

Wiltshire Council

Cabinet

17 September 2019

Subject: Update on Outdoor Education sites

Cabinet Member: Cllr Philip Whitehead – Leader of the Council and Cabinet Member for Finance, Procurement and Economic Development

Key Decision: Non-Key

Executive Summary

To provide Cabinet with an update on the progress being made with the business and land transfer for our Outdoor Education Centres at Oxenwood and Braeside.

Proposals

In December 2018, the Council Cabinet approved the disposal of the Outdoor Education business and sites at Oxenwood and Braeside. It also approved the deferral of the closure of Oxenwood and Braeside until at the latest January 2020 to allow for negotiations and successful transfer arrangements to be made.

To provide Cabinet with a full appraisal of negotiations to date and proposed dates for completion subject to their successful outcome.

To gain Cabinet's continued commitment to support the negotiation process with the two preferred bidders for our Outdoor Education Centres: Braeside (Classes Abroad) and Oxenwood (Community First).

Reason for Proposals

To ensure that Wiltshire Council can secure Outdoor Education provision for the children and young people of Wiltshire through third-party agreements at two existing and well-regarded centres in our County.

To ensure outdoor education provision can continue to deliver a valuable and enriching service to education settings whilst supporting Wiltshire Council's objectives and priorities.

Terence Herbert
Executive Director, Children and Education

Wiltshire Council

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Purpose of Report

1. The purpose of this report is to update Cabinet on the progress of the negotiations to transfer our Outdoor Education Centres to new providers. This will secure an outdoor education programme for the benefit of our children and young people across Wiltshire.

Relevance to the Council's Business Plan

2. Strong Communities
Both centres form an integral part of their local communities and their continued use will attract children from all over the County to areas they would not have been able to experience individually.
3. Growing the Economy
Transferring the Outdoor Education provision to third party providers, will attract new ideas and development opportunities to increase the customer base to encourage greater diversity of use.
4. Protecting those who are most vulnerable
Outdoor Education brings learning to life for our children and young adults. It enhances the classroom learning and teaches life skills in a way that helps people develop and grow in group environments often away from home for the first time.
5. An innovative and effective council
Wiltshire will be able to benefit from keeping an outdoor education service within the County and secure it long term, through external third-party funding from organisations that are proud to support and develop children and young adults.

Background

6. In December 2018, the Council Cabinet approved the disposal of the business and site, with the following:

- i) Cabinet delegates to the Executive Director for Children's Services in consultation with the Cabinet Member for Finance, Procurement, ICT and Operational Assets, the commencement of negotiations with the preferred bidders Wiltshire College and Community First, having regard to the recommendations and advice of the Outdoor Education Scrutiny Task Group.
- ii) Cabinet approves the deferral of closure of Braeside and Oxenwood outdoor education site until at the latest January 2020 to allow for negotiations and successful transfer arrangements.
- iii) Cabinet delegates to the Executive Director for Children's Services in consultation with the Cabinet Member for Finance, Procurement, ICT and Operational Assets the completion of contracts to sell and/or transfer the Councils outdoor education businesses on terms to be agreed, including sale of the asset at less than best consideration providing social value benefit can be demonstrated.

Main Considerations for the Council

Oxenwood

7. Negotiations have continued with the preferred bidder Community First. This has been a detailed process to ensure that both parties understand the ongoing responsibilities for the site and business. The resources and equipment key to the business delivery will also be transferred to the new provider, including two vehicles and five trailers. All discussions have been conducted in good faith and purpose.
8. Community First is a registered charity (288117) based in Devizes. It is an award-winning charity that has supported people and places across Wiltshire and Swindon for over 50 years. As a member of ACRE, they support rural communities across Wiltshire and Swindon through advisory services for Village Halls and Local Councils. Community First envisage, create and manage projects to support people and places including community transport schemes, community-led housing, community organising and volunteering services.
9. The Council's recognised trade unions were informed and consulted from the very start of the proposals. The prospect of employees being transferred to Community First has been fully discussed with Unions and staff members and they will continue to be consulted throughout the process.
10. Oxenwood team members have had updates from their line manager, HR advisers and Education and Skills officers dealing with the negotiations over the business transfer, so they are kept informed of developments as they progress.
11. The transfer of staff to Community First occurs as an operation of law in such circumstances under the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006. These regulations place obligations on both Wiltshire Council (as transferor) and Community First (as the transferee) in relation to the affected employees. Staff consultation has been held and will continue to do so with those affected to ensure full compliance with the TUPE regulations.

12. As part of the TUPE investigations, a number of staff members had been identified as working with such regularity on a 'casual-basis' that they should have been placed on a permanent zero-hours working contract with Wiltshire Council. These staff members have been advised and the TUPE process has been extended to cover those individuals in the consultation period. Staff members working on a 'casual-basis' with no regularity of work pattern have been advised that they will not be transferring across to the new provider. Their details have been passed to Community First at the team members' request.
13. The administration costs for Community First to become an admitted body of the Local Government Pension Scheme have been identified. The costs were not clear and obvious during the tender process and Community First had subsequently made no provision for them. To meet those costs, a reduction in the purchase price has been agreed for the same value. This reduction does not include any contribution to the Pension Liability Bond, which is mentioned later in the report. Community First are solely responsible for either securing a guarantor or buying a bond to secure their pension fund that satisfies LGPS conditions.
14. The site has a water supply from the Fosbury Estate, but this supply is not covered by a formal Easement. Negotiations have been held with the Estate to secure the right under an Easement, but the legal title has not been suitably proved. To cover this risk Community First have requested an indemnity insurance and the Council have agreed to meet the cost (£135). Community First have confirmed they are satisfied to proceed now the indemnity is in place.
15. All ongoing liabilities will transfer to Community First and the land deal includes an overage provision for alternate uses for a fixed future period. There is planning approval for the site to be used for educational purposes and any change would need to be approved through the appropriate planning process. There is no explicit clause in the Business Transfer Agreement that Community First must provide Outdoor Education provision from the site for any length of time. At the time of the tender process, it was considered that the overage condition and planning classification were enough to secure the intent for provision of outdoor education services.
16. The anticipated completion date is 1 October 2019 which will result in staff transferring under TUPE on this date, with their final day of employment with Wiltshire Council being 30 September 2019.
17. Community First are committed to become an Admitted Body of the Local Government Pension Scheme as part of the TUPE staff transfer. Their application will be made directly to LGPS and the relevant administration costs will be payable by Community First directly to LGPS. LGPS is committed to guaranteeing the financial viability of the pension fund and demand that any party entering these agreements, in this case Community First, must have either a guarantor or pension liability bond to secure the pension fund against any relevant employee events occurring. These options would incur a cost for Community First and they have been advised that these costs will have to be considered and met by themselves.
18. As the new provider will be operating on a charitable basis, wholly independent of Wiltshire Council, it is not recommended that Wiltshire Council act as

guarantor as it will then retain a long-term financial liability out of its direct control or influence. During due diligence discussions, Community First have been advised by LGPS representatives that the Pension Liability Bond will be required when seeking 'Admitted Body' status to protect the new pension created by the TUPE transfer.

19. The common purpose of discussions throughout has been to ensure that Community First take on the business as a going concern, so the children and young people continue to benefit from its unique offer in our County.
20. It has been agreed that each party will be responsible for payment of their own legal fees to complete the transfer documentation.
21. Community First and Wiltshire Council have now substantially agreed the content of both the Business Transfer Agreement and Land Registry Document and are seeking to take the next steps towards exchange of contracts.
22. To that effect, Community First have resolved, at their Finance Committee on 23 July 2019, to purchase the site and transfer the business as set out in the Business Transfer Agreement and Land Registry Document.
23. Updates have been provided to, and advice has been sought from, the Chair and Task Group for Traded Services in March and July to progress negotiations in line with Cabinet's aspiration for a successful business transfer of the outdoor education provision. Cllr Whitehead has led discussions to secure the desired outcomes.
24. Wiltshire Council's Cabinet has already delegated to the Executive Director for Children's Service, in consultation with the Cabinet Member for Finance, Procurement, ICT and Operational Assets, the completion of contracts to sell and/or transfer the Councils outdoor education businesses on terms to be agreed, including sale of the asset at less than best consideration providing social value benefit can be demonstrated. A Record of Officer Decision is currently being prepared to reflect the decision to move to transfer the business.
25. The Cabinet Member role for Finance, Procurement, ICT and Operational Assets has subsequently been split, with Operational Assets removed. The Cabinet Members for Finance have been involved in the negotiations and both Cabinet Members have confirmed that we should proceed with the disposal.

Braeside

26. Following the withdrawal of the bid from Wiltshire College, as the preferred bidder, each of the remaining bidders for the Braeside offer were approached to confirm and explain the circumstances for the next steps and discussions that would commence with the next best offer from the tender process.
27. Classes Abroad, ranked number 2 in the evaluation process, were invited to commence negotiations. At the negotiations, they were encouraged to make sure their bid reflected the due diligence checks they had made prior to submission and the purchase price was in line with their commercial intentions for the site. Wiltshire Council reinforced their aspirations that Classes Abroad would offer

outdoor education provision from the site to education settings across Wiltshire. Classes Abroad confirmed their intention to utilise the knowledge and experience of the existing Braeside Outdoor Education team to develop the outdoor education service and increase the opportunity for their existing core business to grow.

28. Classes Abroad were established in 1992 and specialise in educational and discovery travel across Europe. They are a family-run business with a local office and residential accommodation based in Grittleton, which is 4 miles north of Corsham and north of the M4. Classes Abroad pride themselves in having the knowledge and experience to create an unforgettable and invaluable experience for both students and teachers.
29. The Council's recognised trade unions have been informed and consulted from the very start of the proposals. They have been advised of the prospect of employees being transferred to Classes Abroad and will continue to be consulted throughout the process.
30. Braeside team members have had regular updates from their line manager, HR advisers and Education and Skills officers dealing with the negotiations over the business transfer, so they are kept informed of developments as they progress.
31. The transfer of staff to Classes Abroad occurs as an operation of law in such circumstances under the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006. These regulations place obligations on both Wiltshire Council (as transferor) and Classes Abroad (as the transferee) in relation to the affected employees. Staff consultation has been held and will continue to do so with those affected to ensure full compliance with the TUPE regulations.
32. The costs for Classes Abroad to become an admitted body of the Local Government Pension Scheme have been identified. The costs were not clear and obvious during the tender process and as such Classes Abroad were offered the opportunity to factor those costs into their revised agreed purchase price. They have also considered and forecasted a reduction in income over the first couple of years due to the original decision to close the site and its repercussions, plus costs relating to a review of the staff structure once completion has taken place. With the reduced bid received, the evaluation process was re-considered and compared to the original tenders received. It was confirmed that Classes Abroad were ranked number 1, based on the withdrawal of the bid from Wiltshire College.
33. All ongoing liabilities will transfer to Classes Abroad and the land deal includes an overage provision for alternate uses for a fixed future period. There is planning approval in place for the site to be used for educational purposes and any change would need to be approved through the appropriate planning process. There is no explicit clause in the Business Transfer Agreement that Classes Abroad must provide Outdoor Education provision from the site for any length of time. At the time of the tender process, it was considered that the overage condition and planning classification were enough to secure the intent for provision of outdoor education services.

34. On the rise of successful negotiations for the business and land transfer, Classes Abroad are committed to become an Admitted Body of the Local Government Pension Scheme as part of the TUPE staff transfer. Their application will be made directly to LGPS and the relevant administration costs will be payable by Classes Abroad directly to LGPS. LGPS is committed to guaranteeing the financial viability of the pension fund and demand that any party entering these agreements, in this case Classes Abroad, must have either a guarantor or pension liability bond to secure the pension fund against any relevant employee events occurring. These options would incur a cost for Classes Abroad and they have been advised that these costs will have to be considered and met by themselves.
35. As Classes Abroad will be operating on a commercial basis, wholly independent of Wiltshire Council, it is not recommended that Wiltshire Council act as guarantor as it will then retain a long-term financial liability out of its direct control or influence. During due diligence discussions, Classes Abroad have been advised by LGPS representatives that the Pension Liability Bond will be required when seeking 'Admitted Body' status and Classes Abroad have factored these pension costs into their purchase price for the site and business.
36. It has been agreed that each party will be responsible for payment of their own legal fees to complete the transfer documentation.
37. Classes Abroad are in receipt of the Business Transfer Agreement that reflects the detail covered above and are seeking legal advice to confirm their understanding of the agreement. It is understood that Classes Abroad will set up a subsidiary company as the new provider for the Braeside Outdoor Education Centre, so the documents will be completed once this has been finalised. There are negotiations still to be concluded with the content of these documents before they are finalised and ready for issuing, but that process is continuing, and updates will be provided in due course.
38. It is intended that, subject to the negotiations, Wiltshire Council's last day of operational management and delivery at the site will be on the 30 November. The Braeside Outdoor Education Centre staff will transfer to the payroll of Classes Abroad from 1st December. The land will also transfer across to Classes Abroad from 1st December. This will release Wiltshire Council's liability for the site in line with Cabinet's aspirations.
39. Wiltshire Council's Cabinet has already delegated to the Executive Director for Children's Service, in consultation with the Cabinet Member for Finance, Procurement, ICT and Operational Assets, the completion of contracts to sell and/or transfer the Council's outdoor education businesses on terms to be agreed, including sale of the asset at less than best consideration providing social value benefit can be demonstrated. A Record of Officer Decision is currently being prepared to reflect the decision to move to transfer the business.
40. The Cabinet Member role for Finance, Procurement, ICT and Operational Assets has subsequently been split, with Operational Assets removed. The Cabinet Members for Finance have been involved in the negotiations and both Cabinet Members have confirmed that we should proceed with the disposal.

Overview and Scrutiny Engagement

41. Updates have been provided to, and advice has been sought from, the Chair and Task Group for Traded Services in March and July to progress negotiations in line with Cabinet's aspiration for a successful business transfer of the outdoor education provision. Cllr Whitehead has led discussions to secure the desired outcomes.

Safeguarding Implications

42. The teams at both centres are already engaged with children and young adults through their existing provision and the preferred bidders core businesses are centred around the same populations. On that basis, no further implications have been identified.

Public Health Implications

43. Continuing with an Outdoor Education offer in Wiltshire has fantastic health and wellbeing benefits for the children and young adults of Wiltshire, so there are no further implications identified by its responsible transfer to a third-party organisation.

Procurement Implications

44. The tender process was presented to the market in the Autumn of 2018 to achieve 'Best Consideration' on the disposal of the business and assets used by the outdoor education service at Braeside and Oxenwood.
45. The two sites have been openly marketed, with the land transfer included within the advertising pack. No further procurement implications identified.

Equalities Impact of the Proposal

46. No equalities impact identified.

Environmental and Climate Change Considerations

47. No further environmental and climate change considerations identified.

Financial Implications agreed on behalf of the S151 Officer (CS - MT)

48. In December 2018, Cabinet approved the disposal of the Outdoor Education business and sites at Oxenwood and Braeside in order to allow social value to the community through the continuation of services from the two sites. The market was tested through the bidding process and the disposal has taken best consideration of the tenders received in selecting the preferred bidders. All efforts are now being made to transfer the centres whilst removing future financial risk and liability for the Council. Any net receipts from the sale of the assets will be a capital receipt and therefore ringfenced to support funding the Council's capital programme. These actions are in line with Cabinet's original aspirations.

Legal Implications

49. Advice has been sought externally for completion of the Business Transfer Agreement and the detail of the content contained.
50. Legal Services is advising on the property documentation required to transfer the properties to the preferred bidders.
51. Legal Services is also advising on a deed of easement which is required to grant rights for the benefit of Oxenwood Outdoor Education Centre from an adjoining land owner. The deed of easement will need to be completed at the same time as the property transfer documentation.

Workforce Implications

52. Staff affected by the business and land transfer are subject to TUPE regulations and are in receipt of regular updates and being consulted throughout the process.

Options Considered

53. The sites could have been closed and the outdoor education provision ceased. This proved to be an unpopular decision with members of the public voicing its affection for the service. Every effort has been made to date to ensure the provision can continue.
54. The sites could have been sold for development but existing planning conditions and covenants in place would make that prohibitive and would not achieve Wiltshire Council's aspiration of having outdoor education provision based within the County.

Conclusions

55. To recommend that Cabinet support the advanced negotiations with the third parties concerned to achieve Wiltshire Council's aspirations for the long-term provision of Outdoor Education opportunities in Wiltshire
56. Subject to the continued negotiations and successful outcomes, Cabinet to support the business and land transfer to the preferred bidders as detailed below:

Community First for the Oxenwood Outdoor Education Centre;
Classes Abroad for the Braeside Outdoor Education Centre.

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Appendices

None

Background Papers

None