

Cobtree Contracts Reliefs and Mitigations

Final Decision-Maker	Cobtree Manor Estate Charity Committee
Lead Head of Service	John Foster – Head of Regeneration and Economic Development
Lead Officer and Report Author	Mike Evans – Leisure Manager
Classification	Public
Wards affected	Boxley

Executive Summary

A report seeking the Cobtree Manor Estate Charity Trust's authority to agree Covid-related relief with the operators at the Cobtree Estate.

Purpose of Report

In response to the enforced closures of leisure sites at the Cobtree Estate, the Cobtree Manor Estate Charity Committee is asked to make decisions on the contract measures and mitigations it wishes to take with its operators at Cobtree Manor Park Golf Course, Kent Life and Cobtree Café.

This report makes the following recommendations to this Committee:

1. That the rent paid by MyTime Active at Cobtree Manor Park Golf Course is suspended for a period of 58 days, that the payment of the pro rata rent for that 58-day period is waived and the Senior Finance Manager makes provision for this in the Cobtree cashflow forecasts
2. That the contract fee paid by Planning Solutions at Kent Life is suspended for the whole of the Q1 period, that the payment of the Q1 contract fee is waived and the Senior Finance Manager makes provision for this in the Cobtree cashflow forecasts.
3. That all agreements to provide relief are reliant on the operators complying with all of the appropriate actions and qualifying criteria, with the relief being withdrawn should the operator not be eligible or not be in compliance.
4. That authority be given to the Director of Regeneration and Place to instruct Mid-Kent Legal Services to amend the contracts and leases thus incorporating the changes approved in recommendation 1 and recommendation 2 above, and for the amended contracts and other ancillary documents to be entered into by the Council on behalf of Cobtree Manor Estate Charity.
5. That the Leisure Manager continues to monitor the budget and cashflow positions at Cobtree Manor Park Golf Course and Kent Life and that future requests for supplier relief are brought to this committee for future consideration.

Timetable	
<i>Meeting</i>	<i>Date</i>
Cobtree Manor Estate Charity Committee	11th June 2020

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CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> • Embracing Growth and Enabling Infrastructure • Safe, Clean and Green • Homes and Communities • A Thriving Place <p>Accepting the recommendations will materially improve the Council's ability to achieve the safe, clean and green priority and the thriving place priority. We set out the reasons other choices will be less effective in section 3 available options.</p>	Mike Evans – Leisure Manager
Cross Cutting Objectives	<p><i>The four cross-cutting objectives are:</i></p> <ul style="list-style-type: none"> • <i>Heritage is Respected</i> • <i>Health Inequalities are Addressed and Reduced</i> • <i>Deprivation and Social Mobility is Improved</i> • <i>Biodiversity and Environmental Sustainability is respected</i> <p>The report recommendations support the achievement of all of the cross-cutting objectives by ensuring the future sustainability of Cobtree Manor Estate and ensuring contractual operations at the estate continue.</p>	Mike Evans – Leisure Manager
Risk Management	Refer to section 5 of the report	Mike Evans – Leisure Manager
Financial	Cashflow is a key consideration for the ongoing operations of the Estate, and this report sets out proposals to ensure there are sufficient financial resources to allow the Estate to continue to operate on a sustainable basis during the current	Paul Holland, Senior Finance Manager

	situation.	
Staffing	We will deliver the recommendations with our current staffing.	John Foster – Head of Regeneration and Economic Development
Legal	Under the Council’s Constitution the Committee as Corporate Trustee is responsible for all matters relating to the Charity with the exception of daily management. which will be undertaken by the Director of Finance and Business Improvement. Accepting this recommendation will align the committee’s procedures more closely to the Council’s constitution	Senior Lawyer – Contracts and Commissioning
Privacy and Data Protection	Accepting the recommendations will increase the volume of data held by the Council. We will hold that data in line with our retention schedules.	Policy and Information Team
Equalities	No impact identified as a result of the report and recommendations.	Equalities and Corporate Policy Officer
Public Health	We recognise that the recommendations will have a positive impact on population health or that of individuals.	Public Health Officer
Crime and Disorder	There are no crime and disorder implications caused by these recommendations.	Mike Evans – Leisure Manager
Procurement	On accepting the recommendations, the Council will then follow procurement exercises, the PPN guidance and agree any contract changes with operators by way of a variation to the contract. We will complete those exercises in line with financial procedure rules.	Head of Regeneration and Economic Development & Section 151 Officer

2. INTRODUCTION AND BACKGROUND

- 1.1 The Covid-19 pandemic that developed in the UK in March 2020 had huge implications for all sectors and businesses in the Maidstone borough, including those who operate aspects of the Cobtree Manor Estate. The Cobtree Manor Estate Charity (CMEC) holds contracts with MyTime Active for Cobtree Manor Park Golf Course, Planning Solutions for Kent Life, and DAGT for Cobtree Café.
- 1.2 In response to the Covid-19 outbreak the Cobtree operators began to alter their operating procedures from 16 March 2020 onwards until, under instruction from the UK government, the businesses closed and ceased operations on Monday 23 March 2020.
- 1.3 The operators have taken advantage of the government's furlough scheme and business rates relief schemes where they are eligible but they are all left with significant budget pressures.
- 1.4 The *UK Procurement Policy Note 02/20: Supplier Relief due to Covid-19* from the Cabinet Office "sets out information and guidance for public bodies on payment of their suppliers to ensure service continuity during and after the current coronavirus, Covid-19, outbreak. Contracting authorities must act now to ensure suppliers at risk are in a position to resume normal contract delivery once the outbreak is over." The PPN is applicable to all contracting authorities including local authorities and the view of Mid-Kent Legal Services is that it also applies to CMEC. The UK PPN02/20 is available as appendix 1.
- 1.5 In the absence of change of law clauses in the contracts governing the Cobtree operators, CMEC and its operators must follow the UK PPN02/20 guidance and work collaboratively to find solutions.
- 1.6 In the case of operators who make payments to contracting authorities the UK PPN02/20 guidance FAQ document says that operators do not have to pay back this money. Contracting authorities have a future claw-back option where contract delivery is not possible because of the impact of Covid-19. The full statement on this subject is available in *Frequently Asked Questions (FAQs) – Procurement Policy Note 02/20*, which is available at Appendix 2. CMEC should work on the basis that any relief it gives to operators is done so with the expectation that it will not be getting that money back at a later date. This point is a key one in determining how much support CMEC gives its operators in the first instance.
- 1.7 The contract positions at each venue are provided in appendix 3. The payments made to CMEC each year are:
 - The Cobtree Golf Course rent (paid quarterly)
 - The Kent Life contract fee (paid twice yearly)
 - The Cobtree Café base rent (paid quarterly)
 - The Cobtree Café turnover share (paid quarterly)

The shutdown has affected each business differently but each one has requested financial support from CMEC.

Cobtree Manor Park Golf Course

- 1.8 MyTime Active has requested that CMEC waive rental payments for a full year, based on the uncertainty around the economic recovery period. The request is for CMEC to waive this rent and not for it to be paid at a later date. MyTime's profit and loss budget sheet shows that the business was already suffering from the heavy rainfall and flooding that occurred between December and February 2020. With the pandemic the golf course has suffered a business interruption of six months, starting in December 2019 and lasting until May 2020.
- 1.9 At the point of closure the golf course memberships were either frozen where people paid by direct debit, or given an extension where people had paid for 12 months in full. Staff were put on furlough and the clubhouse building was put into hibernation. Cobtree Manor Park Golf Course qualifies for a £10,000 business rates grant. The capital development works at the golf course have been placed on hold because of the Covid-19 pandemic.
- 1.10 At the time of writing the golf course has re-opened with social distancing measures in place in accordance with government and England Golf guidance. These measures limit the number of people who can play each day, which does have an impact on the achievable income. The clubhouse, bar and restaurant all remain closed and the revenue streams for food, drink, functions and group bookings are still hampered by the impacts of Covid-19. MyTime Active have reopened the venue with two members of staff and support from their core team. The majority of staff are still on furlough and MyTime continue to receive Covid-19 Job Retention Scheme support for these staff costs.
- 1.11 MyTime Active pay their annual rent to CMEC in four quarterly payments. At the time of the lockdown their payment in advance for Q4 of 2019/20 was outstanding. Their account is in arrears to the value of one quarterly payment. The payment for the current quarter has also not been invoiced and is the subject of this report.

Kent Life

- 1.12 Since closing on 23 March Planning Solutions has furloughed all Kent Life staff apart from two team members who have been caring for the animals and livestock on site. These staff have been attending site every day, ensuring they do not come into contact with each other, and have been checking the premises as well as caring for and feeding the animals.
- 1.13 Customers' memberships are either frozen or extended, depending on the type of membership they have, and bookings made in advance have been honoured for the future or will be refunded.
- 1.14 Business rates at Kent Life are £0 for the year. The rate payer is Maidstone Borough Council corporate property department and the rateable value is £64,100, which is above the £51,000 qualification threshold. At the moment Kent Life does not qualify for any government grants that could be used as a contribution towards the running costs of the site or the contract.

This is being monitored on an ongoing basis by the Leisure Manager and if the criteria for grants change an application on behalf of Kent Life will be made.

- 1.15 Planning Solutions has provided their full profit and loss budget sheet for 2020 which shows the impact of the Covid-19 lockdown and a forecast of its ongoing impact. The impact at Kent Life has been a loss of all revenue since 23 March 2020. Running costs have been managed but the impact to Kent Life and Planning Solutions is still considerable.
- 1.16 Planning Solutions pays the annual contract fee to CMEC in two six-monthly instalments, due at the end of Q2 and Q4. The payment for Q1 and Q2 due in November 2019 remains outstanding. The payment for Q3 and Q4 became payable during the lockdown and also needs to be invoiced. Because of these two invoices the Kent Life account is currently in arrears by one year's rent.
- 1.17 At the time of writing Kent Life remains closed and there is no indication of when it can re-open. A lot of Kent Life's income is dependent on school trips so even if the site opens soon, the financial impact could extend through July with schools not in a position to resume school trips.

Cobtree Café

- 1.18 DAGT altered the café service on 20 March 2020 and switched to providing take away food and drinks only. They provided service on this basis until 23 March when they were ordered to close as part of the government lockdown. Cobtree Café pays a base rent and a turnover rent to CMEC. The turnover rent for the lockdown period will be £0 because it is based on a percentage share of the turnover.
- 1.19 The café has prepared a plan to re-open on a take-away basis from Sunday 16 May 2020. Mid-Kent Legal Services provided legal advice that the café could operate in this way and given approval for it to re-open. The café prepared risk assessments and documentation in order to re-open but at the time of writing it has still not re-opened.
- 1.20 After giving approval for the café to re-open on a take away basis officers received a force majeure letter from the café operator dated 18 May stating that the owners believed a force majeure event to have occurred and stating that they would be vacating the café.
- 1.21 Mid-Kent Legal Services reviewed the force majeure letter and provided comments. The force majeure request was rejected because it does not comply with the specification of a force majeure request as per the Cobtree Café concession contract and the PPN 02/20 guidance is also very clear that the government wishes to avoid suppliers to the public sector using force majeure clauses for Covid-19 and instead wishes them to use the furlough scheme and the PPN02/20 guidance to remain whole and resume trading at a later date (see appendix 1, page 2, point 9).
- 1.22 Before submitting the force majeure letter Cobtree Café had requested a rental holiday of 100% rent relief for the duration of the closure and 50%

rent relief for the first six months after re-opening in order to mitigate the impacts of the Covid closure. The café has submitted this request and some accompanying financial information for the closure period. Some dialogue about the costs has been had between the Leisure Manager and DAGT. DAGT has declined to submit any additional financial information or provide clarification on a number of points raised by the Leisure Manager.

- 1.23 Section 2. Action of the UK PPN02/20 guidance states, at bullet point 4, that "To qualify, suppliers should agree to act on an open book basis and make cost data available to the contracting authority during this period. They should continue to pay employees and flow down funding to their subcontractors."
- 1.24 The transparency section of the UK PPN02/20 guidance states "All suppliers are expected to operate with integrity. Suppliers should be made aware that in cases where they are found to be taking undue advantage, or failing in their duty to act transparently and with integrity, contracting authorities will take action to recover payments made."
- 1.25 Officers have a number of questions around the financial information that DAGT has submitted for Cobtree Café. Officers have sought clarification on those points but DAGT have thus far declined to provide answers or share any more information. At this time, without receiving any further responses or the clarification required, officers are not confident in making recommendations regarding rental relief for Cobtree Café to CMEC.

Cobtree Manor Park car park

- 1.26 The car park at Cobtree closed to vehicles on 23 March 2020. Since that day car park income has been £0. The park remained open to pedestrians during the lockdown but vehicles were prevented from entering. The car park re-opened on Wednesday 13 May 2020 and was closed for a total of 51 days. The closure period would have included the Easter school holidays, Easter weekend and the first May bank holiday weekend. The same seven-week period in 2019 yielded £16,420.
- 1.27 Car park permits have been extended by two months so that annual permit holders are still able to benefit from a full 12 months of car park permit use.

Cobtree Manor Estate Charity Cashflow

- 1.28 Appendix 3 shows the contract payments made to CMEC by the operators at the Cobtree estate on a quarterly basis. The UK PPN guidance says that CMEC has to take measures to ensure that the operators are whole and able to trade after the Covid-19 restrictions are lifted. Where authorities receive payments they should waive these for the closure period.
- 1.29 It is certainly in CMEC's best interests to ensure that its operators survive the Covid-19 closures and do not go into liquidation or insolvency during the lockdown period. The risks of an operator ceasing to trade outweigh the costs of assisting them during this time. Were an operator to cease trading, CMEC would have to take over the maintenance responsibilities of the site, the operation of the services and the management of the staff involved.

This situation would be less than ideal for CMEC and it should work to ensure its operators are able to trade post-Covid.

- 1.30 The UK PPN02/20 guidance advises contracting authorities to waive contract fees during the Covid-19 lockdown period up to 30 June 2020 inclusive. Officers have been using a quarter-by-quarter approach in their planning. At the time of writing the golf course is partially open after a closure of 58 days and its current usage with a skeleton workforce means it is profitable again. The café has plans in place to re-open but as yet has not done so. Kent Life is still not able to re-open and is still included in the UK Government's lockdown restrictions.
- 1.31 CMEC can explore waiving contract payments for the length of the closure period for each venue or it can aim to choose a period that is the same length for all operators. CMEC may also provide support over a longer period to assist the operators in the recovery periods as well.
- 1.32 Some of the Cobtree operators pay contract fees and some pay rents. CMEC may wish to distinguish between these fees, on the basis that its rent-paying tenants have still had full use and enjoyment of the premises during the closure period while the operators who provide contracted services have not been able to deliver the services relating to their contract fee. Operators who pay a contract fee will have also paid their peppercorn rent to cover the enjoyment of the premises during lockdown. Alternatively, CMEC may wish to treat rent payments and contracted payments the same and give relief to all operators regardless of how they make their payments to CMEC.

3. AVAILABLE OPTIONS

3.1 **Do nothing**

CMEC could choose to ignore the UK PPN02/20 guidance and the requests for support from its operators. This would be against the intention of the UK PPN02/20 guidance and could leave CMEC open to legal challenge from its operators. This option also increases the risk of an operator entering insolvency and risks CMEC having to manage one or more of its venues itself in the future, which would be far more costly than working with the operators to ensure they are whole at the end of the Covid-19 lockdown period. **This option is not recommended**

3.2 **Provide support for the whole of Q1 for the operators at Cobtree Manor Park Golf Course and Kent Life**

CMEC could waive all payments for the period 1 April to 30 June 2020. This would cost CMEC the *Q1 Total* as shown in Appendix 3. This option removes the risk of operators being insolvent at the end of the Covid-19 lockdown period, but it does place added pressure on the CMEC cashflow position. As well as the *Q1 Total* CMEC has also suffered a decrease in car park income estimated to be approximately £16,420. **This option is not recommended.**

3.3 Provide support on a pro rata basis for the period of each site's closure.

CMEC could waive payment for the period 1 April to 30 June 2020 for the operators who have been affected for the whole quarter and give pro-rata support for the operators who have been able to re-open for trade before 30 June 2020.

3.4 This option would mean the total support given to operators is the figure shown as the total in Appendix 4. The businesses have been severely impacted by Covid-19 and will be looking at every available option for as much support from CMEC as possible. CMEC's aim in this process is to ensure its operators survive the Covid-19 lockdown period and are able to trade again afterwards.

3.5 Where operators such as MyTime Active have commenced operations post-lockdown it may be argued they are no longer at risk of not surviving. However, CMEC should offer its support to its operators, in conjunction with the government schemes and help its operators where it can. At all times CMEC must safeguard its own cashflow and its own existence. It must also ensure that it has financial resilience for any future claims and a future second wave in the Covid-19 pandemic. **This option is the recommended option.**

3.6 Provide support to the operators of Cobtree Café.

For the reasons described in paragraphs 1.22, 1.23, 1.24 and 1.25 this option is **not recommended at this time.**

3.7 Maintain dialogue with all operators so that future additional support can be discussed, and further recommendations can be brought to future meetings of this committee

The recovery period from Covid-19 is full of uncertainty. Where operators are unable to open in July, which is beyond the 30 June deadline of the UK PPN02/20 guidance, this committee will need to discuss and consider additional relief on a case by case basis.

3.8 There is also no certainty that the Covid-19 lockdown of March and April 2020 is the only one that will occur this year. The coronavirus pandemic may increase again in future months and there may be a need for another lockdown and additional need for supplier relief.

3.9 In both of these situations officers will bring further reports and recommendations to this committee. **This option is also recommended.**

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

4.1 The first recommended option is to provide contractual relief to MyTime Active, who operate Cobtree Manor Park Golf Course, in the form of the *MyTime Q1 pro rata fee* in appendix 4.

- 4.2 The second recommended option is to provide contractual relief to Planning Solutions, who operate Kent Life, in the form of the *Planning Solutions Q1 fee* also available in appendix 4. Kent Life has been closed for the whole quarter, hence the relief offered being equivalent to that time period.
- 4.3 The third recommended option is to continue dialogue with all operators so that the effectiveness of this contractual relief can be monitored and assessed and any future claims for contractual relief under the UK PPN02/20 guidance can be brought to this committee
- 4.4 This approach ensures that Cobtree's operators are given relief for the period of their closure and also protects CMEC's own cashflow during this period of uncertainty. This approach also ensures CMEC has some resilience for any future closures that occur later in 2020 or in 2021.

Future resilience

- 4.5 Paragraph 4.3 includes within its recommendation scope to reconsider the relief claim at Cobtree Café, should sufficient evidence be received that the operator is eligible to benefit from the UK PPN02/20 guidance. This approach is particularly prudent given the information at paragraphs 1.23, 1.24 and 1.25. The financial impacts to CMEC of accepting these recommendations are shown in appendix 5.

5. RISK

- 5.1 The risks of the Covid-19 pandemic to CMEC centre around its cashflow and its operators' ability to trade. CMEC needs to ensure its operators are in place to recommence trading once the pandemic is over, its operators are able to recommence the provision of services in line with the new social distancing guidance and its operators can run the services profitably.
- 5.2 CMEC relies on the contractual income from its operators to run the Cobtree Manor Park and the wider Cobtree estate and CMEC needs to protect its own cashflow. CMEC also needs to be aware of the risks of an operator not being able to continue in providing the services. If that happens the services will return to CMEC to operate and operating them in house will be far more costly to CMEC.
- 5.3 The risks associated with these proposals, including the risks if CMEC does not act as recommended, have been considered in line with the Council's Risk Management Framework. That consideration is shown in this report at paragraphs 1.29, 3.1, 3.2, 5.1 and 5.2. We are satisfied that the risks associated are within the Council's risk appetite and will be managed as per the Policy.

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 6.1 The proposals in this report have been developed in consultation with the Head of Regeneration and Economic Development, the Practice Area Team Leader – Contracts and Commissioning, the Senior Finance Manager, and the CMEC Chair and Vice Chair.
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7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 7.1 Once CMEC has decided its preferred course of action the Leisure Manager will work with Mid-Kent Legal Services and the operators to vary the service contracts by way of a deed of variation.
- 7.2 The Leisure Manager will ensure the operators work with CMEC on an open book basis, as instructed by the UK PPN02/20 guidance and all financial relief given will be subject to the PPN02/20 criteria
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8. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- Appendix 1: *UK Procurement Policy Notice – Supplier Relief due to Covid-19 Action Note PPN 02/20*
 - Appendix 2: *Frequently Asked Questions (FAQs) – Procurement Policy Note 02/20*
 - Appendix 3: CMEC Contract quarterly finances
 - Appendix 4: CMEC Contract pro-rata finances
 - Appendix 5: Cobtree cashflow projections recommendations impact
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9. BACKGROUND PAPERS

- None