

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: PR86-040

Case Officer: Darren McBride

Site Address: Former Coal Yard, Pluckley Station, Station Road,
Pluckley, Ashford, Kent TN27 0RT

Title Number(s): Unregistered

Nominating Body: Pluckley Parish Council

Nomination Validated: 7 July 2022

Deadline Date: 1 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.

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

¹ Subsection 88(1) of the Act

- 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 7 July 2022 and so should be determined by 1 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:

- Pluckley Parish Council (nominating body)

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

- Owner(s)⁴
- Cllr G Clarkson (Leader of the Council)
- Cllr P Feacey (Portfolio Holder for Community Safety and Wellbeing)⁵
- Cllr K Howard-Smith (Deputy Portfolio Holder for Community Safety and Wellbeing)⁶
- Cllr C Bell (Ward Member)

If the Solicitor to the Council and Monitoring 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

⁴ The nominated land is unregistered and so the ownership is unclear. Therefore, information about this community nomination has been sent to the owners as identified by the nominating body.

⁵ The nomination was received prior to the recent Cabinet reshuffle.

⁶ Ditto.

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 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. In this case, the nominated building/land is not currently in use for community benefit 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. 'The site was rented by a fuel/coal retailer. This trade has ceased.'

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. 'The site is required for additional parking at the railway station and to reduce the amount of hazardous parking that takes place on adjacent lanes.'

'The improved parking area is required for vehicle electrical charging points, not only for railway users but by local residents who have no garages.

The site will offer infrastructural benefit for the travelling public such as covered storage for bicycles and cycling gear.

'The inclusion of the adjacent woodland will form a natural protective buffer between the activity of the proposed car park and the two neighbouring residents to the north. It will be actively managed to enhance the bio-diverse environment of the conservation area.'

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.

The nominated site is not currently in community use. The nominating body states that its main use in the recent past was by a fuel/coal retailer. The fuel/coal trade use has ceased but the nominating body has not provided the dates when this use was taking place and so the Council cannot establish whether that use was occurring in the 'recent past.'

Also, the nominating body has given no reasons for thinking that the Council should conclude that such a use would have furthered the social wellbeing or social interests of the local community. Setting aside the lack of information, in my view, the stated use of the former coal yard site would not have been a use which furthered the social wellbeing or social interests of the local community.

The nominating body has outlined an aspiration for a future use of the site as 'additional parking at the railway station.' The nominating body has not, however, provided its reasons for thinking that the Council should conclude that this proposed future use would further the social wellbeing or social interests of the local community. Moreover, 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.

In the absence of any such reasons, I do not consider that 'additional parking at the railway station' would further the social wellbeing or social interests of the

local community. Also, of course, such a use would not be a non-ancillary as it would clearly be a use ancillary to the adjacent railway station.

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 lack of 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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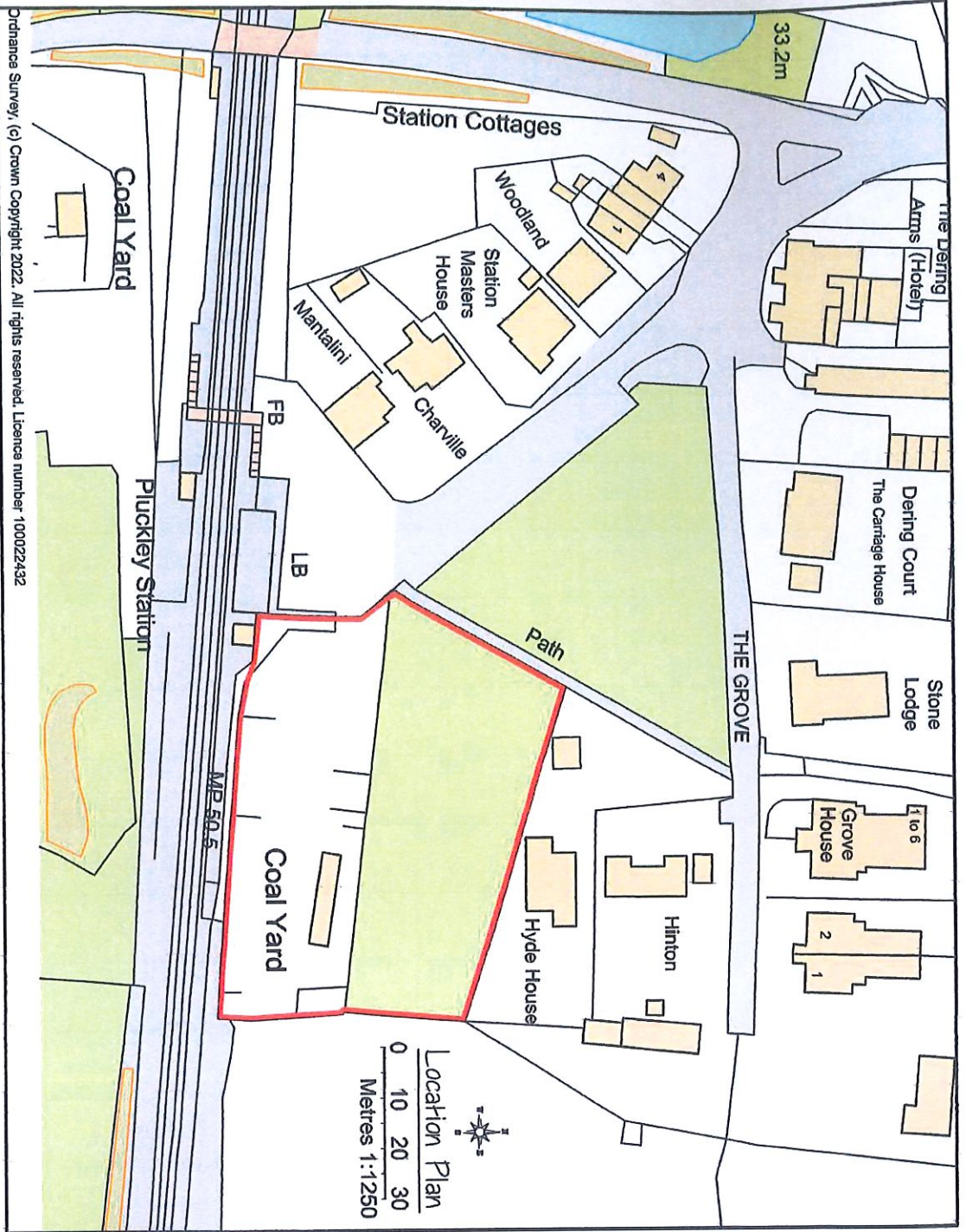
AUTHORITY

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:31/08/2022.....



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1939 coal yard location plan.dwg

Client: Pluckley Parish Council

Address:

Job: Proposed Community Asset Registration
Coal Yard

Title: Location Plan

Scale: 1:1250
(Original size: A4)

Date: June 2022

Drawing Number: 1939 DOI

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