

Cheltenham Borough Council

Cabinet – 11th October 2022

Outdoor Leisure and Catering Contract – Pittville and Montpellier Parks

Accountable member:

Deputy Leader, Cabinet Member Assets & Finance, Councillor Peter Jeffries

Accountable officer:

Director of Finance & Assets (Deputy Section 151 Officer), Gemma Bell

Accountable scrutiny committee:

Asset Management Working Group

Ward(s) affected:

Pittville, Lansdown.

Key/Significant Decision:

No

Executive summary:

The recreational leisure and catering facilities at Pittville Boathouse, Central Cross Café, Pittville Kiosk, and Montpellier Gardens Café are leased to “In The Park Limited” for a commercial rent. Pittville and Montpellier Tennis Courts are also leased to In the Park Limited. All leases are due to expire in February 2023. All leases are excluded from the 1954 Landlord and Tenant Act. This means that at the end of the lease term, there is no automatic right for the business to renew.

In addition to the leases, In the Park Limited run a simultaneous service contract at these locations for the provision of outdoor leisure activities including tennis, fishing, boat hire and golf. The service contract runs co-terminously with the leases and will also expire in February 2023. An Invitation to Tender is being drafted by the Council’s Procurement team for a new agreement.

The Service Contract is not the subject of this Cabinet Report which is provided in order to outline the proposed terms for the new leases, however, the successful party identified from the Invitation to Tender will be the new Lessee for the Cafes. For clarity, there will be a service contract, and a separate lease –

both to the successful party from the tender.

The cafes and tennis courts form part of the Council's open space. Leases of seven years or more are classed as a disposal and therefore under Section 123 of the Local Government Act, the Council are required to advertise them for a period of two consecutive weeks in the local newspaper. In line with the Council's constitution, a disposal in this manner falls within the delegation of Cabinet to approve.

This report is prepared for the purpose of providing recommendations to the Cabinet in respect of the new leases. It is intended to provide sufficient context in which the recommendations have been made.

Recommendations: That Cabinet approve:

- **The granting of a new lease for a period of 7 years to the successful party in the tender of the outdoor leisure and catering contract;**
 - **Permission be sought to place s123 notices in the local paper to grant new leases to the successful party to the tender, leases to commence February 2023.**
 - **Delegation to the Director of Finance & Assets, in consultation with the Cabinet Member for Finance & Assets, the marketing and disposal of the property represents best consideration and upon such other terms as are deemed appropriate or desirable to protect the council's interests; and**
 - **to enter into such documents as the Director of One Legal deems necessary or desirable to reflect the terms negotiated by the Director of Finance & Assets**
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1. Background

- 1.1. Until 2010, recreational, leisure and catering facilities in Pittville Park and Montpellier Gardens operated as a function of the council. Following a review, it was determined that a more commercial approach would be beneficial, not only for the council, but also as an opportunity to work with businesses in the local area.
- 1.2. Following a formal tender process, In the Park Limited were awarded a contract to provide the catering/refreshments and operate the tennis courts and café kiosks in Pittville and Montpellier Parks. Leases were granted for the premises in 2015 for a period of seven years. The contract and lease run simultaneously and are due to terminate in February 2023.
- 1.3. The cafés are operating successfully, are very popular and greatly enhance the offering in both parks. They are well established as businesses, trade well and have developed into destinations in their own right. The value and importance of amenity space also became more apparent during the Covid-19 pandemic when usage of the Council's parks hugely increased. The operations are well received by the local communities and are providing important functions for the Council that, due to increased budgetary pressures, may otherwise not be available.
- 1.4. Both the leases and the contract are in the process of being renewed. The council wishes to continue running these operations by way of service contract and commercial leases. The authority has previous experience of running the services; however, due to high staff turnover and operational challenges, it was unable to deliver these in a way that provided a positive financial contribution to the general fund. The council's input into the running of these services was subsequently minimised to client side activity. In the current operational format, the Council

is now in receipt of annual rent and sales commission. Following officer review, it was decided that the council should maintain this structure of operation.

- 1.5. The cafes and tennis courts form part of the council's Open Space, and any decision to grant a lease of thereof must first be advertised for two consecutive weeks as a 'Disposal of Open Space' pursuant to Section 123 (2A) of the Local Government Act 1972 in the Public Notice Section of a local newspaper. All comments or representations received must be considered before any final decision can be made.

2. Reasons for recommendations

It is our recommendation that new leases are granted to the successful party in the Invitation to Tender for the following reasons:

- Since the leases were granted in 2015, the effects of the Covid-19 pandemic have compelled the council to re-examine its finances and policies leading to the production of the *Cheltenham Recovery Strategy*.
- The Recovery Strategy's purpose is to focus policy to support the aims of both the *Cheltenham Corporate Plan 2019 – 2023* and *Council's Medium Term Financial Strategy*.
- A core principle of the Corporate Plan is that the council will "*be commercially focused where needed*". Likewise, the MTFs further underpins this by acknowledging that the Covid-19 pandemic has led to the Council is facing an unprecedented financial challenge which requires an agile approach to asset management in order to address the budget gap.

3. Alternative options considered

Should the decision be taken not to renew in its current form, the council would be required to take back the operating, maintenance, repairing and on-going liability of the buildings resulting in the potential closure of the facilities due to pressures on finance and resources.

4. Consultation and feedback

The following parties have been consulted in respect of the proposal to renew the contract and dispose of the properties by way of a 7 year lease:

- Adam Reynolds, Green Space Manager
- Simon Hodges, Principal Surveyor, Property & Asset Management
- Gemma Bell, Director of Finance & Assets (Deputy Section 151 Officer)

5. Key risks

See Appendix 1.

6. Implications

6.1. Financial implications

The latest budget monitoring report highlights a pressure of £2.8m on the general fund budget in 2022-23 which further supports the basis for commercial strategies and maximising the financial benefit our assets and services are delivering for the town. The re-tender of the lease for the running of these concessions in the park reduces the financial pressure on the general fund whilst also

providing a facility for residents and visitors to the parks.

Signed off by: Gemma Bell, Director of Finance and Assets (Deputy s151 Officer), 01242 264124

6.2. Legal implications

Under Section 123 of the Local Government Act 1972, the Authority has an obligation to secure best consideration reasonably obtainable when disposing of a property by way of a lease for more than 7 years. This obligation can be waived with the consent of the Secretary of State, who has given a General Consent to such disposals where, in the reasonable opinion of the Local Authority, this disposal is for social, economic or environmental benefit of the inhabitants of the Authority's area or any of them.

Section 123 (2A) also provides that before disposal of public open space by way of lease, the Authority must first advertise such proposed disposal in a local newspaper for 2 consecutive weeks, and consider any objections.

The Council's Constitution requires that the decision to dispose of public open space (including leasehold disposals) rests with Cabinet.

To that end, the recommendations have been made to satisfy the following criteria:

- Delegate to the Director of Finance & Assets, in consultation with the Deputy Leader and Cabinet Member for Finance & Assets, the marketing and disposal of the property represents best consideration and upon such other terms as are deemed appropriate or desirable to protect the council's interests; and
- To enter into such documents as the Director of One Legal deems necessary or desirable to reflect the terms negotiated by the Director of Finance & Assets.

Signed off by: One Legal legalservices@onelegal.org.uk

6.3. HR implications

None arising from the report recommendations.

Signed off by: Julie McCarthy, HR Manager, julie.mccarthy@publicagroup.uk

6.4. Environmental and climate change implications

Since the previous leases were granted, the Council has declared a Climate Emergency and committed to becoming net zero by 2030. To that end, the new leases have been drafted with the inclusion of 'green lease' clauses.

The provisions of the green lease clauses specifically address the environmental performance of the buildings including:

- Consumption of energy and generation of associated greenhouse gas emissions
- Consumption of water
- Waste generation and management
- Any other environmental impact (not specified), arising from the use or operation of the Premises.

There is a further commitment that data relating to environmental performance will be collected, benchmarked, and shared between the Council and tenant to continue to make necessary adjustments or improvements in a timely manner.

The Council agrees to provide an environmental forum that will meet on a regular basis to review the environmental performance of the property.

Finally, any alterations made by the tenant to the premises must be made in consideration of their environmental impact on the property. The Council will not permit works or alterations that detrimentally affect the existing energy performance. Where applicable, EPC certificates have been obtained in order to provide a suitable benchmark and for compliance with the MEES regulations on letting commercial properties.

Signed off by: Laura Tapping, Climate Emergency Programme Officer, 01242 264263

6.5. Property/asset implications

The latest budget monitoring report highlights a pressure of £2.8m on the general fund budget in 2022/23 which further supports the principals in the asset management strategy to maximise the financial benefit our assets are delivering for the town. The re-tender of the lease for the running of these concessions in the park reduces the financial pressure on the general fund whilst also providing a facility for residents and visitors to the parks.

Signed off by: Gemma Bell, Director of Finance and Assets (Deputy s151 Officer), 01242 264124

6.6. Corporate policy framework implications

The granting of the new leases is directly supporting three core policies:

- Cheltenham Corporate Plan 2019 – 2023
- Medium Term Financial Strategy
- Cheltenham Recovery Strategy

In re-tendering the contract, the Council are demonstrating that they are using their assets to 'be commercially focused where needed', adopting an agile approach to asset management and addressing the funding/budget gap in the wake of Covid-19.

Signed off by: Richard Gibson, Head of Communities, Wellbeing and Partnerships, 01242 264280

7. Performance management – monitoring and review

The leases form part of wider tender package in which the successful applicant must have demonstrated that they meet the requirements both financially and in terms of sustainability, to deliver these services.

The leases are drafted in such a manner that allows for the Council, as landlord, to check that the tenant is complying with the terms and conditions and relies on the usual remedies in law to ensure these are complied with.

The leases include a review (of rent) at year five to ensure that the Council receives an income

commensurate with future market conditions.

The leases include a break clause which allow either party to terminate the lease on the yearly anniversary, subject to written notice.

Report author:

Claire Pockett, Estates Surveyor

claire.pockett@cheltenham.gov.uk

Appendix 1: Risk Assessment

Risk ref	Risk description	Risk owner	Impact score (1-5)	Likelihood score (1-5)	Initial raw risk score (1 - 25)	Risk response	Controls / Mitigating actions	Control / Action owner	Deadline for controls/ actions
	<p>The tenant's business may fail meaning they are unable to a) make rent payments b) provide contracted services to the public c) maintain the property to the required standard</p> <p>The impact to the Council would be a) loss of revenue b) reputational damage if services and facilities were no longer provided c) the property is returned to the Council in a condition that required expenditure or other resource.</p>	Claire Pockett	3	3	9	Accept the risk	The leases are granted subject to the tenant passing appropriate financial checks and meeting the criteria as set out in the ITT.	Claire Pockett	Feb 2023