

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: PR86-004

Case Officer: Darren McBride

Site Address: The Compasses Inn Public House, Sole Street,
Crundale, Canterbury, Kent CT4 7ES (in the Borough
of Ashford)

Title Number: K88715

Nominating Body: Crundale Parish Meeting

Nomination Validated: 23 August 2023

Deadline Date: 18 October 2023

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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 23 August 2023 and so must be determined by 18 October 2023.

If the Council accepts a valid nomination then it must be included on 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.

- Crundale Parish Meeting (Nominating Body)
- Freehold Owner
- Occupier
- Cllr N Ovenden (Leader of the Council)
- Cllr L Wright (Cabinet Member for Communities & Health)
- Cllr G Meaden (Ward Member)

If the Solicitor to the Council and Monitoring Officer includes the asset on 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.

Protected 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).

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 appear to 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

Having regard to the provisions of section 89 of the Act and Regulations 4 and 5 of the Assets of Community Value (England) Regulations 2012 ('the Regs'), the nominating body has provided information demonstrating that it is 'a voluntary or community body with a local connection.'

Also, 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. In this case, the nominating body has confirmed that the public house premises are currently closed and so the questions and answers state as follows:

Q1. 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)...

A1. 'Public house and garden.'

'It is the only non-religious community building in the parish. The only other pub closed in 1955. The school closed in 1966. The shop and post office closed in the 1970s. The pub is a meeting point for the local community. Apart from the local church there are now no other community buildings. The nearest village hall is in Godmersham village 3 miles away.

'The pub is currently closed and Shepherd Neame have submitted a planning application to [Ashford Borough Council] to put a detached house off the pub car park. It is possible this is a precursor to further development proposals and then closure of the pub. Whether or not [Ashford Borough Council] grant consent we wish to see the pub preserved as a pub. The Campaign for Real Ale successfully applied for a

community asset from [Ashford Borough Council] at this site this has now fallen away as it was only granted for 5 years⁴. Since then the pub has closed again (three times) and latterly from January 2023. We wish to see the buildings and grounds in use as a public house. If it is sold we would wish to consider putting in a bid to maintain its active use as a pub and community building.

'The Compasses Inn has historic value as a 17/18th century building which has served as an inn and public house and restaurant since at least the early part of the 19th century. It is the only public house in the three villages of Crundale, Godmersham and Bilting. It has played an important role as a social hub for 200 years hosting games, music, beer festivals, quizzes, meetings as well as functioning as the only community building. The pub has a good beer garden at the front and rear which provides an area to sit out and enjoy the countryside in the Kent Downs Area of Outstanding Natural Beauty. Its last use was as a public house and ancillary restaurant.

'The pub closed 7 months ago. It closed for Covid. It was closed after Covid restrictions were lifted as the tenant left and moved away. The new tenant was not able to obtain sufficient economic return from the pub and it therefore closed for a third time. It is rumoured that the landlord and landlady of Timberbatts public house in nearby Bodsham may be becoming tenants of the pub before Christmas 2023 but there is no official notification of this to local people though they have posted something on their own website for Timberbatts pub.'

Q2. *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?*

A2. 'By agreeing this is a community asset (as [Ashford Borough Council] have already done before) it will ensure this pub is kept as a pub whether or not the granting of planning [permission] for a detached house in the pub car park is agreed by the [Ashford Borough Council] Planning Committee. This is the last community building left in the parish (apart from the church) having lost our shop, school, village parish hall, blacksmiths and post office over the years. It will provide the opportunity for the community to run a community pub should the pub and land be sold. We wish to retain a public house as the last pub in the three villages of Crundale, Godmersham and Bilting as a community asset.'

Generally, public houses are the type of buildings which the Community Right to Bid Scheme is designed to protect. However, 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.

⁴ Previously included on the Council's List of Assets of Community Value on 10 September 2015.

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 Meeting and so, although there is no evidence of the strength of community feeling, it is reasonable to assume that the Parish Meeting is representing the views, or is expressing the general wishes, of a reasonable percentage of their local community.

For a building or land to be included in the 'List of Assets of Community Value' its main use – not 'an ancillary use' – must further the social wellbeing or social interests of the local community.

Setting aside for one moment that this public house is currently closed, the nominating body claims that the public house:

- Was the only non-religious community building in the parish
- Was a meeting point for the local community
- Served as an inn and public house and restaurant since at least the early part of the 19th century
- Was a social hub for 200 years hosting games, music, beer festivals, quizzes and meetings
- Included a restaurant

Generally, a local meeting place of this type would be considered as furthering the social wellbeing or social interests of the local community and the main use of the building as a public house would in and of itself further the social wellbeing or social interests of the local community.

Also, the serving of food in the restaurant is likely to be viewed as non-ancillary to the main use and so would likewise further the social wellbeing or social interests of the local community.

In my view, on balance, the main use of the building as a public house would have furthered the social wellbeing or social interests of the local community.

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As mentioned above, the nominated premises are currently closed and so the Council must consider whether:

- (a) there is a time in the recent past when an actual use of the building/land that was not an ancillary use furthered the social wellbeing or social interests of the local community, and
- (b) 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/land that would further

(whether or not in the same way as before) the social wellbeing or social interests of the local community.

There is a time in the recent past when an actual use of the building/land that was not an ancillary use furthered the social wellbeing or social interests of the local community

There is no statutory definition of 'recent past.' The Department for Communities and Local Government's guidance⁵ provides the following comment on the meaning of 'recent past':

'With regard to "recent past", our current view is that we will leave it to the local authority to decide, since "recent" might be viewed differently in different circumstances. For example, "recent" might be taken as a longer period for instance for land which was formerly used by the public until the MoD took it over for live ammunition practice, than for a derelict building. Ten or even twenty years might be considered recent for the former but not for the latter.'

I understand that some authorities have treated the 'recent past' as being the five year period preceding the nomination but in *Scott v South Norfolk District Council (2014)*⁶, Judge Warren in the General Regulatory Chamber of the First-Tier Tribunal said that the phrase 'in the recent past' was deliberately loose in contrast to the five years in the second condition and that it was 'not the Tribunal's role to undermine that by giving the phrase a meaning which is certain.'

In *Worthy Developments v Forest of Dean District Council (2014)*⁷, Judge Warren (again) stated that:

"It seems to me illogical to seize on the period of five years, as some suggest, when applying the past condition. This figure is chosen because it is the length of time specified by Parliament over which the future condition is to be assessed. It seems to me, however, that Parliament's failure to specify the precise period of five years when defining the past condition, cannot be taken as intending that the more precise period used in the definition of the future condition should be imported"

In *Crostone v Amber Valley Borough Council (2014)*⁸, Judge Lane stated that:

"The 'recent past' is not defined in the Localism Act 2011 or any relevant subordinate legislation. What constitutes the 'recent past' will depend upon all the circumstances of a particular case. To that extent, the expression is a relative concept. In this regard, it is relevant that the Black Swan operated as a public house for almost 200 years, until its closure in 2012..."

⁵ Assets of Community Value – Policy Statement (2011)

⁶ CR/2014/0007

⁷ CR/2014/0005

⁸ CR/2014/0010

Accordingly, although what constitutes the 'recent past' will depend on all the circumstances in a particular case, Judge Lane's conclusion that 'the expression is a relative concept' suggests that the length of time that the building had been used as a public house is relevant (in *Crostone* it was nearly two hundred years). Therefore, the implication seems to be that the longer the period of use furthering a community benefit the longer the period which will constitute the 'recent past.'

In this case, according to the nominating party, the public house closed in 'January 2023' – just seven months before the submission of the community nomination.

The nominating body states that the premises 'served as an inn and public house and restaurant since at least the early part of the 19th century.' Accordingly, prior to its closure in January 2023, it seems that the premises may have been used without any material interruption⁹ as a public house for some 200 years or more. In my view, having regard to the relative concept of 'recent past' as outlined by Judge Lane in *Crostone* (above), January 2023 would be viewed as the 'recent past' when viewed in the context of approximately 200 years' of continuous use prior to that date.

Accordingly, as I have already concluded that the actual main use of the premises prior to its closure would have furthered the social wellbeing or social interests of the local community, then it follows that in my view there was a time in the recent past when an actual main use of the premises that was not an ancillary use did further the social wellbeing or social interests of the local community.

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/land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community

The central government guidance is silent on the question of whether there is a realistic prospect that there could again be a community use of nominated building/land. The case law suggests that the test does not require the likely future use of the building/land to be determined but rather to determine whether future community use is a realistic prospect¹⁰.

In this case, the nominating body has stated that 'we wish to see the pub preserved as a pub' and that, if the premises became available, then it would

⁹ I acknowledge that the pub was closed during the Government mandated Covid lockdown and was then 'closed after Covid restrictions were lifted as the tenant left and moved away. The new tenant was not able to obtain sufficient economic return from the pub and it therefore closed for a third time' in January 2023. However, in my view, the mandated closure should not be counted as part of any formal period of closure for the purposes of the Asset of Community Value regime.

Given the tight window following the end of mandated lockdown, the subsequent period of closure (following the departure of the first tenant and arrival of the second tenant), would appear to have been relatively brief and so would be unlikely to have amounted to any material break in the use.

¹⁰ See again: *Worthy Developments v Forest of Dean District Council (2014)*(para. 19)

provide the community with an opportunity 'to run a community pub,' as indeed the nominating body itself canvasses in its nomination.

According to the nominating body, the nominated premises is the only non-religious community building in the parish.

On balance, in my view, it is realistic to consider that the building could re-open as a public house in the next five years. This view is supported by the fact that the premises have been closed for a relatively short time and so will not have markedly deteriorated since the closure.

Regarding future viability, the central government guidance is again silent. In *Worthy* (mentioned above), the Court considered detailed financial appraisals which indicated that it would not be economically viable for the public house in question to return to community use. However, Judge Warren stated that:

"...It is important, however, not to confuse commercial viability with what altruism and community effort can achieve. The calculations advanced by Worthy Developments Ltd do not, in my judgment, ...demonstrate that the committee's plans are not realistic. Although there was some discussion of the figures at the hearing, it does not seem to me necessary to go into further detail on this point. The legislation does not require a detailed business case at this stage" [emphasis in original]

Other cases appear to support this stance¹¹ and so it does not seem to me to be necessary for the Council to consider the viability of some future community use of the premises. The test seems to be simply whether 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 that would further the social wellbeing or social interests of the local community.

Also, it should be noted that the use would not need to be as a public house and it would not even necessarily need to be economically viable in the sense that it would have to make a profit for its operator. This is because it could be run as a not-for-profit co-operative by local community volunteers as either a public house or for some other non-ancillary community use.

Conclusions

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

I have taken into consideration the potentially adverse impact that listing could have on the owner(s) of the building/land (as summarised above under the sub-

¹¹ See for example: *Gibson v Babergh District Council (2015)*(CR/2014/0019); *Sawtel v Mid-Devon District Council (2014)*(CR/2014/0008); *St. Gabriel's* (above) etc.

heading *Consequences of Listing*) but the internal listing review process and appeal do allow the owner(s) the opportunity to challenge the decision to list.

Accordingly, in my view, this building/land should be included in the Council's 'List of Assets of Community Value'.

Recommendation

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

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AUTHORITY

In accordance with the functions delegated to me, I hereby accept the nomination for this building/land to be included on the Council's 'List of Assets of Community Value', for the reasons set out above.



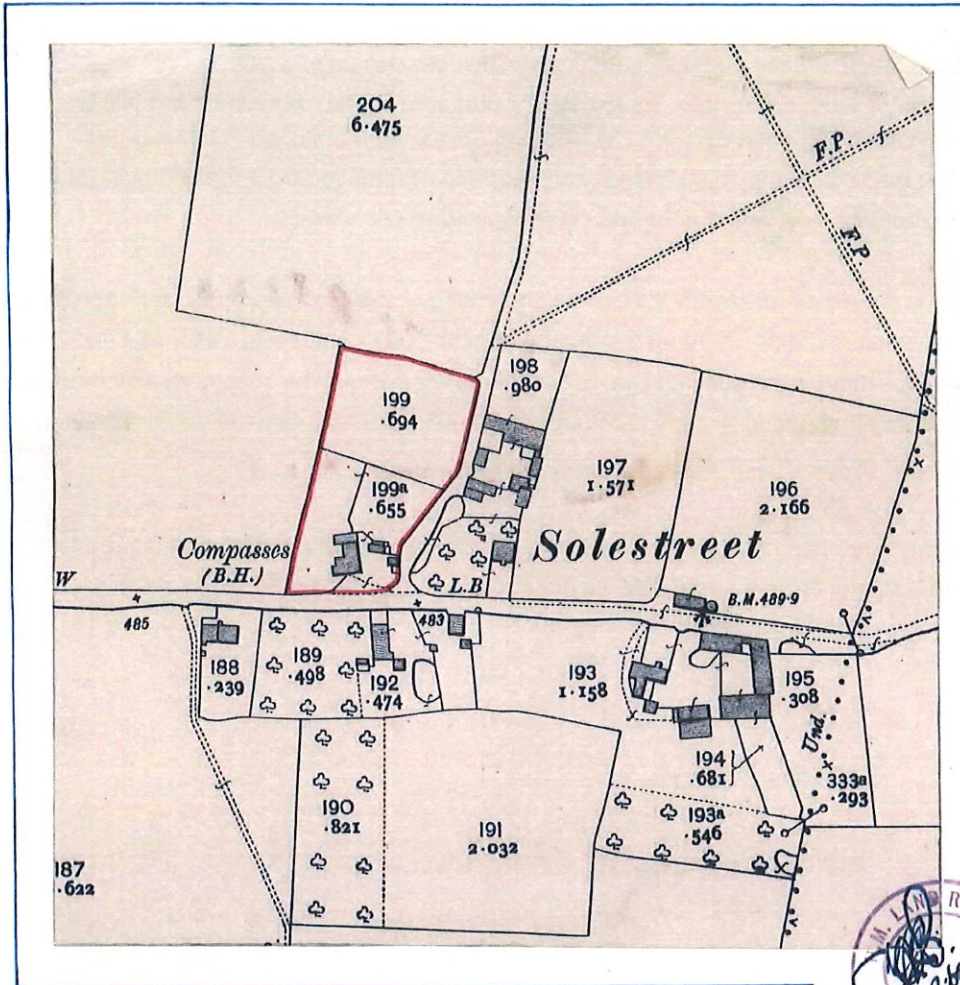
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Solicitor to the Council and Monitoring Officer

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