FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
COMMUNITY RIGHT TO BID

Tribunal Reference: CR/2014/0013

Appellant: The General Conference of the New Church

Respondent: Bristol City Council

Judge: Peter Lane

DECISION NOTICE

1. The Localism Act 2011 requires local authorities to keep a list of assets (meaning buildings or other land) which are of community value. 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.

2. The property in question in the present proceedings is a building and small area of surrounding land. The building comprises a church of the Bristol Society of the New Church, who used it for religious purposes from its construction in 1899 until its closure in November 2013. The church is owned by the General Conference of the New Church, an incorporated body, formed for the Religion of the Receivers of the Doctrines of the New Church, as contained in the Theological Writings of the Honourable Emanuel Swedenborg. The church is on the corner of Claremont Road and Cranbrook Road. The adjoining land is approximately quarter of an acre and contains a number of large trees.

3. The church was nominated as an asset of community value by an unincorporated association entitled "Protect Redland and Bishopston from Over-Development" ("PROD"). Listing took place on 3 April 2014. The General Conference requested a review by the city council of that listing. The result of that review, on 3 July 2014, was to maintain listing. The General Conference appealed against that decision to the First-tier Tribunal, pursuant to regulation 11 of the Assets of Community Value (England) Regulations 2012 (SI 2012/2421).

4. The General Conference requested a hearing of the appeal. In its response of 20 August 2014 the city council indicated that, for its part, it would be content for the matter to be considered on the papers. The city council did not appear at the hearing, which took place on 23 January 2013 at Bristol Magistrates Court. In its response, the city council stated that it would "abide by the decision of the Tribunal". In an email to the Tribunal of 3 November 2014, PROD indicated that no one from its membership had expressed an interest in contributing to the Tribunal. PROD did not seek to be made a party to the appeal.

5. At the hearing, the General Conference was represented by Peter Wadsley of Counsel, instructed by Harris and Harris Solicitors. Ms (Jennifer) Zoe Brooks, Trustee, Director and Company Secretary of the General Conference, gave evidence. Mrs Siusaidh Hall, Secretary of PROD, also attended and spoke.

6. Ms Brooks explained that the General Conference was enrolled in chancery in 1822 and incorporated as a company in 1872. Although the General Conference owns the church, responsibility for maintaining and running it is in the hands of the Bristol Society. It was the Bristol Society that decided the church should close in October 2013. By that time, the congregation consisted of only three regular members, only one of whom lived in the area served by the church. Four other members attended less regularly. It was also used as a church by the Holy Celtic Church.

7. A number of other activities also took place in the church. Bristol City Council uses the church from time to time as a polling station. A group of Brownies used it weekly until February 2013, when they moved to other premises. Dance classes were held occasionally until May 2013. Two meditation groups, which used the church infrequently, ceased to do so in November 2011 and October 2012 respectively. Apart from the religious use of the church, the only group making use of it at the time of closure was "Music with Mummy and Jolly Babies", which used it twice-weekly. It appears that this group has, since closure, found an alternative venue.

8. Ms Brooks also gave evidence regarding the costs of running and maintaining the church and of the income received from uses other than by the Bristol Society. In the period 2008-2013 inclusive, costs of maintenance totalled £80,000; insurance £12,000; and gas and electricity £12-18,000. The total income over those six years was only £3-4.5,000.

9. I find these figures paint a stark picture of the difficulties facing the congregation, leading to the decision that the church had to be closed.

10. I accept Ms Brooks' evidence that no local or community bodies have ever shown any interest in the church as a place of worship and that, prior to the premises being put up to sale (with a guide price of £600,000) no individuals or groups ever offered any support for the church or for any of the non-religious activities carried on there.

11. PROD is concerned about what it sees as the threat of over-development in Redland and Bishopston. As can be seen from the written materials, and as Mrs Hall made plain in her remarks at the hearing, PROD is particularly concerned at the

possibility of any purchaser building on all or part of the grounds. Mrs Hall told me that PROD's hope is that the ground could be retained in some form as a "green oasis", since people like looking at it. As well as bats roosting in the church structure, slow worms and a sparrow colony were to be found in the grounds and the trees (which were, she said, subject to Tree Preservation Orders).

12. Section 88(1) and (2) of the Localism Act 2011 read as follows:-

> "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."

13. Mr Wadsley submitted that the use of a building as a place of religion, such as a church, does not fall within the scope of the uses that further "the social wellbeing or interests of the local community". He pointed to section 88(6) of the 2011 Act, which provides that "social interests" include, in particular, each of the following –

> "(a) cultural interests;
>
> (b) recreational interests;
>
> (c) sporting interests"

14. Mr Wadsley said that, had it been the legislature's intention to include religious interests within the scope of section 88, one would expect to find express reference to them in section 88(6). Although the definition of "social interests" in that subsection is not exhaustive, the absence of any reference to religious interests is significant. In this regard, Mr Wadsley drew my attention to the Equality Act 2010, where section 4 (protected characteristics) specifically includes "religion or belief", thereafter specifically

defined in section 10 (religion or belief), thereby highlighting, in his view, the discrete nature of religion. Religious interests, Mr Wadsley said, could not be properly said to be "cultural interests" or "recreational interests". Further evidence of the particular nature and character of religion was to be found in Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

15. In its review, the city council's solicitor considered "that religious worship is for the social wellbeing and social interests of the community", although she conceded that she might be wrong about that. Given that the city council has not chosen to take any further part in these proceedings, their views on this issue have not been developed in argument. I am, therefore, cautious about making any definitive finding. On the basis of Mr Wadsley's submissions, I nevertheless consider that the expression "social wellbeing and social interests of the community" in section 88 does not encompass religious observances in a church, mosque or synagogue etc, and that such a building will not in practice fall within section 88 unless there is some other non-ancillary use being made of it, which does further social wellbeing/social interests of the local community.

16. The city council, in its review, considered that the other activities which had taken place in the church in recent years, namely "brownies, meditation, elections, dance, singing [and] mothers and babies meetings" were "non-ancillary" and furthered the social wellbeing or interests of the local community.

17. Mr Wadsley did not challenge the latter conclusion but he vigorously contended that those uses were, in fact, ancillary to the church's use as a place of religious worship.

18. The expression "ancillary use", which occurs in several places in section 88, is undefined. I agree with Mr Wadsley that, in the circumstances, it may be helpful (to put it no higher) to look at how the concept of primary and ancillary uses is dealt with in planning law. In volume 2 of the Planning Encyclopaedia (Planning R.184: April 2014) one finds at P55.39 that:-

> " In many cases it is possible to identify a single primary use for a site overall, such as "private dwelling", "retail shop", "hotel", or "farm". That description may in any given case describe the sum of a number of "incidental" or "ancillary" uses of quite different character.

19. At P55.42, we find:-

> " Much analysis in this area relies upon subjective judgements as to the type and scale of activity which may ordinarily be regarded as ancillary to a particular primary use. It is a test of functional relationship rather than extent."

20. Mr Wadsley submitted that churches are places of assembly and, as such, can also be useful as a meeting place for others who may not share the religious purpose for which the church was created. In this way, meetings for the other groups that used part of the church (the evidence is that they were not allowed to use certain areas) were in the category of meetings or assemblies. There was, accordingly, a functional link between those meetings and the principal or main use.

21. In the alternative, Mr Wadsley drew attention to paragraph 7.6 of the Explanatory Memorandum to the 2012 Regulations, which speaks of the "main purpose of the building or land". Mr Wadsley submitted that, on this approach, the answer one arrived at was the same: namely, that the main purpose of the church was as a church and the other uses were subsidiary to that.

22. As the Tribunal stated in Dorset CC v Purbeck DC (CR/2013/004), in determining for the purpose of section 88 whether a use is ancillary, "there is no certain guidance or touchstone". In some cases, the position "on the ground" may be such that a single primary use is such that other uses fall properly to be regarded as ancillary to that primary use, whether or not one uses the test of functional relationship. In other cases, there may be a number of discrete uses, where none is properly to be regarded as ancillary, even though one particular use may be more significant than the others (whether in terms of intensity or otherwise). Neither planning law nor explanatory memoranda provide definitive answers; the context is all.

23. In the present case, the original and sole purpose was as a church. That remained the position, even when other non-religious groups were permitted to make use of the church. On the facts, I find that the primary use was as a church. Again, on the facts, I find that the evidence discloses that the other uses did not have a more than ancillary character. They were disparate, largely *ad hoc* and even before closure had dwindled to the point where only one group was using the church on a regular basis. In short, immediately before its closure, the reality was that (despite the decline in congregations) the church was still a church; not a community or social centre. The other uses were ancillary.

24. The result is that I find section 88(2)(a) is not satisfied. There has not been in the recent past (indeed, ever) "an actual use of the building or of the land that was not an ancillary use [which] furthered the social wellbeing or interests of the local community".

25. But even if I am wrong about that, I find as a fact on the evidence before me that the requirement of section 88(2)(b) is not satisfied. It is not "realistic" to think that there is a time in the next five years when there could be non-ancillary use of the building or of the land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community".

26. The present appeal does not turn on whether the city council committed legal or factual errors in its review. The appeal is a re-hearing on all matters. Nevertheless, I agree with Mr Wadsley that the council's decision in the review may well have been different had it not misstated the statutory test in section 88(2)(b). The review document rightly recorded, in my view, that "given the information which has been provided it is realistic to think that the land and building might not be used for community purposes in the future". However, it then went on to state that "given the extremely long history of community use it would be premature to find that it is wholly unrealistic to think that the land and building might not be used for community purposes in the next five years". As can be seen from section 88(2), the test is not whether such future use is "wholly unrealistic". The test is whether it is realistic to think that there could be a relevant non-ancillary use in the next five years.

27. Even if the other uses could be said not to be ancillary, the evidence adduced by the General Conference, which I accept, demonstrates that the running and maintenance costs could never begin to be met by these sorts of activities. The church has been on the market for some time and no one has expressed an interest to the General Conference in purchasing it with a view to using the site for section 88(2)(b) purposes.

28. PROD have suggested some "possible future community uses" such as a community centre; hire of rooms for a variety of community uses; hire or use by invitation for a summer fete; bat watches, nature sessions; provision of a children's play area; and use of the grounds as a park. They suggest the building could be used for religious and secular uses, with a possible use by local schools and local small businesses; finally, use as a polling station.

29. Although the legislation does not require a formal business plan, or the like, from those contending that the site should be listed under section 87, any proposals need to be "realistic". On all the facts of this case, PROD's list fails to meet this requirement. It is entirely speculative, so far as it envisages new forms of use. There is a dearth of evidence to suggest that anyone – whether a community group, commercial organisation or public body - has evinced any interest in pursuing such a scheme for the church and its land, let alone shown how this might realistically be achieved, given the evidence of running costs and the likely value of the property on the market. So far as PROD's list involves continuation of uses that have existed in the past, Ms Brooks' evidence demonstrates how these cannot be regarded as realistic pointers to the next five years.

30. Use as a polling station was, clearly, only very occasional and cannot properly be said to be the kind of activity that would call for listing as an asset of community value. In any event, there is no suggestion that the city council has any continued need to use the church as a polling station for elections, following its closure, or that any income derived from this would be significant.

31. Even if I am wrong in my finding at paragraph 15 above, there is no evidence to suggest that there is a time, in the next five years, when the church could be re-opened as a place of religious worship. Mrs Hall spoke of PROD being approached by a Christian group who wanted to acquire the church but who concluded that the asking price was "prohibitive". There is, however, no evidence that any approach has been made in this regard to the General Conference or to the Bristol Society. The conclusion of the Christian group underscores the unrealistic nature of the church being reopened for religious activities.

32. PROD's motivation for seeking listing emerges from the minutes of its meeting of 1 February 2014, which record that "a suggestion was made that we should make a community right to buy. Although at the moment £600,000 minimum makes this prohibitive any publicity of an attempt will be a problem for developers". This was reinforced by what Mrs Hall had to say at the hearing. PROD's concerns about over-development, protection of *fauna* and safeguarding of the mature trees on the site are all matters that fall to be addressed in the context of the law relating to development control. They fall outside the ambit of the legislation with which we are concerned.

33. For these reasons, this appeal succeeds.

Peter Lane
Chamber President
Dated 12 February 2015