

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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Crusaders Football Club's Application [2013] NIQB 68

CRUSADERS FOOTBALL CLUB

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**TREACY J**

**Application**

[1] The applicant is Crusaders Football Club. By this application they seek relief in relation to what is described in the Order 53 Statement as a decision of the Minister and/or the Department of Culture, Arts and Leisure ("DCAL") in a statement dated the 10<sup>th</sup> of September 2012 to redevelop Windsor Park as the National/Regional Football Stadium pursuant to the preferred options within an outline business case prepared by consultants commissioned by the Department of Sport in Northern Ireland by expenditure of public funds totalling in excess of £25 million and the alleged ongoing failure of the Minister and/or the Department to provide the reasons upon which that decision was based. The three primary grounds of challenge in respect of which leave is sought relate to:

- (i) the alleged unlawful State aid in breach of European Union Law;
- (ii) alleged breach of the Competition Act 1998 ("the 1998 Act"); and
- (iii) the failure to provide reasons and an alleged lack of transparency in the decision.

[2] As to the alleged breaches of the 1998 Act I refuse leave. Even if the 1998 Competition Act is engaged the Act itself provides for at least two alternative private law remedies, namely filing a complaint to the Office of Fair Trading and or pursuing an action against the parties who have allegedly breached the applicable Competition Law principles. Moreover, any claim alleging a breach of a so called Chapter 1 prohibition would likely be fact sensitive and may require expert evidence

and discovery. Such fact sensitive disputes are unsuitable for resolution in judicial review proceedings. The primary remedies which Parliament intended should be utilised in such private law disputes are those that I have already identified namely complaint to the OFT and/or a damages claim usually before the Commercial Court.

[3] As to the contention that the alleged agreement constitutes unlawful State aid I am satisfied that the applicant has established an arguable case. DCAL resisted the application on the grounds of alleged prematurity asserting that no final agreement had been reached. It is in my view arguably clear that the Department has made a decision in respect of the funding package to redevelop Windsor Park, build a new stadium at Casement Park and redevelop Ravenhill. Indeed, the Department's website as was pointed out by Mr Girvan on behalf of the applicant states as follows:

“In conjunction with the governing bodies of the three major ball sports in Northern Ireland, the IFA, Ulster Rugby and the Gaelic Athletic Association consultants were commissioned by DCAL/Sport Northern Ireland to complete an outline business case to examine the sports stadium options and other options for meeting their long term needs. The preferred options arising from the OBC have been accepted i.e. the IFA will redevelop Windsor Park, Belfast, the GAA will build a new stadium at Casement Park, Belfast and Ulster Rugby will redevelop its grounds at Ravenhill, Belfast. The Northern Ireland Executive has endorsed a funding package of up to £110 million over the next four years for this purpose. The governing bodies are now working with DCAL to take forward the practical requirements e.g. planning of developing the three stadiums.”

[4] Even if funding arrangements have not been completely finalised or signed off that does not constitute an insuperable barrier to bringing judicial review proceedings. For substantive judicial review purposes the decision challenged does not have to be absolutely final and in this respect the court was referred to the judgment of Lord Steyn in Burkett v Hammersmith and Fulham Borough Council [2002] UKHL 23 at paragraphs 38-40. There is some lack of clarity as to the detail of the funding package and associated arrangements. Indeed, it is this lack of clarity which in large measure grounds the applicant's complaint of lack of transparency. However, the package/decision/arrangements, whatever they may be called, sufficiently crystallised to permit the Department to initiate informal discussions with the European Commission as to whether the impugned arrangements or proposed arrangements constitute State aid. This informal process was itself only triggered after and because of the issues raised by these proceedings. For these reasons I reject the argument that the application is premature. Indeed, from the applicant's perspective if it had delayed further in lodging the judicial review

application and funds were committed, binding arrangements entered into and work commenced on Windsor Park, the applicant would likely have been confronted with a delay and prejudice argument. As it is the IFA who are the notice party in these proceedings contended before me yesterday, erroneously, that the applicant was guilty of delay and that the proceedings were issued outside the applicable time limit.

[5] The court therefore holds that the challenge is not defeated at this stage on grounds of prematurity or delay. Since the Department and the IFA declined to make any submissions at this stage on the substantive merits of the unlawful State aid claim, I grant leave on this aspect. As to the transparency argument the applicant relies upon the principle of effective protection under Community Law which requires national authorities to give reasons for administrative decisions which infringe upon directly effective Community Law Rights so as to enable individuals to properly decide whether to challenge the decisions. In this respect I was referred to pages 187-188 of a book entitled 'Remedies in EC Law - Second Edition' by Mark Brealey and Mark Hoskins. Understood on that basis and not as a traditional common law procedural fairness reason challenge, I am satisfied that this ground is also arguable and grant leave.

[6] For the sake of completeness I should emphasise that the grant of leave says nothing at all as to how the case will ultimately be resolved following the provision and consideration of all relevant evidence and full submissions on all the substantive issues that arise. The grant of leave merely signifies that the case is arguable or worthy of further consideration.