



ADUR & WORTHING COUNCILS

Joint Strategic Committee
7 July 2020
Agenda Item 13

Key Decision Yes

Ward(s) Affected: as outlined

Leisure provision in Adur

Report by the Director for the Economy

Executive Summary

1. Purpose

- 1.1 The purpose of this report is to set out the findings of recent work by Officers and SLC Leisure Consultants to understand the implications of the Pandemic for the delivery of leisure services in Adur District to enable Member to make an informed decision around the level of financial support that is to be provided to the current operator, Adur Community Leisure.
- 1.2 Attached to the Agenda are confidential Appendices A and B which contains further exempt information.

2. Recommendations

- 2.1 That members of the Committee:
 - Do not approve the request from Adur Community Leisure (ACL) for additional financial support for the reasons set out in the Report;

- In the event of the insolvency of Adur Community Leisure, that members delegate Authority to the Director for the Economy in consultation with the Executive Members for Customer Services, the authority to investigate and enter into shorter term franchisee or supply contracts in duration and/or concessionary contracts for temporary leisure delivery to the community;
- That Members approve an additional budget of £300,000 in 2020/21 funded from Emergency Funding provided by MHCLG for the costs associated with managing the buildings in the event they are returned to the Council and any further consultancy support required for the procurement exercise;
- Agree a further report is to be taken back to JSC at the earliest opportunity based on the findings of SLC Leisure Consultants to approve a detailed draft specification that will form the basis of a procurement exercise for a longer term leisure service provider in Adur;
- That in the event of ACL's insolvency, Members note and approve any necessary transfer of essential staff (the number of staff to be determined) from ACL to ADC to ensure the leisure properties are sufficiently and well maintained.

3. Context

3.1 Adur District Council (ADC) owns 3 leisure facilities operated and maintained under a Funding and Management Agreement by Adur Community Leisure (ACL) which operates as a subsidiary company of Impulse Leisure. These facilities are:

- Lancing Manor Leisure Centre
 - a dry-side leisure centre in Lancing built in 1971
- Southwick Leisure Centre
 - a dry-side leisure centre in Southwick built in 1972
- Wadurs Community Pool
 - a 25m 5-lane pool in Shoreham built in 1993

3.2 The contract commenced on 1 July 2005 and covers a 30-year service period, terminating in June 2035. Under the terms of the funding and management agreement, the Council pays Impulse Leisure an annual service fee based on agreed 5-year business plan figures. The Service Fee for April 2020 – March 2021 payable by ADC to ACL is £125,000.

3.3 On 23rd March, HM Government introduced a “lockdown” in the UK to tackle the spread of COVID-19, enforcing a mass closure of leisure facilities across

the country. This placed many leisure operators under the threat of insolvency as income streams effectively ceased, whilst operators continue to incur costs relating to the maintenance of the facilities during closure, ongoing payments which cannot be ceased or frozen and a skeleton staffing structure.

- 3.4 It was anticipated that Leisure centres would be able to open from 4th July 2020 as part of the third phase of lockdown easing but with strict social distancing measures in place, but on 23 June 2020 the Prime Minister announced this would not be the case, and the re-opening of leisure in the UK remains very uncertain.
- 3.5 When leisure services do re-open, they will be subject to rigorous restrictions which will prevent the use of leisure facilities as we have previously known it to be, with social distancing being paramount and restrictions on numbers using the facilities. These restrictions are likely to remain in place until COVID-19 Alert Level 1 (no presence of the virus in the UK) is reached or a widely available vaccine is developed. This means that the leisure operating industry, like many others, faces an extremely uncertain and financially challenging period over the coming months during which the operating capacity of gyms, pools and other sports and leisure activities will be significantly reduced.
- 3.6 Although the reopening of leisure facilities will allow leisure providers to re-establish services and income streams, the likely restrictions and safety measures that will be required in order to enable services to safely resume will significantly reduce the range of services they can provide and the capacity of facilities. The reopening of facilities will also mean a significant increase in costs compared with “lockdown” levels.
- 3.7 Under normal circumstances, leisure operators are reliant on their ability to generate high levels of income through the leisure facilities to cover the substantial operating costs associated with the services. There will be a substantial reduction in income levels whilst costs remain similar to pre-closure levels resulting inevitably in a substantial operating deficit across each local authority’s leisure portfolio. There are also likely to be cost increases due to the need for additional cleaning, new Personal Protective Equipment (PPE) for staff and customer safety, new signage and safety screens, staff training, additional supervisory staff, marketing and communications upon reopening.
- 3.8 It is nationally recognised that the leisure industry is facing an absolute crisis and it is anticipated that many leisure providers will fail.

The request for financial support

- 3.9 As a result of these unprecedented circumstances, leisure providers across the country have been seeking financial support from their local authority partners to subsidise these retained closure costs.
- 3.10 Following the closure of the facilities and prior to the commencement of this review, ADC agreed (under the terms of the existing budget) to support ACL with an advance payment of the annual service fee for the period 1 April 2020 – 31 March 2021 (£125k). This advance payment was agreed on 28 April 2020 in response to a request for support from the operator to help manage immediate cash flow pressures resulting from the closure of the facilities.
- 3.11 Also under consideration by the Council prior to the commencement of this review, was a request from the operator for further funding, and for the reasons discussed in the exempt part of this report that deals with the financial of ACL, to date the request has not been granted.
- 3.12 Mindful of the a level of urgency and the importance of understanding the parameters, officers commissioned SLC Leisure Consultants, a team with a nationally recognised profile, to obtain information from ACL and:
- a. Analyse the financial position of ACL and to consider the ability for ACL to recover financially and trade successfully and sufficiently to enable ACL to repay any loan that ADC members may authorise;
 - b. Identify the costs to ADC of the closure of ACL's leisure portfolio as a result of the COVID-19 crisis, in order to identify what level of financial support was fair, reasonable and proportionate, required by the operator during lockdown. Please see Table 1 of the SLC Report. The costs are summarised as follows in Table as ,including and excluding additional facilities operated by ACL outside of the District.
 - c. SLC was also engaged to investigate what an outline business plan would look like to enable the Council and ACL to develop and, if possible, agree a business plan for the recovery period which establishes a provisional management fee position for the agreed recovery period, based on revised income and expenditure projections and reopening scenarios.
 - d. The findings of SLC and the Report are at Exempt Appendix A to the Agenda.

4. Alternative approaches and the future of leisure, health and well-being

- 4.1 Given the significant risk of insolvency being faced by all leisure industry providers, some initial thought has been given to alternative management options.
- 4.2 Operating the facilities in-house would carry additional costs, both during the recovery period and in steady state, and doing so for an interim period prior to seeking a new operator would have significant financial implications for any incoming provider given that any staff previously taken in house would be entitled to TUPE over to the new provider as well as a continuation of the usual local government terms and conditions relating to pensions which would then be carried forward into any future contractual arrangements, and could potentially make the delivery of leisure services by an incoming service provider unviable.
- 4.3 The Council could set up a new Local Authority Trading Company (LATC) to operate the services (or transfer the services to an existing Council LATC and save some costs), and this would theoretically provide some savings in recovery and in steady state compared with the existing operation.
- 4.4 Prior to any procurement exercise being carried out to find a new operator, there is an opportunity to reflect upon the impact of the Pandemic on the leisure industry and to set out a new approach which helps to integrate more successfully, the leisure, health and well being aspirations of our residents. It is already clear that the Pandemic has changed the outlook of many people to the role of exercise in their lives.
- 4.5 In the meantime, mindful of the importance of the facilities to local residents, it is proposed that the Council should actively seek one or more temporary franchisees and/or concessionaires for the Adur outdoor spaces as well as the leisure facilities so that some or all of these can be reopened safely at the soonest opportunity and prior to the full procurement exercise for a longer term provider being completed.

5. Issues for consideration

- 5.1 In the event Members approve the recommendations for the reasons set out in this Report and the exempt part of it, and do not approve any further financial support to ACL, the Council must take immediate steps to protect its leisure buildings and seek concessionaires that may be able to deliver

short term leisure support to the Community using our open parks and if possible accessing our buildings.

6. Engagement and Communication

- 6.1 The relevant executive councillors and financial and legal officers have been consulted in preparing this report. The content of the report has been shared with ACL at an early stage. In developing any future alternative vision for leisure, wellbeing and health it will be important to consult members of the local community and other stakeholders.

7. Financial Implications

- 7.1 The Council has a budget of £125,000 per annum for the contract payment to ACL. Under Cabinet Office guidance, Councils were asked to support suppliers by considering advance payments to assist in cashflow issues during the early phases of the pandemic.
- 7.2 In April the Council was approached by ACL for additional funding. In the light of their significant cashflow pressures caused by COVID-19, the full fee for 2020/21 was paid in advance in May whilst a review of their financial position was undertaken.
- 7.3 The further financial implications are set out at Exempt Appendix B to this report.

8. Legal Implications

- 8.1 Under Section 111 of the Local Government Act 1972, the Council has the power to do anything that is calculated to facilitate, or which is conducive or incidental to, the discharge of any of their functions.
- 8.2 Section 3(1) of the Local Government Act 1999 (LGA 1999) contains a general duty on a best value authority to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
- 8.3 Section 1 of the Localism Act 2011 empowers the Council to do anything an individual can do apart from that which is specifically prohibited by pre-existing legislation.

- 8.4 Section 1 of The Local Government (Contracts) Act 1997 provides that every statutory provision conferring or imposing a function on a local authority confers the powers on the local authority to enter into a contract with another person for the provision or making available of assets or services, or both (whether or not together with goods) for the purposes of, or in connection with, the discharge of the function by the local authority.
- 8.5 Section 93 of The Local Government Act 2003 provides that there is a general power to charge for any discretionary service such as leisure and cultural services.
- 8.6 Section 19 of The Local Government (Miscellaneous Provisions) Act 1976 allows a local authority to provide either indoor or outdoor recreational facilities as it thinks fit and that includes the power to provide buildings facilities equipment supplies and assistance of any kind, either without charge or on such payment as the authority thinks fit.
- 8.7 Any advance to ACL that members may elect to authorise must not offend the rules on state aid. During the current COVID-19 crises the allowable de minimis level of state aid to any undertaking must not exceed the sum of 800,000 euros.
- 8.8 Under the Council's constitution at 9.1 and 9.2 of the Access to Information Procedure Rules, information is exempt if it includes 'information relating to the financial or business affairs of any particular person' (or organisation) and includes information relating to the Authority's own financial or business affairs.
- 8.9 In taking its next steps as authorised by Members the Council must ensure that it also complies with any existing arrangements in its Funding and Management Agreement with ACL and its lease arrangements for the leisure properties.
- 8.10 In entering into any future agreement with a further leisure provider the Council must have regard to the Contract Standing Orders and Public Contract Regulations 2015, as amended by any relevant Government Public Procurement Policy Note which may be in force.
- 8.11 Paragraph 14 of the Access to Information Rules found at Part 4 of the Council's constitution confirms that where a Key Decision and/or a Confidential/Exempt Decision has not been included in the 28 Day Notice, then (subject to Access to Information Rule 15), the decision may still be taken if; the decision needs to be taken by such a date that it is impracticable

to defer the decision until 28 clear day's notice has been given by Notice; and the Director for Communities has, in writing, informed the Chairmen of the Overview and Scrutiny Committee of the matter to which the decision is to be made; the Director for Communities has made copies of the Notice (relating to the Key Decision and Exempt Information) available on Councils' website and at least 5 clear working days have elapsed since the Director for Communities complied with these requirements.

Background Papers

- EXEMPT APPENDIX A - The SLC Report
- EXEMPT APPENDIX B - The further financial considerations

Officer Contact Details:-

Martin Randall

Director for the Economy

01903 221209

martin.randall@adur-worthing.gov.uk

Sustainability & Risk Assessment

1. Economic

The pandemic has had a major impact on the wider economy and has made operating conditions in the leisure sector challenging. Remaining limitations on operating leisure facilities will need to be taken into account in any financial plan for re-opening facilities.

2. Social

2.1 Social Value

The pandemic has had a major impact on the lives of individuals, families and our communities. Leisure and its relationship with health and well being will be of vital importance to local communities as we recover.

2.2 Equality Issues

The pandemic has had a disproportionate impact on some communities and this will need to be reflected in our recovery planning for leisure.

2.3 Community Safety Issues (Section 17)

The pandemic has raised a number of community safety issues both direct and indirect. Leisure, health and well being have an important role to play in this regard.

2.4 Human Rights Issues

No specific matters.

3. Environmental

The environmental impact of leisure provision is an increasingly important consideration and encompasses aspects such as travel and the management of buildings and facilities.

4. Governance

The Council has a formal contract arrangement with ACL. Any change to this position will need to be reflected in robust governance arrangements.