

Subject:	Sports Facilities Contract Extension – Freedom Leisure
Date of Meeting:	29th March 2021
Report of:	Executive Director, Economy, Environment & Culture
Contact Officer:	Name: Donna Chisholm Ian Shurrock
	Email: Donna.chisholm@brighton-hove.gov.uk ian.shurrock@brighton-hove.gov.uk
Ward(s) affected:	All

FOR GENERAL RELEASE

Note: The special circumstances for non-compliance with Council Procedure Rule 3, Access to Information Procedure Rule 5 and Section 100B(4) of the Local Government Act 1972 (as amended), (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) were that negotiations with the providers could not be completed prior to the publication of the agenda.

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 Wealden Leisure Ltd trading as Freedom Leisure manage the council's sports facilities pursuant to two contracts with the council – both on very similar terms. The current ten-year contract with Freedom Leisure in relation to all the facilities listed in 3.1 below (except Portslade Sports Centre) expires on the 31st March 2021. An additional contract with Freedom Leisure to manage Portslade Sports Centre commenced in 2016 to run concurrently with the existing contract and also expires on 31st March 2021. These two contracts are referred to as the Sports Facilities Contract and there is provision within the contract for an extension of up to five years.
- 1.2 At a special Policy & Resources Committee on 14 August 2020 a three-year extension with an associated re-negotiated management fee was recommended and agreed. This took into account the significant impact on the Sports Facilities Contract from the initial Covid 19 lockdown period (21st March – 25th July 2020). The aim was to minimise the impact of financial pressures created by the Covid-19 pandemic by extending the contract over a three-year period.
- 1.3 Despite the Government allowing sports facilities (including gyms and swimming pools) to re-open from 25th July 2020, subsequent lockdowns and tier measures were introduced in November 2020, December 2020 and most recently from 5 January 2021 – 12 April 2021. These have had a continued negative impact on our Sports Facilities Contract with Freedom Leisure.

1.4 As well as a significant financial loss over 2020/2021 there is also an expected significant loss this year, combined with slow business recovery in terms of operating the facilities. Freedom Leisure are therefore requesting that the previously agreed financial position is reconsidered, taking into account the significant impact on the business created by successive lockdowns and the associated slow return of users over 2021/22.

2. RECOMMENDATIONS:

2.1 That the significant financial impact of the Covid-19 pandemic upon Freedom Leisure as the operator of the council's Sports Facilities and the financial support already provided be noted;

2.2 That it be noted that a high proportion of the management fee which was waived during the period 1 July 2020 to March 2021 was reclaimed by the council as lost income from central government;

2.3 That the successful application to the National Leisure Recovery Fund (NLRFF) for a grant which will be passed on to Freedom Leisure as required by the associated terms and conditions in respect of business relief and recovery be noted;

2.4 That £0.363m of Contain Outbreak Management Funds be allocated to Freedom Leisure be agreed; and

2.5 That the Executive Director Economy, Environment & Culture and Executive Lead Officer for Strategy, Governance & Law be granted delegated authority to settle the terms of the contract variations and take any steps necessary to implement the recommendations above.

3. CONTEXT/ BACKGROUND INFORMATION

Sports Facilities Contract

3.1 The sports facilities included within the Sports Facilities Contract are:

- King Alfred Leisure Centre
- Moulsecoomb Community Leisure Centre
- Paddling pools (Hove Lagoon, King's Road, The Level Water Feature Saunders Park)
- Portslade Sports Centre (added from 2016)
- Prince Regent Swimming Complex
- Stanley Deason Leisure Centre
- St Luke's Swimming Pool
- Withdean Sports Complex

3.2 Freedom Leisure commenced operation of the Sports Facilities Contract on 1st April 2011 and under the terms of that contract a payment is currently made by Freedom Leisure to the council to manage the facilities.

3.3 There is provision in the existing contract for an extension of the initial term by up to five years on the existing terms and conditions. Once the council has

committed to extend the contract, the parties then have to negotiate the management fee. This negotiation takes into account previous financial performance and the expected cost of providing the service which will apply for the remainder of the contract.

Sports Facilities Investment Plan

- 3.4 The council is aware that the facilities managed under the Sports Facilities Contract are ageing and their condition is deteriorating. The most recent facility to be built was the Moulsecomb Community Leisure Centre which opened in 1991. In 2019 the council commissioned a Sports Facilities Investment Plan together with an appraisal of management options, so that the future of the sports facilities could be determined. This work included detailed condition surveys on all the facilities to inform the Investment Plan. The Sports Facilities Investment Plan is anticipated to be considered by TECC committee in June 2021.

Sports Facilities Contract – original contract extension negotiations

In order for the Sports Facilities Investment Plan to be completed to inform any re-tendering of the Sports Facilities Contract, negotiations commenced with Freedom Leisure to extend the existing contract.

- 3.5 These negotiations recognised that Freedom Leisure had not achieved the financial return they had expected as per the original bid for the contract. Therefore, it was accepted that a reduced management fee would be received for the extended contract period. After detailed negotiations, provisional agreement was reached that a management fee to be paid to the council for each year of the contract extension. Unfortunately, shortly after the negotiations were concluded the Covid-19 pandemic resulted in the closure of the facilities. Consequently, the provisional financial agreement reached for the contract extension needed renegotiation, due to the pandemic affecting the financial performance of the sports facilities.

Impact of Covid-19 Pandemic

- 3.6 Lockdown for sports facilities was introduced on Friday 21st March 2020 when everything closed. This constituted a Force Majeure Event under the terms of the Sports Facilities contract. Consequently, Freedom Leisure were excused from performing their obligations under the contract for the period during which sports facilities were not allowed by law to open.
- 3.7 The Government issued a “Procurement Policy Note – Supplier relief due to Covid-19” in which local authorities were requested to assist suppliers (such as Freedom Leisure) with their cash flows in order to support them in the initial stages of the lockdown. This applied to the end of June. Contractually Freedom Leisure are obliged to meet the operational running costs of the sports facilities (apart from landlord responsibilities) but receive the income generated to achieve financial viability. The closure of the facilities with the consequent loss of income placed Freedom Leisure in a difficult financial position.

- 3.8 In order to mitigate costs Freedom Leisure furloughed all apart from two staff of those directly employed pursuant to the Sports Facilities Contract in Brighton & Hove. The two remaining staff were overseeing the closed facilities together with members of the council's Sports Facilities Team in order to reduce costs. However, it has not been possible to avoid all costs while the facilities have been closed, such as utilities, even though they have been minimised.
- 3.9 When the Government announced that sports centres and indoor swimming pools could re-open from the 25th July 2020 a phased reopening was agreed as a variation to the original contract. This recognised the immense task and continuing financial impact of the various measures needed to re-open the facilities safely in the pandemic.
- 3.10 Unfortunately, despite re-opening the facilities as agreed and in some cases for longer hours to accommodate some key user groups, a further lockdown closed most of the sites in November 2020. This was followed by being placed in Tier 4 on 26th December 2020 and again into National Lockdown on 5th January 2021 has meant that the previously agreed position is untenable.
- 3.11 Further funding has been extremely welcome in the form of the National Leisure Recovery Fund (NLRF) being paid to the Council to be passed onto the Operator to support business recovery. However only 30% can be utilised for 'business relief' and the aim and objective of the fund is to support future recovery rather than provide funding support for the extended lockdown periods.
- 3.12 Other grants have also been provided and the extension of the Job Retention Scheme (JRS) is continuing to ensure the business remains viable. However, despite all the various streams of income and support the expenditure although minimised as much as possible, still significantly exceeds income levels.
- 3.13 To implement Covid-19 safety requirements there were and continue to be increased costs for cleaning. Social distancing also limits capacity in exercise areas. It is anticipated that it will take some considerable time for the levels of usage and hence income to increase.
- 3.14 The pandemic has caused significant uncertainty across the services of the council including the leisure sector. Therefore, spreading the cost of support over the three-year extended period is viewed to be more realistic than the originally proposed two year extension.
- 3.15 Importantly the risk of operation remains with Freedom Leisure. The council is not agreeing to a deficit funding arrangement in which the operational risk would rest with the council. We are agreeing the extended contract on different financial terms to reflect the continuing impact of the pandemic.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 Negotiations have been on-going with Freedom Leisure to seek a solution to the current very difficult financial situation to enable the contract extension to be achieved and delivered for the next three years.

- 4.2 The Sports Investment Plan will include an appraisal of the options for the future operational management of the sports facilities. The outcomes of this work will be taken to the Procurement Advisory Board (PAB) and reported to committee.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 Not applicable.

6. CONCLUSION

- 6.1 The granting of a three-year extension to Freedom Leisure for the Sports Facilities Contract previously had enabled a financially sustainable position to be reached between both parties.
- 6.2 However, the unforeseen and continuing financial pressures caused by the additional lockdowns due to the Covid-19 pandemic has meant this position required re-negotiation.
- 6.3 Following re-negotiation, the council and Freedom Leisure have reached a position which enables all of the council's sports facilities to open according to the government's road map and to be operated in a COVID safe manner for as long as required.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 These are included in the part 2 of this report.

Finance Officer Consulted: Jeff Coates

Date: 22nd March 2021

Legal Implications

- 7.2 The Council is entitled to extend the contract without the agreement of Freedom Leisure. However, the parties must reach agreement on the Management Fee which should reflect the cost of providing the service. The Covid-19 pandemic has had a significant impact and the reversion to the council making payments to Freedom Leisure is therefore in accordance with the terms of the contract.
- 7.3 Legal Services will continue to assist in order to put in place a deed of variation to the contract with Freedom Leisure to cover the proposed extension period to 31st March 2024 and the changes to the management fee during the extension period.
- 7.4 The proposed variations to the contract with Freedom Leisure are permitted within the scope of the original contract and are therefore contract modifications which are permitted by the Public Contracts Regulations 2015.
- 7.5 The original contracts were procured and as the original contract (in 2011) required the Council to pay a management fee to Freedom Leisure which reflected the cost of providing the service, the risk that these proposals amount to a subsidy is very low.

Lawyer Consulted:

Alice Rowland

Date: 21st March 2021

Equalities Implications:

- 7.6 The council seeks to provide a range of opportunities for residents to participate in sport and community activities across the city. Sports facilities are fundamental to that provision.

Sustainability Implications:

- 7.7 A key focus of this report is the financial sustainability of the Sports Facilities Contract. However, there has been significant investment in the sports facilities to improve environmental sustainability such as LED lighting, inverters on pumps and more thermally efficient glazing.
- 7.8 More recently photovoltaic (PV) panels have been installed on the roof at Stanley Deason Leisure Centre and will be installed shortly at Withdean Sports Complex to provide energy for the sites and further afield.

7.9 Brexit Implications:

- 7.10 None identified

7.11 Public Health Implications:

The sports facilities are key locations in the city for regular participation in sport and physical activity. The Covid-19 pandemic has heightened the awareness of the importance of regular participation in sport and physical activity to health and well-being.

SUPPORTING DOCUMENTATION

Appendices:

1. None

Background Documents

1. None