

The Vale of Glamorgan Council

Cabinet Meeting: 31 October, 2016

Report of the Cabinet Member for Regeneration and Education

Library Strategy - Establishing Community Libraries - Rhoose

Purpose of the Report

1. To update Cabinet on the outcome of the hearing of the claim for Judicial Review of the Cabinet's decision taken on 8 February 2016 in respect of the library at Rhoose.

Recommendation

1. That Cabinet considers the judgment of Mr Justice Lewis in respect of a claim for judicial review (heard on 28 and 29 July) of its decision of 8th February 2016 to establish a community library at Rhoose.

Reason for the Recommendation

1. To update Cabinet in relation to the library at Rhoose following receipt of the judgment of Mr Justice Lewis on 13 September.

Background

2. At the Cabinet meeting held on 25 July 2016 (minute reference C3268) Members were updated on the progress made to establish community libraries and with the exception of Rhoose resolved that the deadline of 31 May 2016 for establishing community libraries be revised and delegated authority be granted to the Director of Learning and Skills, or the Head of Strategy, Community Learning & Resources, in consultation with the Managing Director, the Leader and the Cabinet Member for Regeneration and Education to specify the revised deadline for establishing the community libraries at Dinas Powys, Sully, Wenvoe and St Athan. In respect of Rhoose, Cabinet resolved that a further report would be submitted to Cabinet regarding the library at Rhoose to take account of the Order to be made by the Court in the Judicial Review proceedings listed for 28 and 29 July 2016 concerning the library.

Relevant Issues and Options

3. A claim for judicial review of the decision taken by Cabinet on 8th February was issued on the 6 May 2016. On the 3 June 2016 permission was granted to bring the claim for judicial review and His Honour Judge Jarman QC granted the Claimant an interlocutory injunction prohibiting the Respondent Council from entering into any

legal argument for the establishment of a community library at Rhoose pending the outcome of their application. The claim was heard in the High Court on 28 and 29 July 2016.

4. There were initially four grounds of challenge:
 - Ground 1 - it was irrational to determine that the proposed community library at Rhoose would be viable without determining the minimum number of volunteers needed and available, to staff the library.
 - Ground 2 - it is alleged that the Defendant failed to consider the viability assessment prepared by Council officers of the revised business case for Rhoose Library.
 - Ground 3 - it is alleged that the Defendant failed to comply with its duty under section 7 of the Public Libraries and Museums Act 1964 ("the 1964 Act") to provide a comprehensive and efficient library service for all persons desiring to make use of it.
 - Ground 4 - the Claimant contends that the Defendant failed to comply with its duty under section 149 of the Equality Act 2010 ("the 2010 Act") to have due regard to certain matters.
5. In addition, permission was given at the hearing to amend the claim form to enable the Claimant to contend that the Defendant was required by virtue of section 28 of the Children Act 2004 ("the 2004 Act") to have regard to the best interests of the children affected by the decision and failed to do so.
6. The grounds on which the Claimant sought to challenge the defendant Council were rejected by the Court: Mr Justice Lewis's full judgement is provided in Appendix A which is available to view in the Members Room and on the Council's website at the following link:
[www.valeofglamorgan.gov.uk/Documents/ Committee%20Reports/Cabinet/2016/16-10-31/Appendices/Library-Strategy-Establishing-Community-Libraries-Rhoose-Appendix-A.PDF](http://www.valeofglamorgan.gov.uk/Documents/Committee%20Reports/Cabinet/2016/16-10-31/Appendices/Library-Strategy-Establishing-Community-Libraries-Rhoose-Appendix-A.PDF)
7. Ground 1 - the Defendant Council acted irrationally in the way its cabinet at the meeting of 8 February 2016, approached the question of volunteers staffing a proposed community library. The Claimant's case is set out at paragraph 28 of the judgment. The information before the Cabinet is recorded at paragraph 30. The reasons for considering why the approach was not in the Court's judgment irrational is set out at paragraph 31.
8. Ground 2 - The second issue concerned whether the Cabinet had sufficient information to reach a decision. The information before the Cabinet is identified at paragraphs 40 and 41 of the judgment. The reasons why that was sufficient are set out at paragraph 42. It is recognised by the court that more information could have been provided but what was provided was sufficient to enable the Cabinet to reach a decision; this is referred to at paragraph 43 of the judgment.
9. Ground 3 - The third issue concerned whether the Council had properly considered whether its proposals would result in a failure to provide a comprehensive and efficient library service as required by s.7 of the 1964 Act. The Claimant's case is set out in paragraph 44. The information before the Cabinet is identified at paragraphs 50 and 51. The reasons for considering why the Defendant Council would be failing in its duty to provide a comprehensive and efficient library service are identified at paragraphs 52-57.
10. Ground 4 - The fourth issue concerned whether the Council had due regard to the duty imposed on it by section 149 of the 2010 Equality Act. The Claimant's case is

referred to at paragraphs 58, 65, and paragraph 68. The information before the Cabinet is identified at paragraph 63. The reasons why the Cabinet did have regard to its duty under section 149 of the 2010 Act is set out at paragraphs 64, 66-67 and paragraph 70.

11. The fifth issue concerned The Best Interests of the Child. The Claimant's case that the defendant was under a duty to have regard to the best interests of the child as a primary consideration and failed to do so is referred to at paragraphs 71, 72 and 79. The Court's consideration of this issue is set out in the judgment at paragraphs 75-77. The Court's judgment on this issue is set out at paragraph 78 and paragraphs 80-82.
12. On 13 September 2016 in dismissing the claim Mr Justice Lewis went on to consider an application by the Claimant for permission to appeal (to the Court of Appeal) his judgment in respect of the two first grounds relied upon by the Claimant. Permission to appeal was refused. Mr Justice Lewis gave reasons for his decision and recorded that in his view, "neither of the grounds have any real prospect of success. In addition there are no other compelling reasons to grant permission to appeal".
13. On 4th October 2016, the Claimant notified the Council that it had filed a notice of appeal at the Court of Appeal. The Claimant applies for permission to appeal on the following grounds:
 - Firstly, 'The Court erred in concluding that the assessment of the business case in the area of volunteer recruitment was rational';
 - Secondly, 'The Court erred in concluding that the Cabinet were sufficiently informed as to the issue of viability';
 - Thirdly, the Court erred in holding at paragraphs 77-78 that the duty on Welsh local authorities to have regard to the need to safeguard and promote the welfare of children under s.28 of the Children Act 2004 could not be interpreted consistently with the duty on the Welsh Ministers to treat the best interests of the child as a primary consideration in the exercise of their functions under s1(1) of the Rights of Children and Young Persons (Wales) Measure 2011 and article 3 UNCRC'.
 - Fourthly, 'The Court erred in holding at paragraphs 79-80 that it was not necessary to consider whether the Council had treated the best interest of the children as a primary consideration in the event that the library closed, as that is not what the Council had decided to do.
14. A request has been made by the Claimant for urgent consideration of this application.
15. In addition, the Claimant has applied for an order prohibiting the defendant Council from entering into any legal agreement for the establishment of a community library at Rhoose pending the outcome of this appeal unless any such agreement makes sufficient provision for the possibility that the appeal is successful.
16. Members will recall when this matter was considered by them on 8 February 2016, the Claimant had been given permission to appeal part of the judgment of Mrs Justice Elizabeth Laing of 5 November 2015 following a hearing in respect of the Claimant's first claim for Judicial Review of the Cabinet's decision of 9 March 2015 which was heard in the High Court on the 13 and 14 October 2015. This appeal is listed to be heard in the Court of Appeal on the 21 February 2017.
17. In respect of the application to appeal the second judgment of 13 September 2016 the Claimant has applied to the court for the appeal of this matter (subject to

permission being granted by the Court) to be listed to be heard with the current appeal.

18. On the 10 October 2016 the Claimant notified the Council that the notice filed by them on 4 October 2016 seeking permission to appeal the order of Mr Justice Lewis of 13 September 2016 has now been entered in the Court's records.

Resource Implications (Financial and Employment)

19. The Medium Term financial plan considered by Cabinet in September 2016 estimates a savings target requirement over the three year period 2017/18 to 2019/20 of £24.1M, comprising of £7.8 M already identified and £16.3m yet to be allocated. Failure to deliver this level of savings will prevent the Council achieving its required financial strategy. It is recognised that whilst savings from efficiencies will continue to be pursued, realistically, a substantial proportion of the balance will need to be found through the reshaping of Council services.
20. Savings over the two year period 2015/16 to 2016/17 of £16.236M have already been identified which included the estimated savings from the implementation of the libraries strategy.
21. The reshaping of the library service was estimated to deliver savings of £525,000 over 2015/16 and 2016/17. Partial implementation of the library strategy enabled £352k of the savings to be met in 2015/16, and the remaining £173k is dependent on the establishment of community libraries as agreed by Cabinet on 8th February 2016.
22. The Council has incurred a total of £86,040 to date in respect of legal fees for defending the claims for the Judicial Review. (£78,450 was incurred in the 1516 financial year and £7,590 to date in the current financial year). Further costs are anticipated as not all invoices have been received. These costs have and will continue to be met from the Library Fund.

Sustainability and Climate Change Implications

23. The establishment of community libraries will enable the library service to be sustained within reduced funding levels.

Legal Implications (to Include Human Rights Implications)

24. Section 7(1) of Public Libraries and Museums Act 1964 places a duty on a Council to provide a comprehensive and efficient library service for those living and working in its area who wish to use it.
25. The purpose of this report is to update Cabinet on the outcome of the hearing of the claim for Judicial Review of the Cabinet's decision taken on 8 February 2016 in respect of the library at Rhoose.
26. On 13 September 2016 judgment was handed down by the High Court in respect of the claim brought by the Claimant on 6 May for judicial review of the decision taken by Cabinet on 8 February. The claim was dismissed. Permission to appeal was refused.
27. On 4th October 2016, the Claimant notified the Council that it had filed a notice of appeal at the Court of Appeal. A decision in respect of whether the Claimant is to be given permission to appeal is awaited.
28. The Claimant has applied for an order prohibiting the defendant Council from entering into any legal agreement for the establishment of a community library at

Rhose pending the outcome of this Appeal unless any such agreement makes sufficient provision for the possibility that the Appeal is successful.

29. The judgment of Mrs Justice Elizabeth Laing of 5 November 2015 in respect of the Claimant's first claim arising from Cabinet's decision of 9 March 2015 is listed to be heard in the Court of Appeal on the 21 February 2017.

Crime and Disorder Implications

30. There are no crime and disorder implications arising from this report.

Equal Opportunities Implications (to include Welsh Language issues)

31. The Council must comply with the public sector equality duty (section 149 of the Equality Act 2010) when coming to a decision on the proposal to establish community libraries. Section 149 requires the Council to have due regard to the need to:
- Eliminate discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
 - Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - Foster good relations between persons who share a relevant protected characteristic and persons who do not share it: Equality Act 2010 s149 (1).
32. The relevant protected characteristics are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation: section 149 (7) of the Equality Act.
33. Section 149(3) of the Equality Act states that having due regard to the need to advance equality of opportunity involves due regard, in particular, to the need to:
- remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low;
 - the steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
34. Section 149(5) of the Equality Act states that having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding. Compliance with the duties in this section may involve treating some persons more favourably than others.
35. In his judgement of 13 September 2016 Mr Justice Lewis concluded that 'there was no basis for inferring that there was any failure to have due regard to the matters set out in s.149 of the 2010 Act when Cabinet took the decision on 8 February 2016 to establish community libraries.

36. There is no application currently before the Court for permission to appeal the decision relating to the issue of the public sector equality duty.

Corporate/Service Objectives

37. The establishment of community libraries contributes to the corporate objective of valuing culture and diversity and will enable the corporate plan action of working with community partners to deliver a vibrant and diverse library service to be achieved.

Policy Framework and Budget

38. This is a matter for Executive decision.

Consultation (including Ward Member Consultation)

39. An initial public consultation on the future of the library service was carried out between the 12 November and 15 December 2013. Specific consultation on three recommendations resulting from a review of the library service was held between 13 October and 21 December 2014, Cabinet considered the outcome of the consultation at its meeting of 9th March 2015.
40. Consultation with staff and the recognised trade unions has been an integral part of restructuring the service.

Relevant Scrutiny Committee

41. Learning and Culture.

Background Papers

Library Strategy July 2014

Cabinet Report - Library Strategy: Establishing Community Libraries February 8th 2016

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