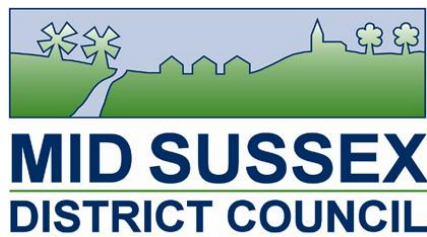


COUNCIL

19 AUGUST 2020



11 August 2020

Unless a majority of the Council resolve to extend the meeting before 9.00 pm it will automatically end at 9.00 pm in accordance with Council Procedure Rule 17.2.

New regulations came into effect on 4 April 2020 to allow Councils to hold meetings remotely via electronic means. As such, Council and Committee meetings will occur with appropriate Councillors participating via a remote video link, and public access via a live stream video through the [Mid Sussex District Council's YouTube channel](#).

To all Members of the Council,

You are hereby summoned to attend a special meeting of the **MID SUSSEX DISTRICT COUNCIL** to be held **VIA REMOTE VIDEO LINK** on **WEDNESDAY, 19TH AUGUST, 2020 at 6.00 pm** to transact the following business:

Yours sincerely,

KATHRYN HALL
Chief Executive

Pages

- | | | |
|----|---|---------------|
| 1. | Opening Prayer | |
| 2. | Roll Call and Virtual Meetings explanation. | |
| 3. | To receive questions from members of the public pursuant to Council Procedure Rule 9. | |
| 4. | To confirm Minutes of the meeting of Council held on 22 July 2020. | 5 - 14 |
| 5. | To receive declarations of Interest from Members in respect of any matter on the Agenda | |
| 6. | To consider any items that the Chairman of the Council agrees to take as urgent business. | |
| 7. | Chairman's Announcements | |

Working together for a better Mid Sussex



8. Leisure Centre Reopening 15 - 24
9. To consider whether to exclude the Press and Public from the meeting during consideration of the following items in accordance with Section 100A of the Local Government Act 1972 on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the said Act.
10. Leisure Centre Reopening - Exempt Appendix 25 - 28

To: **Members of Council:** Councillors C Trumble (Chairman), M Belsey (Vice-Chair), G Allen, J Ash-Edwards, R Bates, J Belsey, A Bennett, L Bennett, A Boutrup, P Bradbury, P Brown, H Brunsdon, R Cartwright, P Chapman, R Clarke, E Coe-Gunnell White, P Coote, M Cornish, R Cromie, J Dabell, R de Mierre, B Dempsey, S Ellis, R Eggleston, A Eves, L Gibbs, I Gibson, S Hatton, J Henwood, S Hicks, S Hillier, T Hussain, R Jackson, J Knight, C Laband, Andrew Lea, Anthea Lea, J Llewellyn-Burke, A MacNaughton, G Marsh, J Mockford, A Peacock, C Phillips, M Pulfer, R Salisbury, S Smith, A Sparasci, L Stockwell, D Sweatman, N Walker, R Webb, N Webster and R Whittaker

**Minutes of a meeting of Council
held on Wednesday, 22nd July, 2020
from 6.00 pm - 9.21 pm**

Present: C Trumble (Chairman)
M Belsey (Vice-Chair)

J Ash-Edwards	B Dempsey	A MacNaughton
R Bates	S Ellis	G Marsh
J Belsey	R Eggleston	J Mockford
A Bennett	A Eves	A Peacock
A Boutrup	L Gibbs	C Phillips
P Bradbury	I Gibson	M Pulfer
P Brown	S Hatton	R Salisbury
H Brunsdon	J Henwood	S Smith
R Cartwright	S Hicks	A Sparasci
P Chapman	S Hillier	L Stockwell
R Clarke	T Hussain	D Sweatman
E Coe-	R Jackson	R Webb
Gunnell White	J Knight	N Webster
P Coote	Andrew Lea	R Whittaker
M Cornish	Anthea Lea	
J Dabell	J Llewellyn-Burke	
R de Mierre		

Absent: Councillors G Allen, L Bennett, R Cromie, C Laband and N Walker

1. ROLL CALL AND VIRTUAL MEETING EXPLANATION.

The Chairman welcomed everyone to the meeting. The Vice Chairman took a roll call of Members present. The Head of Regulatory Services provided a virtual meeting explanation.

2. OPENING PRAYER

The opening prayer was read by the Vice-Chairman.

3. TO RECEIVE QUESTIONS FROM MEMBERS OF THE PUBLIC PURSUANT TO COUNCIL PROCEDURE RULE 9.

The following question was received from David Wooley:

13 months ago, MSDC adopted an 18-point motion on Environment and Climate Change built on commitments in the Sustainability Strategy 2018-2023. We must mitigate climate change wherever we can and without delay.

The motion included several Key Performance Indicators. Will council now publish these pre-Covid historical KPI results for 2018-2019 and also 2019-March 2020 (with particular emphasis on the provision and maintenance of EV charge points), and commit to publishing these KPI results quarterly or 6-monthly from now?

Will council introduce Sustainability Impact Assessments and require that all council projects adhere to the Sustainability Strategy?

Response from Cabinet Member Cllr. J Belsey

This Council has a number of Performance Indicators that relate to our Sustainability work. These are published quarterly and considered by the Cabinet and the Leader, Finance and Performance Scrutiny Committee. The reports for 2018-19 and 2019-20 years are therefore already publicly available. The 18 point list in the Motion were actions that this Council had already taken towards delivery of our strategy. We continue to build on these actions to deliver this work - for example:

- We now have 58 establishments, amounting to 88 outlets, signed up to the Refill programme,
- 25,745 kwh of the electricity used at the Oaklands campus was generated by the solar PV panel in 2019-20 providing an 8.3% reduction in our need for grid-supplied electricity, saving 6,500kg CO2
- The British Heart Foundation kerbside collection pilot of textiles and small electrical equipment resulted in 46 tonnes of clothing being collected in the trial period,

We continue to invest in our parks and open spaces. We have successfully secured commitments from developers to support sustainability measures and interventions. As I reported to the last Council meeting, work to procure a new EV Charge Point Operator for the provision and maintenance of EV charge points, in collaboration with all the other West Sussex District and Borough Councils and County Council, will result in a new operator being in place by the end of the year. I would also stress that councils have no obligation to provide EVCPs and we are doing so to help to stimulate the market.

With regard to the introduction of Sustainability Impact Assessments; this Council continues to have regard to a range of assessments of impact. For example, this includes assessments across a wide range of its activities as is relevant in each matter and it will continue to do so.

Achieving sustainable development is also at the core of the Council's planning service in line with national policy set out in the NPPF. The District Plan and the emerging Sites DPD are legally required to be subject of a Sustainability Appraisal which demonstrate how social, environmental and economic issues have been considered in the preparation of the plan. Planning applications are subject to Environmental Impact Assessments and all applications are considered against policies in the District Plan.

As part of our ongoing work to assess the impacts, challenges and opportunities to do things differently that the recent pandemic has presented, we will continue to review and update our work on Sustainability.

I look forward to bringing further information on that work to colleagues in the coming months.

Mr Wooley sought clarification on the location of the published performance indicators and asked a supplementary question seeking assurance that the new charging points will be maintained by the Council. The Cabinet Member agreed to provide a written response regarding performance indicators and confirmed that ongoing maintenance will be provided to the charging points.

The following question was received from Robin Walker:

On 29th November, 17th December, 4th February, 5th May, 11th June and 19th June, for Theobalds bridleway users and residents, I emailed MSDC's Nathan Spilsted and Sally Blomfield about the "Eastern Greenway" in Lewes District.

I proved it would only be used by 8 commuter cyclists, be ecologically very damaging, cannot be realised without CPOs, and too indirect. A route probably makes sense, but not this one. I asked why no direct central route was seriously considered, despite being shorter, flatter and less disruptive. I have received no substantive response. Why not, and why is this still under active consideration?

Response from Cllr Llewellyn-Burke, Deputy Leader

Thank you, Mr Walker, for your question. I believe your question refers to the recent consultation carried out by the Council in relation to the Place and Connectivity Programme which forms part of the Burgess Hill Growth work. This consultation ended on 25 June.

I do not believe it is the case that you haven't received responses from officers. In fact, officers have been in discussion with you and the Theobald Road Association about this proposal prior to this consultation starting. Indeed, the Council's consultants Sustrans, a nationally recognised expert, spent a day with you and other Burgess Hill and Haywards Heath residents prior to the public consultation. I believe this provided unprecedented access to this Council's consultants.

During the formal consultation we have received correspondence from you however, in line with common practice, the Council does not make individual responses to consultation instead consultation responses are summarised and then made publicly available. In the case of this consultation exercise the responses will be made publicly available on the www.burgesshill.net website by the middle of August.

To be clear, the consultation for the Eastern Greenway referred to by you seeks to widen and improve the surface material and replace bridges on this important link. The fundamental objective of the proposal is to provide a route which is capable of year-round use and which ensures a much-needed safe off-road connection between Burgess Hill and Haywards Heath. The route will be capable of use by all users including children who will in future use this as a safe link between Haywards Heath and the new secondary school to be provided as part of the Northern Arc. This can be achieved without any comprehensive widening of the route and through the use of loose surface material which is also appropriate for equestrian users.

The outcome of the consultation will be considered by the Council and its partners Burgess Hill Town Council and West Sussex County Council during August.

Mr Walker thanked the Council for access to Sustrans but asked if Members were aware that the route from Wivelsfield through Bolnore Village is already owned by the

Council. The Deputy Leader requested that he email with further detail of the route in question. She will provide a written response, and raise during the debrief of the consultation process in August.

4. TO CONFIRM MINUTES OF THE MEETING OF COUNCIL HELD ON 24 JUNE 2020.

The minutes of the meeting of Council held on 24 June were agreed as a correct record of the meeting. The Chairman confirmed that the minutes are summary of discussion held during the meeting and that the full recording is available on the Council's website.

5. TO RECEIVE DECLARATIONS OF INTEREST FROM MEMBERS IN RESPECT OF ANY MATTER ON THE AGENDA.

None.

6. TO CONSIDER ANY ITEMS THAT THE CHAIRMAN OF THE COUNCIL AGREES TO TAKE AS URGENT BUSINESS.

None.

7. CHAIRMAN'S ANNOUNCEMENTS.

The Chairman noted that nominations for the Mid Sussex Applauds 2020 are now open and asked for Member's support in promoting this as widely as possible within local communities.

With regard to the order of business, the Chairman noted that due to significant public and Member interest in item 11, this item will be discussed first, with the other substantive items following after.

8. TREASURY MANAGEMENT STRATEGY STATEMENT AND ANNUAL INVESTMENT STRATEGY 2020/21 - 2022/23.

Cllr Pulfer moved the item. This was seconded by the Deputy Leader.

A tabled amendment (published online) was proposed by Councillor Hicks, seeking the Council to commit to explicitly adopting an ethical investment policy to encourage socially responsible investment. This was seconded by Councillor Eggleston.

The Deputy Leader drew Member's attention to the report which states that 'the Council's shared service will research the range of "green" and "ethical" investments that is developing'. She noted that the proposed overarching policy would tie the hands of the Audit Committee and it raises issues on what is defined as 'green' and 'ethical' from various different standpoints.

Members discussed the amendment. Some Members felt that the amendment was mild, well intentioned and would move forward the Council's commitment to research a range of investments. Other Members felt that the terminology of 'explicitly adopting' could affect the Audit Committee's ability to seek the best investment to protect the funds managed on behalf of residents to provide key Council services. It

was noted that the Audit Committee will consider the research into green and ethical investments at its meeting in September.

The Chairman took members to a vote on the amendment. 30 Members voted against and 18 voted for, therefore the amendment was lost.

The Chairman took Members to the original recommendations which were agreed.

RESOLVED

Council agree:

(i) the proposed Treasury Management Strategy Statement (TMSS) for 2020/21 and the following two years,

(ii) the Annual Investment Strategy (AIS) and the Minimum Revenue Provision Statement (MRP) as contained in Sections 4 and 2.3 respectively of the report;

(iii) the Prudential Indicators contained within this report.

9. MSDC PAY POLICY STATEMENT 2020/21.

Councillor de Mierre moved the item noting that since the Localism Act of 2011 the Council has a statutory obligation to produce the statement annually. This was seconded by the Deputy Leader.

The Chairman took Members to the recommendations which were agreed.

RESOLVED

Council agreed the Pay Policy at Appendix A, to comply with the requirements of the Localism Act.

10. EQUALITY AND DIVERSITY SCHEME 2020 - 2024.

Councillor Webster moved the item noting that it has been reviewed by the Scrutiny Committee in February 2020 and consultation with a number of key groups within the District including Mid Sussex Voluntary Action, Citizens Advice, Town and Parish Councils, Age UK and Mid Sussex Older People's Council. It also includes the Governments request that all Councils formally adopt the IHRA definition of antisemitism. This was seconded by the Deputy Leader.

Members commended the policy, especially noting that against the backdrop of the Covid 19 pandemic, it highlights the immediate need to reflect on how the Council can continue to protect the most vulnerable. Members also welcomed the adoption of the definition of antisemitism and thanked Officers for training provided on equalities issues. The issue of hate crime both in person and on social media was discussed and the Cabinet Member confirmed that Sussex Police are actively promoting the need to report hate crimes so that action can be taken.

The Chairman took Members to the recommendations which were agreed.

RESOLVED

Council agreed to:

- (i) approve the proposed Equality and Diversity Scheme 2020-24 attached at Appendix 1
- (ii) adopt the IHRA definition of antisemitism and guidelines attached at Appendix 2.

11. SITE ALLOCATIONS DEVELOPMENT PLAN DOCUMENT SUBMISSION DRAFT (REGULATION 19).

Cllr MacNaughton moved the item, noting that a politically and geographically balanced constitutional Working Group was set up to monitor the work, meeting 16 times in total and providing 8 updates to the Scrutiny Committee for Housing, Planning and Economic Growth. The criteria used by the group was designed to enable comparison of one site against another to determine the most suitable and developable site in accordance with National Planning Policy Framework. A significant buffer of sites is required especially in the current climate, to ensure the Council can maintain its five-year housing land supply.

He noted a recent request by Ardingly Parish Council to remove site SA25 . They have been advised to submit their comments to the Inspector. Should the draft Site Allocation Development Document (Sites DPD) be approved for consultation, it will enable an eight-week public consultation to begin on 3 August. Even after inspection, all sites will still be required to apply for planning permission.

The item was seconded by Councillor Peacock who noted that a lengthy and detailed process had been followed and reiterated the crucial need to maintain the Council's five-year housing land supply.

Members of the Working Group thanked Officers for the extensive training and technical detail that was provided to enable them to make informed decisions about the sites, based on fact. It was noted that Members have to view the document at District level, rather than from a parish perspective. It is crucial that the Council maintains a delivery plan as requested by the Inspector as part of the District Plan.

Discussion was held on the importance of maintaining biodiversity at a number of sites. The Cabinet Member confirmed that the Council understands the importance of protecting biodiversity, and habitat surveys specific to each site will be required to identify areas that need to be conserved and enhanced.

Members raised concern over sites that have been included in areas that have already met the minimum requirements set out in DP6, and that by inclusion in the Site Allocations DPD, it makes it easier for permission to be granted. There was also concern over sites that bordered other Districts and any delay this may cause in progressing applications. A query was also raised on the delivery of an appropriate cycle network. The Cabinet Member provided reassurance that regular contact is made with bordering Local Authorities, with no delays anticipated. He also reiterated that developers for each site would have to submit applications which would be considered against the relevant policies at the time. Regarding the cycle network the Cabinet Member confirmed that the majority of the network will be provided by Homes England and requested an email on the specific routes that were queried in order to provide a written response.

A tabled amendment (published online) was proposed by Councillor Eggleston, seeking to remove site SA12 and SA13 from the Site Allocations DPD, noting a number of objections to the inclusion of these sites, due to traffic impacts. He also

noted that the District Plan requires a buffer of 20% available sites, with the Council intending to put forward a buffer of 38%, therefore the removal of two sites would not pose a risk. This was seconded by Councillor Dempsey who acknowledged the significance of the issue and expressed a motivation to do the best for the District. He reiterated the traffic concerns and issues around potential coalescence.

Members discussed the amendment. It was noted by some that development of the two sites in question is not suitable for Burgess Hill and may impact on the biodiversity of the area and the view of the South Downs. Concern was raised over the final meeting of the Working Group, whether neighbouring authorities had been consulted and the fact that Haywards Heath Golf Club was not included as a site, despite the potential for development. It was also queried why the Council was submitting a 38% buffer when only 20% was required.

Some Members highlighted the importance of safeguarding the Council's five-year housing land supply by providing as substantial buffer as possible, noting that by removing sites SA12 and SA13 it would remove 340 of the 484 homes that provide the potential buffer. This would be approximately 70% of the buffer and would provide an advantage for developers to promote other sites. It would also take control away from elected Members on behalf of their residents, as the Inspector would choose other sites to take their place. It was noted that the developer for Haywards Heath Golf Club requested 900 homes which was deemed to be inappropriate for the area, and their initial planning application has been withdrawn. The Cabinet Member confirmed that sites SA12 and SA13 were assessed and performed well, and the objections proved to be unfounded.

The Chairman took Members to a vote on the amendment. 19 Members voted for, 28 Members voted against and 1 abstained therefore the amendment was lost.

The Chairman took Members to a vote on the original recommendations which were agreed.

RESOLVED

That Council:

- (i) Approves the submission draft Site Allocations DPD, and supporting documentation, for eight weeks public consultation starting on 3rd August 2020;
- (ii) Agrees that, following conclusion of the public consultation, the submission draft Site Allocations DPD, and supporting documentation, is submitted to the Secretary of State for examination;
- (iii) Authorises the Divisional Leader for Planning and Economy, in consultation with the Cabinet Member for Planning, to make any necessary minor typographical and factual changes to the submission draft Site Allocations DPD prior to submission; and
- (iv) Authorises the Divisional Leader for Planning and Economy, in consultation with the Cabinet Member for Planning, to suggest any necessary modifications to the submission draft Site Allocations DPD during the examination process to help secure its soundness (pending further public consultation as required).

12. RECOMMENDATIONS FROM CABINET HELD ON 6 JULY 2020.

The Deputy Leader proposed the item, which was seconded by the Leader.

A Member expressed appreciation that the demolition of the library in Burgess Hill can progress. Regarding the cost implications, the Deputy Leader confirmed that asbestos removal is required but the price will be competitive as consultants are revisiting costs with a number of contractors.

The Chairman took Members to the recommendations which were agreed.

RESOLVED

BURGESS HILL LIBRARY DEMOLITION 2020

Council approved:

(i) that this project is added to the Capital Programme 2020/21, financed from the General Reserve, and that the Head of Corporate Resources is delegated to contract with those bodies necessary to achieve the project outcomes.

(ii) and that a further report is to follow to Cabinet detailing the project costs.

BUDGET MANAGEMENT 2020/21 – PROGRESS REPORT APRIL TO MAY 2020

Council approved:

(i) that £357,996 grant income relating to Homeless Support Grant be transferred to Specific Reserves as detailed in paragraphs 25 of the Cabinet report;

(ii) that £5,483 grant income relating to Cold Weather Fund Payment Grant be transferred to Specific Reserve as detailed in paragraph 26 of the Cabinet report;

(iii) that £8,428 grant income relating to Local Authority Data Sharing Programme Grant be transferred to Specific Reserve as detailed in paragraph 27 of the Cabinet report;

(iv) that £34,629 grant income relating to Implementing Welfare Reform Grant be transferred to Specific Reserve as detailed in paragraph 28 of the Cabinet report;

(v) that £25,242 grant income relating to New Burdens Verify Earnings & Pensions Grant be transferred to Specific Reserve as detailed in paragraph 29 of the Cabinet report;

(vi) that £1,233 grant income relating to New Burdens Transparency code and £1,380 grant income relating to New Burdens Severe Disability Premium changes be transferred to Specific Reserve as detailed in paragraph 30 of the Cabinet report;

(vii) that £695,753 grant income relating to COVID 19 Council Tax Hardship Fund be transferred to Specific Reserve as detailed in paragraph 31 of the Cabinet report;

(viii) the variations to the Capital Programme contained in paragraph 38 of the Cabinet report in accordance with the Council's Financial Procedure rule B3.

13. TO RECEIVE THE LEADER'S REPORT.

The Leader noted that the Council continues to prioritise work undertaken as part of the Covid 19 response.

He highlighted the ongoing difficult negotiations over the costs of closing and reopening Leisure Centres within the District and confirmed that in common with most Councils in contract with Places Leisure, the centres will not be reopening on Saturday 25 July when the Government lifts the restrictions. It is unlikely that they will reopen in August. This is due to cost implications, and not because of safety concerns. The Council needs to consider the costs and what tax-payer subsidy can be justified, with issues carefully modelled and assessed.

He noted that work is ongoing towards a revised budget and Corporate Plan which will be presented to the Scrutiny Committee in August and Council in September. He welcomed a recent Government announcement offering more support to Councils, of which Mid Sussex is entitled to £170,000, along with a scheme to support low income households. He also noted the Council's need to focus on the economy, and in helping businesses to restart and thrive, and people to return to work or gain employment.

Discussion was held on the reopening of leisure centres and Members requested a standard communication that they could provide to residents on the matter. The Leader agreed to make available his Leaders report as well as further information. He shared the concern of a Member that staff at Places Leisure were potentially not aware of the situation and hoped they are briefed accordingly by their employer. He also reiterated that it is not straightforward to open the centres even partially as The Coronavirus Act 2020 has interrupted contracts for all Council's with external leisure contractors, resulting in the need for complex negotiations and clarity from the Government on how the loss of income will be addressed.

In accordance with Council Procedure Rule 17.2, the Chairman took Members to a vote on whether to continue the meeting beyond 9.00pm. 32 Members voted in favour of continuing and 14 voted against. The meeting adjourned for a 5-minute break, resuming at 8.55pm.

14. REPORT OF CABINET MEMBERS, INCLUDING QUESTIONS PURSUANT TO COUNCIL PROCEDURE RULE 10.1.

Report of the Deputy Leader

The Deputy Leader noted that the Council is proceeding with property plans as far as possible and drew Member's attention to the Colliers website where the sale of land with planning permission for 5 houses and 3 flats is advertised, to assist with income generation.

Report of the Cabinet Member for Economic Growth

The Cabinet Member reported that work undertaken with partners to make High Streets Covid 19 safe has completed. Some adjustments are needed in Hurstpierpoint and he agreed to provide details in writing. He noted that it was too early to assess the true ramification of the Covid 19 pandemic on the economy, but work is underway in order to be prepared when reassessing the Council's economic strategy.

Report of the Cabinet Member for Customer Services

The Cabinet Member noted that Mid Sussex Matters has been published and assured Members that the magazine aims to reflect a balance of projects across the towns and villages. She also noted that virtual Play Days have begun online, and

confirmed the number of business grants that have been issued. By the end of July, a further Hardship Grant will be available for anyone in receipt of Council Tax support and those in arrears seeking financial advice.

Report of the Cabinet Member for Environment and Service Delivery

The Cabinet Member noted that playgrounds are legally open now and Government guidance gave owners and operators discretion to decide when it is safe to open individual areas. The Council has risk assessed all play areas and deep cleaned and prepared 50 sites which are now open. The guidance is being monitored before any further sites are opened. He confirmed that Officers can provide expertise or advice to Town and Parish Councils if required.

Discussion was held on the Blue Heart scheme to provide wildflower areas in some parks. It is currently a trial scheme and if successful may be possible to extend to other areas. The Cabinet Member agreed to provide a written update with details of the scheme and an update on a query over St John's Park where it was felt that the blue heart area potentially occupied valuable leisure space in a popular location.

Discussion was also held on litter collections and a clean-up exercise along the A23. The Cabinet Member requested that any specific issues be emailed to the Council via the Council's website, or by emailing wastematters@midsussex.gov.uk or parksopenspaces@midsussex.gov.uk.

Report of the Cabinet Member for Community.

The Cabinet Member confirmed that the annual Air Quality report has been submitted to DEFRA for approval and once approved will be shared with Ward Councillors before publishing on the Council's website. The anticipated timescale for this is September 2020. He confirmed that the air quality assessment does measure particulates to the level that satisfies the legal requirement.

Report of Cabinet Member for Housing and Planning

The Cabinet Member confirmed that the Planning Department continues to exceed performance targets, and the Housing Department are dealing with an increase in numbers of people seeking support. A further update on the work of the Housing Department will be circulated to Members by email.

15. QUESTIONS FROM MEMBERS PURSUANT TO COUNCIL PROCEDURE RULE 10.2

None.

The meeting finished at 9.21 pm

Chairman

LEISURE CENTRE REOPENING

REPORT OF: Assistant Chief Executive
Contact Officer: Judy Holmes
judy.holmes@midsussex.gov.uk
01444 477015
Wards Affected: All
Key Decision: Yes
Report to: Council
Wednesday 19th August 2020

Purpose of Report

1. To outline the impact of the Covid-19 crisis on the Council's contract with Places Leisure (PL) and provide information and advice about how the risks and costs associated with this can be managed in order to enable the Council's leisure centres to reopen on 1st September 2020.

Recommendations

2. **Council are recommended to agree the following:**
 - (i) **That the negotiated costs associated with the enforced closure of the Council's leisure centres and their reopening as outlined in paragraphs 31 and 36 and the exempt appendix to this report, are noted;**
 - (ii) **That the mechanism for supporting PL to reopen the leisure centres and manage the costs to the tax payer (as outlined in paragraphs 38 to 43) is agreed;**
 - (iii) **That the costs to this Council resulting from this unprecedented set of circumstances be funded from the General Reserve and reported regularly to Members in the usual way; and**
 - (iv) **That the Council agree to remove Clair Hall from the contract with PL (paragraphs 48 to 55 refer).**
-

National Context

3. This report focuses on the impact the Covid-19 crisis has had on the leisure sector in general and the specific issues for this Council. It recommends a way forward that will enable the District's well used leisure centres to open again (with Government required restrictions) and explains why significant financial support from this Council is necessary to enable this to happen.
4. This is a complex matter and there are some risks that Members must clearly understand and balance against the (understandable) desire to enable our centres to open again.
5. The Government required all leisure centres to close from midnight on 20th March 2020. It enabled them to open again from 25th July providing they comply with Covid Secure guidance. This places significant restrictions on the way centres can operate in order to facilitate social distancing and cleaning requirements.

6. Nationally there are a wide range of arrangements in place under which councils like Mid Sussex provide leisure centres. A few still run facilities in house, but the majority work with specialist leisure providers. The structure and size of these providers varies enormously and includes Trusts, charities, community interest companies and private operators.
7. Similarly, the contractual relationships between councils and these providers varies too. As a consequence of this, the impact of the enforced closure of facilities as a result of the Covid-19 crisis, has varied significantly and this in turn, has meant that the Government has struggled to find mechanisms to support the sector through this crisis.
8. Some councils still subsidise their leisure providers, some operate on a profit share basis and others (like this Council) receive a management fee from their providers in return for having the right to operate council-owned leisure facilities. This latter option involves providers taking most of the operational risk and in return having comparative freedom to operate facilities in accordance with their specialist knowledge of the sector and changing customer requirements.
9. The public leisure sector has considerable variation, but there are some common characteristics. This sector often operates on very low margins (1 to 5% income relative to contracts); it is reliant on income for cash flow; often has very limited reserves and can find it difficult to access borrowing.
10. In the light of the manifestation of some of these characteristics and following the enforced shutdown, the Government has made some interventions in order to try to assist councils and their operators.
11. It issued two Procurement Policy Notes (PPN) 02/20 and 04/20 which strongly encouraged councils to work with providers to ensure service continuity during and after the crisis. They included advice on supporting suppliers with cash flow and with payments (where appropriate).
12. Later, the Secretary of State for Local Government announced support for councils that were experiencing significant reductions in their income as a result of the crisis. Members will recall that this included a commitment that the Government would fund 75p in every £1 of income lost (after the first 5%). The Government has clarified that in addition to supporting loss of income (like car parking, planning fees etc), this scheme will also cover management fees paid by leisure providers to councils.

Situation in Mid Sussex

13. Many Members will recall that in July 2014, Mid Sussex entered into a contract with Places Leisure (PL) to operate its leisure centres and halls for 15 years with an option to extend for a further 5 years (until 2034). The contract requires PL to pay an annual management fee to the Council of £1.4m in return for running the Council's three leisure centres, halls (Clair Hall and Martlets, latter now closed), Mount Noddy, and the splash pad (Victoria Park) and paddling pool (Cuckfield).
14. The contract gave responsibility for utility costs and all reactive, planned maintenance and capital works on the leisure centres to PL. The halls were not included in the full repairing aspect of the contract because of their age and use profile.
15. This Concession Contract was let following the Council's Contract Procedures and EU Procurement Rules.

16. Members were deeply involved in the process, with the (then) Leisure and Community Scrutiny Committee overseeing every step in the process. The Council used guiding principles and its leisure strategy to provide a policy framework for the procurement. These included requirements to maintain and enhance service quality, increase participation levels, develop services and opportunities to improve wellbeing, reduce the Council's exposure to risk and cost and enhance opportunities to invest in the facilities.
17. The procurement took place at a time when the market was extremely competitive. It attracted strong interest from a wide range of providers and when the Council awarded the contract in February 2014 it fulfilled all the Council's key requirements and delivered an annual management fee that was extremely competitive. It was then and continues to be a central plank of the Council's financial strategy as the income over the lifetime of the contract is very significant.
18. Since the contract was let the Council has worked effectively with PL. Key performance indicators are considered in detail by Members quarterly and demonstrate a positive picture. In addition, the capital investment so important to the success of leisure facilities, has been secured. To date the Council has invested £1.9m in centre improvements and this has leveraged £4.8m investment in the facilities from PL. This total investment of £6.7m since the contract was let has seen very significant improvements to facilities in all three centres.

Impact of the Coronavirus Act and its Regulations on the Contractual Position

19. As outlined above, the contract with PL is a concession contract. It gives the service provider the right to exploit the service and make money from third parties. The contractor takes the operating risk (encompassing demand or supply risk, or both), in addition they are exposed to any fluctuations in the market.
20. Along with many other councils across the country this Council's contract is based on the Sport England template. As such it includes a Clause which is triggered in the event of a Qualifying Change in Law (QCIL). As confirmed in the Government's Procurement Notes, the instruction to close the centres on 20th March 2020 triggered this Clause; although it seems quite unlikely that the Clause was drafted with the circumstances of a global pandemic in mind.
21. In the event of a QCIL, the contract either requires the Council to work with the contractor to leave them in a 'no better, no worse off' position, with a duty on PL to mitigate the losses in the event of a complete closure, or to activate a force majeure clause. Activating the force majeure clause could result in the contractor terminating the contract, in which case the Council would also be liable for redundancy costs, unless it takes on the leisure staff itself or relets the contract to a new provider.
22. Looking nationally again for a moment, the implications of this are significant. Current estimates suggest that the enforced lockdown of leisure centres, combined with the restrictions imposed on reopening, could cost local authorities nationally over £1.5bn. For many, this is the single biggest financial impact of the coronavirus pandemic, and work is ongoing across the sector to lobby Government on this matter.
23. As the Government has indicated that the Coronavirus Act and its Regulations constitute a Qualifying Change in Law (QCIL), it appears that the Council's obligation to provide financial support to the contractor is triggered. However, the level of support is not prescribed in the contract, and as a result officers have been in extended negotiations with PL over what is reasonable.

24. In recognition of the complexity of this set of circumstances, the Government, through Sport England is supporting Councils by funding expert consultants to work with contractors and Councils to reach agreement. This Council has availed itself of this support and retained specialist advisors to support its negotiations with PL.
25. The negotiations have been ongoing throughout May, June and July. They have been tough and taken many twists and turns. However, officers and the Council's advisors are now of the view that they have reached an end point and the priority is now for Members to carefully consider the cost to the Council (and tax payers of Mid Sussex) of both the enforced closure period and reopening. These must be balanced against the desire to reopen these well used facilities, albeit with significant restrictions on their operation in order to ensure a safe environment for users.
26. This is a difficult issue because the cost implications of the QCIL are significant. As outlined above, the Council relies heavily on the annual management fee (£1.4m) from the contractor to support its direct service provision. Therefore, to lose this fee and move to a position of having to provide significant financial support to PL is very difficult to accommodate; not least because the Council's other sources of income have also been hugely impacted by the Covid-19 crisis.
27. However, as outlined above, the Government's Scheme to support councils experiencing loss in income will assist in the 2020/21 financial year. Importantly though, the Government has made clear that its scheme only applies to the 2020/21 financial year. Therefore, if the current situation extends into 2021/22, the impact on the Council's financial position will be significant.
28. Members need to carefully consider these matters and the related risks.
29. The impact of the QCIL means the Council needs to consider two areas:
 - (a) Closure costs; and
 - (b) Costs of reopening.

Closure costs

30. After tough negotiations and some regrettable delays in producing the necessary information, officers and their advisors have been able to undertake a line-by-line analysis of PL's claim for the costs associated with enforced closure of the centres since March 2020.
31. The conclusion of this is that total closure costs are **£943k** (March to August) (subject to final reconciliation). This is in addition to the Council forgoing the Management Fee (£120k per month).
32. A more detailed analysis of this is provided in the exempt Appendix.

Reopening costs

33. PL have developed a model to forecast likely usage levels for all facilities in the light of the Government's guidance regarding social distancing. Clearly most expenditure is fixed and is required irrespective of whether the centres can operate at full capacity.

34. However, income is more difficult to predict. There are still a large number of unknowns regarding the trajectory of Covid-19, the speed with which lockdown measures will be eased, the public appetite for returning to leisure centres and the risk of local outbreaks. However, PL's assumptions and income modelling have been thoroughly scrutinised by officers and our expert consultant and are considered cautious but reasonable.
35. They assume all three centres reopen at the same time and that usage levels start low and build as customer confidence grows. They also take account of the Government's restrictions. Appendix A provides an overview of PL's current plans for which services will be available to the public, over which timescale.
36. These forecasts indicate a cost to this Council of approximately **£1.5m** to April 2021, assuming the restrictions currently in place.
37. Given the length of time the facilities have been closed, it will take PL two weeks to get the facilities and plant ready and undertake the work essential to public safety given the Covid Secure requirements. PL have decided to commence these reopening procedures at their own risk. This means that, if Members agree the recommendations in the report, all three leisure centres will be able to open on 1st September 2020.

Review and Monitoring Mechanism

38. However, given the very significant uncertainty governing both the progress of the virus, the current restrictions and possibly most significantly, customer behaviour, officers have negotiated a very flexible mechanism which should enable the Council and PL to respond to opportunities and risks as they emerge.
39. This mechanism involves the Council forward funding 75% of the anticipated costs for PL to open and run the centres on a month by month basis (based on PL forecasts). This will then be reconciled to actuals at the end of every month. This will be done on an open book basis. The negotiated position is that this mechanism is only agreed for the first 3 months; thereafter it is subject to review.
40. This should enable PL to open the Centres and operate and enable this Council to satisfy itself that the burden on the tax payer is being actively managed by PL. It is also flexible enough to take account of actual customer behaviour, use of the facilities (including income) and any change to restrictions (positive and negative).
41. Detail of the assumptions and costs, month by month are provided in the exempt Appendix to this report. The actual cost to this Council will obviously depend on the support the public gives to the facilities but, as outlined above, PL's estimates provide a reasonable starting point.
42. It is proposed that these arrangements are kept under active review. Officers are very mindful of value for money for the tax payer. If Members agree this mechanism at this point, it will be reviewed after three months and a decision made about whether to continue for a further three months, in consultation with the Leader and Portfolio Holder.
43. In the longer term, a proposed programme of work involving a strategic review of all the Council's long term contracts (in a post Covid-19 world) will enable opportunities to keep this contract under active review. This will be outlined in the Revised Corporate Plan for 2020/21 to be considered by Members shortly.

Management Fee

44. It is proposed that the Council forgoes any management fee payments that it was due throughout the enforced closure (March to opening), and for at least the first three months of reopening (at which point the issue would be subject to further review).
45. As outlined above, the Government's Income Scheme should enable the Council to claim some reimbursement for this budgeted income in the current year. Officers will maintain pressure on PL to uphold its contractual obligations to mitigate its costs and to flex service provision as customer preferences in a post Covid-19 environment become clearer.
46. There is a clear expectation that PL will work to ensure this significant support from the tax payer is reduced and eliminated as quickly as possible and that a return to the position where the Council starts to receive its management fee again, is achieved.

Insurance

47. The Council understands that PL has insurance for business interruption. However, Members will also be aware that this issue is currently being litigated through the High Court and at the time of writing, is unresolved. PL has accepted that the arrangements outlined above would be subject to a successful claim. Officers will keep this matter under review and should PL's claim be successful it will, of course, be built into the monthly review mechanism of managing the reopening of the leisure centres outlined above.

Clair Hall

48. The position for Clair Hall is quite different to that of the leisure centres. There is currently no clear indication for when venues like Clair Hall can reopen, but larger theatres appear to be planning for a very prolonged period of closure.
49. As outlined above, because of the age of Clair Hall and its low usage, it is included in the PL contract but at a cost to the Council (i.e. deducted from the management fee). In addition, the Council retains full repair and maintenance responsibility.
50. Clair Hall is not economically viable to run. It runs at a loss and assuming it can open at some stage in the future, social distancing requirements and other restrictions will make its viability even more challenging.
51. It was constructed over 50 years ago and is beyond its economic lifespan. The cost of maintaining and repairing the building over the next 20 years is estimated to be £1m. In addition, a new legal standard for minimum energy efficiency (MEES) commencing in April 2023, places a penalty on landlords who continue to let any buildings which have an EPC rating of less than E. This will certainly apply to Clair Hall and penalties for non-compliance are likely to be applied unless significant work is done to improve the building's energy efficiency.
52. Usage at Clair Hall has steadily declined over the last four years.
53. Therefore, given the significant uncertainty over when this facility can open again and its poor value for money for the tax payer, it is recommended that it is removed from the contract with PL at this time. This would relieve PL of some cost pressures and help with the overall affordability of opening the leisure centres and will need to be part of the agreement with PL.

54. The Council can consider the future of the site at some future point, the priority now being to agree a process for enabling the leisure centres to reopen.
55. The Redwood Centre is unaffected by the proposal to remove Clair Hall from the contract with PL.

Conclusion

56. This report outlines a basis upon which the Council can enable PL to reopen the District's leisure centres for public use (with restrictions to enable public safety).
57. Members need to carefully consider the considerable financial impact on the Council and tax payers of Mid Sussex of this and balance it against the importance of our well used leisure centres to local communities and the contribution they make to the wellbeing of our population.
58. The situation faced by the Council is shared by many others nationally. The impact of the Covid-19 crisis on our contractual position with PL is unprecedented.
59. Officers are comfortable that the negotiated mechanism for managing the costs to the tax payer on a monthly basis, will provide a sufficiently flexible way of ensuring PL make strenuous efforts to keep the cost to the tax payer at an absolute minimum. It will also enable constant pressure on PL to develop new and innovative ways of providing services that comply with Covid-19 restrictions but maximise income and customer choice.
60. For the 2020/21 year, the costs of the enforced closure and reopening of the leisure centres will need to be met from the Council's General Reserve. This is tolerable for the short term but is not sustainable in the long term. Members will be able to consider this matter, in the round, when they consider the Revised Corporate Plan for 2020/21 shortly.
61. If Members support the recommendations in this report and enable the centres to reopen (from 1st September 2020) they will be doing so in a very uncertain commercial environment. It is currently very unclear how customer preferences for using leisure facilities will be affected by the Covid-19 crisis or how the leisure industry will need to adapt to a post Covid-19 trading environment.
62. The Council will need to maintain careful scrutiny of this as the next few months progress. These matters will be reported to the Portfolio Holder and Cabinet as appropriate. The recommendation to remove Clair Hall from the contract will provide PL with more freedom to manage the challenging commercial environment.

Financial Implications

63. Members should note that this is the most significant aspect of our Medium Term Financial Plan (MTFP) pressure. Whilst the income protection scheme mitigates the worst of the income loss, it does not assist with the increased costs from the prolonged closure or the reopening where expenditure is in excess of forecast income for some months.
64. The effect of this is that those costs form part of a direct draw on the General Reserve – probably in the region of **£2.5m** in 2020/21.
65. Whilst this is within our financial capacity, and could be sustained over the short to medium term if absolutely necessary, at some point overall income and expenditure should be brought back into equilibrium to enable a balanced budget to be set.

Policy Context

66. This decision will enable the Council, in accordance with the requirements of the leisure contract, to reopen its leisure centres.

Other Options Considered

67. The Council could decide to not reopen the leisure centres. However, this would result in a loss of amenity for residents and would incur costs for the Council. A decision to not reopen could trigger a breach of the Council's contract with PL resulting in the termination of the contract. This would mean the Council would no longer have a provider to run its centres. In this situation the Council could choose to run the centres or to relet the leisure contract to another provider. Re-procurement is expensive and protracted with no guarantee that a provider would be interested given the risks of operating centres under the Government's current restrictions. If a new provider was secured there is no guarantee that the Council would secure as beneficial a contract as it currently holds with PL. The Council does not have the expertise or capacity in house to operate the leisure centres.

Risk Management Implications

68. There are commercial risks for PL in terms of trading in an uncertain environment; during the Covid-19 pandemic. How the public will respond to the centres reopening and how they will use them, is not fully understood at this point. In addition, the untested legal situation regarding the QCIL means the requirement for the Council to support PL (and for how long) is also unclear.

Equality and customer service implications

69. The purpose of an equality impact assessment is to determine whether it is likely that there would be a negative impact on any protected groups as a result of any service changes and if so to consider whether these can be mitigated or under the proposal should be changed or dropped. It is not considered that reopening the leisure centres would have a negative impact on any protected groups.

Other Material Implications

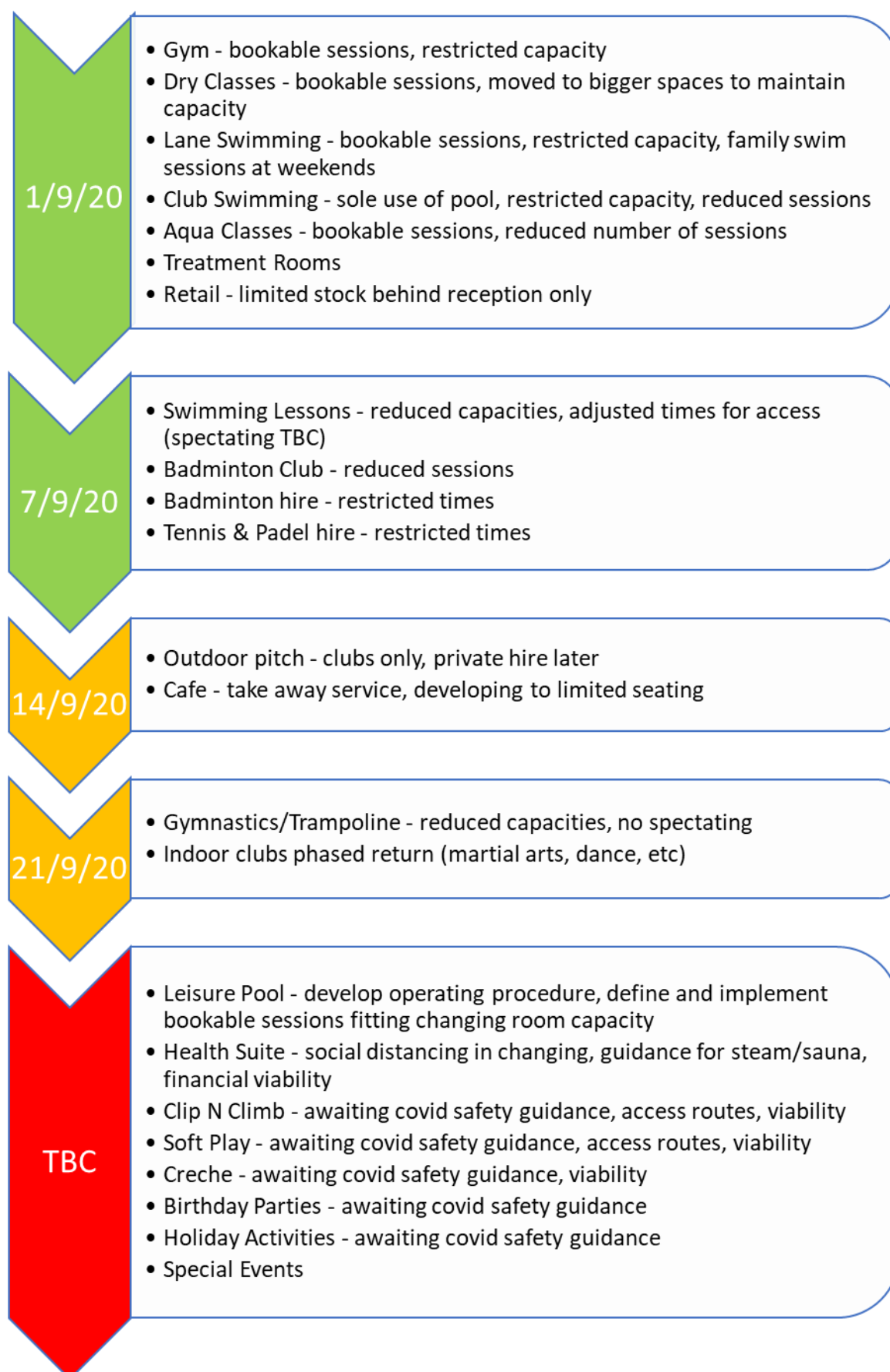
70. None

Background Papers

None

Places Leisure Reopening Phasing Plan

*Subject to confirmation of Covid-19 measures for each activity, successful previous phases, easing restrictions, balancing reduced programming and ongoing review.



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