

EXECUTIVE – 29 JUNE 2016

SUPPLEMENTARY BUDGET TO SUPPORT HEALTH & SAFETY PROSECUTION



Hinckley & Bosworth
Borough Council

A Borough to be proud of

REPORT OF DEPUTY CHIEF EXECUTIVE (COMMUNITY DIRECTION)

WARDS AFFECTED – ALL WARDS

1. PURPOSE OF REPORT

To seek Executive agreement of a supplementary budget of £30,000 to support a health and safety prosecution following a fatality on a premises within the Borough.

2. RECOMMENDATION

That the Executive agrees a supplementary budget, initially £30,000 for the continued engagement of a barrister, expert witness and any other legal advice to support a prosecution.

3. BACKGROUND TO THE REPORT

In December 2013, an employee of a business in the borough died following being struck on the head by a heavy (15 stone) tree branch.

Enquires into work related deaths in relation to certain premises falls to local councils. Investigations into this accident, conducted by officers from Environmental Health, have found evidence of offences under the Health and Safety at Work etc. Act 1974.

Advice was obtained from a Barrister and Expert Witness concerning these offences and the degree of culpability of the company and the success or otherwise of any likely defence.

The Expert Witness believes there is sufficient evidence to support a prosecution and the Barrister has definitively advised that there is a case for the company to answer the charges under sections 2(1) and 33(1)(a) of the Health and Safety at Work etc Act 1974. A decision has therefore been made to undertake a prosecution against the company.

Given the advice received from the barrister on the complicated nature of the case, it is thought that the costs of the case, and that of time of the Environmental Health Manger (Commercial) and Litigation Solicitor dedicated to working on the case, will be substantial. Using costs from a previous similar case it is estimated the costs of engaging the Barrister and Expert Witness could be in the region of £30,000, although if the defendant pleads guilty or is found guilty an application can be made to recover all costs, including those of officers. There is no certainty as to the amount of costs that would be awarded by the court, if at all. It is therefore requested that Executive grant a Supplementary Estimate for £30,000 to fund the prosecution.

4. FINANCIAL IMPLICATIONS [AG]

A supplementary budget of £30,000 will require approval by the Executive in accordance with the financial procedure rules. If defendant is found guilty an application may be made to recover the costs.

5. LEGAL IMPLICATIONS [ST]

Advice has been obtained by a leading barrister in Health and Safety cases and also an expert in the field of trees, such advice confirming that there is a case for the company to answer and, as such, recommending that prosecution proceedings be commenced as soon as possible, given the date of the accident and also the delay in awaiting the expert report.

As set out within the body of the report, in the event that the defendant pleads or is found guilty, an application to recover all legal costs associated with the prosecution can be made and awarded by the Court.

6. CORPORATE PLAN IMPLICATIONS

Creating a vibrant place to work and live: Protect the community by creating a safer place

7. CONSULTATION

Not Applicable

8. RISK IMPLICATIONS

It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

Management of significant (Net Red) Risks		
Risk Description	Mitigating actions	Owner
Reputation from negative press coverage from enforcement	Ensure enforcement carried out competently and proportionately and in accordance with Enforcement Policies	Steven Merry
Reputation from lack of enforcement	Ensure enforcement carried out competently and proportionately and in accordance with Enforcement Policies	Steven Merry
Legal	Ensure Council's legal duties carried out and Council not exposed to challenge of Judicial Review by family of deceased	Steven Merry

9. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

Not applicable as relating to a specific case

10. CORPORATE IMPLICATIONS

By submitting this report, the report author has taken the following into account:

- Community Safety implications
- Environmental implications
- ICT implications
- Asset Management implications

- Human Resources implications
 - Planning Implications
 - Voluntary Sector
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Background papers:

Contact Officer: Steven Merry, Environmental Health Manager (Commercial)

Executive Member: Cllr K Morrell, Executive Member for Rural Communities & Tourism,
Licensing & Environmental Services