

Crawley Borough Council

Report to Overview and Scrutiny Commission 28th June 2021

Report to Cabinet 30th June 2021

Leisure Contract – Extension of Variation Order

Report of the Head of Major Projects and Commercial Services, **HPS/27**

1. Purpose

- 1.1 This report sets out the arrangements the Council has entered into with Everyone Active (EA) following the initial lockdown in March 2020 and recommends the Council extend the variation order to facilitate the continued opening of the leisure centres over the period 1 July 2021 – 30 September 2021.

2. Recommendations

- 2.1 To the Overview and Scrutiny Commission:

That the Commission consider the report and decide what comments, if any, it wishes to submit to the Cabinet.

- 2.2 To the Cabinet:

That the Cabinet is recommended to approve the extension of the contract variation with Everyone Active under the terms set out in section 5.8 of this report.

3. Reasons for the Recommendations

- 3.1 The recommendation facilitates the continued re-opening of the leisure centres from 1st July 2021 in accordance with the Government announcement on 22 February 2021 and in accordance with Procurement Policy Note 02/20 (Supplier Relief Due to Coronavirus).

4. Background

20 March 2020 – 30 June 2021

- 4.1 As part of the Covid-19 response, since 20 March 2020, the Government has required leisure centres to either be fully closed or to be partially open with restrictions applied to capacity, social distancing and other specific measures introduced as part of individual activity risk assessments.
- 4.2 Also on 20 March 2020, the Government published Procurement Policy Note 02/20 (Supplier Relief Due to Coronavirus). This note advised contracting authorities to put in place 'appropriate payment measures to support supplier cashflow and ensure suppliers who are at risk continue to be paid as normal'. Reflecting PPN02/20, the

Council agreed a variation order with EA for an initial three-month period (April – June 2020) which would permit non-payment of the contract fee (£76K per month) and underwrite EA's operational costs up to a capped amount. The initial three-month variation was extended for the period 1 July 2020 – 30 September 2020, then for the period 1 October 2020 to 31 March 2021 and more recently again for the period 1st April 2021 to 30th June 2021.

- 4.3 For the agreement, covering the period October 2020 – March 2021, EA's projections had assumed that the leisure centres would be permitted to open and the growth in attendance evidenced since the July re-opening would continue. On this basis, the requested capped payments from EA over this period were:

October:	£ 72,000
November:	£ 92,000
December:	£100,000
January:	£ 47,000
February:	£ 46,000
March:	£ 22,000

- 4.4 Unfortunately the rise in Covid cases over the winter initially placed additional restrictions on opening and from the beginning of January, required all leisure centres to close again. This meant the losses incurred by EA were greater than the original projections however the Council's contribution was capped at the agreed level.
- 4.5 In December 2020, the Council, working with EA, submitted an application to the National Leisure Recovery Fund for support towards leisure centre operational costs over the period December 2020 – March 2021. This application was successful and all of the capped deficit payable by the Council over this four-month period (£215,000) was offset by the NLRF grant received by the Council.
- 4.6 Further, guidance issued to s151 officers in August 2020 gave a new income support scheme to cover 75% of losses as a result of lost income due to the pandemic. There is a top slice deductible from 5% of all sales, fees and charges. This funding effectively enables the Council to recover approximately £53,000 of the £76,000 monthly contract fee which would otherwise be payable to the Council. This scheme is currently due to expire on 30th June and it is not yet known whether it will be extended. The impact of this is reflected in the 2020/21 Budget Monitoring Report Quarter 4 (FIN/526) report elsewhere on this Agenda.
- 4.7 Since the approval of the previous variation the roadmap has allowed for the following leisure facilities to reopen:
- | | |
|------------|---|
| 29 March : | Outdoor Activities (3G Pitches / Athletics) |
| 12 April: | Gym, children's indoor sport including learn to swim programme, café (takeaway) |
| 17 May: | Group exercise classes, adult indoor sport, café (indoor table service) |
- 4.8 With this phased re-opening, the operational deficit over the period 1st April to 30th June was projected at £260,100 (broken down as £96,300 (April), £85,500 (May) and £78,300 (June)). However, as expected, these projections have proved to be cautious and the actual deficit for April saw a reduction of £42,000 in the required

subsidy. Actual figures for May and June are awaited however it is understood the usage and income has continued above the projections.

5. Description of Issue to be resolved

- 5.1 On the 22 February 2021, the Government announced a phased re-opening of leisure centres with effect from 29 March 2021. With social distancing and public health requirements in place, the guidance under PN02/20 continues to apply and it is recommended that the Council extend the contract variation for a further three months (covering the period 1st July – 30th September 2021) to enable the continued phased re-opening.
- 5.2 Subject to continued reduction in the infection rate and numbers of Covid cases, the roadmap for opening leisure centres will see the final removal of legal restrictions on 21st June 2021, although it still seems likely some forms of distancing and measures to suppress the spread of the virus will continue to be required.
- 5.3 Up until March 2021, the Deed of Variation which the Council entered into with EA had enabled the Council to benefit where deficits were lower than the projected budget costs. This was particularly the case in August, September October and December when there were fewer restrictions and usage was strong. The Council had also benefited from the capped arrangements with any deficit larger than the projection, being met by EA. This was particularly the case from April – July, November and from January – March 2021 when the leisure centres were largely closed.
- 5.4 The contract variation the Council had agreed is somewhat anomalous to the majority of contract variations EA had agreed with other local authority clients. The other contract variations have, on an open book basis, generally seen the Council benefit from the upside of increased usage and income but bear the additional cost when tighter restrictions were applied.
- 5.5 Following representations from EA in March the Council agreed to bring into line the contract variation for the Crawley contract whereby the Council benefits if the net deficit is lower than projections, however if the net deficit is higher than the projections, the additional cost will be met by the Council.
- 5.6 To provide additional controls for the Council, it was agreed with EA that:
 - (i) Should any of the major expenditure items exceed the amount stated in the monthly projections, specific Council authorisation will be required for this expenditure.
 - (ii) EA will present income and expenditure projections to the Council on a fortnightly basis to demonstrate that all reasonable efforts are being made to maximise income and mitigate costs.
 - (iii) Should the overall net deficit exceed the projection in a given month, EA and the Council will commit to a review as soon as reasonably practical which will seek to ensure the deficit in the subsequent month(s) is at or below the projection figure for that period.
- 5.7 The compensation for lost income from the non-payment of the contract management fee will continue until 30th June 2021. With an initial 5% deduction from

the total lost income, and compensation then apply at a rate of 75% of the amount thereafter. This scheme is currently due to expire on 30th June and it is not yet known whether it will be extended.

- 5.8 It is recommended that the Council extends the contract variation (as detailed in section 5) for a three-month period (1st July 2021 – 30th September 2021) including the requirement for the monthly deficit payments projected at up to £190,000 in total for the period. Extending the contract variation for a longer period (6–12 months) is not advisable given market uncertainties over that timeframe. Further, at the point when all distancing restrictions are lifted, the Council will want to return to the standard contract model and contract payments, and it would be prudent to retain the flexibility until more information is known about the process for lifting restrictions in due course.

6. Information & Analysis Supporting Recommendation

- 6.1 The two main alternative options which the Council could consider are to close the leisure facilities or to terminate the existing contract with EA. It is felt that both of these options would be more costly to the Council and would lead to an extended period of disruption without the service and a longer recovery to return to a normalised service position.

7. Implications

Financial

- 7.1 The Budget and Council Tax 2021/22 [FIN/514](#) report to Cabinet on 3 February 2021 and Full Council on 24 February 2021 Table 2 and section 5.5.5 included a provision of £813,000 in respect of additional costs and lost income in respect of Covid-19 funding for 2021/22. Section 5.5.5 also confirms that with the Leisure Contract, continuation of the 'open book approach' will be required into 2021/22 to the point where social distancing or other Covid prevention measures are no longer required. As part of the quarterly monitoring process during 2021/22 the finance team will report on the draw down from the budget and how it has been allocated including the draw down in respect of the Leisure Contract.

8. Background Papers

- 8.1 Budget and Council Tax 2021/22 [FIN/514](#) report to Cabinet on 3 February 2021.

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