

Decision maker:	Cabinet member contracts and assets
Decision date:	19 July 2017
Title of report:	New lease arrangements for leisure facilities
Report by:	Director for economy, communities and corporate

Classification

Open

Key Decision

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function to which the decision relates.

And

This is a key decision because it is likely to be significant in terms of its effect on communities living or working in an area comprising one or more wards in the county.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

Wards affected

Countywide

Purpose

To approve the assignment of new longer term lease/s with revised conditions for 7 of the council's leisure facilities to Halo Leisure Ltd.

Recommendation(s)

THAT:

- (a) **the leases Halo Leisure Services Limited (Halo) hold for Hereford Leisure Centre, Hereford Leisure Pool, Leominster Sports Hall, Leominster Leisure Pool, Ross on Wye Swimming Pool, Bromyard Leisure Centre, Ledbury Leisure Pool, and the car parks adjoining Leominster Leisure Pool and Hereford Leisure Centre be terminated by agreement and new 75 year full**

- repairing leases be issued;
- (b) a 10 year rent free period be granted following which a minimum rent of circa £50K per annum will be charged followed by regular rent reviews: and,
 - (c) authority be delegated to the Director for economy, communities and corporate to finalise lease terms and implement the recommendations above

Alternative options

- 1 Shorter term leases including the terms/conditions currently in place could continue. Halo would ideally prefer a 99 year lease but it has been agreed that 75 years would be an appropriate length of time to deal with the backlog of maintenance and successfully compete for outside work. Revised longer term lease conditions would include Halo taking on full repair and maintenance liability for the facilities, which will result in significant savings for the council.
- 2 When the current leases expire the council could offer for sale the freehold or a leasehold interest in the buildings. Provided that we can illustrate that the best value requirement is met i.e. by adequate marketing, and independent valuation. Selling the freehold would of course result in a one off capital receipt however, even with the inclusion of covenants, if the centres were to underperform the new owner could choose to close one or all of them.

Reasons for recommendations

- 3 A lease period of 75 years would enable Halo to make more concrete longer term business decisions which would help to ensure a sustainable leisure offer across the county.
- 4 Revised lease conditions would transfer the considerable buildings/grounds maintenance liability to Halo resulting in a significant annual saving for the council.
- 5 In time Halo would pay an appropriate market rent for the facilities providing the council with a minimum income stream of £50k per annum.

Key considerations

- 6 The council owns ten leisure/sports facilities (listed at appendix A) across the county which are assigned to and operated by Halo Leisure under separate lease and/or management arrangements.
- 7 The leases for seven of these facilities (Hereford Leisure Centre complex, Hereford Leisure Pool, Bridge Street Sports Centre, Leominster Leisure Centre, Ross on Wye Swimming Pool, the Bromyard Centre and Ledbury Swimming Pool) run from 1st April 2002 for 25 years at peppercorn rents of £1 per facility per annum. In addition the car parks adjoining Hereford Leisure Centre and Leominster Leisure Centre) are being occupied by Halo under 'tenancies at will' and they collect and retain the income.
- 8 Some terms for the leases vary according to the individual requirements of the property but a key element is that the council is responsible for a percentage of the maintenance costs up to a maximum (cumulative across all facilities) of £85k per annum. The council is also currently responsible for structural and external repair costs on an ad-hoc basis, and therefore the average annual cost to the council

(including the £85k) is circa £130k per annum.

- 9 It should be noted that the council does not provide a subsidy for the operation of these leisure facilities.
- 10 In recent discussions regarding future lease and management arrangements for the facilities, Halo expressed the wish to have more security of tenure to enable them to make longer term plans for the facilities which would help them to be more sustainable and to safeguard the sport/leisure offer across the county.
- 11 Should a longer term lease/leases be granted then Halo have said that they would be willing to take on the full maintenance liability and would pay an annual rent.
- 12 The Herefordshire Leisure Centres Valuation Strategy (HLCVS) compiled by HUB Professional Services Ltd. (Appendix B) estimates the maintenance requirement for the sites over the next 5 years to be approximately £2.5million. In addition it advises that a prudent owner/tenant should set aside sufficient funding after that stage to cover ongoing costs.
- 13 Halo are prepared to take on the maintenance responsibility in the knowledge of the costs required to maintain the properties into a good state.
- 14 HLCVS recommends that the council should charge a minimum rent of £50k per annum. However, Halo have advised that it could take some time for their proposed operating model to show a net surplus so have asked for a 10 year rent free period.
- 15 It is therefore proposed that for the seven named facilities and two car parks, the Council grants Halo new 75 year leases. The conditions of the new leases would include Halo's maintenance liability along with the arrangements for payment of rent.
- 16 The remaining three centres, (Ledbury Leisure Centre, Mortimer Leisure Centre, Wigmore and the Lady Hawkins Community Leisure Centre, Kington) will remain on their current arrangements. They are all dual use educational/leisure sites which have received conditional grant funding from external grant funders including Sport England.
- 17 As the freehold owner of the seven sites and as part of the commercial negotiation it has been agreed that the council will continue with the existing buildings insurance arrangements for the properties with Halo paying for all contents and public liability cover
- 18 Ten yearly the rent will be calculated at review based on 7.5% of the average annual net operating profit for the seven properties for the preceding five year period. With a minimum rent to be £7,143 per property.
- 19 The Council owns and maintains solar panel installations at Leominster Leisure Centre and Hereford Leisure Centre. In the new 75 year lease the installations will continue to be owned by the Council but an agreement will be negotiated and entered into with Halo, setting out the maintenance responsibilities associated with the installations.

Community impact

- 20 The leisure facilities referred to in this report cover a wide variety of activities ranging from swimming diving, football, badminton, exercise classes and weight training

Further information on the subject of this report is available from
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through to track and field disciplines. The facilities serve a large percentage of the county and usage of facilities is increasing.

21 The health and wellbeing benefits to our local communities should not be underestimated and it's therefore important to support the long term aspirations and viability of leisure provision in this county through the assignment of long term leases.

22 The proposals support the council's corporate plan in that it works in pursuance of its objective to 'work in partnership to make better use of resources, including premises'.

Equality duty

23 How does this decision/proposal pay due regard to our public sector equality duty as set out below:

Note: Under Section 149, the "General Duty" on public authorities is set out thus:

"A public authority must, in the exercise of its functions, have due regard to the need to -

eliminate discrimination, harassment, victimisation and any other conduct ... prohibited by or under this Act;

advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

foster good relations between persons who share a relevant protected characteristic and persons who do not share it."

24 The decision to extend the leases and provide security and sustainability for these facilities will support the council in complying with Section 149 of the Equality Act 2010 in particular to the need to advance equality of opportunity between persons who share a relevant protected characteristic (disability being one such characteristic) and persons who do not share it.

25 The leisure centres provide a number of opportunities for those that share "protected characteristic" and those that do not to integrate and mix through recreational activities. These activities build a sense of community and fosters good relations between differing groups. The benefits of these facilities as community facilities cannot be underestimated not only from a health and wellbeing perspective but also from a community cohesion one.

Financial implications

26 During the initial 10 year rent free period, the council will benefit from reduced maintenance costs which currently cost a maximum of £85k per annum. Additionally, structural and external maintenance responsibilities will transfer to Halo resulting in a total council saving of circa £130k per annum (inclusive of the £85k). Responsibility for the backlog maintenance requirements will transfer to Halo, thus releasing the council from potential unbudgeted future capital costs.

27 From year 11, the council will further benefit from a minimum rental income of £50k per annum with periodic rent reviews to reflect market conditions.

28 During the 75 year lease agreement, the council will continue to be responsible for the building insurance costs of the facilities. This is considered to be the best value

option as the council benefits from economies of scale in insuring its entire estate, and transferring the insurance liability to Halo would result in a reduced rental income which would outweigh the savings in insurance premiums.

- 29 The recommendations have no impact on existing agreements to finance capital improvements at sites.

Legal implications

- 30 The Local Government Act 1972, section 123, allows the Council to dispose of its land provided that it obtains the best consideration reasonably obtainable otherwise Secretary of State consent is required.
- 31 During the first ten years of this lease the best consideration requirement may not be met given the rent free periods proposed. However the Local Government Act 1972: General Disposal Consent (England) 2003 provides for a general consent to local authorities to dispose of land if the difference between the unrestricted value of the land (in this case the rental value) and the consideration for the disposal does not exceed £2million and where the purpose for which the land is being disposed is likely to contribute towards the achievement of the promotion or improvement of one or more of the following: economic well-being, social well-being and/or environmental well-being: in respect of the whole or any part of its area or of all or any persons resident or present in its area
- 32 In this particular case the proposed tenant, Halo Leisure Limited (Halo), would be providing, by the nature of the lease and the covenants contained within it, a service and facility for the benefit of the community in the immediate surrounding areas. As such the new lease at less than best consideration for ten out of the seventy five years, would likely satisfy the social well-being requirement. The Council can therefore justify the disposal on these grounds.
- 33 The Market Economy Operator Principle (MEOP) is a concept which has been developed by the Commission to determine whether a transaction entered into by a public body gives an advantage to a particular economic undertaking and therefore falls within the State aid regime. In broad terms, MEOP says that an economic transaction carried out by a public body does not constitute State aid if it is carried out in line with normal market conditions. Accordingly, the State aid rules are not triggered if a market operator, of a comparable size to the public body, operating in the normal conditions of a market economy could have been prompted to enter into the transaction on the same terms. A transaction will only involve State aid if it is manifestly clear that no rational market operator would have entered into a transaction on the same terms. Given that the proposal divests the maintenance liability of the landlord and increases the current rent payments from year eleven for the remaining sixty five years, it is conceivable that another market operator could have been prompted to enter into this transaction. This is enough to satisfy that MEOP applies and that the state aid rules do not apply.
- 34 The granting of the lease will entail the completion of a new suite of leases which will be governed by the provisions of the Landlord and Tenant Act 1954. Deeds of surrender can be entered into prior to the granting of the new leases however, this is not essential as surrender by operation of law will be effected in any event when the new leases are completed. It should be noted that the primary function of a lease is to regularise the tenant's occupation of the premises its responsibilities for it. The lease will not contain wider monitoring/management obligations beyond those relating to the premises. Following completion of the leases, it will be the Tenant's

responsibility to calculate and pay any Stamp Duty Land Tax (SDLT) due and deliver a Land Transaction Return to HMRC in the case of a notifiable transaction (Section 77 Finance Act 2003).

Risk management

- 35 Should the tenant no longer be operational, the option to relinquish the property back to the council to seek alternative opportunities and avoid the property being unused could be pursued.
- 36 Halo have demonstrated a track record of managing facilities in Herefordshire and elsewhere in the country.
- 37 Future risks remain with Halo in respect of ongoing funding and costs of maintaining the property to an acceptable standard for use and ongoing costs as per the requirements of the lease. If the changes aren't approved there is a risk that the council will continue to bear a percentage of the annual maintenance costs and not benefit from a significant annual rental income.
- 38 Approval of the long-term leases will allow Halo to continue to manage and operate the facilities and would allow for external funding to be obtained allowing Halo to undertake further improvements to the property. The continued use will have a positive impact on the continued provision of leisure facilities within the county, and should ensure that there is no financial commitment to the council.

Consultees

- 39 Halo, Property Services, cabinet member assets and contracts and all elected members have been consulted. Concerns were fed back from ward members regarding land management issues for the SSSI, flood bund and wooded area at Bridge Street Sports Park Leominster and also about what was proposed for the solar cooperative array on the building. The SSSI and wood are owned by Herefordshire Council and managed by BBLP. The flood bund was created by the Environment Agency who will carry out maintenance as required. The solar array on the building is owned and maintained by a community co-operative by way of a sublease with Halo which will continue under the new 75 year lease.

Appendices

A: List of sport/leisure facilities

B: Hereford Leisure Centres Valuation Strategy

Background papers

- None identified.