



**Decision of Cabinet Member for
Environment, Infrastructure and
Climate Action**

**Report from the Corporate Director,
Resident Services**

Authority to vary and seek a contract extension for the Tri-Borough Leisure Contract in accordance with paragraph 13 (Part 3 Constitution)

Wards Affected:	Sudbury
Key or Non-Key Decision:	Non-Key
Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Part Exempt – Appendices 1 and 2 are exempt as they contain 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:	Two: Appendix 1(exempt): Cost of repair to existing infrastructure at Vale Farm Sports Centre Appendix 2 (exempt): Financial forecast for the service for 2023-24
Background Papers:	None
Contact Officer(s): (Name, Title, Contact Details)	Kelly Eaton Head of Parks, Leisure and Cemeteries Kelly.eaton@brent.gov.uk 020 8937 5565

1.0 Executive Summary

- 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 1 September 2024 to 31 August 2025, pending a review of options to deliver long-term arrangements for future leisure service provision.

- 1.2 A one year extension to the current contract was previously agreed as a Cabinet Member decision in October 2022 and changes the contract expiry date to 31st August 2024.
- 1.3 This report sets out the associated financial implications of such an extension and the risks of the extension not being approved. A summary of the background to the recommendation, including details of the contract and the benefits to be obtained, is outlined below.

2.0 Recommendation(s)

That the Cabinet Member for Environment, Infrastructure and Climate Action:

- 2.1 Approves a further one-year extension from 1 September 2024 to 31st August 2025 to the existing tri-borough contract for Vale Farm Leisure Centre, to allow sufficient time for the authority to either re-procure a contract or alternatively bring the service back in-house.
- 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 second 12 month extension from £222,940 to £53,286 to reflect the increased cost of utilities and inflation.
- 2.3 Note the extension of the contract referred to in 2.1 above will include provision for a lease renewal of Vale Farm Sports Centre to Sports and Leisure Management Limited (trading as Everyone Active) from 1 September 2023 to 31 August 2025 at an annual rent of a peppercorn. The lease renewal is to be outside the provisions of Part 2 Landlord and Tenant Act 1954.

3.0 Detail

Contribution to Borough Plan Priorities & Strategic Context

This report set out the options for re-procurement of the Vale Farm Leisure Centre Contract. Brent's Leisure Centres are key to the mental and physical health of residents and this proposal directly integrates with the Healthier Brent Objective within the Borough Plan. The council needs to provide and future proof its leisure facilities to allow Brent's residents to have access to as many opportunities as possible to improve their health. This report also links closely to the Health and Wellbeing Strategy and the priorities to create healthy lives and healthy places for Brent's residents. Both of these strategies can be found here:

<https://www.brent.gov.uk/the-council-and-democracy/strategies-priorities-and-policies>

Vale Farm Leisure Centre sits within the large green space of Vale Farm and so offers a wide range of opportunities for local residents to improve their health and wellbeing. The proposal to extend the leisure centre contract by a further year will allow the Parks and Leisure Service to ensure that there is sufficient time to develop a leisure centre that meets the needs of the local community, whether that means re-procuring the service through an external provider or bringing it back in house.

Background

- 3.1 Vale Farm Sports Centre is currently operated by Sports and Leisure Management Ltd (T/A Everyone Active) (“Everyone Active”) on behalf of Brent Council. This service is provided as part of an existing Tri-borough agreement with the boroughs of Ealing and Harrow, the initial term of which expired on 31st August 2023.
- 3.2 A decision to vary and extend the current contract for one year until 31st August 2024 was approved as a key decision by the Lead Cabinet Member in October 2022. At the time it was felt that this would be sufficient time to consider and implement a new service provision. However with a change in Directorate for Leisure Services in December 2022 and meetings held with colleagues in Ealing and Harrow in early 2023, it became clear that a one year extension was insufficient to allow either a re-procurement of the service on a tri-borough basis, or for the opportunity to bring the service back in house.
- 3.3 Cabinet Member approval is sought to vary and extend the existing Tri Borough Leisure Contract, for Vale Farm Sports Centre by a further year from 1 September 2024 to 31st August 2025 . The current contract which expires on 31st August 2024 is jointly managed between Ealing, Brent and Harrow Councils. Ealing have already been through their governance process and have authorisation to vary the contract and thereby extend operations with Everyone Active until 2025. Harrow are in the same position as Brent, in that they have authorisation for a one year extension and are going through their governance process to obtain agreement for a second year’s extension.
- 3.4 The legal basis for seeking this authorisation is set out in more detail in section 6 of this report. However, in summary, Section 72 of the Public Contracts Regulations makes provision for the variation of an existing contract if “the modification is necessary to accommodate additional services by a Contracting Authority which have become necessary, where 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).
- 3.5 Cabinet Member approval for authority to vary the contract and extend for a further one year until 31st August 2025 is sought as it would be very difficult for Brent to source another service provider to manage the daily operations of Vale Farm Leisure Centre in one year or to bring the service back in house in such a short period of time. The proposal to extend also brings Brent in line with our contractual borough partners

- 3.6 The financial implications of a further one-year extension are set out in more detail in Section 5 of this report. There are two aspects to the financial implications; the reduction in management fee and the increase in maintenance costs, with this latter element expected to have a nominal financial impact on the council of around £15,000.
- 3.7 Everyone Active has produced a financial forecast for 2023-24 that will result in a reduced annual management fee to the council based on the increase in energy costs. The forecast for 2024-25 will be the one that will impact the extension being sought in this report.
- 3.8 The extension of the contract with Everyone Active will also require the extension of the related lease of the Vale Farm Leisure Centre. Further details concerning this lease extension are included in paragraph 9.2

4.0 Stakeholder and ward member consultation and engagement

- 4.1 Given the nature of the proposed extension and variation, no stakeholder and ward member consultation and engagement has taken place. However, ward councillors will be made aware of the extension proposals and kept updated with regards to the detailed options appraisal to be undertaken.

5.0 Financial Considerations

- 5.1 If the contact is extended, the Council will receive a reduced annual management fee of £53k, as agreed in the previous extension that started on 1st September 2023. This is a significant reduction from £223k, that was received annually, prior to the first extension. The reduction is mostly due to the estimated increase in utilities costs and inflation. If profits of the operator exceed the forecasted figure, Brent will be entitled to receive an additional amount for the management fee.
- 5.2 During this extension, the Council could try to renegotiate the contribution of £18k to Ealing Contract Management Team, which would help to reduce costs. This would however, put more demands on the Leisure Client Officer.
- 5.3 To further mitigate the gap in the management fee, the Council is seeking support from Sport England for the Swimming Pool Support Fund.
- 5.4 The challenge for seeking any further mitigations is that the service is contracted out, and the Council has limited control over increased membership or income generation initiatives.

6.0 Legal Considerations

- 6.1 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 function.

- 6.2 Under section 3 of the Local Government Act 1999 the Council has a general 'best value' duty to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. Best Value is a mandatorily relevant consideration, being a positive duty.
- 6.3 Officers have detailed in Section 3 why it is recommended to vary and extend the existing Contract for a further one year period. The period of extension sought is considered necessary to allow the council to prepare to insource the service should this option be approved or alternatively undertake a further procurement. Also, Officers have detailed that due to increased utilities costs a variation to the fees payable to the Council is also recommended.
- 6.4 The Contract is subject to the Public Contracts Regulations 2015 ("PCR 2015"). As a result any extension or variation must be in accordance with the provisions of the PCR 2015.
- 6.5 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)
- 6.6 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.
- 6.7 When relying on the grounds stated in Regulation 72(1)(b) and (c) of the PCR 2015 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.
- 6.8 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).

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

6.10 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.

6.11 As set out in Recommendation 2.3, the extension of the contract will include provision for a lease renewal of Vale Farm Sports Centre to Everyone Active. Paragraph 9.2 contains further details concerning such lease arrangement.

7.0 Equality, Diversity & Inclusion (EDI) Considerations

7.1 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.

7.2 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.

7.3 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.

- 7.4 There is no prescribed manner in which the council must exercise its public sector equality duty but having an adequate evidence base for its decision is necessary.
- 7.5 The proposals in this report have been subject to screening and Officers believe that there are no adverse equality implications.

8.0 Climate Change and Environmental Considerations

- 8.1 The council declared a climate and ecological emergency in 2019 and set out to do all in its gift to become carbon neutral on a borough-wide basis by 2030. The council has subsequently adopted a Climate and Ecological Emergency Strategy (2021-2030) which sets out the council's route map to achieve this aim.
- 8.2 The Climate and Ecological Emergency 2022-24 Delivery Plan set out a specific action to lead by example and *'finalise our plans for the council to achieve net zero carbon emissions from the council's own estate and operations by 2030'*. The options for the sports centre beyond the proposed one-year extension, and any proposed capital maintenance work for the building, should place a strong emphasis on environmental sustainability, thereby contributing to the council's stated aims for buildings which could be considered part of its estate.
- 8.3 The government's Swimming Pool Support Fund (SPSF) provides a total of £60 million to local authorities in England as a support package for public leisure facilities with swimming pools and is split into two phases. Phase II of this fund makes £40m available from the government for capital investment to improve the energy efficiency of public facilities with pools in the medium to long term. The council has submitted a bid to this fund and Vale Farm Sports Centre is one of the sites which the bid focussed on.

9.0 Human Resources/Property Implications (if appropriate)

- 9.1 This service is currently provided by an external contractor and there are no implications for Council staff arising from extending and varying the Contract.
- 9.2 As set out in Recommendation 2.3, the extension of the contract will include provision for a lease renewal of Vale Farm Sports Centre to Everyone Active from 1 September 2023 to 31 August 2025 at an annual rent of a peppercorn. The lease renewal is to be outside the provisions of Part 2 Landlord and Tenant Act 1954. Approval to extend the lease will be sought from the Corporate Director, Finance & Resources / Operational Director Property and Assets.

10.0 Communication Considerations

- 10.1 There are no communications considerations to be considered at this time.

Related documents for reference:

- Authority to vary and extend tri borough leisure contract in accordance with paragraph 13 of part 3 of the constitution – Lead member key decision October 2022
- Recommendation To Vary the Contract for Vale Farm Leisure Centre – Delegated Authority report August 2023

Report sign off:

Peter Gadsdon

Corporate Director Resident Services