

Cabinet

22 September 2011



**Review of Indoor Sport & Leisure
Facilities – Update & Evaluation of
Further Bids**

**Key decision NS/04/11
MTFP: NS1**

**Report of Terry Collins, Corporate Director, Neighbourhood
Services and Councillor Bob Young, Portfolio Holder for Strategic
Environment and Leisure**

Purpose of the Report

- 1 At its meeting of 13th July 2011 Cabinet agreed to close indoor leisure facilities at Ferryhill, Glenholme and Sherburn from 1st October 2011. At the same meeting Cabinet also indicated that consideration would be given to any further proposals received prior to closure taking effect. The purpose of this report is to inform members of proposals that have been subsequently received and the outcome of the evaluation of those bids, following the Cabinet report in July.

Background

- 2 Members will recall that Cabinet (2 March 2011) 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 outcome of that consultation exercise and making recommendations as to the future of the six facilities identified in the earlier report.
- 4 Members will be aware of the financial pressures in terms of meeting the Medium Term Financial Plan (MTFP) savings targets. These targets include the need to achieve an annual saving of c£1.098m from a review of indoor leisure facilities. Actual savings resulting from the proposals approved by Cabinet were £1.105m, £7K over the required saving within the MTFP.
- 5 At its meeting in July, Cabinet agreed to a number of recommendations. Included within these were 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.

- 6 Whilst Cabinet (July) recognised the extensive and inclusive consultation process that had been followed with regards to seeking alternatives to closure and ultimately approved the closures of facilities at Ferryhill, Glenholme and Sherburn, it also highlighted its commitment to consider any further 3rd party submissions that might be received prior to the closure date that would result in 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.

Evaluation of 3rd Parties

- 7 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) a number of organisations subsequently contacted the Council to register their interest in operating one or more of the facilities.
- 8 All organisations received information and support whilst compiling their business proposals. This included a number of meetings between the various organisations and Council officers (including Sports & Leisure staff, Finance, HR and Legal Officers as appropriate) and/or Members to discuss the proposed submissions. All 3rd parties took up the opportunity to attend at least one of these meetings; with some attending several meetings to discuss in detail their ideas / proposals.
- 9 There were two types of organisation that subsequently submitted bids; community enterprises established for the sole purpose of operating a centre from within the local community and a not for profit organisation operating either with the support of local community groups / Town or Parish Councils or in collaboration with them.
- 10 Seven submissions were received from six organisations as follows:

	Ferryhill LC	Glenholme LC	Sherburn LC
Organisation 'A'			✓
Organisation 'B'			✓
Organisation 'C'			
1. With support of local council			✓
2. With support of local council	✓		
Organisation 'D'	✓		
Organisation 'E'		✓	
Organisation 'F'		✓	

- 11 As with the original evaluation, the new / revised proposals have been assessed by an Evaluation Panel, made up of officers with a range of experience and expertise relevant to the task, including Finance, HR, Asset Management and Sport & Leisure staff, supported by detailed guidance and advice from colleagues in Legal Services. In order to ensure consistency the same panel which considered the original bids was reconvened to evaluate the most recent submissions.

- 12 In considering the various submissions the panel needed to be mindful of the potential operator's competence in order to ensure that they were able to meet the compliance issues associated with the safe operation of a public facility. As identified in the previous Cabinet report, the application of TUPE is a significant consideration with regards to the bidders and the Council have clear legal obligations in this regard. Where the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) applies it is important that the Council is satisfied that the organisation into which staff will transfer is competent and viable and can accordingly demonstrate adequate responsibility in this regard.
- 13 Having given all the proposals full consideration it was the panel's view that the outcomes of this evaluation are as follows:
- i. There is no suitable business proposal for Ferryhill Leisure Centre. Therefore the position with regards to the closure of the centre from 1 October 2011, agreed at Cabinet on 13 July 2011 remains unchanged.
 - ii. There is no suitable business proposal for Glenholme Leisure Centre. Therefore the position with regards to the closure of the centre from 1 October 2011, agreed at Cabinet on 13 July 2011 remains unchanged.
 - iii. There is one potentially suitable business proposal for Sherburn Leisure Centre. Organisation 'B' (Sherburn Village Parish Council) has submitted a proposal that the Evaluation Panel recommends for consideration by Cabinet, subject to appropriate conditions within any subsequent lease.
- 14 Sherburn Village Parish Council have proposed to retain Sherburn Leisure Centre as a members "community club" that will operate during significantly reduced opening hours (4.00pm – 9.00pm weekdays and 10.00am – 5.00pm on a weekend). All users will need to become members, paying an initial monthly fee of £5. The gym facilities will be removed. On this basis the organisation believes that TUPE will not apply and has obtained legal advice supporting this view. The advice from the Council's legal team, based on the information provided by the Parish Council is also that, on the balance of probabilities, TUPE will not apply. However should the Parish Council deviate from their proposals as outlined in their business proposal, there is a real risk that TUPE would apply.
- 15 The Parish Council is committed to providing finance in the first year to guarantee any losses, as are two local businesses. Volunteers and members will run the centre on a day to day basis.
- 16 Having evaluated in detail the submission from Sherburn Village Parish Council, 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. 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.
- 17 The reasons for rejecting other bids, relating to Ferryhill, Glenholme and Sherburn, are specific to each of the submissions and all submitting organisations will receive detailed feedback. However there were some common themes as follows:

- *Financial Margins*

A number of the bids demonstrated very small margins between income and expenditure. Without the availability of working capital or the backing of an organisation with the ability to support it, such small margins put at risk the ability of the organisation to withstand relatively small increases in costs or downturn in income, issues which can be commonplace when trading within a leisure market.

- *Unrealistic or unsubstantiated income targets*

Whilst it is understood that greater levels of income than those achieved under the Council's operation might be generated, it is essential that targets are reasonable and substantiated, especially at times where personal disposable income is under pressure. It is the panel's view that some income targets are not realistic or are not substantiated. In some instances bids were predicting growth in excess of 100% over a three year period. Where the issue of unrealistic targets are also combined with small margins, as described above, sustainability within the financial business case was highly questionable in a most cases.

- *Under provision of expenditure*

In many instances no structured capital or asset replacement plan was provided. Budgets for repairs and maintenance from a number of organisations also appeared insufficient. Insufficient provision for central management or support costs within most of the bids was also a concern for the panel, particularly where organisations have substantial off-site personnel teams to finance.

- *TUPE Regulations*

The Council's view is that TUPE Regulations would apply to all but organisation 'B'. The previous Cabinet report (13 July 2011) explained the issues surrounding TUPE, including the financial difficulties that it can present to potential 3rd party operators.

The effect of the Regulations is that where there is a relevant TUPE transfer of a leisure centre to such bidders, the employees permanently assigned to the leisure centre would transfer on their current terms and conditions of employment. The Council has a duty to consult its employees on the TUPE transfer. An employee can make a complaint to an Employment Tribunal about both the Transferor and Transferee should they be in breach of TUPE Regulations.

The Council should not make transferring employees redundant in order to make the transfer more appealing to the Transferee. The Council would be at risk of legal challenge not only by the affected employees but also by Auditors over the lawfulness of the redundancy payment.

Whilst at face value there is an acceptance that staff would transfer by a number of bidders, some of these submissions clearly show the organisations' intentions to significantly restructure/downsize and change terms and conditions of employment of transferred employees, as a direct consequence of the transfer. Such changes risk breaching the TUPE Regulations, which are effectively in place to afford protection of employment, therefore giving rise to serious concerns from the Council's point of view in relation to knowingly entering into an agreement to transfer staff to an organisation that could not sustain future employment.

HR Implications

- 18 On the basis of the change of use at Sherburn Leisure Centre, both in terms of the facilities provided and significantly reduced operating hours proposed, there will be no requirement for TUPE consultation with employees or their representatives. However, Trade Unions and/or affected employees could challenge the Council's position on TUPE. Notwithstanding this, the service had already commenced a formal consultation process with all trade unions and employees at all of the affected centres in April 2011. Staff were issued with Section 188 notices and the Council's change management protocols have and continue to be adhered to.
- 19 Great effort has been made throughout this exercise to minimise the number of compulsory redundancies as a result of the closures and, as this process nears completion, it is clear that the impact of this has been significantly mitigated through successful redeployment opportunities within and out with the Service and through the consideration of ER and /or VR applications. The HR implications and time plan as identified within the Cabinet report of 13 July 2011 therefore still apply.

Financial Considerations

- 20 The full financial implications of the Review of Indoor Facilities were included within the July Cabinet report. The proposals to close Ferryhill LC and Glenholme LC in line with the recommendations approved by Cabinet in July will deliver savings in line with the targets included within the MTFP. The possible transfer of Sherburn LC raises the potential of a delay, whilst heads of terms / lease issues are resolved. This has the potential to reduce the saving in 2011/12. Members should note that monthly subsidies / assumed savings (costs to the Council if delayed) equate to £14,650 for Sherburn LC; £23,300 for Ferryhill LC and £21,600 for Glenholme LC – a total of £59,550 per month.
- 21 The proposal from Sherburn Village Parish Council for the operation of Sherburn Leisure Centre changes the existing undertaking from a leisure centre to a community club. On this basis many of the existing activities will cease, including operation of the gym. Therefore there is no reason why the centre cannot be closed from 1 October 2011 in line with the identified MTFP saving. This will also assist in ensuring a comprehensive and successful handover to the Parish council. As part of this process officers will seek to ensure that any lease has sufficient conditions attached to protect the Council from legal challenge if the use of the facility was subsequently changed at a later date.
- 22 Detailed discussions have also taken place with Sport England in relation to outstanding grant conditions at Ferryhill Leisure Centre and the potential for claw-back. The implications of this report, in particular the lowering of the potential for capital receipts for investment in sport, will need to be considered by Sport England. However, given that this results from retaining further provision across the county, plus the fact that members will shortly be considering proposals to invest in outdoor sport and leisure provision as part of the Capital Programme 2012/13 to 2015/16, it is anticipated that this will not be viewed negatively.

Conclusion

- 23 Following evaluation of submissions from six 3rd party organisations the Evaluation Panel has identified a potential viable business case for Sherburn LC from organisation 'B' – Sherburn Village Parish Council. This requires consideration by Cabinet as it has the potential to amend the decision made at Cabinet on 13 July 2011. No other viable proposals have been received from 3rd parties for the other two facilities for the reasons outlined in the report.
- 24 This will result in the closure of Ferryhill LC and Glenholme LC from 1 October 2011 and their subsequent disposal, in line with the Council's disposal programme. Sherburn LC will also close from 1 October 2011 but will, subject to discussions with regards to the lease of these premises, reopen as a community club venture under the management of Sherburn Village Parish Council.
- 25 Should Cabinet approve the recommendations of this report then 5 out of the 7 leisure facilities, including the Roseberry Grange golf course, that were at risk of closure will continue to operate, at nil cost to the Council, delivering services to the community. Given that this review has been undertaken on the basis of having no cost to the authority, the retention of 5 facilities should be seen as a positive outcome. At the same time the disappointment of not being able to retain the remaining facilities needs to be recognised. It is hoped however that the review will provide a solid base from which to strategically deliver the core offer for sport and leisure services in the future, as detailed in the Sport and Leisure Strategy 2011-2014.

Recommendations

- 26 It is recommended that:
- i) Approval be given to commence discussions with Sherburn Village Parish Council for the lease of Sherburn Leisure Centre, giving delegated approval for the agreement of the lease to the Corporate Director of Neighbourhood Services and Portfolio-holder for Strategic Environment and Leisure, subject to satisfactory arrangements relating to finance and operational matters being concluded; and
 - ii) Members note the original decision to close Ferryhill and Glenholme LC's from 1 October 2011, together with the arrangements to demolish / dispose of the sites, in line with the 13 July Cabinet report, remains unchanged.

Background Documents

- Report to Cabinet 2 March 2011 – Indoor Facilities review
- Report to Cabinet 13 July 2011 – Review of Indoor Sport & Leisure Facilities
- 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 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 Sherburn LC there will be no TUPE transfer.

Risk -

A risk assessment has been undertaken for the overall Facilities Review and there are no further reportable risks.

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 Sherburn Leisure Centre were subject to a detailed and thorough Equalities Impact Assessment which was last reviewed on 8th June 2011 and is due for a further review during February 2012. Various mitigatory measures were identified during this assessment which are in the process of implementation. The timing of the February 2012 review has been set after implementation of changes as it is intended to determine if the mitigatory measures have been successful, and consequently identify the need for additional mitigatory measures.

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 –

There will be a range of procurement issues to resolve in relation to contracts for the sites facing closure and the transfer of Sherburn LC. A comprehensive list of all contracts per site has been compiled and consultation with contractors undertaken. In relation to the Competition Line contract at Ferryhill, 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 Sherburn Village Parish Council bid. In providing this advice consideration was given as to whether or not the future economic entity will retain its identity, ie 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