

Update on Judicial Review Claim – National Park Branding Decision

Report by Solicitor and Monitoring Officer

Summary: This report provides a brief update for members' consideration.

Recommendation: The content of this report be noted.

1 Introduction

- 1.1 Members will be aware that further to the Authority's decision on 23 January 2015 to adopt the brand 'Broads National Park' for marketing purposes, a claim seeking to judicially review that decision was issued. This report is intended to bring members up to date with developments with the legal claim and confirm what will happen next.

2 Background & Update

- 2.1 The background to this Judicial Review claim is that on 23 January 2015, following a lengthy consultation exercise, the Authority resolved by a majority of 11 to 3 to adopt the brand 'Broads National Park' in marketing related purposes. In so resolving, the Authority stressed that this did not involve any change in the legal name or functions of the Authority. It also resolved, in response to issues raised in the accompanying consultation exercise, that it would no longer pursue an aim for the Broads to become a national park in law and that it had no intention of seeking the application of the Sandford Principle to the Broads.
- 2.2 The Claimants, in their pleadings, characterise the Authority's Decision was unlawful, irrational, procedurally unfair and a misrepresentation.
- 2.3 On 13 July 2015, Mrs Justice Patterson refused the Claimants permission to bring judicial review and rejected all of the grounds argued, essentially on the bases set out by the Authority. In light of this, an application renewing their application for permission was lodged and a renewal hearing took place last month.
- 2.4 On 12 August 2015, Mr Justice Singh held that it was arguable that there may be an important point of public law which has not been considered by the courts. There may be a developing doctrine of public law that public authorities have higher obligations placed upon them than private parties, based upon a fundamental concept of fairness and dealing with the public in a plain way. Permission was therefore granted to allow the claim for Judicial Review to be listed for a full hearing.

- 2.5 The latest development is that last week, the Court listed this claim for hearing on 10 and 11 February 2016 before the High Court in London. The hearing is listed to last one and a half days. The Claimants will be represented by Leading Counsel, Mr Gregory Jones QC. The Authority will be represented by Leading Counsel, Mr Nigel Giffin QC. The Authority is currently finalising its further legal submissions and evidence to be relied upon at that hearing. The parties will then both submit skeleton arguments shortly before the hearing in accordance with the Civil Procedure Rules.

3 Financial Implications

- 3.1 On the issue of costs, members are invited to note that at the Renewal Hearing, it was ordered that a costs cap be applied to this claim. This means that should the Authority succeed and be awarded its costs, it would be limited to receiving a contribution of no more than £10,000 from the Claimants. In return, should the Claimants succeed in their claim, they would be limited to receiving a contribution of no more than £35,000 from this Authority. Whilst the cap limits both the recovery and exposure of this Authority, it does not account for the potential legal costs that may be incurred by this Authority in seeking to defend this claim.
- 3.2 At this stage it is not possible to determine the potential legal costs that may be incurred by this Authority in seeking to defend this claim up to and including the hearing next year. As of the renewal hearing, the Authority's costs were estimated to have reached just over £10,000. Any costs will fall within the Authority's Legal budget and should, as expected, those sums lead to an overspend of the Legal budget for 2015/16, any additional sums shall be met from the Authority's national park reserves.

4 Summary

- 4.1 Members shall be provided a further update at the Authority's meeting on 22 January 2016 or as and when appropriate.

Background papers:	None
Author:	Piero Ionta
Date of report:	11 September 2015
Broads Plan Objectives:	None
Appendices:	None