

Bolsover District Council

Meeting of the Executive on 9th October 2023

Lease of Roseland Park and Crematorium

Report of the Portfolio Holder for Resources

Classification	This report is Public
Contact Officer	Theresa Fletcher Director of Finance and Section 151 Officer

PURPOSE/SUMMARY OF REPORT

- To update Members on the partial exemption and VAT position of the Council.
- To set out to Members the next steps in relation to the lease of Roseland Park and Crematorium in line with expert advice provided on the VAT partial exemption calculation.
- To authorise the transfer of the Roseland Park land to the Council and the subsequent lease of the land and crematorium to the Shirebrook Crematorium LLP (“LLP”)

REPORT DETAILS

1. Background

- 1.1 In August 2022, the Council approved the investment of £9.2million in the development of a new crematorium and wake facility. This is funded by borrowing from the Public Works Loan Board (PWLB), and works are due to commence on site in September 2023, and the building be operational from Summer 2025.
- 1.2 In September 2021, the Director of Finance - Section 151 Officer stated in a report to Executive that “...*income and expenditure related to cremations could adversely affect the Council’s partial exemption calculation and cost us money. This needs to be fully investigated as part of the next stage of the project to ensure any VAT consequences related to our Section 33 body status, are factored into the feasibility cost plan before any final decision on borrowing is undertaken.*”
- 1.3 The Director of Finance has sought this VAT Advice from the Council’s tax advisors – PSTAX – and this report sets out the measures needed to structure the delivery of the scheme in order to comply with the advice given.

2. Details of Proposal or Information

General powers of VAT recovery

- 2.1. Local authorities and other public bodies are generally referred to as section 33 bodies because their ability to recover VAT incurred on costs associated with their statutory and non-business activities, is covered in the VAT Act 1994 section 33.
- 2.2. When a VAT-registered local authority like Bolsover, incurs VAT on expenditure, it is referred to as input VAT. We can recover input VAT under one of three powers provided by the VAT Act 1994. They are a mix of the normal rules that apply to all VAT-registered entities and the special rules that apply only to bodies like local authorities.
- 2.3. In all cases, the input VAT is recovered through the Council's monthly VAT return submitted by finance. However, the longer-term recovery entitlement is linked to the use we as a Council, make of our purchased goods and/or services.
- 2.4. The normal rules fall under the VAT Act 1994 section 26 and allow full recovery of input VAT related to taxable business activity.
- 2.5. The special rules sit under the VAT Act 1994 section 33 part 1 and 2.
 - Part 1 provides a local authority full recovery of input VAT related to a non-business activity. This would apply to supplies made for no charge, such as leases where the only consideration is a peppercorn or £1.
 - Part 2 provides a local authority with the recovery of input VAT relating to VAT-exempt activities, but only to the extent that the value is insignificant. HMRC has set a basic de minimis value for significant as either £7,500 per year or 5% of all the VAT recovered in a year, whichever is the higher. If a local authority incurs exempt input VAT at or above this level, it must be repaid to His Majesty's Revenues and Customs (HMRC).
- 2.6. The Council has to carry out a calculation annually (referred to as the partial exemption calculation), to estimate the value of its exempt input VAT. HMRC does allow a breach of the insignificant limit but this can only occur once in any consecutive 7 years, this is known as the 7-year average.
- 2.7. A recent HMRC ruling which changes certain leisure exempt activities to non-business and the building of the crematorium, whose activities are classed as an exempt business activity, meant there was a need to obtain expert advice on our partial exemption calculation.

PSTAX calculations and advice

- 2.8. Bolsover District Council will be investing £9.2million into the construction of a new build crematorium, wake facility, and associated hard and soft landscaping over the next 18-months with work starting on site September 2023. The facility will be operated by the Shirebrook Crematorium LLP which will be a partnership between Bolsover District Council and Shirebrook Town Council.
- 2.9. The LLP agreement details a profit share of 96% to Bolsover based on the value of the Council's contribution. Although the Council will not be operating the crematorium, there is a risk that HMRC will deem any profit share received as consideration for a lease of occupation of the crematorium. As an exempt activity, this would then represent a substantial risk to the Council's de minimis partial

exemption position. Initial calculations estimate this predicted breach to mean a repayment of £1.7m to HMRC.

- 2.10. The potential breach of this partial exemption can be mitigated, and PSTAX have provided an advice note setting out their recommendations.

LLP operation of the crematorium

- 2.11. The LLP will operate the crematorium business in its name as principal in the delivery of VAT-exempt cremation services to the public.
- 2.12. Upon completion of the development phase, a premises lease will be granted by the Council to the LLP to enable it to occupy the crematorium facilities. The premises lease will be for no consideration (non-business activity).
- 2.13. A separate operation agreement will be drawn up under which the Council will set out how it wants the LLP to operate the crematorium. The operation agreement will be the right to operate the crematorium (a taxable supply).
- 2.14. The most common arrangement under an operation agreement is where the LLP levies a periodic operational charge on the Council to cover an anticipated operational deficit. This is a supply of operational services by the LLP to the Council for which a fee is charged. The Council is entitled to recover the VAT charged by the LLP as this relates to the taxable operation agreement.
- 2.15. Where the crematorium generates a profit, the Council will receive a periodic receipt from the LLP. The fee payable to the Council under the operation agreement will represent consideration for the Council's taxable supply of operational rights to the LLP.

The Council exercising an option to tax

- 2.16. The option to tax allows the Council to choose to charge VAT on the sale or rental of commercial property, i.e. to make a taxable supply out of what otherwise would be an exempt supply.
- 2.17. If HMRC did deem the receipt of any profit share by the Council as monetary consideration for a supply of the crematorium to the LLP, the option to tax will turn the consideration from exempt to taxable and allow the Council full input tax recovery on the capital works.
- 2.18. An option to tax on the building would act as a safety net for the Council in the event HMRC deemed the profit share as consideration for the lease.
- 2.19. *Transfer of land to Bolsover District Council*

The land where the crematorium is to be built is currently owned by Shirebrook Town Council. In order to complete the lease referred to above, Shirebrook Town Council will need to transfer the land shown edged red on Appendix 1 to the District Council for nil consideration. The transfer by the Town Council will represent its contribution to the scheme. The transfer will be made subject to the Council entering into an agreement to lease the completed crematorium to the LLP.

3. **Reasons for Recommendation**

- 3.1. To ensure the Council's de minimis partial exemption position is protected, to mitigate any potential repayments of VAT to HMRC.
- 3.2. Whilst independent advice is being sought for the LLP's VAT position, it should be noted that the LLP is separate from the Council and subject to separate VAT registration. The LLP would not be a local authority and would not receive the same VAT recovery position regarding exempt or non-business activities.

4. **Alternative Options and Reasons for Rejection**

- 4.1. The advice provided by PSTAX presents the only option available to the District Council to ensure it protects its partial exemption limit.
- 4.2. The recommendations from PSTAX align to the Council's intended route of establishing a joint venture LLP to operate the crematorium, and confirm the steps needed to ensure the Council does not breach its de minimis partial exemption limit and trigger a repayment to HMRC of potentially £1.7m.

RECOMMENDATION(S)

1. That the Council takes a transfer of the Roseland Park land as shown edged red on the plan attached to the report from Shirebrook Town Council for nil consideration,
2. That the Council grant a lease of Roseland Park and crematorium for a peppercorn rent on terms to be agreed by the Council's Chief Executive,
3. That the Council enter into an agreement with the LLP setting out who the LLP will operate the crematorium rent on terms to be agreed by the Council's Chief Executive, in consultation with the Director of Finance & Section 151 Officer
4. That Members approve the Director of Finance & Section 151 Officer's decision to opt to tax the crematorium, in order to protect the Council's partial exemption position.

Approved by Councillor Clive Moesby, Portfolio Holder for Resources

IMPLICATIONS.

Finance and Risk: Yes No

Details:

Covered throughout the report.

On behalf of the Section 151 Officer

Legal (including Data Protection): Yes No

Details:

Covered throughout the report.

On behalf of the Solicitor to the Council

Environment:

Please identify (if applicable) how this proposal/report will help the Authority meet its carbon neutral target or enhance the environment.

Details:

Not applicable to this report.

Staffing: Yes No

Details:

On behalf of the Head of Paid Service

DECISION INFORMATION

<p>Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards, or which results in income or expenditure to the Council above the following thresholds:</p> <p>Revenue - £75,000 <input type="checkbox"/> Capital - £150,000 <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p>	<p>Yes</p>
<p>Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)</p>	<p>Yes</p>

<p>District Wards Significantly Affected</p>	<p>(please state which wards or state All if all wards are affected)</p> <p>Shirebrook wards</p>
<p>Consultation: Leader / Deputy Leader <input type="checkbox"/> Executive <input type="checkbox"/> SLT <input type="checkbox"/> Relevant Service Manager <input checked="" type="checkbox"/> Members <input type="checkbox"/> Public <input type="checkbox"/> Other <input type="checkbox"/></p>	<p>Details: Meetings and discussions have been held with the Section 151 Officer and colleagues in Finance in seeking the advice and reviewing recommendations to prepare this report.</p>

<p>Links to Council Ambition: Customers, Economy, and Environment.</p>
<p>This report directly contributes to the two Economic priorities of the Vision Bolsover and Growth Strategy: making the best use of our assets; and ensuring financial sustainability and increasing revenue streams.</p>

DOCUMENT INFORMATION	
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Appendix No	Title

Background Papers

<i>(These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Executive, you must provide copies of the background papers).</i>

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