



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

Tribunal Reference: CR/2014/0012
Appellant: Hawthorn Leisure Acquisitions Ltd
Respondent: Northumberland County Council
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 19 June 2014 Northumberland County Council (“Northumberland”) confirmed in a review decision the entry of the Black Bull Inn, Lowick on its register of assets of community value. The owners of the Black Bull Inn are Hawthorn Leisure Acquisitions Ltd (“Hawthorn”) who have appealed against that decision.

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3. Both Hawthorn and Northumberland have consented to the case being decided without a hearing and I am satisfied that I can properly determine the issues without one.
4. Three grounds of appeal are advanced by Hawthorn although, as acknowledged in their written submissions these can be conveniently considered under two heads. The first head raises the question of the validity of the original nomination by a community group. The second raises the question of whether the exemption relating to hotels applies.

B. Is the nomination valid?

5. The Act explains (Section 89) that assets of community value are generally listed in response to a “community nomination”. In England this must be made by a parish council or by “a voluntary or community body with a local connection”.
6. The Assets of Community Value (England) Regulations 2012 (“the Regulations”) define, in Regulation 5, a voluntary or community body. The expression refers to several types of legal institutions such as charities, industrial and provident societies, and companies limited by guarantee but also includes, in Regulation 5(1)(c), a provision which seems designed to empower looser community groups:–
 - “(c) an unincorporated body –
 - (i) whose members include at least 21 individuals, and
 - (ii) which does not distribute any surplus it makes to its members;”
7. Reg 4 of the Regulations defines the local connection requirement. It stipulates, for an unincorporated body under Reg 5(1)(c) that:-
 - (i) The body’s activities must be wholly or partly concerned with the local authority’s area or that of a neighbouring authority.
 - (ii) Any surplus it makes must be wholly or partly applied for the benefit of one of those areas.

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- (iii) At least 21 of its members must be registered to vote in local government elections in one of those areas.
8. The nomination form in respect of the Black Bull Inn was completed on 20 January 2014 by Ms Diane Chisholm. She ticked a box on the form to say that the nomination was made by an “un-constituted community group” and stated that she was its spokesperson. She said that the group had 24 members. The form required her to supply the names and home addresses of 21 members registered to vote in the nomination area. The accompanying list in fact gives 25.
9. The group has since sought the help of Northumberland’s Social Enterprise Team who have provided advice and guidance to allow them to formally constitute themselves as a local charity under the banner “Save the Black Bull Public House Lowick” and a draft constitution has been included by Northumberland in the tribunal papers.
10. It is convenient to deal first with an earlier contention advanced on behalf of the then owners of the Inn concerning the meaning of “an unincorporated body”. It was submitted that this phrase had been “defined in case law” namely Conservative and Unionist Central Office v Burrell (Inspector of Taxes) [1982] 1WLR 522. In that case, the Court of Appeal were concerned with the question of whether the Conservative and Unionist Central Office should pay corporation tax or income tax. Corporation tax was charged on the profits of companies and “company” was defined as:–

“Any body corporate or unincorporated association but does not include a partnership, a local authority or a local authority association.”

It will be observed that the Court was there concerned with the meaning of “unincorporated association” not “unincorporated body”. The case is helpful, in my judgement, however, for the approach adopted by the Court. Lawton LJ referred to the Act of Parliament and stated that it was “against this statutory background that a meaning has to be given to the words”.

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11. In the very different statutory context of the Localism Act and the regulations, I agree with Northumberland's reviewing officer that a local action group, forming itself perhaps for the specific purpose of making a community nomination, is not expected to turn its mind immediately to the drawing up of a formal constitution or set of rules or even to give itself a name before making a nomination. The requirement for 21 local individuals is sufficient to indicate strength of feeling.
12. What then of the requirement that the body should not distribute any surplus it makes to its members (Reg 5) and that any surplus should at least partly be applied for local benefit (Reg 4)? In the case of a local action group, it seems to me that the requirement in Reg 4 is unlikely to cause difficulty. In respect of Reg 5(1)(c), however, it seems to me that a local authority, in the absence of any provision in a written constitution, should at least invite an assurance from the organiser of the group that any surplus it makes is not distributed to members.
13. In the present case, there is no evidence of any surplus being available and I do have evidence of the group's intention to organise itself into a local charity. These circumstances suffice in my view to justify a finding that Regs 4(1)(b) and 5(1)(c) are both satisfied.
14. Hawthorn submits that some of the addresses of the group's members are vague and queries how Northumberland managed to confirm that each of them was registered to vote. A handful of the addresses are indeed comparatively short but this is to be expected in rural areas. I accept Northumberland's evidence that a member of staff has verified the registration of 21 of the members in the register for local elections. I do not consider that there is anything in another point made by Hawthorn to the effect that one of the members has moved away since the Inn was listed.
15. I conclude therefore that the nomination is valid.

C. Is the Black Bull Inn exempt because it is a hotel?

16. By Schedule 1 Para 12 of the regulation, a building cannot be listed if it is a "residence"; the prohibition applies also to land connected with the residence.

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17. By Para 2(b)(iii) of the same Schedule a building is ‘a residence’ if it, or part of it, is a hotel or is otherwise principally used for letting or licensing accommodation to paying occupants.
18. The Black Bull Inn does have four guest bedrooms. Downstairs there is a bar, a lounge, a function room and a restaurant seating about 30 diners. It is used by local clubs and groups e.g. for pub quizzes, by the local over 60s club for dinners, and by the local football club for fundraising events. Additionally, members of the community use it as their ‘local’; a use which encourages friendships, conversation and the mixing of classes and generations.
19. Hawthorn submits that the Black Bull Inn is a “hotel with ancillary bar and catering”. No financial information for example as to the takings from resident compared with non-resident is supplied. It is submitted that the proportion of floor space available to residents is greater than that available to non-residents but no details of that calculation are given. Since another part of its submission envisages that “the bar facility will be used by guests for a coffee or liqueur after an evening meal rather than as a public house for the local community”, I am doubtful of this calculation. It is true, as Hawthorn points out, that an online review of the Black Bull Inn by a guest describes it as a ‘good hotel break’; but then the very next one refers to it as ‘a friendly local pub’.
20. There is no sharp dividing line between a pub and a hotel. Indeed it used to be conventional for a public house to proclaim itself to be a hotel however unlikely the prospect of a guest being attracted to stay overnight. My task is not to characterise the Black Bull Inn as either a pub or a hotel. Rather I have to decide whether it is a ‘hotel’ or whether it is ‘principally used for letting or licensing accommodation to paying occupants’. I have taken into account all the information before me including the submissions made at the local authority review stage. In my judgement the Black Bull Inn does not fall within either exemption. The activities carried on there and the small number of guest bedrooms in relation to its size give me the impression that, in the ordinary use of language, people would not describe it as a ‘hotel’. Nor, in my judgement, is the letting of the guest bedrooms a principal use.

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D. Conclusion

21. I am satisfied that the Black Bull Inn's use as a pub, is not an ancillary use and that the use furthers the social wellbeing and social interests of the local community. The present condition in s 88(1)(a) of the Act is therefore satisfied.
22. Hawthorn accepts that the Black Bull Inn, as currently used is thriving; so the future condition in s 88(1)(b) must also be taken as satisfied.
23. For these reasons the appeal fails.

NJ Warren

Chamber President

Dated 12 January 2015