

Wards affected:

General

Strategy Group – 6 July 2020

Leisure Facilities Covid-19 Situation

Community, Culture & Leisure Issues

1. Purpose of Report

To update Members on the financial situation of the Council's leisure facilities as a result of Covid-19 and seek approval for authority to vary budgets and take other measures designed to facilitate their safe re-opening and ongoing operation.

2. Advice

That it be RECOMMENDED:	<ol style="list-style-type: none"> 1. That the terms of the Council's contracts with Sport & Leisure Management Limited (SLM) may be varied and applied to facilitate the safe re-opening of leisure facilities and their ongoing operation. 2. The Chief Executive is given authority in consultation with the Leader to adjust the current year revenue budget for the provision of leisure facilities by up to a total of £600k adverse.
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3. Introduction

The current Covid-19 pandemic and measures taken in response to it has caused the closure of Daventry and Moulton Leisure Centres and Daventry Sports Park. This is typical of the situation across the UK. Urgent action was taken to support the Council's operator, Sports & Leisure Management (SLM, which trades as Everyone Active) in retaining staff and keeping facilities in a state to permit re-opening once this was otherwise possible.

Whilst the Government has not yet given a date by which it expects such leisure facilities to be permitted to re-open, it is currently anticipated this will be in July or August. However, re-opening will be a slow process, and is expected to be one where most operating costs arise quickly but income will be slower to recover. This has obvious financial implications.

4. Information

4.1 Current situation

All formal leisure facilities retained by the Council (minor parts of the leisure operation involved assets which have been transferred to Daventry Town Council) are currently closed. This is required by the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020.

Since that time the Council has been supporting SLM to the total of £36k per month, made up of £17k towards furloughed staff pay and employer's cost, £5k for staffing to keep facilities in a fit state and prepare for re-opening, and £14k in forgone management fee (which would otherwise be paid to the Council). The total costs for April, May and June will have amounted to £108k.

It is not known when the legal prohibition on operating many of the facilities will end, but this is likely to be in July or August, provided there is not a resurgence of Covid-19 which delays or turns back the gradual process of relaxing restrictions.

4.2 Preparing for re-opening

As with its contracts across the UK, SLM has been planning for safe re-opening its Daventry District facilities. The recent Government change from a 2m distancing to '1m plus' is considered to be helpful in that regard, but nonetheless capacity will be reduced and it is likely appetite for using public leisure facilities will take time to recover.

Work to achieve a suitable level of Covid-19 security affects capacity. User numbers which can be safely accommodated under current guidelines, taking into account the duties of SLM and the Council under health and safety law, are markedly lower than prior to the pandemic. The implementation of control measures such as booking time slots for the gym and a reduction in swimming class size are needed to meet guidelines. The need to create more space around gym equipment means equipment being moved to areas previously used for fitness classes, further reducing available capacity.

It is also unlikely to be practical for SLM to run valued but peripheral activities such as children's clubs. Under current guidelines and with restricted space they are undeliverable.

4.3 Financial projections

Currently SLM's projections suggest a significant monthly deficit on re-opening, with this reducing over time and usage increases. This would add up to a loss of £298k over the 2020/21 financial year. This is made up of:

- Local operating costs - £1,259k
- Central operating costs - £57k
- User income – (£738k)
- Furlough scheme and DDC staffing support for April, May and June – (£195k)

- Net management fee (allowing for no management fee payable by SLM in April, May and June for Daventry) – (£85k)

This financial forecast has been developed using research from Sport England and sports governing bodies such as Swim England. This has been further refined using SLM's industry knowledge. Although the best data currently available has been used to develop the financial forecast whether the public chose to return to leisure facilities is clearly a matter of personal preference and perception of risk. This unknown variable has significant potential to alter the forecast budget, either positively or negatively. Once the facilities have reopened the effect of public confidence and willingness to return to leisure facilities would be monitored and the figures revised accordingly.

Whilst the potential user numbers able to access the facilities has been reduced the number of staff members required to facilitate and supervise these activities remains relatively static. Indeed, requirements for additional cleansing and oversight of activities have the potential to increase staffing requirements. Only a very small number of redundancies are under consideration.

Utilities expenses have continued at a reduced level whilst the facilities are closed. Once open these costs will return to pre-closure levels. In the event that the current operator was financially unable to continue operations these costs would still need to be met by the Council if it intended to re-open the facilities at some point in the future (and in many cases even if it did not, unless connections were removed).

4.4 Options

The Council is to a material degree bound by its existing contractual obligations (see Legal Implications). However, for clarity the main options are set out here.

1. The Council could seek to decline to make further payments. This would be likely to result in prolonged closure of facilities and a legal dispute with SLM. Given the legal context, the best outcome likely to be available to the Council would be a negotiated departure of SLM from the Council's sites. This would leave the Council to address the ongoing deficits or close the facilities. SLM is a credible and competent operator and it is not considered likely any alternative operator would make a material beneficial difference to the losses likely to be suffered.
2. The Council could negotiate the agreed exit of SLM from its facilities. This would have the same outcomes, albeit more simply, than option 1.
3. The Council could follow 1 or 2 and then close the facilities, either permanently or for a prolonged period (after which a substantial cost would be incurred in making them capable of operating again). This would involve the loss of the public goods that providing the leisure facilities is intended to achieve. It would also raise issues about the use of planning obligation (Section 106) and Community Infrastructure Levy (CIL) funds, particularly at Moulton. These would probably need to be repaid or not claimed, leaving the Council with a deficit of round £6 million to be covered.

4. The Council could seek to agree a 'fixed price' arrangement with SLM covering the risks of operating during Covid-19. This is not considered to be attainable, as the potential variability is too great. Exceptional risks such as Covid-19 are inherently client risks, and (short of clear contractual provisions to the contrary) will remain so.
5. The Council could agree to work with SLM on an 'open book' basis whilst the pandemic continues to have a material effect. This is the approach taken by Sport England in relation to the National Sports Centres. SLM would not be permitted to make a profit, but would have its reasonable costs covered, to the extent that income did not cover these.

Option 5 is recommended as the only practical means of proceeding, and the one best able to deliver the Council's objectives and protect public money.

4.5 Approach

Given the high degree of uncertainty in the situation and the potential for rapid changes, it is proposed that the Chief Executive, in consultation with the Leader, be authorised to make budget adjustments required. A cap on this power at £600k is suggested; of this, £108k will already have been used by the end of June, meaning that headroom of £194k would be allowed over the current projections. This should allow sufficient flexibility to make it possible to manage the situation between scheduled Council meetings.

Practically, the agreements with SLM would need to be modified to cover temporary operation on a 'costs covered' basis. As soon as it was clear that the situation had returned to sufficient stability, the intention would be to revert to the prior agreement terms. If as Covid-19 recedes it becomes clear that 'normality' for the leisure sector will not return to its previous state, it may be necessary to consider other arrangements. If that arises, it would be a decision for Members of this Council or, perhaps more likely, for West Northamptonshire Council (WNC).

Whilst SLM was operating on an net-cost-recovery basis, it would be obliged to provide access to its income and expenditure on an open book basis.

4.6 Local government reorganisation

As with all its other statutory functions, the matters covered by this report will become the responsibility of West Northamptonshire Council (WNC) from 1st April 2021. However, the biological and economic realities underlying the proposals set out above will not change. Given this, the Council taking this action at this time should assist, rather than impede, WNC in delivering these public services and in achieving value for money.

The West Northamptonshire Shadow Executive on 23rd June adopted an Assets, Capital Schemes and Reserves Notification Process. This asks each outgoing council to notify the Shadow Executive if it is proposing to purchase or dispose of assets, enter into new capital schemes with ongoing revenue effects or use reserves in ways not set out in that council's budget. The Shadow Executive, or in cases of urgency the Leader of the Shadow Authority, would consider and if they judged appropriate endorse the proposed action. Only transactions with a value

at or above £100k are covered. Such proposals are initially passed to the Interim (or later permanent) Chief Executive of the Shadow Authority and from him to the Shadow Executive.

In accordance with this process by the time this report is considered it will have been provided to the Interim Chief Executive of the West Northamptonshire Shadow Authority. The outcomes of its consideration by the Shadow Authority will be reported to Members at Strategy Group if possible or full Council otherwise.

5. Implications

5.1 Financial – Covid-19 has already resulted in additional leisure costs to the Council of £108k. This figure will rise further, with the central projection being a further £298k and this report recommending authority to incur up to £600k of adverse financial effect be granted. This can be met from this Council's revenue reserves. The more significant issue is the potential impacts for WNC, both through it receiving lower reserves from this Council on vesting day, and through potential for it to be exposed to higher ongoing costs, at least in 2021/22. Doubtless a key strand of work for all councils forming part of WNC will be to understand and control such ongoing costs.

5.2 Personnel – Implementing the proposal in the report would not have any material effect on the Council's staff. Clearly the options which could be chosen have the potential to have significant impacts on SLM staff, with the most dramatic being closure of facilities. The recommended course of action should mean that the vast majority of SLM staff retain their employment and income.

5.3 Legal/Constitutional – European Union law (with certain exceptions not relevant here) continues to apply in the United Kingdom until the end of the implementation period, currently expected to be 31st December 2020, under Article 127 of the UK Withdrawal Agreement. For these purposes references to member states of the EU include the UK. Provisions that continue to apply include both state aid and public procurement law. Even if there is no agreement with the EU after that point, the provisions of the European Union (Withdrawal) Act 2018 mean that both legal regimes would continue to apply, with modifications, after that point. If there is an agreement they would still be expected to apply, perhaps in some hybrid form of the existing EU and proposed UK versions of the rules.

The agreements with SLM contain 'change of laws' provisions which mean the impact of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 and any further such regulations are treated as if they were changes to the operating of the agreement imposed by the Council. This is conventional in such service contracts, and applied in a similar way to Sport England's contracts for the National Sports Centres.

The effect of this is that the Council has a duty to support SLM through this period, and doing so – being a term of the contracts – does not constitute either new procurement (which would require tendering in many cases) or unlawful state aid.

5.4 Environmental – Supporting SLM in safely reopening the leisure facilities is unlikely to have any material environmental impacts, including on biodiversity or climate change.

5.5 Policy – The proposal would help meet Corporate Strategic Plan items

Objective 1 (Improve our Business Economy, Learning and Skills), Priority B1 (Develop Daventry Town), Priority B2 (Maximise economic opportunities in the rural area), Objective 3 (Promote Healthy, Safe and Strong Communities and Individuals), Priority H2 (Encourage a safe and healthy lifestyle), Measure H2.1 (Sport and Physical activity facilitated by the Council (total number of attendees taking part in physical activity in 000's)), Objective 4 (To Be an Efficient and Effective Council), Priority C2 (Effective resource and risk management), Measure C2.1 (Rated as meeting value for money criteria as assessed by external auditors (rating grade)) and Measure C2.2 (Sustainable and prudent medium term financial plan and capital programme adopted by Council (projected level of reserves at end of medium term financial plan period, £s)).

5.6 ICT – No implications. No new or modified Council ICT would be required to implement the proposed decisions.

5.7 Crime and Disorder – Enabling the safe re-opening of the leisure facilities may well have a modest beneficial impact on crime and disorder, by providing a range of legitimate forms of activity.

5.8 Human Rights – Neither funding changes nor changes to the contracts and their operation should adversely affect any of the Convention rights. In particular, the choices are essentially to support re-opening or keep the facilities closed, so in neither case should the Article 1 right to life be adversely affected.

5.9 Equalities – Achieving the safe re-opening of the Council's leisure facilities should be of general benefit. Whilst there would be some differences in the degree to which people with different protected characteristics benefited, the Council's intention in operating the facilities is that they benefit all, in particular including people with disabilities. Therefore any indirect discrimination which arises would be lawful as a proportionate means of achieving legitimate ends, including the public good of sport, exercise and recreation, and complying with the Council's contractual obligations.

5.10 Health and Wellbeing – The continued operation of the leisure facilities plays a significant role in providing access to health and fitness facilities within Daventry and the surrounding area. At the moment leisure facilities are limited and maintaining an operational site which can be easily accessed by residents is key to meeting local needs.

6. Conclusions

The Council delivers important public goods through providing leisure facilities. It also has contractual obligations and a need to fulfil the intended use of planning obligation and CIL monies, if it is to avoid significant adverse financial effects. The Covid-19 pandemic has created a situation where the leisure facilities are currently closed, and safe re-opening is desirable. To achieve this will involve

increased costs, but the scale of these cannot be determined with any precision at this time. Therefore it is proposed that action is taken as required to vary or apply the contracts as required, and that the Chief Executive is given authority to vary the relevant budgets by a total of £600k adverse if required. Naturally, every effort will be made to minimise net additional costs, with a focus on the overall cost over time.

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Background papers:
None

Previous minutes:
None

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