

BROMSGROVE DISTRICT COUNCIL

CABINET

6TH JANUARY 2010

TRANSFER OF THE DOLPHIN CENTRE TO A LEISURE TRUST

Responsible Portfolio Holder	Roger Smith
Responsible Head of Service	Phil Street
Key Decision	

1. SUMMARY

- 1.1 The report outlines the case for re-opening discussions with Wychavon Leisure and Community Association Ltd (WLCAL) regarding the transfer of the Dolphin Centre to the Trust.

2. RECOMMENDATION

- 2.1 The Cabinet recommend to full Council to approve completion of negotiations for the transfer of the Dolphin Centre to WLCAL based, first, on the production of a business case that meets the savings as proposed in the Medium Term Financial Plan.(MTFP) and second, on a range of targets that will further improve the efficiency of the Dolphin Centre.
- 2.2 The Cabinet delegates authority to the Executive Director – Partnerships and Projects, the Deputy Head of Street Scene and Community and the Section 151 Officer to undertake negotiations with WLCAL and subject to a satisfactory business case complete the transfer of the Dolphin Centre to WLCAL by 1st April 2010.
- 2.3 The Cabinet delegates authority to the Executive Director – Partnerships and Projects to sign on behalf of the Council the agreements required to effect the transfer.
- 2.4 The Cabinet delegates authority to the Head of Legal, Equalities & Democratic Services in consultation with the Executive Director – Partnerships and Projects to undertake negotiations with WLCAL to agree a suitable lease and to execute it on behalf of the Council.

3. BACKGROUND

- 3.1 In 2007 Bromsgrove District Council opened discussions with Wychavon Leisure Trust (WLCAL) regarding the transfer of its leisure centres. These discussions made significant progress, but complications with job

evaluation salaries at the centres and new case law around equal pay legislation meant that discussions could not be satisfactorily completed.

- 3.2 The discussions with WLCAL were not concluded in 2008 as Bromsgrove's job evaluation scheme had introduced a degree of differential between Bromsgrove District Council's employees and those of WLCAL's. WLCAL thought this may destabilise their organisation. WLCAL reluctantly took the decision to close the discussions with Bromsgrove whilst they consider the impact of the case law on their organisation,. Once satisfied that they could manage such issue moving forward they made contact and asked if discussion could be recommence.
- 3.3 Bromsgrove District Council had originally entered into discussion with WLCAL as they offered the opportunity to provide a more effective and efficient service delivery and had a proven track record in providing high quality services to customers that maximise income generation opportunities and increases residents and user satisfaction. The current user satisfaction rating in Herefordshire and Worcestershire for leisure facilities provided by Sport England clearly shows the WADC scores to be the highest in the area.
- 3.4 Once the discussions with WLCAL came to a close Bromsgrove commenced a service review of its leisure centres provision to realise greater efficiencies and to ensure the effective use of resources. This review led to a fundamental overall of the Dolphin Centre in order to generate the savings identified with in the MTFP and the implementation of the Cabinets decision to surrender our interest in the dual use site at Haybridge High School.
- 3.5 The service review was undertaken in parallel with preparations to open the new fitness suite at the Dolphin Centre. The combination of the service review and the opening of the fitness suite offered the opportunities for the Council to achieve efficiencies at the centre.
- 3.6 When the service review of the Dolphin was concluded there was a determination to promote a more entrepreneurial culture within the centre that could respond to market forces more effectively and met the increasing high standards customers expect for leisure providers. This became particularly important in marketing and promoting the fitness suite as the service business case was predicated on attracting over direct debit 600 members. It was considered that the management arrangements and the culture that was created within the staff at the Centre was central to delivering the standards of service required to realise the aspirations of the Council.
- 3.7 Although revised senior management responsibilities were identified with in the service review its was officer opinion that due to the tight timescales involved with the new services going live and the limited opportunities that a single site offers to potential applicants an alternative route should be considered for the management of the site in the interim.

3.8 Despite the closure of the discussions regarding transfer of the sites operational delivery to WLCAL, dialogue with WLCAL did not end and the relationship between both parties had remained positive. Therefore, a discussion was held with WLCAL to explore the benefits of them providing interim management support of the centre. Following discussions agreement was reached to have WLCAL manage the centre for one year. This decision has been vindicated in terms of improved standards across the centre. There has been increased user satisfaction, a reduction in complaints and accidents and the level of membership recruited to the fitness suite has exceeded targets and led to increased income generation.

3.9 It is apparent that during the interim period that the benefits of WLCAL management can not be under estimated. The benefits of working with a specialist leisure services provider are far reaching and have enhanced training and development and have provided quality marketing skills.

3.10 The success WLCAL have experienced in managing the centre encouraged them to approach the Council about reopening discussions about the transfer of the future delivery of the service.

3.11 Meetings have been held with WLCAL and they have indicated they would want to seek an agreement with the Council. The discussions have opened with WLCAL. This report proposes the conclusion of these discussions resulting in the transfer of the Dolphin Centre.

3.12 It is recognised that the transfer is being proposed as this Council is entering into a joint management arrangement with Redditch Borough Council. However, it needs to be recognised that the proposed transfer will not compromise any further reviews of the leisure service delivery nor limit the options available for future service delivery across Bromsgrove or Redditch.

3.13 The consequences of job evaluation have been addressed by WLCAL and these are no longer a barrier to an agreement. Therefore,

- Union and staff consultation has been commenced around TUPE and pension implications.
- A business case has been developed and shows a level of saving in year one rising to £170,000
- It is proposed that a 3 year term be agreed with the option of a further two year roll over.
- Discussions are taking place between officers of the Council and WLCAL regarding the distribution of additional efficiency savings generated over the deficit funding.

3.14 A project group has been established as a forum for negotiations. The project group have prepared a project plan. This includes

- human resources
- pensions -delete
- property matters,
- transfer documents
- business proposal.

4. FINANCIAL IMPLICATIONS

- 4.1 During 2009/10 Wychavon Leisure have implemented a number of revised procedures and processes that have improved the financial management arrangements and clarity in the budgets required for operating the centre in a more effective and efficient way.
- 4.2 The initial discussions in relation to the trust taking over the responsibility for the service delivery at the Dolphin Centre have identified savings that could be made under this arrangement. These include savings due to charitable relief on business rates together with the reduced spend and increase in income that can be achieved by an organisation whose sole focus is leisure provision and therefore has an increased leverage in the market to negotiate deals with supplier and market the facilities.
- 4.3 The current savings identified equate to £140k in 2010/11 arising to £170k in 2014/15 which relates to a 5 year contract being in place. Further review and discussions are ongoing to identify further savings to enable the council to maximise the income share whilst improving service delivery to the residents.

5. LEGAL IMPLICATIONS

- 5.1 There are significant legal implications associated with:
- 5.2 It will be necessary for an appropriate agreement to be prepared and executed on behalf of the Council which details responsibilities and payments, ensures local representation in the operations of the leisure facilities and minimises the Council's ongoing risks. External legal opinion has been obtained on this and a number of other issues to provide members and officers with comfort that the agreement is reasonable and legally sound.
- 5.3 Preparation of a lease - a lease is at an advanced stage of preparation that proposes the Council would enter into a five year lease with the Trust for the Dolphin Centre with the Council retaining responsibility for the building structures and major plant. The Council will still retain the freehold of the Dolphin Centre and will ensure that the right to renewal is removed.

- 5.4 A management document is at an advanced stage of preparation that will secure and identify monitoring and governance involvement by the Council. The management agreement will include defining and preserving the following:

- Service level outcomes
- Local representation
- Management Group Composition
- Priority Users
- Insurance
- Accounting arrangements
- Information exchanges

The management document will clearly define the service outputs expected in return for the Council management fee support.

- 5.5 The Council has a number of powers available to it to transfer the Dolphin Centre to a leisure trust and to enable it to enter into the proposed financial and operational arrangements:

- Section 19 of the Local Government (Miscellaneous Provisions) Act 1976 states that 'a local authority may provide inside or outside its area, such recreational facilities as it thinks fit' and assist 'by way of grant or loan towards the expenses incurred.... by a voluntary organisation in providing any recreational facilities';
- Section 111(1) of the Local Government Act 1972 provides that 'Without prejudice to any powers exercisable apart from this section a local authority shall have power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to the discharge of any of their functions.
- The Local Government Act 2000 allows for the promotion or improvement of the economic, social and environmental well-being of an area. S2 (1) includes a power to incur expenditure, give financial assistance to any person, enter into arrangements or agreements with any person, co-operate with or facilitate or co-ordinate the activities of any person.

- 5.6 Procedures have been put in place to prevent staff being transferred having undue influence on the negotiations which could be seen to being to the disadvantage of the Council.

6. COUNCIL OBJECTIVES

- 6.1 The transfer of the Dolphin Centre to a leisure trust will contribute to the Council's Objective 2 (improvement) by providing effective and efficient services that meet the needs of residents and provide additional

activities to support the council values of leadership and partnership. Through the additional activities provided within the centre and the increased usage generated the site will also contribute to the Sense of Community & Well Being Objective (3) by increase participation in physical activity and by bring different sectors of the community together in one location/venue for leisure pursuits.

7. RISK MANAGEMENT

7.1 The transfer doesn't take place due to failure to reach agreement. The result will be that further savings will not be achieved.

Negotiations have to be transparent and thorough and after the experience of earlier negotiations it is important to scan the environment for impending issues that affect discussions.

7.2 The transfer does not result in the savings predicted.

The business case put forward by WLCAL has to meet our expectations and has to be included in a binding agreement.

7.3 We are challenged that we have not gone out to tender.

We have taken external specialist legal advice on this matter and we are assured that the arrangements we are pursuing are acceptable and appropriate.

7.4 Despite our best endeavours the negotiations are not completed.

This will mean that the Council will continue to operate the Dolphin Centre on our current arrangements, but we will not achieve the level of savings predicted and other actions will be required to identify savings opportunities.

8. CUSTOMER IMPLICATIONS

8.1 The Council wants to secure high quality service delivery to the residents and ensure the Council's resources are used to maximum community benefit. The Council has engaged WLCAL to provide interim management support at the Dolphin Centre since April 2009 and during this period the standard of service delivery has increased month on month. This is supported by a number of operational performance measures that have shown a marked improvement when compared to the previous level of service provision. The effective management of the service, the commitment to improving service standards and the customer experience along side improvement to both the buildings presentation and the standard of staff training have ensured that the overall experience of visiting the Dolphin Centres has become more rewarding and satisfying.

9. EQUALITIES AND DIVERSITY IMPLICATIONS

9.1 There are not any direct equalities and diversity implications.

10. VALUE FOR MONEY IMPLICATIONS

- 10.1 In respect of UK law the Council has a fiduciary duty to demonstrate best value on behalf of its taxpayers. Whilst a competitive process may do this other methods are also justifiable. In this case the likely partner has an excellent track record of delivering these services and the comparison with the in-house operation shows demonstrable VFM.
- 5.7 The study by the Audit Commission, published in summer 2006 mentioned earlier in the report also acknowledges that transfer to a Trust is a cost effective alternative to direct provision.

11. OTHER IMPLICATIONS

Procurement Issues – Legal advice has been sought on the approach being taken to engaging WLCAL as this is a key issue for the Council as Members will wish to be sure of the legality of the process being undertaken. The Council has taken advice from a senior external legal consultant who is satisfied that the Council does have the power to do as it proposes. The advice is that European and UK legislation is satisfied and that the process is robust enough to enable the Council's Financial Regulations and Contract Procedure Rules to be suspended in this case. In simple terms the award of a contract for leisure services is not subject to a requirement for competitive procurement in the EU as it is classed as a part B service. Given the above advice it is recommended that Council's Financial Regulations/Contract Procedure Rules are suspended in relation to this matter in order that the transfer can be progressed.
Personnel Implications – Consultation will take place with trades unions, employees and other stakeholders. Staff would be subject to TUPE should negotiations be concluded successfully.
Governance/Performance Management – Performance improvement will be sustained and continually improved.
Community Safety including Section 17 of Crime and Disorder Act 1998 - Not applicable
Policy - Not Applicable
Environmental - Not applicable

12. OTHERS CONSULTED ON THE REPORT

Portfolio Holder	
Chief Executive	Yes

Executive Director (Partnerships and Projects)	Yes
Executive Director (Services)	Yes
Assistant Chief Executive	Yes
Head of Service	Yes
Head of Financial Services	Yes
Head of Legal, Equalities & Democratic Services	Yes
Head of Organisational Development & HR	Yes
Corporate Procurement Team	No

13. WARDS AFFECTED

All wards, but particularly St Johns

14. APPENDICES

Not applicable

15. BACKGROUND PAPERS

None

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