



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

Tribunal Reference: CR/2016/0011

Appellant: The Trustees of Sundorne Estate

Respondent: Shropshire Council

Judge: Jacqueline Findlay

**Decided at York House Leeds Without a Hearing
On 5 October 2016**

DECISION AND REASONS

A LEGISLATION

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

Localism Act 2011("the LA Act")

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.

(3) The appropriate authority may by regulations—

(a) provide that a building or other land is not land of community value if the building or other land is specified in the regulations or is of a description specified in the regulations;

(b) provide that a building or other land in a local authority's area is not land of community value if the local authority or some other person specified in the regulations considers that the building or other land is of a description specified in the regulations.

(4) A description specified under subsection (3) may be framed by reference to such matters as the appropriate authority considers appropriate.

(5) In relation to any land, those matters include (in particular)—

(a) the owner of any estate or interest in any of the land or in other land;

(b) any occupier of any of the land or of other land;

(c) the nature of any estate or interest in any of the land or in other land;

(d) any use to which any of the land or other land has been, is being or could be put;

(e) statutory provisions, or things done under statutory provisions, that have effect (or do not have effect) in relation to—

(i) and of the land or other land, or

(ii) any of the matters within paragraphs (a) to (d);

(f) any price, or value for any purpose, of any of the land or other land.

(6) In this section—

“legislation” means—

(a) an Act, or

(b) a Measure or Act of the National Assembly for Wales;

“social interests” includes (in particular) each of the following—

(a) cultural interests;

(b) recreational interests;

(c) sporting interests;

“statutory provision” means a provision of—

(a) legislation, or

(b) an instrument made under legislation.

B BACKGROUND

2. The appeal concerns a decision dated 9 March 2016 of the Shropshire Council (‘the Council’) that the Upton Magna Memorial Hall Fields (“the Fields”) should be listed as an Asset of Community Value (“ACV”). The decision was made by Mr Steve Law.
3. By a nomination form dated 17 January 2016 the Upton Magna Parish Council invited the Council to list the Fields as an ACV under section 88 of the LA Act.
4. The Appellant, the owners of the Fields, the Trustees of Sundorne Estate, exercised their right to ask the Council to undertake a review of the decision. The review was undertaken by Mr Chris Edwards who had no previous involvement in the matter.

Mr Edwards decided on 14 June 2016 that the statutory requirements had been met and that the Fields should remain listed as an ACV.

5. The Appellant has granted a licence under which the local community has used and continues to use the Fields for a variety of events which further the social wellbeing and interests of the local community. The licence is granted on a 5 yearly basis.

C THE ISSUES

6. The appeal has been determined on the papers. Both parties have agreed to a determination on the papers. Both parties have been given ample opportunity to address the issues and prepare and present their cases and the Tribunal finds no injustice in so doing.
7. The Appellant submits grounds of appeal in relation to the Fields and the De Quincey Fields. This appeal is concerned only with the Fields.
8. The Appellant submits that the relevant "uses" underlying the decision to list the Fields as an ACV are "ancillary" uses and accordingly the statutory requirements are not met because section 88(1)(a) expressly excludes ancillary uses.
9. The Appellant submits that the Tribunal should base its decision on the Council's review of 14 June 2016 and that the appeal be allowed or disallowed on the wording of the review decision and not on the "ex post facto rationalisation by Counsel." The Appellant urges the Tribunal to attach no weight to the submissions of 20 July 2016 and focus only on the justification and reasons contained in the review decision of 14 June 2016. The Appellant submits that the Listing Review Decision simply lists 5 observations and then concludes that the current activities are not "ancillary" without providing an explanation as to how the conclusion is reached and that there is a duty on the Council to do this.
10. The Appellant argues that all the uses of the Fields relied upon in the decision, whether taken individually or as a whole, are "ancillary" because "they are all connected with activities taking place at the Memorial Hall." The Appellant states "the Memorial Hall Fields are therefore principally used for ancillary uses connected with either the adjacent Memorial Hall itself or the nearby Church." The Appellant submits that as a matter of principle it is permissible to consider individual uses and then to assess whether they are "ancillary". In particular, the Appellant submits the following:
 - a. The use of the Fields for parking is "ancillary" to uses taking place within the Memorial Hall and Church.
 - b. The use of the land as a site for a marquee when the Hall is used for wedding receptions is "ancillary" to the use of the Hall
 - c. The use of the Fields for cub/scout camping is "ancillary" to the use of the Hall for cub/scout meetings.

- d. The use of the Fields once a year for the annual village fete is “ancillary” to the use of the Hall.
 - e. Many of the activities on the Fields are arranged on the basis of generating income for the Hall.
11. The Appellant submits that some of the uses of the Fields are for the purposes of raising money and for that reason cannot be said to further the social wellbeing or social interests of the local community.
 12. The Respondent submits that the uses of the Fields should be assessed as a package rather than as isolated activities and that the overall package does not constitute a minor or minimal use of the Fields.
 13. The Respondent submits that the correct analysis of the word “ancillary” in the context of the LA Act and following the relevant case law requires posing of the question “in what ways is this land used?” and “of those uses, are the ones being relied upon for the ACV listing merely ancillary to other uses of the same land which are not being relied upon?” The Respondent submits that if the answer to the latter question is yes then the uses may well be ancillary but in the present case “there are no other uses of the Fields to which the relevant uses are ancillary.”
 14. The Respondent submits that the grounds set out by the Appellant are based on a misunderstanding of the correct legal approach to the work “ancillary.”
 15. The Respondent submits that the role of the Tribunal is to undertake a full merits review and “stand in the shoes” of the original decision-maker and made the listing decision that the Council should have made and when doing so consider afresh the submissions for and against the listing of the Fields as an ACV.

D DECISION AND REASONS

16. The appeal is dismissed. The Fields were correctly listed as an asset of community value. The requirements of section 88(1) of the LA Act are satisfied. The fields are of community value in that the current use of the Fields is not an ancillary use and it is realistic to think that there can continue to be non-ancillary use of the Fields which will further the social wellbeing or social interests of the local community.
17. The Fields is the area of land next to the Upton Magna Memorial Hall and for many years has been used and continues to be used by villagers and visitors. The Fields are used for additional parking for events at the Memorial Hall, for the annual village fete, for study days, for cub and scout camping, for caravan pitching and for marquees for weddings. The Fields are not used for agricultural purposes. It does not have a gate onto the public highway. The Fields contains an area of “hardstanding.”
18. The appropriate test when analysing the word “ancillary” is as set out in *Idsall School v Shropshire Council* (CR/2014/0016). The Tribunal finds that although the Fields has a close geographical and functions connection to the Memorial Hall it is a

separate unit. The uses of the Fields should be looked at as a whole and it is a wrong approach to look at each use in isolation. The Fields are not part of the Memorial Hall. The Fields have their own uses and there are no "ancillary" uses when the correct test is applied. The uses of the Fields include a car park, a site for the annual village fete, a site for wedding marquees, a site for cub and scout camping, a site for study days and a site for general camping. These are not uses ancillary to other uses of the Fields. These are the uses of the land and the only uses of the land and are the uses relied on for the ACV listing. These are not uses ancillary to other uses of the Fields.

19. The Tribunal finds that the Fields were being used in ways which further the social wellbeing or social interests of the local community and it is realistic to think that such use would continue.
20. The Tribunal rejects the submission of the Appellant that "the Memorial Hall Fields are therefore principally used for ancillary uses connected with either the adjacent Memorial Hall itself or the nearby Church." This is an argument that could only be considered if the Fields were part of the Memorial Hall for ACV listing purposes. Only the Fields have been listed as an ACV and it is only the Fields with which the Tribunal is concerned. It would be wrong to consider the Memorial Hall and the Fields for the purposes of the ACV simply because the Appellant is the owner of both or because they are part of the same "land unit" or "planning unit." The Tribunal rejects the Appellant's submission in this regard. There is no statutory authority for doing so. There is no statutory reference to these terms. The Fields has been listed as a separate piece of land and the duty of the Tribunal is to consider whether the Fields has or has not been correctly listed.
21. The role of the Tribunal is to undertake a full merits review and make the listing decision afresh. The Tribunal is not restricted to considering the terms of the review decision and the grounds provided for that decision. The Tribunal has the duty to consider all the submissions and the evidence presented. The Tribunal has done this and undertaken a full reconsideration of the issues.
22. The Tribunal is not required to consider whether the relevant uses of the Fields would continue if the Memorial Hall no longer existed. That is the wrong test. The Tribunal is concerned only with the land that is subject to the listing, namely the Fields.
23. The Tribunal finds on the basis of the evidence that the use of the Fields furthers the social wellbeing or social interests of the local community. The uses of the Fields as set out above are recreational interests and involve a bringing-together of the community. For example, the use of the Fields for the annual village fete involves the attendance of local people who come to meet others. This is a furthering of social wellbeing in a rural community. It is the view of the Tribunal that it is irrelevant that this event happens once a year. An annual village fete is an important part of rural life and is looked forward to, planned and reflected on for the many months before and after the event. The provisions of section 88(1) (a) of the LA Act are clearly satisfied.
24. The Tribunal finds that on the basis of the evidence it is realistic to think that there can continue to be non-ancillary use of the Fields which will further the social

wellbeing or social interests of the local community. It has not been suggested that the current use of the Fields will change at any time in the future.

25. The appeal is dismissed.

Judge Jacqueline Findlay

5 October 2016