



**FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
Community Right to Bid**

**Tribunal Reference:** CR/2014/0001  
**Appellant:** Red Star Estates Ltd  
**Respondent:** Walsall Metropolitan Borough Council  
**Judge:** NJ Warren

**DECISION NOTICE**

1. Red Star Estates Ltd (“Red Star”) appealed to the Tribunal against a decision of Walsall Council (“Walsall”) to list a pub known as “The Magic Lantern” as an asset of community value. Just before the hearing was due to take place, Red Star, with the consent to the Tribunal withdrew its appeal. Walsall have now applied to the Tribunal for a costs order. The application is made under 10(1)(b) of the GRC Procedure Rules. The Tribunal may make an order in respect of costs if Red Star has acted unreasonably in bringing or conducting the proceedings.
2. It seems to me that there are some general considerations which I should take into account when exercising this jurisdiction.
3. First, although in the Courts costs follow the event, public law tribunals have a different tradition which is reflected in the present Rule 10. It is in my judgement part of our public law system that challenges to a state decision before a Tribunal do not generally attract a penalty in costs if they fail. It works both ways. Millions of decisions are taken every year by public authorities. Inevitably some of them are wrong. There are also many on which ordinary reasonable people be they members of the public, decision makers in the public authority or decision makers in the Tribunal might reasonably differ. In general, both the public authority and the citizen gain from a cost free environment. The decision under appeal is properly scrutinised, no one pays out more in lawyers fees than they choose to do so.

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4. A second important general consideration in my view is that public law tribunals often deal with complex issues on which it is difficult to obtain legal advice. This is certainly true of many jurisdictions within the GRC; and may now be true more widely given the reduction in public expenditure on legal aid and legal advice. A particular challenge may seem to a trained expert lawyer to be futile or wrong headed; it would be wrong to assume the challenge is inevitably an unreasonable one for the citizen to bring. It is also relevant to take into account that advice is harder to get in a relatively new jurisdiction like the community right to bid.
5. It is right to remember also that the GRC procedural rules already contain some protection for public authorities in that they may apply for a hopeless appeal to be struck out without a hearing.
6. Finally, while there will always be exceptional cases requiring exceptional treatment, it is a principle of the First Tier Tribunal that neither appellants nor public authorities should feel the need to be routinely legally represented. See the Leggatt report. The judges in this jurisdiction have a duty to use their expertise effectively to enable public authorities as well as appellants to conduct cases proportionately, informally and flexibly. They must enable public authorities, as well as appellants, to participate fully in the proceedings. See Rule 2 GRC Procedural Rules.
7. In this application, Walsall correctly point out that it was an essential part of Red Star's case that it was not realistic to think that there would be a time in the next five years when the Magic Lantern would be used in such a way as to further the social well being or social interests of the local community – in plain terms, in the context of this case, this means “function as a pub”. Red Star stated that the Magic Lantern would cease to trade as a pub on 19 January 2014 and would never be a pub again. The pub, however, continued to trade. Walsall submit that the appeal was flawed from the outset and that Red Star should not have tried to continue with the appeal but should have recognised that Walsall's response to it was unanswerable. It was Red Star who asked for a hearing whereas Walsall were content for the case to be decided on the papers. For most of the time Red Star was represented it seems by a firm of planning consultants or surveyors. Later a firm of

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solicitors became involved. They asked for an adjournment, which was refused, and then made the application to withdraw.

8. These points are all fairly made and I can understand any irritation or frustration which Walsall staff might feel. In the context of the general considerations to which I have referred, however, especially the newness of this jurisdiction, I do not consider that Red Star acted unreasonably in bringing or conducting the proceedings. I therefore refuse the application for costs.

**NJ Warren**

**Chamber President**

**Dated 14 August 2014**