



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

**Appeal reference:
CR/2017/0008**

Between

CAROLE DUNN

Appellant

and

NORTH DEVON DISTRICT COUNCIL

Respondent

DECISION UNDER RULE 8(3)(c)

1. The respondent requests the Tribunal to exercise its power under rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 to strike out the appellant's appeal as having no reasonable prospect of success.
2. I consider that I can determine this issue without a hearing. There are no relevant disputed facts and the arguments for and against striking out have been well articulated in writing by the parties.
3. I have had regard to the parties' submissions, including those of Mrs Dunn and her husband, and Mr Dunn's email of 1 August 2017.
4. The appeal was brought against the decision of the respondent, on review, to maintain the listing under the Localism Act 2010 of the Reform Inn, Pilton, Barnstaple, as an asset of community value. The premises are and were at all material times a working pub. It has recently been sold as such to a third party by the appellant and her husband.
5. Mrs Dunn questions the motivation of the nominators. Their motivation is legally irrelevant. The Act makes it abundantly plain that Parliament did not intend nominations to turn on motivation. In any event, a group of people may each have their different reasons for agreeing to form an unincorporated body, in

order to nominate the asset. Any inquiry into motivation would therefore be entirely inappropriate.

6. An unincorporated body does not need to be an unincorporated association: see Mendoza Ltd v London Borough of Camden [2016] CR/2015/0015.

7. The test for listing is whether “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” (section 88(1)(a)). There is no requirement in the legislation for the asset to be “essential to the special character of the area”. The use of that expression in the respondent’s Community Right to Bid Policy 2016 has no statutory backing. On the contrary, the Tribunal has in several cases dismissed appeals against the listing of pubs, notwithstanding that there may be other pubs in the area in question: see eg Pullan v Leeds City Council [2016] CR/2015/0011. In the present case, the evidence shows the Reform Inn does indeed further relevant social interests. The fact that other pubs in Pilton may also do so is immaterial.

8. I agree with the respondent that the decision of Weymouth and Portland Borough Council regarding the Albert Inn, Weymouth is very problematic, if the decision not to list was made for the reasons set out in the submissions. The Council appears wrongly to have imported planning considerations into its assessment of whether nominated premises meet the requirements of section 88 of the 2010 Act. I do not regard that Council’s decision (which in any event is not a judicial decision) as providing the appellant with any legitimate support in her appeal.

9. I do not find that there is anything in the so-called “postcode lottery” argument of Mrs Dunn that stands any likelihood of assisting her appeal. The Tribunal must apply the law, in deciding whether the requirements of section 88 are, or are not, met, regardless of which local authority listed the asset. Wider issues, such as whether all local authorities are interpreting the law in the correct way, are for the Government to address; for example, by way of policy guidance.

10. I am entirely unpersuaded by the appellant’s contention that the terms of the lease of the pub are such as to prohibit public meetings, sales and auctions and that this in some way might impact on the future ability of the pub to further relevant social interests. The existence of the prohibition in the lease has plainly not prevented the Reform Inn from satisfying section 88(1)(a). It is for the new owner to decide whether to insist on adherence to the provision, assuming it is included in any lease from him to the person running the pub. As far as I can see, there is no evidence that the new owner intends to do so. In any event, the respondent is, I find, right to contend that meetings of such things as the Pilton Green Man Committee would not, in any event, constitute public meetings within the scope of the prohibition.

11. Regulation 11 of the Assets of Community Value (England) Regulations 2012 provide as follows:

“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.”

12. At the time she filed her notice of appeal, Mrs Dunn appears to have been an owner of the Reform Inn. It is a moot point whether the subsequent sale of the pub means that the appellant can no longer pursue the appeal. What is, however, plain is that the new owner should be permitted to do so.

13. In the event, I do not consider it necessary in the context of the present proceedings to decide this issue. Even if one assumes that Mrs Dunn can still prosecute the appeal, for the reasons I have given above, I am fully persuaded that she has no reasonable prospect of succeeding in an appeal, were there to be a hearing and substantive determination of the case. To proceed to a substantive determination of this appeal would be a waste of the resources of the Tribunal and of the parties.

14. As matters stand, no application has been made by the respondent for costs against Mrs Dunn. It is accordingly unnecessary for me to say more about that issue.

15. The appeal is struck out.

Judge Peter Lane

9 August 2017