

FROM: Audit and Risk Manager
TO: Head of Place, Arts and Economy
C.C. Chief Executive
Head of Finance
Arts Manager
Portfolio Holder (Cllr Billiald)

SUBJECT: Catering Concessions
DATE: 22 May 2023

1 **Introduction**

- 1.1 In accordance with the Audit Plan for 2023/24, an examination of the above subject area has recently been completed by Jemma Butler, Internal Auditor, and this report presents the findings and conclusions for information and, where appropriate, action.
- 1.2 Wherever possible, findings have been discussed with the staff involved in the procedures examined and their views are incorporated, where appropriate, into the report. My thanks are extended to all concerned for the help and cooperation received during the audit.

2 **Background**

- 2.1 Catering is provided at a number of Council-owned sites. In most cases, the sites are leased with annual rental income being paid. Some sites, however, are operated as concessions. In January 2019 a three-year catering and events contract was agreed with Complex Development Projects (CDP), the creative quarter development partner. This contract included the catering concessions, essentially making them sub-contracts, with CDP as the main contractor. Previous to this the catering contract was held by Kudos.
- 2.2 Until November 2019 concessions were operated at two of the Council's most prestigious sites - the Royal Pump Rooms (housing the Assembly Rooms and Café) and the Glasshouse in the Jephson Gardens. Since then, after following a formal contract amendment process, the Royal Pump Rooms was removed from the contract. The management of the Assembly Rooms was tasked to the Arts team and the Café was offered as a leasehold. This left the Glasshouse as the only catering concession, where a percentage of their income is paid to the Council.
- 2.3 The concession within the Glasshouse covers day-to-day operations and special events. The provisions governing recharges for premises and equipment service, along with the criteria for determining concession charges, remain unchanged from the previous contract with Kudos.

3 **Objectives of the Audit and Coverage of Risks**

- 3.1 The management and financial controls in place have been assessed to provide assurance that the risks are being managed effectively. It should be noted that the risks stated in the report do not represent audit findings in themselves, but rather express the potential for a particular risk to occur. The findings detailed in each section following the stated risk confirm whether the risk is being controlled appropriately or whether there have been issues identified that need to be addressed.
- 3.2 In terms of scope, the audit covered the following risks:
1. Income due is not collected.
 2. Providers do not provide accounts to allow for monies due to be calculated accurately, or accounts provided have been falsified (where Council income is based on a percentage of sales).
 3. Risk of the contractor / leaseholder defaulting or being unable to offer the service (e.g. through loss of alcohol / premises license) will reflect badly on the Council.
 4. The concessions are not operated under the agreed terms.
 5. Security of Council-owned buildings due to the contractor being a key holder.
- 3.3 These risks, if realised, would be detrimental to the Council with regards to meeting the following corporate objectives, as set out in the Fit for the Future Strategy:
- The provision of catering at Council-owned properties within the district helps to meet the overall objective of the council, i.e. making the district a great place to live, work, and visit.

4 Findings

4.1 Recommendations from Previous Reports

- 4.1.1 The current position in respect of the recommendations from the previous audit reported in October 2020 were also reviewed. Although no recommendations were made, the audit had been given a moderate rating. This was due to there being no change in the controls or outcomes from the previous audit, and because some areas were unable to be reviewed due to concessions being closed as a result of the restrictions in place for the COVID-19 pandemic. As Internal Audit is required to provide a level of assurance, a moderate level of assurance was given.

4.2 Financial Risks

4.2.1 Potential Risk: Income due is not collected.

The previous audits of Catering Contracts reviewed the contracts in place for the concessions so these have not been reviewed again; only where any amendments have been made. Where the café has been changed from a contract to a lease the handover has been reviewed to ensure any outstanding debts and relevant requirements have been considered in the lease and fees.

The contract for the concessions at the Restaurant in the Park and the Café in the Pump Rooms had been transferred from Kudos to Just Inspire. At the time, Kudos owed the Council a large amount. Since then, however, this debt has been written off as legal advice was that it would be uneconomical for the Council to pursue it. Late in 2019 / early 2020 it was recognised that Just Inspire were struggling to make the concession at the café work for them and were having difficulties making payments to the Council. A decision was made to release them from the Café part of the contract and leave them running the Restaurant in Park only.

In January 2020, the Larder, who have the lease for the Aviary in Jephson's garden, took on the Café in the Pump Rooms. Due to the COVID-19 restrictions in place the Café was unable to open until the restrictions were lifted. The concession contract was changed to a lease which was signed in June 2020.

The contract for the Restaurant in the Park has various specifications including a requirement for the caterers to obtain their own insurance for £10 million public liability, employers liability and product liability. The Arts Manager meets with Just Inspire (the contractor) at least quarterly to check that the specifications are being met and reviews documentation on an annual basis. The documentation reviewed includes the insurance certificates, food hygiene certificates and training information and management accounts.

Just Inspire are invoiced for the utilities and the commission based on their income. This is calculated by a member of the Business Administration team. Utilities are invoiced quarterly and commission on a monthly basis.

Commission is calculated as follows: 15% facility hire, 5% food and drink sales and a fee of £150 for hire of the Temperate House. Just Inspire provide monthly spreadsheets showing the income for each event held and a breakdown of the commission owed. The figures can be corroborated against the management accounts reviewed annually by the Arts Manager.

Utilities are calculated using the meter readings for the restaurant sub meters. This includes gas, electricity and mains water. Monthly meter readings are taken by the Facilities Manager or Supervisor and input onto a shared spreadsheet so the business admin team can access them. The meter readings are used to calculate the units used which are then multiplied by the cost per unit. For the electricity and water costs this is straightforward - the gas has to be converted from units used to KWh which is then multiplied by the cost.

Just Inspire also have a payment plan in place for the costs incurred when they also had the café and Assembly rooms in the Pump Rooms. The payment plan is managed by the Purchasing and Payments Team and set up to be paid monthly. No payments have been missed.

There was one quarter identified where the pre-set formula hadn't been updated with the correct cost per KWh resulting in the tenants being undercharged by £41.47 for the gas used. The business admin officer was notified so this could be rectified. The pre-set formula used has also been

updated to take the data directly from the cells rather than the cells and the formula needing to be manually updated. No standing charge is paid by Just Inspire for the electricity; they are only charged for the units used. The electricity meter for the restaurant hasn't worked since an unknown point sometime during September / October 2022. Consequently the bills have been estimated based on previous usage. Invoices issued to Just Inspire are paid within the time frame specified on the document. In most cases the payment is received within days.

Although the Café in the Pump Rooms is now a lease, checks were completed to ensure any debts owed were transferred across and that any charges were in line with the lease. The lease is held by the Larder who also have the lease for the Aviary in Jephson's Gardens. The lease rent for the café in the Pump Rooms is £15,000 per year and the Building Surveyor confirmed that invoices for the lease payments are issued on a monthly basis and that payments are received from the Larder promptly. Meetings are held on a regular basis with the Purchasing and Payments Team to review missed payments so the tenants can be contacted early if they are facing difficulties in paying.

Utilities for the café in the Pump Rooms are invoiced by the Business Admin Officer. Calculated in the same way as the Restaurant in the Park using the meter readings and charging only for the units used, no standard day charge is added. The café is also charged a Climate Change Levy (CCL), based on the floor space. A review of the invoices revealed that the electricity costs and CCL had been calculated incorrectly. Previously the Assembly Rooms and the Café had been billed together but this approach had been carried over to the Larder without removing the Assembly rooms. As the Assembly rooms is run in-house the costs associated with it should not be recharged to the Larder.

Review of the invoices for the financial years 2021/22 and 2022/23 established that the Larder had been over-charged on the utilities for £2,702, as well as the climate change levy for the assembly rooms. The total over-charged could not be confirmed as the auditor didn't review the invoices for the 2020/21 financial year. With the CCL charge the final figure is estimated at circa. £4.5k.

The Arts Manager was made aware of the mistake during the audit so the issue was able to be corrected for the last quarter's bill, which had not yet been issued. Once the full amount overcharged has been calculated the Arts Manager will discuss with the tenant how they wish to proceed i.e. whether to reduce their bill or provide a refund.

A brief review of the Aviary was completed. Although this is now a lease, the review was completed to compare the way the recharges are carried out. There was no evidence to show that the Aviary pays for the utilities through the Council. No recharges are processed and the only payments received for the lease are the lease rent charges. As this is a standalone building the utilities are organised by the tenants and not completed through the Council as a recharge.

No audit recommendation is being made for the recharge issue as the matter was resolved during the audit. However, it does bring into question how

recharges are calculated, managed and monitored across the Council. There are various staff in different teams calculating and issuing recharges with no consistent approach and in the cases reviewed no standard charge is included. Therefore, it will be recommended to SLT that the way recharges are managed should be reviewed so a more centralised approach can be developed ensuring that recharges are completed consistently across the Council.

4.2.2 **Potential Risk: Providers do not provide accounts to allow for monies due to be calculated accurately, or accounts provided have been falsified (where Council income is based on a percentage of sales).**

The commission is not calculated by the Council. Instead the Council relies on Just Inspire to provide completed spreadsheets that detail the breakdown of their income and the percentage due to the Council as commission. Commission is billed on a monthly basis.

No formal accounts are provided with the spreadsheet but are available on request from Just Inspire. The Arts Manager also reviews the approved business management accounts on an annual basis allowing any differences to be highlighted.

The invoices issued to Just Inspire for commission over the last two financial years were reviewed. This confirmed that the commission billed matched that on the spreadsheets provided and that payments were made promptly.

The contract with Just Inspire is the only remaining catering concession so no other commission-based contracts were reviewed.

4.3 **Reputational Risks**

4.3.1 **Potential Risk: Risk of the contractor / leaseholder defaulting or being unable to offer the service (e.g. through loss of alcohol / premises license) will reflect badly on the Council.**

There is no performance bond held as the contract with Just Inspire is a sub-contract between CDP and Holt Solutions (trading as Just Inspire). A performance bond with Just Inspire is not needed as the main contract is with CDP so if Just Inspire failed CDP would be responsible for the contract.

The contract sets out the specifications and the requirements. This includes meeting frequently with the Arts Manager and providing relevant supporting documents when required. The Arts Manager confirmed that various documents are reviewed on at least an annual basis. They include licenses, food certificates and insurance. If complaints or concerns are raised about the restaurant the Arts Manager is able to meet with Just Inspire and help support them.

The Arts Manager had noted that during the pandemic there had been an increase of rats in the park. He raised this with Just Inspire enabling them to put extra controls in place to prevent issues at the restaurant.

There are no contingency plans in place if the catering concession fails. This is because the contract is not with Just Inspire but with CDP who would be tasked to find new caterers.

Meetings are held on a quarterly basis with Just Inspire. This helps to ensure the terms of the contract are being followed and to highlight any issues or concerns.

The risk register includes a risk of failure of the catering and events concessions contract. As this contract is due to expire in January 2024 and plans are being made to renew it as a lease the risk is relevant but only until then. Once the lease is in place the risk of failure of the catering and events is the responsibility of the leaseholder. Although it may impact the Council reputationally as it is in a very public Council property it would in principle be no different to a leaseholder of a shop failing.

4.4 **Other Risks**

4.4.1 **Potential Risk: The concessions are not operated under the agreed terms.**

There are no monitoring measures included in the SAP for the provision of catering. The contract monitoring aspect is referred to in the service overview section and the projects section. The Arts Manager has been assigned responsibility for the support provided to Just Inspire.

The 2019 amendment of the contract includes various details and expectations of the caterers in place at both the pump room café and the restaurant in the park. These include general menu expectations and opening hours. KPIs include prompt service times and food temperatures for the restaurant. The 2020 amendment refers to contract measures but doesn't list them so it can be presumed that they remain the same as in the earlier contract.

The measures have been covered in earlier audits of the subject so haven't been reviewed this time. It has been confirmed that contract meetings are still held frequently and documents checked as specified in the original contract with Just Inspire.

4.4.2 **Potential Risk: Security of Council-owned buildings due to the contractor being a key-holder.**

Just Inspire are key-holders for the park enabling them to have access to and from the restaurant in the evenings when the park is closed to the public. There is no formal agreement in place for this in the contract but an informal arrangement with Green Spaces. Just Inspire are asked to ensure that the building and the park are securely locked up when they leave and follow the park procedures in place when using vehicles within the park. This includes using flashing lights on the vehicle where possible or having staff walk ahead of the vehicle to warn nearby pedestrians.

Access within the park is restricted in the evenings when the park is closed. Just Inspire provide an escort to walk customers to and from the restaurant and the gates. If the area outside of the restaurant is used, only plastic glasses are allowed and staff must check for litter when closing. There are also noise restrictions in place in the evenings. The Green Space Development Officer and the Park Rangers spot-check and report back any issues to the Arts Manager so they can be resolved immediately.

5 **Summary and Conclusions**

- 5.1 Section 3.2 sets out the risks that were being reviewed as part of this audit. Reassuringly, the review did not highlight any significant weaknesses against these risks.
- 5.2 In overall terms, therefore, we can give a SUBSTANTIAL degree of assurance that the systems and controls in place in respect of Catering Concessions are appropriate and are working effectively to help mitigate and control the identified risks.
- 5.3 The assurance bands are shown below:

| Level of Assurance | Definition |
|---------------------------|---|
| Substantial | There is a sound system of control in place and compliance with the key controls. |
| Moderate | Whilst the system of control is broadly satisfactory, some controls are weak or non-existent and there is non-compliance with several controls. |
| Limited | The system of control is generally weak and there is non-compliance with controls that do exist. |

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