



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

Appeal Reference: CR/2017/0005

**Heard at Reading Employment Tribunal
On 18 July 2017**

Before

JUDGE CHRISTOPHER HUGHES

Between

WORTHMORE PROPERTIES LIMITED

Appellant

and

SOUTH OXFORDSHIRE DISTRICT COUNCIL

First Respondent

SOUTH MORETON PARISH COUNCIL

Second Respondent

Appearances

The Appellant:

Mr A Gill

First Respondent:

Mr M Lee

Second Respondent:

Mr T Kendall

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.

Legislation

2. The Localism Act 2011 provides:-

87 List of assets of community value

- (1) A local authority must maintain a list of land in its area that is land of community value.
- (2) The list maintained under subsection (1) by a local authority is to be known as its list of assets of community value.
- (3) Where land is included in a local authority's list of assets of community value, the entry for that land is to be removed from the list with effect from the end of the period of 5 years beginning with the date of that entry (unless the entry has been removed with effect from some earlier time in accordance with provision in regulations under subsection (5)).

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.

...

(6) In this section—

....

“social interests” includes (in particular) each of the following—

(a) cultural interests;

(b) recreational interests;

(c) sporting interests;

Assets of Community Value (England) Regulations 2012

Appeal against listing review decision

11.—

(1) An owner of listed land may appeal to the First-Tier Tribunal against the local authority’s decision on a listing review in respect of the land.

(2) The owner referred to in paragraph (1) may be either the owner who requested the review, or a subsequent owner of part or the whole of the land.

The appeal

3. The freehold of the Crown Public House in South Moreton was acquired by the Appellant in these proceedings (“Worthmore”) in August 2015 from a traditional brewery, Wadworths. Until that time it had been open, in recent years under a succession of managers. Over time its trade had declined, although the last manager Mr Bouet and his wife, had during the few months they were there, produced an improvement in trade. The brewery stripped out the kitchen equipment prior to completion. In July 2016 the South Moreton Parish Council nominated it as an asset of community value. South Oxfordshire District Council (“the Council”) accepted the nomination as

valid, investigated whether the test provided by section 88 was met and after consideration included the Crown in the list of assets of community value. Worthmore sought a review of the decision, which was unsuccessful and appealed to this tribunal.

4. Worthmore accepts that in the recent past the Crown has furthered the social wellbeing of the local community and therefore the primary issue for the tribunal to decide is whether section 88(2)(b) is satisfied, 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 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. Worthmore argue that it is not on two grounds – first that their intention is to develop the pub for housing and secondly that the alternative community use would not be economically viable. I deal with these issues in turn.
5. The evidence of the Managing Director of Worthmore is that the company is a property developer with 150 properties, 9 developments and assets of £9M. It bought the Crown for £340,000 and intends to develop the site as three homes which would have a total selling price of £1.5M. His evidence did not explore the detail of the various costs involved in carrying out the redevelopment; however it is clear that there is potentially a substantial profit or capital gain to be made through this approach. It does not wish to forego this opportunity, it is not a pub operating company and has no intention of re-opening the Crown as a pub. Its strategy, if the Crown remains listed, is to leave the property vacant until the listing period ends in 2021 and then apply for planning permission for residential development.
6. The current use of the Crown is as a pub. An application was made for planning permission for change to residential use in 2016, however this was withdrawn prior to determination following planning concerns which included concerns about the loss of a community facility. It is likely that if the Crown remains listed as an ACV planning permission will be harder to obtain until 2021 and even then remains uncertain. In the meantime Worthmore will have an expensive non-performing asset. There are risks in the current Worthmore approach that could see them at some time in 2021/2022 with a failed planning application having foregone income and not realised the capital gain. Furthermore during that period the economic climate is likely to change in unpredictable ways with new opportunities and risks arising which may significantly re-shape the choices Worthmore faces. The last two five year periods have seen the 2008 banking crisis and the vote to leave the European Union in 2016; both were largely unexpected and both have had significant impacts; the next few years are foreseeably unforeseeable. These uncertainties mean that it realistic to think that over that period Worthmore might well decide to sell the land or allow its use within the current

permitted planning use; this could include taking a loss on the purchase price of this speculative investment.

7. The second substantive argument under section 88(2) is that the Crown is not a viable economic proposition. The background is that the Crown over the years had a fall in turnover, the brewery that owned it put in a series of short term managers as the trade declined and then sold the premises. The information as to the actual trading of the Crown is very limited, the only data being the annual barrelage figures for supply by the brewery of drink to the operator of the Crown, the actual trading figures of the Crown itself under its various operators is unknown. Worthmore rely on two reports by Mr Fry, a chartered surveyor with expertise in the licensed trade. He was instructed by Worthmore in connection with its planning application for change of use from a pub to enable conversion into three homes. From the limited information before him he concluded that from 2003-8 the Crown was trading at a reasonable level and that in subsequent years trade has reduced. His view was that neighbouring villages had more attractive pubs, the population of South Moreton was small and unable to support the Crown on its drinks trade alone. He noted the national trend for breweries to dispose of smaller non-viable pubs. He anticipated the need to spend £115,000 on redecorating and upgrading the Crown. He recognised that it was difficult to assess the future turnover on the available information and concluded that after meeting costs and interests payments a new operator would produce a very modest profit of under £7,000.
8. Mr Fry was unable to obtain significant information from the brewery and its representatives and assumed that it had been marketed effectively as a pub before it was sold to Worthmore. As part of its abandoned planning application Worthmore had attempted to demonstrate that despite marketing it as licensed premises there was no interest in the property. Given that neither of the agents it used were specialists in commercial property and neither marketed it actively it is unsurprising that this "marketing" was unsuccessful given that it was marketing the pub on a lease at a high price and without the benefit of a kitchen which was apparently removed by the brewery before completion.
9. Mr Bouet an experienced publican gave oral and written evidence that he had successfully run a small pub in a neighbouring village and approached Wadsworth's before the sale to Worthmore. He had inspected the pub before the kitchen was removed. He had the finance available and could have matched the price but was unsuccessful in obtaining the Crown. In his current pub he had taken over from an incompetent landlady and had tripled the turnover. He was confident of his ability to turn a pub into a thriving venture and had won an award from his brewery of Community Pub of the Year for the Thames Valley in 2015. He was making a success of his current pub with 50 covers – the Crown had 70. The Crown would need considerable

investment given the removal of the kitchen, however he would still be interested in buying it.

10. Correspondence from a Mr Murphy indicated that he had made repeated attempts to purchase the Crown to run as a pub. He had contacted Worthmore's agents, and had made two direct offers to its Managing Director which had not been acknowledged. He had offered significantly more than the purchase price of £340,000.
11. An email from Mr Binyon, the last licensee of the Crown indicated that during the months he and his wife ran the pub, turnover increased from £145,000 a year to £234,000 a year, he indicated that there had been local support and with realistic rents and obtaining Rural Rate Relief at a realistic rent of £25,000 the pub would be profitable.
12. In addition there is some interest within the community from residents keen to ensure the survival of the village pub with a commitment from one local resident of significant funding (bundle page 152).
13. It is clear that there is some interest in maintaining the Crown as a pub. Some individuals with knowledge and expertise in running pubs in the area think that it would be possible to make a success of the Crown. The view of the expert retained by Worthmore to demonstrate that the pub is not financially viable is countered by other evidence. It is clear that the assumptions underlying Mr Fry's analysis are not the only assumptions which could reasonably be made in assessing possible future use of the Crown.
14. I am satisfied that on the evidence before me it is realistic to think that in the next four years there is a non-ancillary use of the building that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.
15. A subsidiary argument advanced by Worthmore late in the day was that the car park should be divided and not all of it listed. This rather opportunistic late change of tack was predicated on the fact that the arguments advanced by the Respondents had not mentioned the car park per se. The expert retained by Worthmore had noted that, unusually (as he claimed) for a rural pub the site was only small and had only 8 parking spaces. Oral evidence suggested that there was parking space for a dozen.
16. It is clear from photographic and oral evidence that the use of the car-park was integral to the use of the pub. In addition to parking for the pub the play area for the Aunt Sally (a competitive game played between Oxfordshire pub teams) extended across the area it was proposed to sever from the listing. I am satisfied that its part of the appeal is without merit.

17. For the reasons stated I am satisfied that the grounds for listing this land under section 88 are made out and this appeal is dismissed in its entirety.

Judge Hughes

28 July 2017