

## Law & Governance

Kevin Lane – Head of Law & Governance



DISTRICT COUNCIL  
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Please ask for **Ross Chambers**      Our ref **RC/9557**      Your ref **APP/C3105/A/13/2190714/N**  
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6 February 2013

Dear Mr McClean

**Appeal by Mr and Mrs Noquet**  
**Site at Street Through Burdrop, Sibford Gower, Banbury, OX15 5RQ**  
**Reference: APP/C3105/A/13/2190714/NWF**

Please accept this letter as an early notification that Cherwell District Council is likely to make an application for a full award of costs should the appellants proceed with the above-mentioned appeal. This application will be made pursuant to Communities and Local Government Circular 03/2009 for the following reasons:

1. "The costs award regime seeks to increase the discipline of parties when taking action within the planning system through financial consequences for those parties who have behaved unreasonably and have caused unnecessary or wasted expense in the process". (Introduction to the Circular, paragraph 1).
2. Costs will normally be awarded where the following conditions have been met:
  - A party has made a timely application for an award of costs;
  - The party against whom the award is sought has acted unreasonably; and
  - The unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process – either the whole of the expense because it should not have been necessary for the matter to be determined by the Secretary of State or appointed Inspector, or part of the expense because of the manner in which a party has behaved in the process (Annex Part A – Conditions for an Award A12).
3. "The right of appeal should be exercised in a reasonable manner. It should be used as a last resort, with the appellant being ready to proceed with the appeal once it is submitted. An appellant is at risk of an award of costs being made against them if, on the basis of the available evidence, the appeal or ground of appeal plainly had no

reasonable prospect of succeeding on the basis of the application submitted to the planning authority. This may occur when:

- The appeal follows a recent appeal decision in respect of the same, or very similar, development on the same, or substantially the same, site where the Secretary of State or Inspector has decided that the proposal is unacceptable and circumstances have not materially changed in the intervening period” (Annex Part B – Awards against appellants – unreasonable pursuit of appeal B13).
4. An appeal by Mr Geoffrey Noquet against an enforcement notice served by Cherwell District Council was heard by way of public inquiry on 14 – 17 August 2012. The appeal was made on ground (a) and the breach of planning control alleged in the enforcement notice was “without planning permission, the material change of use of the land from a public house (Use Class A4) to a residential dwelling house (Use Class C3)”. This appeal was dismissed and the enforcement notice upheld by a decision of the Inspector, Sara Morgan, dated 4 October 2012.
  5. The appellants new appeal is an appeal against a decision of Cherwell District Council dated 20 July 2012 to refuse planning permission for the “Change of use of a vacant public house to C3 residential (as amended by site location plan received 18/07/12)”.
  6. In determining the ground (a) enforcement notice appeal the Inspector concluded that it had not been shown that the public house was no longer financially viable in the long term. She found that the marketing exercise carried out by the appellants was flawed and had not shown the absence of a market for the public house if offered for sale at open market value. The Inspector also found that the public house provided a much valued facility and service, and that its closure had reduced the ability of the local community to meet its day-to-day needs.
  7. In short, an Inspector appointed by the Secretary of State concluded as recently as 4 October 2012, following a 4 day public inquiry, that the same development on the same site as this new appeal was contrary to Development Plan policies and the National Planning Policy Framework and should not be allowed. The District Council considers that circumstances have not materially changed in the intervening few months. The District Council respectfully submits, therefore, that the new appeal has no reasonable prospect of success.

The District Council reserves the right to expand on this submission in the light of events that take place at the Hearing if it takes place.

Yours sincerely



Ross Chambers LARTPI  
Solicitor

cc Mr and Mrs Noquet