
Council

15 July 2014

Name of Cabinet Member:

Policing and Equalities, Councillor Townshend

Director Approving Submission of the report:

Assistant Director for Legal & Democratic Services and Monitoring Officer

Ward(s) affected: All

Title:

Ricoh Arena Judicial Review

Is this a key decision?

No.

Executive Summary:

The Judicial Review brought by Sky Blues Sports & Leisure Limited (and others) against the City Council and Arena Coventry Limited and the Alan Edwards Higgs Charity (as interested parties) was heard in the High Court in Birmingham on 10 – 12 June 2014. Mr Justice Hickinbottom handed down his judgment on 30 June 2014, dismissing the Claimant's application in its entirety. The Claimants have indicated that they will seek permission to appeal the decision. This report seeks authorisation from Members for Officers to defend an appeal in the event permission is granted.

Recommendations:

Council is recommended to authorise the Assistant Director for Legal and Democratic Services, and Assistant Director Financial & Section 151 Officer to:-

- (1) defend on behalf of the City Council any application submitted to Mr Justice Hickinbottom of the High Court for permission to appeal to the Court of Appeal
- (2) defend on behalf of the City Council any application to the Court of Appeal for permission to appeal if leave to appeal is refused by Mr Justice Hickinbottom

- (3) defend the appeal on behalf of the Council if permission to appeal to the Court of Appeal is granted
- (4) to make any consequential applications considered necessary as a result of recommendations (1), (2) and (3)
- (5) update the ACL Shareholder Panel as appropriate on developments as to any appeal and estimates on future costs to be incurred

List of Appendices included:

Judgment of Mr Justice Hickinbottom of the High Court dated 30 June 2014

Other useful background papers:

Judgment of Mr Justice Hickinbottom of the High Court dated 30 June 2014

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

Yes, 15th July 2014

1. Context (or background)

1.1 In April 2013, Sky Blues Sports and Leisure Limited and two other parties within the Sisu Group (the Claimants) commenced Judicial Review proceedings against Coventry City Council as the main Defendant and Arena Coventry Limited (ACL) and the Alan Edward Higgs Charity (AEHC) were interested parties. The Claimants sought to challenge the decision by the City Council on 15 January 2013 to grant a £14.4m loan to ACL in order to protect its interest in ACL and the Ricoh Arena.

1.2 The grounds of challenge to that decision were as follows:

Ground 1 A private investor in the shoes of the Council would not have entered into the transaction on the terms agreed by the Council (or, indeed, on any terms) and; consequently, the transaction was State Aid and not notified to the European Commission in advance. It was therefore unlawful as contrary to EU law;

Ground 2 The decision to make the loan was unlawful as being made in bad faith and/or for an improper purpose, namely gaining control of the Club and forcing a sale to a preferred third party;

Ground 3 The decision to make the loan was outside the discretionary powers of local authorities in the conduct of their financial affairs;

Ground 4 The decision to make the loan was irrational, in that a) the Council took account an irrelevant consideration, namely “the partisan views of the Council’s [then] own Leader and senior officers, whose objective has been to oust the Claimants from the club” and b) the decision to make the loan was legally irrational or perverse, in the sense that there is simply no rational explanation for the Council’s decision to make this loan on the terms that it did and no reasonable authority could have entered into such a transaction.

1.3 At the hearing in June, the Claimants abandoned grounds 2 and 3 referred to above. They sought to add an additional ground ostensibly under the umbrella of ground 4 above, namely that in coming to its decision to make the loan, the Council failed to take into account several material considerations because Officers failed to bring them to the attention of Members.

1.4 The Judgment was handed down on Monday 30 June and a copy is attached at Appendix 1. In relation to State aid, Mr Justice Hickinbottom could not say that the loan extended by the Council to ACL would not have been entered into, on the terms agreed, by any rational private market operator in the circumstances of the case. In his judgment, the transaction fell within the wide ambit extended to public authorities in this area. It was therefore not State aid.

1.5 Mr Justice Hickinbottom refused permission for the Claimants to proceed with the new ground referred to at paragraph 1.3 above because did not consider that there was any arguable force in the Claimants’ arguments on this point. He commended the Officer report considered by Members for being focused and succinct.

1.6 The Claimants arguments that the Council’s decision was irrational could not survive the findings in relation to the other matters, particularly in relation to State aid. Therefore, the application for Judicial Review was refused.

1.7 Following the Judgment the Claimants have publicly indicated to the media that they will be applying for permission/leave to appeal the Judgment. Mr Justice Hickinbottom directed that such an application should be made by 4pm on Monday 7th July 2014 and that any response to the application by the Defendants and/or interested parties should be filed by 4pm on 14th July 2014.

2. Options considered and recommended proposal

2.1 Not to oppose the Claimants' application for leave and any subsequent appeal should such an application(s) be made. This is not the recommended option. In the absence of any submissions by the Council, the Court would still need to consider the Claimants' applications. Therefore it is essential that the Court has before it all of the arguments that are necessary in order for the Council to continue to protect its interest in ACL. Failure to defend any appeal may add weight to the Claimants' case.

2.2 Oppose the application for leave and defend any subsequent appeal (recommended option). The Judgment is very robust and Officers remain confident of the Council's position. It is important that the Council continues to protect its investment in ACL and the Ricoh Arena by continuing to defend any applications made by the Claimants in the strongest possible terms. The recommendations seek delegated authority to the Assistant Director of Legal & Democratic Services and the Assistant Director Finance who is also the Section 151 Officer in this particular matter.

3. Results of consultation undertaken

3.1 It is not necessary for the Council to conduct a consultation in respect of this matter.

4. Timetable for implementing this decision

4.1 The Claimants have until 4pm on Monday 7th July to file their application for permission to appeal the Judgment. The Council have until 4pm on 14th July 2014. Assuming an application for leave is received, the Council will ensure that the directions are complied with. It is not clear how long it will take for the Judge to determine the Claimants' application. The Judge has indicated that if the application is refused, the Claimants will have 14 days from the service of that decision to submit an application for permission to appeal to the Court of Appeal. The matter will then be considered by a single Judge in the Court of Appeal on its papers. If permission is refused at that stage, the Claimants have 7 days to apply for permission to be considered at a hearing by three judges.

5. Comments from Executive Director, Resources

5.1 Financial implications

It is currently difficult to estimate how much it will cost to defend an appeal at this stage but the costs of defending an appeal will need to be met from existing budgets. The Council has incurred substantial legal costs to date in the region of £500,000.00 and will be seeking recoupment of as much of those costs as possible.

5.2 Legal implications

Should an application(s) be made to appeal the decision, the Council will instruct Leading and Junior Counsel to provide advice, guidance and support to the Council to submit its defence and any consequential applications.

6. Other implications

6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?

The recommendations will protect the Council's commercial investment in Arena Coventry Limited.

6.2 How is risk being managed?

The Council is safeguarding its interest in ACL by defending any appeal(s) to the High Court decision. The key risk is that the Claimants' application for appeal is granted and the Council is potentially liable for the Claimants' costs. Alternatively, the Claimants application may fail but the Council does not recover its costs in full. These risks will be managed through reviews of the Council's case and by having regard to advice from the legal team.

6.3 What is the impact on the organisation?

None

6.4 Equalities / EIA

No Public Sector Equality Duty implications arise from the content/recommendations in this report.

6.5 Implications for (or impact on) the environment

None

6.6 Implications for partner organisations?

It will be for ACL and AEHC as interested parties in these proceedings to determine whether they intend to take an active role in defending an appeal by the Claimants.

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