



Appeal number: CR.2020.0006

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

Haydn David Wakefield

Appellant

- and -

Melton Borough Council

First Respondent

- and -

Grimston, Saxelby & Shoby Parish Council

Second Respondent

**Before:
JUDGE J FINDLAY
Determined on the papers, sitting Chambers on 7 December 2020**

DECISION

The appeal is dismissed.

REASONS

Mode of Hearing

1. This has been a paper hearing which has been consented to by the parties. The form of remote hearing was P: paper determination which is not provisional. A face-to-face hearing was not held

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because it was not practicable and no-one requested the same and all the issues could be determine on the papers. The documents referred to are in an open bundle of 154 pages, the contents of which have been recorded. The decision made is as described above.

2. I have considered the Case Management Directions of 14 August 2020 and, in particular, paragraph 12 (page 152) and decided that it was fair and just to proceed to determine the appeal on the basis of the papers having considered rules 2 and 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended). The Response and replies have been filed and all the parties have been given ample opportunity to prepare their cases.

Background

3. The Act requires local authorities to keep a list of assets (meaning buildings or other land) which are of community value. Once an Asset of Community Value (“ACV”) 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.
4. A nomination to list the buildings and land associated with The Black Horse, Main Street, Grimston, Leicestershire, (“the Property”) dated 13 February 2020 was submitted by the Grimston and Saxelby and Shoby Parish Council, the Second Respondent. The First Respondent decided on 4 June 2020 that the Property had been properly nominated and qualified as an asset of community value and was added to its list of assets of community value.
5. Section 92 of the 2011 Act makes provision for the right of owners of land included in a local authority’s list of assets of community value to seek a review of the listing decision. Regulation 11 of the 2012 Regulations provides that 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. An appeal takes the form of a complete rehearing and the Tribunal’s determination on the issues must be made as at the date of its decision.
6. Mr David Alan Wakefield, Ms Sally-Ann Wakefield and Mr Haydn David Wakefield are the owners of the Property. Mr Haydn Wakefield is the Appellant on behalf of the owners. The Property was purchased on 22 June 2017.
7. The Property closed for business on 18 January 2020.

The Legislation

8. The Localism Act 2011 (“the 2011 Act”) 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.

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(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 (“the 2012 Regulations”)

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.

91 Notice of inclusion or removal

(1) Subsection (2) applies where land—

(a) is included in, or

(b) removed from,

a local authority's list of assets of community value.

(2) The authority must give written notice of the inclusion or removal to the following persons—

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- (a) the owner of the land,
- (b) the occupier of the land if the occupier is not also the owner,
- (c) if the land was included in the list in response to a community nomination, the person who made the nomination, and
- (d) any person specified, or of a description specified, in regulations made by the appropriate authority,

but where it appears to the authority that it is not reasonably practicable to give a notice under this subsection to a person to whom it is required to be given, the authority must instead take reasonable alternative steps for the purpose of bringing the notice to the person's attention.

(3) A notice under subsection (2) of inclusion of land in the list must describe the provision made by and under this Chapter, drawing particular attention to—

- (a) the consequences for the land and its owner of the land's inclusion in the list, and
- (b) the right to ask for review under section 92.

SCHEDULE 1- Land which is not of community value (and therefore may not be listed)

1.—(1) Subject to sub-paragraph (5) and paragraph 2, a residence together with land connected with that residence.

(2) In this paragraph, subject to sub-paragraphs (3) and (4), land is connected with a residence if—

- (a) the land, and the residence, are owned by a single owner; and
- (b) every part of the land can be reached from the residence without having to cross land which is not owned by that single owner.

(3) Sub-paragraph (2)(b) is satisfied where a part of the land cannot be reached from the residence by reason only of intervening land in other ownership on which there is a road, railway, river or canal, provided that the additional requirement in sub-paragraph (4) is met.

(4) The additional requirement referred to in sub-paragraph (3) is that it is reasonable to think that sub-paragraph (2)(b) would be satisfied if the intervening land were to be removed leaving no gap.

(5) Land which falls within sub-paragraph (1) may be listed if—

- (a) the residence is a building that is only partly used as a residence; and
- (b) but for that residential use of the building, the land would be eligible for listing.

2. For the purposes of paragraph 1 and this paragraph—

- (a) “residence” means a building used or partly used as a residence;
- (b) a building is a residence if—
 - (i) it is normally used or partly used as a residence, but for any reason so much of it as is normally used as a residence is temporarily unoccupied;
 - (ii) it is let or partly let for use as a holiday dwelling;
 - (iii) it, or part of it, is a hotel or is otherwise principally used for letting or licensing accommodation to paying occupants; or
 - (iv) it is a house in multiple occupation as defined in section 77 of the Housing Act 2004(1); and
- (c) a building or other land is not a residence if—

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- (i) it is land on which currently there are no residences but for which planning permission or development consent has been granted for the construction of residences;
- (ii) it is a building undergoing construction where there is planning permission or development consent for the completed building to be used as a residence, but construction is not yet complete; or
- (iii) it was previously used as a residence but is in future to be used for a different purpose and planning permission or development consent for a change of use to that purpose has been granted.

Written Submissions

9. The Appellant, Mr Wakefield, submits the following points:
- a) The Parish Council have been against him from the day he took over the Property in 2017. Several parish members acted in a discriminatory way due to “the landlord’s sexual preference.”
 - b) The flat should not have been listed as it goes against the legislation. Mr Wakefield pays council tax for the flat which has the separate address of 3 Main Street. Even though the access to the flat is through the main bar area the flat is private and not an integral part of the Property.
 - c) He criticises the First Respondent for the handling of the case and the decision to make the decision when the hospitality sector has been hit hard by the pandemic.
 - d) The Property has been closed since January 2020 due to tenants going into liquidation. Having searched for new tenants it became clear when the pandemic hit in March 2020 that nobody was looking or interested in taking on small country pubs or restaurants. The Property will remain closed for the foreseeable future.
 - e) The Black Horse has not been that successful over the past 3 years and has been in decline for all of those years. There is a lot of wealth within Grimston and the parish for the pub to be able to be sustained. The previous tenants should have been able to continue trading until 2023 when the lease was up for renewal. The current business cannot be opened due to the pandemic and the business is not financially viable with the restrictions in place for social distancing and other measure imposed by governments.
 - f) The social activities within the parish are very different from how they were 20 years ago. Only 10% of the parish use the facilities of the Property and not more frequently than once a week.
 - g) Mr Wakefield agrees that there were sports teams that used the Property but the teams were made up people from outside the parish. He questions the fact that so few people from the parish took part in the social games if the Property was such a social hub. The darts and boules teams come from further afield with only three members of the parish taking part and being members of those teams.
 - h) 13 testimonials were received from a parish of 298 residents which he calculates is about 4% of the parish. That percentage does not sustain a community asset or keep it going in the future. If it was such an important asset to the community why didn’t over 50% of the

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community provide testimonials? If the community had supported the business it would not have made a loss and this shows that the Property was not valued by the parish. The Parish Council did not hold any of its meetings at the Property.

- i) Mr Wakefield states there is no support for the Property from the Parish Council. In 2018 the Parish Council was approached for permission to use the village green for outside tables and chairs. The Parish Council did not support the initiative which was not supportive of keeping the business going and trying to help it succeed.
 - j) Business is based on numbers and if the community does not support the facility it will close as happened. The business has been on the open market for months and no buyer has come forward even after reducing the asking price because in the current climate no one is taking on these types of properties.
 - k) Mr Wakefield questions the relevance to this appeal of the case law relied on by the First Respondent.
 - l) A planning application has been submitted for change of use. This has been refused and is under appeal.
 - m) The terms of Mr Wakefield's mortgage do not permit him to lease the business.
 - n) The business has been struggling for years and there is no guarantee or certainty that it will re-open in the next 5 years in its current format. From a common sense point of view the current crisis has put the sector in a very difficult situation. There are no buyers or tenants coming forward and it is heartbreaking that an order could be put in place at a time when the county is going through a pandemic. The local council is meant to help small businesses but on this occasion the council has failed to do this. He has received negative assertions on social media which suggested that there was no community support for the Property to continue as a public house.
 - o) If the village hall were licensed it could provide a venue for community activities and use.
10. The First Respondent invites the Tribunal to confirm the listing and submits the following points:
- a) The requirements are met of regulation 4 of the Assets of Community Value (England) Regulations 2012 ("the 2012 Regulations") (local connection) because the Property is within the Parish Council's area.
 - b) The requirements are met of Regulation 5 of the 2012 Regulations (voluntary/community body) because the Parish Council is a community body as defined.
 - c) The requirements are met of Regulation 6 of the 2012 Regulations (community nomination) and the building or land is in a local authority's area because there was a valid community nomination which included a description of the nominated land including the boundaries, a description of the nominated land with the Land Registry documents, the nomination included details why it was considered the land to be of community value and evidence that the nominator was eligible to make a community nomination.

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d) Although the requirements of sections 88(1)(a) and (b) of the Act are not satisfied, the requirements of sections 88(2)(a) and (b) are met.

11. The Second Respondent submits the following points:

- a) The Property is a vital hub of the rural community, reaching all people in a way that the village hall and church activities may not.
- b) The Property is extremely important to the social wellbeing and interest of the community and has served the parish and wider community since 1828.
- c) The pub business was run very successfully until the current owners took over and it is believed that with the right ownership, or tenants, it could quickly return to that level of success.
- d) The Appellant has offered the Property to the community and a community committee has been formed. The committee is actively pursuing a community bid to purchase the Property and there is confidence that the group should be in a position to make a formal bid before the end of the 6 month moratorium period by, 14 December 2020.
- e) The removal of the Appellant's flat from the AVC is unreasonable as the flat has always been an integral part of the pub since it was originally established. The Appellant did not separate the flat from the business when it was offered for sale. It is not correct to state that the flat has a separate address of 3 Main Street.
- f) The Property had a rich history of involving the community for social and sporting events and many different sports teams used the pub over the years. The community is much wider than the parish and includes patrons from the neighbouring parishes.
- g) The village green is owned by the Parish Council which is currently going through the process to register its ownership.
- h) The Parish Council and community have acted in good faith to try and save an asset that has existed for nearly 200 years.
- i) The removal of the ACV would undermine the legislation and regulations and the ACV should remain in place.

Issue before the Tribunal

12. The issue in this appeal are as follows:

- a) Is the flat excluded from the scope of the ACV listing by the 2012 Regulations?
- b) Did the Property further the social wellbeing or social interests of the local community in the recent past?
- c) Is it realistic to think that there is a time in the next five years when there could be non-ancillary use of the Property that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community?

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Conclusions

13. The Property dates from the 16th Century. It was open for business and received good reviews for its food and hospitality until December 2019 (pages 120 to 122).
14. A nomination must be made by a Community Nomination which includes a nomination by a community body with a local connection. I find that there was a valid community nomination made by a local parish council and the requirements of regulation 5 of the 2012 Regulations are satisfied because the Second Respondent was an appropriate body as defined.
15. I find that Mr Haydn Wakefield, as one of the owners of the Property, is the correct person to represent the owners in these proceedings.

Issue a)

16. I find that the flat providing living accommodation above the public house should be included in the ACV because it is functionally inseparable from the main part of the Property and an integral part of the economic unit. The flat can only be accessed from the main bar. I find that the Property was only partly used as a residence and but for that residential use of the flat within the building, the land would be eligible for listing. I find that the flat should not be excluded from the listing as an ACV.
17. I find that the provisions relating to the exclusion of a residence set out in Schedule I of the 2012 Regulations does not apply. This is because the Property is only partly used as a residence and but for that residential use of the flat the land is eligible for listing. The exclusion from listing for residences does not apply in this case.
18. I find there is a sufficient physical relationship between the Property and the flat and a sufficient functional relationship such that they should be considered to be part of the same building for the purposes of considering the exceptions in paragraph 1(5) of Schedule 1. In reaching this conclusion I find it significant that the flat can only accessed through the main bar and does not have a separate entrance. It is of no relevance that the Appellant used a different postal address for the flat and paid council tax for the purposes of the listing.
19. I find that the First Respondent was correct to treat the whole of the Property, including the flat, as comprising a building for the purposes of paragraph 1(5) and the whole of the Property was correctly listed.

Issue b)

20. The closure of the Property has been of great regret to members of the community for whom it was a social hub and meeting place that was much valued (pages 125 to 141). The Property closed for business on 18 January 2020 and this is agreed by all the parties.
21. I find that there was not 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 section 88(1)(a) of the Act is not satisfied on the grounds that the Property was closed in January 2020 and there have been no activities which could further the social wellbeing or social interests of the local community since the date of the closure.

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22. I find that there was a time in the recent past when an actual use of the Property that was not ancillary use furthered the social wellbeing or interest of the local community. I find the requirements of section 88(2)(a) of the 2011 Act are satisfied.
23. The Act gives limited guidance about what constitutes the ‘social wellbeing or social interest of the local community.’ The Act does state that the term ‘social interests’ includes ‘in particular’ (i.e. non-exhaustively) ‘cultural interests’, ‘recreational interests’ and ‘sporting interests.’ The term ‘social wellbeing’ is not defined in the Act.
24. I find that until 18 January 2020 the Property was used as a public house and restaurant by the local community who enjoyed socialising, drinking, dining and meeting each other. I find that there were social events, sports teams events and gatherings for organised food nights. I find that the activities which happened at the Property prior to 18 January 2020 were activities that would further the social interests and social wellbeing of the local community.
25. In reaching this decision I have attached weight to the comments of the members of the local community who describe the Property as being “at the heart of the local community”, “open virtually every day for anyone to meet and socialise with others in a warm, inviting and welcoming atmosphere”, “plays an invaluable part in bringing people together socially”, “a place to meet up with friends for drinks and a chat from time to time”, “the heart of our little village”, “the only centre in the village for the people of Grimston to get together over a drink and chat and to socialise”, “Pie nights, shoot dinners, Quiz nights and Sunday lunches have brought clientele back to our pub during the last year”, “The Black Horse sits at the heart of the village, both physically and in terms of the community”, “The Black Horse is the hearth around which we all gather to socialise catch up, do business, celebrate special occasions; eat together and support each other”, “I am sure the pub would be named by everyone as the heart of the village”, “Having a place to drink and talk in such a rural location brings everybody in and most importantly villagers”, “a means of getting together for a ‘noggin and natter’ and keeping in touch with friends and neighbours”, “The Black Horse has been a meeting place for the community for several hundred years”, “a very valuable asset to the village as an integrating facility, which is so vital to sustaining our village community and making it such a lovely and welcoming village in which to live” and “the public house of our community where all are welcome and all go to keep our community alive.”
26. The sentiments of the contributors set out above, describe the activities at the Property before closure and demonstrate strongly that meeting others at the Property contributed to the wellbeing and social interest of the community.
27. Although Mr Wakefield accepts that sports teams did use the Property he submits that the members were mostly people from outside the community. I find that there is nothing in the legislation which suggests that the facilities need to be used by all or the majority of the community or that the facility has to be equally valuable or equally accessible to all sectors of the community. It is not necessary for any particular proportion of the local community to have used the facility. It is sufficient that the Property furthered the social wellbeing or social interests of some members of the local community regardless of whether people from outside the area benefitted also.
28. I find that the use was in the ‘recent past.’ The ‘recent past’ is not defined in the 2011 Act or any subordinate legislation. However, the ordinary interpretation of the word ‘recent’ must include something that happened only a few months ago taking into account how long the Property has been operating as a public house.

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Issue c)

29. I am required to consider whether it is 'realistic' to think that in the next five years there could be a non-ancillary use that would further the social wellbeing or social interests of the local community. I am not required to decide what is likely to happen only to consider whether a use within the statutory language is a realistic possibility.
30. I find that it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the Property that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.
31. The First Respondent has put forward four realistic outcomes for the owners:
 - To sell the building/land to someone who is interested in running it as a public house.
 - To submit a planning application for change of use.
 - To lease the building/land to someone who is interested in bringing the building/land back into use.
 - Be unable to dispose of it and it becomes derelict
32. In reaching this decision I have borne in mind that it is not necessary for there to be before a detailed commercial or financial analysis of the future plans for them to be 'realistic.' The legislation does not require a detailed business case.
33. In reaching my decision I have attached weight to the considerable support of the local community as demonstrated by the testimonials. I am satisfied that there is strong community spirit and enthusiasm to find a community use for the Property. Although there would be difficulties and obstacles I find that the intention to purchase the Property and recommence trading could be realistically achieved with sufficient community effort and support in the next five years. A new enterprise under new management taking into account the available market could realistically be expected to satisfy the statutory test.
34. I accept that with the present Covid-19 restrictions the immediate opening of the Property as a public house and restaurant is unlikely, however, I am required to consider the next five years.
35. In reaching this decision I have borne in mind that the owners intentions in relation to the Property are not determinative and I have attached weight to the submission from the Second Respondent that a community committee has been formed and there is confidence that a formal bid can be made. In my view it is highly unlikely that the Second Respondent would have stated this (page 83) if it were not the case.

Miscellaneous points of issue

36. In relation to the point made by the Appellant that the village hall with a licence could be used as a community venue, it is not a requirement of the legislation that there be only one asset providing the same service. Whether the village hall could or could not provide such facilities is irrelevant.

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37. In relation to the point raised by the Appellant that the case law referred to by the First Respondent is irrelevant, case law refers to the collection of precedents and authority set by previous judicial decisions on a particular issue or topic and can provide guidance when interpreting or applying legislation. I am not bound by decisions of the First-tier Tribunal and it is my decision whether to follow previous decisions and guidance of the First-tier Tribunal.
38. In relation to the point raised by the Appellant about the handling of the case, under section 90(2) and (3) of the 2011 Act a local authority must consider any community nomination and must accept it if the land nominated is within the authority's area and is of community value pursuant to section 88. If the nomination is accepted the authority must cause the land to be included in its list of AVCs. Section 92 of the 2011 Act makes provision for the rights of the owners of the land to seek a review of the listing decision. I am satisfied that the procedure was correctly followed. Although there is an offensive comment on page 148 there is no evidence before me to suggest that there has been any personal discrimination during the listing process.
39. Mr Wakefield submits that the Parish Council was not supportive of the business in the past and, in particular, did not support the proposal to use the village green for tables and chairs which might have increased the numbers using the facilities and supported the business. I find that any real or perceived lack of support by the Parish Council in the past is not relevant to the issues before me.
40. For the reasons stated, the appeal must be dismissed.

(Signed) Judge J Findlay

Dated: 7 December 2020
Signed: 15 January 2021

