

**Committee: FULL COUNCIL**

**Date: 15 November 2022**

**Title: Judicial Review**

**Purpose of Report**

For members to receive formal notification of the outcome of the Judicial Review between CPRE (Somerset) and South Somerset District Council

**Recommendation:**

Members to note the report.

**Background:**

1. At the Full Council Meeting on the 17 August 2021 the council passed a resolution: *to allow Ilminster Town Council to be named as the Applicant for the South Somerset Carnival Park in a resubmitted planning application and to issue a letter supporting the ethos and the reasons behind the need for a park to be built by 7 votes for the proposal and 2 Abstentions*
2. As a result an application was submitted to South Somerset District Council for them to consider which they duly did. A meeting of the Area West Planning Committee was held on the 19 January 2022.
3. The outcome was that the Area West Committee passed the application at which point it was then sent to the Chief Executive for her final decision.
4. Following the decision on the 19 January 2022 a request was made to the Department for Levelling up, Housing and Communities for the application to be called in as a result of the decision. A decision by the Chief Executive was not made until the outcome of this request was made known.
5. South Somerset District Council's Chief Executive then passed the Planning application on the 8 April 2022.
6. Following this decision the CPRE (Formerly known as the Campaign for the Protection of Rural England) have decided to launch a Judicial Review request based upon the decision of the application against SSDC, naming both the

Town Council and Dillington Estates as Interested Parties. Documents relating to this have been shared with members of the council.

7. Members of the council were informed on the 21 June 2022 that there had been no confirmation from SSDC as to how they intend to respond to the request for a Judicial Review. They have options open to them but I am unaware as to what options they wish to follow. The outcome of a Judicial review would be either to find that there was no breach in the decision-making process or that there was a breach. If it finds there was a breach the main outcome will be that the application would be sent back to the Committee Stage of the process. Inevitably there will be costs to SSDC and CPRE if the Judicial Review does run its full course.
8. On the 12 July, the Administrative Court office sent to all parties a **Notification of the Judge's Decision on the application for permission to apply for judicial review (CPR 54.11, 54.12).**
9. In the Judge's Decision he made the following orders;
  - i. The application for permission to apply for judicial review is granted.*
  - ii. The application is to be listed for 1 day; the parties to provide a written time estimate within 7 days of service of this order if they disagree with this direction.*
  - iii. The case shall be transferred to the High Court in Cardiff for administration and hearing on the South Western Circuit.*
10. At the meeting on the 19 July 2022 members authorised the clerk to seek some legal advice. This he did in an informal manner and as a result advised members that the correct course of action would be to take Neutral Stance in respect of the JR. A letter was sent to the court on the 21 July informing them of this decision. This letter was copied to members on the day that it was sent.
11. On the 11 August 2022, the court informed all parties that the hearing would take place in Bristol on the 12 October 2022 and that counsel should attend. At the Town Council meeting on the 29 September 2022 members resolved that the Town Clerk should attend the Hearing at Bristol which he duly did.

**Report:**

12. As a result of the hearing on the 12 October Mr Justice Chamberlaine handed down his verdict on the 8 November. This is attached to this report as **Appendix 15A**. Also contained with the report is the Final order as delivered and this is attached as **Appendix 15B**.
13. In his conclusion the judge stated the following:

*For these reasons, the planning permission is vitiated by apparent bias on the part of Cllrs Hamilton and Baker and will be quashed. The District Council will now have to make arrangements to determine the application according to law.*

*This outcome does not reflect adversely on the integrity or professionalism of either councillor. Both councillors declared their interests openly. Neither attempted to hide their associations. Both followed the advice of the Monitoring Officer. That advice flowed from her honest analysis and application of the Code. The Monitoring Officer went wrong in law, as many public decision-makers and most judges do at some point, but was not otherwise at fault.*
14. A request was made to the courts in respect of costs that the council had incurred were included in any settlement but this was rejected for the following reason by the judge.
15. *The Order records appearances at the hearing - i.e. those who made submissions. It is correct to say that Ilminster Town Council did not appear, because they had no legal representative and no-one attending to make submissions on its behalf. The court has no power to award the costs of the Town council's attendance. The power to award costs is limited to the costs of legal representatives or (in certain circumstances) litigants in person. It does not arise where a party makes no submissions and is unrepresented.*
16. Whilst present at the hearing the town clerk made no submission and no request was made for him to do so in line with the position of neutrality that this council undertook in this matter.
17. It is not yet apparent how SSDC will proceed with the application, but the expectation is that they will take the planning application back into their system for further consideration.

## **AGENDA ITEM 15**

18. Any further information will be brought to members attention and if there is a decision to be made by the town council then a report will be submitted for consideration.
19. Members to note the report.

**Mark Tredwin  
Town clerk  
November 2022**