



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

Tribunal Reference: CRB /2013/0006
Appellant: Matterhorn Capital Bristol Ltd
Respondent: Bristol City Council
Second Respondent: Bristol South Scouts
Judge: NJ Warren

DECISION NOTICE

A. 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.
2. On 22 March 2013 Bristol City Council (Bristol) added to their list the “land on which the Balfour Road Scout Hut is located”. These proceedings arise out of that listing.
3. There was a hearing of this appeal at Bristol on 15 January 2014. The appellants, Matterhorn Capital Bristol Ltd (Matterhorn), were represented by Mr Wills. Bristol

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were represented by Mr Lee. Bristol South Scouts were represented by Mr Hussey. I am grateful to all three of them for their helpful submissions.

B. History

4. Until recently there had been a scout hut on the site in Balfour Road for about 60 years. In 2006 Matterhorn bought an area of land which at present comprises a building called the Luckwell Club, disused now for some years, a small amount of derelict land and the freehold interest in the scout hut land. A local voluntary organisation had taken out a 25 year lease on the latter in 1979 on behalf of the scouts. Although the lease had expired, the scouts were still in possession and paying rent. I need not go into the precise legal position.
5. The scouts had built a substantial scout hut with central heating, toilets and a kitchen. It did not meet 21st century requirements for new buildings, in particular in respect of access for wheelchair users but it was a popular local resource used by the scouts, the guides, a local martial arts club and for occasional hirings.
6. The site and the surrounding area are vividly shown in aerial photographs produced to the Tribunal.
7. Matterhorn, applied for planning permission to build flats on the site which they owned. The application included a “community building”. It was granted subject to a condition that the proposed new “scout hut/community floor space” should be available for community use before the flats were occupied. Matterhorn did not proceed with this development. In 2011 Matterhorn made a fresh planning application for the land excluding the scout hut site. The proposal was to build town houses. This application, which did not affect the scout hut, was granted but the development did not take place.
8. In September 2012 Matterhorn gave the scouts six months notice to quit. In February 2013 Bristol South Scouts applied to Bristol for the land to be listed. As I have indicated, the application was successful. A week later the scouts reluctantly left their hut in accordance with the notice to quit.

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9. In May 2013 Matterhorn asked for a review of Bristol's decision. By this time, they had already signalled to Bristol their intention to demolish the scout hut, something they were entitled to do under the General Permitted Development Order. Demolition took place in June. In July Bristol confirmed the listing of the asset on review. The officer conducting that review knew that the scouts had left but was unaware of the demolition.

C. Jurisdiction

10. Not for the first time, even in a comparatively novel jurisdiction, the Tribunal is faced with changes in the relevant circumstances. Events do not stand still in deference to the review and appeal procedures.
11. The law takes this into account. The local authority's review decision and the tribunal's appeal decision both involve a full reconsideration of the issues. It is well settled that this means looking at the facts, as they stand, at the time of the review decision and the appeal decision respectively. See Quilter v Mapleson (1882) 9 QB 672 and Ponnamma v Arumogam (1905) A.C. 383. This approach was approved by a Tribunal of Social Security Commissioners in R(FIS)1/82. The existence of the local authority's power to take into account changes of circumstances in Rule 2(c) Assets of Community Value (England) Regulations 2012 does not seem to me to affect this principle.
12. As I understand it neither counsel involved, Mr Wills or Mr Lee, dissented from this approach.
13. This means that the legal basis upon which I approach the appeal is inevitably different from that which Bristol were bound to follow. Both counsel agree that I should now focus on Section 88(2) Localism Act 2011, not Section 88(1).
14. Section 88(2) Localism Act 2011 reads as follows:-

“For the purposes of this chapter but subject to Regulations under subsection (3), a building or other land... is land of community value if in the opinion of the local authority –

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- (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 well being 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 well being or social interests of the local community.”

These may be taken as the “past condition” and the “future condition” for listing, both of which must be satisfied.

D. The Past Condition

15. I have no doubt that the past condition is satisfied. The land at Balfour Road which was the subject of the 1979 lease, furthered the social well being of the local community by providing the site for a scout hut and a small accompanying outdoor area. This seems to me to be obvious from the use of the hut for the scouts, the guides, the martial arts club and the casual hirings; and as Mr Hussey perceptively observed, the use of the land provided opportunities for adults to volunteer.

E. The Future Condition

16. I agree with Mr Lee that the nub of this appeal is whether, taking into account that the scout hut has now been demolished and the lease has expired, it is realistic to think that there is a time in the next five years when there could be a non-ancillary use of the land that would further (whether or not in the same way as before) the social well being or social interests of the local community.
17. In assessing what is realistic, I obviously have to consider as one relevant factor the intentions of the owner, Matterhorn. Matterhorn intend to develop the whole of the site for housing. Of course, these are the present intentions of the current owner. But I have no doubt that housing over the whole site is one of the realistic outcomes over the next five years.
18. In my judgement, however, the community use envisaged by Section 88(2)(b) of the Act is also a realistic outcome. It seems to me that there are two principal factors underpinning this conclusion.

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19. First, Matterhorn do not have planning permission to develop the whole of the land which they own for housing. On the occasion which they obtained planning permission for the whole of the site, they did so by including in the application the provision of a building for community use. Only when they excluded the part of their land on which the scout hut was based did they obtain permission for housing alone. It would be quite wrong for me to attempt a detailed prediction of what the planning authority might decide in the future but on the evidence before me, it seems a real possibility that an approach consistent with the past planning decisions will be taken. Second, the evidence of Bristol South Scouts is that they are determined to rebuild a scout hut, if possible, on the Balfour Road site. From an organisation like the scouts it doesn't seem to me to be necessary to press for detailed information about the money available or the possibilities of philanthropy in order to conclude that the outcome they seek is amongst those which I should characterise as realistic. They have shown a commitment to this site for 60 years.
20. I therefore confirm, necessarily on different grounds, Bristol's decision to include the scout hut land on their list of assets of community value.

F. Further Reasons

21. I am conscious that in expressing my conclusions, I have not dealt directly with all of the submissions advanced on behalf of Matterhorn by Mr Wills. If I deal with them briefly here, I hope I am not being disrespectful to their careful craftsmanship.
22. Mr Wills took what he described as a preliminary point concerning the construction of the statute and its reference to "a building or other land". He submitted that the past condition had been satisfied because of the use of a "building" the scout hut. Matterhorn had now demolished the building. It was therefore "simply impossible" for the future condition to be satisfied. In my judgement, this argument wrestles with words, rather than with realities and is sufficiently answered by the analysis of the past and future conditions which I have given.
23. Mr Wills also drew attention to the case of Jennings Motors Ltd v Secretary of State for the Environment (1982) Q.B. 541. He submitted that the demolition of the

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scout hut meant, in planning terms, an abandonment by Matterhorn of the “community use” of that part of the site which they owned. Any proposal to build a new scout hut on the site and to resume community use would require planning permission. This may well be right; but on the facts of this case there is no suggestion that there would be any difficulty in securing such permission, any more than there has been difficulty in securing permission for housing for the rest of the land which Matterhorn owns. This factor, therefore, does not appear to me to have any material impact in the assessment of what could be a realistic outcome.

24. Finally, Mr Wills referred to the availability of alternative sites which can be used by the scouts and the other community bodies which previously used the scout hut. A list has been provided. I do not consider it necessary to explore all those alternatives. It would be wrong for me to decide this case on the basis that local residents have enough facilities already. The point might be relevant if other facilities were so abundant or superior in what they had to offer that they would deter any community group from taking a further interest in the listed land. I am satisfied by the evidence from Bristol South Scouts, and from Bristol, that this is not the case here.

NJ Warren

Chamber President

Dated 23 January 2014