



IAC-AH-DP-V1

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

Appeal Reference: **CR/2017/0004**

**Heard at Birmingham
On 14 July 2017**

Before

JUDGE PETER LANE

Between

GREYHOUND INN DEVELOPMENTS LTD

Appellant

and

BROMSGROVE DISTRICT COUNCIL

First Respondent

CAMRA REDDITCH AND BROMSGROVE BRANCH

Second Respondent

Representation:

For the Appellant: Mr Stuart Andrews, Solicitor, Eversheds Sutherland
Solicitors

For the first respondent: Mr Anthony Gill, Counsel, instructed by Ms Sue Hanley

For the second respondent: Mr Gez Quinn

DECISION AND REASONS

A. The Greyhound Inn

1. The appellant appeals against the decision of the first respondent on 17 January 2017 to maintain, on review, its decision of 4 November 2016 to list, as an asset of community value under the Localism Act 2011, the premises known as the Greyhound Inn, 30 Rock Hill, Bromsgrove.
2. The Greyhound Inn was in use as a public house until April 2016. It is common ground that this use furthered the social wellbeing or interests of the local community, within the meaning of section 88(2)(a) of the 2011 Act.
3. It is also common ground that the issue for determination in this appeal is whether the requirements of section 88(2)(b) are met; namely, whether:-
 - “(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.”

B. The Whitford Road site

4. The Greyhound was purchased by the appellant in 2016. The circumstances in which this purchase came about are as follows.
5. The appellant is a subsidiary company of Catesby Estates Ltd (“Catesby”). Catesby is a property company, which acquires land for residential development and works with house builders to secure that development.
6. Catesby owns land at Whitford, Bromsgrove, which it wishes to see developed for residential purposes. The development would be undertaken by its partner in this regard, Miller Homes Ltd.
7. Catesby and Miller Homes Ltd applied to Bromsgrove District Council, as local planning authority, for outline planning permission for the residential development of Whitford Road. Following the local planning authority’s refusal of permission, Catesby and Miller Homes Ltd appealed to the planning inspectorate. A public inquiry was held by a planning inspector on 16 and 19 June 2015.
8. By a decision dated 3 August 2015, the inspector dismissed the appeal. At paragraph 145, the inspector concluded:
 - “that the proposed development’s benefits are significantly and demonstrably outweighed by the harm that it will cause in terms of added traffic congestion

and the related issues of movement and safety. As such, it would not constitute sustainable development”.

9. One of the traffic problems which the inspector identified related to the junction of Fox Lane and Rock Hill. This junction is located south east of the Whitford Road site. If developed, that site would generate additional vehicle movements, putting increased pressure on the Fox Lane junction.

C. The appellant's plans for the Greyhound

10. After the unsuccessful appeal, the appellant acquired the Greyhound. The appellant's intention was to demolish the Greyhound, so as to facilitate the construction at the Fox Lane junction of a roundabout, in place of the existing T-junction. This would, according to the appellant, solve the problem at Fox Lane, as identified by the inspector.
11. In accordance with the requirements of the General Permitted Development Order 2015, the appellant notified the local planning authority of the appellant's intention to demolish the Greyhound, without the need to obtain detailed planning permission. That notification, however, led to the nomination of the Greyhound as an asset of community value and to its listing as such. As a listed asset, the Greyhound cannot be demolished without express planning permission.
12. On 30 November 2016, Catesby and Miller Homes submitted a fresh planning application, as follows:-

“Site A (land off Whitford Road) Provision of up to 490 dwellings, Class A1 retail local shop (up to 400 sqm), two new priority accesses onto Whitford Road, public open space, landscaping and sustainable urban drainage; and

Site B (land off Albert Road) demolition of Greyhound Public House, Provision of up to 15 dwellings, new priority access onto Albert Road, landscaping and sustainable drainage.”
13. The application in respect of the construction of up to fifteen dwellings at Site B arose because, following the proposed demolition of the Greyhound and construction of the roundabout, there would still be land available for a small residential development.
14. The 2016 application is currently being considered by the local planning authority. The agreed planning position (bundle 2/120) records “as regards Site A, all statutory consultees have responded (apart from Worcestershire Highways) and not objected, apart from a consultation response from Worcester Regulatory Services regarding noise matters. A meeting is being arranged to discuss the additional noise monitoring work”.

15. In relation to Site B, there are said to be no objections from any statutory consultees to the development of the site for residential development.
16. Section 106 heads of terms are being drafted, with the exception of the highways input. So far as highways are concerned, Worcestershire County Council is undertaking updated traffic counts. The quantity and position of those counts have been discussed with Whitford Vale Voice and Bromsgrove District Council.

D. The Bromsgrove District Plan

17. On 16 December 2016, the planning inspectorate produced its inspector's report on its inspector's examination of the Bromsgrove District Plan ("BDP"). The BDP is intended to guide determination of planning applications until 2030.
18. The inspector noted that the BDP does not identify sufficient land to meet its 7,000 dwellings housing requirement. Provision is made only for some 4,700 dwellings. The remaining figure will, accordingly, have to be identified through a greenbelt boundary review, scheduled to be completed by 2023.
19. The BDP identifies Whitford Road as an allocated development site, known as BROM3 for the purposes of the BDP.
20. Also of relevance is the BDP Infrastructure Delivery Plan (February 2014). This provides a baseline of existing infrastructure capacity needs within Bromsgrove District and sets out the infrastructure that is needed to support the predicted growth contained in the BDP. The IDP identifies the Greyhound site as an appropriate location to secure necessary highway improvement works in the delivery of future housing development.
21. So far as Whitford Road is concerned, the BDP inspector had this to say:-
 - "50. The estimated annual build rates for the Whitford Road do not exceed 120 units and to my mind appear realistic. While the site has been the subject of a planning appeal dismissal and subsequent High Court challenge, it is clear from comments made at the examination hearing by Worcestershire County Council (WCC) that the developer is working closely with the local highway authority to resolve outstanding issues. A further planning application has been submitted. Given that a reduced level of delivery is anticipated in the first year (2017/18) I am satisfied on balance that the Council's assumptions are realistic."
22. This observation relates to a Table (bundle 2/118) produced by Bromsgrove District Council and Redditch Borough Council in response to the BDP inspector's questions. Under "Whitford Road, Bromsgrove" we see:-

- “Site pushed back by 5 YHLS¹ to reflect recent refusal and appeal. No. of units within 5 YHLS reduced accordingly.”

23. The figure of 50 is given for units in respect of 2017-18, 120 for each of the periods 2018-19 and 2019-20 and 110 for the period April 20-March 21, bringing the total within five years to 400.

24. At paragraph 52, the BDP inspector said:-

“I have seen no specific evidence that the developments included in the Council’s five year land supply are unlikely to come forward. I therefore agree with the Council that there is no need to apply a broad brush ‘lapse rate’ discount.”

E. The appellant’s submissions regarding the relevance of the BDP

25. In the light of the above, Mr Andrews, for the appellant, submits that the position is as follows. The residential development of Whitford Road (aka BROM3) is in accordance with the BDP and the local planning authority can, accordingly, refuse planning permission for that development only for “technical” reasons. BROM3 is integral to ability of the local planning authority to demonstrate a five-year supply of deliverable housing sites. The Table at bundle 2/118 is, accordingly, of particular significance. If the local planning authority’s stance is that Whitford Road cannot deliver units within the five year period, then the policy in the BDP for the supply of housing cannot be considered up-to-date. This is because paragraph 49 of the National Planning Policy Framework (“NPPF”) says:-

“Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites.”

26. In this scenario, the local planning authority would not be able to rely upon the relevant provisions of the BDP, when considering planning applications for residential development. This is because paragraph 14 of the NPPF states that:-

“For **decision-taking** this means:

- Where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
 - any adverse impacts in doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this framework taken as a whole; or

¹ Five year land supply

- specific policies in this framework indicate development should be restricted.”

27. That position was, Mr Andrews says, recently confirmed by the Supreme Court in Suffolk Coastal District Council v Hopkins Homes Ltd and another/Richborough Estates Partnership LLP and another v Cheshire East Borough Council [2017] UKSC 37.

F. The respondents' submissions

28. For the first respondent, Mr Gill rightly emphasised the fact-specific nature of the Tribunal's task in deciding whether it is realistic to think that there will be a time in the next five years when, in the present case, the Greyhound could once again become a pub, and so further the social wellbeing or social interests of the local community. He stressed the fact that, as in other decided cases where appeals against listing reviews have been dismissed, there is no extant planning consent for the demolition of the Greyhound and the construction of the roundabout. He urged the Tribunal not to be drawn into wider, strategic planning issues, in deciding the issue before it.
29. I am also mindful of the fact that, as other cases have made plain, the stated intentions of an owner of a listed asset are not necessarily to be treated as determinative. If the position were otherwise, then section 88 would, in effect, assume a voluntary character, which was plainly not the legislature's intention.
30. I also take account of Mr Quinn's submissions, on behalf of CAMRA, that the Greyhound did serve relevant community needs, whilst it was open, and that there is a lack of community pubs in the area. According to Mr Quinn, in purchasing the Greyhound, the appellant was taking a "punt", that is to say, acting in a speculative manner. If the Greyhound were demolished, Mr Quinn said the site would be likely to remain an "eyesore" for years to come.

G. Discussion

31. I have carefully considered all the evidence and submissions in this case. I fully accept that, in many appeals, it will be unnecessary and therefore undesirable to venture beyond the question of whether planning permission for a change of use (or demolition) of the listed property has been granted or refused. Each case is, however, as Mr Gill says, fact-specific. In the present case, I agree with Mr Andrews that it is necessary to look at the matter by reference to the position regarding Whitford Road and in particular, how that site features in the BDP.
32. The reality of the matter is, I find, that the appellant is the owner of an asset which, as the recent planning history makes plain, is a necessary (albeit not a sufficient) part of securing the residential development at Whitford Road. That development is

relevant to the local planning authority's ability to demonstrate a five year supply of deliverable housing sites within its area. The consequences of being unable to do so are, I find, accurately described by Mr Andrews (paragraphs 25-27 above). I consider that they provide a powerful incentive for both Catesby and the local planning authority to see the development take place.

33. Mr Andrews was, I find, also right to emphasise that the test under section 88(2)(b) is not whether planning permission is likely, or bound, to be granted within five years. The correct way of looking at the matter is, rather, to recognise that, for the reasons set out above, the appellant and its parent company are extremely unlikely to give up their plans for the Greyhound in the next five years. It is common ground between Mr Andrews and Mr Gill that the Greyhound has, in effect, acquired "ransom" status. As such, it is highly unlikely to be within the means of any community group, or anyone else wishing to buy it as a pub, to obtain it for such a purpose, even if it were to come to market within the five year period.
34. In reality, it is fanciful to think the Greyhound would even be offered for sale during that period. The potential prize that it holds, in terms of facilitating development at Whitford Road, is simply too great.
35. By the same token, it is, I find, inconceivable that the appellant itself would re-open the Greyhound as a pub, at any time during the five year period. Not only does the appellant have no economic need to do so; given the circumstances, it would be commercially nonsensical for the appellant to contemplate such a scenario.
36. Drawing these threads together, I have come to the firm conclusion that it is not realistic to think that the Greyhound would serve further the social wellbeing or social interests of the local community, by re-opening as a pub within the requisite five year period. No other relevant use was suggested by either of the respondents and I consider that none is material.
37. As I believe will be apparent, the result of this appeal is not to be construed as suggesting that the intentions of the owner of a listed asset will, henceforth, be treated as determinative. What distinguishes the present case is the particular combination of the relevant planning position and the nature of the appellant and its parent company.

H. Decision

38. This appeal is allowed.

Judge Peter Lane

2 August 2017