

# Brighton & Hove City Council

## Tourism, Equalities, Communities and Culture Committee

## Agenda Item 15

**Subject:** Sports Facilities Contract Extension – Freedom Leisure

**Date of meeting:** 16th June 2022

**Report of:** Executive Director, Economy, Environment & Culture

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**Ward(s) affected:** All

### For general release

#### 1. Purpose of the report and policy context

- 1.1 Wealden Leisure Ltd trading as Freedom Leisure manage the council's sports facilities pursuant to two contracts with the council, both on very similar terms. The current contract with Freedom Leisure commenced on 1<sup>st</sup> April 2011 in relation to all the facilities listed in 3.1 below (except Portslade Sports Centre). An additional contract with Freedom Leisure to manage Portslade Sports Centre commenced in 2016 to run concurrently with the existing contract. These two contracts are referred to as the Sports Facilities Contract.
- 1.2 Under the terms of these contracts there is provision to extend for a further 5 years. At a special Policy & Resources Committee on 14<sup>th</sup> August 2020 a three-year extension with an associated re-negotiated management fee was agreed. This took into account the significant impact on the Sports Facilities Contract from the initial Covid 19 lockdown period (21<sup>st</sup> March – 25<sup>th</sup> July 2020). The aim was to minimise the impact of financial pressures created by the Covid-19 pandemic by extending the contract over a three-year period. A further package of financial assistance was agreed at the Policy and Resources Committee on 29<sup>th</sup> March 2021 taking into account the significant impact on the business created by successive lockdowns and the associated slow return of users over 2021/22. Both of these contract extensions expire on the 31<sup>st</sup> March 2024. There is provision within the current contract for an extension of up to a further 2 years.
- 1.3 Despite the Government allowing sports facilities (including gyms and swimming pools) to re-open from 25<sup>th</sup> July 2020, subsequent lockdowns and tier measures were introduced in November 2020, December 2020 and January 2021 – April 2021. These have had a continued negative impact on our Sports Facilities Contract with Freedom Leisure. In addition, the current cost of utilities and increased staffing costs will have a significant impact on the financial position of the contract into 2022 and beyond.

- 1.4 The Council Sports Facilities Investment Plan (2021-2031) was agreed by Policy & Resources Committee in June 2021. This sets out the Council's priorities to modernise and improve the indoor leisure facilities portfolio in the city. The delivery and implementation of this plan is influenced by the management arrangements that are to be put in place in the future.

## **2. Recommendations**

*That the Tourism, Equalities and Communities and Culture Committee:*

- 2.1 Recommends to Policy & Resources Committee that it agrees to exercise the option to extend the Sports Facilities Contract with Freedom Leisure by two years until 31<sup>st</sup> March 2026 and that it agrees the variation in the management fee set out in Part 2, subject to the recommendation at 2.2 below.
- 2.2 Recommends to Policy & Resources Committee that it grants delegated authority to the Executive Director Economy, Environment & Culture to agree changes to the management fee set out in Part 2, following consultation with the Leaders Group.

*That the Policy & Resources Committee:*

- 2.3 Agrees to exercise the option to extend the Sports Facilities Contract with Freedom Leisure by two years until 31<sup>st</sup> March 2026 and agrees the variation to the management fee set out in Part 2, subject to the recommendation at 2.4 below.
- 2.4 Grants delegated authority to the Executive Director Economy, Environment & Culture to agree changes to the management fee set out in Part 2, following consultation with the Leaders Group.

## **3. Context and background information**

### Sports Facilities Contract

- 3.1 The sports facilities included within the Sports Facilities Contract are:
- King Alfred Leisure Centre
  - Moulsecoomb Community Leisure Centre
  - Paddling pools (Hove Lagoon, King's Road, The Level Water Feature Saunders Park)
  - Portslade Sports Centre (added from 2016)
  - Prince Regent Swimming Complex
  - Stanley Deason Leisure Centre
  - St Luke's Swimming Pool
  - Withdean Sports Complex
- 3.2 Freedom Leisure commenced operation of the Sports Facilities Contract on 1st April 2011 and initially under the terms of that contract a payment was made by the Council to Freedom Leisure. Following the capital development

at Withdean Sports Complex in 2013, the arrangement was varied resulting in a financial return to the Council (to support the payment of the capital loan).

- 3.3 There is provision in the existing contract for an extension of the initial term by up to five years on the existing terms and conditions. The current contract has been extended previously for a three year period and there is provision within the existing contract to extend this for a further two years.
- 3.4 Once the council has served notice to extend the contract, the parties are required under the terms of the contract to “discuss and use reasonable endeavours to agree any variation to the Management Fee which is reasonable to take account of any material changes in the costs of the Contractor in providing the Services”. This negotiation will take into account previous financial performance (if applicable) and the expected cost of providing the service which will apply for the remainder of the contract.

#### Sports Facilities Investment Plan

- 3.5 The council is aware that the facilities managed under the Sports Facilities Contract are ageing and their condition is deteriorating. The most recent facility to be built was the Moulsecoomb Community Leisure Centre which opened in 1991.
- 3.6 In 2019 the council commissioned a Sports Facilities Investment Plan together with an appraisal of management options, so that the future of the sports facilities could be determined. The Sports Facilities Investment Plan (SFIP) was agreed by Policy & Resources committee in June 2021. This work included detailed condition surveys on all the facilities to inform the SFIP. Work on the implementation of this plan continues to progress and the extension of this contract provides continuity whilst future operating models for new facilities are tested.

#### Impact of Covid-19 Pandemic

- 3.7 Covid-19 had a significant impact on the operation and management of the Council leisure facilities over the last two years. Lockdown for sports facilities was introduced on Friday 21<sup>st</sup> March 2020 when everything closed. This constituted a Force Majeure Event under the terms of the Sports Facilities contract. Consequently, Freedom Leisure were excused from performing their obligations under the contract for the period during which sports facilities were not allowed by law to open.
- 3.8 This was a very challenging financial period and in order to mitigate costs Freedom Leisure furloughed all apart from two staff of those directly employed pursuant to the Sports Facilities Contract in Brighton & Hove. The two remaining staff were overseeing the closed facilities together with members of the council’s Sports Facilities Team in order to reduce costs. However, it wasn’t possible to avoid all costs while the facilities were closed, such as utilities, although they were minimized.

- 3.9 The impact of Covid still remains a risk to the future operation of the service. However, the leisure centres are starting to see improvements in usage and participation and are currently operating at an average of 75% of pre-covid business across the various activity areas.

#### Utility costs

- 3.10 The biggest risk to leisure operators currently is the escalating costs associated with utilities. Freedom Leisure retain the risk on utility costs on this contract. Leisure providers (both inhouse and externally commissioned) are being adversely and disproportionately affected because leisure centres have high energy demands, especially for those facilities with swimming pools. Energy costs are typically a leisure operator's second highest cost after staffing costs. This is further exacerbated because the sports facilities portfolio is ageing and energy inefficient.
- 3.11 Leisure providers are mitigating the costs through the implementation of energy efficiency improvements, but they are unable to accurately budget forecast for gas and electricity costs because the price is fluctuating erratically. This is particularly impacting providers who buy electricity and gas supplies on a day ahead rate. Providers, like Freedom Leisure, on a fixed price contract have some short term protection (until Sept 2022), but the risks to providers and councils are being stored up for when the fixed element ends. Prices could stabilise by then, but they would need to drop significantly to reduce the risk.

#### **4. Analysis and consideration of alternative options**

- 4.1 Negotiations have been on-going with Freedom Leisure to seek a solution to the current very difficult financial situation to enable an agreed contract extension position to be achieved.
- 4.2 In the current economic climate, a contract extension is considered to be a more stable and appropriate solution than the other alternative options which include considering the transfer of the services back in house, creating a local authority trading company or commencing a new procurement process.

#### **5. Community engagement and consultation**

- 5.1 Not applicable.

#### **6. Conclusion**

- 6.1 The granting of a two year extension to Freedom Leisure for the Sports Facilities Contract will enable a financially sustainable position to be reached between both parties and allow for the future leisure centre provision requirements to be developed and progressed as set out in the Councils agreed Sports Facilities Investment Plan.

## **7. Financial implications**

7.1 These are included in the part 2 of this report.

*Finance Officer Consulted: John Lack*

*Date: 26/05/22*

## **8. Legal implications**

8.1 The Council is entitled to extend the contract without the agreement of Freedom Leisure. However, the parties must reach agreement on the Management Fee which should reflect the cost of providing the service. The Covid-19 pandemic and rising utility costs constitute material changes which will need to be factored into the discussions.

8.2 The proposed variations to the contract with Freedom Leisure are within the scope of the original contract and are therefore contract modifications which are permitted by the Public Contracts Regulations 2015.

*Lawyer Consulted:*

*Alice Rowland*

*Date: 09/05/22*

## **9. Equalities implications**

9.1 The council seeks to provide a range of opportunities for residents to participate in sport and community activities across the city. Sports facilities are fundamental to that provision.

## **10. Sustainability implications**

10.1 A key focus of this report is the financial sustainability of the Sports Facilities Contract. However, there has been significant investment in the sports facilities to improve environmental sustainability such as LED lighting, inverters on pumps and more thermally efficient glazing.

10.2 Additional works to the sites are also proposed from funding that was applied for and successfully secured from the council's carbon neutral fund.

10.3 Site by site energy audits have also recently been commissioned by Freedom Leisure in partnership with Brighton & Hove City Council to assess the current energy usage of the sites and consider what other capital investments could be implemented to improve the energy usage of the sites.

## **11. Other Implications**

### **Social Value and procurement implications**

11.1 The procurement of the original contract was carried out in 2010 before social value considerations were embedded as part of the tendering processes. However, through their Active Communities Plan, Freedom Leisure deliver many sessions and activities for a wide range of targeted groups within local communities and also support the NHS with social prescribing and GP exercise referral schemes.

### **Public health implications:**

- 11.2 The sports facilities are key locations in the city for regular participation in sport and physical activity. The Covid-19 pandemic has heightened the awareness of the importance of regular participation in sport and physical activity to health and well-being. The leisure centres play a significant role in contributing towards improving the mental and physical well-being of residents across the city.

### **Supporting Documentation**

#### **Appendices:**

1. None

#### **Background Documents**

1. None