FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Community Right to Bid

Appeal Reference: CR/2015/0017

Determined at Field House without a hearing
On 25 April 2016

Before

JUDGE PETER LANE

Between

HADDON PROPERTY DEVELOPMENT LTD

Appellant

and

CHESHIRE EAST COUNCIL

First Respondent

WYCHWOOD COMMUNITY GROUP

Second Respondent

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. 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. Section 88 of the 2011 Act provides 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.

The appeal

3. The appeal concerns two contiguous parcels of land known respectively as the Gorstyhill Golf Club and the Gorstyhill Country Park, Weston, Cheshire. Both are owned by the appellant. On 31 March 2015, the first respondent informed the appellant that the golf club and country park had been listed as an asset of community value under the 2011 Act. The appellant made a freedom of information request in order to obtain information concerning the background to the listing,

which resulted in May 2015 in the first respondent supplying various documents, including the nomination form, completed by the second respondent.

4. Following an unsuccessful review of the decision to list, the appellant appealed to the First-tier Tribunal. The parties were content that the appeal could be determined without a hearing and, in all the circumstances, I am satisfied that the Tribunal can justly do so.

The issues

5. According to the second respondent's nomination, the golf club was, until its closure in 2013, used extensively by local residents, both as members of the private club and extensively on a "pay and play" basis. Some 44 per cent of the membership was said to be from post code areas CW1 and CW2. The golf club offered sporting, leisure and physical activity benefits. The club was said to be a "focal point for local golfers and the Wychwood community as a whole". Local residents were able to use the club house "as a meeting point and it was also opened as an evening bistro, which proved popular with residents and non-residents". The nearby Wychwood Park Golf Club was said to have been designed as a championship standard course, whereas Gorstyhill was very much for the social golfer.

6. The second respondent said that the intention was for the golf club to continue to provide golfing facilities. Previous members were said to have "expressed interest in returning". It was, however, recognised that the site "has huge potential to provide a much wider recreation and well-being offer for local people across the parish and rural area". There was said to have been significant interest from Cheshire Wildlife Trust and nature trails and walks had been successfully organised across the country park. Public rights of way crossed the site, offering facilities for walking.

7. The second respondent considered that grant and lottery funding would be available to get the golf course back to playing standard. An application would be made for permanent planning permission for the club house, which had only temporary permission, which expired in July 2015. Wildlife elements would continue to thrive.

8. In its grounds of review to the first respondent, the appellant made it clear that it did not dispute the listing of the country park. It did, however, contest the listing of the golf club. Although in the same ownership, the golf club and the country park were, according to the appellant, separate entities. The country park was open to all; whereas the golf club had been restricted to paying players. The second respondent's nomination had, in various places, failed specifically to distinguish between activities and proposals regarding the golf club and the country park respectively. 95 per cent of the membership of the golf club had been male. At the time of closure, annual golf club membership fees had been £300 per annum.

Approximately £17.50 had been charged for green fees. Given that 62 per cent of the local population was said to suffer from some form of measurable deprivation, the appellant contended that it was unlikely the facility was ever available to a sufficiently wide sector of the community to satisfy the 2011 Act. So far as age was concerned, 73 per cent of the golf club's membership had been aged over 45 years and 50 per cent were over 55.

9. Particular reference was made by the appellant to the position of the club house. The appellant noted that weight was placed by the second respondent upon the community benefits offered by this building, including its use as a bistro. However, the planning permission for the club house was temporary, expiring on 19 July 2015. That itself was an extension of a previous temporary permission issued in 2008. In recommending the second temporary permission in 2010, planning officers had "made it clear that the club house was being permitted on a temporary basis for viability reasons and that no further temporary permissions would be issued to extend the timeframe for the operation of the club house". Thus, as from 19 July 2015, any activities taking place at the club house (as well as its physical existence) would be unauthorised. Any community group obtaining the assets would have to budget for the replacement of the existing structure as a permanent building; alternatively, the golf club would have to function without a club house, which was considered unlikely to be viable. In conclusion, the appellant contended that listing the golf club would set an undesirable precedent, given that access to the facility "was always limited to a statistically insignificant minority of the population (0.16 per cent) able and willing to pay for a niche recreational facility."

10. In its response, the first respondent reiterated that a private golf course could be a community asset and that a number of these had been registered by local authorities under the 2011 Act. The club did not have to be open to the public in general, in order for it to be a community asset. Gorstyhill golf course was said to be an essential part of the original "concept design" of Wychwood village and local residents had chosen to live there in order to play and/or watch golf. The country park was already protected for the public benefit, specifically for the residents of Wychwood Park, by agreements made under section 106 of the Town and Country Planning Act 1990. The section 106 agreements were also, unusually, incorporated into the deeds of every property.

11. The golf course was said to frame the village of Wychwood and provide open walks leading to the country park. Both elements were physically linked by public rights of way and by permissive paths. Viewed on a map, the two parcels appeared closely linked. The closure of the golf club meant that it had "reverted back to open countryside/scrubland and in its current state was a close affinity to the country park". It was considered that the entire site "has a huge potential to provide a much wider recreation and well-being offer for local people across the parish".

12. The first respondent said that, besides information provided by the second respondent, "verbal evidence has been provided from the parish council and ward

councillor as to how the country park provides for social well-being and social interests of the community". The second respondent would apply for grant and lottery funding for permanent planning permission for the clubhouse, supported by various fundraising activities. However, "since the use of the clubhouse has declined and Haddon Property Developments have ceased any formal use of the building", the first respondent said that the second respondent was considering ways in which a flexible/combined use of the community hall (that is, the village hall, recently "completed to a very high standard") might mitigate any adverse effects, should any proposal to seek permanent planning permission be lost. Every planning permission was, however, judged on its merits.

13. In its response, the second respondent submitted that golf courses were inherently designed to serve both local communities and the wider community of golfers. Although the original application had been made in order to restore the golf club to golfing use, "as a result of the current period of neglect [the second respondent] has identified that restoration may need to be done in stages. Work to date has identified that all parts of the course can be used for other purposes which will provide a real and tangible benefit to the local community during the period of phased restoration". As a result of the reversion of the golf course, the second respondent considered that the course and the country park "are now synonymous and are treated as a single resource by a wide cross section of the wider community". Key linkages across the golf course and country park provided central pedestrian links to the villages of Weston and Balterley Heath. The country park and golf course created "a ring of open countryside and green space around the village". This was a significant feature in sales materials relating to the dwellings in the village of Wychwood, the residential component of which would not have been granted planning permission without the inclusion of the golf course and the country park, as indicated in section 106 agreements.

14. A number of local community groups, business, charities and environmental groups were said to be "involved in on-going planning" and the temporary nature of the clubhouse planning permission had been "taken … into account in the business plan".

Discussion

15. In reaching a decision in this appeal, I have had regard to all the written evidence and submissions, comprised in the appeal bundle, running to 425 pages. 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.

16. The fact that two parcels of land are in common ownership is not, in itself, sufficient to make them both the subject of a combined nomination for listing under the 2011 Act. In all the circumstances of the present case, there is, I consider, a significant functional difference between the country park and the golf course. Each

is a separate land unit (as to which, see Trouth v Shropshire Council and Caynham Village Hall Committee (CR/2015/0002)).

17. Whilst this finding would have been significant, if one of the issues in the present appeal had been whether a use taking place on one of the parcels of land was ancillary to a use taking place on the other, such an issue does not arise. The appellant is content for the country park to be listed. The question for determination is whether the golf course satisfies the requirements of section 88(2) of the 2011 Act.

(a) The past: section 88(2)(a)

18. It is, I find, common ground between the parties that what needs to be examined is whether, in the period 2005 to 2013, when the golf club was in operation, that club furthered the social wellbeing or interest of the local community. There is nothing in the 2011 Act which requires one to conclude that a private members' club, such as a golf club, cannot, as such, further social wellbeing or interests. A highly exclusive establishment, charging many thousands of pounds in annual membership, might not, on the facts, have a sufficient relationship with the local community to satisfy the test in section 88. In the present case, however, I am satisfied that the use of the Gorstyhill Golf Club, up to 2013, satisfied section 88(2)(a). The first respondent's evidence indicates that there was significant use being made of the club, as a golf club, by local people. The fact that the overwhelming majority of golfers were male and middle aged or older is immaterial. Teetotallers and children may be inherently less likely to make use of the facilities of a village pub; but it has never been suggested (nor would it be correct) to refuse to list an asset merely because it is not equally valuable to all sectors of the local community.

19. The evidence indicates that the "play and pay" fees charged by the Gorstyhill Golf Club were not such as to preclude local golfers of moderate means from playing there. Indeed, the Gorstyhill Golf Club appears to have been envisaged, from the inception of the Wychwood village building project in the 1980s, as a more accessible alternative to the neighbouring Wychwood Park Golf Club.

20. I also accept that the use of the clubhouse up to 2013 furthered the social wellbeing or social interests of the local community, over and above the interests of those who used the course to play golf. I accept the evidence of the second respondent that the clubhouse was used as a social meeting place, including as a bistro.

(b) The future: section 88(2)(b)

21. The remaining issue, therefore, is whether the requirements of section 88(2)(b) are met; namely, 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 land comprising the Gorstyhill

Golf Club that would further (whether or not in the same way as before) the social wellbeing or social interest of the local community.

22. At pages 204 to 209 of the bundle, we find the planning officer's report and decision notice relating to the temporary planning permission for the clubhouse. From this we see that a temporary golf clubhouse, comprising a single storey building, was constructed for the purposes of the club, under temporary planning permission granted in 2008. The reason only temporary planning permission was granted was because such permission "would not have been approved on a permanent basis in the location and in the interest of the appearance of the development in the locality and in accordance with Policy BE.2 (Design Standards) of the Borough of Crewe and Nantwich Replacement Local Plan 2011". Being situated in open countryside "the design and siting of the temporary golf club needs to be carefully considered".

23. It is plain that the decision in 2010 to grant an extension until 2015 of the temporary permission was an exceptional measure. Circular 11/95 stated that "A second temporary permission should not normally be granted … usually a second temporary permission will only be justified where highway or redevelopment proposals have been postponed, or in cases of hardship where temporary instead of personal permission has been granted for a change of use". In 2010, the extension was sought for financial reasons. The planning officer advised that during the further five years "the applicant will be required to find a permanent solution for its accommodation needs. The impact upon the open countryside is therefore accepted for a temporary 5 year period only". The financial reasons involved "increased financial constraints and delays caused by the recent recession".

24. The condition attached to the further temporary grant of planning permission was that "the building hereby approved shall be removed from the application site and any land forming part of the golf club on or before 19th July 2015".

25. In deciding what is "realistic" for the purposes of section 88(2)(b), the present planning position of the clubhouse is, I find, of material relevance. Although the second respondent contends that provision for a permanent clubhouse features in its business plan, no evidence has been adduced as to what is envisaged in this regard. In particular, there is no evidence of any alternative location within the golf course site being identified as potentially suitable for a permanent structure, which would not have the same objections as were faced in the case of the temporary clubhouse. The fact that grants or lottery funding might be available does not address this problem. Furthermore, the fact that the existing clubhouse is now unauthorised development and should have been demolished, in compliance with the planning condition, means that (if it has not been removed already) its future must be viewed as highly precarious, to say the least. In all the circumstances, I therefore find that it is not realistic to think that, in the next five years, there could be a clubhouse on the land which would serve the social wellbeing or social interest of the local community. Accordingly, insofar as the respondents' case involves use of a

clubhouse by the non-golf playing members of the local community, the appellant must succeed in its challenge.

26. The first respondent (at page 50) contends that, so far as golfers are concerned, there may, in fact, be no need for a clubhouse on the Gorstyhill Golf Course. This is because the second respondent runs the village community hall, which is situated approximately 50 metres away from the existing clubhouse. The community hall has been completed to a very high standard and is run by the community itself, in conjunction with the Parish Council. The second respondent is said to be "considering ways in which a flexible combined use of a community hall will mitigate any adverse effects, should any proposal to seek permanent planning permission be lost".

27. In the case, say, of a rural pub, which has recently closed, members of the local community might go further afield, in order to enjoy a drink in another pub. Upon the reopening of the first pub, many of those individuals can, in normal circumstances, be expected to return to their "local". In the case of the Gorstyhill Golf Club, however, there are reasons to doubt that the same result would occur. Local golfers, who had formerly been members of the club or who had paid to play there on an *ad hoc* basis, may well be reluctant to return to a club, which no longer has a clubhouse, but which is forced to share a community hall off-site (albeit nearby). The new arrangements would, in short, be markedly different from the old. Although the second respondent makes brief reference to former members of the Gorstyhill Golf Club saying that they would be returning, it is entirely unclear whether this is predicated on the assumption (which I have found to be highly dubious) that a permanent clubhouse on the golf course can be built (or the existing structure permitted for a further period). Quite apart from this specific problem, there is a general absence of evidence to suggest that, against the background of challenging financial conditions for golf clubs generally, the first or second respondent has turned its mind to the general viability of a golf club which would not have its own clubhouse.

28. In all the circumstances, I find that the appellant is in entirely correct in highlighting the issue of the clubhouse. The issue cannot be overcome by pointing to the fact that planning applications are decided on their merits. The present planning position of the clubhouse is highly relevant in deciding what is realistic to expect in the next five years and it is not one that favours the respondents' case.

29. The second respondent's "fall-back" position (page 269) is that the now overgrown golf course makes it "synonymous" with the country park. As a result, the second respondent now considers that restoration of the golf club, as such, "may need to be done in stages". In so saying, the second respondent is acknowledging the difficulty in contending that it is realistic that the Gorstyhill Golf Club could, within the next five years, be brought into actual use as a golf club, fulfilling the requirements of section 88(2)(b). But this alternative position has its own difficulties. Apart from anything else, it is unexplained how, in reality, the overgrown golf

course could be returned to golf use "in stages". It is, for example, difficult to see how potential members could be persuaded to join a golf club which has fewer than nine holes (Gorstyhill originally having eighteen). The "stages" proposal is, thus, nebulous.

30. The second respondent's contention that its work "has identified that all parts of the course can be used for other purposes which will provide a real and tangible benefit to the local community during the period of the phased restoration" is not supported by any reliable evidence. I infer that what the second respondent might have in mind are the kinds of activities described at page 296; namely, wildlife walks which appear to take place in Wychwood Country Park. It is, however, unexplained why National Lottery or any other funding might realistically be forthcoming to facilitate such a use of the golf course, given the existence of the country park.

31. The fact that the golf course and the country park have "S106-related protection", as the second respondent describes it, is, in the circumstances, immaterial so far as the issue in this appeal is concerned. Such protection will continue, whether or not the golf course remains listed under the 2011 Act. The systems of development control and land registration will see to that. By the same token, the removal of the golf course from the list of assets of community value will not have any effect upon the existence of rights of way. For the purposes of the 2011 Act, land is not used by the local community, merely as a result of people looking at that land from a right of way (Banner Homes v St Albans City Council and Verulam residents' Association (CR/2015/0002)).

Decision

32. The land comprising the Gorstyhill Golf Course (including the site of the temporary clubhouse) does not meet the requirements for listing of section 88(2) of the 2011 Act. That land should, accordingly, be removed from the list held by the first respondent pursuant to section 87.

33. The appeal is allowed to the above extent.

Judge Peter Lane

Chamber President

11 May 2016