

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: PR86-008

Case Officer: Darren McBride

Site Address: The Wheel Inn Public House, The Street, Westwell,
Ashford, Kent TN25 4LQ

Title Number(s): K766689 (FREEHOLD) AND TT71980 (LEASEHOLD)

Nominating Body: Westwell Parish Council

Nomination Validated: 21 April 2021

Deadline Date: 16 June 2021

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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 21 April 2021 and so must be determined by 16 June 2021.

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:

- Westwell 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.

- Freehold Owner(s)
- Leasehold Owner(s)
- Occupier(s)
- Cllr G Clarkson (Leader of the Council)
- Cllr P Feacey (Portfolio Holder for Community Safety and Wellbeing)
- Cllr L Krause (Deputy Portfolio Holder for Community Safety and Wellbeing and 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.

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 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.

Permitted Development Rights

Another consequence of listing is that a building which is used as a drinking establishment which is listed as an asset of community value loses certain permitted development rights for the specified five year period⁴. As a result, planning permission would be required for the change of use or the demolition of the building.

Assessment

The nominating body is 'a voluntary or community body' with 'a local connection,' as defined in Regulations 4 and 5 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. The questions and answers state as follows:

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

A1. 'Public house and garden.'

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

A2. 'It is a meeting place for the community, and is the only restaurant in the village. It hosts various periodic groups and events and there is a table tennis table in the garden for public use.'

⁴ Classes A and B of Part 3 and Class B of Part 11, Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015 (SI 2015/596)

'During the coronavirus pandemic, The Wheel supported the community by converting the bar into a village shop, supplying basic essentials such as fresh milk, vegetables, lavatory paper, nappies and cleaning materials (there is no shop in Westwell and no public transport into the village).'

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. 'As long as the building continues as a public house, restaurant and community venue it will continue to enhance the well-being of local residents and bolster community cohesion.'

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.

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 building/land was the subject of a previous successful nomination⁵. The building/land was included in the Council's List of Assets of Community Value until that entry expired on 13 January 2021. This latest nomination seeks to return the building/land to the List.

The building is currently open and operating as a public house. No evidence has been submitted which demonstrates that the business is viable and therefore likely to continue to remain open. However, there is no requirement for the nominating body to demonstrate future viability. The test is simply that it is 'realistic to think that there can continue to be non-ancillary use of the building...' The fact that the building is currently open and operating as a public house would, in my view, suggest that it is realistic to think that its current use can continue.

⁵ During the previous listing period, part of the land was the subject of a relevant disposal. As a result, that part of the land was removed from the List of Assets of Community Value. The remaining area of land (including the public house building itself) remained listed and it is that building/land which is the subject of this latest nomination.

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

In this case, the nominating body claims that the public house is:

- 'a meeting place for the community';
- 'the only restaurant in the village'; and that it
- 'hosts various periodic groups and events and there is a table tennis table in the garden for public use'

Also, during the Coronavirus pandemic, it is claimed that the public house operated as, in effect, a village shop.

The nominating body has provided no specific details about the 'various periodic groups and events' which are hosted at the public house. As such, it is not possible to establish whether these uses would be viewed as non-ancillary to the main use of the building/land as a public house.

Regarding the use of the public house building as a village shop during the Coronavirus pandemic, generally, a village shop would itself often further the social wellbeing or social interests of the local community. However, the use of the public house building as a village shop temporarily during the pandemic, whilst commendable, would probably be viewed as a use ancillary to the main use of the building as a public house. Also, assuming that the village shop use has now ceased (or will cease once the pandemic has eased) then this would further suggest that such temporary use of this particular building in extraordinary circumstances would be viewed, for the purposes of the Asset of Community Value regime, as merely a short-term ancillary use.

However, generally, a local meeting place of this type would be considered as furthering the social wellbeing or social interests of the local community. Also, the serving of food is likely to be viewed as non-ancillary to the main use. In addition, of course, the main use of the building as a public house would itself further the social wellbeing and social interests of the local community.

Conclusions

In my view, on balance, it is reasonable to conclude that the actual current use of the building/land as a public house does further the social wellbeing and 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-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 in 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 in 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

Date:11/06/2021.....

