



Open Report on behalf of Andrew Crookham, Deputy Chief Executive and Executive Director for Resources

Report to:	Executive
Date:	04 July 2023
Subject:	Deepings School Leisure Centre
Decision Reference:	I029668
Key decision?	Yes

Summary:

The Deepings School is an Academy managed by the Anthem Schools Trust (AT). The Anthem Trust currently occupy the entire site via a Tenancy at Will from Lincolnshire County Council (LCC) which includes the Deepings Leisure Centre. The Tenancy at Will was granted as a precursor to the standard 125-year Academy lease. To finalise and formalise AT's occupation, it is important that this 125 year lease is now completed and signed.

The Leisure Centre was operated by South Kesteven District Council (SKDC) from 1974 until SKDC ceased its operation in July 2021. A formal decision was made by SKDC in November 2022 to return the asset to LCC.

In January 2023, the premises were returned to LCC in a very poor state of repair. An options appraisal has since been undertaken to determine the future of the Leisure Centre, which will enable LCC to fulfil its obligation of formally granting the Academy lease to the AT. These options are detailed within this report and a recommendation provided.

Recommendation(s):

That the Executive:

1. Approves the seeking of Expressions of interest (EOI) for a third-party purchaser of the Leisure Centre building having a sustainable and viable business case for the refurbishment and operation of the building as a Leisure Centre.
2. Delegates to the Executive Director for Resources in consultation with the Leader of the Council and the Executive Councillor for People Management, Legal and Corporate Property the authority to take all necessary decisions and steps to (i) determine and progress the process for seeking EOIs set out in 1 above, (ii) determine whether any viable business case has been received for the refurbishment and operation of the building as a Leisure Centre as a result of the

said process (iii) approve the making of any contribution of Council funding and (iv) if a viable business case is received and subject to approval from the Anthem Trust and Department for Education, dispose of the freehold of the building.

3. Should a successful third party fail to be found, following an Expression of Interest exercise, approves the Council proceeding forthwith to demolish the Leisure Centre building.
4. Delegates to the Executive Director for Resources in consultation with the Leader of the Council and the Executive Councillor for People Management, Legal and Corporate Property the authority to take all necessary decisions and steps to give effect to the decision in recommendation 3 including determining the terms and approving the award of any contracts associated with such works
5. Approves, following a disposal as set out in paragraphs 1 and 2 above, the granting of a 125 year Academy Lease to Anthem Trust excluding the Leisure Centre building land on terms otherwise agreed with the Anthem Trust and Department for Education and in fulfilment of the statutory obligation to transfer the site of the school to the Anthem Trust
6. Approves, following the demolition of the Leisure Centre building pursuant to paragraphs 3 and 4 above, the granting of a 125 year Academy lease to Anthem Trust which includes the Leisure Centre building land on terms otherwise agreed with the Anthem Trust and Department for Education and in fulfilment of the statutory obligation to transfer the site of the school to the Anthem Trust

Alternatives Considered:

This report outlines several alternative options (Section 2.1) and explores these options from a financial, reputational and risk-based perspective.

Reasons for Recommendation:

1. The recommendation to seek expressions of interest around a disposal provides an opportunity for LCC to test the market, and establish the availability of suitable third parties to take a freehold transfer of the Leisure Centre building with a view to bringing the Leisure Centre back into use whilst removing all liabilities from LCC.
2. Any further delay in determining the direction of travel for the Deepings Leisure Centre would result in potential health and safety liabilities, reputational damage for LCC and additional revenue cost to the Council from a repairs and maintenance perspective.
3. The delay in the transfer of the Academy lease to the Academy Trust further protracts the short-term measures which include their provision of the “temporary” hall. The AT require a permanent solution to fulfil Physical Education curriculum requirements and statutory obligations around examinations.
4. The Council is obliged to complete the 125-year Academy lease to formalise the Academy Trust’s occupation. LCC has no statutory responsibilities to provide Leisure Centre facilities, therefore the freehold disposal and the demolition options would absolve LCC from its responsibilities and liabilities regarding the Leisure Centre.

1. Background

1.1 The Deepings Leisure Centre (outlined in red on the attached plan in Appendix A) is owned by Lincolnshire County Council (LCC) and has been operated by South Kesteven District Council (SKDC) since 1974. The centre was closed by SKDC in July 2021 and a formal decision was made by SKDC in November 2022 to return the asset to LCC in January 2023. LCC took responsibility for the building on 16th January 2023. The building is currently in a very poor state of repair.

1.2 The Leisure Centre building forms part of a Tenancy at Will (a short-term agreement pending a 125-year lease agreement) for the entire site (outlined in white on attached plan in Appendix B), let from LCC to The Anthem Schools Trust (AT). The school have occupied the entire site on this basis for over 10 years, whilst the Leisure Centre building has been occupied and operated by SKDC.

1.3 LCC have an obligation to complete a 125 year Academy lease with the AT and positive discussions have concluded in both parties expressing an interest to complete the lease agreement and find a mutual solution for the future of the Leisure Centre building. LCC, as the freehold owner of the entire school site is obliged to receive approval of any proposal from the Department for Education (DfE).

1.4 As a result of the closure of the Leisure Centre, AT have constructed a temporary school hall within the school site. AT now require a longer term sustainable solution to fulfil Physical Education curriculum requirements and statutory obligations around examinations.

1.5 To ensure the unoccupied building remains safe and secure, and to mitigate the risks and liabilities associated with holding a vacant property, the Leisure Centre building is currently being monitored by an LCC contractor. This is currently an unfunded revenue pressure and there is a high likelihood that the property will require further financial investment the longer it remains unoccupied.

1.6 A firm direction of travel is required regarding the future of the Leisure Centre to enable the lease to be formalised between LCC and AT. Several options have been considered and are detailed in Section Two of this report.

2. Options Appraisal

2.1 Principles and Approach

A comprehensive option appraisal has been undertaken using the following principles to guide the development of a recommendation.

(a) The preferred option must result in the termination of the existing Tenancy at Will and the successful granting of the 125-year Academy Lease.

(b) The preferred option must ensure no ongoing liability for LCC once the recommended option is implemented. LCC has no statutory obligation to provide leisure facilities

therefore all ongoing financial liability for LCC must be removed.

(c) Due to the existing Tenancy at Will and the requirement for DfE agreement, the AT will need to be supportive of any recommendation. Discussions have been ongoing with the AT and the selected options (Section 2.2) would provide a mutually acceptable position.

The following options have therefore been discarded from this option appraisal, as they do not meet all of the above principles.

(i) LCC exclude the Leisure Centre building from the 125 year lease, complete the Lease with AT and maintain the Leisure Centre in its existing state

This option would require LCC to complete the 125-year Academy lease with the AT and exclude the Leisure Centre building from the lease. LCC would continue to retain all ongoing responsibilities and liabilities of the building in its non-operational state. A long-term vacant property plan would increase both revenue and capital expenditure to keep the premises safe and secure. The longer the premises are kept in their current state, the higher the likelihood health and safety risks will emerge and increase.

(ii) LCC exclude the Leisure Centre building from the 125 year lease, complete the 125-year Academy Lease with the AT and enter into a separate long leasehold with a third-party operator

This option would result in LCC acting as landlord for both the 125-year Academy lease and a lease to a Leisure Centre operator. If the Leisure Centre operator was to fail or the lease with the operator otherwise came to an end all responsibilities and liabilities would again fall back to LCC.

(iii) LCC transfer the whole site, including the Leisure Centre building, to the AT as part of the Academy lease, based on the premiss that AT offer a separate lease to a third party operator

This option has been discounted as the AT have no appetite to take on responsibility and liability for the Leisure Centre building and act as Landlord to a third party.

(iv) LCC exclude the Leisure Centre building from the 125 year lease, complete the 125-year Academy Lease with the AT and refurbish and operate the Leisure Centre itself or procure a third party to operate it

LCC has a power under section 19 of the Local Government (Miscellaneous Provisions) Act 1976 to operate leisure facilities. This is not recommended, however, as LCC has no capacity or experience of operating leisure centres or commissioning third parties to operate them. In addition, this option would require significant capital expenditure in the region of £10-11m (based on work undertaken by SKDC as at April 2022 (see Background Papers)) given the current poor condition of the Leisure Centre building. Such capital expenditure would require an annual revenue charge in the region of £800k to £1m, depending on interest rates and the determined useful life of the asset once refurbished. Given the uncertain medium to longer term outlook for the council's finances, this isn't deemed to be an

affordable or value for money option given operating leisure facilities isn't core council business.

2.2 Remaining Options

This section of the report outlines the remaining options available to meet all of the criteria as described in section 2.1.

2.2.1 Option One: LCC exclude the Leisure Centre building from the 125 year lease, complete the lease with AT and dispose of the Leisure Centre including to a third party operator

This option would require LCC to complete the 125-year Academy Lease with the AT and dispose of the Leisure Centre by freehold. This is the only option under which the Council would relinquish all future liability for the Leisure Centre building.

At the same time the Council recognises the loss of facilities that would affect the local community if the building ceases to be operated as a Leisure Centre.

Therefore, this option could be combined with efforts to dispose of the building to a purchaser with sustainable plans to operate the building as a Leisure Centre.

Under this option an Expression of Interest (EOI) exercise would be undertaken to encourage bids from third parties to purchase the freehold with an intention to use the building to provide a Leisure Centre.

It should be noted that Sports and Leisure facilities require highly specialised management in terms of their repair and operation. Whilst a freehold disposal will absolve LCC of ongoing liabilities for the land, the Council must have regard to the land's location with a school site. Any solution needs to be sustainable so that disruption is not introduced into the running of the school. If a sustainable leisure solution cannot be identified, then demolition would be preferable to a simple freehold transfer. The EOI process and evaluation criteria will therefore need to be rigorous and robust.

LCC would therefore need to fully test any proposals and ensure any third party has suitable experience to deliver. Any approval would be subject to the submission of a viable business plan from a competent and experienced third-party operator. This would not entail the Council assessing detailed proposals for the way the Centre would be run. It would however require rigorous testing of refurbishment plan (including evidence of necessary levels of capital funding) and proposals for its future operation (including revenue funding). Any applicant, through the EOI exercise would be encouraged to consider potential shared use with the AT to support their requirement for a permanent sports hall provision.

It should also be noted that the freehold disposal option will mean that the Council not only relinquishes liability for the building but also control over it. Therefore, although LCC can assess the business cases for operation of the building and dispose to an entity that has expressed an intention in operating such a facility it cannot enforce such operation once the disposal is complete. That would be a matter for the entity that acquires the freehold.

Although this option would result in LCC having no further liability for the Leisure Centre in the medium/long term, it would require LCC to invest in the building whilst waiting for a DFE decision. Given the current state of the building and the liabilities the Council is incurring the Council has an interest in achieving a resolution as soon as possible. It is estimated that this option could be completed within 12-24 months after Council decision.

It is understood that the electrical supply to the building is currently metered therefore can be billed separately. Previous quotes to separate the supplies some years ago of circa £150,000 had been provided. Given current market conditions this anticipated to be significantly inflated.

The site of the Leisure Centre building is located adjacent the site of buildings forming the Deepings school run by the Anthem Trust. Therefore, the potential disposal extent will need concurrence by the Anthem Trust and the Department for Education to agree the exact disposal boundary and the terms of any cross-rights sought to be included and reserved facilitating use of the Leisure Centre and the Deepings school respectively.

The Council may consider providing a grant to support any successful third party's business case to support the refurbishment of the Leisure Centre. This would be subject to negotiation and separate decision-making at the time which would need to take account of legal considerations such as subsidy control. If a grant were to be provided it would be secured through a Grant Agreement which would entail some degree of requirement on the third party to operate the building in accordance with the purpose for which the grant had been given.

Any disposal would be subject to the Council obtaining Best Consideration in accordance with S123 of local Government Act 1972. As any disposal limited to third parties who intended to use the building for the specified purposes would be a restricted sale and because s123 requires unrestricted valuation any such disposal will be at an undervalue.

Such a disposal will require Secretary of State's consent or be brought within the terms of the General Disposal Consent (England) 2003. This requires the amount of the undervalue to be less than £2m and for the disposal to promote or improve the economic, social or environmental wellbeing of the whole or any part of the Council's area, or of all or any persons resident or present in its area.

In this case there would be clear social benefits of maintaining access for the local community to leisure facilities close to the community. No work has yet been done to determine the amount of any undervalue and this will not be clear until expressions of interest have been received.

This assessment will therefore need to be done prior to any disposal decision being made under the delegation at recommendation 2.

Further a disposal at an undervalue is capable of amounting to a subsidy and therefore prior to any disposal a subsidy control assessment will also need to be conducted.

Before moving on to Option 2 it should be noted that if a viable disposal to a third party to operate a Leisure Centre cannot be achieved, this option would also encompass a freehold disposal of the existing building without any restrictions.

2.2.2 Option Two: LCC Demolishes the Building

This option would result in LCC demolishing the leisure centre, making good the site, and transferring the whole site to the AT as part of the 125-year Academy lease. This would facilitate LCC to fulfil their primary obligation of formalising the lease agreement.

This option would remove any ongoing liability and responsibility from LCC and following the demolition would not attribute any further revenue or capital funding. In addition, unlike the option above, there is no DfE approval required as the site remains within the control of the AT.

It is estimated that demolition could be completed over the summer holidays of 2024 and it is anticipated that associated costs could be up to £1.4m.

3. Conclusion

Taking all available options into consideration, it is recommended that Option One (disposal) is adopted. This recommendation will enable LCC to rigorously canvas the Leisure market and within the limitations of a freehold sale seek to influence the outcome so that suitable third parties bring the Leisure Centre back into use. It will also allow the Council to finalise the Academy lease and relinquish all associated liabilities associated with holding the existing Leisure Centre building. This option, as set out in Section 2.2.1 would be subject to a sustainable and viable business case, section 123 and subsidy control compliance and DfE approval.

It should be noted that anything less than this, and in particular, a lease to a third party, is going to lead to the building reverting to the Council at the end of the lease along with the liabilities for its upkeep. The end of any lease has the potential to be earlier than the expiry of the contracted lease term upon any dissolution of the tenant.

Should the Expression of Interest exercise fail to provide the required outcome in Option One it is recommended that demolition (Option Two) is undertaken. This option will require a Capital sum however, it will remove all associated risks and liabilities of holding the leisure centre building and will result in the formalisation of the 125-year lease with AT.

2. Legal Issues:

Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.

- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic.
- Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it.
- Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding.

Compliance with the duties in section 149 may involve treating some persons more favourably than others.

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision-making process.

The Public Sector Equality Duty has been taken into account.

It will be a condition of any disposal that any business case for the operation of a Leisure Centre ensures appropriate access to the facilities for people with a protected characteristic.

Demolition of the leisure centre building will permanently reduce opportunities in the local area and affect accessibility as local people will need to continue to travel to other areas to access leisure services. This is likely to be more difficult for certain groups with a protected characteristic such as the elderly or the disabled.

However there is currently no facility which can be accessed and the demolition will only occur once a reasonable opportunity has been afforded to third parties to present a business case for bringing the existing building back into use.

Joint Strategic Needs Assessment (JSNA and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health and Wellbeing Strategy (JHWS) in coming to a decision.

Consideration has been given to the Joint Strategic Needs Assessment (JSNA) and the Joint Health and Wellbeing Strategy (JHWS) and the recommendations to explore the continuation of leisure centre services on the site has benefits for both the health and wellbeing of the people of the local area.

Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area.

Consideration has been given to crime and disorder and there are not considered to be any implications arising out of this report.

3. Conclusion

The Executive is invited to determine the future of the Deepings Leisure Centre building in accordance with the recommendations in the Report

4. Legal Comments:

The Council has the power to adopt the recommended options.

The decision is consistent with the Policy Framework and within the remit of the Executive

5. Resource Comments:

The recommendation seeks to explore remaining viable options for maintaining leisure provision in the Deepings whilst also minimising financial exposure to LCC, which is unaffordable in the context of the council's financial outlook and not its core business.

The alternative valid option of demolition would require a call against the revenue contingency budget of up to £1.4m.

6. Consultation

a) Has Local Member Been Consulted?

b) Has Executive Councillor Been Consulted?

Yes

c) Scrutiny Comments

The decision will be considered by the Overview and Scrutiny Management Board at its meeting on 29 June 2023 and the comments of the Board will be reported to the Executive

d) Risks and Impact Analysis

See the body of the Report

7. Appendices

These are listed below and attached at the back of the report

Appendix A	Leisure Centre Footprint 1
Appendix B	Leisure Centre Footprint 2

8. Background Papers

The following Background Papers within the meaning of section 100D of the Local Government Act 1972 were used in the preparation of this Report

Background Paper	Where it can be viewed
South Kesteven District Council Report to full Council on 24 November 2022 Agenda Item 7 entitled "Deepings Leisure Centre"	Deepings Leisure Centre Report.pdf (southkesteven.gov.uk)

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