



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

**Appeal Reference: CR/2016/0005**

**Heard at Derby Magistrates' Court  
On 27 July 2016**

**Date of Decision: 27 July 2016  
Date of Promulgation: 18 August 2016**

**Before**

**JUDGE JACQUELINE FINDLAY**

**Between**

**MR JOHN COLLINS**

**Appellant**

**and**

**DERBYSHIRE DALES DISTRICT COUNCIL**

**Respondent**

**Representation:**

**For the Appellant: Mr James Collins  
For the first Respondent: Mr Brett Wilson**

## DECISION AND REASONS

### A. LEGISLATION

1. For present purposes, the relevant provisions are:-

#### *Localism Act 2011("the LA Act")*

##### *87 List of assets of community value*

- (1) A local authority must maintain a list of land in its area that is land of community value.
- (2) The list maintained under subsection (1) by a local authority is to be known as its list of assets of community value.
- (3) Where land is included in a local authority's list of assets of community value, the entry for that land is to be removed from the list with effect from the end of the period of 5 years beginning with the date of that entry (unless the entry has been removed with effect from some earlier time in accordance with provision in regulations under subsection (5)).

##### *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) The appropriate authority may by regulations –

(a) provide that a building or other land is not land of community value if the building or other land is specified in the regulations or is of a description specified in the regulations;

(b) provide that a building or other land in a local authority's area is not land of community value if the local authority or some other person specified in the regulations considers that the building or other land is of a description specified in the regulations.

(4) A description specified under subsection (3) may be framed by reference to such matters as the appropriate authority considers appropriate.

(5) In relation to any land, those matters include (in particular) –

(a) the owner of any estate or interest in any of the land or in other land;

(b) any occupier of any of the land or of other land;

(c) the nature of any estate or interest in any of the land or in other land;

(d) any use to which any of the land or other land has been, is being or could be put;

(e) statutory provisions, or things done under statutory provisions, that have effect (or do not have effect) in relation to –

(i) and of the land or other land, or

(ii) any of the matters within paragraphs (a) to (d);

(f) any price, or value for any purpose, of any of the land or other land.

(6) In this section –

“legislation” means –

(a) an Act, or

(b) a Measure or Act of the National Assembly for Wales;

“social interests” includes (in particular) each of the following –

(a) cultural interests;

(b) recreational interests;

(c) sporting interests;

“statutory provision” means a provision of—

(a) legislation, or

(b) an instrument made under legislation.

## **B. BACKGROUND**

2. The Respondent received a nomination form in August 2015 from the Matlock and Dales’ branch of Campaign for Real Ale Limited to list the Three Stags Heads at Darley Bridge (‘the building’) as an asset of community value. The decision to list dated 14 October 2015 which appears at documents 97 to 99 of the bundle states ‘For the Reasons set out above, the Three Stags Heads, Darley Bridge will be listed as an Asset of Community Value with effect from 14 October 2015. The listing will apply to the building and surrounding land denoted on the land registry map with a red line, with the part bounded by the green line being excluded’. The land registry official copies of register of title at pages 39 to 43 show the original freehold land edged with red with the title no. DY427534 included the adjacent field and it is recorded that on 6 January 2014 the field marked in green was removed from this title and registered under the title no. DY480841. The copy of the register shows that the field with title number DY480841 is owned by John Dearnley Collins, the Appellant to these proceedings.

## **C. THE ISSUES**

### **The First Issue**

3. Mr James Collins, the son of Mr John Collins the Appellant, initially sought to appeal against the decision to list the Three Stags Head, namely the building, the car park and the drive. Mr James Collins has withdrawn his appeal.
4. The appeal before the Tribunal was lodged by John Collins and his grounds of appeal at page 2 are as follows:

‘I understand that a piece of land I own has been included on a listing for a pub called the 3 Stags in Darley Bridge, Matlock. I have been sent a copy by the owner of the pub of the listing which includes my land which is a field to the side of the pub - DY480841 and DY427534. I have not been approached by the council regarding this land and did not have the chance either defend it’s original listing or to appeal it. It is a private field, it has not and is not used by anyone else and certainly is not an asset of community value. I have been to see my solicitor and he has informed me that I should write to you to have the land immediately removed from any ACV listing for the 3 stags pub.’

5. Under Part 7 of the appeal form Mr Collins writes 'I have tried to contact the Council to ask them to acknowledge the error made and if they will there would be no need for a hearing, but if they will not I would like a hearing, probably in Matlock.
6. The first issue is whether Mr John Collins has a right of appeal. The Tribunal concluded that he has. It would be a breach of natural justice if he did not have right of appeal taking into account that he was led to believe he had a right of appeal. In reaching this decision the Tribunal attached weight to the following factors:

Mr John Collins is a director of JC Darley Bridge Limited (Company Registration No. 08402028) and received a copy of the notification letter of 25 August 2015. The letters appear at documents 28 to 30.

The notification letter of 25 August 2015 was sent with a copy of the District Council's policy. The letter of 25 August 2015 did not enclose a copy of the decision to list as an asset of community value or a copy of the land registry entry showing the area of land covered by the listing.

A letter of 25 August 2015 states that the recipient of the letter should inform the writer of the letter Donna Tasker 'If you are not the owner or know of any other person that may have an interest in the property.....'

It would not be clear to the recipient of the letter what land had been listed as a community asset.

Mr John Collins as a trustee received a letter dated 9 December 2015 asking him as the co-owner of the property whether he required the matter to be dealt with by way of an oral hearing.

The policy statement enclosed with the letter of 25 August 2015 (pages 69 to 73) states 'if the owner is dissatisfied with the outcome of the Council's internal review they have a right of appeal to the First Tier Tribunal'.

Mr John Collins' appeal was accepted and the case management note of 23 March 2016 states: 'These appeals are appeals by separate people, each of whom, seems, is an owner of the listed asset' (page 100). This in fact was not the case but led Mr John Collins to believe he had a right of appeal.

Mr John Collins appointed his son James Collins to act on his behalf. On numerous occasions as stated below Mr James Collins asked for clarification in relation to the land encompassed in the listing and at no time was he given a copy of the decision dated 14 October 2015 or told unequivocally that the field with the registered title no. DY480841 was not included in the listing.

The note of the oral review document states that paragraph 8 (page 95) 'the land owner has the right of appeal against this decision to the General Regulatory Chamber of the First Tier Tribunal. The deadline for appealing is specified in the procedural rules of that Chamber as 28 days from the date on which notice of the decision appealed against was sent to the owner.'

### **The Second Issue**

7. There is no issue between the parties that the Stags Head, the beer garden, the driveway and the car park have been appropriately listed as a community asset and the requirements of section 88(1) of the Localism Act 2011 are satisfied. Mr John Collins does not intend to pursue his appeal against the listing.
8. For the sake of completeness the Tribunal finds that the actual current use of the building that is not an ancillary use furthers the social wellbeing or social interest of the local community and it is realistic to think that there can continue to be non-ancillary use of the building which will further the social wellbeing or social interests of the local community.
9. Three Stags Head is a public house that is located in the centre of the small village of Darley Bridge. The building is Grade II listed and parts are thought to date back to the 17 Century. The pub has a beer garden facing the main entrance and further seating outside the front of the building. There are some outbuildings and a large car park. There is a driveway from the public road to the car park.
10. The Tribunal finds that the building is currently in use as a public house and is a venue which provides somewhere for village residence to meet and socialise. It acts as a place when people to interact with others from the local area to ensure a cohesive community and a village pub of this type meets the statutory test.

### **The third issue**

11. The third issue is whether there should be an award of costs.
12. The Appellant submits that there should be an order for costs against the Respondent on the basis that until he received the bundle of documents he had not seen the details of the decision and that the correspondence from the Respondent has been imprecise and misleading. He states through his son, Mr James Collins, that the appeal was unnecessary and could have been avoided if at any time he had been told clearly that the field with the title reference DY480841 was not included in the listing.
13. The Respondent invites me to make an order of cost against the Appellant on the basis that the appeal could have been avoided. Mr Wilson submits that although the Respondent can produce no documentary evidence to show that the decision to list document, at pages 97 to 99, was enclosed with the letters of 25 August 2015 it is 'likely' that copies of this document would have been sent out either on 25 August 2015 or at some other time.
14. Mr Wilson submits that Mr James Collins, on behalf of Mr John Collins, was told clearly that the field with land registry title plan and no. DY480841 was specifically excluded from the listing and in particular he refers to the email from Wendy Li, Senior Solicitor, at page 88. Mr Wilson submits that the

appeal could have been withdrawn in April 2016. Mr Wilson submitted that the situation would have been clear to Mr Collins when he received the response and bundle of documents and in any event the official copy of the register of title could have been obtained by Mr Collins at any time.

15. The Tribunal makes an order in respect of costs against the Respondent under Rule 10 of the Tribunal Procedure (First Tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended, on the grounds that the Tribunal considers that the Respondent has acted unreasonably in conducting the proceedings. In reaching this decision the Tribunal attaches weight to the following factors:
  - a. Mr John Collins and his representative Mr James Collins, were not sent at any time a copy of the decision to list dated 14 August 2015 which appears at documents 97 to 99. If the decision had been issued to Mr Collins it is highly unlikely that the Respondent would have failed to state this in the Response or failed to produce documentary evidence to show when the decision was issued.
  - b. Mr James Collins, on behalf of Mr John Collins, asked on a number of occasions for clarification and confirmation that the field with land registry title plan and no. DY480841 was not included in the listing. At no point was Mr John Collins given an unequivocal confirmation of this fact.
  - c. Mr James Collins, on behalf of Mr John Collins, in an email dated 13 April 2016 wrote 'for clarification, your response in Point 7 states that the field is excluded as an ACV and it is only the pub that the Council wishes to list? That was the purpose of my fathers and appeal to the tribunal, he owns the field and has nothing to do with the pub now. If that is correct and receives a formal letter to that effect there is no need for the Tribunal. Please confirm.'
  - d. The response from Wendy Li, Senior Solicitor, is equivocal and obscure. She replied on 20 April 2016 'when the Council considered listing the Three Stags Heads, it took into account the Land Registry's title and plan no. DY427534, because the registration of the Three Stags Heads falls under the aforementioned title. Land Registry title plan and number DY480841 is under the ownership of Mr John Collins but it is excluded from the title plan no. DY427534. Please refer to title no. DY427534 which specifies this'.
  - e. It is the view of the Tribunal that Mr Collins was entitled to receive clear unequivocal confirmation that the field with Land Registry title and plan no. DY480841 was excluded from the listing and he did not do so. Had the Respondent replied to Mr John Collins' and Mr James Collins' queries with clarity and precision, had the listing decision, and in particular paragraph 6, been issued this hearing could have been avoided.
  - f. It was not unreasonable for Mr John Collins to pursue the appeal to hearing after he had received the bundle taking into account the history

of the matter, the confusing correspondence he had received from the Respondent and that the Respondent had asked for an order for costs.

- g. It is likely that no copy of the land registry entries was attached to the nomination form, the report on the internal review of decision to list or the decision to list. The description of the nominated land including its proposed boundaries at paragraph 6.1 of the report (pages 4 to 7) of the oral review at page 91 is confusing as refers to 'this map shows that the application relates to the Three Stags Heads, beer garden, and car park as enclosed by the red line on the map'.
16. For the reasons as stated above the appeal is dismissed. Mr John Collins has lodged a schedule of costs in accordance with Rule 10(iii)(b). The Tribunal makes an order for costs in accordance with that schedule.

**Judge Jacqueline Findlay**

**27 July 2016**