

Arun District Council

REPORT TO:	Housing and Wellbeing Committee – 20 June 2023
SUBJECT:	Leisure Operating Contact
LEAD OFFICER:	Oliver Handson, Environmental and Strategy Manager
LEAD MEMBER:	Councillor Carol Birch
WARDS:	ALL
CORPORATE PRIORITY / POLICY CONTEXT / CORPORATE VISION: IMPROVING THE WELLBEING OF ARUN: To plan services, resources, amenities, activities, and places to help our community thrive.	
DIRECTORATE POLICY CONTEXT: To regularly monitor and review the performance of contracts.	
FINANCIAL SUMMARY: This report recommends Members note £205,255 of financial support from the 23/24 budget, to support the increased energy costs required to operate the Council's leisure facilities.	

Not for publication

Note: The public and press are likely to be excluded from the meeting during consideration of the appendices/background papers within this report as it contains exempt information as defined in Part 3 of Schedule 12a to the Local Government Act 1972.

1. PURPOSE OF REPORT

- 1.1. Following on from a previous report to the Housing & Wellbeing Committee on the 6 December 2022, this report provides further insight and an up to date position of the current financial pressure impacting on the Council's leisure operating contractor, Freedom Leisure. This report recommends an appropriate level support to ensure the sustainability of the contract and the continuance of services to the public.

2. RECOMMENDATIONS

That the Housing and Wellbeing Committee:

- 1.2. Note the contents of this report in relation to work undertaken by officers and our external consultants The Sports Consultancy, who have reviewed the current operating cost pressures faced by Freedom Leisure, linked to the global energy crisis.
- 1.3. Note the work undertaken by Freedom Leisure to secure a better energy deal to improve the financial outlook for 23/24 and therefore reduce the level of support recommended.
- 1.4. Support the use of £205,255, which has been included in the 2023/24 budget to support Freedom Leisure's continued operation of the Leisure Operating Contract as a one off non-contractual financial assistance.

2. EXECUTIVE SUMMARY

- 2.1. As requested by the Housing & Wellbeing Committee at their meeting on the 6 December 2022, this report seeks to provide additional insight and update members on the options and risks of not providing an identified level of financial support to the Leisure Operating Contract.

3. DETAIL

- 3.1. Freedom Leisure is the trading name of Wealden leisure Ltd, a not-for-profit leisure trust. Freedom Leisure was awarded a ten-year contract to operate the Council's leisure facilities in April 2016. Under the terms of the contract Freedom Leisure is responsible for the operational costs and expenditure associated with the delivery of the service. They retain any income generated but pay an agreed annual management fee to the Council. An additional one-year extension was granted on the basis of the ceasing of trading due to Covid.
- 3.2. The global situation in relation to the energy crisis escalated in the mid to latter part of 2022, and current energy costs remain high. The impact on Freedom Leisure as a not-for-profit trust with almost no assets and minimal financial reserves is currently unsustainable. In December 2022 Members agreed a level of financial support for 2022/23 and agreed that it was necessary to support Freedom to ensure the continued viability of the Leisure Operating Contract. Members of the Committee can view further details in the background papers to this report.
- 3.3. The income generated by Freedom Leisure is still behind the pre-pandemic levels, even though there have been price rises since 2020.
- 3.4. Increased energy costs are being felt nationally across many sectors, but leisure services/centres are particularly hard hit due to the high energy demands. Links to articles published by the Local Government Association indicating the scale of the issue may be found in the background papers section of this report.

- 3.5. In response to the residual impact of Covid on income levels, the increase in energy costs and rising inflation, Freedom Leisure introduced mitigating measures aimed at improving the financial position of the contract. These measures included increasing prices, reducing pool operating temperatures, staffing adjustments and service programme changes. Members of the committee noted in December that the Director of Environment and Communities and the Interim Group Head of Finance and Section 151 Officer were authorised to implement mitigating measures and make revisions and changes to the leisure operating contract based on energy matters affecting the facilities.
- 3.6. Freedom Leisure have been closely monitoring the utility market prior to the contract renewal process for both Gas (October 22) and Electricity (November 22). Due to the extremely volatile nature of wholesale prices at the time, Freedom decided to opt for shorter term contracts of 6 months for Gas and 5 months for electricity. This was based on broker advice in the hope that the market would settle over the months ahead. The short-term contracts signed at that time were broadly 6 times the previous tariffs, but these were reduced to only 3 times after the impact of the Governments Energy Bills Relief Scheme.

In late February 2023, new contracts were negotiated and signed, on the basis of a 2-year fixed Electricity contract and 3-year flexible Gas contract. These have resulted in an improved position where prices are now roughly 2 times the tariffs prior to October 22, resulting in an improved forecast for 23/24. The reason for taking the flexible contract for Gas was to allow Freedom Leisure to benefit from the forecasted drop in wholesale prices. Unfortunately, at the time of needing to sign the new contracts, there was not a Flexible Electricity contract available from any supplier.

4.6.1 Freedom Leisure are continuing to monitor the wholesale market, especially for gas, and are taking advice from their brokers on buying periods for the coming 3 years to ensure opportunities for reduced pricing are taken.

- 3.7. In addition to the above, the Council and Freedom Leisure are exploring all opportunities, including external grant funding schemes to reduce the future costs and energy consumption of the Leisure Centres, to ensure a more sustainable position for the future. This currently includes:

3.7.1. The inclusion of significant Photo Voltaic (PV) roof array at the Arun Leisure Centre as part of the wet change refurbishment project.

3.7.2. Submission of expression of interest to the governments £63million swimming pools support fund to support projects designed at reducing energy consumption.

3.7.3. An Initial bid for further decarbonisation scoping works through the Low Carbon Skills Fund.

- 3.8. Following the Committee's substantive recommendations from the December meeting, officers alongside industry specialists The Sports Consultancy have undertaken further review and scrutiny based on the current situation. The latest data and financial information available from Freedom Leisure are used to inform

recommendations in this report and the report produced by The Sports Consultancy. They represent a proportionate and shared approach to risk between the Council and Freedom Leisure.

3.8.1. Option 1

The Council provide financial support of £205,255 in 23/24 to meet the continued impact of the energy price increase, based on the further work undertaken by The Sports Consultancy

3.8.2. Option 2

Without appropriate support, Freedom Leisure will need to undertake critical mitigating action to offset the additional cost of utilities. These measures could include closure of satellite sites, the closure/ceasing of certain activities, reduced opening hours, further price increases and the removal of free swimming for certain age groups.

3.9. The Committee is recommended to support Freedom Leisure as a key partner, for the significant and unforeseen increased cost of keeping the leisure facilities and services available to the community. The mitigation noted in paragraph 4.5 has impacted on the service and any further actions as detailed in 4.8.2 would adversely disadvantage those members of the community the Council most wish to support in the greatest areas of need and would severely reduce Freedom's reach and affordability.

3.10. In conclusion and in full consideration of the further review undertaken by officers, The Sports Consultancy and Freedom Leisure, it is recommended that the Council provides the outlined financial support in 2023/24 for the increase in costs directly relating to the significant rise in energy costs.

4. CONSULTATION

4.1. Full review/appraisal of financial support undertaken with industry experts The Sports Consultancy.

5. COMMENT OF THE INTERIM GROUP HEAD OF FINANCE/S151 OFFICER

6.1 Full Council approved the 2023/24 revenue budget on the 9 March 2023, including an increase in financial support of up to £580,000 to Freedom Leisure. The costs of £205,255 outlined in this report will be funded from that increase.

6.2 Any further financial support will need to be reviewed with the Finance Group and reported to this Committee. No further support without Officer review with Finance, then reporting back to H&W.

6. RISK ASSESSMENT CONSIDERATIONS

- 6.1. The risks of not providing support are significant. Freedom Leisure may feel unable to continue with the contract which would require the Council either to retender the leisure operating contract, run the services in-house or set up a Direct Service Organisation. If the Council was to retender the leisure operating contract there would be a significant lead into the tender and at the current time operators would price in a significant element of risk resulting in a much lower operating fee payable to the Council. If the Council were to consider running the services or setting up a Direct Service Organisation, this would require significant time to deliver and there is insufficient capacity within the organisation to deliver this project. The Council would be unlikely to benefit from the economies of scale and purchasing power that Freedom Leisure can provide across multiple contracts and sites.

7. COMMENTS OF THE GROUP HEAD OF LAW AND GOVERNANCE & MONITORING OFFICER

- 7.1. The parties entered into a Leisure Operating Contract in respect of Littlehampton Swimming & Sports Centre, Arun Leisure Centre, Bersted Park Community Centre and Windmill Theatre & Cinema dated 31 March 2016 for the provision of leisure and associated services, as varied from time to time (the 'Agreement'). The agreement has been varied a number of times to add the Wave and to remove the Littlehampton Swimming and Sports Centre. It has also been varied to amend the indexation provisions and also to allow for Covid support under PPN/20 which expired in 2021. This new proposed support is not under PPN/20 and is not a proposed variation of the contract.
- 7.2. By section 19(1) of *the Local Government (Miscellaneous Provisions) Act 1976*, a local authority may provide, inside or outside its area, such recreational facilities as it thinks fit and the Act further declares that the powers conferred by this subsection to provide facilities include powers to provide buildings, equipment, supplies and assistance of any kind. Subsection 19(3) then goes on to provide that (3)A local authority may contribute— (a)by way of grant or loan towards the expenses incurred or to be incurred by any voluntary organisation in providing any recreational facilities which the authority has power to provide by virtue of subsection (1) of this section; and in this subsection “*voluntary organisation*” means any person carrying on or proposing to carry on an undertaking otherwise than for profit.
- 7.3. Accordingly, this provision would normally allow the Council to provide financial assistance to Freedom Leisure which is a “non- profit” organisation. This proposal however concerns an organisation with which the Council already has a contractual relationship covered by the *Public Contract Regulations*. Further from 4 January 2023 the new *Subsidy Control Act 2022* has replaced the provisions of the now repealed “State Aid” post Brexit. Legal Services has reviewed the terms of the Subsidy Control Act 2022 and believes that this proposal is compliant.

8. HUMAN RESOURCES IMPACT

8.1. None

9. HEALTH & SAFETY IMPACT

9.1. None

10. PROPERTY & ESTATES IMPACT

10.1. None

11. EQUALITIES IMPACT ASSESSMENT (EIA)

11.1. The council seeks to provide a range of opportunities for residents to participate in sport and community activities across the district. Sports facilities are fundamental to that provision.

11.2. If facilities close there will be an impact and loss of a host of numerous targeted sessions currently offered by Freedom Leisure.

12. CLIMATE CHANGE & ENVIRONMENTAL IMPACT

12.1. There are current projects including the delivery of a PV array (solar) at the Arun Leisure Centre and other potential projects which seek to improve the energy efficiency of the leisure centres and reduce the carbon footprint of operations. Exploration of these opportunities and partnership delivery of these project relies on a sustainable operating position and effective contract between the Council and Freedom.

13. CRIME AND DISORDER REDUCTION IMPACT

13.1. None

14. HUMAN RIGHTS IMPACT

14.1. None

15. FREEDOM OF INFORMATION / DATA PROTECTION CONSIDERATIONS

15.1. None.

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BACKGROUND DOCUMENTS:

1. Chief Leisure Officer Bulletin 04/11/2022: Leisure centres in 40% of council areas at risk of closure [ukactive survey](#)
2. [LGA Briefing Note for councils - the impact of rising energy costs](#)
3. [LGA: UK's public leisure centres facing 'crisis point'](#)
4. [Soaring energy bills leave leisure centres 'teetering on brink'](#)
5. 6 December 2022 report to Housing & Wellbeing Committee (**NB Exempt report**) [Leisure Operating Contract Exempt \(moderngov.co.uk\)](#)

Appendix B - Sports consultancy report – EXEMPT