
A separate report is submitted in the private part of the agenda in respect of this item, as it contains details of financial information required to be kept private in accordance with Schedule 12A of the Local Government Act 1972. The grounds for privacy are that it contains information relating to the financial and business affairs of any particular person (including the authority holding that information). The public interest in maintaining the exemption under Schedule 12A outweighs the public interest in disclosing the information.

Cabinet
Council

9th March 2021
16th March 2021

Name of Cabinet Member:

Cabinet Member for Strategic Finance and Resources – Councillor R Brown

Director Approving Submission of the report:

Director of Finance

Ward(s) affected:

None

Title:

Coombe Abbey Park Ltd - Shareholder Refinancing Proposal

Is this a key decision?

Yes - the proposals involve financial implications in excess of £1m per annum.

Executive Summary:

Coventry City Council has a long-standing interest in Coombe Abbey Hotel as the landlord for the property as well as being the owner of the Country Park within which the hotel is located. The Council provided financial resources in the shape of a loan to Coombe Abbey Park Limited (CAPL) in 2013 as part of re-financing the borrowing the company had in place at the time. Subsequent to this, the Council acquired 100% of the shares in the company in 2017 to become the sole shareholder.

Following the acquisition of shares the financial performance of the business has been affected by primarily external factors. Over the last 12 months, the hospitality sector has suffered immensely as a result of the Covid-19 pandemic with mass cancellations across rooms, events and conferences. In 2020 the hotel was able to trade for only 78 days without restrictions and 115 days with some restrictions in place which has affected the ability of the business to generate revenues in line with expectations.

The Council provided a short-term loan to the business in June 2020 to support the operating costs of the business as result of the impact of Covid-19. This facility is currently due for repayment in December 2021.

In an effort to reduce operating costs under the challenging circumstances, the company have furloughed all but 6 members of staff. However, the inability to generate revenue has meant that the business has had to defer a number of payments that would have been due to the Council, these include rent and repayments of existing loans. The company is now in a position where they will not have sufficient cashflow to meet expenditure beyond March 2021 without further support from the Council.

CAPL have requested that existing arrangements in place be refinanced and spread over a longer term to enable to company to operate through any lingering impact of the pandemic, and to enable them to improve their financial position back to being profitable. Council officers have considered this request and carried out appropriate due diligence with CAPL Board and management to determine both the short and medium-term affordability. The private report details the financial arrangements proposed, which in summary are seeking approval for a further facility to meet the costs of operation and refinance existing debt to make on going repayments manageable for the business.

Recommendations:

The Cabinet is requested to recommend that Council:

- 1) Approves the use of its powers under the Localism Act 2011 to provide a Loan up to sum detailed in the private report, to Coombe Abbey Park Limited (CAPL) on commercial terms as detailed in the private report.
- 2) Approve CAPL as the authority to set up two company subsidiaries to help support the business plan as further set out in paragraph in 2.15 of the report.
- 3) Delegate authority to the Director of Finance (S151 Officer) and the Director of Law and Governance, following consultation with the Cabinet Member for Strategic Finance and Resources, to finalise and agree the detailed terms of the transaction with CAPL. The authority under this delegation shall also include the power to enter into the necessary legal agreements and subsequently the power to negotiate and agree any such variations as is deemed necessary to the terms of the loan facility and ancillary security documents.

Council is recommended to:

- 1) Approves the use of its powers under the Localism Act 2011 to provide a Loan up to sum detailed in the private report, to Coombe Abbey Park Limited (CAPL) on commercial terms as detailed in the private report.
- 2) Approve CAPL as the authority to set up two company subsidiaries to help support the business plan as further set out in paragraph in 2.15 of the report.
- 3) Delegate authority to the Director of Finance (S151 Officer) and the Director of Law and Governance, following consultation with the Cabinet Member for Strategic Finance and Resources, to finalise and agree the detailed terms of the transaction with CAPL. The authority under this delegation shall also include the power to enter into the necessary legal agreements and subsequently the power to negotiate and agree any such variations as is deemed necessary to the terms of the loan facility and ancillary security documents.

List of Appendices included:

None

Background papers:

None

Other useful documents

[Coombe Abbey Park Hotel](#) – Council Meeting – 10th September 2013

[Project CAP](#) – Council Meeting - 10th October 2017

[Coombe Abbey Park Limited – Capital Financing and Country Park](#) – Council Meeting -16th October 2018

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

Yes – 16th March 2021

Title: **Coombe Abbey Park Ltd - Shareholder Refinancing Proposal**

1. Context (or background)

- 1.1 Coventry City Council (hereafter “CCC”; the Council”) has had a long-standing interest in Coombe Abbey Park Hotel partly due to the Council owning the site which is leased to the Coombe Abbey Park Limited (CAPL) the company that operates the hotel on a long lease and partly due to its shareholding interest in the company. The Council is in a unique position as the owner, landlord and the finance provider for the business.
- 1.2 In 2013 the Council provided a loan to CAPL on commercial terms and at a commercial rate of interest.
- 1.3 In December 2017 the Council acquired 100% of the shareholding in CAPL, to become the sole shareholder of the business.
- 1.4 In 2019 the Council approved a short-term ‘leasing’ facility that CAPL could call on as required to support capital investment supported by a business case. CAPL have drawn down three loans, all of which will continue to be repaid by 2028 to reflect the life of the assets financed
- 1.5 The hospitality sector has been one of the key sectors affected by Covid-19 and has seen significant downward trend in trading performance. The wider sector has been able to take advantage of the Coronavirus Business Interruption Loan Scheme (CBILS) and / or Bounce Back Loans (BBL), backed by the government through the British Business Bank (BBB). Unfortunately, the ownership of CAPL by the Council prevents access to these national funding facilities. A temporary loan arrangement was therefore put in place in 2020 to support the continued operation of the hotel under these challenging circumstances.
- 1.6 In 2020 the hotel was only able to trade for 78 days without any restrictions in place. A further 115 days trading took place with significant limits on party numbers and social distancing rules being required, which at best allowed for 50% of normal trade. Following the Prime Ministers announcements on 22nd February 2021 about reopening the economy, hotels will remain shut until the 17th May 2021. Coombe Abbey Hotel will therefore have been legally required to close for 219 days since the 21st March 2020.
- 1.7 Prior to March 2020 CAPL employed 265 members of staff on a mixture of fulltime and casual contracts. To reduce costs, CAPL have reduced permanent staff and casual staff numbers significantly. Only 6 members of staff currently remain working in the business, all other retained staff having been furloughed.
- 1.8 The business did see an increase in revenues in 2020 for the café in park, top pool lodge and ice cream kiosk compared to 2019 which have been able to continue to provide a limited service in line with the Covid-19 restrictions, however these will only offset the wider difficulties.
- 1.9 The company has had to defer a number of payments that under usual circumstances would have been made to the Council. The options presented provide a solution to support the business in continuing to operate, subject to the Covid-19 restrictions that may be required. Current assumptions are on the basis that the business will be able to re-open from May 2021, any significant delay to this would require the financial modelling undertaken by the business to be revisited.

2. Options considered and recommended proposal

- 2.1 **Option 1: Do nothing** – by the end of March 2021, financial modelling indicates that CAPL will not have sufficient cashflow to meet their expenditure requirements. The business will not be in a position to meet the full payroll costs for March, so would have to consider making staff redundant and cease trading.
- 2.2 In addition to this, the business would not be able to make payments to the Council for the rent not only for the main building, but the café in the park, top pool lodge, the Go Ape site and the ice cream kiosk, leading to the Council losing further revenue,
- 2.3 Repayments due on the existing loans would not be made from April onwards, leading to the Council losing further payments and possibly having to write off the outstanding balance of the loans if the business is unable to trade. This would equate to a loss of the funds currently invested in CAPL including outstanding loans and payments deferred in 2020 and 2021.
- 2.4 This decision would in turn lead to the business being closed and remaining staff being made redundant. The value of the Council's investment under these circumstances would have diminished, and a distressed sale on the open market would not deliver sufficient value to cover the initial investment or losses for the Council. Any incoming operator would most likely seek to renegotiate the rent, reducing the rental income due to the Council for the main Hotel building
- 2.5 The Council would also have to meet the deferred VAT payment due by the business to HMRC from any value present on winding up the business.
- 2.6 This is not the recommended option as the CAPL Board of Directors have demonstrated to the City Council that the business is fundamentally sound, and that with a reprofiling of debt and opportunities to generate income once re-open, they can implement measures to protect and grow the business in the coming years as lockdown restrictions ease.
- 2.7 **Option 2: Extend the temporary facility** – the Council granted a temporary loan to the business in 2020 to meet the pressures they were facing as a result of Covid-19. This loan was provided to support the business during this difficult time and as such attracted a lower rate of interest but was only in place until 31st December 2021. Another option available to the Council is to extend this low interest facility and extend the loan period as allowed by the EU Commission under Article 107(3) TFEU for its Covid-19 Framework scheme (the "**Covid Temporary Framework**") on 6 April 2020. Extending this loan would provide some initial relief, and reduce the interest burden, but in the short to medium term, the business would not be in a position to meet the increased loan repayments as well as all other expenditure whilst it recovers from the impact of the pandemic. This solution would require further intervention in the relatively near future and as such is not the recommended solution.
- 2.8 **Option 3: CAPL to consolidate and refinance the existing borrowing through a bank or financial institution** – CAPL could seek to secure finance from a bank but this would mean that the existing charge that the Council has over the assets as security would reduce as a bank would not be comfortable taking second charge over the asset.
- 2.9 The bank would also require a level of control over decisions made in relation to the operation of the business to protect their investment. This would mean that the Council as sole shareholder would not be able to make independent decisions in relation to their investment without seeking permission from the third party.

- 2.10 CAPL did apply for a Covid Business Interruption Loan Scheme (CBILS) but they were unsuccessful due to the strength of group parent structure, hence why Coventry City Council stepped in to provide the facility under the “Temporary Framework for State Aid Measures in the current Covid-19 Outbreak”.
- 2.11 This is not the proposed solution as it will not provide the business or the Council with a sustainable solution to manage the assets independently, thus rendering the option ineffective.
- 2.12 **Option 4: Consolidate and refinance existing borrowing over a longer term (preferred)** – the proposed option is to consolidate the existing borrowing that is in place over a longer time frame and provide the business with to access to additional working capital.
- 2.13 Part of the value of the revised loan would be retained by the Council to extinguish the outstanding liabilities of the main loan, temporary arrangement to support difficulties experienced due to covid-19 loan, existing deferred payments on the main loan and rent due.
- 2.14 The additional net facility is based on the business immediately drawing down a sum for working capital with a further amount held, only to be drawn down if required. The business will have sufficient cashflow available to service the debt based on the due diligence that has been carried out by the City Council on the revised business planning that has been carried out by CAPL.
- 2.15 One of the business recovery plans proposed by the Board of CAPL requires it to bring in additional revenue streams by using its expertise within the hospitality sector to provide services to other entities including the Council which will be done by setting up two new subsidiaries. It is proposed one of those subsidiaries will be a Teckal company. Under Regulation 12 of the Procurement Regulations 2015 the Council is able to set up a “Teckal” subsidiary and contract for services directly so long as the requirements under the Procurement Regulations 2015 are met.

3. Results of consultation undertaken

- 3.1 Not applicable

4. Timetable for implementing this decision

- 4.1 CAPL would enter into the amended loan agreement to take account of the new loan facility immediately. Once signed the Council would provide an initial tranche of the net additional loan for working capital to CAPL before the end of March 2021. Part of the new facility would be retained by the Council to meet the value of the current loans and the deferred payments due to the Council.

5. Comments from the Director of Finance and the Director of Law and Governance

5.1 Financial implications

Due to the restrictions in place as a result of Covid-19, CAPL have deferred a number of payments in 2020 and 2021 which would be repaid as part of the refinancing request. The net impact of the proposed refinancing is that the Council would make a new loan to CAPL. The Council is in the unique position, in that they are the landlord of the site, so they already have first call on the security in place for the loan.

The Council will make available loan facilities to CAPL for the full amount as detailed in the private report and the Council would retain the balance required to extinguish existing liabilities, leaving a net additional facility for working capital. The loans will be managed by the Treasury Team in line with the commercial investments Strategy. A sum is expected to be required for working capital immediately so that CAPL can afford to pay staff, building heating and security costs, and pay rent to the City Council so that it does not fall further into arrears.

The need for further drawdown against the facility will be dependent on a number of factors, for example the ability, basis, and timing of re-opening, strength of trade/demand for the hotel, availability of the governments job retention scheme subsidy, and future rate relief. It is proposed that future drawdowns by CAPL are delegated to the s151 officer in conjunction with members and based on business case justification.

The Council will generate an annual return as a result of the margin applied on top of the rate of borrowing.

There is still a risk that CAPL could default on the Council loan. This risk will be mitigated by CAPL holding quarterly Board meetings and sharing monthly management information with the Council to enable the Council to monitor the financial performance and ability to repay the loan. As sole shareholder the Council has Senior Officers that make up the Board of Directors for the company who will be responsible for managing the Council's investment setting the strategic aims of the business and implementing leadership to support the delivery of them. The board will continue to report to its Shareholder Panel of elected members periodically.

Interest rate

Terms and Conditions for Commercial loans in these circumstances must not be set on an advantageous basis to CAPL. This is to prevent in this case, one hotel gaining commercial advantage over a competitor. When determining an interest rate many factors need to be considered.

The recommended option has been considered in the light of the Hotel's financial background. The company has been profitable historically and CAPL's management and directors have provided clear explanations on how the hotel is expected to return to profitability in the future based on for example: restructuring of business operations to reduce its cost base; the introduction of additional profit-making aspects including the Go-Ape franchise and new on-site catering outlets; latent demand and the expected increase in 'staycation' holidays post Covid and; the likely local boost to Coventry visitor numbers during and after the City of Culture and Commonwealth Games. The Council's role as landlord, 100% shareholder and existing creditor, also provide rationale as to why the Council wants to ensure its existing debt is repaid and that CAPL continue rent payments and enhance the future balance sheet value of the company and maintain access to future dividend payments.

5.2 Legal implications

Under Section 12 of the Local Government Act 2003, the Council has a specific power to invest (or provide a loan). The power states "a local authority may invest for any purpose relevant to its functions under any enactment or for the purposes of the prudent management of its financial affairs". This provides the Council with a power to invest in BAML, for any purpose relevant to its functions (this function would have to be identified) or

if the Council can show it is for the prudent management of its financial affairs. Under section 1 of the Localism Act 2011, the Council also has a power "to do anything that individuals generally may do" (the "General Power of Competence"). "Individual" means an individual with full capacity. The General Power of Competence gives the Council:

- Power to do a thing anywhere in the United Kingdom or elsewhere;
- Power to do it for a commercial purpose or otherwise for a charge, or without charge, and
- Power to do it for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area.

The Council will be compliant with the requirements of both the General Power of Competence and the Power to Invest. This report serves as the case for the proposal and the basis on which the investment powers can be utilised.

Subsidy Control

Following the withdrawal of the United Kingdom from the European Union which came to an end at 11pm on 31 December 2020, EU State aid law no longer applies to financial assistance provided by UK public authorities.

However, under Chapter 3 of Title XI of Part 2 (the "**Subsidy Control Chapter**") of the Trade and Co-operation Agreement between the European Union and the United Kingdom (the "**TCA**"), both the EU and the UK have undertaken to implement an effective subsidy control regime in their respective territories.

It should be noted that the Subsidy Control Chapter is only relevant where a particular public intervention meets the definition of a "subsidy" in the TCA.

Market Economy Investor Principle ("MEIP") is a well-established exemption to the previous EU State Aid legislation. Such an exemption is still applicable to the Subsidy Control Regime (which replaces the previous EU State Aid Legislation). A Loan does not automatically constitute a subsidy if the Council carries out prior due diligence that demonstrates that investments are likely to generate sufficient returns that a private prudent investor would have made the same investment. i.e. the Council can invest in the proposal in return for an appropriate commercial return which would satisfy the expectations of a private prudent investor.

The risk of Subsidy is not dependent upon whether the financial return is actually ever achieved by the Council, as whether the Subsidy exists or not is assessed at the time of the funding advanced, but there must be a realistic prospect of the financial return being achieved by the Council.

In practice the Council would need to rely on the MEIP analysis as a justification for any subsidy in the event of a complaint, challenge or investigation.

The new Loan will be secured by way of a Debenture which will be entered into alongside the Loan to protect the Council as a secured creditor. Due diligence has been undertaken that demonstrates that the proposed financial support satisfies the MEOP test.

The Council is complying with Subsidy Control Regime as the transaction is being undertaken upon arms' length terms and will comply with the MEIP principle, meaning that no benefit is conferred on the receipt and therefore there is no distortion to competition.

The Council has received advice from Pinsent Masons LLP its external solicitors. Legal services have undertaken due diligence on the various legal advice received and are satisfied with the legal implications and regulatory compliance in setting up a Teckal Company which has also been endorsed by Senior Counsel.

6. Other implications

Any other specific implications

6.1 How will this contribute to the Council Plan (www.coventry.gov.uk/councilplan/)?

The proposals in this report support the continued operation of Coombe Abbey Hotel and will support the business to grow. With Coventry being the City of Culture in 2021 this will support visitors to the city who will require overnight accommodation which Coombe Abbey Park Hotel could offer. The working capital will ensure jobs can be retained at the hotel while the business recovers from the impact of the Covid-19. The Coombe Abbey parkland and visitor centre which is directly managed by the Council is unaffected by these proposals. The proposals in this report will protect the current annual rental income stream used to support the Council's priorities and to protect the value of the Council's commercial interest in the hotel.

6.2 How is risk being managed?

The business is fundamentally sound but has been affected by the wider impact on the hospitality sector as a result of the pandemic. The company has and will continue to take advantage of Government support available while the trading position recovers to pre-Covid levels. The current assumptions are modelled on the basis that the business will be in a position to reopen from May 2021. If this is not the case, the funding approved should support the costs of the business but may not mitigate against the business seeking further support in the future. This is entirely dependent on decisions outside of the control of the Council and CAPL such as the timescales for the business to reopen and the restrictions that they may have to abide by.

As with any investment there is a risk that the borrower may default on the loan repayments. Providing a 12-month payment holiday will support the business to consolidate their financial position post pandemic.

As sole shareholder the Council has Senior Officers that make up the Board of Directors for the company who will be responsible for managing the Council's investment setting the strategic aims of the business and implementing leadership to support the delivery of them. They will receive regular reports in relation to the financial performance and operation of the company and will be able to implement measures to ensure that the business is on track to meet the requirements of the loan agreement.

There is a low risk of challenge that the terms on which the loan is to be provided are perceived to provide CAPL with an advantageous position over other operators in the market. The challenge would be that the terms and quantum of the facility do not reflect commercial or market investor principles (state aid/ subsidy control). Due diligence has been carried out to ensure that the terms of the proposal reflect the commercial risk involved.

6.3 What is the impact on the organisation?

Without the Council providing loan financing, CAPL will not be able to meet the payroll costs for the business, which in turn could lead to a number of redundancies. Implementing the proposals in the report will protect the jobs within the business and ensure when the hotel can reopen it has appropriate resource in place to continue to deliver the level of service expected from the company, and facilitate the repayment of liabilities.

6.4 Equality Impact Assessment (EIA)

No equality impact assessment has been carried out as the recommendations do not constitute a change in service or policy.

6.5 Implications for (or impact on) climate change and the environment

There is no impact for climate change or the environment.

6.6 Implications for partner organisations?

The report has implications for CAPL in which the Council has a leasehold and shareholder interest. These are detailed in the main body of the report.

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