

Report to the Cabinet

Meeting to be held on Thursday, 9 August 2018

Report of the Director Programmes and Project Management

Part I

Electoral Division affected:
Preston Central East; Preston
Central West; Preston City
Preston East; Preston North
Preston Rural; Preston South
East; Preston South West
Preston West;

Update on Preston Youth Zone Operator

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Executive Summary

In August 2017 Cabinet agreed that a procurement exercise would be undertaken to secure a Preston Youth Zone Operator. This ensured that the potential for state aid issues was negated by opening the opportunity to competition through a procurement process which complied with the Concession Contracts Regulations (2016).

In April 2018 Cabinet agreed that the County Council capital contribution to the Preston Youth Zone scheme would be capped at £5.925m, with any additional capital requirements (estimated at £2.6m) being met by the private/voluntary sector delivery partner. The council had also previously made a commitment to make a revenue contribution of £150,000 per annum to the operation of the Youth Zone for an initial implied period of 10 years.

The procurement process commenced on 19th April and concluded on 8th June with no bids received.

It is now necessary for Cabinet to consider the next steps for the delivery of a Preston Youth Zone. The options considered within this report are:

- Undertake a further procurement exercise on the same terms and conditions
- Re-procure on different terms and conditions
- Approach interested organisations directly
- Withdraw from the project

This is deemed to be a Key Decision and the provisions of Standing Order C19 have been complied with.

Recommendation

Cabinet is asked to:

- (i) Withdraw from the delivery of a Preston Youth Zone on the Preston Bus Station site and extend the public realm treatment associated with the Bus Station redevelopment across the whole western apron.
- (ii) Fund the additional public realm works estimated at £1.25m from the £5.925m currently allocated to the Preston Youth Zone.
- (iii) Consider repurposing of £3.431m capital funding remaining following reductions of £1.244m abortive costs and £1.25m additional Public Realm costs.
- (iv) Release £150,000 revenue allocation previously committed to the operation of the Preston Youth Zone.

Background and Advice

The Preston Bus Station and Multi-storey Car Park regeneration programme includes the delivery of a Preston Youth Zone on a section of the western apron of the bus station. Following the agreement of the Cabinet in August 2017, and clarification regarding the county council's capital contribution agreed by Cabinet in April 2018 a compliant procurement process to secure a Preston Youth Zone Operator was undertaken.

The procurement process also ensured that the county council was able to comply with the requirements of s123 of the Local Government Act 1972 by removing reference to a 'peppercorn' rent and seeking a market rent for the facility from the prospective operator through the tender process.

The Invitation to Tender was issued on 19th April 2018 with a closing date of 8th June 2018.

No tender bids were received.

Options for Next Steps

1. Re-procure on the same terms and conditions

The procurement process generated very limited supplier interest, either through the Prior Information Notice or Invitation to Tender. 10 organisations expressed an interest or viewed the tender documents, but none took any further action.

Following the conclusion of the procurement process the Lancashire Procurement Service contacted all organisations who accessed the tender documentation via Oracle to explore what prevented them from submitting a bid.

From the organisations who responded and direct feedback one organisation provided by letter to the Leader, the following concerns were identified:

- difficult for suppliers to commit to the level of capital contribution required,
- length of proposed lease was insufficient
- lease terms including break clauses and the requirement for an open market rent were not acceptable
- co-location with Youth Offending Team was a concern, and
- design of the building was not compatible with model of delivery.

It was also apparent that some organisations were only interested in certain elements of the service such as the delivery of activities, support and guidance, with some expressing an interest in the construction of the building rather than the operation of the Youth Zone.

Based on this feedback it is considered unlikely that a second procurement exercise would generate any tenders if the tender is re-issued on the same terms and conditions.

2. Re-procure on different terms and conditions

This would require further officer time and resources in engaging with suppliers to understand what terms and conditions are particularly restrictive and what would be more acceptable to the market, with no guarantee a compromise could be found.

Given the feedback that has been received it is anticipated that for suppliers to engage the county council would need to increase its capital contribution above the £5.925m identified. The current estimate for the development is £8.53m. It was previously anticipated that the operator would provide £1m capital investment, but none of the feedback received has indicated what level of capital investment would be achievable.

The length of lease is also an area of concern for suppliers, with an indication that a 125 year Peppercorn lease would be required. Any move away from achieving an open market rent for the property would not enable the county council to satisfy the requirements of s123 Local Government Act.

The co-location of the Youth Offending Team service within the Youth Zone has also been raised as a concern and this would need to be addressed, potentially by removing this service from the building.

Any changes to terms and conditions would require the re-issuing of a revised Invitation to Tender to the open market to comply with the Concession Contracts Regulations (2016). Given the comments received it is clear that there is a very limited market available to provide the role of operator, and there is a risk that any re-tender would also fail to generate compliant bids, even if the county council were able to compromise on the issues mentioned above.

3. Approach interested organisations directly

To ensure compliance with procurement regulations any direct approach to any organisation following a tender exercise which elicited no responses, or no suitable responses, would have to be made in accordance with the principles of the "negotiated procedure without prior publication" under the Public Contract Regulations 2015. That procedure could only be considered if the terms and conditions of the original tender are not substantially altered.

Contacted organisations have indicated that they wouldn't be able to present a viable business plan based on the current tender requirements, but are open to further discussions around commissioning options if the council wishes to have that dialogue. These are likely to require significant changes to material terms and conditions, such as capital contribution, length and nature of lease arrangements and the co-location of the Youth Offending Team.

In such circumstances, altering key terms and conditions would require re-issuing a tender to the open market to ensure compliance with Public Contracts Regulations.

4. Withdrawal from the Project

It is unlikely that the county council will be able to deliver a Preston Youth Zone on the Bus Station location without a significant increase in capital funding, a reduction in lease payments, an increase in the term of lease and the removal of the co-located Youth Offending Team service.

It would be very challenging in the current financial climate for the authority to compromise on these points. It should also be noted that since the first discussions on the construction of a Preston Youth Zone, children, young people and family services have developed a much stronger focus on targeted services rather than a universal service offer such as that provided through a Youth Zone. The shift in focus towards delivery of an integrated 'early help' service offer in Lancashire for children, young people 0-19yrs+, now focusses on targeting those most in need of support and was agreed by Cabinet at its meeting in November 2015. The decision detailed the 'Transformation of Wellbeing, Prevention and Early Help Services', integrating a number of existing services (including the former Young People's Service in the County Council) and repositioning the service delivery offer to be principally focussed on those assessed as having complex or intensive needs aligned to Lancashire's Continuum of Need at Levels 2 and above.

Although the council has demonstrated to date, a continuing commitment to the provision of a Preston Youth Zone, and continues to recognise that this would represent an extremely welcome asset in Preston, it must now consider whether this is aligned with the targeted approach described above which ensures the greatest support and assistance is provided to those with greatest need.

A decision to withdraw from the delivery of a Preston Youth Zone would reduce the capital requirement of the Preston Bus Station development programme. However it should be noted that significant expenditure has already been incurred on the project. This is split in to two principal areas:

- Firstly, the abortive costs of the extensive design work done to date, as well as a likely claim from the contractors for loss of profit. These costs total £1.244m.
- Secondly, the expansion of the public realm works to include the entire area of the western apron of the bus station, covering the area that would have been taken by the Youth Zone footprint. It is estimated that in order to deliver quality public realm to a suitable standard to complement that planned for the rest of the apron would incur an additional cost of £1.25m. This includes £150k additional design costs, £350k additional electrical works (primarily lighting) and £750k construction. The total cost of the public realm works would be £2.75m including the apron works already programmed across other approved capital projects associated with the bus station re-development and Fishergate.

Taking the abortive costs and the costs of delivering the additional public realm from the original capital allocation of £5.925m would release £3.431m capital funding. Repurposing this capital funding will reduce borrowing requirements if no longer needed to fund a Youth Zone.

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

Legal/Procurement

In proceeding with the procurement process the county council as a public authority must comply with the relevant procurement regulations, state aid rules and s123 of the Local Government Act 1972.

The potential for state aid issues has been negated by opening the opportunity to competition through a procurement process which complies with the Concession Contract Regulations 2016. Appointing a Youth Zone Operator following an open tender process does not create an unfair advantage to the recipient but offers a fair and transparent opportunity to all those interested in delivering the services (including operators from other EU states). Under a compliant procurement process all bids would be evaluated on an equal basis according to pre-published criteria and there is thus no detrimental impact upon inter-state competition.

Section 123 of the Act provides that a council cannot dispose of its land for a consideration less than the best that can be reasonably obtained in the market,

except with the express consent of the Secretary of State. A disposal of land includes the granting of a lease. The removal of all reference to a peppercorn rent from within the Invitation to Tender, allowing for an open market rent, gives compliance to this requirement.

Finance

The financial contributions committed to the delivery of the Preston Youth Zone have been considered through previous reports, most specifically within the report to Cabinet on 9 June 2016.

The cabinet established at its April 2018 meeting that all capital costs above the agreed £5.925m would be met through the Youth Zone Operator, therefore limiting the county council's financial commitment to that already agreed. The required commitment of the Youth Zone Operator is currently estimated to be £2.605m, rather than the £1m contribution previously discussed.

The procurement process specified that the Youth Zone Operator would take on the operational and financial risk associated with delivering the Preston Youth Zone. It was envisaged that they would need to secure private sector contributions from sponsors, arrange contributions from other public sector partners, as well as charging a fee for young people to access the activities to cover costs.

The county council has previously made a commitment to provide a maximum revenue contribution of up to £150,000 per annum, for a maximum period of ten years. This was detailed within the procurement documentation. The withdrawal from the project would enable the release of this revenue funding.

OnSide have written to the Leader stating that they will be placing an invoice with the county council for the development costs they have contributed to the project. There is an anticipated cost for all fees included within the abortive cost figure of £1.244m. At the commencement of the Project, OnSide provided a figure for their fixed consultancy fee and this amount is included within the Project Cost Plan and is reflected in the abortive costs.

Funding for the delivery of the existing western apron public realm treatment has been secured through Growth Deal, through the Preston City Centre Improvements Programme. Whilst this funding does not specifically relate or contribute to the delivery of a youth zone, the outputs in the business case used to secure the funding do refer to the youth zone and as such the Growth Deal Board will require a change request to be submitted to address any implications on the outputs to be delivered by this change to the business case deliverables. The impact of this is unknown and is subject to Growth Deal Management Board discussion but could result in reduced funding for the public realm treatment.

List of Background Papers

Paper	Date	Contact/Tel
Proposals for Transforming Wellbeing, Prevention and Early Help Services for Children, Young People and Families in Lancashire	26.11.2015	Debbie Duffell 01772 532173
Procurement Report – Request for approval to commence procurement exercise	10.8.2017	Rachel Tanner 01772 534904
Update on Preston Youth Zone Operator	12.4.18	Sue Procter 01772 538848

Reason for inclusion in Part II, if appropriate

N/A