

<b>Subject:</b>	<b>Saltdean Lido</b>		
<b>Date of Meeting:</b>	<b>30<sup>th</sup> May 2012</b>		
<b>Report of:</b>	<b>Strategic Director - Communities</b>		
<b>Lead Member:</b>	<b>Economic Development &amp; Culture</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Ian Shurrock</b>	<b>Tel: 29-2084</b>
	<b>Email:</b>	<b>ian.shurrock@brighton-hove.gov.uk</b>	
<b>Key Decision:</b>	<b>Yes</b>		
<b>Ward(s) affected:</b>	<b>All</b>		

### **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 (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) was the short timescale since conclusion of negotiations and receipt of proposals.

This item was published in the Committee Agenda on the 24<sup>th</sup> May 2012. This was the first opportunity after the Council became aware of the proposal. A decision is required to be taken by 31<sup>st</sup> May 2012 meaning it would be impracticable to defer the decision. The procedures required under Part 5 Overview & Scrutiny Rules, Procedural rule 18 and Part 7 Access to Information, have been followed.

### **1. SUMMARY AND POLICY CONTEXT**

- 1.1 The council is the freeholder of Saltdean Lido which is leased on a long lease to Saltdean Lido Limited (SLL) of 125 years, of which 111 years are remaining. SLL is the head lessee, with sub tenancies to Saltdean Community Association ("SCA") for the community centre and the council for the library. This report is being considered within the context of the council being the freehold owner of the Lido complex and therefore as the "superior landlord" of the property. The council also has statutory duties in respect of the property, from a planning perspective as the local planning authority and as the regulatory body for health and safety issues through Environmental Health. The current situation has resulted in a considerable amount of officer time being expended across these council functions on issues in relation to the Lido.
- 1.2 Saltdean Lido is an important community facility with the community centre and library providing activities and services primarily to local residents. However, the Lido itself is the largest enclosed outdoor swimming facility for the city and therefore has a wider catchment area. In addition, health and fitness facilities are also provided within the Lido complex.

- 1.3 The overriding requirement of the council is to seek a vibrant, accessible, high quality facility that befits the status of the Lido as a key asset of both the local and wider city community.
- 1.4 A resolution of full Council was agreed at the meeting of 20<sup>th</sup> October 2011 included a review of the options available in relation to getting a resolution to the current impasse and the taking of early actions that would facilitate the repair and refurbishment of the Lido which do not prejudice the position of SCA, who are tenants of SLL.
- 1.5 Reports on the operation of Saltdean Lido have been considered at the Cabinet Member Meeting for Culture, Recreation & Tourism on 6<sup>th</sup> December 2011 and 6<sup>th</sup> March 2012 (Appendices 2 & 3). At the first meeting it was approved that senior officers should continue to seek a negotiated way forward with the head lessee, including if satisfactory terms can be agreed, surrender of the head lease back to the council. At the March meeting it was noted that the head lessee had agreed to have without prejudice negotiations regarding the possible surrender of the lease.
- 1.6 Various questions have been put to various meetings of the council by the Save Saltdean Lido Campaign.
- 1.7 Negotiations with SLL have resulted in an agreement in principle for the head lease to be surrendered back to the council but as the terms of the proposed agreement are commercially sensitive they need to be considered in a part II confidential session.
- 1.8 A plan of the site is attached in Appendix 1.

## **2. RECOMMENDATIONS**

- 2.1 That it be noted the terms for the surrender of the Lease of Saltdean Lido (“the surrender”) are recommended to be agreed in the Part II report going to this meeting;
- 2.2 That it be noted as the surrender does not entail the transfer of a going concern, it is inevitable that, if the terms of the surrender are agreed, the pools and gym part of the Lido will not be immediately open at the start of the summer season; and
- 2.3 That if the terms of the surrender are agreed, it be agreed that interim management arrangements are put in place as soon as possible by officers in consultation with the Chair of the Economic Development & Culture Committee.

## **3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS**

### **3.1 History & Lease Arrangements**

- 3.1.1 The relevant history is set out in Appendices 2 and 3. As explained in the appendices (a) the library is leased back to the council; no rent is payable but the council are liable under the sub lease to contribute to the repairs and maintenance to be carried out by SLL; (b) the SCA are holding over the sublease granted to them and the council's legal view is that their documentation provides for a 55% contribution; and (c) the sublessee of the public house does not contribute to the main Lido expenses and pays a ground rent to SLL.
- 3.1.2 The current lessee is SLL for whom Mr Audley is also a director. The Appendices refer to relevant requirements under the head lease and steps taken by the council under the lease. On May 15<sup>th</sup> mediation between the council and SLL took place to see if agreement could be reached regarding the terms of a surrender of the lease back to the council. The detail of the proposal is in the Part II report. If the recommendations in that report are agreed the agreement to be entered into on 31<sup>st</sup> May 2012 would be in full and final settlement not only of all claims between SLL and Mr Audley and the council but also of the current claims and counterclaims between SLL and Mr Audley and the SCA.
- 3.1.3 SCA runs a thriving community centre which provides a wide range of activities with approximately 700 users per week. The community centre is a strong focal point for the local community and as well as a programme of regular activities, the centre is often used for functions and events. The library is open 3 days a week and is used by approximately 37,000 visitors per year. Saltdean Library is the second busiest community library in the city on a visits per hour basis.

## **3.2 Condition of Building and position of the Local Planning Authority**

- 3.2.1 On 12<sup>th</sup> May 2010 the council served a notice as landlord under the lease regarding aspects of disrepair. The lessee served a counter notice which means that no further action can be taken by the council without resorting to court.
- 3.2.2 The Lido was upgraded to a grade II\* listing in March 2011 and was put on the Buildings at Risk register on 19<sup>th</sup> October 2011. This register is used by English Heritage as part of its Heritage at Risk programme which was established "to identify historic assets that are at risk of being lost through neglect, decay or development or are vulnerable to becoming so".
- 3.2.3 The local planning authority appointed a surveyor to advise on the works that would be necessary for the proper preservation of the listed building. A first stage warning letter was sent to SLL on 12 January 2012 expressing concern over the condition of the building and advising SLL of the council's powers to serve a Repairs Notice under section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the powers to compulsory purchase the building lease under section 47 of that Act if such a Notice is not complied with. SLL was further advised that the use of these powers was being actively considered in this case. The Lido was inspected by a conservation officer

from the Heritage team together with the appointed surveyor and a schedule of works drawn up.

- 3.2.4 A 10-15 year maintenance plan was proposed by SLL to the local planning authority, with a view to removing it from the At Risk Register. However, the lessee made it clear that this programme of works could only be funded by way of an enabling development scheme on the land occupied by the Saltdean Tavern and adjoining car park. Both the local planning authority and English Heritage advised the lessee that they would only ever consider a very modest development of the site (see paragraph 3.2.10).
- 3.2.5 On 22 March 2012 the local planning authority issued a second warning letter and a schedule of works to be completed by the lessee. SLL's solicitor responded that his client did not consider the building to be at risk and that no substantial works are required for its proper preservation. The local planning authority is awaiting the outcome of the discussions by the council as landlord with the lessee prior to considering any further action.
- 3.2.6 If a Repairs Notice were to be served by the council as local planning authority, compulsory purchase proceedings may be commenced after a minimum of two months from the date of the Notice but a sufficient period of time would need to be allowed for the works to be carried out before proceeding with compulsory acquisition. Given the extent and scope of the works required in this case, and taking into account that much of the work would need to be undertaken in favourable weather conditions, a period of at least 6 months would be reasonable. However, this would need to be subject to continuous monitoring and review and if no progress were evident the local planning authority could commence compulsory purchase without further warning.
- 3.2.7 The Senior Planning Officer (Conservation) has held initial discussions with English Heritage on this matter. They have indicated that, in principle, they would support the local planning authority taking action under section 48 of the Act and that financial assistance (in the form of grant aid) may be available to the council towards acquisition, professional and legal costs. The amount of such grant aid would depend upon the regional funds available at the time of application.
- 3.2.8 It should be noted that the service of a notice under section 48 of the Act is an enforcement matter within the Planning Committee's remit. Any subsequent action under section 47 for compulsory purchase would require authorisation by the Policy and Resources Committee. A compulsory purchase order would require confirmation by the Secretary of State and if the lessee disputes this a public inquiry would have to be held. Compensation would be payable to SLL and see the Part II report in this respect.
- 3.2.9 If the lease is surrendered back to the council, the maintenance responsibilities currently vested in SLL would, of course, revert to the council.

3.2.10 As explained in the appendices, the lessee undertook various pre-application discussions but did not submit any planning applications in respect of the Lido complex. The council as the local planning authority has been very clear with the lessee on the limitations and difficulties of achieving anything other than modest development of the site. English Heritage have specifically commented that the Lido's low-lying form, distinctive silhouette and unusual intactness, are likely to make anything more than very modest development in any position on the site harmful to the Lido's setting. In planning terms any development on this site that reduces areas of open space or parking is likely to be resisted and any modest development would require complementary leisure and recreational uses. There are also restrictive covenants on the site.

#### **4. NEXT STEPS**

4.1 If the negotiated surrender is agreed, as there is not a transfer of a going concern, it will not be possible to immediately open the gym and pools part of the Lido. At the handover of keys, officers will begin an immediate assessment of the feasibility of opening the facility in the short-term and the requirements for a procurement process for the long-term operation of the facility.

#### **5. COMMUNITY ENGAGEMENT AND CONSULTATION**

5.1 Prior to the mediation referred to at paragraph 3.1.2 of this report various meetings took place with the lessee and with SCA, Saltdean Residents Association, Save Saltdean Lido Campaign ("SSLC") and local ward members to discuss a range of issues on Saltdean Lido.

5.2 SSLC has previously indicated an aspiration to operate the Lido complex. However, it has been inappropriate for the council to actively seek an alternative operator of the Lido complex or actively engage with the SSLC whilst the legal agreement with SLL exists. If the recommendations in the Part II report are agreed, recommendation 2.3 of this report recommends that interim management arrangements are put in place as soon as possible by officers in consultation with the chair of the Economic Development & Culture Committee.

5.3 Thereafter the council will need to consider if it wants to do a marketing exercise for a property transaction or if it would prefer to remain in substantive control of the property and have a detailed service specification to be fulfilled in-house or by an appointed leisure services contractor. It is likely that the Economic Development & Culture Committee will lead on the options appraisal, but given the property, legal and final implications, Policy & Resources Committee will need to approve the final way forward.

#### **6. FINANCIAL & OTHER IMPLICATIONS**

6.1 Financial Implications:

- 6.1.1 The financial implications arising from the recommendations are detailed in the Part II report.

*Finance Officer Consulted: Michelle Herrington*

*Date: 29/05/12*

6.2 Legal Implications:

- 6.2.1 As stated at above there are a number of issues which cannot be included in this public report as they remain confidential, due to legal privilege or commercially sensitivity.

- 6.2.2 The legal implications of this matter have been included in the main body of the report.

*Lawyer Consulted: Bob Bruce, Principal Solicitor*

*Date: 29.05.12*

6.3 Equalities Implications:

The council seeks to provide a range of opportunities for residents to participate in sport and community activities across the city.

6.4 Sustainability Implications:

The efficient operation and effective maintenance of the facility has implications for the long term sustainability of the Lido complex.

6.5 Crime & Disorder Implications:

There are no direct crime and disorder implications but the provision of sport and leisure opportunities can help to reduce anti-social behaviour.

6.6 Risk and Opportunity Management Implications:

As with any leased facility where the risk of operation has been transferred to the head lessee, there is a risk of non compliance with the terms of the lease.

6.7 Public Health Implications:

Opportunities to participate in sport and physical activity, community activities and access to a local library are all very important to the health and well being of the city's residents.

6.8 Corporate / Citywide Implications:

Saltdean Lido is an important recreation resource for the city.

## **7. BRIEF REVIEW OF OPTIONS**

- 7.1 The length of the head lease is a key issue, in that a long lease gives greater security to the lessee and it is difficult for a landlord to be able to secure

forfeiture of a 125 year lease through court action. The position is further complicated by the provisions regarding contributions to be made by the SCA.

- 7.2 There are 3 options – (a) seek compliance with the lease, (b) seek a negotiated surrender of the whole lease or part of the lease and (c) seek to take back the lease through forfeiture or compulsory purchase. Further discussion on the complex implications of these options can take place in Part II, but for immediate purposes brief information on these options is set out below.
- 7.3 Officers have been pursuing option (a), as evidenced by service of the notice referred to in paragraph 3.2.1. SSLC have expressed serious concerns about when the site is open and some health and safety issues. The opening hours issue was addressed by a proposed monitoring regime and all health and safety issues raised have been properly addressed by the council.
- 7.4 Option (b) entails seeking agreement with the lessee on the timing and extent of any surrender. Fragmented management or ownership of the Lido should be avoided and it is not considered appropriate for the council to take back just the pools area or part of the complex. There is clearly scope to seek agreement with the lessee about surrender of the whole lease and the key aspect will be the terms including any compensation provisions.
- 7.5 Option (c) is the last resort. Forfeiture proceedings are notoriously expensive and protracted and the court encourages landlords and tenants to settle their differences by agreement. Compulsory purchase may be a route, but is a local planning authority consideration linked to whether or not Planning Committee agree the service of a section 48 Notice and then whether or not that Notice is complied with. Compulsory purchase would require confirmation by the Secretary of State and he/she would need to be satisfied that proper steps were not being taken to preserve the building. It is likely that a public inquiry would be held.

## **8. REASONS FOR REPORT RECOMMENDATIONS**

- 8.1 Saltdean Lido is a leased facility and therefore the position of the head lessee and council as freehold owner need to be recognised.
- 8.2 Saltdean Lido is a Grade 2\* listed building on the Buildings at Risk Register. Therefore, it is important that the building is maintained to the appropriate standard so that it is removed from the register and operated to its full potential for the benefit of the community.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. Site Plan
2. Report and minutes of the CRTCOMM 6<sup>th</sup> December 2011
3. Report and minutes of the Cabinet Member Meeting of 6<sup>th</sup> March 2012

### **Documents in Members' Rooms**

None

### **Background Documents**

None