

**Name of meeting: Council**

**Date: 9<sup>th</sup> December 2015**

**Title of report: Whitcliffe Mount School and the Closure of Whitcliffe Mount Sports Centre – To note the Ombudsman’s Report**

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	No. The report is for information purposes
Is it in the <a href="#">Council’s Forward Plan?</a>	Not applicable
Is it eligible for call in by <a href="#">Scrutiny?</a>	Not applicable
Date signed off by <u>Director</u> & name	Ruth Redfern Director of Communities, Transformation & Change David Smith Director of Resources
Is it signed off by the Director of Resources?	<b>David Smith 30<sup>th</sup> November 2015</b>
Is it signed off by the Assistant Director (Legal Governance and Monitoring)?	<b>Julie Muscroft 1<sup>st</sup> December 2015</b>
Cabinet member <a href="#">portfolio</a>	Give name of Portfolio Holder area and name for Cabinet reports <b>Cllr Jean Calvert, Portfolio – Community Development</b> <b>Cllr Graham Turner, Portfolio – Resources and Community Safety</b>

Electoral [wards](#) affected: Cleckheaton

Ward councillors consulted: None

Public or private: Public

## 1. Purpose of report

- 1.1 A decision was taken by Cabinet on 17<sup>th</sup> December 2013 to close Whitcliffe Mount Sports Centre (WMSC). The purpose of this report is to inform all Members of Council of the background to the decision to close WMSC and to report to Council the outcome of an Ombudsman investigation. In accordance with the Constitution, as this is an executive matter, a subsequent meeting of Cabinet will be convened in North Kirklees (local venue to be confirmed) to formally review the decision to close. The Council itself has no decision making power in relation to this. The Ombudsman is aware of the constitutional arrangements and is in agreement with the decision being taken by Cabinet at a suitable date.

## **2. Summary**

- 2.1 On 17<sup>th</sup> December 2013, Cabinet considered a private report to close Whitcliffe Mount Sports Centre (WMSC).
- 2.2 Two separate complaints have been submitted to the Ombudsman about this decision. Both raise the issue that consultation was not undertaken until after the decision was taken and that a full Equalities Impact Assessment was not undertaken.
- 2.3 The Ombudsman has recommended that Cabinet should give further consideration to the decision to close WMSC at a public meeting as “it is not possible to go back and re-run the decision making process in its entirety” (Local Government Ombudsman).

## **3. Background**

- 3.1 Appendix 1 to this report sets out the Background to the decisions taken.
- 3.2 Appendix 2 sets out the final decision of the Ombudsman in relation to the two complaints referred to as Mr B and Mr B and his son.

## **4. Implications for the Council**

- 4.1 Cabinet will need to formally consider the future of WMSC. A meeting is being arranged in North Kirklees to consider the Ombudsman report and the future options for the Council.

## **5. Consultees and their opinions**

- 5.1 Kirklees Active Leisure has discussed closure plans with users of the sports centre and relocated many of the regular bookers to other KAL premises or they have made their own arrangements.
- 5.2 Staff and governors at Whitcliffe Mount School have been consulted in relation to the development of the new school.

## **6. Officer recommendations and reasons**

- 6.1 That Council notes the background to the WMSC decision and the Ombudsman report

## **7. Cabinet portfolio holder’s recommendations**

- 7.1 Agrees with the officer recommendation.

## **8. Contact officer and relevant papers**

Adele Poppleton 01484 221000 [adele.poppleton@kirkees.gov.uk](mailto:adele.poppleton@kirkees.gov.uk)

## **9. Assistant director responsible**

Kimiyo Rickett, Assistant Director, Communities and Leisure

## Appendix 1

### WHITCLIFFE MOUNT SPORTS CENTRE AND WHITCLIFFE MOUNT SCHOOL

#### INFORMATION SHEET

##### DECISION TIMELINE

2008	Building Schools for the Future submission – the Government's plan to update deficient school buildings. Whitcliffe Mount School included in the submission.
December 2009	Outline planning permission for extensive works granted to Whitcliffe Mount School
July 2010	BSF programme cancelled by Coalition Government
2011	A report commissioned by the Council indicated a limited remaining life for Spenborough Pool.
11 <sup>th</sup> October 2011	Cabinet considers report to submit capital funding bid to Government for Whitcliffe Mount School
October 2011	Priority Schools Building Programme Bid submitted to Government including Whitcliffe Mount School
June 2012	Government confirms that the Priority Schools Bid for Whitcliffe Mount School has been successful
Autumn 2012	The replacement of Spenborough Pool included in the Council's Risks and Pressures which formed part of the Council's new approach to strategic capital investment.
10 <sup>th</sup> July 2013	£4.4 million borrowing identified in the Capital Plan for Spenborough Pool
17 <sup>th</sup> December 2013	Private report considered by Cabinet to accept Education Funding Agency's (EFA) conditions, close Whitcliffe Mount Sports Centre (WMSC) and accept the EFA's offer to demolish WMSC
May 2014	AHR commissioned to look at options on Spenborough Site and review other potential sites. Brief revised to look at a bigger facility on the existing Spenborough Pool site.
Autumn 2014	Education Funding Agency (EFA) approached the Council regarding the potential to bring forward the closure of

WMSC from late 2016 to May/June 2016 in order to make better use of the reconfigured school site and to reduce the impact of the new build on the green belt.

December 2014	AHR complete their report regarding Spenborough Pool
December 2014	EFA submit planning application for new school
27 <sup>th</sup> January 2015	Cabinet updated about the appointment of the contractor Laing O'Rourke and revised plans re the footprint of the school building including on part of the footprint of the existing WMSC
February 2015	Capital borrowing for Spenborough Pool increased to £15 million
24 <sup>th</sup> February 2015	Cabinet approves plans to extend the fitness facilities at Spenborough Pool
March 2015	Planning application for new build school approved
June 2015	Planning application submitted for modular build at Spenborough Pool to extend fitness facilities
7 <sup>th</sup> October 2015	Council debates petition submitted over closure of WMSC

## **1. INTRODUCTION**

- 1.1 Two separate complaints have been submitted to the Ombudsman about the decision to close Whitcliffe Mount Sports Centre (WMSC). They both raise the issue that consultation was not undertaken until after the decision was taken and that a full Equalities Impact Assessment (EIA) was not completed.
- 1.2 The Ombudsman has upheld the complaints but not issued a formal report. She has recommended that the council should give further consideration to the decision to close WMSC at a public meeting to resolve the lack of public consultation as *“it is not possible to go back and re-run the decision making process in its entirety”* (Local Government Ombudsman). At this meeting, members of the public should have the opportunity to put forward their views.
- 1.3 WMSC is a sports centre owned by Kirklees Council and managed on its behalf by Kirklees Active Leisure (KAL). It shares a campus, car park and all utilities with Whitcliffe Mount School in Cleckheaton.
- 1.4 Whitcliffe Mount School is a large and sprawling school with over 1,200 students and consists of multiple buildings built over the last 100 years. It reflects the changes in education over this time with many disparate extensions. Consequently, the school presents considerable management difficulties for the staff, a situation which has been compounded by a lack of investment in recent years following the cancellation of the Building Schools for the Future (BSF) programme in 2010. The school was originally one of the Council's Pathfinders and initially received Outline Planning for extensive works in December 2009.
- 1.5 The decision to rebuild the school has led to the decision to close WMSC.

## **2. THE DECISIONS TAKEN**

### **2008 to 2011**

- 2.1 Kirklees entered the Government's Building Schools for the Future (BSF) programme in 2008, with the aim of fully or partially rebuilding all twelve High Schools in the north of the Borough. Whitcliffe Mount School was chosen by the Council as one of two pathfinder schools to be taken to outline planning permission, primarily due to its condition but also to respond to the then impending changes to the three tier pyramid system in place in Cleckheaton at the time. Outline planning permission by the Council to extensively rebuild Whitcliffe Mount was achieved in December 2009.
- 2.2 The Council was in the process of submitting its overall Outline Business Case Submission for all twelve schools to the Department for Education in the summer of 2010 when the BSF programme was cancelled by the incoming coalition government following a review of capital by the Department in July 2010.

- 2.3 Subsequently in 2011, the Government set up the Priority School Building Programme (PSBP) through a privately financed public private partnership (PPP) to invest in those school buildings nationally in the worst state of repair. Councils were invited in Autumn 2011 to submit proposals for schools that met nationally set criteria.

### **2011 Priority Schools Building Programme bid**

- 2.4 In response to the Department for Education's PSBP invitation, the Council submitted a bid in 2011 to the Department for Education for Whitcliffe Mount and four other schools to be considered for the replacement Priority Schools Building Programme. The PSBP was set up primarily to deal with condition issues and eligibility for funding was based on meeting the following criteria published:

- Its condition backlog of priority 1-3 needs should be at least 30% of the anticipated rebuild cost
- The project would need to cover the whole school and unless at least 70% (by floor area) of the school is replaced it is unlikely to be value for money
- If any of the school buildings are listed, these should be less than 30% of the floor area
- It should not have received major capital investment in the last 15 years.

- 2.5 As part of the bid process, the Authority commissioned a detailed condition survey for all of the schools being considered for the bid following a prior sifting process and subsequently, Whitcliffe Mount School (along with All Saints Catholic College and Mount Pleasant Primary School) were all deemed to be beyond reasonable repair and were selected for the programme with Whitcliffe and All Saints being part of the PPP programme and Mount Pleasant being determined by the EFA as being more suitable for a capital build programme.

### **11<sup>th</sup> October 2011 Cabinet Report**

- 2.6 On 11<sup>th</sup> October 2011, Cabinet considered a report to bid for capital funding from Government for five schools in Kirklees including Whitcliffe Mount School. Rebuild costs for the school were estimated to be around £15 million. Cabinet approved the submission of a PSBP1 bid.

### **June 2012**

- 2.7 In June 2012, the Government confirmed that Kirklees had been successful with three bids including the rebuild of Whitcliffe Mount. By being accepted on to the Priority School Building Programme, this acknowledged that the school is one of the 261 worst condition schools in the country.

## **17<sup>th</sup> December 2013 Cabinet Report**

- 2.8 A private report was presented to Cabinet on 17<sup>th</sup> December 2013. This outlined the Education Funding Agency's (EFA) conditions in relation to Whitcliffe Mount School and its proposals for demolishing the school and rebuilding it. The report was deemed to be a private report because it contained exempt information under Part 1 of Schedule 12A of the Local Government Act 1972 including information about financial and business affairs. Disclosure of some of these details could have adversely affected value for money; compromised commercial confidentiality of the bidding organisation and KAL; and disclosed contractual terms.
- 2.9 It is now accepted by the council that part of this report could have been a public report with only the commercially sensitive information contained within a private report or appendices. It has been agreed with the Ombudsman that the council will consider whether private matters can be separated in future Cabinet reports.
- 2.10 The EFA proposed that it would provide the funding to rebuild the school and the school would contribute to the long term maintenance costs. The Council would not be contributing financially to either the new build cost or the on-going cost of the long term maintenance contract.
- 2.11 The report recognised that the site had a complex ownership. As the school is a Voluntary Controlled School, ownership of the site is split between the Council (Deed packets 2055 and 2059) and the School's Charity Trustees (Trustees) (10413, 10411 and 10412). WMSC sits partially on Council land but mainly on Trustees land with the car park on a mixture of both.
- 2.12 The EFA originally proposed the complete demolition of the existing school campus including the prominent Edwardian building which faces onto Turnsteads Avenue. The school would be replaced with a complete new build with the most likely position being on the school's existing Redgra sports area. The new build would include a four court sports hall with appropriate changing facilities. A replacement playing field to Sports England standards would be provided to replace the Redgra. The EFA did not propose to relocate the existing school bus bay and was looking to use the existing shared WMSC/school car park for staff car parking as opposed to providing a dedicated school car park for staff. New visitors and disabled car parking would be provided.
- 2.13 This package of works was known as the EFA's "Control Option" and was necessary to enable the EFA to run a tender process to select a contractor to deliver the 7 school PFI package of works. The Yorkshire PFI batch contains two schools in Kirklees, four schools in Bradford and one school in Harrogate. No guarantee was given by the EFA that the final design solutions proposed by the successful bidder would match the proposed control option.
- 2.14 The EFA noted that the location of WMSC at the centre of the campus would have a significant impact on the redevelopment of the site and so offered to

demolish WMSC free of charge to the Council should the Council decide to close the facility. It would not though replace the community aspects of the facility as its funding can only be used on costs directly related to the new build school.

- 2.15 Should the Council wish to retain WMSC, the EFA agreed to demolish all the buildings around it and make good the points at which the demolished buildings connected to WMSC (i.e. rebuild walls to close holes in the external envelope) free of charge to the council. It would not however re-provide severed utility connections or a new boiler which is presently housed in the school. This is because the EFA will only use its budget on costs directly related to the new build school. With this option, WMSC would have to close until the utilities had been re-connected.
- 2.16 The new school will have a four court sports hall with changing facilities. As a minimum, it will also have a new playing field to Sport England standards and the possibility of a 3G artificial pitch should the school be able to lever in additional funds from the Football Foundation or other Sports Bodies. Whilst not at the level and range of sports provision presently provided by WMSC, if the school provides community access to these facilities, some of the loss of WMSC will be negated. The EFA has indicated that there will be no limits to community use in the PFI contract. There will be a gap in provision from when the school is demolished and the new one opened, approximately 18 months.
- 2.17 This first proposal (i.e. the EFA control option) did not intend to build on the footprint of WMSC. The report recommended the closure of WMSC for financial reasons. The cost to reinstate utilities to WMSC after the connection to the school is severed in order to demolish it was assessed to be £0.5 million. WMSC also requires significant investment of approximately £1.5 million (2013 estimates) to repair the fabric of the building, improve antiquated changing rooms and the reception area and make it fully DDA (Disability Discrimination Act) compliant. This means that WMSC required a total investment of £2 million.
- 2.18 Cabinet decided to accept the EFA's conditions and in light of the substantial investment required to keep WMSC open, decided to close the centre from late 2016.
- 2.19 The cabinet report was prepared without prior public consultation and a full Equality Impact Assessment (EIA) was not undertaken to inform the Cabinet about the impact on users, especially those with protected characteristics, if the centre closed. The EIA screening tool was used and it determined that a full assessment was not required as services were not being withdrawn but relocated and thus there would be minimal impact.

#### **Autumn 2014**

- 2.20 All three bidders invited to tender by the EFA for the 7 schools Yorkshire Batch PFI contract concluded that the EFA's Control Option of placing the



new build school and sports centre on the existing redgra area would not be the best solution for the site. All bidders opted instead to site the replacement buildings on or around the existing tennis courts and WMSC. The EFA approached the Council to consider the possibility of bringing forward the closure date from late 2016 to May/June 2016 in order to make best use of the site and to limit the impact on the green belt.

### **27<sup>th</sup> January 2015 Cabinet Report**

- 2.21 On 27<sup>th</sup> January 2015, Cabinet was updated about the plans for the school. Laing O'Rourke had been appointed as the contractors for the new build. The company had identified the optimum location for the school and its stand-alone sports hall plus Multi-Use Games Area, main car park and delivery yard as an area which includes the footprint of WMSC.
- 2.22 This means that the decision to close the sports centre is no longer just a financial decision but one which is also about minimising the impact of the new school on local residents and the green belt.

### **February 2015**

- 2.23 A topped up figure of £15m was agreed in the Capital Plan to invest in a new Spenborough Pool and Fitness Complex. Approval to borrow £4.4 million was originally secured in February 2014. Most of this spending will be from 2016 with an expected opening of the centre in Spring 2019.
- 2.24 It was decided that this site was more of a priority for investment than WMSC due to the need to replace the pool and due to its more central location.

### **24<sup>th</sup> February 2015 Cabinet report**

- 2.25 At this Cabinet, Members approved an extension to the existing facilities on the Spenborough Pool site to provide additional fitness facilities and to improve the existing ones. Once completed around late 2015/early 2016, these new facilities would facilitate the transfer of fitness activities from WMSC.

### **20<sup>th</sup> October 2015 Cabinet Report**

- 2.26 On 20<sup>th</sup> October 2015, Cabinet endorsed the Built Sport and Leisure Facilities Strategic Assessment Report. Once the new sports hall at Whitcliffe Mount School and the fitness facilities at the new Spenborough Pool are built, if WMSC was to remain open, there would be over provision in the area especially as Bradford Council are planning to build a major new sports facility at Sedbergh Playing Fields, less than 4 miles from the WMSC site, which is due to open in 2018.

### **3. OTHER INFORMATION**

- 3.1 KAL has been supporting users of WMSC to relocate to other facilities with better access for people with disabilities e.g. some netball teams have relocated to Huddersfield Leisure Centre and are being charged the same rates as at WMSC for better facilities; the roller hockey team is using facilities in Bradford.
- 3.2 A programme of works to improve and extend the fitness suite at Spensborough Pool will be completed by Christmas 2015 so that WMSC gym members, the largest percentage of WMSC users (53%), can transfer to that site in early 2016. This is only 1.8 miles away from WMSC.
- 3.3 Under the terms of the Council's formal Funding Agreement with KAL, as the Council may require the closure of WMSC, it will be liable for any outstanding costs associated with such a closure. KAL is trying to mitigate such costs as far as possible but this is likely to include redundancy and associated employment costs and a range of associated costs which will include: removal/de-cant costs; early termination of service contracts; stock write-offs; KC finance charge write off for bar conversion work in 2008/09 of £66,068; Council CWI loan write-off; and the scrapping of any KAL assets. Redundancy costs have still to be calculated, but the other associated costs listed are likely to be c.£100k.
- 3.4 The only outstanding issue is provision for indoor bowlers. With the loss of indoor bowling facilities in Huddersfield since the development of Huddersfield Leisure Centre, there is now no similar provision in Kirklees. Council members and officers are advising a partnership of voluntary groups which is wishing to build a new indoor bowling facility at Huddersfield YMCA at Salendine Nook.
- 3.5 One of the groups for whom one of the complainants has been lobbying, the Society for the Blind of Dewsbury, Batley and District has informed KAL that it will no longer be using WMSC as its funding for bowling activities has ceased.
- 3.6 In December 2014, the EFA submitted a Planning Application for the new build school complete with standalone four-court Sports Hall. As part of the submission, detailed discussions were held with Sport England who needed to satisfy themselves that there was no substantial loss of provision with the new build. The subsequent approval in March 2015 included a Condition that required there to be a Community Use Agreement in place before the new school opened to ensure that a community benefit was maintained
- 3.7 If the decision is taken to close WMSC, the gym users will transfer to Spensborough Pool and Fitness centre in January 2016 and the remaining users will relocate elsewhere in Spring 2016. KAL intends to vacate the building by the beginning of May 2016.
- 3.8 The present school building has significant condition needs and is no longer suitable for the delivery of a modern curriculum. The provision of extensive

new build accommodation will have a range of positive impacts on teaching and learning by:

- providing efficient learning environments that maximise the resources used for learning rather than running and maintaining the premises
- providing an effective learning environment that gives the best conditions for learning and makes young people feel safe and secure at all times
- treating young people with trust and respect which encourages responsibility
- providing a modern environment that stimulates their interest and is relevant to them
- giving flexibility of group organisation with “lecture”, large group and small group spaces and free break out space
- providing internal and external environmental opportunities for exploration
- providing cutting edge ICT capacity, capable of continuous updating to support extended learning and social interaction.

3.9 The EFA has consistently indicated that the overall 7 school rebuild PFI package cannot be jeopardised by one school and that should such a situation arise, the most likely outcome would be the removal of the school concerned from the PFI contract which is expected to be signed by the EFA in the coming weeks. The extensive re-design of the Whitcliffe Mount project, which would be inevitable if a decision was made to keep WMSC open, would be a situation that would cause the EFA grave concern and would be a scenario under which the EFA would strongly consider the removal of the school from the PFI package.

3.10 A complaint from a disabled user of the centre has been received by the council and a petition from more than 3,000 people was discussed at the council meeting on 7<sup>th</sup> October 2015.



**Complaint reference:**  
14 016 740

**Complaint against:**  
Kirklees Metropolitan Borough Council

## **The Ombudsman's final decision**

Summary: The Council failed to carry out public consultation and an Equalities Impact Assessment when deciding to close a public leisure centre. This complaint is upheld. Mr B objects to the closure of the leisure centre but the decision affects many people as it is linked to construction of a new school. It is not possible to rerun the entire decision making process, but an acceptable remedy would be for the Council to reconsider the issue publicly at a Council meeting.

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## **The complaint**

1. The complainant, whom I shall refer to as Mr B, complains about the Council's decision to close a sports centre. He wants the centre to remain open as he prefers the facilities there.

## **The Ombudsman's role and powers**

2. The Ombudsman investigates complaints of injustice caused by maladministration and service failure. I have used the word fault to refer to these. The Ombudsman cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. She must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3)*)
3. If the Ombudsman is satisfied with a council's actions or proposed actions, she can complete her investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i)*)

## **How I considered this complaint**

4. I read the papers sent by Mr B and discussed the complaint with him.
5. I considered the Council's comments about the complaint and the supporting documents it provided.
6. I sent my draft decision to Mr B and the Council, and considered their comments.

## **What I found**

### **Key facts**

7. Mr B and his son are users of a sports centre. The Council decided this sports centre will close in May 2016. The sports centre shares a site with a school. The Council will demolish the school and sports centre and the school will be rebuilt elsewhere on the site using private funding.

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8. The Cabinet of the Council met for a private session on 17 December 2013. Officers prepared a report seeking a decision from Cabinet to demolish the school and sports centre and rebuild the school on the site.
  9. The Council has said the report should to be considered in private because the information is exempt information under part 1 of schedule 12A of the Local government Act 1972, as it contained information about financial or business affairs.
  10. The report is not available for the public to read. However, I have read it and it clearly explains that a significant investment was needed to the sports centre. This included general upgrading and a new boiler if the school was demolished, as these services were shared.
  11. The report outlines the closure of the sports centre would have an impact on the local community. It also explains the Council should carry out an Equalities Impact Assessment (EIA) to assess the impact on current users. This would be users including specific groups e.g. indoor bowls, basketball.
  12. The report also explained the new school would have a new four court sports hall which could be available for public use. The report also considered that the Council should consider the closure as part of the wider picture of sports facilities in the area.
  13. The decision to close the sports centre in 2016 became public on 18 December 2013.
  14. In January 2015 Cabinet approved the date for the closure of the sports hall to change from late 2016 until the end of May 2016. This was a decision made after a public report. The report noted that extending another site would accommodate the current fitness users at the sports centre. The report said that other users of the sports hall use other sports halls or the new school sports hall that would replace the sports centre. The reports noted there was currently no other provision for roller hockey and indoor bowls, but the Council wanted to find an alternative for the indoor bowling.
  15. The Council carried out a screening assessment in November 2014 which showed there was a low risk of impact and so the Council did not need a full Equalities Impact Assessment.
  16. The notes of the screening assessment say that ‘the current service includes providing a range of sport and physical activity opportunities which will stop on the existing site. The new school facility should provide the opportunity for some of the opportunities to continue except for bowls and roller sports. There will be a removal of service from the current site i.e. the Sports Centre, but some of this capacity will/can be absorbed into the new school facility. In addition there will be an extension to the fitness provision at another site, this will accommodate at least the capacity from the closure of the sports centre. Fitness classes and gym use is by far the largest percentage of use at the current site. Other services will have alternative options where possible. For example the regional bookings like Netball will be offered space at a new Sports Centre. Work to identify alternative indoor bowling opportunities has begun and will continue. The Council will continue to work with current users to provide for their needs where possible.’
  17. The Council has said that after the decision was made by Cabinet to close the sports centre, it carried out a few consultations to mitigate the loss of the facilities. People were also able to put forward their objections to the planning application to demolish and replace the school.

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18. The Council has said the alternative gym facilities, at a local swimming pool complex, will comply with disability access requirements. The Council has said the facilities available at the sports centre which are due to close are no different to those available at other leisure centres.

### **My analysis**

19. Mr B has complained the Council failed to consult users when deciding to close a sports centre.
20. Under Section 100(A) (4) of the Local Government Act 1972 a council may exclude the public from a meeting during an item of business whenever it is likely that if members of the public were present during that item there would be disclosure to them of exempt information. Exempt information is defined in the legislation as:
- Information about any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
21. Cabinet decided to close the centre in a private meeting. I asked the Council to explain why it decided to take the decision on closing the leisure centre in private.
22. The Council has said that disclosure of the details could have adversely affected value for money, compromise commercial confidentiality of the bidding organisation and disclose contractual terms. The Council has said that it has no written record of why the decision was taken in a private meeting.
23. I asked why the Council could not separate any confidential aspects from the general decision to close the leisure centre. As the decision to close the leisure centre became public in the newspapers the next day, it seems to me that it would have been possible to consider most of the decision publicly, keeping back those details which were confidential.
24. Because the Council decided to close the school privately it carried out no public consultation. I consider the consultation on the leisure centre closure could have been separated from the private finance aspects which the Council felt should be private. I can see no reason the Council could not consult the public solely on the leisure centre closure. The Council has said that it will consider whether private matters can be separated out in future.
25. The Ombudsman's view is that Council's should consult the public before withdrawing a service it has provided to the public. In this case the Council consulted after making the decision to close the leisure centre and so the Council pre-determined the outcome of the consultation. The failure to consult before making the decision to close the leisure centre was fault.
26. The Council did not carry out an equalities impact assessment. It carried out a screening assessment to see whether an EIA should be carried out. I asked the Council to explain why the closure of the leisure centre had such low scores on the screening that it did not require a full equalities impact assessment.
27. The Council said that it shared some of my concerns on the assessment scoring, in terms of impact. But it felt that any errors might appear low in view of the fact that local sports provision is not being withdrawn, but simply reconfigured and relocated elsewhere.

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28. The Council's view is the new provision for disabled sports users will be much improved and it could not hope to offer such disabled facilities if the leisure centre was refurbished.
29. The Equalities and Human Rights Commission (EHRC) has also issued advice to public authorities on this subject. This advice says that, 'A key requirement of the public sector duties is for public authorities to carry out equality impact assessment for all relevant policies and decisions.'
30. I consider that the Council's failure to carry out a full equality impact assessment on the closure of the leisure centre is fault. I can find nothing in the legislation that suggests a screening assessment is adequate, especially when there are a number of disabled user groups who would clearly be adversely affected.
31. In response to my concerns about the lack of public consultation and the equalities impact assessment the Council has said that it is willing to carry out the consultation process and to undertake a full equalities impact assessment on the closure of the physical sports centre now. However, the Council has said that as the contract to redevelop the site has been signed (this was to be late October/early November), there would be a large financial penalty if it did not go ahead with the closure of the leisure centre.
32. Given that the situation has moved on, I do not consider it is reasonable to expect the Council to rerun the consultation process and equalities impact assessment. This is because the Council has clearly already made its decision and so it is unlikely to change this after consultation.
33. However, I do think it reasonable for Council Members to make a final decision on the leisure centre closure at a well publicised Council meeting. I think that the Council should write a public Committee report explaining:
- The errors the Council made during the process to close the leisure centre.
  - The benefits of closing the leisure centre for sports centre users and for users of the new school.
  - The drawbacks of closing the leisure centre for sports centre users and for users of the new school.
  - The cost to the tax-payer of breaking the contract and keeping the leisure centre open.
34. I understand that Mr B wants the leisure centre to remain open and that is his preferred result. However, I have to take account that there may be many other local residents who would prefer the new school and leisure centre. So, in this situation I consider it reasonable for Council Members to make a final decision after members of the public have put forward their views. This would include consideration on whether the cost of breaking the contract and keeping the leisure centre was a good use of public money.
35. In response to my draft decision Mr B has said the Council did not carry out public consultation and the Council should have carried out a full EIA.
36. Mr B said he wants the Council to hold the meeting quickly and he does not think that financial penalties should stop the Council making the right decision. Mr B says he has questions about the decision to demolish the sports centre, including a land swap agreement.



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37. I consider the Council will consider these points at the public meeting the Council has agreed to organise. The Council can then make a final decision on the leisure centre aware of Mr B concerns and the views of other residents.

### **Agreed Remedy**

38. The Council has agreed that Council Members will make a final decision after members of the public have put forward their views on the leisure centre closure at a well publicised Council meeting.

### **Final decision**

39. I have completed my investigation and uphold this complaint. The Council failed to carry out public consultation and an equalities impact assessment on the closure of a leisure centre. The Council's reconsideration of the decision to close the leisure centre at a public meeting is an adequate remedy to this complaint as it is not possible to go back and re-run the decision making process in its entirety.

### **Investigator's decision on behalf of the Ombudsman**



**Complaint reference:**  
14 006 462

**Complaint against:**  
Kirklees Metropolitan Borough Council

## **The Ombudsman's final decision**

Summary: The Council failed to carry out public consultation and an Equalities Impact Assessment when deciding to close a public leisure centre. This complaint is upheld. Mr B objects to the closure of the leisure centre but the decision affects many people as it is linked to construction of a new school. It is not possible to rerun the entire decision making process, but an acceptable remedy would be for the Council to reconsider the issue publically at a Council meeting.

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## **The complaint**

1. The complainant, whom I shall refer to as Mr B, complains the Council has failed to consult disabled users of a sports centre when deciding to close it. He wants the centre to remain open as he prefers the facilities there.

## **The Ombudsman's role and powers**

2. The Ombudsman investigates complaints of injustice caused by maladministration and service failure. I have used the word fault to refer to these. The Ombudsman cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. She must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3)*)
3. If the Ombudsman is satisfied with a council's actions or proposed actions, she can complete her investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i)*)

## **How I considered this complaint**

4. I read the papers sent by Mr B and discussed the complaint with him.
5. I considered the Council's comments about the complaint and the supporting documents it provided.
6. I sent my draft decision to Mr B and the Council, and considered their comments.

## **What I found**

### **Key facts**

7. Mr B is a user of a sports centre. The Council decided this sports centre will close in May 2016. The sports centre shares a site with a school. The Council will demolish the school and sports centre and the school will be rebuilt elsewhere on the site using private funding.

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8. The Cabinet of the Council met for a private session on 17 December 2013. Officers prepared a report seeking a decision from Cabinet to demolish the school and sports centre and rebuild the school on the site.
  9. The Council has said the report should to be considered in private because the information is exempt information under part 1 of schedule 12A of the Local government Act 1972, as it contained information about financial or business affairs.
  10. The report is not available for the public to read. However, I have read it and it clearly explains that a significant investment was needed to the sports centre. This included general upgrading and a new boiler if the school was demolished, as these services were shared.
  11. The report outlines the closure of the sports centre would have an impact on the local community. It also explains the Council should carry out an Equalities Impact Assessment (EIA) to assess the impact on current users. This would be users including specific groups e.g. indoor bowls, basketball.
  12. The report also explained the new school would have a new four court sports hall which could be available for public use. The report also considered that the Council should consider the closure as part of the wider picture of sports facilities in the area.
  13. The decision to close the sports centre in 2016 became public on 18 December 2013.
  14. In January 2015 Cabinet approved the date for the closure of the sports hall to change from late 2016 until the end of May 2016. This was a decision made after a public report. The report noted that extending another site would accommodate the current fitness users at the sports centre. The report said that other users of the sports hall use other sports halls or the new school sports hall that would replace the sports centre. The reports noted there was currently no other provision for roller hockey and indoor bowls, but the Council wanted to find an alternative for the indoor bowling.
  15. The Council carried out a screening assessment in November 2014 which showed there was a low risk of impact and so the Council did not need a full Equalities Impact Assessment.
  16. The notes of the screening assessment say that ‘the current service includes providing a range of sport and physical activity opportunities which will stop on the existing site. The new school facility should provide the opportunity for some of the opportunities to continue except for bowls and roller sports. There will be a removal of service from the current site i.e. the Sports Centre, but some of this capacity will/can be absorbed into the new school facility. In addition there will be an extension to the fitness provision at another site, this will accommodate at least the capacity from the closure of the sports centre. Fitness classes and gym use is by far the largest percentage of use at the current site. Other services will have alternative options where possible. For example the regional bookings like Netball will be offered space at a new Sports Centre. Work to identify alternative indoor bowling opportunities has begun and will continue. The Council will continue to work with current users to provide for their needs where possible.’
  17. The Council has said that after the decision was made by Cabinet to close the sports centre, it carried out a few consultations to mitigate the loss of the facilities. People were also able to put forward their objections to the planning application to demolish and replace the school.

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18. The Council has said the alternative gym facilities, at a local swimming pool complex, will comply with disability access requirements. The Council has said the facilities available at the sports centre which are due to close are no different to those available at other leisure centres.

### **My analysis**

19. Mr B has complained the Council failed to consult disabled users when deciding to close a sports centre.
20. Under Section 100(A) (4) of the Local Government Act 1972 a council may exclude the public from a meeting during an item of business whenever it is likely that if members of the public were present during that item there would be disclosure to them of exempt information. Exempt information is defined in the legislation as:
- Information about any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
21. Cabinet made the decision to close the centre in a private meeting. I asked the Council to explain why it decided to take the decision on closing the leisure centre in private.
22. The Council has said that disclosure of the details could have adversely affected value for money, compromise commercial confidentiality of the bidding organisation and disclose contractual terms. The Council has said that it has no written record of why the decision was taken in a private meeting.
23. I asked why the Council could not separate any confidential aspects from the general decision to close the leisure centre. As the decision to close the leisure centre became public in the newspapers the next day, it seems to me that it would have been possible to consider most of the decision publicly, keeping back those details which were confidential.
24. Because the Council decided to close the school privately it carried out no public consultation. I consider the consultation on the leisure centre closure could have been separated from the private finance aspects which the Council felt should be private. I can see no reason the Council could not consult the public solely on the leisure centre closure. The Council has said that it will consider whether private matters can be separated out in future.
25. The Ombudsman's view is that Council's should consult the public before withdrawing a service it has provided to the public. In this case the Council consulted after making the decision to close the leisure centre and so the Council pre-determined the outcome of the consultation. The failure to consult before making the decision to close the leisure centre was fault.
26. The Council did not carry out an equalities impact assessment. It carried out a screening assessment to see whether an EIA should be carried out. I asked the Council to explain why the closure of the leisure centre had such low scores on the screening that it did not require a full equalities impact assessment.
27. The Council said that it shared some of my concerns on the assessment scoring, in terms of impact. But it felt that any errors might appear low in view of the fact that local sports provision is not being withdrawn, but simply reconfigured and relocated elsewhere.

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28. The Council's view is the new provision for disabled sports users will be much improved and it could not hope to offer such disabled facilities if the leisure centre was refurbished.
29. The Equalities and Human Rights Commission (EHRC) has also issued advice to public authorities on this subject. This advice says that, 'A key requirement of the public sector duties is for public authorities to carry out equality impact assessment for all relevant policies and decisions.'
30. I consider the Council's failure to carry out a full equality impact assessment on the closure of the leisure centre is fault. I can find nothing in the legislation that suggests a screening assessment is adequate, especially when there are a number of disabled user groups who the decision would adversely affect.
31. In response to my concerns about the lack of public consultation and the equalities impact assessment the Council has said that it is willing to carry out the consultation process and to undertake a full equalities impact assessment on the closure of the physical sports centre now. However, the Council has said that as the contract to redevelop the site has been signed (this was scheduled to be late October/early November), there would be a large financial penalty if it did not go ahead with the closure of the leisure centre.
32. Given the situation has moved on, I do not consider it is reasonable to expect the Council to rerun the consultation process and equalities impact assessment. This is because the Council has clearly already made its decision and so it is unlikely to change this after consultation.
33. However, I do think it reasonable for Council Members to make a final decision on the leisure centre closure at a well publicised Council meeting. I think that the Council should write a public Committee report explaining:
- The errors that the Council made during the process to close the leisure centre.
  - The benefits of closing the leisure centre for sports centre users and for users of the new school.
  - The drawbacks of closing the leisure centre for sports centre users and for users of the new school.
  - The cost to the tax-payer of breaking the contract and keeping the leisure centre open.
34. I understand that Mr B wants the leisure centre to remain open and that is his preferred result. However, I have to take account that there may be many other local residents who would prefer the new school and leisure centre facilities. So, in this situation I consider it reasonable for Council Members to make a final decision after members of the public have put forward their views. This would include consideration on whether the cost of breaking the contract and keeping the leisure centre was a good use of public money.
35. In response to my draft decision Mr B has said that he thinks the rebuild of the school can go ahead without demolishing the sports centre. He wants to take action against the individual Councillors involved. Mr B said that he has questions about the land ownership and the contract.
36. I consider the Council will consider these points at the public meeting the Council has agreed to organise. The Council can then make a final decision on the leisure centre aware of Mr B concerns and the views of other residents.

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## **Agreed Remedy**

37. The Council has agreed that Council Members will make a final decision after members of the public have put forward their views on the leisure centre closure at a well publicised Council meeting.

## **Final decision**

38. I have completed my investigation and uphold this complaint. The Council failed to carry out public consultation and an equalities impact assessment on the closure of a leisure centre. The Council's reconsideration of the decision to close the leisure centre at a public meeting is an adequate remedy to this complaint as it is not possible to go back and re-run the decision making process in its entirety.

## **Investigator's decision on behalf of the Ombudsman**