

**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 23<sup>rd</sup> 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 23<sup>rd</sup> 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