



**First-tier Tribunal
(General Regulatory Chamber)**

Tribunal Reference: CR/2016/0010

Before

TRIBUNAL JUDGE SIMON BIRD QC

Between

NEEM GENIE COMPANY LIMITED

Appellants

and

TELFORD & WREKIN COUNCIL

First Respondent

and

WATERS UPTON PARISH COUNCIL

Second Respondent

Representation:

For the appellant: Ms Flower and Mr Victor Green
For the first respondent: Mr Jack Parker of counsel instructed by the Solicitor,
Telford & Wrekin Council
For the second respondent: Mrs Lynda Baker Oliver and Mrs Katrina Baker

DECISION AND REASONS

A Introduction

1. The Localism Act 2011 (“the 2011 Act”) 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, a sale cannot take place for six months. The intention is that this period, known as “the moratorium”, will allow the community group to come up with an alternative proposal. However, at the end of the moratorium it remains up to the owner whether the asset is sold, to whom and at what price. 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 of the 2011 Act provides so far as is material to this appeal:

“(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”.*

C The Listed Asset

3. This appeal concerns the Swan Inn at Waters Upton which lies at the north western edge of the village and at the junction of the A442 and River Lane. There has been a public house on the site since 1843 but the Swan Inn closed to business in late 2011. By nomination dated 20 November 2015, the Second Respondent (a nominating body for the purposes of the 2011 Act) successfully applied to the First Respondent for the Swan Inn to be added to its List of Assets of Community Value (“LACV”). A review

of that decision took place at the request of the Appellants on 5 May 2016 when the First Respondent decided to maintain the Cross Keys on the LACV.

4. The Appellants appealed to the Tribunal against that decision by notice dated 10 June 2016.

D Preliminary Issues

5. At the commencement of the hearing, the First Respondent raised two preliminary matters. Firstly, it argued that the appeal had been made out of time having regard to Rule 22(1) of the Tribunal Procedure (First-Tier Tribunal)(General Regulatory Chamber) Chamber Rules 2009 ("the 2009 Rules"), no request had been sought for an extension of time and no good reason had been advanced why time should be extended. In support of this submission the Second Respondent relied on the criteria applied in Data Select Limited v HMRC [2012] UKUT 187 (TCC).
6. Secondly, the Second Respondent submitted that the Tribunal should exercise its power under Rule 8(3)(c) of the 2009 Rules to strike out the appeal as having no reasonable prospect of success, because the grounds of appeal did not explain why the listing review decision was wrong or why the conditions in section 88(2) of the Localism Act 2011 are not fulfilled.
7. In response, Mr Green on behalf of the Appellant stated it had thought that the appeal had been made in time and, if required, he sought an extension of time.
8. Having regard to the overriding objective contained in Rule 2 of the 2009 Rules, I concluded that I should exercise my discretion under rule 5(3) to extend time for the service of the notice of appeal. Whilst the appeal did appear to have been made out of time, it was only 8 days beyond the 28 day period and no party claimed that extending time would cause any prejudice. Whilst there was no reason for the late notice, other than a belief that the appeal had been made in time, that is just one of the factors which bears on the exercise of the discretion and, given the Appellant had been unrepresented throughout, I concluded that extending time to allow consideration of the appeal was appropriate having regard to the overriding objective.
9. In relation to the application to strike out, whilst it is correct that the "grounds of appeal" box contained in the appeal notice did not clearly articulate why (in the Appellant's view) the substance of the First Respondent's review decision was wrong, it was possible to identify from the documents attached to the notice those grounds upon which the Appellant relied in arguing that the review decision had been wrong. I therefore waived any defect in the exercise of the power contained in Rule 7(2)(a) of the 2009 Rules and declined to strike out the appeal.

E The Issues

10. There is no dispute in this appeal that the Swan Inn is not in an actual current use which furthers the social wellbeing or social interest of the local community. The issues are:

- (a) Whether there is a time in the recent past when an actual, non-ancillary use of the building furthered the social wellbeing or interests of the local community ("The Past Condition"); and
- (b) Whether it is realistic to think that there is a time in the next five years when there could be a 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 ("The Future Condition").

E The Background

11. The Swan Inn dates from 1843 but has been altered and extended over time. It has an area of land adjacent to it capable of accommodating car parking. The land associated with the public house originally extended further to the east to include what was part of its car park and a beer garden. In January 2014 planning permission was granted on appeal to develop this part of the land for five dwellings (now completed) but with a planning condition attached to the grant of planning permission securing the retention of some of the Swan Inn's car park. The Inspector's appeal decision granting planning permission for this development of five dwellings records:

"For the avoidance of doubt and in the interests of the proper planning the layout shall include for a minimum of 20 parking spaces and a minimum 130 sqm garden area to serve the former public house".

12. Whilst the Swan Inn fronts the A442 and therefore lies on the edge of the village, it can be accessed by villagers via River Lane or via the footpath along the edge of the main road.

13. In terms of Waters Upton itself, it has one other bar/restaurant, the Lion Inn, which is an Indian restaurant and lies some 210m away from the Swan Inn. There is also a church, local shop/post office and a village hall. The village is identified in the First Respondent's planning policy documents for an element of housing growth; as is the nearby village of Crudgington.

14. Whilst the Appellant queried the historic extent of the usage of the Swan Inn when it was operational, there was no serious challenge to the Second Respondent's evidence that it had been regularly used by the local community as a venue for functions and fundraising, including harvest festivals, beer festivals, fancy dress and theme nights and as the home for the local darts, dominoes and pool teams.

15. The Swan Inn closed in late 2011 and there then followed a period of marketing by Punch Partnerships (PML) Limited ("Punch Taverns"). Whilst there was some interest for the premises as a whole within the community, the evidence of the Second Respondent was that Punch Taverns was not interested in selling that part of the pub's land which they subsequently sought to develop with the five dwellings.

16. Punch Taverns had applied for planning permission for the five dwelling development by application dated 14 December 2011, which coincides with the closure of the Swan Inn. In July 2012, it sought advice from the firm of Sydney Phillips, Hotel and Licensed Property Agents, on the likely effect on the viability of the Swan Inn if planning permission were to be granted for the five dwelling development with its consequent loss of garden area and car parking. That advice was provided in a letter dated 16 July 2016 signed by the Managing Director of Sydney Phillips and includes the following:

"We know the Swan Inn well, having visited the premises on three previous occasions for valuation purposes. The trading success of the pub over the last 15 years has been extremely limited and at no time during discussions with three previous operators have any of them indicated that the business was taking more than £3000 per week inclusive of VAT.

.....

It is our opinion that the Swan Inn has a viable future as a public house serving the local community. There are numerous examples throughout Shropshire of successful public houses having similar size or indeed smaller car parks such as the Tally Ho at Bouldon, Stanton Arms, Stanton upon Hine Heath; and the Appletree, Onibury which has no car park...."

17. The Planning Inspector who granted planning permission for the five dwelling development accepted that, whilst the car parking area available to the public house would be significantly reduced, the residual area remained appropriate to its size and location.

18. Punch Taverns then sold the Swan Inn and that part of its land not required for the five dwelling development to the Appellant on 22 July 2013. The Land Registry Proprietorship Register records that the stated purchase price was £170,000 plus VAT. The Appellant's evidence was that the property is currently mortgaged with Barclays Bank with a charge in the sum of £115,000.

19. The Appellant used the building for its business of selling cosmetic products which were mainly distributed by mail order, with Ms Flower occupying the residential accommodation above. The First Respondent ultimately concluded that this was an unlawful use of the premises and sought its cessation, visiting Ms Flower on a

number of occasions in the autumn of 2013, with enforcement action threatened. This led to the property being marketed by the Appellant from February 2014.

20. Prior to marketing, the Appellant through Ms Flower, had approached Councillor Bentley a local ward councillor, who it was believed would know of anyone interested in purchasing the Swan Inn. Whilst there was a subsequent expression of interest from one person, they were apparently not interested unless all of the Swan Inn's original grounds were available for purchase.
21. The marketing campaign on behalf of the Appellant commenced in February 2014 with an asking price of £195,000. This resulted in one or two viewings and two offers. One of the offers was from a young couple who were the managers of a nearby pub and offered £170,000, but the Appellant was not satisfied that they had access to funding or that they could be regarded as seriously interested.
22. The second offer of £175,000 made on 18 November 2014 and subject to contract, was made by Edis Developments Shropshire Limited ("Edis"). It wished to redevelop the site of the Swan Inn for housing. The sale has not progressed further but at the hearing the Appellant recognised that anyone approaching the sales agent since 2014 would have been informed that a sale had been agreed. On receipt of this offer, Ms Flower moved out of the Swan Inn in order to comply with the First Respondent's requests to cease the use which it considered to be unlawful.
23. Subsequently, there were two arson attacks on the Swan Inn (on 8 August 2015 and 18 September 2015) which, combined, left it seriously damaged. The property was not insured against arson.
24. Edis maintained its interest in the development of the land and on 29 September 2015 applied for planning permission for the demolition of the Swan Inn and the erection of 5 dwellings. This was refused by the Council by notice dated 21 March 2016 on the grounds that the development would result in the unacceptable loss of land/building used for the benefit of the local community and that the development would be of an inappropriate scale, character and appearance. Whilst Edis sought to appeal this decision, the appeal was lodged out of time and its current status is unknown.
25. On 26 August 2016 the Second Respondent issued a notice under section 215 of the Town and Country Planning Act 1990 on the ground that the condition of the Swan Inn is adversely affecting the amenity of the area. The list of works which the Appellant is required to undertake within the notice's nine month compliance period is extensive and includes reinstatement of all damaged or demolished external walls and chimney stacks, reinstatement of the roof(s) and installation of new doors and windows. I was informed by the First Respondent that the requirements of the notice were drawn up by the Second Respondent's Planning Enforcement Team and not Building Control officers.

26. The Appellant has ceased trading and does not have the resources to comply with the terms of this notice and I was told by Mr Green that if the inclusion of the Swan Inn on the list of assets of community value is upheld, the company will be forced into liquidation and the bank will foreclose. If the appeal succeeds, the Appellant proposes to proceed with the sale to Edis and to redeem the mortgage.

F The Appellant's contentions

27. The Appellants contend that the Swan Inn should be removed from the LACV because:
- (a) It is over four years since the Swan Inn was used as a public house which is not "recent" and the claims by the Parish Council that it was a facility which served as the heart of the community are overstated and unsubstantiated. Those who did use it, will now have found alternative facilities and the Inn cannot be said to be vital. The Lion Inn now serves the needs of the community for a public house.
 - (b) Over the 15 year period prior to the closure of the Swan Inn, it had three different owners or managers all of whom failed to make it a going concern. The last manager had said that he could not make it pay with the business being crippled by rates and utilities. To operate a public house on a standard industry model with appropriate margins would require a turnover of £165,000 per annum to which VAT would need to be added, giving a total of £198,000 or £4,000 per week just to break even. That is 33.3% more than was being achieved by the Swan Inn in 2015 and no one has identified how that additional trade would be generated. The proposed new housing developments relied upon by the Second Respondent will not principally be within walking distance of the Swan Inn and the car park is too small even for 20 vehicles. The Sydney Phillips advice given to Punch Taverns in 2012 was sought by the then vendor and would therefore be expected to express an optimistic view on future viability.
 - (c) The Appellant purchased the public house at £20,000 below the asking price and as far as it was aware, there was no other interest in it.
 - (d) The First Respondent itself objected to the loss of the car park land as part of the the five dwelling development, recognising the likely effect that the loss would have on the future viability of the Swan Inn.
 - (e) Whilst the public house might be viable if bought more cheaply, it was not the objective of the legislation that property should be able to be bought on the cheap;
 - (f) The Appellant had obtained advice from Mark Dady Associates Limited, Consulting and Structural Engineers Ltd on the structural condition of the building. This concluded that 50% of the building is now structurally unsound and requires demolition. The remaining 50% is beyond economic repair because of the amount of refurbishment work that would be required. The report recommended demolition of the existing building and rebuilding or replacement.

Whilst the cost of works has not been assessed, the Appellant had been advised that the cost of demolishing and re-building would be circa £300,000. Allowing for a realistic valuation of the site, the vendor would have to pay someone to buy the site and replace the public house. Any proposal for the inclusion of separate residential units within a restored public house would require planning permission.

- (g) Rowton Brewery, referred to by the Second Respondent as being interested in the Swan Inn, has made no offer to buy the premises nor any offer to assist with financing.
- (h) There is no evidence of any substantial local support for the retention of the Swan Inn as evidenced by the limited number of objections made to the Edis planning application.

G The First Respondent's contentions

28. The First Respondent argues principally that:

- (a) Use of the Swan Inn as a public house (which is a community use) within the period of the past five years did constitute a recent use and that is reinforced by the context. A public house use was carried on from C19th to 2011 and a past use five years ago in that context is recent. It is also relevant to have regard to the reasons for the absence of use since 2011. The first period of non-use (late 2011-2013) coincided with the Appellant's occupation of the building for the purposes of its business and ancillary residential purposes. Since 2013, there has been no intention to use the building as a public house. On the Appellant's vacating of the premises, an offer was accepted from a housebuilder with the obvious intention to apply for planning permission to redevelop the site. Looked at in context, the Past Condition is satisfied.
- (b) As to the Future Condition, the Appellant's submissions focussed on the financial viability of a public house use. The First Respondent's original decision and the decision on review considered a broader range of factors and not just viability in reaching the conclusion that the Future Condition was satisfied. These included the potential sources of future trade, the absence of any other comparable facility within the village, the local support for the retention of the public house, the Sydney Philips advice and the expressions of interest in taking on the public house or forming a management group for it. It also took account of the contrary considerations, including the condition of the premises, the availability of other local community facilities, the Appellant's questioning of the true extent of the community desire for a public house in this location and the reference by Sydney Philips to the extremely limited trading success at the property over the last 15 years of trading. The conclusion reached was that the Future Condition was satisfied.
- (c) There was no need for a detailed business plan to support the listing. There was committed local support from the Parish Council and support and interest in

running the Swan Inn from Rowton Brewery. It would be difficult to be sure that, if the land were marketed at a price which reflected its current condition, there would be no interest in it for a public house use. The Sidney Phillips advice stated that the maximum gross profit per week of the previous three operators was £3000 which may be compared with the £4000 per week referred to by the Appellant which would be needed for a sustainable business. Whilst it may be a challenge to find another £1000 per week, it is not so far out of the way as to be unrealistic.

- (d) The offer which had been accepted at £175,000 does not reflect the current condition of the building and it is obvious that the value must be less, given the work required by the section 215 notice. Whilst the Appellant's structural engineer's report is the only document before the Tribunal which addresses the existing condition of the building, it is comprised largely of assertion rather than good and reliable evidence.
- (e) It is a matter for the Appellant to decide whether it wishes to reduce the sale price in order to sell. The alternative appears to be re-possession by the bank and subsequent marketing by it at a price which does reflect the repair work required. The Council has not costed the works required by the section 215 or such additional works as would be required to allow for a resumption of a public house use in the premises and no one has produced any assessment of the financial viability of such a scheme. However, from Mr Green's evidence, the Appellant is apparently confident that the bank would recover its outstanding mortgage monies (of in the order of £130,000) which would suggest that the repair costs are not prohibitive.
- (f) The First Respondent's review decision considered two changes of circumstance which had occurred since the original decision namely the refusal of planning permission for the Edis redevelopment proposals and secondly the further deterioration in the condition of the building. It concluded that the refusal of planning permission added weight to the listing of the Swan Inn but that the further decline in the condition of the building was a countervailing consideration which might indicate that it would be difficult to bring the public house back into social or community use. Neither were found to justify changing the decision to list the Swan Inn.
- (g) The status of the appeal purportedly made by Edis against the refusal of planning permission is uncertain and it is not possible to reach any conclusions on the prospect of its success (if it is accepted as valid). Decisions to allow or dismiss the appeal are equally realistic. The potential appeal is at best a neutral factor.

H The Second Respondent's contentions

- (a) The Swan Inn was an important part of the community and can be again in the future. At the time of closing, it was used by the local darts, dominoes and pool teams which have had to move to public houses over 6 miles way. The advantage of the Swan Inn is that it was in the village and many people walked to enjoy a drink. The pattern and range of social and community uses of the public house continued right up until it closed. The Lion Inn is an Indian

restaurant with a very small bar area which serves as a waiting area for those people using the restaurant. It is not a substitute for the role performed by the Swan Inn.

- (b) The most recent tenants of the Swan Inn were “caretaker” tenants put in by Punch Taverns. They received little company support and their rent was increased without notice to unrealistically high levels which caused them to move on. Lack of custom was not the reason.
- (c) The building is in a prime location on the A442 and at the entrance to the village with passing trade a bonus to the regular local trade when it was trading. It should have 20 car parking spaces available and there is, in any event, further car parking available to it on the other side of the road.
- (d) In recent months additional new houses have been built in Waters Upton and the surrounding villages, all within a short distance of this location.
- (e) There have been a number of interested persons visiting the site but some have been deterred by the inaccurate sales particulars which do not reflect the current condition of the building and the sales price which remains at £175,000. There are local people interested in purchasing the building and the site at a realistic valuation and to bring it back into use. These include Councillor Bentley who is involved with the running of the shop/post office and Rowton Brewery who have considered the business case for bringing the Swan Inn back into use including a business plan which postdates the fires.
- (f) Meetings have been held with Rowton Brewery and they have suggested the inclusion of two residential units at first floor level within the restored public house to make it sustainable. In addition one of those interested in the public house in 2012 remains interested, although he is disappointed at the loss of the car park land. The Second Respondent has not progressed this or other proposals further at this stage, because it did not consider it appropriate to do so until the current appeal has been determined.
- (g) The Second Respondent had sought advice from a surveyor on the condition of the buildings following the two fires and it was this advice which had led it to conclude that the fires had not caused such damage to the property that it could not be brought back into use.

I Findings

29. I find as a fact that the requirement contained in section 88(2)(a) is satisfied. The Swan Inn was plainly actively and well used by the local community for a range of activities ranging from darts and dominoes to the holding wakes. I am satisfied that the Second Respondent has established that the primary use of the Swan Inn furthered both the social wellbeing and social interests of the local community, in providing a venue for a broad range of local social and community activities. I am equally satisfied that this function was performed in the recent past as required by the statute. Whilst that term is not defined in the Localism Act 2011, five years ago falls

well within the scope of the ordinary and natural meaning of the words “recent past” in the context of a public house which has stood on the land for decades.

30. The more difficult issue is whether the Future Condition contained in section 88(2)(b) is met. In approaching my decision on that requirement I bear in mind the decision of the Upper Tribunal in Banner Homes Limited v St Albans City and District Council and Verulam Residents Association [2016] UKUT 0232 (AAC) in which it concluded:-

“38. In my opinion it is always wiser to use the statutory language. That is more likely to focus the mind and avoid the risk of error. However, in the present context I cannot envisage any empty space between what is ‘not fanciful’ and what is ‘realistic’ and the First-tier Tribunal was not in error of law on this point”.

31. Section 88(2)(b) requires me to consider what could be realistic not whether a use which furthers the social wellbeing or social interests of the local community is the only or most likely option. It suffices that a qualifying use could be one of a number of possibilities.
32. Had the Swan Inn been in a reasonable condition and capable of re-use without very significant work, I would have had little hesitation in concluding that it is realistic to think that there is a time in the next five years when there could be a qualifying use made of the building. It is a possibility, if the Edis planning appeal progresses, that it will be dismissed and the building will be marketed at a price reflecting its current condition. The Second Respondent is clearly committed to the re-opening of the Swan Inn and has taken some steps to further that objective in involving others such as Rowton Brewery and Councillor Bentley. Those steps demonstrate that it is aware of the need to engage with those with experience in operating businesses in order to realise its objectives. Whilst it is right that the Parish Council has prepared no business plan and has seen no business plans or financial information prepared by others, I accept that this is only because it felt it inappropriate to progress matters further pending the outcome of this appeal.
33. Whilst Councillor Bentley may have been approached in 2014 just before the Swan Inn was marketed by the Appellant and this resulted in no interest, I am not satisfied that such a limited approach to the community at a time can fairly be taken as an indication of the absence of local community interest. At that time it would have been reasonable for villagers to believe that a commercial operator might be found through marketing.
34. Coupled with the clear local commitment is the evidence on viability of a public house business conducted from premises in this location. I attach some weight to the advice of Sydney Phillips, provided to Punch Taverns in 2012, that a community public house in this location would be viable. It was produced by an apparently experienced company and I have no reason to doubt that it reflected the professional

opinion of the author. Whilst that advice was obtained a little over four years ago, nothing I have heard would suggest that the location would have declined in commercial attractiveness since it was obtained. In fact, the evidence points to there being the prospect of some local housing growth which would provide some potential additional support for a public house here.

35. I acknowledge that the Sydney Phillips advice also records that the Swan Inn tenants struggled in terms of viability over the 15 years up to its closure but that sits within the context of its later advice that a community public house has a viable future here. Whilst the Appellant queried this by arguing that a turnover higher than ever previously obtained would be required to support a viable public house use here, that assumed a traditional business model rather than a less commercial, community run public house, which is one of the options which is being considered locally. It also seems to me to me that the possibility that a different operator could attract additional levels of trade to a restored Swan Inn cannot be ruled out.
36. However, the problem here is that the Swan Inn is a fire damaged building which, as is clear from the requirements of the section 215 notice, requires very significant structural and other works just to be watertight. The property was not insured against arson and the Appellant has no resources to repair the building.
37. The evidential difficulty facing the Tribunal is that there is a dispute about what works would be required to restore the building to a condition in which it could be used as a public house but no detailed evidence addressing the issue has been given. Further, no party has costed those works in order to identify whether or not (if undertaken) the cost would exceed the value of the restored building in public house use. If that were the result of a relevant appraisal it would reduce the prospect of anyone other than a benevolent investor acting purely altruistically, being interested in the restoration of the building.
38. Whilst various figures were advanced at the hearing, none had any basis in terms of actual build/repair costs and none was supported by any valuation evidence and I can give them no weight. Whilst the Second Respondent was aware that Rowton Brewery had done some appraisal work as part of a business case, it had not seen that appraisal and could not comment on its content, other than to indicate that the proposed inclusion of two residential units within the restored building was to support sustainability.
39. Had there been evidence that the premises had been marketed at a price reflecting its condition and still not attracted any relevant interest, then that would have been a strong indication that the Future Condition is not satisfied. However, in reality, since the Edis offer for the premises was accepted, there has been no active marketing and the Second Respondent's evidence was that there had been a local understanding that the premises were already owned by Edis. In those circumstances, given that

alternative development proposals were actively being promoted through the planning processes, the absence of any interest is not a weighty factor.

40. Doing the best I can on the evidence which I have before me, I am not satisfied that the only possible option if a public house use is to resume on this site is the demolition of the entirety of the existing structures and replacement with what is, in substance, a new building. Both the Appellant's Chartered Engineer and the Second Respondent's surveyor looked at the existing building at a period when it was in broadly the same condition and each has reached different conclusions. Whilst the Appellant's Engineer's report is before the Tribunal, I accept the criticism of it made by the First Respondent that its final conclusion is more assertion than demonstration. The same applies to the reported conclusions of the Second Respondent's surveyor, there being no report of his/her findings before the Tribunal and no indication of the detail of that survey.
41. On the totality of the information before me, it seems to me that it is at least possible that an alternative to total demolition could be found even though there has been some decline in the condition of the property since both the Engineer and the Surveyor inspected it.
42. However, whether it is realistic to think that a public house use could be viable or could otherwise be achieved within a five year period is a different matter. Given the value at which the Swan Inn has been marketed as a public house, the scale of the works required and the evidence (to which I attach some weight) that the proposal considered by Rowton Brewery includes two residential units to ensure that restoration is "sustainable", it seems to me inherently implausible that the Swan Inn could be restored without some form of enabling development (in the form of a higher value land use such as the suggested residential use on the first floor) or sufficient funds being secured from an individual or individuals interested in restoring the public house use but without any form of commercial return on their investment, whether now or in the foreseeable future.
43. I have seen nothing to suggest that there is any possibility of one or more purely altruistic investors investing sums equivalent to the contribution which the inclusion of two residential units in the restoration of the Swan Inn might result in. I therefore reject that as unrealistic.
44. However, on the basis of the evidence before me, I consider that restoration of the public house use on the ground floor of the Swan Inn within the next five years supported by some enabling development at first floor level cannot be ruled out as a possible option. It has actively been considered by Rowton Brewery and whilst such a development would require planning permission, the First Respondent has shown by its refusal of the Edis planning application, that it is keen to protect the community use of the site and, if that is best secured by some limited enabling development, it is

at least a possible option that it would regard such an application favourably. I therefore conclude that it is realistic to think that there is a time in the next five years when there could be a non-ancillary use public house use made of the ground floor of the Swan Inn which would further the social wellbeing or social interests of the local community.

45. I have considered whether any other social or community use of the Swan Inn and/or its land would satisfy the requirements of section 88(2)(b) in relation to the premises as a whole but I have seen nothing to support a conclusion that any could be possible options.

46. I accordingly find that the requirements of section 88(2)(b) are satisfied in respect of the ground floor of the Swan Inn but not as regards the upper floor. That floor should, accordingly, be removed from the Council's list kept pursuant to section 87.

Decision

47. The appeal is allowed to the above extent.

Signed Simon Bird QC

Judge of the First-tier Tribunal

Date: 31 October 2016