

Sports Centre Management Contract

For Cabinet on 29 July 2021

Summary

Lead Member: Councillor Jane March Portfolio Holder for Culture and Leisure

Lead Director: Paul Taylor, Director of Change & Communities

Head of Service: Gary Stevenson, Head of Housing, Health & Environment

Report Authors: Paul Taylor, Director of Change & Communities & Gary Stevenson, Head of Housing, Health & Environment

Classification:

Partially Exempt from Disclosure – Exempt Appendix A exempt by virtue of paragraph 3 of Schedule 12A of the Local Government Act 1972 (as amended): Information relating to the financial or business affairs of any particular person including the authority holding that information.

Wards Affected: All

Approval Timetable	Date
Management Board	23 June 2021
Portfolio Holder	9 June and 5 July 2021
Communities and Economic Development Cabinet Advisory Board	14 July 2021
Cabinet	29 July 2021

Recommendations

Officer recommendations as supported by the Portfolio Holder:

1. That the Cabinet delegate authority to the Director of Change and Communities in consultation with the Portfolio Holder for Culture and Leisure to negotiate and implement the agreed recommendations in the attached exempt appendix A.
2. That enhanced performance measures be agreed alongside the contract extension with associated financial consequences for any failure to meet expected standards of customer care and cleanliness.

3. Those negotiations be undertaken to front-load the capital investment into the sports centres.
4. That any contract extension be made contingent upon an agreed phasing of revenue payments and capital spend with any failure to meet this agreement being regarded as a breach of the contract.
5. That work be undertaken to explore alternative arrangements for delivering the contract with reports to be brought back to Cabinet on:
 - a) the relative merits of contracting with a leisure operator, partnering with another authority/other authorities and in-house/arms-length provision of the contract;
 - b) options for reducing the carbon footprint of the Council's leisure centre; and
 - c) recommendations for future leisure provision taking account of the state of the market and projected future trends and the benefits of any linkages with voluntary and community sector organisations, parish and town councils, and with parks and educational settings.

1. Introduction and Background

- 1.1 The Council currently has a contract with Fusion Lifestyle to operate its three leisure centres at St John's in Tunbridge Wells, Putlands at Paddock Wood and The Weald at Cranbrook. The contract runs until March 2022 and this report seeks Cabinet approval to extend the contract and the associated lease agreements.
- 1.2 The report suggests that now is a most unfavourable time to be seeking a new contract for a number of reasons: first and most significantly, there are significant market uncertainties as a result of the Covid-19 pandemic and we are seeing that many councils are extending their existing arrangements rather than risk going to the market and potentially finding that relatively few providers would currently be willing to invest the time and resources to bid and that any bids received would be significantly less beneficial than the existing contractual arrangements.; an extension to the contract will also provide time for market conditions to stabilise and the longer term-trends associated with the demand for leisure provision to become clearer; an extension would also enable us to integrate any new leisure facilities arising from the new Local Plan into the contract; and, finally, an extension will enable officers to explore alternative options for future service delivery (something we have neither the time nor capacity to do at the present time) and to present a further, more detailed report to members.

Current Situation

- 1.3 The current Coronavirus pandemic has had a significant impact on councils' provision of leisure services. Across the country, local authorities have been called on by leisure trusts, in-house providers and external operators to provide financial support during the prolonged periods of closure and the necessary limitations on users due to social distancing.
- 1.4 In accordance with initial government guidance contained in Procurement Policy Notes (PPN 02/20 Supplier Relief and PPN 01/20 Responding to Covid 19 (Reg72)) and in line with most other authorities, the Council has provided financial support to Fusion during this period which, at a local level, has allowed them to remobilise and open successfully and, at a more national strategic level, has helped preserve a viable leisure contracts market. In addition, Fusion made a successful application the government's Coronavirus Large Business Interruption Loan Scheme.

- 1.5 In recognition of the importance of the access to physical activity provided by leisure facilities, and the impact of the Covid restrictions forcing closure (and then reopening with limited capacity), a National Leisure Recovery Fund (NLRF) was established to support eligible public sector leisure centres. The fund, administered by Sport England, aims to help give the sport and physical activity sectors the best chance of recovery to a position of sustainable operation over the medium term.
- 1.6 Working with Fusion, the Council submitted a successful application to the NLRF. The grant award of £224,418 will be paid to Fusion under the terms of the funding agreement with Sport England.
- 1.7 Following the easing of the last lockdown our centres reopened as shown below:
- Tunbridge Wells Sports Centre – 29 March for Outdoor Group Exercise
 - Tunbridge Wells Sports Centre – 12 April for health and fitness, swimming, swim school, Racket Sports (household bubbles only)
 - The Weald Sports Centre – 12 April for health and fitness, swimming, swim school, Racket Sports (household bubbles only)
 - Putlands – 12 April for health and fitness, Racket Sports (household bubbles only)
 - 17 May – Indoor Group Exercise and Badminton/Tennis restrictions lifted
 - Tunbridge Wells Soft Play – 27 May
- 1.8 Despite the ongoing pandemic there has been good uptake of group exercise, family swimming and adult lane swimming; however attendance levels are not expected to return to pre-Covid numbers for some time as the vaccine roll out continues and concerns remains over future waves and more contagious variants.

2. Current Market Position

- 2.1 It is clear that Coronavirus (COVID-19) is having an unprecedented impact on public procurement activities for the foreseeable future, including on delivery of existing contracts and on tendering for new contracts.
- 2.2 Leisure operators – in particular leisure trusts – have faced particular challenges in accessing Government support during the COVID-19 pandemic:
- whilst they have benefitted from the job retention scheme, they are largely ineligible for the retail, hospitality and leisure grants or rate relief
 - they are not in a position to take out loan finance because of the nature of their business model and the low margins, which are in any case reinvested in the community
 - they have not been eligible to date for the Sport England emergency response package announced, which is aimed at grassroots organisations,

and it is not yet clear whether or not they will be able to access any of the £750 million package of support for charities announced by the Chancellor.

- 2.3 Across the country, operators have faced (and still face) serious financial challenges as a result of lost income and high standing costs associated with running a facility. Nationally, there is an acceptance that revenue reductions will make the operation of leisure centres more expensive in the medium term. This will be the case irrespective of whether services are delivered in-house or under contract. Because of this, the changing demand for the service and the current state of our leisure estate, there is a need to carefully consider the way forward.

Other Strategic Issues

- 2.4 As part of the review, the following issues will need to be considered:

- The service offer (a future needs assessment is in progress following Sport England's Strategic Outcomes Planning Guidance);
- Medium and long-term changes in demand and the consequential impact on revenues arising from the Pandemic;
- The impact of future housing growth and the delivery of new facilities arising from the Council's new Local Plan.
- The aspirations of local sports clubs and the needs identified in the Council's Sports and Active Recreation Strategy;
- What we can afford in terms of the Medium-Term Financial Strategy and budget pressures;
- The current state of the assets and ongoing costs of planned maintenance;
- How the service is provided (procured/a form of insourcing);
- Inclusion of carbon reduction measures to meet the Council's net zero carbon target;
- The current capacity of staff to run procurements or set up In House options.

- 2.5 In recent years, we have seen the ways in which people think about fitness and leisure change and evolve. As society begins to take more notice of health, wellness and nutrition, the new generation of leisure activity consumers will know much more about healthy lifestyles, from a very young age, than any previous generation. Having a health-aware generation means needing to meet their changing demand for better, more engaging, digital and real-world personalised experiences.

- 2.6 This change has only been accelerated as a result of the Covid crisis and there has been a real shift towards digital health and fitness tools, meaning that the leisure industry must evolve and innovate if it is to continue to attract users.

- 2.7 In the UK, prior to lockdown, it was estimated that around one million people fell into the 'sleeper' category when it comes to their fitness memberships – people who pay their monthly fee but generally do not attend the gym. It is highly likely

that these users will be lost moving forwards as facilities struggle to re-engage them, often after a period of frozen membership fees. But what about those non-users who haven't yet become involved with a gym or leisure centre, but have engaged with physical activity during the pandemic – how do we engage them?

- 2.8 We must grasp this unique opportunity to rethink our approach to fitness and leisure facilities; moving away from the traditional dry/wet mixes of the past and consider what communities actually want from their leisure facilities, and in turn, ensure business plans are viable.
- 2.9 The future of the leisure sector is not about returning to 'normal' that was often not entirely fit for purpose. It is about joining up and making designs more inclusive both in terms of the actual building and its context, understanding what people want and how facilities can be designed to encourage more people in, rather than simply serving those who have previously engaged with them.
- 2.10 Our communities invest in leisure centres and fitness clubs, so it is important to pay attention to the uniqueness of each area and offer and understand exactly what the public locally want and need from the facility going forward.
- 2.11 As a Council we need to secure the immediate future of our leisure offer for our residents – particularly those on lower incomes – whilst exploring future options that are both sustainable in the longer-term but also have ambition to transform the way we think about and provide leisure services. This would require us to think about changing needs and demands associated with demographic change and our emerging Local Plan and could also include integrating the offer with a host of other community, health and wellbeing services, replacing the traditional formal sporting spaces with more flexible zones and responding to. This approach would allow the leisure sector to cater to a much wider range of user groups by allowing for various different activities to take place in a particular space. Examples might include integration with libraries and life-long learning settings (which would increase the number and diversity of users engaged with a space as well as encouraging social opportunities) or integrating leisure centres into park settings to create a more varied leisure experience with a broader appeal, as well as encouraging people to explore underused green spaces.
- 2.12 In austere times, and perhaps even more so in light of COVID-19, it is increasingly important to maximise the economic potential of leisure sites and ensure that they meet the needs of the community. We will need to give consideration to the location, age and environmental impact of our existing sites, possibly placing greater emphasis on mixed-use developments, rather than standalone leisure centres and fitness facilities, maximising their revenue potential and ensuring they make business sense for operators.

3. Options Considered

- 3.1 The existing contract ends in March 2022. This date coincides with the end of the repayment period for the loan provided by the Council to finance improvement works carried out by Fusion at the TWSC in 2014/15. Following the suspensions of repayments in 2020 in accordance with the Covid Supplier Relief guidance Fusion are now up to date to with the loan repayments.
- 3.2 The contract contains a provision for the payment of a management fee income to the Council, currently £250k per year. As part of the Covid Supplier Relief package, the Council waived the management fee in 2020/21 recovering the majority through the Government's fees and income compensation scheme. Fusion is seeking the waiver of the 2021/22 management fee to assist in the recovery from the impact of Covid. The Government's compensation scheme currently covers the period to 30 June 2021 and so it is proposed that only the first quarter's fee is waived.
- 3.3 The only viable option is to extend the existing agreement and negotiations have been on-going with Fusion to seek a solution to the current very difficult financial situation to enable the Council to continue to provide the same range of services across the three centres at a cost it can afford in light of the Medium-Term Financial Strategy and budgetary pressures.
- 3.4 Three options have been put forward to provide either a one, three or five-year extension to the contract. Details of the options are in Exempt Agenda A.
- 3.5 In summary, the one-year option is a stop gap with no capital investment and a reduced management fee income which would have to be offset by savings elsewhere.
- 3.6 The three-year option provides for some capital investment at the three centres and the retention of the full management fee income.
- 3.7 The five-year option provides an increased level of capital investment at the three centres, the retention of the full management fee income and, in addition, a separate agreement to pay back the waived management fees for the periods 2020/21 and 2021/22 and the additional support payments (not covered by the NLRf) made from the Council to Fusion from September 2020.
- 3.8 The three and five year extensions options will see greater involvement from the corporate Sports and Community Development Team to support the local managers to increase sport and physical activity, particularly amongst those members of the community that are inactive and under-represented in their local leisure centres.

- 3.9 There will be improved engagement with customers through the use of the technology and Fusion is working towards having a fully automated Customer Relationship Management platform which can hyper-personalise messages based on customer behaviour. In the main this would be used to coach, encourage and give tips and advice based on the activities the customer participates in.
- 3.10 The three and five-year extensions secure sufficient time for a full review of our current assets, the future of the leisure market and an assessment of the opportunities enhancing our offer to the public to encourage greater participation in leisure, health and wellbeing activities.

4. Preferred Option and Reason

- 4.1 Details of the Council's preferred options are set out in the exempt appendix so as to not prejudice our negotiating position.

5. Consultation on Options

- 5.1 Consultation will be carried out with the Cabinet Advisory Board. No external consultation has been undertaken on the proposal to extend the contract. A wide-ranging consultation on the future options for the extent of the service and the way in which it is delivered will be carried out.

Recommendation from Cabinet Advisory Board

- 5.2 The Communities and Economic Development Cabinet Advisory Board were consulted on 14 July 2021 and agreed the following:

That the Cabinet Advisory Board supported the recommendations in the report and exempt Appendix A.

6. Implementation

- 6.1 Subject to Cabinet approval, any necessary legal/financial documentation will be drawn up and executed to implement the approved recommendation.

7. Appendices and Background Documents

Exempt appendices:

- Exempt Appendix A: Extension Options

8. Cross Cutting Issues

A. Legal (including the Human Rights Act)

Extending the contract is permissible and each of the recommendations falls within one of the exemptions from the Public Contract Regulations 2015 so that a procurement exercise will not need to be undertaken. Mid Kent Legal Services will be able to draft and complete the necessary agreement(s).

Lucinda MacKenzie-Ingle Team Leader Contracts & Commissioning 6 July 2021

B. Finance and Other Resources

The Council has a £1.8m budget deficit forecast for 2022/23, so any loss of management fee income or additional costs incurred would need to be financed from savings in other services. Procurement Regulations permit a contract variation of up to 50 per cent of the original value of the contract, and all extension options will fall within scope. Covid has caused Fusion significant financial hardship, so a full due diligence exercise must be carried out prior to any agreement taking place to ensure it will remain a going concern for the term of the contract extension.

Jane Fineman Head of Finance, Procurement & Parking (Deputy s151 Officer) 6 July 2021

C. Staffing

There are no new implications for the Council's staff based on the preferred recommendation contained the exempt appendix.

Anita Lynch HR Manager 6 July 2021

D. Risk Management

The preferred option will help to mitigate the Corporate Strategic Risk CSR03: Contract management and delivery - Council unable to source contractor to deliver service within financial parameters / existing provider(s) ceases to provide service

Gary Stevenson Head of Housing Health and Environment 6 July 2021

E. Environment and Sustainability

The carbon emissions from the three sports centres account for 45% of the total building related emissions from the Council's estate. Significant mitigating measures will be required by 2030 to support the Council's target of net zero carbon emission. The preferred option in the report will allow the development of energy saving measures in the short to medium term whilst critically allowing for sufficient time to give careful consideration to, and assessment of, opportunities for the most appropriate and effective carbon reductions as part of the overall review of the operation of the sites.

It is also recommended that as part of any extension to the contract agreed by Cabinet, that the contract is reviewed and amended appropriately to enable the council consider taking ownership of utility supply contracts and the payment of utility bills with suitable recharging. This would then enable the Council to be able to bid for future grant funding opportunities such as the Public Sector Decarbonisation Grant funding.

Karin Grey, Sustainability Manager 6 July 2021

F. Community Safety

The preferred recommendation will not have a direct impact on community safety

Gary Stevenson Head of Housing Health and Environment 6 July 2021

G. Equalities

The preferred option itself does not change the current operating arrangements. As part of the any ongoing dialogue any changes proposed will be reviewed to identify if separate Equalities Impact Assessment is required

Gary Stevenson Head of Housing, Health and Environment 6 July 2021

H. Data Protection

The preferred option does not propose any changes to the existing operational arrangements however as part of the on going contract management data protection controls will be reviewed.

Gary Stevenson Head of Housing, Health and Environment 6 July 2021

I. Health and Safety

The preferred option does not propose any changes to the existing health and safety operational arrangements however as part of the on going contract management health and

safety controls will continue to be monitored through regular premises inspections and monitoring.

Gary Stevenson Head of Housing, Health and Environment 6 July 2021

J. Health and Wellbeing

The continued provision of leisure and sports facilities allows people to participate in activities that have a positive their health and wellbeing. It provides opportunities for healthier lifestyle choices to be made. Fusion will be expected to continue to work with the Heath Team and exercise referral scheme.

Gary Stevenson, Head of Housing, Health and Environment 6 July 2021