

Bevan Brittan Legal Advice

As with all decisions in the context of local government, when exercising powers the Councils must act for proper purposes, and in good faith. They must exercise the powers properly, following proper procedures in a "Wednesbury reasonable" manner. In other words the Councils must act for proper motives, taking into account all relevant considerations and ignoring irrelevant matters. They must not act irrationally, and must balance the risks against the potential rewards.

Additionally, the Councils must consider their overarching duties, including best value and the fiduciary duty to taxpayers, crime and disorder reduction and equalities, as well as any explicit requirements placed on a specific power.

Whilst there are arguments to support the proposal for a poll, our view is that there is a high risk of challenge based on best value and use of resources should the Councils go ahead, which could undermine the reorganisation proposals. Any challenge could impact upon whether or not there would be any reorganisation in Somerset this time around.

This risk is increased given the views of the Secretary of State who has written to the Councils stating that he is of the view that proceeding would risk duplicating and detracting from the consultation; would be confusing for local people, businesses and others in Somerset; and would not be consistent with the timetable for decision making. He further states that it is hard to see how the proposals can represent value for money.

That said, the Councils clearly have the power to undertake a poll under section 116 of the Local Government Act 2003, and it is a matter for the Members of each Council to determine whether to go ahead having taken into account the above decision making principles, and having balanced the likely risks and benefits accordingly.

Kind Regards

Judith

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