



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

Tribunal Reference: CR/2013/0005
Appellant: M Patel
Respondent: London Borough of Hackney
Second Respondent: Churchwell Residents' Group
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. In Mehetabel Road, Hackney, there was a pub named the Chesham Arms which had been there since 1866. In October 2012 Mr Patel bought it and closed it. He wants to turn it into flats. On 19 November 2012 the Churchwell Residents’ Group asked the London Borough of Hackney (“Hackney”) to list the pub as an asset of community value. Hackney did so and confirmed this decision on review. Mr Patel now appeals to the Tribunal against the listing.

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3. I heard the appeal at Hackney Town Hall on 17 October. Mr Patel was represented by Mr Turney. Hackney were represented by Mr Lee. Mr Watson and Mr Williams spoke on behalf of the Churchwell Residents' Group.

4. The real issue between the parties is whether Section 88(2)(b) of the Localism Act is satisfied. This requires that before an asset is listed, it must be:-

“ ... 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 (whether or not in the same way as before) the social wellbeing or social interests of the local community”.

It is not suggested by either of the respondents that such a use could be anything but as a pub. For the appellant, Mr Turney, correctly pointed out that not all pubs would come within Section 88(2)(c). In my judgement, however, the reality is that if the building did revert to being used as a public house then, looking at this particular building in this area, that use would come within the sub-section.

5. I should perhaps deal with two preliminary points about which I heard argument from Mr Lee and Mr Turney.

6. Mr Turney submitted that the Tribunal's jurisdiction was to rehear the case completely. Mr Lee drew attention to the conditions for listing being prefaced in the statute by the words “in the local authority's opinion”. He submitted that whilst the Tribunal was not limited to proceeding on the somewhat narrow grounds upon which judicial review is possible in the Administrative Court, nevertheless in approaching the appeal, the Tribunal should give significant weight to and afford a degree of deference towards the Council's decision.

7. I prefer Mr Turney's submission. This is a simple right of appeal to the First Tier Tribunal. I rather doubt whether the halfway house urged upon me by Mr Lee can intellectually coexist with the Tribunal's freedom to receive new information and its duty to remain unbiased. Of course, some statements made by a local authority will carry particular weight because of their source. An example in this appeal would be Hackney's assertion that “the area is experiencing considerable economic

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growth”. A Tribunal rejecting such a statement from a local authority would have to clearly explain why. This, though, is merely part of the ordinary evaluation of evidence and does not relate to the jurisdiction of the Tribunal.

8. In earlier submissions it had been suggested on behalf of Mr Patel that it was essential to demonstrate on the balance of probabilities that the Chesham would reopen as a pub. At the hearing, Mr Turney resiled from that submission and in my judgement he was right to do so. The question posed by Parliament is whether “it is realistic to think” that there could be such an outcome. This should not be confused with the test which courts and tribunals use as the civil standard of proof; a test designed to produce one outcome. The language of the statute is consistent with a number of realistic outcomes co-existing.
9. It is convenient to deal next with a submission on behalf of the appellant in his reply concerning the weight to be given to Mr Patel’s intentions. It is said that:-

“ The intentions of the appellant are clear and should indeed be the determinative factor in this appeal.”
10. Whilst I have no doubt that it is reasonable to take into account Mr Patel’s intentions as part of a general consideration of the circumstances, I cannot accept this assertion about the weight to be given to them.
11. If correct, it would seem to follow that that an owner need only say “I have set my face like flint against any use of community value” and listing will be avoided. This almost makes the scheme voluntary. I think it more reasonable to take into account Mr Patel’s intentions as part of the whole set of circumstances. After all, they are the current owner’s present intentions and the legislation requires an estimate of what will happen over the next five years.
12. At the hearing, Mr Turney advanced another submission to the effect that the Chesham Arms could never be viable as a public house. He relied on the evidence from the previous owner, Mr Webster. (See especially page 47 of the appellant’s bundle). I do not accept that conclusion. Mr Webster’s letter is silent on detail and indeed specifically refuses to disclose figures. Set against it:-

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- (a) The evidence of Mr Assi, the former tenant, is that he ran the pub paying a rent of £30,000 and was keen enough on the trade to want to buy it.
- (b) There have been expressions of interest and at least one firm offer from those in the local pub trade.
- (c) Mr Webster found it sufficiently profitable to move to the pub and to run it himself for three months between Mr Assi's departure and the sale to Mr Patel.

These indications, in my view, outweigh the evidence of Mr Webster.

- 13. Mr Turney made the fair point that the evidence of people being willing to buy the pub depended on the acceptance of a valuation much below what Mr Patel had paid and I turn now to consider that point in the context of the general prospects for the Chesham Arms.
- 14. The current planning use for the building is as a public house. This would permit use for up to two years as an office without the need for any further permission. The building includes residential accommodation for the landlord. Mr Patel intends to rent this out. There is a suggestion, but no more than that, that the latter proposal might run into planning difficulties. Mr Patel intends to apply for planning permission to convert the entire building for residential use.
- 15. If such permission were granted and the building converted then its value could easily be three times its value if the use were restricted to a public house. Mr Patel has bought the Chesham at a price somewhere between those two figures hoping to make a profit if planning permission is granted.
- 16. On the material I have, it seems to me that I must treat both the grant and the refusal of planning permission as realistic possibilities. One realistic outcome therefore is that the Chesham will be converted into flats. What if permission is not granted? A second outcome might be that the Chesham is rented out as one flat plus office space – but the current permission for office use expires in two years

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time. A third outcome might be that a refusal delivers a fatal blow to Mr Patel's current investment strategy. It seems to me that he might realistically then decide to cut his losses and sell to someone interested in running the building as a pub. I agree with Hackney that all these three options are realistic. It follows that they were correct to list the Chesham as an asset of community value.

NJ Warren**Chamber President****Dated 7 November 2013**