

KENNET DISTRICT COUNCIL

Full Council

APPLICATION FOR UNITARY STATUS – JUDICIAL REVIEW

Report by Mike Rowan, Head of Legal Services

1. PURPOSE OF REPORT

To advise members on the status of a proposed challenge, by way of judicial review, against the Secretary of State for Communities and Local Government

2. FINANCIAL IMPLICATIONS

Costs of challenge are estimated at £50,000 to be split equally between Kennet DC and West Wilts and Salisbury District Councils. Costs are recoverable in the event of successful litigation.

3. RISK IMPLICATIONS

All litigation carries financial and adverse publicity risks.

4. STAFFING IMPLICATIONS

None

5. LEGAL IMPLICATIONS

As outlined in the report.

6. INTRODUCTION

Following the decision that the Secretary of State for Communities and Local Government is minded to allow the bid by Wiltshire CC for Unitary status to go ahead members requested that officers explore any grounds that the Council may have to challenge this decision.

The Head of Legal Services, together with the Leader of the Council and Deputy Leader, Councillor Wilmot, attended a

conference with Counsel in London on 9th August 2007 to seek advice on possible grounds for judicial review.

Members and an officer from West Wiltshire DC (WWDC) and an officer from Salisbury DC (SDC) were also in attendance.

WWDC and SDC have now resolved to join in any proceedings brought.

7. BACKGROUND

Counsel, who is also acting for Shrewsbury in their proceedings which have previously been reported to Council, advised in conference that having considered the individual circumstances of KDC and the Wiltshire bid that we may have several grounds for Judicial Review which are set out below. His view is that ground 1 (below) is strong and has good prospects of success. However, succeeding on this ground alone would not stop the process of Kennet DC being abolished. It was not possible at the conference to give a view of prospects on Grounds 2 – 4 at that stage until further evidence, which was discussed at conference, was collated and assessed.

The legal challenge could be on the following grounds: subject to satisfactory evidence being available;

ILLEGALITY

1. **Secretary of State has no power** to have embarked on this process as the powers she is exercising are contained within a Bill currently before parliament but not enacted (utilising the same arguments as advanced in the Shrewsbury challenge)

FAILURE OF SECRETARY OF STATE TO APPLY HER OWN CRITERIA IN ALLOWING WCC BID TO PROGRESS TO STAGE TWO (MARCH 2007 DECISION) AND THE CONSULTATION PROCESS WAS ONE SIDED, BIASED AND UNFAIR

2. **lack of stakeholder support.** Although the Shrewsbury challenge includes this as a ground we will have to rely on our own local evidence e.g. the MORI poll. Kennet postcard results, and any other evidence of lack of support that can be produced. Having considered the evidence Counsel advised that this is a viable and strong ground for review.

3. **Affordability/vfm.** The Shrewsbury challenge does not include this as a ground but Counsel advised at conference that we should explore the evidence as to whether it was reasonable of the Secretary of State to conclude that the bid met this criteria. Having now considered further evidence supplied to Counsel since the conference he advises that it would be difficult to prove that the Secretary of State acted irrationally in deciding that the WCC bid met the criteria in this regard, and therefore it is not proposed to challenge on this ground.

4. **lack of neighbourhood flexibility.** Again the Shrewsbury challenge does not include this as a ground but Counsel advised that if it can be demonstrated that size was an issue in the assessment of the failed bids e.g. Somerset and North Yorkshire then this argument might have some chance of success. Kennet, WWDC and SDC are exploring the evidence further.

It is important that proceedings are issued before 12th September so that the court can be made aware that other proceedings are in the pipeline when it hears Shrewsbury's case which, in Counsel's view, strengthens the position of the individual Councils.

It is proposed that formal proceedings will be commenced in the week commencing 27th August 2007 and an oral update of the position will be given to Council at it's meeting on 4th September 2007.

7. **RECOMMENDATIONS**

That Council notes the position with regard to the legal challenge and approves the continuation of the proceedings.

