

Name of meeting: Cabinet
Date: 21st December 2022
Title of report: Kirklees Stadium Development Limited – Revisions to the previously agreed approach.

Purpose of report

To review current arrangements for the standalone Stadium management and development business (Kirklees Stadium Development Limited or KSDL) that manages the Stadium for the benefit of the two professional sports clubs and the community.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Yes Proposed spending in excess of £250k
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports?)	Yes
The Decision - Is it eligible for call in by Scrutiny?	Yes
Date signed off by Strategic Director and name	David Shepherd – 08. 12 22
Is it also signed off by the Service Director - Finance?	Eamonn Croston 01.12.22
Is it also signed off by the Service Director -Legal Governance and Commissioning?	Julie Muscroft – 01.12.22
Cabinet member portfolio	Cllr Paul Davies Corporate Cllr Graham Turner Regeneration

Electoral wards affected: N/A

Ward Councillors consulted: N/A

Public or private: Public (Appendix A in private)

Appendix A of this report is in private in accordance with Schedule 12A of the Local Government Act 1972 namely it contains information relating to the financial and business affairs of a third party. It is considered that disclosure of the information would adversely affect KSDL and therefore the public interest in maintaining the exemption, which would protect the rights of an individual or the Council, outweighs the public interest in disclosing the information and providing greater openness in the Council's decision making.

Has GDPR been considered? Yes

1. Summary

- 1.1 Kirklees Stadium Development Limited (KSDL) was established originally in 1993. The current structure created a standalone Stadium management and development business to manage the Stadium for the benefit of both professional clubs, Huddersfield Town AFC (HTAFC) and Huddersfield Giants (HRLFC) as well as for the benefit of the community. This solution separated the assets from individual control of either of the clubs, procured the building of the new Stadium and has supported a decent quality facility over a 25-year period, with KSDL shareholders being Kirklees Council (40% shareholding), HTAFC (40% shareholding) and Huddersfield Sporting Pride – known as Huddersfield Giants or HRLFC (20% shareholding).
- 1.2 Whilst the arrangement enabled operation of the Stadium for more than 25 years, during 2020 and 2021 it was identified that for various reasons, relating to the need for additional investment- in refurbishment, it was appropriate to amend arrangements for the management to seek to ensure:
 - i) the Stadium did not become a source of reputational damage to the Council or financial burden to local taxpayers.
 - ii) the long-term tenure of professional sport- HTAFC and HRLFC at the stadium.
 - iii) financial sustainability over the longer term and delivery of longer-term Stadium operational investment requirements
 - iv) complementary regeneration opportunities for an enterprise corridor between the Stadium and the town centre
- 1.3 In March 2021, the Cabinet endorsed the development of a Community Trust operating model that was considered most suitable to delivering the above objectives, Cabinet also approved a complimentary regeneration opportunity for the strategic acquisition of a land asset.
- 1.4 Negotiations to create the Community Trust took place during Spring and Summer 2021 and made reasonable progress. However, two issues arose, which impeded that approach and now necessitate a revised approach. These relate to a change in the ownership of HTAFC (it reverting to the control of the previous owner), and matters related to historical liability. It has taken a further year to identify a solution with which all parties to KSDL are in broad agreement. This is set out in this report.

2. Information required to take a decision

2.1 Previous Proposals

- 2.1.1 The agreed new model was that a Community Trust option be supported with the Council being willing to lend up to £13m to the Community Trust from the Council's Property Investment Fund capital programme, should the Community Trust be able to demonstrate a viable business plan. This was considered the most achievable plan that met the needs of the Stadium to be a self-sustaining business, whilst meeting the needs of the clubs who use the facility, and the community more generally.
- 2.1.2 As a part of the arrangement, it was agreed that the Council would acquire the Gasworks Street Site, subject to agreement on its value, from a subsidiary of KSDL, Kirklees Stadium Development Land Limited.

2.2 Update on Proposals.

- 2.2.1 The arrangements in principle were reached with each shareholder, with the intention that they would agree to transfer their ownership to the Community Trust. The trust would, under new more sustainable financial arrangements with each occupier, then execute the necessary improvements, borrowing capital from the Council where necessary to restructure existing loans and make these improvements.
- 2.2.2 In Autumn 2021 the control of HTAFC reverted to the previous owner, following financial difficulties encountered by the then owner. The current owner did not support the previous agreement to form a Community Trust and has sought to renegotiate the proposal. In summary these renegotiations relate to how historical debt is hypothecated.
- 2.2.3 The financial position of KSDL has not improved and matters such as high energy costs have made viability worse. The company faces severe cash flow difficulties. (See additional information at the end of this report)
- 2.2.4 Under the alternative business model that it now proposes, HTAFC would take full repairing responsibility for the Stadium, and the costs of any necessary refurbishment would be funded from HTAFC, or its owners own resources.
- 2.2.5 In the earlier proposals, the historical liabilities of KSDL were intended to be absorbed within the new debt structuring funded by the Council loan. These debts have been identified as potentially higher than previously envisaged.
- 2.2.6 The proposal now is that some of the debts are written off by the party which currently holds them, and other prospective liabilities are shared in relation to historical control at the time those liabilities were incurred, and that either
 - (a) the Council grants a lease directly to HTAFC
 - Or
 - (b) KSDL is restructured by agreement to be controlled by HTAFC, who would become responsible for all the operations, maintenance, running of the Stadium etc. In either option, HTAFC would be responsible for all site costs and receive all site income. (The Council lease to KSDL forbids any assignment if lease premium payments have not been made)
- 2.2.7 In neither of these options would the Council have any involvement in operation of the stadium, other than its ability to exercise very minimal control by way of the head lease.
- 2.2.8 There are three other potential options
 - (a) The existing KSDL operation is retained. Section 2.2.9 notes the issues related to this.
 - (b) The Council takes on all the roles currently held by KSDL and takes on the leases to HTAFC and HRLFC directly. Section 2.2.10 notes the issues related to this.
 - (c) KSDL is sold
- 2.2.9 (a) The existing KSDL operation is retained. The revenues generated under the lettings to HTAFC and HRLFC, and the other income earned through the facilities- such as catering and car parking- are inadequate to cover day to day operational costs before any of the required major repair and improvement investment. The consequence of this is that for KSDL to remain solvent there will be a continuous cash call on the shareholders. This is a continuing subsidy from the Council – and Council taxpayer to the two occupiers, which is not sustainable in current financial circumstances, and may breach subsidy control rules.
- 2.2.10 (b) The Council takes on all the roles currently held by KSDL and takes on the leases to HTAFC and HRLFC directly. Although the Council would gain full control, this would result in the Council holding the full risks and liabilities for operation and repairs, without the ability to secure increases in rent from the two occupying clubs.
- 2.2.11 (c) Another option may be to try to sell KSDL. Given the financial position, the strong sub leases and the need for capital investment there are no prospects for this to happen. A sale of KSDL alongside the freehold interest held by the Council may make the sale

more attractive. However, disposal of the freehold would mean a complete loss of control over how the site is used or controlled. More practically, the former uses of the site, and the encumbrances of substantial structures mean that any attractive and viable alternative uses for the site are unlikely.

2.2.12 Disposal of the freehold is not therefore a feature of this proposal. Retention of the freehold, notwithstanding the very long lease, facilitates a small element of control, and reduces the risk of issues which have arisen in the event of sales of professional sporting business, with consequences of split ownerships and control, elsewhere in the country.

2.2.13. Inaction will have the consequence of KSDL entering administration. This could result in disruption to operations (with an impact on the tenants) and would result in impacts on suppliers (whose debts may not be paid), and the incurring of administration fees. Given the prospects of sale noted in 2.2.11, the likelihood is that the administrator would look to return the lease to the Council as freeholder, leaving it in the position described in 2.2.10.

2.3 Historical financial position- loans and other liabilities.

2.3.1 KSDL has not been viable for some time, and it has received various loans from the Council, the largest of which was issued in 2021 as a precursor to the restructuring proposed at that time. It related to the replacement of the borrowing that Kirklees Stadium Development Land Ltd had obtained to acquire the Gasworks Street site which was beyond its terms for redemption. KSDL also has a long-standing commercial bank loan guaranteed by the Council (payment of which was deferred during the pandemic), which related to the original construction of the site. There are a small number of other loans, some from the Council, and others.

2.3.2 KSDL entered into a commercial agreement with a partner to develop a part of the site. A viable potential scheme has never been achieved. The partner organisation does not accept that the arrangement is unachievable. This agreement may limit the flexibility to reorganise or restructure or result in litigation.

2.3.3 The amounts of each debt and other prospective liabilities are shown in the private appendix.

2.4 Stadium Operational Investment requirements

2.4.1 The 25-year Stadium asset life cycle means that significant capital investment is now required over the next 10 years (the bulk in the next 5 years) to address a backlog of maintenance issues and to renew the key structures and mechanical and electrical systems of the Stadium to extend the asset life to circa 2050, at an estimated cost of £8m to £10m. The refurbishment and repairing obligations are the responsibility of the principal leaseholder.

2.5 Options

2.5.1 The options that are now available could be seen to be.

- (a) Do nothing- with the consequence of administration
- (b) Try to continue with a Community Trust model- no longer supported by all parties to KSDL, so no longer achievable
- (c) Transfer responsibility to an existing leaseholder, including those for operations and maintenance (through a share sale or otherwise)
- (d) Sell KSDL (with or without the Council freehold interest)-not practical for reasons described
- (e) The Council supports the closure of KSDL and become the operator, assuming all

responsibilities for operations and maintenance.

2.6 Progressing Options

- 2.6.1 The options that maintain the existing or a community interest-based solution are not achievable.
- 2.6.2 A solution where the Council becomes fully responsible is likely to be achievable but would involve a substantial and ongoing cost (a subsidy to professional sport).
- 2.6.3 A solution that sells or transfers the operations to another is likely to be the most sustainable solution. Whilst this brings less clear community benefits than the previous preferred option, this solution is likely to be effective in maintaining a functioning sports facility. Doing this by negotiation rather than through administration is likely to bring some benefits.
- 2.6.4 The pursuit of the transfer though may come at a potential cost.
- 2.6.5 The successor will be willing to take on all the current and future liability, but there will need to be an attribution of historical liability.

2.7 Conclusions

- 2.7.1 This is an unfortunate situation, where the options now available are quite limited and the needs of the Council need to be balanced against those of the occupiers of the Stadium. Some decisions taken in respect of the Stadium, at its formation and more recently were, with hindsight, not in the best interests of KSDL or of the Council.
- 2.7.2 It is important now to seek to achieve a solution which resolves some of the historical issues and creates a potentially sustainable solution to enable professional sport to continue to be played at the Stadium, whilst not creating an ongoing liability for the Council.
- 2.7.3 A form of statutory resolution (administration) will arise if no other action is taken.
- 2.7.4 The most sustainable solution seems to be to look to negotiate a revised operating arrangement with HTAFC as the major existing Stadium occupier, whereby they take on full responsibility, and offer opportunity for continuing use by HRLFC.
- 2.7.5 Achieving such a solution will involve the Council and some other debtors agreeing to write off the historical liabilities.

3 Implications for the Council

3.1 Working with People

The revised proposals will continue to provide some potential input to community service delivery

3.2 Working with Partners

The preferred proposal involves a continuing dialogue to reach a solution with HTAFC and HRLFC.

3.3 Place Based Working

The project will support the Council's commitment to place-based working. Resolving issues related to KSDL will facilitate the Council's wider focus on the regeneration of the 'Station to Stadium' Corridor that will bring forward strategic investment opportunities.

3.4 Climate Change and Air Quality

Resolution of issues re KSDL should create the opportunity for investment in the facility, which may involve refurbishment to reduce demand for energy.

3.5 Improving outcomes for children and young people

There may be opportunities in negotiating new arrangements to facilitate some involvement

3.6 Financial Implications for the people living or working in Kirklees

There are no direct cost impacts on the Kirklees community, although indirectly they will meet costs through any debt write off or financial support.

3.7 Other (e.g., Legal/Financial or Human Resources)

As noted earlier, the current structure of KSDL requires all parties to agree to any restructuring.

Of the options that remain available transfer of operations satisfies the best combination of factors.

Legal and finance resources will be required to conduct detailed due diligence and enter into the necessary legal documentation. Specialist advice may be needed on leases, company structure and taxation, which will be obtained if necessary

The resolution of the ownership of the Gasworks Street site will similarly be a feature of the considerations, with specialist advice obtained if necessary.

More detailed information is contained within the private appendix.

4 Consultation

The Head of Risk comments that any default by the future core tenant in meeting its obligations, including that to keep the property in a long-term good state of repair may have an impact on the Council's finances, and reputation, although the immediate direct impact will be on HTAFC as occupier and operator.

5 Engagement

Engagement has taken place with all those with current direct commercial interest.

6 Next steps and timelines

The intention is that, subject to Cabinet endorsement of the proposals set out above, Council officers will look to negotiate a potential outcome with the current principal occupier.

Officers consider that the approach outlined in this report is the best approach to achieve an effective balance between the provision of Stadium facilities, the needs of the users, and the Council.

7 Officer recommendations

Cabinet agrees that the Strategic Director for Growth & Regeneration in consultation with the Chief Executive, Service Director Finance and Service Director Legal, Governance and Commissioning, and with the portfolio holders for Regeneration and Corporate be authorised to:

- (1) Conduct negotiations with the current principal occupier- Huddersfield Town Association Football Club (HTAFC), with a view to HTAFC taking full operational control of the facility
- (2) Conduct negotiations with other current leaseholders, etc as necessary
- (3) Agree terms that involve an element of debt write off (as detailed in the private appendix) to facilitate such an agreement.
- (4) Enter into such any agreements on the Council's behalf necessary to give effect to such an agreement, if they are satisfied with such outcomes

A report will be brought back to Cabinet in due course to update Members on progress on the recommended actions set out in this report.

8 Cabinet portfolio holder(s) recommendations

Cllr Graham Turner, Regeneration portfolio holder states:

I am fully supportive on the recommendations contained in this report.

KSDL has been an important part of the development of the stadium site and has over the years served the residents of Kirklees well.

However, what was right all those years ago when KSDL was set up is now not the right way to operate the stadium complex and a different operating model should be adopted. This report sets out the preferred option and I am sure that the proposals to negotiate with the football club to become a long-term lease holder will help secure the stadium and allow it to develop and flourish in the coming years.

The interests of all those who use the facilities at the stadium will be protected as the final negotiations take place.

I would like to thank the current board of KSDL and all past members for the hard work and commitment they have shown over the years, especially given some of the challenges we have seen over the last 25 years.

Cllr Paul Davies, Corporate portfolio holder recommends that Cabinet endorses the officer recommendation.

9 Contact Officer

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10 Background Papers and History of Decisions

Cabinet report 16th March 2021

11 Service Director responsible

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ADDITIONAL INFORMATION
BUSINESS PLAN OF KSDL AND ENVISAGED COMMUNITY TRUST

1. The Council has always been the freeholder of the site (with a small exception) with a lease held by KSDL, and it granted sub leases to HTAFC, HRLFC and the Council as occupiers of the sports centre - operated in practice by Kirklees Active Leisure.
2. The commercial model depended on KSDL earning additional income from matters such as catering, car parking and facility hire. KSDL took responsibility for all costs of operation, including staffing, stewarding, safety, maintenance, energy, and improvements. As the Stadium has got older more repairs and refurbishment have become necessary, Recent inflation, in the costs of construction, and energy, potentially make matters worse
3. The financial position of KSDL is that its costs have exceeded its revenues for a number of years- even in the circumstances where both HTAFC and HRLFC have been successful. Whilst the two restricted years of Covid have made matters worse, the lack of financial sustainability of KSDL means that it may not be able to demonstrate that it is a going concern if it is not able to agree permanent or temporary funding from the principal occupiers.
4. The leases held by the principal occupiers (HTAFC and HRLFC) are severely restrictive in the extent to which rents/occupation charges can be increased, and as such mean that a viable operation for KSDL cannot be achieved. In the event of an administration of KSDL, the clubs could still potentially use the leases to constrain the ability of any new operator to achieve a viable operation, as the parts of the activity within the control of KSDL (or successor) do not have the potential to generate sufficient revenues to offset the growing deficit.
5. The Community Trust arrangement was intended to achieve a potentially viable future with agreed new leases and a refurbishment programme. The Council would have lent capital funds to enable the works to be carried out. As noted above this is no longer acceptable to all the parties.