Portfolio Holder Decisions/Leader Decisions

Friday, 23 October 2020

Minutes

Attendance

Committee Members
Councillor Izzi Seccombe
Councillor Peter Butlin
Councillor Kam Kaur

1. **Coronavirus Business Interruption Loan Scheme - CWLEP Funding**

   Resolved

That the Leader of the Council:

- Approves the County Council entering into an agreement with Coventry City Council to re-purpose £1 million of Coventry and Warwickshire Local Enterprise Partnership (CWLEP) funding for the provision of the Coronavirus Business Interruption Loan Scheme (CBILS) in Warwickshire.

- Approves the County Council entering into a loan agreement with Coventry and Warwickshire Reinvestment Trust Limited (CWRT) for the on-lending of the CWLEP funding to businesses based in Warwickshire.

- Authorises the Strategic Director for Communities to negotiate, and enter into, all relevant agreements on terms and conditions acceptable to the Strategic Director for Resources.

2. **S278 Highway Improvement Scheme at B4100 Banbury Road, Lighthorne Heath**

   Resolved

   That the Portfolio Holder for Finance and Property gives approval to

   1) increase the capital programme provision for the S278 highway improvement scheme at B4100 Banbury Road (Village Centre Access), Lighthorne Heath, to £1.7m

   2) increase the capital programme provision for the S278 highway improvement at B4100 Banbury Road (Southern Roundabout), Lighthorne Heath, to £1.3m

3) the award of the combined contract for the S278 highway improvement scheme at B4100 Banbury Road, Lighthorne Heath, to the supplier who has submitted the most economically advantageous price subject to the applicable S278 Agreement with the Developers having been signed.

3. Response to Government consultation on the reform of exit payments in local government

Resolved

That the Portfolio Holder for Customer & Transformation and the Portfolio Holder for Finance and Property note the report and approve the proposed strategic response to the current MHCLG consultation on LGPS Regulations

Minute Item 1

Decision to be made by the Leader of the Council on or after Friday 23rd October 2020

Coronavirus Business Interruption Loan Scheme – CWLEP Funding

Lead Member	**Cllr Seccombe**
Date of decision	
	Signed  **23.10.2020**

Decision taken
That the Leader of the Council: • Approves the County Council entering into an agreement with Coventry City Council to re-purpose £1 million of Coventry and Warwickshire Local Enterprise Partnership (CWLEP) funding for the provision of the Coronavirus Business Interruption Loan Scheme (CBILS) in Warwickshire. • Approves the County Council entering into a loan agreement with Coventry and Warwickshire Reinvestment Trust Limited (CWRT) for the on-lending of the CWLEP funding to businesses based in Warwickshire. • Authorises the Strategic Director for Communities to negotiate, and enter into, all relevant agreements on terms and conditions acceptable to the Strategic Director for Resources.

Reasons for decisions
The decisions are required in order to make available £1 million of funding allocated by Coventry and Warwickshire Local Enterprise Partnership (CWLEP) to support delivery of the Government’s Business Loan Interruption Scheme (CBILS) in Warwickshire via Coventry and Warwickshire Reinvestment Trust (CWRT). In particular, approvals are sought for the Council to enter into an agreement with Coventry City Council (CCC) to receive £1 million of CWLEP funding for the purposes of CBILS and a loan agreement with CWRT for the on-lending to businesses based in Warwickshire. CCC act as the Accountable Body for the CWLEP. However, they are unable to secure loans to CWRT for on-lending to businesses based in Warwickshire. The County Council, on the other hand, has security arrangements in place with CWRT (as part of a small number of

existing loan agreements) which can be used to provide security for the CWLEP funding. CCC have, therefore, requested that the Council enters into a loan agreement with CWRT for the on-lending of the CWLEP funding to Warwickshire businesses.

1.0 & 2.0 Background information

1.0 Key Issues

1.1 The Coronavirus Business Interruption Loan Scheme (CBILS) is a key part of the package of support put in place by Government to support smaller businesses affected by Covid-19. It is delivered through over 100 commercial lenders, backed by the Government-owned British Business Bank. The Government provides the accredited lenders with a guarantee of up to 80% on each loan (subject to a per-lender cap on claims). The Government also makes a Business Interruption Payment to cover the first 12 months of interest payments and any lender fees.

1.2 CBILS was due to finish at the end of September. However, the Government announced on 24th September 2020 that the scheme would be extended until 30th November 2020.

1.3 The major banks and other mainstream providers have provided the large majority of finance under the scheme. However, smaller specialist local lenders have also helped meet demand from businesses. In April 2020, the Council agreed to make available a loan of up to £1 million to Coventry and Warwickshire Reinvestment Trust (CWRT) – a not-for-profit, FCA accredited specialist finance provider set up to fill gaps in mainstream lending in Coventry and Warwickshire – in order to increase the delivery of CBILS in Warwickshire.

1.4 The May 2020 loan from the Council has formed a part of a package of sub-regional funding. The Council was followed by Nuneaton and Bedworth Borough Council, Rugby Borough Council and Warwick District Council as well as Coventry City Council (CCC) in making funding available to CWRT. The three Warwickshire district and borough authorities collectively provided £0.750 million of loans to CWRT. In July 2020, the CWLEP also approved for CBILS the use of up to £2 million of funding currently allocated to support the Coventry and Warwickshire Duplex Investment Fund in advance of it being required to support the Duplex project. Of this, £1 million has been allocated for CBILS to support businesses based in Warwickshire.

1.5 CWRT have now lent £1.750 million under CBILS to businesses in Warwickshire, safeguarding 213 jobs with a further 75 new jobs expected to be created. CWRT also have a pipeline of further enquires and applications worth over £1 million from businesses in Warwickshire.

1.6 CCC act as the Accountable Body for the CWLEP. However, they are unable to secure loans to CWRT for on-lending to businesses based in Warwickshire. This is because the security developed as part of the Duplex Fund (which also covers other lending) did not contemplate either council taking security over a loan book relating to the other council area. The County Council, on the hand, has security arrangements in place with CWRT (developed for the Duplex loan agreement and used for subsequent loans including the May 2020 loan for CBILS) which can be used to provide security for the CWLEP funding. CCC have, therefore, requested that the Council enters into a loan agreement with CWRT for the on-lending of the allocated CWLEP funds to Warwickshire businesses.

1.7 The CWLEP funded loan will allow CWRT to support a further ten businesses in Warwickshire, safeguarding a further 143 jobs. The loan will be used to support otherwise viable small businesses who have been unable to secure sufficient (or any) finance from their bank or other mainstream lenders. Priority will continue to be given to businesses with 5-49 employees in order to maximise impact.

1.8 The loan will be secured using the same security package as previous loans from the Council to CWRT: an all-encompassing debenture and a deed of assignment covering the loan book created by CWRT using the loan. These documents were prepared following a lengthy due diligence process during the establishment of the Duplex Fund and they are being used effectively for other loans including the Council's CBILS loan. The Council was also advised on the establishment of Duplex by an external banking law specialist at the law firm Browne Jacobson.

1.9 Lending in the current Covid-19 crisis would normally represent a high risk for the Council. However, the agreement with CCC (in addition to the requirement to enter into the loan agreement with CWRT) only requires the Council to repay income or sums actually received from CWRT by way of repayment of this new CBILS loan and the proceeds of any associated Government guarantee as well as any related interest paid to the Council. The only financial risk to the Council is, therefore, a highly unlikely breach or negligent performance or non-performance of the agreement with CCC. The agreement with CCC also provides that any unused part of the £1 million CWLEP funding can be lent to CWRT pursuant to any CBILS replacement scheme provided the parties (and CWLEP) so consent.

1.10 The main risk is actually to the future delivery of the Duplex Fund in Warwickshire in the unlikely event that the repurposed CWLEP funding is not repaid. However, the CWLEP has allocated sufficient funding to support Duplex in Warwickshire until the end of 2022/ 2023 (based on current demand and take-up). Furthermore, all receipts from this new CWLEP funded loan from the Council to CWRT will be reimbursed back into the delivery of Duplex in Warwickshire as soon as they are received, and all sums are expected to be repaid before they are needed. There is obviously a risk that demand from businesses for Duplex will increase in later years. However, Duplex is scalable, and the Fund can be re-scoped to meet the available budget. Moreover, the risk of not supporting additional CBILS loans in 2020 is considered far greater than having less funding for Duplex in 2022/ 2023 and beyond.

1.11 Finally, it should be recognised that the risk to Duplex is mitigated to some extent by the Government guarantee to accredited CBILS lenders. The Government is providing CBILS lenders with a guarantee of up to 80% on each loan subject to a per-lender cap on annual claims. CWRT, for their part, can claim up to 60% of the outstanding capital balance on any bad debts (after exhausting all opportunities to obtain the funds from the borrower (i.e. credit control, using the security secured against the loan)). The Council's loan agreement with CWRT will require that all associated payments from Government are used in the first instance to repay the CWLEP funded loan.

1.12 The risk to Duplex is also mitigated by CWRT's Lending Policy (which has been reviewed by the British Business Bank on behalf of the Government as part of the approval process to become a CBILS lender) and their FCA accreditation. CBILS lenders are under no obligation to support a business despite the Government guarantee. CWRT, for their part, normally only fund low risk businesses and some medium ones subject to the security available. CWRT are also FCA regulated which requires them to minimise default rates across their whole loan book.

2.0 Options and Proposal

2.1 Option 1: Do nothing – The Council could now do nothing further and hope that lending from other CBILS lenders will meet the demand from small businesses in Warwickshire. However, this is considered highly unlikely. CWRT have seen high demand for their lending (as have all CBILS lenders) and the businesses which make up the pipeline described in 1.5 have already approached their bank or other CBILS lenders.

2.1 Option 2: Unsecured loan from CCC to CWRT – The Council could ask CCC to enter into an unsecured loan agreement with CWRT. Whilst this might meet the short-term goal of making the CWLEP funding available to businesses based in Warwickshire, it would represent an unacceptable risk to the future delivery of the Duplex Fund in Warwickshire. The £2 million of CWLEP funding currently allocated to support Duplex and being repurposed to temporarily support CBILS is allocated equally across Coventry and Warwickshire, and CCC have already entered into a secured loan agreement with CWRT for the £1 million allocated to Coventry

2.1 Option 3: Council enters into the loan agreement with CWRT using the £1m CWLEP allocation – This option would make the CWLEP funding for lending to businesses based in Warwickshire available quickly whilst managing the risk to the future delivery of the Duplex Fund in Warwickshire. The CWLEP funded loan will be secured and the Government is providing CWRT with a guarantee of up to 60% of any bad debts (and the Council's loan agreement includes the requirement for CWRT, in the first instance, to use any such payments from Government to repay the Council's loan).

Option 3 is recommended. It makes the CWLEP funding available quickly and this report has set out how the risks to the future delivery of the Duplex Fund can be mitigated to an acceptable level. Moreover, the financial risk to the Council is limited to a highly unlikely breach or negligent performance or non-performance of the agreement with CCC.

3.0 Financial implications

3.1	The £1 million loan to CWRT will be funded in full by the CWLEP. It is intended that CWRT will be charged interest at the same rate as the Council's own May 2020 CBILS loan to CWRT. This is 1.5% above base. Any such interest received on this new CWLEP-funded loan will need to be invested back into Duplex.
3.1	The only financial risk to the Council is a highly unlikely breach or negligent performance or non-performance of the agreement with CCC. The agreement with CCC (in addition to the requirement to enter into the loan agreement with CWRT) only requires the Council to repay income or sums actually received from CWRT by way of repayment of this new CBILS loan and the proceeds of any associated Government guarantee as well as any related interest paid to the Council.

4.0 Environmental implications

None

5.0 Timescales Associated with the Decision and Next Steps

5.1 It is appropriate that this report should be dealt with via an additional Portfolio Holder decision. The loan to CWRT (and CBILS loans to individual businesses) need to be made available as soon as possible. The agreement with CCC has already been received and a draft loan agreement with CWRT has been prepared and therefore it is expected that the loan will be entered into within a few days of the Decision.

Report Author	Matthew Epps
Assistant Director	Dave Ayton-Hill
Lead Director	Mark Ryder
Lead Member	Leader of the Council

Urgent matter?	No
Confidential or exempt?	No
Is the decision contrary to the budget and policy framework?	No

Lists of reports considered
N/A
List of background papers
None

Members and officers consulted and informed

Portfolio Holder – Councillor Izzi Seccombe

Corporate Board – Mark Ryder

Legal – Jane Pollard

Finance – Virginia Rennie

Equality – Keira Rounsley

Democratic Services – Helen Barnsley

Portfolio Holder Decision – S278 Highway Improvement Scheme at B4100 Banbury Road, Lighthorne Heath

Portfolio Holder	**Portfolio Holder for Finance and Property**
Date of decision	**23 October 2020**
	Signed

Decision taken
The Portfolio Holder for Finance and Property gives approval to: 1) increase the capital programme provision for the S278 highway improvement scheme at B4100 Banbury Road (Village Centre Access), Lighthorne Heath, to £1.7m 2) increase the capital programme provision for the S278 highway improvement at B4100 Banbury Road (Southern Roundabout), Lighthorne Heath, to £1.3m 3) the award of the combined contract for the S278 highway improvement scheme at B4100 Banbury Road, Lighthorne Heath, to the supplier who has submitted the most economically advantageous price subject to the applicable S278 Agreement with the Developers having been signed.

Reasons for decisions

On 13 September 2019 the Deputy Leader (Finance and Property) gave approval to include two (Highways Act 1980) Section 278 highway improvement schemes on B4100 Banbury Road, Lighthorne Heath, to the 2018/2019 capital programme. The two schemes are connected to the same development – one at the new village centre access and one at the southern roundabout access. The estimated costs, including works and fees, was £1.2m and £1.1m respectively.

The S278 works are required as part of the planning consent given by Stratford-on-Avon District Council on 14 December 2017 (ref: 15/00976/OUT). The Developer, Taylor Wimpey Homes, will be providing 100% of the funding for the scheme via the (Highways Act 1980) Section 278 Agreement which will be signed before the construction contract is awarded.

It was originally expected that the works would be delivered as two separate contracts. However, at the request of the developer the two schemes have been tendered as a single package of works. It is intended to combine both capital programme entries into a single entry as soon as possible to be consistent with the contract.

The procurement of the works is through a Package Order Call Off Contract (POCOC) under Warwickshire County Council's Framework Contract for the Provision of Construction Works 2019. The Framework Contract was established in January 2019 following an EU procurement process. The Framework contract comprises four Framework Lots (identified by financial value and / or nature of work). Successful applicants were awarded a place as a supplier within a Framework Lot following evaluation of Lot-specific ITT questionnaire responses provided by each of the tendering applicants. A Lot-specific POCOC for a particular Work Package is awarded following further competition between suppliers for the Lot to which the Work Package relates. Further competition is on the basis of price alone with the contract being awarded to the supplier who submitted the most economically advantageous price.

The five named suppliers in the appropriate lot of the Framework were invited to submit quotations for these works on 02 September 2020, with a tender return date of 05 October 2020. Two suppliers returned quotations, the lowest of which is more than 10% above the combined value of the capital programme entries. Warwickshire County Council's Contract Standing Orders (April 2019) Section 2.3 states that authority to award a Major Contract between £1.0m and £3.0m requires a report back to the relevant Portfolio Holder where the bids exceed the original estimate by 10% or more.

If the recommendation is approved, the contract will be awarded to the supplier who has provided the most economically advantageous price at the earliest possible date and highway works will commence as soon as the supplier is able to mobilise their resources.

Background information

Approval is requested to increase the capital programme provision as follows:

1) B4100 Banbury Road (Village Centre Access), Lighthorne Heath, from £1.2m to £1.7m
2) B4100 Banbury Road (Southern Roundabout), Lighthorne Heath, from £1.1m to £1.3m

These amounts are to cover the cost of the works and fees, and an allowance for contingencies.

Approval is requested to award the contract to the supplier who has provided the most economically advantageous price for a combined contract for both schemes following assessment of the tenders.

If the recommendations are not approved, it will be necessary to re-tender the highway works. The tenders can only be sent to the same suppliers as before and the responses may be similar. Furthermore, delaying the highway works to complete a new tender exercise will affect the ability of the Developer to meet its planning obligations in time for the programmed occupation dates of the homes on this development.

Financial implications

There is no financial risk to Warwickshire County Council as S278 schemes are fully funded by the contributions from the Developers which are ring-fenced for the works specified. For Developer funded schemes, there are no alternative uses for the contribution and it does not affect the overall level of available capital resources.

Environmental implications
The environmental impacts of developer-funded highway schemes are considered through the planning approval process to ensure that the developments are consistent with the principles of sustainability. The contractors on the Council's Framework Contract for the Provision of Engineering and Construction Works (WCC 6012) have all demonstrated that they hold a certificate of compliance with BS EN ISO 140001 (or equivalent) or have otherwise satisfactorily demonstrated their policies and arrangements for the management of construction-related environmental issues.

Report Author	Shirley Reynolds shirleyreynolds@warwickshire.gov.uk,
Assistant Director	Scott Tompkins Assistant Director (Environment Services)
Lead Director	Strategic Director for Communities
Lead Member	Portfolio Holder for Finance and Property

Urgent matter?	No
Confidential or exempt?	No
Is the decision contrary to the budget and policy framework?	No

List of background papers
None

Members and officers consulted and informed
Portfolio Holder – Councillor Peter Butlin Corporate Board – Mark Ryder, Strategic Director for Communities Legal – Ian Marriott Finance – Virginia Rennie Equality – Democratic Services – Isabelle Moorhouse Councillors –

Local Member(s): Cllr Chris Williams – Kineton and Red Horse Cllr Andy Crump – Feldon

Minute Item 3

Portfolio Holder Decision – Response to Government consultation on the reform of exit payments in local government

Portfolio Holder	**Portfolio Holder for Customer & Transformation, Portfolio Holder for Finance and Property**
Date of decision	**23 October 2020**
	Signed

Decision taken

Note the report and approve the proposed strategic response to the current MHCLG consultation on LGPS Regulations.

Reasons for decisions

The implementation of the Restriction of Public Sector Exit Payments Regulations 2020 create significant governance risks for the County Council which are difficult to mitigate, particularly while changes to the Local Government Pension Scheme Regulations remain outstanding. It is therefore recommended that WCC takes the opportunity to submit its detailed responses to the MHCLG consultation as part of West Midlands Employers (WME), and independently a strategic response to the risk and governance issues created. It is further recommended that WCC's redundancy policy be reviewed in light of the impact of the exit payment cap and future changes to the LGPS regulations once those are known.

Background information

The Restriction of Public Sector Exit Payments (RPSEP) Regulations 2020 apply a cap on exit payments that may be made to employees in most public sector organisations. This cap applies not only to money paid directly to the employee on exit, but also other payments due, such as pension strain payments. In some situations, the pension strain payments can be well in excess of the cap on their own. The cap may be disapplied only in very narrow circumstances and with the consent of HM Treasury.

The RPSEP Regulations were approved by Parliament on 30 September 2020 and will come into force 21 days after being signed by the Minister. In spite of strong representations from the local government sector, it appears this will likely be before corresponding changes can be made to

Local Government Pension Scheme (LGPS) Regulations. Consequently, in taking decisions regarding leavers aged 55 and over, local authorities will be forced into non-compliance with either one set of regulations or the other.

Local authorities are awaiting guidance on how to deal with affected individuals aged 55 or over, who will now be impacted by the new RPSEP Regulations. WCC has a number of such cases, which it is reviewing.

Currently Pension Funds are advised by their own actuaries on the factors to apply to calculate pension strain costs. The new Regulations will require a consistent national set of factors to be applied. In addition, Funds' pension system software will need to be updated for these new factors.

While in the case of local authorities it may be possible either to expedite such decisions before the RPSEP Regulations come into effect, or alternatively delay implementation of such decisions until there is greater clarity, this may not be possible for some smaller employers within the LGPS, who are also within scope. In these cases, the Pensions Administration Service is in an impossible position, being unable to provide those employers with accurate and reliable information on exit payments or pension benefits.

A consultation by the MHCLG on changes to the LGPS Regulations (together with the redundancy payments legal framework) is ongoing, closing on 9 November 2020. However, given that the RPSEP Regulations have now been approved by Parliament, the outcome will not change the implementation of the exit payment cap. Rather, the present consultation concerns options for bringing the current legislation in line with the RPSEP Regulations. It is proposed that WCC takes the opportunity to respond to the consultation as part of West Midlands Employers (WME). This can be made available, should the Portfolio Holders wish to see it. Given the technical nature of the consultation, any detailed responses require specialist pensions and actuarial expertise and time. Organisations such as WME and the LGA will be better placed to respond on behalf of the sector, and their representations may carry more weight. Nevertheless, the Portfolio Holders are asked to endorse a strategic response expressing WCC's concerns for the governance risks and implications brought about by the implementation, as set out in Appendix A.

The RPSEP Regulations and regulatory changes being consulted upon by MHCLG are likely to make early retirement / voluntary redundancy significantly less attractive for employees, who may now have to choose between (i) forgoing some or all of their non-statutory redundancy payment, (ii) foregoing an element of their pension benefits, (iii) deferring their pension to normal pension age, or (iv) making an up-front payment to offset reduced pension benefits, depending on the outcome of the present consultation.

This in turn is likely to impact on future reorganisations, where we can expect greater resistance to change, less flexibility in terms of acquiring volunteers for redundancy and increased potential for legal challenges in the employment tribunal or civil courts. In addition, there may be a spike in legal challenges in the short term, if employees are offered an exit package which then has to be retracted.

Further, the advent of the cap on exit payments precipitates the need for a review of our current discretionary redundancy payments policy which was implemented in 2011. The scheme currently applies a taper in terms of the multiplier applied to a week's pay, according to age, for LGPS members over 55. Any discriminatory impact of this taper has previously been offset by the immediate access to unreduced pension for those members and the taper is intended to avoid a windfall in those circumstances. A cap on pension strain costs which affects a member's pension will need to be taken into account in considering the proportionality of the taper.

Financial implications

On the face of it, the exit payment restrictions have the potential to reduce costs to the local authority, through capped redundancy costs, and the longer-term impact on employer pension contribution rates.

However, set against these potential cost reductions are the implications arising from the difficulties they are likely to create in, for example, the implementation of restructures, cost of employment tribunals, cost of implementing change and additional workloads, management of changes with other employers in the LGPS, communication with LGPS scheme members.

Environmental implications

None

Report Author	Liz Firmstone, Victoria Jenks lizfirmstone@warwickshire.gov.uk, vickyjenks@warwickshire.gov.uk,
Assistant Director	Assistant Director for Finance
Lead Director	Strategic Director for Resources
Lead Member	Portfolio Holder for Customer & Transformation, Portfolio Holder for Finance and Property

Urgent matter?	*No*
Confidential or exempt?	*No*
Is the decision contrary to the budget and policy framework?	*No*

List of background papers

1. MHCLG: Reforming local government exit pay A consultation on the reform of exit payments in local government

Members and officers consulted and informed

Portfolio Holder – Councillors Kam Kaur and Peter Butlin, 23rd October 2020

Corporate Board – 14th October 2020

Legal –- Jane Pollard - Legal Services Manager, Sarah Cowen – Senior Solicitor, David Leach – Employment Solicitor

Finance – Andrew Felton, Assistant Director, Finance

Equality – Keira Rownsley. EDI Practitioner

Democratic Services – Helen Barnsley, Democratic Services Officer

Councillors – Staff and Pensions Committee, 14th September 2020

Local Member(s): N/A