



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

Appeal Reference: CR/2017/0007

**Decided without a hearing
On 14 September 2017**

Before

JUDGE JACQUELINE FINDLAY

Between

MACNEIL UB40 LTD

Appellant

and

LONDON BOROUGH OF HACKNEY

First Respondent

and

CAMRA (EAST LONDON AND CITY BRANCH)

Second Respondent

DECISION AND REASONS

LEGISLATION

- 1) The Localism Act 2011 (“the LA Act”) 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.

For present purposes, the relevant provisions are:-

Localism Act 2011 (“the LA Act”)

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.

- (3) The appropriate authority may by regulations—

(a) provide that a building or other land is not land of community value if the building or other land is specified in the regulations or is of a description specified in the regulations;

(b) provide that a building or other land in a local authority's area is not land of community value if the local authority or some other person specified in the regulations considers that the building or other land is of a description specified in the regulations.

(4) A description specified under subsection (3) may be framed by reference to such matters as the appropriate authority considers appropriate.

(5) In relation to any land, those matters include (in particular)—

(a) the Owner of any estate or interest in any of the land or in other land;

(b) any occupier of any of the land or of other land;

(c) the nature of any estate or interest in any of the land or in other land;

(d) any use to which any of the land or other land has been, is being or could be put;

(e) statutory provisions, or things done under statutory provisions, that have effect (or do not have effect) in relation to—

(i) and of the land or other land, or

(ii) any of the matters within paragraphs (a) to (d);

(f) any price, or value for any purpose, of any of the land or other land.

(6) In this section—

“legislation” means—

(a) an Act, or

(b) a Measure or Act of the National Assembly for Wales;

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

(a) cultural interests;

(b) recreational interests;

(c) sporting interests;

“statutory provision” means a provision of—

- (a) legislation, or
- (b) an instrument made under legislation.

89 Procedure for including land in list

(1) Land in a local authority's area which is of community value may be included by a local authority in its list of assets of community value only—

- (a) in response to a community nomination, or
- (b) where permitted by regulations made by the appropriate authority.

(2) For the purposes of this Chapter “community nomination”, in relation to a local authority, means a nomination which—

(a) nominates land in the local authority's area for inclusion in the local authority's list of assets of community value, and

(b) is made—

- (i) by a parish council in respect of land in England in the parish council's area,
- (ii) by a community council in respect of land in Wales in the community council's area, or
- (iii) by a person that is a voluntary or community body with a local connection.

(3) Regulations under subsection (1)(b) may (in particular) permit land to be included in a local authority's list of assets of community value in response to a nomination other than a community nomination.

(4) The appropriate authority may by regulations make provision as to—

- (a) the meaning in subsection (2)(b)(iii) of “voluntary or community body”;
- (b) the conditions that have to be met for a person to have a local connection for the purposes of subsection (2)(b)(iii);
- (c) the contents of community nominations;
- (d) the contents of any other nominations which, as a result of regulations under subsection (1)(b), may give rise to land being included in a local authority's list of assets of community value.

(5) The appropriate authority may by regulations make provision for, or in connection with, the procedure to be followed where a local authority is considering whether land should be included in its list of assets of community value.

Assets of Community Value (England) Regulations 2012 (“the ACV Regs”)

Definition of local connection

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.

(2) For the purposes of these regulations and section 89(2)(b)(iii) of the Act—

(a) a parish council has a local connection with land in another parish council’s area if any part of the boundary of the first council’s area is also part of the boundary of the other council’s area; and

(b) a parish council has a local connection with land that is in a local authority’s area but is not in any parish council’s area if—

(i) the council’s area is within the local authority’s area, or

(ii) any part of the boundary of the council’s area is also part of the boundary of the local authority’s area.

(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(1).

Voluntary or community bodies

5.—(1) For the purposes of section 89(2)(b)(iii) of the Act, but subject to paragraph (2), “a voluntary or community body” means—

(a) a body designated as a neighbourhood forum pursuant to section 61F of the Town and Country Planning Act 1990(1);

(b) a parish council;

(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;

(d)a charity;

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

(f)an industrial and provident society which does not distribute any surplus it makes to its members; or

(g)a community interest company(2).

(2) A public or local authority may not be a voluntary or community body, but this does not apply to a parish council.

(3) In this regulation “industrial and provident society” means a body registered or deemed to be registered under the Industrial and Provident Societies Act 1965(3) which meets one of the conditions in section 1 of that Act.

BACKGROUND

2) On 28 October 2016 a nomination was made by the East London and City Branch of CAMRA seeking the listing of the building and land known as The Acorn Public House, 149 Queensbridge Road, Haggerston, London, E2 8PB (“the Property”). The nomination comprised the entire building including the basement, ground floor accommodation above and the yard to the south west. The Property is located to the west of Queensbridge Road at the junction with Whiston Road. The building is rectangular and comprises two storeys with a cellar and storage area. It was built in or about 1839 and has been used constantly as a public house until its closure in September 2016.

3) Objections were received from Freeths Solicitors, on behalf of the Appellant (MacNeil UB40 Ltd the Owner), dated 21 and 25 November 2016 and advice concerning the withdrawal of a planning application associated with the Property dated 28 November 2016.

4) An Authorising Officer on behalf of the First Respondent considered the evidence and found that the East London and City Branch of CAMRA was a community body pursuant to Regulation 5 and that the community nomination contained the information required by Regulation 6. The Authorising Officer found for the purposes of Section 88(2) of the LA Act there was a time in the recent past when the actual use of the Property furthered the social wellbeing or interests of the local community and that the requirements of Section 88(2)(b) were satisfied and it was realistic to think that there is a time in the next five years that a main use of the Property could further the social wellbeing or social interests of the local community. Accordingly, the First Respondent accepted the community nomination and included the Property in the Council’s List of Assets of Community Value.

THE ISSUES

- 5) The Appellant appeals on the following grounds:
- a. The nomination is not a community nomination having been made by a person, Campaign for Real Ale Limited, which has no local connection of its own. Accordingly, the nomination should be rejected.
 - b. The primary purpose of the nomination is to frustrate intended development of the Property, notwithstanding a previous intention to retain public house use. This is an unacceptable ulterior use of the ACV regime. The First Respondent should properly police the use of the ACV regime or it will be abused.
 - c. It is not realistic to think that the Property will be used in a way which will be of community value in the next five years (given that the Council has made no determination of the planning application to retain any public house use at the Property). The Owner will demolish the Property or develop it using permitted development rights and the consequences of the ACV listing cannot be taken into account when considering the use of the Property in the future.
 - d. The Appellant submits in support a report from Mr David Gooderham of AG&G (pages 130 to 136) who gives the professional opinion that the Property would be halved in value as a consequence of the listing as an ACV and it is highly likely that the Owner will make a claim for compensation against the First Respondent for the loss suffered as a result in the diminution in value of the Property.
- 6) The First Respondent submits in the Response the following:
- a. The nomination was from the East London and City Branch of CAMRA and not from CAMRA nationally. The East London and City Branch of CAMRA satisfies the conditions of regulation 5(1)(c) and regulation 4(1) of the ACV Regs. The nomination was valid.
 - b. The provisions of Section 88(2)(a) are satisfied in that the Property had in the very recent past been operating as a pub and had done so since 1839 and was being used by members of the local community in ways which furthered their social wellbeing and interests.
 - c. It is realistic to think that at some stage within the next 5 years the Property could be returned to use as a pub or to some other use which furthered the social wellbeing and interests of the local community. The Appellant's intentions for the Property are relevant but they could not be determinative of the range of realistic outcomes. The planning application was irrelevant in relation to the realistic future use. The current state of the Property and the commercial challenges of operating a successful pub were relevant considerations but these were not determinative.

- d. Any “positive planning advice” given by the First Respondent on 15 April 2015 is not relevant.
- e. The Property is in a poor state of repair but the work required does not render it unrealistic to think that it could be returned to use as a pub within the next 5 years and there is precedent for this with other properties in poor states of repair.

7) Second Respondents submits the following:

- a. The East London and City Branch of CAMRA is the nominating body, that the Branches of CAMRA are not separate entities and that CAMRA Ltd is a network of branches and the only identity a Branch has is that of CAMRA Ltd and that CAMRA and the East London and City Branch of CAMRA are one and the same thing. Branches are run by volunteers who are members of CAMRA.
- b. The East London and City Branch of CAMRA should not be treated as an unincorporated body as all Branches are part of CAMRA and “cannot be anything else in legal identity” (page 141). CAMRA has lodged a statement of authority to confirm that the East London and City Branch of CAMRA is authorised to act in the name of CAMRA and to bind CAMRA in the context of ACV nominations.

PROCEDURE

- 8) The parties have consented to this appeal being determined without a hearing and I am satisfied there is no injustice in so doing and that it is fair and just to do so. The issues are clear and the parties have been given the opportunity to prepare and present their cases.
- 9) In reaching a decision in this appeal, I have had regard to all the written evidence and submissions, comprised in the appeal bundles numbered 1 to 322. The fact that I do not make specific reference to any particular document or submission does not indicate that I have not taken account of the same.

FINDINGS OF FACTS AND REASONS

- 10) I find that the East London and City Branch of CAMRA was at all material dates and, in particular, when lodging the nomination application acting in the name of and with the full authority of CAMRA Ltd and acting as the agent for the national organisation. I find that the national organisation was the principal and the Branch the agent. The nominator was the national organisation of CAMRA Ltd and the nomination was made through its duly appointed agent the East London and City Branch of CAMRA.
- 11) I find that CAMRA is a private company limited by guarantee and that under Article 5 of the Articles of Association (pages 193 to 115) the income and property must be applied solely towards the promotion of the objects of CAMRA and “no portion thereof shall be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit to the members of CAMRA, providing that nothing herein contained shall prevent the payment of reasonable remuneration to any of the National Executive or other members or services actually rendered” (page 105).

- 12) In finding that the East London and City Branch of CAMRA was acting as agent with express authority for the national organisation I attach weight to the following matters:
- a. The covering letter submitting the nomination makes clear that the nomination is from CAMRA Ltd and is signed by James Watson (page 85) “On behalf of the Campaign for Real Ale Ltd.” It is significant that Mr Watson does not sign on behalf of the East London and City Branch of CAMRA.
 - b. The nomination form under the paragraph headed Description of Membership/Directors of Nominating Group states “The East London and City Branch of CAMRA covers the E and EC post code areas. All CAMRA branches are part of the company. Nominations for ACV status are made by CAMRA Ltd via the branch network. Full authority of the directors of the company is granted for all ACV nominations. A statement of authority from the company is included in the Appendix (page 86).
 - c. The Statement of Authority (page 102) is signed by Faye Grima, Campaigns Officer for CAMRA dated 25 October 2016 and states “I confirm that, in submitting the attached nomination to list The Acorn pub as an ‘Asset of Community Value (ACV)’, the East London & City Branch of CAMRA is acting on behalf of and with full authority of the Campaign for Real Ale Ltd, a company limited by guarantee, registered in England with company number 1270286.”
- 13) I find that the declaration in the nomination form and the Statement of Authority are express authority from CAMRA Ltd to the East London and City Branch of CAMRA to act as its agent. The declaration in the nomination form and the Statement of Authority define the relationship between the principal and the agent and the terms of the agreement are that the agent has the authority to act for the principal in relation to the nomination.
- 14) I find that the East London and City Branch of CAMRA acting as agent for the national organisation satisfies the definition of a “voluntary or community body” as set out in regulation 5(1)(e) of the ACV Regs as “a company limited by guarantee which does not distribute any surplus it makes to its members.”
- 15) I find that the East London and City Branch of CAMRA acting as agent for CAMRA does not satisfy the provisions of regulation 4 of the ACV Regs. Following from the findings above it is a body within regulation 5(1)(e) and to satisfy the definition of “local connection” “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.
- 16) The Articles of Association (pages 103 to 115) make clear how funds are to be used. Any surplus funds are not wholly or partly applied for the purposes set out in regulation 4(1)(b).
- 17) As agent for the national organisation the East London and City Branch of CAMRA cannot be an “unincorporated body” in its own right. The East London and City Branch of CAMRA can have for the purposes of the nomination no other separate or additional

identity. Its legal identity is as the agent for the national organisation. The authority of the principal as set out in paragraph 12 (b) and (c) above defines clearly the relationship and identity of the East London and City Branch of CAMRA. It is not possible, in my view, for the East London and City Branch of CAMRA to have a separate and/or additional identity and to be an “unincorporated body” in its own right.

- 18) This case is distinguishable from previous decisions of the First-tier Tribunal which considered similar nominations. In *St Gabriel Properties Ltd v London Borough of Lewisham [2015] UKFTT CR/2014/0011(GRC)* it was held that the local branch was entitled to rely on “its own activities” for the purposes of satisfying regulation 4(1)(a) and that the local branch fell to be treated in an “hybrid” way. As a duly appointed agent the identity of the East London and City Branch of CAMRA is defined and it cannot rely on “its own activities” because its identity is defined by the agency relationship.
- 19) In *Hamma Wakaf Ltd v London Borough of Lambeth [2016]UKFTT CR/2015/0026 (GRC)* Counsel for the local authority submitted that “In order for a CAMRA Branch to bind the company, the Branch needed to have express, implied or apparent authority to act on behalf of the company.” In that case no authority had been provided and there was no documentation before the Tribunal to show any such authority had been given. The distinguishing feature in the present case is that there is express authority from CAMRA to the local Branch and there is documentary evidence confirming the terms of that authority.
- 20) Accordingly, the nominator the East London and City Branch of CAMRA acting as agent of CAMRA does not have a “local connection” as defined in regulation 4(1)(b) of the ACV Regs. The East London and City Branch of CAMRA acting as agent is not a person that is a voluntary or community body with a local connection pursuant to section 89 (2)(b)(iii)of the LA Act and the nomination is not valid.

21) It is not necessary for me to deal with the other grounds of appeal.

DECISION

22) The appeal is allowed. There is no valid nomination.

Signed Judge Jacqueline Findlay

Judge of the First-tier Tribunal
Date: 14 September 2017