



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

Appeal Reference: CR/2016/0002

**Heard at Dover Magistrates Court
On 28 September 2016**

Before

JUDGE CHRISTOPHER HUGHES

Between

THE BAY TRUST

Appellant

and

DOVER DISTRICT COUNCIL

First Respondent

5TH DOVER (ST MARGARET'S) SCOUT GROUP

Second Respondent

Representation:

For the appellant:	Ms Philomena Harrison (Counsel) instructed by Mr Christopher Hanson (Solicitor)
For the first respondent:	Ms Karina Vickerman (Fellow of the Chartered Institute of Legal Executives)
For the second respondent:	Mr Alec Clayson

DECISION AND REASONS

A. LEGISLATION

1. For present purposes, the relevant provisions are:-

Localism Act 2011

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.
- (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

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.

B. THE FACTS

2. The Bay Trust was founded by Mr. F.E. Cleary as the St Margaret’s Bay Trust in 1970 and his family “with the object of improving and preserving the physical environment of the Parish of St Margaret’s at Cliffe by the purchase of land and property, the planting of trees, the provision of seats and such other activities which will maintain the character of the Village.” One of the properties it bought was “The Glebe Land – adjoining the Church and Village Hall – to protect the area and provide recreational space” (undated St Margaret’s Bay Trust document at bundle page 263, possibly 1972). In 1973/4 in consultation with the Charity Commission the intention was formed to use the field for housing and to promote biodiversity (Appellant’s Reply paragraph 9 bundle page 28). This trust was succeeded by the Bay Trust in 2008. The Bay Trust promotes environmental education and works with young people in a variety of ways including providing outdoor learning. It continues to own a number of sites in the Dover area including; Rippledown used as a residential outdoor learning centre, Steps Bank a landscape regeneration project, Pines Calyx a centre for research in

building energy conservation, Pines Garden a living classroom for teaching sustainable living, a field (the Sea Street site) and the Glebe Field.

3. The Glebe Field is an area of 5111 m². A survey of the flora, invertebrates and birds conducted by the owners (the Bay Trust) on 14/5 June 2016 describes the habitat as semi-improved grassland/meadow with hedgerow and boundary trees. The Trust state that it is actively managed to maintain the diversity of grassland and meadow flowers. On 18 December 2013 it entered into a contract for the sale of the field. The sale is subject to obtaining a satisfactory planning permission. A planning application has been submitted and the Trust's objective for the site "is to provide a mix of low-carbon community focussed housing and open land which will also increase the bio-diversity of the site with permaculture methodologies." (witness statement C Bicker, Interim Executive Director and Deputy Chair of the Bay Trust).

4. The 5th Dover (St Margaret's) Scout Troop was formed in 1968. It received a substantial donation from Mr F.E. Cleary which, with other fundraising, enabled it to build a Scout Hut on land within what was then the Vicarage Field, the Glebe Field being a residue of that open land after further development. It works to promote the development of young people in achieving their full potential as responsible citizens.

C. ISSUES IN THE APPEAL

5. In this hearing the parties helpfully identified three issues; whether there is an established non-ancillary use of the land, does it further a social interest and is it realistic to think that it will continue.

6. The written evidence of Mr Bicker was that the Glebe Field was actively managed by the Bay Trust for maintaining and researching the bio-diversity of the field (as evidenced by the survey report). This was the principal use of the land. The Bay Trust and its predecessor the St Margaret's Bay Trust had perhaps once or twice a year been approached for permission to use of the land or a 24/48 hour period and some of these requests had been refused (letter 4 January 2016, bundle page 160). Other uses of the field had not been permitted by The Bay Trust nor had they been witnessed by any members of staff who were local residents. He stated (witness statement paragraphs 25/26):- "St Margaret's Bay Trust was a separate entity and used the land merely as an investment property. Since the Bay Trust was founded whilst the Glebe Field remains a potential development property, it is part of a much wider land portfolio." The boundary of the property was secured by a well maintained boundary fence and notices stating the land was private were erected about five years ago. He exhibited weekly check reports on the Glebe Field address the boundary fence, gate, lock and waste deposits on the land for the period February to August 2016.

7. Diane Gould, a community outreach worker for the Bay Trust for the last 8 years gave oral and written evidence. Much of her evidence related to the recent history of relations with the Scout Group with respect to an alternative site for the 2015 village fete which the Trust had not permitted to be held on the field as it had been since it had been revived in 2009. She stated that she drove past the Glebe Field 4/5 times a week on her way to swim at the local leisure centre and had not seen the scouts. She acknowledged however that she did this in the mornings and scout activities were in the evening adding "to be honest I do use the road to go to Aldi's and I have never seen anyone use it except cars". She initially claimed that a paling fencing was erected around the field in 2014, then acknowledged that different fencing had been described at the start of 2016 and stated that the fencing had been erected in "2014 or later". She acknowledged that as she was not part of the estates team she lacked their detailed knowledge of the fencing. She stated that it was "only polite" to ask to use the field, that while the scouts could have got onto the field "they can physically trespass". Her evidence appeared to be driven by certain assumptions and on matters of detail and observation I am not satisfied that her evidence was relevant.

8. Mr Clayson has been involved with this scout group since 1982, as Group Scout leader for 28 years until the day before the hearing. The scout hut had been built on the corner of the Vicarage Field, which had been originally owned by the diocese and then the St Margaret's Bay Trust. Until 1979 there had been one big field and the scouts had used all of it. They had used the field until 2015 for the weekly activities of the various parts of the scout movement, six different sections (Guides, Cubs etc) meeting on four evenings each week and involving about 100 children and young people; more would be involved but numbers were limited by the availability of group leaders. Each section would spend between half an hour and an hour on the field when the weather was fine. Local children also used the field to play, constructing dens and a tree swing in one corner. Specific requests for permission to use the field were only made when the use was exceptional – for a fete or for an overnight exercise. He took responsibility for arranging with a local farmer to come in and cut the meadow each year, the Bay Trust was not involved in that arrangement. In addition the scouts mowed parts of the field more closely to make it more suitable for the fete. In 2015 when he was informed that the field was not available for the fete he had asked for a meeting with the Bay Trust and had also approached the purchasers. The meeting had resulted in an offer of an alternative site for the fete which was not practicable for the scouts and other discussions about future relocation. The purchasers had not replied. He had not been aware of the change of Trust in 2008; "I don't know why the chairman changed, we had no reason to think we should stop using the field, there was no indication." The boundary fence was for many years a decaying post and two rail fence; replaced in 2010 with a post and single rail. Neither had been sufficient to prevent entrance to the site and "private" notices had been erected in 2015. The paling fence (which did not completely enclose the site) had not been erected until 2016. The field had

previously been secured with a padlock, in 2012 this was changed to a combination lock for which the Scout Group had the code.

H. CONSIDERATION

(1) a non-ancillary actual or recent use of the land

9. The oral and written evidence points overwhelmingly to the conclusion that the use of the land, by the Scout Group and others, is non-ancillary. The St Margaret's Bay Trust acquired the land (paragraph 2) to protect it and for recreational purposes. The founder of that trust also endowed the Scout Group to enable them to build on part of the then field so that they could use the field for recreational purposes. Other continuing recreational uses (by children) were accepted by that trust and specific permissions were given for more intensive use. While the current owners may have an active intention to dispose of the land for development and this may be consistent with the purpose for which the previous owners held the land (paragraph 6) it is clear that for many years, whatever the intention formulated in 1974 may have been, the charity has used the land for recreational purposes. The use by the Scout group clearly had the permission of the St Margaret's Bay Trust which sought to promote recreational use. The Bay Trust has clearly had different priorities and evolving activities since 2008 which have not focussed on this land until they proceeded to market it and set about obtaining planning permission for development. They continued to co-operate with the Scout Group by providing them with the combination of the lock. The Scout Group continued to arrange for the mowing of the field and continued to use it for their weekly activities. The Bay Trust renewed the fencing in 2010 and 2016 (the Council's Reviewing Officer found at the start of 2016 that the fence was decaying and incomplete) and put up signs in 2014. The evidence is that no communication of a change of the management of the land was made to the Scout Group until 2015. Until that time the predominant and non-ancillary use of the land was for recreational purposes and the Scout Group was a major user for that purpose. The survey from 2016 and the recent weekly surveys of the boundary fence do not indicate any continuing process of managing the field; rather it points towards a recent change to further the application for development. This is a recent use of the land within section 88(2)(a).

(2) does it further the social wellbeing or social interests of the local community

10. The position therefore is that each week, subject to the weather being dry, a total of about 100 young people take part in a range of scouting activities and sports under the supervision of the various scout leaders responsible for each of the groups. In addition there have been uses for which explicit permission has been sought, whether it be for an overnight camp or the annual village fete. Ms Harrison argued that the use without explicit permission was a trespass and that the effect of this was that Mr Clayson and his colleagues had been encouraging

the young people of the village to trespass and were thus, it appeared, encouraging lawlessness and a lack of respect for the rights of others in successive generations of young people in the village. As I have indicated above I am not satisfied that this use was a trespass. Even if I am mistaken on that point, it was pellucidly clear from the evidence of Mr Clayson that he and his colleagues believed on reasonable grounds that they had permission to use the field for the playing of games and other activities. Such a reasonable, if mistaken, belief of entitlement could not be undermining the Scout Law, as Ms Harrison argued, and the recreational activity it enabled for many young people was clearly of social benefit to the local community.

(3) is it 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?

11. The Bay Trust is in the process of disposing of the land for development. At the date of the hearing the planning application had not been resolved and the outcome of such a decision will clearly have an impact on the future use of the land. As the Council's Reviewing Officer, in considering the review of the Respondent's decision to list the land correctly noted, both grant and refusal of the application are realistic possibilities. If the application is not successful then the Bay Trust will face the question of how to advance its charitable purposes without the development. In such circumstances it is entirely conceivable that it will adopt another approach which will be consistent with continuing the use of the field which has continued for many years until recently. I am therefore satisfied that continuing the use is a realistic prospect.

Decision

12. I am satisfied that the grounds for listing this land are established and the appeal is dismissed.

Judge Chris Hughes

3 October 2016