



Executive
17th July 2006

**Report from the Director of
Environment and Culture**

For Action

Wards Affected:
ALL

**Re-tendering Leisure Management of Vale Farm and
Charteris Sports Centres – Review of options and award of
contract**

Forward Plan Ref: E&C 05/06 055

The Report has an exempt part to it.

Appendix 1 of this report is not for publication as it contains the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely :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)

1.0 Summary

- 1.1 This report provides Members with an update on the progress to date with the retendering of Brent's leisure management of Vale Farm and Charteris sports centres and seeks award of the Leisure Management Contract subject to final negotiations on contractual matters.

2.0 Recommendations

The Executive:

- 2.1 Award the leisure management contract for Vale Farm sports centre to Leisure Connection Ltd based on their variant bid subject to final negotiations on contractual matters and the Director of Environment and Culture, in

consultation with the Borough Solicitor, being satisfied that all outstanding contractual matters have been agreed and finalised.

- 2.2 Agree that Charteris Sports Centre should be brought in-house and operated by the Council's Sports Service
- 2.3 Note that the above recommendations costs £49,360 in a full year above the existing Sports Service budget. During this year (2006/07) the part year additional costs will be met from existing budgets. This will have to be funded in future years from either the corporate budget or from making savings elsewhere in Environment and Culture.

3.0 Detail

- 3.1 There are currently four sports and leisure centres in Brent.
- Bridge Park Community Leisure Centre - which is managed by the Council's Sports Service
 - Willesden Sports Centre - which is being redeveloped as part of a PFI contract and will be operated by Leisure Connection.
 - Vale Farm and Charteris Sports Centres - which are currently managed by Leisure Connection under a leisure management contract
- 3.2 In 2004 the Sports Service undertook a best value review of the service which included an analysis of the existing leisure management contract. The best value review identified that the Bridge Park Community Leisure Centre and the Sports Development services should continue to sit outside the leisure management contract and recommended the retendering of the leisure management contract at the end of the initial term in April 2006.
- 3.3 The best value review was considered by the Executive in July 2004 and the decision was made to re-tender the contract for Vale Farm and Charteris rather than extend the existing contract for a further three years. By retendering the Council would be able to address areas of current weakness and a new specification would be written that would result in a better quality service that is more closely aligned to the Council priorities and Sports Strategy themes. The new specification would provide an opportunity to secure improved value for money to the Council.
- 3.4 To investigate the market situation officers met with some of the better known leisure management providers as well as other local authorities who had recently been through the retendering process. This gave officers an insight into the views, preferences and market practice around issues such as investment, pricing, payment mechanisms and expectations from a specification.
- 3.5 Approval was given at the January 17th 2005 Executive to retender the contract for Vale Farm and Charteris sports centres and incorporate improvements to the service specification. The report considered areas such as:

- the centre's minimum opening hours,
- the pricing policy and role of the leisure card,
- the provision of free swimming for identified target groups
- targeted programmes of use
- marketing
- consultation with users and non users
- equalities issues
- quality standards
- benchmarking
- health and safety requirements
- clearer performance management

3.6 The 17th January report also discussed issues regarding capital investment and information technology that would also lead to improved service and these included:

- Capital investment creating new sports facilities
- One off capital investment in repairs and maintenance to bring the facilities 'up to standard'
- Annual investment in repairs and maintenance during the lifetime of the contract
- Capital cost of investing in IT and large sports equipment

Tender process

3.7 The leisure management contract was advertised to seek initial expressions of interest which elicited nine initial enquiries and four companies submitted pre-qualification questionnaires. Following assessment of the pre-qualification questionnaires Members agreed at the April 12th 2005 Executive that all four submissions met the pre-qualification criteria and all four companies were invited to progress to the tender stage. During the tendering process Greenwich Leisure Ltd and Enfield Leisure Centres Ltd withdrew. The two remaining companies were Leisure Connection Ltd and Parkwood Leisure, both private operators with a significant portfolio of local authority contracts .

Evaluation process

3.8 The Executive agreed outline evaluation criteria on 17 January 2005. To assist in the evaluation a matrix was developed that identified the detailed criteria against which the tenders would be evaluated and a weighting was apportioned to each criterion. This matrix was provided to tenderers during the tender process.

Evaluation criteria and weightings were as follows:

- Service 30%
- Facility Management 20%
- Equipment supply and maintenance 5%
- Finance 35%
- Legal 5%
- Other 5%

In addition, references were taken from other Council's regarding the bidder's performance and these results are incorporated in the evaluation criteria scoring.

- 3.9 The tender evaluation was carried out by a panel of officers from the Council's legal, finance, property and asset management, health safety and licensing, environmental policy, environment directorate information and performance and Sports Service, plus consultants Leisure Futures who were assisting with the retendering process.
- 3.10 Contractors were asked to submit a mandatory standard bid based on a 7 year contract for Vale Farm and Charteris sports centres with an option to extend for a further three years. Contractors were also invited to submit variant bids if they felt an alternative approach would be beneficial and these submissions were returned by 29th July 2005. Both Leisure Connection and Parkwood Leisure submitted the mandatory bid and Leisure Connection also submitted a variant proposal.
- 3.11 The evaluation process highlighted concerns regarding the bids received and it was concluded that both mandatory standard bids were not actually compliant. All four short-listed companies were given the option to resubmit compliant bids by 17th October 2005 and revised mandatory standard bids were received from Leisure Connection and Parkwood Leisure with Leisure Connection proposing three variant proposals and Parkwood one variant proposal. Requiring the resubmission of tenders added approximately three months to the tender process.
- 3.12 Initial evaluations of the October submissions were carried out and approximately 90 clarification questions were sent to each tenderer and clarification meetings were held. Final bid evaluation was then possible.
- 3.13 Although the bids were affordable, officers were disappointed with the quality of the tenders which was reflected in the low scores awarded to each bid with the marketing and programming sections scoring most poorly within the evaluation.
- 3.14 The service specification was written specifically to help the Council achieve its social objectives and deliver quality services for all its communities. The specification focussed on encouraging participation and use of the sports centres by target groups and by proactively engaging with low and non user groups. Officers were concerned that these were areas that contractors had been particularly weak or silent on in their submissions until pushed to comment at the clarification stage and were not convinced that they would deliver these requirements and achieve the improved standards of the specification.

- 3.15 Members agreed at the 16th January 2006 Executive that they would not accept any of the submitted tenders and officers should review a number of alternative options.
- 3.16 The original timetable required the new contract to commence from 1st May 2006. However in order for officers to pursue further work on these alternate options and then present their findings the timetable had to be extended and an extension to the existing contract was negotiated for 6 months, until 31st October 2006.
- 3.17 The options that officers considered in detail were:
1. Award the contract to Leisure Connection (as the highest scoring tenderer) and implement a mechanism that ensures that the new service requirements are met.
 2. Bring Vale Farm and Charteris Sports Centres in-house.
 3. Bring Charteris Sports Centre in house and award the contract for Vale Farm to either Leisure Connection or Parkwood following negotiation and re-evaluation.
 4. Bring Charteris Sports Centre in house and look to retender the contract for Vale Farm either as a stand alone facility or in conjunction with another authority.

Officers have reviewed each of these options and a summary of the findings are shown below:

Option 1 - Award the contract to Leisure Connection (the highest scoring tenderer) and implement a mechanism that ensures that the new service requirements are met.

- 3.18 The main advantages of this option was that all three centres (including the new Willesden Sports Centre) would be operated by the same contractor and there would be no reduction in service standard between contract award and contract start date as Leisure Connection are the incumbent contractor. The main disadvantages are that the tender recorded a low score on the service elements and officers are not convinced that the outreach work, targeted programming and delivery would be achieved. The Council would be tied into a seven year contract that would have to be tightly managed to ensure the specification outcomes and improved service quality was achieved. In addition the tender submission did not accept the payment mechanism which would limit our ability to reduce payments in the case of poor service delivery. Finally the October tender submissions were to remain open for acceptance for a period of 6 months and both tenderers did not agree an extension to this period. The October submissions have therefore expired and it would be

necessary to renegotiate the tender price if this option was pursued. Officers therefore do not believe this option offers value for money for the Council.

Option 2 - Bring Vale Farm and Charteris Sports Centres in-house.

- 3.19 The main advantage of this option is that the Council would have total control and flexibility over the service which would enable it to more easily reflect any change in Council priorities and Borough needs. Three of the borough's sports centres would be operated by the Council. Use of the Prudential borrowing scheme for the capital investment would make it more economical for the Council as the cost of borrowing is lower than would be charged by a contractor. The main disadvantages are that bringing the service in-house may result in a significant increase in salary costs over time if staff move onto Brent's terms and conditions, requiring an increase of approximately £300,000 in salary costs. The Council has no recent experience in managing a 'wetside' sports facility and would be taking the income and expenditure risk on both centres. Officers do not believe that this option offers value for money to the Council.

Option 3 - Bring Charteris Sports Centre in house and award the contract for Vale Farm to either Leisure Connection or Parkwood Leisure following further negotiation and re-evaluation.

- 3.20 To pursue this option, officers met with both contractors to explain why the Council had not awarded the contract based on their tender submissions and asked them to resubmit the tenders based on the following specification changes:
- The contract term is for 5 years with an option to extend for a further two years
 - The contract is for Vale Farm sports centre only
 - The capital and IT investment would be funded by the Council (this was identified as a cheaper option via the Prudential scheme than requiring the contractor to invest in the capital and recharging the Council)
 - The provision of a jointly funded and managed post responsible for outreach and development work.
- 3.21 Officers also asked the contractors to carefully consider their submissions to ensure they provided the quality and quantity of staff and resources that would deliver the level of service required within the specification at all times, especially in relation to staffing and cleaning.
- 3.22 Both contractors accepted the revised specification and Leisure Connection and Parkwood Leisure submitted revised standard bids together with alternate options relating to specific sections of their submission. Clarification meetings were again held and final evaluation has been completed.
- 3.23 The main advantages of this option to bring Charteris in-house and award a leisure management contract to operate Vale Farm are that the Council would have control over Charteris and so could ensure that it plays a key role in

increasing sporting opportunities and achieving strategic objectives in the south of the Borough. It will give the Council greater flexibility and remove the need to negotiate with a contractor over changes to the specification to reflect any changes in Council priorities. Charteris will be relatively easy to manage as a satellite centre as staffing levels are small and the Council already has experience of operating a dryside sports facility. It should also be possible to achieve some economies of scale by undertaking joint marketing and outreach work with the Council's sports development team and Bridge Park Community Leisure Centre. If the Council agrees to move the transferring staff onto Brent terms and conditions the financial implications would be relatively small as the staffing levels are small (see paragraph 7.2). Furthermore, as both tenderers agreed to resubmit tenders based on the revised specification changes (detailed in paragraph 3.20) a competitive process was maintained so retaining value for money for the Council. Officers believe that this option offers the best value for money to the Council.

Option 4 - Bring Charteris Sports Centre in house and look to retender the contract for Vale Farm either as a stand alone facility or in conjunction with another authority.

- 3.24 Officers explored potential joint arrangements with other Borough's but differing timeframes and service requirements meant that this option was not able to be progressed. Officers believe that commencing the whole retendering process using a different specification with a portfolio of only one facility would not be attractive to the market and there is a strong risk that no or only one submission would be received. Officers do not feel that this option offers value for money to the Council.
- 3.25 The leisure management retendering process has been extended by 6 months and Members need to be aware that if they are not minded to accept the recommendations outlined in paragraphs 2.1 and 2.2, officers will not be able to meet the revised timetable. This would mean that the current contract would have to be further extended and the new service improvements could not be implemented. Without a long term identified contractor the Council is unlikely to invest in new IT and fitness equipment as we would need to liaise with the new contractor regarding equipment specification and training and if we cannot provide this new equipment the quality of service will not improve. An ongoing process of short term contract extension also places a high level of uncertainty on the contractor and this may also result in a reduced quality of service. In addition, by revising the tendering process again it may result in companies withdrawing from the process which would place the council in a less competitive situation.

Award of Contract – Based on Option 3

- 3.26 Officers have evaluated the revised bids using the evaluation criteria outlined in paragraph 3.8 above. Both contractors submitted two revised bids, a standard bid and a variant bid.
- 3.27 Officers set a score of 60% as the lowest level that a bid would be considered as an 'acceptable' minimum score. Leisure Connection's variant bid proposal

received the highest overall score in the evaluation and is above the 60% minimum score. Officers therefore recommend that Leisure Connection's variant bid proposal is accepted. Full details of the evaluation scores and tender prices are shown in Appendix 1 which is 'below the line'.

- 3.28 By awarding the contract for Vale Farm to Leisure Connection the following service will be achieved:
- Free swimming for OAP's, under 5's and disabled people at all public swimming times.
 - Free swimming for under 17's during the school holidays
 - Provision of an exercise referral scheme
 - An ongoing programme of user and non user consultation on service provision
 - A 'community liaison officer' post to focus on outreach work targeting low and non user groups.
 - Increased levels of staffing and cleaning.
 - Expansion of the gym into the disused bar area to accommodate a free weights area
 - Provision of targeted programmes of use and marketing
- 3.29 In addition, the Council will retain the following:
- Control over core prices
 - Control over minimum opening hours
 - Use of the B.Active discount scheme at the centres
- 3.30 Leisure Connection's bid is based on the contract being awarded to a 'Trust' arm of Leisure Connection. At present, a Trust should be able to receive 80% rate relief on the NNDR charge for Vale Farm sports centre and this saving of approximately £89,000 has been passed on to the Council within the proposed contract price.
- 3.31 The specification is largely outcome based and to help develop a positive partnership with the contractor which will ensure continuous improvement and achievement of the required service outcomes, nine key performance indicators (KPI's) have been identified. The contractor will use these KPI's to monitor its performance and a system of financial deductions will apply for failure to achieve the required performance standards. The initial tender submission from Leisure Connection did not accept some of these KPI's, however during the negotiations on the revised specification Leisure Connection reversed their position and have accepted all the KPI's and the associated performance payment mechanism.
- 3.32 Within the specification the Council has taken back responsibility for the large capital and planned programme of works at Vale Farm Sports Centre. In addition the Council has also taken responsibility for day to day repairs and maintenance above a de-minimus level of £1,500. It was felt that this arrangement would be more economical for the Council because the cost of borrowing is lower for the Council and if the contractor were required to fund

the works this would result in a high tender price as the contractor is likely to include a significant premium for risk. However, this arrangement will require the Council to be able to respond in a timely way to maintenance issues and failure to do so could put the Council at risk of compensation claims from the contractor.

4.0 Financial Implications

- 4.1 The current leisure management budget within the Sports Service for Vale Farm and Charteris is £764,000 which is a reduction of £88,000 on 2005/06 as savings were anticipated from May 2006 if the new contract would be awarded to a Trust (which can claim 80% mandatory relief on Business Rates).
- 4.2 There are a number of items that are not part of the new contract which the sports service will have to fund and these are detailed in Appendix 1 which is below the line. This leaves £300,000 as the affordable budget for the new contract.
- 4.3 The Leisure Connection's variant bid is unaffordable but is the closest to being affordable within this budget (see appendix 1 which is 'below the line' for details of all the tender prices). The contract is due to commence on November 1st 2006 and so within the 2006/07 financial year there is a smaller impact upon the sports services budget, the difference of which will be found from savings elsewhere. However the full year effect on the sports service budget is significant and Members would need to increase the sports service budget in 2007/08 to recognise that the tender price is unaffordable.
- 4.4 In future years the Sports Service budget will need to be increased as set out in paragraph 9 of Appendix 1 which is below the line.
- 4.5 However there are certain factors which could lead to the actual costs being different.
- 4.5.1 Under Leisure Connection's variant bid, the Authority would be liable for any increases in utility costs above RPI increases (e.g. if utility prices rose by 8% against an RPI increase of 2.5%, Brent would meet the 5.5% additional increase). If utility costs rose above RPI each year there would be a cumulative effect. Given the recent volatility in electricity and gas prices there is a risk that costs will continue to increase by more than RPI. If the authority was able to secure gas or electricity supplies for a lower cost than Leisure Connection, they would agree to this, which may help to keep any increases down.
- 4.5.2 The bid assumes that savings of 80% will be made on Business Rates by awarding the contract to the Trust arm of Leisure Connection. This is equal to a reduction of £89,000 on the rates bill for Vale Farm. If the regulations were to change so that this saving was removed, the Authority would have to find this additional amount.

It is unlikely that this will happen, but the possibility of changes at same stage in the next five years cannot be entirely ruled out.

- 4.5.3 The allowance for running Charteris would be insufficient if expenditure were to rise, or income fall. However, if the reverse happened, savings could be achieved.
- 4.5.4 There is a profit share arrangement, whereby if the income generated at Vale Farm were substantially above that assumed in the tender (or costs lower) a proportion would come back to the Council. However, it would not be advisable to assume that this will happen and the projected level of income is significantly higher than the current contract, although Leisure Connection are comfortable that this challenging target is realistic and achievable.
- 4.5.5 As mentioned in paragraph 3.32 the Council would be responsible for major repairs above a de-minimus level of £1,500. An allowance has been made for this. If there were a major fault in the building or plant which had to be rectified the risk of this lies with the Council.

4.6 Details regarding the financial differences between the bids and Leisure Connection's standard and variant bid are detailed in Appendix 1 which is below the line.

5.0 Legal Implications

- 5.1 The Council has the power to provide leisure facilities pursuant to s19 of the Local Government (Miscellaneous Provisions) Act 1976.
- 5.2 The Provision of leisure management services falls within Part B Services under the EU Services Regulations and the contract therefore is not subject to the full application of the EU Procurement Regulations. It is however, subject to the overriding EU principles of equality of treatment, fairness and transparency in the award process. In addition the procurement and award of the contract is subject to the Council's Contract Standing Orders in respect of High Value contracts and Financial Regulations.
- 5.3 On 17 January 2005 the Executive agreed that a negotiated procedure should be adopted for the procurement of the contract and the process has been conducted on that basis.
- 5.4 As stated in the financial implications the Leisure Connection bid is based on the contract being awarded to a 'Trust' arm of Leisure Connection. Under the current law the Trust arm should be able to receive 80% rate relief on the NNDR charge for Vale Farm sports centre. However, if the law was to change on this issue then under the contract the Council would be responsible for paying the increased NNDR costs.
- 5.5 Leisure Connection has raised a number of issues with the conditions of contract and other contract documentation for the leisure management contract and these issues will be the subject of further negotiation with Leisure

Connection prior to a contract being awarded. Having reviewed the issues raised by Leisure Connection, officers are confident that the outstanding matters will be able to be resolved during negotiations.

- 5.6 Bringing Charteris in-house would result in staff transferring to Brent on their existing terms and conditions as a result of the Transfer of Undertakings (Protection of Employment) Regulations 2006 . Only employees would transfer and it would be necessary for the Council to establish pre-transfer which of the “casual “ staff were employees and which were not. If the Council wished to employ the transferred staff on Brent’s terms and conditions then it could seek to agree with individuals that their old contract was to terminate and that they accept a new contract containing Brent’s terms and conditions in its place. This may be legally effective in ensuring the replacement of their terms and conditions with Leisure Connections by Brent terms and conditions although the legal position is not clear- cut. An individual is only likely object to entering into a new contract if there is for that person some aspect of their existing terms and conditions not in Brent’s terms and conditions which they would wish to retain, and which was more valuable to them than areas of their contract where Brent’s terms are more generous. Another option for the Council would be to leave the transferring staff on their existing terms and conditions, although the staff would be entitled to join the Local Government Pension Scheme in any event.

6.0 Diversity Implications

- 6.1 Under the Race Relations (Amendment) Act 2000, the local authority’s duty of care extends to include services that have been outsourced. The new contract documents, tender evaluation process and payment mechanism incorporates equalities legislation and good practice guidelines in line with Council guidelines.
- 6.2 The new service specification requires the contractor to pro-actively encourage participation in sports and use of the Borough’s sports centres by the 5 target groups identified in the Strategy for Sport and Physical activity through targeted programming, outreach work, provision of specified activities and targeted marketing. A jointly funded post will focus on development work and encouraging low and non user groups to use Vale Farm sports centre. The specification requires the contractor to provide free swimming during the school holidays for children and free swimming throughout the year for OAP’s, under 5’s and disabled people. The contractor also has to accept and promote the B.Active card which offers significant discounts to concessionary groups

7.0 Staffing/Accommodation Implications

- 7.1 Leisure Connection currently provides these services and selecting Leisure Connection as the preferred bidder for Vale Farm will have no direct staffing implications.
- 7.2 Bringing Charteris in-house would initially result in staff transferring to Brent on their existing terms and conditions (TUPE transfer) However if the Council

agrees with the transferring staff that they are to go onto Brent's terms and conditions this is likely to lead to an increase in full and part time salary costs, a reduction in the hours in a working week and increased annual leave entitlements. According to Leisure Connections' TUPE information there are only 3 full time members of staff at Charteris and approximately 12 part time / casual staff who work a variety of different hours.

- 7.3 Charteris sports centre would operate as a satellite to Bridge Park Community Leisure Centre and the manager at Charteris would report to the manager at Bridge Park Community Leisure Centre. Bringing this additional centre in-house would require the Sports Service to review its current staffing structure especially the finance, marketing and admin support roles.

Background Papers

- Executive Report 16th January 2006 – Progress report on retendering the Leisure Management of Vale Farm and Charteris Sports Centres
- Executive Report 12th April 2005 – Retendering the Leisure Management Contract – Service specification and selection to tender stage
- Executive Report 17th January 2005 – Retendering the Leisure Management Contract.
- Executive Report 12th July 2005– Findings of the Best Value Review of the Sports Service

Contact Officers

Any person wishing to inspect the above papers should contact Gerry Kiefer, Head of Sports Service, 020 8937 3710.

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