

**CABINET
21 JULY 2020**

PART 1 – PUBLIC DOCUMENT

TITLE OF REPORT: COVID-19 LEISURE CONTRACTS RECOVERY

REPORT OF THE SERVICE DIRECTOR - PLACE

EXECUTIVE MEMBER ENVIRONMENT & LEISURE: CLLR STEVE JARVIS

COUNCIL PRIORITY: RESPOND TO CHALLENGES TO THE ENVIRONMENT

1. EXECUTIVE SUMMARY

- 1.1 The Government instigated lockdown on 20 March 2020 resulting in the closure of gyms and leisure centres. This report outlines Stevenage Leisure Limited (SLL) recovery plan of the leisure facilities, and asks to consider and agree an Open Book approach recommended in the Procurement Policy Note – Supplier relief due to COVID-19 02/20 (PPN 02/20), and further support included within the Local Government Association (LGA) Options for councils in supporting leisure providers through COVID-19.

2. RECOMMENDATIONS

That Cabinet consider and agree: -

- 2.1 The approach set out in SLL's recovery plan and support SLL using the Open Book approach as recommended in the PPN 02/20, and further support included within LGA Options for councils in supporting leisure providers through COVID-19 Guidance from service closure.
- 2.2 Officers will continue to work with SLL to agree ways in which income can be maximised and costs minimised whilst ensuring that operations continue to meet COVID-19 and other safety requirements.

3. REASONS FOR RECOMMENDATIONS

- 3.1. To seek approval for the SLL recovery plan and a phased approach toward recovery allowing flexibility through delegation, to ensure business continuity for the leisure contracts and for them to survive beyond the COVID-19 pandemic.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1. See Part 2 Report

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1. Consultation was undertaken with our Executive Member Environment and Leisure, Cllr Steve Jarvis and Cllr Kay Tart.

6. FORWARD PLAN

- 6.1 This report contains a recommendation on a key Executive decision, which has not been notified to the public in the Forward Plan. It is not possible to defer consideration of this decision because decisions regarding the effect of Covid-19 on Leisure Facilities and operators and consideration of the way forward cannot be delayed until the next Cabinet meeting in September 2020. The Chairman of the Overview and Scrutiny Committee has been informed and notice of the recommendations has been available at the Council Offices in Gernon Road, Letchworth for three clear working days prior to the date of this meeting.

7. BACKGROUND

- 7.1. On 30th January 2020 the World Health Organisation declared a Public Health Emergency of International Concern for the coronavirus known as COVID-19. During March social distancing measures were introduced along with initial guidance on self-isolation.
- 7.2. On 20 March 2020, the Government announced the temporary closure of all gyms and leisure centres (along with pubs, clubs, restaurants, cafes) as part of its COVID-19 response to stop the spread of infection.
- 7.3. This change in law has reduced SLL's income to almost zero, and without the goodwill and support of NHDC, the Governments Furlough scheme, and some loyal customers that continued to pay their Direct Debit payments, there was, and still is a real risk that SLL will not be able to continue trading.
- 7.4. SLL took an early decision to Furlough 96% of the SLL operational staff team, and for all remaining employees to take a 20-30% pay cut. This left just 8 employees to manage the North Hertfordshire Contracts. This involved ensuring the buildings were still being operated in accordance with statutory regulations, were being maintained in a state that they would be able to open quickly, communicate with customers and stakeholders, prepare for reopening, attend team meetings to discuss plans and also to deal with any reactive issues that arose. These decisions and positive actions have put SLL in the best possible position in regard to reopening the facilities as soon as Government allows.
- 7.5. At the Cabinet meeting on the 23 June 20 it was discussed and agreed as part of the Business Continuity report, to delegate to senior officers in consultation with Executive Member changes to the recovery plan to protect the Councils financial position. The following minute details the resolution (4);

BUSINESS CONTINUITY PLANNING UPDATE

RESOLVED:

- (1) That the further commissioning of legal services in relation to the holding company, to be agreed by the Service Director: Legal and Community, the Deputy Chief Executive [Managing Director] in consultation with the Leader and Deputy Leader be approved.
- (2) That the decision on establishment of the trading company, with business case to be presented to the Cabinet Sub-Committee as soon as possible for approval thereafter be delegated to the Deputy Chief Executive [Managing Director] in consultation with the Leader and Deputy Leader.
- (3) That Cabinet supports any additional initiatives such as the furloughed space grants suggested by the British Retail Corporation to support the economic recovery of the District, provided it is fully funded by the Government.
- (4) That Cabinet delegate authority to the Managing Director and Service Director Place to take decisions regarding services provided under the Leisure contracts, in consultation with the Executive Member for Environment and Leisure, the Service Director Resources and Executive Member for Finance and IT.

REASON FOR DECISIONS: To ensure that the Council is as prepared as it can be for contractor failure / withdrawal from major contracts.

8. RELEVANT CONSIDERATIONS

- 8.1. SLL has now provided their proposed recovery plan for North Hertfordshire Leisure facilities, there are individual plans for the three main facilities, North Herts Leisure Centre (NHLC), Hitchin Swimming Centre (HSC) and Royston Leisure Centre (RLC) that detail a phased recovery of services from mid July subject to Government confirmation and goes through to October 2020.
- 8.2. The plan does not include the opening of the outdoor pools, with limited casual swimming being introduced in phase 2, September 2020;

Phase 1 – Mid July – Restart the highest income generators first and these are the fitness facilities and swimming lessons, which generate 75% of the income. Customer attitude and behaviour will be fundamental to its success.

Phase 2 – September - Introduction of limited casual swimming, dry side courses, dry side block bookings, squash.

Phase 3 - October – Increase workout classes, casual swim / fun sessions, wild camp, soft play, increased café offering, exercise referral.

The above proposed phases will need to be flexible and adaptive and be responsive to Government advice and customer reaction.

- 8.3. The proposed phased approach is very challenging and will require regular review, and where necessary action taken to safeguard the financial position of operating our leisure facilities.

8.4. Communication and Marketing Plan

Key to the success of these recovery plans is the communication and messages SLL send to their customers, to ensure they have a strong number of returning customers, that are confident to use the facilities, and have exceptional service to come back to.

SLL are currently working with a national sports and leisure marketing company (TA6) to devise re-engagement plan for current customers, and then moving on to retention and ex members.

This is a 6-week plan, specific to SLL and their customers, in line with SLL's vision and values of bringing the community back together.

The plan starts 2-3 weeks prior to opening, leads into the facility opening and customer service plan, and then onto a new member acquisition plan after 6 weeks. SLL need to re-engage with their current customers before getting any new ones. All marketing collateral, online content, and physical content will be bespoke designed for SLL, and specific to the messages they want to get out.

This marketing plan will apply to all SLL and Aspire Leisure facilities.

8.5. Environmental Health and Health & Safety

Officers and SLL are working closely with the Environment Health and Health & Safety teams to ensure they are compliant prior to opening.

Environmental Health Officers will visit the sites to comment and make recommendations on SLL's risk assessments and propose operating procedures to deal with COVID-19.

8.6. LGA Options for councils in supporting leisure providers through COVID-19 Guidance.

This advice note aims to update Councils on the impact the COVID-19 pandemic is having on leisure providers operating services and facilities owned and delivered on behalf of Councils. It includes options as well as examples of how councils are providing practical support to providers and ensuring facilities are in a position to reopen when social distancing measures are relaxed.

For further information download

<https://www.local.gov.uk/options-councils-supporting-leisure-providers-through-covid-19>.

The following are some key relevant extracts from this Guidance:

"This advice note aims to update councils on the impact the COVID-19 pandemic is having on leisure providers operating services and facilities owned and delivered on behalf of councils. It includes options as well as examples of how councils are providing practical support to providers and ensuring facilities are in a position to reopen when social distancing measures are relaxed.

Leisure providers are currently falling between the cracks of most announced support packages. Leisure trusts are most at risk because they are charities, societies or community interest companies (with a public benefit asset lock) and as such do not

distribute profits. Currently leisure providers are exempt from most COVID-19 emergency support funding, because:

- the Procurement Policy Notes 02/20¹ (PPN 02/20) on supplier relief do not account for the income arrangements between councils and providers*
- leisure providers are unable to secure loan finance, either through the government backed scheme or commercially, due to judgement of viability being assessed and judged on historical profitable financial records rather than on future financial projections, tight contractual and operating margins and, for trusts, their reinvestment of surpluses into the community model*
- the majority have a rateable value above £51 000 so are not eligible to receive the retail, hospitality and leisure grants*
- they are not eligible for Sport England's emergency response funds which are targeted at grassroots community organisations and are unable to be used to address financial impact on council service provision*
- trusts are not eligible for the Government's £750 million for frontline charities, as they are not deemed 'small' nor 'delivering frontline services'*
- closure has been required and that some are interpreting this as a 'change of law' event from central government – specifically closing gym and leisure facilities.*

The following actions will support a partnership approach between councils and their providers:

- Adopting the recommendations and approach recommended in PPN 02/20.*
- Supporting the net subsidy position utilising the Open Book approach recommended in the current PPN 02/20 run from service closure on 20 March to the date at which 'full normal service and income levels have been achieved' to ensure fairness and transparency. Leisure providers will be under an obligation to mitigate costs as much as possible.*
- Holding regular review meetings with the operator to monitor and manage the joint response to the crisis.*
- Understanding that organisations have had to furlough most of their staff resource, so reconciliation under the Open Book specific to the contract should be quarterly to minimise resource impact.*
- Understanding that leisure operators including trusts, are not eligible for the vast majority of Government-backed support schemes, nor those of Sport England.*
- Taking steps to understand the potential costs to their council in present and future budgets should their leisure partner be unable to continue.*
- Noting that under 'Change In Law provisions' (where applicable) the council is fully responsible for all the costs of hibernation and supporting the ramp back up to normal working.*
- Agreeing hibernation costs with the operator (where relevant), including security, plant checks etc.*

Councils may also consider:

- funding the operator to pay staff their normal contracted remuneration, while also ensuring that the operator is maximising the value of the Government's job retention scheme³*
- agreeing payments to the operator to ensure that the operator's cash flow position is protected.*

It should be noted that leisure operators are supporting a large number of community resilience plans across the country and this collaborative approach is providing immediate benefits to many councils and their communities, the continuation of this support is encouraged.”

8.7. Communication with Stevenage Borough Council (SBC) and Central Bedfordshire Council (CBC) Leisure Client Teams

SLL’s three largest clients are SBC, CBC and us. Since lockdown there has been regular communication where we have shared our concerns and position statements. In recent months, we introduced fortnightly meetings between the three Councils and the Chief Executive and Operational Director of SLL. The discussions have been open and honest, looking to see a consistent approach in particular around recovery.

Further detail contained within Part 2 report.

8.8. SLL’s Current Contract

The current three leisure contracts terminate on the 31 March 2025. It is unlikely that SLL will be able to continue with the existing financial terms unless their income returns back to previous levels. Once the period of Open Book accounting ceases we need to agree future terms and discussions will need to take place with SLL, SBC and CBC to determine the joint approach we take.

8.9. Depending on the outcome of the review consideration needs to be given to extending the contracts for a further year as requested by SLL, this would help SLL spread out any loans and other costs over a longer period and it may provide the Council with an opportunity to recover some of its costs.

8.10. Any terms agreed with SLL must be on the basis the company accounts have removed all costs associated with profit or management fees.

8.11. We have developed over many years a good partnership approach with SLL and this will need to be embraced if SLL are to survive and NHDC risks are minimised.

9. LEGAL IMPLICATIONS

Modification of Contracts:

9.1. Regulation 43 of The Concession Contracts Regulations 2016 (CCRs) allows the Council to modify contracts during their terms.

1 year extension:

9.2. Regulation 43(5) of the CCRs allows for these Leisure Contracts to be modified where the value of the modification is below-

- (a) the procurement threshold (£4,733.252); and
- (b) 10% of the value of the initial concession contract, provided that the modification does not alter the overall nature of the concession contract.

9.3. The Leisure Contracts are for periods of 10 years (Letchworth) and 14 years (Hitchin and Royston), so an extension of 1 year from 1 April 2025 to 31 March 2026 would equate to 10% of the value of the initial concession contracts so this modification is allowed under the CCRs.

9.4. Rule 3.11 of the Council's Contract Procurement Rules (CPRs) (Part B, Section 20 dated 16 January 2020) states:-

"These Rules do not apply to Concession Contracts (see Glossary of Terms in section 34). For Concession Contracts equal to or greater than the sum specified in Article 8(1) of the Concessions Directive, please follow the processes set out in the Concession Contracts Regulations 2016. Seek advice from Legal."

10. FINANCIAL IMPLICATIONS

10.1. As detailed in a separate report the Council is facing significant financial pressures arising from Covid-19 and needs to consider the affordability of any financial support that it provides to SLL. This needs to be on the basis of the cost of alternative outcomes and overall available resources in the short and medium-term.

10.2. Due to the commercial sensitivity financial details are included within Part 2 report.

11. RISK IMPLICATIONS

11.1. The facilities will provide a new experience for customers when they re-open. There is a risk that customers may not have confidence to return or have a negative reaction to the changes put in place i.e. social distancing rules, cleaning of equipment, reduced classes). If this is reflected in customer behaviour income targets set out in the recovery plan may not be achieved.

11.2. UK Active and Swim England have been key to recovery plans which include Risk Assessments and Work Instructions to ensure facilities are compliant with Environmental Health prior to opening.

12. EQUALITIES IMPLICATIONS

12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

12.2. To continue to support the SLL facilities via the Open Book approach provides support to those potentially vulnerable staff (on low income and zero contracts). Dependent on the new way in which the facilities open, they may provide support to those vulnerable members of the community who have been shielded or isolated during this pandemic period.

13. SOCIAL VALUE IMPLICATIONS

13.1. The Social Value Act and "go local" requirements do not apply to this report.

14. ENVIRONMENTAL IMPLICATIONS

- 14.1. There are no known Environmental impacts or requirements that apply to this recommendation of continued support. The Facilities are currently shut and remain so for the moment. The impact on the environment has been reduced in comparison to when it was fully opened. When the facilities re-open or are closed then the environmental implications may require assessment.

15. HUMAN RESOURCE IMPLICATIONS

- 15.1. The Council has already set up a trading company for such an eventuality. HR must be consulted at the earliest opportunity if there is any likelihood of a service being contracted in. The Councils TUPE and or Reorganisation policies would apply.

16. APPENDICES

- 16.1. None

17. CONTACT OFFICERS

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18. BACKGROUND PAPERS

- 18.1. LGA Options for councils in supporting leisure providers through COVID-19
<https://www.local.gov.uk/options-councils-supporting-leisure-providers-through-covid-19>
- 18.2. Procurement Policy Notes 02/201
<https://www.gov.uk/government/publications/procurement-policy-note-0220-supplier-relief-due-to-covid-19>

- 18.3. Procurement Policy Notes 04/20
<https://www.gov.uk/government/publications/procurement-policy-note-0420-recovery-and-transition-from-covid-19>
- 18.4. SLL Recovery Plan
- 18.5. SLL Communication Plan
- 18.6 COVID-19 Position statements from neighbouring authorities