

Report

South Park Pavilion

Author:

Cllr Livingstone, Cllr Wilson and Town Clerk

Update

South Park Pavilion has the support of our community and will be a significant investment for the town one that will last well into the end of this century.

Our objective is to build a quality environmentally friendly building that can be enjoyed by our residents, community groups, and will attract new visitors to our town. It will also act as a gathering place for events, exhibitions, and celebrations.

We have been taking our time through a volatile period in our country's history to ensure we have a building that reflects our residents views, can be delivered without an unsustainable increases in our precept. We have also given thought to how we will manage the building and understand how we operate, manage, maintain, and sustain it.

Timescales

As Councillors are aware planning permission has been granted. The proposed timescales for completion of the project are as follows:

- Stage 1 Open Tender and Selection of Contractor - Jan – March 2024
- Public Consultation on Public Works Loan – March 2024
- Stage 2 Tender – March – March - May 2024
- Appointment of Contractor Full Council – July 2024
- Work Commences on Site – August 2024
- Pavilion Complete and Open – Easter 2025

Work could not start on site prior to the receipt of planning permission which we have now received.

VAT Recovery

Our design team have advised that the construction and fit out of the pavilion is £1.6m. This type of construction is VAT rated at 20% and a cost of £320k would be incurred the Council and residents of Macclesfield.

We have sought VAT advice from the Parkinson Partnership a specialised advisor to Town and Parish Councils. Their full report is attached for review by the Council. They have advised that we have three options in relation to VAT.

- Paying VAT in full.
- Construction of the building and then handing it to a charity for £1 and reclaiming the VAT.

- Registering for VAT and opting to tax and reclaiming the VAT.

Should we opt to tax and reclaim the £320k we would enter into an arrangement with HMRC that would last 20 years. During this period, we would incur VAT that we could not recover on the income generated from room hire.

If we generate £50-60k per year on room hire and corporate letting we would incur a cost £10-12k per year around £200-240k which would indicate that opting to Tax is a preferable option for the Council.

Operating the Pavilion

Congelton Town Council operates a café and events venue from its town hall and has opted to tax. This provides a useful model for us to learn and follow. A meeting is being arranged with Congelton Town Council and the members of the Pavilion Working Party.

We have considered the option of the Council running the pavilion including the catering and room hire or leasing these out as a concession to a hospitality provider. Operating the pavilion ourselves will allow us to remain in control and retain the benefit of any surplus (profit) generated. Letting the building to a hospitality provider will reduce the Council's risks but reduce our control. On balance at present, we are proposing to operate the building, this matter will however be kept under review.

Our Pavilion is designed for a café, events, community events and groups, and as a gathering place for weddings and life events. It is proposed as a minimum to recruit a manager for the building to operate and manage it supported by a facilities assistant (caretaker). It would be preferable to recruit the manager next year around the time work starts on site.

The Pavilion will be a first class building. We need to ensure that its operated for the community on a commercial basis and ensure that it generates sufficient revenue to cover its cost. The café, plus regular events, life events will be the main source of income. As with all new ventures marketing and promotion will be required to generate turnover.

A draft business plan has been prepared with the support of an external consultant. Further work is required to refine this and confirm the treatment of VAT. The work so far confirms that it will be possible for the Council to operate the building, cover its operating cost and return a surplus. The final Business Plan will be brought to the full Council meeting in March next year.

Budget Update

The budget for the pavilion at this time last year stood at £1.48m. As the Council is

aware construction costs increased last year at an unprecedented level of 25% due to

- the impact of energy costs rises
- the increased importation costs of construction materials due to Brexit
- and significant rise in inflation and interests costs as a result to the 2022 budget.

As a result the overall budget has now increased to £1.85m.

Construction output is falling, and costs have now stabilised. Whilst they are unlikely to fall they are becoming more predictable and the risk premium levels applied by contractors are now reducing. Projects like the pavilion will a short duration of 9-12 months attract significantly less risk pricing than projects with longer durations. Our design team have identified potential savings should these be required. The two stage procurement process is designed to allow opportunities value engineer the design whilst retaining its quality.

This split down as follows (excluding VAT)

Construction and Fit Out	£1,650,000
Design and Survey Fees	£55,000
Legal, Accountancy and Marketing	£25,000
Contingency	£115,000
Total	£1,845,000

The Council intends to fund this project via the use of reserves, annual funding for parks, borrowing via a public works loan of £1m, and sponsorship and fund raising.

Council Allocated Reserves	£548,500
Parks Budget	£200,000
Public Works Loan	£1,000,000
Sponsorship and Fund Raising	£96,500
Total	£1,845,000

A loan of £1m will result in a cost to the Council of £81,040 in the first year, reducing by £350 every 6 months. This would result in an 8% increase in our precept, again in the first year, however over the years this would reduce plus there will be income from the pavilion to go towards the payment and in time covering the payment. Our precept is comparatively lower than similar towns locally.

As an alternative the Council could decide to increase the level of loan we seek to of £1.25m which would result in a cost of £101,301.70 in the first year reducing by £437.50 every 6 months, over 40 years. The Interest rate is fixed at 5.67%.per year

Sponsorship

We intend to undertake a targeting series of sponsorship and fundraising events

utilising the sponsorship document that was approved at the last Council meeting.

Procurement

To ensure that we have undertaken an open and transparent process in the selection of our contractor for this significant development we intend to undertake a tender process. Contractors will be able to express their interest in the project via the Town Clerk and will be shortlisted based on pre-qualification questions.

It is proposed that the submissions will be reviewed by a panel comprising the Town Clerk, Councillors Wilson, Livingstone and Barber and our professional design team. Those who have passed the pre -qualification will be invited to tender.

The Council has agreed to utilise a two stage tender process to procure the building. This a competitive procurement process and involves the following stages

Stage One – Open tender for selection of a preferred contractor on the basis of quality and cost based upon their overheads, profit, and preliminaries costs (management, site compounds etc).

Stage Two – supply chain and tendering of sub-contractors and supply chain by the preferred contractor, on a transparent basis, with oversight and challenge by the Council's professional advisors. Design development and value engineering and agreement of Agreed Maximum Price or capped price with the Contractor. Savings below this price would be shared by the Council and the Contractor.

To ensure that the process can be expedited the Council is asked to delegate approval to a panel comprising the Town Clerk, the Chair of the Finance Committee Councillor Thompson, and Councillors Wilson, Barber and Livingstone of the following

- Selection of contractors invited to tender after the pre-qualification stage.
 - Selection of the preferred contractor following Stage 1 of the tender process.
- This will then be brought to next Full Council meeting.

Final approval of tender and appointment of a Contractor to undertake the building is aimed to place at Full Council in July.

The South Park Pavilion Working Group

The current membership of the group is as follows:

- Councillor Livingstone (Chair), Councillors Barber and Wilson
- The Town Clerk
- Our Design Team
- Friends of South Park
- CVS

Consideration will be given to adding a member with hospitality experience.

Proposals:

- To approve that the Council opt to tax for the Pavilion subject to approval with the HMRC.
- Decide a loan amount.
- To approve the tender process and delegations:

Chair of Finance, Cllr Ruth Thompson, Councillors Wilson, Barber and Livingstone and Town Clerk to:

- Oversee pre-questionnaire process and invite contractors to tender.
- Selection of the preferred contractor following Stage 1 of the tender process.



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27 September 2023

Dear Laura

VAT advice in relation to the construction of a pavilion

You engaged us to advise the council on the VAT implications of the construction of a pavilion, including any options to maximise VAT recovery. We have undertaken this work based on information the council provided in an online consultation, by telephone, email and on its website. This letter sets out our advice.

Executive summary

- 1) 20% VAT will be payable by the council on the construction of the new pavilion. If the council intends to hire rooms out, or to lease parts of the building for more than £1, it won't be able to reclaim much of this VAT without taking further steps.
- 2) Registering for VAT and making an option to tax on the site (before any significant expenditure is incurred) will allow the council to reclaim the VAT on construction, but the council would have to charge VAT on rent and room hire.
- 3) The council should note that at higher income levels, an option to tax ceases to be better than simply paying extra for the construction and keeping all the income.
- 4) The council will also need to register for VAT, if it intends to accept sponsorship funding or if it decides to directly manage the café.
- 5) If the council doesn't require income to help repay a loan, leasing the building to a non-profit organisation for £1 (with all the income reinvested in the building) also allows the council to reclaim VAT, but reduces the level of council control.
- 6) Zero-rating the construction is not legal for the council. It would be permitted if a charity constructed the building, but a commercial café is not a charitable activity and this approach is unlikely to meet the council's aspirations.

- 7) The rules for local authority controlled companies and trusts are complex and the council should ensure that it has sound legal advice if it wants to pursue this approach, to avoid any expensive errors.
- 8) This is a summary and the council should read the full report before any decision.

The Project

- 9) You told us that the council intends to take over a site within a park (owned by Cheshire East Council) on a 150-year lease, where it will demolish a dilapidated pavilion and construct a replacement.
- 10) The project is expected to cost at least £1.2 million and will be funded from council reserves (£500,000), a lottery fund application (£400,000), a loan of up to £700,000, sponsorship (up to £100,000), crowd funding (possibly £10,000) and other grants.
- 11) This new building will include two multi-function rooms on the ground floor, with a café, accessible toilet and baby changing facilities, an information point and storage. The first floor will include a function room with a bar and small kitchen area.
- 12) Management arrangements have not been finalised, but one proposal is that the council runs the building for the initial 2 years, to ensure that it is run and marketed to a high standard, and to ensure it is self-sustaining financially. The vision is for it then to be run by the community, of which there are several models to explore.
- 13) The council aims to invite tenders for the provision of food and beverage services and then use the income from this to pay for any loan. It is intended that the café, weddings, events, training and corporate activities will run on a commercial basis, with lower fees for community group use.
- 14) Potential income has been estimated by the council as £115,000, made up of: room hire £50,000, event fees £30,000, café lease up to £15,000, memberships, sales and other income £20,000. (The council's architect has suggested a potential turnover of £1 million a year, which appears to include the gross takings of the café. Even so, in our experience this seems extremely high for a £1.2 million public building in a park).
- 15) Running costs (excluding business rates) are estimated to be £75,000, assuming that the café is run by a third party (with no staff or stock costs for the council). The town council will have no maintenance responsibility for the surrounding park.
- 16) You told us that the council is not currently registered for VAT.

VAT implications of the project

- 17) Non-residential construction work is standard-rated (20% VAT), so a project costing £1.2 million will incur VAT of around £240,000. The council's ability to reclaim this VAT depends on how the building is to be used.
- 18) When a council acts as a public body, providing freely available services using taxpayers' funds, it can normally treat this as non-business and recover associated VAT under Section 33 of the VAT Act 1994 (Section 6 of VAT Notice 749). Non-business activities include leases that the council grants for £1 or less, where no other payment or benefit passes from the tenant to the council.

- 19) Where a council supplies goods or services (including the use of premises) in return for any form of payment, this is a business activity for VAT purposes (Section 5, VAT Notice 749 - Local Authorities and Similar Bodies) and the rules are different.
- 20) Hire of premises is generally exempt from VAT (Group 1, Schedule 9, VAT Act 1994), and this affects the council's ability to reclaim VAT on construction. VAT-exempt activities would include the hire of rooms and lease of space to a café operator.
- 21) Where a council has VAT-exempt business activities, it can only reclaim VAT on the associated costs (such as construction, maintenance and running costs) if the VAT on those costs is less than £7,500 in the financial year, or less than 5% of the VAT incurred in the financial year, if that is greater (Section 8 of Notice 749).
- 22) If the VAT incurred on costs related to VAT-exempt business activities exceeds both thresholds, the council would be unable to recover any of that VAT, for the financial year involved. This wouldn't prevent the council reclaiming VAT incurred on its non-business activities, it would just prevent a reclaim on the new building and any other rented properties. This creates a problem for councils constructing buildings for hire.
- 23) Some of the potential activities would involve making taxable supplies of goods or services, for example if the council ran a bar or café, offered wedding and party packages, or sold souvenirs and other goods. The £85,000 VAT registration threshold does not apply to local authorities and the council would need to register for VAT if it expected to make taxable sales of more than £6,000 in a financial year.
- 24) Sponsorship (where advertising and other benefits are provided in return) is a taxable supply and subject to 20% VAT. The council will need to register for VAT if it plans to charge businesses for sponsorship opportunities.
- 25) Genuine donations (where the donor receives nothing of benefit in return) are not subject to VAT, but the council must retain ownership of anything bought with donations if it wants to reclaim VAT on the expenditure. It is permissible to mention donors in a list of thanks, with nothing more to draw attention to their business.
- 26) Only a VAT-registered council can reclaim VAT on costs relating to its taxable sales, an unregistered council isn't entitled to do that. Being registered does not entitle a council to reclaim VAT on costs relating to its VAT-exempt business activities.
- 27) If a building is used for multiple purposes, a council can apportion costs between VAT-exempt, taxable business and non-business activities, using any reasonable basis (such as floor area, or hours of use).
- 28) For example, if the council uses 30% of the floor area to run a café (taxable), 5% of the area to run a free information centre and the remaining space is used for room hire, it might be reasonable to treat 65% of the costs (rather than the whole cost of the building) as relating to VAT-exempt business activities.
- 29) Even with some of the construction VAT apportioned to non-business and taxable business activities, the VAT relating to exempt business activities on this project will substantially exceed both thresholds.

- 30) By running the building, even for an initial 2-year period, the council will be undertaking VAT-exempt business activities (by hiring out premises) that will affect its ability to reclaim VAT on the project.
- 31) The council risks facing a large amount of non-recoverable VAT, if it builds and manages the pavilion without further action.

Potential solutions

- 32) Where the VAT incurred on a project is likely to exceed both thresholds, there are several approaches to avoid the VAT being irrecoverable, although some of the simplest are not viable due to the size of this project.
- 33) This leaves several viable approaches for the council's situation:
- a) Registering for VAT and making an Option to Tax on the building.
 - b) Granting a £1 lease of the building to another organisation for at least 10 years and reclaiming the VAT as non-business.
 - c) Leasing the site to a charity and providing a grant to allow them to construct their own building.
 - d) Registering for VAT and maximising taxable income by running the café, ticketed events, advertising, weddings and shop sales.
 - e) Simply accepting the extra cost of unrecoverable VAT.
- 34) Each of these alternatives is explained below.

Option to Tax

- 35) The council could make an option to tax on the site (explained in Appendix 1 and described fully in VAT Notice 742A). This is a formal decision that VAT will be charged on any lease or hire, for a minimum of 20 years. In return, the council will be able to reclaim VAT on both construction and running costs.
- 36) An option to tax would allow the council to reclaim the full £240,000 of VAT on the construction. VAT of perhaps £19,000 to £23,000 a year (based on the council's estimates) would need to be charged on hire fees and paid to HMRC, but around £5,000 a year could be reclaimed on running costs.
- 37) Over the minimum 20-year life of an option to tax, there would be a total net payment to HMRC of around £40,000 to £120,000 (depending on income and running costs), which is a better approach than paying £240,000 to HMRC at the start and also risking being unable to reclaim VAT on running costs and future refurbishments.
- 38) This approach works well if the council wants the building to be run by other bodies and the council will simply receive VAT-exempt rent income. It also works if the council aims to run the room hire business directly and lease the café to others.
- 39) It is still likely to be of benefit if the council runs the café directly, as well as the room hire, but this would need some careful calculations to see if it was beneficial.

- 40) An option to tax would need to have been formally agreed and notified to HMRC before major costs are incurred. It cannot be done retrospectively, so if the council didn't opt to tax, then decided to do so after paying for £500,000 of construction work, it may not be able to reclaim VAT on the money spent before it decided to opt to tax.

Leasing the building for £1

- 41) If the council doesn't need the building to do more than cover its running costs, with any profits reinvested in the building, a simple approach would be to lease the building (or parts of it) to one or more organisations to run, for rent of no more than £1, with no further payment (such as insurance, utility or maintenance contributions) passing to the council. HMRC regard a lease for £1 as non-business, so VAT can be reclaimed on the construction.
- 42) This would need to be happen from completion of the building, the council wouldn't be able to reclaim VAT if it ran the building for a period, before leasing it to anyone.
- 43) Generally, such leases involve the tenant(s) taking on the day-to-day running of a building, with substantial responsibility for maintenance. The council would also have to accept a loss of day-to-day control over the pavilion.
- 44) It is unlikely that a tenant providing room hire would be entitled to reclaim VAT on running costs with this approach, but they wouldn't have to pay any of the income to HMRC. Any charitable tenant would also benefit from business rate relief.
- 45) Whilst this is a simple solution for reclaiming VAT, the council needs to be careful. It must not receive any other payment from the tenant, such as financial contributions towards insurance, maintenance, utilities or other costs, or towards the loan repayment. Any such payments are generally regarded by HMRC as additional rent for the supply of the property and would risk having to repay the VAT reclaimed.
- 46) If there is any change of use from non-business to VAT-exempt use (for example, if the tenancy was terminated and the council ran the building) within 10 years of construction, there is a risk that the council may have to repay some of the original VAT reclaimed (see "Capital Goods Scheme" below).
- 47) With changes to councillors and staff over a 10-year period, there is a risk of error (e.g. by accepting payment from a tenant) – at which point HMRC may be entitled to clawback some of the VAT initially reclaimed.

Construction by a charity

- 48) If there is the possibility of a charity willing to manage the construction of the pavilion, an alternative approach would be for the council to lease the site to a charity for £1, to construct and run their own building. Construction costs (but not the professional fees) of a village hall (or similar) by a charity can be zero-rated (Item 2 of Group 5 of Schedule 8 of the VAT Act 1994).
- 49) As a local authority, the council is not entitled to zero-rate any construction. We know that the council has been told that it can, but the underpinning legislation (note 12 of Group 5 of Schedule 8 of the VAT Act 1994), requires that the construction services are supplied to the charity that will use the building for charitable purposes.

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- 50) Zero-rating requires the constructing charity to issue of a certificate, set out in Section 18 of VAT Notice 708. The wording of the certificate requires the person signing it to confirm that their organisation will use the building for a relevant charitable purpose. There is a substantial penalty for wrongly issuing such a certificate.
- 51) Zero-rating would only be allowed for use in a similar way to a village hall, which requires (para. 14.7.4 of VAT Notice 708) that all of the following apply and it is:
- a) constructed and managed by a charity
 - b) operated on a non-commercial basis for the benefit of a local community
 - c) used solely to provide social or recreational facilities for a local community.
- 52) Running a commercial café or a wedding venue is not a charitable activity and not similar to a village hall. The exact plans for the use of the building might mean that it doesn't qualify (or only partly qualifies) for zero-rating and may not be suitable for being constructed or run by a charity.
- 53) Where a charity undertakes trading (such as running a shop or café) other than its primary activity, it must generally do this through a subsidiary company. This can add a layer of complexity to the leasing arrangements, so the council and any interested charity would need to take legal advice from someone familiar with council and charity law.
- 54) Zero-rating doesn't apply to professional fees such as architects. The council could commission the design and reclaim VAT on the fees, before leasing the site to a charity to construct a zero-rated building. The charity will need to issue the correct certificate of zero-rating set out in Section 18.1 of VAT Notice 708.
- 55) In these circumstances, any funding would need to be awarded to the charity and the council would need to make a grant to the charity of funds that it holds.
- 56) It would also be more efficient if any personal or company donations were made to the charity, rather than the council. This increases the value of personal donations by 25%, while companies can claim tax relief on their contribution to a charity.
- 57) If the demolition of the old building takes places as part of the project, it can be included within the zero-rating if it is done by the charity's contractor. If it has to be demolished earlier and there will be a significant time gap, the work would be standard-rated and the council would be able to reclaim the VAT as non-business if it commissions the work.
- 58) If the building (or part of it) ceased to be used for relevant charitable purposes within 10 years of completion, a proportion of the VAT avoided would become payable. The rules for this are set out in Section 19 of VAT Notice 708.
- 59) As an example, if the building ceased to be used for charitable purposes at the end of year six, then 40% of the VAT avoided on construction would become payable.
- 60) Apart from the VAT implications, the council would not have day-to-day control of the building, as it would be managed by the trustees acting in the interests of the charity.

Maximising taxable income

- 61) Registering for VAT and maximising taxable sales income by running the café, ticketed events, advertising, weddings and shop sales, along with some non-business use (such as council or public meetings, free events and free use by certain groups) would allow a significant proportion of the construction VAT to be reclaimed.
- 62) There would still be some unrecoverable VAT in relation to the rooms for hire, but if the council apportioned the construction costs based on the amount of income each activity generated, the room hire might be a relatively small proportion compared to the taxable sales income from the café and weddings.
- 63) For example, if VAT-exempt room hire accounted for 25% of the total income, then 25% of the VAT on construction (i.e. around £60,000) would relate to exempt activities. Using the council's estimate of £50,000 a year hire income, opting to tax would result in the council paying up to £200,000 of its income to HMRC in VAT over 20 years (£10,000 a year), in order to reclaim that initial £60,000.
- 64) The council would need a realistic assessment of potential café, wedding, advertising and sales income in order to assess whether this approach was cost effective.

Accept the extra cost

- 65) There is a level of income at which an option to tax ceases to be beneficial. If:
 - a) the VAT that would be charged on leases and hire fees over 20 years greatly exceeds the VAT incurred on construction, and
 - b) much of the income is from community groups or individuals rather than VAT-registered businesses,the most economic approach might be to accept the extra cost at the start (by not reclaiming VAT), to maximise the income in the long term.
- 66) The council doesn't have sufficiently detailed information to undertake a 20-year discounted cashflow calculation, but this is what it would need to do in order to assess the level at which an option to tax ceases to be beneficial.
- 67) As a simple example, if the income from hire and leasing was £200,000 a year and the council opted to tax, it would be paying £800,000 to HMRC in VAT over 20 years, in order to reclaim £240,000 at the start and £100,000 on running costs.
- 68) Even allowing for inflation and the cost of borrowing, it might prove better to accept the extra cost at the start, not opt to tax and keep more of the income.

Capital Goods Scheme

- 69) All construction work exceeding £250,000 is subject to the VAT Capital Goods Scheme (CGS), explained in VAT Notice 706/2, but modified for local authorities by Section 9 of VAT Notice 749.
- 70) If the council reclaims VAT on the basis that the building will be used (or partly used) for taxable or non-business purposes, but the proportion of VAT-exempt use turns out to be higher in the year of completion, or any of the following nine financial years,

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the council would have to review (and possibly repay some of) the VAT it reclaimed on the construction.

- 71) This would apply, for example, if a tenant terminated a £1 lease before the end of the 10-year period and the council started managing the VAT-exempt room hire activity. It would also apply if the council estimated that 40% of the usage of the building would be VAT-exempt room hire, but it turned out to be 50% in year 2 and 60% in year 3.
- 72) Similarly, if the council didn't opt to tax and didn't reclaim any VAT (for example, because the building was used solely for VAT-exempt room hire), but after three years it let the building to a community group on a £1 lease, it would be able to reclaim a portion of the construction VAT in years 4 to 10 (roughly £24,000 a year, if the council gets no income from the building in those years).
- 73) The method for making these calculations each year is set out in Section 9 of VAT Notice 749, but we recommend that the council seeks further advice if any changes occur that might involve making VAT-exempt supplies.

Other implications of commercial activity

- 74) The council is looking at management options, which might involve the council doing things for a commercial purpose (i.e. to generate revenue, rather than just cover costs), or working through an entity or trust controlled or influenced by the council. These areas are tightly controlled by legislation and may require legal advice.
- 75) We are not lawyers, and this section is a summary of some key points that might affect the council. This is for initial guidance and nothing in this section should be regarded as professional advice.
- 76) If the council is relying on the General Power of Competence (Part 1 of the Localism Act 2011) to undertake commercial activity, it should note that Section 4 of the Act requires that the council must do such things through a company.
- 77) If it is relying on other powers, Section 93 of the Local Government Act does not allow charges for discretionary services to exceed the costs involved, while the Local Government (Miscellaneous Provisions) Act 1976 allows "such charges as the authority thinks fit".
- 78) Part V of the Local Government & Housing Act 1989 and Part 12 of the Local Government & Public Involvement in Health Act 2007 currently regulate the operation of companies and trusts controlled (50% or more) or influenced (20% or more) by local authorities. Part V was supposed to be repealed by Schedule 18 of the 2007 Act, but the repeal doesn't appear to have been brought into effect by Parliament.
- 79) Normally, the accounts of a controlled company or trust must be consolidated into the parent authority's accounts, although we are not aware of any situations where a parish or town council controls a company and the proper practices set out in the Practitioners Guide (NALC, 2023) do not make any reference to such consolidation.
- 80) The council should ensure it obtains legal advice on these issues.

Recommendations

- 81) If the council needs the income from the building to contribute towards repayment of a loan or wants to have substantial control over the buildings use, registering for VAT and making an option to tax on the site is likely to be the most straightforward way for the council to minimise the VAT liabilities. The formal decision should be made before any significant expenditure is incurred.
- 82) The council will need a sound estimate of the potential income from the site, in order to assess whether the VAT lost on income would exceed the VAT that could be recovered on the construction and running costs.
- 83) The council will need to register for VAT anyway, if it intends to accept sponsorship funding or if it decides to directly manage the café.
- 84) If it makes an option to tax, the council must avoid receiving any direct contributions towards the work from the prospective tenant or hirers, as this would remove the ability to recover VAT.
- 85) If the council doesn't need the income and wants it reinvested in the building, the simplest approach would be to lease the building to another organisation to run for a nominal £1 (with no further payment to the council), reclaiming the VAT as a non-business activity. The council would not be able to run the building for a period first, if it wanted to use this approach.
- 86) Leasing the site to a charity for £1 and providing grant funding to construct a zero-rated pavilion would not be compatible with running a commercial café or wedding hire business, it would only work if it were essentially volunteer-run for the local community. The council would need legal advice in relation to charities. The charity must provide the correct certificate to achieve zero-rating.
- 87) If it takes the charity approach, the council should consider commissioning the design work and other professional services, to allow VAT recovery on the fees.
- 88) The council should note that any change of use in the first 10 years (for example, if the charity fails or surrenders the lease) could trigger repayments under the Capital Goods Scheme and should seek advice before making any changes to the operation of the building.
- 89) The council should consider all the implications, not just VAT, in making a decision about how the building will be managed.
- 90) We would want to see the wording of any leases or tenancy agreements to ensure that they comply with the requirements to ensure VAT recovery.

Disclaimer

- 91) This advice covers the situation based on the information that the council has provided, but The Parkinson Partnership LLP cannot accept responsibility for any errors or omissions on the council's part in providing that information.

92) This advice is provided exclusively for Macclesfield Town Council and The Parkinson Partnership LLP accepts no liability towards any other party that may access or use this information as a result of it being disclosed by the council.

I hope that this covers all the issues, but if you have any questions, please let me know.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Steve Parkinson', with a stylized, cursive script.

Steve Parkinson
The Parkinson Partnership LLP