

## Rother District Council

**Report to:** Cabinet

**Date:** 14 December 2020

**Title:** Bexhill Leisure Centre and Bexhill Leisure Pool Freedom Leisure Contract 2021/2024

**Report of:** Joe Powell, Head of Housing and Community

**Cabinet Member:** Councillor Brewerton

**Ward(s):** All

**Purpose of Report:** To propose a new contract for the management of Bexhill Leisure Centre and Bexhill Leisure Pool.

**Decision Type:** Key

### Officer

**Recommendation(s):** It be **RESOLVED:** That:

- 1) the proposed contract for the management of Bexhill Leisure Centre and Leisure Pool for 2021-24 be approved, to include six months of continued financial support payments, at a total contract cost of up to £130,000;
- 2) the proposed investment of up to £140,000 be approved and included in the Council's capital programme to enable the minor refurbishment of the two sites.

**Reasons for Recommendations:** To ensure that the Council continues to offer leisure services and activities to the community through the COVID-19 Pandemic and beyond.

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### Introduction

1. The Bexhill Leisure Centre (BLC) and Bexhill Leisure Pool (BLP) are operated by Freedom Leisure (FL) on a joint contract that ends in March 2021. The centres are well used community assets that attract more than 340,000 visits a year on average, with the majority being from residents, the local workforce and those in neighbouring areas. The Rye Leisure Centre contract is separate and therefore not a consideration of this report. The Rye contract will continue to run until 2026.
2. In April 2020 in consultation with the Leader of the Council, the Executive Directors to the Council made the decision to provide FL with financial support under delegated powers (Executive Decision 003 (OED003 refers). The Council provided payments to FL of £112,000 for the period April 2020 to July 2020. In July 2020 when leisure centres were due to reopen and restricted services resumed, Cabinet approved a second tranche of financial support of up to £303,273 for the period August 2020 to March 2021 (Minute CB20/22 refers). The process continues to be subject to an open book accounting

review (OBR) process conducted by officers from the Council and FL, with accounts being reconciled against actual spend.

3. The uncertainty in the leisure sector as to the longer-term impact of COVID-19 led, in July 2020, to the Council adopting the recommendation of the Bexhill Leisure Centre Steering Group (BLCSG) to not rebuild or carry out a major refurbishment of the centres. The Council resolved to undertake a modest programme of refurbishment with a view to seeking a new contract with the incumbent operator FL for three years (Minute CB20/22 refers). This report has been brought following this recommendation.
4. In November 2020, England entered a second lockdown and leisure centres were closed for a further month. It is projected that the cost of the second lockdown will broadly be offset by a more positive income performance between August and October 2020. The Council will continue to monitor FL's financial position through the OBR process until March 2021, in consultation with the Leader of the Council and Cabinet Portfolio Holder for Health, Wellbeing and Inclusion.
5. The BLCSG formed of relevant Cabinet and Ward members, reformed informally in November 2020 to consider options for a new and refreshed contract and specification from April 2021 to March 2024. Officers were able to present options to the BLCSG with the support of a specialist leisure consultant, Strategic Leisure, who continue to inform the development of a specification and contract negotiations with FL. The BLCSG considered both options for a refreshed specification and a suitable contract mechanism by which the Council could support the provision of leisure services through the immediate impact of COVID-19 and beyond.
6. The Council has negotiated a contract in principle with FL which is described in Option One of this report. The report includes a second option to close both the centres and cease leisure provision in Bexhill. The report also describes other options considered, including bringing leisure services in-house and reducing the level of leisure provision.
7. Members are reminded that leisure services are not a statutory requirement for the Council to provide; however, the financial challenges facing many local authorities in the UK aside, there is perhaps an expectation amongst residents and visitors that the Council provide these services as is the norm elsewhere across the region and much of the UK.
8. In addition, a new three-year contract will align the operating contract for the BLP with a break-clause in the lease the Council holds for the site. A new contract will leave open the option of developing a new leisure centre - should the Council decide to do so in the future - once the impact of COVID-19 on the local leisure industry can be better understood.

## **Options**

### Option One

9. Agree a new three-year contract with FL from April 2021 to March 2024 to sustain the existing leisure services via continued supporting payments to FL for the first six-months up to the total value of £130,000. The initial six-month

period is followed by a 50% surplus share arrangement for the remainder of the contract period. The OBR process currently in operation would continue throughout the new contract period. The option will include an investment of up to £140,000 over the contract period for minor refurbishments.

10. This would not necessarily commit the Council to any new outlay as the current capital programme includes a sum of £544,000 for the development of the BLC site, which has been put on hold. Any refurbishments will be determined in consultation with FL and proportionate to the short-term nature of the contract and the viability of the buildings beyond the contract period without significant further investment.
11. In November 2020, the BLCSG met informally to consider options for a refreshed specification. The BLCSG also discussed possible contract mechanisms that would allow for the service to continue to be subsidised through the COVID-19 pandemic while allowing for a return to normal operating levels and contract costs as soon as possible.

### Specification

12. Members should note that a three-year contract is short by industry standards and has several implications for the Council, including the level of change that can be built into the new operational specification without incurring additional costs. There are however limited opportunities to refresh the specification and support the national drive to reduce mental and physical health inequalities between different population groups.
13. Several improvements to the existing specification have been negotiated with FL following consultation with the BLCSG, these include:
  - the provision of more detailed performance information so the Council is clear about who is using the facilities and where they live; as well as, when they are using the facilities and the types of activity undertaken;
  - a commitment from FL to collaborate with the Cabinet Portfolio Holder and officers to determine concession pricing during off-peak hours;
  - focusing programmes and activities to ensure health and well-being provision is made to address growing health inequalities; and
  - working with local community groups to offer a wider range of services from the two centres.

### Contract

14. Discussions with FL have been undertaken on an updated and refreshed contract. This approach has been taken to ensure the new arrangement is affordable and the financial impact of COVID-19 minimised.
15. FL has provided costs for the three-year interim contract, covering BLP and BLC. The cost of the contract sits in the first six months of operations (April 2021 to September 2021) while FL rebuild the customer base as we emerge from the restrictions brought about by COVID-19. An incentive mechanism for minimising the level of financial support provided has been agreed in consultation with the Cabinet Portfolio Holders for Health, Wellbeing and Inclusion, and Finance and Performance Management, respectively. This means that the maximum cost to the Council is capped at £130,000. The

contract costs will be managed in collaboration with Council officers on an OBR basis.

16. From October 2021, the contract will revert to a nil fee arrangement, meaning the Council will no longer pay FL any financial support. In addition, a surplus share arrangement is proposed between FL and the Council. This would mean that once FL achieves a break-even operational position i.e. after overheads (including operating profit) any surplus made above that break-even position is shared between both parties. The proposal provides a better position than the current contract, which although a nil fee, does not have an element of surplus share. Members should note that the proposals assume there are no further national or regional lockdowns due to COVID-19 beyond April 2021, there remains a risk that further lockdowns happen in 2021.
17. A proposal developed between Council officers and FL for up to £140,000 of investment into the facilities was also considered, in line with the recommendations of the BLCSG adopted by Cabinet in July 2020 (Minute CB20/22 refers). A level of investment may support the service to achieve the specification changes highlighted above and support the contract price proposed.
18. Members should note that in addition to the modest programme of investment recommended the centres are ageing and will require increasing repair and maintenance, at a cost to the Council. The maintenance and repair costs across the two sites for 2019/20 was £80,000.

#### Option Two

19. Cease to operate leisure services in Bexhill and continue to operate the RLC until its expiry in March 2026.

#### **Bexhill Leisure Pool**

20. The land at Ravenside Retail Park which Bexhill swimming pool occupies under a one hundred- and five-year lease (lease commencement date 24 June 1989) is owned by Land Securities who own the whole retail park. There is a 'user' clause in the lease that requires the Council to keep the building open and operating as a pool and leisure centre. Unless agreed otherwise under separate negotiation with Land Securities, the Council would not be able leave the building vacant, nor demolish it. However, the lease does contain a break clause which becomes operable in June 2024 and which requires the Council to serve a minimum of 12 months' notice.

#### **Bexhill Leisure Centre**

21. The Council owns BLC and the land on which it stands and so the option to close and demolish this site is available. The cost of demolition can only be estimated without a full survey and assessment; we have sought an estimated cost from a market contractor and the cost of demolition is estimated to be in the region of £300,000.
22. Members may be minded to consider the decommissioning of leisure provision now and in the future as it is a discretionary service. However, it is not possible to terminate the lease on the BLP until 2024 and while it may be

possible to negotiate an early termination, it is likely that this could carry an additional fee, given there is no obligation on Land Securities to terminate presently.

23. Further, the costs of decommissioning the BLC are significant. Finally, there would be a reputational impact on the Council by ceasing to operate leisure services in Bexhill alongside a detrimental health and wellbeing impact on residents – particularly those from more deprived areas of the District – who would be left unable to access leisure services as readily as at present.
24. The option of mothballing the BLC and operating the BLP is also open to the Council, while it considers the longer-term provision of leisure services beyond the contract term of the BLP to 2024. However, the BLC generates a surplus which is used to offset losses generated by the BLP which is more expensive to operate relative to income generated. The option of mothballing the BLC is therefore not recommended as income will be lost, leaving a deficit in the operation of the BLP which is obliged to remain open under contract.
25. Members may wish to revisit the possibility of decommissioning leisure services at the BLP and BLC again in 2023 when a twelve-month termination clause must be enacted to end the lease at the BLP site.

### **Other Options Considered**

26. Officers have considered a third option of bringing the operation of leisure services in-house with guidance from our consultants Strategic Leisure. The picture is complex; however, in summary, local authorities cannot presently benefit from VAT and local business rate relief in the same way that outsourced charitable operators such as FL can. The effect is to make leisure services more expensive for local authorities to operate.
27. In addition, the Council does not currently operate any leisure facilities and therefore does not have the expertise to manage operations. An in-house operation would also take significant time to set-up and infrastructure investment to deliver. It is not considered a sensible use of Council resources to consider this option at this time given the investment and time that would be required, particularly given the uncertainty surrounding the future of leisure provision locally beyond 2024. Taking the leisure service back in-house also means the Council would carry all the risk of income failing to meet expenditure; as well as for TUPE [Transfer of Undertakings (Protection of Employment) Regulations 2006] transferring staff and for pensions liability for the transferred staff.
28. The final option considered was to shorten the operating hours of leisure centres to try and reduce costs. FL was asked to provide costs for a reduced level of service that related to a reduction in opening hours at the BLP to reduce the support costs to the Council. Detailed discussion with FL has identified that there is little benefit to reducing operating times; this is because the operating costs on the BLP are predominantly fixed; reducing operating hours simply means the same costs are spread over fewer opening hours and reduced throughput.

## **Conclusion**

29. COVID-19 has had a significant impact on the operation of leisure services nationally. The effect has been to reduce the income generated as fewer people use the facilities, to the extent that the Council has chosen to financially support its operator, FL and ensure future service provision.
30. It is recommended that Option One is adopted given that it best meets the requirements of the Cabinet instruction made in June 2020 (Minute CB20/22 refers). The contract and specification negotiated enable the Council to sustain the delivery of leisure services through the effects of COVID-19. The contract incentivises FL to minimise the level of subsidy it receives in 2021/22 and offers an improved financial position on the present contract as it offers a surplus share arrangement.
31. The short-term interim contract also offers an improved contract specification that is more focused on health outcomes and returns greater performance and outcome information to the Council to measure the impact of its investment and inform future investment decisions.

## **Financial Implications**

32. The repair costs relating to the fabric of the buildings remain the responsibility of the Council. The cost of repairs for the Bexhill centres in 2019/20 was £80,000 and is likely to increase given that the centres continue to age.
33. The proposed contract provides a maximum revenue cost to the Council of up to £130,000 in 2021/22, with a nil cost in 2022/23 and 2023/24. In addition, the contract price negotiated relies on a further capital investment of up to £140,000 over the lifetime of the contract.
34. The basis of the financial agreement is that the Council is committed to continuing to support FL through COVID-19 and its impacts, but this support needs to be based on actual costs incurred. To this end, FL has agreed to extend the current OBR process through the life of the extended contract.
35. There will be a six-month period at the start of the contract where the Council may provide up to £130,000 to FL to support the service. All monies paid will reflect the actual costs of the service offered, being reconciled on a quarterly basis through the OBR process. This financial support will cease at the end of September 2021 or earlier should FL reach an agreed break-even point at which point a surplus share kicks in and the Council will be able to claw back some of the financial support. This would have the effect of reducing the £130,000 cost.
36. In years 2022/23 and 2023/24, the cost will be at nil to the Council. If FL returns its operating position to pre-COVID-19, and is making contract surpluses, there is a surplus share arrangement with the Council reflecting the fact that it will have supported the provision of leisure services through payments to FL of up to circa £550,000 during 2020/21 and 2021/22, exclusive of any costs associated with the refurbishment of the centres, up to the value of £140,000.

37. Capital expenditure for maintenance and some minor repairs is funded through borrowing, which reduces the financial support to FL from the Council.

## **Legal**

38. If Option One is approved officers will take forward the procurement and award of the contract and specification. Legal advice has been sought in relation to the procurement of the new contract. An operator can be appointed on the basis of a three year agreement whilst ensuring compliance with public procurement rules as the estimated value is under the threshold of the Concession Contracts Regulations 2016; and the Council's own Procurement Procedure Rules by the completion of an exemption report approved by the Chief Executive and the Chief Finance Officer. Comprehensive support and advice for this process will be provided by the legal and procurement services to ensure compliance.

## **Environmental**

39. The contract is short term and, therefore opportunities to improve on existing contract terms relating to carbon reduction are limited. The short nature of the contract and ageing nature of the buildings, plant and equipment means that longer-term refurbishment ambitions are not possible. Any significant ambition to reduce carbon would require long-term planning and investment in carbon reducing technologies, building refurbishment and new equipment. Where the repairing of existing plant and equipment is no longer viable replacement equipment will be obtained according to a balanced view between environmental and cost consideration, and in line with the Council's Environment Strategy. The refreshed specification allows for minimising environmental impact and for the monitoring of the carbon footprint of operations.

## **Equalities and Diversity**

40. An equalities impact assessment is presently being drafted and will be finalised in consultation with the Cabinet Portfolio Holder for Health, Wellbeing and Inclusion.

## **Risk Management**

41. There is a risk that England restricts the operation of leisure centres again that forces FL to close. The financial projections and contract proposed assume that there will not be further closures. The financial impact of further closures would need to be reviewed with operator and further recommendations made to Cabinet before any additional financial support could be given to FL to operate the service.
42. The BLP and BLC require significant future investment if they are to be fit for purpose in the longer-term; to this end, there is a risk that a particularly expensive repair is required during the lifetime of the contract. The Council will have to take a pragmatic view as to the value of any significant further investment into the BLP or BLC given the short contract term. The Council has proposed a contract clause that enables the closure of the centres should the Council decide that the cost of any unforeseen repair is uneconomical,

given the short contract term. The authorised officers will monitor the cost of emerging repairs in consultation with the Cabinet Portfolio Holders for Health, Wellbeing and Inclusion, and Finance and Performance Management.

<b>Other Implications</b>	<b>Applies?</b>	<b>Other Implications</b>	<b>Applies?</b>
Human Rights	No	Equalities and Diversity	Yes
Crime and Disorder	No	Consultation	No
Environmental	Yes	Access to Information	No
Sustainability	No	Exempt from publication	No
Risk Management	Yes		

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Appendices:	-
Relevant Previous Minutes:	CB20/22 (Officer Executive Decision 003 (OED003)).
Background Papers:	-
Reference Documents:	-