

Cabinet

14 December 2011

Review of Indoor Sport & Leisure Facilities Update - Ferryhill Leisure Centre



MTFP NS1

Report of Corporate Management Team

Terry Collins, Corporate Director Neighbourhood Services

Councillor Bob Young, Portfolio Holder for Strategic Environment

Purpose of the Report

1. The purpose of this report is to seek approval to enter into discussions with Ferryhill Community Partnership for the lease of Ferryhill Leisure Centre, giving delegated approval for the agreement of the lease to the Corporate Director of Neighbourhood Services and Portfolio-Holder for Strategic Environment.

Background

2. On 2 March 2011 Cabinet approved the Sport and Leisure Strategy 2011-2014 and considered the outcome of a wide ranging review of Indoor Facilities, approving consultation on the potential closure or transfer of six indoor facilities to 3rd party operators.
3. Following an extensive consultation process, Cabinet considered a further report (13 July 2011) detailing the outcomes and making recommendations as to the future of the six facilities identified in the earlier report. Cabinet agreed to a number of recommendations, including the closure of facilities at Ferryhill, Glenholme and Sherburn; the commencement of discussions with Deerness Valley Gymnastics Club and Future Leisure in Coxhoe in order to transfer Deerness Leisure Centre and Coxhoe Leisure Centre to these organisations and for the Council to continue to retain and operate Abbey Leisure Centre on a restricted basis in order to minimise cost / achieve a net nil subsidy from the Council.
4. Whilst Cabinet recognised the extensive and inclusive consultation process that had been followed with regards to seeking alternatives to closure, it ultimately approved the closures of facilities at Ferryhill, Glenholme and Sherburn. At the same time Cabinet also highlighted its commitment to consider any further 3rd party submissions that might be received prior to the closure date that would result in the continued operation of the facilities, so long as this was at nil cost to the Council in terms of revenue and capital funding and that TUPE requirements had been fully met where appropriate.

5. At its meeting on 22 September 2011 Cabinet approved a report that saw Sherburn Leisure Centre transferred to Sherburn Parish Council. At the same meeting it was agreed to progress with the closure and demolition/disposal of indoor leisure facilities at Ferryhill and Glenholme from 1 October 2011.
6. In light of the undertaking to consider any further submissions (new proposals and/or variations and updates to proposals that were originally considered during the consultation process) Ferryhill Community Partnership subsequently contacted the Council to register their interest in operating from Ferryhill Leisure Centre.

Ferryhill Community Partnership

7. Ferryhill Community Partnership is an established group that have come forward with proposals to operate Ferryhill Leisure Centre as a community facility.
8. The Partnership have approached the Council with a proposal to retain Ferryhill Leisure Centre as a members "community club" that will operate during significantly reduced opening hours (3:00pm to 10:30pm Monday to Friday and 11:00am to 11:00pm Saturday and Sunday). All users will need to become members, paying a monthly fee of £5. Members will be offered a variety of facilities including: offices for business incubation service, a pub/bistro offering meals, the use of rooms for community groups, a centre for performing arts, and the use of the sports hall.
9. The centre will be managed by volunteers, who will each give four hours per week of their time to run the centre. The opening times will give a requirement of 64 hours per week by volunteers, meaning a minimum of 16 volunteers is necessary, (currently there are 32 volunteers).
10. The Partnership has also provided information setting out how they intend to manage compliance matters associated with operating the facility. Whilst the centre will be operated by volunteers, their business plan suggests that they will have a range of people with the necessary skills to ensure the safety of users. There are arrangements proposed to manage health and safety, first aid, booking arrangements, security, safeguarding and all compliance matters.
11. In addition to the volunteers, a security firm will be contracted to provide an employee to open and close the premises as required and to act as emergency cover should there be any problems outside of normal working hours. This person will also be qualified in first aid, health and safety matters, fire and building evacuation drills and any other legitimate concern of maintaining the safety of the users of the centre. It is expected that they will also assist with daily administration.
12. Having evaluated in detail the submission from Ferryhill Community Partnership, it is considered that the proposal provides the appropriate level of confidence to be recommended as a potential operator, subject to discussions regarding the subsequent lease of the facility.

HR Implications

13. The foundation of the proposal, with which the Council's legal team agrees, is that TUPE does not apply. On this basis the risks associated with the transfer are significantly reduced in that no staff will transfer. The bid also refers to the continued operation of the facility in order to enable use of the local outdoor amenities and as a potential venue for other outdoor sports and community use. However should the partnership deviate from their proposals outlined in their business plan there is a risk that TUPE would apply.
14. On the basis of the change of use at Ferryhill Leisure Centre, both in terms of the facilities provided, who can access (i.e. members only) and significantly reduced operating hours proposed, there will be no requirement for TUPE consultation with employees or their representatives.

Financial Considerations

15. Finance officers have undertaken a review and provided detailed feedback to the Ferryhill Community Partnership on their business plan (for a summary Appendix 2). Although the outcome of this review is that there are no financial issues to the Council which would prevent the transfer of the facility; it is important to highlight the following areas of risk:
 - Although there is a cumulative net surplus of £55,290 at the end of 4 years the partnership recognises this relies on high risk income generation. This is mitigated by proposed fund raising which is not confirmed.
 - The Partnership has requested Ferryhill Town Council provide a £20,000 bank guarantee.
 - The proposal require the Bowls Club to pay for their share of utility costs, however, there is no written commitment to this.
 - Membership is required to grow from 100 in year 1 to 600 by year 4.
 - There is income forecast from a community group named Entercic, this is again reliant on grant funding which is not confirmed.
16. AAP/Members funding is included within the bid although this is yet to be confirmed.

Sport England Issues

17. As part of the facilities review a number of grants awarded to former District Councils for which Durham County Council is now responsible for meeting the conditions of award were identified. Of particular relevance to this report is the award of lottery funding to Ferryhill Leisure Centre for the provision of a bowls extension (£1,379,786).
18. While under the conditions of the grant, Sport England could claw-back funding, officers have met with Sport England representatives who have agreed that they are sympathetic to the position the Council finds itself in and would not be clawing the grant back, subject to a number of mitigation measures based on the Council's future investment into sport.

As part of this agreement they have specifically requested that any receipts arising from the disposal of any sites should be ring-fenced for investment back into sport in order to support delivery of the Council's vision of a network of sports facilities based on the settlement hierarchy (see Cabinet Report 2 March 2011).

19. At the time of negotiating this position with Sport England the closure of Ferryhill Leisure Centre was approved and included within the level of capital receipt that was anticipated. Although formal communications have not taken place with Sport England on the revised plan for the Centre, there is a risk that without this resource being made available or the Partnership's failure to facilitate full and proper use of the facility, that Sport England may change their position on this matter.
20. Should this be the case it should be noted that based upon the period since the award was made and the length of term of the grant, full claw-back, if required, could be up to 80% of the award or £1,103,828.
21. Although the business plan identifies that the facility will be available for bowls, the plan relies upon the bowling club meeting the full cost of their use. Clarification will need to be sought during the negotiation of the lease that the bowling club are in a position to meet these costs. The Council will need to seek assurances from the Partnership and Sport England that the terms of the grant funding are upheld.

Conclusion

22. A potentially viable business case for Ferryhill Leisure Centre has been identified resulting from a proposal made by Ferryhill Community Partnership. This requires consideration by Cabinet as it has the potential to amend the decision made on the 22 September 2011.
23. Should Cabinet approve the recommendations of this report then the leisure facility at Ferryhill will continue to operate, at nil cost to the Council, delivering services to the community.

Recommendations and Reasons

24. It is recommended that:
 - i) Approval is given to commence discussions with Ferryhill Community Partnership for the lease of Ferryhill Leisure Centre, giving delegated approval for the agreement of the lease to the Corporate Director of Neighbourhood Services and Portfolio-holder for Strategic Environment, subject to satisfactory arrangements relating to finance and operational matters being concluded.

Background Papers

- Report to Cabinet 2 March 2011 – Indoor Facilities review
- Report to Cabinet 13 July 2011 – Review of Indoor Sport & Leisure Facilities
- Report to Cabinet 22 September 2011 – Review of Indoor Sport and Leisure Facilities – Update and Evaluation of Further Bids
- Durham County Sport and Leisure Strategy 2011-2014 (Cabinet 2 March 2011)
- Durham County Corporate Plan (2011)

- Sustainable Community Strategy for County Durham (June 2010)
- County Durham Sub-Regional Facility Study 2009
- Sport England Facility Planning Modelling Data 2011
- Bids / Submissions by 3rd Party Operators

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Appendix 1: Implications

Finance –

The financial implications of the Leisure Centre Facilities Review were included within the Cabinet report of 13 July 2011.

Staffing –

The service continues to implement the implications of the Council's change management protocols as recommended within the Cabinet report of 13 July 2011. On the basis of approval of the report's recommendations and of the change of use at Ferryhill LC there will be no TUPE transfer.

Risk –

Ferryhill Partnership has successfully demonstrated to the Council and to legal advisors that TUPE does not apply. However should the partnership deviate from their proposals outlined in their business plan there is a risk that TUPE would apply.

There is a further risk with regards to the Sport England grant funding and the Council will need to take measures to control these risks as part of the leasing negotiations.

Equality and Diversity / Public Sector Equality Duty

An Equalities & Diversity Impact Assessment has been completed for the overall Leisure Facilities Review, with appropriate actions and mitigations identified. Impacts to the protected equalities strands associated with the proposals for Ferryhill Leisure Centre were subject to a detailed and thorough Equalities Impact Assessment which was last reviewed on 8 June 2011. In light of this new proposal a further EqIA screening has been carried out. (Appendix 4)

Accommodation -

N/A

Crime and Disorder -

N/A

Human Rights -

N/A

Consultation -

A comprehensive consultation process has been implemented for the Leisure Facilities Review as referred to in detail within the Cabinet report of 13 July 2011.

Procurement –

A number of procurement issues have been resolved in relation to the closure of this site. A comprehensive list of all contracts has been compiled and consultation with contractors undertaken. In relation to the competition line contract the corporate procurement officer has indicated that novating this contract to another Council facility would be acceptable subject to agreement with Competition Line.

Disability issues -

The full Equalities & Diversity Impact Assessment undertaken for the Facilities Review sets out measures to mitigate the impacts upon people with a disability.

Legal Implications –

Legal advice has been provided with regards to TUPE with the Ferryhill Community Partnership. In providing this advice consideration was given as to whether or not the future economic entity will retain its identity, i.e. the “going concern” test. After consideration of the factors relating to this, it is legal’s view, on the balance of probabilities, that it is likely that TUPE will not apply.

Appendix 2: Financial Review

1. The Business Plan submitted in support of the proposal included a Profit and Loss Account and Cash Flow Statement for the four year period from 2012-13 to 2015-16. These statements include income and expenditure budgets for the period which were assessed for their accuracy and adequacy.
2. There is a cumulative net surplus of £55,290 at the end of the four year period based on total projected income of £653,000 and expenditure of £597,710. The overall surplus represents a margin of 8.5% against turnover. See Appendix 3 for a detailed breakdown of Profit & Loss Account figures.
3. The Partnership has included a sensitivity analysis in its Business Plan that highlights loss of income as the biggest risk to generating a surplus. To mitigate the risk to income the Partnership proposes that between £5,000 and £10,000 be raised through fund raising before starting the project. It will also ask Ferryhill Town Council to provide a £20,000 bank guarantee.
4. The income is generated from a number of diverse areas including community grants, monthly membership fees, room and hall hire, rental of business incubator units, bar hire and bowls.
5. The community grants from the AAP/Members have been confirmed and will be received in Year 1. The fact that the grants are front ended obviously impacts on the surpluses and cash flows for the next few years resulting in a small deficit in Year 2 and more modest surpluses in Years 3 and 4.
6. Members' fees are based on an initial membership of 100 increasing to 600 from the start of Year 4. Membership will cost £5 per month.
7. There is forecast income from a community development group called Enteric due to a long term rental agreement, which the group will finance from Lottery grant income and disabled persons grant.
8. The bar area will be rented out to a local licensee who will refurbish the area to create a bistro/bar.
9. Office facilities will be developed and rented out as business incubator units.
10. The Bowls Club will pay for use of the bowls facility and will also be recharged for a share of the utility costs.
11. The balance of income will be generated from the hire of rooms and the sports hall and other unspecified sources.

12. Much of the income is to be generated from diverse new sources and the assessment undertaken by the Council highlighted the following risk issues, which were reported to the Partnership:

- The commitment from Entercic and the hire charges agreed.
- The commitment of the licensee and the robustness of the business plan for the bar/bistro development.
- The operational details and the on-going costs for the business incubator units.
- The strategy to drive membership numbers to the necessary levels to generate the projected income.
- The basis and method for recharging the Bowls Club for use of the bowls facility.

13. All expenditure budgets have been compared to equivalent outturn figures for the Council's facilities and any apparent shortfall or inadequacy in the estimated budgets has been reported back to the Partnership. The Partnership is confident that the budgets provided in the Business Plan are appropriate for the facility and its intended usage and that they will benefit from the access to alternative funds and markets that charitable status will allow them.

14. There are no direct employee costs as the facility will be staffed by volunteers drawn from the membership. They will be supported by staff hired from a private security firm staff, which will provide a security and administrative function. The Partnership state in their Business Plan that the legal advice they have received indicates that TUPE does not apply under the proposed usage.

15. The expenditure budgets must be appropriate to support the facility and the following risk issues have been highlighted to the Partnership:

- The adequacy of some of the premises related budgets, especially relating to utilities, and the budget to cover repairs and maintenance over the period.
- The treatment of VAT and the impact on projected surpluses, which will depend on the legal status of the organisation and its registration as a charitable body.

16. The Partnership has been provided with detailed feedback regarding all of the concerns identified by the Council in relation to the Business Plan and the forecast budgets in the Profit & Loss Account.

17. No Council employees will transfer into the new organisation.
18. Grant income from the AAP/Members has been confirmed in Year 1, but there will be no core funding received from the Council, or any future funding support received from Sports & Leisure.
19. The facility will be transferred to the Partnership on a lease with appropriate conditions and restrictions regarding its use, similar to those incorporated into the Sherburn Leisure Centre agreement. This will protect the Council from legal challenge if the use of the facility was subsequently changed.
20. Based on the above information, there are no financial issues that would prevent the transfer of the facility to the Partnership.

Appendix 3: Ferryhill Community Partnership Projections for Leisure centre
**Profit & Loss Account
2012-13 to 2015-16**

	Year 1	Year 2	Year 3	Year 4	Total	Total
	2012-13	2013-14	2014-15	2015-16	£	%
	£	£	£	£	£	%
SALES						
Members fees	10,450	24,000	36,000	36,000	106,450	16.3%
Enterkick	12,000	12,000	12,000	12,000	48,000	7.4%
Bar	12,000	14,000	15,000	18,000	59,000	9.0%
Business Incubation units	6,500	12,000	13,000	15,000	46,500	7.1%
Cleves Room	10,300	20,000	22,000	25,000	77,300	11.8%
Millen room	2,800	4,500	6,500	7,200	21,000	3.2%
Sport Hall	19,300	30,000	32,000	35,000	116,300	17.8%
Bowls	4,500	9,000	10,000	12,800	36,300	5.6%
Other member usage	2,550	6,500	9,500	10,000	28,550	4.4%
Community Grants	65,000	-	-	-	65,000	10.0%
Bowls Utility contribution	9,600	12,000	13,000	14,000	48,600	7.4%
Total	155,000	144,000	169,000	185,000	653,000	100.0%
OVERHEADS						
Security contract	42,000	54,000	62,000	68,000	226,000	37.8%
Cleaning contract	6,000	7,200	7,800	8,400	29,400	4.9%
Professional Finance Ass fees	7,200	7,200	8,400	9,600	32,400	5.4%
Volunteer expenses	4,800	7,200	7,500	8,000	27,500	4.6%
Rent	-	-	-	-	-	-
Rates	13,200	13,200	14,000	14,400	54,800	9.2%
Water	4,800	4,800	5,200	6,000	20,800	3.5%
Insurance	8,040	8,400	9,000	9,600	35,040	5.9%
Electricity	24,000	25,800	27,000	28,000	104,800	17.5%
Gas	7,200	7,800	8,400	8,800	32,200	5.4%
Telephone	1,200	1,200	1,200	1,200	4,800	0.8%
Repairs	2,400	3,000	3,300	3,600	12,300	2.1%
Advertising	400	400	500	500	1,800	0.3%
Post	600	600	600	600	2,400	0.4%
Sundry	600	600	600	600	2,400	0.4%
Motor expenses	600	600	600	600	2,400	0.4%
Legal & Professional	150	250	150	300	850	0.1%
Waste Disposal	600	720	800	900	3,020	0.5%
Bank Charges	600	600	600	600	2,400	0.4%
Bank Interest	600	600	600	600	2,400	0.4%
Loan Interest	-	-	-	-	-	-
Depreciation	-	-	-	-	-	-
Total Overheads	124,990	144,170	158,250	170,300	597,710	100%
NET PROFIT	£30,010	-£170	£10,750	£14,700	£55,290	