



The Planning Inspectorate

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Your Ref:
Our Ref: APP/L3245/W/20/3253136
Date: 20 December 2022

Dear Madam

**LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 - SECTIONS 78 & 322
LAND AT BOTTEGA, 16 WYLE COP, SHREWSBURY, SY1 1XB: APPEAL BY
MICRO PUBS: APPLICATION FOR COSTS**

1. I am directed by the Secretary of State for the Department for Levelling Up, Housing and Communities to refer to the Planning Inspectorate's correspondence of 1st June 2022 confirming the withdrawal of the above appeal. The appeal was against the decision of Shropshire Council to refuse planning permission for the change of use of the land from A1 (Retail) to A4 (Micro Pub).

2. This letter deals with the Council's application for an award of costs against the appellants as made in correspondence of 31st May 2022 and 19th July 2022. William Anderson-Stevens of Worcester City Planning Consultancy, responded on behalf of the appellants in correspondence of 11th July 2022, however as per the email of 1st June 2022, the agent stated that they no longer represented the appellants. Therefore, any comments from them in relation to the application for costs cannot be taken into account. Mr Mark Kiely of Micro Pubs responded in correspondence of 23 November 2022.

Summary of decision

3. The formal decision and costs order are set out in paragraphs 11 and 12 below. The application succeeds to the extent that a partial award of costs is being made.

Basis for dealing with the costs application

4. In planning and enforcement appeals, the parties are normally expected to meet their own expenses, irrespective of the outcome. Costs are awarded only on the grounds of "unreasonable" behaviour, resulting in unnecessary or wasted expense. The applications for costs have been considered by reference to the Planning Practice

Guidance on awards of costs (as published on the Gov.uk website under "Appeals"), the appeal papers, the correspondence on costs and all the relevant circumstances.

5. All the available evidence has been carefully considered. The decisive issue is whether or not the appellants acted unreasonably by withdrawing the appeal without any material change in circumstances having occurred since it was submitted, and by not withdrawing it promptly, with the result that the Council incurred wasted or unnecessary expense. The sequence of events leading to the withdrawal of the appeal has been carefully examined.

6. The appeal was submitted on 26th May 2020 and was confirmed as valid on 26th June 2020. The Inspectorate's Start letters of 30th June 2020 informed the parties that the appeal would be dealt with by the written representations procedure and set out the timetable for receipt of representations. The letter to the appellants' agents warned that withdrawal of the appeal at any stage in the proceedings, without good reason, may result in a successful application for costs and directed them to the costs guidance for further information, which could be found on the GOV.UK website. The Council's statement was received by the Inspectorate on 4th August 2020. A site visit was arranged to take place on 25 August 2020 but as nobody representing the appellants attended, the visit was aborted. Another site visit was arranged to take place on 13 October 2020 but again the appellants failed to attend. In the e-mail of 1 June 2022 from William Anderson-Stevens of Worcester City Planning Consultancy, he instructed that the appeal be withdrawn. However, as in the same e-mail he stated that he no longer represented the appellants, he technically had no authority to withdraw the appeal. Nevertheless, as the appellants have not refuted the withdrawal, it is considered reasonable for the Inspectorate to treat the appeal as withdrawn.

Conclusions

7. As the appeal has been withdrawn, thus ending the proceedings, the issues arising on it remain unresolved as they have not been tested by an appointed Inspector after assessing all the evidence before him/her. Therefore, it is not possible to assess the reasonableness of either party's case on appeal, and the Secretary of State has no further jurisdiction in the matter. The only issue before the Secretary of State to consider therefore is whether or not the appellants acted unreasonably by withdrawing the appeal when they did.

8. Paragraph 054 of the guidance explains that appellants are encouraged to withdraw their appeal at the earliest opportunity if there is good reason to do so. The Secretary of State has to decide whether the appellants had good reason for the withdrawal due to a material change in circumstances relevant to the planning issues arising on the appeal, and, if so, whether it was withdrawn promptly. Paragraph 052 of the costs guidance explains that failing to attend or to be represented at a site visit, hearing or inquiry without good reason could give rise to a procedural award.

9. The right to appeal is a statutory right, but it is expected that it will be exercised in a reasonable manner and as a last resort. When deciding to appeal, appellants have a responsibility to ensure they are in a position to pursue it through to a decision unless a material change in circumstances relevant to the planning issues arising on the appeal occurs. In this case, there is no evidence before the Secretary of State of any such change in circumstances having occurred since the appeal was submitted. The fact that the appellants failed to attend or be represented at both the arranged site visits, signifies that the appellants had decided not to pursue the appeal shortly after its submission. In the event, the appeal was not withdrawn until some 2 years after it was

made, which clearly cannot reasonably be considered to be prompt. The result of the appellants actions was to cause the Council to incur wasted expense in having to resist the appeal and in attending 2 aborted site visits. An award of costs will therefore be made.

10. As to the extent of the award, the view is taken that the Inspectorate's letter of 30th June 2020 gave sufficient warning to the appellants, via their agents, that withdrawal of the appeal without good reason, at any time in the appeal process, could result in an award of costs against them. The appellants therefore had adequate opportunity, from that date, to consider their position in relation to the risks of costs. Consequently, it is considered that a partial award of costs from 7th July 2020 is justified. This date allows a nominal period of seven days for the appellants to have fully considered the warning of costs.

FORMAL DECISION

11. For these reasons, the Secretary of State concludes that the appellants acted unreasonably and caused the Council to incur wasted or unnecessary expense as a result. A partial award of costs is therefore considered justified in the particular circumstances.

COSTS ORDER

12. Accordingly, the Secretary of State for the Department of Levelling Up, Housing and Communities in exercise of his powers under section 250(5) of the Local Government Act 1972, sections 78 and 322 of the Town and Country Planning Act 1990 and all other powers enabling him in that behalf, **HEREBY ORDERS** that, Micro Pubs shall pay to Shropshire Council their costs of the abortive appeal proceedings before the Secretary of State, limited to the costs incurred from 7th July 2020; such costs to be assessed in the Senior Courts Costs Office if not agreed.

13. The Council are now invited to submit to Mr Mark Kiely of Micro Pubs, details of those costs with a view to reaching an agreement on the amount. A copy of this letter has been sent to him.

Yours faithfully

K McEntee

KEN McENTEE
Authorised by the Secretary of State
to sign in that behalf