

TUNBRIDGE WELLS BOROUGH COUNCIL

OVERVIEW AND SCRUTINY COMMITTEE

MINUTES of the meeting held at the Council Chamber, Town Hall, Royal Tunbridge Wells, TN1 1RS, at 6.30 pm on Tuesday, 10 August 2021

**Present: Councillor Patrick Thomson (Chairman)
Councillors Bland, Everitt, Goodship, Hayward, Hills (Vice-Chairman), Holden, Morton
and Pound**

Officers in Attendance: Jane Clarke (Head of Policy and Governance), Gary Stevenson (Head of Housing, Health and Environment), Paul Taylor (Director of Change and Communities), Claudette Valmond (Senior Lawyer) and Caroline Britt (Democratic Services Officer)

Other Members in Attendance: Councillors Dawlings and March

APOLOGIES FOR ABSENCE

OSC25/21 Apologies for absence were received from Councillors Chapelard, Hickey and Ms Palmer.

DECLARATIONS OF INTEREST

OSC26/21 There were no disclosable pecuniary or other significant interests declared at the meeting.

There were no declarations of use of the party whip.

NOTIFICATION OF PERSONS REGISTERED TO SPEAK

OSC27/21 Councillors Dawlings and March were in attendance and presenting the response to the Call-In on behalf of the Cabinet in respect of item OSC28/21.

There were no members of the public or Visiting Members registered to speak.

CALL-IN OF CABINET DECISION: SPORTS CENTRE MANAGEMENT CONTRACT

OSC28/21 The Chairman explained the Call-In process.

Councillor Hayward presented the Call-In on behalf of those who had signed the Call-In request. Comments included:

- The enquiry was on the soundness of the decision made by the Cabinet.
- The basis of the call-in was that there was insufficient consultation prior to the decision being made, there was insufficient evidence on which to base the decision and there was insufficient consideration of legal or financial advice.
- The decision was against a backdrop of financial insecurity for all parties.
- The leisure contract had not been performing before the pandemic.
- Alternatives had not been explored despite the problems with the contract being well known.

- Procurement processes had been too heavily weighted to cost over quality.
- A lack of alternatives had resulted in the uncontested option of renewing the contract.
- Health and leisure services would be vital to the recovery from the pandemic
- The option of bringing the service in-house had been dismissed due to a lack of resources, difficulties of transferring staff employment rights under TUPE and the financial risk; but no analysis of the actual cost and practicalities had been undertaken.
- Examples of successful and profitable in-house services were available.
- There was still time to undertake an assessment of in-house or other local providers options including other local authorities.
- No risks of extending the contact, including the reputational damage to the Council and Fusion's own financial status, were included in the report to Cabinet.
- The decision should be returned to Cabinet with a proper analysis of alternatives and risks.

There were no questions to Cllr Hayward.

Councillor March presented part of the response to the Call-In for the Cabinet and the points raised included:

- A full procurement process was not part of the contract extension but if it had been it would have taken considerable time and resources to undertake.
- A review of the current contract was started in early 2020 but this had been stymied by the pandemic. A project team was established in October 2020 to prepare a new tender process but this too was affected by the second wave in December 2020.
- The impact of the pandemic on the market and users of the leisure services was significant which required a more strategic review of the service as a whole.
- The need to extend the contract to allow a fundamental review had been briefed to members through various forums in January and February 2021.
- Fusion had experience, economies of scale and resilience needed to operate and maintain a wide variety of specialist equipment and facilities.
- A longer extension would also provide for additional investment by Fusion.
- The decision to extend the contract was to allow time for a full strategic assessment of the service. Further, it would mitigate the risks of running the services during a period of high unpredictability.
- The future procurement of a new service would follow a formal process and address all the issues raised by the call-in.
- The decision had been supported by the Cabinet Advisory Board.

The Committee asked questions, to which the answers included the following points:

- The Portfolio Holder and officers had met with a number of sports clubs to discuss their aspirations and future plan in order that they

may be taken into account when the future contract was under consideration, they were not specifically consulted on the question of the extension.

- Existing provisions for managing the contract would remain in place during the extension. There were already penalties for breaches of contract. Ultimately, the contract could be terminated if the threshold number of defaults was reached.
- Fusion were looking to implement Sport England standards on cleanliness which would see improvements being made.
- Any future contract, if this was the direction the council chose, would seek to incorporate Sport England standards into the contract.
- The extension would be an opportunity to consult with relevant parties, including any Community Interest Organisations, regarding the future running of the leisure centres.
- One of the five conditions of extending the contract would be to implement carbon reduction measures, this was a high priority for the Cabinet. The report made reference to seeking funding opportunities such as (but not exclusive to) Public Sector Decarbonisation. Therefore, the Cabinet did have sufficient information on this matter.
- Constitutional minimum requirements for contracting for services were in relation to procuring new contracts. The Council was in an active contract.
- The value of the extension was less than fifty per cent of the value of the original contract therefore there was no requirement to apply the procurement provisions.
- Legal Services advised that an extension to the contract was not considered to be within the meaning in the Constitution of 'contracting for services'.

Councillor Dawlings presented part of the response to the Call-In for the Cabinet and the points raised included:

- Publicly stated personal preference for small, local contracts. The nature of this contract involved specialist experience and expertise.
- The Council was in a difficult financial position with income down as a result of the pandemic. Fusion's management of the leisure centre was a source of income and investment. Loss of the income would need to be balanced by cuts elsewhere.
- Fusion had been required to close during the pandemic and received support funding from the government. Fusion had been able to renew their pension bonds and insurance cover which indicated third-party confidence in the company.
- Loans made by the council to fusion were to enable investment in the council's property.
- Cleanliness and equipment availability had much improved and the effort demonstrated by Fusion management was reassuring.
- With ongoing fundamental changes to the leisure market, this was not the time to change service provider.
- Extension of the contract was the best way to ensure the continuation of the services, generate income and to recover the investment made by the Council.
- During the extension period the Council would undertake a full analysis of the market and the needs of residents.

The Committee asked questions, to which the answers included the following points:

- Any reasonable extension would allow a full tender process, the chosen length of the extension would achieve the greatest financial contribution.
- Examples of similar extensions included Vale of Glamorgan.
- Work on the market analysis would start after a reasonable pause to allow for the market to stabilise. The assessment would follow the Sport England framework and would likely take two to three years. Such contracts were typically for 10 years, up to 20 years if capital investment was desired, so this was not something to be rushed.
- The leisure market was in significant flux, there were already moves from large centralised facilities to small pop-up facilities and the pandemic had introduced digital facilities. UK Active had predicted that market stabilisation may take up to 18 months.
- The future needs of users needed to be understood. The views of stakeholders were many and varied and it would take time to understand them all.
- Sport England standards on cleanliness and facilities were new, not being in place at the time the current contract was started, but would form part of the considerations for any new contract.
- Point 4 of the original decision making an extension contingent upon agreed phasing of revenue payments and capital spend and failure being considered a breach of contract did not increase the risk to the Council as it already had to manage this risk .

Debate included:

- Statements from Fusion staff, who wished to be anonymous, reported that up to fifty per cent of staff had been made redundant and staffing was now dangerously low. Fusion had cancelled its cleaning contract and all staff had had their job description changed to include cleaning duties.
- The Council had clearly failed to consult or consider any evidence as to the efficacy of the current contract.
- Arguments for an extension appeared to be that it was 'too difficult to do anything about it at present' and 'the contract was a source of income'.
- The council did not apply the same standard to contract extensions as it did to new contracts and this was not in the interests of residents.
- No alternative providers or methods of operations had even been approached. No analysis had been undertaken before proposing an extension.
- Whilst the Council did not have the staff to run the sports centres it did have staff with experience of managing sport centres or managing contracts client side.
- This matter had been examined by the Overview and Scrutiny Committee in 2020, the situation could have been completely different had the options been explored then.
- The current contract was not fit for purpose but there was no fault in the decision making process.
- There was no evidence of Fusion's financial stability or employment practices on which to base continuing the contract.

Councillor Pound moved, and Councillor Hayward seconded, that the matter be referred back to Cabinet for further consideration.

Councillor Pound requested a recorded vote.

Members who voted for the motion: Councillors Everitt, Hayward, Morton, Pound, Hills and Thomson. (6)

Members who voted against the motion: Councillors Bland, Goodship and Holden. (3)

Members who abstained from voting: None.

The committee decided the matter taking the exempt information as read.

RESOLVED – That Cabinet decision Sports Centre Management Contract made on 29 July 2021 be referred to the Cabinet for further consideration for the reasons set out in the debate.

URGENT BUSINESS

OSC29/21 There was no urgent business for consideration.

DATE OF THE NEXT MEETING

OSC30/21 The next meeting was scheduled for Monday 27 September 2021.

EXEMPT APPENDIX TO CALL-IN OF CABINET DECISION: SPORTS CENTRE MANAGEMENT CONTRACT (ITEM 4)

OSC31/21 The item was considered in public taking the exempt information as read.

NOTE: The meeting concluded at 8.00 pm.