First-tier Tribunal
(General Regulatory Chamber)
Community Right to Bid

Appeal Reference: CR/2016/0009

Heard at Fleetbank House, London EC4Y 8AE
On 29 November 2016

Before

JUDGE ANTHONY SNELSON

Between

Z B INVESTMENTS LTD

Appellants

and

LONDON BOROUGH OF CROYDON

First Respondents

and

SAVE THE SHIP GROUP

Second Respondents

DECISION

The decision of the Tribunal is that the appeal is dismissed.

REASONS

Introduction

1. The Ship at South Norwood ('the pub') served the local community from about 1809 until its sudden closure in the summer of 2014. Most of the present structure dates from Victorian times. It is situated in the South Norwood

Conservation Area and is locally listed. Since the closure the entire property has been divided into flats, in clear breach of planning controls.

2. This is the appeal of ZB Investments ('ZBI'), the freehold owners, against the decision of the First Respondents, the London Borough of Croydon ('the Council'), given in a document dated 27 April 2016, declining to review their decision of 7 January 2016 to include the pub's ground floor, basement and garden / yard in their list of assets of community value.

3. In *BHL v (1) St Albans City & District Council (2) Verulam Residents Association* [2016] UKUT 0232, Upper Tribunal Judge Levenson offered this summary of the nature and effect of the assets of community value ('ACV') legislation:

> **3. The Localism Act 2011 requires each local authority to keep a list of land (including buildings) in its area which is of community value. The effect of listing (which usually lasts for five years) is that generally speaking an owner of listed land wishing to sell it must give notice to the local authority after which any community interest group has six weeks in which to ask to be treated as a potential bidder. If any such group does so the sale cannot take place for six months, during which the group may come up with an alternative proposal. At the end of the six months it is up to the owner whether to sell and to whom and on what terms. There are arrangements to compensate owners who lose out financially in consequence of the listing.**

4. The appeal came before me on 29 November this year for oral hearing. ZBI were represented by Mr Jack Parker, counsel, and the First Respondents ('the Council') by Mr Christopher Cant, counsel. Mrs Rachel Pickering spoke on behalf of the Second Respondents, 'Save The Ship' (hereafter 'STS'), the unincorporated association which nominated the pub for ACV listing and campaigns for it to be saved as an amenity for the local community.

5. Mrs Pickering and her husband, Mr Mark Pickering, gave evidence and were cross-examined by Mr Parker and Mr Cant. In addition I received documentary evidence contained in a substantial agreed bundle, which Mrs Pickering supplemented with certain loose papers in the course of the hearing. These included signed statements in the names of Mr Glen Hall, Ms Rose Bartlett and Cllr Steve O'Connell and an email of 28 November from Cllr O'Connell. I also pre-read statements on behalf of the Council in the names of Ms Julie McGhee, Mr Pete Smith and Ms Sarah Ireland, although Mr Cant and Mr Parker agreed before me that nothing turned on their evidence since it went to issues which had fallen away before the hearing began.

6. In addition I had the benefit of skeleton arguments from Mr Parker and Mr Cant.

7. After hearing closing submissions I reserved judgment. I was not asked at any time to grant permission for the submission of late evidence. By an email of 3 December Mrs Pickering sought to introduce fresh material concerning the

garden issue. This resulted in further emails from all three parties, together with attachments.[1] All were forwarded to me. It seems[2] that their broad purpose was to develop the points shortly made at the hearing concerning rights over the garden/yard, the uses to which that space was put when the pub was open and the uses to which it has been put since. Having reminded myself of my broad case management powers,[3] I decline to admit this fresh material. It has not been permitted and I see no reason to permit it. Litigation needs to be conducted in an orderly fashion, in accordance with rules and conventions. Otherwise there is the risk of unfairness. Prejudice is liable to result if evidence is put in after a hearing and therefore not (a) tested through the cross-examination of witnesses or (b) made the subject of oral argument. There may be cases where justice can be done by admitting late documentary evidence and inviting written submissions upon it, but I do not consider that it would be right or proportionate (having regard in particular to the 'overriding objective' of the 2009 Rules[4]) to take that course here. The Tribunal gave clear pre-trial directions in the usual way. The parties have had ample time to prepare. The Appellants and the Council have had legal representation throughout. Moreover, I accept the thrust of the Council's submission that the new material appears to miss the point that whether or not (a) adjoining landowners had (or have) rights over the land or (b) the use of the land by occupiers of the pub premises was lawful are irrelevant considerations, given the statutory questions before the Tribunal.[5]

The Legislation

8. Section 88 of the Localism Act 2011 ('the Act') includes:-

> **(2) For the purposes of this Chapter … a building or other land in a local authority's area is land of community value if in the opinion of the 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 social 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 term 'social interests' includes (in particular) cultural, recreational and sporting interests (s88(6)).

9. The 'recent past' is not defined in the 2011 Act or any relevant subordinate legislation. In *Crostone Ltd v Amber Valley BC* (CR/2014/0010) Judge Peter

[1] Evidence as well as argument from the Appellants and Mrs Pickering; argument only from the Council
[2] I have glanced at them solely to enable me to understand their general purpose. I note that some attachments cannot be opened.
[3] See the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ('the 2009 Rules'), r5.
[4] See r2
[5] See *eg BHL-v-St Albans City & District Council & another* [2016] UKUT 0232.

Lane, President of the General Regulatory Chamber ('GRC'), sitting in the First Tier Tribunal ('FTT'), observed (para 14):

> **What constitutes the "recent past" will depend upon all the circumstances of a particular case. To that extent, the expression is a relative concept.**

The remark is not binding upon me but it is plainly persuasive. Moreover, I respectfully agree with it.

10. The word 'realistic' in s88(2)(b) was considered in *BHL v St Albans City and District Council* [2016] UKUT 0232. The FTT had equated it with 'not fanciful' and, while the Upper Tribunal remarked (para 38) that it is always wiser to stick to the statutory language, it found no error of law at first instance. There is no empty space between what is 'not fanciful' and what is 'realistic'.

11. Under the 2011 Act, s90(2) and (3) a local authority must consider any 'community nomination' and must accept it if the land nominated is within the authority's area and is of community value (under s88). If the nomination is accepted the authority must cause the land to be included in its ACV list (*ibid*, subsection (4)).

12. The 2011 Act, s92 makes provision for the right of owners of land included in a local authority's list to seek a review of the listing decision. The 2012 Regulations, reg 11 includes:

> **(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.**

In *Gullivers Bowls Club Ltd v Rother District Council* (CR/2013/0009) Judge Nicholas Warren, immediate past President of the GRC, held (para 18) that appeals under reg 11 take the form of a complete rehearing. The same judge held in *Dorset County Council v Purbeck District Council* (CR/2013/0004) that the Tribunal's determination of the issues must be made as at the date of its decision (para 19). Again, I respectfully agree with this guidance and adopt it.

The Issues

13. Until shortly before the hearing there were numerous issues in this case. These included sundry matters such as a time limit point and a disagreement about the status and precise legal standing of the Second Respondents. Very sensibly, the Appellants have abandoned those technical and procedural arguments and there are now just three issues for me to determine. First, is there a time in the recent past when an actual, non-ancillary use of the pub furthered the social wellbeing or social interests of the local community ('the s88(2)(a) issue')? Second, is it realistic to think that there is a time in the next five years when there could be non-ancillary use of the pub which furthered the social wellbeing or social interests of the local community ('the s88(2)(b)

issue')? Third, even if the Appellants fail on the first two issues, should the ACV listing be varied (assuming that the Tribunal has power to vary it at all) to exclude the garden / yard ('the garden issue')?

The Facts

14. The evidence was quite extensive. I have had regard to everything put before me. Nonetheless, it is not my function to recite an exhaustive history or to resolve every evidential difference. The facts essential to my decision, either agreed or proved on a balance of probabilities, I find as follows.

The premises

15. The site has an area of some 567 square metres. It is situated on the High Street and surrounded by a mix of residential and commercial properties. It backs on to the railway line and has excellent public transport links.

16. A three-storey building stands on the site. Until the works effected after the closure in 2014 the pub consisted of a downstairs bar area with a basement below and the adjoining garden / yard. Upstairs, there was residential accommodation including a kitchen. The kitchen was not listed because it was judged to serve the living quarters and not to form part of the pub facility. That assessment has not been challenged.

17. The High Street frontage is terraced. To the right of the front of the pub proper as one faces it is a gate which gives access to a narrow way which runs parallel to the premises for most of their length and then opens (to the right) on to a (roughly) square yard. This is the area referred to above as the 'garden / yard'. According to a document dated 16 February prepared by surveyors acting for the Appellants, "the area has enjoyed a common law right of way by many properties".

18. It is common ground that the fabric of the building was not well maintained. Mrs Pickering described it as "shabby". There would be leaks at times of heavy rain. The accommodation upstairs was also of poor quality, which led to complaints from some who occupied it.

The planning history

19. The lawful use of the site is and for generations has been A4 licensed premises (ground floor and basement) and C3 residential ancillary to the licensed premises (first and second floors).

20. Three planning applications on the part of the current owners of the pub have failed. The first, refused on 13 January 2015, sought permission for seven two-bedroom flats, two one-bedroom flats and an office. The second, refused on 22

April 2015, proposed four two-bedroom flats, a studio flat and an office. The third, refused on 27 January 2016, was for flats on the upper floors and the rear of the ground floor with the remainder of the ground floor and the basement reverting to licensed premises use. Mr Parker told me that this application was made despite the owners remaining convinced that a pub on the site was not, and would not be, a viable proposition.

21. As a result of the unauthorised development the Council have served an enforcement notice on the Appellants, which they have appealed. One of the grounds is that planning permission should be granted for the development as built, subject to minor amendments. It seems that the only factual issue in the enforcement proceedings is whether the Appellants have created seven flats or eight. The appeal has yet to be heard.

Facts relevant to the s88(2)(a) issue

22. The pub was at all relevant times up to 2014 a tied house owned by Punch Taverns. For over ten years ending in 2011 they leased it to Mr Stephen Courtney. He made a success of his tenure but eventually left in frustration, unhappy at what he saw as a failure by the company to invest in the property and maintain it. After he departed a series of managers (not tenants) followed. None lasted long. One was caught selling his own stock and dismissed. Others were incompetent or feckless. One held a barbeque (in the garden/yard) on a day of snow. I infer that it was not a success. The beer was not kept as well as it had been. Supplies of beer sometimes ran out because orders had not been placed in time. On occasions the pub did not open on time and one manager made a habit of entrusting the keys to a 'regular' and asking him to open up for him. The period after 2011 certainly saw a decline in the pub's fortunes and some customers drifted away. Receipts inevitably diminished. Matters appeared, however, to be improving in 2014, following the arrival of a new manager (identified in the evidence only as 'Jo'), who was capable, had relevant experience, knew the area and was willing to work hard. Among other things, she forged links with local groups, promoted and advertised pub events and activities (directly or through social media), encouraged a broader range of patrons (including younger 'mums'), started offering coffee and sandwiches, and exploited the garden/yard to attract families and other mixed-age groups which included children.[6] Where these initiatives might have led is a matter for speculation given the sudden closure of the pub in 2014.

23. The pub's principal market was the beer drinker. One enthusiast, Mr Hall, a 'regular' for over 45 years, described it as the only real ale pub in the area. Cllr O'Connell said that it was the only local pub that sold a "reliable" pint of real ale. At all events it was not suggested that any other local establishment had a better name for real ale. Mass-market beers and lagers were also sold. Food

[6] In particular, she arranged a 'Family Day' at the pub in August 2014.

was not ordinarily offered save for summer barbeques held from time to time and (latterly) the sandwiches just mentioned.

24. Mr and Mrs Pickering attested to the friendliness of the pub and its warm and convivial character. They and other witnesses described a mixed clientele, a range of ages and a unique atmosphere. Mrs Pickering said that it was place to go for company and conversation and to find out what was happening locally. Cllr O'Connell made the point that for some 'regulars', particular older men, it was the very hub of their social lives. Mr Hall said that everyone knew each other's names, the pub was "the heart of the community" and that older patrons were cared for by staff and 'regulars'. I accept that all of this evidence reflects the sincere and reasonable perceptions of those who visited the pub frequently.

25. Because of its location, the pub's atmosphere tended to change when Crystal Palace FC ('CPFC') had a home fixture. For some hours on match days it became very busy. No doubt it was a lot noisier than normal on such occasions but I was told without challenge, and again accept, that there was never any 'trouble' or violence and that home and away fans drank quite contentedly together.

26. Those who used the pub had access to a number of activities. There was live music from time to time. Mr Hall described regular visits by jazz bands and other performers. The Boston Brew group played at the pub in January and February 2013 as did Captain Sensible in July 2014. There were also evenings hosted by a 'resident' DJ, some involving karaoke and some not.

27. Quiz nights were held during Mr Courtney's time, although not, it seems, thereafter.

28. The pub had a darts board and a pool table. It fielded teams in both sports and collected some trophies, which were on display.

29. Users of the pub also shared two particular sporting activities off the premises. Golfers (dubbed 'The Ship Shankers') played regular four-ball and eight-ball days and held two tournaments a year. The course where they played still hopes for their return. There was also a five-a-side football team.

30. From time to time the pub was used for 'one-off' celebrations of 'big' birthdays and other special occasions.

31. The pub was also used by external groups. It was attended by the South Norwood Lakes Sailing Club in 2011 for drinks after dinghy sailing, at least during the summer months. The Norhyst Householders' Association met there and it was also chosen as the location for Stanley Technical Boys College union/staff meetings. In addition, the steering group of Crystal Palace

Transition Town met at the pub to plan the Sensible Garden project, which involved clearing and planting a piece of derelict land nearby. When that work was underway, the pub (then in the hands of 'Jo') offered considerable support, providing a water supply and refreshments for the participants. On completion of the project, the pub hosted the celebratory party and laid on a barbeque. This was the event at which Captain Sensible (already mentioned) played in July 2014. Members of the project, who ranged from schoolchildren to retired people, had plans to do some work to brighten up the pub's garden/yard, but this aspiration was not fulfilled owing to the closure which followed very soon thereafter.

32. Mr Cant relied on the breadth of support for the STS campaign as itself tending to show that the s88(2)(a) test is satisfied. In the nomination document submitted in or about November 2015 it was stated that over 40 individuals had personally supported the nomination and that supporters on social media numbered over 1000. Further, it was pointed out that the objectors to the owners' second planning application numbered over 500, more than 300 of whom had added comments online supporting the preservation of the pub,[7] and that a further petition against the third planning application had collected 347 signatures in less than 10 days at a time when many people were away on holiday. I accept that this information is substantially correct, having no reason to think otherwise.

33. Mr Parker not unnaturally reminded me that local opinion is not all one way. My attention was drawn to two letters written in June 2015 by, one infers, individuals with interests in The Albion and The Jolly Sailor, two other pubs in South Norwood High Street, both of which opposed the re-opening of The Ship. The thrust of both letters was that it never thrived, was never a local asset and would bring no benefit to the community if restored. (For what it is worth, Mrs Pickering told me that the proprietor (or manager) of The Albion now supports the revival of the pub.) ZBI also produced a somewhat tendentious 'petition' seeking views "on whether re-opening of a failed pub would benefit the real local community." The interviewees were offered the opportunity to reply 'Yes' or 'No' but the 27 who filled in the form all replied 'No'. Most said that there were too many pubs locally. Two (at least) disapproved of alcohol. One expressed an unfavourable opinion about The Ship.

34. Mr Parker made a separate point about the petitions against planning permission arranged by STS, namely that they included erroneous references to the pub having an A2 retail use. Mr Pickering explained that the paperwork was produced in that way by mistake. I find that it was indeed an error and one which has not resulted in anyone being confused or misled. It was wrongly thought that the commercial use of the pub fell within the 'retail'

[7] Copies were included in the bundle.

classification. In a message delivered to the Council (also the local planning authority) on 10 April 2015, STS said:

> **The Ship … is a building of significant architectural interest. We wish to object to the proposed change of use.**
>
> **We are seeking to maintain A2 retail usage, since shops are important to our community and this building on a busy high street.**
>
> **…**
>
> **This building has been in A2 retail use since the 1820's and became a public house in 1852 and has continued to be so until its closure in June 2014.**

35. As I understood him, Mr Parker accepted that the use of the pub up to 2011 satisfied the statutory test under s88(2)(a) save only that a state of affairs ending in that year could not be said to be in the 'recent past.' But he contended that any qualifying use after 2011 was *de minimis*. Mrs Pickering estimated that there was a core of about 150 'regulars' aged over 50 who visited the pub daily. If the numbers, apart from match days and special occasions were ever that high, I am satisfied that average daily attendance was certainly lower by 2014, when 'Jo' took charge. But even during the period of decline between Mr Courtney and 'Jo', I find that, as Cllr O'Connell states, an appreciable body of 'regulars'[8] remained loyal. The figures probably picked up a little in the short time that 'Jo' was there.

Facts relevant to the s88(2)(b) issue

36. The findings above concerning the level of support for the campaign to save the pub are also relevant here, but will not be repeated.

37. Mrs Pickering told me, and I accept, that STS has members with a mixture of experience and backgrounds, ranging from brewing to fundraising to communications. They have held two public meetings and have an email list of over 1,000 supporters. Some have expressed interest in contributing financially, some in other ways.

38. The group has connections with a local micro-brewery, a wine supplier and a catering organisation.

39. Advice and support has been received from the Ivy House in Ladywell, which was salvaged and now runs successfully as a community pub operating on the 'community shares' model.

[8] Cllr O'Connell refers to a 'crowd'. When I refer to a 'regular' I mean someone who visits often enough to be known to the pub and some other users. A CAMRA viability test carried out by Mrs Pickering after the pub closed included an online survey to which 213 local residents responded. In answer to the question, Did you drink at the Ship, the following recorded replies (numbering 212) were given: Never: 100; Daily: 2; Weekly: 14; Monthly: 13; On CPFC match days: 11; Occasionally: 60; Visited once and didn't return: 12. I accept Mrs Pickering's point that some older patrons of the pub may have been excluded by the fact that participation in the survey required access to, and ability to operate, a computer.

40. STS has also approached the Plunkett Foundation which helps communities to solve problems collectively through co-operatives and similar ventures and has recently launched a dedicated pubs programme. Subject to its criteria being met, the Foundation offers financial support in the forms of bursaries, loans and grants as well as training and advice. It has said that it may be able to help the group.

41. In addition, STS has made contact with the Ecology Building Society, which has a special interest in supporting community-owned businesses. Again, there is the possibility of help from this source. The Society has supplied a summary of the information it requires before being able to take a proposal forward. Such information relates principally to the community organisation applying for assistance, the property in question and the business plan.

42. When pressed on the financial viability of the pub if it were re-opened, Mrs Pickering frankly accepted that the group has at present nothing amounting to a business plan for the pub. She made the point that it is not possible to make a plan until one knows what one is dealing with. Purchase of the freehold would be one thing, taking a leasehold interest quite another. Quite different considerations and calculations would be involved. A further obstacle to concrete planning is the fact that the current owners have not allowed the group access to inspect the premises.

43. Mr Parker also challenged the raw material on which any business plan might ultimately be based. He pointed to a discrepancy between Mrs Pickering's assertion for the purposes of the CAMRA viability test that weekly takings in the football season averaged £10,000 per week and Mr Courtney's statement (cited on the same page) that wet sales amounted to about £1m over ten years (a weekly average for any full year of under £2,000). Mrs Pickering did not give me any reason to place confidence in her figure, although I have no doubt that receipts fluctuated and were significantly higher in the weeks of home CPFC fixtures. I also note that Mr Courtney, after referring to the average wet sales over ten years, added:

> **There was potential for a lot more but Punch Taverns wouldn't invest in renovations and I was limited [as] to choice of beers I could choose being a tied pub.**

44. Finally, Mrs Pickering mentioned that some form of community rescue was not the only possibility: Mr Courtney, who runs another (successful) pub in the locality, has expressed an interest in purchasing The Ship outright and (she said) certainly had the funds to do so. I have no evidence from Mr Courtney or any independent source to verify her belief.

Facts relevant to the garden issue

45. The sales particulars for the pub (which date from, I believe, 2011) offered the 'trade garden / rear yard' as part of the freehold. The plans and drawings which I have seen are consistent with that.

46. Usage of the pub has, I find, been consistent with the particulars and the plans. The garden / yard was used as a beer garden and as an informal outdoor space ancillary to the pub.

47. There is no clear evidence of any third party having enjoyed or asserted rights of any sort over the garden / yard.

48. At the hearing Mr Parker produced an aerial photograph taken the same day which appears to show two vans parked in the garden / yard.

Conclusions

The s88(2)(a) issue

49. In my judgment Mr Parker's tacit concession that the s88(2)(a) test was satisfied up to the departure of Mr Courtney in 2011 was plainly correct. On the evidence which I have accepted, the (non-ancillary) use to which the pub was put manifestly furthered in numerous ways the social wellbeing and social interests (in particular cultural, recreational and sporting interests) of the local community. The findings which I have made concerning the nature of the pub and its clientele, its importance as a social centre, the events and activities which it fostered and promoted, the affection with which many remember it, and the strong backing for the campaign to recover it as an asset for the local community speak for themselves.

50. Mr Parker says that 2011 is not the 'recent past' within s88(2)(a). I disagree. As the *Crostone* case makes clear, the statutory language invites a nuanced and contextual interpretation. In a case concerning a public amenity which has existed for over 150 years and perhaps more than two centuries, I certainly consider 2011 'recent'. It was 'recent' at the time of the ACV listing and it is still 'recent'. This view is consistent with other reported decisions in the ACV jurisdiction (see *Scott v South Norfolk DC* CR/2014/0007, *Hawthorn Leisure v Chiltern DC* CR/2015/0019).

51. My reasoning so far concludes the s88(2)(a) issue in favour of the Respondents. For completeness, however, I also reject Mr Parker's submission that the test ceased to be satisfied after 2011. The pub may well have furthered the social wellbeing and social interests of the community rather less after Mr Courtney's departure, but that is not the point. It certainly became less profitable, but that also is not the point. What matters in only whether that wellbeing and those interests continued to be furthered to any material extent. Mr Parker

suggested that any community benefit from 2011 onwards was *de minimis*. I cannot accept that submission. The core of loyal 'regulars' (diminished or not) was never minimal. The football supporters continued to come (except when the beer had run out). Activities (such as music, darts and pool) continued even if others (such as quiz nights) did not.

52. Further and in any event, even if I had been persuaded by Mr Parker's submission regarding the decline after 2011, I would have found that the statutory language was satisfied in the last months before the pub closed, as a result of the energetic and imaginative contribution of 'Jo' and the many innovations which she achieved in the short period allowed to her. Again, I will leave my primary findings to speak for themselves. In my judgment the pub under 'Jo's' management was an asset of community value within the terms of s88(2)(a), delivering precisely the sort of service which Parliament, in enacting the 2011 Act, was seeking to give local people the chance of preserving.

The s88(2)(b) issue

53. Here again, despite the well-presented submissions of Mr Parker, I cannot accept ZBI's case. The only question is whether it is 'realistic' to think that in the next five years there *could* be a non-ancillary use that would further the social wellbeing or social interests of the local community. I am not asked to decide what is likely to happen. (It is natural that Parliament did not require the Tribunal to ask that question since the Tribunal's decision may, through the moratorium, itself affect what happens to the land in the future.) I am only asked whether a use within the statutory language is a realistic possibility.

54. Mr Parker contended that, if there was a possibility, it was a 'fanciful' one. I do not accept that. The only lawful use is A4. ZBI have failed in three planning applications and face enforcement proceedings. Their last application sought permission for a partial A4 use, which may suggest a dawning realisation that restoration of the premises as a functioning pub *may* prove unavoidable. It seems to me that that is, to put the matter at its lowest, a serious possibility. If that is the outcome of the enforcement action, ZBI will be faced with a choice. They could divest themselves of the pub. That might take the form of a disposal to the STS (or some other vehicle for a community-owned business), to Mr Courtney or to some other person or entity trading in the open market.[9] Alternatively, they might opt for running the pub themselves. As I understand it they are developers and claim no special expertise in the licensed trade but recent correspondence suggests that they have not discounted this option. I do not have to ask myself which of those possibilities is more likely. Either way, there would be a pub on the site of The

[9] Mr Parker appeared to suggest that the pub was commercially unviable. If that were so, it might have led to the suggestion (not advanced before me) that the business is unsellable and/or unlettable. I would not have accepted such a submission. There is no evidence to sustain it (other than the mere assertion that it was marketed unsuccessfully, presumably by Punch Taverns, in 2011). The pub was profitable when properly run and there is no evidence to show that it cannot return a profit again.

Ship.[10] And that, if it is to happen, is likely to happen in the next five years. Is it realistic to think that such a use of the land would further the social wellbeing and/or social interests of the local community? Plainly. It follows from my conclusions above that, in my view, a new enterprise modelled on The Ship of old but with lessons learned and sound management could (to put the matter at its lowest) realistically be expected to satisfy the statutory test. Alternatively, the re-launched pub might aim for a new market and deliver an entirely different 'product'. The result might cause the old 'regulars' to shudder and move on, but for my purposes, the analysis is the same. As s88(2)(b) makes clear, it is not necessary that the new (anticipated) use should further social wellbeing and/or social interests in the same way as the s88(2)(a) use did. It must, in my judgment, be realistic to think that a new-style Ship *could*, in its own way, meet the s88(2)(b) test.

The garden issue

55. Here again, ZBI fail. Quite simply, the garden/yard, like the basement, forms an integral part of the pub. There is no cogent evidence before me that any third party has any rights over it. In any event, such rights would not preclude the ACV listing of the space. The evidence, on which I have made certain findings above, clearly shows that the use of the garden/yard has furthered the social wellbeing of the local community (including in particular children and young persons) and is likely to do so in the next five years.

56. It is a moot point whether the Tribunal has power to amend an ACV listing. I decline to enter into that interesting question, which has not been argued before me in any depth. Even if the power exists, this is not, in my view, a proper case in which to exercise it.

Result

57. For the reasons which I have given, the appeal must be dismissed.

Signed

Judge of the First-tier Tribunal
Date:

[10] I discount as highly improbable a third possibility: that the owners might shut the doors and let the building rot.