



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

Tribunal Reference:	CR/2014/0007
Appellant:	GK Scott
Respondent:	South Norfolk District Council
Second Respondent:	Pulham St Mary Parish 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 case concerns the Kings Head, a listed building in Pulham St Mary, Norfolk, dating back, in its earliest parts, to the 14th or 15th century. It closed as a pub in 2007. In October 2013 Pulham St Mary Parish Council applied to South Norfolk Council (“South Norfolk”) for it to be added to the local list of assets of community value. The application was successful. Mr Scott, the owner of the Kings Head, applied for a review but was unsuccessful. He now appeals to the Tribunal against the listing on a number of grounds.

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3. I should perhaps deal first with a contention made by South Norfolk to the effect that I should interfere with their decision only if the decision is so irrational that no reasonable council could have reached it – the old concept known to lawyers as “Wednesbury unreasonable”. I reject this submission. The Tribunal is not confined to the narrow grounds on which the administrative court would interfere with a public authority’s decision in an application for judicial review. This is an ordinary right of appeal, on fact and law, to the First Tier Tribunal.
4. I have indicated that the Kings Head was not in current use as a pub when the Parish Council made its application to South Norfolk. This meant that in order to decide whether to include the building in the list, South Norfolk had to consider Section 88(2) Localism Act 2011 and to ask themselves whether:-
 - “ (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 wellbeing or social interests of the local community”.
5. It is convenient to refer to the first condition in sub para (a) as “the past condition” and to the second condition in sub para (b) as “the future condition”.
6. Both the past and the future conditions must be satisfied before a building can be listed.
7. It is striking that in setting out the future condition Parliament used a definite period of five years whereas in setting out the past condition Parliament used the vaguer formula “the recent past”. Where Parliament has opted for a loose expression, it is not the Tribunal’s role to undermine that by giving the phrase a meaning which is certain.

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8. The facts of this case obviously raise the question of whether the community use existed “in the recent past” and this is the first of the grounds on which Mr Scott appeals.
9. The statute, as I have indicated, does not provide a clear answer.
10. An important feature of this case, it seems to me, is the reasoning of the officer who conducted the review on behalf of South Norfolk. That review, as I have explained, was unfavourable to Mr Scott. In the course of the review decision there appears the following:-

“ Therefore, in light of the history of the property and the community right to bid application by the Parish Council, I am inclined to mitigate the issue of recent usage with the viability of the business and the need for a premises of this type to further the social wellbeing of the community.”

And the decision concludes:-

“ In conclusion, South Norfolk Council’s position in this matter is that:

- The Kings Head at Pulham St Mary could be used by the community as a recreational facility.
- The pub is not currently in use, nor has it been used in the recent past, however
- The history of the property demonstrates and the recent planning application from Mr Scott confirms the viability of the business.”

11. So it will be seen that the reviewing officer found as a fact that there had been no community use of the building in the recent past because of the six year closure

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period. It seems to me that in the circumstances it would be quite unfair if I took a different view.

12. I therefore conclude, as the reviewing officer should have done from his finding of fact, that the past condition was not satisfied. The appeal therefore succeeds. In the circumstances I need not deal with the other grounds of appeal.
13. This decision was taken without a hearing because all parties had consented to that course and I was satisfied that I could properly determine the issues without one.

NJ Warren

Chamber President

Dated 14 August 2014