



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(COMMUNITY RIGHT TO BID)

Appeal No: CR/2015/0022

Appellants: Astim Limited

Respondent: Bury Council

Second Respondent: Ramsbottom Heritage Society

Before

Simon Bird QC

Judge

Date of Decision: 21st July 2016

Date of Promulgation: 22nd July 2016

DECISION NOTICE

A Introduction

1. The Localism Act 2011 ("the 2011 Act") requires local authorities to keep a list of assets (meaning buildings or other land) which are of community value. 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, a sale cannot take place for six months. The intention is that this period, known as "the moratorium", will allow the community group to come up with an alternative proposal. However, at the end of the moratorium it remains up to the owner whether the asset is sold, to whom and at what price. There are arrangements for the local authority to pay compensation to an owner who loses money in consequence of the asset being listed.

B Legislation

2. Section 88 of the 2011 Act provides so far as is material to this appeal:

“(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”.*

C The Listed Asset

3. This appeal concerns the Grant Arms Bowling Green, Ramsbottom (“the Bowling Green”). The Bowling Green lies close to the Grant Arms Hotel and within the historic core of the town. Immediately adjacent is the Civic Centre. The Bowling Green, which is owned by the Appellant, and its use as such dates back to the 19th Century, however that use ceased in or about 2011 when the members’ club which operated it ceased to do so and vacated it.
4. By nomination received by the First Respondent on 31 March 2015, the Second Respondent (a relevant nominating body for the purposes of the 2011 Act) successfully applied for the Bowling Green to be added to the First Respondent’s List of Assets of Community Value (“LACV”). A review of that decision took place at the request of the Appellant in November 2015 when the Council decided to maintain the Bowling Green on the LACV.
5. The Appellant appealed to the Tribunal against that decision by notice dated 24 November 2015. All parties have consented to this appeal being determined without a

hearing and I am satisfied that I can properly determine it without one. I do so by means of a full reconsideration.

D The Issue

6. Whilst the First Respondent's review of the listing concluded that the Bowling Green satisfied the criteria for listing under both section 88(1) and (2), I am not satisfied that the conclusion in relation to section 88(1) was soundly based. The basis for the First Respondent's conclusion that the *actual current* use of the Bowling Green furthered the social wellbeing or social interests of the local community was that it formed an integral part of the town's civic area with historic and architectural interest and thus furthered the cultural interests of the local community. In my view, to extend the term "*cultural interests*" as used in section 88(1) to embrace the enjoyment of the historic environment from public vantage points extends the term beyond the intention of the legislation. That conclusion is consistent with the approach of the Tribunal in Banner Homes Limited v St Albans City and District Council CR/2014/18.
7. I therefore conclude that the principal issue in this appeal is whether the criteria contained in section 88(2) are satisfied.

E The Background

8. The earliest reference to use of the Bowling Green as such appears on the 1842 Tithe Map. Subsequent Ordnance Survey maps for 1891, 1908, 1911 and 1938 all show the Bowling Green. Until its closure in 2011, the Bowling Green was occupied by the Grant Arms Bowling Club ("the Club") which was a members club of (at that time) about 40 members. The undisputed evidence is that throughout the period of their tenancy, the Club was well used and often hosted regional championship matches. Its use was not restricted to Club members, with visitors and non-members allowed to use the green on payment of a small fee and spectators were welcome to sit around the green to watch matches and many did so. There was no fence or other restriction on public access.
9. The Bowling Green has planning policy protection under the First Respondent's Bury Unitary Development Plan 1997 ("UDP") within which it is designated as "Protected Recreation Provision" under policy RT/1. This policy aims to safeguard the existing level of provision for recreation in the urban areas of the Borough by resisting development where it would result in the loss of existing and proposed outdoor public/private recreation areas and recreation space within settlements for which there is a recreational need. Exceptions to this policy of restriction are permitted where alternative provision is made available or if there is an excess of recreational open space in the area. The policy also recognises that some recreation sites may genuinely become redundant and rather than leaving them derelict the First Respondent may permit a change to an alternative use if there is no prospect of the site being required for recreation use either now or in the future.

10. The Ramsbottom Conservation Appraisal and Management Plan 2011 records that:

“The bowling green adjacent to the Civic Hall is an important green open space, and is shown on the 142 tithe map, as a valued recreational asset”

11. The Appellant acquired the site prior to the Club vacating and since 2013 has been seeking its development for retirement housing for the elderly. Schemes for 34 units (2013), 28 units (2014) and 24 units (2015) have been advanced by way of planning applications made to the First Respondent. The applications relating to 34 and 28 units were withdrawn prior to consideration and planning permission for the 24 unit scheme was refused by the First Respondent contrary to the recommendation of its officers by notice dated 4 September 2015. The reason for refusal was that the loss of the Protected Recreation Provision resulting from the development would not be adequately replaced by equivalent or better provision in terms of quantity/quality.
12. In support of its planning application, the Appellant submitted a heritage statement which addressed the issue of communal value. It concluded that:

“The bowling green along with its association with ‘Grants Arms Hotel’ , would have possessed a great communal value and together both establishments would have been a focal point for the local and wider community within Ramsbottom.

Up to the closure of the green in 2011, the bowling green would still have possessed some communal value as it was still played on by the local bowling club as well as their opponents. However, since its closure, it is no longer playable as it has since become overgrown due to a lack of maintenance. The current team has since relocated to a different green and the existing green is no longer sustainable for use as a bowling green. For these reasons, the existing site possesses no communal value”.

13. The Appellant appealed to the Secretary of State for Communities and Local Government against this refusal of its application. This appeal was dismissed by an Inspector appointed to determine the appeal by decision letter dated 4 February 2016. In summary, the Inspector concluded that:
- (a) It was clear from the number and nature of the letters of objection submitted that the Bowling Green was a valued community recreational facility;
 - (b) The proposed development would result in the loss of a recreational facility given that she was not convinced that the site was no longer suitable for a recreational use;
 - (c) There was no evidence that the proposals by the Appellant to fund improvements to other recreational facilities elsewhere in the locality would provide increased capacity and would therefore not be equivalent to the loss of the Bowling Green;
 - (d) The loss of the Bowling Green would cause some harm to the significance of the Conservation Area and the setting and significance of the Grant Arms Hotel (a Grade II listed building); and
 - (e) The moderate benefits of the proposed development did not outweigh the harms

F The Appellant's Contentions

14. In support of its appeal, the Appellant argues that the history of the Club prior to its eventual closure in 2011 was one of declining membership and financial struggle. That is the reason why there was no interest in continuing with its occupation of the Bowling Green. It also states that it has not seen any of the alternative recreation/cultural use proposals which the Ramsbottom Heritage Society may have and it queries whether the Society would have the funds to bring them to fruition.

G The First Respondent's Contentions

15. The Council argues that the focus should be on the criteria contained in section 88(2) and that the evidence of the Second Respondent demonstrates a real interest shared by a number of community groups in managing the Bowling Green for the benefit of the local community. In that context, it is realistic to think that there is a time in next five years when there could be non-ancillary use of the Bowling Green that would further the social wellbeing or social interests of the local community.

H The Second Respondent's Contentions

16. The Second Respondent contends that the Club was flourishing not dwindling prior to the Appellant's policy of clearing the site in readiness for a building application. It was forced to leave the site after the rent had been progressively increased from £250 to £1000 a year. Crown green bowling is growing as a sport and there is evidence of it attracting social funding. The Appellant's own Heritage Statement concedes the Green's "*great communal value*" and the concept of "*social interests*" goes beyond sporting or leisure interests.
17. The Second Respondent further argues that despite the current condition of the site, nothing has been done to its fundamentals to prevent full restoration of the original Bowling Green. If this is not possible, there are many possible communal uses and much public debate has been generated as to its future. Shielded from the hustle and bustle of the town centre, the Bowling Green provides a unique site and an oasis of peace and tranquillity. It also enjoys open views of the countryside, including the tree covered flank of Holcombe Hill. There is no requirement in the Act or the Regulations that firm and costed proposals for the next five years need to be provided in support of alternative communal uses.

I Findings

Section 88(2)(a)

18. I conclude that the Bowling Green was until 2011 in an actual use which furthered the social wellbeing and social interests of the local community of Ramsbottom. In meeting a local sporting need and providing the base for a 40 strong club of members with

opportunities for use by visitors and also the opportunity for members of the public to spectate, it clearly furthered the social wellbeing of the local community. This conclusion is supported by the Heritage statement submitted by the Appellant in the context of its most recent development proposals for the site and its statement that (as at 2011) the Bowling Green would still have possessed at least some communal value.

19. I am also satisfied that this use was in the recent past for the purposes of section 88(2)(a). In my view a last use in 2011 is a recent one particularly when seen in the context of a use which commenced in the middle of the 19th Century.
20. I therefore find that the requirements of Section 88(2)(a) are met in this case.

Section 88(2)(b)

21. The issue which falls for consideration under section 88(2)(b) is whether it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the Bowling Green that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.
22. In my judgment it is realistic to think that a use which furthers the social wellbeing of the local community could be made of the Bowling Green in the next five years. The site continues to be designated as Protected Recreation Provision in the adopted development plan for the Borough, there is a shortage of a recreational land within the Borough and there has been a recent finding by a Planning Inspector that it remains appropriate for recreational use. Whilst none of these factors will of themselves lead to the Bowling Green being returned to recreational use, they need to be seen in the context of the dismissal of the Appellant's planning appeal.
23. The Inspector's reasoning in relation to the impact of the Appellant's proposed development on heritage assets raises, at the least, a material doubt as to whether any development could acceptably be accommodated on the Bowling Green. The appeal decision will inevitably require the Appellant to reconsider the options for the future of the Bowling Green. It is realistic to think that this may include disposal of the site for recreational uses (if it is concluded that it has no realistic development potential) or exploration of whether on-site provision of recreational space should be provided in conjunction with a development of lesser scale than that recently rejected on appeal.
24. Whilst such on-site provision may not be a bowling green, it suffices to satisfy section 88(2)(b) that there could be *any* use which would further the social wellbeing or interests of the local community in the next five years. It is in my view, realistic to conclude from the Inspector's conclusion that the Bowling Green makes a positive contribution to the Conservation Area in providing a green space within the town centre which off-sets the other civic and historic buildings, that at the very least a significant part of the site would need to be kept free of development to address this objection raised which would then have the potential for recreational use.

25. With the identified need for recreational facilities and the clear interest expressed by a number of groups in helping to bringing forward proposals, a future recreational use serving the local community is therefore realistic.
26. Whilst I acknowledge that the Second Respondent has not advanced any detailed proposals or as yet identified any possible sources of funding for future use of the Bowling Green, I have seen nothing to suggest that the types of community uses in which there is an interest and for which the Bowling Green might be suitable (which include low key recreational uses) would be difficult to fund whether on their own or in conjunction with some lesser alternative development proposals on the bowling green in the event that a scheme which meets the Inspector's objections could be identified. It would be wrong to rule out community spirit and philanthropy as resources which might be drawn upon to bring forward such uses.
27. For these reasons I dismiss the appeal.

SIMON BIRD QC

21 July 2016