

MINUTES OF THE PROCEEDINGS OF A MEETING OF THE AYLESBURY VALE DISTRICT COUNCIL

1 SEPTEMBER 2015

PRESENT: Councillor N Blake (Leader); Councillors S Bowles (Deputy Leader), J Blake, A Macpherson, H Mordue, C Paternoster and Sir Beville Stanier Bt

IN ATTENDANCE: Councillors M Bateman, S Lambert and M Rand

1. MINUTES

RESOLVED –

That the Minutes of the meeting held on 14 July, 2015, be approved as a correct record.

2. DECLARATIONS OF INTEREST

There were none.

3. EMPLOYEE INDEMNITY

It was normal practice for Councils, and other employers, to indemnify all of their employees against any expenses, liability, loss, claim or proceedings arising from doing, or not doing, something in the course of their employment (other than conduct of a reckless or wilful nature) whether they were acting for the Council itself or another person or body with the Council's consent. A number of exceptions and other conditions applied to this indemnity and this would be detailed in the Indemnity Resolution.

AVDC, in line with other businesses, had put in place an indemnity resolution, passed by the Personnel Committee in 1997, although it had not been reviewed for 16 years. It was important for the Council to update it to reflect changes in legislation and the regulatory framework since 1997. There were several sets of regulation where both the authority and individuals might be in a position to have to defend themselves against criminal proceedings where there was a 'reverse burden of proof', i.e. where it was for the defendant to convince the court that they had done enough to comply with the law.

A recent incident at the Depot had highlighted the need to update what is an outdated policy. For example, levels of fines and costs had increased significantly since 1999 with the council having to ensure that it is capable of defending itself adequately. Since the recent review by the Sentencing Council, far more severe sentences were being actively sought for health and safety offences including 32 custodial sentences since November 2014.

Included at Appendix 1 to the Cabinet report was the recommended text for an updated Indemnity Resolution. Opportunity had been taken to increase the applicability with regards to the Road Traffic Act and other primary Fire and Health and Safety Legislation with our insurers via our Insurance Officer. The wording of the indemnity covered both the applicability of the Council's existing Employers' Liability Policy (Appendix 2 to the Cabinet report) and should AVDC have a different insurance provider in the future.

Cabinet was mindful that recent reviews of criminal justice and the reduction of legal aid meant that courts were less likely to award costs if someone was acquitted. This review had been part of a wider review of Health and Safety including the Council's 'Critical Incident Plan' and health and safety arrangements.

There was also no cover for a breach of Environmental Legislation such as the Environmental Protection Act 1990, for which the Council would have to meet any defence costs from reserves.

RESOLVED –

That Aylesbury Vale District Council's 'Indemnity Resolution' be updated, as detailed at Appendix 1 to the Cabinet report.

4. AYLESBURY WATERSIDE THEATRE CONTRACT REVIEW

Cabinet received a report advising Members of the outcome of the 5 year review of the Aylesbury Waterside Theatre contract, that had looked at the proposed financial terms of the management contract and other items jointly proposed by the Council and the Ambassador Theatre Group (ATG).

The five year review of the Aylesbury Waterside Theatre (AWT) contract with the Ambassador Theatre Group (ATG) had been conducted in accordance with the provisions of the current 15 year contract. Prior to review meetings being held, a comprehensive review looking at the original submission from ATG and the actual delivery over the last 5 years had been conducted by a specialist Theatre and Arts Consultancy, Artservice. That review had reached the conclusion that ATG had delivered a first class programme of events and productions but due to a number of factors, primarily the worldwide recession and less disposable income since 2010, it had taken considerably longer to build audiences, group bookings and repeat business than was expected at the time of the bid. A copy of the detailed Artservice report had been included with the confidential section of the Cabinet agenda, given the commercial details it contained.

Options for the Council that Artservice had considered had included re-tendering the management contract, establishing a charitable trust, in house operation, partnering with an existing trust or local authority or including in a larger cultural/leisure contract. In terms of the way forward, the report had recommended the continuation of the current agreement with ATG, via re-negotiation of the lease and terms of the management agreement as the most sensible option. This would allow the Council to continue the good relationship it had built up with ATG and to build on the foundations laid in the first 4-5 years of operation. The option of granting a longer lease should also be explored with a view to encouraging some capital investment in the Theatre to upgrade and re-design key areas of operation with a view to increasing income from ancillary trading, hires and events and making the second space more suitable for live arts use by amateur, community and educational organisations.

Regarding the management fee, the consultant had commented that the annual subsidy paid to ATG was in line with the national average for this type of management arrangement. However there might be scope to reduce it if the Theatre could build on the encouraging estimated financial outturn for 2014/15, and if it could increase income from ticket sales and ancillary trading and events. There was a limit to how much cost cutting was advisable in flexible areas of the budget such as staffing and marketing, as cutting costs further could have a negative impact on performance and, especially on the Theatre's ability to generate increased ticket sales; to undertake commercial development function; and to increase trading income.

In terms of other operators, there were only 1 or 2 comparable theatre management companies in the market place. ATG was the accepted market leader and was also the largest theatre management company in the world following the recent merger and financing changes. It was thought there would be little to be gained by terminating the

current contract with ATG and going out to the market place. Furthermore, this could result in a worse/more expensive outcome for the Council in terms of cost and quality and scope of programme offered.

In summary, over the last 5 years a very strong relationship had been forged between the Council and ATG. The Council recognised the important role the theatre had in terms of town centre regeneration and economic benefit. Furthermore, the Council was very happy with the quality and range of programme and events offered. Consequently, the best scenario was to negotiate new acceptable terms with ATG, that were on more favourable and less expensive terms.

The contract had commenced in October 2010 and included a six year funding agreement which terminated on 9 October 2016 and a formal contract review in year 5. The initial annual management fee payable to ATG had been agreed at £350,000 p.a. with a 3% uplift each year from October 2011. The contract included a review in year 5 to consider how the contract was performing and to review the current financial arrangements. Any agreed changes would become effective from October 2016. There was currently no financial agreement beyond September 2016 although the contract remained in force until October 2025.

The consultants' report had been received in June, following which informal negotiations had been conducted at a local level between AVDC and ATG to find common ground. Formal contract review meetings had taken place in June-July and a series of joint proposals had been discussed and agreed. Details were provided of these proposals, which included:-

- (a) That AVDC continues to acknowledge and champion the theatre's pivotal role and contribution to the development of Aylesbury town centre and night time economy.
- (b) That AVDC continues to use its best endeavours to ensure that coach drop off and pick up arrangements remain a high priority and that signage, way-marking and the public realm continue to be improved wherever practicable, for visitors, both pedestrians and by vehicles to the theatre.
- (c) That AVDC continues to work with ATG to seek affordable solutions to reduce maintenance and utility costs for mutual benefit.
- (d) To confirm the 6 year Funding Agreement from October 2016 until 31 March 2023 as detailed in the confidential appendix.
- (e) To include a formal review of the contract in year 5 (2021/22) to seek a new funding Agreement for the remaining period of the contract and any other relevant considerations at that time.
- (f) ATG will pay AVDC an agreed percentage of the gross proceeds arising from the Building Levy once ticketed admissions exceed the threshold of 250,000 p.a., payable annually in arrears in order to help with maintenance costs, as detailed in the confidential appendix.
- (g) AVDC and ATG will each make an agreed annual payment to the "Special Maintenance" sinking fund in accordance with the current contract Agreement in new contract years 1 – 6, as detailed in the confidential appendix.

- (h) All Contract Terms and Specification to be updated to reflect date changes and to remain as now except those details referred to above or that have been previously jointly agreed during the first five years.

The AVDC negotiating team was very pleased with the outcome of the negotiations and considered the terms were the best possible outcome for the Council at the present time. The ATG Board had considered the proposals and were in support of the joint recommendations. Accepting the proposals also meant that the Council would reduce substantially the cost of the management fee over a tapering 5 year period. This financial information had also been included within the confidential section of the Cabinet agenda, given the commercial details it contained. A report on the theatre contract review and proposals would be taken to the Finance and Services Scrutiny Committee on 12 October 2015 as part of their scheduled work programme.

As referred to earlier in this Minute Cabinet received commercially sensitive information as defined in Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act, 1972 relating to the financial terms for the theatre management contract and on the contract review which were taken fully into account in reaching the decision referred to below.

RESOLVED –

- (1) That the financial terms and other proposals set out in the Cabinet report for the management and operation of the Aylesbury Waterside Theatre by the Ambassador Theatre Group be approved.
- (2) That Officers be instructed to progress the required updated contract documentation with the Ambassador Theatre Group.

5. VALE LOTTERY

Cabinet received a report seeking agreement to the launch of an on-line Vale Lottery to help fund discretionary support to the local voluntary and community sector (VCS) and to enable good causes to raise funds directly. AVDC was seeking to become the first council in the country to run a lottery in this form.

AVDC had historically provided substantial financial support for the VCS across the Vale, helping to deliver a number of corporate aims, and currently distributed around £1m p.a. through Service Level Agreements as well as through Community Chest grants (ending in 2017) and other one off support.

As budget pressures continued to grow on all aspects of the council's work there would inevitably be an impact on the funding available for good causes during the medium term. The concept of an AVDC lottery had been considered for some time as a partial new source of income to help mitigate budget pressures, however the struggle with its development had been a combined one of how this would be delivered, and how it would fit with existing funding for good causes. The report addressed these issues and provided a model for implementation of a Vale Lottery.

The concept of a Vale Lottery also fitted in with the ethos of the Council's New Business Model (NBM) approach to exploring new ways of increasing income, reducing processes, bureaucracy and costs. Part of the NBM programme was considering how AVDC could sell more services to the general public, wider public sector and private sector to increase the income position of the Council. It would also help to move the

Council away from being a provider of all services to a more diverse model of buying and selling services, as well as the public and groups being able to 'self help'.

Lotteries had long been a way of smaller organisations raising income and were regulated by the Gambling Act 2005. There were different types of lotteries available, however the Cabinet report only discussed 'society lotteries'.

Society lotteries were promoted for the benefit of a non-commercial society. A society was non-commercial if it was established and conducted:

- for charitable purposes.
- for the purpose of enabling participation in, or of supporting, sport, athletics or a cultural activity.
- for any other non-commercial purpose other than that of private gain.

In all cases, lotteries had to deliver a minimum of 20% of proceeds to good causes – the report recommended that a minimum of 50% of proceeds would go to good causes in the Vale Lottery. This compared favourably to other well-known lotteries such as Euromillions and the National Lottery (who shared 28% of lottery monies with good causes) and the Health Lottery (who shared 20% of lottery monies with good causes). As a local authority, AVDC would have to be licensed by the Gambling Commission.

There were no Vale wide lotteries currently being delivered, and there was only one other council known to be a licensed operator in the country. There were however a number of community groups / charities who either ran lotteries or lottery-like fundraising within the Vale.

An AVDC lottery would need to have a set of aims or unique selling points. It was felt that there was a place for a lottery that was focused on:

- *Delivering the proceeds locally* – an AVDC lottery would deliver benefits only to local causes, unlike any other provider – players could be assured that the proceeds would stay in the Vale.
- *Maximising benefits to the community* – to bolster support and to help in continuing the good work AVDC already did, there needed to be a significant benefit being delivered to the Voluntary & Community Sector (VCS). The proposal was for 58% of proceeds to be given to good causes, with the additional benefit of none of the proceeds generated being taken by AVDC.
- *Minimising costs* – whatever delivery route was adopted it would need to minimise set-up costs, meaning the lottery would need to be largely self-financing, and any funding distribution mechanism should tap into existing distribution routes.
- *Delivering winners locally* – whilst anyone could play, it was likely that players would be locally based and hence it would be easier to maximise the value from winners' stories and encourage more participation.
- *Facilitating a wider benefit* – whilst the lottery would help current funding of good causes, it would also enable local good causes to fundraise in partnership with AVDC. This could be seen as the Council enabling good causes to help themselves, by reducing the barriers to lottery type funding such as licensing and administration. It would also open up a way for good causes to create new links with repeat donors.
- *Helping to shift residents' perceptions* – of what AVDC could do, and was here for, in line with the commercial approach being taken by the Council to move from a provider to an enabler.

A review of available delivery options for the lottery had been undertaken. In doing so, it had been difficult to assess the number of actual players that might take up a Vale Lottery. Officers had worked with different elements of the industry and had considered

a number of variants and operating models to identify a product that would deliver against the aims mentioned in the Cabinet report. One overriding issue was that the lottery would have to be online. This was due to the costs of distribution and sales in any other way. This fitted with AVDC's digital approach and the lottery would be able to be accessed via desktop, mobile and tablet.

The suggested model would operate at two levels:-

Vale Lottery – operating Vale-wide, with profits generated distributed through existing mechanisms used by AVDC to local voluntary and community organisations.

Specific Vale Good Causes –enabling groups to 'sign up' to take part in the lottery and would specifically raise a 50% share for their good cause. By signing up they would have their own web page for the lottery helping them in engaging players and raising income.

AVDC would be the overall license holder and control the good causes joining the scheme. Players buying tickets through specific web pages would know that the profits were for that specific good cause. This in turn motivated the group to gain more players to support their specific cause. This option in effect operated as an 'umbrella' scheme within the main Vale Lottery.

The Council would retain some (8%) of the proceeds to help existing funding streams for the VCS, while local organisations would also have the platform to fundraise independently. Annex A to the Cabinet report set out a draft criteria that organisations would need to adhere to on joining the umbrella scheme, and information on fund allocations.

All sales for the lottery (no matter which version the player chose) would operate via a dedicated website (specific good causes would have their own landing pages), and be funded via an online direct debit or payment card for tickets. This approach was needed to keep operating costs at a minimum.

The proposal had also looked at options for the delivery of the lottery through either an in-house management or through an external lottery manager (ELM) and it had been found that, on balance, the preferred option would be to use an ELM, taking into consideration set up costs, unknown player numbers and the skills base needed to run a lottery.

During the scoping of the work, officers had worked with two competing providers to develop the exact form of the lottery. The main difference between the them was their ticket price model, i.e. Provider A – a £1 per ticket model versus Provider B – a £2 per ticket model. For a number of reasons, it was clear that selecting a ticket price would have a significant bearing on the success of the lottery. Public perception of appropriate lottery ticket pricing was the most significant factor to consider when selecting a preferred model for the lottery. As such, it was recommended that Provider A was the most suitable ELM to operate a Vale Lottery. Due diligence was currently being undertaken on the provider.

Based on the recommendations in the Cabinet report, the Vale Lottery structure would operate as follows:-

- Ticket price - £1 per week
- Draw frequency – once per week
- 2 modes of operation:

Vale Lottery (unspecified good cause) the funds of which would be delivered through existing good cause distribution routes.

Specific Vale Good Cause directly signing up to the Vale Lottery umbrella scheme, enabling them to fundraise for their own cause within the wider Vale Lottery process.

Proceeds Apportionment				
	Specific Vale Good Cause		Vale Lottery ^A (no specific good cause)	
	<i>% Allocation</i>	<i>£ Allocation per ticket</i>	<i>% Allocation</i>	<i>£ Allocation per ticket</i>
Specific Good Cause	50	£0.50	-	-
Prizes	20	£0.20	20	£0.20
Vale Lottery Good Causes	8	£0.08	58	£0.58
External Lottery Provider	18	£0.18	18	£0.18
VAT	4	£0.04	4	£0.04
Totals	100	£1.00^B	100	£1.00

Cabinet considered further information on the number selection and prize structure (top prize was £20,000), and player modelling that indicated that a very conservative level of players would generate a considerable income for good causes across the Vale.

All day to day management would be conducted by the ELM. This included processing new players, distributing prizes and income for good causes. The ELM would also provide significant tailored marketing support to good causes and AVDC, and assist players should they experience difficulties. The ELM would send newsletters to all good causes signing up to the lottery providing updates on their lottery. AVDC would help publicise the Vale Wide lottery and support its take up. Apart from licensing and marketing costs, the lottery would be self-funding.

Based on the report and factors it had identified, Cabinet were of the view that the Vale Lottery would not significantly increase problem gambling, and that the benefits to good causes in the Vale from the proceeds of the lottery outweighed the possible negative issues.

The timetable put forward to deliver the lottery was:-

- Early September – report to Cabinet for decision.
- Late September – Launch event for VCS
- End October – License Approved (subject to Gambling Commission)
- Mid November – First Draw

RESOLVED –

- (1) That Council be recommended to give approval for AVDC to launch an online Vale Lottery, as detailed in the Cabinet report.
- (2) That the Chief Executive, after consultation with the Cabinet Member for Business Transformation, be authorised to agree the final arrangements for launching the online Vale Lottery.

6. EXCLUSION OF THE PUBLIC

In connection with minute 4 above, Members received the following commercially sensitive information included in the confidential section of the agenda in accordance with Section 100(A)(4) of the Local Government Act, 1972:-

Aylesbury Waterside Theatre 5 year contract review (Paragraph 3)

The public interest in maintaining the exemption outweighs the public interest in disclosing the information because the report contains information relating to the financial or business affairs of organisations (including the Authority holding that information) and disclosure of commercially sensitive information would prejudice negotiations for contracts and land disposals/transactions.

7. AYLESBURY WATERSIDE THEATRE CONTRACT REVIEW

As referred to above, Cabinet received commercially sensitive information relating to the contract negotiations in connection with the management of the Waterside Theatre.