



Finance Committee Meeting Minutes for Tuesday 2 May 2023

FC 66 / 22 Attendance and apologies

Attendance: Cllr Booth (Chairman); Cllr Buxton; Cllr Pike; Cllr Bains; 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 67 / 22 To review minutes of the meeting 11 April 2023.

RESOLVED: That the minutes of the meeting 11 April 2023 were approved.

The Chairman highlighted the following matters arising from the minutes:

ACTION: Cllr Pike to provide the committee with the information she received from the DCLG regarding CIL uses.

ACTION: The Clerk is still chasing an update and confirmation on the CIL payment from RBWM which was challenged.

FC 68 / 22 Public Adjournment

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

FC 69/ 22 Business from previous meetings

FC 69/ 22 / 1 The committee discussed the need for adopting General Power of Competency and agreed that the council did not require this power at the present time.

RESOLVED: That the committee notes the General Power of Competency and will not be proposing council adopts this at the present time.

FC 70 / 22 To receive questions from committee members.

There were no questions notified or brought forward.

FC 71 / 22 Council reports for year ended 31 March 2023

FC 71 / 22 / 1 The committee received and reviewed the year end reports including the balance sheet, profit and loss, reconciliation report, variances report and reserves.

RESOLVED: That the committee noted the end of year reports with no actions or questions to answer.

FC 71 / 22 / 2 The committee received and reviewed the final Internal Audit report and thanked the RFO for another clean audit report. It was noted that the council fidelity insurance should be increased.

ACTION: The Clerk to follow this up with the council's insurers and put in place.

ACTION: The Clerk to review the property surveys carried out in 2022 and review the insured values of the council assets for the insurance renewal in September 2023.

FC 71 / 22 / 3 The committee received and reviewed the AGAR for year ending 31 March 2023 and reviewed the Annual Governance Statement, Section 1 with no questions or issues raised.

RESOLVED: That the committee propose the AGAR to council for approval.

FC 72 / 22 Information Sharing.

There were no items brought forward.

FC 73 / 22 Dates of the upcoming meetings

The Chairman thanked all members of the committee for the previous 4 years of fiscal management on behalf of the council.

The next finance committee meeting was confirmed as the 11 July 2023.

The meeting closed at 12:10 pm.

Signed as a true record of the meeting:

Signed: _____

Dated: _____

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 regimeⁱ**, 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.

ⁱ 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.