



SCRUTINY BOARD (CITY DEVELOPMENT)

Call-in Meeting to be held in Civic Hall, Leeds, LS1 1UR on
Wednesday, 20th April, 2011 at 1.30 pm

MEMBERSHIP

Councillors

| | | |
|-------------------|---|--------------------------------|
| J Akhtar | - | Hyde Park and Woodhouse; |
| B Atha | - | Kirkstall; |
| D Atkinson | - | Bramley and Stanningley; |
| J Elliott | - | Morley South; |
| G Harper | - | Hyde Park and Woodhouse; |
| J Jarosz | - | Pudsey; |
| M Lobley | - | Roundhay; |
| J Procter (Chair) | - | Wetherby; |
| R Pryke | - | Burmantofts and Richmond Hill; |
| M Rafique | - | Chapel Allerton; |
| M Robinson | - | Harewood; |
| S Smith | - | Rothwell; |
| B Woroncow | - | Co-optee (Non –voting) |

Please note: Certain or all items on this agenda may be recorded

Agenda compiled by:
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LEEDS LS1 1UR
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Principal Scrutiny Adviser:
Richard Mills
Tel: 24 74557

A G E N D A

| Item No | Ward/Equal Opportunities | Item Not Open | | Page No |
|---------|--------------------------|---------------|---|---------|
| 1 | | | <p>APPEALS AGAINST REFUSAL OF INSPECTION OF DOCUMENTS</p> <p>To consider any appeals in accordance with Procedure Rule 25 of the Access to Information Rules (in the event of an Appeal the press and public will be excluded).</p> <p>(*In accordance with Procedure Rule 25, written notice of an appeal must be received by the Chief Democratic Services Officer at least 24 hours before the meeting.)</p> | |
| 2 | | | <p>EXEMPT INFORMATION - POSSIBLE EXCLUSION OF THE PRESS AND PUBLIC</p> <p>1 To highlight reports or appendices which officers have identified as containing exempt information, and where officers consider that the public interest in maintaining the exemption outweighs the public interest in disclosing the information, for the reasons outlined in the report.</p> <p>2 To consider whether or not to accept the officers recommendation in respect of the above information.</p> <p>3 If so, to formally pass the following resolution:-</p> <p>RESOLVED – That the press and public be excluded from the meeting during consideration of the following parts of the agenda designated as containing exempt information on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press and public were present there would be disclosure to them of exempt information, as follows:</p> <p>No exempt items or information have been identified on the agenda</p> | |

| Item No | Ward/Equal Opportunities | Item Not Open | | Page No |
|---------|--------------------------|---------------|---|---------|
| 3 | | | <p>LATE ITEMS</p> <p>To identify items which have been admitted to the agenda by the Chair for consideration.</p> <p>(The special circumstance shall be specified in the minutes.)</p> | |
| 4 | | | <p>DECLARATION OF INTERESTS</p> <p>To declare any personal / prejudicial interests for the purpose of Section 81(3) of the Local Government Act 2000 and paragraphs 8 to 12 of the Members' Code of Conduct.</p> | |
| 5 | | | <p>APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTES</p> <p>To receive any apologies for absence and notification of substitutes.</p> | |
| 6 | | | <p>CALL-IN OF DECISION - BRIEFING PAPER</p> <p>To receive and consider a report of the Head of Scrutiny and Member Development.</p> | 1 - 4 |
| 7 | | | <p>CALL-IN - GARFORTH SQUASH AND LEISURE CENTRE</p> <p>In accordance with Scrutiny Board Procedure Rules, to review a decision of the Executive Board regarding Garforth Squash and Leisure Centre.</p> | 5 - 22 |
| 8 | | | <p>OUTCOME OF CALL-IN</p> <p>In accordance with Scrutiny Board Procedure Rules, to consider the Board's formal conclusions and recommendation(s) arising from the consideration of the called-in decision.</p> | |

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Originator: Richard Mills

Tel: 2474557

Report of the Head of Scrutiny and Member Development

Scrutiny Board (City Development)

Date: 20th April 2011

Subject: CALL- IN OF DECISION – BRIEFING PAPER

Electoral Wards Affected:

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

1.0 INTRODUCTION AND BACKGROUND

- 1.1 In accordance with the Council's Constitution, a decision of the Executive Board has been Called In.¹ The background papers to this particular decision are set out as a separate agenda item and appropriate witnesses have been invited to give supporting evidence.
- 1.2 This report advises the Scrutiny Board (City Development) on the procedural aspects of Calling In the decision.
- 1.3 The Board is advised that the Call In is specific to the report considered by the Executive Board and issues outside of this decision, including other related decisions, may not be considered as part of the Board's decision regarding the outcome of the Call-In.

2.0 REVIEWING THE DECISION

- 2.1 The process of reviewing the decision is as follows:
- Members who have requested the Call-In invited to explain their concern/reason for Call-In request.
 - Relevant Executive Member/Officer(s) asked to explain decision.
 - Further questioning from the Board as appropriate.

¹ Scrutiny Board Procedure Rules Paragraph 21

OPTIONS AVAILABLE TO THE BOARD

- 3.1 Having reviewed the decision, the Scrutiny Board will need to agree what action it wishes to take. In doing so, it may pursue one of three courses of action as set out below:

Option 1- Release the decision for implementation

- 3.2 Having reviewed this decision, the Scrutiny Board may decide to release it for implementation. If the Scrutiny Board chooses this option, the decision will be immediately released for implementation and the decision may not be Called In again.

Option 2 - Recommend that the decision be reconsidered.

- 3.3 The Scrutiny Board may decide to recommend to the decision maker that the decision be reconsidered. If the Scrutiny Board chooses this option a report will be submitted to the Executive Board.
- 3.4 In the case of an Executive Board decision, the report of the Scrutiny Board will be presented to the next available meeting. The Executive Board will reconsider its decision and will publish the outcome of its deliberations within the minutes of the meeting. The decision may not be Called In again whether or not it is varied.

Option 3 - Recommend that the decision be reconsidered and refer the matter to full Council if recommendation not accepted.

- 3.5 This course of action would only apply if the Scrutiny Board determined that a decision **fell outside the Council's Budget and Policy Framework** and this determination were confirmed by the Council's Section 151 Officer (in relation to the budget) or Monitoring Officer (in relation to other policies).
- 3.6 If, at the conclusion of this meeting, the Scrutiny Board forms an initial determination that the decision in question should be challenged on the basis of contravening the Budget and Policy Framework, then confirmation will subsequently be sought from the appropriate statutory officer.
- 3.7 Should the statutory officer support the Scrutiny Board's determination, then the report of the Scrutiny Board will be presented in the same manner as for Option 2. If the decision maker accepts the recommendation of the Scrutiny Board in these circumstances, then the revised decision will be published in the same manner as for Option 2 and the decision may not be Called In again. If, however, the decision maker does not accept the recommendation of the Scrutiny Board, then the matter will be referred to full Council for final decision. Decisions of full Council may not be Called In.
- 3.8 Should the appropriate statutory officer not confirm that the decision contravenes the Budget and Policy Framework, then the report of the Scrutiny Board would normally be progressed as for Option 2 (i.e. presented as a recommendation to the decision taker) but with no recourse to full Council in the event that the decision is not varied. As with Option 2, no further Call-In of the decision would be possible.

3.9 However, the Scrutiny Board may resolve that, if the statutory officer does not confirm contravention of the Budget and Policy Framework, then it should be released for implementation in accordance with Option 1.

4.0 FAILURE TO AGREE ONE OF THE ABOVE OPTIONS

4.1 If the Scrutiny Board, for any reason, does not agree one of the above courses of action at this meeting, then Option 1 will be adopted by default, i.e. the decision will be released for implementation with no further recourse to Call-In.

5.0 FORMULATING THE BOARD'S REPORT

5.1 If the Scrutiny Board decides to release the decision for implementation (i.e. Option 1), then the Scrutiny Support Unit will process the necessary notifications and no further action is required by the Board.

5.2 If the Scrutiny Board wishes to recommend that the decision be reconsidered (i.e. Options 2 or 3), then it will be necessary for the Scrutiny Board to agree a report setting out its recommendation together with any supporting commentary.

5.3 Because of the tight timescales within which a decision Call-In must operate, it is important that the Scrutiny Board's report be agreed at the meeting.

5.4 If the Scrutiny Board decides to pursue either of Options 2 or 3, it is proposed that there be a short adjournment during which the Chair, in conjunction with the Scrutiny Support Unit, should prepare a brief statement proposing the Scrutiny Board's draft recommendations and supporting commentary. Upon reconvening, the Scrutiny Board will be invited to amend/ agree this statement as appropriate (a separate item has been included in the agenda for this purpose).

5.5 This statement will then form the basis of the Scrutiny Board's report (together with factual information as to details of the Called In decision, lists of evidence/witnesses considered, Members involved in the Call-In process etc).

5.6 The Scrutiny Board is advised that there is no provision within the Call In procedure for the submission of a Minority Report.

6.0 RECOMMENDATION

6.1 The Scrutiny Board (City Development) is asked to note the contents of this report and the procedure as detailed within it.

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Report of the Head of Scrutiny and Member Development

Scrutiny Board (City Development)

Date: 20th April 2011

Subject: Call In - GARFORTH SQUASH AND LEISURE CENTRE

Electoral Wards Affected: ALL

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

1.0 INTRODUCTION AND BACKGROUND

1.1 This paper presents the background papers to a decision which has been Called In in accordance with the Council's Constitution.¹

1.2 Papers are attached as follows:

- Copy of completed Call-In request form
- Report of the Acting Director of City Development
- Relevant extract of Executive Board Minutes of 30th March 2011

1.3 Appropriate Members and/or officers have been invited to attend the meeting in order to explain the decision and respond to questions.

2.0 RECOMMENDATION

2.1 The Scrutiny Board (City Development) is asked to review this decision and to determine what further action it wishes to take.

¹ Scrutiny Board Procedure Rules Paragraph 21

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Leeds City Council Scrutiny Support Unit

CALL IN REQUEST - Option (a)

A Call In request may be made by:

Any five non-executive Members of council

Date of decision publication: 30/03/2011 (Executive Board)
Delegated decision ref: or
Executive Board Minute no: 205 or
Area Committee Name and decision ref:
Decision description: Garforth Squash + Leisure Centre
Executive Board Report
.....
.....

Discussion with Decision Maker:
Prior to submitting a Call In, a nominated signatory must first contact the relevant officer or Executive Member to discuss their concerns and their reasons for wanting to call in the decision. Please identify contact and provide detail.
 Director/author of delegated decision report.
 Executive Board Member
Detail
Cllr Alan Lamb has spoken with Mark Allman, Head of Sport + Active Recreation, on the phone on 07/04/2011.

Reasons for Call In:
All requests for Call In must detail why, in the opinion of the signatories, the decision was not taken in accordance with the principles set out in Article 13 of the Council constitution (decision making) (principles of decision making) or where relevant issues do not appear to be taken into consideration. Please tick the relevant box(es) and give an explanation.

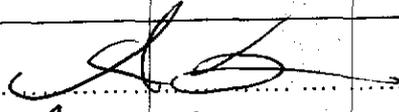
| | |
|-------------------------------------|--|
| <input type="checkbox"/> | Proportionality (ie the action must be proportionate to the desired outcome) |
| <input type="checkbox"/> | Due consultation and the taking of professional advice from officers |
| <input type="checkbox"/> | Respect for human rights |
| <input checked="" type="checkbox"/> | A presumption in favour of openness |
| <input checked="" type="checkbox"/> | Clarity of aims and desired outcomes |
| <input checked="" type="checkbox"/> | An explanation of the options considered and details of the reasons for the decision |
| <input type="checkbox"/> | Positive promotion of equal opportunities |
| <input type="checkbox"/> | Natural justice |

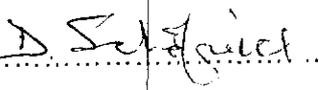
Explanation: None of the above have been properly explained and there are grave concerns about the propriety. The 2000+ name petition of local residents shows the level of local concern + elected members also have concerns about the lack of a business plan, opportunities for other providers + concerns about the overall process particularly the level of detail in the Executive Board report.

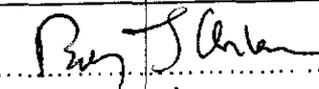
Leeds City Council Scrutiny Support Unit

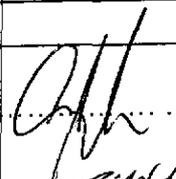
A Member cannot count as one of the two/five signatures if they are a member of the Scrutiny Board to which the Call In will be referred. In the case of decisions made by Area Committees, a Member cannot count as one of the two/five signatures if they are a member of that Area Committee.

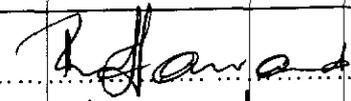
The following signatories request that the above decision be called in:

1) Signature 
Print name ALAN LAMB

2) Signature 
Print name DAVID SCHOFIELD

3) Signature 
Print name Barry Anderson

4) Signature 
Print name Peter Harwood

5) Signature 
Print name Peter Harwood

This form should be submitted to the Head of Scrutiny and Member Development (Scrutiny Support Unit, 1st Floor West, Civic Hall) by **5.00pm on the fifth working day after the decision publication date**. The office is open from 9.00am to 5.00pm.

(For further information on the Call In procedure please refer to the Scrutiny Support Unit intranet site, or contact the Unit on 39 51151).

Leeds City Council Scrutiny Support Unit

For office use only: (box A)

Received on behalf of the Head of Scrutiny and Member Development by:

Robert A. Mills.....(signature)

Date: *07/04/11*..... Time: *2.50pm* SSU ref:

For office use only: (box B)

Exemption status checked:

Call In authorised: Yes / No

Date checked:

Signed: *Robert A. Mills*

Signatures checked:

Date: *07/04/11*

Receipts given:

Validity re article 13

Receipt details:*Email back*.....

A presumption in favour of openness

Elected members have concerns that the Schools Partnership Trust (SPT) is definitely going to take the Leisure Centre on. It is a loss making facility and there are grave doubts about what discussions have actually taken place with the Trust and the trustees who will actually determine SPT's willingness to take on the facility. There are no timelines or detail of the negotiation that has taken place.

The initial announcement on the community asset transfer came at the Full Council meeting on 23 February there has therefore been over a month to firm up the details of the proposals, yet the report does not contain agreed proposals.

The report to Executive Board did not contain a fully developed business plan and there are concerns that council officers have been given authority to reach an agreement without members having full access to all information. It seems that the approach to this has been simply to proceed on a good will basis without finalised heads of terms or detail on how the future service delivery at this facility will look.

There has been a 2000+ written petition submitted by concerned local residents there are concerns that the report that is being called in did not fully explain all matters relating to the community transfer and that as a result the signatories of the petition have not been fully informed and could be given false hope that the centre will not suffer reduced opening hours.

At 3.9 the report admits to being vague about the future of the facility; *'Without detail of the proposed uses a definitive assessment cannot be undertaken at this point in time of the improvements to promotion or improvement of the economic, social or environmental well being of the local area or people living or working there.'* Given this how can local residents make a judgement on the future service provision? Furthermore pronouncements in the media suggest that the centre has been saved, yet this report does not in fact give that undertaking.

Clarity of aims and desired outcomes

Given the rushed nature of the proposals the desired outcomes are unclear as at the present time there is no certainty as to what will happen to the Leisure Centre. In effect the report sets out an intention, or hope, that SPT will take on this facility, yet without details that is all the report represents.

Why are the proposals being brought forward now in such an incomplete state? Surely this will only confuse the desired outcomes - would service continuity be disrupted that much given that the public are already aware (through press statements) of additional Area Committee money that will ensure the centre can be kept open for approximately 58 hours per week in the short term?

An explanation of the options considered and details of the reasons for the decision

There are concerns that only one organisation has been approached to take this facility on and there is no certainty that this organisation will in fact actually be willing to do it, this is despite interest from other organisations.

A similar process took place at the South Leeds Leisure Centre where a well intentioned effort to community transfer that facility ended up with it closing, does the same fate await this centre?

Discussion with the decision maker

Cllr Lamb spoke with Mark Allman, Head of Sport & Active Recreation, by telephone on 7 April 2011. Mr Allman was not able to provide satisfactory responses and as such Cllr Lamb remained dissatisfied for the reasons outlined above.

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Report of : Acting Director of City Development

To : Executive Board

Date: 30th March 2011

Subject: GARFORTH SQUASH AND LEISURE CENTRE

Electoral Wards Affected:

Garforth & Swillington

Ward Members consulted (referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In (Details contained in the report)

Executive Summary

At its meeting on the 23rd February 2011, Full Council approved the Revenue Budget for 2011/12. Included in this were proposals for a community asset transfer (CAT) of the Garforth Squash and Leisure Centre.

Garforth Squash and Leisure Centre was purpose built in the 1970s with a sports hall completed in 1988 forming a community squash and leisure centre. The report seeks Executive Board support for the grant of a long term lease at a peppercorn rent of the property to the School Partnership Trust (SPT).

1.0 Purpose of this Report

1.1 The purpose of this report is to seek Executive Board support for the recommendation that the Council grants the School Partnership Trust a lease of the Garforth Squash and Leisure Centre from a date to be agreed, and delegates to the Acting Director of City Development the authority to finalise and conclude a lease. The School Partnership Trust (SPT) is currently responsible for the leadership and governance of a number of schools in Leeds and Wakefield, including Garforth Academy and Green Lane Primary Academy in Garforth.

2.0 Background Information

2.1 Garforth Squash and Leisure Centre is located on Nine Lands Lane, Garforth. There

are no playing fields and the site boundaries are close to the building except at the front where the car park is located.

- 2.2 The centre is a two storey high building incorporating squash courts and main sports hall. The squash courts and adjoining areas were constructed in the 1970s with the sports hall completed in 1988.
- 2.3 In August 2009, the Executive Board approved a "Vision for Council Leisure Centres" which set out a strategy for renewal and rationalisation. Under this, Garforth and Kippax would be replaced by a single new facility to serve both communities. Both would remain in place pending this. The Vision has had to be modified in the light of the current public sector budget position which makes early development of a new replacement centre extremely unlikely (although there is no proposal to abandon the longer term intention to provide this).
- 2.4 At its meeting on 23rd February 2011 Full Council approved the Revenue Budget for 2011/12. The sports budget for 2011/12 has been reduced by 15% as part of the Council's overall response to budget financial pressures. As a result, Garforth and Kippax were reviewed together and Garforth was identified for reduced hours because Kippax also includes a swimming pool that serves the wider area. Council decided to 'progress a proposal for community asset transfer for Garforth Sport Centre as from summer 2011 with a reduction in opening hours to 31 hours a week from 1st April 2011.'

3.0 Main Issues

- 3.1 The centre provides dry sports facilities to the residents of Garforth and beyond, and until the longer term vision of a new centre can be provided it will remain an important element of sports provision. The reduction in hours is required by the Council's tight financial position but is not desirable in service terms. Further cuts required in future financial years raise concerns about whether even the 31 hour operating basis can be sustained into the future under Council management.
- 3.2 A well-established way to improve viability would be to adopt a dual use (community and education) model. In general, peak school use hours and peak community use hours are complementary and therefore the viability of the site could be greatly enhanced. To explore this, informal contact was made with the School Partnership Trust (SPT) which operates Garforth Community College. The SPT is currently responsible for the leadership and governance of a number of schools in Leeds and Wakefield including Garforth Academy and Green Lane Primary Academy in Garforth. The organisation has a proven track record as a not for profit body with public accountability working with the public sector. The college's positive response has led to the current proposal for CAT. Continuing a negotiation with the SPT through to agreement of contract is preferred to the alternative option of advertising for expressions of interest in CAT and evaluating bids, on the following grounds:-
- advertising and evaluating bids would add significant time to the process, delaying the restoration of longer opening hours, damaging user confidence and potentially damaging the long term business plan by losing business permanently;
 - the express willingness of the SPT to adopt mechanisms to ensure wider community interests are represented in the governance model (as reflected in the draft Heads of Terms);

- the financial and organisational robustness of the SPT, and the significant contribution its own usage could add to the business plan, which no other local organisation is likely to be able to match;
- the transfer would build on and reinforce the strong community links already enjoyed by Garforth Community College.

3.3 Transfer to the SPT is the most likely way to secure the future of the site unless and until the longer term strategic aim of a new leisure centre is realised, and to restore longer opening hours. The Trust will operate the site through a management board, which will include members of the community to ensure continued community involvement in the site.

3.4 Two other parties have expressed interest in taking over the site. Both parties are involved in the sport of squash and wanted the site to continue as a squash focussed centre. No detailed proposals have been received beyond this so it is unknown whether they would be driven by community benefit. There is the possibility that either of these parties, or others, could challenge the process undertaken in negotiating exclusively with SPT to take over the site. Given the SPT's willingness to adopt mechanisms to ensure wider community interests, the financial and organisational robustness of SPT and that the transfer would build on and reinforce the strong community links already enjoyed by Garforth Community College, it is considered appropriate to continue exclusive negotiations with them rather than advertise for other interested parties. However the potential contribution of these other parties could be harnessed via the management board referred to above.

3.5 Community ownership and management of assets has been strongly promoted by government over the past three years. The agenda was made prominent by the Quirk Review "Making Assets work" – Community Management and Ownership of Public Assets". Government support for community asset transfer has been confirmed through the principles of the Big Society and through proposals in the Localism Bill. The Bill will give community organisations greater opportunity to identify and bid for assets of value to them from which they can deliver existing or new services. As well as empowering communities this aims to diversify the providers of services and stimulate creative and imaginative new patterns of service and enterprise.

3.6 In normal circumstances for any asset transfer proposal a detailed business plan would be requested spelling out:-

- the proposed uses for the property;
- the community benefit of the transfer;
- the service and strategic benefit to the Council;
- the knowledge, skills and experience of the project team;
- how any works would be funded;
- the financial viability of the proposal.

3.7 Due to the tight timescale necessary for this project to ensure the continuity of service to the local community and to protect the Council from a potential finance and maintenance liability, it has not been possible for this information to be provided yet.

This report is brought forward at this stage in the interest of transparency and accountability, and to give greater certainty to the next stages. A number of risks and challenges to the proposal remain at this stage. The completion of a lease will be subject to a viable business plan being prepared. There are a number of risks to be covered, the principal ones being (with mitigation):-

- a) justification for the zero rental proposal includes the assumption that the SPT will not make an appreciable profit. If the business plan demonstrates otherwise, the rent consideration will be reviewed either at the outset or via break clauses.
- b) the risk of an unsustainable operating deficit. If the business plan demonstrates that this is to be expected, the lease could not proceed. The break clauses further mitigate this risk.
- c) The lack of specialist expertise currently in the SPT to run this facility. It is proposed to offer information on how the council approaches this task as the SPT prepares its business plan, and subsequently.
- d) Uncertainty about TUPE and the potential implications for the business plan. This will be explored further and reflected in the final business plan, therefore being covered by the mitigations above.
- e) The business plan is needed to confirm the working assessment that there will be improvement of the well being of the local area and residents through increased use of the centre and increased accessibility.

3.8 The level of risk to the Council from litigation associated with the proposed transfer of the Centre to the School Partnership Trust from third parties is considered to be low and should not impact on the proposal.

3.9 Given the nature of the Trust there are a variety of options for operation of the property. Without detail of the proposed uses a definitive assessment cannot be undertaken at this point in time of the improvements to promotion or improvement of the economic, social or environmental well being of the local area or people living or working there. This is an essential consideration for the council to be able to use the General Consent (2003) powers that would be necessary to consider the request for asset transfer on a less than best consideration basis. This report therefore seeks an in principle decision that recommends the principle of asset transfer of the centre to SPT on a long leasehold basis and that delegates authority to the Acting Director of City Development to negotiate and approve the final details of the agreement with the SPT, subject to a satisfactory lease agreement and business plan demonstrating both viability and community benefit.

3.10 Heads of terms have been drafted and shared with the SPT. These are set out below as the proposed basis for finalisation and preparation of a full lease.

- Tenant: School Partnership Trust.
- Term: Term to be no longer than 99 years from a date to be agreed including break clauses.
- Rent: peppercorn
- Repairing obligation: Tenant to be responsible for internal and external repairs and ensuring the premises are kept in a suitable condition for sports and

community use.

- Assignment: Assignment will be allowed to a similar organisation subject to landlord's consent. Any arrangement would be for the whole of the premises and subject to an Authorised Guarantee Agreement.
- Sub-letting: Sub-letting of part only will be allowed, subject to landlord's consent. Sub-letting to organisations offering services as outlined in the User Clause will be deemed to have landlords consent. Any sub-letting to be contracted out of the Landlord and Tenant Act 1954.
- Use: The premises are to be used to provide a balanced programme of sports, recreation, health and wellbeing, education and other community uses complementary to the above in a non-discriminatory way.
- Use by the wider community: The tenant shall use its best endeavours to ensure that the facilities are available for wider community use in accordance with a programme to be agreed through the Board. The Board shall be set up to oversee the management of the site and include representation from the community. The charge for the use of the facilities shall be agreed in consultations with the landlord. Landlord's approval to the proposed charges shall not be unreasonably withheld.
- Contracted Out lease: The lease to be contracted out of the provisions of the Landlord and Tenant Act 1954.

3.11 The business plan will be required to cover, as a minimum:-

- detailed description of the proposed uses of the property;
- details of any capital investments to made in the building, including funding sources;
- details of the requirements of any funder in terms of charges over the lease and length of tenure;
- detailed financial forecasts for the first three years of operation in the form of a cash flow forecast; financial forecast for the "mature" operation of the centre;
- details of the experience of individuals at SPT that will manage the project, with particular reference to the leisure industry;
- details of how the Management board will be constituted and its powers;
- details of initial operating arrangements including school and community access timetables to sports facilities and other uses.

3.12 When contemplating the disposal of any property interests, whether leasehold or freehold, the Council is required under S123 of the Local Government Act to achieve "best consideration" unless formal approval is granted to dispose by other means. The current open market value of the Garforth Squash and Leisure Centre has been assessed in the order of £950,000 assuming it could be used for industrial purposes. However, the restricted value under the proposed Heads of Terms would be significantly less and could well be zero, as public leisure facilities normally require

subsidy.

- 3.13 It is proposed that Executive Board support the grant of a lease to the School Partnership Trust at a nil rent for a term of up to 99 years, following finalisation of Heads of Terms.
- 3.14 The grant of the proposed lease on a peppercorn rent will ensure the continuation and enhancement of the service provided to the local community by the Garforth Squash and Leisure Centre whilst protecting the Council from a potential finance and maintenance liability.

4.0 Implications for Council Policy and Governance

- 4.1 This proposal is a modification of the original Vision for Council Leisure centres approved by the Executive Board in 2009, due to the current financial pressures on the Council. The proposed lease will assist in ensuring the continuity of service provided by the Garforth Squash and Leisure Centre to the local community.
- 4.2 The transfer will contribute towards achieving the following outcomes outlined in the Leeds Strategic Plan:-
- increased entrepreneurship and innovation through effective support to achieve the full potential of people, business and the economy.
 - more inclusive varied and vibrant communities through empowering people to contribute to decision making and delivering local services.
 - increased educational attainment through the provision of additional facilities to an established education trust.
 - increased community / education links through the management of a community facility.

5.0 Ward Member Consultation

- 5.1 Ward Members have been consulted on the CAT proposal and are supportive. They have advised that in order to minimise the impact of the budget decision in the period until the transfer takes effect, they anticipate that the Outer East Area Committee will agree to provide financial support for the remainder of this Municipal year. It is hoped that the asset transfer will be completed within this period. The funding would enable the centre to open for longer than 31 hours per week.
- 5.2 Advice has been taken which confirms that this would be consistent with the Council's budget decision, whose force is that Sports Service budget cannot be spent to open Garforth beyond 31 hours per week, but which does not stop external or other applicable internal funding sources being used.
- 5.3 The Outer East Area Committee is due to meet on 22 March and any decision reached can be reported to Executive Board at its meeting.

6.0 Equality Impact Assessment

- 6.1 An Equality Impact Assessment has been completed and published in the Equalities Section of the Council's website. The lease terms would include the requirement to

operate a non-discriminatory service which reflects the needs of the local community.

7.0 Legal and Resource Implications

7.1 In accordance with Section 123 of the Local Government Act 1972, the Council can only dispose of land for a consideration less than the best that can reasonably be obtained with the consent of the Secretary of State. Under the terms of the Local Government Act 1972 General Disposal Consent (England) 2003, the Council has the power to dispose of land at less than the best consideration that can reasonably be obtained subject to the following conditions:

- i) The Council considers that the purpose for which the land is to be disposed is likely to promote or improve the economic, social and/or environmental well being of the area or of local residents, and
- ii) The difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000.

There is no comprehensive legal definition of social, economic and environmental well-being in the context of the General Disposal Consent. However, by analogy in the context of the well-being powers in Section 2 of the Local Government Act 2000, the relevant Guidance states "it is for the local authority itself to decide whether a particular action would promote or improve well-being, taking account of their local circumstances and the wishes and needs of their communities". In addition, the Courts have said the powers in Section 2 were intended to have a broad meaning, and that an over-technical approach should be avoided. As a result, the Council has a broad discretion in deciding whether the particular uses proposed by Trust are likely to promote well-being, whether the alternative expressions of interest are likely to do so, and whether greater well-being benefits are more likely to arise from one proposal than another. In this context, whilst the Council is under the usual fiduciary duty to Council tax payers, and also under the usual duty to take all relevant matters into account, there is no specific legal duty to inquire into alternative proposals, nor to undertake a competitive exercise or bidding process in relation to the disposal on the proposed terms. In addition, it is considered "reasonable" in a legal sense for the Council not to undertake such an exercise for the reasons stated in paragraph 3 above, subject always to the Council being satisfied in due course that the business plan provides evidence of sufficient well-being benefits.

7.2 Sport is not a statutory service.

7.3 Under the proposed reduced hours regime, the site is projected to make a small operating profit but this would be more than outweighed by ongoing maintenance costs. The main benefit of this proposal is non-financial i.e. the increased usage and availability which are expected after CAT.

7.4 The Trades Unions representing staff at the centre have been advised that there is a potential TUPE transfer situation.

8.0 Recommendation

Executive Board is asked to note the proposed method of disposal via direct negotiation with the Schools Partnership Trust, the aims of the proposed transfer and the risks and mitigations identified in the report, and to approve:-

- 1 the principle of a community asset transfer of Garforth Squash and Leisure Centre to the School Partnership Trust at less than best consideration
2. that the Acting Director of City Development in consultation with the Executive Member for Leisure be authorised to finalise a lease agreement in keeping with the principles and terms outlined in the report and subject to receipt of a suitable and robust business plan to conclude a lease with the School Partnership Trust.

Background Papers

None

EXTRACT OF EXECUTIVE BOARD MEETING HELD ON 30TH MARCH, 2011

LEISURE

205 Garforth Squash and Leisure Centre

The Acting Director of City Development submitted a report outlining proposals regarding the granting of a lease to the School Partnership Trust in respect of Garforth Squash and Leisure Centre from a date to be agreed and seeking approval to delegate the necessary authority to the Acting Director of City Development in order to finalise and conclude the lease.

The report noted that an Equality Impact Assessment had been completed in relation to this matter, which had been published within the Equalities Section of the Council's website.

RESOLVED –

(a) That the proposed method of disposal via direct negotiation with the Schools Partnership Trust, together with the aims of the proposed transfer and the risks and mitigations identified within the submitted report, be noted.

(b) That the principle of a community asset transfer of Garforth Squash and Leisure Centre to the School Partnership Trust at less than best consideration be approved.

(c) That the Acting Director of City Development, in consultation with the Executive Member for Leisure, be authorised to finalise a lease agreement in keeping with the principles and terms outlined within the submitted report and subject to receipt of a suitable and robust business plan to conclude a lease with the School Partnership Trust.

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