



**Open Report on behalf of Andrew Crookham,  
Deputy Chief Executive and Executive Director for Resources**

Report to:	<b>Executive</b>
Date:	<b>08 May 2024</b>
Subject:	<b>Deepings School Leisure Centre</b>
Decision Reference:	<b>I030085</b>
Key decision?	<b>Yes</b>

**Summary:**

The Deepings School, (as edged red in Appendix One) is an Academy managed by the Anthem Trust (AT). The Anthem Trust currently occupy the entire site via a Tenancy at Will from Lincolnshire County Council (LCC) as a precursor to the standard 125-year Academy lease. LCC has a statutory duty to finalise and formalise the Anthem Trust's occupation, via the completion of a 125-year lease.

The Deepings Leisure Centre building is a Council owned property which forms part of the site of the Deepings School (area edged white Appendix One). The granting of the statutory Academy lease has been significantly delayed due to the issues regarding the liability of the leisure centre.

The Deepings Leisure Centre was operated by South Kesteven District Council (SKDC) from 1974 until SKDC ceased its operation in July 2021. A formal decision was made by SKDC in November 2022 to return the asset to LCC. In January 2023, the premises were returned to LCC in a very poor state of repair and a direction of travel is required to prevent the building falling into any further disrepair.

At its meeting on 4 July 2023, the Executive of the County Council approved the seeking of Expressions of interest (EOI) for a third-party purchaser for the Leisure Centre building, having a sustainable and viable business case for the refurbishment and operation of the building as a Leisure Centre.

The Executive also resolved that should a successful third party fail to be found, following an Expression of Interest exercise, the Council would proceed forthwith to demolish the Leisure Centre building.

The purpose of this paper is to report the results of the Expression of Interest Process and seek a final decision from the Executive as to how the Council should proceed regarding the outcome of the EOI process.

**Recommendation(s):**

That the Executive:

1. Approves the funding of £850,000 to the Deepings Community Leisure Centre Community Interest Company (CIC) towards the cost of refurbishment and operation of the Deepings Leisure Centre building as a Leisure Centre, subject to receipt of a sustainable and viable business case for the refurbishment and operation of the building as a Leisure Centre. Such business case should include (but not be limited to) confirmation of the following matters:
  - (a) A robust exit strategy, including assurance that in the event the Leisure Centre becomes unviable, and it is necessary for the Deepings Leisure Centre building to be demolished, the CIC will cover the full costs of demolition and site clearance so that no cost falls to the County Council arising from such;
  - (b) That any bond that the CIC may have secured to cover the costs of (a) above is suitable and affordable;
  - (c) That any major funding contributions detailed by the CIC inclusive of that proposed by South Kesteven District Council, in its business case are committed to, and approved by, those contributors;
  - (d) Any bid by the CIC to the Community Ownership Fund has been approved;
  - (e) That agreement has been reached with the Deepings School on the operating plan of the Leisure Centre to mitigate any potential impacts on the school; and
  - (f) That an experienced provider in leisure centre management, with a sustainable and viable business case for the leisure centre, has been secured to operate the Leisure Centre business.
2. Delegates to the Deputy Chief Executive and Executive Director for Resources in consultation with the Leader of the Council and Executive Councillor for People Management, Legal and Corporate Property authority to determine whether any such business case received from the CIC pursuant to paragraph 1 above is sustainable and viable and take all steps and decisions necessary, including the entering of legal agreements and the updating of the Subsidy Control Act 2022 Principles Assessment , to give effect to paragraph 1 above subject to the funding amount detailed therein not being released until such time as the statutory period for challenge under the Subsidy Control Act 2022 has expired.
3. Approves, subject to determination of a sustainable and viable business case and the provision of funding in accordance with paragraph 2 above and approval from the Anthem Trust (or successor school provider) and Department for Education, the disposal of the freehold of the Deepings Leisure Centre building to the CIC for a consideration of £1.
4. Delegates to the Deputy Chief Executive and Executive Director for Resources in consultation with the Leader of the Council and Executive Councillor for People

Management, Legal and Corporate Property authority to take all steps and decisions necessary, including the entering of legal agreements, to give effect to paragraph 3 above.

5. Approves, following the disposal detailed in paragraph 3 above, the granting of a 125-year Academy lease to the Anthem Trust (or successor school provider) excluding the Deepings Leisure Centre building land on terms otherwise agreed with the Anthem Trust and Department for Education and in fulfilment of the statutory obligation to transfer the site of the school to the Anthem Trust.
6. In the event that a sustainable and viable business case is not received pursuant to paragraphs 1 and 2 above, approves the demolition of the Deepings Leisure Centre building.
7. Delegates to the Deputy Chief Executive and Executive Director for Resources in consultation with the Leader of the Council and Executive Councillor for People Management, Legal and Corporate Property authority to take all steps and decisions necessary to give effect to paragraph 6 above, including determining the terms and approving the award of any contracts associated with the demolition.
8. Approves, following the demolition of the Deepings Leisure Centre building pursuant to paragraph 6 above, the granting of a 125-year Academy lease to the Anthem Trust (or successor school provider) including the Deepings Leisure Centre building land on terms otherwise agreed with the Anthem Trust and Department for Education and in fulfilment of the statutory obligation to transfer the site of the school to the Anthem Trust.

#### **Alternative Options Considered:**

##### **1. Do nothing and maintain the current position**

The Council's statutory obligation to complete the 125-year Academy lease and formalise the Anthem Trust's occupation, can only be achieved once the current issue with the Leisure Centre building is resolved. Maintaining the current position would not solve the issue of the outstanding lease.

This option would also protract the short-term measures which include the Anthem Trust's provision of a "temporary" hall. The Anthem Trust require a permanent solution to fulfil Physical Education curriculum requirements and statutory obligations around examinations.

The Council will continue to hold responsibility for a vacant asset that is deteriorating together with the associated health and safety liabilities and costs.

For the reasons set out above, this option is not recommended.

## **2. Demolition of the Leisure Centre Site**

Demolishing the Leisure Centre would result in the County Council extinguishing all liabilities and associated holding costs of a vacant asset and result in the formalisation of the statutory 125-year academy lease.

It would also however, result in a significant capital outlay and would remove the current opportunity for the facility to be brought back into use for the benefit of the local community of the Deepings. For these reasons, it is not recommended that this option is pursued at this time, however, this option should be considered should the preferred option not be implemented.

## **3. Commence a new Expression of Interest exercise to seek further interest**

The recent Expression of Interest exercise undertaken in Summer 2023 evidenced the limited interest in acquiring, refurbishing and operating the building as a leisure centre, with the receipt of only one bid.

Going back to market a second time, is therefore unlikely to result in positive interest and will almost certainly result in a further delay to determining the direction of travel for the leisure centre building. Consequently, LCC will continue to hold responsibility for a vacant asset that is deteriorating and will result in further costs and ongoing health and safety liabilities.

For the reasons set out above, this option is not recommended.

### **Reasons for Recommendation:**

1. The recommendations seek to ensure that any funding provided by the Council and any transfer of the freehold, is conditional on receipt of a sustainable and viable business case from the CIC for the refurbishment and operation of the Deepings Leisure Centre building as a Leisure Centre. This is consistent with the Executive's previously stated position under its decision of 4 July 2023. Within this, it is necessary that such business case provides particular assurance over the matters detailed and referred to paragraph 1 (a) to (f) of the recommendations in this report. In summary, these include:
  - (a) A robust exit strategy is required to ensure the building will be demolished at no cost to the County Council if the business isn't viable. If the CIC propose to assure this through a bond, it must be both suitable and affordable. Failure to provide this protection may result in the Academy Trust and/or the DfE not being satisfied that the school will not be detrimentally impacted, and therefore may not give agreement to the transfer of the land
  - (b) Confirmation of all funders, including a successful Community Ownership Fund bid is fundamental to enable a sustainable and viable business case.
  - (c) The leisure centre building is located within the school site operated by the current school operator, the Anthem Trust and therefore an operational

understanding and agreement is required to ensure risks such as safeguarding measures are mitigated.

- (d) The CIC secures the services of at an experienced provider in leisure centre management with a sustainable and viable business case for the leisure centre, to operate the Leisure Centre business.
2. Any further delay in determining the direction of travel for the Deepings Leisure Centre would result in potential health and safety liabilities, reputational damage for LCC and additional revenue cost to the Council from a repairs and maintenance perspective.
  3. Subject to the finalisation of the Subsidy Control Act 2022 Principles Assessment, grant funding might only be able to be provided to the CIC on a subsidy control basis that would require the Council to remain involved in reviewing the operation of any future Leisure Centre. Such reviews are in order to ensure that the financial assistance continues to be within the subsidy limit of what is necessary for the CIC to deliver the leisure services plus no more than a reasonable profit. Although this is contrary to one of the principles underpinning the Executive's original decision, namely to relinquish responsibility for the building or its operation, reviewing the service at least once every three years (including at the start and end of the delivery period) is a necessary legal requirement of providing a subsidy for a Service of Public Economic Interest.

Any disposal would be conditional on approval by the Anthem Trust and the Department for Education (DfE). It should be noted that there is no certainty that either the DfE or the Anthem Trust would accept the terms and conditions of such a freehold disposal based on the business plan received.

A decision is required as any further delay in the transfer of the Academy lease to the Anthem Trust further protracts the short-term measures which include their provision of a "temporary" hall. The AT require a permanent solution to fulfil Physical Education curriculum requirements and statutory obligations around examinations. The Council is obliged to complete the 125-year Academy lease to formalise the Anthem Trust's occupation. Further delay continues the Council's liability for the building and compounds the problems of the business case as the costs of refurbishment and operation are likely to rise.

## **1. Background**

The Deepings School, as edged red in Appendix One is an Academy currently managed by the Anthem Trust (AT). The Anthem Trust currently occupy the entire site via a Tenancy at Will from Lincolnshire County Council (LCC) as a precursor to the standard 125-year Academy lease. LCC has a statutory duty to finalise and formalise the Anthem Trust's occupation, via the completion of a 125-year lease.

The Deepings Leisure Centre building is a Council owned property which forms part of the site of the Deepings School (area edged white in Appendix One). The granting of the statutory Academy lease has been significantly delayed by the state of disrepair of the Deepings Leisure Centre and the uncertainty over its future operation as a leisure centre.

The Deepings Leisure Centre was operated by South Kesteven District Council (SKDC) from 1974 until SKDC ceased its operation in July 2021. A formal decision was made by SKDC in November 2022 to return the asset to LCC. In January 2023, the premises were returned to LCC in a very poor state of repair and a direction of travel is required to prevent the building falling into any further disrepair.

At its meeting on 4 July 2023, the Executive of the County Council considered this matter and approved the seeking of Expressions of interest (EOI) for a third-party purchaser of the Leisure Centre building having a sustainable and viable business case for the refurbishment and operation of the building as a Leisure Centre.

The Executive also resolved that should a successful third party fail to be found, following an Expression of Interest exercise, the Council would proceed forthwith to demolish the Leisure Centre building.

In considering this matter, the Executive balanced the ongoing liability of the existing building on the public purse and the aspirations of the local community. Further, in July 2023, the Executive considered two principles:

- that the County Council itself would not operate a Leisure Centre from the site given the condition of the building, coupled with the fact that the County Council has no history or track record in such provision; and
- that the County Council could not continue to carry the liabilities of the building indefinitely.

These principles are considered to still be suitable and have been carried forward into this Report.

### **1.1 Expression of Interest Process**

Following the Executive decision on 4 July 2023, an Expression of Interest (EOI) exercise commenced on 11th August 2023, with a closing date of 22nd September 2023.

The EOI exercise, invited applicants to provide a sustainable and viable business case for the freehold purchase, refurbishment and operation of the building as a Leisure Centre. Applicants were asked to ensure that their plans would not interfere with the running of The Deepings School and were encouraged to consider potential shared use with the school.

Prior to the EOI closing date, a set of criteria was compiled, for evaluation by the internal evaluation panel. The criteria included, funding availability and certainty, experience in refurbishing and operating a leisure centre, a robust exit strategy and willingness to work with the Anthem Trust to mitigate interference with school operations.

One Business Case was received by the closing date of 22<sup>nd</sup> September 2023 from the Deepings Community Leisure Centre Group, incorporated as Deepings Community Leisure Centre Limited Community Interest Company (CIC).

Following an initial evaluation, a second version of the Business case was provided on 14th December 2023 and subsequently evaluated. The CIC was granted further time and invited to submit their final business case with all requested clarifications on or before 5th February 2024. The final business case, together with relevant supplementary documents were submitted by the CIC on 2nd February 2024 and evaluated on 7th February 2024.

## **1.2 Business Case Evaluation Summary**

This section of the report sets out a summary of the Business Case evaluation and identified gaps against the evaluation criteria.

### **1.2.1 Transfer of the Leisure Centre Site and Exit Strategy**

The CIC have made a formal offer to pay the Council a sum of £1 for the freehold transfer of the leisure centre site to enable a full refurbishment of the Leisure Centre property, and to bring it up to an appropriate standard to open and operate.

A freehold transfer would satisfy the County Council's requirements to extinguish all ownership and liabilities, however as owners of a building which is an integral part of a school site and as the local authority with responsibility for education in its area, the Council must have regard to the longer term and the consequences for the school, in particular, of the Leisure Centre proposals failing.

Should the County Council dispose of the freehold land and the CIC fail, in the absence of a robust exit strategy from the CIC, the building could become unused again and fall into disrepair becoming a blight on the school site and the town.

The CIC are therefore required to provide a robust Exit Strategy to ensure the demolition of the building at no cost to the County Council if the viability of the business fails. Failure to provide this protection may result in the Academy Trust and/or the DfE not being satisfied that the school will not be detrimentally impacted, and therefore may not give agreement to the transfer of the land.

The Department for Education (DfE) have advised LCC that to dispose of the leisure centre building as a freehold, and therefore exclude the leisure centre building from the education estate at The Deepings School, LCC would need to apply for the consent of the Secretary of State. This would need to be accompanied by Heads of Terms for the disposal and plans and be supported by the Anthem Trust. To get to the provision of heads of Terms, a viable and sustainable business case is required with a robust Exit Strategy. It should be noted that DfE approval is not guaranteed and can take up to 12 months.

### **1.2.2 Best Consideration**

The Council have a statutory duty under section 123 of the Local Government Act 1972 to ensure best consideration for any land disposal. Taking into consideration, the significant investment the CIC would incur to bring the property back into use, the freehold transfer of £1 would represent best consideration and satisfy this requirement.

### **1.2.4 The Position of the Anthem Trust**

Conversations have evolved and are continuing between the CIC and the Anthem Trust to reach agreement on the operating plan of the Leisure Centre to mitigate any potential impacts on the school. This will include an agreed plan whilst the refurbishment is taking place and when the leisure Centre is operational ensuring any safeguarding risks are addressed. As referenced in section 1.2.1 the Anthem Trust sign off to the exit strategy is crucial.

### **1.2.5 Capital Funding**

The CIC have requested a sum of £800,000 of LCC Capital funding to support the costs of refurbishment. Unsecured funding was also identified to refurbish and refit the leisure centre from sources including South Kesteven District Council (SKDC) (for £850,000) and the Government's Community Ownership Fund. Other potential funding streams were identified mainly from town and parish councils but not yet confirmed or secured.

SKDC considered the funding request at a meeting of its full Council at which it approved the giving of the grant subject to certain conditions and left it for the Council's executive to make the final decision. One of the conditions attached by SKDC was that all other funding has been made available including the County Council's funding.

SKDC's conditions are listed below:

- Any funds would only be released after the statutory period for a potential challenge in accordance with the Subsidy Control Act 2022 has expired.
- Confirmation that the other major funding contributions set out in the Business Plan have been committed and approved by those contributors.
- A satisfactory undertaking of due diligence of the Deepings Community Leisure Centre CIC including a review of their Financial Regulations.
- Evidence that proposed refurbishment works will comply with Building Regulations.
- Completion of transfer of lease or freehold ownership of the site from LCC to the Deepings Community Leisure Centre CIC.
- CIC have entered into an acceptable and formal partnership with a suitable third-party leisure provider.
- Formal agreement with the Anthem Trust regarding terms of use and tariffs for the use of the centre by the Deepings School.
- Robust, final, and affordable quotes for the refurbishment of the centre.

Given that SKDC have not yet reached a final decision it would be sensible, if the Executive were minded to give the grant, that the County Council's grant be made conditional on SKDC approving the giving of its grant. This will ensure that the Building Regulations issues have been assessed by the body responsible for the operation of the Regulations before the County Council gave any money.

Notwithstanding the £800,000 grant funded requested by the CIC, under the circumstances it would be justifiable for the County Council to offer a grant of £850,000 to improve the sustainability and viability of the business case.

Prior to any formal transfer of the leisure centre site, it is fundamental that all other major funding contributions detailed by the CIC in its business case are committed to, and approved by, those contributors.

### **1.2.6 Operating the Leisure Centre**

The CIC have no experience of delivering leisure services and have continued to seek guidance and advice from an experienced leisure operator, who has provided support and



guidance to compile their business case. The leisure operator has expressed their intention to operate the facility on completion of the refurbishment, however, to satisfy the Council, the CIC must evidence that they have secured an experienced provider in leisure centre management to operate the Leisure Centre business.

### **1.2.7 Evaluation Summary**

The Expression of Interest process has identified an organisation with an incredibly strong desire to reopen the Leisure Centre for the benefit of the wider community, and this is evident in the significant effort within the Business Plan and associated documents.

Evaluation of the current Business Plan and supplementary documents have highlighted several issues that require to be addressed as part of any final business case to meet the requirements of both sustainability and viability before any funding could be considered for release and disposal of the freehold completed. These are summarised below:

- A robust exit strategy, including assurance that in the event the Leisure Centre becomes unviable, and it is necessary for the Deepings Leisure Centre building to be demolished, the CIC will cover the full costs of demolition and site clearance so that no cost falls to the County Council arising from such
- That any bond that the CIC may have secured to cover the costs of (a) above is suitable and affordable;
- That any major funding contributions detailed by the CIC in its business case are committed to, and approved by, those contributors,
- Any bid by the CIC to the Community Ownership Fund has been approved.
- That agreement has been reached with the Deepings School on the operating plan of the Leisure Centre to mitigate any potential impacts on the school.
- That an experienced provider in leisure centre management has been engaged to operate the Leisure Centre business.

It is imperative that the Council secures value for money from its policy decision making. The report sets out that issues remain with the CIC bid for the leisure centre, and therefore placing stringent conditions to the subsequent granting of funding seeks to safeguard LCC taxpayer money whilst delivering the policy objective.

## **2. Legal Issues:**

### Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.

- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic.
- Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it.
- Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding.

Compliance with the duties in section 149 may involve treating some persons more favourably than others.

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision-making process.

The Public Sector Equality Duty has been taken into account.

It will be a condition of any disposal that any business case for the operation of a Leisure Centre ensures appropriate access to the facilities for people with a protected characteristic.

The Council has been requested to provide funding to a community group to reopen the Deepings Leisure Centre. As the Council would not be the direct provider of the services going forward an Equality Impact Assessment is not required as the re-opening and operation of the Leisure Centre will be the responsibility of the CIC.

If the Council was considering removing funding, or removing service provision, an Equality Impact Assessment would be necessary. The Council's involvement in this matter is simply as a funder, not an operator.

Joint Strategic Needs Assessment (JSNA and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health and Wellbeing Strategy (JHWS) in coming to a decision.

Consideration has been given to the Joint Strategic Needs Assessment (JSNA) and the Joint Health and Wellbeing Strategy (JHWS) and the recommendations to explore the continuation of leisure centre services on the site has benefits for both the health and wellbeing of the people of the local area.

Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area.

Consideration has been given to crime and disorder and there are not considered to be any implications arising out of this report. Demolition will remove a building which if it is left in its current state would become a magnet for vandalism and anti-social behaviour.

**3. Conclusion**

The Executive is invited to determine the future of the Deepings Leisure Centre building in accordance with the recommendations in the Report.

**4. Legal Comments:**

The Council has the power to adopt the recommended options.

The decision is consistent with the Policy Framework and within the remit of the Executive.

**5. Resource Comments:**

The recommendations set out within the report are for the Council to either grant £850,000 of capital funding to contribute towards the cost of refurbishment and operation of the Deepings Leisure Centre building as a Leisure Centre, or in the event that a sustainable and viable business case is not received, to demolish the Deepings Leisure Centre building at an estimated revenue cost of £1.4m.

The cost of refurbishment could be capitalised, whereas the cost of demolition is expected to require revenue funding due to the works not resulting in an asset. Depending on which option ends up being progressed, there would need to be a revenue or capital contingency bid submitted to enable the works to take place.

In either of the two scenarios considered, the Council would reduce its financial liabilities associated with holding the current site. The ongoing costs currently borne by the Council are unaffordable in the context of the council's financial outlook and not its core business.

## 6. Consultation

### a) Has Local Member Been Consulted?

Yes

### b) Has Executive Councillor Been Consulted?

Yes

### c) Scrutiny Comments

The decision will be considered by the Overview and Scrutiny Management Board at its meeting on 25 April 2024 and the comments of the Board will be reported to the Executive

### d) Risks and Impact Analysis

See the body of the Report

## 7. Appendices

These are listed below and attached at the back of the report

Appendix 1	Deepings Leisure Centre - Footprint
Appendix 2	Subsidy Control

## 8. Background Papers

The following Background Papers within the meaning of section 100D of the Local Government Act 1972 were used in the preparation of this report:

Document Title	Where the document can be viewed
LCC Executive report – 4 July 2024	<a href="#">Agenda for Executive on Tuesday, 4th July, 2023, 10.00 am (moderngov.co.uk)</a>

This report was written by Jayne Sowerby-Warrington, who can be contacted at [jayne.sowerby-warrington@lincolnshire.gov.uk](mailto:jayne.sowerby-warrington@lincolnshire.gov.uk).

# Appendix 1 – Deepings Leisure Centre – Footprint



## **Appendix 2 - Subsidy Control**

1. In coming to a decision, the Council must assess the lawfulness of the proposal in terms of the provisions of the Subsidy Control Act 2022 (SCA) which replaces the State Aid rules.
2. The subsidy under consideration is capital provision in the sum of eight hundred and fifty thousand pounds (£850,000.00) by the Council towards refurbishment costs. There is no commitment in the CIC business plan for any capital layout for acquiring the site and they have since clarified that they are only prepared to pay £1 for the site. The Council therefore must consider the amount of the undervalue in consideration of freehold land transfer for £1, as any undervalue would amount to a further subsidy in addition to the £850,000.00 capital funding.
3. A formal valuation of the site indicates the amount of undervalue for freehold transfer at £1 is zero on the basis that the land has a negative value given that it would cost significantly more to demolish the building than the land would be worth with no building on it . Accordingly, the overall amount which is being assessed against the subsidy control principles is the £850,000 in capital funding to be used by the CIC towards refurbishing the leisure facility.
4. The SCA imposes requirements on a Local Authority when it intends to provide a third party with a subsidy. If these requirements are not complied with then the subsidy will be unlawful and can be challenged in the Competition Appeal Tribunal. In particular, the Council is required to assess the funding request received from the Deepings Community Leisure Centre CIC against the subsidy control principles in Schedule 1 to the Subsidy Control Act. Subject to the caveat in paragraph 18 below. A grant must not be provided if it is inconsistent with these principles.
5. Under Section 33 of the SCA the Council would be required to publish details of the grant on the UK's Subsidy Database within three months of the formal decision to provide it, and to maintain this record for six years or the duration of the subsidy if this is longer.
6. Under Section 70 of the SCA, any interested party who is aggrieved by the making of a subsidy decision may apply to the Competition Appeal Tribunal for a review of the decision. The challenge can be in relation to the Council not complying with the subsidy control requirements in the SCA, or on more general public law grounds, for example that the Council did not behave reasonably or rationally when deciding to provide the grant. If such a challenge was successful the Competition Appeal Tribunal could impose remedies under usual judicial review principles, including an order for the recovery of the unlawful subsidy with interest. The period in which a challenge can be made in relation to the provision of a subsidy is typically one month from the publication.
7. External legal advice has been obtained regarding the Council's subsidy control obligations which has identified the following key factors for the Council's consideration.

### **Is there a subsidy?**

8. A subsidy arises where the following conditions are met:
  - Funding is given directly or indirectly from public resources by a public authority

- It confers an economic advantage on one or more enterprises
  - Benefit is gained by the enterprise receiving the grant over one or more other enterprises with respect to the provision of goods or services
  - The subsidy has or is capable of having an effect on competition or investment within the UK.
9. The advice provided in relation to subsidy control has confirmed that the provision of funding to the CIC, in accordance with the proposal set out in its business case, meets the four above conditions and will therefore qualify as a subsidy.

***What type of subsidy is it?***

10. The advice received is, that as the provision of community leisure activity is typically viewed as an important health and wellbeing benefit for the community, the proposed funding could be considered to be a Subsidy for Services of Public Economic Interest (SPEI).

11. For the Council to designate a service as a SPEI it must be satisfied that:

- The service is provided for the benefit of the public; and
- The service would not be provided, or would not be provided on the terms required by an enterprise under normal market conditions.

12. If a subsidy is in respect of a SPEI this places additional requirements on the Council which must be complied with should the request for funding be granted as detailed in Section 29 of the SCA. The Council will need to:

- Satisfy itself that the amount of the grant is limited to what is necessary for the CIC to deliver the SPEI services, having regard to the income and costs plus no more than a reasonable profit (the “subsidy limit”). Reasonable profits should be assessed through a benchmarking exercise comparing the profits achieved by similar public service contracts which have been awarded under competitive conditions.
- Ensure that the funding is given in a transparent manner which would necessitate a written contract or grant funding agreement which clearly sets out the terms of the subsidy and provides the following information:
  - The SPEI services in respect of which the subsidy is given
  - Details of the CIC as the enterprise which is tasked with providing the services
  - The period for which the services are to be provided
  - The location of the facility itself or geographical location
  - How the amount of subsidy has been determined
  - The arrangements in respect of reviews
  - The steps which may be taken for recovery, for example where the funding is found to be more generous than permitted and part or all of it has to be clawed back.

13. Should a grant be provided, the Council will need to keep the grant under review, at the beginning and end of the subsidy period, and at least every three years in the intervening period, and take steps to recover the grant to the extent that the maximum

permitted subsidy is exceeded. The Council will also need to take steps in accordance with its rights under the grant agreement to recover the grant if the funding is found to be more generous to that permitted and exceed the “subsidy limit”.

14. Although there is an exemption which can be used to provide SPEI grants up to a maximum total of £725,000, the funding requested from the Council exceeds that amount meaning that the steps outlined in this report for ensuring compliance with the subsidy control rules would need to be taken in relation to any balance of the funding in any event.

**Does the proposed subsidy meet the subsidy control principles?**

15. The Council is required to assess the funding request received from the Deepings Community Leisure Centre CIC against the subsidy control principles in Schedule 1 to the Subsidy Control Act and subject to the caveat at paragraph 42 below, the grant must not be provided if it is inconsistent with these principles.

16. The subsidy control principles are as follows:

- A Subsidies should pursue a specific policy objective in order to—
  - (a) remedy an identified market failure, or
  - (b) address an equity rationale (such as local or regional disadvantage, social difficulties or distributional concerns).
- B Subsidies should be proportionate to their specific policy objective and limited to what is necessary to achieve it.
- C Subsidies should be designed to bring about a change of economic behaviour of the beneficiary and that change in behaviour should be (a) conducive to achieving the Council’s specific policy objective, and (b) something that would not happen without the subsidy.
- D Subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy.
- E Subsidies should be an appropriate policy instrument for achieving their specific policy objective and that objective cannot be achieved through other, less distortive, means.
- F Subsidies should be designed to achieve their specific policy objective while minimising any negative effects on competition or investment within the United Kingdom.
- G Subsidies’ beneficial effects (in terms of achieving their specific policy objective) should outweigh any negative effects, including in particular negative effects on (a) competition or investment within the United Kingdom; or (b) international trade or investment.

17. To determine whether a subsidy can be lawfully given the Government has produced an assessment template which outlines the recommended advice to support the provision of a subsidy in terms of:



- Whether it supports a policy objective
- Whether a subsidy is the most appropriate way to address the policy Objective
- What would happen if the subsidy is not provided
- How the subsidy will change the economic behaviour of the beneficiary and achieve something which would not have occurred without it
- Whether the subsidy is proportionate and designed to minimise any negative impact on competition
- Whether any negative effects are outweighed by the positive impact of providing the subsidy

18. For any decision to provide the funding to be lawful, the Council will need to satisfy itself that the funding is consistent with the subsidy control principles. However, where a Council has determined that its Grant will be a subsidy for SPEI, section 29(8) of the SCA provides that the duty on the Council to ensure that its Grant is consistent with the subsidy control principles applies only so far as the carrying out of that duty does not obstruct the carrying out of the SPEI services.

Paragraph 6.18 in the SCA Guidance provides that it is still necessary to assess a SPEI subsidy against the principles, but adds that the subsidy may be given even if it is inconsistent with the principles if requiring full consistency with the principles would prevent the SPEI services from being carried out. A careful record should be kept of the rationale for concluding that it would obstruct delivery of the DLC Facility if the Council were to adjust the terms of its Grant to bring it fully into alignment with the subsidy control principles.

To further justify its decision to provide the Grant in these circumstances, the Council could have regard to the monitoring and recovery provisions that it will include in its grant agreement (as required by section 29) to ensure that an appropriate part of its Grant could be recovered if CIC makes such a good profit from operating the DLC Facility that the full amount of the Council's subsidy is no longer justified.

19. The proposal to provide funding to the Deepings Community Leisure CIC (based on the business case currently available) has been assessed against the Government template and the assessment is attached at Appendix Four to this report. This assessment should be updated prior to any funding being given.

20. Overall there are elements of the assessment that can be assessed positively. The health and wellbeing of the people of the Market Deeping area can be identified as a specific policy objective. The proposed grant funding would change the CIC's behaviour in that the bringing back into operation of the leisure centre would not take place without the Council's funding. The funding is limited to what is necessary to achieve the objective and is not compensating for costs the CIC would meet anyway. At the same time there are some issues.

21. Firstly, it is not easy to see how the policy objective is addressing a market failure or equity rationale. As discussed in the assessment at Appendix Four there are 3 other local authority provided Leisure Centres in South Kesteven as well as private gyms. These other Leisure Centres are within a 9 mile radius of Market Deeping. This does not amount to a failure in the market and does not place the residents of the Market Deeping area at a disadvantage in relation to other areas of the county or even other areas of South Kesteven. It is not therefore possible to easily identify an equity rationale.
22. Secondly the issues with the current business case identified earlier in this Report mean that it is very difficult to say that the proposed subsidy is a proportionate means of achieving the policy objective or that the benefits to be achieved outweigh the impacts on the market. This is because the present business case can give the Council only limited confidence that the giving of the subsidy will lead to the policy objective being achieved. At this point the assessment of the business case and the subsidy control assessment come together and the lack of viability and sustainability within the present business case are significant .
23. It is advisable that the Council should not consider making any payment of subsidy until it has given notice of the formal decision to grant the subsidy and the time period for challenge has expired.