

Report to: Lead Member for Resources and Climate Change

Date of meeting: 1 November 2024

By: Chief Operating Officer

Title: New property arrangements for Rye Sports Centre, The Grove, Rye, TN31 7ND.

Purpose: To seek approval for the Council to surrender the existing property arrangement and agree a 20-year full repairing lease with Rye Town Council to enable the continuation of the community and curriculum use of the facilities including the swimming pool.

RECOMMENDATIONS:

The Lead Member for Resources and Climate Change is recommended to:

- 1) Subject to Rother District Council agreeing to terminate the existing property arrangements and their contract with Freedom Leisure by April 2025:
 - (a) Approve the surrender of the existing property agreements at Rye Sports Centre and Swimming Pool;
 - (b) Approve the County Council entering a 20-year lease with Rye Town Council at Rye Sports Centre and Swimming Pool to facilitate ongoing curriculum and community use. This represents best value under s123 of Local Government Act 1972 and is supported by a formal valuation report;
 - (c) Approve the grant of a sub-lease between Rye Town Council and Rye Health and Well-Being Charitable Incorporated Organisation (CIO); and
 - (d) Approve the capital investment to be undertaken at Rye Sports Centre and Swimming Pool following successful grant awards secured by Rother District Council (RDC) from Sports England and RDC Levelling Up Funding, having regard to the specific grant conditions.
- 2) Agree that a further report be brought to the Lead Member should Rother District Council not agree to terminate the existing arrangements as set out in recommendation 1 above; and
- 3) Delegate authority to the Chief Operating Officer to agree the terms of the property lease and other associated agreements and to carry out all actions necessary to give effect to the recommendations in this report.

1 Background

- 1.1 East Sussex County Council (the County Council) holds a Joint Use portfolio, currently comprising 10 assets. The majority of assets within the Joint Use portfolio are subject to a legal agreement, known as a Joint Use Agreement (JUA) setting out roles and responsibilities of the respective parties, as set out in paragraph 1.3 below. Most of these JUAs relate to the use of the facilities by schools for delivery of the curriculum and the wider community outside of the curriculum hours.
- 1.2 The joint-use assets are run and managed by a wide range of partners including the County Council, as well as District and Borough Councils, Town Councils, and community groups. The

majority of District and Borough Councils have contracts with leisure operators to manage the facilities on their behalf.

- 1.3 The JUAs set out the operational, financial, day-to-day maintenance and capital investment arrangements which are shared in agreed proportions between the partners.
- 1.4 This report sets out the current arrangements in relation to one of the joint-use assets, Rye Sports Centre and Swimming Pool, along with the proposed new property arrangements following Rother District Council's (RDC) decision to withdraw from leisure provision at Rye Sports Centre and Swimming Pool. The report sets out 2 options with a recommendation to grant a property lease to Rye Town Council (Rye TC) for both Rye Sports Centre and Swimming Pool and subsequently grant a sub-lease to the Charitable Incorporated Organisation (CIO).

2 Supporting information

- 2.1 Rye Sports Centre and Swimming Pool provides a current mixture of dry-side and wet-side facilities as set out below. The facilities are adjacent to the Rye College Aquinas Trust (Rye College) site.

Dry-side:

- Sports Hall, Studio 1 and Studio 2.
- Fitness suite.
- Changing facilities.
- Academy Hall (will not form part of the new arrangements).

Wet-side:

- Swimming pool.
- Access and changing.
- Car parking arrangements.

Outside

- Multi-Use Games Area (MUGA)

Current Property arrangements

- 2.2 At present, there are a number of property agreements with different partners, and these are summarised below:

Swimming Pool (wet-side), car parking – Licence

- RDC funded a building extension on County Council land to enable the addition of a swimming pool facility.
- The Licence covers the swimming pool, reception area, access and use of the associated car parking.
- The Licence agreement is between the County Council and RDC only and it will expire in December 2024 (this can be extended).

Rye College Aquinas Trust lease and Joint Use Agreement

- The County Council granted a 125-year Academy lease to Rye Academy Trust, now known as Rye College Aquinas Trust, in April 2016. The Academy has retained rights to use the dry side facilities for curriculum use only as a partner to the JUA.
- The JUA allows community use of the dry-side facilities outside curriculum hours used by the Academy.
- The Academy separately hire the wet-side facilities on occasion.

Multi-Use Games Area (MUGA)

- The MUGA forms part of the Rye College Aquinas Trust facilities and is currently run and managed directly between the College Trust and Freedom Leisure (FL).
- The facility will not form part of the proposed new Rye Sports Centre lease arrangements.
- It's intended that the future community use will continue under separate arrangements.

Rye Sports Centre Joint Use Agreement

- The dry-side facilities are currently subject to a JUA between the County Council, RDC and Rye College Aquinas Trust, dated April 2016, which expires in March 2026.
- There has been a JUA in place at Rye Sports Centre since January 1986. The JUA relates to the use of the facilities by the school for delivery of the curriculum activity and by the wider community use outside of the curriculum hours.

RDC's Contract arrangements with Freedom Leisure

- 2.3 RDC have a services contract with FL, which relates to both the dry-side and wet-side facilities in place until March 2026. RDC made a decision to focus on some key outcomes from their Budget Consultation exercise and therefore a decision was made to withdraw their financial support for Rye Sports Centre and Swimming Pool. If the proposed new property arrangements, as set out in this report, proceed, RDC and FL will need to mutually agree to an early cessation of their services contract.

Recent operational challenges for Rye Sports Centre and Swimming Pool

- 2.4 The majority of public sector leisure centres and sports centres are still impacted by the Covid-19 closures. In general, leisure and/or sports facilities and swimming pools in particular have been impacted by utility increases and slower return of attendance to pre-pandemic levels, both of which have impacted on operating viability. RDC, in common with other local authorities, have also needed to provide additional financial support to its leisure services operator and has been partially funded by local and central government grants.
- 2.5 FL are an established leisure provider and have been running Rye Sports Centre and Swimming Pool for circa 10 years on behalf of RDC. FL temporarily closed the pool facilities because of the Covid-19 requirements and, latterly, as a result of viability concerns. RDC and FL worked together to agree the reopening of the pool with slightly revised opening times. FL subsequently indicated to RDC that it is no longer viable for them to continue to operate Rye Sports Centre and swimming pool under the current services agreement without significant revenue contribution from RDC. FL wish to exit the Agreement by working towards an April 2025 transfer of the operation to a new provider, if possible.

External funding secured, ring fenced to Rye Sports Centre and Swimming Pool

- 2.6 RDC has confirmed that they have been successful in securing, and are in receipt of, a Sport England grant for roof solar panel investment of £140,000 in relation to Rye Sports Centre and Swimming Pool, which represents a long-term investment in the sustainability of the site. The County Council has received a copy of the Sport England grant terms and conditions relating to this funding. This includes a requirement for ongoing energy monitoring for a 3 year period up to 2027; this responsibility will be retained by RDC. The County Council has sought written confirmation from RDC that, if the facilities were to close prior to the expiry of this three year period, the County Council would not be liable for any payback of any grant based on the Sport England terms and conditions.
- 2.7 RDC has also secured Levelling Up Funding (LUP Funding) of £650,000, ring fenced to Rye Sports Centre and Swimming Pool, to improve the overall sustainability of the Centre. The improvements which the grant enables may include replacement of plant and machinery and include up to date carbon reduction initiatives. The County Council will be approving the scope

and specification of the works to ensure the investment is targeted and deployed to the infrastructure of the building to aid the ongoing viability of the Centre. RDC advise that the funds are to be allocated to an agreed project spend by March 2025 and advise that the actual spend must be undertaken by the end of March 2026. Monitoring of the grant application will be required for a period, which will be direct between RDC and a new operator. The County Council is seeking written approval from RDC that once the building contract is awarded, any associated unspent funds at point of transfer will be novated from RDC to Rye CIO from 1 April 2025, if the works are not completed. Further details on this point are set out in an exempt report later in the agenda.

Options

- 2.8 Local stakeholders, including RDC, Rye TC, Rye College Aquinas Trust and the County Council formed a Working Group in late 2023 to explore the potential new operating model. Rye TC were keen to lead a new operating model and sought partners, in principle, to consider setting up a CIO to run and manage Rye Sports Centre and Swimming Pool. Rye TC supported the establishment of a CIO who would run and manage the Sports Centre and Swimming Pool. Rye TC and partners requested the CIO submitted a business case that provided a viable and sustainable operating model. A business case was developed, and the key elements considered were: (i) securing working capital; (ii) boosting demand for use of the centre; and (iii) having a new operational team with experience running the centre.
- 2.9 For all stakeholders, the viability of running a public swimming pool is challenging as it requires fit for purpose facilities and ongoing revenue income. In respect of the fit for purpose, RDC has secured external funding from 2 sources and this investment is geared around the centre being open, viable and operational for the mid/long term future. Rye TC have worked with the CIO to fully assess their business case and to ensure the working capital is in place. The details of the working capital are outlined in an exempt report, later in the agenda.
- 2.10 Option 1 is for the County Council to support the new proposed property arrangements for Rye TC and CIO to operate and manage the sports centre from 1 April 2025. The licence for the swimming pool between ESCC and RDC would need to be extended for 3 months from 1 January – 31 March 2025.
- 2.11 Option 2 is for the County Council to undertake public consultation to explore options for the future management of the facilities. This would result in temporary closure of the swimming pool from December 2024, when the current licence between the County Council and RDC expires.

Option 1 – The County Council continues to work on a new operating model with stakeholders

- 2.12 The proposed model involves surrender of all existing legal property documentation for the dry-side and wet-side and to set up new property arrangements, to be in place by 1 April 2025. This would require current property arrangements between the County Council and RDC and their respective contract arrangements with FL to be formally surrendered. The County Council would grant a 20-year lease of the sports centre and swimming pool to Rye TC. RDC would then step away from any property interest post April 2025, with the exception of the solar panel monitoring responsibility. The draft heads of terms are agreed between the County Council and Rye TC (set out in Appendix 1 to an exempt report later in the agenda) and allow Rye TC to sub-let to the CIO who would manage the asset and leisure services operations based on the terms in the Headlease. The CIO are a newly established charitable organisation set up solely to run the sports centre. There will be a local Agreement between the CIO and Rye College Aquinas Trust to ensure ongoing curriculum use of the dry-side facilities; this will be a condition of the lease between the County Council and Rye TC.
- 2.13 It is important to note that the heads of terms between the County Council and Rye TC lease contain a tenant break clause, which is operable at any time after 6 months (i.e. September

2025), by Rye TC. However, this clause may only be exercised if the CIO, as an organisation, does not exist and the centre is not open. Rye TC cannot hold a lease if the CIO were no longer operational as they may have to bear holding costs long term and this includes business rates. The CIO, as a registered charity, benefit under current rating legislation to exempt mandatory and discretionary relief from business rates.

- 2.14 The CIO are seeking a 20-year sub lease from Rye TC on the same terms as between the County Council and Rye TC. However, the sub-lease would not have a CIO break clause, as this allows the CIO to have greater access to secure external funding. Most funding organisations require a long-term lease in place.
- 2.15 Rye TC held a Full Council meeting on 30 September 2024 where it was resolved (a) to approve the heads of terms between the County Council and Rye TC; (b) to seek re-assurance that start up donations and/or contributions have been secured by the CIO; (c) to approve the CIO business case; and (d) that due diligence is completed.
- 2.16 The County Council is seeking written assurance from Rye TC that they have written confirmation of the sub lease heads of terms between Rye TC and the CIO.
- 2.17 The Council has received valuation advice to confirm that the proposed lease to Rye TC, on the terms agreed, provide best consideration under s123 of Local Government Act 1972.

Option 2 – Seek public consultation on the future options of the centre.

- 2.18 The County Council has previously conducted public consultations at other joint use facilities over the last two years. The sites were at Heathfield, Uckfield and Ringmer. During these consultations, no stakeholders came forward before the expiry of the existing arrangements proposing a viable or sustainable option. However, post public consultation discussions at Uckfield, with Wealden District Council and Ringmer Pool, with Lewes District Council did confirm and establish new property and operating models.
- 2.19 Rye Sports Centre and Swimming Pool is different to Heathfield, Uckfield and Ringmer as local stakeholders have been keen to find a viable and sustainable solution with partners ahead of any potential public consultation.

Proposed Future Property Arrangements summary

- 2.20 20-year full repairing lease between the County Council and Rye TC
- The Council has agreed in principle to a new 20-year full repairing lease with a rolling 6-month break clause to Rye TC to enable operation of both the dry-side and wet-side facilities. This would require the surrender of the existing joint use agreement between the County Council, RDC and Rye College Aquinas Trust.
 - A schedule of condition will be undertaken once the LUP and solar panel works are completed.
 - Rye TC would subsequently grant a 20-year sub-lease to Rye CIO to operate the facilities. The commercial aspects are outlined in an exempt report later in the agenda.
- 2.21 Rye College Aquinas Trust
- Rye College Aquinas Trust would continue to use the dry-side facilities for their curriculum use delivery along with hire arrangements for the swimming pool. The dry-side arrangements will be subject to an agreement between the CIO and the College Trust on how the curriculum facilities were to run day to day.

2.22 20-year full repairing lease between Rye TC and Rye Health & Wellbeing CIO

- The County Council has asked for written confirmation that heads of terms between Rye TC and the CIO are agreed and finalised and that they have secured the working capital and funds are in place.

2.23 RDC, Rye TC and Rye CIO

- All parties will work on a lead out plan with RDC and FL to ensure receipt of all up-to-date information to enable a smooth and seamless transfer of the service if option 1 is pursued.

Financial Implications

2.24 There are currently no annual ongoing revenue financial liabilities for the County Council arising from the existing JUA and licence property arrangements. However, there was a recent joint condition survey by RDC and the County Council. The survey results indicated the County Council will be responsible for up to £10,000 of works with RDC being responsible for the other works. At present, the County Council does not pay any annual property running costs under the JUA or under the County Council licence to RDC relating to the swimming pool.

2.25 An exempt report later in the agenda sets out additional information related to the associated costs for options 1 and 2. It should be noted, however, that there are potential financial consequences and risks in the medium and long term to the County Council if the proposed operating model property arrangements were not sustainable (Option 1) though these should be noted alongside the financial consequences of Option 2.

3 **Conclusion and reasons for recommendations**

3.1 The County Council is keen, wherever possible, to seek ongoing community use of the dry and wet side facilities, but with the understanding that the County Council is not a leisure commissioner. The County Council owns the freehold of the dryside and wetside assets and therefore has sought to facilitate a smooth transition of services currently provided by RDC and FL to be managed by Rye TC and the CIO from 1 April 2025.

3.2 Under **Option 1**, if the CIO is successful and continues to operate for the next 20 years, there are low scale risks to the County Council. However, this preferred route does present some potential risk to the County Council if the CIO was to fail within the next 20 years and more information is set out in the exempt report later in the agenda. In essence, the County Council could at a future date be responsible for the wet side facilities and holding costs on an ongoing basis. The CIO has secured working capital as outlined in its business case and capital investment via LUP and Sport England as outlined in this report which will ensure the facilities are fit for purpose. The CIO are seeking to tap into latent demand from local residents to increase usage of the facilities and their business case has been reviewed and approved by Rye TC.

3.3 **Option 2** seeks to commence public consultation, if RDC hands back the swimming pool on 1 January 2025. The swimming pool would need to temporarily close and this will result in holding property costs. A future operating model would need to be found, and it would need to be viable and sustainable. The County Council is not a leisure commissioner so it would not seek to procure a services contract direct, which would require ongoing public revenue funding for this facility.

3.4 Proceeding with Option 1 above, noting the commercial aspects outlined in the exempt report, will enable the continuation of both the curriculum and community use of the facilities. At the

same time, significant capital investment is taking place from external funding secured by RDC as outlined in this report.

3.5 The Lead Member for Resources and Climate Change is therefore recommended to:

- 1) Subject to Rother District Council agreeing to terminate the existing property arrangements and their contract with Freedom Leisure by April 2025:
 - (a) Approve the surrender of the existing property agreements at Rye Sports Centre and Swimming Pool;
 - (b) Approve the County Council entering a 20-year lease with Rye Town Council at Rye Sports Centre and Swimming Pool to facilitate ongoing curriculum and community use. This represents best value under s123 of Local Government Act 1972 and is supported by a formal valuation report;
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- 3) Delegate authority to the Chief Operating Officer to agree the terms of the property lease and other associated agreements and to carry out all actions necessary to give effect to the recommendations in this report.

ROS PARKER
Chief Operating Officer

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LOCAL MEMBERS
Councillor Glazier

BACKGROUND DOCUMENTS
None