



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Community Right to Bid**

Appeal Reference: CR/2015/0019

Decided without a hearing
At Field House
On 3 May 2016

Before

JUDGE PETER LANE

Between

HAWTHORN LEISURE LTD

Appellant

and

CHILTERN DISTRICT COUNCIL
GREAT MISSENDEN PARISH COUNCIL

Respondents

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. 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.

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.
- (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) any 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 the legislation.”

The appeal

3. The Kings Head in Prestwood, Great Missenden, Buckinghamshire operated as a public house from the nineteenth century until mid-2013. In recent times it had been owned by Greene King PLC. In 2013, Greene King leased the Kings Head to Mr Mannan, at a rent of £24,889 per annum. He ran it as an Indian restaurant, which also welcomed local drinkers, even if they were not dining. The restaurant closed in April 2015.

4. In 2014, Hawthorn Leisure Limited (the appellant) acquired the freehold of the Kings Head, as part of a large disposition of public houses from Greene King to the appellant. On 21 May 2015, the second respondent nominated the Kings Head as an asset of community value. On 13 July 2015, the first respondent listed

the property. The appellant sought a review of that decision, which the first respondent carried out on 13 July 2015. The outcome of the review was that the Kings Head should remain listed.

5. The appellant appealed against that decision. The parties were content for the appeal to be determined without a hearing and, in all the circumstances, I consider that I can justly do so. In reaching my decision, I have had regard to the agreed bundle of documents, running to 124 pages, together with written submissions settled by Mr R Hopkins, Counsel, on behalf of the first respondent.

The issue

6. The issue in this case is whether the requirements of section 88(2) of the 2011 Act are satisfied. There is, however, the following preliminary point. Regulation 11(1) of the Assets of Community Value (England) Regulations 2012 provides that “an owner of listed land may appeal to the First-tier Tribunal”. Although the appellant was the owner of the Kings Head at the time it filed its notice of appeal with the Tribunal, it is no longer the owner. The evidence is that in February 2016 the appellant sold the Kings Head to a Mr and Mrs Nix. On behalf of the first respondent, Mr Hopkins does not “seek to take a jurisdictional point in this respect”. Although the matter may need to be re-visited in another appeal (where the Tribunal might benefit from detailed submissions), for present purposes I conclude that the Tribunal has jurisdiction to determine the appeal. Hawthorn Leisure Ltd was the owner when it exercised its right of appeal to the Tribunal. The company continues to satisfy the definition of “appellant” in rule 1 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2012.

Discussion

7. The evidence clearly shows that, despite the appellant’s contentions, there was a time in the recent past when the actual use of the Kings Head furthered the social wellbeing or interests of the local community, as required by section 88(2)(a). At page 111, there is unchallenged evidence from Mr and Mrs Eden, who ran the Kings Head as a pub from 2000 to 2007, when ill-health forced them to relinquish the tenancy. During that period the pub was successful, with a large and varied clientele, including six dart teams, two cribbage and dominos teams and two quiz league teams. It is noteworthy that those teams have either disbanded or play outside the village of Prestwood, owing to a lack of suitable public houses there.

8. Much is made by the appellant of there being other pubs in Prestwood. However, I accept Mr and Mrs Eden’s evidence that the nearest such establishment, the Polecat, “is a food pub but is not a drinking pub”. There is no

indication that any village organisations or clubs make use of other pubs in Prestwood.

9. Given the long history of the Kings Head as a pub, up to 2007, it is, I find, correct to describe that use as having occurred “in the recent past”. Furthermore and in any event, the ability of locals to socialise in the Kings Head lasted until the closure of the Indian restaurant in April 2015. Up to that point, the website for the restaurant encouraged local drinkers to come and enjoy the beers and wines on offer, even if they were not dining at the restaurant.

10. I turn to the requirements of section 88(2)(b); 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 building ... that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community”.

11. I find that the evidence satisfies that requirement. The report prepared by Savills for the appellant suffers from the fact that its writer was “only ... provided with basic trading information”. Perhaps as a result, much of the report is generic. No account appears to have been taken of the successful tenancy of Mr and Mrs Eden. In any event, even on the basis of the figures provided by Savills, a profit after paying wages and other costs of some £10,000 is reached. The evidence of interest in the purchase of the Kings Head by Mr Robert Grant and his partner (page 114) makes it clear that it is realistic to assume that a purchaser of the Kings Head as a pub may well be in a position – like that of Mr Grant – where turning a profit from the pub need not be “foremost” in the purchaser’s mind. As Mr Grant says, “we feel stopping the decline of a community has far greater rewards”.

12. I do not consider that the fact the appellant did not receive a community bid for the Kings Head when it was on sale in 2015 demonstrates that it is not realistic to think the Kings Head could re-open as a pub. As the second respondent points out, the marketing of the pub was under way by the time the Kings Head was listed. I find on balance that the figure of £650,000, at which the Kings Head was advertised, was not a realistic asking price for a building whose permitted use was as a pub, and not solely a private residence. There is no evidence before me as to what price was paid by the eventual purchasers. Even if they were persuaded to pay the advertised asking price, the planning position is that consent for a change of use to a residence has been refused, having regard to local plan policies. It is speculative to suggest that the planning position is likely to change in the near future.

13. In all the circumstances, I agree with the first respondent that use of the Kings Head as a pub very much remains a realistic option (albeit that it is not the only such option). Prestwood is a large village, with a population in excess of 7,500. Although served by other pubs, the evidence demonstrates that the Kings Head has significant potential to resume its position as a social meeting place for

residents, whether involved in local clubs and associations or otherwise. The evidence of Mr and Mrs Eden is, in this regard, supported by that from Mr Grant and, additionally, from the Prestwood Revitalisation Group (pages 112-113).

Decision

14. The appeal is dismissed.

Judge Peter Lane
10 May 2016