



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

**Tribunal Reference:** CR/2014/0019  
**Appellant:** Carol Gibson  
**Respondent:** Babergh District Council  
**Second Respondent:** Thorpe Morieux Parish Council  
**Judge:** Peter Lane

**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. Section 88 of the 2011 Act provides as follows:-

**“88 Land of community value**

- (1) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area is land of community value if in the opinion of the authority –
  - (a) an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and

- (b) it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community.
- (2) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area that is not land of community value as a result of subsection (1) is land of community value if in the opinion of the local authority –
- (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 wellbeing 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.”

3. This appeal concerns land and buildings comprising the Bull Inn, Thorpe Morieux, Suffolk. It appears that the Bull has functioned as the village pub since at least the 1860s. Around the turn of the 19<sup>th</sup> and 20<sup>th</sup> centuries, it was run partly as a pub and partly as a village grocery store. In more recent times, the Bull (in common with many other such establishments) has had a more chequered history. It appears to have been closed for a time before Mr and Mrs Clayton purchased it in 1993. Miss Gibson purchased the Bull in October 2007 from the Claytons. According to the decision of a planning inspector dated 2 May 2002, the pub business at the Bull was “fairly quiet in the week because of the Inn’s isolated location, but at the weekend, when the restaurant side of the business is particularly busy, four staff are normally required to cook and to serve”. The inspector decided to allow the appeal of the Claytons against the refusal of the local planning authority to permit the erection of a dwelling next to the Bull, subject to a condition limiting its use to a person solely or mainly employed or last employed in the business conducted at the Bull. The purpose of the planning application had been to reduce overheads by erecting a dwelling that could house members of the family running the Bull, who would assist in that activity.

4. Local residents spoke in favour of the proposed development:-

“ It is clear from the representations made, including a petition of about 165 signatures, that there is overwhelming local support for the proposed development. In the absence of any shops in the neighbourhood, the Bull Inn provides the only retail outlet in the locality and has become a focal point and meeting place for the local community. Residents are rightly concerned that if the appeal

is not allowed, it might again lead to the closure of the public house and the likely permanent loss of the hub of this rural area.”

5. Miss Gibson paid £616,000 to acquire the Bull Inn and the adjacent two bedroom dwelling, which had been constructed pursuant to the grant of planning permission. She and her niece initially lived in the Bull, whilst Miss Gibson’s parents occupied the two bedroom dwelling (“the Old Orchard”). Miss Gibson’s parents subsequently died. Her case is that she was confident she could make a commercial success of the Bull, investing a considerable sum in the property. However, by February 2009 she had concluded that it was necessary to close the pub. Subsequently, however, she reopened the Bull, whilst taking a day time job.

6. In March 2009 Miss Gibson instructed a firm specialising in the sale of pubs to seek a purchaser for it as a going concern. The initial asking price was £575,000. After five months Miss Gibson wanted to increase the sale price. The specialist firm recommended seeking the lifting of the planning condition relating to the Old Orchard. An initial planning application was refused but in August 2012 a planning inspector allowed Miss Gibson’s appeal against a second refusal by the local planning authority.

7. The inspector noted that Miss Gibson was trading at a “significant loss”, which was exacerbated by the price she had paid for the premises and her mortgage repayments. Miss Gibson told the inspector that her intention was to reinvest capital raised by the sale of the Old Orchard in the business at the Bull Inn. The inspector noted that there could be “no guarantee” that this would occur. The inspector recognised the

“strong local support, from both sides in this appeal, for the retention of the Bull Inn as an important community facility. There can be no certainty in the situation, but I have come to the view that the Bull Inn is at greater risk with condition 5 attached to the planning permission than if the condition were to be removed”.

8. On 31 May 2013 Miss Gibson purported to effect a change of use of the Bull Inn to a bric-a-brac shop. In August 2013 Babergh District Council (“the District Council”) placed the Bull Inn on its list of assets of community value. Miss Gibson requested a review, contending that the use of the Bull Inn was now a class A1 shop; that a change of use to A4 public house would require planning permission; and that despite the history of use as such, a change of use back to a pub would not be consistent with the District Council’s policies on sustainability.

9. Following an oral review hearing on 29 January 2014 the District Council concluded that the Bull Inn should not be listed. The review concluded that there was no indication of how any future owner or tenant, whether a community group or private individual, could make the business a going concern.

10. However, on 7 July 2014 the District Council informed Miss Gibson that it had again listed the Bull Inn as an asset of community value. Miss Gibson requested a review, which took place on 14 October 2014. The result of that review was to maintain the Bull Inn on the list. The reviewer found that the nominators (Thorpe Morieux Parish Council) had given an indication as to how they intended to run the Bull and were aware that significant fundraising and local support would be needed in order to achieve any agreed purchase price. In this regard, I note that a group of local residents had suggested that a reasonable price for the business would be £200,000 and that £50,000 would be needed for renovations. The District Council considered that the nominators were actively looking to raise money to purchase the asset and run the Bull as a pub. In all the circumstances, the District Council decided to maintain the Bull on the list.

11. Miss Gibson appealed against that decision to the First Tier Tribunal. Each of the parties to the appeal has consented to its being determined without a hearing. I consider that, in the circumstances, the issues in the appeal can be properly determined without a hearing.

12. Miss Gibson's case is that it is not realistic to think that there is a time in the next five years when there could be a non-ancillary use of the Bull Inn that would further the social wellbeing or social interests of the local community. In essence, the Bull has experienced difficult times over the past twenty years, at least. In the early 1990s it had been closed as a business. The reason why the property now known as the Old Orchard was constructed is indicative of the pub's commercial fragility during the ownership of Mr and Mrs Clayton. Miss Gibson's accounts, submitted in connection with the reviews, demonstrate serious financial losses during her period running the pub. The village comprises only some 250 residents, including children, which is insufficient to support a public house that, owing to its location, has no passing trade. Miss Gibson prays in aid, in particular, what was said by the planning inspector in the 2012 appeal decision, lifting the condition on who might occupy the Old Orchard. The village hall was refurbished in early 2011 and provides a meeting place and focal point for the village, as well as competing with the pub. Miss Gibson fought hard to keep the Bull Inn running as a pub, even taking a full-time day job whilst opening the Bull in the evenings and at weekends.

13. The District Council points to the creation of the "Friends of Thorpe Morieux Bull", who were able in September 2014 to make an offer of £200,000 for the property. The District Council points out that it is not a prerequisite for a community group to have a business plan or sufficient means to purchase the asset, in order for listing to occur. The test of what is realistic permits of more than one outcome.

14. The Parish Council gives details of the clubs and other bodies that used the Bull Inn in the recent past. The Parish Council asserts that Miss Gibson failed to

invest in infrastructure and maintenance, leaving the Bull Inn looking shabby and uninviting. She did not reside on the premises for the last few years of trading and made unwise business decisions, such as instigating a “fish and chip night” on the same night that a mobile chip van with an established and loyal clientele traded in the village. So far as the village hall is concerned, the Parish Council submits that it was refurbished because its ceiling was falling down. No new facility or capacity had been added. The village hall does not have a licence to serve alcohol. Over the past years, there has been no change in the number or size of events taking place in the hall. In fact, the Parish Council contends that the village hall contributes to the trade of the Bull Inn, since, for example, people meeting in the hall would typically reconvene in the pub “for a few pints”.

15. In reaching a decision in this appeal, I have had regard to all the written evidence and submissions, including those not specifically mentioned by me.

16. Two preliminary matters need to be mentioned. First, there is no legal impediment on the District Council deciding to list the Bull Inn only shortly after it had decided, following a review, that the criteria for listing had not been met. The significance of these events lies only in the fact that Miss Gibson is permitted, in these proceedings, to point to the earlier decision as one that should, in effect, be followed by the Tribunal. Secondly, Miss Gibson raises an issue regarding the person who signed the letter of 7 July 2014 informing her that the District Council had listed the Bull Inn. The signatory had, in fact, put her name to a petition in support of the listing nomination. This issue is not one which concerns the Tribunal. I am concerned with whether, on the evidence, the criteria for listing set out in section 88 of the 2011 Act are met.

17. There is, I find, ample reliable evidence to show that the requirement of section 88(2)(a) is met in the case of the Bull Inn. Until its last closure as a pub by Miss Gibson in 2013, the Bull Inn plainly furthered the social well being or interests of the local community. Not only was the pub used by locals for eating and/or drinking (albeit that their numbers were small); various clubs and other bodies used it. I accept what the Parish Council has to say about the non-competing nature of the village hall.

18. The issue, accordingly, is whether section 88(2)(b) is satisfied; namely, whether it is realistic to think that there is a time in the next five years when there could be a non-ancillary use that would further the social wellbeing or social interests. In this regard, it is important to emphasise that the question is not whether such a use is more likely than not to occur. Rather, the question is whether such a use is realistic, in the sense of not being “fanciful”, even though that use might not be the most likely scenario.

19. I have had full regard to Miss Gibson’s evidence and submissions regarding the commercial difficulties she encountered in running the Bull Inn. I do not, however, find as a fact that her experience is such as to show (whether or not

with other evidence) that no other individual or group could realistically run the Bull Inn as a pub. Miss Gibson's grounds of appeal record that, on purchasing the Bull Inn in October 2007, she was "confident that she would be able to make a success of the pub". I consider the evidence discloses that, regrettably, the problems in caring for her elderly parents and her need to take a daytime job in order to repay her bank, hampered her efforts to run the pub business. For the last few years Miss Gibson has not, it seems, resided at the Bull Inn.

20. The grounds of appeal state that Miss Gibson has "had over 30 years of experience of pub work at the time of purchase and had also worked in the catering industry on the purchasing side". The Parish Council, however, points out that this was not mentioned in Miss Gibson's introductory letter to the village, of which a photocopy has been provided. What is said there is that Miss Gibson worked as general manager for a bus cleaning company in central London and bought the Bull Inn as she wanted to live closer to her parents.

21. At all events, looking at the evidence overall, I am not satisfied that Miss Gibson's own experiences compel the conclusion that it is no more than fanciful to think that anyone else could run the Bull Inn successfully, whether or not on a profit-making basis.

22. The evidence before the District Council in connection with the second listing of the Bull Inn (and which is before me) demonstrates that there is not only a strong local wish to see the Bull Inn re-open but also that this could be realistically achieved within the statutory timescale. This is demonstrated by the existence of the Friends of Thorpe Morieux Bull and the offer of £200,000 for the property (as well as an estimate of £50,000 for repairs). The first of these figures is criticised by Miss Gibson as unrealistically low, whilst the second is regarded as purely arbitrary.

23. So far as the second figure is concerned, no alternative has been put forward by Miss Gibson; or any explanation as to why no such sum would need to be expended. So far as the £200,000 is concerned, the fact that Miss Gibson paid much more than this in October 2007 (albeit that her purchase included the Old Orchard) is in no sense determinative. This is particularly so when one turns to consider the planning position.

24. I accept the evidence of the respondent that the creation of the so-called bric-a-brac shop in the Bull Inn appears to have involved no real change to the property and that the shop's alleged opening hours are problematic. Indeed, in 2014, Miss Gibson applied to the District Council for planning permission for a "change of use" of the Bull Inn from a "bric-a-brac shop with living accommodation to a dwelling". On 30 January 2015 that application was refused. The refusal noted that a grant of permission would not be in accordance with relevant plans. The applicant was advised that:-

“ The application asserts that the premises are now Class A1 use, however, on the basis of the evidence before it the Local Planning Authority is not satisfied that a material change of use has taken place from use as a public house within Class A4. Accordingly the LPA has assessed the application as a change of use from a public house or shop.”

The present planning position is, accordingly, that the Bull Inn is still seen very much as a pub; a factor that has relevance for its future use as such and for its likely market value.

25. Against this background, I find that it is not unrealistic or fanciful to hypothesise a situation within the next five years, whereby Miss Gibson decides to sell the Bull Inn as a pub. The fact that an offer of £200,000 could be made demonstrates that there is significant local interest and ability to see the continuation of the pub. Miss Gibson appears to consider that the financial offer was merely from a few individuals. That does not, however, mean that, if the pub were to reopen, section 88(2)(b) would not be satisfied. Indeed, one of the realistic possibilities is that Miss Gibson herself might decide to reopen the pub (as she has in the past). I also note the evidence regarding efforts made by the local community to research ways of community funding the acquisition of the Bull Inn. These efforts strike me as having been genuinely undertaken and are indicative of potential ability to raise additional funds, for example, by the issue of shares (as in the case of the King's Arms, Shouldham).

26. This appeal is accordingly dismissed.

**Peter Lane**

**Chamber President**

**Dated 8 May 2015**