

MINUTES OF MEETING URGENT DECISIONS HELD ON MONDAY, 5TH OCTOBER, 2020, 4.00 PM

PRESENT:

Councillors: Joseph Ejiofor

ALSO ATTENDING:

52. APOLOGIES FOR ABSENCE

There were no apologies for absence.

53. DECLARATIONS OF INTEREST

None.

54. BUY BACK OF FUSION'S NEW RIVER LEASE AND PROVISION OF A SHORT TERM LEASE

The Leader considered the report which sought authority to acquire the New River lease from Fusion for the sum of the New River loan outstanding to the Council, and for Fusion to then pay back the New River loan to the Council and to grant Fusion a new short-term lease for 12 months which will include break clauses at six and nine months.

The Leader RESOLVED to

- i. **agree the acquisition of the New River Lease from Fusion for a sum equal to the amount of the loan outstanding under the Loan Agreement dated 11 July 2014;**
- ii. **agree to fund the acquisition through utilising the Responsiveness Fund capital budget and the approved capital programme contingency budget;**
- iii. **agree to the Council leasing back part of the site (not subject to the Tenancies) to Fusion Lifestyle for a period of up to 12 months; and**
- iv. **to note the Tenancies that will be directly managed by the Council on the site once the Head Lease is acquired (as set out in appendix C).**

Reasons for decision

Fusion have indicated that in order to restart their business they need to obtain a loan under the CLBILS funding arrangements. A condition of that scheme is that the bank supplying that loan needs to take a charge on all the assets of Fusion and the charge needs to rank equal to any existing charges granted by Fusion. On the 28th August 2020 a Cabinet Member decision agreed:

- a) That the Council does not agree to Fusion's request to allow NatWest to take a security against the New River Lease.
- b) In anticipation that Fusion may wish to hand back the lease to the Council, that the Council commissions a Leisure Management Options appraisal for the New River Sports Ground. The options to include proposals for the sale of the freehold, a new lease hold arrangement, direct management, or management by a third party.

As a consequence, Fusion have now offered the New River Lease back to the Council for the sum outstanding on the New River loan and for Fusion to repay this loan back to the Council.

The recommendation to accept the surrender of the lease for the sum outstanding and then for Fusion to pay back the loan to the Council represents a good financial proposition for the Council for the following reasons: -

- Since leasing the site to Fusion, the Council has not subsidised the site.
- The site has benefited from investment and been significantly upgraded since the lease was granted.
- The New River Lease has been valued by Wilks, Head and Eve (WHE) which demonstrates that the buy back of the lease is good value.
- The potential lease income per year for the site should meet the outstanding loan repayments and then from April 2030 would return an income that could be used to support other services.
- By taking the lease back the Council will be in full control of the site and free to review the future management arrangements.
- A short-term lease back to Fusion prior to the new management arrangements being implemented ensures that the site can reopen quickly allowing residents and clubs to participate in their chosen physical activity. It allows for an ongoing business to be maintained. It avoids the Council being liable for additional site management costs in this financial year. Fusion will accept all risk in the running of the site during a period of continued uncertainty related to Covid-19 and the national pandemic.
- It also means that an options appraisal, including an in-house option, can be developed in accordance with the Councils agreed Insourcing Policy (Oct 2019) and Insourcing Action Plan (Mar 2020). Following a further Council decision any transfer to another form of management can be done in a well-planned and careful way to ensure the best outcome for the Council, Fusion staff and site users.
- Based on the assumption that the Council agrees the recommendations in the report then Fusion plan to reopen the New River site on the 5th October 2020.

Alternative options considered

One alternative would be to refuse to accept the offer. However, this would mean that Fusion will be unable to obtain the CLBILS loan and this would cause severe financial difficulty to Fusion and make them more vulnerable to failure.

A Fusion failure is not in the best interest of the Council.

If Fusion were to become insolvent, then there would be no clear date for reopening the New River site.

In the event of Fusion becoming insolvent the Council has two routes available to it to recover its loss at New River.

The first is as landlord, in this situation the Council could forfeit the New River Lease and take the premises back into its control. In this instance the Council's loan would become an unsecured debt (which may have to be written off) but the Council regains control of the site and its future. Fusion or its liquidator could apply for relief from forfeiture and if that happens it will be for the courts to decide.

The second route available to the Council is to enforce its charge over the New River Lease and appoint an LPA Receiver to sell the New River Lease. In the event of a sale the Council would receive up to the amount outstanding under the loan from the sale proceeds. However, any amounts achieved over and above the outstanding loan would go to the Fusion or its liquidator to meet other Fusion debts. The site would be sold on the open market and the Council (as landlord) may have to agree to relax or remove some of the provisions in the New River Lease in order to achieve a sale to a third party in these circumstances.

In addition, if Fusion were to become insolvent then several new risks would be realised on the Leisure Management Contract that covers Park Road, Tottenham Green, and Broadwater Farm.

- The Council would need to step in and manage the facilities until a temporary or permanent arrangement could be put in place. This may include closing the centres for a period.
- All risks and costs of operating the leisure centres would return to the Council until such time as other arrangements are put in place.
- The cost of the leisure centre service in the case of Council step in is estimated to be considerably more than the current cost. An emergency tender for an interim operator is also estimated to cost the Council considerably more.
- The Council would also cease to receive the annual capital repayment for the loan related to the main leisure centre contract for Tottenham Green, Park Road and Broadwater Farm.
- The Council's abilities to achieve its MTFS savings over three years would be lost.
- The extent to which the Council could offer concessionary access to the centres could be reduced.

An alternative option was to bring the service back in house at the point of transfer of the lease back to the Council. This was rejected on the basis that it would not give adequate time to carry out the necessary TUPE consultation with staff employed at New River. Another option to address this TUPE issue was to second staff from

Fusion for a six month period, after receiving further legal advice this was rejected as TUPE would still apply to the Fusion staff from day one of the secondment.

CHAIR:

Signed by Chair

Date