**COUNCIL – 13 DECEMBER 2016**

**14. SPECIAL EXPENSES**

(DoF)

1. **Summary**

1.1 This report reviews the Council’s general and special expenses.

2. **Details**

***Financial Arrangements with Parish Councils - The Principles***

2.1 Financial arrangements with parish councils are specifically aimed at avoiding ‘double taxation’ – the situation where the costs of certain services are charged twice to local taxpayers because the parish provides a service but the district council still charges taxpayers in the parish for the equivalent services it provides elsewhere.

2.2 Double taxation might apply, for example, if the residents of Abbots Langley were to be charged via the Abbots Langley Parish Council precept, for the maintenance of playing fields in the parish (a function performed only by the parish council in that area and paid for only by Abbots Langley parishioners), and for a share of the cost of maintenance of playing fields in the remainder of the district (carried out by the district council elsewhere).

2.3 Guidance provided by the Department for Communities & Local Government suggests that there should be five principles that should govern arrangements between district councils and parish councils:

1. Fairness in the provision and access to services

2. Simplicity to keep operating costs to a minimum

3. Transparency to help understanding

4. Democratic control and accountability to distinguish between funding provided to a parish by the district for a service carried out by the parish and funding raised through the parish precept for services carried out by the parish.

5. Finance should follow function so that where service provision is devolved or transferred from the district to the parish council funding is also transferred with the amount agreed between the councils.

2.4 Prior to the Local Government Finance Act 1992, the Council made grants to parish councils where they carried out a ‘concurrent’ function in their area that would normally have been performed by the district council.

2.5 Other arrangements (that have not been used here) could be support in goods or in kind and agency agreements under S101 of the Local Government Act 1972 or S20 of the Local Government Act 2000 where a parish council acts as an agent for the district in carrying out a task for which it is paid an agreed rate.

2.6 The Local Government Finance Act 1992 provided for different amounts of council tax to be calculated for different parts, e.g. parished and unparished areas, of a district, depending on what, if any, ‘special items’ relate to those parts.

2.7 A special item is an item which relates to only part of a district council’s area. A parish precept is one special item. ‘Special expenses’ are another special item.

2.8 There are five different types of special expense, but the one affecting this district is set out in Section 35(2)(d) which provides that:

“any expenses incurred by a billing authority in performing in a part of its area a function preformed elsewhere in its area by the sub-treasurer of the Inner Temple, the under-treasurer of the Middle Temple, a parish or community council or the chairman of a parish meeting are the authority’s special expenses unless a resolution of the authority to the contrary effect is in force”.

2.9 Three Rivers decided to use the special expenses arrangements because:-

a) they provided fairness, transparency and accountability, and,

b) by reducing the district’s expenditure on grants for ‘concurrent’ services and raising the funding via the parish precept, the district reduced the chances of it being ‘capped’.

2.10 The formation of the new Batchworth Parish Council from 2017/18, gives the opportunity for a fundamental review of Special Expenses including what is included, how costs are apportioned between the parishes and whether the existing methodology is still fit for purpose and flexible enough to incorporate future changes.

***What Should Be Declared As A Special Expense?***

2.11 The parishes are asked each year to declare which services they carry out and a decision is taken on which services to include as concurrent expenditure. The services provided by the parishes and the district do not vary significantly year on year, so the current categories declared as special expenses are still valid.

2.12 The detailed analysis of each category will include an assessment of the services included in the calculation, whether they have changed over time, and whether those changes are correctly reflected in the apportionment of costs.

2.13 The Council currently treats the following services as a special expense;

* Woodlands
* Cemeteries
* Community Halls
* The Centre (South Oxhey)
* Watersmeet
* YMCA Building at Leavesden
* Playing Fields & Open Spaces
* The Aquadrome

***The Calculation and Apportionment of Special Expenses***

2.14 The mechanism for the apportionment of Special Expenses has not changed significantly for some years. It is based on a methodology that has evolved incrementally over time to take account of changing circumstances such as:

* The implementation of new financial information systems
* Organisational restructures within TRDC which affect the way support services are recharged to services.
* The Grounds Maintenance contract being outsourced and coming back in-house
* The outsourcing of Leisure venues to Hertsmere Leisure
* The outsourcing of Leavesden PDU to the YMCA
* The treatment of Watersmeet as a community Hall

2.15 In the first instance, the review addressed the following questions:

* Is the base data correct, showing the true costs of each Special Expense?
* Is the data used to calculate the apportionment percentages correct?
* Are the apportionments being applied correctly between the parishes?
* How will they be affected by the addition of a new parish?

2.16 The review has resulted in the creation of a new fit-for-purpose calculation, taking the best from the old, and reworking it into a more understandable and logical format. **Appendix 1** shows a review of each of the services that are currently treated as a special expense.

***Conclusion***

2.17 Special Expenses is the most appropriate method for avoiding double taxation in Three Rivers District. To abandon this method and replace with either grants or agency agreements would require a detailed review of what concurrent services parishes provide, their costs and levels of service. Agreement would have to be reached between the parishes and the district on the level of service for which grant would be given or agency payments made. It could compromise the parishes’ control over the quality of concurrent services they provide.

2.18 The current method for calculating Special Expenses is basically sound. Analysis of this methodology found that

* Special Expenses are included in accordance with the declaration made to Members.
* The base data was correct, showing the true costs of each Special Expense.
* The criteria for the apportionments between parishes were valid, but in some cases over-complicated for little or no benefit.
* The data used to calculate the apportionment percentages contained a few minor inaccuracies and had not always changed to reflect changing circumstances.
* The apportionment percentages produced from the data were being applied correctly between the parishes.
* The addition of a new parish should only affect the charge to the old unparished area, all else being equal. However, simplifying some of the calculations will lead to minor changes.

2.19 Having agreed the items that are “special expenses” and the areas to which they relate the calculation of the council tax is purely a mathematical exercise. This is set out at **Appendix 2.**

2.20 The Council has approached the parish clerks to ascertain whether the functions the parishes are performing have altered. Some changes have occurred, but none of these affects the calculation of special expenses.

3. **Options/Reasons for Recommendation**

3.1 The recommendation enables the Council to determine the calculation of special expenses.

3.2 In the interests of fairness, the option to resolve that all of the district’s expenses be ‘general’ has been rejected.

4. **Policy/Budget Reference and Implications**

4.1 The recommendations in this report are within the Council’s agreed policy and budgets.

5. **Legal, Staffing, Environmental, Community Safety, Customer Services Centre, Communications & Website Implications**

5.1 None specific.

6. **Financial Implications**

6.1There are no changes to the budget already agreed by Members as a result of this report.

7. **Legal Implications**

7.1 Contained in the report. There has been little case law resulting from the legislation. Any challenge to the Council’s interpretation of the law would be subject to judicial review. The Council would need to demonstrate that it had acted reasonably. This would particularly apply where apportionments are used. There are different bases for apportionments any one of which might be ‘reasonable’ but give a different answer.

9. **Risk Management and Health & Safety Implications**

9.1 The Council has agreed its risk management strategy which can be found on the website at http://www.threerivers.gov.uk.

9.2 The following table gives the risks if the recommendations are agreed, together with a scored assessment of their impact and likelihood:

|  |  |  |  |
| --- | --- | --- | --- |
| Description of Risk | | Impact | Likelihood |
| 1 | There is a successful challenge to the Council’s application of the special expenses provisions of the Local Government Finance Act 1992. | III | F |

9.3 The following table gives the risks that would exist if the recommendation is rejected, together with a scored assessment of their impact and likelihood:

|  |  |  |  |
| --- | --- | --- | --- |
| Description of Risk | | Impact | Likelihood |
| 2 | There is a successful challenge to the Council’s application of the special expenses provisions of the Local Government Finance Act 1992. | III | E |

9.4 The Council has determined its aversion to risk and is prepared to tolerate risks where the combination of impact and likelihood are plotted in the shaded area of the matrix. The remaining risks require a treatment plan.

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Likelihood** | A |  |  |  |  |  | Impact | Likelihood |
| B |  |  |  |  |  | V = Catastrophic | A = >98% |
| C |  |  |  |  |  | IV = Critical | B = 75% - 98% |
| D |  |  |  |  |  | III = Significant | C = 50% - 75% |
| E |  |  | 2 |  |  | II = Marginal | D = 25% - 50% |
| F |  |  | 1 |  |  | I = Negligible | E = 2% - 25% |
|  | I | II | III | IV | V |  | F = <2% |
| **Impact** | | | | | |  |  |

10. **Recommendation**

To Council

10.1 That the Council confirms that it will apply the following resolution for special and general expenses for 2017/18:-

(1) that the following functions being either those provided equally across the district or incurring minimal expenditure be declared general expenses:-

closed churchyards;

allotments;

litter bins;

salt bins;

dog bins;

highways, trees and roadside verges;

seats and shelters;

youth centres;

crime prevention;

land drainage;

footpath maintenance;

footpath lighting;

community arts;

off-street car park maintenance;

street naming;

Dial-A-Ride;

play-schemes

award of grants under Section 137.

cemeteries

YMCA Woodlands building in Abbots Langley

The Centre, South Oxhey

(2) that the following functions are declared special expenses:-

Woodlands (apportioned on the basis of acreage)

*The ranger at Leavesden Open Space costs should no longer be treated as a general expense, and should remain within the Special Expenses calculation in future. 50% of the Arboriculture and Landscape Officers’ costs should be charged to general expenses*

Community halls (including apportionment of Oxhey Hall);

Playing fields and open spaces (excluding water-based activities and maintenance met from commuted sums);

*On the grounds of both materiality and simplicity, the current unwieldy calculation of special expenses should be replaced by a much simpler method based entirely on the Grounds Maintenance contract.*

Aquadrome

*should be treated as 50% general expense and 50% special expense apportioned to the new Batchworth Parish.*

Watersmeet (all costs except the pantomime charged to the unparished area and Batchworth Parish as a community hall. The pantomime is treated as a general expense). *The costs of Watersmeet should continue to be apportioned to both Batchworth and the new unparished area on the basis of population*.

Report prepared by:

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**Data Quality**

Data sources:

Financial Information System

Data checked by: Bob Watson – Head of Finance

Data rating:

|  |  |  |
| --- | --- | --- |
| 1 | Poor |  |
| 2 | Sufficient | 🗸 |
| 3 | High |  |

**Background Papers**

Questionnaires to Parish Councils.

2016/17 Special expenses calculation

Grounds Maintenance Contract

***The recommendations contained in this report DO NOT constitute a KEY DECISION.***

**APPENDICES / ATTACHMENTS**

1. Review of the methodology of charging Special Expenses
2. Extract from the Local Government Finance Act 1992

**APPENDIX 1**

1. **WOODLANDS**

Apportioning woodlands costs by the area of TRDC-run woodland in each parish is probably the most equitable solution. All areas, with the exception of Sarratt, contain TRDC woodlands. Currently, the costs allocated are the net costs in the Trees and Landscapes Cost Centre, after removal of the costs of the Leavesden Ranger, which are treated as a general expense (see below).

Analysis of the current allocations found the following:

1. The table of woodland sizes used to do the calculation was slightly different from the sizes given in the Woodlands Management Plans published in 2012. On the advice of the Principal Landscapes Officer, the more accurate Management Plan figures should be used in future.
2. A small wood which, although in a Rickmansworth Town ward of TRDC, is actually within the boundaries of Chorleywood Parish, was wrongly apportioned to the unparished area. This has now been corrected.
3. The ranger at Leavesden Open Space is charged to the Trees and Landscapes cost centre. His costs are currently treated as a general expense, as they were initially funded from the S106 monies, but this is no longer the case, and the post has responsibilities for other areas such as The Aquadrome. It is recommended that these costs are no longer treated as a general expense, and should remain within the Special Expenses calculation in future.
4. Two Arboriculture and Landscape Officers within the Trees and Landscapes cost centre spend 50% of their time on Tree Preservation Orders and Planning issues. These are not tasks carried out by the parishes and are not, therefore a special expense. It is recommended that these costs should be charged to general expenses.
5. The Aquadrome and several playing fields are included in the woodland table used to allocate net costs in the Special Expenses calculation. The Trees and Landscapes cost centre also has a direct internal recharge to The Aquadrome, and Playing Fields and Open Spaces. This was investigated for potential double counting, but was not a material issue.

The figures have been updated to take account of the recommended changes above, and the old unparished area costs have been split to take account of the new parish.

The effect is minimal in all but the old unparished area where, as most of the woodland lies within the new parish, Batchworth picks up a considerably higher proportion of woodlands costs. This is mitigated by the extra costs being spread over a larger council tax base.

1. **CEMETERIES**

Currently, cemeteries are only charged to the unparished area and Croxley Green, apportioned on the basis of population.

The expenditure on Cemeteries by the District Council is now at a de minimus level. It is therefore recommended that Cemeteries be declared a General Expense.

1. **COMMUNITY HALLS INCLUDING THE CENTRE, WATERSMEET, THE YMCA AND OXHEY HALL**

All the original parishes own, or contribute to a community hall. The old unparished area, however, has no such facility, other than Watersmeet.

Watford Rural and Abbots Langley currently benefit from the net income from Oxhey Hall and the YMCA Building at Leavesden Country Park respectively, which are treated 100% as a Special Expense. Watford Rural also pays a 6.4% contribution towards the costs of The Centre at South Oxhey.

**The Centre**

The Centre at South Oxhey is currently apportioned 93.6% General expense and 6.4% Special Expense charged to Watford Rural based on a historic apportionment.

The Centre is now run as part of the leisure venues contract with Hertsmere Leisure, so cannot be split into the historic component parts. The current contract is up for renewal and the status of The Centre in its present form is under review.

If the centre is rebuilt, the new facility will be directly comparable with the William Penn Leisure Centre, which is treated as a general expense. 6.4% of the current costs is considered to be de minimus. It is recommended that The Centre be treated as 100% general expense.

**Watersmeet**

With the exception of the costs and income for the Pantomime, which is a general expense, Watersmeet is currently charged as a Special Expense in the old unparished area. Previously, when Croxley Green did not contribute to a community hall, they also received a charge for Watersmeet. The charges were apportioned by population in each area.

Geographically Watersmeet sits in the new Batchworth parish. Whilst being run by the District Council, it would be equitable to continue to charge the costs to both Batchworth and the new unparished area apportioned by population. The situation should be reviewed if the new parish were to take over Watersmeet, as the District would then have minimal involvement with Community Halls, and might wish to re-designate them as a General Expense.

**The YMCA (PDU Building)**

This building was transferred to the Council as part of the Leavesden Country Park arrangements. It was originally intended to be a community facility for the benefit of local people, and was, therefore, treated as a community hall in the special expenses calculations.

The building sat unused for several years, until it was leased to the YMCA, who have created a fitness facility and a commercial children’s nursery. The activities within the building do not fulfil the criteria for a community hall, and are more directly comparable with the dry-side of William Penn. It is not run or used by the Council, but is now a commercially let building. On this basis, it is recommended that the income from it should no longer be treated as a special expense.

**Oxhey Hall**

This is a Community Hall, owned by the District, within the Watford Rural parish. The income from the hall is treated as a special expense 100% to Watford rural.

1. **PLAYING FIELDS AND OPEN SPACES**

The apportionment of Playing Fields and Open Spaces is quite complicated. It falls into five parts:

1. **General expenditure**

The majority of the expenditure, including the Grounds Maintenance recharge, is apportioned on the basis of land area in hectares in Appendix C of the 2009 Grounds Maintenance contract (the list and details of locations)

1. **Premises expenditure**

Premises expenditure is apportioned on the basis of number of pavilions, acknowledging the fact that not all sites have pavilions.

1. **Tennis Court Expenditure**

This expenditure is only allocated to the areas that contain tennis courts.

1. **Pitch/Court Hire Income**

The income is only apportioned to the sites that have pitches and courts for hire, on the basis of the number of pitches/courts.

1. **Overheads (internal recharges for support services)**

Internal recharges are apportioned 72% on the GM contract and 28% on pitch income to reflect the nature of the recharge.

Analysis of the current allocations found the following:

1. The grounds maintenance percentages had been created using the full contract and stripping out Cemeteries and The Aquadrome from the old unparished area. As a result of changes in this calculation, the old unparished area would bear too high a percentage of the costs.
2. Additional items mentioned in the text and other appendices did not include measurements. These inconsistencies led to Watford Rural picking up too large a proportion of costs for Oxhey Playing Fields, and other areas, including Chorleywood House Grounds and Leavesden Country Park, picking up too small a charge in comparison to their overall size.
3. Additional sites have been added to the GM schedule since 2009 (eg The Horse Field funded from S106 monies).
4. Premises expenditure was not apportioned to Leavesden Country Park, which does have a pavilion.
5. Changes in pitch numbers and locations have not been reflected in the calculations

The percentages have been recalculated using the original table, adjusted for changes since 2009. In addition, as part of the review, the complicated criteria for the apportionment of costs were compared to apportioning the whole cost centre on the basis of the new Grounds Maintenance percentages alone. Using this simpler method made no material difference to the allocation of the expenses. On the grounds of both materiality and simplicity, it is recommended that the current unwieldy calculation be replaced by this much simpler method.

**Leavesden Country Park**

Leavesden Country Park is part of the calculations above but is treated as a General Expense because S106 monies were given specifically for its upkeep when it was transferred from the Department of Health, so it is not funded from council tax. Currently, there is no problem with this treatment but, if expenditure was not fully funded from the S106 monies, the Council should consider whether all or part of any shortfall should be a Special Expense, charged to Abbots Langley.

**The Aquadrome**

The Aquadrome is a separate cost centre within TRDC accounts and is treated differently for the purposes of special Expenses. Currently, 30% is deemed a General Expense and 70% is charged to the old unparished area. This is a historic split, the basis of which is unclear. It is probably based on a combination of usage figures from a survey many years ago, and a split between wet and dry activities, as water-based activities are specifically excluded from Special Expenses. It needs to be revisited, as The Aquadrome falls entirely within Batchworth Parish. The Ebury recreation ground on Riverside Drive is not part of The Aquadrome, but included within the general Playing Fields and Open Spaces budgets.

Officers have observed that The Aquadrome usage has widened beyond the district boundaries over recent years, as demonstrated by the much higher carpark usage. As a unique facility within the district, it is unreasonable for the old unparished area (or the new Batchworth Parish) to bear 70% of the costs. It is recommended that the charge to the new Batchworth Parish be reduced to 50%.

**APPENDIX 2**

**LOCAL GOVERNMENT FINANCE ACT 1992**

**34.** – (1) This section applies where for any financial year an item mentioned in section 35(1) below relates to a part only of a billing authority’s area; and in this section “special item” means any such item which so relates and “the relevant part”, in relation to such an item, means the part concerned.

(2) The authority shall calculate the basic amount of its council tax for dwellings in a part of its area to which no special item relates by applying the formula –

B – A

T

where –

B is the amount calculated (or last calculated) by the authority under section 33(1) above as the basic amount of its council tax:

A is the aggregate amount of all special items;

T is the amount determined for item T in section 33(1) above.

(3) The authority shall calculate the basic amount of its council tax for dwellings in a part of its area to which one or more special items relate by adding to the amount given by the formula in subsection (2) above the aggregate of the amounts which, in relation to each of those special items, are given by the formula –

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  | S |  |  |  |
|  |  |  |  | TP |  |  |  |

where –

S is (in each case) the amount of the special item;

TP is (in each case) the amount of the authority’s council tax base for the relevant part as calculated by it for the year.

And

**35.** –(1)The itemsreferred to in Section 34(1) above are –

(a) any precept issued to or anticipated by the authority which is or is believed to be applicable to part of its area and was taken into account by it in making the calculation (or last calculation) in relation to the year under section 32(2) above; and

(b) any expenses of the authority which are its special expenses and were taken into account by it when making that calculation

(2) For the purposes of subsection (1) above –

(d) any expenses incurred by a billing authority in performing in a part of its area a function preformed elsewhere in its area by the sub-treasurer of the Inner Temple, the under-treasurer of the Middle Temple, a parish or community council or the chairman of a parish meeting are the authority’s special expenses unless a resolution of the authority to the contrary effect is in force.