

EAST HERTS COUNCIL

COUNCIL – 20 SEPTEMBER 2006

REPORT BY THE LEADER OF THE COUNCIL

10. LEISURE PROVISION

WARD(S) AFFECTED: All

'D' RECOMMENDATIONS: That (A) the following actions to secure for the provision of leisure services in East Herts be approved;

(B) a supplementary vote of up to £100,000 be funded from balances to meet any additional costs.

1.0 Purpose/Summary of Report

1.1 To consider the continuation of leisure services within East Herts.

2.0 Contribution to the Council's Corporate Objectives

2.1 The report contributes to the Council's objective to ensure access to opportunities to take part in sport, leisure and cultural community activities.

3.0 Background

3.1 The Council entered into a contract with Aspire for the provision of leisure services within East Herts for a term of 5 years from 4 July 2005. Due to the decision by Enfield Leisure to put the company into liquidation and the trading difficulties being experienced by Aspire, the Council needs to decide how to provide leisure services within the district.

The Executive decision of 15 February 2005 was as follows:

No	Subject	Recommendation
1	The Outcome of the Market Testing of the Management of the Five Pools and Gyms (1)	<p>(A) the report, as requested on 18 January 2005, following the investigations of the areas of risk identified which required further clarification, be received;</p> <p>(B) the contract be awarded to the second tenderer, and subject to contract and agreement between both parties, the contract be implemented on 4 July 2005;</p> <p>(C) officers submit a further report to the Executive no later than 1 June 2005, relating to the Central Establishment Charges, and recommend either a reduction in these costs or a redirection of those resources to other identifiable activities;</p> <p>(D) officers report back within the next 3 months as to how they will commence work on the long term proposals for the long term future of these facilities;</p> <p>(E) officers submit the second tenderer's proposal for the Young Persons Gym at Hartham Pool within 6 months; and</p> <p>(F) the fees and charges for pools and gyms, as detailed in Appendix 'A5' of the report, be approved.</p>

4.0 Report

The Council needs to take urgent action to secure the continued provision of leisure services. Due to the urgency of the situation, the need to maintain services and secure the future of the staff, the Council will need to move quickly. The legal position is complex and therefore advice has been sought from Counsel on the options available to the Council (attached as an appendix (pages 127 – 138) for Members only – this contains exempt information by virtue of paragraph 5 of Part I of Schedule 12A to the Local Government Act 1972). Clearly, there is a short term need to secure the future of the services and a longer term requirement for leisure services. As a result, the Council will need to address the immediate problem and prepare for a longer term solution.

The decision by Enfield Leisure to go into liquidation has required East Herts to take action. The services provided by Enfield Leisure to Enfield Council do not directly affect the leisure services in East

Herts. However, the liquidation of Enfield Leisure affects the management services provided to Aspire which has an impact on the services provided to East Herts.

The Council has therefore sought co-operation of the liquidator of Enfield Leisure to ensure the continuity of services to East Herts.

4.1 Options for the future

4.1.1 A) Assignment

One option which has been considered is a possible assignment of the 5 years contract to another provider. The assignment would be contrary to the obligation of transparency, because the contract would not be advertised.

It is therefore possible that a simple assignment of the contract would give rise to a claim by a contractor who would have wished to secure the contract. Further, if a contractor succeeded in such a claim, the Council's exposure might be significant, because the contract has four years left to run - the claim might be for all profits lost by the contractor by failing to secure the entire 4 year contract.

The Council will also need to consider whether an assignment on improved payment terms would be consistent with its obligation to ensure best value.

4.1.2 B) Make additional payments to Aspire over and above its contractual entitlement with a view to keeping Aspire alive and maintaining continuity of service. This approach would simply "postpone the inevitable", and so a better long term solution would be preferable.

4.1.3 C) If Aspire goes into liquidation, the Council could make payments to Aspire through its liquidators to maintain the service. Simply paying money to a company in liquidation is a very risky approach, because even if the liquidators were willing to carry on the business for a time (which would be exceptional), they could cease trading at any time. A longer term plan is thought preferable.

4.1.4 D) Taking the service back "in house" on a short term or long term basis. This option would lose the tax saving on NNDR and VAT.

- 4.1.5 E) The Council need not conduct a competition because of the nature of the services.

If the Council decides to appoint a new contractor either with or without advertisement and/or a short break in services, the Council will need to decide whether to immediately seek a long term contract, or to first seek a short term bridging contract. There are good reasons for seeking a short term bridging contract whilst a competition is (voluntarily) conducted for a long term contract. This approach would demonstrate transparency and ensure that the Council can show best value.

An alternative would be to bring the services "in house" in the short term, even if that is not the preferred option over the longer term, whilst a competition is conducted. This decision would also be subject to the obligation to ensure "best value". The advantage of this approach is that it would not involve a breach of the obligation of transparency.

Depending on the approach adopted, the staff may transfer to another provider. Issues around the transfer will need to be managed including consultation.

The Council has sought an appropriate service provider. It is therefore proposed that the Council should enter into a short term agreement with Stevenage Leisure who is prepared to manage the facilities and provide the services. During this time, the Council will prepare a specification for the provision of the services. This specification would be more flexible to allow for changes in the provision of services in the future. Castle Hall would be added to the facilities to be managed by the contractor.

In the time available, the most suitable is Stevenage Leisure Limited. Stevenage Leisure operate within the area and the company has the capacity to manage the Council's leisure services.

The revised longer term contract would allow greater flexibility to allow the Council to develop its longer term strategy. This would enable the Council to achieve its ambition for the long term provision of leisure.

- 4.3 Company status reports have been sought from Dun and Bradstreet

Ltd and ICC Credit Aquila and both sources indicate that Stevenage Leisure Ltd has minimal risk of business failure. Stevenage Leisure Ltd is considered to be a “going concern” that has adequate financial standing to undertake a short term bridging contract to manage East Herts Council’s leisure facilities.

5.0 Consultation

5.1 There has been no consultation.

6.0 Legal Implications

6.1 The legal implications are contained in a separate report (pages 127 – 138).

7.0 Financial Implications

7.1 The original management fee for the contract to Aspire was £786,910 per year. In the current year the figure adjusted for inflation is £806.300.

The Council does not have information from Aspire that gives its current financial position.

The agreement with Stevenage Leisure for the short term management of the contract is that they will be paid for the actual costs of running the services on an open-book basis, plus their management fee for running the service.

Stevenage Leisure has estimated that the yearly management/administration fee will be £260,000. It must be recognised that some of this is initial set up costs and a significant amount will, by definition, already be in the management fee paid to Aspire. The “open-book” costs will identify these but at present they cannot be quantified.

In addition the Council would be able to call on the Bond that Aspire need to obtain in order to obtain the contract. This amounts to just under £80,000 and will be used to partially offset any additional costs.

Stevenage Leisure and East Herts officers will work closely together to establish actual costs of running the service.

In order to pay any set up/transition/management costs that are not covered by the bond it is recommended that the Council approve a supplementary vote of up to £100,000, to be drawn from balances for the current year. The details of any call being made on this money being reported when the actual costs are established.

It is a practicality that the exact financial consequences cannot be known as the process is fast moving and the priority is to both provide the service to the public and ensure value for money at all stages.

8.0 Human Resource Implications

8.1 The staff affected are employed by Enfield Leisure and Aspire, they would transfer to Stevenage Leisure Limited on existing terms and conditions.

9.0 Risk Management Implications

9.1 The Council faces risks in ensuring that leisure facilities continue to be provided to the community. The cost for providing the service may increase and continuing of service may be difficult to guarantee. There may be a potential claim by another provider in some circumstances. Potential claims by staff employed by Aspire will need to be considered.

Background Papers

Leisure Services contract.

Contact Member: Councillor Tony Jackson - Leader
Contact Officer: Simon Drinkwater – Director of Corporate Governance
Ext: 2003