



COMPETITION APPEAL TRIBUNAL

NOTICE OF AN APPEAL UNDER SECTION 70 OF THE SUBSIDY CONTROL ACT 2022

Case No: 1760/12/13/25

Pursuant to Rule 14 of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (the “Tribunal Rules”), the Registrar gives notice of the receipt of an application (the “Application”) on 5 December 2025, under section 70 of the Subsidy Control Act 2022 (the “SCA22”) by: (1) BEK Developments Ltd; (2) Alleyhaus Ltd; (3) Dales and Moors Development Ltd; and (4) Masonic Hall Ltd (the “Appellants”). The Application relates to a decision of Durham County Council (the “Respondent”) to award further grant funding to Stack Bishop Auckland Ltd (“Stack”) and a proposed subsidy to The Auckland Project (“TAP”) for the Market Place Hotel development.

According to the Application, the Respondent is the authority responsible for redevelopment and regeneration activity in the Bishop Auckland town centre. Since 2021, the Respondent has been involved in the allocation of public financial assistance, both its own resources and funds channelled through the North East Combined Authority (“NECA”), to private operators undertaking redevelopment of specific commercial sites. On 1 March 2023, the Respondent entered into a grant funding agreement with Stack for the redevelopment of 9-11 Newgate Street. Between 2024-25, the Respondent applied to the NECA to secure additional funding of approximately £2 million for Stack (the “Additional Stack Funding”). The Respondent has communicated to Stack, to NECA, and to third parties (including the Appellants) that it intends to award the Additional Stack Funding, subject only to administrative approvals.

In parallel, between 2022 and 2025, the Respondent developed a proposal to award approximately £3.1 million to TAP in respect of the development of a new 60-bedroom hotel, the Market Place Hotel (the “TAP Subsidy”). Although no grant funding agreement relating to this subsidy has yet been executed and no funds have been disbursed, the Appellants consider that the Respondent has taken several operative steps amounting to a decision to give a subsidy within section 70 of the SCA22.

The Appellants challenge the decisions of the Respondent to award the Additional Stack Funding and the TAP Subsidy. The Appellants claim the Additional Stack Funding amounts to a subsidy under section 2 of the SCA22 and that the commercial market operator principle does not apply. While the relevant grant funding arrangements for the subsidies have not been finalised, the Appellants contend that a subsidy decision arises where a public authority decides, in substance, to provide an economic advantage through public funds. Given the Respondent has decided in principle to grant both of these subsidies, the Respondent has made subsidy decisions in relation to both, which are capable of being challenged.

The Appellants apply for a review of the Additional Stack Funding and the TAP Subsidy decisions on the grounds that, first, the Respondent has erred in law by misapplying the subsidy control principles in Schedule 1 to the SCA22.

Regarding the Additional Stack Funding, the Appellants state the Respondent’s errors include: (1) a failure to assess whether the subsidy is necessary for Stack’s commercial viability or to articulate a policy objective (Principle A); (2) a failure to recognise that overrun costs are normally borne by the developer not the public (Principle D); (3) a failure to assess or quantify the distortion of competition in the relevant market (Principles F and G); (4) a failure to assess least distortive means (Principle E); (5) a failure to consider the effect on entry or expansion by competing undertakings (Principle F); and (6) treating escalating project costs as justification for an unlimited grant, contrary to proportionality.

Regarding the TAP Subsidy, the Appellants state the Respondent’s errors include: (1) a failure to identify a specific policy objective capable of justifying a £3.1 million public subsidy for a commercial hotel development, or to demonstrate that the subsidy is necessary to achieve such an objective (Principle A); (2)

treating cost and financing issues as a basis for public subsidy, notwithstanding these are normally borne by the developer and the investor, not the public (Principle D); (3) a failure to assess the distortive effects of the TAP Subsidy on competing accommodation providers and leisure operators (Principles F and G); (4) a failure to consider less distortive means of achieving any claimed policy objective, such as commercial lending, equity investment, phased development, reduced scope, or alternative operators (Principle E); (5) a failure to consider the suppression of entry or expansion by competing undertakings caused by conferring substantial capital support on TAP's hotel operation (Principle F); and (6) a failure to demonstrate that the subsidy is proportionate or represents the minimum necessary to achieve the stated objective (Principle B).

Second, the Appellants claim the Respondent erred in law by failing to consider the subsidy control scheme requirements.

For the Additional Stack Funding, the Respondent treated the further funding as an extension of the existing arrangements, rather than a new subsidy which required a full evaluation under the principles set out in sections 12-18 of the SCA22. This meant, according to the Appellants, the Respondent failed to: (1) identify a policy objective under Principle A; (2) assess the counterfactual; (3) consider whether Stack was the appropriate recipient; or (4) examine whether the same outcome could be achieved through market-based finance or alternative mechanisms.

For the TAP Subsidy, the Appellants claim the Respondent failed to: (1) identify, as per above, a policy objective capable of justifying a £3.1 million subsidy (Principle A); (2) assess the counterfactual market position of TAP or alternative operators; (3) consider whether TAP was the appropriate recipient given the existence of rival accommodation providers; (4) examine whether market-based financing or alternative delivery structures could have met the alleged objective with less distortion; or (5) consider the cumulative subsidy exposure to TAP across multiple linked projects.

Third, the Appellants contend that the Respondent's assessment regarding the Additional Stack Funding is based on material errors of fact and omission in that the Respondent appears to rely on Stack's unverified assertions regarding costs escalation, without independent valuation or benchmarking. There appears to be, the Appellants allege, no evidence that the costs are genuine, that the cost escalation is attributable to a market failure and that additional funding is proportionate.

Fourth, the Appellants state the Respondent erred in law by failing to consider relevant considerations and/or taking into account irrelevant considerations.

For the Additional Stack Funding, the Appellants claim the Respondent failed to consider: (1) the impact on competitors and the foreclosure of alternative schemes; (2) the sufficiency of the original grant; (3) whether Stack had contractual obligations to bear cost overruns; and (4) budgetary caps and funding priorities. The Appellants allege that the Respondent took irrelevant considerations into account including political and reputational factors and the desire to ensure Stack completes irrespective of cost.

For the TAP Subsidy, the Appellants claim the Respondent failed to take into account a range of relevant considerations, including: (1) the impact of the subsidy on competing accommodation and hospitality operators in Bishop Auckland and the surrounding region and the distortion of competitive market conditions; (2) whether TAP, as a private developer, ought to bear the financial risks, rather than the public; (3) whether TAP could have been supported using less distortive means (e.g. commercial financing, phased development, scaling adjustments, or engagement with alternative operators); and (4) the cumulative effect of multiple subsidies already proposed or provided to TAP and whether public funding caps, budgetary prioritisation or proportionality constraints should limit any further award.

Fifth, the Appellants allege the making of the subsidy decisions was both procedurally unfair and there was a lack of transparency. For both the Additional Stack Funding and the TAP Subsidy, the Respondent selectively engaged with the subsidy recipients and failed to notify affected parties, failed to consult, and failed to publish required information under the SCA22.

By way of relief, the Appellants seek:

1. A declaration that the Additional Stack Funding and the TAP Subsidy are unlawful for the purposes of the SCA22;
2. An order quashing the respective subsidy decisions;

3. A prohibitory order restraining the Respondent from giving further subsidies to Stack or TAP, pending lawful reconsideration;
4. Costs; and
5. Such further relief as the Tribunal considers appropriate.

Any person who considers that they have sufficient interest in the outcome of the proceedings may make a request for permission to intervene in the proceedings, in accordance with Rule 16 of the Tribunal Rules. Please also note that a direction of the President is currently in place as to the electronic filing of documents: see paragraph 2 of the Practice Direction relating to Covid-19 published on 20 March 2020. Therefore, a request for permission to intervene should be sent to the Registrar electronically, by email to registry@catribunal.org.uk so that it is received within three weeks of the publication of this notice.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively, the Tribunal Registry can be contacted by telephone (020 7979 7979) or email (registry@catribunal.org.uk). Please quote the case number mentioned above in all communications.

Charles Dhanowa CBE, KC (Hon)
Registrar

Published 15 January 2026