

Wards Affected:

All Wards

MEDBOURNE PAVILION, OAKGROVE LEISURE CENTRE & TATTENHOE PAVILION; TEMPORARY EXTENSION OF THE MANAGEMENT CONTRACT

Authors:

Neil Hanley, Community Solutions Programme Manager Tel: (01908) 253632

Paul Sanders, AD, Community Facilities Tel: (01908) 253639

Executive Summary:

This report is seeking approval to further extend the contract with Hertsmere Leisure Trust for the management of Medbourne Pavilion, Oakgrove Leisure Centre and Tattenhoe Pavilion for a period of up to 18 months from 30th April 2014.

This is to allow sufficient time for applications to be invited and assessed through the Community Asset Transfer Programme (CAT) for the management of the following four community assets:

Medbourne Community Sports Pavilion, Oakgrove Leisure Centre, Tattenhoe Sports Pavilion and Woughton on the Green Sports Pavilion.

CPC agreed on 4 September 2012 under minute PC48 that the extension of the existing contract with Hertsmere Leisure Trust for the management of Medbourne, Oakgrove and Tattenhoe facilities for a period of up to 18 months from 31 October 2012 be approved.

1 Recommendation(s)

- 1.1 That the temporary extension of the existing contract with Hertsmere Leisure for the management of the Medbourne, Oakgrove and Tattenhoe facilities for a period of up to 18 months from 30 April 2014 in order to facilitate a timely and robust completion of the Community Asset Transfer process, be approved.

2 Issues

- 2.1 This contract extension will facilitate the commencement of a CAT process to transfer not only the facilities currently managed by Hertsmere Leisure (Medbourne Community Sports Pavilion; Oakgrove Leisure Centre and Tattenhoe Sports Pavilion) but also the Council's directly managed facility of Woughton on the Green Sports Pavilion.

- 2.2 Once the CAT two stage process has been completed, Cabinet will be asked to make relevant decisions on an asset by asset basis as regards the future management and/or ownership of these facilities
- 2.3 Medbourne Community Sports Pavilion, Oakgrove Leisure Centre and Tattenhoe Sports Pavilion are currently under management by Hertsmere Leisure Trust, a 7-year contract which ended in December 2012, and has been extended till 30 April 2014, (such extension having been agreed by Cabinet Procurement Committee on 4th September 2012). Failure to successfully re-tender these facilities would entail them being brought back into Council management.
- 2.4 The proposal to extend Hertsmere Leisure Trust contract is subject to obtaining any necessary waiver under section 151.
- 2.5 This contract has already been extended eighteen months beyond its original end date to facilitate a procurement exercise. The further extension of contract to enable the progress of these assets through the CAT programme increases the risk of challenge from other providers in the leisure market as the value of this service exceeds the EU threshold, the risk was considered low for the initial extension period however this increases the longer the extension continues.
- 2.6 In the event that Hertsmere Leisure Trust agrees to continue with the contract, then this may trigger a request for additional costs. There is a risk that service levels will not be maintained during the extension but this can be mitigated by agreeing service levels during the extension and close contract management.
- 2.7 A further extension may not be welcomed by third parties involved in the sites, such as Oakgrove School; therefore the relationship management and stakeholder engagement will be key to reducing reputational and relationship risk.
- 2.8 Cabinet members in two meetings with officers in late May and June last year made the suggestion that the leisure assets be offered at the same time under the Council's Community Asset Transfer process. However, It was initially thought that State Aid issues could render disposals at undervaluation unlawful.
- 2.9 It was considered that Woughton Leisure Centre did not invoke State Aid given that the value of the asset is at such a low level given its age and current condition. As such it was decided at Cabinet Procurement Committee on 4th September 2012 to offer Woughton Leisure Centre alone through the Community Asset Transfer Programme.
- 2.10 Following a joint application by Milton Keynes College and Milton Keynes Leisure Trust via the CAT process, it became clear that the scale of the investment required for Woughton Leisure Centre from the applicants and/or the Council was too great at that stage for the application to proceed any further. Added to this there were a number of sensitivities between community and curriculum college use that would be difficult to resolve without significant additional expenditure. The Council will continue to directly manage this facility in the meantime for the benefit of the local community and will continue to work closely with local partners including MK College, St Paul's School, MK Academy and the Woughton Community Council in developing programmes of use.
- 2.11 Counsel's opinion has since been received earlier this year and giving away the other leisure facilities as mentioned in this report under CAT potentially isn't barred by State Aid because they are of local interest and unlikely to impact non

cross border trade within Europe. The applicant in this case should also be local in nature (as set out in the pre-application questionnaire for CAT) and any economic activities they carry out should be of purely local interest.

- 2.12 Analysing the facility and the applicant is necessary and the decision whether State Aid applies should be reached after this analysis. Members are advised that transferring the leisure facilities via the CAT programme won't automatically trigger State Aid, but that it is important to vet the applicant and carry out the necessary analysis.
- 2.13 The four facilities will be offered through the Community Asset Transfer programme and follow the adopted Toolkit (31/7/12) and its inherent two stage application process. The Council's entire property interest will be transferred with these assets with the ultimate aim of no revenue funding support being provided by the Council in the future. The conclusion of this process will be reported back to Cabinet on each of the assets.
- 2.14 An indicative timeline for the transfer of these assets in line with the adopted CAT Toolkit is attached in **Annex A** for information. This highlights the need to allow time for the procurement of a lease related contract for each of the assets to ensure that should the CAT transfer be unsuccessful that the Council has this as a fall back position. This timeline accepts the need to be flexible as in some instances assets will transfer through the CAT process and others may not.

3. Alternative Options

- 3.1 If the leisure facilities outlined in this report are not successfully transferred under CAT then options will be explored to outsource these assets under a long term lease related contract in accordance with the Council's Contract Procedure Rules and Financial Regulations.

The Council could also continue to manage Woughton on the Green Sport Pavilion but if the Contract is not extended to the leisure trust, all of the assets, liabilities and staff would transfer to the Council from Tattenhoe, Medbourne and Oakgrove facilities.

The additional costs to the Council of managing the assets in-house would result in an additional liability of £90,432 in relation to business rates and the additional on-costs for staffing of approximately £70K. Furthermore because of staff turnover, as TUPE employees left the Council there would be a need to recruit to their posts on the Council's pay structure terms and conditions, therefore there is the likelihood that the annual pay bill would only increase year on year causing budget pressure which could lead to the Council having to consider the option to shut/close the assets.

- 3.2 An alternative option could be to tender for the management of these facilities but this would be unlikely given the time and expenditure required in any bidding process and the impending CAT offer.
- 3.3 Another option for the Council would be to sell the assets, generating receipts for the Council.

4. Implications

4.1 Policy

The applications seek to implement the Council's approach to Community Asset Transfer toolkit which was adopted on July 31st 2012.

The Milton Keynes Sport and Leisure Strategy 2009-2014, clearly sets out the aspirations of the Council in ensuring that opportunities are presented to increase participation in sport and active recreation. One of the drivers to do this is ensuring the accessibility of sport and leisure facilities to the local community and that robust management structures are in place.

4.2 Resources and Risk

Asset Management

Woughton on the Green Sports Pavilion, Medbourne Community Sports Pavilion, Oakgrove Leisure Centre and Tattenhoe Sports Pavilion, will be transferred outside of the Council ideally under a freehold but possibly on a long term leasehold arrangement should the asset be successfully transferred under CAT. If not then the facilities would be outsourced under the lease related contract as referred to in paragraph 3.1.

Revenue Provision and Risk

The costs of this contract are met from the Community Facilities Unit budget within the revenue programme. The extension of the contract will be met from existing budget provision of £137k pa which translates into the eighteen month extension requested of £205,500.

Providing the opportunity to local organisations to bid for individual facilities may produce innovative local management arrangements and potentially on going revenue savings.

Woughton on the Green Sports Pavilion had a budget provision in the financial year 2012/13 of £88k and has a net budget for 2013/14 of £29k.

The threat here is that this facility does not receive any or acceptable applications and therefore this facility would remain under the Council's direct operation. Again such an arrangement would facilitate a further procurement exercise.

Bids may not meet expectations/criteria for Stage One to Stage Two applications.

If some of the assets are transferred via the CAT process, the ones left to the Council may well be less attractive to operators, leaving the Council with a less attractive portfolio to offer via a lease related contract.

N	Capital	Y	Revenue	N	Accommodation
N	IT	Y	Medium Term Plan	Y	Asset Management

4.3 Carbon and Energy Management

As set out in the specification, evaluation criteria and risk assessment.

[Page 4 of 6](#)

4.4 Legal

There is no statutory obligation for the Council to provide leisure facilities.

Under the Localism Act 2011 the Council has (under the relevant Right to Challenge provisions, sections 81 to 86,) a duty to consider expressions of interest by certain organisations (including voluntary or community bodies, charities, and parish councils) in relation to certain services provided by or on behalf of the Council in the exercise of any of its functions and carry out an appropriate procurement exercise if it decides to accept an expression of interest.

This recommendation complies with MKC rules, UK and European legislation.

4.5 Other Implications

Stakeholders

Stakeholders including local Ward Members, Parish Councils, numerous clubs and organisations e.g. voluntary sports clubs, will be made aware of this development and will have the opportunity to attend public engagement events at each of the leisure sites mentioned in this report clarifying the specific aspects related to this proposed asset transfer.

Different media will be used to inform key stakeholders of the public engagement events such as advertising in the local press and a poster campaign in advance of the meetings as well as on the Council's web site.

The CAT application documents are available to view in various formats.

Staffing

There could be TUPE implications as a result of this service change. 23 Staff (10.4fte) currently employed externally to the Council in the facilities of Medbourne Community Sports Pavilion; Oakgrove Leisure Centre and Tattenhoe Sports Pavilion, may be subject to TUPE and transfer across directly to the new operator(s). In the case of Woughton on the Green Sports Pavilion, 7 staff (3.55 fte) are currently directly employed by the Council and will be affected by this potential transfer. They will be guided through the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).

As an integral part of these possible transfer arrangements an Equalities Impact Assessment will be completed.

Y	Equalities/Diversity	Y	Sustainability	Y	Human Rights
Y	E-Government	Y	Stakeholders	Y	Crime and Disorder
Y	Carbon and Energy Policy				

Annex A: CAT Project Timeline

Background Papers: Project Risk Register

Sport and Leisure Strategy 2009/14

Community Facilities Unit Service Plan 2012/13 – 2014/15

<http://www.milton-keynes.gov.uk/council-news/displayarticle.asp?id=86297>

Community Asset Transfer Toolkit