

## **BRIEF TO ADVISE**

### **QUERIST: Belfast City Council**

#### **RE: Call-in under section 41(1) of the Local Government Act (NI) 2014- Newington Football Club**

#### **Introduction**

1. On 3 March 2025, Belfast City Council ('the Council') ratified a decision which had been made by the Strategic Policy and Resources Committee (SP&R) on 21 February 2025, being a decision to apply to the football fund for funding relating to Newington Football Club. The precise nature of the decision is important and I address it further below.
2. On 10 March 2025, the requisite number of members submitted a call-in requisition form, seeking a reconsideration of the Council's decision. The call in is sought under section 41(1)(b) of the Local Government Act (NI) 2014, namely "*that the decision would disproportionately affect adversely any section of inhabitants of the district*" (often referred to as the "community impact ground").
3. Section 41(2) of the Local Government Act (NI) 2014 requires Council standing orders to make provision to obtain an opinion from a practising barrister or solicitor before reconsideration of a decision on requisition made on the community impact ground. I am asked to provide an opinion accordingly.
4. The call in requisition also makes representations as to the proper procedure to be undertaken by the Council in respect of a call-in request. I have provided advice on that matter separately.
5. The requisitioners claim that the decision will disproportionately adversely affect an identified section of inhabitants of the district. In considering that matter, it is necessary to consider:

- i) The nature of section 41(1)(b).
- ii) The nature of the decision which was made.
- iii) The impact the decision will have.

**The nature of section 41(1)(b)**

6. Section 41(1) provides:

*“Standing Orders must make provision requiring reconsideration of a decision if 15 per cent of the members of the council (rounded up to the next highest whole number if necessary) present to the clerk of the council a requisition on either or both of the following grounds-*

- (a) That the decision was not arrived at after a proper consideration of the relevant facts and issues;*
- (b) That the decision would disproportionately affect adversely any section of the inhabitants of the district.”*

7. Ground 41(1)(b) therefore contains a number of elements. There must be (i) an adverse impact; (ii) this must be on a specified section of the inhabitants of the district; and (iii) the impact on them must be disproportionate.

8. Test (ii) can be addressed briefly and so I consider it now. The requisition states the section of inhabitants of the district which is adversely affected by the decision to be *“The Protestant, Unionist and Loyalist community and the community, of all backgrounds, who are resident in North Belfast”*.

9. Standing Order 48(4) defines the *“section of the inhabitants of the district”* for the purposes of Section 41(1)(b) of the Local Government (NI) Act as being:

*“any section of the inhabitants that is clearly identifiable by location, interest or other category including those categories [identified] in section 75(1) of the Northern Ireland Act 1998.”*

10. I consider that element (ii) is plainly met given the identifiable location and community background explained by the requisitioners.

11. I turn now to consider elements (i) and (iii) above. In respect of both elements, I recall that the language used by the statute is “*that the decision would disproportionately affect adversely any section of the inhabitants of the district*”. I emphasise the words “*the decision*” in this context because I consider that the focus must be on the actual effect of the decision made by the Committee. In order to determine that, it is necessary to consider the precise nature of the decision.

12. Before turning to do so, I remind myself the principle of proportionality requires a balancing of between the objective of an action with the means used to achieve it, as well as the consequences of the action. There are well established legal tools to analyse the proportionality of a measure. The concept of proportionality, in the legal context, has been imported from jurisprudence European Convention of Human Rights. The essence of the concept in that context is that any interference with Convention rights must be proportionate to the legitimate aim pursued. In that context, the following questions are asked:

- i. Is the objective sufficiently important to justify limiting a fundamental right?
- ii. Are the measures designed to meet the objective rationally connected to it?
- iii. Are the means used no more than necessary to accomplish the objective

*(de Freitas v Permanent Secretary of the Ministry of Agriculture, Fisheries, Lands and Housing [1999] 1 AC 69)*

13. *In Azienda Agro-Zootecnica Franchini Sarl v Regione Puglia* Case [C-2/10](#))  
EU:C:2011:502, [2011] ECR I-6561, the CJEU said proportionality:

*“requires that measures adopted by Member States in this field do not exceed the limits of what is appropriate and necessary in order to attain the objectives*

*legitimately pursued by the legislation in question; where there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued ...”<sup>1</sup>*

14. Whilst proportionality has its genesis in European law, it is a concept which is has been utilised by the UK courts in assessing the domestic lawfulness of decisions of public authorities (see for example *Pham v Secretary of State for the Home Department* [2015] UKSC 19). I therefore approach my assessment of the proportionality of the adverse impact in this case with these foundational principles in mind.

#### *The nature and effect of the decision*

15. Whilst the call-in request relates to the decision of the Council made on 3 March 2025, that was not the first time the Council considered this issue. The issue was considered at a total of 5 meetings at Committee and full Council. The decision which the Committee and then the Council was being asked to make evolved over time. The procedural background is therefore important and I set it out below.
16. The matter was first placed on the agenda of the Council’s Strategic Policy and Resources Committee (SP&R) on 27 January 2025. The minute of the meeting records that the Committee agreed to deferred decision on the matter to a special meeting scheduled for 31 January 2025.
17. The matter duly returned to the agenda of the SP&R committee on 31 January 2025. A report, prepared by the Strategic Director of City and Neighbourhood Services was considered by the Committee. The report informed members of “*a request from Newington Football Club to provide a letter of support for a potential new home pitch within Belfast to enable their application to the Football Fund*”. The report outlined 3 options for the Committee. Option 3 involved the use of Ballysillan Playing Fields as part of a grounds share between Ballysillan Swifts and Newington FC. It stated:

---

<sup>1</sup> *Azienda Agro-Zootecnica Franchini Sarl v Regione Puglia* , at [73]

*“In terms of Ballysillan Playing Fields, work is due to start this month as a part of a major multi-million transformation under the Urban Villages Programme. In addition to other on-site improvements, this investment will provide a Championship/Premier Intermediate standard floodlit 4G football pitch on the side of the current bowling pavilion. The current planned infrastructure, which has already been subject to public consultation and has received planning permission, is sufficient to meet the standard required by Newington as a championship team. Should Newington be awarded funding under the Football Fund then further enhancements such as additional spectator seating etc could be considered at that stage.*

*The Urban Villages business case for this site, identified Ballysillan Swifts as one of the priority users of the pitch and it might therefore be possible to operate a ground share option with these two anchor clubs (as is current practice at Malgrove and Marrowbone) with any remaining slots being allocated to other clubs/users. It is proposed that such a model would operate equally on a 50/50 basis with each club receiving the same allocation of pitch hours per week based on their needs.”*

18. The minute records the decision of the Committee as follows:

*“That the Committee agrees to provide a letter of support to Newington Football Club in relation to a new home pitch, in principle, at Ballysillan Playing Fields to enable its application to the Football Fund.”*

19. As is usual course, the minutes of the SP&R Committee were placed on the agenda of the next Council meeting, which took place on 3 February 2025. The Chief Executive advised the Council that a procedural call in was received in relation to this matter. There ensued lengthy discussion by Council members about the validity and correctness of the call-in request. The Chief Executive also explained that he had received correspondence which outlined that Newington FC was unable to act as the applicant. In the course of discussion, Councillor Murphy proposed an alteration to the minute of the SP&R Committee, namely that under the heading *“Newington Football*

*Club” the minute would be amended to provide that the Council would be the applicant to the Football Fund, subject to due diligence. That proposal was voted on and carried.*

20. The matter was then placed on the agenda of the SP&R Committee again on 21 February 2025. A further report was prepared by the Strategic Director of City and Neighbourhood Services. It records:

*“3.1 At its meeting of 3<sup>rd</sup> February, Council agreed to act as the applicant to the Football Fund in respect of Newington Football Club in order to bid for the associated costs of establishing a home pitch for the club at Ballysillan Playing Fields. The decision was subject to due diligence and further work by officers.*

*3.2 Since this decision, further conversations have taken place with some elected members, Ballysillan Swifts FC and Newington FC and a second option with the Ballysillan Playing Fields is now also presented for consideration.*

*3.3. The first option, which involves upgrading the new 4G pitch, provided under the Urban Villages investment, to the standard required by Newington FC at an estimated cost of £500k. This option would see the facilities used on a shared basis by Ballysillan Swifts and Newington FC. Whilst this option is possible, it is clear that Ballysillan Swifts are not in agreement with this proposal particularly in relation to Saturday matchday use, instead believing that they should be able to use this pitch as a home pitch every Saturday alternating between their first and second teams.*

*3.4 In addition to this option, Officers have completed some initial work on a second option for members consideration which would see a grass pitch at the playing fields developed to the standard required by Newington FC. A high-level estimate would suggest that an investment of approx. £750k would be required on the basis that the pitch would remain a grass pitch predominantly for matchday use. This investment would include fencing, floodlighting, turnstiles etc with the existing changing pavilion*

*being utilised. Planning permission is currently not in place for this development but that is not an inhibitor to the Football Fund application.*

*3.5 Newington FC are also agreeable to Option Two and council officers are further committed to working with the club to find additional training slots within council estate (potentially at the adjacent leisure centre pitch once capacity opens up following the decant of Ballysillan Swifts). This option is a more favourable option for Ballysillan Swifts. It should be noted that both options and particularly Option Two, will require agreement from Urban Villages and therefore following committee decision, Officers will formally engage with UV to seek their views/agreement. Option Two may require agreement to 'flip' a planned event space and a planned football pitch so that the football pitch is closer to the changing pavilion."*

21. The minute records that the SP&R Committee agreed *"to proceed with option 2 as set out in the report."*
22. On 3 March 2025, the Council ratified the minute of the SP&R Committee of 21 February 2025.
23. The effect of the Council's decision will be that the Council will apply to the Football Fund to pursue option 2, as described in the report presented to SP&R Committee on 21 February 2025. Funding is not guaranteed. It is also recorded that option 2 will require agreement from Urban Villages and that planning permission is currently not in place for this option. Therefore, it may be that the project does not come to fruition, in which case the fears set out in the requisition for call in will not materialise and no adverse impact will occur. To a large extent, the alleged impacts contended for by the requisitioners call for speculation as to what the impact might be in future. Arguably, the need for such speculation alone may mean that the matter does not demonstrate the disproportionate community impact required by section 41(1)(b).
24. Nonetheless, for the sake of providing a full analysis of this matter and assuming, *arguendo*, that a funding bid is successful and Urban Villages agree to the amended

project and planning permission is granted, the outcome will be the teams will use separate pitches at the same wider facility. It is evident that when this was initially discussed by the Council, the proposal would have resulted in the 2 clubs sharing the same pitch. However, the decision evolved and ultimately, the proposal would result in both teams will use separate pitches in the wider facility.

25. It is evident from representations made by some Members in Council that this decision may result in Ballysillan Swifts FC attaining something different to what they were “promised” or expected to attain from the Urban Villages project. At the meeting on 03 March 2025, Alderman McCullough quoted a social media post issued by Ballysillan Swifts social media which stated:

*“We have sporting relationships with many teams from both sides of the so called divide, this is not the reason for us refuting the BCCs ultimatum...our view of being a priority user is that we get full use of the pitch for both senior teams on a Saturday afternoon, not just one team every other week. We will use the mid-week slots available to train and grow our many teams and the rest is open to anyone who wants to use them.”*

26. The acknowledgement of the relationship between the Ballysillan Swifts with teams from “both sides of the divide” demonstrates that football, like other sports, is capable of bridging the traditional community divide and improving community relationships. That tends to suggest that a facilities sharing relationship would not in and of itself give rise to a disproportionate adverse impact.

27. Further, it is clear from the extract quoted by Alderman McCullough that the concerns of Ballysillan Swifts were on the basis that it understood that it would be a priority user of the pitches, with the result that they could use the pitch for both senior teams on a Saturday, and it appeared that would not be the case if the teams had to share the same pitch. As noted above, it appears that the advent of option 2 addresses this issue. Therefore, as a result of the introduction and approval of option 2, at the SP&R Committee on 21 February 2025, the concerns which were initially raised about the

Ballysillan Swifts not being able to use the proposed new pitch every Saturday are no longer apposite. Option 2 will not result in the 2 clubs sharing the same pitch, rather both teams will use separate pitches in the wider facility.

28. It is difficult to see how the sharing of wider facilities could it and of itself give rise to a disproportionate adverse impact. The call in requisition states that those from a PUL background will be *“negatively disenfranchised”* by the decision which is described as being *“driven by partisan political objectives”* and *“sectarian in nature”*. The latter of these is a particularly serious allegation and I have been provided with no evidence that demonstrates to me that the decision was motivated by sectarianism. On the contrary, I note that the stated intentions behind the decision are to ensure that the facility is open to everyone. At the Council meeting on 03 February 2025, Councillor Murphy made these relevant comments about the objective of the proposed decision:

*“it’s about trying to maximise usage on the site...so another team within North Belfast can use it to play home games in North Belfast...trying to encourage best usage of assets, making use open to everyone, regardless of where they come from.”*

29. At the meeting on 03 March 2025, Councillor McDowell stated *“nobody is objecting to sharing, but what we are objecting to is this Council and other contributors acting in bad faith...for over a decade now the business plan that was put together for Ballysillan was based on Ballysillan swifts and providing resources for them...at the 11<sup>th</sup> hour what feels like a hijack...of that plan”*.

30. In a similar way, the requisition for call in contends that the decision is *“contrary to various policy commitments and promises and represents a bad faith departure from same.”*

31. It is therefore evident that Council members and members of the identified community may well be concerned and frustrated that what is now proposed is a change to what they expected to obtain as a result of the Urban Villages project. In

my view, such concerns, even if legitimate<sup>2</sup>, are concerns about the conduct and operation of Council business and the expectations participants had, but that does not equate to a disproportionate adverse impact on an identified community (in this case the PUL community), which is required by section 41(1)(b).

32. I also note that the call in requisition contends that the objective of the decision is *“denying facilities to a club from a traditionally PUL background, in breach of promises, in order that a club from a traditionally CNR background may instead benefit”*. For the reasons outlined above about the precise nature of the decision made by the SP&R Committee to approve “option 2”, I do not consider that the effect of the decision will be to deny facilities to the Ballysillan Swifts.

## **Conclusion**

33. For all the reasons outlined above, I do not consider that, when one properly understands the precise nature, impact and effect of the decision made by the Council, it has been demonstrated that it will have a disproportionate adverse impact on the identified community. As is often in the nature of government, consideration of issues evolves over time. The decision taken by the Council on 03 March 2025 is not the same as the decision which was taken on 03 February 2025. It will have a different effect. The actual impact of that decision must be carefully considered. For all the reasons outlined above, in my view, properly analysed, it will not give rise to a disproportionate adverse impact on the identified community.

**Denise Kiley KC**

**The Bar Library**

**24 March 2025**

---

<sup>2</sup> I do not consider that it is necessary for me, in the context of this opinion, to determine whether such expectations were legitimate. The business case and letter of offer which I have been provided with relating to the grant of funding under Urban Villages project is not conditional on Ballysillan Swifts FC having exclusive use of the pitches and facilities. However, for the purposes of this opinion, I take at their height the concerns expressed by requisitioners that the decision is contrary to earlier commitments and that the local community believe that they will receive something different to that which they expected if Ballysillan Swifts are required to share facilities with Newington FC.