



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

Appeal Reference: CR/2016/0001

**Heard at Bury St Edmunds County Court
and Family Court Hearing Centre
On 20 July 2016**

Before

JUDGE PETER LANE

Between

ANN CERESA

Appellant

and

MID SUFFOLK DISTRICT COUNCIL

Respondent

Appearances:

For the appellant: In person, assisted by Nicolas Kingsley, Solicitor

For the respondent: Simon Smith, Solicitor

DECISION AND REASONS

A. 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.

B. Legislation

2. Section 88(1) and (2) 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. Section 89 explains the procedure for listing (so far as relevant):-

"89. Procedure for including land in list

- (1) Land in a local authority's area which is of community value may be included by a local authority in its list of assets of community value only –
 - (a) in response to a community nomination, or

- (b) where permitted by regulations made by the appropriate authority.”

C. The appeal

4. This appeal concerns the public house known as the Cross Keys, which is the only such establishment in the village of Redgrave, near Diss. There is no dispute between the parties that the Cross Keys Public House meets the criteria for listing as an asset of community value under section 88 of the 2011 Act. It is a functioning pub, used by locals to drink and socialise. Various village activities are centred on, or otherwise involve, the Cross Keys, such as seasonal festivities.

5. What is disputed is the decision of Mid Suffolk District Council (“the Council”), following a review under the Assets of Community Value (England) Regulations 2012, to maintain the listing of the part of the garden area of the Cross Keys, shown outlined on the official copy of the title plan to Land Registry Title No SK363825 (bundle, page 75). Mrs Ceresa, the owner, has appealed against the review decision.

D. The hearing

6. The hearing of the appeal took place in Bury St Edmunds on 20 July 2016. Mrs Ceresa appeared in person and gave evidence. She was assisted by Mr Kingsley. Also in attendance was Mr Peter Ceresa, Mrs Ceresa’s son, who lives in the Cross Keys and runs the pub.

7. The Council was represented by Mr Smith. He cross-examined Mrs Ceresa and made submissions.

8. In reaching a decision in this appeal, I have taken account of the oral evidence and submissions, together with the materials contained in the hearing bundle, assembled by the Council, which runs to 106 pages. At the hearing, I was supplied by Mr Smith with a copy of the planning permission issued by the Council as local planning authority to Mrs Ceresa in August 2015, giving consent to the erection of three holiday units, with associated parking, to the rear of the Cross Keys, on the land situated within the area shown on the plan for SK363825.

9. Mrs Ceresa explained the genesis of the project to construct the holiday units (or chalets). The Cross Keys had been purchased in order to provide a living for Peter Ceresa and one of his sisters. The latter subsequently moved away, with the result that Peter is now in sole charge. He enjoys his work and the family is keen to ensure that the Cross Keys remains viable. Mrs Ceresa told me that, although villagers make use of the Cross Keys, she feels that a larger number could do so.

10. In order to generate additional income and business for the pub, Mrs Ceresa had discussions with local planning officers with a view to exploring the feasibility of creating en-suite accommodation within the existing pub building. Peter Ceresa was, however, concerned at the adverse impact on the locals, if the room currently containing a pool table were, as a result, to disappear.

11. The family accordingly conceived the idea of building three self-catering holiday units on part of the garden. Given Mrs Ceresa's extensive experience in the accommodation industry, she considers that the holiday units would significantly enhance trade at the Cross Keys. During the week, business travellers could be expected to use the units and drink in the pub, whilst leisure travellers would do the same at weekends. As a result, some £750 a week could realistically be added to the turnover of the Cross Keys. The holiday units would be booked through an online system and their servicing would be outsourced.

12. Mrs Ceresa said it was likely that the family would be able to implement the planning permission, using their own financial resources, particularly if certain land held in Oxfordshire could be sold. Otherwise, she would obtain commercial funding. She stressed that she had a good relationship with her bank manager.

13. Mrs Ceresa said (in cross-examination) that the family intended to implement the planning permission within the three year period mentioned in the August 2015 consent. The building programme needed to be fixed by reference to the requirement to carry out certain archaeological works prior to the commencement of development (conditions 3 and 4), as well as by reference to the time of year.

14. Mrs Ceresa explained in detail, by reference to the plan attached to the planning permission, how the garden of the Cross Keys would be improved, as part of the development. Present unsightly sheds would be removed and landscaping would take place.

15. Mrs Ceresa was cross-examined in some detail regarding her evidence-in-chief, in which she said that the part of the garden sought to be excluded from listing was not, at present, used to any material extent by customers of the Cross Keys. Mrs Ceresa said that trees and shrubs currently occupied the site. Most people who chose to sit outside would do so at the front of the pub, alongside the road. Asked by Mr Smith whether families with children would choose to sit in such a place, Mrs Ceresa replied that there is (and will continue to be) a separate courtyard area, to the southeast of the pub building, which was fenced from the road.

E. Discussion

16. The issue of whether land covered by a nomination (and subsequent listing) as an asset of community value can be conceptually separated into more than one "land unit" is a fact-sensitive one. Each case, in other words, turns on its own facts.

17. In this regard, nothing material turns on the decision by Mrs Ceresa to separate the rear part of the garden for the purposes of land registration. What is, however, of far more significance is the grant of planning permission. In the particular circumstances of this case, the grant, coupled with the fact that the area in question can readily be demarcated from the rest of the grounds of the Cross Keys, leads me to conclude that it should be looked at in its own terms, albeit with reference to the activities taking place in the Cross Keys.

18. I found Mrs Ceresa to be, overall, an impressive and truthful witness. I accept her evidence that customers of the Cross Keys do not make any material use of the rear portion of the garden for any purpose that can be described as furthering the matters set out in section 88(2). Despite intensive and skilled cross-examination, Mrs Ceresa was adamant that, in particular, children do not make use of the area. A suitable area for any small child, who needs to be restrained from venturing on to the B1113 road, exists in the courtyard area.

19. For these reasons, I conclude that the area in question does not, at present, further the social well-being or social interests of the local community. Nor is there any evidence to show that it has done so in the recent past (section 88(2)(a)).

20. That finding is sufficient to dispose of the appeal. But even if that finding were wrong, I find that paragraph (b) of subsection (1) or, as the case may be, subsection (2) of section 88 is, in any event, not met. It is not realistic to think that there either could continue to be non-ancillary use of the area in question, which furthers relevant interests, or that it is realistic to think that there is time in the next five years when there could be such use. My reasons are as follows.

21. I am satisfied that Mrs Ceresa and her family intend to implement the planning consent by August 2018. I am also satisfied that she has the means to do so (or can readily obtain the same). Her business case is unchallenged and, in any event, I find it to be compelling. Indeed, it is, I consider, manifestly in the interests of the local community, who wish to see the Cross Keys continuing to function as a local pub, that the viability of the business should be strengthened. So compelling is the case for the holiday units that I find it is highly likely (indeed, almost inevitable) that any hypothetical future owner of the Cross Keys (including a community interest group) would wish to implement the planning permission. Thus, even on the hypothetical basis that the local community took on the Cross Keys, it is not realistic to think that the garden land which is the subject of this appeal would be actually used in a way required by section 88.

22. Mrs Ceresa has concerns about the way in which the Council ran the process under the 2011 Act. As I explained at the hearing, these matters do not fall within the scope of Mrs Ceresa's appeal to the Tribunal. I should, however, make it clear that the fact I have taken a different view, on appeal, from that of the Council is not to be regarded as lending support to Mrs Ceresa's criticisms.

F. Decision

23. The appeal, is accordingly, allowed. The Council must remove the land delineated on the plan to Title No SK363825 from the list maintained by it under section 87 of the 2011 Act.

Judge Peter Lane

4 August 2016