



Appeal number: CR.2020.0003 P

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

Andrew Abbott

Appellant

- and -

Stockton-on-Tees Borough Council

First Respondent

- and -

Nigel Dennison

Second Respondent

Before:

JUDGE J FINDLAY

Determined on the papers, sitting Chambers on 29 September 2020

P: Paper determination which is not provisional

DECISION

Decision

1. The appeal is dismissed.

Mode of Hearing

2. This has been a paper hearing which has been consented to by the parties. The form of remote hearing was P: paper determination which is not provisional. A face-to-face hearing was not held because it was not practicable and no-one requested the same and all the issues could be determined on the papers. The documents referred to are in an open bundle of 157 pages, the contents of which have been recorded. The order made is as described above.

3. The Tribunal considered it was fair and just to determine the appeal on the basis of the papers having considered rules 2 and 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended).

The Background

4. The Localism Act 2011 (“the Act”) requires local authorities to keep a list of assets (meaning buildings or other land) which are of community value. Once an Asset of Community Value (“ACV”) 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.
5. A nomination to list the buildings and land associated with The Vane Arms Public House, Darlington Road, Stockton, Long Newton, TS21 1DB (“the Property”) was received by the First Respondent on 8 November 2019. The Property was listed as an ACV by the First Respondent on 12 February 2020.
6. The Appellant, Mr Abbott, is the owner of the Property.

The Legislation

7. 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;

Assets of Community Value (England) Regulations 2012

Appeal against listing review decision 11

(1) An owner of listed land may appeal to the First-Tier Tribunal against the local authority's decision on a listing review in respect of the land.

(2) The owner referred to in paragraph (1) may be either the owner who requested the review, or a subsequent owner of part or the whole of the land.

Submissions

8. Jim Abbott, on behalf of the owner Mr Andrew Abbott, the Appellant, submits the following grounds of appeal:
 - a. The criteria have not been met and therefore the Property should be removed from the list of successful ACV nominations.
 - b. To be listed the use of the building/land needs to further the social wellbeing or interests of ‘the local community’. The legislation does not define ‘a local community’. It is clear in the context of a building/land situated in a small village that a reasonable person would interpret ‘the local community’ as being the population of Long Newton, or at least a meaningful part of that population. The population of Long Newton is around 900-1000 people (828 in 2011 census) and the adult population would be around 700. Hence facts put forward as to the use of the building/land need to be considered for relevance to the social wellbeing and interests of the broad population of Long Newton Village (‘the local community’).
 - c. Any uses do not meet the criterion if they relate to groups of local people (or communities or cliques) which are very small in number in comparison to ‘the local community’, particularly if the people attending overlap for different uses, so that the aggregate number of people who take part overall is still small in comparison to ‘the local community’.

- d. When considering activities in ‘the recent past’ (certainly no more than 4 years), in the council’s decision, they state that case law has demonstrated that much longer periods (than 6 months), into years, can be accepted as ‘the recent past’. This defines ‘the recent past’ in this context as ‘a few years’, but not ‘many years’. Any activity which happened (or may have happened) longer ago, but has not taken place or has only happened at a very low level in the last few years, is clearly not important for the social wellbeing/interests of ‘the local community’, otherwise community members would have continued to arrange and support it at a significant level until the pub’s closure in August 2019.
- e. The activities and events referred to are also (or could be) carried out at other locations in the village, which are more suited, due to their size and/or facilities to provide those social wellbeing or social interests and could hence cater for more people. There are also outdoor spaces, which are used for community recreation.
- f. There are other alternative locations in the middle of Long Newton, which can between them provide facilities for all the activities listed in the nomination.
- g. The activities referred to in the nomination relate to activities/events with participants coming largely from outside the village (not ‘the local community’).
- h. The activities/events relied on are largely based on the use of the property’s car park as a place to meet up and/or park cars and the social interaction happens primarily elsewhere. The existence of a car park should not be a considered factor for access by the local community as all parts of the village are in walking distance. If a car is used by a local resident to drive to the property for an event, then equally other properties outside of the village can be accessed just as easily for social purposes.
- i. There are very many factual errors in the listed activities/events put forward in the nomination. This is taken from the certain knowledge of the owner and family management team, who have worked at and supported the pub in the recent past (4 years). The data submitted in the nomination form is factually incorrect and cannot be relied on. Participation at events is in reality very small in comparison with the size of ‘the local community’. Furthermore, participants in different listed activities are nearly always drawn from a small clique of locals (around 30 people).
- j. All the activities had a much lower attendance than claimed. If there was a Book Club it was a rare event with few attendees. The activities of the Engineers’ lunch and Dog Walking were attended largely by people from outside the village.
- k. Claimed attendances (with typical food and drink) would conservatively result in till receipts of around £900 every week. The actual weekday takings varied from £400 to a peak of £900 per week. Claimed attendances would mean that there would be 1-2 large groups in the pub nearly every weekday, whereas the pub is mostly rather quiet.
- l. For the Quizzes and Themed food nights the attendance has been exaggerated. The owner is not aware of the Flower Arranging and Tennis & Badminton clubs in the last 4 years. If they did happen, they must have been rare events with few attendees. The Curry club is not relevant to The Vane Arms as participants just met up at The Vane Arms, before going elsewhere for their social interaction. None of ‘Easter Egg painting, Car Treasure Hunt and Pumpkin Carving’ have happened in the last 4 years, which means that, if any did, they must have been a one-off and with much lower attendance than stated. The Summer events, Fireworks, Christmas afternoons, Morris Dancing and Christmas Carols have only happened

in occasional years and with much lower attendances than those stated. St Mary's School has annual Christmas Fair and Summer events. The organised outings are not relevant because participants met up in The Vane Arms car park, before going elsewhere for their social interaction. Sometimes a fraction of the participants had a pub buffet laid on for their return.

- m. There have been no weddings held at the property. Indeed, in last year, 2 locals, who frequent the pub very often, decided to hold their wedding reception elsewhere. There have been occasional christening receptions, funeral wakes and birthday parties held at The Vane Arms, around 50% of them for locals, but once again the attendances are very much lower than stated. The upper participation levels claimed (200 people) are very much higher than the indoor licensed capacity of the premises.
 - n. The activities listed are ancillary to the use of the public house in its conventional sense by this small group of locals, representing less than 5% of the adult population of Long Newton. Indeed, the above is the crux of the matter – there generally was not enough trade of any kind from members of ‘the local community’ – this was one reason the pub was losing money, which was why it had to close.
 - o. It is significant that Ward Councillor Andrew Stephenson and the parish council chair knew nothing about the nomination, when consulted, and did not even know the people involved. They have the fundamental interests of Long Newton village community at heart. If the nomination had been important for ‘the local community’, they surely would have known more. The parish council also were not minded to respond in support of the nomination, when consulted.
 - p. A distinction must be drawn between the number of people in ‘the local community’ who demonstrated their interest in the pub by using it and the number of people, who will naturally say that they support the nomination, when asked. Prior to the promotional campaign organized by the nomination team, the pub had a very low visibility in ‘the local community’, as evidenced by the lack of knowledge of the ward councillor and lack of response of the parish council.
 - q. With regard to the aspirational intentions for future use the Tribunal is invited to consider the observations on past behaviours. In the recent past there were many pushes (by the management) to increase the use of the pub (in addition to numerous dining and drinking initiatives) , including but not limited to – Table tennis evenings, increasing participation at quizzes, Father Christmas fairs, arranging beer festivals & live music and extending opening hours for watching live sport. These were supported by word of mouth messaging to locals, advertising, social media messaging and leafletting for the whole local community but did not achieve long term traction with the ‘the local community.’ In the recent past, there is no evidence of locals setting up clubs within the pub. Furthermore, attendance at existing clubs languished. The over-riding interest for the small group of locals has been its use as a traditional pub.
 - r. The Appellant does not believe that the nomination group have any evidence on which to base past or future viability of the pub. The management team have concluded on accounting data, marketing the property unsuccessfully throughout 2018, and professional analysis that the pub is not viable. The 120 residents and outsiders who comment that they want to preserve the pub (when being galvanised in a campaign) are not the same as the 30, or so, hard core group who regularly used it in recent times.
9. The First Respondent submits the following points:

Andrew Abbott v Stockton-on-Tees Borough Council and Nigel Dennison CR.2020.0003

- a) The owner states that he was unaware of the invitation to make representations prior to the Property being listed. The Chief Solicitor has confirmed that a letter was sent to the owner notifying him of the nomination to list the Property as an ACV and inviting representations on 19 November 2019. The owner states in his submission in support of the review that these are the representations that he would have made had he been aware of the invitation to comment. The owner has been given adequate opportunity to make representations on the listing of the Property as an ACV.
- b) 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 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 land that would further (whether or not in the same way as before) the social well-being or social interests of the local community.
- c) The owner states that the “community” whose social wellbeing or interests must be furthered means the residents of Long Newton only. “The local community” relevant to each asset must be assessed on its own merits and may vary. It is agreed that in relation to a village pub “the local community” will largely be the residents of the village in which the pub is situated, but not exclusively and can extend to regular customers or people who travel to attend events at the pub. The nature of the asset and the use that has been made of it must also be considered.
- d) There is evidence from the nomination to suggest that use has been made of the pub by villagers and is not disputed by the owner, although he disputes the frequency.
- e) The owner states that the criteria cannot be met if the groups of people using the pub (to further their social wellbeing) are very small compared to the size of the local community.
- f) The owner does not dispute that the pub is used for activities that would further the social wellbeing or interests of people attending and provides his estimated numbers of attendees for each event in his submission. There is nothing in the legislation that states the social wellbeing or interests must be furthered for the majority of the local community or a large number. The fact that The Vane Arms provides the opportunity for the local community to gather and socialise is sufficient. The owner accepts that weekly and monthly activities took place in the pub in the last 4 years, including weekly ladies lunches, two weekly gardening club, 2 weekly engineers lunch, a monthly quiz and monthly food nights. The owner also accepts that annual events took place at the pub including a summer beer festival, Christmas Afternoon, Morris Dancers, summer fete, Christmas carols and fireworks/bonfire night.
- g) The owner submits that the activities cannot be taken into account if they did not happen in the “recent past” (certainly no more than 4 years) or happened at a very low level. The owner accepts that the activities listed above did happen in the last 4 years. He also accepts that some occurred weekly or monthly. Again there is no restriction in the legislation that requires the activities or opportunities to further the social wellbeing or interests of the local community to take place at any specified frequency. Annual events can be sufficient.
- h) The asset only closed to public use in August 2019 and it is certainly reasonable to class that as being in the recent past, as would the listed community use over the last 4 years.
- i) The owner submits that activities or events that could or do take place at other venues in the village do not meet the criteria. He provides two alternative venues where the activities could

take place. It is the use to which the asset in question is put, or has been put, that is relevant, not that the community use could continue elsewhere.

- j) The owner submits that activities/events do not meet the criteria for furthering the social wellbeing or interests of the local community if participants come largely from outside the village. The owner does not dispute however that the local community have also participated in these events and therefore they have provided an opportunity for the local community to further their social wellbeing or interests by enjoying events in the village and meeting in a social context.
- k) The owner also submits that the activities/events do not meet the criteria if they are based on the use of the car park as a meeting place and the social interaction takes place elsewhere. It is agreed that the use of the car park for parking cars to then travel somewhere else for a social event or activity would not, alone, be sufficient to make The Vane Arms an asset of community value. However, this refers to a The Vane Arms and therefore needs not to be considered further. There are sufficient activities/events that take place in the pub and/or its grounds where social interaction can take place to further the social wellbeing or interests of the local community.
- l) The owner submits that the activities are ancillary to the use of the public house in its conventional sense, however there is no evidence that they only occur when the pub is not being used in the conventional sense, and it is reasonable to believe the activities take place because the property is a public house and an integral part of that use. The owner accepts the participants buy food and/or drink at the pub.
- m) The owner submits that the management of the pub tried to increase the patronage of the pub by the local community, and wider community, by advertising more events, such as increasing attendance at the pub quiz, beer festivals and table tennis evenings as well as food and drink initiatives but gained little “long term traction” amongst the local community.
- n) The interest shown in the pub since its closure and the motivation shown by a number of residents of the village would suggest it is not unrealistic to think that the pub would be utilised again by the local community if it re-opened, or that a different community use could be made of the property. The nominators suggest there was a community use which the owner does not dispute in full.
- o) There is no suggestion by the owner that there is a planned alternative use for the property and no evidence that a planning application has been submitted to change the use of the property, only to sell the property. It is not unrealistic, therefore, to believe it may be bought as a pub or other use that could again further the social well-being of the local community. It also remains a possibility that if the current owner cannot sell the property he may re-open it as a pub and encourage the community use.
- p) The re-use as a pub does not have to be the most likely future use, just one possibility, as long as it is not an unrealistic one. The owner states the pub is unviable, however no evidence has been submitted to substantiate that statement.
- q) The Tribunal is invited to find that The Vane Arms has, in the recent past, been used to further the social wellbeing or interests of the local community (certainly including residents of the village) and it is realistic to think there could be such a use again in the next five years.

10. The Second Respondent submits the following points:
- a. This unincorporated body is formed to preserve this much loved public house that had been providing a local community service for over 150 years. All 21 members live in the village of Long Newton, many since they were born, and all have the interests of the community at heart.
 - b. The number and range of activities and events that benefit the social interests of the community held at The Vane Arms, are plentiful. A large number of the locals benefit hugely from the existence of this public house and the activities it provides. Examples of some of the activities and range of events that take place at The Vane Arms and the average attendance are set out on pages A5 and A6.
 - c. The Second Respondent writes on behalf of a large number of the local village residents. They are anxious to save the local public house as it appears that the current owner has immediate plans to sell with a view to possibly changing its use and redeveloping the plot.
 - d. The prospect of the loss of the public house has deeply saddened huge swathes of the community, as we live in an isolated village without a regular bus service. Many residents use the public house as their only means of social interaction, particularly the elderly and infirm. Due to the varied events and activities there is always something for the local community to become involved in, which caters for all age groups.
 - e. The pub has been a social hub since 1861. It is felt that if run correctly, with drive and enthusiasm, it will be possible to provide and maintain a sustainable future to further the social wellbeing of the local community. There has been a lot of positive feedback from local people and the long term goal is to make it a successful community pub. The intention is to build upon the range of events and activities already available, to include - coffee mornings, breakfast clubs, meeting venue, swap shop, live music performances and board games nights.
 - f. There is evidence of local people prepared to give their knowledge and skills to ease the financial burden. The local community is prepared to make a financial investment in this vital resource.
 - g. Over the years The Vane Arms and the local community have supported CAMRA as a free house and this is one of its main strengths. Research shows that people who have a local pub or happier, have more friends and feel more engaged with their local communities. Many pubs help provide space for the local people to meet, tackle loneliness, and strengthen the local community, which is one of the main reasons for this application.
 - h. The Vane Arms has four bed and breakfast rooms and over the years this has provided villagers who have loved ones living away, either in the UK or further afield, a place to stay and the opportunity to participate in village life.
 - i. With the expansion of Teesside Airport, The Vane Arms will be an ideal location to offer B&B to passengers travelling to and from the airport, which will increase trade and also lead to future revenue.
 - j. The Vane Arms is a warm, welcoming, totally inclusive social hub, that the residents do not want to lose.

- k. The evidence from the local community has been gathered from a comprehensive consultation process which included; door to door canvassing, leaflet drops, questionnaires and a public meeting of nearly 100 residents. More than 120 individuals have also pledged financial support with a view to purchasing the Vane Arms as a community pub. (over £200.000 to date) There has been local and national press coverage. A Facebook page ‘Save the Vane’ was set up and there have been an overwhelming number of messages of support posted.¹⁰
- l. Support has been offered from the Long Newton Parish Council, Alex Cunningham MP, Ward Councillor Andrew Stephenson, the Plunkett Foundation and CAMRA. A prospectus has been produced which explains the vision of the management committee and includes our business model, financial projections and details of the share offer. Unfortunately, due to the recent lockdown restrictions, we have been unable to distribute this to the villagers. The lockdown has not ‘locked down’ our resolve and the management committee has been in frequent contact via Zoom meetings and progress is still being made.
- m. Neighbours received notification on 30 April of two planning applications regarding the Vane Arms site. Plans to change the use of the pub to a residence and build a new dwelling in the beer garden had been submitted. The number and quality of the objections (200+) to these planning applications are evidence in themselves that there is enormous support for the site to remain as a pub and almost all of the letters indicate that the pub has, in recent the past, been used to further the social wellbeing and interests of the local community.
- n. The planning application is clear evidence that the owner is desperate for the ACV listing to be removed to enable him to sell the site to developers. When the present owner bought the pub it was a thriving, going concern. The feeling in the community is that the villagers are being penalised for the failure of one management and that they shouldn’t have to fight to preserve a 200 year old asset because one operator has failed.
- o. The Long Newton Community Hub Ltd Management Committee is fully confident that the Vane Arms could have a bright future based on community ownership and the loyalty and commitment that generates. Furthermore, we seek to ensure that the community will continue to enjoy the amenity of the pub as a social space and we trust that this tribunal will reject the appeal by the owner to remove the ACV from the Council list.

Issue before the Tribunal

- 11. The issue before the Tribunal is whether the legal requirements have been met for the Property to qualify for inclusion in the First Respondent’s list of assets of community value.

Conclusions

- 12. The Tribunal found that there was a time in the recent past, before 31 August 2019, when there was actual use of the property that was not an ancillary use and furthered the social wellbeing or interests of the local community and 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 the social wellbeing or social interests of the local community.
- 13. The Property has been closed since 31 August 2019 and there have been no activities or events at the property since then. The Property was nominated as an ACV by a community nomination received by the Respondent on 8 November 2019. The Respondent listed the property as an ACV following an officer delegated decision on 12 February 2020.

14. A nomination must be made by a Community Nomination which includes a nomination by a community body with a local connection. A Community Body can include an unincorporated body whose members include at least 21 individuals who are registered as local electors at an address in the local authority's area and which does not distribute any surplus it makes to its members.
15. The Tribunal found that a valid nomination to list the Property as an ACV was submitted by an unincorporated body of at least 21 members registered as local electors at an address in the local authority's area that does not distribute any surplus to its members. The Tribunal accepts the confirmation of the electoral registration team that all 29 names on the nomination form were indeed registered on the electoral register for Stockton-on-Tees. The Tribunal found that the nomination was valid.
16. The Appellant has been given adequate opportunity to make representations on the listing of the Property as an ACV. All parties have been given ample opportunity to prepare and present their cases.
17. The Property traded as a pub in the village of Long Newton until it closed in August 2019.
18. The Tribunal found that there was 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. Having only closed as a pub in August 2019 the Tribunal found that the use of the Property before that date was in the recent past. The Tribunal found that The Property traded as a pub where patrons could meet and socialise.
19. The term 'in the recent past' is not defined in the Act or the Regulations. The Tribunal found that the Property was used up until August 2019 and that use could correctly be said to be 'in the recent past.'
20. The Tribunal found that activities were held at the Property such as quiz nights, food nights, beer festivals, fetes, ladies lunches and gardening clubs. The Tribunal found it was not necessary to make findings about how often such events took place because the legislation does not require activities which further social wellbeing to take place with any specified frequency or regularity. The Tribunal found that these events happened in the recent past, namely before 31 August 2019. The Tribunal found that such events would be attended by members of the local community. The Tribunal found that it was not necessary to find how many people from the local community enjoyed these activities because the legislation does not require any particular proportion of the community to attend. The Tribunal found that the events were open to all members of the community.
21. The Tribunal found that these activities would further the interaction between patrons of the pub and further their social well-being or social interests. Residents of the village were patrons of the pub and there is no evidence to suggest the patronage of the pub was predominantly from people living outside the village. The Tribunal found that the Property was used for more than simply drinking without socialising
22. The Tribunal found that the local community whose social interests or well-being were furthered by the Property would include the residents of the village of Long Newton. The Tribunal rejects the Appellant's submission that only the residents of Long Newton can be considered members of the 'local community.' The legislation does not use such terms and the omission appears to be deliberate. The Tribunal's view is that it would be wrong to impose such a restrictive test. The Tribunal found that the test was satisfied as the social well-

Andrew Abbott v Stockton-on-Tees Borough Council and Nigel Dennison CR.2020.0003

being or social interests of some part of the local community is furthered regardless of whether others from outside the local may benefit also.

23. The Tribunal found that the existence of other pubs or facilities in the area where the same activities do or could take place is irrelevant as it is the use of the Property that is under consideration.
24. The Tribunal found 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 Property that would further (whether or not in the same way as before) the social well-being or social interests of the local community.
25. In reaching this decision the Tribunal has attached weight to the following factors:
 - a) There is strong support in the local community to maintain the Property as a community hub for local activities.
 - b) The residents of Long Newton formed a community interest company. On 5 March 2019 the Long Newton Community Hub Ltd was incorporated by Companies House. The Long Newton Community Hub Ltd became a member of 'More Than A Pub' scheme and gained membership of the Plunkett Foundation which offers support to community groups and, specifically, has obtained the assistance of an advisor. The decision to seek appropriate advice and assistance demonstrates a strong intention to pursue the future of the Property.
 - c) More than 120 individuals have pledged financial support and there has been support posted on the Facebook page 'Save the Vane.'
 - d) There have been offers of support from the wider community; the Long Newton Parish Council, Alex Cunningham MP, Ward Councillor Andrew Stephenson, the Plunkett Foundation and CAMRA.
 - e) A prospectus has been produced which explains the vision of the management committee and includes the business model, financial projections and details of the share offer. Although this has not been distributed due to the Covid 19 restrictions.
26. The Tribunal is satisfied that the ground for the listing of the Property, namely The Vane Arms Public House, under section 88 is made out and the appeal is dismissed.

(Signed)
Judge J Findlay

Dated: 29 September 2020
Signed: 26 October 2020

