



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

Tribunal Reference: CR/2013/0010
Appellant: Firoka (Oxford United Stadium) Ltd and
Firoka (Oxford) Ltd
Respondent: Oxford City Council
Judge: NJ Warren

DECISION NOTICE

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.
2. This appeal concerns the decision by Oxford City Council (Oxford) to list the Kassam Stadium, which since 2001 has been the home ground of Oxford United Football Club, as an asset of community value (ACV). It is necessary to explain the somewhat complex layout of the stadium. The listed land is in two parts: the stadium itself and what is referred to as an “overflow” car park close by, but not contiguous. The stadium is owned by Firoka (Oxford United Stadium) Ltd; the car

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park by Firoka (Oxford) Ltd, both of whom are Appellants. I shall refer to them jointly as “Firoka”.

3. Adjacent to the stadium is a leisure complex owned by Firoka (Oxford Leisure) Ltd. They have no right to appeal under the Act but the leisure complex is factually significant because its customers share the use of car parking around the stadium and the overflow car park with those attending Oxford United FC matches.
4. It is important also to give further details of the stadium itself. It stands along three sides only of the pitch. The west stand, for which ample space lies vacant, has not yet been built.
5. The east and south stands are both built with substantial floor space behind them. In the east stand that space, about 30,000 square foot, is void. In the south stand, the space is fitted out for conferences and hospitality. On match days this is used by Oxford United FC – all but some very small areas which are excluded from their licence. The rest of the time Firoka hires out the facilities bringing in just short of £500,000 a year on room hire alone. Nor is Oxford United FC the only sports team using the stadium. London Welsh Rugby Club also play there. Some idea of overall usage can be obtained from the figures supplied by Firoka and included in the Tribunal bundle. For example, Firoka derives about 35% of stadium revenue from Oxford United FC and about 65% from London Welsh and other activities. There is some discrepancy in figures for attendances at football matches but the annual footfall for rugby and other events at the stadium probably equals or just exceeds that for Oxford United matches.
6. It is submitted on behalf of Firoka that the ACV legislation is intended to apply only to small outfits such as a pub, shop or village hall. It is a simple unsophisticated scheme not constructed to deal with such complex interactions that occur within this large stadium.

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7. I reject this submission. In my judgment there is nothing in the plain language of the ACV legislation to indicate that football stadia are excluded; nor is there any reason in principle why simple schemes should not be drafted to be applied in, sometimes, quite complex circumstances. Local authorities and Tribunals are quite capable of applying the statute to premises which have mixed uses.
8. Firoka also submit that this part of the Localism Act 2011 must be read as being part of our general law of planning. In particular, the Tribunal must look at the relevant “planning unit”. The Act should be applied in respect of any planning unit only in respect of the primary use of that unit.
9. I have no doubt that local planning information will often form an important part of the factual background to be taken into account when making decisions under the Act. I do not accept, however, that concepts such as the “planning unit”, developed by judges for a different purpose, should be imported; nor should they be allowed to restrict the Act to “primary uses”, words which, if intended, could so easily have been used. True it is that in making decisions under the Act local authorities and Tribunals may have to draw lines; but such judgments should be made by applying the words actually used by Parliament to the actualities of the individual case.
10. With that in mind I turn to Section 88(1)(a) of the Act which requires both a present condition and a future condition to be satisfied if the Kassam Stadium is to fall within the definition of “land of community value”. The present condition is that:-

“ An actual current use of the building or of the land that is not an ancillary use furthers the social wellbeing or social interests of the local community.”

“Social interests” includes in particular cultural, recreational and sporting interests.
11. It can hardly be denied that one of the current uses of the Kassam Stadium is to provide a home ground for Oxford United FC. Is that an “ancillary” use? It is true that there are only about 25 match days a year. In my judgment, however, the cultural, recreational and sporting interests with which I am concerned extend wider

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than the hour and a half or so for which 20 – 30 men play a game of football. The role of a football club in the local community goes far beyond that. This point is made in written submissions from OxVox the supporters' trust which nominated the stadium as an ACV. The existence of a home town club, intrinsically linked to the use of its home ground, fosters community pride; stimulates daily conversations in pubs, work places and online; forges friendships and encourages the mix of generations. It was a recognition of the importance of this, no doubt, which resulted in the planning application for the whole stadium being made in 1996 "on behalf of Oxford United FC".

12. I conclude therefore that the present condition is satisfied.
13. Firoka welcomes Oxford United FC to the Kassam Stadium and has no desire for Oxford United to cease to play there. It seems to me to follow that the future condition must be taken to be satisfied as well.
14. In the alternative, Firoka submits that three parts of the stadium should be excluded from the listing. These are the overflow car park, the site of the proposed west stand and the void area behind the east stand.
15. The first of these is the overflow car park. Oxford's approved planning policy is to encourage the possibility of residential development, with some small shops, on the site of the car park. The policy explicitly states, however, that replacement car parking would have to be provided.
16. It is common ground that on match days the overflow car park is used by supporters in conjunction with customers of the nearby leisure centre – just as the main car park is. Both car parks were part of the same original application for planning permission.
17. This current use convinces me that Oxford were correct to include both car parks as part of the stadium and within the designation of the ACV.

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18. There is no suggestion that the site awaiting construction of the west stand should be used for any other kind of development. In my judgment it would be wholly artificial to exclude both this and the void area behind the east stand. One awaits construction work; the other awaits fitting out. The actuality, in my judgment, is that both remain part of the stadium.
19. Finally, Firoka raised the question of whether the listing of the stadium was a breach of Firoka's rights under ECHR, in particular, the first Article of the first Protocol. I am satisfied that neither Oxford's decision to list, nor this decision on appeal, is contrary to the Human Rights Act 1998.

NJ Warren

Chamber President

Dated 9 May 2014