

## OVERVIEW AND SCRUTINY COMMITTEE

Tuesday, 1 September 2020

**Present: Councillor Chris Woodward (Chairman)**  
**Councillors Atwood, Hayward, Morton, Pound, Stanyer and Thomson**

**Officers in Attendance:** Lee Colyer (Director of Finance, Policy and Development (Section 151 Officer)), Paul Taylor (Director of Change and Communities), John Antoniadis (Estates Manager), Mike Catling (Corporate Health and Safety Advisor), Paul Doherr (Architectural Surveyor), Lucinda MacKenzie-Ingle (Team Leader, Contracts and Commissioning (Solicitor) Mid Kent Legal Services), Patricia Narebor (Head of Legal Partnership), Paul Shipley (Contract Services Manager), Gary Stevenson (Head of Housing, Health and Environment) and Caroline Britt (Democratic Services Officer), Carl Bentley (Fusion Lifestyle).

**Other Members in Attendance:** Councillors Dawlings, Fairweather and March

### APOLOGIES FOR ABSENCE

OSC27/20 Apologies for absence were received from Councillors Chapelard and Ms Palmer. Councillors Bland, Neve, and Mrs Soyke were not present.

### DECLARATIONS OF INTEREST

OSC28/20 There were no disclosable pecuniary or significant other interests declared at the meeting.

### NOTIFICATION OF PERSONS REGISTERED TO SPEAK

OSC29/20 Councillor Pope had registered to speak at OSC31/20.

### ITEMS CALLED IN

OSC30/20 There were no items which had been called-in.

### PHASED REOPENING OF COUNCIL SPORTS CENTRES

OSC31/20 Councillor Pope had registered to speak which included the following comments:

- Fusion Lifestyle had been slow to reopen its sports and leisure facilities in the Borough compared with other companies who ran Council owned leisure facilities across the country.
- The tennis courts had remained closed where other tennis courts had reopened.
- Fusion had been poor in communicating with its users about its plans and, from feedback received, contact had almost disappeared during lockdown.
- It was important to note what other Councils were doing whose facilities were managed by Fusion Lifestyle as their decisions might have an impact on Fusion and any loans the Council provided.
- The Council already had a contract in place and therefore any decisions should take this into account.

- This item would normally have been considered by a Cabinet Advisory Board, but as they had been suspended the item had come to Overview and Scrutiny.
- Items that would have gone to a Cabinet Advisory Board would have had 3 options to provide clear advice to Cabinet. However for this item there was essentially only one recommendation with a number of points. This made adjusting the options or selecting a recommendation more difficult.

Gary Stevenson, Head of Housing, Health and Environment, supported by Carl Bentley, Fusion Lifestyle, introduced the report set out in the agenda.

In response to questions the following comments were made:

- The Council confirmed that there had been no formal reporting of outstanding debts prior to 23 March 2020.
- There was an average of 60,000 visitors to the centres each month. This broke down to 41,000 at Tunbridge Wells, 16,000 at the Weald and 3,000 at Putlands. This equated to approximately 700,000 users per year. Actual figures were provided to Council officers on a monthly basis which could be made available if requested.
- Fusion's investment in fixed assets was about £2.7m for the Tunbridge Wells contract. This included £530k for equipment, £390k for furniture, fixtures and fittings and £1.9m for leasehold improvements.
- Opening the tennis centre as a stand alone element was difficult as it relied on other parts of the centre to function properly. It was decided that it was preferable to open the facilities together. It was hoped that most of the coaching courses would be up and running by the end of September.
- It was paramount that the reopening was done in a Covid secure way. There was a lot for staff and customers to get used to. Small steps would therefore need to be taken – the gym and studio classes opened 1 September and the swimming pools would open on 4 September.
- In terms of the metrics on the Council's investment, more time would be needed to get greater detail, but it was reported there was a 30,000 uplift per annum in visitors post refurbishment in 2013.
- Figures were sought on the value of Fusion's own investment in the centres not including that which had been funded by loans from the Council.
- Fusion had submitted a bid to the Coronavirus Large Business Interruption Loan Scheme (CLBILS) and it was their intention to repay money owing to the Council once the loan was in place. Terms had been agreed for the loan but it now required Fusion's clients to agree their Business Plan. The Council had agreed their Business Plan and Fusion had almost secured agreement from all their other clients. It was expected that everything would be in place to enable Fusion to start drawing down the money by the end of September. Fusion would then start the process of repaying the Council the monies owed, to be completed by March 2021.
- Fusion did not want to have to use any of the subsidy provided by the Council.

- Fusion had only been able to use the Government's Job Retention Scheme. No other Government funding streams (until CLBILS) had been open to them.
- In terms of projections, Fusion had relied on the UK Active Projections that had been put together for the industry. Given the unprecedented times Fusion were in, it was thought this method would provide some consistency. At the moment Fusion did not know whether these would be true numbers or whether they would exceed them. August was always a quiet month, September/October would provide better clarity.
- The £355k mentioned in the report as 'loss of income' was to allow Fusion to open and to remain operational until March 2021.
- The Government had announced a compensation scheme for Councils to recover lost income through sales, fees and charges, as a consequence of the Covid-19 Pandemic. Councils could only recover loss of income that they had suffered, it did not extend to contractors. The Management Fee (only that incurred since the start of the Covid-19 lockdown) was a loss of income to the Council and was therefore within the scope of the scheme, as such, the Council should be able to recover approximately 70% of that loss. Fusion's lost income was their lost income and outside the scope of the scheme. The Council would therefore not be able to make a claim for this.
- With regards to the Business Plan and receipt of money from CLBILS, Fusion would require sign up from all their clients. Fusion stated that the majority of their clients had now signed up. One or two were outstanding but were in the process of being agreed. Fusion remained confident that any outstanding agreements would be in place within the next few weeks. Fusion further maintained that although there was a risk, it was not a significant one. Fusion would be able to provide exact numbers by the Cabinet meeting on 10 September 2020.
- Fusion were aware of some disquiet from customers regarding levels of cleaning and customer service. They were now undertaking a lot of staff training particularly with regards to levels of cleaning to ensure the sites were Covid secure. Fusion were also aware of the importance of being able to handle enquiries quickly and efficiently. Improvements were being made to the social media side of the organisation.
- Fusion had presented an initial plan to officers in order to improve communications. In addition an ongoing plan was being finalised which would take them through the transition period to March 2021. This would ensure that customers received all the necessary information. It was also noted that many of Fusion's customers had opted out of receiving information so this also needed to be addressed.
- The level of involvement in officers making the decision with Fusion to not reopen the tennis courts was not known. The original LTA guidance stated there should not be any indoor activity.
- Fusion were committed to repaying money owed, including management fees, to the Council by March 2021, sooner if possible.
- Fusion remained confident of full sign up from clients that would enable the CLBILS loan to be triggered. There was no Plan B.

- Numbers of membership cancelled due to Covid-19 were unknown, but details would follow later.
- By the time the Council had started to chase Fusion for outstanding payments, Government Guidance had been published (PPN 02/20 – Supplier Relief). That Guidance stated that Councils should support contractors and suppliers. As such, in order to stay the right side of Government Guidance, no Councils were taking action against their contractors or suppliers who could not supply what was required under contract due to the Covid-19 lockdown.
- The question as to whether there had been a breach in the contract was not addressed directly because the Guidance issued at the end of March placed a duty on Local Authorities to assist and provide relief to their contractors and suppliers.
- Ceasing the contract would need to be looked into in more detail. The Council could terminate if there was a material breach and the Council could still reclaim outstanding loan payments that were due to the Council. However, whilst there may not be any penalty if the Council deciding to terminate due to a breach, it might lead to litigation which was always expensive for all parties involved.
- The £420k to Fusion would be a payment of money (it was not a loan).
- Fusion's last set of accounts to the end of 2019 were still in draft as it had not been possible to get them fully signed off. Covid-19 had caused significant delays for audit firms. Fusion hoped to get them signed off by the end of December 2020. In terms of loss making, Fusion's current position was a direct result of the Covid-19 crisis. Fusion had some reserves but these were insufficient to cover the difficulties experienced over the last 4 to 5 months. Fusion had made a profit in 2019.
- The Tunbridge Wells Sports Centre was a valuable asset for local residents and schools which was provided by the Council as a discretionary service that supported health and wellbeing. The proposed payment would be a subsidy that would allow this discretionary service to continue for this transitional period.
- Fusion had never resigned an account.
- The report stated that one of the reasons for a loss in 2017 was the loss of a contract with London Borough of Croydon. Fusion were asked to retender for this contract but decided against doing so.
- There was concern raised that contractors and suppliers had used the threat of frustrated contracts and legal action to force Councils to provide funding. The issue of frustration had been raised but the fact that some of the terms within the contract had not been complied with did not mean the contract was automatically frustrated. Similarly, if there was an alternative method for the contract to be performed or if the contract was more expensive to implement and deliver or there was a change in economic condition, did not mean the contract was automatically frustrated.
- Fusion made clear that they had deliberately chosen not to go down the legal route much preferring to discuss and negotiate with the Council to find a resolution.

Discussion included the following comments:

- Whilst it was accepted the Council had a responsibility for the health and wellbeing of its residents, it also had a responsibility to

look after the financial interests of residents. It was therefore suggested that the Management Fee due from April 2020 could be waived provided that the s151 Officer would confirm that 70% of those fees could be reclaimed from Government.

- Due to Fusion's precarious financial position the Council should not be lending them an additional £420k.
- There remained concern that Fusion would not be able to sign up a sufficient number of clients to allow them to get the loan from Government (CLBILS).
- Fusion had been in trouble in 2017, they remained in trouble. There was a view that Fusion had been overtrading and there was doubt as to whether they would survive.
- By not providing the additional funding the service would be lost and would take a long time before the services were available again.
- The £420k was the maximum amount and it was hoped they would not require all of it.
- By agreeing to waive the Management Fees would give Fusion additional funds that could be used to run the centres.
- If the Council decided against providing any funding the Borough ran the risk of having no sporting facilities for the foreseeable future.
- Any replacement service would cost more than was being asked for by Fusion. The centres were hugely beneficial in terms of physical and mental health. To close a facility currently being used by over 50,000 people would be disastrous. It would also have a huge detrimental effect on the schools that currently used the centres. The provision of these services should remain a priority for the Council.
- Longer term concerns regarding Fusion's viability could be taken account of when the contract came up for renew in the near future anyway. Whilst Fusion may be in a difficult financial position now this was not unreasonable given the extraordinary circumstances surrounding Covid-19.
- There should be a proviso in agreeing any reopening that Fusion obtain the necessary grant funding from Government, that money owed would be repaid and future assistance should stop at this point.
- The Council still had a contract with Fusion and as such they should be providing those services. Fusion had an obligation to open the centres.
- Fusion had not given any indication of what they would do if the Council did not give them the money.
- The Council did consider a no-cost option put forward by Fusion. This would have provided a limited service across the Borough but would have largely relied on the centre in Tunbridge Wells as the most profitable centre of the three. Officers were not of the view that there was a no cost option that would be able to provide the very important leisure services that would help peoples health and wellbeing. Officers had looked at the market which was in chaos and not something the Council should look to get into at this time. The Council were proposing a short term solution that returned all the centres into operation. The Council would then be able to look at the options and also look at how the market reacted to such a significant impact.

- There remained concern about supporting option 3.1 ('Provide financial assistance requested to enable all three sports centres to reopen with a full range of activities on offer').
- There was concerned about the suggestion of imposing a condition that the provision of its financial support were to be based on Fusion's success in obtaining funding from Government sources. It was not in the control of the Council, it could only be decided by Government.

The matter was decided taking the exempt information set out in the agenda as read.

**RESOLVED –**

1. That officers be requested to provide, for the benefit of Cabinet:
  - a. actual visitor figures for each of the Tunbridge Wells centres,
  - b. further details on measurable metrics following the Council's investment in the centres,
  - c. exact details regarding the number of Fusion's clients who had already signed up to the Business Plan and details of any outstanding clients who had not,
  - d. details of any council officers who had involvement in the decision to not reopen the Tennis Courts in advance,
  - e. the number of memberships cancelled during lockdown;
2. That Cabinet be requested to consider only waiving the management fees for 2020-21 and provide no other financial support having regard to Fusion's ability to continue service provision and acceptable service levels;
3. That Cabinet be requested to consider that reopening was not optional as Fusion was bound by contract;
4. That, subject to the above, the report be noted.

**CEMETERY DEPOT, BENHALL MILL ROAD**

OSC32/20 Paul Doherr, Architectural Surveyor introduced the report set out in the agenda.

Discussion included the following comments:

- The new Parks maintenance contractor lease would include the necessary stipulations regarding maintenance of the new depot. In addition, a new property was easier to maintain.

The matter was decided taking the exempt information set out in the agenda as read.

**RESOLVED –** That the report be noted.

**ANNUAL CORPORATE HEALTH AND SAFETY REPORT 2019/20**

OSC33/20 Mike Catling, Corporate Health and Safety Advisor introduced the report set out in the agenda.

Discussion included the following comments:

- Council staff had continued to work throughout the Covid Pandemic to provide the services the public needed. This included working from the Town Hall and the Council's other buildings.
- In order to ensure that people worked in a Covid Secure way, numbers were restricted.
- The Council were keen to keep all their buildings open as much as it was possible to do so.
- There could be a number of reasons for an increase in the number of incidents that took place in the car parks. There had been a number of issues related to the condition of the car parks, also incidents involving members of the car parking team varied throughout the year and might include a higher presence in the car park at certain times.
- Statistics were monitored on a regular basis, any significant changes could then be dealt with promptly.
- Incidents at TN2 might be due to the different departments working there.

**RESOLVED** – That the report be noted.

#### **URGENT BUSINESS**

OSC34/20 There was no urgent business.

#### **DATE OF THE NEXT MEETING**

OSC35/20 The date of the next meeting was scheduled for Monday 21 September 2020.

NOTE: The meeting concluded at 4.00 pm.