

Not for publication by virtue of Paragraph 16 of Part 4 of Schedule 12A to the Local Government Act 1972 (as amended). The Proper Officer has determined in considering this report that Paragraph 16 should apply, in which case there is no public interest assessment to be made.

REPORT FOR INFORMATION

REPORT TO:	All Members
REPORT NO:	COGC/104/23
DATE:	3 October 2023
CONTACT OFFICER:	Linda Roberts, Monitoring Officer/Chief Officer Governance & Customer and Richard Weigh s151 Officer/Chief Officer Finance & ICT
SUBJECT:	Local Development Plan - Judicial Review Proceedings
WARD:	All

1 PURPOSE OF THE REPORT

To inform Members of the current position in relation to judicial review proceedings and the LDP. In August 2023 legal proceedings were commenced in the name of Wrexham County Borough Council by three elected members without any express or implied power to do so. As a result of legal advice obtained by the Monitoring Officer, all councillors need to be informed of the current position in terms of good governance and transparency in relation to the legal proceedings.

2 INFORMATION

2.1 Members are aware that the LDP was presented to Council on 19 April 2023 and the report included an explanation of the statutory duties and risks in relation to decision making. Council voted not to support the recommendations to adopt. Following that decision, judicial review proceedings (JR1) were commenced by a consortium of six developers against the Council. Judicial review is a challenge to public law decision making and is a procedure for the court to examine a decision of a public body to check whether it acted lawfully and fairly.

2.2 As a reminder, the judicial review application seeks the following orders:

- a) An order that the decision of the Council taken at its Extraordinary Meeting on 19 April 2023 be quashed;
- b) A declaration that the decision of the Council taken at its Extraordinary Meeting on 19 April 2023 was unlawful;

- c) A declaration that the Council's consequential failure to adopt the local development plan on or before 24 April 2023 was unlawful;
 - d) Unless the Council undertakes to comply with the terms of the declaration sought, a mandatory order requiring the Defendant to adopt the local development plan forthwith; and
 - e) An order that the Council do pay the Claimants' costs.
- 2.3 The judge has granted permission for the judicial review application to proceed to a hearing. To be clear, the judicial review claim has not been settled and will proceed to a hearing before a judge. We are currently waiting for the hearing date.
- 2.4 In addition to these judicial review proceedings, on 16 August 2023 Councillors [REDACTED] and [REDACTED] filed a judicial review application (JR2) in court in the name of 'Wrexham County Borough Council'. The judicial review application was against the Welsh Ministers in relation to the LDP, challenging the decision by the Welsh Government not to endorse the 'no' votes by Council. Council officers were not informed at the time.
- 2.5 There is no express or implied power within our Constitution for individual elected members to use the title of Wrexham County Borough Council to commence court proceedings. The proceedings were therefore issued without lawful authority.
- 2.6 The three councillors did not seek advice from council officers on their proposed course of action before instructing an external solicitor to issue proceedings. The external solicitor is not on the Council's framework for legal instructions and has acted against the Council in previous judicial review proceedings representing members of the public. The outcome of the previous proceedings was unsuccessful, with their clients having to pay the Council's costs.
- 2.7 The three councillors also submitted a Notice of Motion for consideration by Council on 27 September 2023, seeking approval of their unauthorised actions in retrospect and for the Council to pay the costs of instructing external legal advisors along with the defendant's (Welsh Government) costs in the event the JR2 application was unsuccessful.
- 2.8 As a result of the JR2 proceedings and the Notice of Motion, the Monitoring Officer sought written advice from King's Counsel. The advice given was clear that under the Constitution only the Chief Officer Governance and Customer/Monitoring Officer has delegated authority:

Executive Functions

*To institute and conduct all civil, criminal and administrative proceedings (including settlement of claims out of Court) and tribunal hearings of a quasi-judicial nature (other than matter specifically delegated to another Officer).
[Constitution Section 13]*

There is no delegation to Members to institute and conduct court proceedings in the name of the Council. The role of the [REDACTED] cannot override an express and unambiguous delegation.

- 2.9 The legal representative of the three councillors has challenged the delegated authority of the COGC to conduct court proceedings. It is correct that the Plan-making in itself (considering the LDP), is a matter for Full Council, hence the meetings in April and June 2023. However, plan-making does not extend to the issuing of judicial review proceedings. As stated above, there is no express or implied power for individual Members to use the title of Wrexham County Borough Council to launch court proceedings. Members are entitled to commence court proceedings in their own names and bear the risks of costs in their own names.
- 3.0 As a result of the Notice of Motion being received, the Monitoring Officer was under a personal duty to prepare a section 5 report for Council. Section 5 of the Local Government and Housing Act 1989 provides that it is the personal duty of the Monitoring Officer to report formally to Council on any proposal, decision or omission by the Council which has given rise to, or is likely to, or would, give rise to the contravention of any enactment, rule of law or statutory code of practice.
- 3.1 The Notice of Motion sought Council approval to endorse the issuing of court proceedings started by the three councillors. It would have been unlawful to make such a decision.
- 3.2 The Notice of Motion was withdrawn before the publication of the Council Agenda and therefore the Section 5 report did not proceed at that stage.
- 3.3 On 27 September 2023 the Monitoring Officer was notified that a Notice of Discontinuance had been served on the Welsh Government. This does not end the three councillors liability for the legal costs of the Welsh Government incurred in dealing with the claim.
- 3.4 Additional officer time has been spent on dealing with the judicial review proceedings filed by the three councillors and the Notice of Motion. Additional legal costs have been incurred by the Council totalling £6500 plus VAT to date.
- 3.5 The role of the statutory officers is to serve the whole Council, not just the 56 elected members. These events have financial and reputational implications for Wrexham County Borough Council.