

Millom Recreation Centre, Lancashire Road, Millom – New 15 year lease

EXECUTIVE MEMBER: Councillor H Branney
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WHAT BENEFITS WILL THESE PROPOSALS BRING TO COPELAND RESIDENTS?

The proposal will enable a successful community run recreation centre to deliver its development plan which includes an increase and improvement to the facilities already offered from the Centre to local residents, provide additional job opportunities and increased access to sports facilities and a wider range of sports.

WHY HAS THIS REPORT COME TO THE EXECUTIVE?

The Council is requested to provide a new 15 year lease to Millom Recreation Centre Limited following from a successful previous lease arrangement to support the Centre to obtain grant funding to improve facilities and deliver local services. In accordance with Contract Procedure Rule 28.8 disposals at less than market value where the 'value' is more than £250,000 is reserved to Council. In this case the value, assumed to be the total discount over 15 years, amounts to £274,000.

RECOMMENDATIONS:

That a recommendation be made to Council that, subject to the Head of Regeneration and Communities and Portfolio Holder being satisfied that there is no risk of grant clawback to the Council (as freeholder) and that a satisfactory business case is in place, that:

- (a) the Council grants a lease of the Millom Recreation Centre, at less than best consideration, to the Millom Recreation Centre Limited on the terms set out in Appendix A to this report; and**
- (b) that the Head of Regeneration and Communities in consultation with the Head of Corporate Resources, Ward Councillors and the relevant Portfolio Holder be delegated authority to amend and finalise the terms set out in Appendix A, during the negotiation process, other than rent and lease period, save that the lease period can be reduced if grant conditions allow.**

1. INTRODUCTION

- 1.1 Millom Recreation Centre is a council owned building housing a community sports and physical activity facility based in South Copeland. It comprises of a two badminton court sized sports hall with cricket nets, a small 6 station fitness area and a small 5 bike spinning room.
- 1.2 The charitable organisation Millom Recreation Centre Limited is a company limited by guarantee run by a board of local people. The Trustees of the Millom Recreation Centre Ltd currently occupy the building by way of a full repairing and insuring lease with the Council for a period of 28 years which commenced on 1st August, 1990, at a peppercorn rent. The existing lease is due to expire in 2018.
- 1.3 The current facilities within the building have been very well used by local residents and groups and deliver a mix of free and low cost activities. The Centre has been revisiting its vision and options for developing and updating the facilities to better meet local demand and new leisure and sporting opportunities. The current lease term is not long enough to enable the Centre Board to make the required funding applications to deliver their development plan.
- 1.4 The Council provided an annual grant of £11,785 for 2010/11 financial year to the Millom Recreation Centre linked to an annually agreed Service Level Agreement and a copy of annual audited accounts. The continuation of this grant post March 2013 is subject to the outcome of the corporate grants review process which in turn will link to the Centre's business case and future planning which in turn relies on their ability to attract funding to improve facilities and maintain/extend community activities.
- 1.5 Millom Recreation Centre undertake annual audited accounts in line with their company and charitable status. Their financial year operates from 1 August to 31 July. The Centre was incorporated in April 1990 and the Centre has produced audited accounts since this time. The latest annual accounts to end July 2011 confirm the company as delivering an annual surplus of £23,503 alongside holding a restricted sum from donation and grant towards their planned capital development. Their annual income levels have been consistent with a 5% growth since the previous year. The Centre operates their volunteer policy effectively to enable them to carry forward a year on year operating surplus to enable both sustainability and contribute towards their development plans.

2. PROPOSALS

- 2.1 The Council has monitored and worked with the Centre in line with our lease and other grant support and have been supportive of the service and management of

the Centre. We continue to work with the Centre on funding opportunities and enabling their engagement with the South Copeland Sports Partnership. The Council has no other plans for the Centre than for the current uses it is being put to.

- 2.2 Over the last 12 months the Centre board of trustees have made significant improvements to the centre and are now in a position to apply for grant funding to continue this growth. They are looking to expand their fitness offer and also provide a soft play area within the facilities current footprint. The Board need a minimum lease of 15 years in order to secure any grant funding.
- 2.3 The Trustees of the Millom Recreation Centre Limited have gained strong support for the extension of the facilities evidenced by a survey of local residents of all ages, and through letters of support from local community groups such as Millom Autism Support Group, from the local schools, from local sports clubs and from Millom Town Council.
- 2.4 The Council is being requested to support the ongoing delivery and development of this community sports and leisure resource through a new 15 year lease to Millom Recreation Centre Limited. It will allow the Centre to bid for external grant funding to extend its current facilities and sports and leisure offer. The Development Plans for the Centre set out the detailed proposals which will create additional jobs in the running of the Centre and new opportunities for freelance and part time sports coaches in the Millom area.
- 2.5 The development of the Centre as set out by the trustee board is directly aimed at increasing the sustainability of the Centre by maximising use of the existing and expanded space to enable increased opportunities to participate in sport and physical activity e.g. gymnastics hub, multi use indoor fitness suite and child and family focused activity centre. The Centre will continue to be a core resource for local families, workers and residents and also visiting families and tourists.
- 2.6 It is proposed that a new lease is granted for a period of 15 years at a peppercorn rent. Other terms will reflect good estate management practice. As the building houses an important and locally well supported community facility, charging a market rent is not justified given the wider community benefit. The existing lease charges a peppercorn rent. A copy of the provisionally agreed terms for the new lease are attached as Appendix A. The Council will insure the extension under its block insurance policy with all insurance costs being recharged to the tenant. The car parking area is included within the lease agreement.

- 2.7 The Council is awaiting a formal valuation but estimates that the annual market rent would be £18,400 resulting in a rent free sum of approximately £276,000 over the period of the lease. Contract Procedure Rule 28.8 also requires the ward councillor(s) to be consulted. The outcome of this consultation will be reported to the Executive at its meeting.
- 2.8 From a legal perspective the Council is under an obligation, in respect of leases exceeding 7 years in length, to obtain the best consideration that can be reasonably obtained. This does not apply however if the Secretary of State provides consent. A general consent exists which allows local authorities to grant leases, at less than the best consideration, if the difference between the market rent and the chargeable rent over the period of the lease is less than £2m and the Council considers that the lease will improve or promote the economic, social or environmental well being of the area. In this case, subject to confirmation by an independent valuer, the rent free sum is likely to be below the consent level. The proposal will, through providing increased opportunities to participate in sport and physical activities and being a core resource for local families, as outlined in this report, support social well being. In terms of creating additional jobs, economic well being may also be promoted.
- 2.9 The requirement to obtain best consideration is not the only legal factor which needs to be considered. State aid and anti-competitive issues also arise. In respect of state aid this could have an impact where the state provides funds (either through direct grants, tax exemptions, rent free leases), which favour certain undertakings, which could distort or threaten competition and which affects trade between member states. BIS guidance comments that single businesses not close to a state border are unlikely to be caught. A business can also receive €200,000 over a period of 3 years without being caught by state aid rules. Anti-competition law controls trade between companies and agreements which prevent, restrict or distort competition are not permitted. From 6th April 2011 land agreements are now caught. An exemption exists where the agreement promotes economic progress, allows consumers a fair share of the resulting benefits, the restrictions are no more than are necessary to achieving those objectives and competition is unlikely to be eliminated. In this case the exemption is likely to apply.
- 2.10 In respect of all three issues – best consideration, state aid, and anti-competition it is recommended that appropriate conditions are included in the heads of terms to enable the position to be periodically reviewed and to allow the Council to review/terminate the lease if there is a risk of the legislation being infringed.

3. ALTERNATIVE OPTIONS TO BE CONSIDERED

At this time no alternative option are being tabled. As previously stated the resource is effectively run and providing a variety of local sport and leisure services for local residents by the current community based charitable leaseholder.

4. CONCLUSIONS

- 4.1 Millom Recreation Centre Limited has increased their offer and participation levels over the period of the current lease. Their development plans assume their continued location and operation on the leased site. This new lease underpins Millom Recreation Centre's sustainability as the community sport facility for residents of Millom and surrounding area.
- 4.2 The Council's Executive are recommended to grant the new 15 year lease to Millom Recreation Centre. This new lease will allow the Centre to apply for and obtain external grant funding to extend its current service and facility offer. As stated above this development is forward planning for the sustainability and increase in sports and leisure related employment in Millom and local area. Millom is one of Copeland's neighbourhoods experiencing higher than average worklessness and residents are in need of additional job and skill opportunities. The Centre will expand the sports and leisure opportunities for residents of all ages. The extension to the lease ensures that the centre stays open and that the responsibility for running the centre stays within community and charitable ownership and does not return to Copeland Borough Council.

5. STATUTORY OFFICER COMMENTS

- 5.1 The Monitoring Officer's comments are as set out in paragraphs 2.8 to 2.10 above.
- 5.2 The Section 151 Officer's comments are: The renewal of the lease is in compliance with Contract Procedure Rules; the Council as freeholder needs to be assured that any future bid made or grant received upon this asset does not place the council at risk of grant clawback.
- 5.3 EIA Comments: This community resource is well used by a diverse range of local residents and clubs. It is the only indoor recreational facility available to the residents of the area and its loss would have a major impact on the health and wellbeing of local people.

- 5.4 Other consultee comments, if any: Reference is made in the report to the ongoing community, schools and sports club feedback received in support of the Millom Recreation Centre's facilities.

6. HOW WILL THE PROPOSALS BE PROJECT MANAGED AND HOW ARE THE RISKS GOING TO BE MANAGED?

- 6.1 The proposal will be managed by the Sports & Health Development Worker. The Centre is managed by an independent charitable community organisation.
- 6.2 Risks will be managed with advice from the Valuation Service and legal teams of the Council.

7. WHAT MEASURABLE OUTCOMES OR OUTPUTS WILL ARISE FROM THIS REPORT?

- 7.1 Millom Recreation Centre will be able to use the new lease as an important funding asset and tool to bid for resources to both improve the facility and sustain and increase the service offer to local residents. The Council will continue to work with the Centre on fundraising and receive development and business plans and impact data in line with the Council's commitments on the lease.
- 7.2 The development of the fitness area and soft play are delivered in line with the Centre's Development Plans and their funder's timescales.

List of Appendices

Appendix A – Heads of Terms for Millom Recreation Centre
Appendix B – Plan of the site.

List of Background Documents:

Millom Recreation Centre Ltd audited accounts 2010/11.

Appendix A Heads of Terms

LEISURE CENTRE, LANCASHIRE ROAD, MILLOM

HEADS OF TERMS – Subject to Contract and confirmation by valuer as to Council's position in respect of best consideration (section 123 Local Government Act 1972) - 54/LF/BG/9.2.12

- Landlord: Copeland Borough Council, the Copeland Centre, Catherine Street, Whitehaven CA28 7SJ;
- Tenant: Millom Recreation Centre Limited (company registration number 02494406);
- Premises: Land as shown edged red on the attached plan together with the existing building thereon;
- Term: 15 years from a date to be agreed;
- Rent: One Peppercorn per annum;
- Use: As a sports and recreation facility for the benefit of the people of Millom for the provision of facilities, for people of all ages, to promote healthy living, encourage sports and recreation and provide community activity facilities at competitive and affordable rates;
- Repair: To keep the interior and exterior of the premises, including drains, water and sanitary equipment, external sewers, glass in the windows, internal fixtures and fittings in good repair and condition throughout the Term;
- Decoration: The Tenant shall redecorate the building, to the Council's reasonable satisfaction, internally and externally at least every five years and in the last year of the term;
- Outgoings: Other than for building insurance, the Tenant will be responsible for paying directly all outgoings including, business rates, electricity, gas, water, sewerage, telephone etc;

- Indemnity:** The Tenant will indemnify the Council against all and any actions arising from the Tenant's occupation of the premises and against any claw back of grant made by grant funders against the Council as freeholder;
- Assignment and sub-letting:** The Tenant may not assign, sub-let or otherwise part with possession of the whole or any part of the premises without the Landlord's consent;
- Insurance:** The Landlord will insure the Premises in respect of building reinstatement in accordance with its standard policy, against the perils included in that policy or such other perils as the Landlord may from time to time decide, and recharge the cost of the insurance to the Tenant. The Tenant will be directly responsible for all other insurances and will insure the landlord's fixtures and fittings. The Tenant will pay any excess sum relating to any insurance claim made through the Landlord's insurance;
- Alterations:** The Tenant shall carry out the scheme of works in accordance with the attached drawings nos. 2916.21, 2916.22, 2916.23, 2916.24, 2916.31, 2916.32, 2916.33, 2916.34. Other than the Scheme of Works, the Tenant is not to carry out any structural or non-structural alterations to the Premises except with the previous written consent of the Landlord;
- Planning etc:** The Tenant is to obtain all planning and other regulatory consents needed for its use of the Premises;
- Service Delivery:** The Tenant will use the lease to deliver affordable community based health, sports and recreation facilities and services to the residents in the Millom area. The Tenant shall provide an annual report on developments achieved and planned, user statistics against services delivered and rates charged for use. The Tenant shall on request provide to the Landlord, from time to time, copies of its memorandum and articles of association, annual accounts and budget forecasts, agenda and minutes to meetings and details of what steps have been taken to proactively market the availability of the premises for use by the local community;
- Termination:** The Landlord shall be entitled to determine the lease on providing 6 months' written notice to the Tenant if the Landlord and/or Tenant is found to be in breach (or Counsel for the Landlord considers that there is a risk of such breach) of any legislation relating to the grant of the lease, or continuation thereof, provided that if the breach is due to the Rent being at less than the best consideration reasonably obtainable and the

Tenant is willing to pay a rent which avoids such breach then the Landlord shall not be entitled to determine the lease;

The Landlord shall be entitled to determine the lease for breach of its terms by, or in respect of liquidation of, the Tenant;

Right to use: The Landlord shall be entitled to use the premises, free of charge, for election of emergency planning use; and

Costs: Each party are to bear their own costs in this matter.