

URGENT DECISIONS

Friday, 28th August, 2020, 10.00 am - Urgent

Members: Councillors Matt White

1. APOLOGIES FOR ABSENCE

2. DECLARATIONS OF INTEREST

A member with a disclosable pecuniary interest or a prejudicial interest in a matter who attends a meeting of the authority at which the matter is considered:

- (i) must disclose the interest at the start of the meeting or when the interest becomes apparent, and
- (ii) may not participate in any discussion or vote on the matter and must withdraw from the meeting room.

A member who discloses at a meeting a disclosable pecuniary interest which is not registered in the Register of Members' Interests or the subject of a pending notification must notify the Monitoring Officer of the interest within 28 days of the disclosure.

Disclosable pecuniary interests, personal interests and prejudicial interests are defined at Paragraphs 5-7 and Appendix A of the Members' Code of Conduct

3. LEISURE PROVISION BY FUSION AND SUPPORT IN RESPECT TO THE RESTART OF THE FUSION BUSINESS (PAGES 1 - 6)

Please be advised that the Chair of Overview and Scrutiny has further agreed that the call-in procedure shall not apply to this urgent decision. This is because the decision is urgent and any delay in implementation caused by the call-in procedure would seriously prejudice the Council's or the public's interests due to the fact that this is a National emergency and the Council must ensure that it does not hinder Fusion's ability to carry on trading and restructure their business, the Chair of Overview and Scrutiny Committee has agreed that the decision is both reasonable in all circumstances, and that it should be treated as a matter of urgency. This is in accordance with Part 4, Section H, and Paragraph 18 (a) and (b) of the Council Constitution.

4. EXEMPT APPENDICES (PAGES 7 - 106)

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Thursday, 27 August 2020

Report for: Cabinet Member Signing

Title: Leisure Provision by Fusion and support in respect to the restart of the Fusion Business

Report

authorised by : Stephen McDonnell: Director of Environment & Neighbourhoods

Lead Officer: Simon Farrow: Head of Parks and Leisure (Interim)

Ward(s) affected: ALL

Report for Key/

Non Key Decision: Key

1. Describe the issue under consideration

- 1.1 The Council has a Leisure Management Contract with Fusion Lifestyle Ltd entered into on 1st December 2012 for a period of 20 years. This relationship includes the management of three leisure centres (Tottenham Green, Park Road and Broadwater Farm). As part of a subsequent procurement exercise a lease of the New River Sports Ground site was granted to Fusion for a period of 50 years, which commenced on 11 July 2014.
- 1.2 The Council has provided two loans to Fusion, the first under the Leisure Management Contract and the second under a separate loan agreement in respect of New River Sports Ground (previously known as White Hart Lane Leisure Centre). The two loans were used by Fusion to improve the leisure facilities at each of the four sites. The Council's loan for New River was provided for under a loan agreement and is secured against the lease granted to Fusion on 11 July 2014 ("New River Lease").
- 1.3 On 20th March 2020, the Government ordered leisure centres to close and the financial model of Fusion collapsed due to the total loss of income.
- 1.4 The Government is now allowing leisure centres to reopen and to restart their business Fusion need to obtain additional working capital. Fusion has applied for a new loan under the Government backed Coronavirus Large Business Interruption Loan Scheme (CLBILS) from Natwest bank.
- 1.5 The terms of the CLBILS loan is set by Government and it requires NatWest bank to take security over all of Fusion's assets for the three-year period of the loan. Where there is already a prior security on the assets, the requirement is for the CLBILS loan security to rank pari passu (i.e. equal) to that existing security. The Council's loan to Fusion for the New River Sports Ground is secured as a first legal charge against the lease of New River Sports Ground. NatWest therefore requires the Council to enter into a Sharing Agreement in respect of that first charge. This would mean that the Council's legal charge would rank equal to a new security in favour of NatWest Bank against the New River lease.

- 1.6 The Council recognises the importance of securing the CLBILS loan to Fusion and its recovery plan. The Council also notes the encouragement by Government to support key organisations such as Fusion.
- 1.7 This report sets out the case for not agreeing to Fusion's request to enter into a Sharing Agreement with NatWest bank so that its security could be on an equal basis with that of the Council at New River. It is recognised that by not agreeing to this request that this may have implications for Fusion, but on balance the Council needs to protect its financial interest in the New River Sports Ground.

2. Cabinet Member Introduction

- 2.1 The Council has previously committed to two long term arrangements with Fusion. The Council has also supported Fusion with loans on the leisure contract and the New River Sports Ground lease.
- 2.2 The Council is also very much aware of the impact that the government lockdown has had on the whole of the leisure industry in the Borough and across the country. To this end, the Council provided support to Fusion through the lockdown to keep the leisure centres safe and maintained throughout this period.
- 2.3 However, the council has had to consider very carefully Fusion's latest request. While the Council recognises the huge value and importance of the land and buildings we own, of which we are only the custodians for Haringey's communities and having considered the options, I do not believe it is in the Council's long term interest to agree to Fusion's request.

3. Recommendations

Cabinet Agrees:

- 3.1 That the Council does not agree to Fusion's request to allow NatWest to take a security against the New River Lease.

4. Reasons for decision

- 4.1 The market and financial models for local authority leisure provision have been severely impacted by the Covid-19 pandemic. The Council has a favourable contract with Fusion and whilst performance was reducing prior to lockdown the current restart of the operation provides an opportunity to reset and start afresh.
- 4.2 The Council would not normally agree to Fusion's request for the Council to share its security against the New River Lease.
- 4.3 As a result of the Council's decision Fusion may then choose to hand back the New River lease.
- 4.4 If Fusion do hand back the New River Lease a report setting out the options available to the Council will be presented to members within the next 8 weeks.
- 4.5 It is anticipated, at this time, that additional resources may be required under any proposed new operating model.

5. Alternative options considered

- 5.1 An alternative option would be for the Council to agree to the Shared Security arrangement proposed by Fusion.

6. Background information

- 6.1 A government condition of the CLBILS loan scheme is for the bank making the loan to take a charge over any property assets of the business.
- 6.2 Fusion have long term leases without leisure management contracts on five sites. These five sites are Wycombe Rye Lido, Newcastle City Baths, Brockwell Lido in Lambeth, Leisure Sites in Mendip and New River Sports Centre in Haringey. The Newcastle City Baths and Wycombe Rye Lido do not require any Shared Agreement with NatWest as those authorities do not have a first legal charge against the lease as security.
- 6.3 The Council has a fixed charge against the New River Lease in the event of a failure by Fusion to repay the outstanding loan. This first charge means that any value realised in the site must be used to pay back Haringey monies owed on the loan first. In addition, the Council is the landlord and control the use, charging and any assignment of that lease. The Council is also able to forfeit the lease should Fusion become insolvent therefore able to take the site back.
- 6.4 The council is being asked to share its charge on New River Sports Ground with NatWest bank on an equal basis to comply with the government conditions of the CLBILS scheme.
- 6.5 There are several pros and cons in not agreeing to the proposed Shared Agreement and these are set out below under those headings as a series of risks/benefits.

Pros – Refusing consent to Shared Security Agreement

Avoids the potential loss of control in determining who owns the future New River lease

- 6.6 By not agreeing the Shared Agreement, the Council is protecting 100% of its security against the value of the lease.
- 6.7 The value of the lease has recently been assessed by WHE working on behalf of the Council and projects a value greater than the outstanding loan made to Fusion.

Cons – Not consenting to the Shared Security Agreement

Increased risk of Fusion Failure

- 6.8 Fusion may have to reconsider their approach to raising new capital funds. This may well include transferring the New River Lease back to the Council in lieu of the Council's outstanding loan. If this happens then it is most likely to include the whole of the business currently operating from that site. This will include all the assets and employees.

Increased costs to the Council of New River Sports ground now and, in the future:

- 6.9 If Fusion do transfer the New River Lease back to the council, then all risks and liability for the New River site would revert to the Council.

Risk of Fusion handing back the Leisure Management Contract

- 6.10 Fusion will continue to run the Leisure Management Contract covering Park Road, Tottenham Green and Broadwater Farm in its current form subject to amendments relating to Covid-19 recovery period.

- 6.11 On balance it is recommended that the Council does not agree to the request for shared security arrangement as required by Natwest under the CLBILS conditions. This will protect the Council's interests at New River Sports Ground.

7. Contribution to strategic outcomes

- 7.1 The provision of leisure centres in Haringey support the outcomes covered in Priority 2 – People and Priority 3 - Place.

Priority 2 – People

- Happy childhood: all children across the borough will be happy and healthy as they grow up, feeling safe and secure in their family, networks, and communities
- All adults are able to live healthy and fulfilling lives, with dignity, staying active and connected in their communities

Priority 3 – Place

- A healthier, active, and greener place
- A cleaner, accessible, and attractive place
- A culturally engaged place

8. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

8.1 Finance

- 8.1.1 The report notes that there will be a need for an options appraisal for the future of leisure provision in the borough. The cost of the options appraisal will be contained within existing budgets.

8.2 Procurement

- 8.2.1 Strategic Procurement do not believe there are any procurement implications with this report.

8.3 Legal

- 8.3.1 The Assistant Director of Corporate Governance has been consulted in the preparation of the report.

- 8.3.2 The Council owes a fiduciary duty to ratepayers and this includes a duty to use its financial resources properly, prudently and to the best advantage.

8.4 Equality

- 8.4.1 The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:
- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
 - Advance equality of opportunity between people who share those protected characteristics and people who do not
 - Foster good relations between people who share those characteristics and people who do not.
- 8.4.2 The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status apply to the first part of the duty.
- 8.4.3 The proposed decision is to agree that the Council does not support Fusion's request to allow NatWest to take a security against the New River Lease and for that security to rank equal to that of the Council. The proposed decision provides for a Leisure Management Options appraisal in anticipation of the possibility that Fusion may hand back the lease to New River Sports Ground or become insolvent.
- 8.4.4 An objective of the proposed decision is to protect the Council's asset in the New River Sports Ground. This is located in Woodside ward and is easily accessible from neighbouring wards including White Hart Lane, Noel Park, and Bounds Green. Due to the demographic profiles of the populations of these wards and the nature of the activities that the New River Sports Ground is used for, it is likely that young people, Black people, and people from Asian and non-British white communities are overrepresented among those who use it, relative to their representation in the borough or London. Protecting the asset therefore represents a measure to prevent indirect discrimination based on these protected groups.
- 8.4.5 Concessions to leisure centres are measures to advance equality of opportunity to people who share various protected characteristics, such as age and disability, by facilitating access where barriers may otherwise exist.
- 8.4.6 The report provides for a Leisure Management Options appraisal. The Council will have due regard for the need to achieve the three aims of the Public Sector Equality Duty in all aspects of the appraisal.

9. Use of Appendices

- **Appendix 1** – [This information is contained in the exempt part of the report]
- **Appendix 2** – [This information is contained in the exempt part of the report]
- **Appendix 3** – [This information is contained in the exempt part of the report]

10. Local Government (Access to Information) Act 1985

Appendices are NOT FOR PUBLICATION by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

Part of this report is not for publication as it contains information classified as exempt under Schedule 12A of the Local Government Act 1972 in that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information) and information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

By virtue of paragraph(s) 3, 5 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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