

 Executive Report 7th February 2018		Agenda Item No. 14
Title	Investment in Newbold Comyn Arms Manor House	
For further information about this report please contact	Andrew Jones, Deputy Chief Executive Andrew.jones@warwickdc.gov.uk	
Wards of the District directly affected	Clarendon	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?	No - P&C Appendices	
Date and meeting when issue was last considered and relevant minute number	N/A	
Background Papers	N/A	

Contrary to the policy framework:		No
Contrary to the budgetary framework:		No
Key Decision?		Yes
Included within the Forward Plan? (If yes include reference number)		Ref 910
Equality & Sustainability Impact Assessment Undertaken		No
N/A		
Officer/ Councillor Approval	Date	Name
Deputy Chief Executive	24 th November 2017	Andrew Jones
CMT	17 th January 2018	Chris Elliott Bill Hunt Andrew Jones
Section 151 Officer	17 th January 2018	Mike Snow
Monitoring Officer	24 th November 2017	Andrew Jones (author)
Portfolio Holder(s)	22 nd January 2018	Councillors Butler & Whiting
Consultation & Community Engagement		
N/A		
Final Decision?		Yes
Suggested next steps (if not final decision please set out below).		

1. **SUMMARY**

- 1.1 The report recommends that this Council advances a loan of £350,000 to Mr Simon Miller, thereby enabling the erection of a single storey side extension at Newbold Comyn Arms Manor House in accordance with the granting of planning approval of application W16/1346. The property is owned by Warwick District Council but tenanted to Mr Simon Miller & Mrs Sarah Ann Miller following an assignment of the lease in October 2009.
- 1.2 The recommendation provides the opportunity for the Council to improve its assets, enhance the facilities at Newbold Comyn Park and provide an ongoing financial return to the Council which is better than could be achieved through alternative investments.

2. **RECOMMENDATIONS**

- 2.1 That Executive notes that in accordance with planning application W16/1346, Planning Committee has approved the erection of a single storey side extension at Newbold Comyn Arms Manor House, land owned by Warwick District Council (WDC) but tenanted to Mr & Mrs Miller.
- 2.2 That Executive notes that the estimated cost of the works referred to in recommendation 2.1 is £360,000 (Appendix 1).
- 2.3 That Executive notes the position with regard to the lease and delegates authority to Deputy Chief Executive (AJ) and Head of Finance, in consultation with the Portfolio Holders for Business and Finance, following the receipt of appropriate advice from Warwickshire County Council's legal officers, to revise the lease arrangements should recommendation 2.5 be agreed and revision proves necessary.
- 2.4 That Executive notes that Mr Miller has requested that WDC advances a loan of £350,000 to enable him to undertake the aforementioned works to the Manor House and to that end has produced a business plan (Appendix 2 - produced by A.G.S Consultancy) which has been reviewed by this Council's Finance Administration Manager and independently by John Ashworth Associates (Appendix 3).
- 2.5 That Executive agrees in principle to make a loan available of £350,000 to Mr Miller and delegates authority to Deputy Chief Executive (AJ) and Head of Finance, in consultation with the Portfolio Holders for Business and Finance, following the receipt of appropriate advice from Warwickshire County Council's legal officers, to determine the financing and terms of the loan ensuring that:
- Robust security for the loan is in place;
 - The loan is released in staged payments following receipt of appropriate invoices and is overseen by the Council's Finance Administration Manager being managed in accordance with RUCIS grant principles;
 - The Council's Building Control Consortium oversees the construction of the extension;
 - A valuation of the proposed extension is undertaken enabling the Council to determine the increased value of its asset.

3. REASONS FOR THE RECOMMENDATIONS

3.1 Recommendation 2.1

3.1.1 Newbold Comyn Arms is a Grade II listed building used as a public house and function rooms owned by WDC and leased to Mr Simon Miller & Mrs Sarah Ann Miller following an assignment in October 2009. The lease is for a term of 21 years from 1st April 2001 and the Tenant has the right to renew at the end of this lease in 2022. The site lies in a partially elevated location on the edge of the Newbold Comyn Park.

3.1.2 Newbold Comyn Park is a 300 acre (120ha) country park. The northern half is an 18-hole golf course although Members will be aware that this is not currently in use. The southern half is used for recreation, sport and wildlife conservation. Leam Valley Local Nature Reserve covers part of the country park. The park is one of the District's major attractions offering numerous things to see and do including:

- Football – full changing facilities available
- Walks – lots of space for families and dogs. Public footpath links to Offchurch. Climb Observation Hill for good views. Geocaches nearby
- Watch wildlife - Leam Valley Local Nature Reserve has a wetland area with a bird hide. Woodland, meadow and riverbank habitats
- Horse riding route and field
- Model aircraft flying in the designated area
- Play areas – toddlers next to Newbold Comyn Arms pub. All ages near Observation Hill car park
- Skate park – near Observation Hill car park
- Newbold Comyn Leisure Centre

3.1.3 Over the last eight years the tenants have invested £110,000 in the buildings as they endeavoured to turn round what had been a struggling business:

2009 - Various works to rendering and patio area	£10,000
New Fixed Seating and various furniture	£12,500
2010 - Kitchen Refit in Stables Bar	£28,000
2012 - BBQ Hut / Seating area	£11,500
2012 - Replacement of all outside furniture	£8,500
2013 - Marquee	£28,000
2013 - Remodel bar	£12,000

	£110,500

3.1.4 This investment has paid off in no small part due to the erection of a temporary marquee abutting the Manor House where various functions are held. However, there is no planning permission for this temporary marquee and so to ensure that the business is put on a firmer footing (as currently the lack of planning permission makes it difficult to promote the facility) a planning application was made to provide for a permanent solution for function space to replace the existing marquee. The site benefits from a large, albeit shared car park that serves the public house, golf course and country park. On 9th March 2017 planning permission was granted.

3.2 Recommendation 2.2

- 3.2.1 Mr Miller is a builder by trade being a director of Regency Construction Limited (RCL) (company number 08686707). The company's registered office is A.g.s. Consultancy (midlands), 4 Offices 1-2, First Floor, Court Street, Leamington Spa, Warwickshire, CV31 1NH and it was incorporated in September 2013. It has filed all accounts as required by Companies House. The latest credit check on the business states:

"There is no reason to doubt that the company will prove equal to engagements. The risk index allocated to REGENCY CONSTRUCTION LIMITED is based on an analysis of the findings recorded above. In the light of the information available, the overall performance and strength is considered to be sound. The company has, therefore, been awarded a low risk status."

As at 30th September 2017 the company had net assets of £62,139.

- 3.2.2 RCL's nature of business as described to Companies House is described as development of building projects, construction of commercial buildings and construction of domestic buildings. It is with this background that Mr Miller has produced a Budget Estimate Summary (Appendix 1) for the construction of the extension. This estimate details a cost of £360,000.
- 3.2.3 Should Executive agree to recommendation 2.5 then the cost estimates will be validated by the Council's own property team and the Building Control Consortium would be charged with monitoring the works very closely.

3.3 Recommendation 2.3

- 3.3.1 As described in paragraph 3.1, the Millers have invested in the Council's buildings over the last eight years to improve the profitability of their business. To take the business to the next level further investment is required. The Millers do not have the capital available without recourse to borrowing, however, the lease arrangement they have with WDC makes that very difficult.
- 3.3.2 The Warwick District Council Act 1984 regulates how the District Council deals with some of its major property assets. In the case of the Newbold Comyn Arms and Manor House, the 1984 Act gives the District Council the power to grant leases of up to a maximum of 21 years. However, the Act does not prevent the District Council granting a succession of 21 year leases to the same party. The limitation of the term has meant that financial institutions have been unwilling to grant loans to the Millers as the lenders' security could be compromised.
- 3.3.3 The issue has been explored with this Council's solicitors and a potential solution could be achieved by the granting of an initial 21 year lease to the Tenant and that lease would contain an option for the Tenant to renew the lease for a further 21 years on the same terms (including the right to renew). By that means the actual term could be extended to a desired multiple of 21 years.
- 3.3.4 A potential lender may be concerned by the fact that the renewal is dependent on the Tenant choosing to exercise their right to renew, leaving the funder potentially exposed. That difficulty may be overcome by adding the funder to the Lease as a party, and giving them rights to 'step-in' to the Tenant's shoes should they decide not to renew the lease. However, it is undeniable that this "risk" would be factored into any loan terms made available to the Millers.

3.3.5 Given this situation it is recommended that should the Executive agree to recommendation 2.5, authority is delegated to Deputy Chief Executive (AJ) and Head of Finance, in consultation with the Portfolio Holders for Business and Finance, following the receipt of appropriate advice from Warwickshire County Council's legal officers, to revise the Lease arrangements should this prove necessary. This may be the case as Mr Miller is concerned that even with a right to renew, his investment could be heavily discounted if he wishes to assign the lease at a future date.

3.4 Recommendation 2.4

- 3.4.1 Given the difficulty the Millers are encountering accessing finance, they have asked WDC whether it would be prepared to advance a loan that would enable them to undertake the works. Whilst this is not territory the Council has ordinarily ventured into, with financial support from government being reduced and the desire to keep council tax and charges as low as possible for residents, this Council is exploring commercial opportunities which previously would not have been entertained. The Millers' request for a loan could enable the Council to achieve a better rate of return than is currently being realised from its investments whilst at the same time enhancing the land it owns. However, there is an element of risk to the Council in advancing such a loan and obtaining a higher return.
- 3.4.2 Therefore following discussions with the Finance Portfolio Holder, officers asked the Millers to produce a business plan (Appendix 2) which has been reviewed by the Council's Finance Administration Manager and then by a WDC commissioned consultant, John Ashworth Associates.
- 3.4.3 The day to day business is operated by Newbold Comyn Arms Limited (company number 08964638) (NCAL) whose sole director is Sarah Miller. The company has been active since March 2014 and has filed all accounts as required by Companies House.
- 3.4.4 Unlike the RCL Credit Check, the return for NCAL gave officers concern as it stated that the company was in "an above average risk category". However, this was at odds with the trading performance of NCAL with profits of £41,289 in 2016 and £46,373 in 2017, and Total net assets circa £55,000. An investigation revealed that Companies House was under the impression that NCAL was not filing its accounts when in fact Companies House had been addressing correspondence to the incorrect address. This matter has now been resolved to the satisfaction of Companies House, however, it is unable to remove the reference to the "non-filing" on its records hence the impact on the credit score. There is no evidence to suggest that NCAL is anything other than a sound business.
- 3.4.5 The review of NCAL's business plan consisted of:
- A review of the Plan and associated documentation including published company accounts.
 - A meeting with Simon Miller.
 - A visit to the property and its location, but without any detailed inspection of the various rooms and their condition.

- An undertaking of independent research of the local market and competitive environment.

3.4.5 For the avoidance of doubt, following discussion between Deputy Chief Executive (AJ) and Mr Miller, the loan request is only in respect of the extension and not improvements to the Manor House and Stables bar (situated in the Newbold Comyn Arms public house) which would cost a further £183,000. Mr Miller had hoped that the Council would be prepared to make this investment itself given the lack of investment over the past 15 years or so. Mr Miller now recognises that this is not a Council obligation and he will therefore finance this work on a piecemeal basis.

3.4.6 Members can consider the review of the plan at Appendix 3 but the key findings are as follows:

- a) Loan repayment - based on an interest rate of 5%, "the future estimates contained within the Business Plan (Table 1) demonstrate an operating profit in future years which would be more than sufficient to cover loan repayments as described above. The adjusted figures shown in Table 3 would also be sufficient to repay the loan, although with less headroom."
- b) Market Forces - "The Plan itself contains a review of the market and the competition and is positive in its conclusions about the prospects of the business. Our own research generally supports those conclusions."
- c) Location - "A sustained marketing campaign should be an essential element of the Business Plan, not only to re-launch the new function suite in the Manor House, but also to drive traffic to the Stables Bar out of the summer season when visitor levels to the country park and the golf course fall."
- d) Target Customer Groups - "The Business Plan identifies target markets for the Stables Bar and Restaurant and for the Manor House."
- e) Competition - Stables Bar: "Provided the Stables Bar and Restaurant maintains its standards and reputation, and increases its internal capacity, it should be able at least to maintain its share of the available market, which itself is growing." Manor House: "As a family run business, the owners can offer a distinct product when compared with other suppliers. Locally, the competition for functions business is mostly hotel based."

3.4.7 Review conclusions:

"Our review of the future financial estimates in the Business Plan suggests that the planned operating profit of 35/36% per annum is better than we would expect from a business of this type. We have modelled the impact on the bottom line of different cost assumptions, which are more consistent with industry benchmarks, which produce an operating profit of 18% of turnover. This model has not been tested with the owners.

"Local market forces are consistent with the growth forecasts shown in the Business Plan and competition locally for the niche offer which the business can provide is limited.

"The future estimates contained within the Business Plan demonstrate an operating profit in future years which would be more than sufficient to cover repayments on a loan of £350,000. Our adjusted figures, shown in Table 3, would also be sufficient to repay the loan, although with less headroom."

- 3.4.8 The review therefore concludes that a £350,000 loan at 5% interest rate can be met by the Plan. Whilst the removal of the £183,000 improvements may have some impact on the Plan, as these largely relate to the structure of the building, the impact is likely to be minimal although Mr Miller believes he will need to find a way of addressing the improvements.
- 3.4.9 Following feedback from officers, Mr Miller undertook further work on the financials included in the business plan. This work can be seen at Appendix 4. To try and provide further confidence as to the rigour of the plan, it breaks the business down into the operation of the pub (known as Stables Bar) and the Manor House (the proposed extension). The plan also stress tests those operations via three scenarios: Sarah Miller incapacitated; 50% reduction in trade; and no income received from the Manor House. The plan purports to be able to support an interest rate of circa 9-10% with risk mitigation also being provided by Mr Miller's income which is not reflected anywhere in the plan.
- 3.4.9 As stated earlier, the company providing the income to service the loan will be Newbold Comyn Arms Limited. It has made large profits in each of the last two years. Members will therefore need to take a view on whether they consider this track record and expansion of the business robust enough to repay the loan and interest noting however, that the loan will be secured by a personal guarantee from Mr & Mrs Miller.

3.5 Recommendation 2.5

- 3.5.1 In addressing this recommendation, Members will first want to consider whether they believe the business plan to be credible. It has been independently reviewed but like any business plan it will come with risk so Members will need to reflect on their appetite for that risk.
- 3.5.2 Should Members believe the plan is sound and wish to consider a loan then they will want to be reassured that the Council has the power to make the loan and that there are no state aid or competition issues.
- 3.5.3 On the first point there is no legal bar to the Council making a loan. The authority to do this is under the General Power of Competence, and further, Councils have power to invest under the Local Government Act 2003.
- 3.5.4 With regard to the 2nd and third points then there are no state aid or completion issues that cannot be negotiated. Initial legal advice states:

"In order to minimise the risk that this loan be deemed state aid, it should be made at a "market rate". It's very difficult to quantify what this rate should be, given that WDC is the landowner.

"Here's some commentary from a recent case that might help you understanding:

"The risk of falling foul of rules on state aid is a risk area in any project which receives public funding. The consequences of unlawful state aid are drastic: the amount paid plus any interest has to be recovered by the state from the recipient.....The case demonstrates how difficult it can be for a claimant to establish that there has been state aid. The court emphasised the wide spectrum of reasonable reactions to commercial circumstances in the private market. This effectively gives a public body a wide margin of judgment when

applying the private investor test. It is only necessary to establish that a hypothetical investor, with the same characteristics as that particular public body, would have made that decision.

"Basically, in coming up with an appropriate rate/terms, WDC should get an independent view in writing, and I'm suggesting your auditors would be good people to ask for this. You should ask them for their professional opinion on what appropriate terms would be for a loan of this type, bearing in mind that the Council is landowner, and also owner of surrounding land."

- 3.5.5 Clearly the interest rate charged would require further consideration but for a loan of £350,000 @ 10% over 20 years, there would be a repayment of £472,217 interest. This can simplistically be compared with current investment returns on £350,000 which if deposited in Equity funds could potentially be averaging 6% i.e. £420,000 in total.
- 3.5.6 Members will wish to note that in supporting NCAL with its application, the Council has already invested £2,750 (including VAT) by commissioning John Ashworth Associates to review the business plan. There has also been significant time spent by Deputy Chief Executive (AJ) on the proposal although the Council's senior officers do not record their time on individual projects so it is not possible to quantify the cost incurred. There has been limited legal and treasury advice costs incurred up to this point with advice on loans being more generic when another matter was being considered. However, should approval for the loan be granted extra cost will be incurred in commissioning legal advice as well as the day-to-day administration of the loan. All these costs can be met from existing budgets and staff resources although there is obviously an opportunity cost of undertaking this work as opposed to doing something else.
- 3.5.6 Should Executive wish to agree the loan then it is recommended that authority is delegated to Deputy Chief Executive (AJ) and Head of Finance, in consultation with the Portfolio Holders for Business and Finance, following the receipt of appropriate advice from Warwickshire County Council's legal officers, to determine the financing and terms (including security) of the loan and ensure that appropriate safeguards are put in place to protect the Council's investment.
- 3.5.7 With regard to payment and administration of the loan it is proposed that this is dealt with in the same way that the Council's RUCIS schemes are managed whereby payment is only made upon receipt of invoices and the whole process is overseen by the Finance Administration Manager.

4. POLICY FRAMEWORK

4.1 Fit for the Future (FFF)

The Council's FFF Strategy is designed to deliver the Vision for the District of making it a Great Place to Live, Work and Visit. To that end amongst other things the FFF Strategy contains several Key projects.

The FFF Strategy has 3 strands – People, Services and Money and each has an external and internal element to it. The table below illustrates the impact of this proposal if any in relation to the Council's FFF Strategy.

FFF Strands		
People	Services	Money
External		
Health, Homes, Communities	Green, Clean, Safe	Infrastructure, Enterprise, Employment
<u>Intended outcomes:</u> Improved health for all Housing needs for all met Impressive cultural and sports activities Cohesive and active communities	<u>Intended outcomes:</u> Area has well looked after public spaces All communities have access to decent open space Improved air quality Low levels of crime and ASB	<u>Intended outcomes:</u> Dynamic and diverse local economy Vibrant town centres Improved performance/ productivity of local economy Increased employment and income levels
Impacts of Proposal		
Improved facility at which people enjoy themselves.	Enhanced the facilities in a much used park.	Investment in business which may lead to increased employment.
Internal		
Effective Staff	Maintain or Improve Services	Firm Financial Footing over the Longer Term
<u>Intended outcomes:</u> All staff are properly trained All staff have the appropriate tools All staff are engaged, empowered and supported The right people are in the right job with the right skills and right behaviours	<u>Intended outcomes:</u> Focusing on our customers' needs Continuously improve our processes Increase the digital provision of services	<u>Intended outcomes:</u> Better return/use of our assets Full Cost accounting Continued cost management Maximise income earning opportunities Seek best value for money
Impacts of Proposal		
Not applicable.	Improved landlord service to one of our commercial tenants.	Improvement to Council asset and increased financial return.

4.2 Supporting Strategies

Each strand of the FFF Strategy has several supporting strategies. The recommendation seeks to contribute to the Council's Medium Term Financial Strategy in delivering increased income and enhancement to a non-operational asset.

5. BUDGETARY FRAMEWORK

- 5.1 The report recommends that should Members agree to advance a loan then the terms of that loan are delegated. In producing the business plan an assumption has been made that a rate of 9-10% is charged. This figure is considerably higher than the rate that would be charged to the Council via the Public Works Loan Board but certainly below what a financial institution would charge an

NCAL. Therefore in determining the rate the Council will need to ensure that it is not irrationally generous and that it provides a reasonable rate of return particularly when set against what the Council could achieve through alternative long term investments and reflects the risks incurred by the Council in loaning the funds and the costs incurred by the Council in arranging and subsequently administering the loan. To comply with State Aid rules, the rate to be charged on the loan is likely to be at the level stated here rather the 5% quoted in paragraph 3.4.6.

- 5.2 Members should also note that should the loan be approved and the building works progress then there will be an enhancement to a Council-owned asset. Whilst no estimated valuation of the improved property has been done at this point, it is undoubtedly the case that the land and buildings would be able to attract a higher rent in the future. The magnitude of the increased value will be sought to inform the interest rate to be charged.
- 5.3 Whilst the terms of the loan would need to be determined, the Millers have stated that they will provide a personal guarantee and possibly a debenture against the company (NCAL).
- 5.4 As the loan would not be for Treasury Management purposes and in accordance with the Council's Treasury Management Policy, the loan would be classified as capital expenditure and should be included within the Council's Capital Programme. From here, it will be necessary to finance the loan. For the sums involved, it is likely to be funded from the Capital Investment Reserve. However, the precise funding should be determined by the Head of Finance as part of reviewing the overall funding of the Capital Programme.

6. **RISKS - On the assumption that the loan is made**

- 6.1 The building works may start but for whatever reason they do not conclude maybe because of cashflow or personal reasons: The financial risks are largely mitigated by the payment of invoices in arrears but a half-built building would cause reputational problems for the Council, and potentially additional costs. The legal agreement around the loan will need to ensure the Council can step in to finish the works and then demand payment from Mr Miller personally.
- 6.2 As it is proposed that Mr Miller undertakes the works himself, the cost of the works may not be accurately reflected in the invoices: There will be significant due diligence before the loan is approved to ensure that the proposed works are in line with industry standard prices.

7. **ALTERNATIVE OPTION(S) CONSIDERED**

- 7.1 The Council could undertake the works itself: This was considered in detail but the Council's procurement policies would mean that Mr Miller would have to compete for the work along with other builders. Whilst superficially this may offer a best value approach, Mr Miller has priced no "developer profit" and other professional services which he will provide into his cost estimates. In reality this will make a competitive alternative bid unlikely.