



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

**Tribunal Reference:** CR/2014/0010  
**Appellant:** Crostone Ltd  
**Respondent:** Amber Valley Borough 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 a local authority to pay compensation to an owner who loses money in consequence of the asset being listed.
2. This appeal concerns a public house, the Black Swan, and its adjoining car park, in the village of Idridgehay in Derbyshire. On 28 January 2014 Amber Valley Borough Council (“Amber Valley”) included the Black Swan and its car park in the council’s list of assets of community value. The owner of the Black Swan, Crostone Ltd (“Crostone”) requested a review of that decision, leading to a review hearing on 21 May 2014. The decision on that review was to confirm the listing of

**Appellant: Crostone Ltd****Date of decision: 30 January 2015**

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the Black Swan and its car park. Crostone, appeals to the Tribunal against that decision.

3. There was a hearing of the appeal at Derby Magistrates Court on 7 January 2014. Crostone was represented by Mr Lynch, solicitor, and Amber Valley by Ms Oscroft, counsel. I am grateful to them for their helpful and well-crafted submissions.
4. The Black Swan has been a public house since 1827, being originally a coaching house and inn. It is a grade two listed building. The car park has 17 marked car spaces. The Black Swan is situated next to a bus stop.
5. Idridgehay is a linear village located on the B5023. The nearest town is Belper, described as the gateway to the UNESCO World Heritage site of the Derwent Valley Mills. The civil parish comprises Idridgehay, Alton and Ashleyhey. Idridgehay and Alton have 142 properties and an estimated 266 residents. The parish has been described as one of the more affluent areas of Amber Valley.
6. Until 1997, the Black Swan was run as what has been described as a traditional village pub. The focus was on serving drinks; meals were not provided for customers. In that year, the Black Swan was purchased by an affluent local family, who ran it as a French- themed pub/restaurant. After passing through other owners, the Black Swan closed in May 2012 and was purchased by Crostone later that year.
7. Under Crostone's ownership, the pub's bar and kitchen were removed. The three bed-roomed accommodation above the bar/restaurant is currently occupied by Mr Crosby. At the hearing Mr Crosby gave evidence on behalf of Crostone. Parish Councillors Jill Matthews and Robert Tatler gave evidence on behalf of the respondent. Andrew Watson, a planning officer with Amber Valley, also gave evidence.
8. Section 88(1) of the Localism Act 2011 provides as follows:-  
  
“ (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 –

**Appellant: Crostone Ltd****Date of decision: 30 January 2015**

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(a) An actual current use of the building or other land that is not an ancillary land furthers the social wellbeing or social interests of the local community; and

(b) It is realistic to think that there 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.

9. If the building or other land does not fall within subsection (1), it may still be land of community value by reason of sub-section (2):

“ (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.”

10. In the present case, it is common ground that the issue is whether the Black Swan falls within section 88(2). The appellant’s case is that section 88(2) is not satisfied because:-

(i) The Black Swan has not furthered the social well being or interests of the local community since 1997, when it became a themed pub/restaurant; and that no period before that can be categorised as “the recent past; and

(ii) in any event, it is not realistic to think that there is a time in the next five years when there could be non-ancillary use of the Black Swan that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

11. At the review hearing, Mr Crosby, who appeared on behalf of Crostone, is recorded as having in substance accepted that the Black Swan had, in the recent past, furthered the social wellbeing or interests of the local community. Mr Lynch criticised the conduct of the review; in particular for not having investigated this

**Appellant: Crostone Ltd****Date of decision: 30 January 2015**

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matter thoroughly, notwithstanding what Mr Crosby (who was not legally represented) may have said on that occasion.

12. It is common ground between the parties (and I in any event find) that the present appeal involves a full reconsideration by the Tribunal of all the issues, looking at the facts as they stand, with the result that, if the Tribunal concludes on all the evidence that section 88(2) is not satisfied, it should so find.
13. Accordingly, the local authority's review, and the hearing leading to it, is no more than a part of the overall matrix of this appeal. The view expressed by Mr Crosby at the review hearing falls to be considered in the context of the evidence as a whole. In the circumstances of the present case, I do not consider that what Mr Crosby said at the review does constitute a concession which binds Crostone.
14. The "recent past" is not defined in the Localism Act 2011 or any relevant subordinate legislation. What constitutes the "recent past" will depend upon all the circumstances of a particular case. To that extent, the expression is a relative concept. In this regard, it is relevant that the Black Swan operated as a public house for almost 200 years, until its closure in 2012. There is no suggestion by the appellant that the Black Swan was not furthering social wellbeing or interests during any period between 1827 and 1997. There has also been no change of use since 2012. Councillor Tatler's evidence was that, following the change of ownership in 1997, the Black Swan saw itself primarily as a restaurant and that the sort of clientele which had frequented it before, when it was a drinker's pub, was not encouraged. Nevertheless, his evidence (all of which I accept) was that during the time of the pub/restaurant there was seating for some 10-12 people in the bar area (a fact accepted by Mr Crosby). According to Counsel Tatler, some locals still made use of the Black Swan during this time in order to have a drink, without necessarily using the restaurant. This was particularly so in the summer, given that the Black Swan provided tables outside, within its curtilage.
15. Furthermore, Councillor Tatler's evidence is that locals would, from time to time, make use of the restaurant facilities. Indeed, whenever Councillor Tatler went to dine, he said he would see others from the village there. In addition, community

**Appellant: Crostone Ltd****Date of decision: 30 January 2015**

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events were held in the Black Swan post-1997, such as the wake for Councillor Tatler's late wife and an event celebrating Millennium Night, which was attended by many villagers.

16. In his closing submissions, Mr Lynch sought to downplay this evidence, submitting that, whilst it might be said to have involved the provision of a social interest, it could not be said to have "furthered" those interests, as required by section 88(2)(a). Otherwise, according to Mr Lynch, even a MacDonald's restaurant would fall within the ambit of section 88.
17. I do not accept this submission. What constitutes furthering the social wellbeing or interests of the local community is a highly contextual question, depending upon all the circumstances of a particular case. On the facts, the respondent's evidence I find discloses a continuing use by local people (albeit not precisely the same ones or for precisely the same reasons as previously), making use of the Black Swan, not just as a place to get food but to go in the expectation of seeing other locals, as well as using it for bigger community events. These uses furthered social wellbeing in what is a small, rural community. On the facts, the "recent past" requirement is, I find, satisfied.
18. I turn to the issue of section 88(2)(b); namely whether it is realistic to think there is a time in the next five years when there could be non-ancillary use of the Black Swan that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.
19. Mr Crosby has a long history as a professional in the pub trade. His experience in this regard is impressive and I give it due weight. He has submitted an analysis in the shape of a "Black Swan business plan 2014", comprising of a business model for a hypothetical owner or tenant seeking to make a living, primarily through the sale of low-end pub meals.
20. Mr Crosby is plainly justified in his belief that, at the present time, many rural pubs face great financial challenges. Nevertheless, I find myself in agreement with Ms Oscroft that Mr Crosby's stance, as regards the Black Swan, is determinedly

**Appellant: Crostone Ltd****Date of decision: 30 January 2015**

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pessimistic. His total of almost £180,000 for renewal of the bar fittings, kitchen and other fixtures and fittings was, he accepted, not the only viable figure. He agreed in cross examination that one could, by various means, reduce this to around £100,000. The figure of £100,000, which he said in oral evidence would be needed for repairs to the conservatory roof and windows (a matter not previously featuring in the evidence) could, he agreed, be reduced to something in the region of £50-70,000.

21. Furthermore, Mr Crosby's evidence was predicated on one particular kind of business model, entirely commercial in nature. By contrast the respondent's evidence addressed alternative scenarios, such as a family running a pub business in the Black Swan, on the basis that it also provided them with a three-bedroom home, and a community-financed and wholly or partly community-run pub. In this last regard, the respondent put forward evidence of the success of the Bamford Community Society in acquiring and re-opening the Anglers Rest.
  
22. Mr Lynch vigorously cross-examined Councillors Tatler and Matthews over the absence of any business plan from the Parish Council. Each case of this kind is, however, fact specific. In the present circumstances, I do not consider that the absence of a business plan of the kind prepared by Mr Crosby is significant. The relevant language of the Localism Act 2011 is consistent with a number of realistic outcomes coexisting. On the facts, Mr Crosby's outcome is, I find, not the only realistic one. Councillor Matthews gave evidence of there being a volunteering spirit in the locality, of which her evidence shows she is an exemplar. Although it is true to say that current events and activities are on a small scale, I accept the respondent's evidence, to the effect that the local community has a desire to see the Black Swan reopen as a pub and that this desire is not merely "pie in the sky" or fanciful. The desire is demonstrated by 72% of those who responded to the questionnaire submitted by the Vision Idridgehay and Alton, Ashleyhey Neighbourhood Plan Steering Group stated that they would like to see the Black Swan reopen (the response rate was 69% of those distributed with the questionnaire).

**Appellant: Crostone Ltd****Date of decision: 30 January 2015**

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23. I have already mentioned the example of the Anglers Rest. The appellant contends that Bamford is different in character and scale from Idridgehay. That does not, however, in my view negate the force of the respondent's evidence regarding alternative, realistic models to those of the appellant. Councillor Matthews referred to consideration having been given to using the Black Swan as a tea shop/café during the day, as well as a village post office. Although there was some debate as to the extent of tourist activity in the area, the evidence points to there being potential demand from walkers and cyclists for these types of facilities.
24. The Parish Council has also subjected the Black Swan to the Campaign for Real Ale (CAMRA) public house viability test, set out in the written evidence, which Councillor Matthews said had produced a positive outcome. She was not cross examined on this matter. Finally, Councillor Matthews' evidence was that a search had been undertaken, which indicated that there were pre-feasibility grants that could be available to the community, should the Black Swan come on the market. She had also investigated ways of purchasing and running the pub through a community benefit society or similar. Funding could be obtained through a mixture of loans, community shares, grants and donations as well as from organisations like the Charity Bank.
25. Mr Lynch sought to portray this evidence as merely the result of internet browsing. He also pointed to Councillor Tatler's refusal, in cross-examination, to say how much he personally would be prepared to invest in the Black Swan.
26. In my view, neither of those criticisms carries weight. Viewed overall, the respondent has, I find, demonstrated in its evidence that it is "realistic to think that there is a time in the next five years when there could be non-ancillary use" of the Black Swan, within the terms of section 88(2)(b).
27. In so finding, I have had regard to the fact that the Black Swan is not currently on the market. Amber Valley's current planning policy in its adopted local plan states that "the redevelopment and change of use of existing community facilities will only be permitted where it can be demonstrated that there is insufficient local demand to justify or sustain their existing use. In this regard, Mr Watson's

**Appellant: Crostone Ltd****Date of decision: 30 January 2015**

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unchallenged evidence is that, in the case of an application that would result in the loss of a community facility, including a public house, the local planning authority would require development proposals to be supported by a statement including any evidence relating to the loss of that facility. Typically, the supporting statement should provide information that the premises had been marketed as a public house for a period of between 6-12 months prior to submitting an application; the evidence from that exercise should include the level of interest and the price sought for the property.

28. It is common ground that no planning application has been submitted in respect of the Black Swan. In cross-examination, Mr Crosby accepted that it was realistic to suppose that Crostone might sell the Black Swan if someone offered an acceptable price. In any event, it is plainly realistic to think that any attempt by Crostone to change the planning use of the Black Swan would involve its going on the market, thereby triggering a community response under the Localism Act 2011.
29. In conclusion, on all the evidence, I find that the Black Swan and its car park satisfy the requirements of section 88(2) of the Localism Act 2011. This appeal accordingly fails.

**Peter Lane**  
**Chamber President**

**30 January 2015**

**Dated**