

Report to the Cabinet

Report reference: C-073-2020/21

Date of meeting: 20 April 2021



**Epping Forest
District Council**

Portfolio: Environment and Technical – Cllr. N Avey

Subject: Delivery of Epping Leisure Centre at Bakers Lane, Epping

Responsible Officer: James Warwick (01992 564350).

Democratic Services: Adrian Hendry (01992 564246).

Recommendations/Decisions Required:

- (1) To note progress made on delivery of the Epping Leisure Centre at Bakers Lane, Epping;**
- (2) To delegate to the Portfolio Holder for Environment and Technical the authority to agree the Deed of Variation to the contract with Places Leisure for delivery of the new centre, adjustments to the agreement to take account of the sale of current Epping Sports Centre at Hemnall Street to Qualis and the right to continue to use this facility until the new Bakers Lane facility is ready;**
- (3) To allocate £600,000 from existing Capital Programme provision for the Bakers Lane Leisure Centre, as agreed by Council in February, to progress detailed designs and further site survey work in order to arrive at cost certainty;**
- (4) Recognising that Qualis own a number of regeneration sites in Epping Town and the delivery of the Bakers Lane site is interdependent on Qualis progress, to agree to work with Qualis in a strategic delivery partnership with Qualis occupying the role of Infrastructure Manager with the responsibility of coordination for the delivery of all five sites in Epping Town and communications across the sites and agree an appropriate day rate retainer fee to reflect this;**
- (5) To delegate authority to section 151 officer to repay to Qualis costs incurred by them in preparing and submitting a planning application and outline design for the Bakers Lane Leisure Centre that is to be used by Places Leisure; the amount to be based on the actual justifiable costs incurred and upon consultation with the Leader of the Council, Portfolio Holder for Environment and Technical and Portfolio Holder for Finance; and**
- (6) That the final form of contract variation covering Management Fee income from the new Centre be brought to a future Cabinet for consideration.**

Executive Summary:

At the meeting on 21 January 2021 Cabinet agreed that the new leisure centre in Epping is delivered by its incumbent contractor Places Leisure. This includes the purchase of all designs and plans from Qualis once planning permission for the new facility is obtained.

To date, all the work Places Leisure have done with Qualis has been on a voluntary basis and in a spirit of partnership as the Council's leisure centres provider. Following Cabinet decision to have the new centre delivered by Places Leisure it is necessary to make the required amendments to the Contract to reflect this. To progress this project to the next stage Places Leisure need services of specialist consultants and legal advisers. It is standard practice that these costs are covered by the client, in this case the Council, as was the case for the delivery of Waltham Abbey Leisure Centre.

The contract with Places Leisure results in a net annual income of £1.3 million. This has been severely impacted by Covid-19. However as restrictions ease and user confidence increases it is expected that income levels will rise. It is too early, primarily due to the impact of Covid-19, to agree additional income from the new Centre. It is recommended that a final agreement on additional income to the Council is brought to Cabinet for approval later in the year.

Reasons for Proposed Decision:

To agree to have a Deed of Variation in the Contract with Places Leisure and approve budget to enable the necessary design and legal processes to enable Places Leisure to take over the scheme from Qualis and continue work at pace for the delivery of the new leisure centre.

The procurement advice received from Anthony Collins Solicitors is that Places Leisure should tender the construction contract through the Find a Tender Service (FTS formerly OJEU) which will mitigate any risk of challenge as well as demonstrate best value for the Council.

Other Options for Action:

It is possible to delay decisions until the outcome of the planning application. However the slippage in programme will delay delivery of the new leisure centre. Commencement of the construction of the new leisure centre is entirely contingent on the completion of the Multi Storey Car park at Cottis Lane and associated highway works.

Report:

1. At its meeting on 21 January 2021 Cabinet agreed a revised strategy for delivery of the Epping Leisure Centre at Bakers Lane, Epping. It was agreed to let the Council's partnering contractor Places Leisure deliver the new Centre. It was also agreed that the area of land of Bakers Lane Car Park on which the new Centre is to be built will not be transferred to Qualis and all designs and plans associated with the work leading up to the Planning application will be bought by the Council from Qualis at cost.
2. Qualis submitted planning application for the Epping Leisure Centre on 22nd December 2020. Qualis Commercial ran public consultations upon the future redevelopment of five sites in Epping that have been identified in the emerging Local Plan. The Bakers Lane site received 167 responses during the consultation. As with any large planning application a number of queries and clarifications have been raised by stakeholders, statutory consultees and residents. These are being dealt with by Qualis and their consultants. It is anticipated that the planning application will be considered in June.
3. Although no formal instruction has been issued to Places Leisure they have been planning their lead role in delivery of the new Centre. This is exactly in the line with how

the Waltham Abbey Leisure Centre was successfully delivered, DBOM (Design Build Operate and Maintain) arrangement under the contract. Places Leisure are acting in good faith and in the spirit of partnership however contractually it is necessary to issue a formal Deed of Variation which sets out their responsibilities. In order to expedite this process it is proposed that the Portfolio Holder is authorised to agree the Deed, in consultation with the Monitoring Officer and Service Manager Contracts, as soon as is practicable.

4. The Deed of Variation will not only cover the arrangements for the new Bakers Lane Leisure Centre but also update the contract to reflect the changes, for example the numbers and locations of leisure centres. The original decision at the time of contract award to Places Leisure in 2017 was to close Epping and Ongar leisure centres and construct a new centre at North Weald. This decision has since been revised by Council and it now intends to keep Ongar Leisure Centre operational, reflected by the recent investment of £1.3 million, as well as build the new centre in Epping Town and not North Weald.

5. The Deed of Variation is a legal and contractually binding change to the 20 year contract between the Council and Places Leisure. The Council will appoint external legal adviser to prepare the Deed. Some changes are easier than others, for example the retention of Ongar Leisure Centre, however some will require more work. These include the management fee income that the Council would seek once the new Centre becomes operational, a framework for procurement of contractors to ensure Council gets value for money.

6. Leisure Centres are complex structures and require input from specialist designers, architects and engineers. While Places Leisure have significant experience in building and operating leisure centres, they require the services of third-party agents and consultants. In order to progress the Epping Leisure Centre, they need to engage some of these service providers. There is also the need to undertake further site investigation work to fully quantify, as far as possible, the contaminated land risk. Additionally any costs associated with the change to the Contract will have to be borne by the Council as it is triggering the Deed of Variation. At this stage it is recommended that a sum of £600,000 should be allocated from the existing budget for the project already agreed by Council. Officer oversight on expenditure will be maintained through existing contractual processes.

7. The form of Contract between the Council and Places Leisure is DBOM (Design Build Operate and Maintain). This contains a mechanism for delivery of a new leisure centre, this mechanism was used to deliver the Waltham Abbey Leisure Centre in 2019. The Contract sets out the requirements, roles and responsibilities of all parties and associated risks. This arrangement reduces the risks to the Council by relying on the expertise of leisure service provider to use their commercial and operational acumen to deliver a facility on time and at optimum cost ensuring the best commercial return. In such an arrangement the Council will provide all capital costs and Places Leisure will deliver the scheme. Council officers will retain overall financial control. This is the same mechanism used for the Waltham Abbey Leisure centre development on time and on budget.

8. Whereas the responsibility for delivery of the new Centre rests with Places Leisure there is a recognition in the Contract that the client, the Council in this case, has a duty to ensure public funds are utilised appropriately, there is probity, value for money is demonstrated and the Council's interests are safeguarded. The DBOM arrangement has a role of a Specialist Leisure Independent Certifier. This is delivered by a competent agency, usually a consultancy, that has the requisite skills in the subject area. This arrangement worked well in the development of Waltham Abbey Leisure Centre. This offered Council officers reassurance that work was progressing as planned, payments to Places Leisure

were only made upon verification of each stage of the activity, to the desired quality. This process also avoided any disputes at completion as a thorough audit trail was available. The same arrangement is proposed for the delivery of the new Centre.

9. There are considerable interdependencies between the four sites in Epping (owned by Qualis) and Epping Leisure Centre especially around the road infrastructure, disruption during construction and liaison with external agencies like Essex Highways, utility companies, Epping Town Council, businesses and residents. Although Places Leisure will be delivering the new Epping Leisure Centre there is an important role for Qualis, working with officers from EFDC, in coordinating and sequencing all the projects to make sure that each party doesn't delay delivery by the other. They have acquired knowledge in preparing the planning application for the new leisure centre and this could be valuable to Places Leisure. It is recommended that the Council appoint Qualis as the Infrastructure Manager. This will enable Qualis to coordinate the work of all five sites in Epping Town, deal with highways and external agencies. Qualis will be responsible for coordinating the overall delivery of the five schemes in Epping Town whilst Places Leisure will be responsible for the delivery of the new Epping Leisure Centre. Details of the role will be covered in the Deed of Variation as well as the costs payable to them. The report recommends that the costs payable to Qualis for the expenditure incurred on the project so far will be agreed by the Section 151 officer in consultation with the Portfolio Holder for Environment and Technical and the Portfolio Holder for Finance.

10. The contract with Places Leisure results in an average net annual income of £1.3 million. This has been severely impacted by Covid-19 and the Council is having to pay Places Leisure costs for keeping the leisure centres closed. It is anticipated that once lockdown restrictions ease users will come back. However there is a divergence of opinion on how soon leisure centre usage will get back to post pandemic levels. Officers are liaising with other local authority Client Officers and there is a general feeling of optimism that usage will improve however there is uncertainty on how soon this can happen.

11. There is no doubt that the new Epping Leisure Centre will attract new users and as a result Council should see an increase in the annual management fee income it gets from Places Leisure. However the uncertainty caused by Covid-19 means it is difficult to carry out a meaningful predictive income modelling. It is possible that once restrictions ease and public confidence increases leisure centre usage could be higher than pre Covid-19 years. Equally it may take a couple of years for public confidence to get to pre Covid-19 levels. If the Council agrees a management fee uplift too soon then there is a risk that it will lose out on dividends if future usage is relatively higher than pre Covid-19. It is recommended that the management fee uplift be given some further thought and a proposal brought back to Cabinet later in the year when more information on usage will be available.

Resource Implications:

At its meeting on 21 January 2021 Cabinet agreed to allocate £25 million to the delivery of new Epping Leisure Centre. Qualis has incurred costs in preparing planning application and the Council will have to purchase the designs and associated propriety rights at cost.

Places Leisure have been liaising with Qualis in the preparation of planning application for the new leisure centre. They have not charged for their services however once planning permission is granted and the scheme moves into detail design Places Leisure will need to allocate additional resources and it is reasonable for them to charge for their costs, the DBOM arrangement requires this.

Once planning permission is obtained for the new leisure centre Places Leisure will review planning conditions, in case there is a financial impact. Arrangements will be made to purchase all designs and associated details from Qualis.

Officers are working on preparing a Deed of Variation, the existing DBOM arrangement in the Contract will form the basis, which will set out costs for the various elements of the project. In order to avoid any delays while the Deed is being prepared it is recommended that a budget of £600,000 is made available to the project to allow Places Leisure to start to engage with the specialist third party agents. These include architects, designers, project managers, quantity surveyors etc. Fees for these works are being finalised by Places Leisure, Council officers will keep oversight of all expenditure and demand an audit trail to demonstration of value for money. Once finalised these will form part of the Deed of Variation.

Consultancy fees and estimated costs are noted below, these are in line with those for the delivery of Waltham Abbey Swimming Pool and Gym, Places Leisure will charge the same rates for the new Epping Leisure Centre. A contingency of around 8% is recommended to deal with any unforeseen circumstances. The costs below are exclusive of any payments due to Qualis for designs:

Places Leisure Fee	£75,000
Leisure Legal Costs	£75,000
EFDC Legal Costs	£75,000
Technical Consultants, preparation of Employers Requirements and procurement of Build Contractor	£100,000
Project Insurance	£75,000
Contingency	£50,000
Specialist Leisure Independent Certifier	£150,000
Total	£600,000

Places Leisure will charge the same fee as for the delivery of Waltham Abbey Centre and other charges will be validated through a selection process to ensure value for money.

Qualis have estimated construction cost of the new Centre at £25 Million. Places Leisure will carry out a procurement exercise to appoint a suitable build contractor. This will demonstrate value for money and hopefully market competition will deliver a favourable price. Council officers will influence the contractor selection criteria to ensure high quality outcome.

Legal and Governance Implications:

To enable Places Leisure to design and construct the new leisure facility, it would be necessary to carry out a variation to the Contract. This is because the price for the new centre, the timing of the build and the Employer's Requirements and Proposals for the new facility are not within the procurement documents or current Contract.

The procurement advice received from Anthony Collins Solicitors is that the Design & Build contract should be tendered through the Find a Tender Service (FTS formerly OJEU) which will demonstrate best value for the Council.

Safer, Cleaner and Greener Implications:

This project will help Epping Forest District Council achieve a number of corporate objectives under stronger communities. The construction of a new leisure centre will work towards ensuring all residents have the opportunity to lead healthy and fulfilling lives. As well as helping to ensure wellbeing and social cohesion across all ages by providing opportunities for residents to enjoy local heritage, cultural and leisure activities in the district.

The construction of a new, modern leisure centre in Epping will work towards achieving the aim of the Epping Forest Health and Wellbeing Strategy, which is that Epping Forest District residents across all demographics have the opportunity to lead healthy and fulfilling lives.

Consultation Undertaken:

Qualis public consultation on the proposed scheme which received 167 online comments. Planning application consultation as part of the application.

Leisure Management Partnership Board have been kept up to date with progress and will continue to be updated throughout the project.

Background Papers:

21 January 2021 setting out options and Cabinet agreeing the delivery strategy to be Places Leisure and existing DBOM, in other words like Waltham Abbey

Risk Management:

Risk of procurement challenge if Places Leisure do not tender through the Find a Tender Service (FTS formerly OJEU) which will demonstrate best value for the Council and mitigate any procurement challenge.

The unknown risk at this stage are the level of contamination in the ground and the complexity of the build due to the nature of the site. Further ground surveys will need to be conducted to understand the level of contamination and to get a more accurate cost of construction.

Risks are mitigated due to the positive working relationship that Epping Forest District Council and Places Leisure have established. Waltham Abbey Swimming Pool and Gym also provides a model of best practice where the DBOM model worked extremely well resulting in the project being built on time and in budget.

Equality Impact Assessment

1. Under s.149 of the Equality Act 2010, when making decisions, Epping District Council must have regard to the Public Sector Equality Duty, ie have due regard to:
 - eliminating unlawful discrimination, harassment and victimisation, and other conduct prohibited by the Act,
 - advancing equality of opportunity between people who share a protected characteristic and those who do not,
 - fostering good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.
2. The characteristics protected by the Equality Act are:
 - age
 - disability
 - gender
 - gender reassignment
 - marriage/civil partnership
 - pregnancy/maternity
 - race
 - religion/belief
 - sexual orientation.
3. In addition to the above protected characteristics you should consider the cross-cutting elements of the proposed policy, namely the social, economic and environmental impact (including rurality) as part of this assessment. These cross-cutting elements are not a characteristic protected by law but are regarded as good practice to include.
4. The Equality Impact Assessment (EqIA) document should be used as a tool to test and analyse the nature and impact of either what we do or are planning to do in the future. It can be used flexibly for reviewing existing arrangements but in particular should enable identification where further consultation, engagement and data is required.
5. Use the questions in this document to record your findings. This should include the nature and extent of the impact on those likely to be affected by the proposed policy or change.
6. Where this EqIA relates to a continuing project, it must be reviewed and updated at each stage of the decision.
7. All **Cabinet, Council, and Portfolio Holder reports must be accompanied by an EqIA**. An EqIA should also be completed/reviewed at key stages of projects.
8. To assist you in completing this report, please ensure you read the guidance notes in the Equality Analysis Toolkit and refer to the following Factsheets:
 - Factsheet 1: Equality Profile of the Epping Forest District
 - Factsheet 2: Sources of information about equality protected characteristics
 - Factsheet 3: Glossary of equality related terms
 - Factsheet 4: Common misunderstandings about the Equality Duty
 - Factsheet 5: Frequently asked questions
 - Factsheet 6: Reporting equality analysis to a committee or other decision making body

Section 1: Identifying details
Your function, service area and team: Contracts (Leisure and Car Parking)
If you are submitting this EqlA on behalf of another function, service area or team, specify the originating function, service area or team: N/A
Title of policy or decision: Delivery of new Epping Leisure Centre in Bakers Lane, Epping
Officer completing the EqlA: James Warwick Tel: 01992 564350 Email: jwarwick@eppingforestdc.gov.uk
Date of completing the assessment: 17/03/21

Section 2: Policy to be analysed	
2.1	Is this a new policy (or decision) or a change to an existing policy, practice or project? NO
2.2	Describe the main aims, objectives and purpose of the policy (or decision): To agree actions to facilitate delivery of new leisure centre in Epping What outcome(s) are you hoping to achieve (ie decommissioning or commissioning a service)? Agreement to delegate authority to the Portfolio Holder for Deed of Variation the Contract with Places Leisure, approve funding from existing capital allocation
2.3	Does or will the policy or decision affect: <ul style="list-style-type: none"> • service users • employees • the wider community or groups of people, particularly where there are areas of known inequalities? Yes, a new sports facility in the Town of Epping will replace the existing dated Epping Sports Centre at Hemnall Street. Will the policy or decision influence how organisations operate? No, the new centre will be operated by Places Leisure under the existing contractual arrangement
2.4	Will the policy or decision involve substantial changes in resources? Yes, it is estimated that the new Centre will cost £25 Million, however the final figure will be determined following a competitive market tendering exercise
2.5	Is this policy or decision associated with any of the Council's other policies and how, if applicable, does the proposed policy support corporate outcomes?

	Yes, provision of leisure and sports facilities in lined with approved Leisure Strategy and Corporate Plan and Health and Wellbeing Strategy
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Section 3: Evidence/data about the user population and consultation¹

As a minimum you must consider what is known about the population likely to be affected which will support your understanding of the impact of the policy, eg service uptake/usage, customer satisfaction surveys, staffing data, performance data, research information (national, regional and local data sources).

3.1	What does the information tell you about those groups identified? Existing Epping Sports Centre users are expected to join the new Centre along with new members, the new leisure centre will offer a wide range of facilities and opportunities
3.2	Have you consulted or involved those groups that are likely to be affected by the policy or decision you want to implement? If so, what were their views and how have their views influenced your decision? Yes, Qualis led on the design and planning application process and as part of that public displays were carried out in St John's Church Epping. Comments and feedback has been received during the planning consultation. Overall the feedback from public consultation has been positive.
3.3	If you have not consulted or engaged with communities that are likely to be affected by the policy or decision, give details about when you intend to carry out consultation or provide reasons for why you feel this is not necessary: It may be necessary to engage with immediate neighbours and local businesses once impact of construction traffic is known. A comms plan will be put together to communicate to public and local residents the build programme and the various stages of developments.

Section 4: Impact of policy or decision

Use this section to assess any potential impact on equality groups based on what you now know.

Description of impact	Nature of impact Positive, neutral, adverse (explain why)	Extent of impact Low, medium, high (use L, M or H)
Age	Some residents might suffer from reduced cognitive abilities and could be easily overwhelmed by literature and publicity	L
Disability	Those with caring responsibilities may find the disruption during construction difficult	L
Gender	There is limited information available to enable an assessment of the impact on this Characteristic.	N/A
Gender reassignment	It may be that they feel uncomfortable to speak with an officer to seek further information or clarification on the service.	L
Marriage/civil partnership	There is limited information available to enable an assessment of the impact on this Characteristic.	N/A
Pregnancy/maternity	There is limited information available to enable an assessment of the impact on this Characteristic.	N/A
Race	Some groups may feel uncomfortable to speak with an officer to seek further information or clarification on the service.	L
Religion/belief	In the case of Religion some groups may feel uncomfortable to speak with an officer to seek further information or clarification on the service.	L
Sexual orientation	There is limited information available to enable an assessment of the impact on this Characteristic.	N/A

Section 5: Conclusion

		Tick Yes/No as appropriate	
5.1	Does the EqlA in Section 4 indicate that the policy or decision would have a medium or high adverse impact on one or more equality groups?	No	No
			If ' YES ', use the action plan at Section 6 to describe the adverse impacts and what mitigating actions you could put in place.

Section 6: Action plan to address and monitor adverse impacts

What are the potential adverse impacts?	What are the mitigating actions?	Date they will be achieved.

Section 7: Sign off

**I confirm that this initial analysis has been completed appropriately.
(A typed signature is sufficient.)**

Signature of Head of Service: James Warwick	Date: 17/03/21
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Signature of person completing the EqIA: Qasim (Kim) Durrani	Date: 17/03/21
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Advice

Keep your director informed of all equality & diversity issues. We recommend that you forward a copy of every EqIA you undertake to the director responsible for the service area. Retain a copy of this EqIA for your records. If this EqIA relates to a continuing project, ensure this document is kept under review and updated, eg after a consultation has been undertaken.