

LEISURE AND ENVIRONMENT COMMITTEE

22 SEPTEMBER 2020

LETTER OF COMFORT BETWEEN NSDC AND SOUTHWELL LEISURE CENTRE TRUST

1.0 Purpose of Report

1.1 To gain approval from Members to enter into a letter of comfort between the District Council and Southwell Leisure Centre (known as Southwell Leisure Centre Trust) in order to underwrite any potential cash flow losses the Trust make as a result of COVID-19.

2.0 Background Information

2.1 During April 2020, Southwell Leisure Centre Trust approached the Council to enter into an agreement for financial assistance to ensure the sustainability of leisure provision within the Southwell locale as the result of the lack of trading due to the lockdown from COVID-19.

2.2 Their request was for the Council to enter into a letter of comfort with the Trust in order so that the Council underwrites any liabilities the Trust accumulate up to a total amount of £220,000. This would be subject to the Trust utilising all of its reserves in the first instance.

3.0 Proposals

3.1 The Council's legal team has worked with Freeths (being the legal advisors to SLCT) in order to draft a letter of comfort between the two organisations that safeguards the Council's position whilst offering support to the Trust.

3.2 The main provisions within the agreement state that:

- The Council ensures that SLCT will have financial resources available of £220,000, once the Trust has utilised all of its reserves. The support available will be capped at a maximum of £220,000,
- Any support transferred to SLCT must be repaid within 24 months of the payment date,
- Any support transferred to SLCT will not incur any interest expenses for SLCT,
- Any support considered to be transferred must be evidenced satisfactorily in that the debt to SLCT exists and that SLCT do not have other funds available to pay such debts.

3.3 The term of this letter of comfort will be reviewed on a quarterly basis, and the Council reserve the right to terminate this having considered the representations made by SLCT at each quarter end.

3.4 The impact of the agreement is such that the Trust would need to utilise all of its funding prior to approaching the Council for assistance. The Council would then review the information presented regarding the debts of the Trust and transfer funds accordingly where appropriate. This would be to a maximum of £220,000 which is the total exposure for the Council.

- 3.5 The latest accounts for the Trust (31st March 2019) show that the Trust had £551,477 within its unrestricted funds in order to service its liabilities. The 31st March 2020 accounts have not been produced at the time of writing this report, but it is anticipated that the position at that point in time would be similar. Hence the Trust would need to exhaust all of these funds prior to the Council's responsibility through this agreement to intervene.
- 3.6 Based on estimated forecasts produced by the Trust in April 2020, their forecast of reserve balances as at 31st March 2021 is £204,092 prior to any transfer from the Council. If this position would occur, the Council would therefore not need to transfer funds at this point. This position was produced at the beginning of the lockdown in April and hence will be revised during September 2020 in order to account for the latest position now that the centre has opened for business.
- 3.7 As the letter is intended to be legally binding, where a default on the loaned amount occurs the Council could take action in order to enforce the sum due through legal channels available to it.
- 3.8 The Council is aware that the Trust has created a CIO (Charitable Incorporated Organisation) which seeks to limit the personal liabilities of the trustees. As a result, the agreement has been drafted such that the Trust must demonstrate that where shortfalls of cash to service debts that become due, this has not occurred due to the transfer of cash into the CIO.
- 3.9 Where the Council advances the Trust an amount of funds, and the assets and liabilities of the Trust are then transferred into the CIO, the letter has been drafted such that the liability due to the Council would be transferred also into the CIO replicating the arrangements as in the Trust. Hence the liability would then refer to the CIO.
- 3.10 At the point in time that assets and liabilities are transferred into the CIO, the letter of comfort would become null and void, subject to any outstanding amounts due based on paragraph 3.9. Should the CIO seek to negotiate in order to enter into a similar arrangement with the Council as per this letter of comfort, a further report will be brought to this Committee.
- 3.11 The letter of comfort as drafted is attached at **Appendix A.**

4.0 Equalities Implications

- 4.1 There are no equalities implications associated with this report.

5.0 Financial Implications (FIN20-21/9372)

- 5.1 Should SLCT need to service liabilities that would diminish their reserves to a point where they would not have cash to hand, the Council will loan SLCT the funds required up to a maximum of £220,000. The request would be scrutinised by officers to ensure that satisfactory evidence of the debt exists and funds are not in place to service the debt.
- 5.2 The total commitment from the Council would be capped at £220,000, although this would be in the form of a loan to SLCT as any funds advanced to SLCT would need to be returned within 24 months of the date of advance.

- 5.3 It is proposed that the loaned value would not attract interest for the period between the date of advance and the date of receipt.
- 5.4 Should the advanced value not be returned by the respective date, as per paragraph 3.7, the Council could look to enforce the sum through legal proceedings should it choose to do so.

6.0 Community Plan – Alignment to Objectives

- 6.1 Objective 9 of the Community Plan is to ‘Improve the health and wellbeing of local residents, with particular focus on narrowing the gap in healthy life expectancy and other health outcomes’.
- 6.2 As the Council is acting as guarantor for the Trust up to a maximum of £220,000, this ensures that the provision of leisure facilities within the Southwell locale is maintained.

7.0 RECOMMENDATION

Members are asked to recommend to Policy and Finance Committee, for their approval, the request by SLCT for the Council to enter into a letter of comfort with it in order to safeguard its sustainability.

Reason for Recommendation

To ensure the sustainability of Southwell Leisure Centre Trust in order for the continuation of leisure provision within the Southwell locale.

Background Papers

Nil

For further information please contact Nick Wilson 5317.

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