



## EXECUTIVE

### 3<sup>rd</sup> August 2023

<b>Report Title</b>	<b>The Future of Kettering Leisure Village</b>
<b>Report Author</b>	Graeme Kane, Executive Director of Place and Economy
<b>Lead Member</b>	Cllr Matthew Binley, Executive Member for Highways, Travel and Assets

<b>Key Decision</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Is the decision eligible for call-in by Scrutiny?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Are there public sector equality duty implications?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Does the report contain confidential or exempt information (whether in appendices or not)?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Applicable paragraph number/s for exemption from publication under Schedule 12A Local Government Act 1972</b>	

#### List of Appendices

None

#### **1. Purpose of Report**

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- 1.1. On 22<sup>nd</sup> June 2023 Council considered a motion concerning the future of Kettering Leisure Village (“KLV”). Following consideration of the motion, it was resolved:

*“This council values all the opportunities provided, directly or indirectly, for the benefit of residents’ health and well-being across North Northamptonshire. In particular this council welcomes the economic benefits for Kettering and the wider regional area of having a premier national conference centre, combined with public sporting and theatrical venues (commonly known as the Kettering Leisure Village, the KLV).*

*The KLV’s continued public and private availability on a long-term, sustainable, basis is critical to the well-being of all residents along with the wider economic prosperity of North Northamptonshire.*

*A business and legal case which considers the viability of stepping in needs to be urgently created and scrutinised through the formal scrutiny process before*

*being considered by the Executive. Following which (if required) a budget should be agreed by the 3<sup>rd</sup> of July 2023.”*

- 1.2. The report also sets out the position with respect to the decision of Compass Contracts Services UK Ltd (CCS) to close KLV by 3<sup>rd</sup> July 2023, subsequent actions taken by the Council through liaison with CCS and the leaseholder of the site, Phoenix Leisure Management (PLMS), and the current position.

## **2. Executive Summary**

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- 2.1. Following the motion approved by Council on 22<sup>nd</sup> June 2023, this report sets out the considerations required to develop a business case and options appraisal for the longer-term operation of the site.
- 2.2. This report also sets out the current position for KLV and includes information on the offer at the KLV site, the lease arrangements in place and the outcome of recent negotiations with the leaseholders towards securing an interim solution to support the site to remain open.

## **3. Recommendations**

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- 3.1. It is recommended that the Executive:
  - i) Note the motion approved by Council on 22<sup>nd</sup> June 2023;
  - ii) Agree to receive a comprehensive business case, including associated options appraisal and details of any agreement between North Northamptonshire Council and Phoenix Leisure Management as set out in Paragraph 5.13;
  - iii) Endorse the agreement in principle to agree revisions to the provisions of the lease to support the site to remain open
- 3.2. Reasons for Recommendations: The recommendations, if agreed, will allow Officers and the Executive time to fully consider the implications of the Council stepping in to operate part or all of the site, alongside a range of other options for future operation and management of the site.
- 3.3. Alternative Options Considered at this stage:
  - Do nothing and let the site close as the Council does not have direct control of it;
  - Pursue the various litigation options available to the Council to enforce the terms of the lease.
- 3.4. Both options would not have prevented the site from closing on 3<sup>rd</sup> July 2023, which would have been of detriment to users of the site, the staff

employed there and to the wider community. In addition, re-opening and mobilising an already closed leisure facility would present a range of additional challenges which may be avoided if the recommendations set out above are approved.

- 3.5. The other option was for the Council to directly fund the operator, CCS. However, doing so would likely breach Subsidy Control restrictions and is unlikely to satisfy value for money and other fiduciary responsibilities for the Council, not least that it would place further pressure on the Council's Medium Term Financial Plan.

## **4. Report Background**

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- 4.1. It has long been recognised that sport and physical activity make a positive difference to people's lives. It strengthens communities, brings people together and improves the health and wellbeing of our communities.
- 4.2. Leisure is a discretionary service for the Council, however in passing the motion, councillors signalled strong support for KLV and the benefits it derives for the community. North Northamptonshire Council are committed to working with PLMS and CCS to find a resolution to keep the facility open for the community. The response from users and the forming of the KLV Support group is evidence of how important the facilities are for local people and the area.
- 4.3. Kettering Leisure Village (KLV) is one of the many leisure facilities across North Northamptonshire that have an important role to play in helping our residents to live happy, independent and active lives. By providing and supporting leisure facilities across the area, the Council helps to tackle inequality through preventative, outreach and early intervention work. It is important during the ongoing recovery from Covid that the Council supports and encourages our residents to make sport and physical activity part of their everyday life. The opportunities to take part in community and competitive sport and physical activity can help all our residents, it can have a positive impact lowering levels of anxiety, depression and stress as well as an increased sense of wellbeing.
- 4.4. KLV was built in 1991/92 replacing an ageing leisure centre provision in the town, intended to be a regional venue for events, and provide leisure opportunities. It originally contained a leisure pool and a skating rink (replaced with a gym area and a creche) and contains sports halls, conference facilities, meeting rooms, three bars, and the ability to provide a concert venue in the main hall. One of the sports halls was converted into a 500-seat theatre in 2006. Outdoors, there is a beach volleyball facility which replaced an earlier tennis bubble. The leisure space includes 12 badminton courts and 4 squash courts, but these are multi-functional spaces usable for other sports. England Volleyball have their national training centre located at KLV.
- 4.5. KLV is the largest indoor venue in North Northamptonshire and the main hall is one of the largest single space venues in the East Midlands.

- 4.6. In 1991, the former Kettering Borough Council was granted a lease for KLV by BQ Farms Limited, (the Freeholder), for a term of 125 years at a peppercorn rent. This lease expires in 2116 and restricts use of the site to various leisure activities, conference facility, hotel and theatre.
- 4.7. Kettering Borough Council granted an underlease of KLV to PLMS by way of a co-terminus lease expiring in 2116, at a peppercorn rent. This lease mirrors the permitted use of the Council's headlease and provides positive obligations on the tenant to operate and manage the sports facilities (including the theatre), including the provision to keep the facilities open to the public. These obligations do not include other elements of the building, such as the gym and conferencing facilities.
- 4.8. The Council, under the provisions of the lease, is required to contribute to the running cost of the sports facilities and the theatre, currently being £300,000 for the sports arena facilities and £30,000 for the theatre, per annum.
- 4.9. The objectives of the grant agreement with CCS for the sports facilities are to:
- Provide a broadly based range of sports leisure activities catering for the needs of every section of the local community and of visitors to the local community;
  - Meet the Landlord's primary objective of providing opportunities which help to contribute to individual well-being and self-development together with the well-being and development of the community of the Borough as a whole;
  - Offer a wide range of opportunities for all social economic and ability groups designed to attract a diverse range of users and demonstrate this to the reasonable satisfaction of the Council;
  - Cater for school age children during the school holidays;
  - Encourage use of the sports facilities by schools and colleges;
  - Provide after school recreational programmes between the hours of 4pm and 6pm aimed at those of school age;
  - Encourage the use of the sports facilities by disabled people, with supervision be provided;
  - Programme of coaching sessions for all age ranges and abilities.
- 4.10. The objectives of the grant agreement with CCS for the theatre are to:
- Promote the facility to local theatre and musical societies, all schools and other groups
  - Work with community groups to build a qualified, technical and ancillary volunteer cohort, provide rehearsal time and set production support for local groups, agree the programme of events with the Council and local groups, and ensure sensitive timetabling of events vis-a-vis a commercial requirement.
  - Encourage local initiatives that support the Council's plans
  - Promote initiatives for people aged over 50

- 4.11. PLMS granted a sub-underlease of KLV to CCS in 2017 for a term of 15 years, paying a commercial rent. The permitted use mirrors the permitted use outlined above.
- 4.12. The sports facilities have supported the successes of local and national sports people of all ages to achieve their full potential. The theatre is a key feature of the facility, attracting thousands of participants and audience members to be an integral part of community theatre, and enjoy the many professional shows that have been staged at the venue.
- 4.13. The Council values KLV as one of the area's premier leisure venues and is committed to the development of a business case to support its ongoing delivery of sport, physical activity, theatre and health services.
- 4.14. On 27<sup>th</sup> April 2023, the Council was informed by CCS of their intention to close KLV on 3<sup>rd</sup> July 2023. It is understood the decision to do so was based on the significant loss-making position CCS were incurring on the facility. Officers have received financial data to substantiate this position, however, as the data remains the property of CCS and is commercially sensitive it cannot be released for publication.
- 4.15. The closure of KLV would place CCS in breach of their obligations under their sub-underlease with PLMS as the terms of the lease require that they ensure the facility remains open. The Council has no direct contractual relationship with CCS and so the Council's only means of recourse would be via PLMS for breach of lease covenant.
- 4.16. Whilst there are litigation options open to the Council (forfeiture, damages claim, step in rights) each with their relative strengths and weaknesses, all will require KLV to close before they could be legally enacted which is likely to be of significant detriment to the future operation of the facility. Such options would also result in considerable time periods lost (through court action) and legal expense incurred.
- 4.17. A comprehensive business case that fully considers the immediate and longer-term impacts of the Council operating KLV, in full or in part, including key risks and implications the Council would be exposed to, is required to ensure the Council meets its statutory and fiduciary responsibilities, and provides good governance.

## **5. Issues and Choices**

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- 5.1. The motion agreed on 22<sup>nd</sup> June 2023 by Full Council stated:

*“This council values all the opportunities provided, directly or indirectly, for the benefit of residents’ health and well-being across North Northamptonshire. In particular this council welcomes the economic benefits for Kettering and the wider regional area of having a premier national conference centre, combined*

*with public sporting and theatrical venues (commonly known as the Kettering Leisure Village, the KLV).*

*The KLV's continued public and private availability on a long-term, sustainable, basis is critical to the well-being of all residents along with the wider economic prosperity of North Northamptonshire.*

*A business and legal case which considers the viability of stepping in needs to be urgently created and scrutinised through the formal scrutiny process before being considered by the Executive. Following which (if required) a budget should be agreed by the 3<sup>rd</sup> of July 2023.”*

- 5.2. Requiring the Council to step in at short notice, presents a number of immediate operational practicalities and exposes the Council to a significant number of risks, in particular:
  - Defining which areas of the site the Council would be stepping in to.
  - Staffing implications, including impact on wider leisure staff resource and support service needs.
  - Inhouse skills & capacity – for example the Council does not operate theatres directly.
  - The availability and cost of third-party leisure and theatre operators and securing appropriate contractual arrangements with them.
  - The significant financial contribution required to establish operations and continue those, which would likely be at significant cost based on the current operator's loss.
  - HR implications for staff already employed by the organisations operating on site.
  - Provision of a suitable Leisure Management System to cover the site.
  - Managing and carrying out communications and marketing.
  - Provision and maintenance of a suitable IT and booking / payment systems.
  - Health and Safety, building conditions and associated repairs and maintenance, and investment needs.
  - Procuring and financing utility and other supplier contracts.
  - The impact of the increase in energy costs on the leisure sector.
- 5.3. It should also be noted that the Council is not in a position of direct control, such that it can take on the long-term management of KLV, with the site being in control of the Council's tenant PLMS. Therefore, any business case would need to consider the position of PLMS and the Council's legal position.
- 5.4. A comprehensive business case that fully considers the immediate and longer-term impacts of the Council operating KLV, in full or in part, including key risks and implications the Council would be exposed to, is required to ensure the Council meets its statutory and fiduciary responsibilities, and provides good governance.
- 5.5. The business case needs to be considered within the wider strategic context and the development of a wider Leisure Strategic Framework. The Council

has recently started work to develop its vision, commitment, and priorities for the future of Leisure Services for North Northamptonshire and is currently starting a series of engagement workshops with the community, national governing bodies for sport, local sports clubs, schools, facility users, stakeholders and the wider community to ensure that everyone is able to contribute to this important piece of work.

- 5.6. A robust supply and demand report will be undertaken to identify the facilities currently available for community use, whether there is any shortfall or overprovision and investigate future opportunities to improve and invest in leisure across North Northamptonshire.
- 5.7. This work will help inform the development of the Council's Active Communities Framework which will have Leisure Facilities and Playing Pitch Strategies forming key elements to this work. This work is anticipated to be completed by March 2025. The proposed business case regarding KLV will inform the Active Communities Framework.
- 5.8. In addition, the Council is also currently developing a joint Tourism Strategy with West Northamptonshire Council which addresses such issues as large-scale events and conferencing. This strategy will be brought forward for adoption in September 2023.
- 5.9. A business case (for KLV) would typically take approximately three months to develop and review, and would cover:
  - Current use of the site and draft profit and loss operating figures.
  - Opportunities for expanding / changing the leisure offer of the site, including wider strategic leisure and culture/tourism needs and ambitions.
  - The different operating models available, including in-house delivery, procuring alternative leisure providers and community led models, and their relative merits.
  - Opportunities to link the facility with the wider public services need, including public service partners.
  - Any other projected associated costs to the Council
- 5.10. The methodology for completing the review comprises:
  - Background and current context, including current use of the site;
  - Strategic review of national and local priorities, aligned to the work on the Active Communities Framework and how KLV can contribute to it;
  - Overview of the Council's leisure provision and how KLV complements this;
  - Current performance review of KLV, benchmarking against industry standards, to enable an assessment of the financial impact of the alternative future management options;
  - Future Management options appraisal and how KLV could fit into the wider management options appraisal for all of the Council's leisure provision due to be completed in 2024;

- Risk assessment for each management option, including the financial assessment of the potential trading position and cost to the Council and the potential impact on the quality-of-service delivery;
  - Potential implementation timescales and set up costs for each option.
- 5.11. Following the Council being informed on 27<sup>th</sup> April 2023 of the intention to close KLV and, given the importance of finding a solution that avoided the closure, the Executive and Council Officers have worked with both CCS and PLMS, along with other stakeholders, to broker a temporary solution. Since the Council motion was passed on 22<sup>nd</sup> June 2023, a solution between all parties has been agreed, in principle, as confirmed by CCS on 28<sup>th</sup> June 2023.
- 5.12. That solution will see CCS surrender their sub-underlease to PLMS at the end of August 2023, after a two-month handover period. PLMS will then operate KLV, in accordance with the terms of their lease with the Council.
- 5.13. To support the above transfer and to support PLMS stepping in to operate KLV and reduce the likelihood of its closure, the Council agreed, in principle, to a two-year temporary amendment of the obligation on PLMS to use best endeavours to stay open, requiring PLMS to use reasonable endeavours to keep the sporting facilities open.
- 5.14. In practice this change means PLMS will need to take all reasonable steps available to it to keep the sporting facilities open but would not be expected to sacrifice its commercial interests in doing so. This is a standard that is agreed in most commercial leases in respect of the obligations on our tenants, and a typical expectation of a Court. Councillors should note that, despite this obligation being in place, the tenant could choose to close the centre if it is unviable. In this situation the Council would need to consider what if any available legal options it has open to it to enforce the obligation.
- 5.15. The revised arrangement is in draft form and therefore subject to negotiation by legal representatives of PLMS and the Council's legal team (in consultation with the relevant Council officers). The concession is personal to the PLMS (i.e., it cannot be assigned to another party) and so is satisfactory in terms of best value obligations on the Council. As the concession is revising existing terms, this is a delegated decision and is for noting and endorsing by Councillors. The agreement will be binding between the parties, and any further change would need agreement from both parties.
- 5.16. A further report will be brought back to Executive to detail the terms once they are signed with the business case.
- 5.17. Whilst the solution outlined above does not permanently secure the future of KLV or prevent its closure, it has prevented the immediate closure of the building, and provided time for the Council's tenant to consider other operators it may wish to work with.



- 5.18. It is now crucial that the Council continues to work with PLMS and other stakeholders to seek to secure the longer-term future of KLV which will be aided by the development of the business case.

## **6. Next Steps**

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- 6.1. Officers propose to work with the consultants commissioned to support the Council to develop the Active Communities Framework, to produce the business case and options appraisal for the future management of KLV.
- 6.2. Once the business case is completed, which is anticipated to take up to three months, a report will be brought to the relevant Scrutiny Panel and then to Executive to consider the contents and next steps.
- 6.3. Officers will also finalise the revisions to the lease with PLMS and will continue to work with CCS and PLMS to understand the transition arrangements between the two parties at the end of August 2023.

## **7. Implications (including financial implications)**

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### **7.1. Resources, Financial and Transformation**

- 7.1.1. Officer resources from across Council services will be required to develop the business case and options appraisal at pace, or to work with a consultant if a consultancy is commissioned to support the Council to do so.
- 7.1.2. If the work is commissioned, a consultant budget of £8,000 will be required. This will be met from within the overall Leisure Services budget.
- 7.1.3. Any financial implications arising from the business case will be detailed within a further report to the Executive.
- 7.1.4. The original underlease commits the Council to make an annual contribution towards the cost of operation, promotion and management of the sports facilities, commencing at a cost of £153,777, adjusted each year to reflect inflation.
- 7.1.5. Based on inflation, the annual amount the Council currently pays is in excess of £300,000 per annum (c.£328,000 forecast for 2023/24) towards the Sports Facilities and £30,000 towards the theatre.
- 7.1.6. There are a number of cost considerations for the Council associated with any commercial involvement with the facility, and evidence must be obtained of the viability of such a proposal, in order that the impact on the Council and, furthermore, the residents of North Northamptonshire as Council Taxpayers, can be understood. This will be undertaken as part of the business case development.

## **7.2. Legal and Governance**

- 7.2.1. There is a legal framework governing the procedures and principles for the award of public contracts (for goods, works and/or services), which fall within the scope of the rules and exceed specified financial values. Accordingly, the public procurement regime needs to be considered in the business case and options analysis for the future delivery of the facilities.
- 7.2.2. The public procurement regime also needs to be considered when the Consultant to work with officers on the business case is commissioned, as the scope of the retainer has increased.
- 7.2.3. If there is a substantive argument that terms and conditions in relation to the operation and management of 'Sports Facilities' at the premises and the related financial arrangements, are a grant, and not a 'contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services', then the application of the law relating to Subsidy Control (formerly State Aid) should also be considered in the options appraisal.
- 7.2.4. The Council has a duty of best value and therefore it must ensure that it receives this if it were to step in to operate the service. Whilst the lease granted to PLMS contains a step-in right for the Council, this is only a short-term provision, requiring the sports facility and theatre, to close first, and does not include the rest of the site and does not provide a long-term sustainable option. Furthermore, the right does not commence until July 2025.
- 7.2.5. Decisions must be rational and reasonable considering all the facts in the case. If a decision is made that does not consider all facts and implications for the local authority, then it will be subject to challenge, legal and/or financial. It is clear from recent well publicised examples of poor governance in local authorities that just because a Council can do something does not mean that it should. The duty of best value will need to be considered as part of the business case and options appraisal.

## **7.3. Relevant Policies and Plans**

- 7.3.1. Working towards solutions that keep KLV open in the immediate and longer term support the Council's corporate plan priorities and key commitments:
- Active and Fulfilled Lives: improve the accessibility and use of leisure, culture and sport;
  - Thriving Places: strengthen the cultural identity of towns. Villages and rural communities
  - Connected Communities: respect, empower and engage our communities; listen to our communities and give them a greater say in the future of their areas.

#### **7.4. Risk**

- 7.4.1. The failure of leisure providers funded or commissioned by the Council due to rising costs, is already recorded in the Communities and Leisure risk register.
- 7.4.2. The reaction to the announcement by CCS of the proposed closure of KLV from site users, stakeholders, businesses and the wider community has demonstrated the importance of KLV. As such there is a risk to the reputation of the Council should the immediate solution outlined in this report and any medium to longer term solutions for the operation of the site not come to fruition.
- 7.4.3. The Council is not in a position of direct control of the site, such that it can take on the long-term management of KLV, with the site being in control of the Council's tenant PLMS. Further, the Council has no influence over the terms of the legal arrangements between PLMS and CCS.
- 7.4.4. Councillors should note that, despite this stay open obligation being in place, the tenant could choose to close the centre if it is unviable. In this situation the Council would need to consider what, if any, available legal options it has open to it to enforce the obligation.

#### **7.5. Consultation**

- 7.5.1. Whilst there has not been any formal public consultation into the recommendations in this report, as the negotiations between the leaseholders is commercially sensitive, there has been ongoing engagement with the KLV Support Group which has been established by interested members of the community as a representative voice for residents and stakeholders committed to seeing KLV remain open.

#### **7.6. Consideration by Executive Advisory Panel**

- 7.6.1. This issue has not been considered by an Executive Advisory Panel due to the timescales involved.

#### **7.7. Consideration by Scrutiny**

- 7.7.1. This issue has not yet been considered by Scrutiny. The business case will be considered by the relevant Scrutiny panel ahead of its consideration by the Executive.

#### **7.8. Equality Implications**

- 7.8.1. As part of the development of the business case and options appraisal an Equalities Screening Assessment will be undertaken.

## **7.9. Climate and Environment Impact**

7.9.1. There are no new climate and environmental implications as a result of the recommendations in this report, as there is limited change in the short term to the operation of the KLV site.

7.9.2. However, impact will be considered as part of business case and options appraisal.

## **7.10. Community Impact**

7.10.1. The community support for KLV has been evident in the volume of correspondence the Council has received as a result of the threat of closure, which was also demonstrated at a public meeting held in May 2023, the creation by the community and users of the site of the KLV Support Group, and the number of public speakers who requested and addressed the Council meeting on 22<sup>nd</sup> June 2023.

7.10.2. Comments received highlighted the impact closure would have on physical health, mental health and wellbeing of users, and particularly residents who are less abled, elderly and recovering from illness or injury; and on the local economy which benefits from visitors to the theatre and the wider site.

7.10.3. The immediate solution which keeps the site open and working towards a longer-term solution will have a positive impact on these issues.

## **7.11. Crime and Disorder Impact**

7.11.1. The risk of closure of KLV has been discussed amongst North Northamptonshire's Community Safety partnership member organisations, as leaving such a site without capable guardianship would increase the risk of anti-social behaviour, illegal use of motor vehicles in the large car park as well as a risk to security of the buildings on the site.

## **8. Background Papers**

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8.1 There are no background papers to this report.