



**BROMSGROVE DISTRICT COUNCIL**

**MEETING OF THE OVERVIEW AND SCRUTINY BOARD**

**MONDAY 22ND NOVEMBER 2021, AT 6.00 P.M.**

**PARKSIDE SUITE - PARKSIDE**

**SUPPLEMENTARY DOCUMENTATION 1**

The attached papers were specified as "to follow" on the Agenda previously distributed relating to the above mentioned meeting.

11. Pre-scrutiny - Financial Update Regarding Leisure Services (Pages 1 - 8)

The covering report for this item contains information that can be placed in the public domain. However, the appendices to the report contain exempt information and have been included at item 13.

12. To consider, and if considered appropriate, to pass the following resolution to exclude the public from the meeting during the consideration of item(s) of business containing exempt information:-

**RESOLVED:** that under Section 100 I of the Local Government Act 1972, as amended, the public be excluded from the meeting during the consideration of the following item(s) of business on the grounds that it/they involve(s) the likely disclosure of exempt information as defined in Part I of Schedule 12A to the Act, as amended, the relevant paragraph of that part, in each case, being as set out below, and that it is in the public interest to do so:-

<u>Item No.</u>	<u>Paragraph(s)</u>
13	3

13. Pre-scrutiny - Financial Update Regarding Leisure Services (Exempt Appendices) (Pages 9 - 14)

K. DICKS  
Chief Executive

Parkside  
Market Street  
BROMSGROVE  
Worcestershire  
B61 8DA

16th November 2021

### Cabinet

24<sup>th</sup> Nov 2021

#### Financial Update Regarding Leisure Services

Relevant Portfolio Holder	Councillor Philip Thomas, Portfolio Holder for Leisure, Cultural Services and Community Safety
Portfolio Holder Consulted	
Relevant Head of Service	Ruth Bamford, Head of Planning, Regeneration and Leisure Services and Claire Felton, Head of Legal, Democratic and Property Services
Report Author Claire Felton	Job Title: Head of Legal, Democratic and Property Services Contact email: <a href="mailto:c.felton@bromsgroveandredditch.gov.uk">c.felton@bromsgroveandredditch.gov.uk</a> Contact Tel: 01527 881429
Wards Affected	N/A
Ward Councillor(s) consulted	N/A
Relevant Strategic Purpose(s)	Living Independent, Active and Healthy lives
Non-Key Decision	
If you have any questions about this report, please contact the report author in advance of the meeting.	
This report contains exempt information as defined in Paragraph 3 of Part I of Schedule 12A to the Local Government Act 1972, as amended	

#### 1. RECOMMENDATIONS

The Cabinet is asked to RESOLVE that:-

- 1) The impact of Covid-19 on Council's contracted Leisure service and the steps taken to mitigate the financial risks in this regard are noted;
- 2) the financial context and the financial impact in this regard are noted;
- 3) the options available to the Council (*as outlined in Appendix 1*) are noted; and
- 4) the proposal to negotiate a 2021/22 deed of variation to the contract (*outlined in Appendix 1*) is approved.

### Cabinet

24<sup>th</sup> Nov 2021

---

#### 2. BACKGROUND

- 2.1 In 2017 the Council entered into a 21-year leisure operating contract (LOC) with SLM to deliver Leisure Management Services on behalf of BDC to operate Bromsgrove Sports and Leisure Centre (BSLC). This contract sets out the legal and financial arrangements for the provision of leisure services by SLM at BSLC.
- 2.2 The Health Protection (Coronavirus Restrictions) (England) (No.4) Regulations 2020 (the Restrictions) put a legal obligation on leisure operators to close leisure centres during certain periods of 2020-21. These periods of closure were Specific Changes in Law under the terms of the LOC.
- 2.3 Since 20<sup>th</sup> March 2021 the Government originally announced the temporary closure of all gyms and leisure centres as part of the Covid response and the measures that have followed. Many facilities offering vital health, leisure and wellbeing services to the community have been badly affected and many have fallen between the cracks of most announced support packages.
- 2.4 In response to this, the Local Government Association (LGA) issued guidance to Councils on how they could provide practical support to facilities to ensure that they would be in a position to open and continue to operate to deliver these vitally needed services to the community.
- 2.5 As Members will be aware, SLM delivers a range of Council Services through the LOC and these services play an important role in ensuring the mental and physical wellbeing of local communities. Public Health England (PHE) reports that regular physical exercise can reduce the risk of many chronic conditions as well as contributing strongly to mental wellbeing and connectivity with others.
- 2.6 Throughout the periods of closure and lockdown, SLM have continued to provide repurposed support to members through the delivery of streamed workout videos and community information online. Whilst this has been far from ideal, it has been a lifeline for many people.
- 2.7 As the industry remobilises, work continues with officers and the management team at SLM to work through a package of support that will enable continuity of service and a rebuilding of customer confidence moving forward.
- 2.8 It is fair to say that all leisure operators are facing serious financial challenges with the loss of income and high standing cost of running a facility and that the failure of this provision would present the Council with difficult choices.

### Cabinet

24<sup>th</sup> Nov 2021

---

- 2.9 Where a leisure operator fails this report has highlighted some indicative costs that would be relevant in different scenarios, but it is fair to say that with any scenario, the costs to a Council are significant and would include those associated with;
- maintaining the facility
  - TUPE transferring staff back to the Council
  - Loss of income while the facilities are closed
  - Retendering of services
  - Repayment of borrowing
  - Repayment of grant funding
  - Contractual penalties
- 2.10 At the present time the Council faces the following uncertainties:
- The Covid-19 pandemic looks set to continue but for what period of time and to what degree remains uncertain;
  - The short, medium and long term impact of the Covid-19 pandemic on the Leisure industry remains uncertain;
  - The Leisure industry has been significantly impacted by Covid-19 (in terms of cost base and demand for services).
- 2.11 The purpose of this report is therefore to:
- Update Members on the impact of Covid-19 on the Council's contracted Leisure service and the steps taken to mitigate the financial risks presented by Covid in 2020/21 and 2021/22;
  - Update Members on the financial context and the financial impact;
  - Update Members on the legal and commercial position;
  - Advise Members on the options available to the Council moving forward; and
  - Seek Cabinet support for the next steps and mitigating actions.
- 2.12 It is not anticipated that the facility will be in a position to turn a profit for the remainder of the calendar year and in this context it is proposed that the Council continue to work with SLM to ensure the provision of services by extending the agreements that Council have made to date to the end of the calendar year, during any period of opening, on an open book basis with no profit accruing to SLM during this period.
- 2.13 It is then proposed that for the period January 2022 to March 2022 where SLM anticipate that the business may move into a profit making position, the Council would receive 100% of such profit for this period recognising that in an uncertain environment it is also possible that the Council may need to continue to support losses as above.

### Cabinet

24<sup>th</sup> Nov 2021

2.14 It is fair to say that whilst this enables services to be delivered with some certainty to the end of the financial year, the challenge for future years remains. Officers are working with the SLM management team to provide projections for the business beyond March 2022 and this will necessitate further reporting to Members in due course.

### **3. FINANCIAL IMPLICATIONS**

3.1 The financial context to the contract can be summarised as follows:

- The cost to the Council of building the Leisure centre was £14.85 million. £12.07 million being financed from borrowing (internal and external).
- The budgeted income levels (in the Medium Term Financial Plan (MTFP) approved in February 2021) compared to the current forecast are:

	<b>20/21</b> <b>£m</b>	<b>21/22</b> <b>£m</b>	<b>22/23</b> <b>£m</b>	<b>23/24</b> <b>£m</b>
(Income)/Expenditure				
Budgeted	(0.194)	(0.426)	(0.557)	(0.588)
Forecast	0.356	0.085	TBC	TBC
Variance	0.550	0.511	TBC	TBC

- As reported in the Council's Revenue Outturn position for 20/21, The £550k pressure in 2020/21 (which itself is net of £150k Sports England grant funding) has been funded from the General Covid-19 Grant. It is anticipated that the estimated 2021/22 pressure of £511k can also be funded from the General Covid-19 Grant, although it must be noted that the full impact of Covid-19 on the Council's finances remains uncertain at this point in time.
- It should also be noted that at this point, given the uncertainties in the (Covid-19 impacted) Leisure Industry, it is not possible to calculate, within a reasonable degree of accuracy, what the impact on future years' budgets is likely to be. Furthermore, including an estimate at this stage could prejudice the Council's negotiation position. As Covid-19 restrictions ease, it is anticipated that the data available on Leisure related footfall will become ever richer, enabling more certain forecasts in this area. As a consequence, it is anticipated that the 2022/23 Budget setting process will need to clearly identify the risks and uncertainties on this matter over the coming months.

**Cabinet**24<sup>th</sup> Nov 2021

---

**4. LEGAL IMPLICATIONS**Legal Position to Date

- 4.1 As stated in the background section above, Bromsgrove District Council entered into a 21-year LOC with SLM in 2017 for the provision of leisure services at BSLC.
- 4.2 Due to the closure of services during the Covid-19 pandemic, the financial terms of the LOC in the period April 2020 to June 2021 could not be achieved and therefore agreement was reached with SLM to amend specific terms of the LOC.
- 4.3 The Council recognises the significant impact that the COVID -19 pandemic (the "Outbreak") has had on the leisure industry and has worked with SLM to reach mutually acceptable agreements (the "COVID Agreements") in response to the Outbreak. The Covid Agreements vary specific terms of the LOC.
- 4.4 The Covid Agreements divide the Outbreak into distinct phases. Certain phases of the Outbreak were periods of enforced closure by the Government under *Health Protection (Coronavirus Restrictions) (England) Regulations 2020* (the Restrictions). Other phases of the Outbreak were periods in which leisure facilities were permitted but not required by the Government to open, and some restrictions were in place during some of this period.
- 4.5 The Covid Agreements recognise that the phases of forced closure are Specific Changes in Law under the terms of the LOC. Consequently, provided SLM complies with its obligations to mitigate the effects of the Specific Change in Law, the Council is required under the LOC to make payments to cover SLM's net operating costs during the periods of forced closure. These payments do not include any element of profit.
- 4.6 The Covid Agreements also recognise that the periods of limited operation of leisure facilities during periods of reopening do not constitute a Specific Change in Law. Contractually, therefore, the Council is not required to make payments to SLM but acknowledges SLM's need for support during these unprecedented times.
- 4.7 Looking forward, assuming restrictions are not reimposed, the ongoing position remains positive but uncertain and as a result, arrangements for the short to medium term will need to be negotiated between the Council and SLM.

**Cabinet**24<sup>th</sup> Nov 2021

---

**5. STRATEGIC PURPOSES - IMPLICATIONS****Relevant Strategic Purpose**

- 5.1 The Council's partnership with SLM is part of its commitment to support activities for healthy lifestyles in the District.

**Climate Change Implications**

- 5.2 There are no climate change implications.

**6. OTHER IMPLICATIONS****Equalities and Diversity Implications**

- 6.1 There are no equalities and diversity implications.

**Operational Implications**

- 6.2 The information provided in this report relates to the ongoing operation and delivery of leisure services within the district.

**7. RISK MANAGEMENT**

- 7.1 The Council has been continually mitigating its liability by ensuring that SLM reduce costs wherever possible, maximise income and take no profit element. The Covid Agreements between the Council and SLM relating to COVID-19 expressly exclude profit.
- 7.2 The Council have been regularly reviewing SLM costs and ensuring that they relate only to the LOC and have actually been incurred through an 'Open Book' process.
- 7.3 The Council continue to assess the national landscape and the Sport England Guidance on Local Authority Contracts.
- 7.4 Officers meet with SLM regularly to assess the current legal/commercial position in the context of Covid and beyond.

**8. APPENDICES and BACKGROUND PAPERS**

Appendix 1 – Exempt Information  
Appendix 2 – Exempt information



## Cabinet

24<sup>th</sup> Nov 2021

---

### 9. REPORT SIGN OFF

<b>Department</b>	<b>Name and Job Title</b>	<b>Date</b>
Portfolio Holder		
Lead Director / Head of Service		
Financial Services		
Legal Services		

This page is intentionally left blank

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank