

Written Summary of Report to Ordinary Council 7 October 2020.
Brentwood Leisure Trust

Pursuant to the Local Government Act 1972 s100C (2) the minutes of Ordinary Council held on the 7 October 2020 do not provide members of the public a reasonably fair and coherent record of the part of the proceedings that dealt with the Brentwood Leisure Trust. The Proper Officer shall make a written summary of the proceedings or the part which provides such a record without disclosing the exempt information.

Background

The Council in 2004 transferred its leisure provision to the Brentwood Leisure Trust (BLT). Since the transfer, the Council have on numerous occasions provided BLT with assistance both financial and non-financial, this assistance has had a “value” which has enabled BLT to continue. The service was by direct award.

The assistance provided by the Council since the transfer of services to BLT has included grants of circa £2.4 million, and two substantial loans. Despite this assistance, BLT approached the Council for further assistance.

As with all leisure facilities they have been affected by the current COVID-19 Pandemic. Many leisure providers are finding it difficult and have turned to Local Authorities for assistance. The Government issued procurement advice notes (PPN2) to encourage public bodies to where possible to continue to pay their suppliers and keep supply chains open, particularly where the supplier has been placed in financial difficulty or is “at risk” as a result of the COVID-19 Pandemic. This assistance is primarily focused on assisting businesses that were not in financial difficulty prior to December 2019. The European Commission has also provided a mechanism for public bodies to support chains by enabling State aid to be provided under a Temporary Framework, in certain circumstances, up to €800,000.

For services that have been secured through the appropriate procurement process, the above support measures will be more readily available. When reviewing the service provided for the purposes of PPN2 and State aid, it becomes apparent that the services would have to have been subject to a competitive tender exercise.

The Council have for some years provided BLT’s auditors with a letter of comfort confirming that it will not call in the loans owed to the Council. This by their own admission is the only reason why BLT are not in administration

For the reasons given above and in the main body of the report the Council were informed that it could not lawfully continue to provide BLT with State aid. BLT and the Council will need to work on a planned handover of the services to another provider,

to ensure that the Council and any future provider of the service is aware of the liabilities that they may inherit, if BLT can no longer provide the service.

There is a four-stage test to determine if unlawful State aid has been provided to an economic entity. BLT, even though a charity, is an economic entity therefore the State Aid rules do apply, they are through the various arrangements required to improve the recreational, sport, leisure and other related social orientated services both in and outside the Borough. Through the running of the Brentwood Centre, including the events are in direct competition with other potential providers.

The four stages are:

- The use of tax-payers money.
- The entity has an unfair advantage.
- They would not be able to obtain the advantage on the open market.
- The effect of providing the aid has closed the market to competition.

The Council has a statutory duty to ensure that it always acts lawfully and reasonably. Further it is the duty of the s151 Officer to ensure that the financial affairs of the Council are properly administered.

The Monitoring officer appointed under s5 Local Government and Housing Act 1989 also has a statutory duty to report to elected members if it appears the authority were about to, or, have taken actions that contravene the law or could amount to maladministration.

BLT has provided a service for the Borough from 2004, it can be seen from the documents that the Council has effectively been its banker since arguably 2006. To continue to assist with providing financial and other support is for the reasons given above unlawful.

The Council resolved that even though could not provide financial or other support that would infringe State Aid principles it would work with the Trust to affect a smooth transition of services. Further that it would re-engage the Leisure Strategy Working Group to look at future provisions throughout the Borough.

Cllr Hossack **MOVED** and Cllr Poppy **SECONDED** the recommendations within the report and it was **RESOLVED UNANIMOUSLY** accordingly.