

Our Ref: ORC/05384542-00000004

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5 July 2024

FORMAL LETTER BEFORE CLAIM
PURSUANT TO THE JUDICIAL REVIEW PRE-ACTION PROTOCOL

Dear Sir/Madam

OUR CLIENT: HAYWARDS HEATH COMMUNITY CIC
RESPONSE DATE: 4PM ON 12 JULY 2024

We are instructed by Haywards Heath Community CIC to challenge the ongoing failure by Mid Sussex District Council to make a substantive decision in respect of the future of Clair Hall, a multi-purpose community venue in Haywards Heath.

1. Proposed Defendant

Mid Sussex District Council, Oaklands Road, Haywards Heath, West Sussex, RH16 1SS

2. Proposed Claimant

Haywards Heath Community CIC, 3rd Floor 21 Perrymount Road, Haywards Heath, West Sussex, England, RH16 3TP.

3. Details of the matter being challenged

The Council's ongoing failure to make a substantive decision in respect of the future of Clair Hall, Perrymount Road, Haywards Heath, RH16 3DN.

4. Interested Parties

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We have not identified any interested parties at present. If you consider that there are any interested parties, please inform us of this by return so we can review the position.

5. The issue

Background

The Council is familiar with the background to this matter, including through previous pre-action correspondence and judicial review proceedings in which this firm acted for another Claimant, Simon Kingsley-Young, in respect of its decision-making concerning Clair Hall.

The present issue is the Council's unlawful failure to progress its decision making on the future of Clair Hall with any reasonable promptness.

Clair Hall was built in 1971 as a multi-purpose community venue. Its facilities include a 360 capacity fully equipped theatre with a large main stage, theatre curtains, theatre lighting and three dressing rooms. We understand that notwithstanding the current closure of the venue, these facilities remain intact. The Council is the freehold owner of Clair Hall.

On 19 March 2020, in light of the Covid-19 pandemic and imminent national measures to control the spread of the virus, the Council decided to close Clair Hall on a temporary basis.

When national restrictions eased over summer 2020, Clair Hall was not reopened. On 14 September 2020 the Council decided to close Clair Hall permanently.

On 11 December 2020, Mr Kingsley-Young filed an application for judicial review with the High Court, challenging the Council's decision taken on 14 September 2020.

On 12 January 2021 both parties signed a consent order, which was issued by the court on 13 January 2021, dismissing the claim for judicial review on the basis that the Council made the following undertaking:

"to reconsider the decision of 14th September 2020 "to agree to the continued and permanent closure of Clair Hall with immediate effect", not to rely on the decision as quoted above in any way until such reconsideration has taken place, and to use its best endeavours to complete the reconsideration within six months and not later than 12 months from the date of the order".

On 27 January 2021, a letter before action for judicial review was sent on behalf of Mr Kingsley-Young, challenging an alleged breach of the consent order by the Council. In response, on 10 February 2021, the Council said:

"It is important to note the timescales set out in the Consent Order. The Council is required to, and will, use its "best endeavours" to complete the reconsideration within six months and not later than 12 months from 12 January 2021. Mindful of the fact that the new consultation must be a robust and meaningful exercise, the Council proposed to undertake the requisite feasibility

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studies to identify a range of practicable options for the future use of Clair Hall, and to consult on these within the time frame specified in the Consent Order, or, to be precise, to use its best endeavours to do so.”

From 30 June to 22 September 2021 a public consultation was carried out on the future of Clair Hall. The key findings, as summarised in the consultation report, include:

- *“Among most participants there was a firm recognition that the current site required work to ensure the buildings are fit for purpose. Amongst those who participated, there was a preference to see the site refurbished than redeveloped”*
- *“Strong views were expressed that the future site should be retained in its current use – as a multifunctional community centre and resource”*
- *“Participants who commended on the future use of the site expressed a desire for an arts/entertainment facility”.*

On 20 December 2021, the results of the above consultation were presented to the Council’s Cabinet. They were accompanied by an officer’s report which recommended that the Cabinet develop investment options to include the refurbishment or redevelopment of the Clair Hall site to support the provision of community facilities on the site. This course of action was said to be supported by the results of the consultation (Para 25(a)) and also by the fact that the Council lacked the funds to support a refurbishment or development project itself (paras 30-31). Accordingly, it was recommended that the required feasibility work be carried out to assess the site (para 38) and that the Council *“should soft test the market for any potential redevelopment ideas to understand what could be supported by the market in the post-pandemic environment and would deliver the required community facilities on the site”* (para 37).

The Cabinet made a resolution in accordance with the advice in the officer’s report as follows:

- “(i) Carefully considered the outcome of the most recent consultation and engagement activities about the Clair Hall site (in Appendix 1);*
- (ii) Agreed to develop investment options for the site;*
- (iii) Requested officers to commission specialists to advise on options for the site. This work to be evidenced-based and reported regularly to Cabinet;*
- (iv) Agreed to create a £100k reserve to resource this feasibility work by transfer from General Reserve; and*
- (v) Authorised officers to extend the licence for the NHS to continue to use Clair Hall as a vaccination centre (see para 13-16).”*

On 14 February 2022 the Cabinet resolved, in accordance with advice set out in an officer’s report, to:

- “(i) Establish Clair Hall Members’ Steering Group to oversee and steer work to develop investment options for the Clair Hall site, and*
- (ii) Noted the indicative timeline and progress of the work to date”.*

In terms of indicative timescales, the officer’s report recommended that the Cabinet be presented with an interim report by steering group in approximately July 2022, and that the final report to the Cabinet be presented towards the end of 2022. The officer’s report also observed that the NHS was likely to

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require Clair Hall into the new financial year and that “*Should this use not be needed at any point in 2022 and the Clair Hall will become vacated, the Council will complete the surveying work to inform the development of the investment options as well as assess the level of work required after NHS vacates it*” (paras 22-23).

On 18 July 2022 the interim report was represented to the Cabinet. In accordance with the advice contained in an accompanying officer’s report (informed by a report containing a property review of the site (Appendix A) and a report by BOP consulting on the local cultural landscape (including recommended models for CH) (Appendix B), the Cabinet resolved to:

- (i) *“Note the interim report and the findings contained in the property report and the report of the Lead Advisor;*
- (ii) *Agree the strategic success criteria and the financial context statements in paragraphs 37-42 as the guidelines for consideration of options in the next phase of work;*
- (iii) *Approve the next steps in this work set out in paragraphs 43-48.”*

In terms of next steps, three models were recommended for further exploration, including “*soft market testing*”. These were: (1) refurbishment; (2) development – cultural facilities only; (3) development – cultural facilities plus other uses.

On 17 October 2022 a further report by BOP was presented to Cabinet, along with an accompanying officer’s report. The officer’s report outlines that the Council’s success criteria for the site were positively received by the professionals they were presented to (para 24) but that, in line with BOP’s recommendation, only models (1) and (3) should be taken forward for further exploration. That is because model (2) (development – cultural facilities only) was thought to be unviable, with BOP considering that model (3) (development – cultural facilities plus other uses) was the most likely means of ensuring the provision of cultural facilities on the site while meeting the Council’s key criteria. In line with the BOP report (Appendix B), the officer’s report advised that to take forward models (1) and (3), the Council should next appoint an expert agent or broker to develop the brief which will enable both models to be offered to the market (para 3)).

Accordingly, the Cabinet resolved as follows:

- (i) *“Noted BOP’s final report and carefully considered their recommendations.*
- (ii) *Requested officers commission a specialist broker/agent to develop a briefing pack (as outlined at para 34-36). This will include the process the Council should adopt to progress the preferred models to maximise the opportunity to secure an appropriate cultural anchor tenant / partner for the site.”*

Simon Hope of Montagu Evans was subsequently appointed as the Council’s agent in relation to the Clair Hall site.

In February 2023, Haywards Heath Community CIC wrote to Mr Hope and the Council with its intention to submit a business plan that delivers “Model 1” as outlined in the officer’s report provided to Cabinet on 18 July 2022, and requesting information regarding the bidding process (having heard in the local press that potential providers were being shown around Clair Hall). The Council responded as follows on 15 February 2023:

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- *“Our consultants are currently engaging in soft market testing with experienced cultural providers and other operators and investors they have identified. The aim of this work remains to advise us on the viability of each of the two options we agree to explore, as set out in previous Cabinet reports.*
- *This will enable us to come back to Cabinet in relation to potential next steps in line with the two routes we agreed to explore – specifically looking to either have a brand new building or a significant remodelling of the current building. Our focus remains working to secure an investment partner and cultural anchor tenant who can help us deliver cultural and leisure provision in a modern, fit for purpose venue on the Clair Hall site.*
- *In relation to the ACV process, the rights of community partners to request to be a bidder can only be triggered at the point of the Council serving notice (on itself) of an intention to dispose. This is not the case here and again I would refer to the process we have set out in recent Cabinet papers. In any situation where the Council sought to dispose of any asset of community value it would of course publicise this in accordance with its legal obligations.”*

In May 2023, the political composition of the Council changed, with Liberal Democrat councillors becoming the largest grouping (20 out of 48 councillors) and entering into a minority coalition with Independent councillors, having campaigned on a pledge to refurbish and reopen Clair Hall.

In September 2023, councillors proposed that the Council consider Community Proposals for Clair Hall before proceeding with a developer to demolish Clair Hall and build six 6 storey blocks of flats on the site. A Cabinet Meeting was then held on 11 September 2023 which included Clair Hall on the agenda. It was proposed that the viability of any alternative community proposals should be assessed. This recommendation was unanimously agreed.

In January 2024, Haywards Heath Community CIC was invited to make a presentation on alternative proposals for Clair Hall, and submitted detailed proposals before attending a three-hour session with a panel of five experts. This session lasted for three hours and we are instructed that the meeting ran out of time. A further meeting was requested, at which further information could be discussed. On 26 February 2024, a second session took place with the panel experts.

On 26 February 2024, our client was informed at the second panel meeting, in the presence of Louise Duffield and Council officers, that details of the Council’s next steps would be provided within **seven days**. However, our client has had no substantive response from the Council since that date, despite following up this matter several times, including by emails to Louise Duffield, Director – Resources and Organisational Development at the Council, on 28 March 2024, 19 April 2024, 2 May 2024 and 7 May 2024.

On 7 May 2024, Ms Duffield re-stated her previous position that the Council had waited until after certain local elections (although not for the Council itself) before responding to our client due to “purdah”. It is not accepted that the Council was precluded from making a decision and communicating it to our client from 26 February 2024 until the elections for a Police and Crime Commissioner, East Grinstead Town Council and Burgess Hill Town Council on 2 May 2024. In any event, those elections took place over two months ago and the Council has not (to our client’s knowledge) made a decision as promised within seven days of 26 February 2024, or even promptly after the elections on 2 May (to the extent, which is not accepted, that these were a relevant consideration for the Council).

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At present, Clair Hall is not being used appropriately or, in our submission, lawfully (our clients do not accept that its usage by the NHS (or more accurately Alliance for Better Care CIC) is consistent with the law, but this is not directly in issue in the present case so we do not expand on the point). The Council's ongoing delay in making a decision may lead to deterioration in the condition of the building, which may inhibit its future use as a cultural venue.

On 22 May 2024, the Prime Minister called a general election, which was held on 4 July 2024. We expect the Council will say that announcements in respect of Clair Hall could not be made during that pre-election period. However, as the general election has now taken place, there is no longer any arguable impediment to such an announcement being made.

Relevant law and grounds for challenge

Irrationality due to unreasonable and excessive delay

It is submitted that the delay by the Council in making a decision in respect of the future of Clair Hall since 26 February 2024 has been unreasonable and excessive, such that the Council is acting irrationally in the *Wednesday* sense. Where, as here, a decision has to be taken by a public authority without a specific timeframe, the decision must be taken in a reasonable time; *R (O) v Secretary of State for the Home Department* [2019] EWHC 148 (Admin). Given the timeframe of the decision-making process outlined above, the delay by the Council in making a decision is unreasonable.

In *R (HA (Nigeria)) v Secretary of State for the Home Department* [2012] EWHC 979 (Admin), the court was held that a delay of five months by the Defendant in acting on a recommended transfer of the Claimant to hospital was "*manifestly unreasonable*" (paragraph 172).

In *R (H) v Criminal Injuries Compensation Authority* [2002] EWHC 2646 (Admin), the court held that a delay by the Defendant was "*unreasonable and irrational in the Wednesday sense*" (paragraph 33) in circumstances where it aimed to make a decision within four weeks but in fact took over four months before making requests for further information, for which delay the court held there "*can be no rational explanation*" (paragraph 35).

It is submitted that the circumstances of this case are analogous such that the Council's delay in making a decision in respect of the future of Clair Hall has been unreasonable and irrational in the *Wednesday* sense. Following two lengthy sessions attended by the Claimant with the expert panel in January and February 2024, the Council stated on 26 February 2024 that it would confirm details of the next steps within seven days. Over four months later, the Council has provided no further substantive correspondence.

We note in this regard that the expectation here is not that the Council would make a substantive decision on the future of Clair Hall, but merely provide our clients (and, we presume, other interested parties) with information as to the next steps in the decision making process. There can be no reasonable justification for the Council's failure to do this for over four months.

6. The details of the action that the defendant is expected to take

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Please confirm that the Council will now make a decision on the next steps in respect of the future of Clair Hall and communicate the decision to our clients within seven days of the deadline for responding to this letter (as set under section 10 below), i.e. **by 12 July 2024**.

7. ADR proposals

We confirm that our client is willing to consider any form of ADR the Council proposes, subject to the availability of funding to meet our costs. However, given the discrete and focused nature of the present proposed claim, it seems to us likely that the appropriate way for the litigation to be avoided is simply for the Council to now make and communicate the necessary decision on next steps.

8. The details of any documents that are considered relevant and necessary

In the event that the claim is to be defended, please provide copies of any documents or other evidence on which the Council proposes to rely to defend the claim. Additionally, pursuant to the Council's duty of candour, we request copies of any expert reports on which it relies as part of its decision-making in respect of Clair Hall.

9. Address for reply and service of court documents

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10. Proposed reply date

In accordance with the Pre-Action Protocol for Judicial Review, please provide a substantive response to this letter within 7 days, i.e. **by 12 July 2024**.

This abridgement of the usual time for responses is appropriate in circumstances where the challenge is to unreasonable and excessive delay, and where we have afforded a further 7 days for the substantive response to be provided.

We hope it will not be necessary to issue proceedings in this matter and that the Defendant will now expedite its decision-making process in respect of Clair Hall. We put the Defendant on notice however that if it is necessary to issue proceedings and the matter later settles or is determined in our client's favour, we will seek to recover our client's costs in accordance with the well-established principles summarised in the Administrative Court Guide.

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Yours faithfully



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