

Correspondence between the Burton Bradstock Post Office Tenants & the Parish Council

16 November to 1 December 2010

Email Number 1

Gwen Holdcroft to Archie Mackie

16th November 2010
Archie Mackie
Chairman
Parish Council

Dear Archie,
Ref: BBPO Rent Review

I find it necessary to write to you in relation to the ongoing saga of the rent review for the Post Office and Shop. Frankly Simon and myself are both bemused, angry and stressed by the events of the last few months.

I therefore need to make it clear to you our position on the matter.

1. We met with Graham Moody and Dave Dixon shortly after the September PC meeting (at which verbally they said that they wish to withdraw the proposed rent increase) but we were informed that under the current lease that it was most likely that the PC would be forced to impose a rent increase. We asked why this situation had suddenly arisen as we understand our lease was largely the same as all previous tenants. We were told at this meeting that the PC were awaiting further legal advice which would take approx 3 weeks. We agreed to wait for that definitive advice in order for us to have a clearer picture of our position and options as tenants. We did not agree to enter into a new lease at this meeting. We agreed to look at the possibility of a new lease but said that we would need our legal fees paid as we had already a legal lease in place.

We have had 2 subsequent telephone calls with GM. Both times we reiterated that we would need to see the definitive legal advice and if so necessary a copy of the proposed new lease. Again we made it very clear that we needed these in order to take our own legal advice and to be in a position to review our options. GM was keen to arrange a meeting but we said that until we had seen this advice there was little point. Indeed the last time we heard any mention of this definitive legal advice was in GM's email of 11th October. "At the time of drafting this further advice has yet to be received, and I shall report orally on any developments at the meeting."

What has finally prompted this letter are the 2 recent emails from GM which discuss a "timeline" and "sustainable lease". In both of which GM seems to be ploughing ahead without our agreement whatsoever, indeed nor has he even addressed any of our verbal and written questions and concerns.

With regard to GM's latest email reference the valuation of the Post Office. The valuation should also take into account that there is a 6 month break clause. Not many fools would want to take on a business, invest capital and build up a business when your landlord can effectively take your business with 6 months notice. You never know it could be that the rent might be valued below its current level! Also the PC should be looking for a similar village Post Office and shop, of similar square footage, in similar sized village carrying out community deeds in rural West Dorset to have a comparable rentable value.

We therefore are asking you for the following:

Please can we have access to this definitive legal advice that GM seems to working from. As yet we have not been shown any evidence that a new lease is required.

Preferably let us have the name and contact details of the solicitor who is advising the PC so that our solicitors can engage directly. We would take this opportunity to reiterate that we have a current valid lease and that should we agree to explore a different lease we would categorically NOT agree to any of the additions that GM is suggesting in his email regarding the valuations. I made this clear to GM in my email of 22nd October 2010.

SPAR

We are horrified in relation to the comment in GM's report suggesting the possibility of SPAR taking on the Post Office "...the position is not one of preserving the Post Office, as SPAR would probably take it on" GM's email 11th October
This indicates a complete lack of understanding of the services provided and only available at a Post Office for the elderly, disabled and unemployed. My email 22nd October to GM "I would have thought that it was vital for the elderly villagers in Burton Bradstock to have a local shop, Post Office and community asset within easy walking distance as we are in the center of the village. This should be looked at as a possibility of satisfying condition A ii."
We could take GM's comment as an indication of the possibility that you are planning to close the Post Office? Perhaps this is the time to re open the public debate for parishoners and surrounding villages. I do not think that they would be impressed by this as we are most definitely are not.

Furthermore we would ask again for a comprehensive explanation as to why we were not informed as part of our application and lease negotiations that, as you have recently disclosed, the rent at the Post Office is effectively subsidised and if such subsidy were to end that the rent would have to increase dramatically. Surely this should have been disclosed at the time of application and lease negotiations and would have made us think twice about taking the business on and most certainly we would not have invested a substantial amount of our capital into the fabric of your building.

We await your response to the above.

Kind regards

Gwen & Simon Holdcroft

Cc: The Village Society by hard copy

Email Number 2

Archie Mackie to Gwen Holdcroft

22 November 2010

I am sorry to hear that both of you are bemused, angry and stressed by the events of the last few months. It is a matter of public knowledge that the Parish Council is committed to preserving the nature of the village shop and Post Office operation. To this end the Parish Council has stood back from progressing the proposed rent increase.

When Councillors Dixon and Moody met with you and Simon in September I had understood that you agreed to the package agreement proposed by the Parish Council. This was that, subject to legal advice, the proposed rent increase would be withdrawn and you would work with the Parish Council to seek to develop a new lease that will enable the Post Office and village shop to continue to thrive.

On 11 October Councillor Moody emailed you the "addendum" report to the October Parish Council meeting, which sets out the legal advice received by the Parish Council. This is in the form of a Legal Topic Note prepared by the National Association of Local Councils. It tells the Parish Council how the Post Office and village shop can be let at less than a market rent. From this advice it follows that the current lease needs changing at least in respect of the rent clauses, which require a market rent to be set.

Given this legal advice, Councillors Moody and Dixon have been trying to discuss with you and Simon how the Parish Council can work with you to develop new lease terms, but which so far you have declined to discuss.

The Parish Council's offer to withdraw the rent increase included working together in this way.

From your e-mail I have to ask whether you are willing to start and participate in this process as previously agreed? Or are you saying that you have changed your minds and do not wish to work with the Parish Council to develop new rent terms?

The Parish Council's proposal to work with you on a new lease was aimed at agreeing with you any new "business terms", including how the rent would be set, before involving legal advisers. Legal advice would be taken on the new lease terms towards once the principles had been agreed. Councillor Moody's offer to recommend to the Parish Council to meet your reasonable legal costs was in this context.

The Parish Council has not yet appointed a solicitor on this matter and does not intend to do so until draft new terms have been developed.

You refer to the two documents that Councillor Moody has emailed you. This has been in an effort to keep you informed of what the Parish Council intends to do and to seek your views, particularly on a new "sustainable" basis of setting the rent.

We shall build your points about rent setting into the criteria developed so far and let you have a revised copy of the document. In revising the current draft, your email says that you would categorically not agree to include in the lease a number of the proposed rent setting criteria, e.g. providing a range of groceries and provisions including locally produced foodstuffs. If a particular factor is to be taken into account

in setting the rent, it is only right that it should also be included in the lease. So are you saying that we should not have these factors taken into account when setting the rent?

Both the market rent valuation and the new "sustainable" rent valuation the Parish Council is seeking will be handled by a professional Valuer with all the appropriate information at hand.

In relation to the SPAR, you have clearly taken Councillor Moody's comments out of context. They are concerned with how within the law we might justify a lease of the Post Office and village shop in excess of 7 years. There are no plans to close the Post Office and village shop whatsoever nor to relocate it to the SPAR or anywhere else.

You also refer to your having invested in the premises and appear concerned that you might not be compensated for it. There are two points I wish to make here:

1. Your investment would be ignored in setting the rent; and
2. The current lease provides for you to get value out of your investment on its termination (Schedule 3 The Landlord's Covenants clause 4).

The original reason for the Village buying the Post Office and village shop was to preserve its operation and to prevent the building being sold and transferred to residential use, this being worth more than the business operated. From the outset it was recognised that the rent would not meet outgoings, particularly when considering the extent of works required. Moreover the Parish Council is not contemplating an end to that subsidy, but wants to set a rent that sustains the current operations.

ArchieHMackie

Copy to Village Society Trustees

Email Number 3 Gwen Holdcroft to Archie Mackie

EMAIL TO THE PARISH COUNCIL 1st DECEMBER 2010

We certainly do not wish to be confrontational and would like to seek a solution to the problems that have arisen regarding negotiations over the rent. However, we feel we have been treated very badly and have found the whole situation extremely stressful. We feel angry, hounded and disillusioned by the way the PC has conducted negotiations. Therefore we would like to clarify our position:

The PC, due to overwhelming opposition in the form of our petition, finally withdrew the proposed rent increase. During an informal chat with 2 councillors the legal issue regarding the current lease was out of the blue bought up by them and we certainly did not agree to a new lease. What we agreed was to wait the 3 weeks the PC seemed to think it would take for them to get a legal opinion. We further clarified in 2 phone calls and 2 emails that in our opinion to discuss further the possibility of a new lease was pointless until a definitive legal

opinion had been obtained by the PC. This is now being construed by the PC as us being uncooperative. In the proposed new lease the PC seem determined to change the business terms by, for example, stipulating that we sell local produce. This is ludicrous – who would monitor it, how local is local, how much would be determined to be sufficient to meet the terms? Not to mention the fact that in the future the PC would find it extremely difficult to find other tenants to take on a lease which stipulates opening hours, products sold etc.

We have invested a sum in the region of £4,000 into the premises; that is obviously not to be taken into account on the question of rent; but it is a lot of money, it has benefited the PC and it is further evidence of our commitment to the community and project.

In our opinion definitive legal opinion has not yet been gained, or we have not had access to it, nor is there any sign that the PC have looked at alternatives to a new lease.

Due to lack of information and the tone of the PC's last email we were left no option but to seek our own preliminary legal advice. This threw up some interesting points:

- a) The PC has expressed the desire to act consistently with the General Disposal Consent (England) 2003. This is not new law. It is 7 years old and therefore throughout the entirety of this law the rent has been set at below market rent. In other words, in granting the lease to previous tenants the PC recognised that they were within the rule which meant they did not need market rent.
- b) The advice on which the PC relies says that the rent can be sub market value if the PC considers that the purpose for which the land is to be leased is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area or of all or of any of the persons resident or present in it's area... (i) the promotion or improvement of economic well being (ii) the promotion or improvement of social wellbeing (iii) the promotion or improvement of environmental well being.
This being said all the PC had to do when granting the lease was to consider that the PURPOSE of the lease was likely to have those benefits. (ie the shop and PO being the local community hub, supporting local fundraising events by the sale of tickets etc). Also bearing in mind that the rule is met if the lease at a reduced rent is likely to contribute to the promotion/improvement of economic well being OR improvement of social wellbeing of any of the persons resident or present in its area. With the petition signed by so many locals the rule is met many times over.
- c) The PC have already decided that they are within the exception to market rent in agreeing a rent at £2.4K p.a (which they have now disclosed is a subsidized level) and with rent reviews agreeing the "cap" on rent increases over a ten year period, is wholly inconsistent with the market value being the driver.

The PC must have considered themselves within the rule on no market rents, otherwise the lease would not have been granted.

The advice we have received is that there is no need for a new lease if all that is in issue is the rent review. A change to the rent review clause can be done

by a short supplemental deed which simply amends the existing provisions. If this lease does not fall within the no market rent rule under the General Disposal Consent (England) 2003, it is very difficult indeed to see what would. It is indeed a paradigm example of what falls within the no market rent rule.

We feel that PC needs to be consistent with their obligations to the community:

1. The building was purchased using grants and donations solely for the purpose of retaining the Post Office and Shop.
2. The local community have made it very clear in the petition that they (a) do recognise and value the community service the PO/and Shop gives them and (b) do want the PO and Shop to stay as is and (c) do not wish for a higher rent.

The PC also need to consistent with us as tenants. At our interview Archie Mackie, Chairman, said that there would be no material increases in rent unless we were driving around in Porsches.

From our point of view as Parishioners we feel that the PC are going to spend a lot of money getting valuations and meeting legal costs. As previously stated our advice shows that a new lease is not necessary and that the costs of obtaining a new lease would be an unnecessary expense for the PC and indeed (assuming that the PC are not willing to fund our legal costs) for us,

Therefore we are happy to discuss revised terms with regard to the rent clause within our current lease, under the General Disposal Consent (England) 2003. We would perhaps suggest that we should have a meeting to discuss this. We would be happy to exchange legal advice with the PC should they so wish and/or put our lawyers in touch with those for the PC.