight, the first competition process was, arguably, aborted prematurely. More effort could have been made to enact the potential LB-WHU deal, in light of the fact: (a) the legal advice suggested the bid was State Aid compliant and (b) it represented a good deal for the taxpayer that would have transferred the substantial risks relating to the Stadium to a private entity (WHU).

The Manchester case study (referred to in Phase 1) acted as a precedent, proving it was possible for a football club to lease a newly constructed stadium from the State, as would have been the case with the leasehold arrangement in the WHU-LBN bid, without prima facie State Aid.

It appears that the OPLC (and its Founder Members) found themselves in the position where OPLC had two choices:

1. Find an alternative solution quickly; or
2. Continue with the current solution

There is no compelling evidence that any of the parties involved thought that the State Aid complaint, or the other legal challenges, could not be fought successfully, and ultimately defeated. What is clear to us is that there was little or no willingness to fight the legal challenges as this would delay the process. What is also clear, especially with the benefit of hindsight, is that aborting an existing competition process and starting again, including launching a whole new round of bidding, was also not going to produce a quick solution.

In our opinion at this stage it would have been sensible for OPLC to step back, evaluate the timeframe in which the Stadium could realistically be transformed and re-opened, and re-set the goalposts accordingly. This was not done.

With significant pressure and scrutiny from the media and the public leading up to the Games, decisions appear to have been made so as to ensure a perception of momentum and progress. While this may have created a positive public perception in the lead up to the Games, in our opinion, it was not the appropriate way to make long term decisions, which should have had a greater regard for solid financial and risk analysis.

State Aid dealt with too late

In its advice to OPLC, Eversheds also outlined that *“OPLC could notify the EC in advance for an assessment as to whether the application of public funding is State Aid and if so can it be approved as aid compatible with the Treaty”*.

Whilst we cannot comment on the legal facets of the argument, it may have been sensible to seek permission from the European Commission in advance of granting preferred bidder status to WHU-LBN. Interviewees described that there was little consideration given to State Aid at the outset of the first competition process.

Phase 3b – Evaluation of legacy options

What happened?

On 7 December 2011, the Mayor formally approved the OPLC's request for capital commitment to fund an Enhanced Multi-Use Stadium through Mayoral Decision 921. This approval was based on the OPLC's analysis.

The Enhanced Multi-Use Stadium required a running track to allow the hosting of the World Athletics Championships in 2017.⁶¹ The Stadium specification included a 60,000 seat capacity, a full, permanent roof, enhanced hospitality facilities, permanent toilets, catering and turnstiles.

This section outlines why and how we understand this decision was taken.

Business Case

Following the cancellation of the 1st bidding process in October 2011, a business case was put together in November 2011 to assess a range of solutions.

When establishing the basis for the new competition, the business case acknowledged *“public sector ownership of the Stadium carries risks, not least in terms of delivering the transformation works on time and to budget, meeting revenue projections for the Stadium, operating a sports facility and delivering all procurements in a State Aid compliant manner without legal challenge.”* This acceptance of risk highlights the necessity for rigour in the process going forward.

The following 5 options were assessed for the Stadium legacy:

Table 17 – options assessed by OPLC

Option	Summary Description
1. Mothball (“Do Minimum”) – mandatory inclusion in line with Green Book guidance	Mothball the existing 80,000 seat stadium by making it secure and maintaining the site until some future use is identified
2. 25,000 Seats – ODA Base Case	Convert to 25,000 seats in line with ODA design and operated by OPLC as a multi-sports stadium for domestic sports and community use. Does not meet WAC requirements.
3. 60,000 Seats – Enhanced Multi-Use Stadium	Convert to 60,000 seat stadium with full roof - suitable for Premier League football, athletics, concerts and WAC
4. 60,000 Seats – Multi-Use Stadium	Convert to 60,000 seat stadium with existing roof - suitable for non PL football, athletics and concerts. Does not meet WAC requirements
5. 80,000 Seats – Multi-Use Stadium (Temporary)	No structural change from Olympic mode. Does not meet WAC requirements and would require upgrade for WAC

⁶¹ OPLC Board, 29 November 2011, Paper 3 – Stadium paper

These options were assessed against one another in economic terms, both monetary and non-monetary, as had been the case in the previous business cases. OPLC's analysis concluded that the Enhanced Multi-Use Stadium represented the "best economic option," based on the information presented in the table below.⁶² The financial analysis involved estimates of capital expenditure for the transformation costs, ongoing capital expenditure that would be required across the life of the Stadium (lifecycle costs), and operating surpluses or deficits based on estimated income and expenditure. The capital expenditure and operating costs were combined to estimate the total cost of the Stadium over its lifetime, and discounted back to account for changes in the time value of money across the life of the project; referred to as the net present cost or NPC. No risk premium was included in the NPC calculations, meaning all options were assessed on the same risk basis.

Table 18 – OPLC's summary economic analysis of options

	<i>Do Minimum</i>	<i>ODA Base Case</i>	<i>Enhanced Multi-Use Stadium</i>	<i>Multi-Use Stadium</i>	<i>Multi-Use (Temporary)</i>
<i>Capex incl. Optimism Bias</i>	£4,267k	£40,640k	£111,930k	£46,528k	£17,186k
<i>Total life cycle costs (over 25 years)</i>	£1,301k	£7,491k	£31,071k	£41,121k	£7,712k
<i>Annual operating Surplus / (Deficit)</i>	(£2,123k)	(£1,757k)	£3,110k	(£909k)	(£2,589k)
<i>NPC</i>	£41,578k	£64,301k	£42,202k	£62,779k	£55,642k
<i>Non-Monetary Weighted Scoring</i>	95	415	705	575	265

Accordingly, on 6 December 2011, the OPLC Board approved the recommendation to pursue a 'single track' competition to secure an anchor tenant, or tenants, for an Enhanced Multi-Use Stadium.

This recommendation was made in spite of the fact this option required a higher initial investment, with anticipated conversion costs of £112m. This substantial expenditure was required in order to convert temporary elements of the Stadium to be suitable for permanent operations.⁶³ Similarly, the capital expenditure was to include full spectator roof coverage in the Stadium, one of the IAAF's requirements for hosting the WAC.

OPLC's analysis indicated that the Stadium was anticipated to generate a revenue surplus of £3m per year producing a net present costs (NPC) of £42m. OPLC highlighted the risk that that "*the NPC will increase significantly if the rent and naming rights income assumed from football are not achieved.*" Even if this were to have been the case, it was anticipated that "*the Stadium would still have a very small surplus from operations.*"⁶⁴

⁶² OPLC Investment Committee Minutes 22/11/2011

⁶³ E.g. "Consequential impacts of increasing the Stadium capacity, as the access routes to the Stadium via a series of bridges over the encircling waterways have all been designed for a 25,000 capacity legacy Stadium. As a result, deciding to retain the higher capacity will also mean that the temporary bridge platforms, built for Olympic Games use, will have to be retained and strengthened to accommodate larger crowd movements."

⁶⁴ OPLC Board, 29 November 2011, Paper 3 – Stadium paper

The capital cost of the Enhanced Multi-Use option selected was anticipated to be:

Table 19 – OPLC's expected capital costs for the Enhanced Multi-Use option

<i>Item</i>	<i>Expenditure (£ 000)</i>
<i>Deconstruction</i>	<i>4,537</i>
<i>Field of play</i>	<i>4,085</i>
<i>Bowl reconfiguration</i>	<i>5,511</i>
<i>Main roof</i>	<i>19,729</i>
<i>Field of play lighting</i>	<i>700</i>
<i>Video screens</i>	<i>1,430</i>
<i>External envelope</i>	<i>945</i>
<i>Hospitality</i>	<i>10,609</i>
<i>Accommodation alterations</i>	<i>8,012</i>
<i>External works</i>	<i>4,634</i>
<i>Alterations to link bridges</i>	<i>1,830</i>
<i>Subtotal</i>	<i>62,022</i>
<i>Preliminaries allowance (17%)</i>	<i>10,544</i>
<i>Subtotal</i>	<i>72,566</i>
<i>Professional fees (12%)</i>	<i>8,708</i>
<i>FF&E allowance</i>	<i>8,500</i>
<i>Total before optimism bias</i>	<i>89,774</i>
<i>Optimism bias</i>	<i>22,156</i>
<i>Total capital costs</i>	<i>111,930</i>

Main roof replacement – the main roof, as used in Games mode, would be removed and was to be replaced with a new extended roof which would cover all seats in the stadium.

Hospitality – the hospitality facilities were to be enhanced from one level of very basic facilities, as provided in Games mode, to three levels comprising 10-12 corporate boxes on Level 1, plus premium seating and supporting lounge / dining space on Levels 0 and 2. This represented the minimum level of provision considered appropriate for the needs of a Premier League football club and to attract concert promoters.

The operating surplus anticipated was based on:

Table 20 – OPLC’s expected operating income and costs for the Enhanced Multi-Use option

<i>Income/Cost item</i>	<i>£ 000</i>	<i>OPLC’s assumptions</i>
<i>Athletics</i>	<i>20</i>	<i>Profile building from 8 events in Year 1 to a steady state of 16 events p.a. from Year 6. 10% share of catering and merchandising only.</i>
<i>T20 cricket</i>	<i>64</i>	<i>2 x matches p.a., 10% share of ticketing, catering and merchandising</i>
<i>Rent from football tenant</i>	<i>2,000</i>	<i>Assumed rental based on Championship football club as tenant. May be considered high for Championship but should be considered in union with naming rights income below.</i>
<i>Other sporting events</i>	<i>250</i>	<i>5 x rugby matches p.a. @ £50k rent for venue per match</i>
<i>Concerts</i>	<i>1,650</i>	<i>Profit margin based on 5 concerts per annum @ £330k each. Comprises rental and share of ticketing, catering and merchandising</i>
<i>Conferencing and banqueting</i>	<i>660</i>	<i>Share of income, managed by catering company, plus an assumption of pitch hire revenue. Based on income derived from benchmark data for a number of stadia with football tenants.</i>
<i>Naming rights</i>	<i>2,000</i>	<i>Based on £2m received in total for Championship FC tenant, based on benchmarks and early market testing by OPLC.</i>
<i>Other sponsorship</i>	<i>700</i>	<i>Market information has suggested that up to four Tier 2 (silver) sponsorships could be attracted worth between £350k and £500k each - for prudence assumed 2 x £350k</i>
<i>Service recharge income</i>	<i>567</i>	<i>Assumed 30% of facilities management, insurance and utilities costs recharged to stadium office tenants.</i>
<i>Stadium tours</i>	<i>263</i>	<i>Profit margin based on 150k visitors @ £10 per head</i>
<i>Total operating revenue</i>	<i>8,174</i>	
<i>Staff</i>	<i>(600)</i>	<i>1 x stadium manager @£100k, 1 x operations manager @ £40k, 1 x finance manager @ £50k, 1 x commercial manager @ £45k, 2 x commercial staff @ £25k, 1 x HR manager @ £40k, 1 x agency support @ £35k, 1 x reception staff @ £18k, 1 x office manager @ £23k, 2 x admin staff @ £25k, 1 x head grounds man @ £25k and add-on costs of 26%</i>
<i>Facilities management</i>	<i>(1,052)</i>	<i>Based on benchmarked data for similar stadium activities – includes maintenance, cleaning and security</i>
<i>Utilities</i>	<i>(617)</i>	<i>Based on benchmarked data</i>
<i>Rates</i>	<i>(2,000)</i>	<i>Prudent estimate based on commercial football club tenant in the stadium. Benchmarked against other football stadia.</i>
<i>Insurance</i>	<i>(220)</i>	<i>Estimate based on need for cover against fire, damage, public liabilities etc.</i>
<i>Service charge to Olympic Park</i>	<i>(300)</i>	<i>Service charge in relation to wider park facilities management</i>
<i>Other costs</i>	<i>(275)</i>	<i>Estimate</i>
<i>Total operating costs</i>	<i>(5,064)</i>	
<i>Operating surplus</i>	<i>3,110</i>	

The key assumptions noted in the business case related to the Enhanced Multi-Use option were:

Income assumptions:

- Income from Athletics and T20 Cricket, where shown, comprised a share of income from ticketing, catering and merchandising.
- Although the facilities are assumed to be the minimum level required to attract a Premier League football club, for prudence it was assumed that one of the larger Championship football clubs would become the anchor tenant of the stadium with an annual rent payable of £2m per annum.
- Given the enhanced provisions within the stadium, it was assumed that a number of other sporting events, e.g. rugby, could be hosted at the stadium, giving rise to rental income.
- Income of £330k per concert was based upon the net margin realisable for a stadium operator from such concerts at similar venues. It was assumed that five such concerts could be hosted.
- It was assumed that as there would be a Championship football club as the anchor tenant the stadium would generate further income by way of naming rights and second-tier sponsorship. This income was benchmarked against sponsorship deals in the market.
- It is assumed that there would be some service recharge to stadium office tenants i.e. recharge of facilities management, utilities and insurance costs.
- Income from stadium tours - the draw of visitors is expected to the Olympic stadium and/or the grounds of the Championship football club.

Operating costs assumptions:

- Staff costs were based on benchmarked data from other stadia and vary depending on the assumed level of activity under each option.
- Facilities management, utilities costs and insurance costs were based on the level of activity in the stadium under each option with consideration given to the overall size and capacity of the stadium.
- The cost of business rates under each option is also activity and capacity based. The cost assumed was based on the likely rateable value of a stadium with a major football club as the anchor tenant.
- It was assumed that a service charge of £300k per annum is payable for services provided in the wider Olympic Park surrounding the stadium whilst operational.
- Other costs include marketing, professional costs, office costs and contingency.

The financing of the transformation works were also considered as part of the business case, with funding expected to be available from the ODA and OPLC transformation budgets - £39m and £20m respectively. It was also confirmed that LBN would allocate £40m of funding to the project.

OPLC proposed to enter into a Joint Venture with LBN, with the split between the parties to be agreed. It was, however, clear from the details of the proposed agreement that OPLC would be the controlling party and that LBN's role would be secondary. The joint venture would be granted a long lease of the Stadium and be responsible for securing an operator for the Stadium and identifying additional content/users.

Justification for decisions made

The recommendation from the Business Case, which was approved by the OPLC and the then-Mayor, Boris Johnson, was to select the Enhanced Multi-Use Stadium as it was *"by some distance the most economic option"*. While it was noted that this option required higher investment, it was considered to be a viable long-term stadium due to operating surplus that would be achieved each year – in excess of £3m per year before lifecycle costs.

As well as allegedly representing a good monetary return on investment, this option also had the highest non-monetary score, “reflecting its contribution towards the OPLC Legacy objectives such as increased footfall, community access and a vibrant programme of year-round events.” It was recognised, however, that the NPC was subject to fluctuation based on the level of rent and naming rights achieved.

OPLC nonetheless recognised that “selecting the Enhanced Multi-Use Stadium does, however, carry the ‘opportunity cost’ of making a decision now rather than waiting until after 2017 to resolve the long term legacy solution”.

In addition to the economic factors, the justification for the decision was based on assessment against the objectives articulated for the legacy stadium by the Founder Members (the five objectives set in 2010 had been reduced to four by this time):

Table 21 – OPLC’s evaluation of options against legacy objectives

Objective	Assessment by OPLC
1. To deliver a viable, long-term, multi-use Stadium that is deliverable and provides value for money.	<p>The key to long-term viability is a solution which allows the Stadium to operate without ongoing revenue subsidy and which “washes its face” for the foreseeable future.</p> <p>The preferred option is the only one which allows the Stadium to operate at a financial surplus. The rent from a football tenant is higher than the likely income from any other anchor tenant. In addition, naming rights for a football venue will be substantially higher than under any other option and a high profile Stadium will attract other uses which will bring in more income than under alternative options.</p> <p>Against the non-monetary value criteria, the preferred option also scores better than the other options and will have a beneficial effect on the economics of the Olympic Park generally, generating significant extra visits (bringing in more revenue) and enhancing capital values.</p>
2. To re-open the Stadium for operational use from 2014 to ensure consistency with the re-opening of the Olympic Park.	<p>The preferred option foresees a fast tendering process leading to the signing of a contract with an anchor tenant in Spring 2012, which would meet this objective in full. The capital works are extensive, but do not involve wholesale remodelling of the Stadium’s structure, thus making the construction and procurement risks easier to mitigate.</p>
3. To re-open the Stadium with an athletics track that allows track and field events to be hosted at all levels including the World Athletics Championship.	<p>The preferred option provides a Stadium to the standard that was promised in the bid for the 2017 World Athletics Championship (WAC), including a full roof covering all spectators. It also minimises overlay costs for the WAC – the capital cost of making the Stadium ready for the Championship (which would have to be met from the WAC event budget) is estimated at £2.75m under this option.</p>
4. To allow flexible usage of the Stadium by OPLC, tenants and other bodies, accommodating a vibrant programme of commercial, sporting and cultural events, allowing year round community access.	<p>The recommended option will provide a fully featured Stadium with a full set of amenities.</p> <p>Football use will be restricted to a pre-agreed number of match days a year and thus will provide an unrivalled venue for other sporting, cultural (concerts, etc) and community events.</p> <p>Overall therefore our proposal meets this objective in full.</p>

Our Evaluation

This section sets out our evaluation of the decision to pursue an Enhanced Multi-Use Stadium.

Summary

MD921 outlined that one of the reasons for pursuing the Enhanced Multi-Use Stadium was due to the fact it offers the “*best value for money*”.⁶⁵ With the benefit of hindsight, value for money has not been achieved and, in our opinion, there was a foreseeable risk that it would not be achieved.

Until this stage in the process, there had been no reason to suspect that the figures used in historic business cases were not reliable. This was because the considerations up to this point were more straightforward as the transformation originally considered was simpler and there was originally no responsibility for OPLC to bear the costs of transformation or operating the stadium.

The November 2011 business case for a publicly owned and operated Stadium, showed an expected surplus in excess of £3m per year before lifecycle costs. This proved to be an extremely optimistic estimate, in our opinion, because the inputs were not correct.

The accuracy of business plans will be discussed in more detail in Phase 5, but it is clear from the actual costs involved in running the stadium, and from a comparison against the prior WHU-LBN bid latterly aborted, that the cost levels were set too low. Had the picture presented been an operating deficit rather than a surplus, a different option may have been considered.

Consequently, although in terms of securing a sporting legacy for the Stadium which included athletics, the enhanced multi-use option made the most sense, the justification for this on economic grounds was shaky at best.

⁶⁵ MD921, 7/12/2011

Phase 3c – Second competition resulting in selection of West Ham United as preferred bidder What happened?

This section explores the reasons which we believe led to the signing of the WHU concession agreement.

Detailed Timeline

Figure 19 – Timeline of phase leading up to signature of WHU concession agreement



Bidding process: December 2011 – July 2012

Mayoral Decision 921 on 8th December 2011 gave approval, based on the OPLC's analysis, to;

"commence a bespoke open competition, to identify and secure a tenant or tenants for its preferred option of an "Enhanced Multi-Use Stadium" on the basis that in its view this provides the best value for money and best practical and viable future for the Olympic Stadium after the Games."

The disposal route for the Stadium would no longer be for full ownership but a rental agreement, i.e. the Stadium would be retained as a public asset. This meant that the liability for transformation and future running costs for the Stadium would fall upon the public purse through LLDC.

This new competition would be a straightforward competition for one or more tenants, the specifications being a 60,000 seat capacity with a full, permanent roof, enhanced hospitality facilities, permanent toilets, catering and turnstiles.

A total of 16 expressions of interest were registered which materialised into four bids.⁶⁶ The details of the three bids received prior to the submission deadline of 12th July 2012, other than the one from WHU, are outlined below. They are stated in order of their weighted evaluation score:

- The University College of Football and Business

Proposed a 20 year lease for office, media and hospitality facilities rather than for the use of the pitch. This would be for a new private academic facility offering combined football and business degrees.

- LOFC

Bid included the relocation of the club from their current ground, Brisbane Road, to a transformed stadium. This specified that the seating should be no further than 20m from the field of play with all seats fully covered by a roof. LOFC assumed that initial capital expenditure would be met by LLDC.

- Intelligent Transport Solutions

Proposed a Formula One race taking place at the Olympic Park which would include a section of the track inside the Stadium.

⁶⁶ OPLC Board Minutes, 21/02/2012

Stadium Committee Established and WHU - First Ranked Bidder: September – December 2012

On 29 June 2012, the LLDC Board approved the establishment of the Stadium Committee (“the Committee”). The board minutes from this date outline that the Committee would be responsible for advising the board on:

- “a. The business cases for, and commercial and community merits of, different proposals for legacy use of the Stadium;*
- b. The commercial terms for managing the delivery of the Stadium transformation project;*
- c. Any outstanding issues relating to the Corporation’s participation in, the Special Purpose Vehicle with the London Borough of Newham; and*
- d. The procurement process for the stadium operating contractor (inasmuch as this is not considered by the SPV itself).”*

The Committee was said to have “assumed the role of the Investment Committee in reviewing investment proposals for the Stadium.”

The Stadium Committee recommended to the LLDC Board on 11 September 2012 that WHU should be confirmed as the first ranked bidder. This decision was unanimously approved by the LLDC Board on 5 December 2012. The key details of the bids are set out in the table below, as taken from the Allen & Overy Bid Evaluation Report⁶⁷:

Table 22 - Allen & Overy outline of bids

	WHU	UCFB	LOFC	ITS
<i>Summary</i>	<i>Proposing to relocate the football club's operations from its current home stadium at the Boleyn Ground on Green Street to the Stadium.</i>	<i>Proposing to establish a new private academic facility offering football and business related degrees. The Bidder does not require use of the pitch facilities.</i>	<i>Proposing to relocate the football club's operations from its current home stadium at the Matchroom Stadium on Brisbane Road to the Stadium. The Bidder also has Lease Space requirements of 600 sqm of Lease Space</i>	<i>Proposing to develop a temporary Formula One track around the southern part of the Olympic Park. The track would complete a loop in the Stadium on a temporary track overlay. Would operate one Formula One race annually over the course of three days.</i>
<i>Committed Usage Fee and Rental Fee</i>	<i>£1.5m in the Premier League and £1m in any division below the Premier League including rental fee</i>	<i>£529, 000 in year 1 to £704,167 in year 5</i>	<i>£0.5m in any division and £100 per square meter for the rental of Lease Space i.e. £60,000.</i>	<i>Zero</i>
<i>Uncommitted usage fee</i>	<i>Zero</i>	<i>Zero</i>	<i>£21,750 for each additional match 20% of net profits capped at £4m</i>	<i>£888,350</i>

⁶⁷ Stadium Competition: Bid Evaluation Report, Allen & Overy, 30 November 2012

	WHU	UCFB	LOFC	ITS
<i>Term</i>	99 years	20 years with break clause after 5 and 10 years	99 years	12 or 17 years
<i>Mispricing risk</i>	The Usage Fee appears lower than benchmarks, although there are few benchmarks that are directly comparable.	The proposed Usage Fee and rental fee is consistent with, or slightly higher, than, office rents in the area	The Usage Fee and rent is consistent with benchmarks.	Although there are few exact comparators, a usage fee of 5% of ticket revenue is low compared with other promoted events.
<i>NPV analysis</i>	Due to the significant level of incremental capital investment required Improvements or Alterations in relation to the seating and roofing, the NPV in both the Premier League and Championship scenarios is <u>significantly negative</u> .	The NPV analysis of the incremental income and costs for the period prior to the break clause (year 5) is positive.	The NPV in both the "Worst Case" (League 1) and "Most Likely" (promotion to the Championship) scenarios are significantly negative.	The net present value is just negative.
<i>Financial Standing</i>	Statutory accounts demonstrate that it has consistently been in a net liability position.	Incorporated as a company in 2010, it has only traded for one year and has not issued audited accounts.	Reported a profit for the last financial year, but suffered losses for the previous two financial years.	New company and no annual accounts have been prepared.
<i>Other</i>	Bid has delivered a detailed community plan. Bid proposes to improve the level sports participation in the area	Bid has not delivered a detailed community plan. Bid does not propose to directly improve the level sports participation in the area	Very detailed community plan and has an extensive existing community programme, which is the Mayor of Waltham Forest's nominated charity for 2012. Bid proposes to improve the level sports participation in the area.	Bid has not delivered a detailed community plan. Bid does not propose to improve the level sports participation in the area

The bids were evaluated as follows⁶⁸:

Table 23 – evaluation of bids against set criteria

Criteria	WHU	UCFB	LOFC	ITS
<i>Financial (50%)</i>	51.9	58.9	46.6	43.9
<i>Deliverability (15%)</i>	70	50	52	15
<i>Usage (25%)</i>	84	50	65	40
<i>Legal Mark Up (10%)</i>	68	96	100	96
<i>Weighted evaluation score</i>	64.25	59.05	57.35	43.8
<i>Ranking</i>	1	2	3	4

Formal Negotiation: December 2012 – February 2013

According to the LLDC Board minutes from 5 December 2012, the Board unanimously recommended that WHU should be approved as first ranked bidder and that LLDC “enter into negotiations with WHU to agree satisfactory commercial terms”.

LLDC negotiations improved certain terms of the bid received from WHU, according to the LLDC Board Meeting of 19 February 2013.⁶⁹

Table 24 – LLDC’s comparison of bid position to final negotiated position

Element	Terms per bid document (July 2012)	Terms per Concession Agreement (March 2013)
<i>Usage fee</i>	<i>£1.5m pa in Premier League £1m in a lower league</i>	<i>£2.5m pa in Premier League £1.25m in a lower league</i>
<i>Capital contribution</i>	<i>No capital contribution offered</i>	<i>£15m contribution on sale of Boleyn Ground, guaranteed by majority shareholders</i>
<i>Additional payments</i>	<i>No additional payments offered</i>	<i>£0.1m per match over the set number of games and operating costs for u-21/academy matches</i>
<i>Revenue sharing</i>	<i>No revenue sharing mechanism in place</i>	<i>Performance related payments worth up to £0.775m extra pa for Premier League performances plus extra for European Qualification and Cup success</i>
<i>Stadium Naming Rights</i>	<i>£0.25m one-off payment (but part of Usage Fee) and 50% split of net revenue based on WHU disposing of the rights</i>	<i>First £4m kept by LLDC, anything above this split 50:50 with WHU with their share capped at their annual Usage Fee unless clearly attributable to their on-field performance (e.g. bonus payments for European football) Collaborative working to ensure that the value of the package is maximised</i>

⁶⁸ LLDC Board Paper, Appendix A, 5/12/2012

⁶⁹ LLDC Board, Report 12 - Stadium Concession Competition, 19/02/2013

Element	Terms per bid document (July 2012)	Terms per Concession Agreement (March 2013)
<i>Catering revenue</i>	<i>WHU receives 30% of catering revenues, subject to first £0.5m to LLDC; or WHU procures catering and shares revenue 65:35 with LLDC subject to first £0.3m to WHU</i>	<i>LLDC retains first £0.5m of General Admission catering revenue with remainder split 70:30 with WHU in LLDC's favour WHU retain all VIP/hospitality revenue for their events, although LLDC will take a slice by virtue of the contract it agrees with a catering contractor</i>
<i>Number of Matches</i>	<i>All home 1st team fixtures, guaranteed content of 25 games</i>	<i>25 home fixtures per season in the Premier League 30 home fixtures per season in a lower league</i>
<i>Terms</i>	<i>75% reduction in Usage Fee if teamed with another field of play user Seating within 16.9m of field of play on all sides of the pitch, fully roofed All ticketing operated by WHU Sub-lease for office/retail space to include 1st team changing room</i>	<i>50% reduction in Usage Fee if WHU must share with a winter field of play user who wishes to use the Stadium as its home ground Seating arrangements agreed with WHU WHU control only ticketing for their events 1st team changing room signage permitted for WHU during football season</i>

Full Business Case – March 2013

The key commercial terms for the concession agreement were approved by the LLDC Board on 19 February 2013 and by the E20 Board (which would inherit the outcome of LLDC's negotiations) on 19 March 2013.

A Full Business Case (FBC) was put forward in March 2013, advocating a Enhanced Multi-use Stadium with Retractable seating option (but a different solution to that which was finally built), i.e. conversion of the Stadium to make it suitable for football with a flexible seating solution which would make the Stadium suitable for athletics, concerts, major one-off sporting events, community and education uses.⁷⁰ This was the first time that the need for movable seating was considered and included in financial modelling.

⁷⁰ LLDC Stadium Full Business Case, March 2013

The following options were considered:

Table 25 – Options considered by LLDC in March 2013 business case

Option	Summary description
<i>Option A: Existing competition with retractable seating ("Retractable")</i>	<ul style="list-style-type: none"> - An enhanced multi-use option - Retractable seating to ensure seats are near the pitch - Capacity will be around 60,000 (54,000 in pitch sport mode) - New roof which covers all seats - All the hospitality area is assumed to be upgraded - One Premier League football club concessionaire, athletics use, concerts and other sporting use
<i>Option B: Multi-use</i>	<ul style="list-style-type: none"> - A "do minimum" option which retains the Stadium as per Games time mode - 80,000 capacity - No extension to the roof, no turnstiles, no internal concessionaire accommodation, but retention of existing LOCOG toilet/retail/catering blocks - All the hospitality area is assumed to be upgraded - Athletics, concerts and one-off sports events use

In the Business Case, the LLDC asked for approval of assumed additional funding of £25m estimated to be required to fund the transformation works for a multi-use Stadium with retractable seating. Extracts of LLDC's evaluation are detailed below:

Table 26 – economic analysis considered by LLDC in March 2013 business case

	Retractable (A)	Multi-Use (B)
<i>Capital costs (Including optimism bias)</i>	£192.05m	£41.666m
<i>Lifecycle costs</i>	£41.942m	£45.387m
<i>Total operating income</i>	£11.682m	£3.882m
<i>Total operating costs</i>	(£8.454m)	(£4.794m)
<i>Operating surplus / (deficit) before lifecycle</i>	£3.228m	(£0.912m)
<i>Operating surplus / (deficit) after lifecycle</i>	£1.550m	(£2.727m)
<i>NPC</i>	£86.915m	£62.672m
<i>Non-Monetary Weighted Scoring</i>	785	520

The Multi-Use option (B) evaluated was broadly similar to the Multi-Use option considered earlier, in November 2011, but previously dismissed in favour of the Enhanced Multi-Use option. The capital costs, lifecycle costs and operating deficit estimated were similar to those identified in November 2011. The Retractable option is not comparable to previous business cases as the new seating and extended roof represented wholesale changes.

Destined for Football

One reason the concession agreement with WHU was signed in March 2013 was the fact that the financial estimates included in the OPLC's November 2011 Business Case were made on proviso there would be a future football tenant. WHU subsequently proved to be the best tenant to support the anticipated income streams and provide the best chance of achieving financial sustainability for the publicly owned and operated Stadium. Because THFC had withdrawn from the process by this time, this implicitly meant that the Stadium was destined for WHU.

This view is supported by Dennis Hone, LLDC Chief Executive, who stated that WHU's bid was the *"only credible bid on the table,"* given the fact that *"if you have an Olympic stadium with a capacity in excess of 60,000 seats, you need a concessionaire that is going to be able to fill it and use it and bring vitality to that area of London."*⁷¹

Similarly, one interviewee confirmed to us that, when the original legacy plans were originally changed by the OPLC, it was difficult to imagine another scenario which would guarantee high use of the Stadium *"other than a Premier League football club."* Indeed, a briefing note to the Mayor on the Stadium Competition process from 18 June 2012 states that:

"In business case terms the football solution is the only one that allows the Stadium to generate an operational surplus".

OPLC's estimate for the Enhanced Multi-Use Stadium option in the November 2011 Business Case include £2m worth of operating revenues from a *"football tenant."* It notes that:

"the rent from a football tenant is higher than the likely income from any other anchor tenant. In addition, naming rights for a football venue will be substantially higher than under any other option and a high profile Stadium will attract other uses which will bring in more income than under alternative options."

The only other football club that expressed an interest was LOFC; however, at the time the club were in League One and could only offer a fraction of the usage fee on offer from WHU. Further, the Business Case seems to suggest that at the minimum it will be *"one of the larger Championship football clubs"* which use the stadium.⁷² Specifically, it refers to the intention to attract a *"major user such as a Premier League football club."*⁷³

Lack of Competition

Despite the 16 expressions of interest and 4 bids that were registered, the second competition process in substance lacked competition, in part owing to the fact that realistic anticipated usage and associated financial projections were predicated on the future football tenant, as outlined above.

This is referenced in the LLDC Stadium Committee's decision to recommend WHU as the preferred bidder, which states that:

"in general terms the competition process has demonstrated that there is limited market interest in the Stadium post Games."

This lack of competition is also evidenced by Baroness Karren Brady, the Vice-Chairman of WHU, who referred to the fact no one else able to offer a substantial crowd and continuing usage was interested in the Stadium:

"Sometimes I feel like we took over a house that nobody wanted, did it up and made a fortune....Simply, without West Ham, this place would have been demolished and the Park would be done,"

⁷¹ House of Lords Select Committee on Olympic and Paralympic Legacy, Keeping the flame alive: the Olympic and Paralympic Legacy, 18/11/2013.

⁷² Full extract - *"Under Option 3, although the facilities are assumed to be the minimum level required to attract a Premier League football club, for prudence it is assumed that one of the larger Championship football clubs would become the anchor tenant of the stadium with an annual rent payable of £2m per annum."*

⁷³ Full extract - *"If a major user such as a Premier League football club can be attracted to become a permanent tenant, the Stadium has the potential to add yet more value to East London."*

The competition was weaker in the second process than the first in part because THFC did not enter the bidding process, despite being shortlisted as the 2nd ranked bidder in the first round. This potential lack of competition was in fact known much earlier and was specifically identified in the draft report commissioned to look into fall back options prior to the cancellation of the first bidding process. In advice provided by PwC, it was recognised that this lack of competition would have a negative impact on the usage fee achievable.

We set out below the reasons why other bids were clearly unlikely to compete against the WHU offer:

- The University College of Football and Business

Proposed a 20 year lease. However, this was a lease agreement for office, media and hospitality facilities rather than for the use of the pitch. This would be for a new private academic facility offering combined football and business degrees. Clearly this would not be an appropriate use to guarantee regular use of the Stadium and thus in terms of the wider generate programme, it offered a limited legacy.

- LOFC

Many financial aspects of LOFC's offer were significantly weaker than WHU. Notably, LOFC assumed that initial capital expenditure would be met by LLDC. Similarly, LOFC were playing in League One at the time, whereas WHU offered Premier League football. Concerns were raised regarding the fact the proposal would not provide sufficient income to cover operating costs for staging events.⁷⁴

- Intelligent Transport Solutions

Proposed a Formula One race taking place at the Olympic Park which would include a section of the track inside the Stadium. Its bid was to operate one Formula One race annually over the course of three days. As such, this would not bring regular visitors to the park year round. As in the UCFB offer, this would not provide year round access to the park which LLDC considered to be a key aspect of fulfilling the legacy objectives.

That this situation was almost immediately apparent to LLDC is evident from an informal meeting note from the first meeting of the LLDC Stadium Committee on 23 August 2012, the Chairman (Daniel Moylan) is said to have suggested that the;

"discussion should focus on the West Ham United (WHU) bid given officer advice that it offered a higher Usage Fee and greater opportunities around commercial revenues than the offers of other Bidders."

Whilst it was made clear this was *"in no way making a decision on the outcome of the Competition"*, this does illustrate the likelihood that the other bids had little chance of competing successfully against WHU's.

Justification for decisions made

Although the second competition was launched under OPLC, the decision was evaluated and made by LLDC. LLDC had two decisions to make, which interacted:

1. Who did they want as their tenant following the bidding process?
2. Did they want to go with the retractable seating option or the multi-use option with a permanent athletics track?

⁷⁴ LLDC Board Minutes, Stadium Concession Competition, 11/09/2012

Of the submitted bids, only the WHU offer would result in a stadium occupied to capacity and generating net income. However, it was forecast to incur the highest capital cost. LLDC nevertheless considered the WHU bid to be the only viable option. Despite the high capital costs, the estimates presented in the business case indicated that the retractable stadium option with WHU as tenant would deliver an annual operating surplus in excess of £3m before lifecycle costs, offsetting to some extent the capital costs incurred.

The retractable seating option, not previously considered or costed, with WHU as tenant, was therefore accepted as offering the best value for money.

Our Evaluation

This section sets out our evaluation of the decision to sign the concession agreement with WHU as finalised in March 2013.

Our evaluation is split into two parts:

1. why the deal was agreed
2. why we consider the deal does not represent good value for public money

1. Why was the deal agreed?

Summary

The circumstances leading up to the WHU deal largely arise from past decisions, notably, the aborting of the first competition which led to the loss of the opportunity to take advantage of the potential WHU-LBN deal. This led to a second bidding process which lacked competition, in part due to THFC's withdrawal from the process – OPLC's decision not to go forward with the THFC offer in the first competition and the subsequent GLA funding to Haringey, which would benefit THFC's attempts to build a stadium on or near their existing site, meant there was little or no prospect of further interest from THFC. This left the eventual tenants, WHU, as the only remaining Premier League football club and therefore in a dominant negotiating position. The subsequent decision to sign the deal was based on flawed analysis of costs and revenues and estimates which lacked rigour in their formulation, and turned out to be inaccurate, as will be shown in Phases 4 and 5.

Business Case Inaccurate / Bid Evaluation Weak

Overall, we consider that the business case included figures which were inaccurate and foreseeably over-optimistic. This may have led LLDC Board members to believe that the terms of the concession agreement represented a good deal, but based on information and analysis that was limited and of poor quality.

The view of the LLDC at the time can be surmised from a press release of 19 July 2015, announcing that:

*"Once the transformation of the stadium is complete it will not require continuous subsidy from the taxpayer and will see a return to the taxpayer through future profits due to the agreements in place with the operator Vinci and concessionaires West Ham United and UK Athletics."*⁷⁵

Had the figures been prepared based on more appropriate assumptions, applying greater commercial prudence and included appropriate risk premiums in NPC calculations, we consider it unlikely that the business cases from both November 2011 and March 2013 would have projected an operating surplus (after lifecycle costs). In our opinion, appropriate assumptions and risk premiums would have resulted in higher net present costs.

⁷⁵ <http://www.queenelizabetholympicpark.co.uk/media/press-releases/2015/06/stadium-transformation-cost-announced-ahead-of-hosting-raft-of-world-class-sporting-events>

The projections for the operating surplus included in the March 2013 Business Case was based on the following assumptions:

Table 27 – operating income and costs considered by LLDC in March 2013 business case

ANNUAL OPERATION	£ 000
Income	
<i>Usage fee - PL club</i>	2,179
<i>Concerts</i>	990
<i>Conference and banqueting</i>	675
<i>Catering from football</i>	908
<i>Catering from athletics</i>	42
<i>Catering from other events</i>	148
<i>One off events</i>	235
<i>Pitch hire</i>	300
<i>Stadium tours</i>	1,470
<i>Naming rights</i>	4,000
<i>Sponsorship</i>	700
<i>UKA funding for stadium track</i>	35
Total income	11,682
Operating costs	
<i>LLP core staff</i>	(175)
<i>Ground and security staff</i>	(600)
<i>Stadium maintenance and safety</i>	(425)
<i>Pitch maintenance</i>	(105)
<i>Event day costs</i>	(1,991)
<i>Stadium tours costs</i>	(956)
<i>Pitch hire costs</i>	(100)
<i>Utilities</i>	(620)
<i>Cleaning</i>	(355)
<i>Insurance</i>	(500)
<i>Marketing</i>	(100)
<i>Office costs</i>	(20)
<i>Board costs</i>	0
<i>Rates</i>	(1,028)
<i>Community track maintenance</i>	(200)
<i>LLDC parkwide service charge</i>	(300)
<i>Professional fees</i>	(75)
<i>Planning monitoring costs</i>	(50)
<i>Seating solution</i>	(50)
<i>Contingency</i>	(100)
Total operating costs	(7,750)
<i>Management fee</i>	(704)
Total costs	(8,454)
Operating surplus/(deficit)	3,228

Many of these projections proved to be materially inaccurate. Amongst the misestimates, one of the most significant is that a “*notional £50k is assumed as running costs for the retractable seating*”⁷⁶. To achieve a retractable seating solution, there were two options:

- a) An automated system – This would incur high capital investment but would reduce the ongoing cost of the seat moves
- b) A manual system – The capital investment would be significantly lower, but the time and cost of each seat move would be significantly higher.

Whilst in the business plan, the capital costs of £16m included for the installation of retractable seating, even for an automated system, £50k per annum revenue cost appears low. This issue will be explored in more detail in Phase 5.

The capital costs of transformation were similarly grossly underestimated, in particular, the cost of the new roof which was estimated to increase the capital costs by roughly £20m.

The final cost of the roof is estimated at closer to £74m, with additional payments of £36m on top of the March 2013 business case estimate of £38m. In fact, the combination of the roof and the seating solution proved to be one of the single biggest issues. LLDC had said:

*“On the assumption that the cost of providing demountable seats can be met from the operational revenue generated by the Stadium the additional capital cost of the roof solution is likely to be of the order of £20 million.”*⁷⁷

The business case which led to the approval of the retractable seating option (and the concession agreement with WHU) was approved on the basis of representing the best value for money. This had an NPC of £87m, reduced to £66m taking the benefits of regenerating the Boleyn Ground into account. This compared to an NPC of £83m for the multi-use option including the additional roof work for the World Athletics Championships (which required less work on the roof and seats).

However, the basis of the NPC calculation, and certain of the figures used to derive it proved not to be correct, as explained further below and in Phases 4 and 5.

Table 28 – our analysis of impact on net present cost of varying assumptions

Model	NPC per March 2013 Business Case (£ 000)	Our adjustments to NPC per business case model (£ 000)	Adjusted NPC for single factor (£ 000)	Adjusted cumulative NPC (£ 000)
Retractable option excl. Boleyn Ground (per March 2013 business case)	86,915	-	-	86,915
Removal of wider economic benefits	-	24,353	111,268	111,268
Capital costs of £250m	-	53,833	140,748	165,101
Adjusted operating result:				
a) Breakeven operating position	-	52,330	139,245	217,431
b) Operating loss of £1m	-	67,716	154,631	232,817

⁷⁶ March 2013 Business Case

⁷⁷ LLDC Stadium Committee (informal briefing), 23/08/2012

If the business case is stated on an equivalent basis with the wider economic benefits removed, the operating position set at breakeven and the capital costs increased to £250m, the NPC would have been £217.4m not £86.9m, a difference of £130.5m.

The wider economic benefits should not be included as those benefits do not represent a cash benefit to LLDC, and the method used was a discounted cash flow. This is not to say that the wider economic benefits should not be included in the decision making process, however these should have been factored in separately from the NPC. This is important as they are the most speculative aspect of the calculation and their inclusion distorts the NPCs being compared.

The inaccuracy of the capital costs and operating surplus assumptions is further examined in Phase 4 and Phase 5, but their impact was to give a much lower NPC than should reasonably have been expected. If appropriate costs, both capital and operating, had been understood at the time, the decision to proceed with WHU and the retractable seating option could have been taken on the basis of a materially different balance between the competing factors of value for money and the wider economic benefits, which support the economic, physical and social regeneration of the surrounding area, such as employment creation, tourism benefits and public health benefits.

That had been the LLDC's expectation because in August 2012, prior to negotiation with WHU, the Stadium Committee was aware of the issue:

"The business plan will therefore in all likelihood show that a Stadium transformed to a 60,000 seat multi-use venue, with roof coverage over the upper and lower seating will provide significant non-monetary benefits, a strong and lasting legacy and the range of users which will allow naming rights to be exploited and wider socio-economic benefits to be brought to bear. However, it does however come with significant capital expenditure obligations which lead to a negative business plan; it is the belief of the Stadium Team that while the business plan does not show a positive outcome, the wider legacy benefits and opportunities associated with spending money now outweigh the negatives."

Furthermore, the March 2013 Business Case and Board papers leading up to the signing of the WHU concession agreement did not, in our view, contain an appropriate analysis of risk to LLDC. Inherently, the risk to LLDC was increased by two further factors in comparison to the previous competition. Firstly the scale of the transformation works had increased considerably in both scale and complexity, which not only increased the cost, but also the scale of the risk of overruns. Secondly, under a public ownership model, the risk of the transformation sat with LLDC, which would be responsible for all costs incurred, over and above any agreed fixed contributions from other parties, including WHU.

Disconcertingly, the only disadvantages cited in the March 2013 Business Case for pursuing a retractable seating option were that:

- "- Compared with the counterfactual, this option will incur significant additional capital costs*
- The amount of work required means that it would not re-open until 2016*
- The current planning framework does not currently allow for this option and associated event profile and would have to be changed, although all indications are that this will be granted."*

The exposure of the risk of costs significantly increasing, and the likelihood of that, was not a matter explored by LLDC in the March 2013 Business Case.

This omission is compounded by the fact that, in relation to naming rights, the possibility of being unable to attract a sufficient naming rights deal was only deemed medium risk. However, this was inappropriate because in that Business Case it was the key revenue stream included in the business case. In its absence, the projected operating surplus becomes a deficit of £772k per year before lifecycle costs and £2.45m after lifecycle costs.

The evaluation in the Business Case stated:

“WHUFC has confirmed its willingness to be proactively involved in the selling of the naming rights and to include a range of their inventory, such as access to matches, access to players, an opportunity to take premium seats/boxes and advertising space. WHUFC believe that the base case of £4m is low and are incentivised to achieve a higher amount”.

As at the date of this report, we note that no naming rights deal had been achieved. We also consider it inappropriate for LLDC to have cited or ostensibly relied on WHU’s view in this matter.

Taking these factors into account, this leaves a situation in which the attainment of an operating surplus was uncertain and was high risk, meanwhile as the Stadium Committee noted on 23 August 2012 that a high level of surplus was required to justify the overall increase in capital expenditure, even on the lower capital cost forecast which proved to be inaccurate:

“The costs associated with a scheme that meets the needs of the two football clubs are in the order of c. £160m. In order to justify an increase in capital expenditure from the £115m approved in the Outline Business Case to c. £160m, it is logical to expect a greater level of surplus will be required. It should be noted that the £45m difference between these two figures is not within the LLDC budget and therefore the funding will need to be identified. Work is continuing on some of the major assumptions, including the lifecycle assumptions and the revised optimism bias to be applied to the capital cost estimates, but it is clear that a higher net surplus figure is required (i.e. the difference between the revenue received and operating costs must be higher). Further work is being undertaken in relation to the increased capital expenditure...Accordingly, a figure of £4m to £5m per annum (after lifecycle costs) would be an appropriate target”

This level of surplus for supporting the understated costs then forecast was nevertheless not achieved, even in projections.

However, the comments may explain in part the over-optimism of the estimates, i.e. it was evident that the Business Case would need to show positive outcomes for capital expenditure to gain approval and therefore preparation bias could have crept in.

We note in addition that the net present cost calculations used in all business cases (July 2010, November 2011 and March 2013) apply a discount rate of 3.5%, in line with the guidance of the “Green Book”. However, the Business Cases do not apply a risk premium to adjust for the risks related to the different projects as they should have. The arrangement with a complex stadium with retractable seating and a complex structure including a concession and operator arrangement, should have attracted a significantly higher risk premium than a more straightforward structure, as proposed in the first competition or with the alternative multi-use case. This would have had the impact of increasing the cost of the higher risk scenarios to reflect their risk. In LLDC’s assessment the only way risk was applied at all was in the form of an allowance for ‘optimism bias’, but this was only applied to the capital transformation costs, not the ongoing costs and proved to be inadequate.

Phase 5 provides further analysis of the weaknesses in business planning activities.

Lack of Competition

Intrinsically, it is unlikely that a user other than a Premier League football club would be viable, as previously noted. We consider that there were three reasons for the lack of competition in this process:

1. The lack of competition became pronounced with the withdrawal of THFC, the second ranked bidder in the first process. Although THFC raised a judicial complaint regarding the decision to make WHU the preferred bidder in the first competition process, it subsequently declined to enter the second competition. It appears there were 3 principal factors, behind THFC not entering the new competition:
 - THFC obtained planning permission to develop their existing ground at White Hart Lane on 30 September 2010 (as outlined in Phase 2).
 - On 31st January 2012, the Mayor announced a funding package of £41.3m from the Mayor's Regeneration Fund to the Tottenham area. A press release stated that *"it will help maximise the huge opportunities that will arise from Tottenham Hotspur's plans to invest a colossal £400 million in its new stadium development."*⁷⁸
 - The commitment to host the WAC in 2017, awarded to London on 11 November 2011 meant that there was a requirement to keep the athletics track in the Stadium.⁷⁹ THFC's first bid did not involve the retention of the running track and Daniel Levy, THFC Chairman had made it clear that keeping a running track was not in the club's interests.⁸⁰
2. Matters were likely to have been accentuated by public announcements made by then-Mayor, Boris Johnson, following the aborting of the first competition in October 2011 where he stated that *"we will effectively rent it to a football club, almost certainly West Ham."*⁸¹ The reference to a football club and to WHU specifically would inevitably influence the view of other potential bidders in the second competition.
3. Finally, the decision to abort the first competition was inevitably discouraging as certain bidders had already been turned away in the first process and may have been reluctant to re-bid and incur the associated expenses a second time.

The consequence of a relative lack of competition was that the Stadium appeared destined for WHU (whether or not in fact it was), given the lack of viable alternative bidders. This transpired to give the club a formidable negotiating position. Consequently, one interviewee described that the terms achieved with WHU were recognised as being the *"best they could get"* in light of the circumstances and LLDC believed its position to be difficult.

⁷⁸ <https://www.london.gov.uk/press-releases-4687>

⁷⁹ Preparations for the London 2012 Olympic and Paralympic games: Progress report Decembers 2011, National Audit Office, 6/12/2011.

⁸⁰ Paul Kelso, Daily Telegraph, 13/12/2011, <http://www.telegraph.co.uk/sport/football/teams/tottenham-hotspur/8954533/Tottenham-chairman-Daniel-Levy-insists-running-track-would-have-stopped-clubs-Olympic-Stadium-bid.html>

⁸¹ <http://www.dailymail.co.uk/sport/football/article-2048052/Olympic-Stadium-West-Ham-says-Boris-Johnson.html> & <http://www.dailymail.co.uk/sport/football/article-2048052/Olympic-Stadium-West-Ham-says-Boris-Johnson.html>

Negotiating Team / Board Composition

Whilst the negotiations achieved improvements to the terms on offer from WHU, the negotiations did not change the substantial risks associated with the Stadium which were retained by the public. This was largely unavoidable at this stage, as the decision to proceed with a concession arrangement had already been made, and there was a lack of genuine alternatives to the appointment of WHU, other than cancelling the competition yet again. Examples of how LLDC/E20 might have transferred risk to WHU or offset its retained risks include:

- Increasing the usage fee to offset E20's operating cost risk;
- Agreeing with WHU's option to take on the naming rights in exchange for greater fees;
- Changing the arrangement for retractable seating which was not part of the stadium plan when the tender competition was launched.

Retractable seating was effectively requested by WHU as they required all seating to be within 16.9m of the pitch. However, the movement forward of seats also meant the roof had to be expanded forward to meet UEFA requirements at very significant cost.

These issues were somewhat apparent to LLDC. A Stadium Committee meeting on 23 August 2012 noted that:

"WHU's Usage Fee, as it is currently proposed, does not cover the cost of operating the Stadium for their events. The meeting was in agreement that, at a minimum, it would be desirable if all Concessionaires covered the costs to be incurred in operating the Stadium for their events."

Arguably therefore LLDC did not satisfy its own previously stated requirements in negotiation. Meanwhile, from our discussions with LLDC Board members, the two areas that were considered essential in the negotiations (both of which were achieved) were:

1. Some capital contribution from WHU (£15m was obtained); and
2. Protection against the owners of WHU selling the club in the immediate aftermath of the move to the new stadium (this was included).

However, in fact these ought not to have been the only focus of LLDC's agenda, we therefore question whether the priority for LLDC was avoiding public backlash based on perception rather than guaranteeing the best possible financial terms.

Whilst we appreciate that, as explored previously, the business cases portrayed the concession agreement as a good deal, a review of the fine print highlights terms that proved costly to LLDC. The concession agreement:

- Resulted in significant obstacles to potential ground-sharing. This is explored later on in this section (Limited Multi-use);
- Included the need to maintain the Stadium in line with "best modern stadia", which as stadia are constantly developing places an increasing cost burden on LLDC; and
- Did not include a price escalator clause to pass on increased running costs to WHU. A number of running costs for the Stadium have increased, notably stewarding and policing costs in light of recent terrorist attacks, without any additional cost to WHU.

This failure to successfully address important aspects of the concession agreement shares features in common with the overall weaknesses in the bid evaluation. This was further emphasised by the negotiations; we are informed that no-one from LLDC's side had experience of operating football stadiums, putting them, in our opinion, in a weakened position against WHU which did have such experience.

The press coverage of the result of the negotiation suggests that LLDC was outmanoeuvred and out-negotiated by WHU, led by Baroness Karren Brady, and we note some of the coverage has suggested that WHU took advantage of the situation.

However, it is clear from following the chain of events that LLDC, as the public sector representative (and OPLC and the ODA before it) were responsible for this situation, having failed to take advantage of opportunities open to them when they were in a more powerful negotiating position, e.g. the first round when there was greater competition, and LLDC found itself in a weakened position largely as a result of decisions that had been taken by OPLC, particularly those leading to a situation where it had decided to bear the risk of transformation, ownership and operation, despite knowledge that WHU would be in a strong negotiating position. It appears that LLDC were concerned that the Stadium could otherwise become a 'white elephant' (if no tenant could be found) and this was a situation it was determined to avoid.

2. Why the deal is not good value for money

Summary

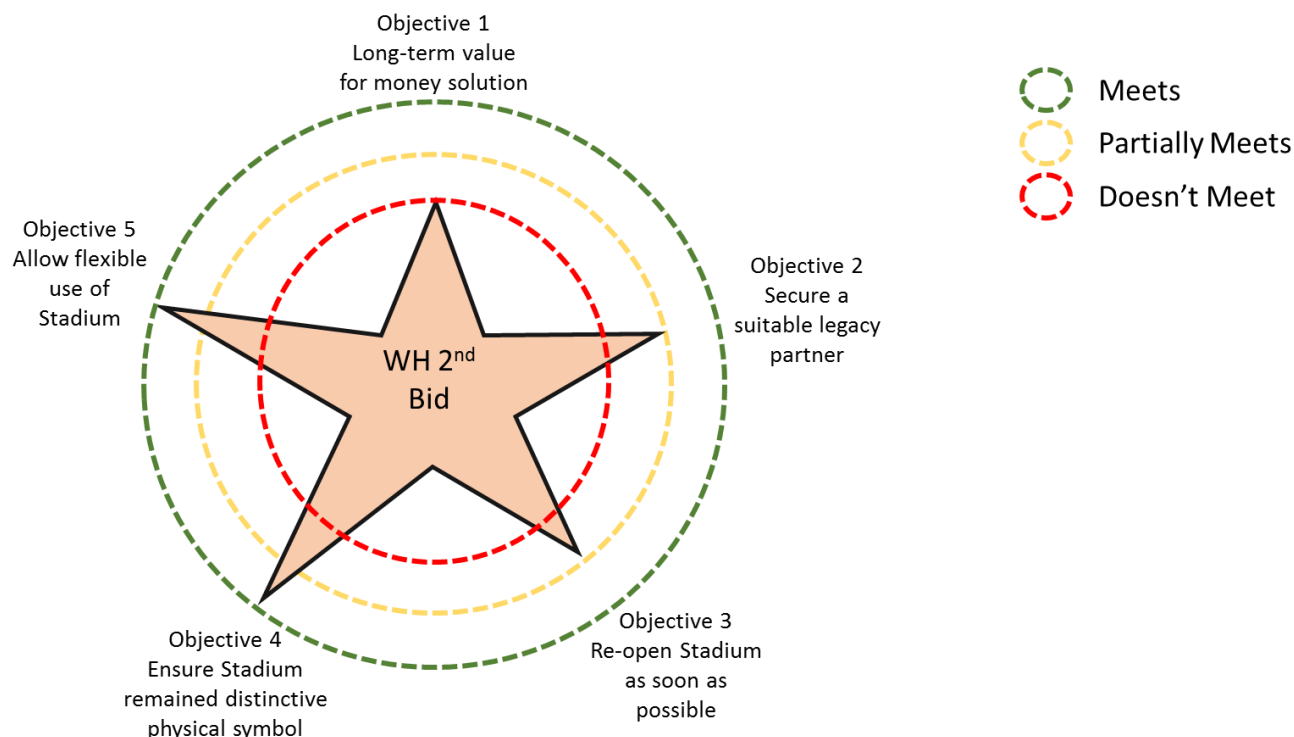
Had the bid analysis outlined the true and likely consequences of the proposed deal and the worst expectations projected, it may not have been signed, particularly in light of the fact the WHU usage fee is not sufficient to cover the costs associated with the contract. We consider that financially, and taken alone, the deal did not represent value for money. In fact, the terms of the deal proved to be much more onerous than the original WHU-LBN bid, made for the first competition process, as the form of the second competition ensured that risk was retained by the public sector.

Following much public pressure, the key commercial terms of the concession agreement were eventually made public after the Information Tribunal turned down an appeal made by the LLDC.⁸⁵

⁸⁵ <https://www.standard.co.uk/sport/football/west-hams-olympic-stadium-deal-set-to-be-made-public-after-tribunal-ruling-a3223171.html>

We have assessed the concession agreement against the original legacy objectives established in 2010, to allow comparison with the first WHU-LBN bid (see Figure 13):

Figure 20 – Our analysis of whether the proposed WHU bid would have satisfied the legacy objectives



Value for Money

LLDC was required to enter into contracts that represent value for money. Had the estimates in the business cases been more appropriate, LLDC should have concluded that taken alone, that this deal did not represent value for money. It is our opinion that this deal should not therefore have been approved on the basis of value for money, and should not have been signed, unless it could be justified on an alternative basis. This is not a hypothetical option as LLDC had the ability to not nominate a preferred bidder if the terms were not satisfactory. This is outlined under Section 6.1(g) of the ITT, where this can occur under the following circumstances:

“9.2. Scenario 1 - No concession agreements entered into with Bidders

9.2.1. In accordance with Section 6.1(g) of the ITT, LLDC reserves the right not to nominate any Preferred Bidder. In accordance with Section 6.1(h)(ii) of the ITT, LLDC reserves the right to terminate the Competition. Accordingly, LLDC has the flexibility under the ITT to decline to award a concession agreement to any bidder, but it must ensure that any decision not to proceed with any Bidders is based on defensible rationale and criteria.

9.2.2. If LLDC were to be able to demonstrate that there is no Bid submission which represents sufficient value for money to permit LLDC to create a business case to grant a concession, this should provide a justifiable argument to reject the Bid proposals. However, LLDC would have to be satisfied that it has sufficient evidence to demonstrate this, and that its judgment is supported by expert accounting advice.

9.2.3. LLDC has mitigated the risk of a challenge to any decision not to award a concession by meeting with all Bidders and requesting improvements to the Usage Fees, rental fees, capital contributions (if applicable) and potential up-side sharing proposals in order to increase the financial viability of each Bid submissions. At the meetings, LLDC explained the risk that LLDC may not be able to make a business case for any concessions and that, as a public body, LLDC must enter into contracts that represent value for money.”⁸⁶

With the benefit of hindsight, and taking into account information available at the time but not correctly used, based on the need for value for money, no bids should have been moved to preferred bidder status. The decision to proceed rested on inaccurate assumptions in the business case and discount rates that did not take appropriate account of risk. It is not clear whether the same decision would have been made by LLDC had it been known that the construction costs were underestimated and the annual result would be a deficit, not a surplus.

Based on how inaccurate the estimated costs proved to be, for both capital and operating cash flows, it seems likely that a more accurate estimate could have been achieved at the time, or given the risk involved, that a greater prudence or contingency could have been applied.

Meanwhile, the bid from LOFC was dismissed. The LLDC evaluation states that:

“LOFC has not submitted a financial proposal that would provide the Grantor (that is, the Stadium SPV) with sufficient income to cover the operating costs for each of its events calculated on an annual basis.”⁸⁷

There is no mention of the fact that the WHU offer is insufficient to cover the operating costs for staging events. By implication, we assume that the Stadium Committee believed the usage fee on offer from WHU would be, or become in total, adequate to cover the costs of staging events. If so, this assumption proved to be incorrect and we have not seen analysis which, correctly performed, supports cost covering. This included incorrect assumptions as to the cost of transitioning the seats from football to athletics mode and *vice versa*. These items will be explored in more detail later on in the report (Phase 5).

It seems, however, to have been generally appreciated that no scenario for the Stadium was particularly favourable. In a Stadium Committee meeting on 23 August 2012, Chair Daniel Moylan outlined the fact that following the receipt of bids *“no option for the post-Games Stadium suggested there would be a significant revenue stream for LLDC from the operation of the Stadium”*. Had the likelihood that the proposed stadium design and concession agreement would lead to such significant costs been fully appreciated by the LLDC Board, in our opinion, this would have been sufficient reason financially to abort or delay the second competition process, unless terms could be substantially improved.

This is particularly so given that at the same time, the Stadium competition preliminary report produced by the Stadium Committee on 23 August 2012 stated *“the business case for the capital expenditure on the Stadium transformation works is a difficult one to make on purely financial grounds.”* It appears therefore that this decision was not based on financial grounds but *“in terms of socio-economic and wider legacy benefits”*.

⁸⁶ LLDC Board Minutes, Stadium Concession Competition, 11/09/2012

⁸⁷ LLDC Board Minutes, Stadium Concession Competition, 11/09/2012

Deterioration from previous position

When the final concession agreement with WHU is compared to the initial proposed WHU-LBN deal, looking at the entire contract the terms are inferior. In part, this was likely to be the case due to the strengthening of WHU's negotiating position.

This deterioration in position is evident from the table below, which exhibits the key differences between WHU's offer in the first round of bidding and the final concession agreement:

Table 29 – key differences between WHU-LBN bid in first competition and signed concession agreement

Element	Initial bid – First competition process	Concession Agreement
Usage fee	£2.5m base rent payable pa in Premier League £1m in a lower league Once LBN borrowing repaid in full: Premier League - £0.75m Non Premier League - £0.25m	£2.5m pa in Premier League £1.25m in a lower league
Additional payments	Additional rent to OPLC - rent set at the higher of £100,000 per annum or 10% of the SPV surplus after loan repayments	£0.1m per match over the set number of games and operating costs for u-21/academy matches
Performance related payments	Finish 10th or higher: Increases to £2.75m for following season Entry to Europa League: Increases to £3m for following season Entry to Champions League: Increases to £3.5m for following season	10th place - £25,000 payment 9th place - £40,000 payment 8th place - £55,000 payment 7th place - £70,000 payment 6th place - £85,000 payment Top five places - a payment of £0.1m per place Europa League - £0.1m payment Champions League - £0.25m payment £0.1m if WHU win either the FA Cup or Europa League £1m if WHU wins the Champions League
Capital contribution	WHU minimum £20m funding	£15m contribution on sale of Boleyn Ground, guaranteed by majority shareholders
Overruns	Fixed price agreement of £90m irrespective of cost overruns	No WHU liability for cost overruns
Lifecycle and maintenance costs	Match day, lifecycle and maintenance costs all to be met by WHU	WHU have no liability for match day, lifecycle and maintenance costs
Term	150 years	99 years
Stadium Naming Rights	Income will be apportioned as follows: £0-2m SPV £2m-3m WHU Over £3m 50:50 SPV/WHU	First £4m kept by LLDC, anything above this split 50:50 with WHU with their share capped at their annual Usage Fee unless clearly attributable to their on-field performance (e.g. bonus payments for European football) Collaborative working to ensure that the value of the package is maximised
Roof	Fabric roof which would not cover the front 5 rows of seats	Specifies all seats should be fully covered by the roof
Other	No specifications for retractable seating	Includes requirement to bring seats no more than 16.9m from pitch - i.e. need for retractable seating

The two fundamental differences between the two competitions concern (i) the ownership and (ii) the design of the stadium. In the first competition, the stadium would have been owned by WHU-LBN on a long lease and would have had a simple design with the track a permanent feature around the outside of the pitch and a moderate sized roof. In the second competition, the stadium was to be owned by LLDC and used by WHU on a concession basis, with a complex design and a very large roof by comparison.

Consequently, whereas in the first competition, WHU-LBN had the responsibility for the transformation works and the operation, in the second competition LLDC had responsibility for both. This increased responsibility for LLDC and decreased responsibility for WHU was not accompanied by a significant change in the usage fee. In the second competition there are therefore increased costs to LLDC without commensurably increased revenue.

The main reasons why the concession arrangement arising from the second competition has proved more costly than the solution in the first competition are:

- Retractable seating
- New roof
- Capital contribution towards conversion
- Liability for cost overruns
- Insufficient usage fee
- Lifecycle and maintenance costs

Retractable seating

LLDC Stadium Committee minutes state:

“WHU has asked for all seats, including the demountable/retractable, seats to be fully covered by the roof of the Stadium and that the front row of seats to be no more than 16.9 metres from the edge of the playing surface along all four sides of the pitch. The current design for the legacy conversion does not include any demountable/retractable seating and consequently does not conform to the requirement for the seating front row to be within 16.9m of the pitch edge on any of the Stadium’s sides. In order to achieve this additional covered seating would have to be provided in the position of the current track. Therefore to maintain the athletics function of the stadium, these seat, would need to be either demountable or retractable.”⁸⁸

As a result, each year the Stadium has been required by WHU’s terms to deploy its retractable seating solution in order to transition the Stadium between athletics and football events. The different configurations for the Stadium are illustrated below:

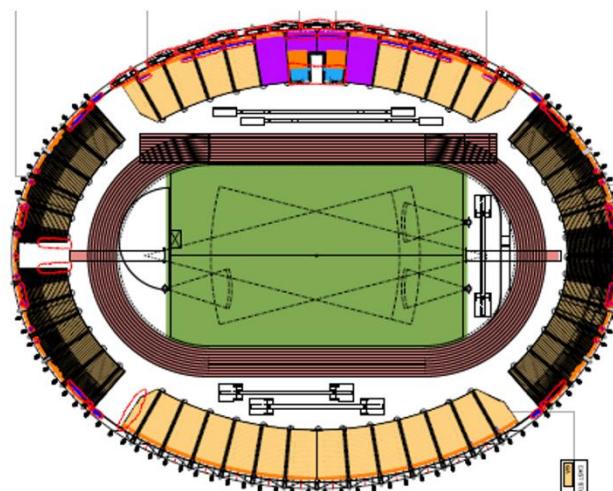
⁸⁸ LLDC Stadium Committee (informal briefing), 23/08/2012

Figure 21 – Seating configurations for football/rugby and athletics

Football / Rugby mode



Athletics mode



This switching between Stadium modes has proved to be extremely expensive to implement, resulting in ongoing significant losses for E20 and the need for it to be subsidised on an ongoing basis. This is assessed in more detail in Phase 5. By contrast, such seating was not a requirement of the first WHU-LBN bid in which it was assumed that the stands would have been positioned behind the running track.

New Roof

WHU specified in the second round bid that all spectators would need to be covered. However, bringing the seats forward meant that the roof would also require extension to ensure they were covered in their forward position. As a result of this change, the engineering challenge was almost unique and the Stadium now deploys the largest cantilever roof of its kind in the world.

Visually, the Stadium has been almost completely transformed, as is explained by David Goldstone, LLDC Chief Executive:

“We have almost completely rebuilt the stadium. The bowl at the bottom, which was the only bit that was going to stay, has been redeveloped to put in the seating system. Everything above ground that was temporary has now been made permanent, with the largest roof of its kind in the world, massive enhancements to the structure, all the spectator facilities, the toilets, the catering, the turnstiles all being put in as permanent and the seating system. It has been complete rebuilt, effectively. We call it transformed.”⁸⁹

⁸⁹ Budget Monitoring Sub-Committee – Transcript of Item 6 – LLDC and the London Stadium, <https://www.london.gov.uk/moderngov/documents/s63310/Minutes%20-%20Appendix%201%20-%20Transcript%20of%20Item%206.pdf>

This is clear from the photographs below:

Figure 22 – Comparison of original roof and post-transformation roof

Olympic Games venue



Post-Olympic transformation



Unsurprisingly, this came at significant cost, as is explored further in Phase 4.

By contrast, WHU's first bid was for a fabric roof which would not cover the front 5 rows of seats, at a limited cost of £14.6m.

Capital contribution towards conversion

During the first competition, the WHU offer was funding of £20m towards the Stadium conversion. Whereas under the concession agreement WHU agreed to make a contribution of £15m, £5m less. Meanwhile, the conversion required by WHU in the second bid was significantly more demanding than the first bid, specifying that:

“the demountable / retractable seating required to all four sides is within the scope of the Pre-Concession Works which are the responsibility of LLDC / the Grantor. This also includes the provision of a roof to cover every seat in the Stadium. Accordingly, there is no factoring in their financial models or this proposal any liability for WuH to meet the cost of the seating and roof solution discussed at technical meetings pre-bid.” [our emphasis]

It is unclear how WHU succeeded in decreasing their capital contribution by £5m whilst requiring additional roofing envisaged to cost around £20m extra. In fact, in WHU's opening second round bid, WHU did not offer to contribute anything to the capital costs of the transformation at all. As a result, one of the key aims of the subsequent negotiation became to obtain such a contribution, as noted above.

WHU's capital contribution of £15m was paid for through the sale of the Boleyn Ground. Whilst the details of this sale are commercially confidential, the ground was valued at £71.2m in the WHU accounts for the year end 31 May 2012. This valuation was performed by Edward Symmons & Partners (Chartered Surveyors). In light of the cost of the transformation of seats and roof, the £15m sought was much too low. In principle it should have been £20m plus the additional costs involved.

To provide further perspective on WHU's contribution, in the year ended 31 May 2016, the club invested a net total of £53.3m in transfer fees and reported a profit on operating activities before interest and taxation of £31.5m. Consequently, for an agreement that provided WHU 99 years of benefit, and relieved the club of significant cost whilst offering the prospect of growth and development not available at the Boleyn Ground, £15m appears a small amount to pay. As a comparable and in contrast, referring back to the Manchester Case Study (Phase 1), MCFC handed over ownership of their old ground to the Council in exchange for the City of Manchester Stadium.

Liability for cost overruns

In the first bid, WHU worked closely with Westfield Group and provided a Memorandum of Understanding between WHU and the Westfield Group guaranteeing a maximum cost of £90m for the stadium transformation offered. Westfield Group offered a fixed price irrespective of cost overruns. By contrast, under the concession agreement, there was no fixed price arrangement and it was ultimately the taxpayer which would become liable for cost overruns, not WHU.

Additionally, whereas the first bid specified that the future SPV would have; *“rights to carry out capital conversion or maintenance works if they reasonably believe WHU are not doing these to an appropriate standard and to recover the costs from WHU”*, under the concession agreement LLDC has no ability to recover such cost from WHU.

Insufficient Usage Fee

The first bid stated that *“WHU....will assume all financial responsibility for running the Stadium”*. However, the concession agreement makes E20 liable for all match day costs including policing, turnstile operations, stewarding and cleaning. As will become apparent later on in the report (Phase 5) the annual Usage Fee from WHU is not even sufficient to cover the costs of staging WHU matches.

Lifecycle and maintenance costs

Whereas the first competition specified that “WHU will assume responsibility for any lifecycle and maintenance costs” under the concession agreement E20 is liable for these costs, even though the usage fee does not even cover the match day costs).

Summary

The concession agreement resulted in considerable risks and costs not taken on by WHU but instead transferred to E20, offering security of tenure without WHU bearing long term risks. In fact the deal is somewhat worse than this because it:

- Offers limited downside protection in the event WHU are relegated or a naming rights agreement is not achieved.
- Offers limited upside potential through superior WHU performance against expectations.
- Has a low contractual fixed cost base and no re-rating.
- Passes risks of cost variation to E20.
- Is long-term (99 years). So in in a property sense the main difference is that between a fully repairing long term lease and non-fully repairing lease.

This substantial deterioration in financial position and risk associated with operating the stadium, between the WHU bids, is exhibited by a comparison of the three business cases from July 2010, December 2011 and March 2013. These show the growing capital and lifecycle costs. However, because the assumptions in the December 2011 and March 2013 business cases, and the capital costs in the March 2013 business case, were so materially wrong the worsening NPC is not evident.

Table 30 – Comparison of business cases

	July 2010	November 2011	March 2013
Options considered	1. Mothball 2. 25,000 seat (ODA Base case) 3. Multi-sport athletics stadium - 25,000 covered stadium with upgraded facilities 4. New purpose built football stadium 5. Multi-sports 60,000 stadium with sports club anchor tenant	1. Mothball 2. 25,000 seat (ODA Base case) 3. 60,000 enhanced Multi-use stadium - suitable for WAC 4. 60,000 Multi-use stadium 5. 80,000 Multi-use stadium with upgrades required for WAC	Option A - Retractable Seating Option B - Multi-use - 80,000 capacity
Preferred option	Multi-sports Stadium with Lease to a Sports Club Anchor Tenant	Option 3 - Enhanced Multi-use Stadium	Option A - Retractable
Capital costs	£87.939m	£111.930m	£192.05m
Lifecycle costs (first 25 years)	£21.921m	£31.071m	£41.942m

	July 2010	November 2011	March 2013
Annual income	£0	£8.174m	£11.682m
Annual costs	£0	(£5.064m)	(£8.454m)
Surplus / (deficit)	£0	£3.110m	£3.228m
NPC	£87.792m	£42.202m	£86.915m
Non-Monetary Weighted Scoring	900	705	785
Risks sat with	Tenant	OPLC	LLDC/E20
Our restated NPV	N/A	N/A	£217.4m

Limited Multi-use

Shortly after the decision to award preferred bidder status to WHU, UK Athletics Chairman, Ed Warner, said that one of the attractive parts of the WHU proposal was the fact that:

"Retractable seats can be moved very quickly in a matter of days, over the track and back again...If that can be put together, we will get a stadium that can be used 52 weeks a year and can be very commercially viable for West Ham and other users." [our emphasis]

The WHU second bid stated it was willing to be teamed with other potential bidders and WHU does not in principle have exclusivity as:

*"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 option exists for another football club to become concessionaire or tenant within the Olympic Stadium whilst WHUFC is in occupation....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.....Yes, is it [sic] possible for a foreign sports team to become a concessionaire or tenant of the Stadium whilst WHUFC is in occupation."*⁹¹

Indeed, the House of Lords' Select Committee in November 2013 recommended that it would be sensible to explore ground sharing arrangements and this is, we assume, still possible subject to agreement with WHU:

"the ongoing dispute over the Stadium has been a disappointing distraction. We urge those concerned to think further on how the two most local football clubs might work together, including whether any difficulties can be ameliorated through wider community use of the Stadium, which may include its occasional use by Leyton Orient FC if appropriate financial arrangements can be agreed."

Accordingly, E20 could attempt to cover the costs of Stadium operation by a ground sharing agreement to obtain greater rental income, provided that the club or other users pay a usage fee in excess of the match day costs, unlike the WHU agreement. There may be interest from other clubs to do this, as evidenced by the fact THFC recently secured a deal to use Wembley Stadium for their home games during the 2017-18 season (which they also used for European fixtures in 2016-2017).

⁹¹ FOI 13-047, 29/01/2014

However, the WHU concession agreement does not really facilitate this, as WHU's minimum usage of the stadium would be between 19 - 23 home league fixtures and maximum usage is between 38 to 44 games (based on the club reaching the Europa League final). Consequently, WHU seek use of the Stadium for a significant proportion of the year, and this is embedded in the terms of the concession agreement which:

1. Provides for a 50% reduction in Usage Fee if WHU must share with a winter field of play user who wishes to use the Stadium as its home ground.
2. Allows for 24 hours either side of an event for event set-up and event break-down.
3. Gives WHU overriding priority for any event scheduled during the football season.

This would not matter so much if the usage fee from WHU covered the match day costs and paid for other operating costs and ongoing lifecycle and maintenance costs, but it does not. In effect, WHU have the benefits of ownership without the associated costs.

Per point 7.3 of the concession agreement:

"The Grantor shall provide the access to the Concession Areas for the Concessionaire to stage the Competitive Matches throughout the Term, including any applicable Set-up and Break-down Time. The Concessionaire shall stage all the Competitive Matches at the Stadium on the Event Dates throughout the Term, subject to the terms and conditions in this Agreement."

Based on section 1.1, set-up and break-down time is defined as follows:

"Set-up and Break-down Time means the access period agreed in the Agreed Event Calendar in respect of the relevant Event, being a maximum of 24 hours either side of an Event when the Concessionaire sets up the Concession Areas in preparation for an Event and then breaks down"

As Premier League games can be scheduled on any day of the week and are often moved at relatively late notice due to TV requirements it becomes almost impossible to use the Stadium other than for WHU in the football season. Additionally, as the club will not know how far they will progress in cup competitions, the stadium will need to be kept available as a contingency for several events including: FA Cup, Carabao Cup and, in certain years, European competition. Large periods in the Stadium event calendar are therefore blocked out for potential WHU usage.

Point 5.14 of the concession agreement says that WHU can effectively hold an event at any date during the Football season, even if the date has already been allocated to another concessionaire;

"It is agreed by the Grantor that if the Concessionaire notifies the Grantor that it wishes to hold an Event on a date during the Football Season (save only in relation to the Championship Window) and the Agreed Event Calendar shows that the selected date is already allocated to Other Concessionaires, the Grantor will revise the Agreed Event Calendar to give effect to the Overriding Priority Principle (without any liability for the Concessionaire)."

The Overriding Priority Principle is described as follows:

“Overriding Priority Principle means the principle that all Competitive Matches shall (subject only to the Championship Window):

(a) take precedence over any other activity, event or use of the Stadium; and

(b) be staged at the Stadium, on the dates that are notified to the Concessionaire Group by a Governing Body from time to time, notwithstanding any event that is set out in the Agreed Event Calendar or otherwise.”

In practice, this gives WHU exclusive use in the football season as other users of the Stadium may have their events cancelled based on the Overriding Priority Principle. This is a deterrent to any other user or event promoter.

Finally, if this were not sufficient to rule other uses impractical, point 20.5 of the concession agreement removes much of E20’s financial incentive to obtain additional revenue through shared use:

“Other than a Neutral Match or an International Match, if any Other Concessionaire uses the Stadium as its home ground for the playing of Football(a Discounted Concession):

(a) the Exclusivity Discount shall be applied to the Usage Fee, the Performance Payment and the League Position Payments for each Event Year during which a Discounted Concession occurs”

For these reasons, although the Stadium is described in LLDC’s papers as “Enhanced Multi-use”, in reality it is severely restricted in staging other events, being de facto exclusive to WHU during the season. This is compounded still further by the time taken to transition the Stadium between different configurations, (as explained further in Phases 4 and 5): the current seating transition is estimated to take 11 days⁹³. Consequently, as events can only feasibly be scheduled outside of the football season to begin with, there is an extremely limited time period to stage other events once the Stadium has been transitioned from football configuration.

The over-optimism associated with the revenues that the Stadium would attract can be attributed to the failure to negotiate a concession agreement consistent with those assumptions. Given the practical and contractual restrictions on other uses for the Stadium by WHU, WHU’s usage amounts to de facto exclusivity for which £2.5m appears a low market rent.

⁹³ LLDC Informal Investment Committee meeting on 7 April 2016

Olympic Stadium Coalition

The WHU deal sparked anger amongst rival football clubs in the area, notably Charlton Athletic Football Club (CAFC) and LOFC. So much so that it resulted in a Olympic Stadium Coalition (OSC) being formed, a group of 14 supporters' trusts and groups.⁹⁴

The basis of OSC's frustration is stated to be that:

"Imagine you own a house near the City of London. It's a bit down at heel, but prices have shot up around there, so you know it's worth something. But you are tipped off that a body controlled by the government has a luxury house nearby it wants to rent in a hurry, and doesn't know how to find a tenant. You enquire.

The terms are fantastic. The rent they are asking is only equivalent to what you pay for utilities (gas, electricity, water, council tax) in your existing house. But – and you check this several times because you can hardly believe it – the landlord is going to pay all those utilities himself if you pay the rent!

*You can see they are desperate, and you don't actually need to sell your house and move out, so you play hardball. You specify your requirements for how the house is configured, and how it will look. They agree to spend as much again as they have already spent on building the house. They ask you only for a small contribution to all that re-modelling. You agree, but you will only pay after you've sold your house. They don't ask you how much your house is worth. So you sell your house for more than twice as much as your contribution to the rebuild, and pocket the rest."*⁹⁵

OSC suggest that the WHU deal has distorted the balance of power amongst football clubs in the area. We understand that OSC are also seeking that the terms of the contract with WHU are revised, either through voluntarily re-negotiation or via a further State Aid enquiry.

The group cite several reasons why the WHU deal is "*unreasonably generous*", notably the absence of cost to WHU for match day overheads, the comparably small amount contributed to the transformation and WHU's retention of 100% of corporate hospitality revenues.⁹⁶

The perceived effect is that WHU has significantly reduced its cost base, allowing it to offer cheap tickets to the detriment of other clubs in the area (who are unable to match WHU's prices despite competing in lower leagues). OSC believes that a competitive advantage is being derived from generous terms provided by the public sector to WHU, thus implying State Aid.

⁹⁴ Arsenal Supporters' Trust, Aston Villa Supporters' Trust, The Blue Union (Everton), Canaries Trust (Norwich City), Charlton Athletic Supporters' Trust, Chelsea Supporters' Trust, Crystal Palace Supporters' Trust, The Dons Trust (AFC Wimbledon), The Foxes Trust (Leicester City), Fulham Supporters' Trust, Leyton Orient Fans' Trust Manchester United Supporters' Trust, QPR1st Supporters' Trust, Tottenham Hotspur Supporters' Trust. <https://oscoalition.wordpress.com/other-supporters/>

⁹⁵ <https://oscoalition.wordpress.com/about/>

⁹⁶ C.Pidgeon briefing document from Richard Hunt

Phase 4 - Transformation

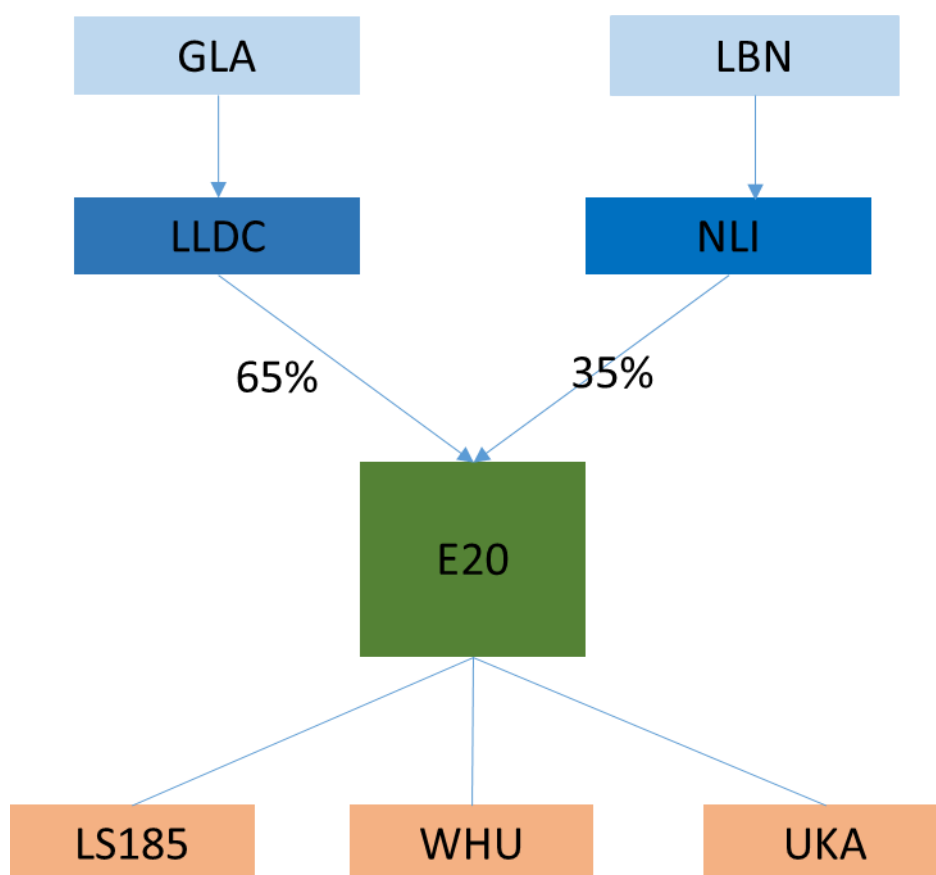
Summary

Key decisions

The decisions made during the transformation phase were necessary to get the Stadium ready for scheduled events in autumn 2015 and summer 2016. Because of the 2015/16 commitments, LLDC was constrained in its position with its transformation contractors and so had to pay significant fees to contractors for any unforeseen/undersigned structural work and for acceleration works.

Bodies involved

Figure 23 – Ownership structure during transformation phase



Public Perception and Press Extracts

<https://www.theguardian.com/sport/blog/2016/nov/02/west-ham-olympic-stadium-deal-explained-london-mayor-sadiq-khan> - 2 November 2016

The total cost of converting the Olympic Stadium from an athletics stadium into a multi-use venue has soared to £323m, taking the overall cost of West Ham United's new home to £752m – largely borne by taxpayers. How did we get here?

<https://www.theguardian.com/sport/2016/nov/01/sadiq-khan-mayor-london-west-ham-stadium-inquiry> - 1 November 2016

The mayor of London has ordered an independent inquiry into the soaring conversion costs for the former Olympic Stadium that is now home to West Ham United, after it emerged the bill had risen by another £51m to £323m.

<http://metro.co.uk/2016/11/02/anger-over-massive-cost-of-converting-olympic-stadium-for-west-ham-6229355/> - 2 November 2016

Sadiq Khan is launching a probe into the soaring costs of converting the Olympic Stadium for use by West Ham football club.

Khan, however, is more concerned about a £51million hike in the cost of converting the stadium from its Olympic configuration into a 60,000-seat multi-purpose venue.

'The former mayor announced just last year that the total cost for transforming the stadium was £272million. In reality, this is £323million – a difference of more than £50million.'

What happened?

Background

On 30 March 2013 E20 signed the WHU concession agreement; it required the following changes to the Stadium:

- Retractable and/or relocatable lower tiers;
- Full roof coverage to all Stadium seats in retracted or extended position. The main roof to be made of metal cladding and polycarbonate (to allow light on the pitch);
- Extended roofing to support extended and enhanced lighting and public address and voice alarm installations; and
- Floodlights to be located on the inner edge of the new and extended roof. Lighting designed to support top level Football, athletics, rugby and American football without physical alteration and suitable for 3D television.

As the Stadium was also required by LLDC to be multi-use, further WHU requirements detailed a temporary seating structure to cover the running track and provide seating on each side of the playing surface, the front row of the lower tier of seating being between 10 metres and 20 metres (inclusive) from the edge of the playing surface, together with adequate roofing to cover all the seats provided.

The March 2013 Business Case was approved, including capital conversion costs of £190m⁹⁷. At that stage, the cost was based almost exclusively on estimates. The design of the converted stadium was still in progress and no works had been tendered; LLDC had only in the region of 40% of the detailed roof design. The budget therefore included an estimate of all costs and accounted for some contingency. This contingency, referred to as optimism bias, was set at 15%.

⁹⁷ Capital costs in the business case added up to £192m but the budget was set at £190m

The expected capital costs were:

Table 31 – Capital cost of transformation per March 2013 Business Case

<i>Expenditure</i>	<i>March 2013 business case (£ 000)</i>
<i>Deconstruction</i>	<i>7,950</i>
<i>Field of play</i>	<i>3,600</i>
<i>Bowl reconfiguration/terracing</i>	<i>27,900</i>
<i>Main roof</i>	<i>38,050</i>
<i>MEP infrastructure</i>	<i>15,320</i>
<i>Field of play</i>	<i>2,000</i>
<i>Video screens</i>	<i>1,000</i>
<i>Secure lines</i>	<i>5,900</i>
<i>Hospitality</i>	<i>6,700</i>
<i>Accommodation alterations</i>	<i>6,460</i>
<i>External works</i>	<i>4,700</i>
<i>Bridges</i>	<i>1,120</i>
<i>Main constructor on-costs</i>	<i>23,000</i>
<i>Subtotal</i>	<i>143,700</i>
<i>Professional fees</i>	<i>7,000</i>
<i>Sunk costs</i>	<i>7,000</i>
<i>FF&E allowance</i>	<i>8,500</i>
<i>Asset protection Cauldron etc</i>	<i>800</i>
<i>Total (excl. inflation and contingency)</i>	<i>167,000</i>
<i>Optimism bias</i>	<i>25,050</i>
<i>Total</i>	<i>192,050</i>

Procurement Strategy

In March 2013, the Board of E20 approved a revised procurement process devised to ensure that the transformation of the Olympic Stadium would be completed so as to facilitate both:

- (a) The Stadium being used to host some of the 2015 Rugby World Cup games (the “RWC”); and
- (b) The permanent opening of the Stadium in May 2016.

The strategy proposed that the LLDC, acting for and on behalf of E20, would procure several packages of the works in advance of procuring the Tier-1 Main Contractor. Some of the Early Works Packages would then be subsequently novated to the Main Contractor following their appointment in December 2013.

Roof & Steel Works

Roof and Steel Works (“R&S Works”) were part of the Early Works Packages. In the final round of R&S Works procurement four tenders were evaluated:

- Balfour Beatty Group Limited;
- Martifer Construções Metalomecânicas, S.A. ;
- Severfield Watsons Structures Limited; and
- Taiyo Europe GmbH.

Balfour Betty was selected on the basis of having the highest technical score and, while not the lowest price, proposing a price at the lower end of the range at £31m (the range being £28.9m - £45.7m).

The budget for the Roof and Steel Works construction had been previously set at £35.57m (within the overall budget for the Works). The associated roof contract with Balfour Beatty Group Limited was signed on 19 July 2013.

Main contractor procurement

The procurement of the Tier-1 Main Contractor took place a few months after the Roof and Steel Works began. The LLDC received three tenders by the deadline of 21 October 2013 from:

- Balfour Beatty;
- Consortium of Buckingham Group Contracting Limited and Lafarge Tarmac Limited; and
- Shepherd Construction Services Limited.

Shepherd Construction received the highest technical score, but tendered the highest price. Balfour Beatty had the second highest technical score and proposed £116m for Tier 1 contract⁹⁸.

On 10 December 2013 LLDC management recommended that the LLDC Board approve the award of the Contract to Balfour Beatty; some of the Early Works Packages were subsequently novated to Balfour Beatty following their appointment. The value of the contract to deliver the Works (including novated Early Works Packages) was estimated at £154m.

Cost increases following appointment of contractor

As explained above, in March 2013 the cost of £190m was estimated prior to finalisation of the design and prior to the appointment of a contractor. Once the contractor had been appointed and work commenced, there was an early realisation that the capital costs would exceed the original budget, i.e. it was underestimated.

⁹⁸ Stadium - Investment Committee & Board presentation - 26 November 2013

The assessment provided by project managers, Mace, in January 2014 was:

Table 32 – Estimated cost of transformation as at January 2014

<i>Item</i>	<i>Cost (£ 000)</i>
<i>Land</i>	<i>0</i>
<i>Roof - Structure</i>	<i>43,700</i>
<i>Roof - Covering</i>	<i>7,400</i>
<i>Seating - Demountable/Retractable</i>	<i>16,100</i>
<i>Seating - Fixed</i>	<i>400</i>
<i>Fitout - Finishes</i>	<i>2,600</i>
<i>Fitout - M&E</i>	<i>22,200</i>
<i>Other - Structural</i>	<i>37,600</i>
<i>Other - General</i>	<i>81,800</i>
<i>Other - FF&E</i>	<i>6,500</i>
<i>Community Facilities</i>	<i>3,900</i>
<i>Catering fit out</i>	<i>4,000</i>
<i>Total</i>	<i>226,200</i>

This increase was explained in the PwC draft business plan of March 2014, *“The estimated capital cost has increased by 15% (£28.7m) since August 2013. This partly reflects the appointment of a Tier One Construction Contractor and their view that the cost of the lower bowl is higher than previous estimates. The increase also reflects a reallocation of the £10m Rugby World Cup (“RWC”) overlay costs as a capital item.”*

Additional structural work

A Stadium Project update paper presented to the E20 Board in March 2014 stated that *“The lowering of the existing roof tension ring and cable net down to the field of play in early March marked the completion of the roof deconstruction works. The next challenge is to strengthen the perimeter compression truss joints so that they are able to take the increased loading from the new roof structure. The extent of this strengthening work is greater than originally envisaged; the cost and programme implications are being worked through with the Tier 1 contractor Balfour Beatty.”*

Balfour Beatty considered that contractually LLDC was responsible for the costs of the compression truss strengthening works. Analysis of the cost and programme implications of the required compression truss strengthening works was carried out by LLDC, Mace and Balfour Beatty.

Following this, Balfour Beatty submitted a compensation event quotation in July 2014 for the additional scope of strengthening works. Balfour Beatty had stated that there were other consequential costs associated with these works, combined with the need for an accelerated programme. The quotation provided by Balfour Beatty was significantly in excess of the contract provisional sum and associated risk allowances in the project budget. In order to allow LLDC to understand expected cost levels, their project managers Mace undertook an estimate of the expected work, and the associated costs. However, the quotation submitted by Balfour Beatty was also in excess of this estimate by Mace. A number of options were considered by LLDC including withdrawal from hosting the 2015 RWC; this was rejected as the withdrawal from the RWC carried significant reputational risk.

Subsequently, on 23 September 2014 the LLDC Board identified that transformation work was already 8 weeks behind programme, due to the additional strengthening works to the compression truss and wider roof structure. The decision was therefore made to settle with Balfour Beatty, and the LLDC Board delegated authority to its Investment Committee to approve the final settlement position with Balfour Beatty for the compression truss strengthening works and any acceleration required.

Balfour Beatty submitted a compensation claim for £203.7m, £50m above the contract price estimate of £154m (it was not a fixed price).⁹⁹ The major differences between the contract estimate and the compensation claim were costs incurred to deliver the required compression truss strengthening works and costs for scope gaps in the works information.

E20 and LLDC carried out analysis and took advice in relation to these costs. The advice received was that the likely outcome would be an Adjudication process initiated by Balfour Beatty on the scope gaps and compression truss strengthening and acceleration cost entitlement. The advice received was that, subject to how sympathetic the Adjudicator may be, the outcome could be a settlement figure of up to £35m. In addition to the original contract estimate (£154m) and the current value of variations to contract (£3m) this would leave a total contract value of £192m.

This sum would then have been supplemented by Adjudication and litigation costs of £8m, compensation to UK Athletics of £1m to refund a track protection works payment and possible compensation to RWC of £3m, bringing the potential Adjudication and settlement costs to £204m.

Based on this analysis, E20 and LLDC pursued a compensation agreement of £190m, because although representing an increased cost of £36m, it was a saving against the alternative.

The settlement agreed was at £189.9m, which LLDC noted was significantly below that requested by Balfour Beatty and within the value for money parameters set. Reaching an agreement was also considered to have the additional benefit of removing cost and programme delivery uncertainty, preserving the legacy benefits of the Summer 2015 events.

In the course of the settlement, a series of meetings were held between LLDC and Balfour Beatty. These meetings took place over a number of weeks at various levels of management and Board. The culmination of these meetings included the Mayor of London, Deputy Mayor, Chief Executive of LLDC, and the Executive Chairman of Balfour Beatty, who reached a proposed settlement on 16 October 2014. Their agreement covered all commercial issues enabling delivery of the stadium transformation works in a licensable condition for the 2015 RWC events.

Rugby World Cup

The concept of hosting games for the RWC was brought to the Boards of LLDC and to E20 by the Mayor of London. The decision to agree to host games was made on 19 March 2013 by the E20 Board.

As the RWC was to be held in the middle of Stadium transformation works, it was necessary to consider the benefits and risks associated with hosting the RWC games.

⁹⁹E20 Transformation Works Update paper presented to October 2014 LLDC Investment Committee

Those factors were considered by the E20 Board to be:

Table 33 – E20’s consideration of benefits and risks of hosting RWC

Benefits per E20 Board	Risks per E20 Board
<i>The stadium’s reputation as a World Class Venue</i>	Financial risk of Transformation Period over-running: E20 will have responsibilities to UK Athletics and WHU to deliver the stadium in time for events from July 2016. If those are missed E20 would be potentially liable for paying compensation to WHU, as well as finding an alternative venue for the 2016 Diamond League event. E20 will have no funds at the time so such a scenario could lead to its collapse or Members having to find additional funding.
Public perception - providing access to the venue during a long period of transformation	Reputational risk of Transformation Period over-running: If the stadium misses its transformation deadline it will have implications for the Stadium (and therefore the LLP’s) reputation about being able to deliver for its concession holders and partners.
Financial – Hire fees would come to E20, although some of these may be negated by costs relating to hosting and the impact on transformation works	The potential for transformation costs to rise: This is a significant risk, but one that is borne by the LLDC rather than the LLP directly.
<i>E20’s relationship with Government and the Mayor of London</i>	Procurement timelines: The LLDC has to accelerate transformation procurement timelines. However, LLDC have responsibility for this risk and have found a solution that means procurement can be managed without implications for the transformation timelines.
Economic benefits generated hosting matches for East London	Impact on 2016/17 Business Plan: If the transformation works slip by a month to July 2016 there would be no potential for concerts in 2016. On the original timeline this was possible to accommodate, albeit on a smaller scale as test events
	Non-delivery of a suitable stadium by September 2015: If E20 signed the staging agreement with the Rugby World Cup organisers and then had to pull out of hosting matches, it would be damaging to its reputation and could incur financial penalties

Following on the decision to host games, E20’s Board approved a revised procurement strategy devised to ensure that the procurement of the transformation works would be completed to accommodate the Stadium being used both to host some of the games of the 2015 RWC and to subsequently open in May 2016.

The Economic Impact Assessment of hosting RWC 2015 prepared by LLDC in April 2013 provided an analysis of the effects of committing to the event. It concluded that the benefits of hosting RWC 2015 matches far outweighed the costs, and could provide a long-lasting positive impact on the Park, on east London and on the UK economy as a whole.

As assessed by Mace, *“the changes to the Stadium transformation programme are estimated to cost £5 million, including the costs of standing contractors down, and cleaning and Stadium preparation”*. This was compared to an economic benefit to East London of £41m, made up of £15m direct impact and £26m indirect impact. Indeed, by one measure, the wider economic impact was calculated as being as much as £175m.

Analysis was also carried out of the revenue to be received from match fees, hospitality and catering, and of revenue costs. This estimated net revenue at £757,000.

A few months later in the minutes of the LLDC Board from 28 May 2013 – Mace provided a new estimate of the anticipated final cost which was £7.6m above the baseline figure following the Rugby World Cup (RWC) and the summer events series.

In the board minutes of E20 from 10 October 2014 Sir Robin Wales commented that *“while NLI were pleased the RWC was being played in the stadium, the decision to host was pursued by the Mayor of London, who agreed to address any cost implications”*.

Seating solution

WHU’s requirement that the seating be brought forward to the edge of the pitch, in addition to the commitment to retain the ability to host athletics to meet legacy objectives and the commitment to the 2017 WAC, meant that retractable seating needed to be included in the Stadium design. While, prior to approval of the March 2013 Business Case, potential designs and solutions for retractable seating were investigated and costed, the work had not been tendered. The tender to find a seating contractor commenced in September 2013.

To ensure that the capital and operational costs would be fully understood and were separable, the seating solution tender comprised two parts:

1. Design-and-Construction Works (the “Installation Works”): for the design, procurement, fabrication / manufacture, delivery, assembly, and installation of the lower-tier (and associated mid-tier) retractable and relocatable seating works;
2. Operation-and-Maintenance Services (the “O&M Services”): an option for the subsequent operation and maintenance of the completed installation for a period of 10 years (extendable by a further 10 years if agreed).

LLDC received only two tenders. These were from:

- The Alto Consortium (made up of Alto and Sapa); and
- A consortium led by ES Global Limited and comprising ES Global and Mott MacDonald (the “ESG Consortium”).

The Alto Consortium scored best in the commercial elements, but less well in the technical elements. There were reservations about the ESG Consortium bid in relation to project delivery, experience and capability.

The baseline scheme planned was a heavily engineered steel electro-mechanical and hydraulic system which would move large sections of SPS seating blocks. However, when not used for long periods such systems were known to be prone to failure (due to corrosion, damp ingress to electronics and damage to hydraulic seals from lack of use) This could have resulted in failure to complete a scheduled move. Such a design would therefore have required a highly intensive maintenance regime to ensure resilience.

By contrast, the Alto scheme was to be a lightweight aluminium system with the seating bowl split into smaller modules which could be moved manually (on wheels), providing flexibility for different seating layouts if required. This scheme was based on manual movements requiring 7 x 12 hour shifts which meant this scheme looked to be very resilient compared to the 7 day schedule.

The ESG scheme meanwhile replicated the engineering design of the Baseline Design scheme, but without any of the automation technology, its anticipated move time not shorter than 7 days.

A paper to the E20 Board on 10 December 2013, states:

“With both the Baseline Design and the ESG scheme, there is high reliance on a considerable number of specialist lift supervisors and banksmen. It is not clear how a suitable team can be assembled and trained for the initial install can be retained long term when there are only two (separated) weeks of work per year on offer. By contrast, almost all of the skills required for the Alto scheme can be obtained from a significant number of UK event structures contractors (some of whom operate Alto products on their rental fleets) and the larger crew agencies, several of whom specialise in grandstand erection.”

Table 34 – expected costs of seating options presented to E20 Board on 10 December 2013

	<i>Specialist seating solutions</i>		<i>Baseline design</i>	<i>Business Plan Assumptions</i>
<i>Item</i>	<i>Alto</i>	<i>ESG</i>		
<i>Tendered annual O&M (including 1 retraction and 1 protraction)</i>	<i>£1.35m</i>	<i>£1.56m</i>	<i>N/A</i>	<i>£0.3m</i> <i>Business Plan was produced prior to finalisation of the Baseline Design and assumed a fully automated scheme with no cranes and minimal offsite storage which proved unachievable</i>
<i>Realistic Target annual O&M cost following design progression and operator procurement (including 1 retraction and 1 protraction)</i>	<i>£0.5m - £0.6m</i> <i>some scope in design development and the tendered costs included a 50% contractor contingency</i>	<i>£1.2m - £1.3m</i> <i>limited scope for cost reduction due to dependency on large cranes</i>	<i>£1.6m - £1.7m</i> <i>limited scope for cost reduction due to dependency on large cranes and extensive maintenance regime required due to complexity of the scheme</i>	<i>N/A</i>
<i>Estimated annual lifecycle costs</i>	<i>£0.04m</i>	<i>£0.02m</i>	<i>£0.07m</i>	<i>£0.07m</i>
<i>Capital costs</i>	<i>£16m</i>	<i>£17m</i>	<i>£28m</i>	<i>£21m</i>
<i>Technical Reliability (Rank)</i>	<i>1</i>	<i>2</i>	<i>3</i>	

The decision to tender appeared to have produced a more capital-efficient option, offering savings of some £5m against the business plan and £12m against the baseline scheme.

While the operational costs of both scheme options were greater than estimated in the March 2013 business plan, prepared pre-tender, by over £1m per annum, it was felt that the Alto scheme was preferable as it *“provides an opportunity to manage risk, operational and lifecycle costs to the E20 LLP as:*

- *The movement system is very simple;*
- *The whole system (being aluminium) is much lighter than the other two schemes, greatly minimising the foundation requirements with the attendant installation issues;*
- *The lightness of the system also greatly reduces the likelihood of damage to the FoP [Field of Play], both during installation and subsequent transitions;*
- *The aluminium construction is less prone to corrosion;*
- *The whole scheme is much less reliant on cranes or complex technology;*
- *The transitions can be accomplished with significantly greater safety margins regarding the schedule. This has the related benefit of making management of the process simpler and therefore safer;*
- *The proven sub-structure system with its much shorter spans removes any doubts about the natural frequency and provides a result well above the bid requirements (i.e. the structure, although lighter, is stiffer);*
- *Most of the labour required is much less skilled than required for the Brunel or ESG schemes and can be obtained from a number of sources including potentially the Stadium operator, making the whole transition process more resilient for the lifetime of the project.*
- *The use of standard, easy to handle, parts makes damage less likely and repair or replacement very simple.*
- *The scheme is very flexible and could be reconfigured to be used for cricket and baseball for example.”¹⁰⁰*

However, this positive outlook had changed by September 2015, in the build up to the RWC.

In September 2015, a paper to the E20 Board, reported that *“Completion of design, component manufacture, delivery to site, management of materials on site, sequencing of work and assembly performance on site have all been problematic.”*

The Alto/Sapa delivery was falling behind schedule, numerous risk reduction meetings were held between LLDC and Alto/Sapa and, as the Board paper explains, *“LLDC/Mace made available to Alto skilled labour from PHD Modular Access Services Ltd/Project 7 Construction Ltd (PHD), the specialist scaffolding company that installed the elevated work platforms for the compression truss strengthening in very challenging circumstances, and encouraged Alto to subcontract this resource directly to supplement their own supply chain, but without effect.”*

Consequently, in the build up to the Great Newham London Run, LLDC/Mace resolved the situation by temporarily contracting directly with PHD to construct temporary scaffold balustrading to allow the north, south and east stands to be usable for a first test event.

Subsequently, while Alto attempted to complete the installation of the seating in track-mode in advance of the IAAF Diamond League meeting, additional support was required from PHD again to install further temporary balustrade and disabled access platforms. LLDC noted that *“full recovery of LLDC costs will be sought from Alto/Sapa, either through the contract or via the £1.9m performance bond E20 have the benefit of, but full recovery will not be easy.”*

Alto were subsequently not able to complete the track-mode installation and this, combined with ongoing pitch-mode component management and delivery issues, put the Barbarians rugby test event due to take place a short time later at considerable risk.

Following protracted discussions, Alto/Sapa conceded that they would not be able to complete the north, south and east stand walkways and bridges or the east stand infill seats in time for the Barbarians event. Alto/Sapa also accepted the need to appoint PHD, at their own cost, to design and install a temporary scaffold solution for the upcoming rugby events.

¹⁰⁰ Paper to E20 Board on 10 December 2013

The E20 Board recognised that the only reason that there was a seating solution for the Barbarians test event and the subsequent RWC was due to the management and resources of Mace and PHD.

In October 2015, Alto went into voluntary liquidation. The overall impact of LLDC/Mace/PHD having to become involved in the seating solution is estimated to have been an additional cost of some £20m. As the contract with Alto/Sapa was one of joint and severable liability, Sapa was expected to take on Alto's responsibilities, but an agreement was instead reached for Sapa's contract with LLDC to be terminated in March 2016.

Work late 2015 onwards

After the RWC and the Race of Champions the transformation works were restarted in late November 2015. As Alto/Sapa had not completed all necessary work prior to the RWC, and a temporary solution had been constructed instead, the work required between November 2015 and summer 2016 was more extensive than previously planned. Consequently acceleration work was required to meet the deadline. Acceleration was required as a higher proportion of the transformation works needed to be completed in the post-RWC window.

In April 2016, Balfour Beatty served a £19m claim for delay and disruption. This consisted of £15m for the costs of delay/disruption cost and acceleration/extension of time, plus allowance for £2m risk and a £2m incentive fee. At the same time, pending acceptance, Balfour Beatty suspended the acceleration works required to facilitate completion in time for a concert on 4 June 2016.

The claim for delay and disruption arose from three principal issues:

- the impact of Alto's liquidation and the consequential delayed removal of the retractable seating from the field of play;
- accelerating the hospitality fit out works to enable their use for the summer 2015 events, leading to out of sequence working; and
- power upgrade works, to meet the power requirements of the kitchens planned by the operator.

LLDC, supported by Mace, considered the reasonableness of the costs associated with the Balfour Beatty claim; LLDC and Mace estimated costs at £4.5m.

Due to the short timescale before the June concert, any delay in reaching agreement with Balfour Beatty increased the risk of having to cancel it. Costs of cancellation were estimated by E20 to be c.£5m, based on a high level assessment of the financial implications, including loss of percentage of catering and hospitality sales, compensation of the promoter, cancelling staff contracts and cost of refunding tickets. In addition there would be significant reputational damage to the Stadium in it cancelling its debut concert event.

After the debut concert, additional events were due to take place in the summer of 2016: the Diamond League athletics on 22-23 July, WHU's first match in their new ground on 7 August with their first Premier League home game on either 13 or 20 August. While the full cost of cancelling these events was not easy to assess, the reputational impact was inevitably significant, and the compensation payable to WHU for missed games was estimated at £1.25m per match, plus compensation for lost retail and catering sales.

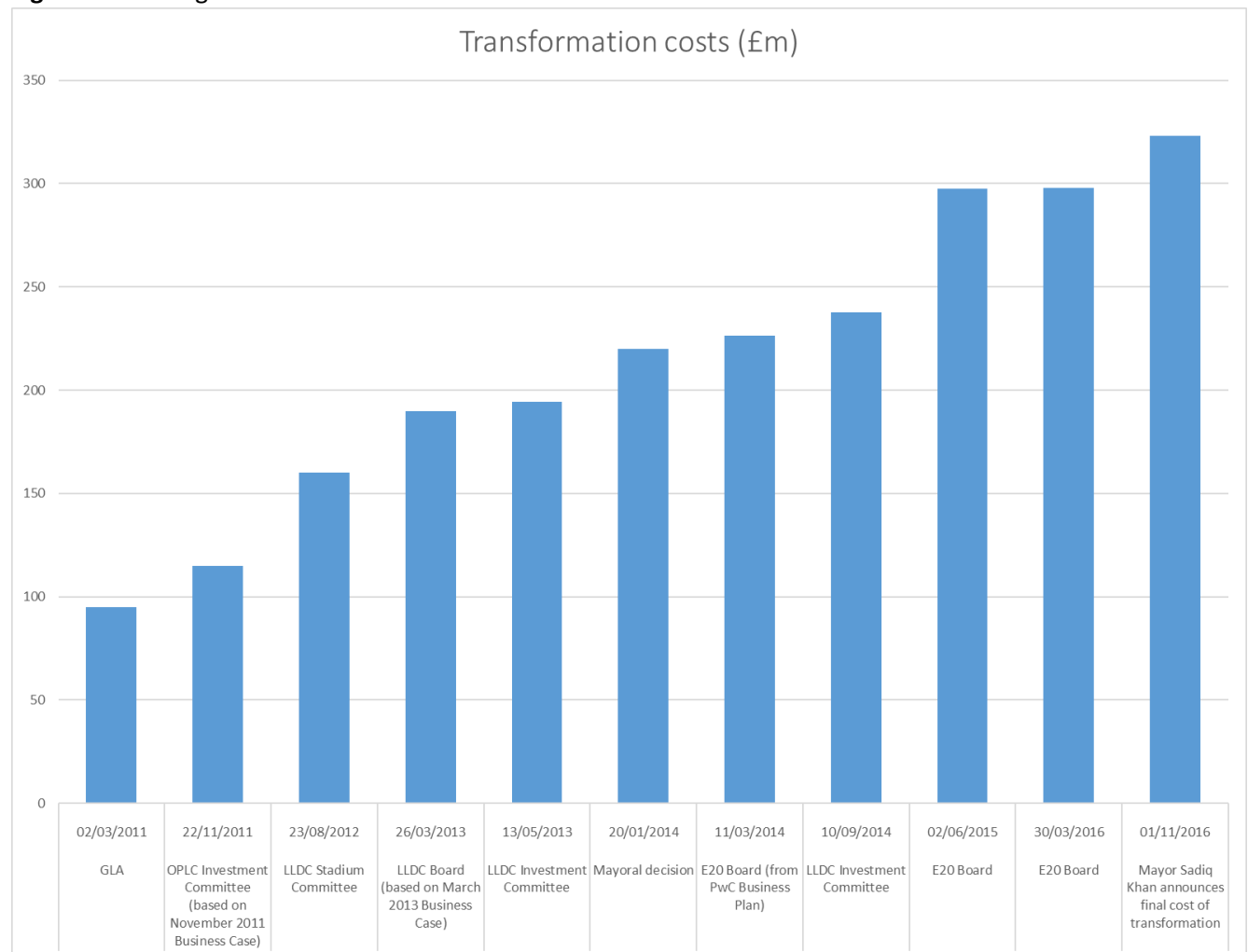
A range of options were considered, including (i) entering into adjudication with Balfour Beatty, (ii) terminating the contract and (iii) cancelling the debut concert, but LLDC/E20 decided to enter into settlement on the basis of:

- Costs as assessed by Mace (£4.5m),
- Costs of cancelling the concert (£5m)
- An amount to reflect costs otherwise associated with cancellation of Diamond League and WHU opening games, the balance of which was considered to exceed any settlement amount.

A settlement sum of £12.25m was therefore agreed. This settlement, together with other scope changes agreed, brought the total payable to Balfour Beatty to £223.13m.

Consequently, the capital costs of the transformation had increased as follows:

Figure 24 – changes in transformation costs from November 2011 to November 2016



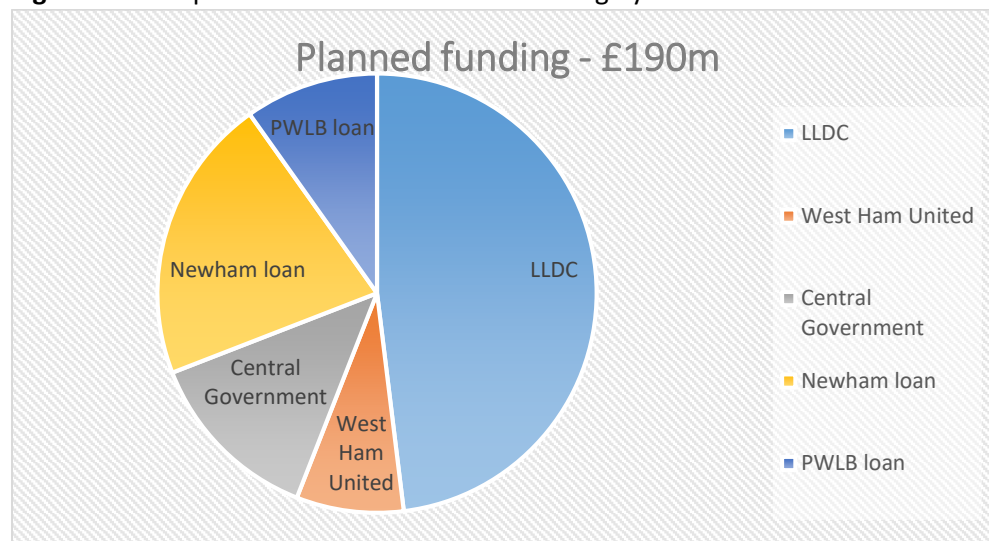
Sources of funding

Following the March 2013 Business Case, the budget estimate of £190m was to be funded as follows:

Table 35 – Sources of transformation funding as at March 2013

Source	Amount £m
LLDC	91.3
WHU	15.0
Central Government	25.0
LBN loan	40.0
PWLB loan	18.7
Total	190.0

Figure 25 – Proportions of transformation funding by source as at March 2013

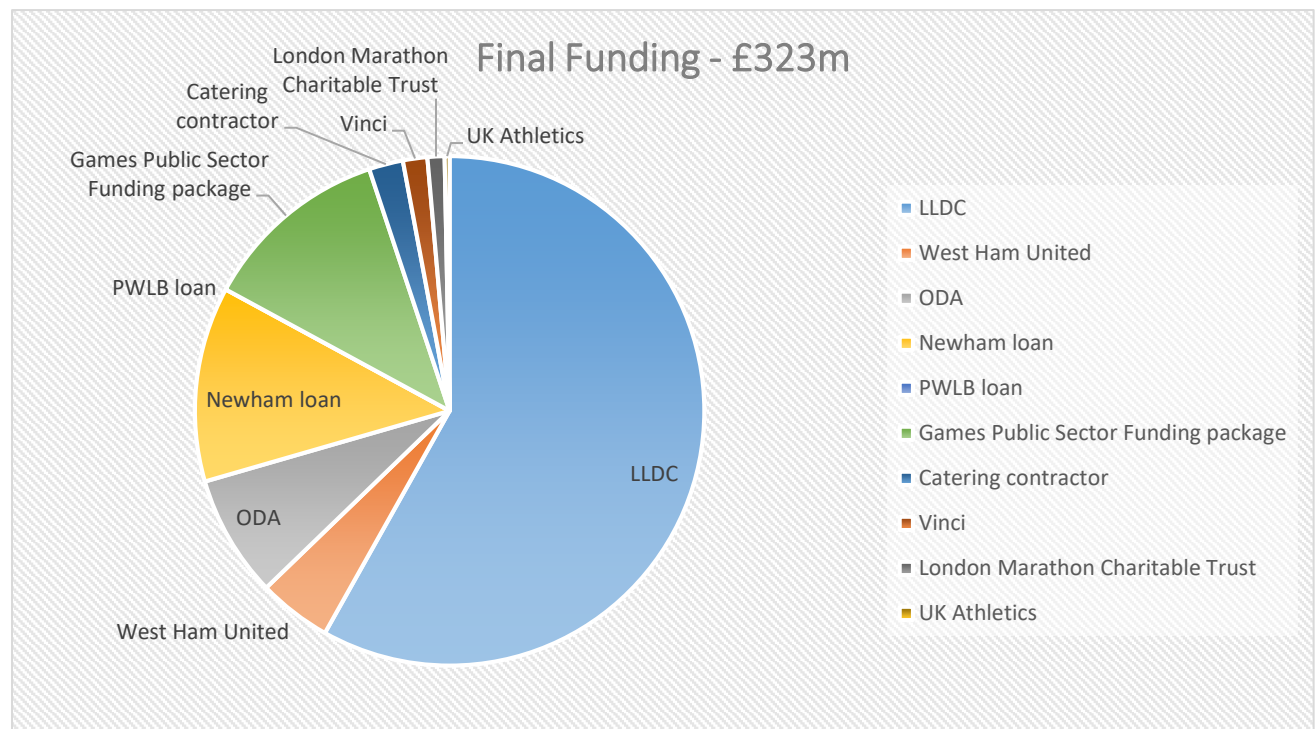


To cover the final Stadium transformation costs of £323m, most of the additional funding came from LLDC and a Games Public Sector Funding package, with some other contributions as follows:

Table 36 – comparison of planned sources of funding against final sources of funding

Source	Planned amount £m	Final amount £m
LLDC	91.3	187.8
WHU	15.0	15.0
Central Government	25.0	25.0
LBN loan	40.0	40.0
PWLB loan	18.7	-
Games Public Sector Funding package	-	38.7
Catering contractor	-	7.0
Operator	-	5.0
London Marathon Charitable Trust	-	3.5
UK Athletics	-	1.0
Total	190.0	323.0

Figure 26 – Proportions of final transformation funding by source



The majority of the additional LLDC funding was required to meet the construction costs which were higher than estimated because the costs were not known when the budget was set. In order for LLDC to access this funding Mayoral approval was necessary through formal Mayoral decisions. These Mayoral decisions were principally based on LLDC's analysis and accompanying commentary.

Our Evaluation

The total costs of the transformation exceeded the March 2013 budget estimate by £133m. The trigger for each cost increase was:

Table 37 – reconciliation of budgeted transformation costs to final costs

Narrative	Cost £ m
Total per March 2013 Business Case	190
Additional costs upon tender receipt incl. RWC acceleration	30
Balfour Beatty compensation, mainly related to roof/strengthening	36
Spend on appointment of hospitality fit-out contractor, acceleration works for Diamond League events (June 2015) and other additional scope	16
Additional work required to rectify retractable/relocatable seating	21
Discretionary fund to add value to the Stadium with regard to its long-term viability eg digital screen, concert capacity	14
General contingency for known risks which crystallised (mainly interface issues and acceleration)	12
Project insurance and internal cost of staff	4
Total	323

However, the underlying cause of the excess over the March 2013 budget estimate of £133m was principally from two sources:

- scope enhancements; and
- timing.

Scope enhancements

When the transformation works were first costed by LLDC as part of the March 2013 Business Case, for acceptance of WHU's bid as negotiated, the total transformation costs prior to any contingency of optimism bias were £167m, to which contingency of 15% was added.

However, the estimates at the time were based on incomplete design work. Whilst the project had been completed to RIBA Stage D, the incomplete design work meant that the full extent of the work required, particularly in relation to the roof and the compression truss strengthening was not fully known at the time of the March 2013 budget.

As the full extent of the work required was not known, it follows that the full extent of the costs could not have been known at the time. In that situation, due to the scale and complexity of the project:

- the project could have been delayed until the design was further developed and the costs could be more accurately estimated (or even tendered for); or
- contingency would be built in to the model or a risk premium included in the net present cost calculation reflecting the degree of uncertainty.

Whilst the costs associated with scope enhancements were outside budget, they were not overspends; the excess represents the amount by which the budget estimates were incorrect or incomplete.

Timing

There are two timing issues which had an impact on the costs:

1. The staging of the RWC and acceleration required before and after the event; and
2. The re-opening deadline that had been set of June 2016.

The desire to host RWC games put additional pressure on delivery of a usable stadium mid-way through the transformation works. It meant that, not only did the construction need to be completed in two parts, but the building site had to be cleared and the Stadium made usable for spectators twice. This had obvious cost implications.

The deadlines imposed on the construction by the RWC and the final re-opening date set of summer 2016 meant LLDC and E20 lost leverage over contractors. In addition, acceleration works were required, which incurred increased costs. Consequently LLDC/E20 were faced with a difficult choice, either:

- Complete the works on time, accept requests for additional acceleration payments for contractors and step in to ensure problems (including the seating solution) were resolved prior to the RWC; or
- Incur losses and compensation for cancelling planned events.

The cancellation of events was assessed by LLDC/E20 as more expensive than the additional delivery costs and the reputation of the Stadium was at stake, which heavily factored in to the decision making process.

Conclusion

Overall, although the March 2013 budget estimate was exceeded by £133m, actual overspend was considerably less than this. Had the March 2013 budget been set at a level appropriate to the scale of work involved (possibly by being set later when costs could more reliably be estimated or by building in more contingency) then the additional necessary structural work would have been covered by the budget.

If overspend exists it relates only to the deadlines that had to be 'met at all costs'. The question of whether these costs represent good value for money depends on what value is put on wider economic benefits, the public exposure of hosting events and political or reputational capital gained from legacy use from the stadium.

These economic and reputational benefits cannot be easily assessed, but it is clear that it was not well understood just how costly hosting events such as the RWC would be and therefore the decisions were not soundly supported at the time they were made.

At the point the decisions were made to host such events, the potential cost impact was not known, and as a result, LLDC/E20 found itself in a situation where there was a direct choice between paying an increased cost or not hosting the event and incurring reputational damage.

This is not to say that the decisions made to host such events were incorrect, but the risk and cost impact of hosting such events should have been approved with the event decision rather than during the transformation. By scheduling during the transformation and close to the planned completion date, LLDC and E20 put their backs against the wall and lost leverage in negotiations with contractors.

The self-imposed completion time pressure should also have been factored into the March 2013 net present cost calculations in the form of an increased risk premium, as larger projects with fixed and tight deadlines are inherently more risky than smaller projects or those with moveable deadlines. That risk premium could then have been adjusted as the project progressed based on timing pressure to reflect the ongoing risk-adjusted cost to LLDC. This would have better informed the decision making process and ought to have led to a cost projection that was consistent across the lifetime of the transformation. In the event, no risk factor was included in the net present cost calculations or assessments, other than the Optimism Bias of 15% (which proved to be inadequate), added to the March 2013 budget estimate.

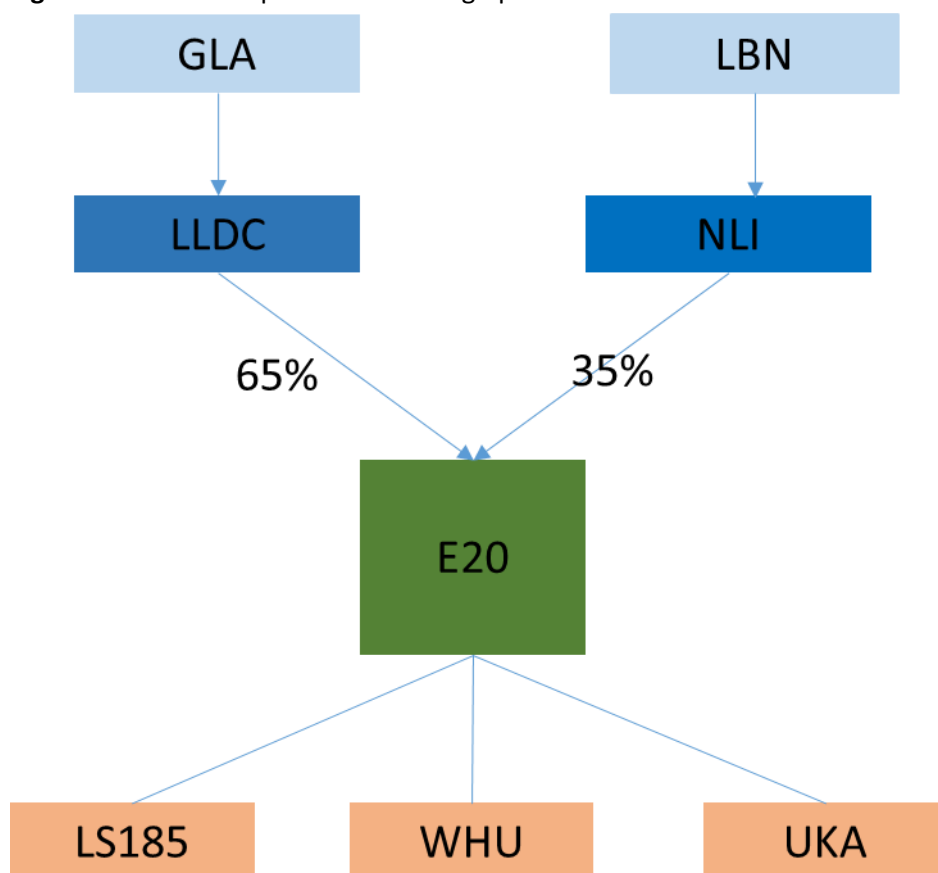
Phase 5 – Operating the Stadium

Background

This section explores the ongoing costs associated with the Stadium now in operation, occupied by WHU.

Bodies involved

Figure 27 – ownership structure during operation of Stadium



E20

E20 is a joint venture between LLDC and NLI, established in July 2012 and responsible for managing the Stadium.

NLI, a subsidiary of LBN, invested £40m for a 35% equity stake in E20. The balance of 65% is owned by LLDC. The Members Agreement specifies that the Profit Share Ratio has a tiered basis, with specific arrangements for the first £5.92m of surplus (up to that level, NLI would receive £2.25m and LLDC £1.22m cumulatively) and a 65:35 split for any surplus above that up to an agreed amount.

E20 is responsible for the running of the Stadium, liaising with the users (WHU and UKA), and managing the operator whilst reporting to NLI and LLDC.

E20's Board consists of five members and a chairperson. Up to three members are nominated by LLDC and a maximum of two by NLI. The chairperson is appointed through a unanimous vote amongst the Board members.

Public perception and Press Extracts

<https://www.theguardian.com/sport/2016/nov/02/west-ham-stadium-losses-retractable-seating-problems> - 2 November 2016

“The former Olympic Stadium, now home to West Ham United, is facing operational losses running into millions of pounds for years to come due to problems finding a naming-rights partner and hugely increased costs for retractable seating

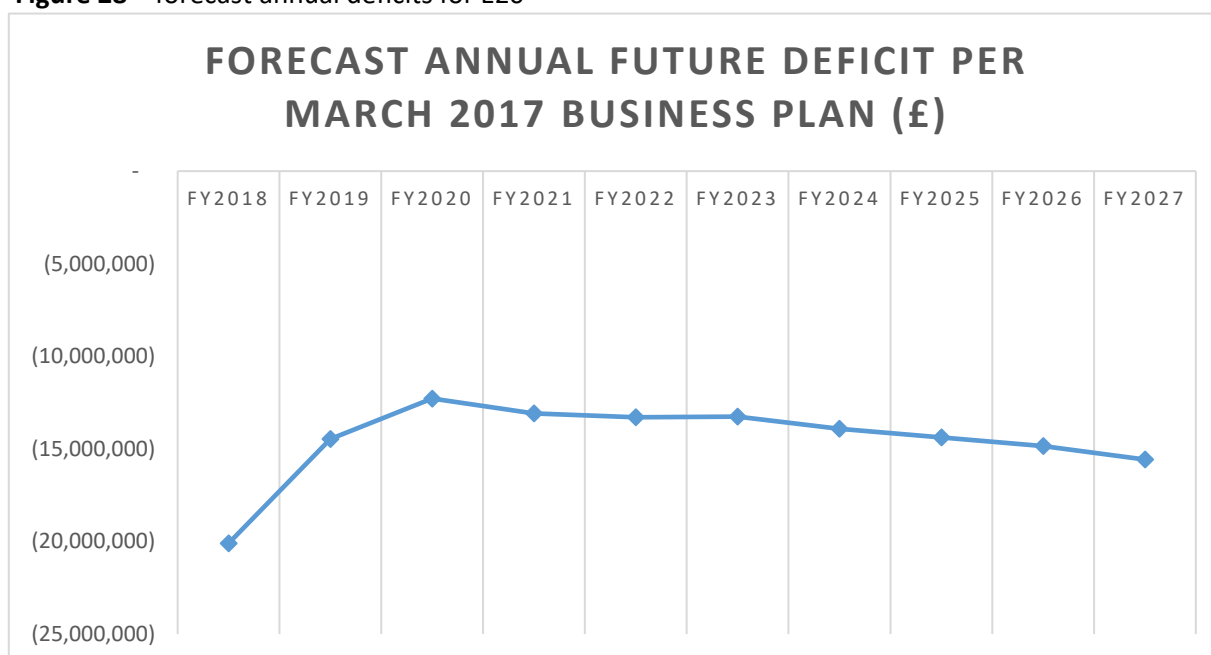
... it is understood that after a naming-rights deal fell through in the summer and the full extent of the increased costs of moving the seats back and forth to make way for a running track became clear, there is a black hole in the budget that makes it unlikely the stadium will break even for the foreseeable future.

The cost of moving rows of seats from football mode to accommodate the running track, and back again, every summer has soared from an estimated £300,000 to an extraordinary £8m.”

What happened?

The March 2017 E20 Business Plan paints a bleak future outlook for E20, depicting a significant net loss after lifecycle costs for many years:

Figure 28 – forecast annual deficits for E20



Meanwhile, the E20 financial statements for the year to 31 March 2017 include a current year total comprehensive loss of £268m, due to the recognition of £200.55m of provisions relating to the WHU concession agreement and the UKA access agreement. The financial statements provide further detail:

“forecasts of the partnership’s financial outlook, particularly in relation to the cost of hosting West Ham and the cost of moving the relocatable seats between pitch (football) and athletics modes, has required an assessment of whether any of its contracts are now deemed to be onerous (loss-making). An assessment of its main contracts (in line with IAS 37) has concluded that two of these are deemed to be onerous – the West Ham concession agreement and UK Athletics access agreement. Consequently, E20 Stadium LLP is recognising a provision for these losses, adversely impacting its reported position for the year.”

An extract from the Management Accounts to the same year end of 31 March 2017 shows the loss for the current year before these provisions:

Table 38 – comparison of E20's budgeted and actual financial performance for year ended 31 March 2017

Item	£000		
	Actual	Budget	Variance
Net operator income / (expenditure)	(6,335)	(2,865)	(3,470)
Net naming rights income / (expenditure)	(154)	2,422	(2,576)
Other operating income / (expenditure)	(5)	396	(401)
Total Staffing	(361)	(339)	(22)
Total Overheads	(3,244)	(3,046)	(198)
Seating Transition	(347)	(300)	(47)
E20 net position before lifecycle costs	(10,446)	(3,732)	(6,714)

Background to retractable seating costs

After Alto entered into liquidation and Sapa were unable to meet contracted delivery dates, E20 sought an alternative delivery route to mitigate the risk that the Stadium would not be transitioned in the necessary timescales. This risk was particularly high for the 12 day window available to transition the seats from track to pitch mode between the Diamond League athletics (22/23 July 2016) and the first WHU game (6 August 2016).

Accordingly, on 14 January 2016, the LLDC Investment Committee approved a proposal to reach an agreed exit from the E20's retractable seating works contract with Sapa/Alto. A Supplemental Agreement was then signed with Sapa, requiring it to deliver a complete athletics mode installation by the end of May 2016, in time for the 4 June 2016 concert, and subsequently meet the football requirements by the end of June 2016. The 13 June 2017 E20 Board minutes propose a £3.5m settlement to release Sapa from the Performance Bond.

On 26 May 2016 the E20 Board noted that the seating was £5.5m over budget, the breakdown of this was said to be; *"£1,900,000 of payments made last year to Sapa/Project 7 to provide seating temporary works, £1,000,000 for Lower Tier surfacing enhancement costs, £700,000 for the result of Sapa not complying with their agreement and £2,279,000 of Yr 2016 Seat Transition scope over and above the budget of £1,400,000 for labour and equipment."*

An Invitation to Tender was subsequently published on 28 October 2016 to procure a new seating contractor. However, by this stage, it had become clear that the future solution would likely be much more expensive than either the Baseline scheme or the Sapa/Alto contract, as the original system had not been delivered. Consequently the tender was now based on relocatable rather than retractable seating.

Again only two tenders were received prior to the application deadline on 2 December 2016, from ES Global Limited (ESG) / Arena Event Services Group Limited (Arena), and PHD Modular Access Limited (PHD). Given the relative lack of bids and the deficiencies experienced in the original seating solution, it was likely at this point that annual operating costs for a relocatable seating approach would be high (absent a complete overhaul of the system, incurring significant capital costs).

On 17 January 2017, the LLDC Board recommended that PHD, a contractor with which it had worked, be appointed for a 5 year period as the Stadium Relocatable Seating contractor by E20 to operate and maintain the seating. PHD were appointed in February 2017, based on the following evaluation:

Table 39 – LLDC’s evaluation of tender for seating contractors

Tenderer	Technical Score % (out of 60%)	Commercial Score % (out of 40%)	Overall Score % (out of 100%)
PHD	35.00	39.20	74.2
ESG	36.70	34.40	71.4

The cost of seating transitions offered by PHD was not fixed but priced on a target cost basis with a 50:50 pain/gain mechanism for additional costs. Under this mechanism, the contractor is reimbursed its actual costs (on an adjusted actual cost basis) at the end of the project. The agreed price is based on target costs plus 50% of any costs measured over and above target. As a result, the tendered cost estimate was exceeded.

E20’s 11 May 2017 Board minutes state that *“between September 2016 and January 2017, the costs provided to Board were pre-tender estimates based on advice from Mace and the LLDC transformation team. The estimates fluctuated, but were within the £8m-£10m mark reported in January 2017”*.

Although a budget of £10m per year had been set for seat relocation, it proved insufficient; E20’s 11 May 2017 Board minutes state that:

“-Our contractor, PHD, submitting an impact assessment for the East Stand move which includes a Target Cost laden with Risk. This is largely due to the need to move multiple stand options in parallel, which has never been previously undertaken.

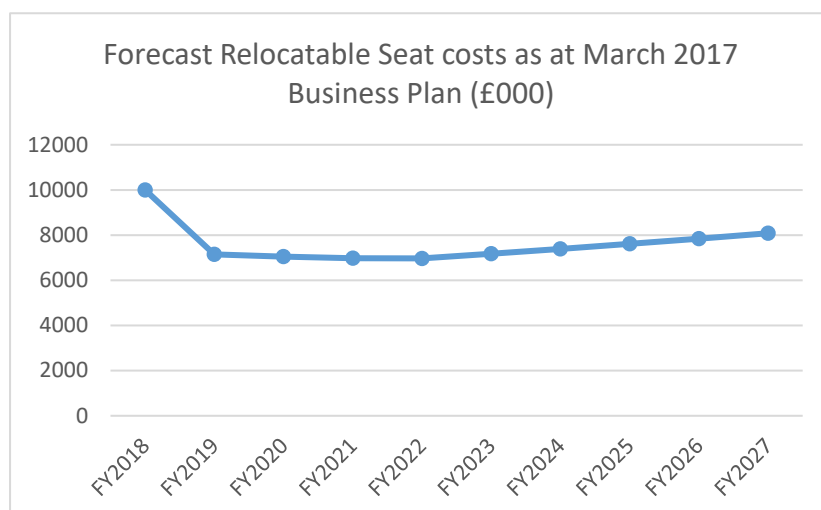
- Greater certainty on East Stand logistical planning. Most critically during Transition 3 (athletics to pitch) there are greater constraints on crane equipment manoeuvrability due to the pitch preparation needs.

- In January 2017 the estimated East Stand cost was priced using rates from the tender documents. It has been subsequently realised that these costs did not allow for weekend working.”

LLDC and E20 are presently assessing ways in which they could reduce the cost of seat moves. Different configurations for the Stadium are being explored, including the option to not transition the East Stand for certain future events.

Whilst the latest estimate for seat moves undertaken in the summer of 2017 is £11.8m, E20 says it is optimistic that some cost savings can be made in future - the summer 2017 moves involved full athletics mode for the WAC and the seat moves taking place in two separate phases. E20 notes that opportunities are under review in relation to different configurations for the Stadium in which the stands do not have to be fully transitioned. The following graph details forecast future costs included in the March 2017 Business Plan.

Figure 29 – Forecast annual relocatable seating costs as at March 2017



Background to Naming Rights

In all business plans produced for the Stadium since March 2013, there has been an assumption that a naming rights deal would be concluded for a substantial annual income. Where an operating surplus has been forecast it has always been on the assumption of substantial naming rights income being received by E20. However, to date E20 have not secured a naming rights partner. Unlike similar deals which exist, for instance Arsenal with Emirates and Manchester City with Etihad, the deal available to and proposed by E20 does not include a shirt or other sponsorship deal which would have to involve WHU.

E20 sought to conclude naming rights deals with Tech Mahindra in 2016 and Vodafone in 2017, but neither of these deals were completed.

Background to Stadium Operator

The Stadium is managed by an operator commissioned by E20; the model was considered by E20's Board on 13 June 2013 and three options were discussed:

“Option 1: Commercial Operator procured – E20 procures a commercial operator who delivers a full operation service. It would include management of the concession agreements, operation and maintenance of the Stadium and potentially catering in return for a fee and/or a share of revenues. Operator will be incentivised to bring in content to the venue when not in use by the Concessionaire or UK Athletics.

Option 2: E20 operates the Stadium – the LLP creates a Stadium Company and employs its own operational team by directly employing operator professionals. It will still sub-contract some services (for example to a catering contractor), but the LLP retains full responsibility for the operation of the venue.

Option 3: The LLP procures shared services from another venue Operator - A variation on Option 2 in that there is a core internal operational team, but more of the services are subcontracted out, such as maintenance and stewarding, in partnership with existing stadium operators to secure better value from suppliers.”

Option 1 was decided to be the preferred option as it was thought to transfer significant risk from E20 to the operator for revenue, operational delivery and maintenance. Procurement for an operator was launched on 7 January 2014 by publication of a formal Contract Notice in the Official Journal of the European Union and Pre-qualification Questionnaire. The operator was to be responsible for managing the stadium, and for operation of concessionaire and access agreements, with the additional objective of bringing in events for the venue on behalf of E20.

The operator was also required to have relevant experience of running a complex venue and to potentially achieve economies of scale by running other venues. In the event there was an unsatisfactory response to the operator tender, a direct delivery option was the contingency plan. At their meeting on 13 June 2013 the E20 Board had noted that there was a risk of a poor response to the tender due to the limited number of operators with the capacity and capability of operating the stadium.

The E20 Board approved the key objectives of the Operator procurement on 13 February 2014 saying:

“the Operator will assume risk for delivery of services (and therefore maximise its commercial return) ... Under the concession, the Operator provides our delivery requirements at their operating and financial risk, and the Contracting Authority would require from the operator a part of the revenues the Stadium and the South Park would generate under their management.

- *The service to be provided includes appointment of users and event organisers/promoters... The Operator will have unfettered ability to optimise usage and drive a commercial return.*
- *The Operator will collect the Usage Fee from WHUFC... It will encourage a strong day-to-day working relationship between the Operator and WHUFC and it is anticipated that it will minimise the number of disputes being escalated to the E20 LLP to resolve.*
- *The Operator will be able to invest capital at the Stadium or South Park to maximise its attractiveness, use of the Stadium and accordingly the potential income from it (and therefore the profit/revenue share to E20 LLP/LLDC). This could include investment in the fit-out of the hospitality areas, temporary event facilities such as stages and/or enhancement of general admission F&B facilities*
- *The Operator will be expected to take the financial risk for the replacement of Fixtures, Fittings and Equipment at the Stadium and for routine maintenance of the facilities.*
- *The Operator will be encouraged to maximise operating profit through securing users of the Stadium and ensuring year-round activity.*
- *It will be at the Operator’s discretion to deliver the following usage at the Stadium and South Park: non-event day; conferencing and banqueting; one-off events; international football matches or single club friendly matches; concerts; short-term concessionaires; the community days; the obligations within the Concession and Access Agreements; and any other events the term of which falls within the Operator’s contract term...as a commercial operator, the profit motive will ensure that best value is obtained through negotiation with the market.”*

Prior to the 14 February 2014 submission deadline five responses to the PQQ were received. Global Spectrum, who had registered interest and had strong credentials did not submit a PQQ. Based on the PQQs, AEG, Vinci and Live Nation were shortlisted to receive the Invitation to Tender documents. AEG who scored the highest of the shortlisted candidates declined to submit an Outline Solution and therefore withdrew from the process. Subsequently, bids were submitted by Live Nation and Vinci on 10 October 2014.

Evaluation of the bids was undertaken by E20 supported by WLG&Co and PwC. A summary of the key areas of each bid from the E20 Board meeting on 10 September 2014 is set out below:

Table 40 – E20’s summary of bids for Stadium operator

Key area	Live Nation	Vinci
Committed Fee	<i>None</i>	<i>None</i>
Uncommitted Fee	<i>Net losses of £6.35m over years 1-3, stabilised at a loss of £2.65m/yr from year 4 onwards</i>	<i>Net losses of £2.5m over years 1-3, with a profit in year 4 of £1.58m and rising to £1.71m by year 20</i>
Capital contribution	<i>None. Catering contribution of £3.5m from preferred catering contractor, Fabulous Fan Fayre</i>	<i>£4.98m with an additional £7m committed from the catering provider with an additional £1m in year 6</i>
Contractual arrangement	<i>Live Nation to act as managing agent; the Grantor would be required to enter into separate contracts with (e.g.) the catering provider and EFM provider</i>	<i>An SPV formed by Vinci Concessions would provide all services and enter into the concession contract</i>
Key content assumptions	<i>WHUFC; UKA; <u>10 concerts</u>; MLB; non-event day F&B</i>	<i>WHUFC; UKA; 5 London Irish rugby matches; MLB; <u>3 concerts</u>; non-event day F&B</i>
Risk transfer	<ul style="list-style-type: none"> <i>None – all revenue and operational risk remains with the Grantor who will be required to contract with 3rd parties for the provision of services.</i> <i>Live Nation have set out a potential profit share arrangement should the business plan make a surplus: the first £0.5m of trading profit would be split 75:25 in favour of E20; between £0.5m and £1.5m, the trading profit would be split 50:50 with E20; and for any profit over £1.5m, the trading profit would be split 75:25 in favour of E20</i> 	<ul style="list-style-type: none"> <i>Risk on fixed operational costs is transferred – Vinci manages the fixed costs (excluding utilities) within an agreed cap of £5.8m per annum indexed. Vinci takes the risk of higher costs, but receive the benefit if the costs are lower;</i> <i>Some but not all revenue risk is transferred, although the Grantor has right of termination every 5 years if net revenues do not exceed certain amounts. If the revenue is more than the event day costs then Vinci receives 5% of the net revenue (with the rest available to cover fixed costs), rising to 20% (E20 LLP retaining 80%) if the net revenue exceeds the fixed operating costs.</i> <i>Therefore if net revenue is less than the fixed operating costs then E20 will be required to fund that deficit</i>
Overall score	20.1%	48.4%

The bids were ranked as follows:

Table 41 – Stadium contractor bid evaluation

<i>Participant</i>		<i>Financial Score (60%)</i>	<i>Technical Score (40%)</i>	<i>Overall Score</i>
1st	<i>Vinci</i>	20.00%	28.40%	48.40%
2nd	<i>Live Nation</i>	0.00%	20.10%	20.10%

According to E20's evaluation report of 24 September 2014 (presented to the E20 Board on 10 October 2014), Vinci's bid was the most economically advantageous. Live Nation's bid on the other hand was said to be non-compliant for example that, Live Nation had not identified changes to information submitted at PQQ about the structure of its delivery vehicle (as required by the mandatory requirements of the Call for Final Tenders (CFFT)):

"It was therefore concluded that the Live Nation's tender submission was non compliant which would prevent the award of the contract to Live Nation if it had proved to be the higher scoring Participant as a result of the evaluation."

The LLDC Investment Committee minutes on 9 October 2014 recommended that E20 should appoint Vinci as the Stadium Plus Operator stating that:

"6.1.1. They submitted the highest scoring final tender which delivers a positive business case over the term of the contract;

6.1.2. Vinci have demonstrated their capability to deliver the operator services; they have taken on significant operational risk;

6.1.3. Vinci will contribute capital funding to enhance the revenue generating opportunities at the Stadium and provide an improved level of fit-out;

6.1.4. Furthermore, by appointing Vinci, E20 and LLDC will pass management of the WHUFC and UKA agreements on to the Operator, removing interface risk from the LLP, along with management and promotion of any future long or short term users; and

6.1.5. Finally, this option will ensure that the operator is appointed in good time to deliver the services and licences required for the summer 2015 events."

Meanwhile E20 evaluation report also highlighted a number of concerns with the Vinci bid, notably that in E20's opinion:

- Revenues for planned event calendar items appeared very optimistic
- In the event that Vinci did not deliver sufficient commercial revenue exceeding the fixed and variable costs (along with the Operator's 5% share), E20 would be liable for any shortfall
- Vinci's bid contained assumptions on the benefits and revenue generated by the "Connected Stadium" which E20 considered were difficult to quantify
- E20 would, even in the presented case, have incurred losses of £2.18m in the initial 5 year contract period.
- The termination clause does not limit E20's liability for a shortfall.

E20's Board minutes record questions raised over whether Vinci should be appointed *"based on the need for an operator to be in place in 2015"* and that *"short term decisions must not impact on the best long term financial return from the Stadium."* The E20 Board resolved that a better understanding was needed.

Accordingly, a benchmarking exercise was undertaken, comparing the Vinci costs with venues of a similar size. LLDC Investment Committee¹⁰¹ concluded that no change was required to the result of the prior evaluation as a result of this benchmarking exercise. The Committee also noted that the appointment of the Operator was time-critical in part due to the requirements of the RWC.

Benchmarking data in relation to fixed costs obtained from the Emirates, Twickenham and Wembley, revealed that Vinci's cost assumptions were *"significantly lower than benchmarked UK stadia."*¹⁰² Similarly, sensitivity analysis performed on Vinci's tendered figures reduced the expected profit from the Operator from £4.9m to £2.8m. Subsequently, E20's Board approved Vinci's on 11 December 2014 and, on 30 January 2015, E20 signed the Operator Agreement with London Stadium 185 Limited (hereafter LS185), a special purpose vehicle formed by Vinci, to run the Stadium.

Our Evaluation

Summary

The ratification of the WHU concession agreement in March 2013 and adoption of retractable seating, was based on analysis provided to the Board which indicated that it made sense financially. However, the information presented proved on a number of occasions to be manifestly incomplete or to be inaccurate. Many of the reasons and issues arising were in fact foreseeable at the outset. In our opinion, business plans have been adopted without appropriate scepticism and risk assessment. As a result, E20's financial position is much weaker than forecast in its business plans, in ways which are challenging to address.

Continuing deficit

E20 has been operating at a continuing deficit since its foundation. This was, in our opinion, knowable given the earlier business plans were adopted based on misunderstandings and/or incomplete information fundamental to their planning.

The initial business plans for E20 were adopted by the Board on 13 March 2014. The main elements of this plan, as per the Board minutes were:

"a total operating surplus for the Stadium of £3.115m pa.

5.4.2. The amount retained by E20 of the £3.115m surplus is £1.830m.

5.4.3. However, E20 also expects to receive a proportion of the £1.285m retained by the Operator, an amount which could be significantly increased should the Operator deliver a bullish business plan and event profile.

5.4.4. Furthermore, in the upside scenario ... the surplus increases significantly to provide a return to E20 which meets the requirements of the business plan."

Oddly, whilst the plan details a surplus in its summary, a thorough reading indicates the opposite. This is because the Business Plan excludes known costs, i.e. it shows the total operating surplus excluding pre concession payment and lifecycle costs.

¹⁰¹ LLDC Investment Committee 22 October 2014

¹⁰² E20 Board minutes from 29 October 2014

The summary presented to the LLDC Board members indicated that:

“Lifecycle costs have also been estimated by G&T at around £330m over the 99 year period which equates to an average annual amount of £3.3m. However, lifecycle costs have a “lumpy” profile, with lower costs in early years but then rising as the assets age. Across the 99 year period, there are nine years when lifecycle costs are expected to exceed £10m with a peak of £18m in Year 60.”

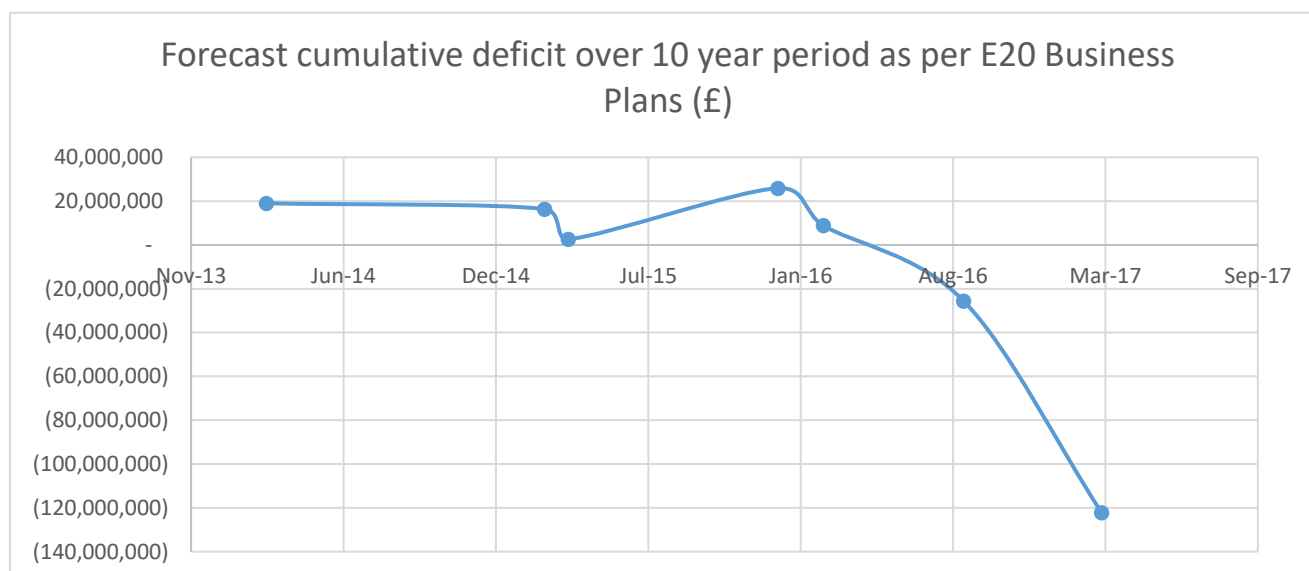
This meant that whilst the Board report highlighted an operating surplus of £3.115m, pre life cycle and financing costs, once these are reflected, a deficit of around £185,000 every year was anticipated, before downside risks.

Over-optimism in budgeting processes

Whilst a close reading of the initial business plans record that E20 would generate a deficit, other assumptions in the plans were nevertheless still optimistic. As it turns out, there was a gross understatement of costs and overstatement of income.

Consequently, E20’s anticipated 10 year surplus/deficit has dramatically fallen as the actual levels of revenue and cost have become apparent. The initial E20 business plans were clearly significantly off the mark:

Figure 30 – forecast cumulative E20 deficits



The reasons for this significant decline are explored in further detail below.

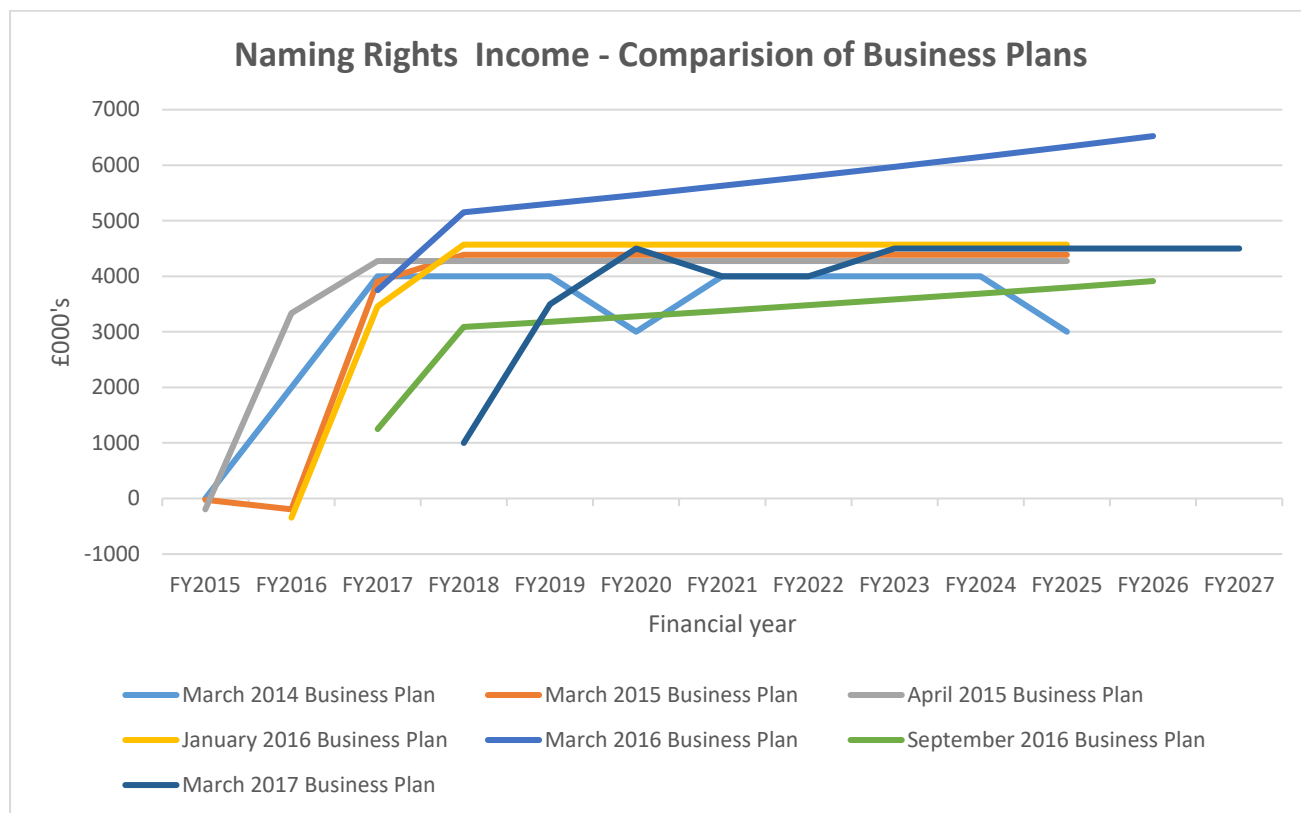
Overstatement of Income

Naming rights

The majority of the E20 business plans assume that E20 can generate some £4m of naming rights income per annum. The March 2016 Business Plan suggested that this income stream could even exceed £6m. This income stream, per the business plans, is in fact the principal E20 income source, yet to date no naming rights income has been received.

The fluctuating budgeted naming rights income is demonstrated in the graphic below:

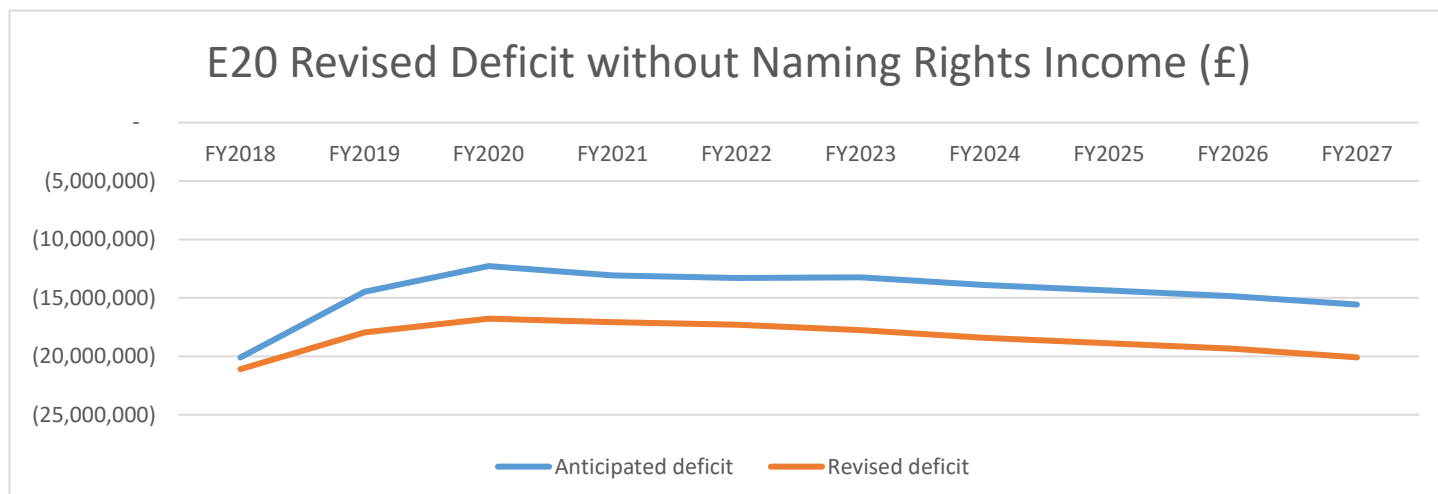
Figure 31 – Forecast naming rights per E20 business plans



In the absence of naming rights, E20 falls into a deficit position and, despite the fact that E20 has not received any income from naming rights to date, the income stream continues to be included in the budgets. Arguably therefore, E20's business plans continue to paint a more positive picture of E20's future than can be justified by income and expenditure to date.

We reproduce below the E20 Business Plan without naming rights income, based on E20's March 2017 Business Plan, and taking into account anticipated lifecycle costs:

Figure 32 – Revised E20 deficits calculated without naming rights income



In our opinion, the fact that no naming rights income has been agreed demonstrates that this particular Business Plan assumption was overly optimistic. This is supported by the other naming rights deals of which E20 was aware. When the context of the other deals is put into perspective, the forecast revenues of £4m and upwards appear unrealistic in terms of timing, value, continuity and duration.

Table 42 – E20’s benchmarking of naming rights income

<i>Venue</i>	<i>Location</i>	<i>League</i>	<i>Capacity</i>	<i>Date</i>	<i>Term</i>	<i>Est Value of Total Contract £m</i>	<i>Value Per Year £m</i>
<i>The Etihad Stadium</i>	<i>Manchester</i>	<i>PL</i>	<i>48,000</i>	<i>2011</i>	<i>10</i>	<i>240.0</i>	<i>24.0</i>
<i>Olympic Stadium</i>	<i>London</i>	<i>PL</i>	<i>60,000</i>	<i>2012</i>	<i>-</i>	<i>-</i>	<i>4.0</i>
<i>Aviva Stadium</i>	<i>Dublin</i>	<i>-</i>	<i>50,000</i>	<i>2010</i>	<i>10</i>	<i>39.2</i>	<i>3.9</i>
<i>Emirates Stadium</i>	<i>London</i>	<i>PL</i>	<i>60,355</i>	<i>2004</i>	<i>15</i>	<i>50.0</i>	<i>3.3</i>
<i>Friends Provident Stadium</i>	<i>Southampton</i>	<i>PL</i>	<i>32,800</i>	<i>2001</i>	<i>5</i>	<i>9.0</i>	<i>1.8</i>
<i>Ricoh Arena</i>	<i>Coventry</i>	<i>Champ</i>	<i>32,000</i>	<i>2005</i>	<i>10</i>	<i>10.0</i>	<i>1.0</i>
<i>KC Stadium</i>	<i>Hull</i>	<i>Champ</i>	<i>25,500</i>	<i>2010</i>	<i>15</i>	<i>10.0</i>	<i>0.7</i>
<i>Reebok Stadium</i>	<i>Bolton</i>	<i>PL</i>	<i>28,700</i>	<i>2007</i>	<i>9</i>	<i>5.0</i>	<i>0.6</i>
<i>Amex Stadium</i>	<i>Brighton</i>	<i>League 1</i>	<i>22,500</i>	<i>2010</i>	<i>10</i>	<i>4.5</i>	<i>0.5</i>

Many of the other naming rights agreements of which E20 was aware have factors not available to E20:

- The Etihad Stadium, the home of Manchester City was previously named the City of Manchester Stadium; it was built for the 2002 Commonwealth Games and first used for football in 2003. A naming rights deal with Etihad Airways was concluded in 2011; however, this deal was part of a wider sponsorship deal including shirt sponsorship and other commercial enterprises. Etihad are owned by the Abu Dhabi government and Manchester City’s owner, Sheikh Mansour, is a member of the Abu Dhabi Royal Family.
- The Emirates naming rights deal for Arsenal’s stadium, previously known as Ashburton Grove, was part of a wider deal, including shirt sponsorship.
- Brighton’s naming rights deal with American Express is linked to the fact that American Express is reportedly the largest private employer in the town, which is the home of its European Service Centre. In 2013, American Express also became shirt sponsor of the Club.

Historic precedent suggests that stadium rights are typically (though not exclusively) part of wider sponsorship programs involving shirt sponsorship. Combining stadium rights within a wider package allows a sponsor increased and concentrated leverage over its sponsorship collateral. Whilst the fact that for the Olympic Stadium shirt sponsorship rights and Stadium naming rights reside with two different bodies does not prevent a naming rights sponsor from doing separate deals with E20 and WHUFC, it adds complexity and may reduce the value of the rights.

A naming rights sponsor will become indelibly linked with team using the Stadium. Consequently, the separation of the ownership of the naming rights from the football club causes practical problems for a naming rights sponsor. A sponsor will wish to protect their brand image and profile and will not want it to be comprised by the football club's deals for its own sponsorship collateral.

The various business plans for the Stadium show continuous naming rights income throughout the discrete forecast period. However stadium naming rights deals are a relatively new phenomena and therefore there is little historic precedent for that optimistic assumption.

For example, the Friends Provident naming rights deal for Southampton was not renewed. Similarly, the Reebok agreement for Bolton Wanderers did run for its full term, though a new naming rights deal was agreed with Macron. Securing a new naming rights sponsor at the end of an agreement could be problematic if there is a strong residual brand association with the previous sponsor.

Whilst the Stadium has potential to generate income from naming rights, as E20 have discovered concluding a deal is problematic. The separation of the ownership stadium naming rights from WHU sponsorship collateral may have been a deterrent, but there are other commercial factors.

Sponsorship is one of many alternative and competing opportunities for a company's marketing budget. Investment in sports sponsorship is typically subject to detailed financial appraisal both pre contract and throughout the term. This is normally performed by comparing the cost of the sponsorship against the value of the media exposure, benchmarked against the cost of advertising.

Consequently for any sponsor, the value of a naming rights deal is fundamentally linked to the future exposure of their brand through the association with stadium and the club playing there. The more successful and the better the brand of the team, the greater media coverage and the higher value of the naming rights.

Securing a naming rights sponsor therefore requires both a subjective brand fit and objective financial evaluation.

Overall, in our opinion, the naming rights assumptions in the various business plans were optimistic. There are other Premiership football clubs more successful than WHU who do not have naming rights deals. Sponsorship is but one component of a company's marketing mix and there are numerous alternative applications for investment. At the end of a naming rights deal there can be no guarantee of extension. Any new deal will be subject to a detailed evaluation and assessed against the sponsor's marketing budget and strategy at that point in time.

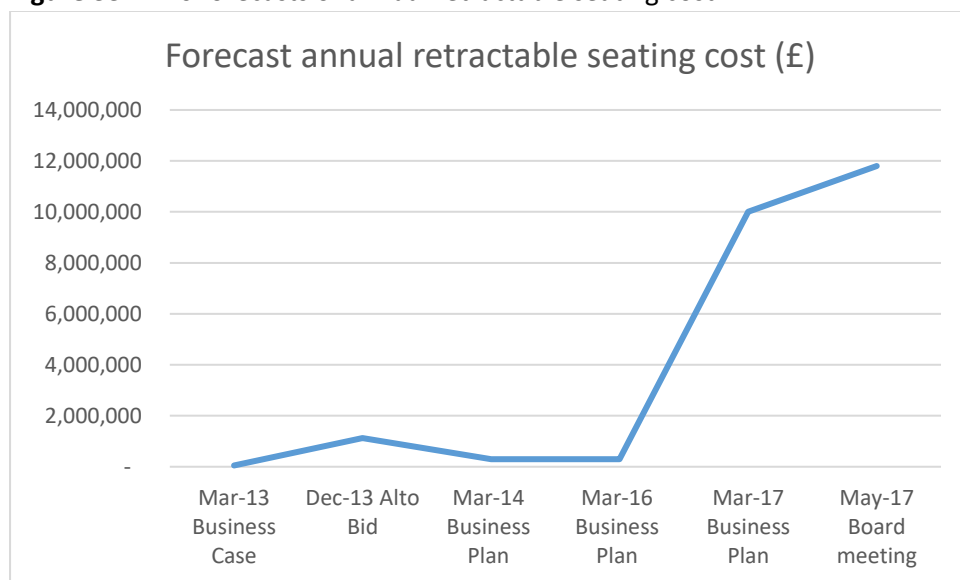
Understatement of Costs

Relocatable seating

The cost of the relocatable seating is now the largest annual expense of E20. The need for retractable/relocatable seating arose from the combination of the UKA access agreement and the WHU's requirement to have seats close to the pitch, requiring the seats to be transitioned between football and athletics "mode" each year.

At the time the commitment to such seating was agreed¹⁰³, there was no worked up plan to enable the cost of moving the seats to be estimated reliably. Speculative figures were included in business plans, however, the forecast costs were understated. The chart below illustrates the extent to which retractable/relocatable seating costs have risen from a “notional £50k” per year assumed in the March 2013 Full Business Case to an anticipated £11.8m (for the summer 2017 moves) to move all stands, per the E20 Board meeting of 11 May 2017.

Figure 33 – E20 forecasts of annual retractable seating cost



Inexplicably, the business plans until March 2016 continued to include a cost of £300k per annum for the retractable/relocatable seating solution despite the fact that the Alto Consortium (the retractable seating provider) submitted a tender on 1 November 2013 which detailed an annual cost of £1.12m in the first year, increasing thereafter. An extract from Alto Consortium’s pricing schedule is provided below:

Table 43 – extract from Alto tender showing annual seating costs

Activity Type	Annual Cost Year 1				Year 2	Year 3
	Net Costs	Overhead	Profit	Total Costs	Total Costs	Total Costs
Operation and Maintenance	£246,550	£24,655	£40,680	£311,885	£324,361	£337,335
Retraction to Athletics	£351,310	£0	£52,696	£404,006	£420,167	£436,973
Protraction to Football	£351,310	£0	£52,696	£404,006	£420,167	£436,973
Total Annual Costs	£949,170	£24,655	£146,072	£1,119,897	£1,164,695	£1,211,281

Indeed, the £300k forecast cost continued to be used in the business plans despite the fact the initial bid evaluation demonstrated that operational costs would most likely be higher:

*“Initial findings are that while both solutions offer significant capital savings, there are high operational costs that would have a negative impact on the Stadium business plan”.*¹⁰⁴

¹⁰³ UK Athletics access agreement signed on 17 May 2013 and WHU concession agreement signed on 22 March 2013

¹⁰⁴ LLDC Investment Committee minutes from 19 November 2013

Similarly, the E20 minutes of 13 March 2014 noted:

“the procurement of a retractable seating supplier has provided an insight into the costs involved in operating and maintaining the lower bowl of the Stadium”.

It is unclear why £300k was repeatedly included in the business plans and this suggests an apparent lack of thoroughness in their production or the supply of the information on which these plans rely. At a minimum, a cost of £500k should have been included in the business plans from December 2013. This was the minimum cost in the E20 Board minutes of 10 December 2013:

“The table illustrates that the figure of £1.3m quoted by Alto is an intentionally cautious estimate as they do not want to manage the system. A more realistic minimum cost of £500,000 per annum has been estimated by advisers.”

Although in the E20 financial statements both the UKA access agreement and WHU concession agreement are referred to as onerous, we consider the acceptance of the bid of WHU in the second competition and subsequent concession agreement to be the root cause as this was the change from the prior status quo. It is the concession agreement which specifies that the seats should be brought closer to the playing surface. In the absence of this, the seats would have remained in “athletics mode” and no requirement to switch the configuration would exist. Furthermore, the commitments made to athletics included in London’s original Olympic bid predate the competition for a Stadium occupier.

Match day costs

Under the terms of the concession agreement, E20 are responsible for the vast majority of match day costs. Clause 24.1 states:

“In accordance with the requirements of any Regulatory Body and any Governing Body Requirements, the Grantor shall, at its own cost, provide or procure all necessary ticket checkers, turnstile operators, stewards within the Island and the Park, security personnel within the Island and the Park, ambulance and other medical personnel, staff for outlets, staff for restaurants and other public catering outlets, cleaning and maintenance staff and other personnel of suitable qualification and training, in sufficient numbers to ensure the safe and efficient operation and management of the Stadium, the spectators and the public on an Event Day.”

Based on discussions with interviewees, benchmarking activity against venues (including the Boleyn Ground and City of Manchester Stadium) had suggested that costs of £2.5m were a reasonable expectation for operating the Stadium. Had that been so, E20 would have broken even from staging WHU fixtures, before other Stadium costs. However, like many other assumptions in the business plans, the match day costs have transpired to be significantly greater than anticipated. As detailed in Phase 3, no price escalator clause was included in the concession agreement to pass on cost increases to WHU, or at the least share costs between the parties. Policing and stewarding costs have increased notably since the signing of the concession agreement.

Before WHU moved into the Stadium, the E20 Finance and Audit Committee raised concerns that the WHU usage fee may be insufficient:

“LS185 have expressed concerns regarding the operational costs for staging West Ham matches, and are concerned they may exceed the fixed fee of £2.5m payable by West Ham.”¹⁰⁵

¹⁰⁵ E20 Finance and Audit Committee 4 November 2015

Their concerns have become reality as match day costs currently stand at £220k per game¹⁰⁶. This means that E20 are making an actual loss before general Stadium costs each time they stage a WHU match. Even if E20 delivered a reduction in costs per game of £50k (as described in the 30 March 2017 E20 Board minutes), the costs of staging WHU events would still exceed associated revenues.

In an E20 Board meeting on 30 November 2016, E20 noted that it intended to reduce match day costs to £149k per game but that this would still be “a £17k loss per match”. The Board minutes note that income per WHU game is effectively £100k (based on a usage fee of £2.5m for a full quota of 25 matches).

The LLDC Board minutes from 28 February 2017 state that E20 receive around £30k per match in catering revenue. Assuming WHU fulfil the full quota of 25 matches, the match day costs remain at £220k and catering revenues are £30k, the usage fee required from WHU to cover these costs alone is £4.75m before general Stadium costs. Consequently, E20 are making a loss of £2.25m per year purely by staging WHU games:

Table 44 – calculated net match day loss from WHU usage fee

Item	Cost (£000)	Assumptions
Match day Costs	(220)	Costs remain at £220k per game – March 17 E20 Estimate
Less: Catering Revenue	30	Revenue remains at £30k per game – Feb 17 E20 Estimate
Net position	(190)	Per game
Total costs	(4,750)	Based on 25 games per year – Premier Match Quota per concession agreement
Less WHU Usage Fee	2,500	Premier Match Quota Usage Fee as per concession agreement
Net loss	(2,250)	

This does not take into account other Stadium expenses including lifecycle costs, relocatable seating expenses, utilities or rates which cause this figure to deteriorate further.

Reflecting utilities and business rates and the fixed fee of the Stadium operator, the WHU required breakeven usage fee rises from £2.5m to around £11.5m. This usage fee would assume that WHU should contribute a fee sufficient to cover 9/12 of the utilities, business rates and operator fee (the football season is roughly 9 months long during which period there are significant barriers to staging other events as outlined in Phase 3). The contribution from WHU to rates and utilities is assumed to be minimal as it would be based on the areas for which they are granted a sub-lease, and WHU do not contribute to the operator fee. These costs are explored in further detail shortly. This revised calculation would be:

¹⁰⁶ E20 Board minutes from 30 March 2017

Table 45 – Revised calculation of usage fee required to cover costs

Item	Cost (£000)	Assumptions
Matchday Costs	(220)	Costs remain at £220k per game – March 17 E20 Estimate
Less: Catering Revenue	30	Revenue remains at £30k per game – Feb 17 E20 Estimate
Net position	(190)	
Total costs	(4,750)	Based on 25 games per year – Premier Match Quota as per concession agreement
Share of Utilities	(1,614)	9/12 of £2.152m utilities – budgeted figure from March 2017 Business Plan
Share of Rates	(1,575)	9/12 of £2.1m rates – budgeted figure from March 2017 Business Plan
Share of operator fixed fee	(3,600)	9/12 of £4.8m – operator fixed fee of £5.8m less round sum allowance for utilities of £1m included within operator fixed fee
Total Cost	(11,539)	

We note that Baroness Margaret Ford previously commented to the London Assembly's Economy, Culture & Sport Committee on 8 November 2011 that:

"The rental has to be commercial. That is the issue. You have to demonstrate that the rent is set at a commercial level and not at a subsidised level".

Business Rates

Compared to original estimates, business rates have risen by almost £1m. Whilst the Business Plan from March 2014 included £1.18m for rates, the March 2017 plan for the 2017-18 financial year included a budgeted £2.1m for business rates.

Under the terms of the WHU concession agreement, E20 bear close to the full cost of the rates as WHU pay rates only on retail and office spaces occupied exclusively by WHU. We understand the WHU contribution is around £200k, based on the amount detailed in the Business Plan under *"failure to secure business rates contribution from West Ham"*. This contribution is a fraction of the total rates costs and appears low when one considers WHU's effective occupation of the Stadium (as outlined in Phase 3).

Utilities

As with the business rates, WHU is responsible for paying utilities only for the areas for which they are granted a sub-lease¹⁰⁷. Meanwhile E20 is required to make a fixed cost payment to the Stadium operator to cover all costs not directly related to events, including staffing, facilities management and utilities.¹⁰⁸

The March 2017 Business Plan has budgeted for a total of £2.152m in utility costs for the 2017-18 financial year.¹⁰⁹

¹⁰⁷ E20 Board minutes from 19 March 2013

¹⁰⁸ E20 Board minutes 06/10/2016

¹⁰⁹ Base provision for utilities £1,008k + adjustment to fixed costs for higher utilities cost £1,144k.

The cost of utilities is around £1m higher than anticipated:

“The level of utilities bills for the stadium is a new cost pressure that has emerged in the past quarter..... the stadium’s current consumption levels indicate that it is currently running at a total utilities cost of c£2m per annum – £1m above the provision.”¹¹⁰

Stadium Operator

At the outset, it was hoped that LS185 would deliver substantial net income to E20, by driving commercial revenues. However, the hoped for net revenues have not been achieved:

Table 46 – forecast net revenues from Stadium contractor from the 28 February 2017 Board minutes

Net Commercial Revenues Forecast (£m)	Vinci Bid (Nov 2014) – at 2014 prices	LS185 Business Plan (March 2016) – at 2015 prices	LS185 Contract Review Submission (Sept 2016) – at 2016 prices	E20 forecast to 31 January E20 Board – at actual prices	Latest: Draft LS185 business plan (17 February 2017) – at 2017 prices
2015-16	1.23	0.94 (actual)	0.94 (actual)	0.94 (actual)	0.94 (actual)
2016-17	3.20	2.51	0.87	(0.27)	(0.46)
2017-18	5.08	5.81	4.04	2.1	3.57
2018-19 onwards (“steady state”)	6.58	6.31	5.21	2.5-3.5	3.66 – 5.12

As a result, LS185’s net commercial revenues do not exceed the operator’s fixed costs which, under the E20 contract means that E20 makes a net payment to LS185 each year. The E20 Board minutes from 6 October 2016 note:

“E20 makes a fixed cost payment to LS185 to cover all costs not directly related to events, such as staffing, facilities management and utilities. This is in the region of £6m per annum, index linked. LS185’s net commercial revenues are no longer forecast to exceed the fixed cost payment – therefore, their projections indicate E20 will continue to make a net payment to LS185 each year.”

Indeed, the minutes from the same meeting detail that LS185 have latterly experienced a fall in revenue due to:

“4.5.1. Operational costs for West Ham matchdays

4.5.2. Reduced secondary sponsorship income

4.5.3. Challenge in securing MLB in addition to concerts – LS185’s March 2016 business plan set out a preferred scenario, where the stadium hosts MLB as well as concerts each summer. This has not proved possible for 2017, in part due to challenges around the retractable seating moves

4.5.4. Under-developed commercial strategy – LS185 has yet to prove itself as a commercially astute organisation capable of identifying and exploiting income generating opportunities. They have not delivered any additional income streams to date, beyond their core opportunities.”

¹¹⁰ E20 Board minutes from 31 January 2017

In our opinion, the commercial revenues forecast by the operator have not been achieved because of the alternative events considered in the E20/LS185 business plans, a number are:

- Unprecedented, rare or unusual
- Unviable economically
- Unlikely to fit in the available window for non-football activity

Risk analysis performed on the Stadium Business Plan and reported on 23 September 2014 noted that there was a high degree of risk on included revenues, as detailed below. This has proved to be so as many of these revenues have not subsequently materialised, notably the income from London Irish and MLB:

Table 47 – risk ratings for revenue streams from E20 Business Plan

Revenue	Assumptions	£'000s (stable year)	Comments	Degree of Risk
Caterer commission	12.5% commission on WHU, UKA, C&B, Stadium Tours and South Park kiosks	1,090	Low commission rate reflects investment. Detailed spend per head and attendance assumptions provided, reflecting experience and market benchmarks. Caterer will guarantee 80% of the total payable	Green
Marketing rights	Pourage and snacks: £385k. Other 2 nd Tier: 753k	1,100	Pourage rights seem low, having been sensitised by a probability score, but 2 nd Tier includes £300k from categories which have not yet been released	Amber
London Irish	5 matches pa at 70% (35,000) occupancy	1,875	Detailed assumptions provided, but 5 matches with 35,000 attendees seems ambitious. Relies on profit target for first game, although this does not seem unrealistic	Red
MLB	2 matches at fixed hire of £600k per game, less £100k variable costs	1,000	Vinci acknowledge they have limited information on likely costs and given LLDC/LV's discussions on overlay costs, the assumed costs seem light	Red
Other sports	1 event, assumed to be net figure	300	Limited detail. Limited calendar slots, given MLB and London Irish.	Amber
Concerts	1 Premium, 1 major and 1 small concert	1,558	Assumes concert promoters cover their costs. Very high margin assumed	Amber
Connected Stadium	Enhanced digital functionality increases WHU attendance by 5% and sponsorship by 15%	668	Difficult to quantify benefits	Amber
Additional revenues from Primary users	£247k from WHU. £80k from UKA from 10% margin on hospitality and 7% from ticketing services	327	WHU income represents difference between usage fee and variable costs	Green

In summary, although one objective of operator procurement was for optimised usage, though this has not been achieved. The E20 Board minutes from 6 October 2016 say that “LS185 have not maximised use of the asset, or demonstrated they will do in future.”

Lack of Incentives & Risk transferred

In our opinion, operator revenues have been disappointing in part because there is little incentive for LS185 to maximise income. LS185 are paid only 5% of the revenues, and only after revenues exceed the variable costs. If revenue is in excess of fixed and variable costs, LS185's share would be 20%, although this is an unlikely scenario (see “Continuing Deficit” section). The E20 Board minutes from 28 February 2017 comment that:

“LS185's latest business plan – even with a big dose of optimism (see below) – forecasts that fixed costs will continue to exceed net commercial revenues on into steady state”.

Consequently whilst one of the key objectives of procurement was for the operator to drive a commercial return, the incentive structure does not support that.

In addition, Vinci/LS185 have taken on minimal risk through the operator agreement, because their fixed costs are covered even if losses are made, as is happening. The substantial risks are passed back to E20. The procurement objective for the operator to assume risk for delivery of services has not occurred.

Disputes

The E20 minutes from 25 April 2017 state:

“contract relations with Vinci are strained, driven mainly by the continued dispute over the stadium handover and statutory compliance, but also the exchanges regarding confidence in business planning and performance earlier in the year.”

A number of issues have occurred in relation to the Stadium handover: LS185 contested whether the transformation works were complete and has asserted that assets were not handed over in their expected condition. LS185 argue that, as a result it has had to implement numerous work-around solutions in order to keep the Stadium in an operational state. LS185 stated it would down tools and stop operating the Stadium if those issues were not resolved.¹¹² We are told this resulted in an extensive programme of remedial works, led by Balfour Beatty, resulting in a delayed completion date for the Stadium and consequent costs to E20.

E20 – How it actually functions

Whilst E20 is, in equity terms, a 65:35 joint venture between LLDC and NLI, in substance it is a special purpose vehicle controlled by LLDC (although NLI lead on certain actions). This is due to the fact that outside the Member’s agreement there is an asymmetrical risk allocation in the partnership and key decisions and operational influence rests with LLDC.

Moreover NLI’s capital was limited to the £40m investment it provided and LLDC’s liability is effectively unlimited as LLDC underwrites liabilities under the operating contract. Consequently, LLDC has funded E20’s ongoing losses. E20’s and LLDC’s views ought to be aligned as the E20 Board is formed of three LLDC members, two NLI members and a Chairperson and E20 Board resolutions require a majority of all votes cast. Also, the majority of E20 functions are, and have been, performed by LLDC staff, as until recently E20 had few or no staff itself.

E20’s contractual arrangements are complicated, which has resulted in a significant number of disputes. When a problem occurs, LS185 has to communicate and negotiate via E20 as there is no agreement between LS185 and WHU. In practice, this makes LS185 operationally constrained.

There have been a number of operational and contractual disputes with WHU. These have included:

- the number of seats at the Stadium that WHU is entitled to under the usage fee;
- the standards of certain of the facilities provided at the Stadium (particularly in the hospitality areas);
- the “look and feel” of the Stadium as WHU’s home ground; and
- access to end use of the signage and branding rights at the Stadium (and who between E20 and WHU is entitled to commercialise such rights).

¹¹² Letter from LS185 presented at 25 April 2017 board meeting outlined *“We have grave concerns as to whether LS185 will be able to continue operations at the Stadium if any such remedial works are not performed or do not establish safe, permanent solutions having regard to applicable statutory and regulatory requirements”*

Overall

The Stadium finds itself in a situation far from the initial expectations, where a Stadium retained in public ownership was expected to provide a return to the taxpayer. Had the full terms of the concession agreement and associated costs been properly understood, in our opinion, this would have been largely foreseeable. However, the consequences were not exposed appropriately at the outset when decisions were being made, owing to over optimism and a lack of appropriate planning and analysis.

E20 has apparently accepted that its business plans were optimistic:

“E20 has historically adopted ambitious business plans, acknowledging them as such at the time. Allowances were not made for known risks, and E20 has perhaps been guilty of overplaying opportunities.”¹¹³

It is unclear how E20 allowed such business plan estimates, which, taken in the round across plans, lacked prudence to be adopted. One reason why estimated E20 surpluses differed was that although the WHU usage fee was fixed in 2013 on the signing of the concession agreement, the operator was only procured 2 years later. Consequently, WHU’s second competition bid was evaluated and the concession agreement entered into before the actual cost structure of operating the Stadium were established, rather than involving the operator and having it accountable for the agreement made with occupiers.

¹¹³ E20 Board 6 October 2016

The reality of the situation now, as compared to anticipations in 2013 is set out below:

Table 48 – E20 Board presentation from 6 October 2016 comparing actual and expected results

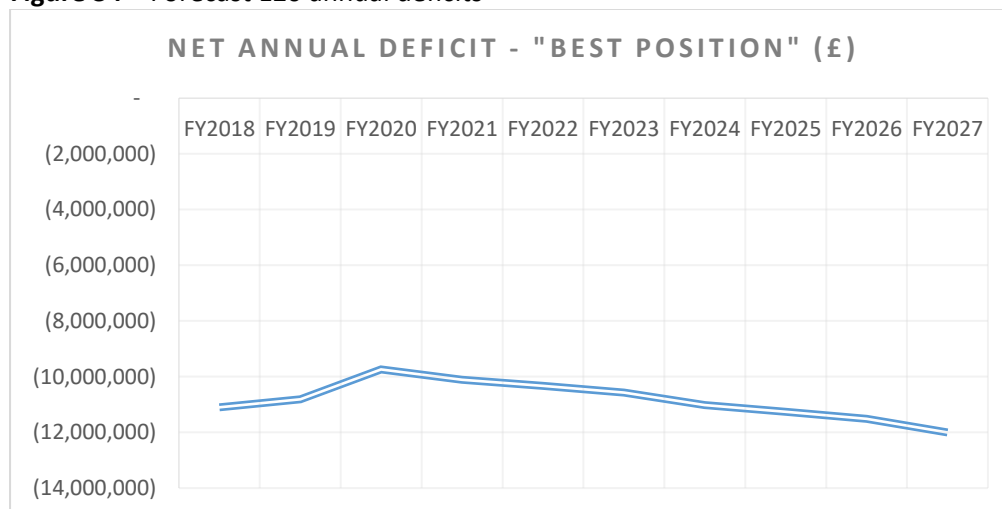
	<i>Expected (2013)</i>	<i>Reality (2016)</i>	<i>Financial Implications</i>
Capital Costs	£120m	£300m	Very High (£Ms pa)
Seats	Retractable seats that work in 7 days and cost £300k pa	10 -14 days and as much as £7m	Very High (£Ms pa)
Naming Rights	Naming rights deal done and providing mainstay of commercials for E20	No naming rights deal	Very High (£Ms pa)
Football Operational Costs	Stadium that could host football games for £100k per match.	Stadium that costs £180k to host a football match	Very High (£Ms pa)
Multi-sport flexibility	Stadium able to move between multiple modes easily	Lose 28 days for seat moves and pitch spec limits cricket etc	Very High (£Ms pa)
Operator taking on Risk	Operator to take on all aspects, financial and operational risk. Independent of E20.	Operator like a small company that can run a stadium but no financial underwriting or spending power. Dependent on E20.	Very High (£Ms pa)
Maintenance	Expected to be given a Maintained stadium	Commissioned once by BB [Balfour Beatty] but not maintained	High (£000s pa)
Concession Agreement	Clear Concession agreement that means matters self-governed	Unclear concession agreement that has generated disputes with demanding and aggressive West Ham	High (£000s pa)
Stakeholder Demands	Co-operative stakeholders (Westfield, TfL etc)	Demanding stakeholder scared of football crowds	High (£000s pa)
Business rates	£1.2m	£2m	High (£000s pa)
Newness	New stadium	Legacy stadium that is 5 years old in most operational matters	Moderate c(£00s pa)
Physical Structure	Robust physical structure	Upgraded structure from temporary but not a fully robust structure	Moderate c(£000s pa)
West Ham Relations	West Ham a demanding client	As expected	Moderate c(£000s pa)

Going forward

Many interviewees suggested to us that there would be no need for our review if naming rights income had been achieved and the costs of seat moves were reasonable. In our opinion, this is not the case. Whilst these are the substantial components of the current deficit, E20 has a plethora of other issues, as explored above.

Were E20 to achieve naming rights income of £4m per annum (as assumed in the March 2013 Business Case) whilst roughly halving the cost of the relocatable seating solution to £4m, over 10 years there would nevertheless be a cumulative deficit of some £108m. In itself that would be an ambitious target for E20 and is significantly less adverse than the £127m “best case” loss anticipated by the March 2016 Business Plan.

Figure 34 – Forecast E20 annual deficits



It is clear that significant changes will be needed to E20 if its financial sustainability is to be improved. Many of the options available to E20 were explored in a Board presentation on 6 October 2016, certain of which are detailed below:

- Not transitioning the East Stand between football and athletics events
- Not holding annual athletics events
- Increasing secondary revenue streams through means such as MLB and cricket
- Re-tendering for the Stadium operator
- Selling the Stadium
- Shutting the Stadium

It is not within our scope to advocate what changes should be made, however we concur with David Goldstone that *“If we [LLDC] don’t fix it, then long term we [LLDC] will be looking at very significant accumulated losses.”*

It is unlikely that the Stadium will, in the near future, prove to be, as David Goldstone had once envisaged, a *“stadium that pays its own way and will not be an ongoing draw on the public purse”*.¹¹⁴ If the Stadium is to operate without significant continued subsidy it is clear that significant changes will be needed, which may also involve substantial capital costs.

¹¹⁴ <https://www.london.gov.uk/moderngov/documents/s51206/Minutes%20-%20Appendix%203%20-%20Transcript%20of%20Item%209%20-%20LLDC.pdf>

Conclusion

The significant transformation costs and substantial annual operating losses incurred by LLDC/E20 are the consequences of earlier decisions, dating back as far as 2006.

The original Stadium design was for a very specific use - the short period of the Olympic and Paralympic Games. The main structure, including the roof, was not designed for any other use or indeed any continuing use at all, as it was intended to be temporary with a limited life.

The original legacy plan, set by the ODA in 2007, was to dismantle the temporary upper elements of the Stadium leaving a 25,000 seat bowl with no roof, for athletics use. While it was known that retrofitting was a more expensive option, this was an accepted cost as the ODA determined that the priority was readiness for the Games, against the background of an already expanding budget.

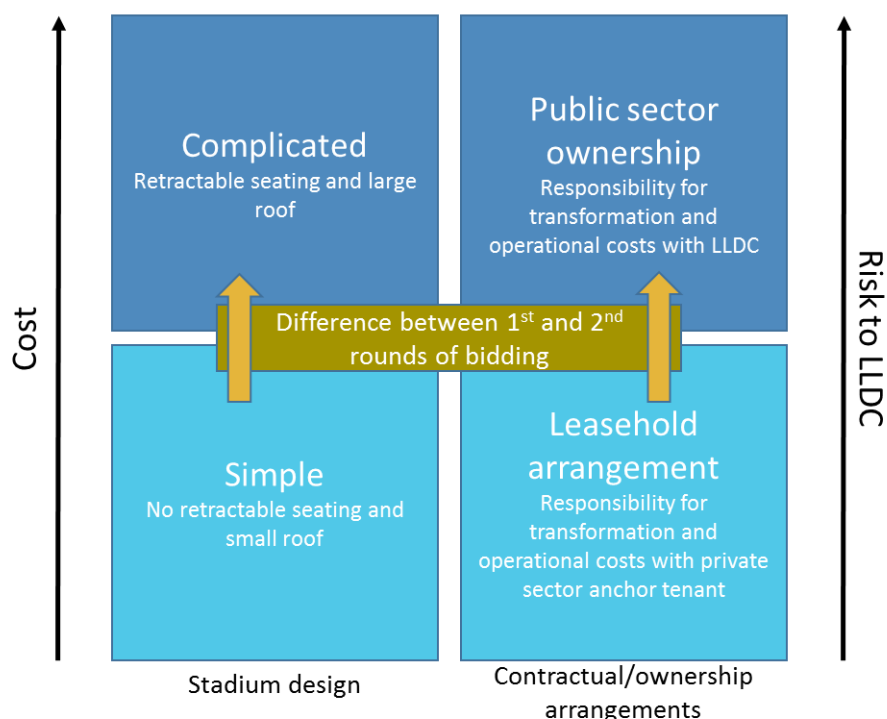
When this decision was subsequently reconsidered by OPLC, the Stadium as envisaged in the ODA legacy was found to have little or no use and therefore no value, either from a commercial viewpoint or considering the wider community/regeneration benefits. However, because of the timing of OPLC's creation and review of legacy options, it was too late to make any changes to the design and build of the Stadium before the Games, so the choice was to demolish or retrofit.

Once it had been recognised that the Stadium should host a Premier League football club, as the only realistic way to achieve regular use of the Stadium whilst generating significant income, there were two issues to consider:

1. Stadium design solution
2. Stadium operation solution

LLDC has found itself with the most expensive solution on both fronts: a high level of expenditure (both capital and operating) and all of the risk with LLDC.

Figure 35 – Our analysis of how decisions made have added to cost and risk



There are three main reasons why LLDC's expenditure on the Stadium has been so high:

1. Retrofitting for multi-use is significantly more expensive than incorporating it into the original design
2. LLDC self-imposed deadlines, making decisions based on these before fully understanding the cost consequences
3. LLDC lost control of the Stadium solution/model

The loss of control of the Stadium solution/model here is key, as this caused the step change between a cost-effective solution for the taxpayer and the solution implemented. The loss of control arose in the period from the decision to cancel the first competition through to the concession agreement with WHU being signed, and arose mainly because:

- i) OPLC (with approval from Founder Members) opted for a solution that it believed would give it control over both the timetable and the use of the Stadium, having a solid legal basis to avoid further legal challenges.
- ii) In doing so, OPLC ultimately prioritised the robustness of the tender process over the commerciality of the solution, which is emphasised by the implicit decision to keep all risk in the public sector, rather than transferring it to the private sector.
- iii) Once OPLC had aborted the first competition (it then being known that it needed a tenant), OPLC ceded negotiating power to the potential occupier, in this case WHU.
- iv) OPLC, and subsequently LLDC, based significant decisions on incorrect, incomplete or unreliable information.

The loss of control and the move to a solution that left the public sector with substantially all of the risk, means that while the Stadium may generate value in a wider sense, much of the financial value from the capital expenditure and revenue subsidy, and much of the wider value benefit goes to other stakeholders. LLDC and E20 are left only with net costs.

None of this is to say that the solution now implemented was necessarily the wrong solution in the round. There are potentially advantages to having the Stadium publicly owned, but the decisions throughout (firstly by OPLC and latterly by LLDC) were not made, or at least not justified, on that basis. Throughout, and in particular in March 2013, the justification for approval of business cases relating to design and use of the stadium was financial value for money. Although the decisions considered wider economic and community benefits, they were ostensibly made on the basis of expected financial outlay and returns.

Had the actual costs been known, it is not clear whether the same decisions would have been made, but the decisions certainly could not have been made on the same basis. Instead, those decisions would have had to be made despite the proposed solution not representing financial value for money. Such decisions instead would have had to be made on the basis that the wider economic and community benefits outweighed the costs.

Based on this, there are two possible conclusions that could be reached in relation to the capital expenditure and subsequent subsidy for operating losses:

1. LLDC has the right solution for the wrong reasons as the expense can be justified by the wider economic, regenerative and community benefits
2. LLDC has the wrong solution, as no other factor justifies the significant capital outlay and ongoing cost to the public purse.

Lessons Learned

In terms of the public sector actions and decision making involved in the Olympic Stadium and its procurement, transformation and agreed usage, we set out below some suggested 'lessons learned', grouped by concept and issue:

Optionality: its existence, creating it and not reducing it

(1) Seek and build in optionality - Alternatives and optionality can be retrofitted at reasonable cost if built in to some degree to original designs (even if not fully worked in and not certainly required). To do so is usually far less expensive than seeking to retrofit and, as is the case here, sometimes retrofitting proves extremely difficult; in this case necessitating large scale rebuilding of the Stadium. It would have been better to spend money at the outset of the Stadium and in its construction design and build to facilitate greater optionality.

(2) Be realistic when planning and where in practice there is no other option, acknowledge it and plan accordingly – in reality only a Premier League football club could occupy and commercially operate a stadium of the scale of the Olympic Stadium. Because demolition or deconstruction was likely to be very unpopular and was unlikely to fulfil commercial or legacy objectives, occupation by a Premier League football club should have been accepted, irrespective of any objections as to sports legacy and then the necessary sports legacy accommodated.

(3) Don't assume a liquid market always exists for large projects or special assets as there may be limited buyers – as a Premier League football club is the only realistic commercial occupier, and turning the Stadium into a much reduced facility was likely to be unpopular, a Premier League club might reasonably be assumed to be a likely winner in any bid process. However there are limited Premier League clubs in London, of which not all have a sufficient fan-base to fill a Stadium of this size and they cannot share their area without the agreement of the Premier League. In practice this simple fact means there was probably one, at most two bidders for the Stadium, from the outset.

(4) Where private sector competing bidders exist they should be encouraged to compete – as it was likely that only two bidders for the Stadium that would be capable of fulfilling usage objectives after the Olympic Games, it is not helpful to reduce duopoly competition to a monopolistic bidder.

(5) Where a firm commitment cannot be achieved, try to sell the right to commit at a later date – it proved impossible to conclude a transaction with a football club at the early stages of the Olympic bid and by the time construction and financial commitments needed to be made. That need not have prevented a process of selling the right to transform the Stadium to one of several buyers. Unless a private sector player has reason to believe their option will not be on the table post Games, it is in their interest to wait and see what happens post Games and make an offer for what is then a "redundant asset". Capitalise whilst there is still competition and planning horizon, because time is on the side of the potential buyer, not the Olympic Delivery Authority.

Appraisal of bids and options after a competitive process

(6) Distinguish plainly and explicitly between the differing component elements of risk – there is a world of difference between uncertainty on risks taken by Third Parties (as applied to many of the risk issues in the first competition) and risks taken directly by a public sector body (as applied to many of the risks in the second competition). These risks and their financial amount should be explicitly stated and quantified appropriately and separately, distinguishing that fact.

(7) The risk of an estimate being wrong is not the same as intrinsic uncertainty - an estimate is a “known unknown”, it can often be addressed as a range: the answer may not be certain but it is capable of being expressed as a reasonable range within which it will lie with a certain degree of confidence (e.g. £190m to £323m construction cost). Intrinsic uncertainty is an “unknown unknown”, its poses a potentially greater risk because it cannot be or has not been sufficiently investigated in order to be well understood (e.g. the cost of a roof the like of which has never before been constructed on a foundation not designed for that purpose).

(8) Account for the differing component elements of uncertainty correctly – financial quantifications should be stated gross (not net, after offsetting incomes and expenses, incomes do not follow the same risk profiles as the costs and do not necessarily move in step with costs). In doing this:

- Estimates (i.e. known unknowns) should be addressed by way of a range and, where items are subject to differing ranges, the overall range of outcome should represent the full range of underlying estimates.
- Intrinsic uncertainties (i.e. unknown unknowns) should be reflected as a contingency that realistically represents the degree to which what is being done is novel vs well known. Moreover, as this is a different issue unrelated to estimates, a contingency should not be excluded or reduced on the ground that the range of outcomes is already wide.

Finally, these figures should not be expressed as single numbers because that gives no sense of the possible outcomes.

(9) Account for the risk attaching to different models and forecasts appropriately – the present day value of incomes which are certain (because they result from legally certain commitments) is greater than that resulting from uncertain income and uncertain expenditure (e.g. trading activity) and this must be reflected in greater discounting of higher risk activities. Accordingly, the public sector owned and operated model should have had a significantly reduced value attributed to prospective returns from operating the public asset, the Stadium.

(10) Model the competing solutions separately and using entirely separate teams – to preserve optionality, model the key competing delivery models fully and ensure the competing solutions are prepared to the same standard, don’t appraise just the preferred model in full as it may fail for reasons outside the commissioning bodies’ control. In practice this may require parallel teams.

As the above was not done adequately, evaluation undertaken was over-optimistic and insufficient analysis was undertaken to reflect downside sensitivities, and risk factors and contingency factors in business cases were insufficient (and not comparable across cases). This resulted in the failure to expose key risks and uncertainties to the Board and/or insufficient acknowledgement of the fact that certain numbers were “soft” and based on indefinite and incomplete assumptions. In our opinion, based on the material we have seen to produce this report, the potential risks and consequences of the decision to terminate the first competition process and retain the Stadium in public ownership was not fully understood.

Governance and Risk Management

(11) When the assumed basis of a transaction or solution changes, reset expectations of risk and reward – under the second competition, the risk and reward to the public sector was completely unlike that in the first competition. However, it is not clear to us that expectations and understanding were reset to reflect the fundamental shift in risk profile and to prevent the carry-over of inappropriate understanding and assumption from the first competition process.

(12) Where it is evident that the public sector is not well placed to manage risk, transfer it to the private sector, preferably to an entity which has demonstrated expertise in managing those risks – the public sector failed to correctly quantify and financially evaluate the financial risks in the second competition bid process. However, narratively that risk was nevertheless known, as was the fact that WHU as a football club managed risks associated with operating a Stadium as its core business. Those risks could therefore have been transferred to the private sector, which may well have managed those risks for a profit and, in exchange, an income might have been extracted.

(13) Tailor governance frameworks to changed risk expectations, when matters change adversely respond by stepping up governance and control until matters are under firm control – whilst under the first bid process there was light record keeping and paperwork and we were informed that certain discussions occurred through dialogue or over the phone (leading to limited documentation in some areas), this should have changed when the continuation of the first competition was threatened.

Notably, we saw little evidence of discussion leading up to (i) the decision to terminate the first competition and (ii) the separate decision to adopt a publically owned and operated model. In our opinion this light documentation and approach was not appropriate under the second competition (because of its far greater risk), but continued. Similarly, Board minutes do not include detailed discussion but only a high-level summary of events which is not appropriate for one-off, major decisions.

(14) Collate documents relating to a project in one place, if not at the time after the fact, chronologically and/or referenced by key decision – we have been informed that LLDC/E20 do not have a corporate document management system. We also did not receive information requested from DCMS. The failure to manage and organise information centrally (after the fact if not at the time) becomes a significant problem over time.

(15) Be explicit as to priorities, and communicate these priorities when appropriate (which may be after the fact) – LLDC's decision making shows that financial sustainability was not the overriding priority for the Stadium project; getting the Stadium ready on time to fulfil past commitments to ensure high future usage of the Stadium was prioritised. That is not necessarily incorrect but should have been made explicit internally at LLDC and communicated. Where the justification is timetable, say as much – decisions which do not prioritise financial sustainability, but nevertheless make sense for other reasons are justifiable, and that decision should be explicit.

Appendix 1 – Interviews submissions and those who did not respond

a) Interviews

ODA

Dennis Hone – Director of Finance and Corporate Services / Chief Executive

GOE

David Goldstone – Finance Director

OPLC

Baroness Margaret Ford – Chair

Nick Bitel – Board Member

Aman Dalvi – Board Member

Neale Coleman – Board Member

Philip Lewis – Board Member

Keith Edelman – Board Member

Elizabeth McMahon – Board Member

Andy Altman – Chief Executive

LLDC

Baroness Margaret Ford – Chair

Daniel Moylan – Chair

Neale Coleman – Board Member and Chair

Philip Lewis – Board Member

Keith Edelman – Board Member

Nick Bitel – Board Member

Elizabeth McMahon – Board Member

Andy Altman – Chief Executive

Dennis Hone – Chief Executive

David Goldstone – Chief Executive

Colin Naish – Executive Director, Transformation

Duncan Innes – Executive Director, Real Estate

Gerry Murphy – Executive Director, Finance

London Borough of Newham

Kim Bromley-Derry – Chief Executive

Philippa Cartwright - Project Director Stadium & Legacy

Others

Steve Lawrence – architect

Richard Hunt – Charlton Athletic Supporters Trust

Karl Havers - EY

b) Submissions only in writing:

Baroness Karren Brady – Vice-Chairman of West Ham United Football Club

Julie Clark - PwC

c) No response to our requests:

Boris Johnson – Mayor of London and LLDC Chair

Ranjit Singh Baxi – OPLC Board Member

Jonathan Dutton – LLDC Executive Director of Finance

Jan Boud – LLDC Legal Counsel

d) Declined our request:

David Edmonds – LLDC Chair

Lord Sebastian Coe

