



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
COMMUNITY RIGHT TO BID**

Tribunal Reference: CR/2013/0003
Appellant: Spirit Pub Co. Ltd
Respondent: Rushmoor Borough Council
Second Respondent: The Friends of Tumbledown Dick
Judge: NJ Warren

DECISION NOTICE

1. The Localism Act 2011 requires local authorities to keep a list of assets (meaning buildings or other land) which are of community value. Once an asset is placed on the list it will usually remain there for five years. The effect of listing is that, generally speaking an owner intending to sell the asset must give notice to the local authority. A community interest group then has six weeks in which to ask to be treated as a potential bidder. If it does so, the sale cannot take place for six months. The theory is that this period known as “the moratorium” will allow the community group to come up with an alternative proposal – although, at the end of the moratorium, it is entirely up to the owner whether a sale goes through, to whom and for how much. There are arrangements for the local authority to pay compensation to an owner who loses money in consequence of the asset being listed.
2. The Tumbledown Dick was a well known pub in Farnborough. It is a fine building, much of it dating back to 1800 and its earliest parts as far as 1600. It used to have a reputation for live music encouraging many local bands and young musicians. It closed in 2008 and has not been used since.
3. In August 2012 before the Localism Act came into force MacDonalds agreed to purchase the freehold from its owner Bride Hall Investments Ltd. The freehold is

Appellant: Spirit Pub Co. Ltd**Date of decision: 22 November 2013**

subject to a lease held by the Spirit Pub Company Ltd which has only nine years to run. Current outgoings on the lease in rent, insurance and vacant rates are about £125,000 a year. The building can be reasonably valued at an estimate of £1.5 million but restoration work would be needed to bring it in to use.

4. The Friends of the Tumbledown Dick are a local community group who have imaginative plans for the building. Expressing the undoubted affection which the Tumbledown Dick still retains in the neighbourhood, they would like to see it as a community enterprise trading as a pub, restaurant, day time café, art centre and live music venue with the possibility of gallery space, office space for community groups, community theatre, day centres and play schemes.
5. The Friends applied to Rushmoor Borough Council for the Tumbledown Dick to be listed as an asset of community value and were successful. Spirit Pub Co Ltd now appeal to the Tribunal against the listing.
6. All parties have consented to the matter being determined without a hearing and I am satisfied that I can properly determine the issues without one.
7. The realistic ground of appeal is that Section 88(2)(b) of the Act is not satisfied. This requires that:-

“ 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 (whether or not in the same way as before) the social well being or social interests of the local community”.
8. It is submitted in the notice of appeal that the Friends of Tumbledown Dick would somehow have to raise as much as £4.5 million if their scheme were to get off the ground. It is suggested that in the absence of any firm indication that they can raise this money or of any financially robust business plan then the listing should not be permitted. I agree with Rushmoor Borough Council and the Friends of the Tumbledown Dick that this places a heavier burden on the Friends than is intended, at this stage, by the legislation. Moreover, the reuse of the building contemplated by the Act need not be organised by this particular community group. Even if their

Appellant: Spirit Pub Co. Ltd**Date of decision: 22 November 2013**

plans came to nothing, the conditions for listing would be satisfied, for example, if it were realistic to think that someone else might run the Tumbledown Dick as a pub. Given the characteristics of this building, I've no doubt that it would be the sort of pub which furthered the social well being and social interests of the local community.

9. I have referred to an agreement to sell the building to MacDonalDs and to the fact that the agreement predates the coming into force of the Act. A disposal of the freehold to MacDonalDs would therefore not be subject to a moratorium. On 25 October 2013 Rushmoor Borough Council, on the application of MacDonalDs, gave permission for a change of use of the Tumbledown Dick from public house to restaurant/takeaway. This is not something I can or should ignore. This is an ordinary appeal to the First Tier Tribunal. It is an appeal at which all issues of fact and law can be canvassed by the parties. The normal well settled rule is that on such an appeal the issues are decided as at the date when the Tribunal gives its decision. See Quilter v Mapleson (1882) 9 QB 672 and Ponnamma v Arumogam (1905) A.C. 383. This approach was approved by a Tribunal of Social Security Commissioners in R(FIS)1/82. The existence of the local authority's power to take into account changes of circumstances in Rule 2(c) Assets of Community Value (England) Regulations 2012 does not seem to me to affect this principle.
10. Having reviewed all the evidence I have reached the conclusion that neither a reversion to use as a public house nor any of the other community uses hoped for by the Friends is a realistic possibility for the Tumbledown Dick.
11. Now that a large organisation such as MacDonalDs has an agreement to buy the Freehold unaffected by the listing; and it has obtained its planning permission for a change of use, other possibilities become much much less likely. Given the need to raise, say, £2 million to finance the purchase and redevelopment of the building and taking into account that it is now five years since anyone was sufficiently motivated to find any use for it at all, it seems to me that all other possibilities have become unrealistic.

Appellant: Spirit Pub Co. Ltd

Date of decision: 22 November 2013

12. For these reasons, this appeal succeeds.

NJ Warren

Chamber President

Dated 22 November 2013