

CHAPTER 3, PART 5 OF THE LOCALISM ACT 2011
ASSETS OF COMMUNITY VALUE (ENGLAND) REGULATIONS 2012

NOMINATION OF BUILDING OR LAND TO BE INCLUDED IN
LIST OF ASSETS OF COMMUNITY VALUE

DELEGATED REPORT

Reference: PR86-041

Case Officer: Darren McBride

Site Address: Land from Field 1, formerly part of the Pluckley Brickworks, Station Road, Pluckley, Ashford, Kent (section adjacent to Chambers Green Road, Pluckley, Ashford, Kent TN27 0RJ and TN27 0RH)

Title Number(s): K824582 (Freehold)(Part)

Nominating Body: Pluckley Parish Council

Nomination Validated: 13 July 2022

Deadline Date: 7 September 2022

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Introduction

Under the Localism Act 2011 ('the Act'), the Council must maintain a list of buildings or other land in its area that are of community value, known as its 'List of Assets of Community Value.'

There are some categories of assets that are excluded from listing, the principal one being a residential property. There is, however, an exception to this general exclusion where an asset which could otherwise be listed contains integral residential quarters, such as accommodation as part of a pub or a caretaker's flat.

Generally, buildings or land are of community value if, in the opinion of the Council:

- an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and
- it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community¹.

¹ Subsection 88(1) of the Act

Buildings or land may also be of community value if in the opinion of the Council:

- there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or social² interests of the local community, and
- it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community³.

Buildings or land which are of community value may only be included in the 'List of Assets of Community Value' in response to a community nomination by certain specified bodies such as parish councils or voluntary or community organisations with a local connection.

A valid community nomination must contain certain information, including:

- a description of the nominated building or land including its proposed boundaries
- a statement of all the information which the nominator has with regard to the names of the current occupants of the land, and the names and current last-known addresses of all those holding a freehold or leasehold estate in the land
- the reasons for thinking that the Council should conclude that the building or land is of community value
- evidence that the nominator is eligible to make the community nomination

A valid community nomination must be determined within eight weeks. In this instance, the nomination was validated by the Council on 13 July 2022 and so should be determined by 7 September 2022.

If the Council accepts a valid nomination then it must be included in the 'List of Assets of Community Value.' If the Council does not accept that the asset nominated meets the statutory definition, or if it is one of the excluded categories, then the valid nomination must be placed on a 'List of Assets Nominated Unsuccessfully by Community Nomination.'

Procedure

Information about this community nomination has been sent to the following:

² Note: the wording of this condition is different to all the other conditions in that it refers to furthering 'the social wellbeing or interest of the local community' rather than 'the social wellbeing or *social* interests of the local community.' However, in *St. Gabriel Properties Limited v London Borough of Lewisham and another (2015)*, Judge Warren held that the word 'social' should be read in here (para. 27)

³ Subsection 88(2) of the Act

- Pluckley Parish Council (nominating body)
- Freehold Owner(s)
- Cllr G Clarkson (Leader of the Council)
- Cllr P Feacey (Portfolio Holder for Community Safety and Wellbeing)⁴
- Cllr K Howard-Smith (Deputy Portfolio Holder for Community Safety and Wellbeing)⁵
- Cllr C Bell (Ward Member)

If the Solicitor to the Council and Monitoring Officer includes the asset in the Council's 'List of Assets of Community Value' then the owner has the right to request, within eight weeks from the date when written notice of listing is given, the Chief Executive to review the decision.

If the owner is not satisfied with the outcome of the internal listing review then they have the right to appeal to the General Regulatory Chamber of the First-Tier Tribunal against the review decision.

The property will remain listed during the review and appeal process.

Consequences of Listing

If an asset is listed nothing further happens unless and until the owner decides to dispose of it. If the owner does decide to dispose of the asset then, unless an exemption applies, the owner must first notify the Council in writing.

Interim Moratorium

There is then a six week interim period from the point the owner notifies the Council. The Council must then inform the nominating community group who may then make a written request to be treated as a potential bidder. If they do not do so in this period then the owner is free to sell their asset at the end of the six week period.

Full Moratorium

If a community interest group does make a request during this interim period, then a full six month moratorium will operate. The community group does not need to provide any evidence of intention or financial resources to make such a bid.

During this full moratorium period the owner may continue to market the asset and negotiate sales, but they may not exchange contracts (or enter into a binding contract to do so later). There is one exception: the owner may sell to a community interest group during the moratorium period.

After the moratorium – either the interim or full period, as appropriate – the owner is free to sell to whomever they choose and at whatever price, and no further moratorium will apply for the remainder of a protected period lasting 18 months (running from the same start date of when the owner notified the Council of the intention to dispose of the asset).

⁴ The nomination was received prior to the recent Cabinet reshuffle.

⁵ Ditto.

Compensation

Private owners (not public bodies) may claim compensation for loss and expense incurred through the asset being listed. This may include a claim arising from a period of delay in entering into a binding agreement to sell which is wholly caused by the interim or full moratorium period; or for legal expenses incurred in a successful appeal to the First-Tier Tribunal. The assumption is that most claims will arise from a moratorium period being applied. However, the wording of the legislation does allow for claims for loss or expense arising simply as a result of the asset being listed.

The Council is responsible for administering the compensation scheme, including assessing and determining compensation awards.

As with the listing itself, an owner may request an internal review of the Council's compensation decision. If the owner remains unsatisfied then they may appeal to the General Regulatory Chamber of the First-Tier Tribunal against the review decision.

Assessment

The nominating body is 'a voluntary or community body' with 'a local connection,' as defined in Regulations 4 and 5 of the Assets of Community Value (England) Regulations 2012 ('the Regs').

The community nomination contains the information required by Regulation 6 of the Regs for it to be considered by the Council.

The community nomination form asked the nominating body to provide their reasons for thinking that the Council should conclude that the building/land is of community value. It is unclear whether the nominated building/land is currently in use for community benefit or not as the nominating body has completed the parts of the nomination form relating to buildings/land currently in use for community benefit and for buildings/land not currently in use for community benefit. In any event, the questions and answers state as follows:

Buildings/land currently in use for community benefit

Q1. What is the current main use of the land/building(s)?

A1. 'Unimproved former agricultural land that is part of the biorepository for displaced species from the development of the former Pluckley Brickworks, 14/01116/AS Condition 30.

'The site is contiguous with the Pluckley Nature Reserve owned by Pluckley Parish Council for ecological benefit and for the benefit of Pluckley Residents and rural visitors.'

Q2. How does the current main use of the land/building(s) further the social wellbeing or social interests of the local community...?

- A2. 'The site is used by red-listed species that require active conservation and have been impacted by the adjacent Brickworks development.

'Wildlife interests of Pluckley residents is promoted by the rich mosaic of natural habitats at the site, and the rare species that inhabit it.

'Enhancing the rich ecological nature of the site is in line with central government policy of enhancing biodiversity and ecological protection.'

- Q3. *Why do you consider that this, or some other main use to which the land/building(s) will be put which will further the social wellbeing or social interests of the local community, will continue and over what period...?*

- A3. 'Pluckley Parish Council would incorporate the site into the existing Nature Reserve, subject its management to the same high standard as the reserve, and make the site available to residents to view, study and enjoy the fauna and flora of the site as it does for the existing reserve.'

Buildings/land not currently in use for community benefit

- Q4. *If the land/buildings(s) main use in the recent past furthered the social wellbeing or social interests of the local community please confirm that use and explain how it did that (including dates for when this was)...*

- A4. 'The site was left over more than a decade to develop the habitat that it is today, retaining endangered species for the enjoyment of residents and visitors.'

- Q5. *How do you anticipate that the land/building(s) will be returned to that use or put to some other main use which will further the social wellbeing or social interests of the local community and when do you consider this will happen?*

- A5. 'Once incorporated into the Nature Reserve, the management will be undertaken according to the Ecological Management plan authorised by Kentish Stour Countryside Partnership. Version 1 2021-6...'

The Council cannot list buildings or land on its own initiative – they must be nominated. Therefore, the onus is on the nominating body to give their reasons for thinking that the Council should conclude that the building/land is of community value.

There is little guidance on the criteria a local authority should consider when deciding whether an asset is of community value. When the Act was at the Bill stage, the Minister stated that:

"...We have suggested that one of the criteria for assessing what is an asset of community value could be evidence of the strength of community feeling about supporting the asset's being maintained for community use"

In this case, the nominating body is a parish council and so, although there is no evidence of the strength of community feeling, it is reasonable to assume that

the Parish Council is representing the views, or is expressing the general wishes, of a reasonable percentage of their local community.

As mentioned above, it is unclear whether the nominated site is currently in community use. The nominating body states that the site is situated adjacent to Pluckley Nature Reserve and its main use is (or was in the recent past) as 'unimproved former agricultural land' where displaced species are now located. Yet, whereas as it seems that the Nature Reserve is accessible to local residents and rural visitors, it is unclear whether the nominated site itself – privately-owned former agricultural land – is lawfully accessible to the public.

Also, even if the site is/was accessible, the nominating body has given no reasons for thinking that the Council should conclude that its use does (or did) further the *social* wellbeing or *social* interests of the local community. In my view, an unspecified or vaguely defined use of a dormant or recently abandoned agricultural field is inadequate to establish whether that use is (or was) a use which furthers the social wellbeing or social interests of the local community.

The nominating body has outlined an aspiration to incorporate the site into the Nature Reserve. Setting aside whether a Nature Reserve use would further the social wellbeing or social interests of the local community – rather than provide, say, an ecological benefit to the local environment and/or a general (as opposed to *social*) benefit to the local community – if the site is not currently in use for community benefit then the nominating body has provided no information about why it would be realistic to think that there is a time in the next five years when the proposed use would be introduced.

Again, the Council cannot list buildings or land on its own initiative. The onus is on the nominating body to give their reasons for thinking that the Council should conclude that the building/land is/was of community value. Regulation 6(c) of the Regs states that a community nomination must include —

'The nominator's reasons for thinking that the responsible authority should conclude that the land is of community value'

Depending on the circumstances, the reasons or evidence in support of a nomination may not need to be extensive or overwhelming. Nevertheless, they should still offer a convincing basis for the Council to conclude that the nominated premises should be added to the List of Assets of Community Value, especially given the potential interference that listing could have with the property rights of the owner of the nominated premises.

In this case, in my view, the inadequate evidence or reasons means that the nomination does not satisfy the tests set down in section 88(2)(a) and (b) of the Act.

Conclusions

The nominating body has provided inadequate evidence or reasons for thinking that the Council should conclude that the nominated building/land is of community value. The nomination does not therefore comply with the requirements of Regulation 6(c) of the Regs.

Accordingly, the nominated building/land should not be included in the Council's 'List of Assets of Community Value'.

Recommendation

That the Solicitor to the Council and Monitoring Officer decline the nomination for this building/land to be included in the Council's 'List of Assets of Community Value.'

That the Solicitor to the Council and Monitoring Officer consent to this building/land being placed instead on the Council's 'List of Assets Nominated Unsuccessfully by Community Nomination.'

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AUTHORITY

In accordance with the functions delegated to me, and for the reasons set out above, I hereby decline the nomination for this building/land to be included in the Council's 'List of Assets of Community Value.' This building/land should instead be placed on the Council's 'List of Assets Nominated Unsuccessfully by Community Nomination.'



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Solicitor to the Council and Monitoring Officer

Date: 06/09/2022

Client: Pluckley Parish Council

Address:

Job: Proposed Community Asset Registration

North Field

Title: Location Plan

Scale: 1:1250
(Original size: A4)

Date: June 2022

Drawing Number:

1939 D03

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