

LEISURE, CULTURE AND LIBRARIES OVERVIEW AND SCRUTINY PANEL

29 OCTOBER 2014

PRESENT: Councillors Clive Bullock, Jesse Grey, Andrew Jenner, Marion Mills and Claire Stretton.

Officers: Andrew Brooker (Head of Finance), Michael Llewelyn (Cabinet Policy Assistant), Kevin Mist (Head of Leisure Services), Christabel Shawcross (Deputy Managing Director and Strategic Director for Adult and Community Services) and Martin Strawson (Procurement and Business Development Manager).

Also Present: Councillors Paul Brimacombe (Member of the Corporate Services Overview and Scrutiny Panel), Simon Dudley (Lead Member for Finance), Philip Love (Principle Member for Regeneration) and Eileen Quick (Lead Member for Leisure and Libraries), Representatives from Parkwood: Peter Fair (Regional Director for Parkwood), Eva Homes (Chair of Legacy Leisure), Andrew Holt (Chief Executive of Parkwood Holdings) and Sue McGrath (HR Director Parkwood).

PART I

50/14 **WELCOME**

The Vice-Chairman, Councillor Claire Stretton welcomed everyone to the meeting and advised that the meeting would be recorded by the Clerk.

Recordings of the Part I sections of the meeting were available at the following link:

<http://www.rbwm.gov.uk/minsys3.nsf/AMByMonth?OpenView&y=2014&m=10>

51/14 **APPOINTMENT OF THE CHAIRMAN AND VICE-CHAIRMAN**

As the incumbent Chairman of the Leisure Culture and Libraries Overview and Scrutiny Panel had resigned his position as Councillor, a new Chairman needed to be appointed to the Leisure Culture and Libraries Overview and Scrutiny Panel.

Councillor Clive Bullock moved that Councillor Claire Stretton be appointed as Chairman for the Panel. This was seconded by Councillor Jesse Grey and unanimously agreed by the Panel.

Councillor Marion Mills moved that Councillor Clive Bullock be appointed as Vice-Chairman for the Panel. This was seconded by Councillor Andrew Jenner and unanimously agreed by the Panel.

RESOLVED UNANIMOUSLY: That Councillor Claire Stretton be appointed Chairman and Councillor Clive Bullock be appointed Vice-Chairman of the Leisure Culture and Libraries Overview and Scrutiny Panel.

52/14 APOLOGIES FOR ABSENCE

There were no apologies for absence.

53/14 DECLARATION OF INTEREST

The following interests were declared:

Councillor Andrew Jenner declared a personal interest as he was the Deputy Lead Member for Leisure and had been involved with the development of the 'Contract Award for Operation of Leisure Centres' project. He stated that he would take part in the discussion but would then leave the Chamber and not participate in the vote. He was also President of the Starfish Charity which used the leisure centres.

It was noted that all Members were users of the leisure centres in the Borough.

54/14 CONTRACT AWARD FOR OPERATION OF LEISURE CENTRES (PART I)

The Panel received a report entitled 'Contract Award for Operation of Leisure Centres' from Andrew Brooker, Head of Finance, and Kevin Mist, Head of Leisure Services.

The report dealt with the awarding of a contract to operate the Royal Borough's leisure centres. A procurement exercise had commenced in February 2014 resulting in an attractive bid for the contract being received from an experienced and successful provider in October 2014.

The report recommended the contract be awarded to the bidder and authority to agree the detailed terms and conditions be delegated to the Leader, the Lead Member and Deputy Lead Member for Leisure and Library Services, the Lead Member for Finance and the Strategic Director of Adult & Community Services.

The report stated that the awarding of the contract would improve the quality of the Borough's leisure centres and the Council expected a cumulative saving of £2.6m by 2018/19 and further material savings per annum thereafter. This would allow for increased investment in other Borough services.

The awarding of the contract would result in 270 staff being TUPE (Transfer of Undertakings (Protection of Employment) Regulations 2006) transferred which meant a 7.29% reduction in the total head count of RBWM staff.

The contractors capital investment programme would help reduce the Council's capital programme and would allow for redistribution of s106 funding to other projects. There would be no transfer of ownership of the leisure centres and/or land.

The contract would cover the operation of five Leisure Centres: Magnet Leisure Centre, Windsor Leisure Centre, Cox Green Leisure Centre, Charters Leisure Centre and from May 2015, Furze Platt Leisure Centre.

It was noted that, during the procurement process, eight organisations had responded to a Pre-Qualification Questionnaire (PQQ) which had been evaluated. The purpose of this evaluation was to shortlist those organisations that had met RBWM's minimum criteria and to make recommendations as to whom would then proceed to the formal bid stage. Those organisations were Greenwich Leisure Ltd (GLL), Vision, RBWM Leisure Trust, Freedom Leisure Ltd (Wealden), Serco, Leisure Connection, SLM Leisure and Parkwood Leisure.

The initial PQQ scorings had led to negotiations with a locally based charitable trust, but that arrangement would have failed to produce an acceptable financial return to the Council. Following failure to agree terms with the local trust, the PQQ hurdles were reduced to invite all 7 qualifying bidders to enter the bidding stage. Only one organisation entered a compliant bid, this was Parkwood Leisure. The sole bidder was not made aware that they were the only organisation to bid, to ensure their bid was remained competitive.

The contract proposed followed a Sports England recommended format with input from RBWM officers and Shared Legal Service. The contract was for a 20 year period however there was a 10 year break clause accessible to either party. At the end of the 10 year period, discussion would take place and agreement would need to be reached on matters such as price before the second 10 year period began. The contract could be terminated earlier than 10 years if a breach of contractual terms occurred.

Mr Mist stated that RBWM was contractually obligated to maintain and replace items relating to the building and the fabric of the building.

Councillor Simon Dudley, Lead Member for Finance, questioned what services would be retained. Mr Mist highlighted appendix A of the report which listed services which would be maintained throughout the life of the contract. However, he noted that there would be some changes over the 20 year period though this would be monitored by an officer from RBWM. The Panel also noted that SMILE classes and programmes would continue to be maintained. Reduced prices for Advantage Card holders would also continue.

It was noted that the Leisure Centre buildings and land would remain in the Council's ownership. Mr Mist provided an analogy to describe the ownership arrangements, stating should the leisure centre be turned upside down and shaken, anything that stayed stuck down belonged to the Council. Furthermore, everything else was to be returned to the ownership of the Council on completion of the contract.

Mr Brooker highlighted to the Panel that the leisure centres already made a positive contribution to the Council's finances. However the proposed contract improved the situation further generating a £2.6 million increase in revenue. It was noted that the contract would generate £225,000 extra income from the lease in 2016-2016. The money Parkwood would pay RBWM was payable irrespective of the leisure centres performance.

Councillor Eileen Quick, Lead Member for Leisure and Libraries, noted that existing staff would retain their existing contracts in perpetuity which would protect their pay, hours and working conditions.

Members raised concern regarding the pensions of staff who were TUPE transferred to Parkwood Leisure. It was noted that Parkwood offered a broadly similar pension scheme however discussions were taking place regarding the possibility of incorporating Parkwood Leisure into the Berkshire Pension Fund.

Councillor Jesse Grey was keen to see quality was safeguarded. It was noted that Parkwood offered greater opportunities for staff to be promoted as it was a larger organisation than RBWM leisure services. It also offered greater opportunity for young people leaving school to join at the bottom of the organisation and work their way up.

The Panel received a PowerPoint presentation from representatives of Parkwood Leisure. Mr Andrew Holt, Chief Executive of Parkwood Holdings, introduced the organisation. It was noted that Parkwood was a group of businesses including 10 golf courses, theatres, horticultural businesses, healthcare services, a nursing agency and consultancy work. Mr Holt stressed that his background was in Local Authorities.

It was noted that Parkwood Leisure had designed and built 17 leisure centres using the private finance initiative (PFI) model. In 1995 the organisation took over control of their first centre, this was followed by steady growth over 19 years and the current year was expected to turnover £77 million in revenue. It was highlighted that sustainability was important and Parkwood were confident that they could deliver.

Mr Holt stated that Parkwood Leisure would sub-contract the operation of the leisure centres to Legacy Leisure Trust. This was because Legacy were a charitable body and could therefore claim VAT (Value Added Tax) relief and NDR (Non-Domestic Rates) relief. This benefited RBWM to a tune of £600,000 per year.

Mr Peter Fair, Regional Director for Parkwood, discussed how Parkwood would deliver to the community of the Royal Borough. He stated that Parkwood were focused on increasing the number of users and customer satisfaction was crucial to this.

Mr Fair stated, in terms of management and front of house standards, managers would be expected to inspect sites, including changing rooms, before customers entered to avoid complaints. Social media would also be utilised to feedback to customers instantaneously. 'Meet the Manager' forums would also be held, as well as mystery visits by an independent organisation.

In terms of quality assurance, it was noted that Parkwood utilised 'Quest' which was the leisure management bench mark standard. All systems had 'Quest' imbedded in them. Central and local support was available to all centres. Also, a general manager would be appointed to oversee the 4 centres in the contract with managers at the individual sites feeding back to the general manager.

Mr Fair described getting staffing right as crucial. Group consultations would be taking place as well as individual 1-2-1 consultations. This would take place in November 2014. Employee forums were available as well as regional and

national forums.

Long term, Parkwood hoped to continue the existing health and wellbeing programme and to expand it. Mr Fair also mentioned 'Bike-ability' which was a new brand Parkwood had developed which increased involvement in cycling. Parkwood would also increase marketing to increase user numbers. It was noted that Parkwood had obtained the website domain name leisurecentre.com. The Panel considered a draft design of the website that would be introduced. This would have information regarding events and clubs as well as allowing online bookings.

Gyms would be rearranged to be more effectively laid out. New gym equipment would be installed in the two bigger sites, and this would allow users to access the internet on the spinning and running machines.

It was noted that energy costs were second only to staff, however inroads had been made at other sites. Parkwood stated that they would be investing in energy efficiency which would create long term savings for RBWM.

If Parkwood were successful, it was noted that any shut down period due to the handover would be very limited with contractors working through the night. Mr Holt suggested centres may close for 1 or 2 days over Christmas 2014 or early January 2015.

The Panel heard from three members of the public who had registered to speak with regards to the proposals set out in the report.

Mr Richard Fagence noted a press release dated 4 December 2013 noted in which Councillor Quick highlighted the potential savings regarding VAT relief. The release also stated the tendering process would begin on 1 April 2014 which was some time ago. He questioned why, with 7 interested organisations, there was only 1 bid. He also expressed his regret that RBWM had effectively disposed of their leisure centres.

David Jessey, a Windsor resident, raised unanswered questions posed by Mrs Hickman in a letter to Councillor Quick. It was noted that current leisure centres were very successful, with Windsor one of the best in the country. He questioned whether savings could be made while maintaining the same standards of customer satisfaction given the current high level of usage. He noted concern that the 10 year period was a long period of time and the report offered limited information. He questioned what was in place if the contract fell through after two years. He raised concern that greater consultation could have taken place. He questioned whether the rent was guaranteed if a surplus was not generated. He queried whether mention of 7.2% of staff referred to all Royal Borough staff as such a reduction would be quite high. Mr Jessey also questioned the appropriateness of the tax arrangements which RBWM was involving itself in.

David Anthony, the Chair of the Leisure Services Trust, asked the following questions:

It was his understanding that Parkwood Leisure was originally excluded from the

tender process on the basis that they did not pass the PQQ. He requested confirmation regarding the basis on which Parkwood failed the PQQ and how the Council was now satisfied that they were able to meet the PQQ.

He requested confirmation that Parkwood Leisure were only bidders and how the Council could be satisfied that it had been able to negotiate a competitive bid if there has only been one bidder.

He requested confirmation as to which procurement process the Council had followed. Was it open, restricted, competitive dialogue or negotiated procedure? It was his understanding that if it was a negotiated procedure, for example, a minimum of 3 bidders needed to be invited to negotiate to ensure genuine competition.

He asked whether there would be a 10 day standstill period to allow the unsuccessful bidders to challenge the decision.

He requested confirmation that the Council had followed their own Contract Procedure Rules dated December 2013 regarding the minimum number of suppliers that needed to be invited to participate in the tender process.

He requested confirmation that the Council had met the minimum requirements set out in the Public Procurement directive and the EC Treaty Principles.

He questioned whether the Head of Procurement and the Head of Legal Services agreed to the proposed modification of the commercial terms of the contract.

He questioned whether the Council was satisfied that it had complied with the Public Procurement Regime and the EC Treaty principles of openness, fairness and transparency.

Mr Anthony stated that it was understood that the Council had renegotiated the fundamental terms of the contract with the new contractor. He submitted that under procurement law the Council was prohibited from changing any of the commercial terms of the contract following the appointment of a preferred bidder. Therefore, a material change would constitute a new contract that needed to be advertised to allow others to bid on the basis of the new terms. If this was the case, he questioned whether the new contract had been advertised and if so where and when.

He requested confirmation from the Council that Parkwood Leisure would offer the Local Government pension scheme to all existing TUPE staff.

He questioned whether the Council was aware of the *Alemo Heron v Parkwood Leisure* court case which the UK Supreme Court had referred to the European Court of Justice. Mr Anthony stated that this was on the basis that Parkwood Leisure refused to pay its employees a pay increase in line with the National Joint Council for Local Government Services. He asked what assurances the Council had that Parkwood Leisure would honour existing terms and conditions of staff and would pay good salaries to local employees.

He requested confirmation that the Council had made site visits to other Parkwood Leisure sites and, if this was the case, questioned which sites had been visited.

He requested confirmation that the Council had taken up references from other Local Authorities who had not renewed their contractual arrangements with Parkwood Leisure to understand the reasons why this was the case.

He requested confirmation from the Council that that Parkwood Leisure would reinvest 100% of its surpluses in the provision of both indoor and outdoor facilities in the interests of social welfare for recreation or other leisure time occupation with the objects of improving the conditions of life of the residents of the Borough. He asked, if this was not the case, why these requirements were included in the Memorandum and Articles of Association of the RBWM Leisure Services Trust as drawn up by the Council.

He requested confirmation that the Local Authority and the local community would be represented on the Board of Parkwood Leisure.

He requested confirmation from the Council as to why it ceased to negotiate with the RBWM Leisure Services Trust notwithstanding that RBWM LST had committed to pay the Council more than Parkwood Leisure was offering, as well as providing a board made up of representatives of the local community with a commitment to employ locally, source supplies locally and invest locally.

He requested confirmation that the Council had consulted with the District Valuer in determining the rental figure required from the RBWM Leisure Services Trust. He requested that he be provided with the fair market rental figure indicated by the District Valuer.

He also asked whether the Council was aware that Charity Commission Guidelines expressly required not-for-profit charitable trusts to only pay a fair market rent and that they could not operate if there was a risk of insolvency or if it was no more than an arm of Local Government?

Councillor Dudley suggested Mr Jessey write to RBWM with his lawyers, if he was using them, with those questions and the Borough would answer them. He did however state additional receipts from Parkwood would not be exclusively reinvested back into leisure activities. They would be treated like all leisure services surpluses to fund any other appropriate activity within the Borough. He also noted that the Borough would only work with an organisation with the required professionalism and track record needed. Furthermore, there was no way a government entity such as the Royal Borough would enter into tax efficiency arrangements that were not appropriate. The 7.2% reduction in staff concerned all Royal Borough staff, excluding schools.

Councillor Quick stated that when the Leisure Trust could not come forward with a business case that was appropriate, the decision was made to open the bidding again to anyone who expressed an interest. A high standard of service and management was expected. In terms of offering both financial return and also the best services for users, only one bidder was able to meet that very high bar. Councillor Quick noted that Parkwood were not made aware that they were

the only bidder, and this was why some information was not made public. She also noted that rent was absolutely guaranteed and the Council took on no risk. If services were not met, the contract could be ended by RBWM. It was noted that some of Mr Jessey's questions concerned Part II (private) information.

Christabel Shawcross, Deputy Managing Director and Strategic Director for Adult and Community Services, noted at page 5 of the report, that Parkwood would invest £150,000 per year in capital investments to supplement the council's planned replacement programme which would remain in place and be subject to the usual annual capital budget programme prioritisation and selection procedure. She noted that Parkwood were experts in the service, and had the money to invest in the best equipment.

Councillor Jenner stated that he was impressed with Parkwood. He questioned how they would deal with peak periods. It was noted that several areas could be improved such as marketing. Attendance at dance classes and swimming classes could be improved. Parkwood believed they dealt well with increasing attendance at daytime periods. Prices would not be increased and might in some cases be reduced to increase take up.

It was noted that Parkwood would be actively involved with helping groups and organisations that use the leisure centres. Existing clubs were protected in the contract.

The Chairman stated that the meeting was to move into Part II (private). However members of the public were invited to wait as the meeting would move back into Part I (public) where the Panel would make their recommendations to Cabinet.

Councillor Brimacombe left the meeting.

55/14

LOCAL GOVERNMENT ACT 1972 – EXCLUSION OF THE PUBLIC

RESOLVED: That under Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the remainder of the meeting whilst discussion takes place on items 6 and 7 on the grounds that they involve the likely disclosure of exempt information as defined in Paragraph 3 of part I of Schedule 12A of the Act.