



Financial Performance and Contracts Committee

27 October 2020

Title	Loan Agreement with Saracens Cophall LLP – Update Report
Report of	Deputy Chief Executive
Wards	All
Status	Public
Urgent	No
Key	No
Enclosures	Appendix A – Chief Officer Decision dated 26 August 2020 Appendix B – Delegated Powers Report dated 28 September 2020
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Summary

This paper updates the Committee on the position with the Loan Agreement with Saracens Cophall LLP.

Officer Recommendations

That the Committee:

1. Notes the position on the Loan Agreement with Saracens Cophall LLP.
2. Notes the proposed next steps set out in paragraphs 4.1-4.3.

1. WHY THIS REPORT IS NEEDED

- 1.1. On 23rd October 2018 the Policy and Resources Committee authorised the council to enter into a Loan Agreement with Saracens Copthall LLP for the provision of a new West Stand as part of the Allianz Park stadium at Copthall. This Loan Agreement, and associated documentation, was entered into on 29th January 2019 under the DPR dated 28th January 2019.
- 1.2. Saracens Copthall LLP leases the stadium from Barnet Council, with a sub-lease to Saracens Ltd (the club). The Council does not have a direct financial relationship with the club in relation to the West Stand or the loan.
- 1.3. As reported to the Financial Performance and Contracts Committee in January 2020, officers placed a pause on loan drawdowns following rumours – later confirmed – that Saracens Men were to be relegated from the Gallagher Premiership at the end of the 19/20 season. At the point where drawdowns were paused, SCLLP had drawn down £3.2m of the agreed £22.9m loan facility¹.
- 1.4. The Committee noted that SCLLP, and their tenant Saracens Ltd, would take stock of plans for the West Stand, and if they wished to proceed with development would present a revised business plan to the council. This would be subject to independent due diligence.
- 1.5. The Covid19 crisis introduced a delay to the preparation of the revised business plan. This delay allowed the unfolding effects of the pandemic to be factored into the business plan.
- 1.6. The Chief Officer Decision (COD) taken on 26 August 2020, and attached as Appendix A to this report, noted that the finalised updated business plan was received on 17 July 2020 and Grant Thornton was commissioned to undertake due diligence on key aspects of the revised plan.
- 1.7. The key change within the business plan is an increased share of space to be leased exclusively by SCLLP's other tenant, Middlesex University. The stand will be the new base for the London Sports Institute and School of Health & Education Departments, and will include a media centre to be used as a 'Learning Zone' outside of match days, particularly for those struggling with mainstream education.

¹ The loan agreement is for "£22.9m plus an amount for fees not to exceed £229,450". In addition to the £3.2m drawn down from the main loan facility, £143,834 (+VAT) had been drawn down from the fees by November 2019, taking the total drawn down to £3,381,928 at the point where the loan was suspended. This is reflected in the Chief Officer Decision at Appendix A, which notes that £3.4m had been drawn down.

- 1.8. The increase in rent from Middlesex University, whilst maintaining the same level of rent from Saracens Ltd, significantly increases the resilience of SCLLP's business plan. It of course increases the council's indirect exposure to the University's financial position, and accordingly due diligence commissioned from Grant Thornton focused on the University's financial resilience in light of Covid19. The due diligence confirmed that financial planning was robust and that the University's projected revenues were sufficient to meet the increased rental. At that time, financial plans were predicated on forecast student numbers, but the university has subsequently confirmed that actual figures remain consistent with the projections.
- 1.9. In order to allow SCLLP to proceed with the project up to the point immediately prior to letting the main works contracts, and thus maintain the schedule required by Middlesex University as one of the stand's two tenants, the decision taken was to authorise further drawdowns up to a total value of £600,000 + VAT for August and September 2020. Of that, £514,414.67 has been drawn down, including £20,000 + VAT in fees, taking the total amount drawn down to £3,896,342.34.
- 1.10. The COD noted that this sum is well within the guaranteed sum of £10m.
- 1.11. The revised business plan envisaged changes to some of the contractual milestones set out in the legal agreements relating to the loan and the project. These are detailed in the Delegated Powers Report dated 28 September 2020, and attached at Appendix B.

2. REASONS FOR RECOMMENDATIONS

- 2.1. This report provides an update for the committee's information.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1. This report provides an update for the committee's information.

4. POST DECISION IMPLEMENTATION

- 4.1. SCLLP have submitted a s73 planning application² to facilitate minor changes to the design of the West Stand.
- 4.2. SCLLP have identified a preferred main contractor for the West Stand, and propose – subject to planning consent – to enter into contract early in 2021.

² 20/4304/S73

4.3. As noted in the DPR at Appendix B, Middlesex University have entered into an Agreement to Lease with SCLLP, which commits the University to taking on a tenancy for part of the West Stand. This Agreement includes a Condition Precedent, requiring SCLLP to appoint a main contractor for development of the West Stand by the Condition Precedent Longstop Date. The University have subsequently entered into a Revised Agreement to Lease, which gives effect to the changes set out above in relation to increased floorspace and rent payments. Once the main contractor is appointed, the Revised Agreement to Lease will be unconditional. At that point, provided there are no further material changes in SCLLP's financial position, loan drawdowns will resume.

5. IMPLICATIONS OF DECISION

5.1. Corporate Priorities and Performance

5.1.1. The July and October 2018 P&R reports noted that the granting of this loan helps to meet Corporate Plan 2015-20 strategic objectives. The council has since updated its Corporate Plan. The granting of the loan also supports the objectives of the council's current Corporate Plan, Barnet 2024, in particular "Investing in community facilities to support a growing population" and "Encouraging residents to lead active and healthy lifestyles and maintain their mental wellbeing". In February 2020 the Council agreed to refresh its corporate plan around the themes of 'Thriving', 'Family Friendly', 'Healthy', and 'Clean, Safe and Well Run'. The range of activities and community benefits provided through development of the West Stand supports these emerging themes.

5.2. Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.2.1. As the Committee has previously noted, the council will fund the loan to Saracens from existing cash balances and from new borrowing, including from the Public Works Loan Board. This is in accordance with the Statutory Guidance from MHCLG on Local Government Investments (3rd Edition) which came into effect on 1 April 2018.

5.2.2. Interest is charged on the loan at 6% and the loan therefore continues to provide a positive contribution to the Council's MTFS.

5.2.3. The security conditions set when the loan was agreed continue to be met.

5.2.4. The loan to SCLLP is guaranteed up to the value of £10m by a UK registered company, Company A, under the terms set out in the exempt report to P&R Committee on 23 October 2018. This is backed by Company A's investment in UK property.

5.2.5. Company A's assets are valued in excess of £20m, consistent with the requirement for the value of the guarantor's assets to be at least double the value of the guarantee. Confirmation of Company A's net asset value was most recently provided in October 2020 in relation to the position as at 30 September 2020.

5.3. Legal and Constitutional References

5.3.1. The Council Constitution Article 7 (Committees, Forums and Working Groups) outlines the terms of reference of the Financial Performance & Contracts Committee, which includes responsibility for the oversight and scrutiny of the overall financial performance of the council.

5.3.2. The land upon which the stadium is to be built is held under a lease dated 3rd July 2015 for 99 years from 12th March 2013 granted to Saracens Cophall LLP from Barnet Council.

5.3.3. The steps set out in this report are consistent with the legal agreements into which the council has entered.

5.4. Risk Management

5.4.1. The council must act in a way that is consistent with the framework set out in the existing legal agreements.

5.4.2. The revised arrangements must continue to comply with State Aid rules.

5.4.3. The sums drawn down to date are well within the £10m separately guaranteed by Company A and are secured against UK property assets, however the council must continue to ensure that there is a clear plan in place to ensure recovery of the loan and associated interest.

5.4.4. The Loan Agreement and associated documentation were designed to ensure that the success of the project was not dependent on the on-pitch success of the club. The increased emphasis on rental streams for Middlesex University further mitigates this risk.

5.4.5. The council recognises that the business plan is now more dependent on the ability of Middlesex University to comply with its financial obligations. This

was addressed through the most recent due diligence, but the council will need to continue to have regard to the position of the University.

- 5.4.6. The council must continue to ensure that the community benefits arising from the development of the West Stand, and thus indirectly from the loan agreement, are delivered.

5.5. **Social Value**

- 5.5.1. As per the July and October 2018 P&R reports, social benefits will be secured through opportunity to increase participation in sport and physical activity in the Borough. This includes the health benefits, but also the benefits of participation.

- 5.5.2. Environmental benefits will be delivered through enhancing the parkland setting of Copthall, which links to the Parks and Open Spaces Strategy, and through development of a community garden. As well as improving biodiversity, it will be a place to support vulnerable people, including adults with learning disabilities, those with poor mental health, and older people.

5.6. **Corporate Parenting**

- 5.6.1. As per the July and October 2018 P&R reports, there are no specific implications. We are working with Saracens on a number of initiatives to benefit children in care and care leavers.

5.7. **Equalities and Diversity**

- 5.7.1. Equality and diversity issues are a mandatory consideration in the council's decision-making process. Decision makers should have due regard to the public-sector equality duty in making their decisions. The equalities duties are continuing duties they are not duties to secure a particular outcome. The equalities impact will be revisited on each of the proposals as they are developed. Consideration of the duties should precede the decision. It is important that the Committee, or the officer decision maker if the decision is delegated to them, has regard to the statutory grounds in the light of all available material such as consultation responses. The statutory grounds of the public-sector equality duty are found at section 149 of the Equality Act 2010.

A public authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

- (a) Tackle prejudice, and
- (b) Promote understanding.

Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under The Equality Act 2010. The relevant protected characteristics are:

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race,
- Religion or belief
- Sex
- Sexual orientation
- Marriage and Civil partnership

5.7.2. There are no specific equalities implications from this report, which is for noting.

5.8. Consultation and Engagement

5.8.1. N/A

5.9. Insight

5.9.1. N/A

6. BACKGROUND PAPERS

6.1. Financial Performance and Contracts Committee Report on Saracens Loan Agreement, 30 January 2020:

<https://barnet.moderngov.co.uk/documents/s57530/Saracens%20Loan%20update.pdf>

6.2. Policy and Resources Committee Report on Saracens Loan Agreement, 19 July 2019:

<https://barnet.moderngov.co.uk/documents/s47458/Copthall%20Report%20Public.pdf>

6.3. Policy and Resources Committee Report on Saracens Loan Agreement, 23 October 2018:

<https://barnet.moderngov.co.uk/documents/s49008/Saracens%20Loan%20Agreement.pdf>

6.4. Delegated Powers Report on Saracens Loan Agreement, 28 January 2019:

<https://barnet.moderngov.co.uk/ieDecisionDetails.aspx?ID=7108>