



## Finance Committee Meeting Minutes for Tuesday 7 March 2023

### FC 56 / 22 Attendance and apologies

Attendance: Cllr Booth (Chairman); Cllr Buxton; Cllr Pike; Cllr Bains

Apologies: Cllr Evans

In Attendance: R Davies (Clerk and RFO)

There were no members of the public present.

There were no declarations of interest for items on the agenda.

### FC 57 / 22 To review minutes of the meeting 7 March 2023.

**RESOLVED:** That the minutes of the meeting 7 March 2023 were approved.

The Chairman highlighted the following matters arising from the minutes:

- ACTION for Cllr Pike to send through information from CIL Legal advisor. This was received on the morning of the committee meeting.
- ACTION for Cllr Pike to forward the information received from the DCLG re CIL payment of salaries for project management. This action is outstanding.
- ACTION for Clerk to analyse the increments of costs for the council was removed due to the amount of work involved and the lack of requirement. This work would be carried out on a case-by-case basis at the request of the committee as appropriate.

### FC 58 / 22 Public Adjournment

There were no members of the public present, therefore the Chairman continued with the meeting.

### FC 59/ 22 Business from previous meetings

**FC 59/ 22 / 1** The committee received the preferred supplier list for council and confirmed that this would remain an internal document with reviews on a case-by-case basis.

**RESOLVED:** That the committee notes the preferred supplier list

**FC 59 / 22 / 2** The committee received the payments schedule for the budget year 2023 2024.

**RESOLVED:** That the committee notes the payments schedule as an action outlined in the financial regulations.

**FC 59/ 22 / 1** The committee received the information provided by the RFO on General Power of Competency and noted the recommendation that this should not be adopted simply because 'it can', rather be against a specific project or objective of the council.

**RESOLVED:** That the committee considers any future known projects or outcomes that the council may wish to implement which would require GPC to be adopted and bring back to the next committee meeting on the 2 May 2023.

### FC 60 / 22 To receive questions from committee members.

There were no questions notified or brought forward.

## FC 61 / 22 To receive and review budget reports to 31 March 2023

**FC 61 / 22 / 1** The committee received and reviewed the council budget report to the 31 March 2023 and noted the amendment the title of the document.

The committee reviewed the report and noted the budgets that were under and over spent culminating in an end of year (pre-adjustments) surplus.

**FC 61 / 22 / 1** The committee received and reviewed the proposed movements to EMR.

Reserve Account	Opening Balance	From Reserve	To Reserve	EMR Balance	Status
<b>Non - Restricted Reserves</b>	<b>01 April 2022</b>			<b>31 March 2023</b>	
General Reserve	122,642			117,047	
General Reserve - Sub Total	122,642			117,047	
<b>Asset Renewal Reserves</b>					
EMR Tennis	64,854		44,762	109,616	Additional £32,560
<b>Capital Project Reserves</b>					
EMR Cemetery	37,032	1,990.00	13,850	48,892	Additional £1,850
EMR Van	450			450	
<b>Major Works Reserves</b>					
EMR Property Maintenance	47,066		15,000	62,066	
EMR Playground	51,228		21,934	73,162	
EMR Village Hall	3,739			3,739	
<b>Other Earmarked Reserves</b>					
EMR In Bloom	1,600		800	2,400	
EMR Election Expenses	5,502		2,000	7,502	Reserving Election underspend
EMR Website / IT	1,088	1,087.50	2,309	2,309	Reserving against known expenditure
EMR Training	450	410.00		40	
EMR Water Rates	-		2,356	2,356	Reserving against estimated expenditure
EMR Audit	618	618.00		-	
Community Action	8,838	8,838		-	
Non-Restricted Reserves - Sub Total	222,464	12,944	103,011	312,531	
<b>Restricted Reserves</b>					
EMR Open Space S106	1,724			1,724	
EMR Public Art S106	14,189			14,189	
EMR Community Facilities S106	2,278	2,140		138	
EMR Allotments S106	581	560		20	
CIL Grant	703,277	69,887	654,293	1,287,683	
Restricted Reserves - Sub Total	722,049	72,587	654,293	1,303,755	
<b>Total EMR Reserves</b>	<b>944,513</b>	<b>85,531</b>	<b>757,304</b>	<b>1,616,286</b>	
<b>Total Reserves - including General Reserve</b>	<b>1,067,155</b>			<b>1,733,333</b>	

With the following EMR movements and accruals, the resulting year end position will be an in-year deficit of £5,595.

**RESOLVED:** That the committee considers these movements to be necessary and notes the indicative election costs for May 2023 of £8,148.73 (this does not include nominee expenses).

## FC 62 / 22 To receive information on VAT charges for Sporting Facilities.

The committee received an update and paper on the information gained by the RFO in a training course by Parkinson Partnerships and noted the judicial decision as it relates to Chelmsford City Council was based upon the definition of 'non-business' activity. This paper is appended to the minutes for clarity.

**NOTED:** That the RFO has already submitted a 4<sup>th</sup> quarter 2019 VAT claim and will claim for the remaining 15 quarters for Tennis Pay and Play by the end of June 2023.

## FC 63 / 22 To receive Financial Information

**NOTED:** The committee received and noted the information provided regarding the external audit provision and practices for 2023 2024.

The RFO confirmed the internal auditor visit would take place on the 26 April 2023.

**NOTED:** The committee received and noted the information provided regarding the precept demands average for England for 2023 2024 at 5.3% increase and an average band D precept of £78.79.

## FC 64 / 22 Information Sharing

The Clerk informed the committee that the CIL payment had been notified of £144,094.17 but was missing payments against her records which were being followed up.

## FC 65 / 22 Dates of the upcoming meetings

The Clerk confirmed that the next scheduled meeting is on the 2 May 2023

The meeting closed at 3:10 pm.

# Appendix A - VAT on Sporting Fees - Update

## Background

The briefing note from Parkinson Partnerships discussed at the finance committee 7 March 2023 left a couple of areas to be confirmed:

1. Should the council charge VAT to the coaches and if not, should it be reclaimed?
2. Should the council charge VAT on Pay and Play and if not, should it be reclaimed?

Training was undertaken by the Clerk by Parkinson Partnerships on Monday 20 March and the following information was provided.

## The case in law

Chelmsford City Council brought a specific case with 3 main claims:

<https://www.casemine.com/judgement/uk/5fa90bc52c94e01cc109d135>

4. *In brief summary, the Council contends (and HMRC disputes) that the charges in dispute do not attract VAT on three alternative grounds:*

*(1) Its supplies of sporting and leisure activities to members of the public are **not economic activities**, and are therefore outside the scope of VAT;*

*(2) Its supplies of sporting and leisure activities to members of the public **are provided by the Council in its role as a public authority acting under a special legal regime<sup>j</sup>**, and therefore it is not a taxable person in respect of those supplies; or*

*(3) Its supplies of sporting and leisure activities to members of the public are **provided by the Council in its role as a public authority**, and therefore it is not a taxable person in respect of those supplies, by virtue of Note 3 Group 10 sch 9 VAT Act 1994.*

In essence, they argued that whilst a local authority was providing sporting facilities (under Section 19 of the Local Government Miscellaneous Provisions Act 1976) and acting as a local authority, VAT is not applicable. The activities are classed as non-Business.

However:

### Economic Activities – Business v's "non-Business"

6. Article 9 P VD provides, so far as relevant:

1. 'Taxable person' shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.

Any activity of **producers, traders or persons supplying services**, including mining and agricultural activities and activities of the professions, shall be regarded as 'economic activity'. The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.

7. Article 13 PVD provides, so far as relevant:

*1. States, regional and local government authorities and other bodies governed by public law shall not be regarded as taxable persons in respect of the activities or transactions in which they engage as public authorities, even where they collect dues, fees, contributions, or payments in connection with those activities or transactions.*

*However, when they engage in such activities or transactions, **they shall be regarded as taxable persons in respect of those activities or transactions where their treatment as non-taxable persons would lead to significant distortions of competition.***

Therefore, when the council is hiring the courts to a Business Activity, the council must continue to levy VAT and therefore no claim for back payments is permissible.

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<sup>i</sup> 88. The Council argues that it provides its sports facilities pursuant to a special legal regime, relying on the power under section 19 of the Local Government Miscellaneous Provisions Act 1976 to provide, inside or outside its area, such recreational facilities as it thinks fit, whether or not for payment. The fact that the Council provides such services under a statutory discretion does not mean that engaging in its activities necessarily involves the exercise of rights and powers of public authority.