

GOVERNANCE AND RESOURCES COMMITTEE
14 November 2019

Report of the Head of Regulatory Services and the Head of Community & Environmental Services

ARC LEISURE MATLOCK – REPAIRS TO MAIN POOL

PURPOSE OF THE REPORT

This report outlines recent problems experienced with the main pool at Arc Leisure Matlock and the actions taken to arrange the necessary repairs. It explains the position relating to responsibility for the problems and seeks approval for the costs to be funded from the District Council's Revenue Budget.

RECOMMENDATION

1. That Council be requested to approve additional expenditure of £11,268.04 as part of the revised estimates for 2019/20.
2. That Freedom Leisure be reimbursed the sum of £11,268.04 (including VAT) from the District Council's Revenue Budget to cover the cost of remedying a latent defect at Arc Leisure Matlock.

WARDS AFFECTED

Matlock All Saints

STRATEGIC LINK

The effective maintenance of the Council's property assets contributes to the aim of ensuring value for money and the aim of providing excellent services as expressed in the Corporate Plan.

BACKGROUND

Under the Leisure Operating Contract from 1st August 2018, Freedom Leisure are responsible for the repairs and maintenance of the 4 Leisure Centre buildings and replacement of lifecycle items (subject to lease arrangements in respect of Bakewell and Wirksworth).

Responsibility for defects within the Council's leisure facilities depends on the origin of those defects. Defects that were identified in the building surveys forming part of the contract and those caused by the contractor will be their responsibility, whereas those defects not identified in the building surveys (known as latent defects) remain the Council's responsibility under the terms of the contract. There are also some items which had either failed or were in fault at the date of the transfer that remain the Council's responsibility (known as transfer defects).

1 REPORT

- 1.1 In March 2019 a section of tiling on the base of the main swimming pool at Arc Leisure Matlock in March 2019 failed. Freedom Leisure informed the District Council of this failure and arranged for the necessary remediation and repair work to be undertaken by their contractors. Freedom Leisure now wish to apply for the cost of the repair and remediation from the Council via a variation notice.
- 1.2 This defect was not identified in the building survey that forms part of the contract and neither is it considered to have been caused by the contractor. As such this defect is considered to be a latent defect and therefore the responsibility of the Council.
- 1.3 The total cost of this defect, including remediation measures, repair works and loss of income amounts to £11,268.04, inclusive of VAT. The details of the claim are as follows:

Description	Cost including VAT
Initial call out 24 March 2019	£1,819.64
Rubber matting – to make safe for continued controlled usage	£319.64
Rectifying works – completed overnight	£7,290.00
Loss of income in relation to swimming gala	£440.76
Additional lifeguarding hours to ensure safety	£1,398.00
Total	£11,268.04

- 1.4 A similar issue relating to defective tiling in the training pool at Arc Leisure Matlock was considered by the Committee in June 2016. At this time the centre was still directly operated by the District Council and the concerns then related to whether the defect could be considered to be due to faulty workmanship and whether the costs could be reclaimed from the contractors who had installed the tiling the first instance. Legal advice was obtained which stated that the civil burden of proof to take action was not met. There was no evidence that the defect was due to faulty workmanship and therefore any attempt to take action to recover costs would be high risk and was also likely to be high cost. It was recommended that this advice be reviewed should any similar defect come to light.
- 1.5 This advice has now been reviewed by the Council's Legal Team, who have indicated that this would again be a very costly claim to pursue, with no direct evidence to prove who was liable. Their recommendation is that the Council should not pursue a claim in this case.

2 RISK ASSESSMENT

2.1 Legal

Legal comments are shown in the body of the report in relation to bringing a claim against the contractors. The failure to carry out relevant repairs could leave the Council liable for damages due to personal injury and thus it is vital that all risk is reduced but repairing and monitoring the tiling in the pools.

2.2 Financial

There is no provision for this proposed expenditure in the revenue budget for 2019/20. The sum of £11,268 has been included in the draft revised estimates for

2019/20 that are to be considered by Council on 21st November. This additional expenditure can be offset by savings made elsewhere in 2019/20. The financial risk associated with the report recommendations is assessed as low.

3 OTHER CONSIDERATIONS

In preparing this report, the relevance of the following factors has also been considered: prevention of crime and disorder, equalities, environmental, climate change, health, human rights, personnel and property.

4 CONTACT INFORMATION

Tim Braund, Head of Regulatory Services, Tel: 01629 761118,
Email: tim.braund@derbyshiredales.gov.uk

Mike Galsworthy, Estates and Facilities Manager, Tel: 01629 761207,
Email: mike.galsworthy@derbyshiredales.gov.uk

5 BACKGROUND INFORMATION

Report to Governance and Resources Committee 9 June 2016

6 ATTACHMENTS

None