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Contact:

James Dearling

01483 444141

19 February 2021

Dear Councillor,

Your attendance is requested at a meeting of the **OVERVIEW AND SCRUTINY COMMITTEE** to be held on **TUESDAY, 2 MARCH 2021** at **7.00 pm**. This meeting will be held virtually using Microsoft Teams.

Yours faithfully,

James Whiteman
Managing Director

MEMBERS OF THE OVERVIEW AND SCRUTINY COMMITTEE

Chairman: Councillor Paul Spooner
Vice-Chairman: Councillor James Walsh

Councillor Dennis Booth
Councillor Colin Cross
Councillor Graham Eyre
Councillor Angela Goodwin
Councillor Tom Hunt

Councillor Ramsey Nagaty
Councillor George Potter
Councillor Tony Rooth
Councillor Deborah Seabrook
Councillor Fiona White

Authorised Substitute Members

For the Overview and Scrutiny Committee, there is no limit on the number of substitute members for each political group on the Council.

QUORUM: 4

WEBCASTING NOTICE

This meeting will be recorded for live and/or subsequent broadcast on the Council's website in accordance with the Council's capacity in performing a task in the public interest and in line with the Openness of Local Government Bodies Regulations 2014. The whole of the meeting will be recorded, except where there are confidential or exempt items, and the footage will be on the website for six months.

If you have any queries regarding webcasting of meetings, please contact Committee Services.

THE COUNCIL'S STRATEGIC FRAMEWORK

Vision – for the borough

For Guildford to be a town and rural borough that is the most desirable place to live, work and visit in South East England. A centre for education, healthcare, innovative cutting-edge businesses, high quality retail and wellbeing. A county town set in a vibrant rural environment, which balances the needs of urban and rural communities alike. Known for our outstanding urban planning and design, and with infrastructure that will properly cope with our needs.

Three fundamental themes and nine strategic priorities that support our vision:

- | | |
|---------------------|--|
| Place-making | Delivering the Guildford Borough Local Plan and providing the range of housing that people need, particularly affordable homes |
| | Making travel in Guildford and across the borough easier |
| | Regenerating and improving Guildford town centre and other urban areas |
| Community | Supporting older, more vulnerable and less advantaged people in our community |
| | Protecting our environment |
| | Enhancing sporting, cultural, community, and recreational facilities |
| Innovation | Encouraging sustainable and proportionate economic growth to help provide the prosperity and employment that people need |
| | Creating smart places infrastructure across Guildford |
| | Using innovation, technology and new ways of working to improve value for money and efficiency in Council services |

Values for our residents

- We will strive to be the best Council.
- We will deliver quality and value for money services.
- We will help the vulnerable members of our community.
- We will be open and accountable.
- We will deliver improvements and enable change across the borough.

AGENDA

ITEM NO.

1 **APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS**

2 **LOCAL CODE OF CONDUCT AND DECLARATION OF DISCLOSABLE PECUNIARY INTERESTS**

In accordance with the local Code of Conduct, a councillor is required to disclose at the meeting any Disclosable Pecuniary Interest (DPI) that they may have in respect of any matter for consideration on this agenda. Any councillor with a DPI must not participate in any discussion or vote regarding that matter and they must withdraw from the meeting immediately before consideration of the matter.

If that DPI has not been registered, the councillor must notify the Monitoring Officer of the details of the DPI within 28 days of the date of the meeting.

Councillors are further invited to disclose any non-pecuniary interest which may be relevant to any matter on this agenda, in the interests of transparency, and to confirm that it will not affect their objectivity in relation to that matter.

3 **MINUTES** (To Follow)

To confirm the minutes of the Committee meeting held on 2 February 2021.

4 **RESPONSE TO COVID-19**

An update from the Managing Director.

5 **LEAD COUNCILLOR QUESTION SESSION**

A question session with the Lead Councillor for Regeneration. Councillor John Rigg's areas of responsibility:

- Town Centre MasterPlan
- Infrastructure
- Major Projects
- Strategic Asset Management

6 **GUILDFORD CREMATORIUM REDEVELOPMENT POST PROJECT REVIEW**
(Pages 5 - 42)

7 **UPDATE ON GYPSY AND TRAVELLER UNAUTHORISED ENCAMPMENTS AND POSSIBLE TRANSIT SITE IN SURREY** (Pages 43 - 130)

8 **OPERATION OF THE LEISURE MANAGEMENT CONTRACT, 2019-20**
(Pages 131 - 180)

9 **OVERVIEW AND SCRUTINY WORK PROGRAMME** (Pages 181 - 190)

To agree the draft Overview and Scrutiny work programme.

**Please contact us to request this document in an
alternative format**

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Overview and Scrutiny Committee Report

Report of Director of Service Delivery

Author: Paul Stacey

Tel: 01483 444720

Email: Paul.Stacey@guildford.gov.uk

Relevant Lead Councillor: James Steel

Tel: 07518 995615

Email: James.Steel@guildford.gov.uk

Date: 2 March 2021

Guildford Crematorium redevelopment post project review

Executive Summary

This report sets out an account of the rebuilding of Guildford Crematorium following approval of the business case and preferred option by the Council's Executive in 2016. From inception of the idea as part of the Bereavement Services Fundamental Service review in 2013-14 to closing out of the project has been a 7-year scheme for the Council.

It has been a complex but successfully executed phased project working in the sensitive environment of the Crematorium.

The report reflects on the business case, governance, issues that arose, feedback on the building now it is in use, and the learning from the post project review.

Recommendation to Committee:

That the Committee

- a) note the account of the project from start to finish
- b) consider and progress the learning from this project
- c) make any recommendations to the Executive it considers appropriate.

Reason(s) for Recommendation:

The Council is a learning organisation and the beneficial learning from this project has a direct application to other Council construction related contracts, to improve performance.

Is the report (or part of it) exempt from publication?

Yes – in part. Appendix 1.

- (a) The content is to be treated as exempt from the Access to Information publication rules because of its commercial sensitivity and is therefore exempt by virtue of paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 as follows: Information relating to the financial or business affairs of any particular

- person (including the authority holding that information)
- (b) The content is restricted to all councillors.
 - (c) The exempt information is not expected to be made public because it is considered that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
 - (d) The decision to maintain the exemption may be challenged by any person at the point at which the Committee is invited to pass a resolution to exclude the public from the meeting to consider the exempt information.

1. Purpose of Report

- 1.1 The purpose of this report is to enable the Overview and Scrutiny Committee to explore the learning points arising from the Council's experience in delivering the project to rebuild Guildford Crematorium.

2. Strategic Priorities

- 2.1 The rebuild of Guildford Crematorium delivered on the Corporate Plan Priorities of the time in the following ways:
- 2.2 *'Our Infrastructure- Providing high quality facilities and land for new schools and health centres – Refurbish or rebuild Guildford crematorium to ensure that the service is fit for purpose for the next 50 years'* which was due for delivery by December 2019.
- 2.3 *Our Borough:* the redeveloped facilities will be more appropriate to the expanded community needs for this service. The present facilities were constructed at a time in the 1960s when the use of this service was a small fraction of its current level. An upgraded and expanded facility will be a significant improvement to the bereavement services offered by the Council, recognising that this is a service called-on by many of its residents, and indeed the wider South West Surrey community at one time or another which yields significant revenue for the Council.
- 2.4 *Our Economy:* the project will help to maintain and support the borough's business base as the redeveloped and enhanced facility will more adequately fulfil the needs and requirements of the local bereavement service industry, both within the Borough and wider afield. This sector includes clergy, undertakers, memorial masons, health sector, third sector, transport related, accommodation and hospitality related, as well as the crematorium services itself.
- 2.5 *Our Environment: Reducing energy and water use* – contributing to the Council's target of *'Reduced Energy and water use by 20% over 2014/15 levels*. Modern facilities have significantly better energy efficiency, can incorporate energy-from-heat recovery technologies, have better thermal insulation, low energy lighting and heating and the potential to incorporate renewable energy. This scheme can contribute to that target.
- 2.6 *Our Society:* a more flexible design will allow the Council more accurately to align the bereavement services to individual beliefs, or to none.
- 2.7 *Our Council:* this project delivers on the recommendations of a Fundamental Service Review and contributes to *'Ensuring long-term financial stability and*

sound financial governance' through delivering efficiency savings and service improvements through our programme of reviews, and increased income from our commercial services and investment assets.

3. Background

3.1 Context of the project

3.1.2 The need to refurbish or rebuild Guildford Crematorium was identified in the Fundamental Service Review of the Council's Bereavement Services in 2013. The Executive adopted this recommendation in 2014 and incorporated it as a target in the Council's Corporate Plan 2015-2020. In addition, a provisional capital budget was agreed of £4.5 million in the 2015-16 budget based on a high-level feasibility study, and available cost information undertaken in 2013. This need was identified, as the facilities were no longer fit for purpose to deliver the services required.

3.1.3 Guildford crematorium broadly serves the Guildford and Waverley Borough Council catchment area and caters for approximately 83-85% of deaths in this area through cremation. It is the operational and administrative home for the whole of the Council's bereavement service. The service undertakes around 1600-1800 cremations a year, around 50 burials at the Council's two cemetery sites, cares for 9 closed churchyards, and provides facilities for remembrance such as gardens, books of remembrance, and a flower room for the bereaved. This supports the long and ongoing grief and bereavement process bringing many visitors to the site who carry out personal acts of remembrance.

3.2 Overview of delivery

3.2.1 A Project Board was established in 2015 of Officers and Councillors to oversee the project. Subsequent to this, £500,000 was moved to the approved capital programme to appoint a quantity surveyor and architect and design team to enable progress to be made with the crematorium project.

3.2.2 In 2015, following the Council's Procurement Procedure Rules the Council appointed Press and Starkey as the Quantity Surveyor and Employers Agent and Haverstock LLP as the Lead Architect and Design Team, incorporating civil, structural and mechanical and electrical engineers, landscape architects, and other such expertise required to support this project. In addition to this Peter Linsell Management Consultancy, a bereavement industry specialist, was also appointed as an advisor in regard of the technical area of crematory plant and equipment along with the company Inneco.

3.2.3 Detailed feasibility work was undertaken in 2016 revisiting the 2013 high level study to determine whether to rebuild or refurbish Guildford Crematorium. This led to the approval of a recommendation to rebuild Guildford Crematorium with a supporting business case, and approval of the transfer of £4 million from the provisional capital programme to the approved capital programme in November 2016 by the Council's Executive. The report also requested a further £5.5 million supplementary estimate from Full Council which was approved in December 2016.

3.2.4 The business case included the provision of temporary facilities to ensure the ongoing operation of the crematorium service to support local need and

businesses who use the crematorium facilities such as funeral directors, and the hospitality industry.

- 3.2.5 As part of the design process a cremator supplier was procured in accordance with the Council Procurement Procedure Rules, to input into the design of the building, supply and install the cremators and abatement plant, and provide a term maintenance contract for the lifecycle of the equipment. The successful supplier was Facultatieve Technologies who were appointed in June 2017.
- 3.2.6 Following public and service consultation through winter/spring of 2016-17 the design was developed to RIBA Stage 3 and a planning application was submitted in July 2017. Planning consent was granted by the Council's Planning Committee for both the temporary facilities and replacement building on 5 October 2017.
- 3.2.7 The technical design process followed this, and procurement exercises were then undertaken to appoint a contractor for the temporary facilities and main contractor. These were awarded to Alresford Marquees and Buxton Building Contractors respectively.
- 3.2.8 In the winter 2017-18 a limited number of trees were removed in accordance with the planning consent and a limited number of memorials moved in consultation with families to enable the development.
- 3.2.9 A further supplementary estimate was required of £1.692 million to cover the additional cost of VAT over the life of the scheme due to the risk of the Council breaching its partial VAT exemption limit and was approved as part of the 2018-19 budget process.
- 3.2.10 As part of the project, mitigation had to be provided for bats roosting in the existing crematorium under a European Protected Species License (EPSL) from Natural England. Following a number of bat surveys in 2016/17/18 this license was granted on 19 September 2018 by Natural England. A number of bat habitat features and replacement roosts were incorporated into a replacement groundsman's store built in winter spring 2017-18, by virtue of the General Permitted Development Order, Part 12, Development by Local Authorities. This had to be completed in advance of demolition of the main building in winter 2018-19 to enable the bats to relocate and was critical to maintaining the project programme. The monitoring of this mitigation has to continue until 2022.
- 3.2.11 A Clerk of Works was appointed in March 2018 to provide regular reports and monitor quality of the construction throughout the duration of the construction phase.
- 3.2.12 The construction phase of the project was undertaken as a six-phase project from May 2018 to March 2020 in order to continue to provide services to the community. The phases were:
 - Phase 1:** Construct and commission new access road, car park, and remembrance courtyard.
 - Phase 2:** Construct and commission temporary facilities, decant from main building.
 - Phase 3:** Demolition of existing crematorium.
 - Phase 4:** Construction and commissioning of new crematorium.

Phase 5: Decommissioning and removal of temporary facilities, commissioning and opening of the new facilities.

Phase 6: Removal of interim cremator, completion of new car park and external works.

- 3.2.13 The temporary chapel and office facilities were commissioned in October 2018 and remained operational until November 2019 to enable construction of the main building and to continue service provision.
- 3.2.14 An application for a revised 'Permit to Cremate' for the new building was submitted in April 2019 to Regulatory services and approved and issued on 11 July 2019. As part of this a Non Material Amendment (NMA) was submitted to the local planning authority on 29 March 2019 to remove louvres from around the emissions stack. This was to ensure compliance with guidance and legislation relating to emissions stacks. The NMA was approved 18 April 2019.
- 3.2.15 The new crematorium opened on 16 December 2019 and operated successfully until Covid restrictions limited service provision in March 2020.
- 3.2.16 A Minor Material Amendment (MMA) was submitted to the local planning authority on 15 January 2020 to take account of an approved highways design to the entrance of the site, the retention of some existing parking area, a fixed access ladder, and swale crossover. This was approved on 14 April 2020.
- 3.2.17 A section 278 consent was approved by Surrey County Council for a widened entrance to the crematorium in February 2020.
- 3.2.18 The complete project achieved practical completion on 20 March 2020.
- 3.2.19 Following enquiries received from member of the public in regard of the emissions stack and subsequent internal investigation by the Council, the emissions stack had to be extended from 8.1m to 9.0m. This included identification of the error to Regulatory Services on 24 April 2020 and a revised permit being issued by Regulatory Services on 11 June 2020 with a condition for stack height to be amended by 9 October 2020. The extended stack received planning consent on 16 September 2020 and was installed on 26 September 2020.
- 3.2.20 This investigation into the error concluded a human error in calculating the stack height in accordance with HMIP D1 guidance and interpretation of the architectural drawings. The Council is also undertaking an external audit of this issue.
- 3.2.21 The defect liability period is nearly complete, however this has been impacted and delayed by Covid 19.
- 3.2.22 A post project review was undertaken in December 2020 and January 2021 and is discussed later in this report.
- 3.2.23 The Council has not yet been able to hold an official opening for the building because of Covid restrictions.
- 3.2.24 The project has been visited by several other Local Authorities who are looking at redeveloping or building new facilities because of the standard that has been set by the project for both permanent and temporary facilities.

3.2.25 The building has been awarded two awards by the Guildford Society; Best New Public Building and Best Civic Building Public Realm. It has also been shortlisted for the following award; Structural Timber Awards “Engineer of the year”. It is hoped others will follow in 2021.

3.2.26 Developing the gardens of remembrance and memorial options will take place in the coming years once the impact of Covid 19 on the service has passed.

3.3 **Building Design**

3.3.1 The design sought to address a number of issues with the existing building, site layout, and site restrictions this included:

- Increased and improved car parking provision.
- Eliminating services crossing and clashing when using the crematorium.
- Creation of a better comforting atmosphere through design and material choices.
- Flexible chapel space to cater for small and large services, and different faiths and practices.
- Improved toilet and waiting room provision.
- Improved office space and welfare provision for staff.
- Improved energy efficiency.
- Development of areas for new memorial gardens.
- Improved memorial provision and floral tribute area.
- Minimising disturbance to over 25,000 cremated remain plots and memorials.

3.3.2 The building incorporates a number of carbon reducing and environmental features;

- Taking a ‘fabric’ first approach where possible to building design which involves maximising the performance of the components and materials that make up the building fabric itself, before considering the use of mechanical or electrical building services systems.
- Plate heat exchanger using waste heat from the cremation process to heat the building.
- Building management system (BMS) incorporating various mechanical and electrical energy saving components.
- Replacement bat habitat and accommodation (Photo1).
- Sustainable urban drainage system (SUD’s) (Photo 2).
- A photo voltaic (PV) array on the roof to provide electricity (10,141kWh per annum, around 5% of total demand) (Photo 3).
- Full mercury abatement plant compliant with national guidance to abate emissions from the cremation process.
- One of nine installations in the UK to voluntarily abate emissions of oxides of nitrogen and controlled through the sites permit to cremate.
- 30 semi mature trees planted.
- 400 metres of new native hedging.
- 4 electric car charging points.



Photo 1: Bat bricks in groundsman store to provide replacement habitat



Photo 2: Part of SUDs system being installed



Photo 3: PV array on roof of new building (Credit Dan Hannington)

3.4 Project Governance and Monitoring

3.4.1 The project board for the project was comprised of the following officers with the following roles. The board met monthly to steer the project and have oversight of it covering programme, risks and issues, finance, communications, and make decisions in line with delegation agreed by the Executive in November 2016 to see the project delivered such as choices around procurement options, risks, and finance.

Table 1: Project Board

Officer	Role	Project Role
Peter O'Connell	Director of Environment	Project Sponsor, ultimate say on all officer decisions
Pauline Searle	Lead Councillor	Political oversight
Nigel Kears	Councillor	Political oversight
Paul Stacey	Parks & Landscape Manager	Project Manager, to coordinate reports, issues for resolution and present information to the project board
Natasha Precious	Bereavement Services Manager	Deputy Project Manager/Client To advise on all service implications, considerations, and specifications regarding

		the design of the facility, lead on liaison with stakeholders
Marieke van de Reijden	Asset Development Manager	To provide strategic and operational support with any property issues – land and maintenance of the facilities, and any financial implications arising from them
Darren Burgess	Building Surveyor Manager	To provide strategic and operational support with any property issues – land and maintenance of the facilities, and any financial implications arising from them
David Draghi	Property Manager Neighbour and Housing Management Services	To support mechanical and electrical requirements and consider any financial requirements arising from them
Vicky Worsfold/ Michele Rogers	Principal Accountant	To provide financial advice supporting all capital and financial implications
Claire Andrews	Communications Officer	To produce and deliver Communications plan
Nathaniel Burrows	Procurement Officer	To provide procurement advice and support
Joyce Hamilton	Council's Solicitor	To provide all legal advice and support the appointment of consultants/contractors

3.4.2 The project also reported into the Council's Major Projects and Programme Board monthly, giving broader organisational oversight of the project as one of its major projects. Financially the scheme was also reported on as part of the capital budget monitoring process.

3.4.3 Decisions were approved by the Council's Executive, Full Council, and the Planning Committee where required in accordance with the councils constitution.

3.5 Business Case

Following a thorough design and feasibility process four options and business cases were considered in making the decision to rebuild the crematorium, as follows:

3.5.1 Option 1: Courtyards - the selected scheme

This scheme saw the crematorium redeveloped on its current footprint in a compact form. The phasing and delivery of this scheme was simpler and relied

on the use and construction of temporary offices and a chapel to enable the scheme to be built as a single phase. The cremator was kept operational during construction to maintain service continuity then demolished and removed once the new facility was operational.

3.5.2 **Option 2: Alternative Courtyards**

This scheme proposed the crematorium to be redeveloped on its current footprint in a linear form. The phasing of this scheme was complex as the scheme worked around keeping the existing chapel and cremator in use while the new building was developed either side of the existing chapel. Once the new build elements were complete, the chapel and crematory would be demolished. Because of the proximity of the construction of the new building the project would have needed to be delivered as a restricted hours contract to enable services to be maintained on site.

3.5.3 **Option 3: New build with full closure**

This proposal was to close the facility and deliver either new build option 1 or 2 and reopen once the rebuild was complete

3.5.4 **Option 4: Refurbishment**

This option was to refurbish/add minor improvements and extensions to the facility over a 208-week period with significant disruption to users and operation of the facility.

3.5.5 **Discounted Cash Flow Analysis**

Aside from operational and practical implications the financial business case was undertaken using a discounted cash flow analysis in line with treasury management guidance.

This involves estimating the capital and revenue expenditure and income over a 30-year lifecycle such as replacing the cremators, roofs, redecoration, and other property maintenance. We included differences such as the additional income possible, savings through energy efficiency and differences in timing of capital expenditure between new build and refurbishment. It also includes lost interest and loss of income through closure while works take place.

The DCF calculation results in a single figure – the Net Present Value (NPV), which is the total cash flow over 30 years discounted to today's prices. The discounted rate is based on Treasury advice for local authorities. In addition to this, the internal rate of return has also been calculated.

Throughout the project and at key stages the business case was kept under review and are shown below in Table 2:

Table 2: Discounted Cash Flow Forecast

	Payback (Years)	NPV	Capital Exp over 30 years	Capital Receipts	Net Capital	Total revenue cost/(income) over 30 years	Internal Rate of Return
At 2016 Executive Approval (Assumes 50% loss of income during works (86 weeks))	18	(5,594)	12,293	0	12,293	(19,699)	8.61%
As at contractor appointment (May 2018) (Assumed 50% loss of income during works (76 weeks))	23	(4,002)	13,187	0	13,187	(20,030)	6.97%
As of May 2019 (Factors in no revenue losses during revised contract period (99 weeks)) and updated interest implications	25	(4,118)	14,442	0	14,442	(18,503)	7.45%
As of January 2021 (Factors in agreed final account, actual revenue during construction and updated interest implications)	22.5	(6,288)	15,043	0	15,043	(22,839)	8.98%

- 3.5.6 The route chosen (option 1), was absolutely the right choice from a practical and operational perspective and the financial business case has and is being delivered. This is discussed further in section 6. The implications of Covid 19 have meant that the use of the facility has not had a sustained period of normal operation to fully consider the outcomes of the business case.
- 3.5.7 Within the post project review it was regarded as one of the key milestones that a thorough feasibility study, options appraisal, and a sound business case was explored enabling a key decision to be taken to ensure the project could progress with option 1.

3.6 Temporary Facilities

- 3.6.1 Critical to the success of the project and business case was delivery and operation of the temporary facilities which were comprised of a chapel, waiting room, temporary floral tribute, offices, and toilets (Photos 4 and 5). It was the first time that this had been attempted in the UK to the Council's knowledge.

- 3.6.2 The main reasons for providing temporary facilities were;
- The building footprint for the new build had to be on existing site, meaning the crematorium would be out of commission for a lengthy period due to:
 - the presence of memorials
 - the impact of guidance and legislation in relation to the siting and planning of crematoria
 - The need to support local businesses who use the facility, such as funeral directors, florists, masons, and hospitality venues
 - The need to support families affected by bereavement either recent or past
 - In consulting with other facilities that had closed for rebuilding or refurbishing, they had undergone a sustained period of reduced business after reopening.
- 3.6.3 The service and architects undertook various research looking at temporary facilities at Guildford Cathedral and Basingstoke Hospital and discussion with suppliers looking at what would be feasible and the potential impact on the service. It was hard to establish how temporary buildings and facilities would be received by families despite engagement with funeral directors over its design and operation.
- 3.6.4 As part of the business case and the 2018-19 budget process, the Council approved a reduction in the revenue budget for income from the Crematorium. This was to account for operational disruption and temporary closure as well as factoring in whether a temporary building and facilities would be accepted and used.
- 3.6.5 Money was put into the budget pressures reserve to mitigate this assumed loss in income – a total of £1.1 million spread over the main build period in 2018-19 and 2019-20. In 2018-19 and 2019-20 the reserve was not used as the crematorium generated more income than originally assumed, and expenditure was under budget. This is shown below in Table 3.
- 3.6.6 The temporary facilities were a success suffering little loss in use and the variances can probably be ascribed to natural variance in the mortality rate and the periods of closure that were required in the project, this is shown in Table 4:

Table 3: Crematorium Financial Outturn 18/19 and 19/20

	18/19 Budget	18/19 Actual	18/19 Variance
Expenditure	909,540	687,538	(222,001)
Income	(702,650)	(1,346,216)	(643,566)
Net	206,890	(658,687)	(865,567)
	19/20 Budget	19/20 Actual	19/20 Variance
Expenditure	1,201,100	726,898	(474,202)
Income	(989,550)	(1,368,902)	(378,542)
Net	211,550	(641,194)	(852,744)
Net for construction phase/ use of temporary facilities (May 2018 - Mar 2020)	418,440	(1,299,881)	(1,718,311)

Table 4: Cremation figures

Calendar Year	Cremations per annum (Business Model Forecast)	Cremations per annum (Actual)	Variance
2016 (Old Building)	1658	1741	+5%
2017 (Old Building)	1658	1434	-14%
2018 (Old Building /Temporary Facilities)	1658	1582	-5%
2019 (Temporary Building)	1704	1416	-17%
2020 (New Building)	1704	1897	+11%
Five year average	1676	1614	-4%

- 3.6.7 The site had to close for a total of 8 weeks on separate occasions during the build period of May 2018 to March 2020 to enable moving between facilities and a short closure to bring new utility services across the site.
- 3.6.8 The Council has provisionally sold the temporary chapel to City of Lincoln Council as a going concern after a period of marketing the facility to recover some cost.
- 3.6.9 The key learning point around the temporary facilities was that it would have been beneficial to include it in the main contractor’s package to ensure better on site coordination with groundworks and service installation. As the first of its kind we opted to procure it ourselves to maintain control over design and construction and to meet the requirements of the project programme.



Photo 4: External view of Temporary Chapel (Credit Dan Hannington)



Photo 5: Internal of Temporary Chapel (Credit Dan Hannington)

3.7 On site delivery; programme

3.7.1 The construction programme was originally set at 76 weeks at contractor appointment and was ultimately completed in 99 weeks, 23 weeks behind schedule. The delays were as follows:

Phase 3: Demolition – 7 week delay due to required method of demolition for bat removal to meet requirement of European Protected Species License, significant additional asbestos finds and removal. (Photo 6 and 7)

Phase 4: Construction of main building – 9 week delay due to ground conditions, additional groundworks required by building control, and delay on joinery package.

Phase 6: Completion of residual groundworks - 7 week delay due to requirement to repair SUDs membrane after removal of temporary building, variations to external works and S278 approval delays.

This was a complex phased project so an overrun in programme is not surprising. Whilst some contingency was built in as we had planned for an 86-week programme, the full extent of the programme issues arising were not able to be mitigated. The delay on opening the new facility and ongoing operation of the temporary facility was 16 weeks as phase 6 was undertaken after completing the new building and removal of the temporary building.



Photo 6: Preparation for removal of concealed asbestos



Photo 7: Removal of bat roosts being undertaken by hand under supervision of an ecologist and in accordance with EPSL.

3.7.2 On site delivery; project management (works)

The project was managed effectively and proactively by all members of the project. Monthly contract meetings were held covering key issues with the main contractor submitting effective progress reports.

Two Clerks of Works were appointed to maintain oversight on build quality through regular quality inspections, covering both construction and the mechanical and electrical installation, these were supported by regular reports and trackers.

Regular health and safety audits were undertaken through the construction phase by the main contractor with no significant issues arising. Documentation from the contractor was very good and they followed the processes as set out in their tender submission which could be considered as a benchmark for all other projects. The appointment of their and our sub contractors proved effective.

Delivery was conducted through an exceptionally healthy project culture with all members of the project striving to deliver the scheme with good quality control, openness, and effort to resolve issues.

3.7.3 On site delivery; reflections on procurement

The success of the delivery team and end result reflects directly back on the procurement strategies and processes employed for the project and overseen by the project board. Significant research and premarket engagement was undertaken to shape the design and structure of the project. Effective pre-qualification processes were employed and weightings in the tender packages were geared to quality in line with the ambition for the project.

The procurement process was managed through the procurement portal 'Intend' which linked to the governments 'Contract Finder' portal. Supplier interviews were assessed as part of the procurement process and were very effective in addressing queries, understanding suppliers approaches to the project in detail and building on our premarket engagement process.

Choosing a 'Traditional' method of design and construction as opposed to design and build has ensured ownership of quality control, design, and end outputs has been retained by the Council. This does place a huge responsibility and resource requirement on the client to engage in and be part of the detailed design process.

The above demonstrates the value in projects determining the right approach to procurement rather than one corporate approach.

3.8 Close out and in use

- 3.8.1 The aftercare process from the main contractor and design team has effectively addressed snags, defects, and operational issues arising with the same commitment shown throughout the project.
- 3.8.2 The biggest issue has been staff capacity and the impact of Covid 19 to embed the operation of the building, and review and adjust procedures.
- 3.8.3 The build quality has been good with no significant defects identified in the defects liability period, just teething issues and defects typical of any construction project as a building settles.
- 3.8.4 The design has achieved the aesthetic, functional, and emotional requirements for the building. Photos 8 to 14 show the completed building.

- 3.8.5 User feedback from staff, funeral directors, clergy, and members of the public on the new facilities has been overwhelmingly positive. Obtaining full operational feedback has been compromised by Covid restrictions so we will need to keep under review and reconsider when normal services can resume. Feedback has included:

'It's brilliant what you have done with the crematorium, it is a lovely setting, one of the mourners said they would come back to walk around because it was so peaceful'

'we felt as the judges that if there was a building in the future that was going to be listed that the Guildford Crematorium would be one of them'

- 3.8.6 The only area of concern has been directional signage around the site which we are improving to enable wayfinding. Some users have not adjusted to the new flow around the sites. Other than this the design has fulfilled the brief the Council set for the building.
- 3.8.7 Emissions from the cremator plant are continually monitored and subject to a full annual test. The results have been within and compliant with the legal limits for crematoria and the conditions set down on the sites permit to cremate in relation to voluntarily abating oxides of Nitrogen.



Photo 8: Aerial view of completed project (Credit Dan Hannington)



Photo 9: View of completed project (Credit Dan Hannington)



Photo 10: Internal view of new chapel (credit Simon Kennedy)



Photo 11: Exit from chapel (credit Simon Kennedy)



Photo 12: View of chapel from protected courtyard (credit Simon Kennedy)



Photo 13: New waiting room (credit Simon Kennedy)



Photo 14: Reflective pool (credit Simon Kennedy)

3.9 Error in Stack Height Calculation and Air Quality Impact Assessment

- 3.9.1 Following enquiries received from a member of the public in regard of the height of the emissions stack and subsequent internal investigation by the Council, the emissions stack had to be extended from 8.1m to 9.0m. Following the necessary regulatory and planning process the emissions stack extension was installed on 26 September 2020.
- 3.9.2 An internal investigation has taken place as to why the error occurred. This investigation into the error concluded a human error in calculating the stack height in accordance with HMIP D1 guidance and interpretation of the architectural drawings.
- 3.9.3 The Council is also undertaking an external audit of this issue where our enquirer has been invited to participate. The internal investigation is set out as a confidential part 2 item in Appendix 1.
- 3.9.4 Our enquirer also raised concerns that an independent air quality impact assessment (AQIA) had not been undertaken as part of the planning process. Criticism has been made that the planning authority did not seek an air quality impact assessment when the planning application for the new crematorium was validated at the very start of the planning process.
- 3.9.5 The planning administration team has a validation checklist, both at national level and local level. At the time (2017), there was no specific requirement for an air quality impact assessment to be submitted and the administrative officer & case officer did not ask for one. The reason being it was felt that because the facility and use of land as a crematorium was already in existence, there was therefore no requirement. This clearly would have been different had the submission been for a new crematorium facility on land not previously used as a crematorium.
- 3.9.6 There were also multiple discussions between the Case Officer and Regulatory Services Officer during the course of the application and at no time did the Regulatory Services Officer raise concerns over this aspect or ask for a report to be commissioned for consideration.
- 3.9.7 The planning application was referred to and considered by members of the Planning Committee on 4 October 2017 as this was a Council application and had the members of the Committee been concerned by this point, they could have asked for the application to be deferred and a report commissioned. No deferral or request for deferral was made, as the Committee felt it had all the facts before them to make a decision. Finally, no legal challenge was made in the 6-week challenge period following the decision.

4. Capital cost

- 4.1 Table 5 sets out the cost and budget for each element of the project and the overall forecast outturn:

Table 5: Budget and Forecast outturn

Item	Budget	Total Forecast Cost	Variance
Main Contract	£ 7,797,512	£ 9,358,170	£ 1,560,658
Temporary Facilities	£ 500,000	£ 437,341	(£ 62,659)
Groundsman Store	£ 85,000	£ 96,255	£ 11,255
Surveys	£ 100,000	£ 99,021	(£ 979)
Professional Fees	£ 917,464	£ 829,962	(£ 87,502)
Minor contractor	£ 86,000	£ 163,822	£ 77,822
Miscellaneous	£ 80,000	£ 41,763	(£ 38,237)
Internal Salaries	£ -	£ 10,174	£ 10,174
Contingency	£ 564,024	Inc above	
Sub total	£ 10,130,000	£ 11,036,508	£ 906,508
VAT	£ 1,692,000	£ -	(£ 1,692,000)
Total	£ 11,822,000	£ 11,036,508	(£ 785,492)

- 4.2 Overall the project is forecast to be underspent by £785,492. The main construction works encountered delays as described in section 3.8 and further issues which incurred additional cost and delay are set out below:
- 4.2.1 Availability of steel fixings to construct the precast elements of the structure of the building in Phase 1. The specified fixings were not available and on a long lead time, despite pre contract checks, therefore replacements had to be found, the columns redesigned which led to a project delay and additional cost.
- 4.2.3. The temporary building was tendered and awarded as a design and build turnkey solution, however this ended up being very involved from the client, design team, and contractors perspective in delivery. Design and co-ordination issues over the base and mechanical and electrical requirements of the temporary building caused issues for the main contractor and design team. The delay on phase 1 required additional facilities such as temporary power due to UK Power Networks not delivering to programme, additional temporary parking measures, and a temporary floral tribute area.
- 4.2.4. Bat relocation and demolishing parts of the old building by hand to comply with the European Protected Species License (EPSL). The exact method of demolition was not able to be determined until the EPSL was granted with the relevant conditions. The system for applying for EPSLs only allows an application to be made 3 months prior to the works. In accordance with the programme and legislation this was applied for in July 2018, after the contract had started. When the license was granted this required additional inspections, attendances, and costs for access equipment, as well as incurring project delay.
- 4.2.5. Extent of concealed asbestos finds and removal which were only able to be determined after a demolition survey had been undertaken which was more than we had allowed for in the original budget. A demolition survey could not take

- place prior to works commencing on site as it would have left significant parts of the building damaged and unable to remain in operation. Buried asbestos waste and contamination was also found below the former cloisters and had to be removed.
- 4.2.5 Ground conditions for the main building meant additional foundation depth being required by building control. These were not able to be determined until the site was clear and the foundations dug as the building was being built on the same location as the existing building.
 - 4.2.6 Low CBR (Californian Bearing Ratio) test results meaning additional works to the road construction and make up. This was part of the contractors package to check the ground conditions to confirm the civil engineers design.
 - 4.2.7 A number of temporary works were required while new services were installed, to keep the segregation of construction areas from the operational site, exploration of potential ashes sites to keep the site operational and to de risk the programme.
 - 4.2.8 Utility company delays impacting cost and programme and additional temporary supplies. A new electricity supply should have been installed in September 2018 but UKPN did not deliver this until December 2018. A new gas supply and meter should have been installed by October 2018, but the meter was not installed until February 2019. Refunds of approximately £12,000 have been received. As statutory undertakers the Council and Contractor has little control over their performance.
 - 4.2.9 The tender package included various options which required clarity and detail as the project progressed such as the extent of the PV system, automatic doors, man-safe systems, and the extent of reconstruction of the entrance to meet Surrey County Council highways requirements.
 - 4.2.10 When the temporary chapel was removed from the car park area, the makeup of this area had to be re excavated to repair the SUDs membrane as the fixings for the temporary structure has penetrated it affecting its integrity and requirement to fulfil its design as per the planning conditions.
 - 4.2.11 Existing surface water drainage was found to be in a poorer state than expected requiring further works.
 - 4.2.12 Variations such as the inclusion of NOx abatement plant, additional walls for memorial plaques, automated doors to the remembrance courtyard, additional car charging points, and retention and resurfacing of some existing parking space.
- 4.3 Following considerable work by the Council's finance team with assistance from Price Waterhouse Cooper (PWC) on the Council's partial VAT exemption, the spend on the project did not make the Council breach its 5% partial exemption and there was no need to capitalise the VAT specific to this project. The partial exemption calculation can only be calculated annually after year end and as such the confirmation was only possible in December 2020. In 2018/19/20 it had been considered that part of the project would be liable for VAT.

5.0 Post Project Review

5.1 The post project review took place in December 2021 and January 2021 through a survey and workshop. Two sessions were held: one with the project board and one with our delivery partners such as the quantity surveyors, design team, contractors, and clerk of works. This enabled reflection by the project board and feedback from external partners about how we performed as client and the structure of the project. The key areas that came out from these discussions are:

5.2 Project Board:

5.2.1 An appropriate project board with membership invested in the outcome – all willing and able to provide the right level of support, challenge, and decision making in a timely manner:

The project board and governance of the project were widely considered to be the key factor in successfully delivering the project, the board was made up of key expertise from across the Council brought the skills and knowledge to provide effective support to the project. The board had an effective delegation from the Executive to deliver the project. The Councillors on the board brought the appropriate political perspective, support, and communicated this back to the Executive meaning Councillors were well sighted on the project. Information was well prepared and in advance of board meetings enabling good participation by the board.

5.2.2 A strong business owner who knows their business and has a clear vision of what success looks like.

The service area who would operate from the building and live through the project was engaged at the outset and brought a significant level of ownership. This was essential to the design of building, structuring of the project as well as providing industry insight. They enabled access to end users in terms consultation and feedback to ensure the facility provided a fit for purpose environment. Also, as owners of the project it brought a further level of ownership and responsibility in delivery.

5.2.3 A delivery focused project manager and project support, ideally dedicated to project delivery, are crucial in maintaining compliance, momentum, and continuity.

The project had a project support officer from the outset which kept work progressing, undertaking of valuable research, and providing valuable administrative support. Project Managers need to have the capacity and support to be able to deliver. This was challenging for the Project Manager as they were also running other projects and a day to day service. The Project Manager equipped themselves well with this project setting an effective culture through all phases of the project.

5.2.3 Effective risk management, including a costed risk register.

The project had a large number of significant risks and issues which were dealt with and addressed effectively by the project board and project team. They were reviewed at each project board meeting and systematically closed down. The main area for improvement would be to have developed costed risk registers

where appropriate; for example, items listed as exclusions in the cost plan to assess the contingency sum and inform optimism bias in terms of the overall budget.

5.2.4 Early involvement of enablers like procurement, legal and finance.

The project brought on board at the outset all key support services to enable them to have input into enabling and developing the project. This was valuable in terms of guiding procurement choices, the business case, legal advice, design development, maintenance implications. It is critical they have early sight of the project.

5.2.5 Simplified financial management for projects.

One of the challenges of the scheme was keeping track of the forecast outturn, as a multiphase scheme with overlapping phases and the timelag in surveyors agreeing valuations. Corporately an issue over the Council's partial VAT exemption had to be contended with and whether the project would become liable for VAT. This changed as the project progressed adding complexity to forecasting the outturn, the budget, and the business case. This is as much of a resource issue in terms of monitoring finances, ensuring projects take account of corporate financial implications as well having simplified and frequent reporting for projects. Significant effort was made by the finance team in obtaining advice on the Council's partial VAT exemption.

5.3 External partners

5.3.1 Ensure all roles and responsibilities are clear and maintained

Roles, responsibilities, and scope were generally well defined at the outset of the project. As the project developed and choices were made about the scheme and a review of the scope of appointments would have been beneficial to ensure all requirements were met at key stages. Some additional design works in relation to the Structural and Civil engineering design elements which were originally out of scope had to be added part way through the project.

5.3.1 Define scope as fully as possible be very clear about exclusions and understand the implications – changes later cost time and money

This relates to the above. The scope was again generally well defined and signed off at key stages where decisions were made such as rebuilding and not refurbishing. Again, at key stages, a check of the scope, responsibilities, and exclusions would be beneficial. The consideration of exclusions is the paramount point, where costed risk registers mentioned above would be a useful tool to mitigate risk and assess cost/business case implications.

5.3.2 Include optimism bias in planning - overlapping phasing and time overruns will inevitably impact cost and quality

The aim of adjusting for optimism bias is to provide a more realistic assessment of the initial estimates of costs, benefits, and time taken to implement a project. The project utilised this thinking throughout the project through challenge at project boards, budget planning, development of the temporary facilities, and premarket engagement.

It is a skill that most people naturally use in projects however there can be tendency to be over optimistic on cost and outcomes. There is supplementary guidance available in the HM Treasury Green book that can quantify the assessment of optimism bias for capital and operating costs, and, programme based on data from past projects and should be considered as tool for future projects. <https://www.gov.uk/government/publications/green-book-supplementary-guidance-optimism-bias>

5.3.2 Early engagement with suppliers pays dividends and good communication should be responsive and two way.

This was a key success of the project, a number of premarket engagement exercises were undertaken to obtain feedback from suppliers and contractors and to enable them to look at the project raise questions and technical issues. This was then able to be used to inform design, specifications, phasing, and enabled successful procurement exercises with good interest from the market. The subsequent appointments were productive, had buy in and commitment to the project. The project had a positive culture and the Council was perceived as good client to work for.

5.3.3 Improve Project and Programme Management information management and document sharing with suppliers (e.g. Dropbox)

This is a technical issue for the Council to consider in terms of transferring drawings, large file sizes, version control when working with multiple external suppliers. Aside from the Council providing relevant ICT infrastructure or access to 3rd party platforms managed by supplier a system a project protocol should be agreed as to what system(s) will be used for the project.

Building Information Modelling (BIM) is a tool that should now be used for public sector projects. BIM is a process for creating and managing information on a construction project across the project lifecycle. One of the key outputs of this process is the Building Information Model, the digital description of every aspect of the built asset. This model draws on information assembled collaboratively and updated at key stages of a project. Creating a digital Building Information Model enables those who interact with the building to optimize their actions, resulting in a greater whole life value for the asset.

The Council will need to consider its approach to adopting this and the system, skill and cost requirements this will bring. It can be a successful tool particularly in new builds but not mitigate everything it is purported to achieve in design. Significant cost would be incurred on surveys of existing buildings to facilitate this.

5.3.4 Implement assurance and reviews to ensure the opportunity to reflect is built into plans.

Currently the council is developing its approach to Project Assurance. For instance, there is no formal documented Post Project Review process, this needs developing to support successful delivery of projects. The project was under constant review by Project Board and Major Projects Programme Board and the

project went through a number of key decisions/gateways. There is room to improve this area through the establishment of a corporate approach and process to assurance.

5.3.5 Despite doing everything right some things can still go wrong

Despite all the planning, controls, resources, and commitment the project had in place things can still go wrong as evidenced by the error in stack height calculation. Projects of this scale go through tens of thousands of decisions by the time it is completed, and this underlies the importance of fully resourcing schemes, and having an effective project culture to address issues and problems.

6.0 Financial Implications

6.1 The project has been delivered within the overall capital budget (which included an element for VAT). The main construction cost of the project would otherwise have been £906,508 overspent, the reasons for which are discussed throughout the main body of the report.

6.2 Money was put into the budget pressures reserve to cover anticipated lost income, this was not needed so has been made available for other uses.

6.3 The final cost has yet to be fully finalised while outstanding commitments are implemented such as bat surveys, and remedial signage. The final account with the main contractor is agreed. The final cost will be reported through the Council's capital monitoring programme and regular financial reporting to Councillors.

6.4 The length of payback has increased by 4.5 years due to the construction cost increasing over the original business case. The internal rate of return (IRR) is 0.37% higher than forecast, with an additional £3.1 million net revenue over a 30-year period as set out in table 2. This net revenue increase is largely due to the success of the temporary facilities with £1.3 million more net income being derived than forecast.

7.0 Legal Implications

7.1 This project demonstrates the importance of having the correct governance in place around major projects being delivered by the Council, this includes early involvement of key enablers (legal, finance, and procurement), a project board with clear terms of reference and effective members as well as risk management processes. There are no legal issues arising from this report.

8.0 Human Resource Implications

8.1 There are no human resource implications arising from this report

9. Key Risks

9.1 There are no risks arising from this report

10. Consultation

10.1 Post project review workshops with Project Board and External Suppliers

11. Suggested issues for overview and scrutiny

11.1 The Overview and Scrutiny committee is asked to consider the following

- a) To note the account of the project from start to finish.
- b) To consider and progress the learning from this project.
- c) To make any recommendations to the Executive it considers appropriate.

12. Conclusions

- 12.1 The rebuilding of Guildford Crematorium has been a complex project but successfully delivered. Throughout the project the Council sustained its bereavement service with no adverse impact and did not suffer any revenue losses. The business case has been delivered and the service can now continue the roll out of further options around memorialisation over the coming years to improve the service offer.
- 12.2 The council has invested in a first-class facility to serve our community for years to come and the building and improvements have been well received by staff and the community.
- 12.3 The project management and governance arrangements have been effective. The learning points in section 5 are worthy of consideration for future projects. It cannot be stressed how resource intensive such projects are and the time commitment to enable delivery.

13. Background Papers

<https://www2.guildford.gov.uk/councilmeetings/ielIssueDetails.aspx?IId=3228&PlanId=0&Opt=3#A12956>

14. Appendices

Appendix 1 – Guildford Crematorium Stack Discharge Height Error Internal Investigation (Part 2 exempt) appended. NOT FOR PUBLICATION

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Agenda item number: 6
Appendix 1

Document is Restricted

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Overview and Scrutiny Report

Report of Director: Ian Doyle: Director of Service Delivery

Author: Samantha Hutchison: Head of Community Services

Tel: 01483 444385

Email: Samantha.hutchison@guildford.gov.uk

Lead Councillors responsible: Joss Bigmore and James Steel

Tel: Joss Bigmore: 07974 979 369

James Steel: 07518 995 615

Email: joss.bigmore@guildford.gov.uk

james.steel@guildford.gov.uk

Date: 2 March 2021

Update on Gypsy and Traveller Unauthorised Encampments and Possible Transit Site in Surrey

Executive Summary

The purpose of this report is to allow the Overview and Scrutiny Committee to comment on the Council's procedure for Unauthorised Encampments on Guildford Borough Council land and comment on the Surrey Leaders Group's proposal for a transit site to help alleviate the pressures surrounding unauthorised encampments on local communities.

Since 2018 the Joint Enforcement Team have managed Unauthorised Encampments on Guildford Borough Land and work in partnership with Surrey Police to manage community and environmental impact.

The Surrey Leaders Group in response to the increased impact unauthorised encampments have had in recent years have developed a transit site proposal for the county that will assist the police in using powers available to them to help manage the pressures districts and boroughs face.

The proposal asked this council to make a capital contribution of £127,00 towards the construction of the transit site and an ongoing annual revenue contribution of £7,500 for the maintenance of the site.

To support this proposal, officers recommended to the Executive that the budget of £115,000 remaining on the capital programme ((Scheme PL60(p)) be re-purposed and a small virement of £12,000 be taken from the capital contingency fund to increase the budget to £127,000 and that the provisional budget be transferred to the approved capital programme. As the budget is already within the capital programme there is no additional impact on MRP in the revenue budget.

On 16 February 2020, The Executive supported the Surrey Leaders Group proposal and agreed to

- A capital contribution of £127,000 towards the construction of a Gypsy and Traveller transit site in Surrey.
- An annual revenue contribution of £7,500 for maintenance of the site.
- Re-purpose £115,000 for Traveller encampments remaining on the provisional capital programme (Scheme PL60(p)) and the virement of £12,000 be taken from the contingency fund to increase the budget to £127,000
- transfer the provisional budget to the approved capital programme

Recommendation to Committee

The Committee is asked to

- Comment on the Council's approach to Unauthorised Encampments as set out in this report
- Comment on the possible Transit Site provision in Surrey

Reason(s) for Recommendation:

To ensure Councillors are aware of this council's approach to unauthorised encampments and the intentions of Surrey County Council to provide a Transit site to support the management of unauthorised encampments across the county.

Is the report (or part of it) exempt from publication?

No

1 Purpose of Report

1.1 The purpose of this report is to provide Overview and Scrutiny Committee (O&S) an update on

- Guildford Borough Council's (GBC) Unauthorised Gypsy and Traveller Encampment procedure
- The county wide strategy on developing a transit site that has been progressed by the Surrey Leaders Group.

2. Strategic Priorities

2.1 Managing Unauthorised Encampments within the borough contributes to the strategic priority of protecting our environment and supporting people in our community.

3. Background

GBC Unauthorised Encampment procedure

3.1 Unauthorised Encampments (U/Es) are when a group of people move vehicles onto land that they do not own and reside there for a period of time. This is particularly relevant, but not exclusive, to the Gypsy and Traveller community who traditionally travel in the summer months.

3.2 The landowner is responsible for enforcement against any U/Es on their land. Local authorities generally use Section 77 and Section 78 of the Criminal Justice and Public Order Act 1994 (CJPOA). (Appendix 1). In summary these powers allow the Council to serve a direction requiring the encampment to leave the land within a certain period of time. If the direction is not complied with, the Council can apply to the Magistrates Court for an order requiring their removal. This allows the Council to remove the encampment with the assistance of bailiffs.

The Police also have powers to enforce against U/Es. They can in certain circumstances use Section 61 CJPOA (Appendix 2). This applies to larger encampments where there are 6 or more vehicles on the land or where the encampment is causing damage to the land or using threatening, insulting or abusive behaviour towards the occupier. This is however extremely resource intensive for the Police and not something they do readily.

Should a transit site be available, there may be opportunities where the police can use Section 62A of the CJPOA. (Appendix 3) This applies where the encampment consists of one or more caravans and there is space on a transit site within the county for those caravans.

3.3 Since April 2018, GBC's Joint Enforcement Team (JET) has had responsibility for the U/E process on GBC land. During this time, we have seen 69 U/Es in Guildford.

- 38 on GBC land dealt with by JET - 6 of these encampments were supported by Surrey Police using Section 61 powers.
- 16 on Surrey County Council (SCC) land dealt with by SCC Gypsy and Traveller team
- 6 on parish council land
- 9 on privately owned land

JET Protocol for Unauthorised Encampments on GBC Owned Land

3.4 JET have become very well known in the South East throughout the Gypsy Traveller communities and have strong communication links with the various community leaders.

- 3.5 When an encampment arrives on GBC land, they begin the enforcement procedure under Section 77 and Section 78 of the CJPOA. This approach, depending on Court availability, can take on average 10 working days. JET have developed a logbook (Appendix 4) which enables efficient deployment of staff as well as evidence and intelligence gathering. This is a transparent process with the encampment and the details obtained are only shared with Surrey Police.
- 3.6 JET is the pivotal liaison point during an encampment, visiting the occupants of the encampment as well as local residents to provide reassurance. They also liaise with Guildford Fire and Rescue to ensure a fire safety visit has happened on site to ensure everyone's safety. Clear reporting lines for the public have been established and all anti-social behaviour concerns are reported to the Police whilst anything of environmental impact is reported to JET. Our Customer Service Team link in with JET to ensure all calls and issues are logged and JET respond to all public enquiries via email or a personal visit.
- 3.7 There is a very strong relationship between JET and the Guildford Police Neighbourhood Team. The Police have supported 6 unauthorised encampments on GBC land by utilising their Section 61 powers under the CJPOA.
- 3.8 Since 2018, JET have only once required bailiff assistance at the end of the Section 78 process. Most encampments move on before this stage of the process.

Possible Injunction Action

- 3.9 Discussions have been had across the county about the possibility of seeking an injunction against repeat unauthorised encampments. Over the last couple of years several local authorities had obtained injunctions in the High Court prohibiting encampments on most or all open spaces within the Borough. However, in January 2020 the Court of Appeal upheld a High Court decision to refuse such an injunction to the London Borough of Bromley Council. Since then the High Court has ordered a review of all existing injunctions with a number being discharged. The courts now appear to be taking a much more robust approach towards granting such injunctions and it will only really be possible to obtain such injunctions for limited named sites or against named individuals. A "blanket" injunction to prohibit encampments in the Borough is no longer feasible.

Development of a transit site in Surrey

- 3.10 The project to develop a transit site for Surrey has been a shared ambition of SCC and the districts and boroughs considering the increased community impact unauthorised encampments have. This project is led by the Surrey Leaders Group.
- 3.11 A transit site in the county would enable the Police to use Section 62A of the CJPOA meaning that they could direct U/Es to the transit site and then prohibit return to a U/E anywhere within the borough for a period of 3 months.

- 3.12 It is also anticipated that a transit site would help to address the welfare needs amongst the travelling community.
- 3.13 Surrey Police have confirmed that they would support the development of such a transit site on the basis that they would be able to better enforce U/E activity. Whilst the ideal provision would see more than one site located at different geographic locations across the county, the Police have confirmed that they would use whatever site is developed in the county as Section 62A powers can be used where there is a site within the Surrey County Council area.
- 3.14 As such, development of a transit site is not a panacea, but a step forward in providing an initial capacity that will be able to be used in a proportion of U/E activity across the county.
- 3.15 The Surrey Leaders Group has learnt from authorities that have experience of transit sites in place that they provide a noticeable impact on the ability to manage U/Es effectively. From West Sussex County Council's perspective, the number of U/Es in the county is not perceived to have declined as a result of the site, but the speed taken to act on unauthorised encampments is much improved due to the increased use of Section 62A powers by the Police.
- 3.16 However, for the Police to direct a U/E to a transit site, it is necessary for the site to have sufficient pitch capacity to accommodate the whole UE; where there are fewer pitches than numbers in the U/E, it is up to the attending Police Officer to decide whether it is suitable or possible to move part of the UE onto the transit site.

Chichester Council provide an example where there have been instances when the police have asked one or two families from the larger U/E to move to the site to ensure that encampments do not remain too large. Otherwise, the Police will not use Section 62A powers. In this case, the remaining encampment was subject to the local authority Section 77/Section 78 CJPOA powers.

The transit site proposal

- 3.17 A site has been identified which, subject to planning permission, will be developed into a 10-pitch transit site in 2021/22. The exact timetable for the site's construction is subject to confirmation and will depend on the extent of remediation required as well as planning.
- 3.18 The site requires significant expenditure on decontamination, but districts and boroughs are only being asked to contribute to the infrastructure costs as the remediation will be met by SCC.
- 3.19 The Surrey Leaders Group has agreed that the host authority for the site will not be required to contribute, but the remaining 10 district and borough authorities will be asked to contribute a proportionate share of the construction of the site.

The contribution requested from each contributing district and borough for the 21/22 financial year is:

- a one-off contribution of up to £127,000 in capital funding for the construction of the site
- an annual contribution of £7,500 revenue funding for the maintenance of the site

3.20 So that this council could support this proposal, officers recommended to the Executive that

- the budget of £115,000 remaining on the capital programme ((Scheme PL60(p)) be re-purposed
- a small virement of £12,000 be taken from the capital contingency fund to increase the budget to £127,000
- the provisional budget be transferred to the approved capital programme. As the budget is already within the capital programme there is no additional impact on MRP in the revenue budget.

3.21 On 16 February 2020, The Executive agreed these recommendations.

3.22 The transit site will be managed by the SCC Gypsy and Traveller Liaison Team.

4. Key Risks

4.1 Unauthorised Encampments in the borough create community concern and unrest. We have seen since 2018 a variety of community responses to Unauthorised Encampments that range from tolerance to extreme hostility and negativity within local community and resident groups. This is particularly seen via the increased use of Social Media. However, the Police and local authorities must respond to U/Es within a legal framework that considers the welfare and human rights of the occupants.

4.2 Local residents do perceive the local authority and local Police as having mute impact on U/Es. The Surrey Leaders Group hope that development of a transit site will help alleviate these perceptions. However, the development of a transit site does depend on key remediation works by SCC and a significant financial contribution from districts and boroughs. GBC has assigned within the budget for 21/22 our financial contribution.

4.3 Expectations must be realistic around what one transit site can deliver. 10 pitches will not be enough to solve all problems around U/Es in the county during peak

season. The local authority enforcement process via Section 77 and Section 78 CJPOA will no doubt still be the driving protocol for U/Es in the borough.

- 4.4 A joint protocol of how the transit site will be managed by SCC and the Police is yet to be developed but it is assumed it will follow the same terms as seen in neighbouring counties.

5. Financial Implications

- 5.1 GBC will contribute £127,000 in capital funding for the construction of the site and an annual contribution of £7,500 revenue funding for the maintenance of the site.

6. Legal Implications

- 6.1 There are no specific legal implications arising from the setting up of a transit site within the County. The legal implications relating to removal of unauthorised encampments are referred to in the body of the report.

7. Human Resource Implications

- 7.1 There are no Human Resource Implications. JET will continue to manage the U/E protocol on GBC land and liaise with Surrey Police as to the legislation required for enforcement.

8 Equality and Diversity Implications

- 8.1 Public authorities are required to have due regard to the aims of the Public Sector Equality Duty (Equality Act 2010) when making decisions and setting policies.

GBC unauthorised encampment protocols require consideration of protected characteristics of the individuals involved, such as Gypsy and traveller status and disabilities and are therefore compliant with the Equality Act 2010.

- 8.2 Surrey County Council as part of the process in creating a transit site will undertake all the relevant assessments to ensure their statutory duty under section 149 of the Equality Act 2010 is fulfilled.

- 8.3 There are therefore no direct implications for this Council arising from the establishment of a transit site.

9. Climate Change/Sustainability Implications

- 9.1 Unauthorised Encampments in some cases create issues around waste as well as the public health of the occupants on site. Our protocol aims to support occupants of U/Es as well as local residents with these issues.

- 9.2 It is hoped that the creation of a transit site will help alleviate some of the pressures around environmental impact of U/Es across the borough.

10. Suggested issues for overview and scrutiny

- Are there any comments from the committee about Unauthorised Encampments on GBC owned land?
- Are there any comments on the proposed transit site in Surrey?

11 Conclusion

- 11.1 Unauthorised Encampments are managed well by the JET team and an efficient procedure is in place to manage encampments that occur on GBC land. The process under Section 77/78 CJPOA is normally used and is completed on average within 10 working days. However, there is no doubt that U/Es cause considerable distress to many in the local community and the Section 61 Police powers which can enable a quicker response to an encampment are not executed often.

This council supports the Surrey Leaders Group proposal that a transit site within the county – although not the cure to all issues around unauthorised encampments – would be of significant help in managing U/Es due to it providing the police with extra powers under Section 62A of the Criminal Justice and Public Order Act and has agreed to a £127,000 capital contribution towards the construction of the site and an annual revenue contribution of £7,500 for the maintenance of the site.

12. Background Papers

None

13. Appendices

Appendix 1: Section 77 and Section 78 Criminal Justice and Public Order Act

Appendix 2: Section 61 Criminal Justice and Public Order Act

Appendix 3: Section 62a Criminal Justice and Public Order Act

Appendix 4: JET Unauthorised Encampment logbook

Appendix 5: Appeal Decision Bromley vs Persons Unknown



Criminal Justice and Public Order Act 1994

77 Power of local authority to direct unauthorised campers to leave land.

(1) If it appears to a local authority that persons are for the time being residing in a vehicle or vehicles within that authority's area—

- (a) on any land forming part of a highway;
- (b) on any other unoccupied land; or
- (c) on any occupied land without the consent of the occupier,

the authority may give a direction that those persons and any others with them are to leave the land and remove the vehicle or vehicles and any other property they have with them on the land.

(2) Notice of a direction under subsection (1) must be served on the persons to whom the direction applies, but it shall be sufficient for this purpose for the direction to specify the land and (except where the direction applies to only one person) to be addressed to all occupants of the vehicles on the land, without naming them.

(3) If a person knowing that a direction under subsection (1) above has been given which applies to him—

- (a) fails, as soon as practicable, to leave the land or remove from the land any vehicle or other property which is the subject of the direction, or
- (b) having removed any such vehicle or property again enters the land with a vehicle within the period of three months beginning with the day on which the direction was given,

he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) A direction under subsection (1) operates to require persons who re-enter the land within the said period with vehicles or other property to leave and remove the vehicles or other property as it operates in relation to the persons and vehicles or other property on the land when the direction was given.

(5) In proceedings for an offence under this section it is a defence for the accused to show that his failure to leave or to remove the vehicle or other property as soon as

practicable or his re-entry with a vehicle was due to illness, mechanical breakdown or other immediate emergency.

(6) In this section—

- “land” means land in the open air;
- “local authority” means—
 - (a)
in Greater London, a London borough or the Common Council of the City of London;
 - (b)
in England outside Greater London, a county council, a district council or the Council of the Isles of Scilly;
 - (c)
in Wales, a county council or a county borough council;
- “occupier person” entitled to possession of the land by virtue of an estate or interest held by him;
- “vehicle” includes—
 - (a)
any vehicle, whether or not it is in a fit state for use on roads, and includes anybody, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle; and
 - (b)
a caravan as defined in section 29(1) of the **M1**Caravan Sites and Control of Development Act 1960;and a person may be regarded for the purposes of this section as residing on any land notwithstanding that he has a home elsewhere.

(7) Until 1st April 1996, in this section “local authority” means, in Wales, a county council or a district council.

78 Orders for removal of persons and their vehicles unlawfully on land.

(1) A magistrates’ court may, on a complaint made by a local authority, if satisfied that persons and vehicles in which they are residing are present on land within that authority’s area in contravention of a direction given under section 77, make an order

requiring the removal of any vehicle or other property which is so present on the land and any person residing in it.

(2) An order under this section may authorise the local authority to take such steps as are reasonably necessary to ensure that the order is complied with and, in particular, may authorise the authority, by its officers and servants—

(a) to enter upon the land specified in the order; and

(b) to take, in relation to any vehicle or property to be removed in pursuance of the order, such steps for securing entry and rendering it suitable for removal as may be so specified.

(3) The local authority shall not enter upon any occupied land unless they have given to the owner and occupier at least 24 hours notice of their intention to do so, or unless after reasonable inquiries they are unable to ascertain their names and addresses.

(4) A person who wilfully obstructs any person in the exercise of any power conferred on him by an order under this section commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) Where a complaint is made under this section, a summons issued by the court requiring the person or persons to whom it is directed to appear before the court to answer to the complaint may be directed—

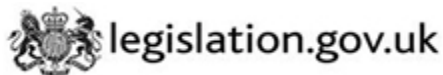
(a) to the occupant of a particular vehicle on the land in question; or

(b) to all occupants of vehicles on the land in question, without naming him or them.

(6) Section 55(2) of the **M1**Magistrates' Courts Act 1980 (warrant for arrest of defendant failing to appear) does not apply to proceedings on a complaint made under this section.

(7) Section 77(6) of this Act applies also for the interpretation of this section.

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Criminal Justice and Public Order Act 1994

61 Power to remove trespassers on land.

(1) If the senior police officer present at the scene reasonably believes that two or more persons are trespassing on land and are present there with the common purpose of residing there for any period, that reasonable steps have been taken by or on behalf of the occupier to ask them to leave and—

(a) that any of those persons has caused damage to the land or to property on the land or used threatening, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his, or

(b) that those persons have between them six or more vehicles on the land,

he may direct those persons, or any of them, to leave the land and to remove any vehicles or other property they have with them on the land.

(2) Where the persons in question are reasonably believed by the senior police officer to be persons who were not originally trespassers but have become trespassers on the land, the officer must reasonably believe that the other conditions specified in subsection (1) are satisfied after those persons became trespassers before he can exercise the power conferred by that subsection.

(3) A direction under subsection (1) above, if not communicated to the persons referred to in subsection (1) by the police officer giving the direction, may be communicated to them by any constable at the scene.

(4) If a person knowing that a direction under subsection (1) above has been given which applies to him—

(a) fails to leave the land as soon as reasonably practicable, or

(b) having left again enters the land as a trespasser within the period of three months beginning with the day on which the direction was given,

he commits an offence and is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale, or both.

[F1(4A)] Where, as respects Scotland, the reason why these persons have become trespassers is that they have ceased to be entitled to exercise access rights by virtue of—

(a) their having formed the common purpose mentioned in subsection (1) above; or

(b) one or more of the conditions specified in paragraphs (a) and (b) of that subsection having been satisfied,

the circumstances constituting that reason shall be treated, for the purposes of subsection (4) above, as having also occurred after these persons became trespassers.

(4B) In subsection (4A) above “ access rights ” has the meaning given by the Land Reform (Scotland) Act 2003 (asp 2).]

F2(5).

(6) In proceedings for an offence under this section it is a defence for the accused to show—

(a) that he was not trespassing on the land, or

(b) that he had a reasonable excuse for failing to leave the land as soon as reasonably practicable or, as the case may be, for again entering the land as a trespasser.

(7) In its application in England and Wales to common land this section has effect as if in the preceding subsections of it—

(a) references to trespassing or trespassers were references to acts and persons doing acts which constitute either a trespass as against the occupier or an infringement of the commoners’ rights; and

(b) references to “the occupier” included the commoners or any of them or, in the case of common land to which the public has access, the local authority as well as any commoner.

(8) Subsection (7) above does not—

(a) require action by more than one occupier; or

(b) constitute persons trespassers as against any commoner or the local authority if they are permitted to be there by the other occupier.

(9) In this section—

• **[F3** “common land” means—

(a)

land registered as common land in a register of common land kept under Part 1 of the Commons Act 2006; and

(b)

land to which Part 1 of that Act does not apply and which is subject to rights of common as defined in that Act;]

• “commoner” means a person with rights of common as defined in section 22 of the **M1** Commons Registration Act 1965;

- “land” does not include—
 - (a) buildings other than—
 - (i) agricultural buildings within the meaning of, in England and Wales, paragraphs 3 to 8 of Schedule 5 to the **M2** Local Government Finance Act 1988 or, in Scotland, section 7(2) of the **M3** Valuation and Rating (Scotland) Act 1956, or
 - (ii) scheduled monuments within the meaning of the **M4** Ancient Monuments and Archaeological Areas Act 1979;
 - (b) land forming part of—
 - (i) a highway unless **[F4** it is a footpath, bridleway or byway open to all traffic within the meaning of Part III of the Wildlife and Countryside Act 1981, is a restricted byway within the meaning of Part II of the Countryside and Rights of Way Act 2000] or is a cycle track under the **M5** Highways Act 1980 or the **M6** Cycle Tracks Act 1984; or
 - (ii) a road within the meaning of the **M7** Roads (Scotland) Act 1984 unless it falls within the definitions in section 151(2)(a)(ii) or (b) (footpaths and cycle tracks) of that Act or is a bridleway within the meaning of section 47 of the **M8** Countryside (Scotland) Act 1967;
- “the local authority”, in relation to common land, means any local authority which has powers in relation to the land under section 9 of the Commons Registration Act 1965;
- “occupier” (and in subsection (8) “the other occupier”) means—
 - (a) in England and Wales, the person entitled to possession of the land by virtue of an estate or interest held by him; and
 - (b) in Scotland, the person lawfully entitled to natural possession of the land;
- “property”, in relation to damage to property on land, means—
 - (a) in England and Wales, property within the meaning of section 10(1) of the **M9** Criminal Damage Act 1971; and
 - (b) in Scotland, either—
 - (i) heritable property other than land; or
 - (ii) corporeal moveable property,

and “damage” includes the deposit of any substance capable of polluting the land;
- “trespass” means, in the application of this section—
 - (a) in England and Wales, subject to the extensions effected by subsection (7) above, trespass as against the occupier of the land;

(b)

in Scotland, entering, or as the case may be remaining on, land without lawful authority and without the occupier's consent; and

- "trespassing" and "trespasser" shall be construed accordingly;
- "vehicle" includes—

(a) any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle; and

(b) a caravan as defined in section 29(1) of the **M10** Caravan Sites and Control of Development Act 1960;

and a person may be regarded for the purposes of this section as having a purpose of residing in a place notwithstanding that he has a home elsewhere.

Textual Amendments

F1S 61(4A)(4B) inserted (S.) (9.2.2005) by [Land Reform \(Scotland\) Act 2003 \(asp 2\)](#), ss. 99, 100(3)(4), **Sch. 2 para. 11** (with s. 100(2)); S.S.I. 2005/17, **art. 2(b)**

F2S. 61(5) repealed (E.W.) (1.1.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 111, 174, 178, Sch. 7 para. 31(2), **Sch. 17**; S.I. 2005/3495, {art. 2(1)(u)(xxxvi)} (subject to art. 2)

F3Words in s. 61(9) substituted (31.10.2011 for E.) by [Commons Act 2006 \(c. 26\)](#), s. 56, **Sch. 5 para. 5** (with s. 60); S.I. 2011/2460, **art. 2(a)(i)** (with art. 3)

F4S. 61(9): Words in para. (b)(i) of the definition of "land" substituted (2.5.2006 for E and 11.5.2006 for W., otherwise prosp.) by [2000 c. 37](#), ss. 51, 103, Sch. 5 Pt. 2 para. 17; S.I. 2006/1172, **art. 2(g)(iv)**; S.I. 2006/1279, **art. 2(e)(g)**

Marginal Citations

M11965 c. 64.

M21988 c. 41.

M31956 c. 60.

M41979 c. 46.

M51980 c. 66.

M61984 c. 38.

M71984 c. 54.

M81967 c. 86.

M91971 c. 48.

M101960 c. 62.

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Criminal Justice and Public Order Act 1994

62A Power to remove trespassers: alternative site available

(1) If the senior police officer present at a scene reasonably believes that the conditions in subsection (2) are satisfied in relation to a person and land, he may direct the person—

(a) to leave the land;

(b) to remove any vehicle and other property he has with him on the land.

(2) The conditions are—

(a) that the person and one or more others (“the trespassers”) are trespassing on the land;

(b) that the trespassers have between them at least one vehicle on the land;

(c) that the trespassers are present on the land with the common purpose of residing there for any period;

(d) if it appears to the officer that the person has one or more caravans in his possession or under his control on the land, that there is a suitable pitch on a relevant caravan site for that caravan or each of those caravans;

(e) that the occupier of the land or a person acting on his behalf has asked the police to remove the trespassers from the land.

(3) A direction under subsection (1) may be communicated to the person to whom it applies by any constable at the scene.

(4) Subsection (5) applies if—

(a) a police officer proposes to give a direction under subsection (1) in relation to a person and land, and

(b) it appears to him that the person has one or more caravans in his possession or under his control on the land.

(5) The officer must consult every local authority within whose area the land is situated as to whether there is a suitable pitch for the caravan or each of the caravans on a relevant caravan site which is situated in the local authority’s area.

(6) In this section—

- “ caravan ” and “ caravan site ” have the same meanings as in Part 1 of the Caravan Sites and Control of Development Act 1960;
- “ relevant caravan site ” means a caravan site which is—
 - (a)
situated in the area of a local authority within whose area the land is situated, and
 - (b)
managed by a relevant site manager;
- “ relevant site manager ” means—
 - (a)
a local authority within whose area the land is situated;
 - (aa)
a private registered provider of social housing;
 - (b)
a registered social landlord;
- “ registered social landlord ” means a body registered as a social landlord under Chapter 1 of Part 1 of the Housing Act 1996.

(7) The Secretary of State may by order amend the definition of “relevant site manager” in subsection (6) by adding a person or description of person.

(8) An order under subsection (7) must be made by statutory instrument and is subject to annulment in pursuance of a resolution of either House of Parliament.

UNAUTHORISED ENCAMPMENT

LOGBOOK

This document is classified as Sensitive. All entries should be in accordance with the Criminal Procedure & Investigations Act 1966 and therefore may be disclosable in legal proceedings. However, hearsay evidence should be recorded where appropriate to assist with decision-making and accountability.

ARRIVAL	Departure
DATE...../...../.....	Date...../...../.....

LOCATION.....
.....

Number of caravans	Number of vehicles
---------------------------	---------------------------

GBC Senior Officer (Key decision-making officer managing incursion & SMT link)

Name	Tel Contact
------	-------------

GBC OIC. (Any changes to OIC to be recorded in decision log)

Name	Tel contact
------	-------------

GBC Land Manager & Service Provider. GBC Service

Name	Tel Contact
------	-------------

Legal services.

- **Bridget Peplow . Senior Solicitor 01483 444076**
- **Raj Devandran Solicitor 01483 444060**
- **Gcobisa Bonani Solicitor 01483 444852**

Encampment Log Contents

- Front Sheet
- Site Summary sheet
- Maps of area and one showing caravan locations
- Vehicle/Caravan Summary
- Welfare Sheet
- Main Event log sheets
- Record of Incorporation in Decision Making Process (Human Rights Act 1998)
- Section 77 Notice of direction to leave - signed
- Certificate of service – showing above has been served – signed
- Summons on application for Sect 78 order – signed
- Certificate of service – showing above has been served – signed
- Sect 78 order to remove vehicles unlawfully on land – signed
- Risk Assessment
- Resourcing list – breakdown of hours etc
- Any pictures or email printouts relevant to the eviction but not all of them
- De-brief of the event after the event has been completed to discuss any issues raised
- A record of any complaints including:
 - local residents and members of the public
 - local businesses detailing the effects on their business
 - any danger to the highway caused by vehicles
 - public health issues such as excrement let on public spaces
 - rubbish left behind and fly-tipping
 - anti-social behaviour/intimidation by travellers and their dogs
 - damage to land
 - impact on the use of the land by members of the public

Site Summary

(INCLUDING LOCATION, LAYOUT, DESCRIPTION AND PROXIMITY TO LOCAL AMENITIES ETC, FORCED ENTRY, DAMAGE ETC)

Site Summary continued

(INCLUDING LOCATION, LAYOUT, DESCRIPTION AND PROXIMITY TO LOCAL AMENITIES ETC)

Incursion Site map show locations of vehicles /caravans/initial observations. Hand drawn

Attach CAD /Google/O.S./ GBC iShares GIS maps here

POLICE

It is of the utmost importance that there exists a strong partnership and unrestricted flow of information between Guildford Borough Council and Surrey Police. Multi Agency Information Sharing Partnership and Surrey Crime & Disorder Information Sharing Partnership allows for the free exchange of relevant information with the common aim of a successful resolution to the incursion and any subsequent related issues.

Please refer to the Surrey County Council & Surrey Police Traveller incursion memorandum of understanding outlining specific roles and responsibilities and expectations within the partnership.

ICAD/

NICHE/

- **Police Sgt OIC** Name & Shoulder Number
.....
- **Mobile contact of SPOC (Required)**
- **Alternative Police Contact (Not 101)** It is expected the Police Sgt OIC will change several times during procedure, but it is imperative GBC officers can contact an informed Police Officer at short notice and visa versa.
.....
- **Behaviour Contract completed Date& Time**
- **GBC & Police engagement & communication lines confirmed**
YES / NO (If not please give reason)

Neighbourhood Police Contacts offered

Vehicle/Caravan Summary

(INCLUDING INDEXES OF VEHICLES)

Index	Make	Caravan/car/ truck	Comments	Vehicle ref no
ABC 123	Springer	Caravan		Veh 1
ABC 123	FORD	Truck	Flatbed	VEH 1
		Page 71		

Welfare check and subsequent authority to continue with incursion procedure and record keeping

- Signed original welfare, decision authority to proceed and Human Rights forms to be submitted to GBC Legal services *immediately* following completion.
- A copy of each of these documents will be attached to the logbook and marked as “Copy “for reference.
- Subsequent documents produced during legal process will be attached in the relevant place within the log.
- Additional Documents will be marked as “Original” or “Copy” and where marked “Copy” the location of “Original” marked thereon (i.e. Held by legal)

Unauthorised Encampment
Welfare assessment

Site Visit / Welfare Check undertaken by -

Date:day /...../..... Time: hrs

Location:

Landowner/manager.....

SCC	GBC	Parish	Private
-----	-----	--------	---------

The below information should be as accurate and complete as possible. The information is accountable and where non engagement prevents accurate information this should not preclude accurate and informed observations. This may include third party information from Police, SCC etc. Any supporting information to be recorded in the additional information (Below)

Date of Arrival	
Anticipated length of stay	
Are all the caravans travelling together?	
Why are the Travellers here/where have the come from?	
Is there a connection to Guildford?	
What is the current accommodation situation when not in Guildford?	
Number of adults on site	
Number of children on site	
Maternity issues declared or observed	

Are any adults vulnerable or unwell	
Names if possible and condition	
Are any children vulnerable or unwell?	
Names if possible and condition. (Full explanation or assessment in comments box	
Are the children attending school?	
If so – where?	
Number of caravans	
Number of cars/lorries/vans	
Total number of vehicles	
Details of any animals on site	
Do any animals need assistance from RSPCA or a Vet?	
If yes – provide detail	
Location of nearest A&E and advice on access to local NHS facilities. NHS 111 or 999	

Encampments Conditions	
Water	
Toilet Facilities	
Domestic Waste disposal	
Access to site. Public road/Across footpath/direct entry	
Other ...	

Additional comments

Signature

Time/date completion.

Time/date presented for decision

Officers attending assessment

Record of Incorporation in Decision Making Process

HUMAN RIGHTS ACT AND CORONAVIRUS ACT 2020

STATEMENT

I certify that I have considered the Human Rights of the Travellers presently located at

.....

In approaching the matter, I have sought to have regard to their human rights (balanced with the human rights of others) and I have sought:

- i) To act fairly, openly and promptly as possible;
- ii) To explain our procedures and requirements clearly in a language which the Travellers understood;
- iii) To consider all matters raised by the Travellers;
- iv) To consider any representations on behalf of the Travellers;
- v) To explain the reasons for our decisions.

I claim to be entitled to seek restriction of the human rights of the Travellers both on the basis that there is no human right of unlawful trespass and that I am acting in accordance with the law and further in accordance with the following stated qualifications, namely:

- i) Public safety; and / or
- ii) The prevention of disorder or crime; and / or
- iii) The protection of the rights and freedoms of others.
- iv) To comply with Corporate & legal responsibilities and advice contained in the Coronavirus Act 2020

I have approached the question of the discrimination and I am acting on the merits of the matter without discrimination.

On the matter of protection of possessions, the action which the council is taking is in the public interest and under, and in accordance with the law.

..... Print Name

Authorising Officer

Dated this day of 20

Decision
Having considered the welfare and assessment of the encampment and that also of the local community I authorise the below actions

Allow a period of toleration and remain in place. No action but reviewed in (timescale)	Days
*** If Applicable **** Subject to full acceptance of the conditions of the code of conduct for a period of (time scale, reviewable)	Days
Consult or seek further information	
Serve Direction to leave (Sec 77. Criminal Justice and Public Order Act 1994)	
Seek Order for removal if necessary (Sec 78. Criminal Justice and Public Order Act 1994)	
Request a further site visit report	Record reasons in Authorising Officers comments.

Authorising Officers Comments

The Human Rights Act has been taken into consideration

Signed..... Print Name.....

Authorising Officer

Date.....

Event and decision log.

The entries in this log are disclosable. The log is a diary of events and record of operational decisions. Entries not made by the GBC OIC should be signed by the author to ensure accountability.

<u>Date</u>	<u>Time</u>	<u>Event</u>

Page 3 Event and decision log.

The entries in this log are disclosable. The log is a diary of events and record of operational decisions. Entries not made by the GBC OIC should be signed by the author to ensure accountability.

<u>Date</u>	<u>Time</u>	<u>Event</u>

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<u>Date</u>	<u>Time</u>	<u>Event</u>

Page 7 **Event and decision log.**

The entries in this log are disclosable. The log is a diary of events and record of operational decisions. Entries not made by the GBC OIC should be signed by the author to ensure accountability.

<u>Date</u>	<u>Time</u>	<u>Event</u>

Page 8 Event and decision log.

The entries in this log are disclosable. The log is a diary of events and record of operational decisions. Entries not made by the GBC OIC should be signed by the author to ensure accountability

**Attach a signed
original/copy
Section 77
Criminal Justice &
Public Order Act
Notice of direction to
leave.**

**Ensure the log is updated by the person attaching
the notice. If document is a copy indicate
location of original (Eg Solicitor)**

Certificate of Service

I, _____, of Guildford Borough Council, Millmead House, Millmead, Guildford, Surrey GU2 4BB hereby certify that at _____ on the _____ day of _____ 2020, I served the occupiers of vehicles on or at land known as ...

in Surrey with the Direction of which the attached is a true copy, by displaying the said Direction on the land in question in manner designed to ensure that it is likely to be seen by any person camping on the land as per s.79(2) and (3) Criminal Justice and Public Order Act 1994

and/or

serving said Direction on the occupiers personally

Dated the _____ day of _____ 2020

Signed

**Attach original or
copy of complaint
and Summons for
application for
Sect 78 order**

**Ensure the log is updated by the
person attaching the notice. If
document is a copy indicate location
of original (Eg Solicitor)**

Certificate of Service

I, _____ of Guildford Borough Council, Millmead House, Millmead, Guildford, Surrey GU2 4BB hereby certify that

at _____ hrs on _____ 2020

I served the occupiers of vehicles on or at land known as ,

Guildford, Surrey with the Summons of which this is a true copy, by fixing a copy of it in a prominent place to every vehicle on the land and displaying it on the land in question in a manner designed to ensure that it is likely to be seen by any person camping on the land as per s.79(2) and (3) Criminal Justice and Public Order Act 1994

and/or

serving the said Summons on the occupiers personally

Dated the _____ day of _____ 2020

Signed

Attach

**Sec 78. Criminal Justice & Public
Order Act 1994,**

ORDER ON COMPLAINT

Authorising removal of vehicles

**The receipt of this document by
GBC OIC should be logged. This
receipt will confirm proposed time
& date for proposed eviction and
this decision will be logged**

**This document is not for service on the
persons concerned, but copies should be
available upon request.**

Bailiffs will require copy of this order.

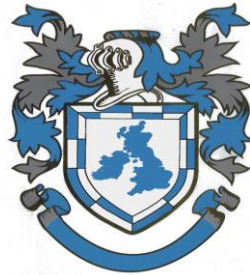
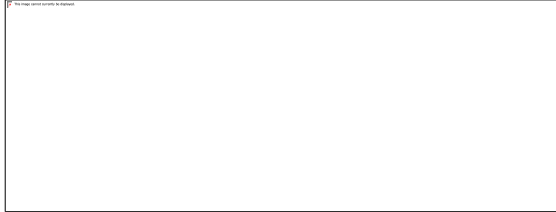
Risk assessment

UNAUTHORISED GYPSY AND TRAVELLER ENCAMPMENT ON COUNCIL OWNED LAND RISK ASSESSMENT					
Itinerant Travellers		Assessment Date:		Review Date:	
Hazard and Risk	People at risk	Our Controls	Our Future Controls	Risk Level	Target date & by whom
Violence Aggressive behaviour Intimidation Firearms / offensive weapons Obstruction Limited capacity for access and emergency exit Exposure to criminal activity Damage to personal property/vehicle Dogs trained to attack	Officers acting on behalf of service responsible for the land	(1) Staff training on Protocol for visiting Gypsy and Traveller encampments (2) Contact Guildford Borough Neighbourhood Police to be aware of the current police stance and any internal intelligence prior to site visit. A SITE-SPECIFIC RISK ASSESSMENT SHOULD BE COMPLETED FOR EACH ENCAMPMENT (3) Two officers to attend the site to ensure the welfare check is done in accordance with government guidance and GBC corporate procedure. (4) Line manager of the officers attending the site is to be made aware of the site visit/expected time scale and mobile phone numbers of both staff. (5) Staff must secure vehicles whilst on site and whenever possible park off site. (6) Staff should not enter a mobile home and conduct all enquiries outside. (7) The Out of Hours Service is not to visit any unauthorised encampment. (8) Officers should be able to use pool cars to visit the site if they wish.	(1) Ensure staff on the front line receive regular refresher training on Gypsy and Traveller encampments as well as handling potentially difficult situations (2) Make mobile phones and personal alarms available to all staff (3) Ensure routine use of in our board and communication with line managers when onsite visits. (4) Ensure the corporate procedure is followed to avoid too many site visits. (5) Review risk assessment every twelve months	High	

Risk assessment needs immediate review 25/02/2019 S. Craggs JET T/L

Bailiffs

GBC preferred Bailiffs are ...



- **Managing Director Marc Mooney**
- **16 Bourne Road, Bexley, Kent, DA5 1LU.**

- **DDI: 01322 906 302**
- **T: 0844 561 1250 / 0844 561 1258**
- www.countyenforcement.co.uk

Method. The point at which GBC contacts County Enforcement Group to give instructions is fluid. CEG will take initial forewarning and offer dates to which they can supply staff. GBC SMT are likely to direct strict timelines and this timeline, governed by legal procedure will dictate a likely eviction date. The GBC OIC must coordinate a mutual date with Legal services and the issuing of the SEC 78 Order, SMT timelines and availability of CEG.

GBC OIC must be aware that a cost is incurred when CEG are instructed and the days on standby when leading to an eviction. There must be close monitoring of the site location to facilitate earliest cancellation.

It is advised the GBC OIC contacts Marc Moony direct by telephone to initiate proceedings followed by email. This is to ensure Marc & CEG are appreciated of any specifics regarding the incursion and discussed followed by confirmatory email. Cancellations will be by telephone at the earliest opportunity, followed by confirmatory email.

Invoicing is by existing arrangements.

All dialogue with CEG to be recorded in the Event /Decision log and signed by author.

<u>Resource</u>	<u>Dept</u>	<u>Hours</u>	<u>Estimated Cost</u>	<u>Actual Cost</u>
Jet attendance	Operational Services			
Legal Services	Legal services			
Land manager services				
Bailiffs attendance/standby	County Enforcement			
Site repatriation				
Criminal Damage repairs				
Waste/Fly tip removal				

Community Impact

During the time of the incursion there may well be an impact on the local community. It is vital that evidence of the impact is recorded and reviewed by the relevant authority/partner organisation.

Copies of impact/incidents or any other relevant information should be attached to the log and made available for review by any proper authority.

To this end a guidance chart below gives an indication as to required events/impact.

- A record of any complaints including:
 - local residents and members of the public
 - local businesses detailing the effects on their business
 - any danger to the highway caused by vehicles
 - public health issues such as excrement let on public spaces
 - rubbish left behind and fly-tipping
 - anti-social behaviour/intimidation by travellers and their dogs
 - damage to land
 - impact on the use of the land by members of the public

Location of original file



Neutral Citation Number: [2020] EWCA Civ 12

Case No: A2/2019/1328

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM
THE HIGH COURT OF JUSTICE
QUEEN’S BENCH DIVISION
Ms Leigh-Ann Mulcahy QC
(Sitting as a Deputy High Court Judge)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/01/2020

Before:

SENIOR PRESIDENT OF TRIBUNALS
LORD JUSTICE COULSON
and
LORD JUSTICE HADDON-CAVE

Between:

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BROMLEY	<u>Appellant</u>
- and -	
PERSONS UNKNOWN	<u>Respondents</u>
- and -	
LONDON GYPSIES AND TRAVELLERS	<u>First</u>
- and -	<u>Intervener</u>
THE LONDON BOROUGHS OF MERTON AND SUTTON AND THE ROYAL BOROUGH OF KINGSTON UPON THAMES	<u>Second</u>
- and -	<u>Intervener</u>
LIBERTY	<u>Third</u>
- and -	<u>Intervener</u>
HARLOW DISTRICT COUNCIL, THE LONDON BOROUGH OF BARKING AND DAGENHAM, THE LONDON BOROUGH OF REDBRIDGE, AND THURROCK COUNCIL	<u>Fourth</u>
	<u>Intervener</u>

**Mr Richard Kimblin QC and Mr Jack Smyth (instructed by London Borough of Bromley
Corporate Services) for the Appellant**

The Respondents did not appear and were not represented

Agenda item number: 7

Mr Mark Wilper QC and Ms Tessa Buchanan (instructed by **The Community Law Partnership**) for the **First Intervener**

Mr Stephen Woolf (instructed by **South London Legal Partnership**) for the **Second Intervener**

Mr Jude Bunting (written submissions only) for the **Third Intervener**

Ms Caroline Bolton (written submissions only) for the **Fourth Intervener**

Hearing Date: 3 December 2019

Judgment

LORD JUSTICE COULSON:

1. INTRODUCTION

1. This is an appeal against the refusal by the High Court to grant what the judge called “a *de facto* boroughwide prohibition of encampment and upon entry/occupation...in relation to all accessible public spaces in Bromley except cemeteries and highways”. Although the stated target of the injunction was “persons unknown”, it was common ground that the injunction was aimed squarely at the Gypsy and Traveller community. The points arising from the appeal itself are of relatively narrow compass, but all parties were anxious that, in the light of the recent spate of similar cases, this court should provide some guidance as to how local authorities might address this issue in future.
2. Numerous similar injunctions have been granted by the High Court in recent years and months. We refer to a number of those judgments below. One common feature of those cases was that the Gypsy and Traveller community was not represented before the court at either the interim or final hearing. Although that did not stop the judges concerned looking very carefully at the orders which they were being asked to make, I do not doubt that, in an adversarial system, there can be no substitute for reasoned submissions from those against whom an injunction is directed.
3. This, therefore, was the first case involving an injunction in which the Gypsy and Traveller community were represented before the High Court. As a result of their success in discharging the interim injunction, it is also the first such case to be argued out at appellate level. I would wish to express my thanks to all counsel, but in particular to Mr Willers QC and Ms Buchanan (and their solicitors, Community Law Partnership), who have acted substantially *pro bono* throughout and have put the points on behalf of the First Intervener and the Gypsy and Traveller community with clarity and concision.

2. THE FACTUAL BACKGROUND

4. Romany Gypsies have been in Britain since at least the 16th century, and Irish Travellers since at least the 19th century. They are a particularly vulnerable minority. They constitute separate ethnic groups protected as minorities under the Equality Act 2010 (see *Moore and Coates v Secretary of State for Communities and Local Government* [2015] EWHC 44 (Admin)), and are noted as experiencing some of the worst outcomes of any minority across a broad range of social indicators (see, for example, Department for Communities and Local Government, *Progress report by the ministerial working group on tackling inequalities experienced by Gypsies and Travellers*, 2012, and Equality and Human Rights Commission, *England’s most disadvantaged groups: Gypsies, Travellers and Roma*).
5. A nomadic lifestyle is an integral part of Gypsy and Traveller tradition and culture. While the majority of Gypsies and Travellers now reside in conventional housing, a significant number (perhaps around 25%, according to the 2011 UK Census) live in caravans in accordance with their traditional way of life. The centrality of the nomadic lifestyle to the Gypsy and Traveller identity has been recognised by the European Court. In *Chapman v United Kingdom* (2001) 33 EHRR 18, the court held at [73]:

“The Court considers that the applicant's occupation of her caravan is an integral part of her ethnic identity as a Gypsy, reflecting the long

tradition of that minority of following a travelling lifestyle. This is the case even though, under the pressure of development and diverse policies or by their own choice, many Gypsies no longer live a wholly nomadic existence and increasingly settle for long periods in one place in order to facilitate, for example, the education of their children. Measures affecting the applicant's stationing of her caravans therefore have an impact going beyond the right to respect for her home. They also affect her ability to maintain her identity as a Gypsy and to lead her private and family life in accordance with that tradition.”

6. In the UK, there is a long-standing and serious shortage of sites for Gypsies and Travellers. A briefing by the Race Equality Foundation found that Gypsies and Travellers were 7.5 times more likely than White British households to suffer from housing deprivation (Race Equality Foundation, *Ethnic Disadvantage in the Housing Market: Evidence from the 2011 census*, April 2015). The lack of suitable and secure accommodation includes not just permanent sites but also transit sites. This lack of housing inevitably forces many Gypsies and Travellers onto unauthorised encampments.
7. The evidence is that Gypsies and Travellers had a particular association with the appellant, whose own Accommodation Assessment of November 2016 (“the Accommodation Assessment”) said at paragraph 1.3 that Gypsies and Travellers had been stopping in Bromley for many years. Traditionally they had done so:

“... whilst working in and travelling through the Borough. Historically, Gypsies moved between farms in Bromley and Kent picking fruit and vegetables in the summer, hops and potatoes in early autumn. [However] as traditional forms of work diminished, travelling patterns changed both nationally and locally. More recently Irish Travellers have also visited the Borough.”
8. The evidence was that Bromley had also had a history of unauthorised encampments, albeit in relatively small numbers. In 2016 there were eleven such unauthorised encampments; in 2017 there were twelve; and in 2018, prior to the application for an interim injunction in the middle of August 2018, there were again twelve. The average length of stay was between five days and two weeks.
9. There are no transit sites to cater for this need, whether in Bromley or anywhere else in Greater London. The court was told that the closest transit site is in South Mimms in Hertfordshire. As to permanent pitches in Bromley, in 2016 there was a shortage of between ten to fourteen pitches with a recognised need for a further six by 2021. Despite all that, Ms Slater, the appellant’s acting planning policy manager, has previously suggested that there was insufficient need for a transit site in Bromley.
10. In the South East, the recent spate of wide-ranging injunctions has been aimed at the Gypsy and Traveller community. This process began in 2015 with *Harlow District Council v Stokes and others* [2015] EWHC 953 (QB). The prohibition on encampments in that borough, and the subsequent perception that the injunction had been effective, led to a large number of similar injunctions in 2017-2019. Most of these injunctions, such as the injunction granted in the recent case of *London Borough of Kingston Upon Thames v Persons Unknown* [2019] EWHC 1903, as well as the interim injunction

granted in this case, did not identify any named defendants. The second and fourth interveners in this case all obtained similar injunctions following what were uncontested hearings.

11. It appears that, in total, there are now 38 of these injunctions in place nationwide. It would be unrealistic to think that their widespread use has not led to something of a feeding frenzy in this contentious area of local authority responsibility. First, these injunctions have had the effect of forcing the Gypsy and Traveller community out of those boroughs which have obtained injunctions, thereby imposing a greater strain on the resources of those boroughs or councils which have not yet applied for such an order. Secondly, they have created an understandable concern amongst those local authorities who have not yet obtained such injunctions to seek them forthwith.
12. The appellant sought and was granted an interim injunction on a without notice basis on 15 August 2018. It covered 171 sites in Bromley: 139 parks, recreation grounds or open spaces, and 32 public car parks. The 171 sites amounted to all the public spaces in the borough: they excluded only highways and cemeteries, and that seemed to be because there had not been a particular problem with incursions on those sites in the past.
13. The basis for the application has never been entirely clear. When it came before Ms Leigh-Ann Mulcahy QC, sitting as a deputy judge of the High Court (“the judge”), she commented at [23] – [24] of her judgment, that, although the appellant had said in its evidence that there had been a “sharp increase” in incursions in 2018, that was not in fact the case. The number of incursions had not increased prior to the application for an injunction, a point borne out by the fact that Ms Slater stated publicly (albeit in a slightly different context) that Bromley “did not suffer particularly from gypsy and traveller incursions”. At best it appears that, prior to the original application in August 2018, there had been an increase in the frequency with which the incursions occurred (again, see [24] of the judgment).
14. The hearing for the final injunction took place on 17 May 2019. As I have said, it was the first time that the Gypsy and Traveller community had been represented at a hearing, through the offices of the first intervener. Having considered the various arguments, the judge refused to grant the final injunction sought in respect of entry and encampments. She did grant a wide injunction in relation to fly-tipping and waste.

3. THE JUDGMENT

15. At the start of her careful *ex tempore* judgment, at [2019] EWHC 1675 (QB), the judge addressed the effect of other boroughs in London and the South East obtaining such injunctions ([6]); the fact that there were 34 injunctions nationwide ([9]); and the cumulative effect of such injunctions ([11] – [12]). At ([13] – [15]) the judge dealt with the first intervener’s argument that the granting of widespread injunctions was in danger of supplanting the existing statutory scheme, parts of which she set out. It does not appear that she reached any conclusions on that specific aspect of the case.
16. It is clear that the judge was concerned about the width of the injunction being sought and the conduct at which it was aimed. This is apparent from [16] and [17] as follows:

“16. It is important to recognise that the injunction that is being sought, and the injunctions that have been sought and granted in other cases, are not limited to preventing fly tipping, and no one, including the intervenor, is suggesting that this kind of behaviour should not be prevented by legal means if necessary. The injunctions are not specifically addressed to antisocial behaviour or criminal acts. They are focused on prohibiting (with, of course, the penal sanction of potential committal to prison if breached) anyone from setting up an encampment without permission of the local authority and the landowner and entering and/or occupying land for residential purposes, and bringing onto the land any caravans or mobile homes and bringing vehicles onto the land in question for the purpose of disposal of waste or materials.

17. Mr Smyth accepted during the course of argument that the order that he was seeking amounted, on at least a **de facto** basis, to a boroughwide exclusion save that Gypsies and Travellers could still go onto private land, cemeteries and highways which were not subject to the order. There is clearly a potential issue when one takes the cumulative effect of all the injunctions granted and potentially to be granted in future into account, as to whether Gypsies and Travellers will be prevented from exercising what is recognised in both UK equalities law and human rights law to be their right to pursue their traditional nomadic lifestyle. I am told that three-quarters of the 30,000 or so Gypsies or Travellers in London are in permanent accommodation, and on the evidence there is some provision in that regard in Bromley, albeit with a shortfall based on need, but one-quarter of that number are nomadic and travel rather than remaining in one place. Whilst there is no general entitlement to encamp or reside on public or recreational spaces and it is a matter for the planning system to ensure suitable provision is made for Gypsies and Travellers, I am told that there are no authorised transit sites available for nomadic Gypsies and Travellers anywhere in London, including Bromley, which then raises the question of where they are to go.”

17. At [18] and [19] the judge addressed a separate argument about whether the Town and Country Planning (General Permitted Development) (England) Order 2015 (“GPDO”) permitted the limited occupation of land by caravans in certain circumstances, because the first intervenor was arguing that such permitted development could not amount to a breach of planning control. As the judge noted, the appellant’s answer was to say that this issue did not affect the proposed injunction in relation to three-quarters of the sites, because those were owned outright by Bromley (and therefore covered by the separate claim in trespass). At the hearing there had been a debate about whether the appellant would be content with an injunction which carved out any permitted development rights. The judge recorded that, through counsel, the appellant had made plain that the proposal would constitute a “second rate” injunction, “and not something that the local authority would wish to have”.

18. At [20], the judge identified three issues which, she said, had not been the subject of appellate review. Those were: i) the cumulative effect of the injunctions granted

elsewhere; ii) the interrelationship between judicially created relief in the form of injunctions and the statutory scheme of enforcement laid down by Parliament; and iii) the impact of permitted development rights on the proper scope of any injunction. However, having identified those three points, the judge then went on to say at [21] that it was her role as a first instance judge to apply existing law to the claim and to the evidence. She then set out the detailed factual background to the claim at [22] – [31].

19. Having completed her review of the facts, the judge noted that the legal basis of the claim to an injunction in respect of the 171 sites was a claim for (anticipated) trespass, in relation to approximately three-quarters of them (being the sites that Bromley owned). She identified some of the relevant authorities at [33] – [38]. She dealt with the particular requirements of an application for an injunction against persons unknown at [39] – [42]. She addressed the issue of permitted development rights which related both to the sites owned by the local authority and the approximately one-quarter of the sites which were not. She then referred at [46] – [47] to the appellant’s public sector equality duty (“PSED”) and Article 8 of the European Convention on Human Rights (“the Convention”).
20. When turning to apply the relevant principles to the facts, the judge began at [48] with a consideration of the requirements of a *quia timet* injunction against persons unknown. She concluded that it was impossible in this case to name the persons who were likely to commit the conduct which it was sought to restrain. Similarly, at [49] the judge was satisfied that it was possible to give effective notice of the injunction to those affected by it. Finally, on this aspect of the application, the judge concluded at [51] that there was “a strong probability” that, unless restrained by an injunction, the defendants would act in breach of the appellant’s rights.
21. As to the likelihood and degree of potential harm required for a *quia timet* injunction, the judge’s conclusions were as follows:

“54. The key question is the second part of the test which has been expressed slightly differently in different cases. In *Vastint Leeds BV v Persons Unknown* [2018] EWHC 2456 (Ch) it was expressed as follows:

‘Secondly, if the defendant did an act in contravention of the claimant’s rights, would the harm resulting be so grave and irreparable that, notwithstanding the grant of an immediate interlocutory injunction (at the time of actual infringement of the claimant’s rights) to restrain further occurrence of the acts complained of, a remedy of damages would be inadequate?’

55. There was some disagreement between counsel as to whether irreparable harm was actually required as a matter of law by the authorities. Clearly, substantial harm has been caused which is sufficient, in my view, to amount to grave harm to local residents as a result of their inability to access and use public and recreational areas they are entitled to access and use [news] and the environmental impact in the respects I have already outlined, together with the clean-up costs which are borne by the Bromley taxpayer.

56. It is a more difficult question whether the harm can be said to be “irreparable”, if that is a requirement, since the damage, for example, to points of entry and so on can be repaired, albeit at a cost in terms of time and money. It could be said that the damage to community relations and the distress to residents is irreparable.”

Accordingly, the judge found that all the necessary ingredients for a *quia timet* injunction against persons unknown were in place, and that what remained was the discretionary exercise of weighing up whether or not it was proportionate to grant such an injunction in all the circumstances of the case.

22. The judge dealt with proportionality from [57] – [72]. Her conclusion was that it was not proportionate to grant the injunction sought. During the course of his submissions on behalf of the appellant, Mr Kimblin QC identified 7 factors from these paragraphs which he said comprised the critical elements of the judge’s assessment of proportionality, and which he went on to criticise in various ways. I use those 7 factors to address the bulk of the appeal in Section 6 of this Judgment.

23. The 7 factors were:

- a) The wide extent of the relief sought and its geographical compass, amounting to “a *de facto* boroughwide prohibition of encampment and upon entry/occupation for residential purposes... in relation to all accessible public spaces in Bromley except cemeteries and highways” [59].
- b) The fact that the injunction was not aimed specifically at prohibiting antisocial or criminal behaviour, but just entry and occupation [60].
- c) The lack of availability of alternative sites. As to this important factor, the judge said:

“61. However, one factor that is clearly relevant to my consideration, as was made clear in the *South Buckinghamshire* case by Simon Brown LJ, is the availability of suitable alternative sites. I note this was an important factor that influenced the decision of Jefford J in the *Wolverhampton City Council v Persons Unknown* [2018] EWHC 3777 QB case when granting an injunction similar to the one sought here. At paragraph 10 she makes clear that she was concerned but was reassured that the result of the injunction would not be a boroughwide prohibition on Traveller sites in Wolverhampton because there were other sites that could be occupied, not all sites were subject to the injunction, and the local authority had taken steps to consider and was seeking to put in place the provision of a transit site. She granted the injunction for a period of three years but with an annual review at which the council would be required to provide evidence of the steps it had actually taken to provide the said transit site.

62. That is not the case here. Here there is no transit site and there is no proposal for a transit site. Further, it would seem that Bromley is not supporting the provision of a transit site in Bromley, at least based on Ms Slater’s evidence at the examination in public.”

- d) The cumulative effect of other injunctions. The judge said:
- “63. Mr Smyth's answer to this was that the Gypsy and Traveller community can occupy private land or they can go elsewhere outside the Borough. I do not regard transferring the undoubted problems the local authority has experienced to private landowners, who would themselves be entitled to seek possession orders evicting such occupants from their land, as a solution. The ‘going elsewhere’ option (which is apparently what has happened following the grant of an interim injunction) transfers the difficulties to another borough, who will then in turn invoke and seek to rely on the grant of the previous injunction to seek theirs on a “me too” approach. The problem, as I indicated before, is now the cumulative effect of all these injunctions which are reaching significant numbers and continue to be applied for by new local authorities as the problem gets transferred into their area, which means there is now more force in the argument that this is a relevant factor to be considered in deciding whether to grant the relief sought.”
- e) Various specific failures on the part of the appellant, as the judge found, in respect of its duties under the Convention and in particular, its PSED. The judge found that, in contrast to the approach taken by other boroughs in other cases, there was no evidence that any proper equality impact assessment (“EIA”) had been carried out “whether in form or indeed in substance” [65]. She found in the same paragraph that there had been no engagement with Gypsy and Traveller families. She also found that it was not clear how any infringements of the injunction would be dealt with in future and that, from the one recent incident (at Leaves Green, first referred to at [27]), it did not appear that any welfare assessments had been carried out [67]. This led to her conclusion on this topic in the following terms:
- “68. In my view, the decision to apply for an injunction was not made having had regard to all the material considerations and did not properly pose and approach the article 8(2) questions as to necessity and proportionality or indeed the need to have regard to the best interests of children (and there are clearly children who are going to be affected by the policy that is being adopted).”
- f) The length of time – 5 years – for which the proposed injunction would be in force. The judge found that this was “an unduly wide and disproportionate temporal limit” [69].
- g) The issue of permitted development rights had not been satisfactorily addressed by the appellant. The judge reiterated at [70] the fact that the appellant had told her that it did not want an injunction which excluded lawfully exercised permitted development rights.
24. For these reasons, therefore, the judge concluded that, on a consideration of the proportionality test, the appellant had not satisfied her that it was proportionate to grant an injunction in the terms sought.

4 THE GROUNDS OF APPEAL

25. It was perhaps inevitable that the judge herself gave permission to appeal, given what she had said in the judgment about the various elements of these injunction cases which had never been considered at appellate level. The judge gave permission on two bases:

“1. Although the proposed appeal against the refusal to grant an injunction prohibiting persons unknown from unauthorised occupation of public land is an appeal against the exercise of a discretion and an assessment of proportionality, in circumstances where (a) it appears that injunctions that are wider even than in this case have previously been granted in a number of cases without being held to be disproportionate, and (b) there is room for legitimate differences of view as to how local authorities should strike the necessary ‘fair balance’ between the Art. 8 ECHR rights of gypsies and travellers on the one hand and the rights of the residents who have been adversely affected by the existence of unauthorised encampments on the other, the appeal has a real prospect of success pursuant to CPR 52.6(1)(a).

2. There is in any event a compelling reason for an appeal to be heard pursuant to CPR 52.6(1)(b). Some 34 injunctions to date have been granted by the courts to local authorities in similar terms (all apparently undefended). This is the first case which has had the benefit of a formal intervention, evidence and argument by leading and junior counsel on behalf of the gypsy and traveller community. The cumulative effect of such injunctions now merits consideration in circumstances where it is common ground that their grant has the effect of displacing the difficulties into the area of a nearby local authority which then applies for a similar injunction relying on those difficulties and the previous grant of such relief. Further, injunctive relief, if it continues to be sought and granted as it has been to date, would appear to carry a risk of supplanting the existing statutory scheme for the removal of gypsies and travellers supported by government guidance. In addition, the injunctions which have previously been granted pursuant to s.187B Town & Country Planning Act 1990 arguably proscribe the lawful exercise of permitted development rights. All these matters appear to me to merit appellate consideration.”

26. There is some tension between the judge’s reasons for granting permission to appeal and the subsequent Grounds of Appeal prepared by the appellant. This sets out 5 Grounds.
- a) Ground 1: The judge erred in finding that the order sought was disproportionate;
 - b) Ground 2: The judge erred in setting too high a threshold for the harm caused by the threat of trespass;
 - c) Ground 3: The judge erred in approach to the cumulative effect issue;
 - d) Ground 4: The judge was wrong to conclude that the appellant had failed to discharge its PSED;
 - e) Ground 5: The judge erred in ruling that the issue of ‘permitted development’ rights had not been satisfactorily addressed.

On one view, only Grounds 1 and 3 were covered by the judge's grant of permission. In addition, under Ground 1, the written grounds of appeal only identified two ways in which it was said that the judge erred in finding that the order sought was disproportionate, whilst Mr Kimblin's skeleton argument, and his oral submissions, asserted numerous other ways in which it was said that the judge failed to carry out the proportionality test correctly.

27. However, despite these potential difficulties, at the hearing of this appeal all parties were able to focus on the handful of relatively short issues between them. Moreover, Mr Kimblin did not at any time underestimate the burden which any appellant has to discharge when seeking to challenge the exercise of discretion by a judge at first instance.

5 THE RELEVANT LAW

5.1 General

28. I set out below what I consider to be the relevant law. This is perhaps more important in underpinning the guidance which this court has been asked to provide (Section 7 below) than for the disposal of the appeal itself. I do this under four broad headings: i) *Quia timet* injunctions against Persons Unknown; ii) *Quia timet* injunctions to prevent trespass; iii) Article 8 and the Gypsy and Traveller community; and iv) The relevant statutory and other guidance relating to the Gypsy and Traveller community.

5.2 Quia Timet Injunctions Against Persons Unknown

29. The law in relation to injunctions against persons unknown has been recently considered by this court in *Joseph Boyd and another v Ineos Upstream Ltd and 9 others* [2019] EWCA Civ 515. That was a case involving protesters concerned about the fracking process. Having said at [32] that it was not easy to formulate the broad principles on which an injunction against unknown persons can properly be granted, Longmore LJ "tentatively" framed the requirements at [34] in the following way:

- "1) there must be a sufficiently real and imminent risk of a tort being committed to justify *quia timet* relief;
- 2) it is impossible to name the persons who are likely to commit the tort unless restrained;
- 3) it is possible to give effective notice of the injunction and for the method of such notice to be set out in the order;
- 4) the terms of the injunction must correspond to the threatened tort and not be so wide that they prohibit lawful conduct;
- 5) the terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do; and
- 6) the injunction should have clear geographical and temporal limits."

30. Those requirements comprise an elegant synthesis of a number of earlier statements of principle, which makes it now unnecessary to refer to other authorities. I respectfully endorse them.
31. It is, however, appropriate to add something about procedural fairness, because that has arisen starkly in this and the other cases involving the Gypsy and Traveller community.
32. Article 6 of the Convention provides that:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”.
33. This is reflective of a principle of English law that civil litigation is adversarial: “English civil courts act *in personam*. They adjudicate disputes between the parties to an action and make orders against those parties only” (*A-G v Newspaper Publishing Plc* [1988] Ch 333, per Sir John Donaldson MR at [369C]). This allows disputes to be decided fairly: a defendant is served with a claim, obtains disclosure of the evidence against them, and can substantially present their case before the Court (*Jacobsen v Frachon* (1927) 138 LT 386, per Atkins LJ at [393]). This allows arguments to be fully tested.
34. The principle that the court should hear both sides of the argument is therefore an elementary rule of procedural fairness. This has the consequence that a court should always be cautious when considering granting injunctions against persons unknown, particularly on a final basis, in circumstances where they are not there to put their side of the case.
35. The other area of potential debate which did not arise in *Ineos* concerns the nature and extent of the likely harm which the claimant must show in order to obtain the injunction. In my view, the approach which the judge in the present case adopted, that what was required was “irreparable harm”, was in accordance with authority:
 - a) In *Fletcher v Bealey* (1884) 28 Ch 688, Pearson J said that “it must be proved that it [the apprehended damage] will be irreparable...”
 - b) In *Lloyd v Symonds* [1998] EWCA Civ 511, Chadwick LJ stated that “such an injunction should not, ordinarily, be granted unless the plaintiff can show a strong probability that, unless restrained, the defendant will do something which will cause the plaintiff irreparable harm – that is to say, harm which, if it occurs, cannot be reversed or restrained by an immediate interlocutory injunction and cannot be adequately compensated by an award for damages.”
 - c) In *London Borough of Islington v Elliott* [2012] EWCA Civ 56, Patten LJ agreed with and approved both *Fletcher v Bealey* and *Lloyd v Symonds*.
 - d) Finally, as already noted, in *Vastint Leeds BV v Persons Unknown* [2018] EWHC 2456, (a case about illegal raves) Marcus Smith J said at paragraph 31 (3) that the relevant question was:

“Would the harm resulting be so grave and irreparable that, notwithstanding the grant of an immediate injunction... to restrain further occurrence of the acts complained of, a remedy of damages would be inadequate?”

5.3 Quia Timet Injunctions to Prevent Likely Trespass

36. *Secretary of State for Environment, Food and Rural Affairs v Meier and Another* [2009] UKSC 11 was concerned with travellers who set up camp on woodland owned by the Forestry Commission and who, on the evidence, if moved on from that camp, would move to another part of the same woodland. The Supreme Court upheld the Court of Appeal’s decision to grant an injunction (against some named defendants and some persons unknown) restraining them from entering any other part of the woodland (including those parts which had never been the subject of an encampment). Lady Hale said:

“38. The main objection to extending the order to land some distance away from the parcel which has actually been intruded upon is one of natural justice. Before any coercive order is made, the person against whom it is made must have an opportunity of contesting it, unless there is an emergency. In the case of named defendants, such as the appellants here, this need not be an obstacle. They have the opportunity of coming to court to contest the order both in principle and in scope. The difficulty lies with “persons unknown”. They are brought into the action by the process of serving notice not on individuals but on the land. If it were to be possible to enforce the physical removal of “persons unknown” from land on which they had not yet trespassed when the order was made, notice would also have to be given on that land too. That might be thought an evolution too far. Whatever else a possession order may be or have been, it has always been a remedy for a present wrongful interference with the right to occupy. There is an intrusion and the person intruded upon has the right to throw the intruder out.

39. Thus, while I would translate the modern remedy into modern terms designed to match the remedy to the rights protected, and would certainly not put too much weight on the word “recover”, I would hesitate to apply it to quite separate land which has not yet been intruded upon. The more natural remedy would be an injunction against that intrusion, and I would not be unduly hesitant in granting that. We should assume that people will obey the law, and in particular the targeted orders of the court, rather than that they will not. We should not be too ready to speculate about the enforcement measures which might or might not be appropriate if it is broken. But the main purpose of an injunction would be to support a very speedy possession order, with severely abridged time limits, if it is broken.

40. However, I would not see these procedural obstacles as necessarily precluding the “incremental development” which was sanctioned in *Drury*. Provided that an order can be specifically tailored against known individuals who have already intruded upon the claimant’s land, are threatening to do so again, and have been given a proper opportunity to contest the order, I see no reason in principle why it should not be so developed. It would be

helpful if the Rules provided for it, so that the procedures could be properly thought through and the forms of order properly tailored to the facts of the case. The main problem at the moment is the “scatter-gun” form of the usual order (though it is not one prescribed by the Rules).”

37. In the same case, Lord Neuberger said:

“58. Particularly with the advent of the Civil Procedure Rules, it is clear that judges should strive to ensure that court procedures are efficacious, and that, where there is a threatened or actual wrong, there should be an effective remedy to prevent it or to remedy it. Further, as Lady Hale points out, so long as landowners are entitled to evict trespassers physically, judges should ensure that the more attractive and civilised option of court proceedings is as quick and efficacious as legally possible. Accordingly, the Court of Appeal was plainly right to seek to identify an effective remedy for the problem faced by the Commission as a result of unauthorised encampments, namely that, when a possession order is made in respect of one wood, the travellers simply move on to another wood, requiring the Commission to incur the cost, effort and delay of bringing a series or potentially endless series of possession proceedings against the same people.”

38. We were referred to eight cases in which wide injunctions were obtained against the Gypsy and Traveller community. They were, in chronological order: *Harlow District Council v Stokes and Others* [2015] EWHC 953 (QB); *Tendring District Council v Persons Unknown* [2016] EWHC 2050 (QB); *Harlow District Council v McGinley and Others* [2017] EWHC 1851 (QB); *Wolverhampton City Council v Persons Unknown* [2018] EWHC 3777 (QB); *Waltham Forest London Borough Council v Persons Unknown* [2018] EWHC 2400 (QB); *London Borough of Sutton v Persons Unknown* [Unreported] 7 November 2018; *London Borough of Kingston Upon Thames* [2019] EWHC 1903; and *London Borough of Havering v Stokes and Others* [2019] EWHC 3006 (QB). As I have said, the one common denominator in relation to all of these decisions is that, although it was the target of all the injunctions sought, the Gypsy and Traveller community was not legally represented.

39. It is unnecessary to go through each of these cases in any detail. It is however instructive to note the following:

a) In *Harlow v Stokes*, Patterson J described the scale of the problem (109 encampments) at [3] and [4]. She identified that there would be ten new sites for Gypsies and Travellers in the borough by 2018 at [4] and [8]. She noted the liaison meetings with the Gypsy and Traveller community at [6]. She also identified the graphic evidence of criminality and the risks posed to public health and safety [10] and the fact that assessments had been offered and not taken up [12]. It was therefore a case where the proportionality assessment clearly favoured the granting of the interim injunction.

b) In the *Wolverhampton* case, Jefford J was troubled about the width of the injunction sought and, in particular, whether there were other council-owned sites that could still be occupied. She was also concerned about the need for a transit site. Positive evidence on both these points had a major impact on her decision:

“10. It is, nonetheless, necessary for me to consider whether it is just and proportionate to grant such an injunction. One matter that needs to be addressed is whether there are lesser alternatives to such an injunction. I am satisfied that, in terms of the efficacy of preventing unauthorised encampments, there is no adequate alternative remedy. There have been plenty of instances in which the council has tried to make it more difficult to access a site. Indeed, businesses have done the same. But measures taken to prevent access have simply been torn down, gates climbed over and ignored. Actions for possession take time and also eat up further council resources. My concern, however, has been, as I said at the outset of this application, that even bearing all that in mind, there is a potential risk in this injunction that it would have the draconian impact of leaving travellers with nowhere to go within the city council of Wolverhampton's area of control. That is one of the reasons why the identification of the relevant sites is material. It appeared to me that it might be the case that the 60 sites that have been identified were the only sites that might be available to travellers within the relevant area and that, if that were the case, the net result of the injunction which was sought would be a borough-wide prohibition on travellers' sites in Wolverhampton. I have been told today, and I accept, that that is not the case and that the 60 sites identified are those that are the most vulnerable, that other sites could still be occupied, and indeed that, since this application was made, one such site not covered by the scope of the injunction sought has been the subject of an unauthorised encampment. That is a relevant consideration.

11. The second matter, however, is this. The council recognises, very fairly and properly, that there is a balancing act to be carried out between the protection of sites from unauthorised encampments and the provision of facilities for those who choose to adopt, as it was put, a nomadic lifestyle. The council has therefore taken steps set out in the evidence before me to consider the provision of a transit site. In the absence of that transit site, all that is available to travellers within this area are the sites that would be unaffected by this proposed injunction. Efforts have been made to identify such a transit site, and a shortlist of three has been drawn up. I was told today that matters are progressing well in that respect. The preferred site is the fishing pool site, which is a privately owned site, and negotiations are taking place with the owner with a view to renting that site to the claimant so that it can be established as an appropriate transit site.”

c) In *Harlow v McGinley*, Jay J expressly noted that the cumulative effect of other injunctions was a relevant factor to be taken into account in any proportionality exercise. In that case, the injunction was justified in part because of the extent and nature of the criminality identified by the judge at [17] - [18].

d) Although the *Tendring* case was very specific because it related to a particular event (namely the Clacton Air Show), Knowles J refused the injunction, partly because of the lack of alternative sites. Presciently, he observed at [46] that the council's methodology “could lead to injunctions of ever-increasing compass year by year”. The *Waltham Forest* case was largely concerned with fly-tipping (in respect of which the judge

granted an injunction in the present case). I note too that, in *Waltham Forest*, the injunction was for three years, not the five years sought in the present case.

e) Fly-tipping was also the principal concern in the *Sutton* case: see [18], [19], [36] and [38] of the judgment of Warby J. The judge went on to note that the granting of this sort of injunction could be unjustified and disproportionate, but he concluded that, on the facts of that particular case, it was not. Amongst the factors that led him to that conclusion were the careful making of assessments on the part of the local authority ([40] - [44]). In particular, there was evidence of a policy of ‘negotiated stopping’ which demonstrated both a degree of flexibility and a willingness to engage which, on the judge’s findings in the present case, was absent here.

f) I also note that, in the *Sutton* case, an EIA had been carried out. Although a perusal of that document demonstrated that it was a rather one-sided exercise, I think that Mr Willers was right to say that it at least showed that the second intervener was aware of its PSED. Again, the judge in the present case reached a contrary view on the different evidence before her.

5.3 Article 8 and the Gypsy and Traveller Community

40. The starting point is *South Bucks District Council v Porter and another* [2003] UKHL 26; [2003] 2 AC 558. That was a case in which injunctions granted against the Gypsy and Traveller community to enforce planning requirements were refused by the Court of Appeal and House of Lords on the basis that it was inherent in the injunctive remedy that its grant depended on the court’s judgment of all the circumstances of the case. Two aspects of the judgment of Lord Bingham should be set out: the first concerned with the history (which demonstrates that, 15 years on, very little has changed) and the second concerned with principle.

41. As to history, Lord Bingham said:

“13... The means of enforcement available to local planning authorities under the 1990 Act and its predecessors, by way of enforcement orders, stop orders and criminal penalties, gave rise to considerable dissatisfaction. There were a number of reasons for this, among them the delay inherent in a process of application, refusal, appeal, continued user, enforcement notice, appeal; the possibility of repeated applications, curbed but not eliminated by section 70A of the 1990 Act; and the opportunities for prevarication and obstruction which the system offered. In the case of Gypsies, the problem was compounded by features peculiar to them. Their characteristic lifestyle debarred them from access to conventional sources of housing provision. Their attempts to obtain planning permission almost always met with failure: statistics quoted by the European Court of Human Rights in *Chapman v United Kingdom* (2001) 33 EHRR 399, page 420, paragraph 66, showed that in 1991, the most recent year for which figures were available, 90 per cent of applications made by Gypsies had been refused whereas 80 per cent of all applications had been granted. But for many years the capacity of sites authorised for occupation by Gypsies has fallen well short of that needed to accommodate those seeking space on which to station their caravans. Sedley J alluded to this problem in *R v Lincolnshire County*

Council, Ex p Atkinson (1995) 8 Admin LR 529 at 533, in a passage quoted in *Chapman* at paragraph 45:

"It is relevant to situate this new and in some ways Draconic legislation in its context. For centuries the commons of England provided lawful stopping places for people whose way of life was or had become nomadic. Enough common land had survived the centuries of enclosure to make this way of life still sustainable, but by s.23 of the Caravan Sites and Control of Development Act 1960 local authorities were given power to close the commons to travellers. This they proceeded to do with great energy, but made no use of the concomitant power given to them by s.24 of the same Act to open caravan sites to compensate for the closure of the commons. By the Caravan Sites Act 1968, therefore, Parliament legislated to make the s.24 power a duty, resting in rural areas upon county councils rather than district councils (although the latter continued to possess the power to open sites). For the next quarter of a century there followed a history of non-compliance with the duties imposed by the Act of 1968, marked by a series of decisions of this court holding local authorities to be in breach of their statutory duty, to apparently little practical effect. The default powers vested in central government, to which the court was required to defer, were rarely if ever used."

The essential problem was succinctly stated in a housing research summary, "Local Authority Powers for Managing Unauthorised Camping" (Office of the Deputy Prime Minister, No 90, 1998, updated 4 December 2000):

"The basic conflict underlying the 'problem' of unauthorised camping is between Gypsies/Travellers who want to stay in an area for a period but have nowhere they can legally camp, and the settled community who, by and large, do not want Gypsies/Travellers camped in their midst. The local authority is stuck between the two parties, trying to balance the conflicting needs and often satisfying no-one."

42. As to principle, Lord Bingham said at [18] that it was "for the court to reach its own independent conclusion on the proportionality of the relief sought to the object of the attained." He had regard to a number of European decisions at [34] – [36] and concluded at [37]:

"It follows, in my opinion, when asked to grant injunctive relief under section 187B the court must consider whether, on the facts of the case, such relief is proportionate in the Convention sense, and grant relief only if it judges it to be so. Although domestic law is expressed in terms of justice and convenience rather than proportionality, this is in all essentials the task which the court is any event required by domestic law to carry out."

43. As to matters of detail, at [38] Lord Bingham endorsed the practical guidance given by the Court of Appeal in that case, which he had set out at [20]. This included the following passage in the judgment of Simon Brown LJ (as he then was):

“38. I would unhesitatingly reject the more extreme submissions made on either side. It seems to me perfectly clear that the judge on a section 187B application is not required, nor even entitled, to reach his own independent view of the planning merits of the case. These he is required to take as decided within the planning process, the actual or anticipated breach of planning control being a given when he comes to exercise his discretion. But it seems to me no less plain that the judge should not grant injunctive relief unless he would be prepared if necessary to contemplate committing the defendant to prison for breach of the order, and that he would not be of this mind unless he had considered for himself all questions of hardship for the defendant and his family if required to move, necessarily including, therefore, the availability of suitable alternative sites. I cannot accept that the consideration of those matters is, as Burton J suggested was the case in the pre-1998 Act era, 'entirely foreclosed' at the injunction stage. Questions of the family's health and education will inevitably be of relevance. But so too, of course, will countervailing considerations such as the need to enforce planning control in the general interest and, importantly therefore, the planning history of the site. The degree and flagrancy of the postulated breach of planning control may well prove critical. If conventional enforcement measures have failed over a prolonged period of time to remedy the breach, then the court would obviously be the readier to use its own, more coercive powers. Conversely, however, the court might well be reluctant to use its powers in a case where enforcement action had never been taken. On the other hand, there might be some urgency in the situation sufficient to justify the pre-emptive avoidance of an anticipated breach of planning control. Considerations of health and safety might arise. Preventing a gipsy moving onto the site might, indeed, involve him in less hardship than moving him out after a long period of occupation. Previous planning decisions will always be relevant; how relevant, however, will inevitably depend on a variety of matters, including not least how recent they are, the extent to which considerations of hardship and availability of alternative sites were taken into account, the strength of the conclusions reached on land use and environmental issues, and whether the defendant had and properly took the opportunity to make his case for at least a temporary personal planning permission.”

44. In *Chapman v United Kingdom* (2001) (referred to by Lord Bingham at [38] of his judgment), the European Court of Human Rights made a series of important observations:
- a) The occupation of a caravan by a member of the Gypsy and Traveller community was an “integral part of her ethnic identity” and her removal from the site interfered with her Article 8 rights not only because it interfered with her home, but also because it affected her ability to maintain her identity as a Gypsy [73];
 - b) There was an emerging international consensus amongst Council of Europe States recognising the special needs of minority communities and an obligation to protect their security, identity, and lifestyle [93];
 - c) Members of the Gypsy and Traveller community were in a vulnerable position as a minority, with the result that “special consideration should be given to their

- needs and their different lifestyle”; to that extent there was a positive obligation on States to facilitate the Gypsy way of life [96];
- d) The fact that a home had been established unlawfully was highly relevant [102];
 - e) If no alternative accommodation is available, the interference was more serious than where such accommodation is available [103];
 - f) Individuals affected by an enforcement notice ought to have a full and fair opportunity to put any relevant material before the decision-maker before enforcement action was taken [106].
45. In *Connors v United Kingdom* (2005) 40 EHRR 9, the ECtHR again emphasised the vulnerable position of Gypsies and Travellers as a minority, reiterating that “some special consideration should be given to their needs and their different lifestyle” to the extent that there is a positive obligation on the State to “facilitate the gypsy way of life” [84]. The Court distilled three further principles of importance:
- a) Given that the applicant was rendered homeless by the decision under challenge, “particularly weighty reasons of public interest” were required by way of justification [86];
 - b) The mere fact that anti-social behaviour occurred on local authority Gypsy and Traveller sites could not, in itself, justify a summary power of eviction [89];
 - c) Judicial review was not a satisfactory safeguard as it did not establish the facts [92] and because there was no means of testing the individual proportionality of the decision to evict [95].
46. In *Yordanova and other v Bulgaria* (App. no. 25446/06), the ECtHR noted a series of resolutions in the Council of Europe which called upon Member States to exercise restraint when carrying out eviction measures that impacted upon the Gypsy and Traveller community. The court considered that such measures should include consultation with the community or individual concerned, reasonable notice, provision of information, and a guarantee of alternative housing measures [76-79]. In its judgment, the court reiterated and expanded upon the principles developed in the case law:
- a) Although it was legitimate for the authorities to seek to regain possession of land from persons who did not have a right to occupy it [111], orders should not be enforced without regard to the consequences upon the Gypsy and Traveller residents or without the securing of alternative shelter for the community [126];
 - b) The authorities should consider approaches specifically tailored to the needs of the Gypsy and Traveller community [128] and should consider Gypsy and Traveller groups as part of “an outcast community and of the socially disadvantaged groups”, who “may need assistance in order to be able effectively to enjoy the same rights as the majority population” [129];
 - c) The underprivileged status of the community “must be a weighty factor in considering approaches to dealing with their unlawful settlement and, if their

removal is necessary, in deciding on its timing, modalities, and, if possible, arrangements for alternative shelter” [133].

47. In *Buckland v United Kingdom* (2013) 56 EHRR 16, the Court built upon the principle set out at [95] of *Connors*, namely that the absence of any measure enabling a member of the Gypsy and Traveller community to challenge the proportionality of a possession order was a violation of Article 8. At [65] the court held that:

“As the Court has previously emphasised, the loss of one's home is the most extreme form of interference with the right to respect for the home. Any person at risk of an interference of this magnitude should in principle be able to have the proportionality of the measure determined by an independent tribunal in light of the relevant principles under Article 8 of the Convention, notwithstanding that, under domestic law, his right to occupation has come to an end.”

48. Finally, in *Winterstein and Others v France* (App no. 27013/07, a decision also dating from 2013, the ECtHR again emphasised that occupation of a caravan was an integral part of the identity of the Gypsy and Traveller community so that measures affecting the stationing of caravans affected their ability to maintain their identity. The margin of appreciation left to local authorities was narrower where the right at stake was crucial to the individual's enjoyment of their Article 8 rights.

5.4 Relevant Statutes and Other Guidance

5.4.1 Statutes

49. Romany Gypsies and Irish Travellers are separate ethnic minorities protected by the Equality Act 2010. Pursuant to S29(6) of the Act, “a person must not, in the exercise of a public function that is not the provision of a service to the public or a section of the public, do anything that constitutes discrimination, harassment or victimisation.” This includes indirect discrimination, which is when a practice, criterion or procedure puts or would put the protected group at a particular disadvantage when compared with people who do not share the protected characteristic. Indirect discrimination by a public authority is capable of justification.
50. The Act imposes upon public authorities a public sector equality duty at S149. This duty requires a public authority, in the exercise of its functions, to 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.
51. By s.149(3), having due regard to the need to advance equality of opportunity between persons who share a relevant characteristic and those who do not share it involves, in particular, 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.
52. Whilst it has been repeatedly accepted that the PSED does not require an EIA, the reality is that undertaking an EIA will be a factor in a case of this sort that points towards a proportionate approach on the part of a local authority. It is the substance of the EIA undertaken that matters, not its formal existence (*R (Brown) v Secretary of State for Work and Pensions and another* [2008] EWHC 3158 (Admin) at [93]). An EIA undertaken prior to the seeking of injunctive relief will be evidence of good practice. Further, the carrying out of a welfare assessment on unauthorised campers to identify any welfare issues that need to be addressed, prior to the taking of any enforcement action against them, is good practice.
53. As to statutory enforcement powers, the court was taken to Sections 61 and 62A of the Criminal Justice and Public Order Act 1994 (“the CJPOA”), which gives the police powers to direct trespassers to leave land if (in the words of s.61) they consider that “they are present there with the common purpose of residing there for any period.”. The same power is given to the relevant local authority pursuant to s.77 of the CJPOA, although this is limited to “unauthorised campers”.

5.4.2 Guidance

54. The issue of unauthorised encampments is the subject of voluminous guidance. *DoE Circular 18/94* states that “it is a matter for local discretion whether it is appropriate to evict an unauthorised Gypsy encampment” (paragraph 6); where there are no authorised sites but an unauthorised encampment is not causing a level of nuisance which cannot be effectively controlled, the authorities should consider providing basic services (paragraph 6); that local authorities should try and identify possible emergency stopping places as close as possible to the transit routes used by Gypsies where Gypsy families would be allowed to camp for short periods (paragraph 7); that, where Gypsies are unlawfully camped, it is for the local authority to take any necessary steps to ensure that the encampment “does not constitute a hazard to public health” (paragraph 8); and that “local authorities should not use their powers to evict Gypsies needlessly...local [authorities] should use their powers in a humane and compassionate way” (paragraph 9).
55. In the Home Office *Guide to Effective Use of Enforcement Powers (Part 1; Unauthorised Encampments)*, published in February 2006, it was emphasised at paragraphs 9 and 77 that local authorities had an obligation to carry out welfare assessments on unauthorised campers to identify any welfare issue that needed to be addressed before taking enforcement action against them. In addition, paragraph 83, entitled ‘*Avoiding unnecessary enforcement action*’, requires landowners to consider “whether enforcement is absolutely necessary” and identifies alternatives to eviction action.

56. And in May 2006, in a document entitled *Guidance on Managing Unauthorised Camping*, the Department for Communities and Local Government provided 66 pages of guidance to local authorities as to how they should best manage unauthorised camping. Chapter 5, entitled ‘*Making Decisions on Unauthorised Encampments*’, stresses the importance of striking a balance between “the needs of all parties”.

5.4.3 UNCRC

57. Article 3(1) of the United Nations Convention on the Rights of the Child 1989 (“UNCRC”) states that:

“In all actions concerning children, whether undertaken by public bodies or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.

58. As the Supreme Court explained in *Zoumbas v Secretary of State for the Home Department* [2013] UKSC 74 at [10], the best interests of a child are an integral part of the proportionality assessment under Article 8 the Convention.

6 ANALYSIS OF THE APPEAL

6.1 Proportionality Generally

59. I turn now to an analysis of the appeal. I undertake that task principally by reference to Ground 1 of the appeal, and the 7 aspects of the judge’s proportionality exercise identified by Mr Kimblin (and set out at paragraph 23 above). As will be seen, this analysis also sweeps up all but one of the other Grounds of Appeal. However, before embarking on that exercise, two preliminary points need to be made.

60. First, as I have said, the judge found in favour of the appellant that the test for a *quia timet* injunction against persons unknown had been made out. In other words, she found that the 6 requirements noted in *Ineos* had been satisfied and that there was a strong probability of irreparable harm¹. Accordingly, it seems to me to be unnecessary to trawl over those points again, since they do not affect the outcome of this appeal.

61. Secondly, since the appeal turns on the judge’s approach to proportionality, it is necessary to record the high hurdle which must be overcome in order to set aside the exercise of a judge’s discretion when undertaking a proportionality analysis. The constraints inherent in such an exercise are apparent from:

- a) *G v G (Minors: Custody Appeal)* [1985] 1 WLR 647 at 642, where Lord Fraser of Tullybelton said:

“The appellate court should only interfere when they consider that the judge at first instance has not merely preferred an imperfect solution which is different from an alternative imperfect solution which the Court of Appeal

¹ Because the appellant has raised a separate issue about harm, set out in Ground 2 of the Appeal, I deal with it shortly at section 6.9 (paragraphs 94-96 below).

might or would have adopted, but has exceeded the generous ambit within which a reasonable disagreement is possible”.

- b) In *AEI Rediffusion Music Limited v Phonographic Performance Limited* [1999] 1 WLR 507, Lord Woolf MR confirmed at 1523:

“Before the court can interfere it must be shown that the judge has either erred in principle in his approach or has left out of account or has taken into account some feature that he should, or should not, have considered, or that his decision was wholly wrong because the court is forced to the conclusion that he has not balanced the various factors fairly in the scale”.

- c) In *R v Secretary of State for the Home Department ex parte Bulger* [2001] EWHC Admin 119 at 50, the judge said:

“A submission that undue or insufficient weight has been given to a relevant factor does not raise any arguable error of law”

6.2 Factor 1: The Extent of the Injunction

62. As I have said, the judge described the relief sought and its geographical compass as being “very broad...” amounting to “a de facto boroughwide prohibition of encampment and upon entry/occupation for residential purposes”. Mr Kimblin submitted that this was an inaccurate description of what was being sought. He relied on two things: the fact that the proposed injunction excluded cemeteries and highways, and the fact that there was a good deal of green space in the southern part of the borough which, being privately owned, was not the subject of the proposed injunction at all.
63. In my view, these are not proper criticisms of the judge’s finding. Her description of the injunction as a boroughwide prohibition was expressly accepted by the appellant’s junior counsel at the hearing.
64. As to the two specific points raised, the evidence is that Gypsies and Travellers do not camp in cemeteries and no-one could regard highways as being an appropriate place for any sort of encampment. This is borne out by the fact that there had been no recorded encampments in cemeteries or highways in Bromley in any event. In addition, I reject the submission that, because the proposed injunction did not cover private land, its width was overstated. The judge expressly dealt with that at [63]. She said that she did not regard transferring the undoubted problems that the appellant had experienced to private landowners, who would themselves be entitled to seek possession orders evicting the occupants from their land, as a solution. I respectfully agree.
65. Accordingly, the judge’s description of the width of the injunction, accepted as it was at the hearing, was an accurate description of what was being sought. The judge was quite right to be concerned about its width, and to regard that as a highly relevant factor in the proportionality exercise.

6.3 Factor 2: Entry/Occupation

66. Mr Kimblin suggested that the judge had been wrong to be concerned by the fact that the injunction went only to entry/occupation and was unconnected to antisocial or criminal behaviour. This was a point that she first raised at [16] of her judgment and

was referred to again at [60]. He suggested that the fact that there was no specific evidence of such conduct in the past could not be a relevant factor.

67. In my view, although it could not be said to be determinative, the absence of any substantial evidence of past criminality (leaving aside fly-tipping) was a factor that was relevant to the proportionality exercise. The fact that the sort of criminal and quasi-criminal conduct which was the basis of the injunctions in the *Harlow* cases was absent here was not unimportant, because it meant that the mischief at which the injunction was aimed was simply entry and occupation. Beyond that, the weight to be given to this factor was entirely a matter for the judge. She was entitled to take it into account when considering proportionality.

6.4 Factor 3: Alternative Sites

68. Here the principal criticism of the judge is that, because she was concerned that there were no suitable alternative sites, she failed to consider whether this should have led to an injunction in different terms, or what Mr Kimblin called “a lesser outcome”. He said that it was incumbent upon the judge to consider lesser alternatives as part of the proportionality exercise.
69. This needs to be unpicked a little. It appears to be inherent in that criticism that the appellant accepted that the absence of any alternative sites was a relevant factor in the proportionality exercise. For the avoidance of doubt, I consider that it was plainly relevant. There was an irreconcilable conflict between, on the one hand, Ms Slater’s statement that Bromley did not need a transit site because it did not suffer particularly from incursions, and Bromley’s claim for a boroughwide injunction preventing *any* entry or encampment.
70. I note that the fact that the injunction only related to some but not all sites, coupled with the proposal of a transit site, were important factors for Jefford J in the *Wolverhampton* case (see paragraph 39 b) above). That approach is in accordance with the ECtHR authorities set out at paragraphs 44-48 above. These important safety valves were not in play here, because of the width of the injunction which the appellant was seeking and the absence of any proposal for a transit site (despite the clear need).
71. The main difficulty for the appellant in relation to its suggestion that the judge did not consider a lesser order is that at no time did they themselves put forward any alternative or lesser order. As we have seen in relation to the permitted development point, when a lesser alternative was expressly mooted, the appellant made plain that it was not interested in any “second rate” solution. So whilst I accept that, in appropriate circumstances, a judge should consider whether the problem can be dealt with in a less draconian way, there must always be realistic limits to that exercise. A proportionality analysis requires a judge primarily to consider whether what is being proposed is proportionate in all the circumstances. The fixed point therefore is that which is actually sought, not that which might have been sought in other circumstances.
72. In cases such as this, what is being sought is a matter for the local authority. It is a matter for the authority carefully to consider the temporal and geographical range of the order sought, and the steps that could be taken to explore alternative sites and other solutions. That is particularly important when they are seeking an injunction against persons unknown, when they know that the defendants will almost certainly not be

represented at either the interim or final hearings. Of course the judge will want to scrutinise carefully what is being sought (and the cases referred to in paragraphs 38 and 39 above make plain just how scrupulously the first instance judges have undertaken that exercise in these cases) but, ultimately, the burden remains on the local authority.

73. What is more, that makes practical sense. Only the appellant would know which of the 171 sites might be regarded as a priority, and which of them might be considered as suitable for exclusion from the terms of any proposed injunction. Only the appellant would know what its proposals were in respect of transit sites (and if there were no such proposals, how that could be squared with the alleged need for the boroughwide injunction). It was not explained how the judge could have satisfactorily undertaken such tasks. In my view, therefore, this criticism of the judge was unfair and unrealistic.
74. Accordingly, it seems to me that, not only is there nothing in this third criticism of the judge's proportionality exercise, but the absence of any transit or other alternative sites was a very important factor militating against the imposition of the boroughwide injunction.

6.5 Factor 4: Cumulative Effect

75. Although the judge dealt with the cumulative effect in her proportionality exercise quite shortly (the second part of [63]), she had referred to the effect of other injunctions granted in favour of other local authorities on a number of occasions in the earlier parts of her judgment.
76. The appellant's criticism of the judge is that, in essence, she should not have placed any weight on the cumulative effect of other injunctions. This is also reflected in the separate Ground 3 of the appeal. Mr Kimblin said that *Meier* was a strong indication that the use of a *quia timet* injunction to deal with an anticipated problem like this was an appropriate course. He said that it then became a matter for each local planning authority independently (although he did not go as far as to say that the cumulative effect was not a material consideration at all). Mr Kimblin also said that, if the cumulative effect was overstated, it might mean that the competing needs of different local authorities would be ignored.
77. There are a number of points to be made about those submissions. First, I do not consider that *Meier* is authority for the wide proposition advanced by Mr Kimblin. On the contrary, I note that Lady Hale expressly said that she was hesitant about granting an injunction in respect of "quite separate land which has not yet been intruded upon". That is this case.
78. Secondly, although I accept that each case has to be looked at on its own merits (that is the whole force of the House of Lords' decision in *South Bucks*) and that the situation in respect of each local authority will be different, it would be wrong to ignore the plain fact that a neighbouring authority's successful injunction potentially narrows the options for everyone else, including other local authorities and the Gypsy and Traveller community itself. If every local authority obtains an injunction, the community has literally nowhere to go. So, as the judge acknowledged, it would be unrealistic to say that the cumulative effect of all the injunctions which have been granted so far was anything other than a relevant factor when carrying out the proportionality exercise.

79. Thirdly, Jay J said in *Harlow v McGinley* that the cumulative effect of other injunctions was a material consideration, but that the weight to be afforded to it was a matter for the judge. I agree with that approach². Here, the judge clearly had the cumulative effect in mind, but she does not say anything which suggests that she gave it undue weight or significance. It was simply a factor that she took into account in her assessment of proportionality. Since Mr Kimblin rightly accepted that he could not say that the cumulative effect of other injunctions was something to which the judge should have paid no attention at all, the difference between the judge's approach and Mr Kimblin's ultimate position was nugatory. I therefore reject this fourth criticism of the judge's proportionality exercise.

6.6 Factor 5: Article 8 and the EIA

80. The judge found a number of specific failures on the part of the appellant, including a failure to comply with its PSED and its failure to carry out an EIA. These failures distinguish the appellant's position from at least the majority of the second and fourth interveners. The scope for any challenge to these findings was inevitably limited. For the reasons noted at paragraphs 49-52 above, this is an extremely important element of the case.
81. The narrow point taken on appeal by the appellant, which is also reflected in the separate Ground 4 of the appeal, is that there was no statutory duty or requirement to carry out an EIA. I have dealt with that at paragraph 52 above. Regardless of whether the failure to undertake an EIA was a specific breach of duty on the part of the appellant, this was a case where the judge found that, not only was there no EIA in fact, but there had been no proper engagement with the Gypsy and Traveller community at all. There was therefore a failure by the appellant to comply with its PSED.
82. Both the Equality Act duties at paragraphs 49-52 above, and the lengthy existing guidance to which I have referred at paragraphs 54-56 above, mean that assessments of various kinds are required in many circumstances when dealing with Gypsy and Traveller encampments. There is evidence that, for example, some of the second interveners considered these obligations and undertook full assessments before seeking the injunction. As the judge below noted, in the *Sutton* case, there was detailed evidence about the second interveners' engagement with the Gypsy and Traveller community and the proposed completion of various welfare and equality assessments. The judge found that this simply had not happened in the present case and, with one exception, there was no substantive answer to that criticism at the appeal hearing.
83. The exception which Mr Kimblin relied on in this connection was the Accommodation Assessment of 2016, referred to in paragraph 7 above. He said that this showed the appellant had given careful consideration to the needs of this particular group and that it was wrong and unfair for the judge to make the criticisms that she did at [64] – [68] of her judgment.
84. In my view there are a number of answers to that submission. First, it was common ground that the judge was shown the Accommodation Assessment, and there is nothing to say that she did not have regard to it. Secondly, since the Accommodation Assessment itself expressly referred at paragraph 2.31 to the outstanding demand for

² There were also shades of the same approach in *Tendring*: see paragraph 39(d) above.

additional sites in the borough, which demand had not been acted upon by the appellant in the time since the Accommodation Assessment was completed, it does not seem to me that it demonstrated any particular engagement with this issue by the appellant. Thirdly, and most important of all, the Accommodation Assessment was prepared before the appellant had even thought about, let alone obtained, the wide interim injunction in this case. It was therefore already out of date by the time of the hearing before the judge and of little relevance to the issues before the court.

85. Take an example: the judge had to address how infringements of the injunction might be dealt with in the future and did so at [67], noting that no proper welfare assessment was carried out in relation to the one incident that had been addressed in the evidence. That was a serious matter and directly referred to an event close in time to the hearing before the judge. The Accommodation Assessment of 2016, on the other hand, could not contain any answer to that question.
86. Accordingly, I consider that the particular factual criticisms that the judge made of the appellant in this case were plainly open to her on the evidence. As I have noted, these criticisms (and in particular the various failings under the Equality Act) go a long way towards distinguishing the appellant's case from those of the majority of the second and fourth interveners. I note that Mr Woolf, who made short oral submissions on behalf of the second intervener, was anxious to emphasise those differences, and in particular the failings of the appellant in relation to its PSED and its general dealings with the Gypsy and Traveller community.
87. For all these reasons, I consider that there is nothing in the fifth criticism of the judge's proportionality exercise and Ground 4 of the appeal.

6.7 Factor 6: Duration

88. The judge concluded that the five-year term sought was unduly long and therefore disproportionate. The criticism is that she should have considered whether a lesser period was appropriate. Again, therefore, it appears to be accepted that the issue of duration was a relevant factor (as it was said to be by Longmore LJ in *Ineos*). In my view it was plainly a relevant factor.
89. As to the argument that the judge should have explored the possibility of a shorter timescale, my view is similar to that noted in paragraphs 69-71 above. The appellant never suggested a shorter period. Whilst that would have been something which the judge could have considered, she was primarily obliged to test the proportionality of the injunction in the terms sought by the appellant. She was certainly entitled to conclude that the five-year term was, for a variety of reasons, much too long. I therefore reject this criticism of the judge.

6.8 Factor 7: Permitted Development

90. By reference back to schedule 1 of the Caravan Sites and Control of Development Act 1960, the GPDO grants deemed planning permission for the stationing of a single caravan on land for not more than 2 nights, or not more than 3 caravans on a larger site, or use of land as a caravan site for a travelling showman. The argument before the judge was that this injunction would potentially cut across those permitted development

rights. She concluded that the appellant had not dealt with this in a satisfactory way and that that was a seventh and final factor in proportionality exercise.

91. The appellant took three points on appeal. First, they said that the permitted development rights were irrelevant because the injunction was aimed at larger encampments. Secondly, they submitted that the judge could have drafted the injunction so as to expressly preserve any permitted development rights. Thirdly, they argued (for the first time) that permitted development rights could not change the use of land for which permission had not already been granted and/or that such rights cannot be exercised without the consent of the landowner. The ‘permitted development rights’ issue is also reflected in Ground 5 of the Grounds of Appeal.
92. In my view, it is unnecessary and possibly unwise to decide this third (and highly technical) point for the purposes of this appeal. I am aware that planning law in respect of caravans and camping has been described as “particularly complex”³ and the issue about permitted development rights was never a significant part of the argument before the judge (which probably explains why it was dealt with last). But I consider that the judge was plainly entitled to conclude that the matter had not been dealt with satisfactorily by the appellant. This was in part because, on the arguments before her, it was said that this point only related to a quarter of the sites, but those sites could not be identified (see [70]). Furthermore, on the face of it, the existence of such permitted development rights would seem to require the appellant, as part of its application, at least to explain how or why they had been exhausted or did not apply. Finally, the criticism that the judge should have expressly preserved any permitted development rights in the injunction is most unfair, given that she expressly raised it and the offer was declined by the appellant’s junior counsel.
93. The permitted development rights were, in my view, a factor which was relevant to proportionality. The travelling showman exception in the GPDO is perhaps a good example of this. The judge needed to be satisfied that the proposed injunction would not cut across that permitted development right, because the Accommodation Assessment showed that there were large numbers of travelling showmen in Bromley. The appellant did not demonstrate that to her (or my) satisfaction. This may be something which, in another case, could be resolved, either by way of the wording of the injunction, or by the designation of particular sites for this permitted development. But the judge was entitled to reach the view that she did on this issue, based on the evidence before her. There is therefore nothing in this last criticism of the judge’s proportionality exercise.

6.9 Irreparable Harm

94. As noted at paragraph 21 above, the judge concluded that the required threshold of harm had been made out by the appellant. It is therefore curious that Ground 2 of the Appeal (the only ground not yet covered) sought to challenge the judge’s conclusion that the necessary threshold was one of “irreparable harm”. Even if, as the appellant maintains, that was too high a threshold, the judge found that the appellant had satisfied the test in this case, so the point simply does not arise on appeal.

³ See paragraph 3B-1144.2 of Volume 6 of the *Encyclopaedia of Planning Law and Practice*.

95. However, as noted in paragraphs 35 and 60 above, I consider that the test of “irreparable harm” is the right one, supported as it is by a number of authorities. Contrary to Mr Kimblin’s submissions, that conclusion is not contrary to *Meier*, because that was not a case in which the test for a *quia timet* injunction was in issue: all that mattered in that case was whether or not such an injunction was at least potentially available to the claimant.
96. For those reasons, therefore, the judge was right to apply the test of irreparable harm as a matter of law.

6.10 Summary

97. For the reasons set out above, I would dismiss this appeal. The judge considered all of the relevant factors when undertaking her proportionality exercise. She did not have regard to anything irrelevant. She came to a conclusion which she was entitled to reach. Whilst I would not accept Mr Willers’ description of the appellant’s arguments as “just a list of grouches”, I agree with his summary submission that the appellant has struggled and failed to find any error of principle in the judge’s reasoning. There is therefore no basis for this court to interfere with her conclusions.
98. I would not wish to move on to the wider guidance sought in this case without expressing my admiration for the judge’s impressive *ex tempore* judgment. Not only did she have a good deal to consider, and not only was she able to marshal all of that material into a cogent judgment, but she took a clear-eyed view of the underlying problems and was not unduly swayed by the number of other cases in which wide injunctions had been granted in ostensibly similar circumstances.

8 WIDER GUIDANCE

99. As noted at the outset of this judgment, the parties were anxious for this court to provide some wider guidance as to how local authorities should deal with this plainly pressing issue. I am wary of offering too prescriptive a set of suggestions, particularly in circumstances where the appeal itself raised a number of fact-specific matters and has been refused. However, in deference to the parties’ requests, I will endeavour to set out in brief terms what I consider to be the overall position.
100. I consider that there is an inescapable tension between the article 8 rights of the Gypsy and Traveller community (as stated in such clear terms by the European caselaw summarised at paragraphs 44-48 above), and the common law of trespass. The obvious solution is the provision of more designated transit sites for the Gypsy and Traveller community. It is a striking feature of many of the documents that the court was shown that the absence of sufficient transit sites has repeatedly stymied any coherent attempt to deal with this issue. The reality is that, without such sites, unauthorised encampments will continue and attempts to prevent them may very well put the local authorities concerned in breach of the Convention.
101. This tension also manifests itself in much of the guidance documentation to which I have referred at paragraphs 54 - 56 above. That guidance presupposes that there will be unlawful encampments, and does not suggest, save as a last resort, that such encampments should be closed down, unless there are specific reasons for so doing. There is no hint in the guidance that it is or could be a satisfactory solution to seek a

wide injunction of the sort in issue in this case: indeed, on one view, much of that guidance would be irrelevant if the answer was a boroughwide prohibition on entry or encampment.

102. It therefore follows that local authorities must regularly engage with the Gypsy and Traveller community (and/or, in the Greater London area, the first intervener). Through a process of dialogue and communication, and following the copious guidance set out above, it should be possible for the need for this kind of injunction to be avoided altogether. ‘Negotiated stopping’ is just one of many ways referred to in the English caselaw in which this might be achieved.
103. If a local authority considers that a *quia timet* injunction may be the only way forward, then it will still be of the utmost importance to seek to engage with the Gypsy and Traveller community before seeking any such order if time and circumstances permit. Welfare assessments should be carried out, particularly in relation to children. An up-to-date EIA will always be important because the impact on the Gypsy and Traveller community will vary from borough to borough and area to area. In my view, if the appropriate communications, and assessments (like the EIA) are not properly demonstrated, then the local authority may expect to find its application refused.
104. Three particular considerations should be at the forefront of a local authority’s mind when considering whether a *quia timet* injunction should be sought against persons unknown, and where the proposed injunction is directed towards the Gypsy and Traveller Community:
 - a) Injunctions against persons unknown are exceptional measures because they tend to avoid the protections of adversarial litigation and article 6 ECHR.
 - b) In order for proportionality (or an equilibrium) to be met in these cases, it is important that local authorities understand and respect the Gypsy and Traveller community’s culture, traditions and practices, in so far as those factors are capable of being realised in accordance with the rule of law. That will normally require some positive action on the part of the authority to consider the circumstances in which the article 8 rights of the members of those communities are ‘lived rights’ i.e. are capable of being realised.
 - c) The vulnerability and protected status of the Gypsy and Traveller community, as well as the integral role that the nomadic lifestyle plays as part of their ethnic identities, will be given weight in any assessment as to the proportionality of an injunction or eviction measure.
 - d) The equitable doctrine of ‘clean hands’ may require local authorities to demonstrate that they have complied with their general obligations to provide sufficient accommodation and transit sites for the Gypsy and Traveller community.
 - e) Common sense requires the court, when carrying out the proportionality exercise, to have careful regard to the cumulative effect of other injunctions granted against the Gypsy and Traveller community.

105. In my view, boroughwide injunctions are inherently problematic. They give the Gypsy and Traveller community no room for manoeuvre. They are much more likely to be refused by the court as a result (as happened here). The solution in *Wolverhampton*, which identified particularly vulnerable sites but did not include all the sites owned by the council, seems to me to be a much more proportionate answer. I do not accept that this automatically means that the remaining sites will be the subject of unauthorised encampment, as Mr Kimblin suggested, but even if that happens, it is likely to be a better solution than a potentially discriminatory blanket ban.
106. The same is true of the duration of the injunction. Again, in the *Wolverhampton* case, the injunction was limited to a period of one year after which there was a review. That again seems to me to be sensible. I consider that it is - without more - potentially fatal to any application for a local authority to seek a combination of a boroughwide injunction and a duration of a period as long as five years.
107. Credible evidence of criminal conduct in the past, and/or of likely risks to health and safety, are important if a local authority wishes to obtain a wide injunction. In my view, the injunctions in the *Harlow* cases were explicable on the grounds of criminality and the grave risks to health and safety. Injunctions which are designed to prevent entry and encampment only, and without evidence of such matters, should be correspondingly more difficult to obtain.
108. Whilst I do not accept the written submissions produced on behalf of the third intervener, to the general effect that this kind of injunction should never be granted, the following summary of the points noted above may be a useful guide:
 - a) When injunction orders are sought against the Gypsy and Traveller community, the evidence should include what other suitable and secure alternative housing or transit sites are reasonably available. This is necessary if the nomadic lifestyle of the Gypsy and Traveller community is to have effective protection under article 8 and the Equality Act.
 - b) If there is no alternative or transit site, no proposal for such a site, and no support for the provision of such a site, then that may weigh significantly against the proportionality of any injunction order.
 - c) The submission that the Gypsy and Traveller community can “go elsewhere” or occupy private land is not a sufficient response, particularly when an injunction is imposed in circumstances where multiple nearby authorities are taking similar action.
 - d) There should be a proper engagement with the Gypsy and Traveller community and an assessment of the impact of an injunction might have, taking into account their specific needs, vulnerabilities and different lifestyle. To this end, the carrying out of a substantive EIA, so far as the needs of the affected community can be identified, should be considered good practice, as is the carrying out of welfare assessments of individual members of the community (especially children) prior to the initiation of any enforcement action.

- e) Special consideration is to be given to the timing and manner of approaches to dealing with any unlawful settlement and as regards the arrangements for alternative pitches or housing.
109. Finally, it must be recognised that the cases referred to above make plain that the Gypsy and Traveller community have an enshrined freedom not to stay in one place but to move from one place to another. An injunction which prevents them from stopping at all in a defined part of the UK comprises a potential breach of both the Convention and the Equality Act, and in future should only be sought when, having taken all the steps noted above, a local authority reaches the considered view that there is no other solution to the particular problems that have arisen or are imminently likely to arise.

LORD JUSTICE HADDON-CAVE:

110. I agree.

SENIOR PRESIDENT OF TRIBUNALS:

111. I also agree.

Overview and Scrutiny Committee Report

Ward(s) affected: whole borough

Report of Director of Services Delivery

Author: Charlotte Brindley (Contracts Officer)

Tel: 07890592023

Email: Charlotte.Brindley@guildford.gov.uk

Lead Councillor responsible: James Steel

Tel: 07518995615

Email: James.Steel@guildford.gov.uk

Date: 2 March 2021

Operation of Leisure Management Contract 2019-20

Executive Summary

Each year, a review of the Annual Report from Freedom Leisure (FL) is undertaken. This report outlines the process by which this is carried out and also gives a summary overview of the contractor's performance on its operation of the Council's leisure facilities; Guildford Spectrum, Guildford Lido and Ash Manor Sports Centre for the ninth contract period (from 1 April 2019 to 31 March 2020). The contract year was cut short slightly (by 10 days) due to the closures associated with the Covid-19 pandemic.

The Council entered into a 10-year Leisure Partnership Agreement (LPA) with Greenwich Leisure Ltd (GLL) with effect from 1 November 2011. GLL has subcontracted the service to Wealden Leisure Limited trading as Freedom Leisure.

The LPA is a substantial document which includes as one of its component elements a detailed service specification specific to each site covering all aspects of service delivery, e.g., opening and closing hours, water and air temperatures, maintenance regimes, health and safety compliance requirements, staffing levels and qualifications. It also sets out the objectives for the service provision.

The performance of the contractor has been monitored across the sites against set criteria by the Council's Leisure Client team.

The operation of the catering offer at Guildford Spectrum, which used to be operated externally until FL took over the direct catering provision in 2016, is linked to, but does not fall directly within the LPA.

The 10 Year Plan (also known as the Life Cycle Maintenance Programme or 'LCM' Programme) that was produced and agreed by GLL, FL, and officers continues to play an important part in reflecting the level of investment that is likely to be required for plant and equipment at each site during a 10 year period. Work on the life cycle maintenance plan has been significantly restricted due to the closures and the direct financial impact of the pandemic.

The full annual report for the contract period 2019/20 is shown at Appendix 1. The table in Section 4 shows a selection of the key performance indicators from the operator agreement. The reported year's figures for 2019/20 indicate a reported deficit of

£43,667 and therefore no additional payment is due the council.

The Council receives a management fee in monthly instalments for the operation of the venue. £1,071,469 was received in 2019/20.

The pandemic closure has impacted on the financial outturn figures for the leisure partnership agreement. Regardless of the pandemic, turnover was significantly down at Spectrum and Lido. At Spectrum, the pools, event income and catering have all shown a drop in turnover. There have been some reductions in expenditure which offset part of the fall in income. At the Lido, the fall in income was primarily due to the weather.

In the opinion of the Client team, operationally the performance of FL has been generally acceptable during the period.

A sub-group of three councillors volunteered to represent the Overview and Scrutiny Committee (Scrutiny sub-group) to consider the FL Annual Report in detail. The sub-group were generally happy with the day to day operation of the facilities but expressed concern over the level of investment, the rise in customer complaints and the long term strategy to address energy consumption. The minutes of the Annual Report presentation that took place via Microsoft Teams on 17 December are included in Appendix 2.

Suggested items for Overview and Scrutiny to consider

That the committee considers and comments on:

- (1) the performance of FL in relation to the operation of Guildford Spectrum, Guildford Lido and Ash Manor Sports Centre detailed in Appendix 1
- (2) the list of LPA objectives detailed in item 3.4

Is the report (or part of it) exempt from publication? No

1. Purpose of Report

- 1.1 To provide an overview of performance of the leisure contractor operating Guildford Spectrum, Guildford Lido and Ash Manor Sports Centre for the contract year period 1 April 2019 to 31 March 2020.
- 1.2 To provide councillors with an opportunity to comment on the process of the Scrutiny sub-group's review of FL's annual report presentation.

2. Strategic Priorities

- 2.1 The provision of the services detailed within this report support the Corporate Plan in respect of the Community theme in **enhancing sporting, leisure, cultural, community and recreational facilities;**
 - by attracting visitors to the Borough and making Guildford a more attractive place to live in. The venue offers a range of employment opportunities and facilities that businesses need.
 - through providing an enhanced leisure offer in an attractive, vibrant town.
 - through promoting physical activities and contributing to public health.

3. Background of the contract

- 3.1 The Council entered into a 10-year Leisure Partnership Agreement (LPA) with Greenwich Leisure Ltd (GLL) with effect from 1 November 2011, to deliver leisure services throughout the borough at Guildford Spectrum, Guildford Lido and Ash

- Manor Sports Centre. GLL has subcontracted the service to Wealden Leisure Limited trading as Freedom Leisure (FL).
- 3.2 A very detailed and complex contractual agreement, the Leisure Partnership Agreement (LPA), is in place between GLL and the Council. GLL and FL have a contractual agreement that mirrors the contents of the LPA.
- 3.3 The LPA is a substantial document which includes as one of its component elements a detailed service specification specific to each site covering all aspects of service delivery, e.g., opening and closing hours, water and air temperatures, maintenance regimes, health and safety compliance requirements, staffing levels and qualifications.
- 3.4 The LPA sets out the following objectives for the service provision:
- to improve the health and well-being of their communities through increased participation
 - to use sport and leisure to bring communities together
 - to enable access to services by specific groups with identified needs
 - to encourage and provide affordable and sustainable local facilities and services
 - to explore partnerships with other organisations where these will benefit the community
 - to work with clubs and voluntary organisations in the borough to develop their activities and skill levels
 - to encourage investment in the facilities to maintain and enhance the quality of service
 - to bear in mind the rights, needs, and aspirations of facility users and staff
 - to demonstrate value for money and continuous improvement
 - to recognise and maximise commercial opportunities in the facilities
 - to improve the financial 'bottom line' of the Council.
- 3.5 This report reviews the ninth contract period from 1 April 2019 to 31 March 2020. The performance of the contractor has been monitored across the sites over a number of criteria.
- 3.6 The operation of the catering offer at Guildford Spectrum is linked to, but does not fall directly within, the LPA.
- 3.7 Historically the catering was outsourced and generated in excess of £400k rental income annually. Due to the poor performance of the external company, FL took the catering operation in house as it was impossible to get a third party to commercially offer anything like the previous rental income. 2019/20 is the fifth full year of the catering being managed in this way.
- 3.8 FL decided to take over the direct operation of the vending at Guildford Spectrum in 2017. A third-party company had previously operated the vending provision with the income declared into the LPA accounts, however in 2018 FL chose to declare the income and expenditure associated with their operation of the vending provision through the catering account.

- 3.9 One of the indirect impacts of Covid is that FL staff have been furloughed for a significant portion of time since the end of this accounting period. This means they have been unable to provide all the information that would normally be included within the annual report and this includes a separate catering profit and loss account. This will make direct financial comparison with previous years very difficult.

Overview of the existing monitoring arrangements

- 3.10 The Council's Leisure Client team monitor the LPA. Normal monitoring includes regular formal meetings and monthly asset meetings, daily discussions with key FL personnel and regular visits to site, specific walk rounds to monitor service delivery, assessment of information provided by FL, regular use of the facilities as a customer, and formal and informal discussion with customers, partners, and FL staff.
- 3.11 Quarterly formal client monitoring meetings are diarised considering a standard agenda covering financial performance, technical issues, quality of service including customer comments, marketing development, and health and safety.

4. Performance of the Contractor – Key Performance Indicators

- 4.1 The following tables below show a selection of the key performance indicators from the operator agreement relating to financial performance, operating performance and catering financial performance. There will have been an impact as a result of the Covid closure to all key performance indicators unless indicated otherwise.

KPI – Key Financial 'LY' = 2018/19	Spectrum	Lido	Ash	Contract	Notes
Income (£) *combined LPA and catering income	10,987,480 (LY) 11,344,499	489,103 (LY) 722,551	401,234 (LY) 387,644	11,877,817 (LY) 12,454,694	The 2018/19 figures for the Lido were exceptional, owing to the successive spell of hot weather which drove footfall & the introduction of online bookings
Expenditure (£) *combined LPA and catering expenditure	9,748,303 (LY) 10,000,209	605,665 (LY) 715,525	346,442 (LY) 338,447	10,700,410 (LY) 11,054,181	Inc central support charges Exc. management fee & repayments
Management fee & repayments* (£)	1,288,637 (LY) 1,265,657	(108,337) (LY) (101,889)	40,774 (LY) 41,924	1,221,074 (LY) 1,205,692	Management fee element (£1,071,469) Will not have been affected by covid closures.
Net contract surplus/ (deficit)	(49,460)	(8,225)	14,018	(43,667)	

- 4.2 FL's approach to the chart of accounts differs to the approach used within their bid calculations. As we are now in the ninth year of the contract, the bid figures are no longer therefore relevant for comparative purposes.

4.3 A small part of the fall in income can be attributed to the 10 day closure due to the pandemic, however the size of the fall (£576,877) would still have been significant had the facilities remained open. The overall position was a deficit of £43,667. As a result, no additional payment is due to the Council.

KPI –Key Operational LY = 2018/19	Spectrum	Lido	Ash	Contract	Bid or previous year	Notes
Attendances	1,707,671 (LY) 1,761,509	69,583 (LY) 132,800	84,233 (LY) 84,833	1,861,487 (LY) 1,979,142	BID 1,920,399	
Memberships	3,738 (LY) 2,522	110 (LY) 72	659 (LY) 612	4507 (LY) 3,206	(18/19) 3,206 (17/18) 3,456 (16/17) 3,685	Not a direct comparison as new memberships were introduced and a breakdown not available from 2018/19 to confirm like for like comparison
Active card	n/a	n/a	n/a	26,210	(LY) 29,940	Will not have been affected by Covid closures.
Green Active card (concessions)	n/a	n/a	n/a	5,281	(LY) 4,353	Will not have been affected by Covid closures.
Overall customer satisfaction rating	- (LY 81%)	- (LY 90%)	- (LY 94%)	n/a	n/a	Exercise not undertaken this year
Compliment	n/a	n/a	n/a	187 (LY 151)		See pages 20-21 of Appendix 1 for summary of statistics
Complaint	n/a	n/a	n/a	721 (LY 579)		
Comment/suggestion	n/a	n/a	n/a	85 (LY 99)		

4.4 In the opinion of the Leisure Services Client team, operationally the performance of the contractor against the above operational KPI's has been generally acceptable during the period. Memberships appear to be a significant improvement compared to previous years where it was declining year on year, however the number of complaints has increased despite attendances being down.

KPI – Key Catering Financial	2019/20	2018/19	2017/18	Notes
Spectrum Catering Income	1,860,255	1,929,347	2,059,577	Figures for 2017/18 affected by profit claim for closures (£16,378)
Spectrum Catering Expenditure	1,508,231	1,422,300	1,594,691	Figures for 2017/18 affected by profit claim (reduced expenditure) for closures
Spectrum Catering Profit	352,024	507,047	464,886	2019/20 figure would have been affected by the early closure as a result of the pandemic.

- 4.5 The available figures indicate a decline in overall catering performance in the period (compared to the previous year), however a profit of £352,024 was still achieved. The catering performance will have been affected by the closures as a result of the pandemic as they effectively lost 10 days income.
- 4.6 Work on the life cycle maintenance plan has been significantly restricted due to the closures and the direct financial impact of the pandemic. The financial impact of the pandemic has created a bigger shortfall than would have otherwise been the case in the funding for the lifecycle maintenance plan.
- 4.7 Freedom Leisure’s full annual report for the contract period 2019/20 is shown at Appendix 1.

5. Health & Safety

- 5.1 In the contract year, there were 805 accidents across the Guildford contract (93 more than last year). This equates to 0.43 accidents per 1,000 visits, against the industry threshold of 1 accident per 1,000.
- 5.2 There were five incidents during the period that required reporting to the Health & Safety Executive (HSE) under RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations). Three of the incidents occurred at Guildford Spectrum, and the other two incidents occurred at Guildford Lido.

6. Overview and Scrutiny sub group monitoring process 2019/20

- 6.1 A sub-group of three councillors (Councillors Booth, Potter, and Manning) volunteered to represent the Overview and Scrutiny Committee (Scrutiny sub-group) to consider the FL annual report in detail.
- 6.2 The sub-group and the Lead Councillor for Environment, James Steel, received a detailed briefing on the contract from the Council’s Leisure Client team in advance of the remote Annual Report Presentation by Freedom Leisure. Those that were unable to attend the briefing were provided with copy briefing papers and were given the opportunity to ask any questions.
- 6.3 The presentation of the annual report took place on Thursday 17 December 2020. The Freedom Leisure Contract Manager, Mark Purnell, delivered a presentation via Microsoft Teams to the Lead Councillor (Councillor James

Steel), the sub-group (Councillors Booth, Potter, and Manning), the Leisure Client Team, and the Director of Service Delivery.

- 6.4 The sub-group considered the contents of the report and asked a number of questions relating to customer feedback, membership prices, and investment in the facilities, as well as re-opening plans for the Lido in particular. The minutes, which were circulated to the sub-group for any further questions/comments, can be found at Appendix 2.
- 6.5 In summary, the Scrutiny sub-group;
- were broadly happy with the day to day operation of the facilities during the period
 - had some concerns relating to the level of investment and the long-term impact this would have on each venue
 - expressed a need for a long-term strategy to reduce the carbon footprint of the leisure facilities, the Spectrum in particular
 - expressed reservations over the lack of financial information within Freedom Leisure's Annual Report submission
 - asked a number of questions in relation to the customer feedback section to obtain further clarification of the nature of complaints and reasons for these. The sub-group expressed a desire for Freedom Leisure to undertake more detailed analysis of the reasons for complaints and propose ways of addressing these
 - were also keen to understand what Freedom Leisure are doing to stay competitive within the market and retain their members particularly given the challenges the pandemic will continue to present.

7. Financial Implications

- 7.1 The council receives a management fee in monthly instalments for the operation of the venue. £1,071,469 was received in 2019/20. This includes £90,000 (plus subsequent Retail Price Indices (RPI) increases) to reflect projected efficiency savings through the joint award of both the Guildford and Woking leisure contracts to the same contractor. This management fee is subject to RPI adjustment each year for the ten-year life of the initial contract.
- 7.2 If FL exceeds the financial performance detailed within their bid, 100 per cent of any surplus comes to the Council with 50 per cent of the surplus ring-fenced for spending on the three venues in the contract and 50 per cent allocated by the Council for any purpose of its choosing. Conversely, should the operator fail to achieve the targeted level of net income, they would still be responsible to pay the full contracted sum to the Council.

8. Legal Implications

- 8.1 Section 3 of the Local Government Act 1999 requires that the Council as a best value authority “make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness”. Reviewing and, where required, monitoring the Council’s contractual approach is an important way in which that obligation can be fulfilled.
- 8.2 Any formal changes to the current contractual arrangements will have to be agreed with GLL/Freedom Leisure and varied by agreement.
- 8.3 As the Overview and Scrutiny Committee has no decision-making powers, any recommendations that may arise would need to be referred to the relevant decision-making body of the Council for a decision.

9. Human Resource Implications There are no HR implications arising from this report.

10. Equality and Diversity Implications

- 10.1 This duty has been considered in the context of the Leisure Partnership Agreement and it has been concluded that there are no equality and diversity implications arising directly from this report. Prior to any future decision to change the Spectrum arrangements, an Equalities Impact Assessment will be required.

11. Climate Change/ Sustainability Implications

- 11.1 Section 11 of FL’s annual report sets out the energy consumption for the last three years for the sites. Guildford Spectrum, by the nature of its facilities, is a significant energy consumer. During the course of the contract, a number of energy saving initiatives have been introduced including the installation of a replacement Combined Heat & Power Unit (CHP) to act as a lead boiler at the venue. In addition to this, there have been a number of SALIX funded projects at the Lido and Spectrum.

12. Suggested items for Overview and Scrutiny to consider

- 12.1 Councillors may wish to consider whether:
- To comment on the performance of FL in relation to the operation of Guildford Spectrum, Guildford Lido, and Ash Manor Sports Centre as detailed in the annual report at Appendix 1
 - to comment on the LPA objectives detailed in 3.4 above

13. Conclusion

- 13.1 The pandemic closure has impacted on the financial outturn figures for the leisure partnership agreement.
- 13.2 Turnover was significantly down at Spectrum and Lido. At the Lido, this was primarily due to the weather. At Spectrum, the pools, event income, and catering

have all shown a drop in turnover. There have been some reductions in expenditure which offset part of the fall in income.

- 13.3 The operator has been unable to provide all the normal information for the annual report as a result of ongoing impacts of the pandemic.
- 13.4 In general, the operation of the venues has been within the acceptable parameters of the contract.
- 13.5 Overall, the sub-group were generally happy with the day to day operation of the facilities but expressed concern over the level of investment, the rise in customer complaints, and the long-term strategy to address energy consumption.

14. Background Papers

Freedom Leisure Annual Report Presentation 2019/20

15. Appendices

Appendix 1 – Freedom Leisure Annual Report 2019/20

Appendix 2 – Minutes of Annual Report Presentation 17 December 2020

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FREEDOM LEISURE ANNUAL REPORT

April 1st 2019 – March 31st 2020

AUTHOR: Mark Purnell

Contracts Manager

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Appendix 1: Profit and Loss Account

1. Purpose of the report

- 1.1 The purpose of this report is to review Freedom Leisure's management of the Spectrum Leisure Complex, Ash Manor Sports Centre and the Lido against the targets and standards set out in the Leisure Partnership Agreement.
- 1.2 The report covers the period from April 1st 2019 to March 31st 2020
- 1.3 Based on the reported results it is recommended that the Council approve that
 - 1.3.1 The objectives set out in the Leisure Partnership Agreement ('LPA') are being achieved.
 - 1.3.2 A balanced service is being offered across the facilities meeting community and commercial needs.
 - 1.3.3 The overall performance of the partnership with Freedom Leisure is in line with the Council's objectives.

2. Introduction

- 2.1 Greenwich Leisure Limited (GLL) and the Council entered into the 10 year Leisure Partnership Agreement (LPA) on the 1st November 2011. GLL subcontracted the service to Freedom Leisure which means that Freedom Leisure provides the operational services whilst GLL is available for assistance if required.
- 2.2 Within this Guildford Contract Freedom Leisure directly employ 211 contracted staff and a further 329 casual and coaching staff.
- 2.3 The facilities which Freedom Leisure operates on behalf of the Council comprise:

Spectrum Leisure Complex ('Spectrum')

- 32-lane tenpin bowling centre
- Olympic sized ice rink with a capacity for over 2,000 spectators
- 4 swimming pools: a leisure pool, teaching pool, competition pool and a diving pool with 3 boards
- Outdoor athletics track with football pitch
- 78 station gym and spa
- 3 multi-purpose sports halls, including a main arena with 10 badminton courts
- "Rock Box" climbing facility
- A variety of restaurants including a 'Costa proud to serve' cafe and Burrito Loco
- Children's soft play area
- Crèche
- 2 sports related retail outlets – Ice Locker and Kit Kabin
- 2 squash courts

Lido

- 50 metre swimming pool, paddling pool and 4 acres of surrounding gardens and 3 water slides
- Specialised heavy weights gym

Ash Manor Sports Centre: ('Ash Manor')

- 42 station gym
- 2 multiuse sports halls
- 3G all weather pitch
- A studio

3. Achievements

Spectrum

3.1 Ice Rink

A successful season of public ice sessions, courses, private tuition and ice hockey matches led by the Flames below – alongside the overwhelming success of the Pantomime on Ice which ran its best series of performances to date and its most successful financial return to date.

The Flames 2019-2020 season was cut short by 3 weeks due to the onset of the Covid 19 pandemic - it was generally a very successful season both on and off the ice. The Flames finished top of their Cup group, advanced to the Cup Quarter final, and finished the shortened league season well in a playoff spot with 25 wins.

The abrupt end of the season forced a cancellation of the playoff competition, and at this time the next Elite league season cannot begin until government guidelines allow at least functional capacity and social distanced attendance for matches.



In terms of the business an excellent attendance season across 30 games was enjoyed with just over 53,000 people through the gate, averaging 1775 people per game between season tickets, game tickets and box hire attendees. Flames finished the season with 1048 season ticket/sponsor ticket holders- the highest ever achieved.

3.2 Bowling

As a Gold Accredited Centre Spectrum is able to:

- advertise on the BTBA website as a Gold Accredited Centre to the wider bowling community to host their tournaments.
- reaffirm commitment to current clubs and bowlers that we are a dedicated bowling venue
- our lanes are inspected annually by the British Tenpin Bowling Association (BTBA) – a chargeable inspection but essential in order to be able to host both leagues and tournaments that are BTBA-recognised.

- between April 2019 and March 2020 the Bowl hosted 18 individual days of tournaments (not including our leagues) resulting in an income of over £17,000.
- the majority of the bowlers in these events are from different parts of the UK bringing new people to Guildford. As events can also span the weekend they have a positive impact on other surrounding local businesses such as hotels and restaurants.

3.3 Charity of the Year – Jigsaw SE

- Jigsaw (South East) supports bereaved children, young people and their families and those affected by having a family member living with a terminal diagnosis.
- Jigsaw (South East's) Business Development Manager, Carolyn Steer, is delighted to be working closely with the Spectrum. She said: "It's a great honour for us to have been voted Guildford Spectrum's Charity of the Year. This partnership will give valuable breaks to many of the families we support, at a time when grief can be overwhelming and finances are stretched.
- "The opportunity to access a leisure activity can have great benefits both mentally and physically. We wholeheartedly thank Spectrum's customers for their kindness," she added.



- Jigsaw (South East) have been given Active Card points that can be exchanged for a wide variety of leisure facilities.
- The activity tickets are generated through the generosity of Spectrum's customers who donate their Active Card loyalty points to the cause. These points are converted into activity tickets for the charity to use as they wish.

3.4 Events 2019/20

- 138 days of Arena based events (26 of these were 2/3 day events – an increase of 24 days from prior year) – see Table in Section 7
- 6 major athletics events (Regional or above)
- 22 school sports days
- 27 league football matches – 10 cancellations due to the impact of the Covid pandemic
- New event- London Pulse Netball / GB Boxing / GB Masters Fencing / Golden Gloves Boxing

The success of these events is measured by feedback from the organisers and if viable repeat bookings are made. Currently GB Boxing & GB Masters fencing have both re-booked for 2020/21.

3.5 Swimming

Event	2019/20	2018/19
Galas	20	33
School Events	13	12
Other	5	5
Total Events	38	50

3.6 Catering Summary

Spectrum Catering			
	2019/20	2018/19	Variance
Income	£1,860,255	£2,047,271	(£187,016)
Expenditure	£1,508,231	£1,422,300	(£85,931)
Profit	£352,024	£507,047	(£155,023)

- Spectrum operation down year on year – a proportion of which is attributable to the tail off and then subsequent closure due to the pandemic – estimated revenue loss c. £80k based on weekly average turnover.
- Reference Appendix One (P+L) for more detailed breakdown of Catering revenues and costs.

4. Ash Manor and Lido Overview

4.1 Ash Manor

Annual Memberships saw an 82% growth and contributed to Ash Manor achieving a 1.8% improvement on membership income from 2018/19.

A number of '12 for 9' offers throughout the year and another successful 'Spooktacular' offer at Halloween contributed to the success overall of Ash Manor annual membership income.

Member retention was the biggest challenge the Centre faced throughout the year. 3 x brand new 24 hour gyms opened within a 3 mile radius (Unit 24 Fitness Centre / Anytime Fitness / Pure Gym).

In order to combat the new local competition a series of new events were included in the programme:

- 6 Week Fat Loss Programmes – 'Drop it like it's hot', 'Thin it to win it' & 'Mission Slimpossible'. – generating a c.£2k surplus overall.
- MummyFIT - our first post-natal 6 week course.
- Gym Fast Classes – 10 x Gym floor classes based and coached within the gym.
- Development of Group Ex programme – classes added resulting in a 30% increase in class numbers.
- Synergy Dance – a partnership for junior members to attend specialised dance classes.

4.2 Recruitment

- Ash recruited 2 x freelance Personal Trainers - enabling Fast Classes, the 6-week challenges and numerous social media video series to be added to the overall programme.
- In addition, a number of 'recreation assistants' with various disciplines were recruited enabling the Centre to increase children's activities and parties throughout the year – contributing to a 224% increase in revenue compared with 2018/19.

4.3 Activities

- Children's Birthday Parties remained popular throughout the year and in January 2020 a Bouncy Castle was purchased which added further options to both the party packages and our overall children's activity programmes.
- The Centre continues to support local families by offering discounted half term/school holiday usage - "Family for £5" – a promotion that developed an increase in families coming down to play badminton and table tennis.
- Three individual football clubs are now using the 3G pitch as their home ground enabling Ash Manor to increase midweek training utilisation on the pitch and achieve an overall YoY increase of 6% in revenue for outdoor activities.

4.4 Maintenance

Various maintenance work has been undertaken and completed during the course of the year including roofing works above the main gym, repair work to ceilings and the refurbishment of the air conditioning units. In addition the main reception carpet has been replaced and the area redecorated throughout.

4.5 Lido

The Lido continued to host the Aquathon series of swim/run events. These events were organised in partnership with the local Triathlon Club on Friday evenings during the summer and encouraged children and adults, novices and experienced participants, to take part in a friendly and relaxed atmosphere.

In addition the April 2019/20 Swim4Life event - a 24 hr endurance event- took place and was well supported.

A mix of schools and private hire usage meant a further 17 individual user groups or organisations were able to make use of the facilities on offer.

The tail end of this year saw significant disruption to the planned preparation for the re-opening for 20/21 season – creating some challenging issues in respect of water maintenance and general presentation of the buildings overall. Not all of these issues are related to the onset of the Covid pandemic and Freedom Leisure acknowledges the need for a more robust PPM programme to ensure readiness for re-opening in 2021.

Gym membership peaked at 110 members in March 2020 – in part due to a £25 promotion campaign designed to halt the attrition being experienced as a result of increased local competition.

5. Finance Summary

	Spectrum	Ash	Lido	Contract
Income	£10,987,480	£401,234	£489,103	£11,877,817
Expenditure	£9,748,303	£346,442	£605,665	£10,700,410
Management Fee + Repayments	£1,288,637	£40,774	(£108,337)	£1,221,074
Net Surplus / (Deficit)	(£49,460)	£14,018	(£8,225)	(£43,667)

The detail is provided for each leisure centre and contract overview can be found within Appendix 1.

5.1 Staff cost v income

	Spectrum	Ash	Lido	Contract
Income	£10,987,480	£401,234	£489,103	£11,877,817
Staff Costs	£4,541,818	£162,195	£235,416	£4,939,429
2019/20 Labour Turnover %	41%	40%	48%	42%
2018/19 Labour Turnover %	42.3%	44.2%	35.1%	42%

5.2 Income Performance Payment (IPP)

IPP is only payable on achieving the bid figures which was not achieved this year and thus no payment has been made.

5.3 Attendance

	2019/20	2018/19	Bid	Variance vs bid
Spectrum	1,707,671	1,761,509	1,750,102	(42,431)
Ash Manor	84,233	84,833	96,872	(12,639)
Lido	69,583	132,800	73,424	(3,841)
Contract	1,861,487	1,979,142	1,920,399	(58,912)

Attendances overall remain broadly consistent with previous trends, although remaining short of the bid figures.

5.4 Average spend per user

	2019/20	2018/19
Spectrum	£6.43	£5.63
Ash Manor	£4.76	£4.57
Lido	£7.03	£5.44
Contract	£6.07	£5.21

5.5 Service failures or closures

Planned closures - none

Unplanned closures: -all facilities from 20th March 2020 as a direct result of the Covid 19 pandemic lockdown

5.6 Summary of results

These Performance Indicators demonstrate that the year was progressing reasonably well up until the Covid 19 pandemic hit the UK, at which point it is fair to say that public disquiet and the subsequent national lockdown adversely impacted the results for the final month of the year.

6. Memberships

Membership type	Totals at 31.03.20
Total Members	3,738
Plus	640
Off Peak	594
Joint Off Peak	120
Joint Plus	240
Student	592
Student Plus	78
Junior 12-13	64
Junior 14-15	292
Fitness	2
Family	244
Live Well (new)	32
GBC Staff	14
Corporate Peak	178
Corporate off peak	52
Connected	60
Swim	122
Swim Joint	12
Allianz	402

Total members compares favourably with 2018/19 (2,522 members) and reflects the on-going solid performance of the Spectrum Sales team in driving this key area.

6.1 Introduction of new memberships

Student Plus - 78 members

GBC Corporate membership - 14 members

Live Well membership - 32 members

The membership climate continued to prove challenging throughout the year with increased competitiveness in the local area – particularly for Ash Manor where 3 new gyms have opened within minutes of the Centre. Price increases in April 2019 across all membership lines created additional pressures around membership retention.

However, strong marketing plans drove up new member enquiries and a strong focus on upgrading existing members to improve overall yield proved successful.

February and March 2020 proved the most challenging months and yielded a high volume of cancellation requests both in person and directly via the bank due the uncertainty of the direction of travel for the COVID 19 pandemic.

A change in structure of the sales and services team in December 2019 created a direct and focussed sales approach, which has proved successful with targets being met in December, January and February. The change in structure continues to be a priority as we move into even more uncertainty in 2020/21 to ensure sales and retention targets are reached.

6.2 Ash Manor Membership Sales

The team at Ash Manor Sports Centre have focussed their efforts on membership retention having experienced stiff competition from at least 2 low cost gyms opening within a 3 mile radius of their facilities. Membership as of 31st March 2020 was 659 members.

6.3 Lido Membership Sales

Various promotional efforts have seen a small growth in memberships at the Lido Gym with c.110 members now signed up. Limited space and increasingly dated equipment alongside no additional services to augment membership means numbers are unlikely to grow and retention will be the main area of focus.

6.4 Local Community Participation

The Active Card was developed to offer sport and leisure benefits to Guildford Borough residents. The data collected from this service is used to determine the best methods of communication with the customer base and to target key times of the day when the facilities have availability.

The Green Card is a version of the Active card specifically for concessionary groups.

	2019/20	2018/19
Active Card	26,210	29,940
Green Card	5,281	4,353

The following is a breakdown of the numbers of members in each concessionary group per site for 2019/20:

Membership Type	Spectrum 2019/20	2018/19	Ash Manor 2019/20	2018/19	Lido 2019/20	2018/19
Disabled	290	120	1	0	0	0
Income Support	62	66	3	0	0	1
Senior Citizen	4,286	3,531	27	338	272	137
Student	266	132	26	17	0	0
Unemployed	44	11	4	0	0	0
Total	4,948	3,860	61	355	272	138

7. Marketing

7.1 Marketing Overview

During 2019 the marketing focus started to shift from traditional forms of marketing towards digital marketing and this is the planned direction that Guildford Spectrum marketing will continue to explore.

The main areas of focus for Guildford Spectrum were the school holidays (Easter, summer, Christmas & Half Terms) memberships and the Pantomime on Ice.

The Lido's focus was open season and the workshop gym during off season.

At Ash Manor the focus was primarily on memberships and the school holiday children's programme.

The tables and graphs above show increased web traffic over the previous year, especially around the school holidays. Engaging with a digital marketing agency in July to trial increasing web traffic promoting Guildford Spectrum as a summer holiday attraction venue provided positive results.

After the successful summer trial similar campaigns were run for October Half Term, Christmas Holidays and Pantomime on Ice. For February Half Term we enlisted the help of a marketing agency to help rebrand our offer and give the family attraction side of Guildford Spectrum even more digital focus – all with great success.

Going forward and with Covid-19 in mind the focus of Guildford Spectrums marketing will remain digitally based. This will allow us to control the message we are putting out with the ability to react quickly to any new changes.

Covid-19 isn't main reason that we intend to focus on the digital side-digital marketing allows us to cost-effectively target our marketing efforts and put the right message in front of the right people, whilst getting quantifiable data back.

There is still a place for traditional marketing and Guildford Spectrum will continue to have a presence in a select few print publications. With the recent takeover of Eagle Radio by Bauer Radio additional advertising opportunities are currently being explored.

7.2 Programme of Events

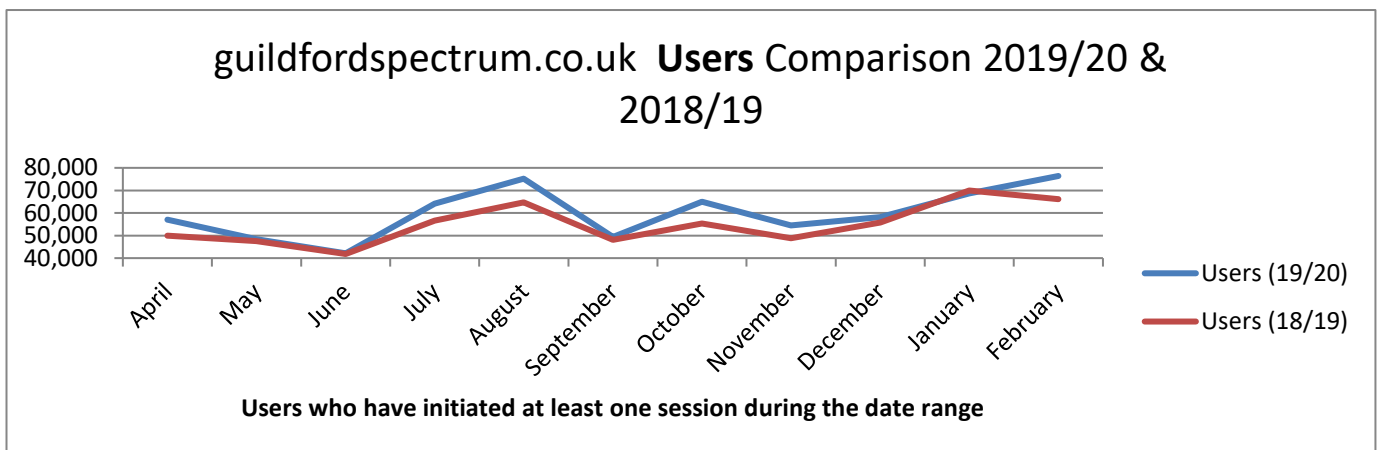
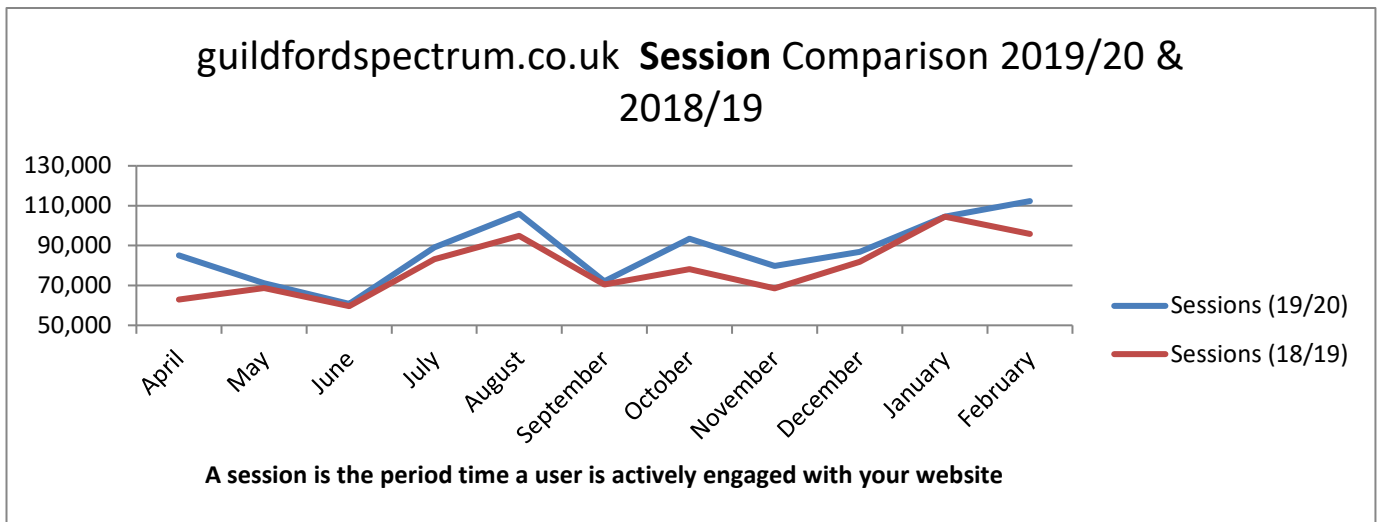
April 2019	November 2019
MMA - Amateur Boxing	British Gymnastics
South East Regional Gymnastics	UK Open Taekwondo
Give Blood Session	Arena League Gala 2
Roller Disco	Roller Disco
British Action Academy	BSAD Games Gala
May 2019	SPREAD Gala
Borough & Parish Elections	Give Blood
Borough & Parish Elections	MMA Competition
IDTA Dance	Boxhill Swimming Club Gala
SWEATY BETTY	Surrey County AA Indoor Athletics
SWEATY BETTY	December 19
Roller Disco	South East Floor & Vault Championships
Surrey Gymnastics	Give Blood
June 2019	Arena League Gala 3
BCA Cheerleading	Pantomime on Ice
Give Blood	Christmas Roller Disco
Robot Wars	NY Eve Roller Disco
Roller Disco	January 2020
Woking Gymnastics	GB Veterans Fencing
South East Gymnastics	Give Blood
July 2019	Surrey AA Indoor Athletics
London Open Tae Kwon Do Competition	Active Surrey School Sports Hall Event
Give Blood	Roller Disco
Roller Disco	Guildford Archery Club
August 2019	Surrey Special School Badminton
Give Blood Session	Mum2Mum
Roller Disco	Surrey County Athletics
September 2019	National Badminton
S E Regional Gymnastics	WIKF Martial Arts Course
Surrey Bridge Association Tournament	Feb-20
Give Blood Session	WIKF Martial Arts Course
Roller Disco	Roller Disco
South East Gymnastics	London Pulse Super League Netball
October 2019	Indoor Athletics Event
SE Masters Gala	ICC Cheerleading
ISTD Dance	Give Blood Session
Give Blood	Active Surrey
Arena League Gala 1	S E Regional Gymnastics
Surrey County Athletics	WADO Winter Course
Fat Face Sale	Active Surrey
GCSC Invitational Gala	MAAS Amateur Boxing
Roller Disco	
IDTA Dance	
South East Regional Gym	*March – no events due to Covid closure

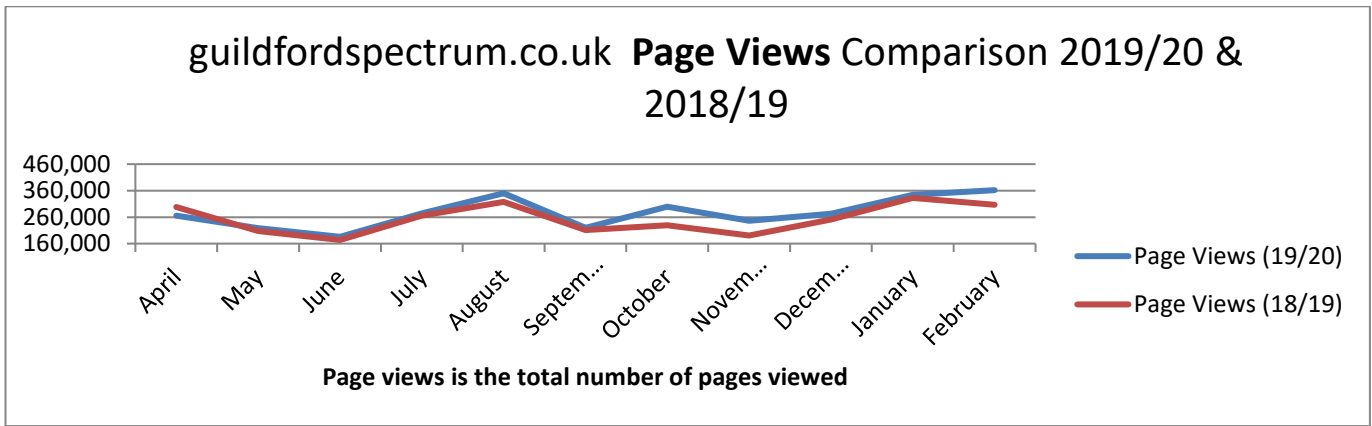
7.3 Digital Marketing

The data below gives an indication of the level of traffic to Spectrum web pages and also reflects levels of new interest versus returning users.

Web Traffic Analytics

	Totals 2019/20	Totals 2018/19
Sessions	960,950	868,848
Users	659,182	604,731
Page Views	3,036,307	2,783,406
Pages / Sessions	3.00	2.76
Avg. Session Duration	1.67	1.75
Bounce Rate %	38.91%	40.90%
New Visitor	68.89%	69.74%
Returning Visitor	31.11%	30.22%





7.4 **Email Marketing**

144,446 e mails were sent between April 2019 and February 2020 with an on open rate of 26% (benchmark for open rate is 15-20%).

7.5 **Website enquiries**

	Totals
Ice School enquiries	1,851
Swim School enquiries	2,155
Contact Us enquiries	774
Group Booking enquiries	129
Birthday Party enquiries	1,487
	6,396

7.6 **Social Media**

Site	Facebook followers increase	Instagram follower increase on 2018/19	Twitter follower increase on 2018/19
Guildford Spectrum	2,566	592	27
Guildford Lido	549	212	7
Ash Manor	275	84	1

8. Programming

8.1 Ice Skating Courses

	Number on programme 2019/20	Number on programme 2018/19
Total	10,092	10,276

Ice skating remains as popular as ever and this is reflected in the growing number on the programme which reflects a 95.7% level of occupancy. Only the Covid pandemic has prevented prior year total being exceeded.

8.2 Swim

Leisure Pool	2019/20	2018/19		Toddler Splash	2019/20	2018/19
April	32,062	34,536		April	610	185
May	23,869	22,550		May	573	133
June	15,233	15,004		June	613	59
July	26,390	32,227		July	655	150
August	46,028	50,749		August	619	261
September	18,432	19,392		September	765	126
October	20,144	21,433		October	600	135
November	14,441	9,776		November	504	107
December	14,960	15,873		December	441	96
January	20,940	20,685		January	710	190
February	31,632	26,603		February	871	221
March	6,786	16,699		March	454	482
	270,917	285,527			7,415	2,145

Leisure Pool attendance reflects a small decline year on year, in part impacted by a warmer July / August period which saw the Lido usage increase to the detriment of Spectrum.

Toddler Splash continues to thrive driven in part by additional sessions being programmed

8.3 Swim School

Numbers have gradually increased from 1888 in April 2019 to an end of year figure of 2,023 – the challenge remains to continually tweak the available programme space to support more attendees.

Swim teacher availability remains generally good and parent feedback is also generally positive.

8.4 Holiday Courses

		5-8yrs			9-12yrs			TOTAL	
		Days Run	Numbers Attended	TOTAL £	Days Run	Numbers Attended	Total £	TOTAL NUMBERS	TOTAL £
2019	Feb	5	111	£3,381	5	57	1919	168	£ 5,300
2020	Feb	5	136	£4,282	5	62	2015	198	£ 6,297
2018	Easter	9	141	£4,457	9	133	4195	274	£ 8,652
2019	Easter	9	243	£7,738	9	152	4834	395	£ 12,572
2018	May	4	63	£1,944	4	52	1643	115	£ 3,587
2019	May	3	70	£2,211	3	35	1156	105	£ 3,367
2018	Summer	29	774	£24,232	29	524	16076	1298	£ 40,308
2019	Summer	29	778	£25,136	29	441	14417	1219	£ 39,553
2018	October	5	80	£2,476	5	78	2574	158	£ 5,050
2019	October	5	275	£8,878	5	113	3633	388	£ 12,511
2018	Xmas	8	99	£2,968	8	29	867	128	£ 3,835
2019	Xmas	7	229	£7,323	7	101	2990	330	£ 10,313

Holiday programme activity take up reflects an improving trend which can be directly linked to the digital marketing and rebranding strategy referenced in the Marketing section of this report.

8.5 Group Fitness Classes

The group exercise programme was refreshed in 2019/20, with two new studio coordinators influencing the timetable introducing new classes and instructors.

Due to customer demand and following industry trend, two new Les Mills classes were returned to the timetable:

- Body Combat
- Body Attack

Several new instructors were brought in to lead the Les Mills expansion, introduced through a 'Les Mills Launch' event in April 2019, all proving to be popular with Spectrum customers and securing regular high attendance in their classes.

Additional new classes 2019/20:

- MetaHIIT
- OTAGO Strength & Balance
- Beginners Cycle

Class attendance was monitored throughout the year using the 'traffic light system', with underperforming classes Dyna Cycle and Animal Flow coming off the timetable. Conversely overachieving classes, such as Kettlecise and Total Body Workout had additional classes added.

Class performance was continually monitored throughout the year using the TLS and Key Performance Indicators. Annual 1-1s with all studio instructors were undertaken half way through the year, led by the Studio Coordinator, Lisa.

The Gym’s Fast Classes continue to gain in popularity, with maximum attendance regularly achieved. Instructors noted that many attendees of Fast Classes were regular group exercise customers, many of which would then enrol onto the Gym Evolve Programme and often go on to purchase Personal Training, increasing value to membership through cross promotion.

The LiveWell membership continued to be a success through the year. With further expansion to the class programme introducing the ground breaking new Otago Strength & Balance class to the timetable.

8.6 Crèche

Spectrum’s Crèche and Activate Scheme retained its Ofsted accreditation with a rating of ‘good’. The Crèche also achieved re-accreditation for the Surrey County Council Early Years Quality Improvement Award.

A total of 1,713 children were looked after this year – an average of just 5 children per day - a fall from the 2400 in 2017

8.7 Parties

Party Type	2019/20	2018/19
Bowling	217	242
Dance	54	74
Flair Gymnastics	17	8
Football	36	40
Ice Skating	293	325
PitSlot	58	93
RockBox	255	222
Soft Play	54	46
Teaching Pool	40	47
WhizzFit	48	40
Leisure Pool	98	98
Total	1170	1137

Parties continue to make a major contribution to the overall success of the Spectrum and reflect the multiple sporting activities available to all age groups to take part in. Marketing challenge is to drive incremental increase in the lower take up activities to grow this business - and the associated catering benefit - further.

8.8 Community / Sports Development

Work has continued with Guildford's Sport Development Officer to offer a coordinated sports development plan that meets the needs of the local community. Progress has been made with the facilities being more available than ever to serve the needs of the Council's focus groups.

User groups this year have included Halo, Action for Carers and the SPREAD Games.

The ELITE scheme continued to operate throughout the year as a way to offer direct support to those identified as up and coming stars. In addition, Freedom Leisure continued to support the Sports Foundation programme run by GLL which offers a range of grants and training for regional sports stars.

<u>Guildford</u>	<u>Awards</u>	<u>Value</u>	<u>Total</u>
Sports Aid	1	£1,000	£1,000
Achievement - £250	14	£200	£2,800
Top Up - £200	1	£150	£150
Training	20		
<u>TOTAL</u>	35		£3,950

9. Customer Feedback

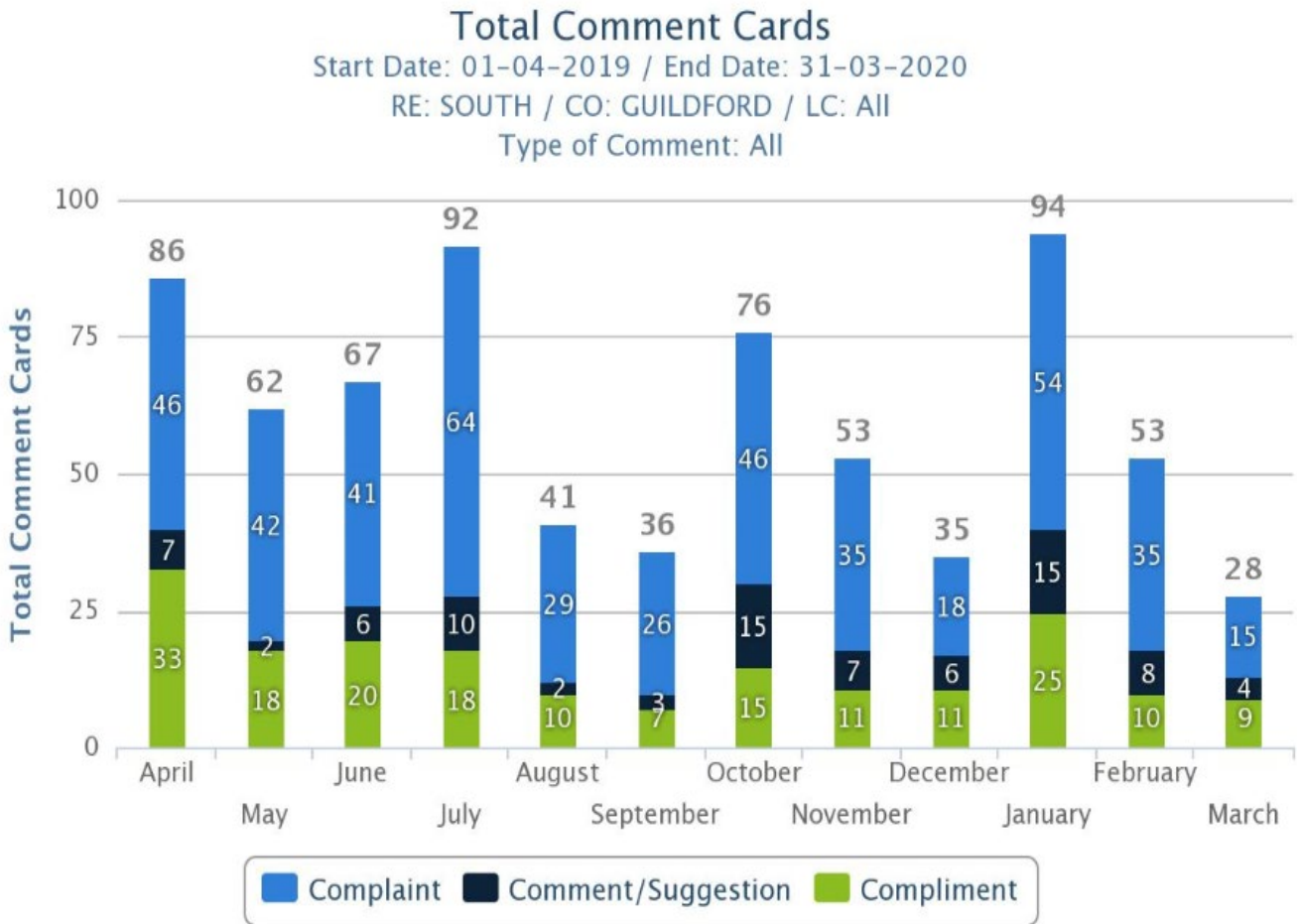
A summary of the results of our comprehensive Customer Research and Insight Programme for this reporting year are set out below.

9.1 Feedback Focus

The continued use of Feedback Focus, a Leisure-net Solutions Ltd system, has enabled the gathering of more balanced qualitative feedback from customers. It has also helped with the recording, response tracking and overall management and analysis of customer feedback for each centre and department.

All compliments, complaints and comments/suggestions received are recorded on the system. Monthly reports are then produced and these have helped Freedom Leisure to remain proactive in responding to customers' aspirations and concerns.

9.2 Total comment cards by type



Number and type of comments	2019/20	2018/19	Variance 2018/19-2019/20
Compliment	187	151	36
Complaint	721	579	142
Comment/suggestion	85	99	(14)
Total	993	829	164

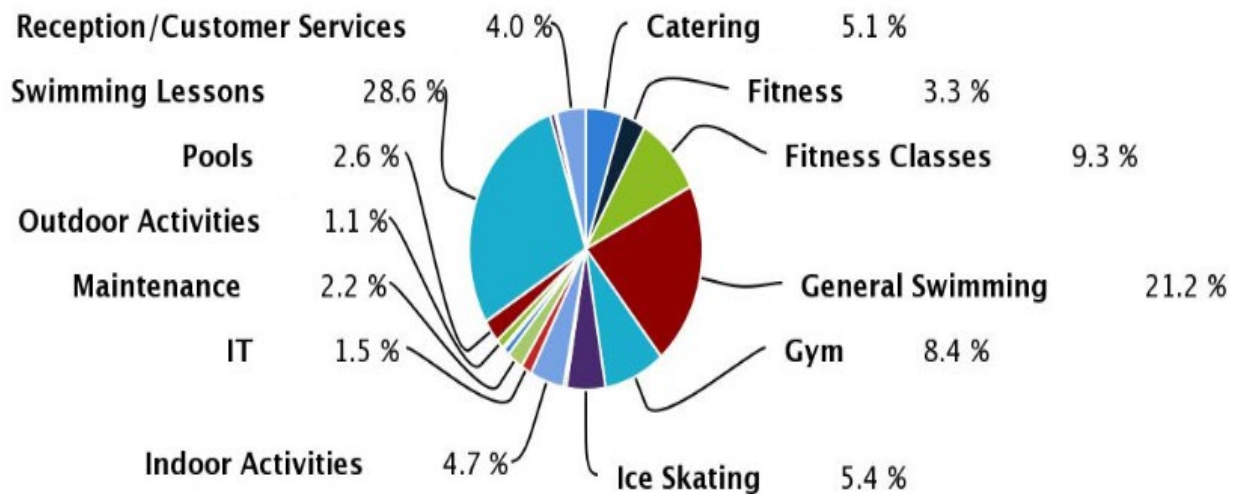
Overall there has been an increase in customer feedback coming through this mechanism.

Breakdown by Activity Group

Start Date: 01-04-2019 / End Date: 31-03-2020

RE: SOUTH / CO: GUILDFORD / LC: All

Type of Comment: All



Breakdown by activity type

- Feedback is dominated by general swimming and swimming lessons which represent c.50% of all the feedback – swimming and swim lesson attendance measures almost 40% of the total Spectrum attendance so these results are not particularly unusual.
- Generally the Centre receives positive feedback on its overall cleanliness and recent steps have been taken to adjust rotas and focus more on the heavy footfall areas in an effort to improve customer reaction – in addition a programme of redecoration has been completed which should enhance perception as we progress through 2020.
- Customer Service is a critical measure in supporting membership retention and repeat visit desire from non-members and work is on-going to improve on current standards.

Net Promoter Score (NPS)

Freedom Leisure has continued to use the NPS system as an additional way to calibrate customer satisfaction as the results can be benchmarked both internally and against other leisure providers.

Twice a year a percentage of the facilities’ users are emailed and asked to rate how likely they are to recommend the facilities to other people. All three sites conduct the survey at the same time. Below was the outcome:

Contract	Leisure Center Name				NPS	Number of Survey Sent
GUILDFORD	ASH MANOR SPORTS CENTRE	5	10	45	67	651
GUILDFORD	GUILDFORD LIDO	4	11	39	65	215
GUILDFORD	GUILDFORD SPECTRUM	41	98	96	23	2947

9.3 NPS Benchmarking



	NPS 19/20	NPS 18/19
Spectrum	23	10
Ash Manor	67	51
Lido	65	100
National average	37	27

Ash Manor and the Lido are performing above the national average, whilst the Spectrum is performing below the national average – however it is an improvement on 12 months ago.

10. Health and Safety

Health and Safety is a primary consideration for Freedom Leisure and so there are a number of checks and balances in place to ensure that a continued level of excellence is achieved. These include internal and external audits within the Guildford facilities by Freedom Leisure Area Managers, GBC client officers, GBC Environmental Health and Surrey County Council (Ice Panto and Crèche only).

These audits provide the Freedom Leisure's senior management team with a steer on how the site is performing and whether any extra assistance is required. Any weaknesses that are identified are added to the site Safety Action Plan with realistic deadlines set.

Freedom Leisure accident reporting system is called STITCH. The charts below detail the prime areas of focus for the team from this year's incident reporting. There are some natural highs relating primarily to both swimming and ice skating so the focus remains firmly on accident reduction and minimisation of risk in all areas wherever possible.

10.1 Spectrum

	Number of Reports	% of Total	RIDDOR
Ice Rink	328	45%	0
Swimming Pool - Leisure	184	25%	0
Diving Board	57	8%	0
Swimming Pool - Main	43	6%	0
Sports Hall	42	6%	0
Bowling Alley	22	3%	1
Swimming Pool - Teaching	15	2%	0
Creche	14	2%	0
Flume	11	<2%	0
Changing Rooms - Village	11	<2%	0
Gym	1	<1%	1
Café Area	1	<1%	1
TOTAL	729		3

In relation to the total attendees visiting the Spectrum the reported number is relatively low – 0.42 accidents per 1000 visits (compared to the industry target of 1 accident per 1,000 visits); however, a process of continuous risk review and action will ensure this number continues to reduce.

10.2 Ash Manor

	Number of Reports	%	RIDDOR		
Fitness Studio (Gym)	5	31%	0		
3G Pitch	4	25%	0		
Sports Hall	3	19%	0		
Offsite	1	6%	0		
Grass Pitches	1	6%	0		
Unknown	1	6%	0		
Gymnasium	1	6%	0		
Total	16		0		

Accident reporting for this Centre is under review as numbers appear to be very low – 0.19 per 1,000 visits - it might be expected that with the presence of the 3G pitch the statistics would potentially be higher.

10.3 Lido

	Number of Reports	%	RIDDOR		
Pool - Main	39	65%	0		
Flume	6	10%	0		
Swimming Pool - Surrounds	4	7%	0		
Car Park	3	5%	0		
Outside Areas	1	2%	1		
Cafe	1	2%	0		
Plant Room	1	2%	1		
Main Entrance	1	2%	0		
Toilets	1	2%	0		
Adventure Golf	2	3%	0		
Pool - Leisure	1	2%	0		
Total	60		2		

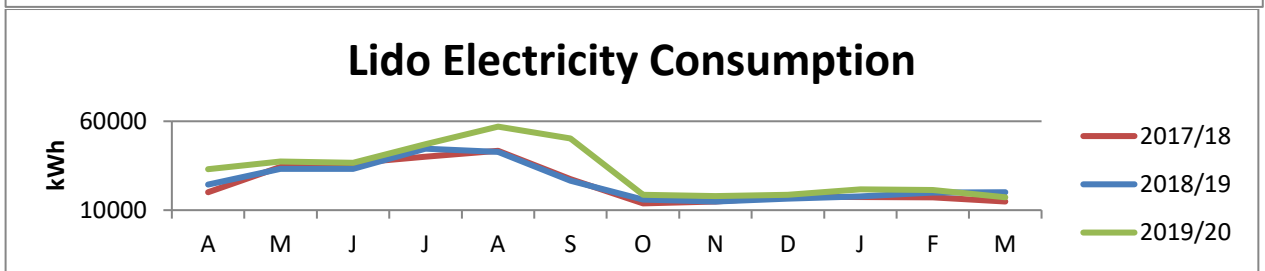
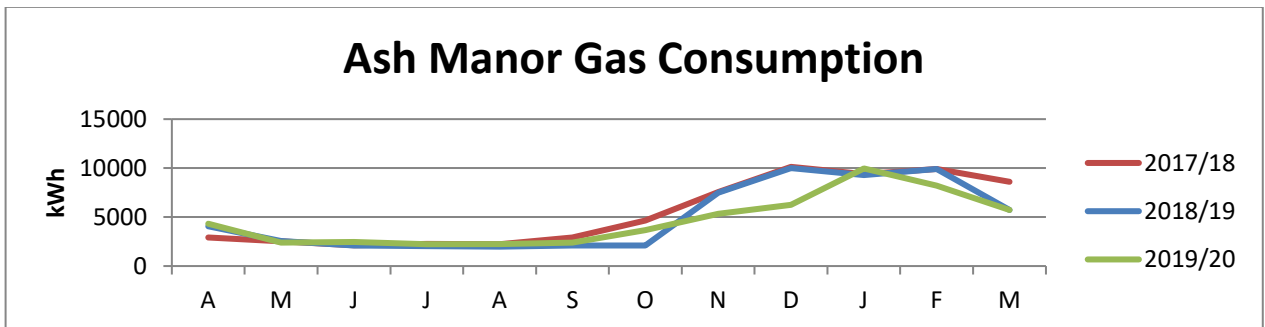
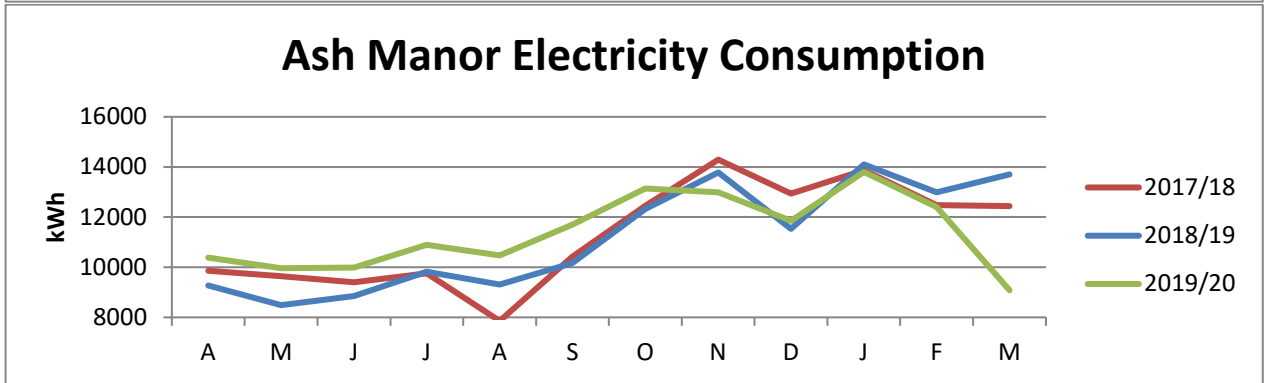
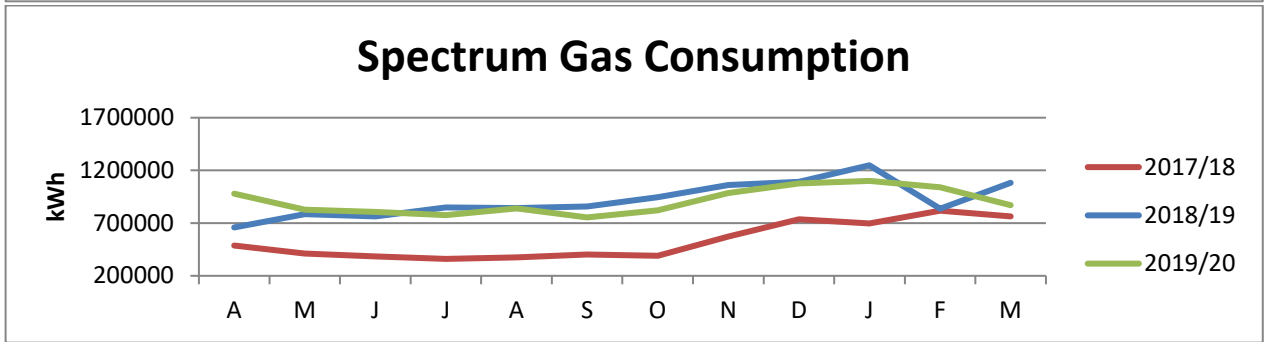
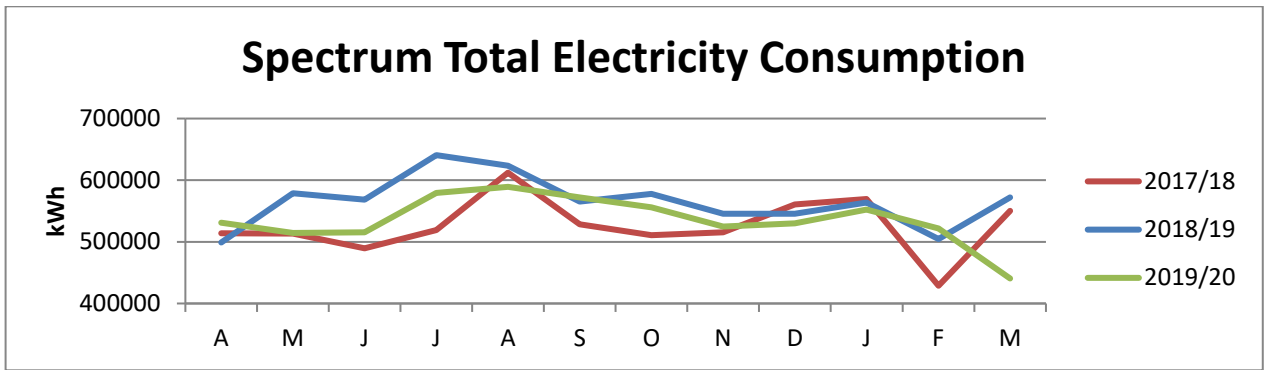
Freedom Leisure remains committed to a focus on reducing risk and shrinking the likelihood of accident in all areas as a key driver in managing on-site Health and Safety.

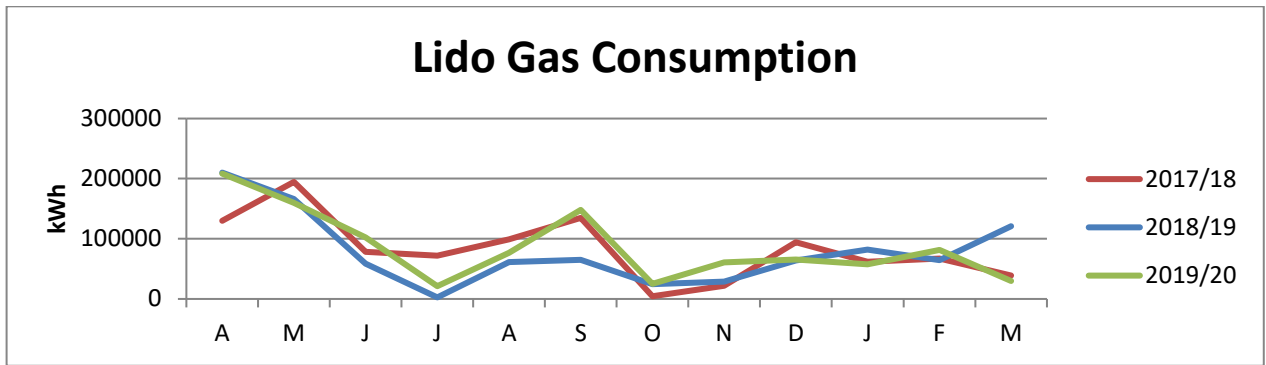
11. Environmental

An unremarkable year is reflected in the site gas electricity and gas graphs detailed below – not particularly easy to assign any particular reasons to any particular patterns.

Electricity was higher at Ash Manor in the first five months of 2019/20 compared to 18/19 and the Lido electricity was generally higher throughout 19/20 which was because of the need to increase circulation as this was perceived to be insufficient the year before.

Conversely, Spectrum consumption was lower – most likely this is due to the continued roll out of LED lighting (possibly Action Suite/squash courts/comp pool) and the general pandemic-enforced run down.





12. Asset Management and 10 Year Plan Update

The 10 Year Plan sets out the longer term asset management plan - it generally relates to the maintenance and replacement of plant room equipment or service facilities.

Large investments 2019/20

Lido:

- Dosing units and Pool Pump replacements **£48,439**

Ash Manor:

- Refurbishment of Air Con units **£13,547**

Spectrum

- Ice plant – compressor replacements **£81,861**
- Pool plant pump replacements **£27,140**

The most significant projects planned for 2019/20 were:

- Lido filter media replacement - completed
- Spectrum ramp refurbishment - outstanding
- Scenic lift replacement - completed
- Bowling lanes flooring replacement – completed

----- **END OF REPORT** -----

MONITORING TEMPLATE
PROJECTED OUTTURN

MARCH 2020

DETAILS MANAGEMENT FEE	MONTH	CURRENT YEAR PERIOD ACTUAL	VARIANCE ACTUAL TO BID	LAST YEAR PERIOD ACTUAL	VARIANCE ACTUAL TO LAST YEAR	YEAR TO DATE					CURRENT YEAR TOTAL BID BUDGET	OUTTURN CURRENT YEAR PROJECTED OUTTURN	VARIANCE OUTTURN TO BUDGET
	CURRENT YEAR PERIOD BID BUDGET					CURRENT YEAR CUMULATIVE BID BUDGET	CURRENT YEAR CUMULATIVE ACTUAL	VARIANCE ACTUAL TO BID	LAST YEAR CUMULATIVE ACTUAL	VARIANCE ACTUAL TO LAST YEAR			
	£	£	%	£	%	£	£	%	£	%	£	£	%
SPECTRUM	(5,639)	(231,180)	-4000%	85,949	-369%	233,221	(49,460)	121%	78,633	163%	233,221	(49,460)	121%
LIDO	(6,359)	22,420	453%	(39,603)	157%	10,313	(8,225)	180%	108,915	108%	10,313	(8,225)	180%
ASH MANOR	3,391	5,668	-67%	5,571	2%	3,648	14,018	-284%	7,273	93%	3,648	14,018	-284%
NET (PROFIT) / DEFICIT	(8,606)	(203,092)	-2260%	51,917	-491%	247,182	(43,667)	118%	194,821	122%	247,182	(43,667)	118%
SURPLUS SHARE		(290,848)											

Agenda item number: 8
Appendix 1

DETAILS	CURRENT YEAR CUMULATIVE PERIOD BID	CURRENT YEAR CUMULATIVE PERIOD ACTUAL	PREVIOUS YEAR FULL YEAR ACTUAL	CURRENT YEAR FULL YEAR BID	CURRENT YEAR FULL YEAR PROJECTED	VARIANCE CUMULATIVE ACTUAL TO FULL YEAR BID	VARIANCE CUMULATIVE ACTUAL TO FULL YEAR LAST YEAR
	£	£	£	£	£	%	%
SPECTRUM							
Income							
Administration	131,547	24,305	19,402	131,547	24,305	18%	125%
Marketing	163,654	9,653	10,065	163,654	9,653	6%	96%
Pools	2,401,106	3,117,115	3,244,563	2,401,106	3,117,115	130%	96%
Bowl	1,101,201	1,133,284	1,081,014	1,101,201	1,133,284	103%	105%
Ice Rink	2,503,293	2,368,514	2,294,804	2,503,293	2,368,514	95%	103%
Arena	825,862	368,141	302,359	825,862	368,141	45%	122%
Energy Level	721,048	1,015,981	1,052,894	721,048	1,015,981	141%	96%
Athletics	37,796	38,844	24,082	37,796	38,844	103%	161%
Catering & Shops	483,378	1,860,255	2,047,271	483,378	1,860,255	385%	91%
Other	41,782	1,051,388	1,268,045	41,782	1,051,388	2516%	83%
TOTAL INCOME	8,410,667	10,987,480	11,344,499	8,410,667	10,987,480	131%	97%
Expenditure							
Employees							
Salaries	1,964,866	2,735,403	2,796,809	1,964,866	2,735,403	139%	98%
Wages	858,636	916,342	961,693	858,636	916,342	107%	95%
Self Employed Instructors	644,235	504,320	521,230	644,235	504,320	78%	97%
NI & Pension	380,899	316,426	319,889	380,899	316,426	83%	99%
Training	18,000	34,138	37,187	18,000	34,138	190%	92%
Other Employee Expenses	16,164	35,190	19,023	16,164	35,190	218%	185%
Premises Related Expenses							
Building & Plant Maintenance	529,515	580,899	736,435	529,515	580,899	110%	79%
Plant Replacement	268,900	268,900	268,900	268,900	268,900	100%	100%
General Rates	114,264	128,016	131,700	114,264	128,016	112%	97%
Electricity	412,446	385,594	365,779	412,446	385,594	93%	105%
Gas	177,868	276,958	264,999	177,868	276,958	156%	105%
Water	69,772	121,042	131,880	69,772	121,042	173%	92%
Cleaning	92,579	106,142	106,403	92,579	106,142	115%	100%
Insurance	60,000	85,500	90,667	60,000	85,500	143%	94%
Other Premises Expenses	0	0	0	0	0	0%	#DIV/0!
Transport Related Expenses							
Travel & subsistence	15,568	685	2,502	15,568	685	4%	27%
Supplies and Services							
Marketing	176,889	127,477	72,030	176,889	127,477	72%	177%
Licences & Fees	35,209	33,634	31,528	35,209	33,634	96%	107%
ICT	49,377	69,128	67,247	49,377	69,128	140%	103%
Equipment maintenance	46,553	65,736	47,187	46,553	65,736	141%	139%
Equipment replacement	157,423	217,981	181,836	157,423	217,981	138%	120%
Events	52,682	571,292	560,852	52,682	571,292	1084%	102%
Admin & postage	30,408	23,992	18,250	30,408	23,992	79%	131%
Bank charges	54,793	117,061	119,058	54,793	117,061	214%	98%
Catering & resale	15,211	745,527	868,312	15,211	745,527	4901%	86%
Other supplies & services	495,770	732,680	721,532	495,770	732,680	148%	102%
Central Support Services	420,533	548,241	557,281	420,533	548,241	130%	98%
TOTAL EXPENDITURE	7,158,560	9,748,303	10,000,209	7,158,560	9,748,303	136%	97%
Management Fee	1,018,886	1,288,637	1,265,657	1,018,886	1,288,637		
NET PROFIT	233,221	(49,460)	78,633	233,221	(49,460)		

Agenda item number: 8

MONITORING TEMPLATE Appendix 1
PROJECTED OUTTURN MARCH 2020

DETAILS	CURRENT YEAR CUMULATIVE PERIOD BID	CURRENT YEAR CUMULATIVE PERIOD ACTUAL	PREVIOUS YEAR FULL YEAR ACTUAL	CURRENT YEAR FULL YEAR BID	CURRENT YEAR FULL YEAR PROJECTED	VARIANCE PROJECTED TO BID	VARIANCE PROJECTED TO LAST YEAR
	£	£	£	£	£	%	%
LIDO							
Income							
Swimming - Casual	211,831	316,951	525,006	211,831	316,951	150%	60%
Swimming - Memberships	18,344	42,063	35,883	18,344	42,063	229%	117%
Fitness - Casual	7,158	3,857	4,104	7,158	3,857	54%	94%
Fitness - Memberships	47,048	26,203	32,309	47,048	26,203	56%	81%
Catering & Vending	9,214	25,295	47,076	9,214	25,295	275%	54%
Goods For Resale	0	3,966	7,698	0	3,966	0%	52%
Car Parking	0	36,012	37,178	0	36,012	0%	97%
Other Income	17,073	34,756	33,297	17,073	34,756	204%	104%
TOTAL INCOME	310,668	489,103	722,551	310,668	489,103	157%	68%
Expenditure							
Employees							
Salaries	117,738	110,092	105,760	117,738	110,092	94%	104%
Wages	69,873	93,126	105,174	69,873	93,126	133%	89%
Self Employed Instructors	0	15,793	29,927	0	15,793	0%	53%
NI & Pension	22,515	12,678	11,068	22,515	12,678	56%	115%
Training	2,000	1,400	1,400	2,000	1,400	70%	100%
Other Employee Expenses	874	2,327	410	874	2,327	266%	568%
Premises Related Expenses							
Building & Plant Maintenance	48,303	72,866	103,510	48,303	72,866	151%	70%
Plant Replacement	30,000	30,000	30,000	30,000	30,000	100%	100%
General Rates	5,862	12,000	11,736	5,862	12,000	205%	102%
Electricity	12,717	31,138	30,072	12,717	31,138	245%	104%
Gas	20,923	28,382	24,008	20,923	28,382	136%	118%
Water	22,728	57,678	69,995	22,728	57,678	254%	82%
Cleaning	9,122	15,441	18,070	9,122	15,441	169%	85%
Insurance	5,000	2,600	5,556	5,000	2,600	52%	47%
Other Premises Expenses	0	0	0	0	0	0%	#DIV/0!
Transport Related Expenses							
Travel & subsistence	273	0	0	273	0	0%	#DIV/0!
Supplies and Services							
Marketing	5,058	5,499	8,910	5,058	5,499	109%	62%
Licences & Fees	3,230	2,812	4,404	3,230	2,812	87%	64%
ICT	4,020	2,782	3,481	4,020	2,782	69%	80%
Equipment maintenance	4,603	3,615	1,029	4,603	3,615	79%	351%
Equipment replacement	6,000	14,440	10,105	6,000	14,440	241%	143%
Events	5,973	0	8,873	5,973	0	0%	0%
Admin & postage	1,174	1,505	1,378	1,174	1,505	128%	109%
Bank charges	826	3,004	3,856	826	3,004	364%	78%
Catering & resale	7,475	16,019	30,494	7,475	16,019	214%	53%
Other supplies & services	40,670	46,857	60,247	40,670	46,857	115%	78%
Central Support Services	15,533	23,611	36,062	15,533	23,611	152%	65%
TOTAL EXPENDITURE	462,490	605,665	715,525	462,490	605,665	131%	85%
Management Fee	(162,134)	(108,337)	(101,889)	(162,134)	(108,337)		
NET PROFIT	10,313	(8,225)	108,915	10,313	(8,225)		

DETAILS	CURRENT YEAR CUMULATIVE PERIOD BID	CURRENT YEAR CUMULATIVE PERIOD ACTUAL	PREVIOUS YEAR FULL YEAR ACTUAL	CURRENT YEAR FULL YEAR BID	CURRENT YEAR FULL YEAR PROJECTED	VARIANCE PROJECTED TO BID	VARIANCE PROJECTED TO LAST YEAR
	£	£	£	£	£	%	%
ASH							
Income							
Gym Casual	29,849	24,972	22,900	29,849	24,972	84%	109%
Gym Classes	25,799	13,170	11,443	25,799	13,170	51%	115%
Gym Memberships	171,450	214,180	210,457	171,450	214,180	125%	102%
Sport Hall Casual	37,498	8,223	8,105	37,498	8,223	22%	101%
Sport Hall Courses	7,781	2,671	825	7,781	2,671	34%	324%
Sport Hall Childrens Activities	4,106	3,995	3,966	4,106	3,995	97%	101%
Sport Hall Bookings	5,869	30,360	36,492	5,869	30,360	517%	83%
Outdoor Casual	118,649	35,806	33,079	118,649	35,806	30%	108%
Outdoor Bookings	0	53,240	51,038	0	53,240	0%	104%
Catering & Vending	24,738	9,598	6,849	24,738	9,598	39%	140%
Other Income	2,960	5,019	2,490	2,960	5,019	170%	202%
TOTAL INCOME	428,699	401,234	387,644	428,699	401,234	94%	0%
Expenditure							
Employees							
Salaries	119,195	92,650	98,889	119,195	92,650	78%	94%
Wages	45,138	58,551	57,989	45,138	58,551	130%	101%
Self Employed Instructors	1,500	1,251	4,164	1,500	1,251	83%	30%
NI & Pension	18,104	7,476	8,455	18,104	7,476	41%	88%
Training	2,000	1,400	1,416	2,000	1,400	70%	99%
Other Employee Expenses	350	867	494	350	867	248%	176%
Premises Related Expenses							
Building & Plant Maintenance	32,254	27,153	26,334	32,254	27,153	84%	103%
Plant Replacement	5,000	5,000	5,000	5,000	5,000	100%	100%
General Rates	8,000	12,096	11,832	8,000	12,096	151%	102%
Electricity	20,535	20,560	19,407	20,535	20,560	100%	106%
Gas	9,176	16,120	15,855	9,176	16,120	176%	102%
Water	7,854	2,501	2,735	7,854	2,501	32%	91%
Cleaning	3,023	12,691	12,484	3,023	12,691	420%	102%
Insurance	5,290	3,804	3,804	5,290	3,804	72%	100%
Other Premises Expenses	0	0	0	0	0	0%	#DIV/0!
Transport Related Expenses							
Travel & subsistence	223	60	324	223	60	27%	19%
Supplies and Services							
Marketing	5,499	6,544	6,216	5,499	6,544	119%	105%
Licences & Fees	5,055	5,206	4,453	5,055	5,206	103%	117%
ICT	7,889	3,234	3,426	7,889	3,234	41%	94%
Equipment maintenance	1,000	5,807	555	1,000	5,807	581%	1046%
Equipment replacement	24,280	7,448	8,015	24,280	7,448	31%	93%
Events	1,127	4,941	19	1,127	4,941	438%	26005%
Admin & postage	1,320	729	1,237	1,320	729	55%	59%
Bank charges	1,280	2,744	2,585	1,280	2,744	214%	106%
Catering & resale	12,065	5,780	3,713	12,065	5,780	48%	156%
Other supplies & services	26,974	21,845	19,664	26,974	21,845	81%	111%
Central Support Services	21,435	19,985	19,382	21,435	19,985	93%	103%
TOTAL EXPENDITURE	385,566	346,442	338,447	385,566	346,442	90%	102%
Management Fee	39,485	40,774	41,924	39,485	40,774		
NET PROFIT	3,648	14,018	7,273	3,648	14,018		

Agenda item number: 8

MONITORING TEMPLATE
ACTIVITY BREAKDOWN

Appendix 1
MARCH 2014

DETAILS	CURRENT YEAR CUMULATIVE PERIOD ACTUAL	CURRENT YEAR CUMULATIVE PERIOD ACTUAL	CURRENT YEAR CUMULATIVE PERIOD ACTUAL	CURRENT YEAR CUMULATIVE PERIOD ACTUAL	CURRENT YEAR CUMULATIVE PERIOD ACTUAL	CURRENT YEAR CUMULATIVE PERIOD ACTUAL	CURRENT YEAR CUMULATIVE PERIOD ACTUAL	CURRENT YEAR CUMULATIVE PERIOD ACTUAL	CURRENT YEAR CUMULATIVE PERIOD ACTUAL	CURRENT YEAR CUMULATIVE PERIOD ACTUAL	CURRENT YEAR CUMULATIVE PERIOD ACTUAL
	£	£	£	£	£	£	£	£	£	£	£
SPECTRUM	ADMINISTRATION	MARKETING	POOLS	BOWL	ICE	ARENA	ENERGY	ATHLETICS	TECHNICAL	CLEANING	OTHER
Income											
Income	24,305	9,653	3,117,115	1,133,284	2,368,514	368,141	1,015,981	38,844	0	0	2,911,643
TOTAL INCOME	24,305	9,653	3,117,115	1,133,284	2,368,514	368,141	1,015,981	38,844	0	0	2,911,643
Expenditure											
Employees											
Salaries	155,423	46,400	748,478	116,491	179,217	61,194	139,100	0	243,807	241,429	803,863
Wages	287	0	231,590	52,573	141,615	57,754	158,855	0	11,356	39,699	222,613
Self Employed Instructors	0	0	7,963	0	489,328	0	2,772	0	0	0	4,256
NI & Pension	29,281	11,987	59,354	14,129	21,267	16,854	28,947	0	38,682	33,219	62,708
Training	0	0	0	0	0	0	0	0	0	0	34,138
Other Employee Expenses	0	0	0	0	0	0	0	0	0	0	35,190
Premises Related Expenses											
Building & Plant Maintenance	0	0	28,397	22,353	117,098	16,035	11,629	5,637	0	0	379,751
Plant Replacement	0	0	0	0	0	0	0	0	268,900	0	0
General Rates	0	0	0	0	0	0	0	0	0	0	128,016
Electricity	0	0	0	0	0	0	0	0	0	0	385,594
Gas	0	0	0	0	0	0	0	0	0	0	276,958
Water	0	0	0	0	0	0	0	0	0	0	121,042
Cleaning	0	0	14,179	0	0	0	0	0	0	91,963	0
Insurance	0	0	0	0	0	0	0	0	0	0	85,500
Other Premises Expenses	0	0	0	0	0	0	0	0	0	0	0
Transport Related Expenses											
Travel & subsistence	0	0	0	0	0	0	0	0	0	0	685
Supplies and Services											
Marketing	0	127,477	0	0	0	0	0	0	0	0	0
Licences & Fees	0	0	0	0	0	0	0	0	0	0	33,634
ICT	0	0	0	0	0	0	0	0	0	0	69,128
Equipment maintenance	0	0	2,836	22,351	19,991	1,043	3,048	6,096	0	0	10,372
Equipment replacement	0	0	10,462	2,562	36,074	4,702	64,095	3,976	0	0	96,110
Events	571,292	0	0	0	0	0	0	0	0	0	0
Admin & postage	0	0	0	0	0	0	0	0	0	0	23,992
Bank charges	0	0	0	0	0	0	0	0	0	0	117,061
Catering & resale	0	0	0	0	0	0	0	0	0	0	745,527
Other supplies & services	0	0	0	0	0	0	0	0	0	0	732,680
Central Support Services	0	0	0	0	0	0	0	0	0	0	548,241
TOTAL EXPENDITURE	756,284	185,864	1,103,258	230,458	1,004,589	157,582	408,445	15,709	562,745	406,311	4,917,059
Management Fee	0	0	0	0	0	0	0	0	0	0	1,288,637
NET PROFIT	(731,979)	(176,211)	2,013,857	902,826	1,363,925	210,559	607,536	23,135	(562,745)	(406,311)	(3,294,053)

(49,460)

Notes

Customer services, catering and reception income and costs are contained within the "other" section
 Technical and Cleaning sections were added from January 2014.
 Administration income includes non contract catering income and room hire
 Marketing income includes advertising and sponsorship
 Pools includes all swimming activity
 Bowl included all bowling activity
 Ice includes all ice skating activity
 Arena includes all hall activities
 Energy includes all gym membership, casual studio and casual fitness
 Athletics includes all athletics and outdoor activity
 Other includes income from catering, licence & rental fees from catering and shops, childrens activities, events, goods for resale and other.
 Other income also includes catering and client maintenance recharges

**CAPITAL EXPENDITURE REPORT
YEAR ENDING 31.03.20**

CONTRACT TO DATE OPENING BALANCE OVERSPEND £ **805,408**

CHARGE TO P&L

Spectrum	£	268,900
Lido	£	30,000
Ash Manor	£	5,000
Total	£	303,900

EXPENDITURE

Smith Construction	Athletics Track	Guildford Spectrum	£	48,400
Chiller Experts	Ice Plant Compressor	Guildford Spectrum	£	23,810
Chiller Experts	Ice Plant Compressor	Guildford Spectrum	£	6,289
Chiller Experts	Ice Plant Compressor	Guildford Spectrum	£	10,185
Chiller Experts	Ice Plant Compressor	Guildford Spectrum	£	10,185
Chiller Experts	Ice Plant Compressor	Guildford Spectrum	£	8,113
Chiller Experts	Ice Plant Compressor	Guildford Spectrum	£	23,280
Allflow	Pool Plant Pumps	Guildford Spectrum	£	7,110
Allflow	Pool Plant Pumps	Guildford Spectrum	£	4,138
Allflow	Pool Plant Pumps	Guildford Spectrum	£	2,007
Allflow	Pool Plant Pumps	Guildford Spectrum	£	3,331
Allflow	Pool Plant Pumps	Guildford Spectrum	£	7,930
Allflow	Pool Plant Pumps	Guildford Spectrum	£	2,624
Power Capacitors	Power Upgrade	Guildford Spectrum	£	8,639
Intelligent Light	Pool Lighting	Guildford Spectrum	£	11,784
Sterling Hydrotech	Pool Filters	Lido	£	10,930
Sterling Hydrotech	Dosing Unit	Lido	£	3,515
Sterling Hydrotech	Dosing Unit	Lido	£	17,335
Volts	Dosing Unit	Lido	£	3,389
Volts	Dosing Unit	Lido	£	1,630
Guildford BC	Calorifier	Lido	£	11,640
H&D	Aircon Units	Ash Manor	£	12,781
H&D	Aircon Units	Ash Manor	£	766

TOTAL EXPENDITURE £ **239,810**

OVERSPEND BALANCE CARRIED FORWARD TO 2020/21 £ **741,318**

**MONITORING TEMPLATE
CONTRACT SURPLUS**

Contract Year	Bid Operating Surplus / Deficit	Actual Operating Surplus Deficit	Variance	Payment Made To Council	Bid Capital Expenditure	Actual Capital Expenditure	Variance	Total Bid Operating Surplus / Deficit	Total Actual Operating Surplus Deficit	Variance	Surplus Payment Made To Council
2011-2012	(334,308)	(273,425)	60,883	60,883	126,625	126,625	0	(334,308)	(273,425)	60,883	60,883
2012-2013	(355,448)	(344,348)	11,100	11,100	303,900	282,020	(21,880)	(355,448)	(322,468)	32,980	11,100
2013-2014	(249,657)	(308,729)	(59,072)	0	303,900	840,165	536,265	(249,657)	(844,994)	(595,337)	0
2014-2015	(159,816)	(467,517)	(307,701)	0	303,900	405,879	101,979	(159,816)	(569,496)	(409,680)	0
2015-2016	(69,237)	(371,972)	(302,735)	0	303,900	466,654	162,754	(69,237)	(534,726)	(465,489)	0
2016-2017	22,086	(351,412)	(373,498)	0	303,900	157,950	(145,950)	22,086	(205,462)	(227,548)	0
2017-2018	60,711	(366,972)	(427,683)	0	303,900	198,384	(105,516)	60,711	(261,456)	(322,167)	0
2018-2019	153,560	194,821	41,261	0	303,900	581,656	277,756	153,560	(82,935)	(236,495)	0
2019-2020	247,182	(43,667)	(290,849)	0	303,900	239,810	(64,090)	247,182	20,423	(226,759)	0
Contract To Date			(1,648,294)	71,983			741,318	(684,927)	(3,074,539)	(2,389,612)	71,983

Annual Report Presentation Meeting Minutes

Thursday 17 December 2020 at 17:00

Present;

From GBC:

- Ian Doyle (ID)
- Jonathan Sewell (JBS)
- Charlotte Brindley (CB)
- Cllr James Steel (JS)
- Cllr George Potter (GP)
- Cllr Dennis Booth (DB)
- Cllr Nigel Manning (NM)

From Freedom Leisure;

Mark Purnell (MP) Contracts Manager

Ref:	ITEM	Action
1.0	Apologies for absence	
1.1	Apologies were received from Kevin Hopkins (KH).	
2.0	Presentation of the Annual Report by Mark Purnell	
2.1	MP welcomed everyone to the meeting and introduced himself. MP joined as Operations Manager at Spectrum in March, just two weeks before the first lockdown. MP then changed posts in September and is now the Contract Manager.	
2.2	MP confirmed that he was happy to take questions at any point.	
3.0	Introduction & Achievements	
3.1	MP confirmed that the purpose of the presentation was to look at the performance during the period 1 April 2019 to 31 March 2020. The year was cut short (by 10 days) as a result of the Covid-19 pandemic and associated closures.	
3.2	MP was pleased to report that the Guildford Flames had another good season, which also had to end prematurely. MP commented how the Flames are an integral part of Spectrum's offering. MP commented how full the ice programme is, in terms of group and private lessons, courses, group bookings and public skate sessions and commented how well used the facilities were.	
3.3	MP reported that another successful part of the facility is the bowl, whereby it contributes around 10% of Spectrum's turnover and continues to be very popular.	
3.4	MP then highlighted Spectrum's charity of the year, Jigsaw, which Spectrum is able to help by providing free passes generated from Active card points that have been donated by customers.	
3.5	MP summarised the events for 2019/20, where more detail can be found on page 5 and 13 of the Annual Report. The number of swimming events, such as Galas, were also shown. MP is keen to see events returning to Spectrum when restrictions allow.	
3.6	MP summarised the catering performance for the year and explained how the catering forms a significant part to Spectrum's overall performance. The summary table on page 6 of the Annual Report sets out the catering's financial performance. Unfortunately, profit was down against the previous year, by just over £150k, partly as a result of the closure which saw 10 days' income lost. MP	

Annual Report Presentation Meeting Minutes

Ref:	ITEM	Action
	explained that a lot of work has also since been taken in respect of rotas and overall management of the facility.	
4.0	Ash Manor & Lido	
4.1	MP then provided an overview to Ash Manor Sports Centre and the Lido. MP confirmed that one of the biggest challenges that Ash faces is the number of gyms that are opening in the local area. Despite this, the venue had another successful year, and continues to maximise usage of the All Weather Pitch which is very popular.	
4.2	MP commented that a range of events took place at the Lido during 2019/20. The Lido had a very strong previous year, however this year, the facility faced challenges associated with water quality and an early closure due to the pandemic. MP reported that the Spectrum has accommodated 12 gym members that have moved across from the Lido. Other members have gone elsewhere. MP cannot confirm how many swimmers have moved across from the Lido but has been speaking with some of them and they remain keen to see the Lido opening again.	
5.0	Finance	
5.1	MP then covered the finances for each site. MP reported that the contract performed reasonably and may have possibly entered into a surplus had the year not been cut short. MP confirmed that staff costs at Spectrum and Ash have continued to improve year on year. MP outlined the importance of ensuring effective management of staff costs, particularly at this time. JS asked a question about the Lido's turnover percentage, which was up on the previous year. JBS explained that the Lido had a very strong year in 2018/19 due to the hot weather which is why the ratio of staff v's income will be very low compared to 2019/20, where the Lido didn't have such a strong year. JBS added the labour percentage will naturally drop if the weather is good as income will be up. JBS noted that staffing (in terms of lifeguarding) has to remain the same at the Lido, regardless of the weather.	
5.2	MP then presented the attendance figures for 2019/20, which were down by 58,912 on the previous year. Average spend per user has increased at Spectrum and Lido, with Ash Manor remaining broadly the same.	
6.0	Memberships	
6.1	MP has been impressed by the sales team at Spectrum, who are knowledgeable and have strengths in cross-selling. MP was pleased to report that memberships have continued to grow and confirmed that a few new memberships were introduced, such as the Student Plus, GBC Corporate, and Live Well membership. MP commented how essential it is for FL to focus on retaining those members, particularly as facilities enter an even more difficult phase as Guildford enters tier 3 whereby group exercise is not allowed to take place. MP outlined how the group exercise provision is a fundamental part of the membership offer, and its absence could erode FL's membership base. FL are working hard	

Annual Report Presentation Meeting Minutes

Ref:	ITEM	Action
	to hold on to the direct debits and encourage members not to cancel, while acknowledging the situation customers find themselves in.	
6.2	MP then summarised the concessionary memberships which he reported to have grown in 2019/20.	
7.0	Marketing	
7.1	MP then went on to provide an overview of the marketing of the sites, which has shifted away from pamphlets (as part of removing high touch point areas, while also being 'greener') and towards digital marketing. MP confirmed that marketing staff Geoff and Louise are on site to provide a more tailored marketing approach, as opposed to all marketing being done centrally by Head Office. FL continue to pitch Spectrum as a family attraction and 'destination' venue rather than a leisure centre. The key marketing focus during the period was on school holiday programmes (Spectrum and Ash), membership and the ice pantomime.	
7.2	MP presented a table which showed an overview of the marketing stats for Spectrum's web pages in terms of no. of sessions, users, page views etc. all of which increased on the previous year. MP confirmed that the website layout has been improved which has allowed customers to navigate to the relevant booking pages more easily. MP added that the marketing team were happy with the years' figures, including the returning visitor rates.	
7.3	MP summarised the stats for social media (Facebook, Instagram and Twitter). A total of 144k emails were sent between April 2019 and February 2020, with a 26% open rate. While this appears relatively low, this figure is strong against the benchmark rate of 15-20%. MP confirmed that emails are targeted so that they remain effective; the main focus being on swim lessons, holiday programmes and general information emails.	
8.0	Programming	
8.1	MP then presented the figures for the ice skating lesson programme which remains as popular as ever, with a 95.7% level of occupancy. MP explained that FL continue to work hard to maximise the space and added that last time he checked, a 97.8% occupancy level was being achieved.	
8.2	The meeting was then presented with a table to summarise the Leisure pool swimming activity for each month of the year. Toddler splash was significantly up on the previous year. The swim school programme is also performing very well with Spectrum's swim school having the greatest number of customers enrolled against all FL sites, which is a testament to the Swim School Manager and Pools Manager. MP reported that over 2000 spaces were filled and this will be built on further when there is a further push in January. MP added that more swim school teachers have also been appointed.	
8.3	MP referred to the Holiday programming which restarted in October this year (with restrictions). The holiday programming is a key part of Spectrum's offering and FL look forward to building on this.	
	The group exercise offering at Spectrum has seen new classes	

Annual Report Presentation Meeting Minutes

Ref:	ITEM	Action
	introduced to improve the overall offering and keep the programme vibrant. MP added that the group exercise instructors have 1:1's to ensure performance is monitored and standards remain high.	
8.4	MP then presented the list of parties that took place on 2019/20, whereby there was a slight improvement on the previous year. MP explained how crucial parties are in driving footfall and the impact these have on catering.	
8.5	MP touched upon the community sports development activity last year and the financial awards that were given by GLL.	
9.0	Customer Feedback	
9.1	MP explained the E-Focus system that is in place which is used for customer feedback. MP confirmed that the system's efficiency allows FL to be more proactive in terms of dealing with complaints, constructive comments and compliments. MP confirmed that an immediate acknowledgement is sent to the customer, with a reply within 10 days. MP presented the numbers of customer comments received for each month of the year, divided into complaints, comment/suggestions and compliments. MP confirmed that the proportion of comments to the overall attendance figure is relatively small and that this area will be explored more vigorously this year.	
9.2	MP confirmed that there are generally a lot of comments relating to general swimming (21.2%) and swim lessons (28.6%), with many of these comments attributed to swim lesson progress.	
9.3	MP then went on to present the figures for Net Promoter Score (NPS) survey. Spectrum scored 23 which is below the national average but an improvement on the year before. Ash and Lido perform above the national average.	
10.0	Health & Safety	
10.1	MP then presented the accidents across all sites, which remain under the national average of 0.42 accidents per 1000. Most of the accidents occur in facilities like the ice rink as you would expect.	
10.2	The number of RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences regulations) reportable incidents were also shown. MP confirmed that there were 3 at Spectrum during 2019/20 and 2 at the Lido. MP commented how seriously FL take Health and Safety, and that a lot of work is done with the teams to ensure they keep on top of it.	
11.0	Environmental & Asset Management	
11.1	MP finished the presentation by summarising the utility usage for each site and also touching upon some of the schemes that have been introduced recently, such as the LED lighting at Spectrum (in the Action Suite, squash courts and competition pool).	
11.2	The final slide listed out the key investments for 2019/20. MP confirmed that the refurbishment and upkeep of Spectrum's front entrance ramp remains a challenge.	
12.0	Questions	

Annual Report Presentation Meeting Minutes

Ref:	ITEM	Action
12.1	<p>JS referred to page 20 of the Annual Report (customer feedback section) and asked what the reasons were for there being 164 more comments than last year (142 of which were complaints) and what Freedom Leisure are doing about this.</p> <p>MP confirmed that he wasn't exactly sure why this was. MP explained that the comments generated within the E Focus system are allocated to the department responsible who will then action and respond accordingly.</p> <p>JS noted that 'General Swimming' and 'Swimming Lessons' makes up around 50% of the feedback and would be interested to understand more detail in terms of what these comments related to.</p>	<p>MP</p>
12.2	<p>JS referred to page 10 of the Annual Report where it says that membership prices were increased in April 2019. JS asked what FL are doing to remain competitive going forward and retain those members.</p> <p>MP confirmed that this is a huge challenge for the leisure sector and that it is important to get the balance right between managing costs and driving revenue. FL will look to incentivise customers through discounted memberships/ deals and will continue to look at what their competitors are doing.</p>	
12.3	<p>JS would like to see the social media stats (as opposed to just the increases) as per page 15 of the Annual Report.</p> <p>MP thanked JS for his comments and is looking forward to working more closely with the Marketing Manager on this, particularly given how crucial social media is and how important it is to monitor it.</p>	<p>MP</p>
12.4	<p>JS asked what Freedom Leisure are doing to invest in the venue as they are looking tired. JS also asked what Freedom are doing to prepare the Lido for opening in April 2021.</p> <p>MP explained that while he managed the P&L for this contract, the financial decisions and conversations associated with investment are a FL executive board decision. MP recognises the need for investment in the facilities, particularly the Lido to ensure it is ready for the season. MP confirmed that there are two staff currently working on costing the reactivation plan. MP commented how challenging this time is financially and how the coming months will continue to be a challenge. JS confirmed that he'd like to have sight of the general strategic elements of the Lido's reactivation plan. MP confirmed that he is happy to provide this and that he is keen to work with the Council more closely in the future.</p>	<p>MP</p>
12.5	<p>There were no further questions and the meeting closed.</p>	

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Overview and Scrutiny Committee Report
Report of Director of Strategic Services
Author: James Dearling
Tel: 01483 444141
Email: james.dearling@guildford.gov.uk
Date: 2 March 2021

Overview and Scrutiny Work Programme

Recommendation

That the Committee consider the overview and scrutiny work programme attached at Appendix 1 and determine its work plan.

Reason for Recommendation

To enable the Committee to review and agree its work programme for the coming months.

1. Purpose of Report

- 1.1 As approved by Council, the remit of the Overview and Scrutiny Committee (OSC) includes the specific responsibility to approve the overview and scrutiny work programme to ensure that the Committee's time is used effectively and efficiently.
- 1.2 A well-planned overview and scrutiny function will help both officers and members plan their workloads as well as providing a clear picture to the public of planned activity. An effective work programme is the foundation for a successful overview and scrutiny function.
- 1.3 This report sets out the overview and scrutiny work programme as developed thus far for the period 2021-22.

2. Work Programme Meetings

- 2.1 In addition, Council has agreed that the OSC is responsible for setting its own work programme in accordance with the following procedure:

The chairmen and vice-chairmen of the OSC and the Executive Advisory Boards and relevant officers shall normally meet at least bi-monthly to exchange, discuss and agree proposed rolling 12-18 month work programmes for submission periodically to the OSC (in respect of the OSC work programme) and to the Executive Advisory Boards (in respect of the EAB work programmes) for approval. The proposed work programme for the OSC will be determined with reference to the P.A.P.E.R. selection tool, attached as Appendix 2 to these procedure rules [and as Appendix 2 to this report].

The chairman and vice-chairman of the OSC will ensure that all councillors are able to submit requests for alterations to the work programme for consideration at each of these work programme meetings.

- 2.2 The next work programme meeting of the chairmen and vice-chairmen of the OSC and the EABs is scheduled for 18 March 2021 (subsequent meetings are to be scheduled).
- 2.3 Councillors are encouraged to attend a work programme meeting to explain in more detail their proposal, including how it fulfils the criteria outlined in the mnemonic P.A.P.E.R. (Public interest; Ability to change; Performance; Extent; and Replication).
- 2.4 In addition to the work programme meetings in section 2.2 above, Councillors can discuss and submit proposals to the OSC Chairman and Vice-Chairman.

3. Financial Implications

- 3.1 There are no specific financial implications arising from this report.
- 3.2 The Council's governance arrangements review of 2015 led to the introduction of a discretionary budget for overview and scrutiny, set at £5,000 per annum. It is envisaged that the work programme, as drafted, is achievable within the existing financial resource.

4. Human Resource Implications

- 4.1 There are no specific human resources implications. It is envisaged that the work programme, as drafted, is achievable within the existing resources.
- 4.2 Overview and scrutiny will call on relevant officers during the conduct of its reviews. Individual scoping reports will seek to take additional resource requirements into account when drafted.

5. Equality and Diversity Implications

- 5.1 The Council has a statutory duty under section 149 of the Equality Act 2010 which provides that a public authority must, in 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 the Act (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The relevant protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation.
- 5.2 This duty has been considered in the context of this report and it has been concluded that there are no equality and diversity implications arising directly from this report. Future overview and scrutiny reviews will consider equality implications on a case-by-case basis.

6. Legal Implications

- 6.1 There are no specific legal implications.

7. Climate Change/Sustainability Implications

- 7.1 There are no specific climate change / sustainability implications.

8. Conclusion

- 8.1 Developing a work programme for the overview and scrutiny function is an essential stage in the scrutiny process. An effective overview and scrutiny work programme identifies the

key topics to be considered over the coming months. In addition, it is suggested that a well-developed programme ensures that the views of councillors, partners, the public, and external organisations are represented effectively in the process.

8.2 The Committee is requested to consider the work programme attached at Appendix 1 and determine its work plan.

8.3 For information, attached at Appendix 3 is the procedure which task and finish groups are expected to operate and report their findings in accordance with.

9. Background papers

None

10. Appendices

1. Overview and scrutiny work programme
2. P.A.P.E.R. selection tool
3. Task group procedure [Appendix 4 of the Overview and Scrutiny Procedure Rules within the Council's Constitution].

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Overview & Scrutiny work programme, 2021-22

Overview & Scrutiny Committee items
<p>19 April 2021 meeting</p> <ul style="list-style-type: none"> • COVID-19 response • Lead Councillor Question Session – Councillor John Redpath, Lead Cllr for Economy • Food Poverty – update • Licensing of Houses in Multiple Occupation (HMO) Update • Submission of a Garden Village bid for Wisley Airfield
<p>8 June 2021 meeting</p> <ul style="list-style-type: none"> • COVID-19 response • Lead Councillor Question Session – Councillor Caroline Reeves, Deputy Leader of the Council and Lead Councillor for Housing and Development Control • Spend on consultants and agency workers – update • Implementation of Modern Slavery policy
<p>13 July 2021 meeting</p> <ul style="list-style-type: none"> • COVID-19 response • Lead Councillor Question Session – Councillor Joss Bigmore, Leader of the Council and Lead Councillor for Service Delivery • Safer Guildford Partnership Annual Report 2021 • Review of Overview and Scrutiny Annual Report, 2020-21
<p>14 September 2021 meeting</p> <ul style="list-style-type: none"> • Lead Councillor Question Session – Councillor James Steel, Lead Councillor for Environment • Implementation of Future Guildford • Air Quality Strategy 2017-22 – monitoring progress tb
<p>9 November 2021 meeting</p> <ul style="list-style-type: none"> • Lead Councillor Question Session – Councillor Jan Harwood, Lead Cllr for Climate Change • Spend on consultants and agency workers: 12-month review • Operation of the Leisure Management contract, 2020-21 • Impact of Brexit
<p>18 January 2022 meeting</p> <ul style="list-style-type: none"> • Lead Councillor Question Session – Councillor Tim Anderson, Lead Councillor for Resources • Annual report and monitoring arrangements for operation of the G-Live contract, 2020-21
<p>1 March 2022 meeting</p> <ul style="list-style-type: none"> • Lead Councillor Question Session – Councillor John Rigg, Lead Councillor for Regeneration
<p>Monday 25 April 2022 meeting</p> <ul style="list-style-type: none"> • Lead Councillor Question Session – Councillor John Redpath, Lead Councillor for Economy

Currently unscheduled items

- Council's project and programme governance [scope of reports to be agreed and then item(s) to be scheduled for report to OSC in 2021]
- Post COVID-19 Homelessness strategy, housing strategy/policies
- Spectrum 2.0 [February 2021 Service Delivery EAB invited to consider the project mandate relating to maintaining existing Spectrum]
- Visitor and Tourism Strategy

Task and finish groups

Title	Update
Social Housing	Membership: Cllrs Ruth Brothwell, Angela Goodwin, Angela Gunning, Ramsey Nagaty, George Potter, Jo Randall, and Tony Rooth. (Task group procedure, attached as Appendix 3, circulated to group members – 8 February 2021.)
Mental Health Provision in the Borough	Membership: Cllrs Paul Abbey, Richard Billington, and Fiona White. (Group Leaders asked to confirm that there are no other Councillors interested and available to participate in this task group – 10 February 2021.)

Overview and Scrutiny Committee

P.A.P.E.R. selection tool

Public interest: concerns of local people should influence the issues chosen

Ability to change: priority should be given to issues that the Committee can realistically influence

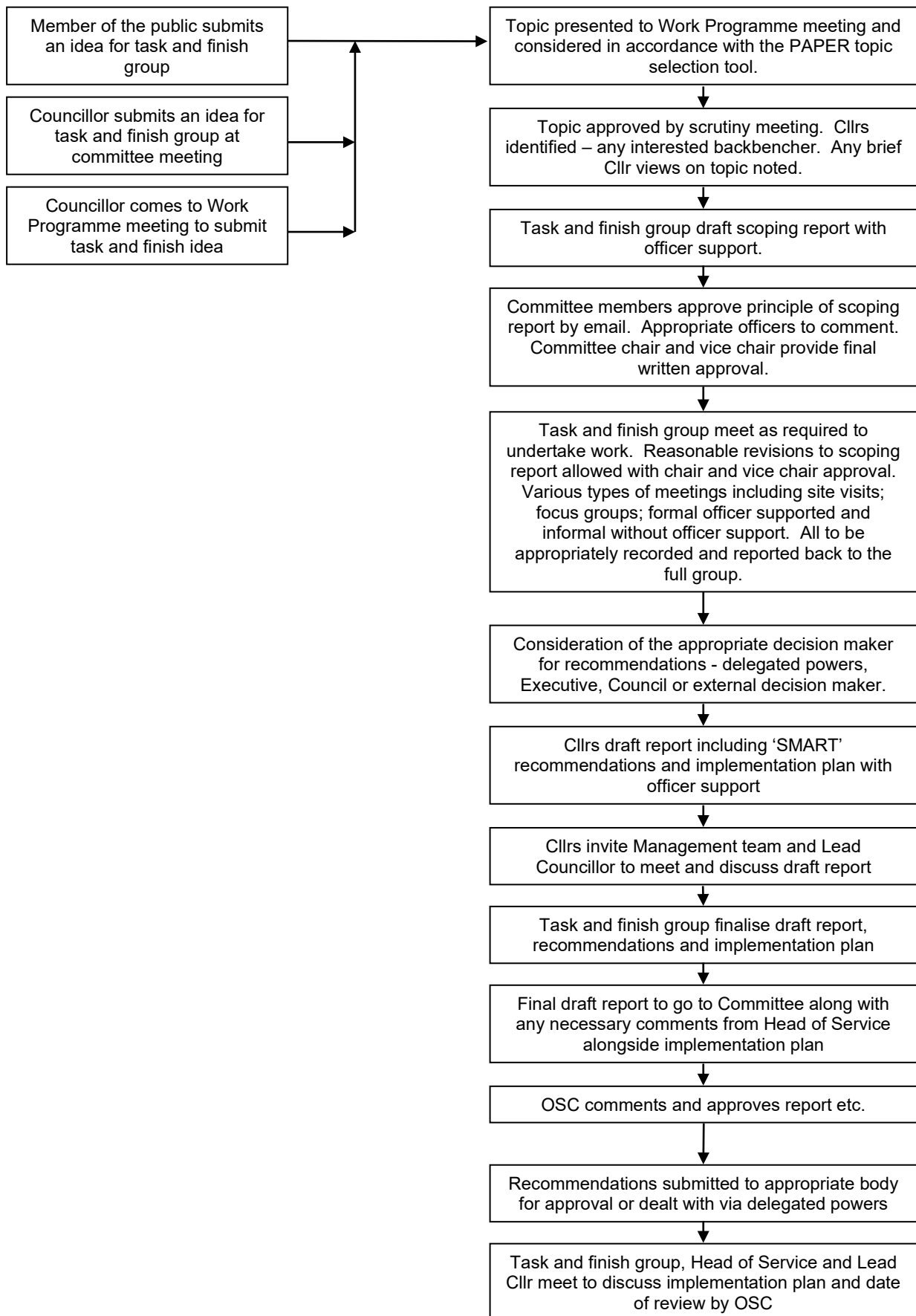
Performance: priority should be given to areas in which the Council and Partners are not performing well

Extent: priority should be given to issues that are relevant to all or a large part of the Borough

Replication: work programme must take account of what else is happening to avoid duplication or wasted effort

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TASK AND FINISH GROUP FLOWCHART



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