

NOTICE OF DECISION OF CABINET MEMBER

Pursuant to Section 15(4) of the Local Government Act 2000, as amended by section 63 of the Local Government and Public Involvement in Health Act 2007, the senior executive member may discharge any of the functions that are the responsibility of the Cabinet or may arrange for them to be discharged by another member of the Cabinet or Officer. On 1st December 2010, the Council adopted the Strong Leader Model for Corporate Governance 2011 as required under Part 3 of The Local Government and Public Involvement in Health Act 2007 (The 2007 Act).

In accordance with the authority delegated to me, I have made the following decision:

Subject	Decision	Reason for decision	Date for Decision to be taken
Leisure Centre Contract financial settlement arising from COVID-19	To agree the payment to Places Leisure for the period from 21 st March to 30 th June 2020 as set out in Appendix 1 to the report; to delegate authority to agree payments to Places Leisure for July to reflect an additional month of closure and during the period of remobilisation as set out in the report; and delegation to agree any documentation or procedural steps required to put the financial settlement into effect.	To enable re-opening of the leisure centres now that the Government has confirmed the timing of lifting of legal restrictions on opening.	10 July 2020

I confirm that the appropriate statutory officer consultation has taken place with regard to this decision.

Dated: 10 July 2020

Signed:



Councillor: Graham Ballinger
Leader of the Council

WYRE FOREST DISTRICT COUNCIL

Strong Leader Report

Leisure Centre Contract – financial settlement arising from COVID-19

OPEN WITH EXEMPT APPENDICES	
The appendices to this report are exempt from disclosure because they contain information relating to the financial or business affairs of any particular person (including the authority holding that information).	
DIRECTOR:	Chief Executive
CONTACT OFFICER:	Ian Miller, Ext 2700 ian.miller@wyreforestdc.gov.uk
Date of report	10 July 2020
<u>EXEMPT APPENDICES:</u>	Appendix 1: summary of terms of financial settlement Appendix 2: report prepared by the Council's consultants

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to provide details of the impact of Covid-19 on the operation of the Council's leisure centres and agree the basis of a financial settlement with Places for People Leisure, the parent company of Places Leisure ("PL"), the operator of the centres.
- 1.2 Members' attention is drawn to the confidential status of the appendices to this report, as the details of the contractual negotiations are commercially sensitive.

2. RECOMMENDATIONS

The Leader is asked to:

- 2.1 agree the payment to Places Leisure set out in Appendix 1 to the report for the period from 21st March to 30th June 2020 inclusive, subject to reconciliation to reflect actual costs once they are known;
- 2.2 delegate to the Chief Executive, in consultation with the Corporate Director: Resources and the Solicitor to the Council authority to:
 - 2.2.1 agree a payment to Places Leisure for July to reflect an additional month of closure beyond that originally claimed due to the delay to reopening of leisure centres arising from Government decisions;
 - 2.2.2 continue negotiations with Places Leisure regarding payment during the period of remobilisation of Wyre Forest Leisure Centre and Bewdley Leisure Centre on the basis set out in Appendix 1 and to agree an amount to be paid on a without

prejudice basis, subject to reconciliation and review at a maximum of quarterly intervals;

2.2.3 agree any documentation or procedural steps required to put the financial settlement into effect.

3. BACKGROUND

- 3.1 On 9th January 2015 the Council entered into a contract (“the Contract”) with Places for People Leisure to design, build, operate and maintain the leisure centre on Silverwoods Way, Wyre Forest Leisure Centre, as well as the retained leisure centre in Bewdley which is held under a dual use arrangement with Worcestershire County Council for use by Bewdley High School.
- 3.2 The Contract is for a period of 25 years from when Wyre Forest Leisure Centre was ready for operation (6th July 2016). It has 21 years left to run.
- 3.3 The Contract sets out how the financial arrangements would be made based on revenue and cost assumptions, with annual indexation and resulted in an overall positive contract payment due to the Council, payable quarterly in arrears.
- 3.4 The Contract was based on industry standard terms which included provisions as to what would happen if there was a change to the service, whether as a result of the Council wanting it, as a result of the operator proposing it or as a result of a change in law. A change in law was anticipated to be where the law either required some element of the service to be delivered in a different way or stopped because it could not be delivered in a different way. Nobody could have foreseen that the change in law would be Government legislation which required the complete closure of the centres for such a significant period of time, followed by a remobilisation plan that would prevent operation at full capacity for some time thereafter.
- 3.5 With effect from 20th March 2020, the leisure centres were forced to close by Government legislation issued in response to the pandemic. PL immediately wrote to the Council seeking financial support. There have been significant discussions since then.
- 3.6 Sport England have been working to support the industry as much as possible, but their resources obviously do not extend to making good lost revenue or meeting operator expenditure during this period. However, following an application by officers, they have provided funding towards engaging consultants to work with councils to agree a way forward with operators. The Council has engaged Strategic Leisure Limited (“SLL”) who have significant industry experience. In addition they have good knowledge of the Council’s contract as they acted for the Council when the contract was originally entered into, have a close working relationship with Sport England, are working with other councils who are having the same issues with their operators and are also discussing the position with other consultants who have been appointed by other councils. This gives the Council a good overview of what is happening nationally regarding operator claims. Officers have been working hard with SLL to minimise the financial exposure of the Council.

- 3.7 PL has undertaken a survey of users across its sites which indicates a positive desire to return to exercise. It is hoped that the existing membership can be retained and built upon.

4. KEY ISSUES

- 4.1 The amount of financial support sought by PL is significant.
- 4.2 PL are now working towards remobilisation and have provided operational details as to how they intend to work within Government guidelines to open safely. This has been reviewed by officers and is considered to be acceptable.
- 4.3 The Government announced on 9 July that indoor gyms and pools and leisure centres can re-open from 25 July at the earliest. As with the re-opening of all other sectors of the economy following lockdown, this is a permissive date, not a requirement from the Government that facilities must re-open on that date. Nevertheless it is important that agreement is reached with PL as soon as possible, to allow remobilisation operations to be put into effect.
- 4.4 The details of the proposed financial settlement are set out in Appendix 1, covering both the closure period and remobilisation. In respect of the period of remobilisation, there are a number of unknowns and these are explored in the Appendix which sets out principles to govern the Council's approach to what payment it is prepared to make in order to support the operator.

5. FINANCIAL IMPLICATIONS

- 5.1 The Council's costs and losses from these proposals, after applying any specific Government funding including the income guarantee, will be funded from General Reserves which will be recalculated as part of the next MTFS. This is in line with the delegation to the Corporate Director: Resources in the May and July Cabinet Reports on Financial Stress Testing in respect of Coronavirus Pandemic Impact.
- 5.2 The Wyre Forest Leisure Centre has performed extremely well since opening and there is a strong partnership between the Council and PL. It is in the public domain that the approved budget for 2020-21 includes £536,090 (£44,674 per month) which is a contract payment from PL to the Council. This helps to defray the Council's costs of borrowing which funded the construction of the building. The forecast in future years rises marginally to £45,127 per month in 2021-22. There is a strong risk that this sum for 2020-21 is at jeopardy and therefore the Council will not have resources to fund the borrowing costs except by drawing on other funding. If lost income from the contract payment is covered by the income guarantee in the July 2nd announcement (see below), the Council would be compensated for the majority of the income loss but could still face a six-figure impact on its budget. We will report the impact in the current financial year as part of budget reports to Cabinet and report back on any impact next year as part of the Medium-Term Financial Strategy, by which time there will be greater clarity about the position beyond March 2021.
- 5.3 While the announcement of further Government funding for councils on July 2nd is welcome, the details of what it means for the Council are yet to emerge, including

what our share will be of the £500m grant funding to help meet additional costs and, crucially, what the exact impact will be of the income guarantee. Whilst the income guarantee is a significant advance on the current position, the first 5% of planned sales, fees and charges income is ignored and the Government guarantee of 75% therefore means that, at best, 71.25% of lost income will be guaranteed ($71.25\% = 95\% \times 75\%$). So in cash terms, for every £1m of lost income, the Government will cover at most £712.5k leaving the Council to bear £287.5k – which is significantly higher than the level of variation that this and other councils might normally expect to experience or absorb in “normal” circumstances.

- 5.4 More importantly, it is unclear whether the income guarantee will cover all types of income, including income from payments from leisure centre operators, such as PL’s contract payment to the Council. The District Councils’ Network is seeking urgent clarification from MHCLG about the scope of the income guarantee and in particular whether the Department for Digital, Culture, Media and Sport will provide a comprehensive funding package for extra costs and lost income to do with leisure centres if they are not going to be covered by the MHCLG scheme.
- 5.5 The cost of providing support PL during the closure and in the remobilisation phase is impossible to quantify accurately in total as it depends on future costs and income generated by PL that are not known. However it is certain that the cost will represent a substantial six figure sum – the best estimates are set out in the confidential Appendix 1.

6. LEGAL AND POLICY IMPLICATIONS

- 6.1 The Council is contractually committed with Places for People Leisure for another 21 years. A resolution to the position must be found that enables the leisure centres to continue to operate whilst retaining what has been an excellent working relationship between Council and operator.

7. EQUALITY IMPACT NEEDS ASSESSMENT

- 7.1 This is a report about contractual and financial issues and an Equalities Impact Screening Assessment is not required.

8. RISK MANAGEMENT

- 8.1 The Council needs to maintain a positive working relationship with the operator as there is a significant time left under the contract and the success of the centres relies on partnership working.
- 8.2 The Council has interrogated figures supplied by the operator, engaging consultants and sharing national knowledge of agreements reached between operators and Councils.

9. CONCLUSION

- 9.1 PL are now working towards remobilisation in light of the Government announcement and have provided operational details as to how they intend to work

within Government guidelines to open safely. This has been reviewed by officers and is considered to be acceptable.

- 9.2 Reopening cannot be progressed without a commitment from the Council towards net costs. It is therefore important that agreement is reached with PL as soon as possible so that it may re-open facilities following the Government's announcement. The proposal is that all payments recommended in this report are on a without prejudice basis and subject to verification to actual expenditure and income and subsequent adjustment of payments.

10 CONSULTEES

- 10.1 Cabinet
- 10.2 Corporate Leadership Team

11 BACKGROUND PAPERS

Places Leisure Re-opening survey (May 2020)

www.linkedin.com/posts/places-for-people-leisure_re-opening-survey-may-2020-activity-6678277817022599168-GMN3/