



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

**Appeal Reference: CR/2018/0004**

**Considered on the papers  
On 29 October 2018**

**Before**

**JUDGE CHRISTOPHER HUGHES**

**Between**

**MR T LEYDEN, MRS A KIRKPATRICK, MRS H LEYDEN**

**Appellant**

**and**

**BRUY METROPOLITAN BOROUGH COUNCIL**

**First Respondent**

**THE RAGLLAN COMMUNITY HUB LIMITED**

**Second 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. The Localism Act 2011 provides:-

#### *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.

...

(6) In this section –

....

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

- (a) cultural interests;
- (b) recreational interests;
- (c) sporting interests;

### *The property*

3. The Lord Raglan Hotel is a public house in the village of Nangreaves. It has been owned and operated by the same family for over 60 years. In response to changing market conditions they have innovated, opening a micro-brewery in the 1990s which for a while had a positive impact on the decline in sales. It functioned as a social centre for people in the locality and editions of a local publication the “Nangreaves Newsletter” for October 2016 and March 2017 list various activities of furthering the social wellbeing of the community which centred on or took place in the Lord Raglan including village meetings, charitable events and visits from the local “Pace Eggers” (one of the various forms of traditional dancing often called Morris Dancing) all held at the pub. It is noticeable that the March 2017 newsletter lists the announcement that councillors’ surgeries will no longer be held at the Lord Raglan because nobody comes to them. Following a bereavement some three or four years ago the pub continued to trade, however in October 2017 having concluded that the business was not viable, the pub ceased trading. The owners unsuccessfully marketed it as a going concern in early 2017.

### *The listing process*

4. In the light of these developments a community group (the Second Respondent, the “Hub”) formed and on 16 October 2017 applied to the First Respondent (“the Council”) for the Lord Raglan to be listed as an asset of community value. On 11 December 2017 the pub was so listed. The owners made further representations and sought an Internal Review of the Listing Decision by the Council. On 28 March 2018 the considered the listing and the evidence and arguments submitted by the owners and the Hub. The review concluded:-

*“ The Panel considered there was evidence of community use in the ‘recent past’ and that it is realistic to think there can continue to be a non-ancillary use of the property for community use. It also noted the owners stated intentions regarding planned alternative use, but took this into account as part of the whole set of circumstances, considering there were a number of realistic possibilities, one of which was community use. There was no evidence that the land met any of the exemption criteria under Section 88 of the Act.*

*In the Review Panels view, the property falls within the category of an asset of community value as defined in the Act and associated regulations; and therefore that it’s listing meets the criteria and should remain listed.”*

### *The grounds of appeal*

5. The Appellants' case is set out in three documents, the notice of appeal, a response to the Second Respondent's submission and a document entitled final summation. These documents provide background information concerning the operation of the Raglan as a pub.
6. In the first document the Appellants did not address whether the Lord Raglan has been of community value in the past; the focus of the appeal (and in the previous representations to the Council and the Hub) is that despite strenuous efforts it has not been possible to run the Lord Raglan as a going concern and in the future it is not realistic to think that it could be. The key specific points made in the notice of appeal are:-
  - The Hub has no history and effectively no resources
  - The Hub's idea's for future use had not been costed and tested
  - The Hub stated that it had funding promises of £100,000, it had made an offer of £250,000 which was not acceptable, the valuation advice the Hub had obtained was not credible, the owners had marketed the Lord Raglan at £485,000.
7. In its response to the appeal the Council focussed its arguments on the application of s88 of the Act to the Lord Raglan. With respect to the s88(2)(a) (requirement for a recent use of community value) it submitted:-

*"There seems to be no dispute that there has, in the recent past, been an actual use of the Lord Raglan Hotel by the community which furthered social wellbeing..."*
8. The Council, in relying on its previous decision-making, noted that the submissions of the local community had described the steps it had taken to set up an appropriate legal structure, started fund-raising, working with experts to develop a business model. The witnesses from the community had shown a real interest in managing the Lord Raglan for the benefit of the local community.
9. The Hub in its response to the appeal gave details of the administrative steps it had taken to prepare itself to take on the Lord Raglan. It had received a £2,500 bursary and appointed an expert to review its business plan and prepare it to raise funds through a public share offer. Drawing on the experience of more than 50 other community groups which had been successful in buying out local pubs it was confident that it would be able to raise the funds to buy renovate and operate the pub. The business model it was developing would diversify the use and increase the footfall in the pub. This had been successful elsewhere and would provide an incentive to local residents to use the pub. The Hub considered that there was a reasonable prospect that the pub could be viable and in the next five years a non-ancillary use of the pub would promote social wellbeing and the interests of the local community.
10. In the response to the Hub's submissions the Appellant appeared to dispute whether there had been recent non-ancillary use which furthered the social wellbeing or

interests of the local community. In referring to the Nangreaves Newsletter it stated:-

*"The Nangreaves News Letter was provided by the Hub as proof that the pub was used on a regular basis by the community.*

*A number of events shown were organised by the pub, obviously to raise revenue, others were of little relevance ie The Village AGM occurs once a year, but the obvious conclusion is that most of the items were part and parcel of running a pub business."*

11. It reaffirmed the view that the Hub project was not viable (the Hub had only raised £2,500 (incorrectly describing that sum as only .01% of the Hub's offer – it was actually 1% of the Hub's offer and 0.5% of the asking price). The Appellants' stated that they had received an offer and served notice that they intended to sell the property:-

*"There is no reasonable prospect whatsoever of the Hub raising the necessary finance to purchase the property, therefore we contend that the ACV is ill conceived and in any case not deliverable".*

12. In the "Brief Summation" the Appellants acknowledged (paragraph 8) *"there was some community use of the premises, but generally the majority of these uses were events organised by the owners of the pub, such as charity events, race trips etc, partly for altruistic reasons but also partly to help the pub survive."* The document confirmed that recent marketing of the pub had been on the basis of a change of use and of development of the car park *"This has produced interest and there is a potential purchaser who wishes to purchase the property at an economic level."* The Hub had only raised a minimal amount, their valuation was 50% of the asking price, their own report on the property indicated a need for significant expenditure and the Hub was *"very unlikely to be able to raise sufficient funds"*.

### Consideration

13. In this appeal two issues have been raised. The first is whether in the recent past the condition set out in s88(2)(a) has been met. This was not raised in the original grounds of appeal, but was suggested in its reply. In its Final Summation the Appellants accepted that there was some community use. The test for me to consider is whether in the recent past there was:-

*"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"*

14. I am satisfied on the evidence before me (notably the contents of the Nangreaves News Letters summarised in paragraph 3 above) that the Lord Raglan was used for a range of social functions and operated as a meeting place and focus for social, cultural and charitable events and activities for residents of the area. The fact that much of this was done with a commercial intent does not detract from the position, the owners intended to "do well by doing good" the fact that they did good, promoting social wellbeing, is sufficient. To the extent that this was a ground of appeal, it must fail on the facts.

15. The second ground of appeal is that it is *not* 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.
16. The Appellant's arguments are straightforward, that in recent years they were unable to run the Lord Raglan as a profitable enterprise and it is unlikely that the Hub could either, that the Hub lack the expertise and business plan to run it successfully, and that the Hub lack the resources to acquire the Lord Raglan at the asking price of £495,000. It is to this last point that I turn first.
17. The Appellants emphasise that they have marketed the Lord Raglan at £495,000 and have an interested party (although the identity of the party and the actual price are not disclosed). They decry the expert advice obtained by the Hub as not presented in the appropriate format. The Lord Raglan has been marketed twice. On the first occasion it was marketed as a functioning pub on a site of 0.5 acres which would "suit alternative use STPP [subject to planning permission] for a price of £495,000. The second occasion it was marketed at the same price as a "development opportunity" and the brochure indicated that "*we believe that the site may have potential for alternative use, including party residential*". From the brochure it is possible to calculate that the area of the site is approximately 1813 sq. metres and the area of the ground floor of the pub is approximately 229 sq metres. It is clear that, if planning permission were granted, significant new buildings could be added. The valuations obtained by the Hub valued the present building under different trading conditions - trading profitably £380,000, open but trading at a loss £325,000 closed and in its present condition £250,000. On that basis the Hub submitted an offer and indicated a willingness to negotiate by a letter dated 16 January 2018). The valuation upon which the Appellants rely is predicated on substantial development. It is not surprising that they have rejected the Hub's offer, however without the prospect of development gain the valuation will clearly be markedly lower and some agreement might be reached either with the Hub or with another group or individual wishing to operate the Lord Raglan as a pub but not willing to pay a price driven by the prospect of a substantial development.
18. While the Appellants argue that the Hub has not demonstrated that it has the resources and the detailed business plan to run the Lord Raglan successfully, that is not the test that I have to apply which is whether:-

*" 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."*

19. From the information before me there is some suggestion that there has been at least some interest from people other than those associated with the Hub in running the Lord Raglan. The Hub has started the process of strategic planning and preparing to raise funds. They have drawn attention to the existence of other groups in a similar position to themselves who have made a success of their projects. Both of these are indicators that some variation of an orthodox pub or a broader arrangement of a pub and other activities could thrive. There are clearly a range of possible futures some of which would mean the continued non-ancillary use of the Lord Raglan in a way which promotes social wellbeing. The evidence before me is sufficient to lead me to

conclude that this is a realistic possibility. I am therefore satisfied that this ground of appeal must also fail.

20. For the reasons stated I am satisfied that the grounds for listing this land under section 88 are made out and this appeal is dismissed.

**Judge Hughes**  
**1 November 2018**