



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

Tribunal Reference: CR/2013/0004
Appellant: Dorset County Council
Respondent: Purbeck District 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 Wareham Middle School playing fields which were placed on the list kept by Purbeck District Council (Purbeck) on 3 June 2013. The appellant is Dorset County Council (Dorset) which has responsibility for schools in Purbeck and is the owner of the land.
3. Purbeck and Dorset have both consented to this appeal being determined without a hearing and I am satisfied that I can properly do so. I am grateful to both councils for the assistance they have given me in their written submissions.

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4. Dorset acquired the land many years ago. Some of it is subject to restrictions imposed in a 1937 conveyance. Consent of a local estate owner would be required for any building on the land other than a school. That conveyance also imposed a positive covenant to lay out and maintain as playground, playing field or ornamental grounds any land not taken up by school buildings.
5. As the name implies, the playing fields have for some time been attached to Wareham Middle School. They have also been used both for training and matches by two long established sports clubs. Wareham cricket club uses an artificial cricket pitch from May to July each year. Matches are played on about 15 occasions. Wareham Rangers has a number of youth teams who use the playing fields for football. They have about 130 children on their books.
6. At the time of the listing there was no access to the playing fields without entering and crossing the site of Wareham Middle School. Users of the playing field would depend upon the school buildings for toilet and changing facilities.
7. In 2011, Dorset decided to reorganise schools in Purbeck. Wareham Middle School closed in August 2013. The school building became an arts centre for Purbeck School. The arts centre itself did not require the playing fields.
8. On the other hand, Purbeck School itself, along with Wareham St Mary's Primary School, both nearby, were short of sports facilities. Under the rules concerning school playing fields Dorset had a duty to make the redundant playing fields available for use by those two schools.
9. The solution is still not ideal so far as Purbeck school is concerned and Dorset has therefore applied to the Secretary of State to sell Wareham Middle School playing fields for housing and to use the proceeds to buy replacement fields closer to the two schools concerned. It was this proposal that prompted a request to Purbeck for the playing fields to be listed.

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10. Since Wareham Middle School closed, a new gateway has been provided so that it is now possible to gain access to the playing fields without going through the arts centre.
11. The first point taken by Dorset in this appeal is that the playing fields should never have been listed because Section 88(1)(a) Localism Act 2011 was not satisfied.
This requires:-

“ An actual current use of the building or other land that is not an ancillary use furthers the social well being or social interests of the local community...”
12. It is submitted that whilst the use by the sports club relied upon by Purbeck, was an “actual current use” it was also “an ancillary use”.
13. Dorset rely heavily on the School Standards and Framework Act 1998 (SSFA 1998). It is submitted that community use of school premises takes place under Schedule 13 of that Act. If I have understood the argument correctly, Dorset submit that those making community use of school facilities under the Act do so under a transfer of control agreement which, by virtue of the Act, must always be subordinated to the primary needs of the school. The school’s use, in case of conflict, always takes precedence and therefore the community use must be “ancillary”.
14. Returning to the wording of Section 88 of the Localism Act, I am unable to derive from its plain words an intention to exclude all community uses authorised under SSFA 1998. In my judgement, all will depend upon the facts. I specifically reject the submission that the “quantum” or amount of use cannot be determinative and that it is the status of the user as against the rights of the owner which counts.
15. Nor, in the circumstances of this case do I derive any assistance from the plain intention of the parties to the 1937 conveyance that a school and playing fields be built on the site.

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16. Having reviewed all the evidence, I have concluded that there is no certain guidance or touchstone. The answer may indeed vary according to how the question of ancillary use is posed. In one sense, looking at the playing fields alone, their use is for sport. Pupils at Wareham Middle School were just as much members of the community as the members of Wareham Cricket Club and Wareham Rangers.
17. In my judgement, however, it is artificial to divorce the playing from Wareham Middle School in this way. The reality on the ground is that there was a school with its playground and playing fields attached. The use of the playing fields by Wareham Cricket Club and Wareham Rangers, which is relied on by Purbeck, was an ancillary use of the school site. I therefore uphold the first ground of the appeal and remove the playing fields from the register.
18. It is unnecessary therefore to deal in detail with the other two grounds.
19. As I have indicated there has been a change in the arrangements since the playing fields were listed. Wareham Middle School has closed and there is a new access gate. I have considered whether this makes any difference to my reasoning because in an appeal when all issues of fact and law can be canvassed by the parties, the normal well settled rule is that issues are decided as at the date when the Tribunal gives its decision. See Quilter v Mapleson (1882) 9 QB 672 and Ponnamma v Arumugam (1905) A.C. 383. I am not satisfied, however, that this single incident is itself a sufficient relevant change of circumstances. Sometimes changes of circumstances take place over a period of time and are composed of a number of individual changes. That is the case here in the context of the overhaul of the school system in Purbeck and the careful plans to bring it to fruition. The inevitable and temporary gap between the closure of the school and the reallocation or disposal of the field in accordance with the plan does not seem to me to affect my original judgement as to the reality of the ancillary nature of the community use.

Decision Notice Continued

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NJ Warren

Chamber President

Dated 16 January 2014