

CULTURE RECREATION & TOURISM CABINET MEMBER MEETING

Agenda Item 40

Brighton & Hove City Council

Subject:	Operation of Saltdean Lido		
Date of Meeting:	6th December 2011		
Report of:	Strategic Director - Communities		
Lead Cabinet Member:	Culture, Recreation & Tourism		
Contact Officer:	Name:	Ian Shurrock	Tel: 29-2084
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Key Decision:	Yes	Forward Plan No: 2	
Ward(s) affected:	All		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT

- 1.1 The council is the freeholder of Saltdean Lido which is leased on a long lease to Power Fitness Ltd (“PFL”) of 125 years, of which 111 years are remaining. PFL is the head lessee, with sub tenancies to Saltdean Community Association (“SCA”) for the community centre and the council for the library. This report is being considered within the context of the council being the freehold owner of the Lido complex and therefore as the “superior landlord” of the property. The council also has statutory duties in respect of the property, from a planning perspective as the local planning authority and as the regulatory body for health and safety issues through Environmental Health.
- 1.2 Saltdean Lido is an important community facility with the community centre and library providing activities and services primarily to local residents. However, the Lido itself is the largest enclosed outdoor swimming facility for the city and therefore has a wider catchment area. In addition, health and fitness facilities are also provided within the Lido complex.
 - 1.2.1 At full Council on the 20th October 2011 a petition was presented and two Deputations received which, as indicated by items 33 and 35 on this agenda, led to the issues raised being referred to this Cabinet Member Meeting.
 - 1.2.2 A plan of the site is attached in appendix 1.

2. RECOMMENDATIONS

That the Cabinet Member for Culture, Recreation and Tourism:

- 2.1 notes the terms of the lease between the council as landlord and Power Fitness Limited (“PFL”) as the head lessee which operates the Lido complex

and determines the action that can be taken by the council as landlord in respect of the facility;

- 2.2 notes that the council on 12th May 2010 served a notice under the lease requiring certain works to be carried out, that the lessee claims to have complied with that notice and that negotiations with the lessee in that regard are ongoing;
- 2.3 notes that the resolution of full Council at its meeting of 20th October 2011 includes reviewing the options available in relation to getting a resolution to the current impasse and the taking of early actions that would facilitate the repair and refurbishment of the Lido which do not prejudice the position of the Saltdean Community Association, who are tenants of PFL;
- 2.4 requests the local planning authority to consider whether or not action can be taken under sections 47 and 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990;
- 2.5 approves the introduction of monitoring arrangements of the Lido pools during next season;
- 2.6.1 agrees that senior officers should continue to liaise with the local planning authority and seek a negotiated way forward with the lessee, including if satisfactory terms can be agreed, surrender of the head lease back to the council;
- 2.7 instructs officers to urgently seek a valuation of the Lido for surrender or compulsory purchase purposes; and
- 2.8 agrees that a further progress report should be brought to the next Culture Recreation & Tourism Cabinet Member Meeting unless a report can be taken sooner to Cabinet.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS

3.1 History & Lease Arrangements

- 3.1.1 The freehold of the Lido complex was purchased by Brighton Borough Council on 1st March 1962 from the receiver of the Saltdean Estate Company Limited, The purchase was subject to certain covenants including restrictions on the sale of alcohol. On 16th February 1976 the council granted a 28 year lease of part of the complex to the Trustees of the Saltdean Community Association ("SCA"), which required the building of a ground floor extension which was completed in 1980. At this time the Lido was occupied by (a) the Borough Council for the purpose of running the pool, (b) East Sussex County Council re: the library and (3) SCA who then as now ran the community centre. Saltdean Lido was listed as a grade II listed building on 13th July 1987. Upon

local government reorganisation in 1997 the ownership of Saltdean Library transferred from the County Council to the city council.

- 3.1.2 When managed by the council the pools made a loss and various proposals were raised but rejected in the 1980s, including privatisation and covering the pools to make it available for year round use. In April 1993 the running of the pools was licensed for one year to a local businessman. He lost over £20,000 and initially did not wish to continue without financial contribution from the council. However he persevered and broke even in 1994. After that arrangement came to an end, the council instructed external surveyors to market the property on a long lease. As a result of consultation by the council, the marketing stressed the listed building aspects and referred to the ongoing requirement for community facilities and local demand for a family pub/restaurant, which would entail release of the no alcohol restriction referred to in paragraph 3.1.1.
- 3.1.3 Over 120 expressions of interest were received, none of which were from community based groups, although a local group of residents, Saltdean Preservation Trust, did express an interest in the site after the preferred bidder had already been appointed. The chosen bid led to the setting up of Marlborough Leisure Limited (MLL), who were granted the head lease for the Lido complex on 1st December 1997 for a premium of £275,000, to be used to refurbish the Lido complex. MLL secured a release of the alcohol restriction by payment of an additional sum of money to the company with the benefit of the covenants, Chaucer Estates Limited. The lease premium was paid by Allied Domecq Leisure in return for a 125 year underlease from MLL of the public house to be built on land within the site adjacent to the Lido. The ground rent payable under the pub underlease to the lessee is £1000 p.a.
- 3.1.4 The library is leased back to the council for 125 years. No rent is payable but the council are liable under the lease to contribute to the repairs and maintenance to be carried out by the head lessee. It was originally proposed that MLL would grant a new underlease to SCA of the community centre. However as terms could not be agreed between MLL and SCA, primarily due to proposed service charge contributions, the headlease was granted subject to and with the benefit of the existing lease to SCA referred to in paragraph 3.1.1. SCA, the Council and the headlessee have over a period of time sought to agree the appropriate level of contributions payable by SCA to the headlessee and the Council's legal view is that the documentation provides for a 55% contribution.
- 3.1.5 On 15th August 2008 the head lessee served notice on SCA to terminate their underlease and replace it with a new lease. SCA made counter proposals and pending the outcome of either court proceedings or mediation the legal position is such that the terms of the original lease referred to in paragraph 3.1.1 remain in force, i.e. SCA are "holding over".
- 3.1.6 In August 1999 MLL changed its name to Saltdean Lido (Brighton) Limited and on 30th September 2004 the lease was transferred to Mr Dennis Audley.

The lease was subsequently transferred by Mr Audley to PFL on 7th July 2011, for whom Mr Audley is a director.

- 3.1.7 The lessee is required to open the Lido complex throughout the year and the pools during normal (unspecified) hours between 31st May and 1st September (subject to the exceptions set out at paragraph 3.3.2). The head lease is full repairing, although contributions are recoverable from SCA and the council as sub tenants. PFL is liable to pay all utility bills, subject to service charge recovery from the council (in respect of the library) and SCA (in respect of their part of the building). The actual running of the premises and its associated health and safety and environment issues are under the direct control of PFL.
- 3.1.8 SCA runs a thriving community centre which provides a wide range of activities with approximately 700 users per week. The community centre is a strong focal point for the local community and as well as a programme of regular activities, the centre is often used for functions and events. The library is open 3 days a week and is used by approximately 37,000 visitors per year. Saltdean Library is the second busiest community library in the city on a visits per hour basis.
- 3.1.9 There are a number of issues which cannot be included in this public report as they should remain confidential, due to legal privilege or they are commercially sensitive financial or business affairs. As these issues are under constant review a verbal update can be provided to members within a closed part II session, if required.

3.2 Condition of Building

- 3.2.1 On 12th May 2010 the council served a notice under the lease regarding aspects of disrepair. The lessee served a counter notice which means that no further action can be taken by the council without resorting to court. A Scott Schedule of the repairs required has been completed by a surveyor appointed by the lessee and this is being reviewed by a council appointed surveyor. This will identify those areas of repair that have been completed satisfactorily, those for which further work is agreed, and any that may be in dispute.
- 3.2.2 The building was put on the Building at Risk register on 19th October 2011. This register is used by English Heritage as part of its Heritage at Risk programme which was established "to identify historic assets that are at risk of being lost through neglect, decay or development or are vulnerable to becoming so". The local planning authority's position on the condition of the building is indicated in 4 below.

3.3 Opening of Lido

- 3.3.1 Concern has been expressed by the Save Saltdean Lido Campaign ("SSLC") that the Lido pools are not available for swimming at times when the weather is suitable. There is provision in the lease for the Lido pools to be open as per paragraph 3.1.7 above.

3.3.2 There are exceptions to the requirement to open the pools that include “routine cleaning, maintenance, inclement weather, force majeure, or other reasons outside of the reasonable control of the lessee”. The head lessee has responded to the concerns by indicating the pools have been closed on occasion due to inclement weather.

3.3.3 Inclement weather is clearly not a precise term. However, given that a key aspect of the lease is the opening of the pools for swimming and in response to the concerns raised, it is proposed to implement a monitoring regime for the next summer season.

3.4 Possible Development of the Site

3.4.1 Although there have been pre-application discussions the lessee has not submitted any planning applications in respect of the Lido complex. However, the head lessee did hold a public exhibition of proposals last year and that acted as a catalyst for the formation of SSLC. The council as landlord would have to approve any development of the site. In addition, development would require planning permission and listed building consent and the council as the local planning authority has been very clear with the lessee on the limitations and difficulties of achieving anything other than modest development of the site. English Heritage have specifically commented that the Lido’s low-lying form, distinctive silhouette and unusual intactness, are likely to make anything more than very modest development in any position on the site harmful to the Lido’s setting. In planning terms (a) no convincing evidence has been submitted that a large scale development is necessary, (b) any development on this site that reduces areas of open space or parking is likely to be resisted and (c) any modest development should introduce complementary leisure and recreational uses to the site.

3.5 Different Operator of the Site

3.5.1 SSLC has indicated an aspiration to operate the Lido complex. However, as the council has a legal agreement with the head lessee, it would be inappropriate for the council to actively seek an alternative operator of the Lido complex while such a legal agreement exists. See section 7 as to the options available to the council.

4. THE LOCAL PLANNING AUTHORITY’S POSITION

4.1 The Lido was upgraded to Grade II* listing in March 2011 and in October 2011 English Heritage, as part of their annual update, added the building to their register of Buildings at Risk (BAR) at priority category C (on a scale of A to F where A is the worst). Buildings in category C are considered to show “slow decay; no solution agreed”. BAR is used by English Heritage to identify England’s historic assets that are at a risk of loss through neglect, decay or development or are vulnerable to becoming so. The council is due to update its own register of Buildings at Risk at the Planning, Employment, Economy &

Regeneration Cabinet Member Meeting of 22nd December and it is proposed that Saltdean Lido will be included. The inclusion of the Lido on the English Heritage register does not confer any additional powers on the council.

- 4.2 The council has the power under section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Act”) to serve a Repairs Notice on the owner of the building, as a preliminary to compulsory acquisition under section 47 of the Act. The minimum period allowed by the legislation between service of a Repairs Notice and commencement of compulsory acquisition is two months. Good practice advice on the service of Repairs Notices, as set out in the English Heritage publication ‘Stopping the Rot’, recommends that the local planning authority (LPA) send a written warning and a draft schedule of repairs to the owner before commencing statutory proceedings.
- 4.3 A Repairs Notice under section 48 of the Act must be confined to those works which are “reasonably necessary for the proper preservation of the building”. The term ‘proper preservation’ implies positive action to put and keep the building in good repair in a way which fully respects its special architectural or historic interest and to prevent it being exposed to harm. Guidance in Stopping the Rot states that “a Repairs Notice should be considered when a building is neglected and the need for permanent repair accumulates to the point where there is potential for serious harm”.
- 4.4 The Lido has recently been inspected by the council’s Heritage team on behalf of the LPA. As a result of that inspection it is considered that the condition of the Lido does meet these criteria. Although some works were carried out to the building in the Spring of 2011 and further works are in progress (in response the schedule of works served by the council as freeholder), it is considered that the works carried out are no more than cosmetic in nature, are not of a quality consistent with a the listed status of the building and have not addressed the underlying issues of disrepair. At best they may very temporarily arrest the building’s physical decline. They cannot be considered a permanent repair.
- 4.5 A Repairs Notice in respect of the Lido could be based upon the schedule of works already prepared by the council as freeholder but would be need to be amended to ensure that only works ‘for the proper preservation of the building’ were included. If a Repairs Notice were to be served a sufficient period of time would need to be allowed for the works to be carried out before proceeding with compulsory acquisition. Given the extent and scope of the works required in this case, and taking into account that much of the work will need to be undertaken in favourable weather conditions, a period of between 9 and 12 months would be reasonable (subject to review if no progress were to be evident).
- 4.6 The Senior Planning Officer (Conservation) has held initial discussions with English Heritage on this matter. They have indicated that, in principle, they would support the local planning authority taking action under section 48 of the Act and that financial assistance (in the form of grant aid) may be available to the council towards acquisition, professional and legal costs. The

amount of such grant aid would depend upon the regional funds available at the time of application.

- 4.7 It should be noted that the service of a notice under section 48 of the Act is not an executive function but rather an enforcement matter within the Planning Committee's remit.

5. COMMUNITY ENGAGEMENT AND CONSULTATION

- 5.1 Various meetings have taken place with the lessee and with SCA, Saltdean Residents Association, Save Saltdean Lido Campaign and local ward members to discuss a range of issues on Saltdean Lido. However, much of the detail of the matters discussed has not been set out in this Part I report so as to not compromise the various parties relationships with each other.

6. FINANCIAL & OTHER IMPLICATIONS

6.1 Financial Implications:

The financial implications arising from the recommendations of this report regarding officer time will be met from existing resources. However, there may be financial implications arising from subsequent proposals or actions that will need to be identified and reported back in due course.

Finance Officer Consulted: Michelle Herrington

Date: 24/11/11

6.2 Legal Implications:

- 6.2.1 As stated at paragraph 3.1.9 of this report there are a number of issues which cannot be included in this public report as they remain confidential, due to legal privilege or commercially sensitivity. If necessary confidential legal issues can be discussed in Part II of the meeting or be set out in a future Part II report once matters have moved on.

- 6.2.2 There is no quick or easy fix to a complex legal situation. The legal implications of this matter have been included in the main body of the report, particularly sections 3 and 7 and the explanation at paragraph 4.7 that service of a notice under section 48 of the Act is not a direct matter for this meeting and hence the wording at paragraphs 2.4 and 2.6.

Lawyer Consulted: Bob Bruce, Principal Solicitor

Date: 23/11/11

6.3 Equalities Implications:

The council seeks to provide a range of opportunities for residents to participate in sport and community activities across the city.

6.4 Sustainability Implications:

The efficient operation and effective maintenance of the facility has implications for the long term sustainability of the Lido complex.

6.5 Crime & Disorder Implications:

There are no direct crime and disorder implications but the provision of sport and leisure opportunities can help to reduce anti-social behaviour.

6.6 Risk and Opportunity Management Implications:

As with any leased facility where the risk of operation has been transferred to the head lessee, there is a risk of non compliance with the terms of the lease.

6.7 Public Health Implications:

Opportunities to participate in sport and physical activity, community activities and access to a local library are all very important to the health and well being of the city's residents.

6.8 Corporate / Citywide Implications:

Saltdean Lido is an important recreation resource for the city.

7. BRIEF EVALUATION OF OPTIONS

7.1 The overriding requirement of the council is to seek a vibrant, accessible, high quality facility that befits the status of the Lido as a key asset of both the local and wider city community.

7.2 The length of the head lease is a key issue, in that a long lease gives greater security to the lessee and it is difficult for a landlord to be able to secure forfeiture of a 125 year lease through court action. The position is further complicated by the provisions regarding contributions to be made by the SCA.

7.3 There are 3 options – (a) seek compliance with the lease, (b) seek a negotiated surrender of the whole lease or part of the lease and (c) seek to take back the lease through forfeiture or compulsory purchase. If necessary further discussion on the complex implications of these options can take place in Part II, but for immediate purposes brief information on these options is set out below.

7.4 Officers have been pursuing option (a), as evidenced by service of the notice referred to in paragraphs 2.2 and 3.2. SSLC have expressed serious concerns about when the site is open and some health and safety issues. The opening hours issue is addressed in section 3.3 of this report and all health and safety issues raised have been properly addressed by the council.

- 7.5 Option (b) entails seeking agreement with the lessee on the timing and extent of any surrender. Fragmented management or ownership of the Lido should be avoided and it is not considered appropriate for the council to take back just the pools area or part of the complex. There is clearly scope to seek agreement with the lessee about surrender of the whole lease and the key aspect will be the terms including any compensation provisions. The valuation referred to in paragraph 2.7 will be key to the full evaluation of this option.
- 7.6 Option (c) is the last resort. Forfeiture proceedings are notoriously expensive and protracted and the court encourages landlords and tenants to settle their differences by agreement. Compulsory purchase may be a route, but is a local planning authority consideration linked to whether or not Planning Committee agree the service of a section 48 Notice and then whether or not that Notice is complied with.

8. REASONS FOR REPORT RECOMMENDATIONS

- 8.1 Saltdean Lido is a leased facility and therefore the responsibilities of the head lessee and council as freehold owner need to be recognised.
- 8.2 Saltdean Lido is a Grade 2* listed building on the Buildings at Risk Register. Therefore, it is important that the building is maintained to the appropriate standard so that it is removed from the register.
- 8.3 A key provision within the lease is the opening of the lido pool during the summer season. Therefore, it is important that the council is clear that compliance with the terms of the lease on this issue is being met.

SUPPORTING DOCUMENTATION

Appendices:

1. Site Plan

Documents in Members' Rooms

1. None

Background Documents

1. None

