



**Decision of Cabinet Member for
Community Engagement,
Equalities and Culture**

**Report from the Corporate Director
Residents Services**

**AUTHORITY TO VARY AND EXTEND TRI BOROUGH
LEISURE CONTRACT IN ACCORDANCE WITH PARAGRAPH
13 OF PART 3 OF THE CONSTITUTION**

Wards Affected:	All
Key or Non-Key Decision:	Non-Key
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Part exempt: Appendix 1 is exempt as it contains the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely: "Information relating to the financial or business affairs of any particular person (including the authority holding that information)"
No. of Appendices:	None
Background Papers:	None
Contact Officer(s): <small>(Name, Title, Contact Details)</small>	Sarah Hawken Health Improvement Manager Sarah.hawken@brent.gov.uk 020 8937 3723

1.0 Purpose of the Report

- 1.1 This report seeks Cabinet Member approval in accordance with paragraph 13 of Part 3 of the Constitution to the variation and extension to the existing Tri Borough Leisure Contract, for Vale Farm Sports Centre, between Ealing, Brent and Harrow Council's with Sports and Leisure Management Ltd (Everyone Active) from 1st September 2023 to 31st August 2024 pending a review of options to deliver long-term arrangements for future leisure service provision.

2.0 Recommendations

That the Cabinet Member for Community Engagement, Equalities and Culture, having consulted with the Leader:

- 2.1 Approves the variation of the Tri-Borough Leisure Contract with Ealing, Brent and Harrow with Sports and Leisure Management Ltd (Everyone Active) that includes the management of Vale Farm Sports Centre to allow for its extension for an additional year from 1st September 2023 to 31st August 2024.
- 2.2 Approves the variation of contract referred to in 2.1 above to reduce the fee payable by Sports and Leisure Management Ltd (Everyone Active) to the Council for the period of the proposed 12-month extension from £222,940 to £53,286 to reflect the increased cost of utilities and inflation.

3.0 Detail

- 3.1 The existing Tri-Borough Contract (the “Contract”) runs from 1st April 2015 to 31st August 2023. The contract is with Ealing, Brent and Harrow councils.
- 3.2 The 10-year contract value was £15 million.
- 3.3 Brent has a much smaller share of the Contract, with just Vale Farm Sports Centre included. Ealing and Harrow both have multiple sites included in the contract arrangement.
- 3.4 Under the terms of the current leisure contract, Brent receive a management fee of £222,940 per annum for the operational management of Vale Farm Sports Centre from leisure operator, Sports and Leisure Management Ltd (Everyone Active) (the “Operator”).
- 3.5 Management Fees for Harrow and Ealing are shown in Appendix 1 (exempt).
- 3.6 Brent currently contribute £18k to the Ealing Contract Management Team - the Lead authority.
- 3.7 The Covid-19 pandemic lockdowns have placed significant challenges on the sports and leisure industry. The sports centres faced a number of months of closure and are only now showing signs of recovery with many areas of the business back to pre-Covid operations and visitor numbers of 51,542 in June 2022 compared to 41,085 in February 2020.
- 3.8 Due to the significant impact of Covid-19 on the leisure sector, Brent Council in common with many authorities has supported the Operator financially throughout the pandemic. For Brent this has been by waiving the management fee of £222,940 for financial years 2020-21 and 2021-22.
- 3.9 Brent Council has also provided the Operator with additional financial support (£304,664) during 2020-21 for operational costs at Vale Farm.
- 3.10 Brent Council successfully secured grant funding from Government – the National Leisure Relief Fund (NLRG) – to support the recovery of the sports centres. £358,000 was allocated to the Operator
- 3.11 There are significant challenges to the delivery of positive public health outcomes for residents in Brent. For example, we have longstanding high levels

of childhood obesity, high levels of adult obesity and high levels of physical inactivity in the borough. The sports centre alone cannot improve these outcomes but it plays an important contribution to improving these.

- 3.12 Officers worked closely with the Operator to implement plans to maximise the number of people using leisure facilities. This includes tight contract management including weekly site visits and monthly financial scrutiny and analysis of income and expenditure on an open book budget line-by-line basis.
- 3.13 There has been a gradual increase in usage at Vale Farm as well as improved financial performance as Covid-19 restrictions have been relaxed. The total number of visits has increased from 16,467 in April 2021 to 51,542 in June 2022. The number of members has increased from 1,831 in April 2021 to 2,480 in June 2022. However, the total number of members in 2019 was 3,470, so clearly there has been a drop.
- 3.14 The Association of Public Service Excellence (APSE)'s State of the Market Survey 2021 concluded that Covid-19 has had a significant impact on the finances of leisure services. The sector remains significantly below break-even, and that a prolonged recovery period will be required with a review of the provision offered by sports and leisure centres.
- 3.15 Moving Communities were commissioned by Sport England to undertake monitoring of local authority leisure contracts' performance as part of the National Leisure Recovery Fund (NLRF). In their report 'Moving Communities in Focus' they reviewed performance for April 2021 to January 2022. The report identified that the recovery in participation had been steady but has not yet returned to levels recorded before the pandemic.
- 3.16 Moving Communities found that recovery in participation levels has been faster in more modern facilities, with a rate of 70% for facilities built within the last 10 years compared to a recovery rate of 62% for facilities that were built 20/30 years ago.
- 3.17 Vale Farm is over 25 years old. Vale Farm has seen an 80% recovery rate in participants for the period April 2020 to June 2022.
- 3.18 The report found that towards the end of the Covid-19 restrictions period income generated by the sector was only covering 83% of operational expenditure. It concluded that lower participation rates, alongside increases in utility costs and ageing stock will cause significant challenges for the long-term sustainability of the sector.
- 3.19 With the existing leisure contract with the Operator ending on the 31st August 2023, SLC (The Sport, Leisure and Culture Consultancy), a specialist public leisure sector consultancy, were commissioned by the Tri-Borough in May 2022 as an independent critical friend to support and provide a review of the future options for the delivery of leisure services, and to provide support in shaping and refining an emerging optimal approach. SLC has completed a focused scoping exercise to identify the current state of readiness of the authorities, any

gaps in key data, and insight and future work streams required to support the Tri-borough partnership

3.20 The report produced by SLC recommends that the existing Contract be extended in order to enable the three authorities to undertake the following, which have been delayed by the Covid-19 pandemic:

- Enable the leisure market to further recover from the Covid-19 pandemic including uncertainty of the ability of the leisure market to respond to a tender opportunity
- Identifying the condition and 'whole life' costs of its assets
- Establishing the scope of services and any service redesign linked to its strategic priorities
- Developing a strategy for investment into assets to meet future need and/or provide a more financially sustainable service
- Establishing a clear position on future affordability based upon the scope of services and investment plans
- Identifying the optimal management model for future delivery of the services
- Exploring if a Tri-Borough approach remains the best option for each Council
- Developing a procurement strategy (in the event an external operator is the preferred delivery model) and delivering a procurement process which secures the optimal long-term arrangement for Councils

3.21 There would be insufficient time to complete all the tasks detailed in the Report by the end of the existing contract in August 2023, resulting in a lack of strategic clarity on the provision of leisure services and the best management model for the delivery of future services.

3.22 Having considered the various options in Section 4, a 1-year extension to the existing leisure contract is recommended. The existing leisure contract with the Operator does not include an option to extend the contract. For public contracts, Regulations 72 (1) (b) and (c) of the public Contracts Regulations 2015 permit an extension of a contract, where necessary, to accommodate additional services from the original contractor, which were not included in the initial procurement, where a change of contractor would cause significant inconvenience or substantial duplication of costs for the Council, and the need for an extension arises in circumstances which could not have been foreseen. It is considered that long lasting impact on the leisure sector of the Covid-19 pandemic is an unforeseen circumstance.

3.23 Many authorities have extended contracts in the last 1-2 years. A 1-year extension to the contract should enable all the required tasks identified in section 3.20 to be completed. Identifying strategic outcomes and objectives for the service will be informed by the Council's new Health and Wellbeing Strategy, Borough Plan and Climate Emergency Plan. Engagement with other Council Services including Adult Social Care, Children's Services, and Public Health will also be required

- 3.24 Ealing and Harrow have indicated that they are in favour of a one year extension to the existing management contract.
- 3.25 The Operator has indicated they agree, in principal, to an extension to the contract but with a reduction to the management fee to reflect the increase in energy costs.
- 3.26 Everyone Active has produced a financial forecast for 2023-24 that would result in a reduced annual management fee to the council. The reduction in management fee is due to a number of factors.
- 3.27 The Covid-19 pandemic has had a significant impact on activity and number of visits. Everyone Active are forecasting that this will still be the case in April 2023.
- 3.28 Expenditure costs have also increased with the current inflation rate meaning that there would be increased expenditure costs in all areas, in particularly significant increases in energy costs and maintenance and repair costs. The latter being particularly impactful at Vale Farm where the ageing facilities will not have been refurbished by the time of the contract extension.
- 3.29 Everyone Active have proposed reductions in the management fees payable to Ealing and Harrow compared to the pre-pandemic contractual fees.
- 3.30 Harrow's management fee would be reduced by a similar percentage to Brent. Ealing's management fee would be reduced by a smaller percentage than Brent as they have more and newer facilities. Ealing and Harrow Councils are minded to agree these reductions.
- 3.31 The proposed management fees for each borough are shown in Appendix 1 (exempt).
- 3.32 Plans for a new community leisure centre in Stonebridge Park can now go ahead after the Court of Appeal upheld a High Court ruling that Brent Council solely owns Bridge Park Leisure Centre. This may influence the new Tri Borough service specification for managing the sports centres as it could include Bridge Park and Vale Farm.
- 3.33 The contract awarded would continue to be open book accounting.

4.0 Options considered

- 4.1 **Option A: The extension of the Council's current Contract (with the London Boroughs of Harrow and Ealing) with the Operator for 1 year.** This will enable the leisure market to recover further from the impact of the Covid-19 pandemic. It will also allow for a strategic review of future leisure service provision, including an investment strategy and appraisal of management options to be completed. It will provide sufficient time to complete all the tasks required to put in place the new management arrangements at the end of the existing contract. All these work streams have been delayed by the Covid-19 pandemic. **This option is recommended**

4.2 **Option B: Commence a re-tendering of the management of the leisure facilities in order to commence a new contract from the 1st September 2023 as part of a Tri-Borough contract with the London Boroughs of Harrow and Ealing.**

This will not provide sufficient time to enable the leisure market to recover further from the impact of the Covid-19 pandemic including uncertainty of the ability of the leisure market to respond to a tender opportunity. It would also not be possible to progress all the necessary steps to undertake a procurement process including soft market testing and the work required to develop a specification. The specification would also not be informed by a strategic review of future leisure service provision including an investment strategy which has been delayed by the Covid-19 pandemic. **This option is not recommended**

4.3 **Option C: Bring the management of the leisure facilities back in-house at the end of the current leisure contract with the Operator.**

There would be insufficient time available to bring the service in-house within the available timescale with a high risk of the service to customers being impacted by the migration. To provide the current service provision would result in significant additional staffing costs to the Council due to the increase in staff on-costs for those staff that would be transferring to the Council under TUPE. Contractors such as the current Operator who manage a high number of leisure contracts nationally also benefit from the resulting economies of scale. The Council also does not currently have the resource to directly manage a large additional service area. **This option is not recommended**

4.4 **Option D: Commence a re-tendering of the management of leisure facilities in order to commence a new contract from the 1st September 2023 for Brent only**

The contract management and administration costs would be higher for a supplier for this option. This will not provide sufficient time to enable the leisure market to recover further from the impact of the Covid-19 pandemic including uncertainty of the ability of the leisure market to respond to a tender opportunity. It would also not be possible to progress all the necessary steps to undertake a procurement process including soft market testing and the work required to develop a specification. The specification would also not be informed by a strategic review of future leisure service provision including an investment strategy which has been delayed by the Covid-19 pandemic. **This option is not recommended**

4 Financial Implications

4.1 LB Brent currently receive a management fee of £223k annually. If the Contract were extended, the Council will receive a reduced management fee of £53k annually. The reduction is mostly due to the estimated increase in utilities costs and inflation.

4.2 We could look to renegotiate the contribution of £18k to Ealing Contract Management Team, which would enable us to make some savings. This would however, put more demands on the Leisure Client Officer.

- 4.3 The extension will allow the market to stabilise post Covid-19 pandemic lockdowns. Currently, operators are risk adverse and not taking on new contracts. It is anticipated that when we put the tender out in 2024, other operators will look to bid, leading to an equal or better offer to the Tri-Boroughs.

5 Legal Implications

- 5.1 Section 111 of the Local Government Act 1972 provides powers for a local authority to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.
- 5.2 Officers have detailed in Section 3 why it is recommended to vary and extend the existing Contract, citing the significant impact Covid-19 has had on the leisure sector in particular, its slow pick-up and the uncertainty it has brought to properly planning and letting a new contract by August 2023. The period of extension sought is considered to be the minimum period required to allow the councils to prepare properly to go out to procurement. Also, Officers have detailed that due to increased utilities costs and inflation a variation to the fees payable to the Council is also recommended
- 5.3 The Contract is subject to the Public Contracts Regulations 2015 (“PCR 2015”). Regulation 72(1)(b) of the PCR 2015 permits the modification of an existing contract where the modification is necessary to accommodate additional services by a Contracting Authority, which have become necessary because a change of contractor cannot be made for economic reasons and would cause significant inconvenience and costs for the Council. Any increase in price must also not exceed 50% of the value of the original contract (subject to indexation).
- 5.4 Regulation 72(1)(c) of the PCR 2015 permits modification of the contract where the need for the modification arises from circumstances which we could not have been foreseen. The change must not alter the overall nature of the contract, and any increase in price must not exceed 50% of the value of the original contract.
- 5.5 When relying on the grounds stated in Paras 5.3 and 5.4 to extend the contract, the Council must publish a modification notice to Find a Tender (Regulation 72(3) and (4) of the PCR 2015). The PCR 2015 do not expressly stipulate a timeframe for publication of a modification notice. Given the need for transparency, the notice should be published as soon as reasonably practicable.
- 5.6 In accordance with paragraph 13 of Part 3 of the Constitution, the Lead Member, in consultation with the Leader is able to vary and extend contracts where:

- (a) the extension goes beyond the period of extension provided for in the contract (if any) or is otherwise not in accordance with the extension provisions in the contract; and
- (b) the contract has a life of not more than one year (including any possible extension provided for in the contract) and the extension exceeds a period of six months; or
- (c) the contract has a life of more than one year (including any possible extension provided for in the contract) and the extension exceeds a period of one year; or
- (d) in the case of any variation (other than an extension):
 - (i) the total value of the variation is £1 million or more; and
 - (ii) the total value of the variation is more than £50k and is more than 50% of the original contract value (calculated over the life of the contract including any extensions or possible extensions and adjusted in accordance with any price review mechanism provided for in the contract).

5.7 Additionally, the Lead Member, in consultation with the Leader, may vary and extend a contract where the Corporate Director refers the decision to them.

5.8 The Lead Member, subject to consultation with the Leader, therefore has powers to agree the variations and extension of the Contract as set out in the recommendations.

6.0 Equality Implications

6.1 The Council must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment and victimisation
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it,

pursuant to s149 Equality Act 2010. This is known as the Public Sector Equality Duty.

6.2 Under the Public Sector Equality Duty, having due regard involves the need to enquire into whether and how a proposed decision disproportionately affects people with a protected characteristic and the need to consider taking steps to meet the needs of persons who share a protected characteristic that are different from the needs of persons who do not share it. This includes removing or minimising disadvantages suffered by persons who share a protected characteristic that are connected to that characteristic.

6.3 The Public Sector Equality Duty covers the following nine protected characteristics: age, disability, marriage and civil partnership, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

6.4 The proposals in this report have been subject to screening and Officers believe that there are no adverse equality implications.

7.0 Proposed Consultation with Ward Members and Stakeholders

7.1 None

8.0 Human Resources/Property Implications (if appropriate)

8.1 This service is currently provided by an external contractor and there are no implications for Council staff arising from extending the contract.

Report sign off:

Peter Gadsdon

Corporate Director Resident Services