



**First-tier Tribunal  
(General Regulatory Chamber)**

**Tribunal Reference: CR/2017/0010**

**Before**

**TRIBUNAL JUDGE SIMON BIRD QC**

**Between**

**DAVID ADAMS**

Appellant

**and**

**ASHFIELD DISTRICT COUNCIL**

First Respondent

**and**

**NOTTINGHAM BRANCH OF CAMRA**

Second Respondent

**Representation:**

For the appellant:

Mr David Adams

For the first respondent:

Mr Christopher Cant instructed by the Solicitor, Ashfield  
Borough Council

For the second respondent:

Nick Molyneux

**DECISION AND REASONS**

**A Introduction**

1. The Localism Act 2011 (“the 2011 Act”) requires local authorities to keep a list of assets (meaning buildings or other land) which are of community value. 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, a sale cannot take place for six months. The intention is that this period, known as “the moratorium”, will allow the community group to come up with an alternative proposal. However, at the end of the moratorium it remains up to the owner whether the asset is sold, to whom and at what price. There are arrangements for the local authority to pay compensation to an owner who loses money in consequence of the asset being listed.

## **B Legislation**

2. Section 88 of the 2011 Act provides so far as is material to this appeal:

*“(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 of the Localism Act 2011 deals with nominations and states:

*“(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 “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—*
  - (i) by a parish council in respect of land in England in the parish council’s area,*

- (ii) by a community council in respect of land in Wales in the community council's area, or*
- (iii) by a person that is a voluntary or community body with a local connection.*

*(3) Regulations under subsection (1)(b) may (in particular) permit land to be included in a local authority's list of assets of community value in response to a nomination other than a community nomination.*

*(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 nominations;*
- (d) the contents of any other nominations which, as a result of regulations under subsection (1)(b), may give rise to land being included in a local authority's list of assets of community value.*

*(5) The appropriate authority may by regulations make provision for, or in connection with, the procedure to be followed where a local authority is considering whether land should be included in its list of assets of community value".*

4. The Secretary of State, who is the appropriate authority for the purposes of Part 5 of the Localism Act 2011, has made the Assets of Community Value (England) Regulations 2012 ("the Regulations"). These supplement section 89 by the provisions of regulations 4, 5 and 6:

*"4 (1) For the purposes of these regulations and section 89(2)(b)(iii) of the Act, a body other than a parish council has a local connection with land in a local authority's area if—*

- (a) the body's activities are wholly or partly concerned—*
  - (i) with the local authority's area, or*
  - (ii) with a neighbouring authority's area;*
- (b) in the case of a body within regulation 5(1)(c), (e) or (f), any surplus it makes is wholly or partly applied—*
  - (i) for the benefit of the local authority's area, or*
  - (ii) for the benefit of a neighbouring authority's area; and*
- (c) in the case of a body within regulation 5(1)(c) it has at least 21 local members.*

*(2) For the purposes of these regulations and section 89(2)(b)(iii) of the Act—*

- (a) a parish council has a local connection with land in another parish council's area if any part of the boundary of the first council's area is also part of the boundary of the other council's area; and*

*(b) a parish council has a local connection with land that is in a local authority's area but is not in any parish council's area if—*  
*(i) the council's area is within the local authority's area, or*  
*(ii) any part of the boundary of the council's area is also part of the boundary of the local authority's area.*

*(3) In paragraph (1)(c), "local member" means a member who is registered, at an address in the local authority's area or in a neighbouring authority's area, as a local government elector in the register of local government electors kept in accordance with the provisions of the Representation of the People Acts.*

*5 (1) For the purposes of section 89(2)(b)(iii) of the Act, but subject to paragraph (2), "a voluntary or community body" means—*

- (a) a body designated as a neighbourhood forum pursuant to section 61F of the Town and Country Planning Act 1990;*
- (b) a parish council;*
- (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;*
- (d) a charity;*
- (e) a company limited by guarantee which does not distribute any surplus it makes to its members;*
- (f) a co-operative or community benefit society which does not distribute any surplus it makes to its members; or*
- (g) a community interest company.*

*(2) A public or local authority may not be a voluntary or community body, but this does not apply to a parish council.*

*(3) In this regulation "co-operative or community benefit society" means a registered society within the meaning given by section 1(1) of the Co-operative and Community Benefit Societies Act 2014, other than a society registered as a credit union.*

*6. A community nomination must include the following matters—*

- (a) a description of the nominated land including its proposed boundaries;*
- (b) a statement of all the information which the nominator has with regard to—*
  - (i) the names of current occupants of the land, and*
  - (ii) the names and current or last-known addresses of all those holding a freehold or leasehold estate in the land;*
- (c) the nominator's reasons for thinking that the responsible authority should conclude that the land is of community value; and*
- (d) evidence that the nominator is eligible to make a community nomination".*

## **B The Listed Asset**

5. This appeal concerns the ground floor, cellar, rear yard and outbuilding at the Portland Arms, Annesley Road, Hucknall, Nottingham NG15 7DQ ("the Pub"). The Appellant purchased the Pub from Admiral Tavens in 2009 with a view to converting it to residential use. The two upper floors have been converted to self-contained flats with the benefit of planning permission but the ground floor of the Pub continues to be used as a public house, the Appellant having granted a tenancy to allow its use for that purpose. However, his intention has always been that the remainder of the Pub should be converted to residential in order to fund his retirement. The delay in implementing his plans has been attributable to ill health and other issues.
6. By nomination dated 19 December 2016, the Second Respondent successfully applied to the First Respondent for the Pub to be added to its List of Assets of Community Value ("LACV"). A review of that decision took place at the request of the Appellant on 25 May 2017 when the First Respondent decided to maintain the Pub on the LACV.
7. The Appellant appealed to the Tribunal against that decision by notice dated 20 June 2017.

## **C The Issues**

8. The issues in this appeal are:
  - (a) Whether the Second Respondent's nomination of the Pub for inclusion on the LACV was a valid nomination; and
  - (b) Whether an actual current use of the Pub and its land and outbuilding 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 a 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.

## **D The Background**

### **(a) The Pub**

9. There is little factual dispute in relation to the actual use of the Pub. The Appellant purchased it from Admiral Taverns when it was derelict and boarded up. He undertook extensive work to get the building back into shape, including replacing all the windows so that it would be suitable for residential conversion. He sought to get the Pub running to make the building look decent rather than an eyesore.

10. The Pub is currently trading as a public house and benefits from a Premises Licence dated 16 November 2016 for the supply of alcohol, the provision of regulated entertainment and late night refreshment seven days a week between specified hours.
11. The current licensee, a Mr Williams, occupies the premises under a tenancy at will granted by the Appellant. The property demised is defined under the tenancy as *“The ground floor, rear garden excluding outbuildings and first floor function room along with access thereto...”* The use to which the premises may be put is stated to be *“Selling alcohol and non-alcoholic drinks along with food to be eaten on or off the property”*.
12. The Appellant is owed money from the licensee under the terms of the tenancy but has taken the view that something is better than nothing whilst the Pub is “ticking over”.
13. The Appellant disputes the attractiveness of the Pub and disputes a number of facilities/activities said by the Second Respondent to be provided by it. However, the general description of it as a *“rough and ready”, “spit and sawdust”*, rather run down public house serving an essentially local clientele of residents and workman is accepted. It is also agreed that the Pub provides for some live entertainment and has its own pool team which participates in local competitions.
14. In terms of the use of the rear yard, the photographic evidence shows that this is a hardsurfaced area with a former bus shelter serving as protection for patrons of the Pub who wish to smoke. The same evidence also shows tables and chairs available for patrons to sit outside if they so desire.

**(b) The Nomination**

15. The nomination form dated 18 December 2016 was accompanied by an e-mail dated 19 December 2016 signed by Mr Molyneux which stated that:

*“This nomination is being made by the Nottingham Branch of the Campaign for Real Ale (CAMRA), a local group comprising some 5,600 members and is being sent to Ashfield District Council by e-mail on Monday 19<sup>th</sup> December 2016 which is the nomination date”*.
16. On the nomination form itself, the name of the organisation inserted in section 2 (which requests information about the community organisation making the nomination), is *“Campaign for Real Ale”* with the address of the national body given. However, the postal address for the Nottingham Branch is also given. The *“Organisation Type”* is given as *“A company limited by guarantee”*. More information is then provided about both the national organisation CAMRA and its Nottingham Branch. It is made clear in this further information that CAMRA’s national surplus is not distributed to members.

17. In relation to the Nottingham Branch, the nomination form was completed to state that it is the largest of the CAMRA branches and that it acts as the voice of the local area's pub-going beer and cider drinking public. In terms of the area of the Branch activities, this was stated to be the whole of the City of Nottingham, large parts of the borough of Broxstowe, Gedling and Rushcliffe and parts of the Districts of Ashfield and Newark & Sherwood.
18. Within the Hucknall area, the Branch was stated to host one of the UK's premier beer and cider festivals as well as running campaigns and activities to protect local pubs. The form also stated that it was more than likely that at least 21 of its Branch members would be registered as local government electors within the District. The Council's subsequent researches confirmed that, as at January 2016, 326 of the 5,642 Branch members were resident within the NG15 postcode within which the Pub is located.
19. The nomination form was also accompanied by a statement of support signed by the Campaigns Officer for CAMRA which stated:

*"I can confirm that in putting forward the attached application to list the Portland Arms, Hucknall as an 'Asset of Community Value (ACV)' that Nottingham Branch of CAMRA is acting on behalf of and will full authority of the Campaign for Real Ale (CAMRA). CAMRA is a limited company, registered in England with company number 1270286."*

## **E The Appellant's case**

20. The Appellant contends that the Pub should be removed from the LACV because:
  - (a) Much work has been carried out by way of redevelopment and repairs and the large function room has been converted to flats. The bar on the ground floor is now ancillary to the flats and the premises have been re-windowed and re-wired to allow for residential conversion. The cellar to the Pub also accommodates the water meter and the sewers, drains and waste collection bins serving the flats are all within the rear yard. Access is also provided across the rear yard to the residences which have been created within the Pub. The public house use is therefore now ancillary to the residential use of the building. This is consistent with the registration of a single plot at the Land Registry. This makes it ineligible for listing;
  - (b) There are still works outstanding to facilitate the residential use of all of the permitted residential units and these include the installation of soundproofing in the ceiling between the bar and the flats in order to comply with the requirements of the Building Regulations;
  - (c) The description of the Pub and its facilities available to patrons which led the First Respondent to list it was not accurate. The Pub is not wheelchair

friendly, there is no Sky Sports channel shown, no wi-fi, the family room is not used as such and there is no car parking. The only sporting activity is pool and whilst the rear yard can be used by smokers and drinkers if they choose, it is a hardsurfaced area rather than being a nice garden.

- (d) There are now 27 pubs in Hucknall and plans have been submitted for yet another on Annesley Road. These serve a population of 31,000. That compares with the eight pubs in Bulwell serving a population of 30,000;
- (e) The cases relied upon as supporting listing in the First Respondent's review decision were all distinguishable. They appeared to involve the last remaining pubs in much smaller settlements or cases in which no planning permission existed for conversion;
- (f) The Council's planning officer had advised that there was the possibility of planning permission being granted for four more dwellings on the ground floor of the Pub. No one had spoken to that officer when considering whether the Pub should be included on the LACV. Further, no one had contacted the Senior Licensing Officer who would have had details of the criminal acts/activities associated with the use of the Pub which would support conversion to residential use for the benefit of the area;
- (g) The LACV regime is grossly unfair to the owners of the relevant buildings, particularly where, as here, as the building was acquired with the benefit of a mortgage and it is the Appellant's only property; and
- (h) If the Pub stays listed and this means it cannot be developed in accordance with the Appellant's intentions, the ground floor might revert back to a boarded up eyesore as it was in 2009.

## **F The First Respondent's case**

21. The First Respondent argues principally that:

- (a) The Pub was listed on the basis that
  - it serves the local community providing a place where they can meet and socialise together with a number of facilities for that community including a family room, evening entertainments including live music events and pub games
  - it is realistic to think that it will continue to do so in the future.
- (b) Since the First Respondent's review decision there has been a decision of the First Tier Tribunal which is relevant to whether the Second Respondent's nomination of the Pub for inclusion on the LACV was a valid one. In *MacNeil UB40 Limited v Hackney LBC and CAMRA (East London and City Branch) CR/2017/0007*, the Tribunal held that where the CAMRA branch acts solely as agent for the Campaign for Real Ale Limited ("The Company") and makes the



nomination for the Company, then it cannot satisfy the local connection requirement within the Regulations. The First Respondent has viewed the nomination here as one made by the Nottingham Branch which satisfies the statutory requirements to qualify as a nominator for the purposes of the statutory regime.

- (c) In this case the e-mail by which the nomination form was sent states that it is made by the Branch and not the Company. Whilst the nomination form was completed to state that the nominator was a company limited by guarantee, there was also reference to the Branch within the context of the previous authorities addressing nominations by CAMRA branches.
- (d) The activities of the Branch and the local connection to the Pub are described in the form and the contact details given are those of Mr Molyneux, a Branch Committee member, who signed the nomination. It is stated that the Branch rather than the Company is making the nomination, although it is acknowledged that the nomination was accompanied by a statement of support from the Company.
- (e) The form is not signed by the Company and the identification of the nominator as a company limited by guarantee indicates muddled thinking rather than a definitive statement that the Company was the nominator.
- (f) Read as a whole and in context, it was clear that the Branch was the nominator. The case is akin to *Hamna Wakuf v Lambeth LBC and CAMRA South West London CR/2015/0026* and distinguishable from the *MacNeil UB40* case.
- (g) The Branch satisfies the requirements for a nominator of a community nomination in that:
  - It is an unincorporated body
  - With at least 21 local members
  - The activities of the Branch are concerned with the Council's area
  - Any surplus of the Branch is applied partly for the benefit of that area; and
  - It does not distribute any surplus to its members.
- (h) In terms of the Appellant's arguments that the Pub should not be included on the LACV, whilst he purchased it with the intention to redevelop it, any further works of conversion require a further grant of planning permission. The owner's intentions are not paramount in deciding whether or not to list an asset. Whether or not planning permission would be granted raises matters which extend beyond its inclusion on the LACV and listing does not prevent the grant of planning permission in an appropriate case;
- (i) It is possible that no planning permission would be granted for the conversion of the ground floor and cellar to residential use and, until such time as a planning permission is granted, it is at the very least possible that the Pub will continue in use as such. As the period of Mr Adams' ownership shows, he would prefer it to be used than to stand empty;
- (j) The Pub is a rough and ready pub which draws its custom from the local community, serves real ales, has a pool team, puts on events and has an outside area for sitting and smoking. Whether or not particular features are

present, it is enough that members of the local community meet there to socialise and to be entertained;

- (k) Crime and anti-social behaviour are matters for the police. The Pub is properly licensed and, at the time of the review decision was not being investigated by the First Respondent's enforcement team;
- (l) The fact that there may be a significant number of pubs operating in the area is not a material factor (see *Pullan v Leeds City Council* (2016) CR/2015/0011). Equally, whether the ground floor of the building would be better put to residential use than continue in pub use is a planning matter for the planning authority and not a matter relevant to its inclusion on the LACV;
- (m) The flats are self-contained and do not form part of the public house. They have rightly been excluded from the listing but they do not prevent the inclusion on the list of those parts of the premises which are listed. The fact that both parts of the building are contained in a single title is irrelevant to listing;
- (n) No detailed evidence on the viability of the Pub has been provided by the Appellant but he did say at the oral hearing on the review that he might keep the pub going "*if things picked up*".
- (o) In terms of fairness, there is provision within the ACV regime for the payment of compensation in certain circumstances (see Regulation 14 of the Regulations).
- (p) The Pub should be retained on the LACV because the use of the ground floor and cellar furthers the social wellbeing or social interests of the local community and it is realistic to think that it will continue to do so because there is no certainty that planning permission will be granted for further conversion.

## **G The Second Respondent's contentions**

22. The Second Respondent supported the First Respondent's decision to include the Pub on the LACV. In particular it stressed:

- (a) The Nottingham Branch of CAMRA was the largest branch and decided in September 2015 to have an active programme of seeking ACV protection across the Brach area which includes Hucknall. The area was divided into wards with the aim of securing one listed ACV in each ward. This involved a cultural shift for the Branch, moving from a perceived real ale elitism to working with others (including Parish Councils) to a much more community based understanding. This led to consideration of pubs with little more to recommend them save that they were important to their local community.

- (b) There is no requirement that to warrant listing a pub has to be special. Pubs like the Pub here are very basic. However, it brings a sense of community, identity with place and a sense of freedom from loneliness. There is clearly a community which uses the Pub although not large and not choosy. There is no doubt that the ground floor, cellar and back yard serve the social wellbeing of local people.
- (c) The First Respondent was right to include the premises on the LACV.

## **H Findings**

- 23. I deal firstly with the validity of the Second Respondent's nomination because if it was invalid, the appeal must succeed.
- 24. I am satisfied that on the facts of this case, the nomination was a valid one. Although the nomination itself sought to take advantage of The Company's status as a company limited guarantee and was accompanied by a statement of support from the Company stating that the branch was acting on behalf of and its full authority, it is clear from the letter which accompanied the nomination form and the fact that the form was signed by Mr Molyneux, that the nomination was in fact being made by the Branch. The branch itself satisfied the requirements of Regulations 4(1) and 5(1)(c) of the Regulations.
- 25. There was no need as at the date of nomination for reliance on the Company for a valid nomination to be made. To the extent that there was any such reliance I agree with the First Respondent that reflected a degree of muddled thinking which, in my view, resulted in an error which was akin to a procedural mistake.
- 26. In so far as the form as completed failed to meet the requirements of Regulation 6 of the Regulations, for the reasons given by the Tribunal in the Hamna Wakaf case such defects are capable of being waived where they give rise to no substantial prejudice. Here the identity of the true nominator was clear from the outset and there is no suggestion that waiving the failure to observe the requirements with regulation 6 would cause any prejudice to the Appellant, let alone substantial prejudice.
- 27. Having regard to all the relevant evidence, the circumstances of this case differ from those in both the Hamna Wakuf and MacNeil UB40 cases. In Hamna Wakuf there was no evidence that the local branch of CAMRA had any authority to act on behalf of the Company. In those circumstances the Tribunal was able readily to conclude that the branch had throughout effectively acted as an unincorporated association within regulation 5(1)(c). In MacNeil UB40, the Tribunal concluded that such a finding could not be made as the branch had acted throughout as the agent for the Company. However, in that case, unlike this case, the letter accompanying the nomination form and the nomination form itself made clear that the nomination was from the Company and not the branch. The Tribunal gave weight to those factors.

28. Whilst I acknowledge that there are some similarities between the facts of this case and the MacNeil UB40 case, the content of Mr Molyneux's letter which accompanied the nomination form and the manner in which the form was completed, are materially different and lead to a different conclusion in this case in terms of the validity of the nomination.
29. The reliance on the Company in this case can properly regarded as a procedural error in the nomination form which should be waived and which does not invalidate the nomination, given that the Branch itself satisfied the requirements of valid community nomination as set out in the Regulations.
30. As to the substantive issues raised by the appeal, I am satisfied that the Pub is in an actual use which furthers the social wellbeing and social interests of the local community. Whilst it may be a rough and ready public house, the evidence shows that it does provide a meeting place for members of the local community and it does encourage social interaction through both its pool team and live entertainment. That is sufficient to meet the statutory requirement.
31. Whilst the Appellant argues that this actual use is now properly regarded as ancillary to the residential use of the building, I do not agree. The building has been subdivided into two parts; the residential and the public house. Whilst the residential conversions rely on the rear yard for access, on services such as electrics and drain runs which through the Pub, and on service meters within the Pub, the pub use is not in any sense ancillary to the residential use. It does not exist solely or substantially to serve the residential use. Both uses are properly regarded as primary uses made of different and functionally separate parts of the building albeit with some minor inter-linkage between them. The public house use is not an ancillary use.
32. The evidence shows that the ground floor, the cellar and the rear year together are in an actual use which furthers the social wellbeing of the local community. I am satisfied in addition that it is realistic to think that this non-ancillary use can continue and that in doing so it will further the social wellbeing of the local community. No planning permission presently exists for the conversion of the remainder of the building to residential use and it is at least realistic to think that planning permission may be refused. Given the history of the pub use since the Appellant's acquisition of the property, I am satisfied that it is also realistic to think that in those circumstances, the public house use would continue as the Appellant seeks some return from his investment in the property. There is no viability evidence before the Tribunal to indicate that this would not be realistic and I note that the Appellant himself recognised in his evidence before the First Respondent's review that this might be a possibility "*if things pick up*".
33. I am not however satisfied that the outbuilding within the rear yard should be included within the LACV. The evidence is that this is excluded from the tenancy at will under which the licensee runs the Pub and the Appellant's evidence is that he uses this outbuilding for his personal storage. In these circumstances, it does not meet the

statutory test and it should not be included within the LACV. To that limited extent the appeal succeeds.

34. I appreciate that the Appellant has concerns as to the unfairness to landowners and developers of the ACV regime and the particular effect of its operation on his own interests, but these are not matters which are relevant to the issue of whether the requirements for listing are met. The Appellant remains free to test any effect of inclusion of the Pub on the LACV through the medium of a planning application which provides the appropriate means for matters such as the comparative merits of continuing pub and alternative residential use to be debated.
  
35. I accordingly find that the requirements of section 88(1) are satisfied in respect of the ground floor, cellar and rear yard of Pub but not as regards the outbuilding. That outbuilding should, accordingly, be removed from the Council's list kept pursuant to section 87.

**Decision**

36. The appeal is allowed to the above extent.

Signed Simon Bird QC

Judge of the First-tier Tribunal

Date: 5 January 2018