

	Individual Cabinet Member Key Decision by Cabinet Member for Community Engagement, Equalities and Culture
	Report from the Corporate Director of Resident Services
Variation of contract for Willesden Sports Centre PFI	

Wards Affected:	All
Key or Non-Key Decision:	Key
Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Part Exempt – Appendix 1 of the Business Plan (attached as Appendix 1 to the main report) and Schedule 2 of the SLA (attached as Appendix 2 to the main report) 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) Draft Heads of Terms Appendix 2 (exempt) Additional Financial Implications
Background Papers:	None
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1.0 Purpose of the Report

- 1.1 In accordance with Contract Standing Order 112, this memorandum seeks approval for Brent Council to vary the Willesden Sports Centre contract

between The London Borough of Brent and Linteum (Willesden) Limited by incorporating agreed Heads of Terms between the parties regarding the proposed payments to 1-Life as a result of a recent benchmarking exercise in relation to income and utilities.

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 Community Engagement, Equalities and Culture:

- 2.1 Review and approve the proposed benchmarking compromise and payments as set out in the Heads of Terms (attached as Appendix 1).
- 2.2 Approve the variation of the Willesden Sports Centre contract between the London Borough of Brent and Linteum (Willesden) Limited by incorporation and implementation of the Heads of Terms under the contract, in place of the contractual benchmarking process.

3.0 Detail

- 3.1 Willesden sports centre is managed by 1-Life on behalf of Brent Council under the PFI contract , which is with Linteum (Willesden) Limited.
- 3.2 Willesden Sports Centre has recovered well compared with other sports centres since the pandemic. Fitness activities are currently running at 81% of pre pandemic levels, swim school activities are running at around 103% of pre pandemic levels and the total income is at 94% of pre pandemic levels.
- 3.3 Income in the period ending April 2022 is £536k less than the year to September 2019, a 23% reduction. This is improved by a 17% increase in swim school income, which has significant staffing cost associated with it.
- 3.4 The cost of utilities is a real concern for the centre. They have materially increased with no anticipated resolution to the conflict in Ukraine. The current pricing for FY23 is at 203% of FY19 with income currently at 94% of FY19. Utilities will take up around 22% of income versus 12% of income previously.
- 3.5 The centre is also facing inflationary pressures on all cost areas.
- 3.6 1-Life have sent notification of intent to benchmark to Brent Council, with financial calculations to trigger the contractual process.
- 3.7 Benchmarking can be conducted under the contract provided more than 5 years have elapsed since the last exercise. The previous benchmarking exercise was conducted in 2014.
- 3.8 However, both parties would prefer to reach a negotiated and mutually acceptable settlement, which will include a shorter term review process, to

avoid locking into a 5-year fixed term (given it is hoped that the current significant utility cost increases will be short term).

- 3.9 1-Life have run initial calculations for the Benchmarking compromise, which have been reviewed by Brent, and this will result in an increase in payments from Brent Council to 1-Life via the unitary charge payment. However this is less than the calculations for the full formal benchmarking arrangement.

Benefits of the proposed variation

- 3.10 The contents of this section are included in Appendix 2 and are considered to be exempt due to commercial sensitivity.

4.0 Financial Implications

- 4.1 The detailed financial implications are set out in Appendix 2 and considered to be exempt due to commercial sensitivity with costs identified to be funded by Willesden PFI Reserves and a capital growth bid.

5.0 Legal Implications

- 5.1 Officers are seeking to vary the current contract with respect to the benchmarking process provided in Schedule 7 of the contract, in order to incorporate an alternative process, an agreed compromise benchmarking payment on terms as set out in the Head of Terms.
- 5.2 Officers have advised of the benefits of the proposed variation in Appendix 2 (exempt) of this report along with the financial implications.

Under section 3(b) of the table at paragraph 9.5 of Part 3 of the Constitution, Chief Officers are able to vary contracts and agreements without the need for Cabinet approval provided that the variation would not be in breach of Procurement Legislation and does not substantially alter the terms and conditions of the contract.

- 5.3 It is considered that the relevant Cabinet Member has authority to vary the contract as recommended by Officers as a Key decision. The above provisions of the Constitution are satisfied in that variation of the contract as proposed by Officers in this report would not be a breach of Procurement Legislation. Regulation 72(c) of the Public Contracts Regulations 2015, provides for modification of contracts during its term where all of the following conditions are fulfilled:

- (i) the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen. Officers have set out in section 3 why the need has arisen.
- (ii) the modification does not alter the overall nature of the contract – the variation proposed by Officers as set out in section 3 of this report does not alter the overall nature of the contract.

- (iii) any increase in price does not exceed 50% of the value of the original contract or framework agreement – Officers have advised that the purpose of the proposed variation is to avoid implementation of the contractual benchmarking process thus reducing the value of the contract. As a result, it is expected that there would be no increase in costs as a result of the proposed variation.

5.4 As the above conditions are satisfied, it is considered that there is authority to approve the proposed variation of the contract under Contract Standing Order 112.

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 Consultation with Ward Members and Stakeholders

7.1 None

8.0 Human Resources/Property Implications (if appropriate)

8.1 None

Report sign off:

Peter Gadsdon

Corporate Director Resident Services