



**First-tier Tribunal  
(General Regulatory Chamber)  
Community Right to Bid**

**Appeal Reference: CR/2015/0014**

**Determined without a Hearing at Field House  
On 19 April 2016**

**Before**

**JUDGE PETER LANE**

**Between**

**ANTHONY HIBBERT**

Appellant

**and**

**WYCOMBE DISTRICT COUNCIL**

Respondent

**and**

**AYLESBURY VALE AND WYCOMBE CAMRA**

Second Respondent

**DECISION AND REASONS**

***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. 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.”

### *The appeal*

3. This appeal concerns the building known as the Red Lion, Whiteleaf, Buckinghamshire. On 26 May 2015, the Red Lion was listed under the 2011 Act as an asset of community value. The Red Lion is a functioning public house which, according to the second respondent, satisfies the requirements of section 88(1), in that it serves the local community, with community groups regularly meeting there, as well as being a hub for gatherings to raise money for charity.

4. The appellant, who owns the Red Lion, does not take issue with the fact that the Red Lion serves relevant community interests. On the contrary, he fully agrees. He

also states that it is not his intention to do anything other than keep the Red Lion as a pub.

5. The appellant's objection to the listing under the 2011 Act is that he considers the second respondent is not able to make a valid nomination, so as to meet the requirements of the Assets of Community Value (England) Regulations 2012.

6. Following an unsuccessful application to the first respondent for a review of the listing, the appellant appeals to the First-tier Tribunal. The parties are content for the Tribunal to make its decision without a hearing and, in all the circumstances, I am satisfied that I can justly do so. In reaching my decision I have had regard to all the evidence and written submissions contained in the bundle, prepared by the first respondent, which runs to 189 pages.

7. Aylesbury Vale & Wycombe CAMRA regards itself as a local unincorporated community interest group. It does not receive any money from the CAMRA Head Office and it does not distribute any money to its members. The Aylesbury Vale & Wycombe branch comprises over 850 individuals, and has done for some time. The area covered by the branch incorporates the whole of Wycombe district, the southern half of Aylesbury Vale district, Beaconsfield, Prestwood and a small enclave of Oxfordshire in the area of Thame and Chinnor.

### *Legislative requirements*

8. So far as relevant, regulation 4 provides as follows:-

"4-(1) For the purposes of these Regulations and section 89(2)(b)(iii) of the Act, a body other than a parish council has a local connection with land in a local authority's area if –

(a) the body's activities are wholly or partly concerned –

(i) with the local authority's area, or

(ii) with a neighbouring authority's area;

(b) in the case of a body within regulation 5(1)(c), (e) or (f), any surplus it makes is wholly or partly applied –

(i) for the benefit of the local authority's area, or

(ii) for the benefit of a neighbouring authority's area; and

(c) in the case of a body within regulation 5(1)(c) it has at least 21 local members.

...

(3) In paragraph (1)(c), "local member" means a member who is registered, at an address in the local authority's area or in a neighbouring authority's area, as a local government elector in the register of local government electors kept in accordance with the provisions of the Representation of the People Acts."

9. So far as relevant, regulation 5 provides:-

“(1) For the purposes of section 89(2)(b)(iii) of the Act ... “a voluntary or community body” means –

...

(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;

...

(e) a company limited by guarantee which does not distribute any surplus it makes to its members;

...”

10. In St Gabriel Properties Ltd v London Borough of Lewisham and Camera and Lewisham and CAMRA – South East London branch (CR/2014/0011), the Tribunal (Judge Warren) addressed similar submissions to those put forward by the appellant in the present case:-

“15. Ms Bretherton submits that CAMRA South East London does not fall within Regulation 5(1). In particular, it cannot come within Regulation 5(1)(c) because it is not an unincorporated body at all. On the contrary, it is a branch of a body corporate – the national CAMRA organisation. CAMRA itself, she conceded, comes within Regulation 5(1)(e); but she submitted that national CAMRA did not have a local connection within Regulation 4. In any event, it was not the national organisation which had made the nomination but its South East London branch.

16. I should here explain that CAMRA (Campaign for Real Ale Ltd) is a company limited by guarantee. Article 5 of its Articles of Association prohibits distribution of its income or property to members.

17. Article 4(h) empowers CAMRA, in pursuit of its objectives:-

“To establish and support branches whose objects are the same as the objects of CAMRA....”

18. I was told by Mr Pettigrew, and I accept, that any member of CAMRA living within the geographical area of the branch is allocated to that branch. The branch does not itself receive money from CAMRA head office. The main source of income is an annual local beer festival. The branch’s funds are spent on organising social events, supporting local breweries, publishing a news letter and campaigning, for example, for the local Greyhound pub to be rebuilt and reopened.

19. At one point during the hearing, it was suggested on behalf of Lewisham that a national body such as CAMRA might be taken to fulfil the definition of “local connection” in Regulation 4 unless it could

be shown that its national activities did not impinge upon the relevant local authority and its neighbours. I am unable to accept that submission. It seems to me to be implicit in Section 89(2) of the Act that a “community nomination” cannot come from a national organisation relying solely on its national activities. Something more by way of local connection is required.

20. The case is different, in my judgement, subject to the facts of any one individual case where a national charity or national company limited by guarantee also has a network of branches. In these circumstances, to regard a local branch and a national organisation as legally separate does not accord with actualities or with the purpose of the statute. It seems to me to be entirely artificial to regard a branch’s link with a national organisation as strong enough to prohibit the branch from having an independent existence under Reg 5(1)(c) and yet not strong enough to permit the branch to take advantage of the national organisation’s status under Regulation 5(1)(e). A proper application of the regulations, in my judgement, treats organisations such as this in a hybrid way. CAMRA South East London Branch is entitled to rely on CAMRA’s status as a company limited by guarantee which does not distribute any surplus it makes to its members in order to satisfy Regulation 5(1)(e). It is then entitled to rely on its own activities in order to satisfy Regulations 4(1)(a) and (b) and I find those sub-paragraphs to be satisfied in this case.

21. I should record that, for Lewisham, Mr Hopkins also submitted that the South East London Branch satisfied Regulation 5(1)(c) as an unincorporated body. I prefer to rest my decision on what I regard as the proper and realistic approach to national organisations with local branches. However, if I am wrong in this approach then I would accept this submission. “Unincorporated body” is a broad term which includes community groups of many descriptions. St Gabriel Properties correctly point out that the branch constitution, unlike CAMRA’s national Articles of Association, does not prohibit distribution of any surplus to members. There is no requirement, in my judgement however, for an unincorporated body within Reg 5(1)(c) to even have a written constitution; let alone a further requirement that a particular clause should be included.

22. Taking into account the branch’s link with CAMRA nationally, and having heard evidence of what the branch actually does with its money, I consider that, as a matter of fact, CAMRA South East London branch would satisfy Regulation 5(1)(c)(ii).

### *Discussion*

11. I am fully satisfied on the evidence that CAMRA is a company limited by guarantee, which does not distribute any surplus it makes to its members. For the reason given by Judge Warren in the St Gabriel Properties case I am satisfied that

these findings are relevant in deciding whether the relevant branch should be treated as satisfying regulation 5(1)(e).

12. In any event, however, I accept the statement of the Aylesbury Vale & Wycombe CAMRA branch, as set out in the nomination, that it, as a branch, does not distribute any money to its members. Instead, its income is spent on supporting local breweries, publishing its magazine and campaigning activities.

13. The appellant contends that the legislation requires the nominator to put before the local authority a list of at least 21 members who are registered in the local authority's area, or that of a neighbouring authority, as local government electors in the register of electors. As can be seen from regulation 4, there is, in fact, no such requirement. In practice, such a list is often supplied to the local authority, which then makes the list available to the appellant (usually with addresses redacted for data protection purposes), having satisfied itself that the requirements of regulation 4(1)(c) and (3) are met. That represents "best practice" and, if it had been adopted in the present case, the appellant's challenge on this ground would not have been pursued. The appellant says as much in one of his documents.

14. In the present case, I am satisfied that the respondents have shown to the requisite standard (namely, the balance of probabilities) that the relevant requirements of regulation 4 have been satisfied. This is because the first respondent saw a list of 21 names of local members of the Aylesbury Vale & Wycombe CAMRA branch, which satisfied the relevant requirements, in connection with the nomination by the branch of the Red Lion at Longwick in April 2015. In its response, the first respondent says:

"3. In the process of assessing the application (document 5) the Respondent not only noted the nominator's confirmation in the nomination that 850 of its branch members lived in the Wycombe district or in neighbouring authorities, but also verified that the names of 21 members of the nominator actually appeared on the electoral role within Wycombe district. This was because the 21 names were received in relation to another bid by the nominator in respect of the Red Lion, Longwick, on or around 27 April 2015, before the nomination assessment and decision took place in respect of the Red Lion."

15. I cannot see that the appellant has challenged the truthfulness of this statement, which in any event I find more likely than not to be true.

16. Were it not for that statement, the first respondent would have to rely solely on the implication that, given the fact 850 members of the branch live in relevant areas for the purposes of regulation 4, it is more likely than not that at least 21 of them are registered as local government electors. In view of the extremely large number of members, I consider that it is, indeed, more likely than not that 21 of the 850 satisfy the requirement.

17. In order to avoid similar issues arriving in the future, the Tribunal considers that it would be expedient for local authorities to request from nominators actual names and addresses for the purposes of regulation 4.

*Decision*

18. The appeal is dismissed.

**Judge Peter Lane**

**16 May 2016**