

# PhoenixWyeCollege

## Response to DPD Examination and ABC's Revised Wording.

### SUMMARY

- i) It is suggested that the marketing effort should include the sports ground as an integral part of the renewed marketing effort
- ii) We are of the opinion that the six-month marketing period proposed is too short to prove that there are no possibilities for re-using the Wye College campus for educational usage.
- iii) A period of two years is considered to be a more realistic period on which this judgement could be made.

As an alternative to iii) we propose:

- a) that Wye3 is removed from the Core Strategy Review process and timetable and .
- b) that the planning process regarding the re-use of the Wye College campus should be reviewed annually.
- iv) Although in principle we agree with the inclusion of the concept of 'reasonable terms' in para 6.99 of ABC's revised wording we point out that, in specific reference to Wye3 and its marketing to the educational market only, this can only be a subjective assessment thereby rendering its use for enforcement open to challenge.

As such the inclusion of wording that would require Imperial College, as an educational charity, to give priority to facilitating the Wye College campus to be re-used for educational purposes over and above any financial considerations would be preferred.

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### 1) Digest of Changes proposed by Ashford Borough Council

- i) New Savills/IC marketing effort to embrace whole of Wye3; to be scaled-up, targeted towards educational institutions and to be actively pursued for at least 6 months
- ii) The concept of a 'reasonable terms' for disposal of the campus is introduced.
- iii) The concept of a Masterplan exercise for the future use of the campus is introduced if no educational use for the campus is found.

## 2) The Existing ABC Proposals relating to Wye3

We consider that the original proposals and wording provided an adequate timescale for new initiatives to use the campus for higher education to develop and come to fruition. It came as no surprise that marketing just Main Campus North did not attract any interest as it did not include sufficient student accommodation in order to become a residential college. Provided that the whole of Wye 3 is offered as a single unit then this makes it a much more interesting proposition for potential users than just 'Main Campus North'; the inclusion of the Withersdane complex provides additional student accommodation and facilities (Swanley Hall, conference suite, staff accommodation) and the ex-DEFRA site and land at the old horticultural unit provides room for future expansion.

Sport is an integral part of university life and the Wye College Sports ground was originally marketed as an integral part of the Main Campus North offer in 2008. Even though this is not included in Wye 3 **it is suggested that the marketing effort should include the sports ground as an integral part of the renewed marketing effort** whilst recognising that some potential users might not wish to acquire it.

A drawback of the ABC proposal is that it is dominated by the timetable of the Core Strategy review in 2014 to be finalised in 2016. If it becomes evident within the next two years, i.e. by mid-2012, that despite the best efforts of Imperial College and others, including ourselves, it becomes clear that the Wye College campus cannot be used for educational purposes then the buildings will be left vacant for much longer than is appropriate. By 2016 the Wye3 buildings will have been vacant for at least 8 years. During this time they are likely to suffer deterioration, possibly terminal. Even now deterioration is clearly visible.

## 3) The Revised ABC Proposals relating to Wye3

### 3.1 New Marketing Initiative

It is generally accepted within the planning system that a six-month marketing period of a standard property into the main housing or property market is sufficient to prove that there is no interest in acquiring that property for a specified use, e.g. relating to the removal of an Agricultural Occupancy Restriction. However, Wye College is an almost unique property, especially with its 560-year history as a place of learning. In addition the labyrinthine management structures integral to universities result in the decision-making process being long and ponderous, especially for a project of this size.

Whilst these factors are always true the current state of the economy and in particular the current (and future) squeeze on university and general spending on education will force potential users of the Wye College campus to be even less expeditious in their deliberations.

Whilst these comments are applicable to the state-funded sector it is our experience that they are also likely to apply to the independent higher education sector.

From a PhoenixWyeCollege perspective we estimate that, after being able to negotiate an agreement in principle to have access to the campus it will take us one to two years to secure the necessary funds to acquire, renovate and equip the

buildings to a suitable standard and also to underwrite the period leading up to a time when student numbers are sufficient to enable the college to break-even financially. When sufficient funds have been secured key staff will be recruited. However, it is unlikely that the college could be opened to accept students until at least 18 months afterwards.

Currently it is estimated that it will be the middle of 2012 before sufficient funds have been secured in order to enable us to make a definite commitment to go ahead with the re-establishment of Wye College.

Therefore we are of the opinion that a six-month marketing period is too short to prove that there are no possibilities for re-using the Wye College campus for educational usage. A period of two years is considered to be a more realistic period.

An alternative strategy is proposed below.

### 3.2 Alternative Proposal

The driving ethos behind the PhoenixWyeCollege initiative has been 'You cannot succeed if you don't try.' As such we are quite realistic that we may not succeed in re-establishing Wye College in one form or another at the Wye campus and that, at some future point, we may need to withdraw. Currently we remain positive and we believe we can succeed, particularly as the new government supports the creation of new independent universities. As indicated above we consider that mid-2012 is likely to be when we would be able to make a decision to proceed or withdraw.

We are also well aware that the longer the campus remains mothballed the more it will physically deteriorate thereby making it less and less attractive to any potential new user. As such we are of the view that adopting the Core Strategy Review timetable of 2014/2016 could be too long for some of the buildings to retain their integrity and future usefulness for any purpose.

In order to address these two apparent conflicts we propose that:

- a) that Wye3 is removed from the Core Strategy Review process and timetable and
- b) that the planning process regarding the re-use of the Wye College campus should be reviewed annually through a round-table meeting of all parties. Each party should report to that meeting on their progress to date and indicate their intentions for the next year.

It is suggested that ABC should organise such meetings. However, it is beyond our competence to suggest how the outcomes of such meeting could be evaluated and expressed in planning terms.

PhoenixWyeCollege would commit to making a thorough and honest contribution to such meetings.

### 3.3 'Reasonable Terms' Concept

In principle we support the inclusion of the concept of 'reasonable terms' in ABC's revised proposal. However, we would point out that with regard to Wye3 this will inevitably be a subjective rather than objective assessment which therefore may have unforeseen consequences.

An objective assessment of 'reasonable terms' can be made for property transfers involving 'standard' properties offered to the general market as it can be based on previous comparable sales, analyses of which are widely available.

However, where an almost unique property such as Wye3 is being marketed into a very limited (education) market an assessment of 'reasonable terms' can only be made by the seller and the purchaser. Each party will make a subjective assessment based on their own individual parameters and only when their judgements coincide can a deal be concluded.

Bearing in mind the requirement to market Wye3 into the '(higher) educational market' it must be remembered that universities are constituted as charities and in general do not create sufficient surpluses with which to acquire additional property facilities from their own resources. Instead new facilities are either funded by specific funds allocated by HEFCE and/or through donations from charitable foundations. Thus it is suggested that a university would only consider 'reasonable terms' to be at the low end of the valuation scale; and especially so bearing in mind not only renovation/refurbishment and adaption costs but also that they are currently unlikely to receive HEFCE funding for such an acquisition.

Bearing in mind the significant difference between the potential financial benefit from disposing of the campus to an educational institution compared with a disposal to the open market it must be recognised that Imperial College might be tempted to reject offers from higher educational institutions on the basis that their offers are not 'reasonable.' In relation to this it should be noted that the marketing exercise conducted in 2008 resulted in all bodies expressing interest, including PhoenixWyeCollege, were summarily judged to be 'non-compliant'.

One basis for assessing 'reasonable terms' that must be rejected as being completely invalid is that Imperial College have a moral right to be financially reimbursed for their perceived 'losses' of £25m. Paras 3.12 and 7.2 of the Savills submission, and which were reinforced by statements made at the examination, indicate that Imperial College consider that the losses they claim to have incurred would be a significant factor in assessing what they consider to be 'reasonable terms.' Valuations related to their perceived losses were mentioned within the examination and previously to our partners.

Although in principle we agree with the inclusion of the concept of 'reasonable terms' in para 6.99 of ABC's revised wording we point out that in specific reference to Wye3 and its marketing to the educational market this can only be a subjective assessment, thereby rendering its use for enforcement open to challenge.

As such the inclusion of wording that would require Imperial College, as an educational charity, to give priority to facilitating the Wye College campus to be re-used for educational purposes over and above any financial considerations

would be preferred. It is beyond our competence to propose how such a condition could be expressed in planning terms.

From a PhoenixWyeCollege point-of-view the over-riding factor in assessing 'reasonable terms' would be that they did not place a financial burden on the new Wye College that could threaten its financial sustainability. As we have not yet reached the stage when we can justify commissioning a financial feasibility analysis we are not yet in a position to express this in monetary terms, nor will we be able to do so for some time.

Although we are proposing a financially more efficient business model compared with that of the previous Wye College we are not unaware that it incurred losses through the 1990's even though it owned its own campus.

It remains our position that the whole campus should be transferred into a charitable trust whose sole purpose is to hold the freeholds of the whole Wye College property in order to fulfil the objectives of the original Wye College as denoted in its Charter of 1948 and now included in the Imperial College Charter. Any financial obligations it undertakes will be charged as rent to Wye College as the operational entity.

#### **4) Masterplan**

We appreciate this concept and endorse the wording proposed by ABC in their revised submission.

## Appendix 1 Other Considerations

### 1) 'Losses' incurred 2000-2004

In Para 3.2 of their original submission Savills state *'In the four years following the merger, Imperial College effectively subsidised activities at the Wye Campus by between £2M and £3M per annum'* and in para 3.2 it is stated *'ICL have expended some £30m on the Wye campus which has incurred them a net loss of £24.8m in the period 2000 to 2009.* We share the Wye PC view that without substantiation these claims of expenditure are suspect. It is suspected that these figures do not relate to actual monetary losses but merely lost 'potential income', mainly resulting from their policy of charging a common notional rental for floorspace used by departments.

In comparison it should be noted that, according to the Agricola Club Report, during the last 11 years of Wye College's independent existence it was losing a mere average of £150,000 per year.

### 2) 'Cost' of acquiring the freeholds of the Wye College Property in 2000.

On acquiring the Wye College property portfolio in August 2000 Imperial College's only expenditure appears to be the non-repayment of a £2.5m loan made in 1999 (Agricola Club Report). At the time it is understood that its valuation was at least eight times this sum.

### 3) Acceptance of a 'nil-rent' lease as 'reasonable terms'

On making a specific request for feedback after the 2008 marketing exercise we received an email from Savills (see Appendix 4) including a comment that *'a nil rent might have been acceptable...'*

### 4) Charitable Status of Universities and Educational Institutions.

In all these deliberations it must be remembered that, apart from one or two exceptions, educational institutions are constituted as charities and therefore exist for public benefit. Whilst charities must act in a business-like manner their privileged status requires that they should not behave as if they were a profit-maximising business answerable to shareholders.

### 5) Transfer of Charity Land to a Charity with identical objectives

With regard to transfers of land and property from one charity to another charity with identical objectives there is no obligation under charity legislation for them to be transferred at market value.

## 6) Endowments

The direct predecessor to Wye College was the South-East Agricultural College (SEAC) which was constituted by virtue of a Charity Commissioners scheme dated 16<sup>th</sup> May 1893. As part of that scheme the property and land which now constitutes the 'old part' of the college, i.e. the southern part of Main Campus North south of the public footpath, was endowed to SEAC for the purpose of establishing an Agricultural School and College. That particular endowment remains in force today.

In addition we are of the view that as Wye College grew throughout the last century and retained the same objectives, each additional piece of land acquired or building erected became subject to the same endowment as it was added solely to further the original objectives of SEAC and, after 1948, Wye College.

Charity legislation not only imposes significant restrictions on the disposal (sale or lease) of 'Charity Land' but also places restrictions on how the financial proceeds of such disposals can be applied.

## 7) The School Foundation - Wye

The predecessor of SEAC was the Lady Joanna Thornhill School Foundation which operated from the Wye College buildings. It owned not only the land and buildings that currently form the 'old part' of Wye College (see 6 above) but also some properties that provided it with rental income. At the same time as SEAC was created by the Charity Commissioners they also created a new School Foundation and endowed to it all the properties owned by the previous School Foundation, apart from the Wye College site.

This School Foundation still exists and there is a suggestion that they might have an interest, as a direct and common successor with Wye College of the original site, should it be disposed of and thereby fail to justify the purpose of its 1893 endowment for agricultural education.

## 8) The Wye College Farm

One of the main aspirations of the Phoenix/Buckingham Prospectus is to establish within the college a specialist research and development centre in Biomass Energy. For that, and with other research opportunities in mind, it is our intention to also secure the college farm and farm buildings. With regard to Biomass energy research the farmland will have the primary purpose of enabling agronomic research and development; some of the farm buildings will house scaled up development versions of research projects which have been carried out in the college laboratories.

## 9) Other parts of the Wye College Campus

In addition to the Wye3 sites within Wye village the original Wye College campus also included Bexley House, Ian Carruthers House, the Wolfson Lecture Room and car park (opposite the front entrance); also 4 domestic dwellings and student accommodation (Harwood House and Wolfson House) within Wye village.

10<sup>th</sup>. August 2010

In association with the Wye College Farm there are several ancillary buildings as well as 8 domestic dwellings, an equestrian centre and large kennels.

## Appendix 2 Current PhoenixWyeCollege situation

Our current position is that we have secured the support of the University of Buckingham in that they are willing to allow a new Wye College to operate under their charter and to offer and conduct degree courses that will be validated by them. A joint Prospectus has been published which provides a significant amount of detail regarding the *modus operandi* of the new college. This embraces a wide range of novel concepts designed to improve the overall academic and social student experience and thereby enable the college to be financially sustainable whilst matching the present total cost (i.e. including living and accommodation costs) of studying for degrees at state-funded universities.

From the outset of our initiative it has been Imperial College's policy not to engage with us (see Appendix 3) and this has been evident through our dealings with them since that time. The issue of Imperial College's policy of non-engagement with the local community was also made by Wye Parish Council.

Even though we had not been invited to take part in the June 29<sup>th</sup> Examination, it was obvious that the Imperial College delegates had not assessed the prospectus on its whole content with regard to its overall educational merits. Instead they took every opportunity to ridicule it by focussing on a couple of minor issues that could well have been resolved through discussions had Imperial College been prepared to engage with us.

Any new grass-roots originated project of this size and complexity needs to go through many stages before it becomes reality. Only when we have an agreement in principle to have access to the Wye College campus is it feasible for the next stages to commence, i.e. fundraising, developing a curriculum, employing key staff, promoting the college, developing management systems, etc.

In addition to Imperial College's general policy of non-engagement they have also stated that, as we can show no evidence of financial backing, they decline to enter into even exploratory negotiations with us. However, there is no point in us initiating a fund-raising initiative until we have, at least, an agreement in principle to use the Wye College Campus. Consequently we find ourselves in a chicken-and-egg logjam situation created by Imperial College.

Although our prospectus envisages the new Wye College being established as an independent university this is a policy that we have adopted as a matter of expediency rather than preference. Accordingly we would welcome academic cooperation with Imperial College.

In order to attempt to open a dialogue with Imperial College we are about to approach them again indicating that we are open to discussion about issues that we believe that they consider to be non-negotiable on our part, particularly in relation to financial issues.

## Appendix 3 Email from Higher Education South-East (HESE)

Date 26 Mar 08

From [REDACTED]

To [REDACTED]

Cc [REDACTED]

Dear Mr Budd

I am writing further to your letter of 18th February.

I have now heard from Sir Peter Knight, Principal of the Faculty of Natural Sciences at Imperial College that, following a decision of the IC Management Board, Imperial College will not be considering further approaches from Phoenix Wye College concerning the future of Wye.

We are therefore unable to take up your suggestion that HESE offers support to your initiative.

Yours sincerely

John Weston

Chief Executive  
Higher Education South East

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**From:** John Weston  
**Sent:** 13 March 2008 16:55  
**To:** [REDACTED]  
**Subject:** Wye College

Dear Mr Budd

Thanks for your letter of 18th February.

As Imperial College is in membership of HESE I need to check back with them before I can reply formally. I should be grateful if you could bear with me until I can give you a definitive response.

Yours sincerely

John Weston  
Chief Executive

10<sup>th</sup>. August 2010

## Appendix 4 Feedback relating to 2008 Marketing exercise

**Subject:-Wye College**

**Date:-11/12/2008 14:44:48 GMT Standard Time**

**From:** [REDACTED]

**To:-** [REDACTED]

**CC:-a** [REDACTED]

Dear Len

Thank you for sending through the hard copy of your email of the 26th November. I cannot see why the original did not get through although we have had a few problems with our servers accepting emails from aol accounts in the past.

As far as we are concerned 'compliant' simply meant in accordance with the terms set out in the sales details. Essentially that means a short/medium lease term (10 years or more by agreement) on FRI terms for the area identified as Main Campus North plus the sportsground.

Although a rental income would have been an aspiration, the principal concern of ICL was to ensure that the occupier could meet the ongoing maintenance obligations relating to the listed buildings. Logically therefore a nil rent might have been acceptable if the proposed occupier could satisfy ICL of their strength of covenant.

As you are aware there have been discussions relating to other parts of the College portfolio and those are ongoing. Our instructions at present are that MCN remains available and any 'compliant' offer coming forward will be given due consideration. As you have rightly pointed out under current circumstances the Phoenix proposal cannot meet the stated criteria. It is possible that the position will change in the new year and I will gladly keep you advised in so far as I am able without breaching any client confidentiality.

Kind regards

Mark

**Mark Flemington**  
**Director**  
**Sevenoaks Development and Commercial**  
**Savills (L&P) Limited**