



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Community Right to Bid**

Appeal Reference: CR/2015/0011

Determined without a Hearing at Field House
On 25 April 2016

Before

JUDGE PETER LANE

Between

**L. PULLAN
L. EXLEY**

Appellants

and

LEEDS CITY COUNCIL

Respondent

DECISION AND REASONS

Introduction

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.

Legislation

2. Section 88(1) and (2) of the 2011 Act provides as follows:-

“88 Land of community value

- (1) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority’s area is land of community value if in the opinion of the authority –
 - (a) 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
 - (b) 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 community.
- (2) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority’s area that is not land of community value as a result of subsection (1) is land of community value if in the opinion of the local authority –
 - (a) 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 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 or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

3. Section 89 explains the procedure for listing:-

“89. Procedure for including land in list

- (1) Land in a local authority’s area which is of community value may be included by a local authority in its list of assets of community value only –
 - (a) in response to a community nomination, or
 - (b) where permitted by regulations made by the appropriate authority.

- (2) For the purposes of this Chapter 2 community nomination," in relation to a local authority, means a nomination which –
 - (a) nominates land in the local authority's area for inclusion in the local authority's list of assets of community value, and
 - (b) is made –
.....
- (3) By a person that is a voluntary or community body with a local connection.
.....
- (4) The appropriate authority may by regulations make provision as to –
 - (a) the meaning in subsection (2)(b)(iii) of "voluntary or community body;"
 - (b) the conditions that have to be met for a person to have a local connection for the purposes of subsection (2)(b)(iii);
 - (c) the contents of community nomination;
....."

4. The regulations in question are the Assets of Community Value (England) Regulations 2012 (SI2012/2421). Regulation 5 provides as follows:-

"Voluntary or community bodies

5:-

- (1) For the purposes of section 889(2)(b)(iii) of the Act, but subject to paragraph 2, 'a voluntary or community body' means –
.....
 - (c) An unincorporated body –
 - (i) whose members include at least 21 individuals, and
 - (ii) which does not distribute any surplus it makes to its members".

The appeal

5. The appeal concerns a public house known as the Old Cock in Otley, Leeds. The Old Cock began trading as a pub in 2010. The appellants had difficulties in persuading the respondent, as local planning authority, to permit a change of use, so as to enable the premises to be run as a pub. In the relatively short time it has been trading, the Old Cock has established an enviable reputation, twice being named Leeds CAMRA Pub of the Year.

6. On 17 February 2015, the respondent received a nomination under the 2011 Act for the Old Cock to be listed as an asset of community value. The nominator

was the Otley Pub Club. The respondent ascertained that this was a locally based unincorporated community group with at least 21 members eligible for the vote in the Leeds area. For this purpose, a check was made with Leeds City Council elector's team.

7. On 13 April 2015 the Old Cock was listed pursuant to section 87 of the 2011 Act. The appellants requested a review of the decision by the respondent. A hearing of the review took place on 14 January 2015. The outcome was that the respondent decided that the Old Cock should remain listed.

8. The appellants appealed to the First-tier Tribunal. The parties were content that the appeal should be determined without a hearing. In all the circumstances, I considered that the Tribunal may justly do so. In determining the appeal, I have had regard to all the evidence and submissions set out in the appeal bundle prepared by the respondent. The fact that I do not refer specifically in this decision to any particular submission or document is not to be taken as indicating that I have not had regard to the same.

Discussion

9. There is no doubt that the appellants are running the Old Cock as a pub and intend to continue to do so. The relevant provision of the 2011 Act is, accordingly, section 88(1).

10. In his helpful submissions on behalf of the appellants, Mr Culverhouse points out that "social wellbeing" and "local community" are undefined in the 2011 Act. That is, no doubt, deliberate, since it will usually be a question of fact as to what the "local community" comprises in any particular case. A similar point may be made about "social wellbeing". It is, however, relevant to observe that in section 88(6) "social interest" is said to include, amongst other things, cultural and recreational interests.

11. The appellants are concerned that Otley Pub Club apparently nominated all the pubs in Otley as assets of community value. The appellants contend that the Old Cock did not have any unique position and that, were it not to be listed, another pub or pubs would be able to further the relevant interests. If one pushes that submission to its logical conclusion, however, the result would be that none of the pubs in Otley could be listed, since a corresponding argument could be made in the case of each of the others. In any event, the 2011 Act does not require the potential asset to be unique or even special. The sole question is whether it furthers relevant interests.

12. The appellants submit that the majority of their trade is not local. But the evidence that emerged at the review hearing, as well as what is said on behalf of the appellants at D16 of their "final submission", makes it plain that at least a

significant number of the users of the Old Cock are people from the town of Otley, which on any rational view is the local community for the purposes of this appeal. Some members of that community may go to other pubs in the town, either as well as, or instead of, visiting the Old Cock. The evidence is, however, clear that the Old Cock's clientele comprises far more than a *de minimis* local element.

13. Despite the responses of Mr Pullan at the review hearing (which were in any event unpersuasive), the appellants have completely failed to show that the Old Cock is a place where people go merely to drink, without socialising. In any event, the weekly music events held on the pub's first floor constitute cultural/creational interests and there is no evidence to show, on balance, that the audience for these events is solely or predominately drawn from outside the town.

14. Although the appellants appear to consider that the nomination by the Otley Pub Club was in the nature of a "publicity stunt", designed to enhance the profile of a local MP who is concerned about pub closures, the question for the respondent and (now) for the Tribunal is a simple one; namely, does the Old Cock meet the requirements of section 88(1) of the 2011 Act? The appellants point to the fact that inclusion of the Old Cock in the section 87 list has a damaging effect upon the value of the appellants' asset. Such a listing means that a person requires express planning permission in order to demolish a building listed under section 87 or to convert it to retail use. But for that listing, the building would enjoy the benefit of permitted development rights. This is not, however, an argument that can be successfully deployed against listing, if the requirements of section 88(1) are met.

15. Under regulation 14 of the Assets of Community Value (England) Regulations 2012, an owner of listed land is entitled to compensation from the local authority, where the circumstances in regulation 14(2) apply. Those are that the person making the claim has, at a time when he or she was owner, "incurred loss or expense in relation to the land which would be likely not to have been incurred if the land had not been listed". Regulation 14(3) lists certain types of claim which are specifically said to meet the requirements of regulation 14(2), without prejudice to other types of claim which may be made.

16. Parliament has, accordingly, legislated to make provision for certain financial loss, which arises as a result of listing. Insofar as loss may arise that is not within the compensation scheme, Parliament must be assumed to require such a loss to fall on the owner of the listed asset.

17. In his submissions on behalf of the appellants, Mr Culverhouse takes issue with the effects of the legislation. The Tribunal, however, must apply the legislation as it is, not as the appellants might wish it to be.

Decision

18. The Old Cock meets the requirements of section 88(1) of the 2011 Act. It is currently being used for relevant social interests and it is plainly realistic to think that use can continue, given the successful nature of the venture. The appeal is accordingly dismissed.

Judge Peter Lane

6 May 2016