

ANGUS COUNCIL – 21 MARCH 2019

LEGAL CHALLENGE TO A COUNCIL DECISION

REPORT BY THE HEAD OF FINANCE AND LEGAL

ABSTRACT

This report advises that a Petition for Judicial Review has been raised in the Court of Session in respect of the decision of the Council at its meeting on 7 February 2019 to demolish the former Lochside Leisure Centre, Forfar.

1. RECOMMENDATION(S)

It is recommended that the Council notes that:-

- (i) A Petition for Judicial Review has been raised in the Court of Session challenging the decision of the Council, at its meeting on 7 February 2019, to demolish the former Lochside Leisure Centre, Forfar,
- (ii) Edinburgh Agents and Counsel have been instructed to defend the decision of the Council which is the subject of the challenge; and
- (iii) That further reports on this matter will be submitted to the Council as this matter progresses.

2. ALIGNMENT TO THE ANGUS LOCAL OUTCOMES IMPROVEMENT PLAN/CORPORATE PLAN

This report contributes to the following local outcome(s) contained within the Angus Local Outcomes Improvement Plan and Locality Plans:

PLACE

- Safe, secure, vibrant and sustainable communities
- An enhanced, protected and enjoyed natural and built environment.

3. BACKGROUND

The Council, at its meeting on 7 February 2019 considered a report by the Head of Infrastructure Services in respect of the future of the former Lochside Leisure Centre, Forfar (Report 48/19 refers). The draft minute of that meeting records the decision of the Council in respect of that report as the Council:-

- i) confirms that the former Lochside Leisure Centre, Craig O' Loch Road, Forfar, shown outlined on the plan at Appendix 1, is demolished with the Common Good land lying beneath reinstated to extend the park.
- ii) Agrees that the modular building previously used as changing rooms is offered for sale subject to removal by prospective purchasers

On 28 February 2019, officers ascertained that a Petition for Judicial Review had been raised in the Court of Session by Mr Mark Guild and Mr Donald Stewart to challenge the decision of the Council made at its meeting on 7 February 2019 to demolish the former Lochside Leisure Centre.

Judicial Review is a type of court proceeding in which a court reviews the lawfulness of a decision or action made by a public body. Broadly speaking a court may uphold a challenge to a decision of a public body if:-

- a) The decision is perverse or that no reasonable public body would make the decision subject to challenge
- b) In making the decision the public body took into account an immaterial consideration,
- c) In making the decision the public body failed to take into account a material consideration,
- d) The decision is tainted by procedural impropriety; or
- e) The public body erred in law in making the decision

In addition to seeking to quash the decision of the Council to demolish the former Lochside Leisure Centre, the Petitioners sought interim orders to prevent the Council from taking steps to demolish the former Leisure Centre pending resolution of the Petition for Judicial Review. Having received legal advice on the request for interim orders contained in the Petition, it was determined that rather than oppose (and potentially lose) the request to the court for interim orders, the Council undertook not to take steps to demolish the Centre without giving the Petitioners and their solicitors 7 days' notice. On the basis of the undertaking being made to the court, no interim orders were sought. The Petition has been formally served on the Council who have the opportunity to lodge Answers to the Petition and defend the Petition in Court.

The Council has instructed Edinburgh solicitors to deal with this matter and Counsel to provide expert advice, draft Answers to the Petition and act on our behalf in the Court of Session in Edinburgh. At the time of writing this report Counsel's advice on the strength of the Petitioners case has still to be received.

It is estimated that this case may take up to six months for the Court of Session to deal with and make a decision.

Further reports will be submitted to the Council as this matter progresses and as appropriate.

6. FINANCIAL IMPLICATIONS

The costs of defending the Petition for Judicial Review are difficult to quantify but are estimated as costing up to £20,000. This figure can vary significantly depending on how long the case takes to be heard in Court, any requirement for evidence to be lead and the potential requirement for expert evidence. It is normal practice in court processes that the successful party to an action is entitled to the expenses of the action from the losing party and expenses will be pursued where considered appropriate. If the Council is unsuccessful in defending the Petition then it is likely it will be required to meet the expenses of the Petitioners. If the Council is successful in defending the Petition then it is likely the Petitioners will be required to meet the expenses of the Council. The costs to the Council will require to be met from the Infrastructure Services Revenue budget in the appropriate financial years.

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List of Appendices: None