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| Report to: | Environment and Neighbourhoods Committee | Date: | 17 September 2015 |
| Report title: | Sutton Life Centre: Review by external consultants and options Legal Implications addendum | | |
| Report from: | Mary Morrissey, Strategic Director Environment, Housing and Regeneration | | |
| Ward/Areas affected: | Borough wide | | |
| Chair of Committee/Lead Member: | Councillor Jill Whitehead | | |
| Author(s)/Contact Number(s): | Stephanie Crossley, Temporary Executive Head of Communities and Neighbourhoods Warren Shadbolt, Executive Head of Safer and Stronger Communities 020 8649 0605 | | |
| Corporate Plan Priorities: | <ul style="list-style-type: none"> • An Open Council • A Fair Council • A Smart Council | | |
| Open/Exempt: | Open | | |
| Signed: |  | Date: | 17 September 2015 |

1. Summary

- 1.1 The legal implications set out in paragraphs 12.5 – 12.11 of the original Sutton Life Centre Report published are not applicable, as the main body of the report was amended following the final contract implications. The property implications remain as outlined in the original report and have been replicated below for ease of reference.

2. Recommendations

- 2.1 To note the updated legal implications.

3. Legal implications

Option 1: Close the Life Centre and dispose of the building

- 3.1 The Council obtained match funding from the Big Lottery Fund for the construction of the Sutton Life Centre building and for the services to be provided from the building in 2007. The grant is for a period of 20 years.



- 3.2 The Council is required to obtain written agreement from the Big Lottery Fund before making any changes to the ownership of the Life Centre, as set out in the grant agreement. Under the terms of the grant, the Council may have to repay all or part of the grant received from the Big Lottery Fund at the Big Lottery Fund's absolute discretion and the Big Lottery Fund may impose conditions on the disposition of the Life Centre if the Council sells the Life Centre.
- 3.3 As this option proposes to close the Life Centre, the service will be required to be decommissioned. In light of this, the Council may be required to carry out a consultation for the decommissioning of the service. It would need to be established as to whether there is a duty to consult: a statutory duty; a promise to consult; an established practice of consultation; or where failure to consult would lead to conspicuous unfairness. If there is a duty to consult, or if the Council chooses to consult, the Council must ensure that the consultation is carried out properly.
- 3.4 If the Life Centre is closed, this will have employment implications. Staff currently employed by the Council to provide services at the Life Centre will be at risk of redundancy, which has financial implications for the Council.
- 3.5 Should the Council dispose of the building, under section 123 of the Local Government Act 1972 the Council has the power to dispose of land or property in any manner it wishes.
- 3.6 Section 123 of the Local Government Act 1972 requires the Council not to dispose of land or property for a consideration less than the best that can be reasonably be obtained, unless the Secretary of State consents to the disposal.
- 3.7 In addition to the issues outlined in paragraphs 1.5 and 1.6 above, there may be other specific legal implications for the property. Issues such as (without limitation) covenants on title, easements burdening the land and rights of third parties, may complicate or prohibit disposal. Such issues will be identified as a result of a detailed analysis of the title deeds and documents.

Option 2: Transfer the Life Centre to another provider, retaining the library

- 3.8 Under the funding agreement, the Council is required to obtain consent from the Big Lottery Fund if the Council proposes to dispose of the property and change the delivery structure from a service provided by the Council to a service provided by a third party. As set out in paragraph 3.4 of the original report, approval has not been provided for the disposal of the Life Centre from Sutton to a third party. The Council cannot dispose of the property without approval to a third party under the terms of the grant.
- 3.9 If, in the opinion of the Big Lottery Fund:
 - 3.9.1 there is a significant change of ownership that has taken place without the Big Lottery Fund's approval within a reasonable period after completion of the project; and
 - 3.9.2 the Big Lottery Fund judge that the grant is unlikely to fulfil the purpose for which it was made,



the Council will be required to pay back all or part of the grant (at the Big Lottery Fund's absolute discretion) and the Big Lottery Fund may impose conditions on the disposition, if the Council seeks to utilise this option.

3.10 If, the service is transferred to a third party provider, there will be employment law implications. The organised group of employees whose main principal purpose is to provide the services to be transferred is likely to transfer to the new provider under TUPE.

3.11 The property implications of this option are as outlined at paragraphs 3.5 to 3.7 above.

Option 3: Continue operations under revised operating model

3.12 This option does not appear to change the project from that described in the Council's grant application and is compliant with the grant agreement. As this option is in line with the grant agreement, the Council will not be at risk of having to repay all or part of the funding to the Big Lottery Fund.

3.13 The Council should consider the employment law implications that may arise out of the restructure of the management team.

Implications for all 3 options

3.14 In the course of deciding which option to choose, the Council should consider any implications under the Equality Act 2010 and ensure that it has had due regard to the public sector equality duty. Subject to the option chosen, the Council may be required to conduct an equality impact needs assessment if the Committee elects Option 1 (to close the Life Centre and dispose of the building).

3.15 Legal services shall provide ongoing advice on this project as and when required.

4. Appendices and Background Documents

| Appendix Letter | Title |
|------------------------|--------------|
| | None. |

| Background Documents |
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| None. |

| Audit Trail | | |
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| Version | Final | Date: 17 September 2015 |

| Consultation with other officers |
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| Officer | Comments Sought | Comments checked by |
|----------------|------------------------|----------------------------|
| Finance | No | |
| Legal | Yes | Susan Moussa |