



Appeal number: CR/2019/0002

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
COMMUNITY RIGHT TO BID**

JULIE BIGGS

Appellant

- and -

EAST SUFFOLK COUNCIL

Respondent

TRIBUNAL: JUDGE MOIRA MACMILLAN

Determined on the papers, the Judge sitting in Chambers on 15 November 2019

DECISION

1. The appeal is dismissed.

REASONS

Background to Appeal

2. The Appellant is the owner of the Royal British Legion Hall (formerly known as the Forrester's Hall) in Albert Road, Framlingham, Suffolk. ('the Hall'). She purchased the property on 7 March 2018 from the Royal British Legion. At the date of the decision under appeal the Appellant was living in the residential part of the Hall during the week.
3. The Respondent is the successor to Suffolk Coastal District Council which ceased to exist on 1 April 2019 ('the Council'). On 17 May 2018 the Council decided to list the Hall as an Asset of Community Value ('ACV') under s. 88 of the Localism Act 2011. The Council took this decision having applied the criteria in s. 88(2). The Hall was nominated for listing by Framlingham Community Baptist Church ('the Church').
4. The Appellant requested a review of this decision. A review hearing took place on 6 March 2019 and the review decision was issued on 13 March 2019. This upheld the initial decision to include the Hall on the Council's list of ACVs.
5. This Decision determines an appeal under regulation 11 of the Assets of Community Value (England) Regulations 2012 against the review decision.

Appeal to the Tribunal

6. The Appellant's Notice of Appeal dated 15 May 2019 challenges whether the Hall meets either of the listing criteria set out in s. 88(2). The Appellant does not dispute that the Hall was historically used for a purpose that 'furthered the social wellbeing or interests of the local community' or that this was not an ancillary use. The Appellant argues, however, that such use was not 'in the recent past'. She submits that the Hall has been scarcely used for community events in the preceding 10 years and had been boarded up for 2 years before she purchased it.
7. The Appellant also submits that there is no likelihood of the Hall returning to community use in the next 5 years. She states she bought the Hall with the intention of living in it and has no intention of selling it. The Appellant contends that the Hall is no longer suitable for community use as it is situated in a residential street with no pavement and no parking. The Appellant states that the Hall would require substantial renovation before it could be put to community use again and that there are 12 other venues in Framlingham that are available to hire for such purposes.

8. The Respondent's Response dated 16 April 2019 submits that the Hall was used in 'the recent past' for a community purpose because it was so used consistently and regularly up until 2010 and continued to be used thereafter until 2016 on a limited, ongoing basis. The Respondent contends that the term 'recent past' is not defined in the Localism Act 2011 and is not limited to the 5 years guideline suggested by official guidance. The Respondent relies on the approach taken by this Tribunal in *Crostone Ltd v Amber Valley BC*¹ and *King v Chiltern DC*² to argue that 'recent past' should be interpreted flexibly, taking into account the context such as the length of time for which premises have been used for relevant purposes.

9. The Respondent submits that the Hall has been used for community purposes for 120 years including a break to repair damage sustained during World War II. It says that the Council was entitled to conclude that, because the Hall has been used for community purposes for such a long time, its use until March 2010 meets the required definition of usage within the 'recent past'. The Respondent suggests that the continued, reduced use of the Hall between 2010 and 2016 is also sufficient for the purposes of s. 88 and that this is plainly within the recent past.

10. The Respondent states that the Council took the Appellant's current intention not to sell the property into account but decided nevertheless that it is realistic to think that qualifying use of the hall for a community purpose could resume within the next 5 years. This is because the Appellant may change her mind about selling the Hall if she remains unable to obtain planning permission to change the permitted use to residential. The Respondent also relies on the fact that the Appellant raised the possibility of the leasing the Hall to the Church shortly before the review hearing

11. The Respondent does not accept the Appellant's assertion that there are 12 similar venues in Framlingham that are available for community purposes.

12. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended³. I have considered carefully the agreed bundle comprising some 137 pages, including submissions made by the Appellant for the purposes of the review hearing. As well as the Response and submissions prepared for the review hearing by the Church.

The Law

¹ *Crostone Ltd v Amber Valley BC* (CR/2014/00010)

² *King v Chiltern DC* (CR/2015/0025)

³

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779790/tribunal-procedure-rules-general-regulatory-chamber.pdf

13. The Localism Act 2011 (part 5 chapter 3)⁴ provided for local authorities to maintain a list of land in their area which is land of ‘community value’. Land of ‘community value’ is, pursuant to s. 88 of the 2011 Act, land where in the opinion of the local 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.

14. Where the land or building is not currently of ‘community value’ but has a history of such use, s. 88(2) provides as follows:

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.

15. The 2011 Act sets out a procedure for including land in the list, imposes a moratorium period on certain disposals of land which has been included in the list, and provides at s. 99 for a compensatory regime to be established as follows:

(1) The appropriate authority may by regulations make provision for the payment of compensation in connection with the operation of this Chapter.

(2) Regulations under subsection (1) may (in particular)—

(a) provide for any entitlement conferred by the regulations to apply only in cases specified in the regulations;

(b) provide for any entitlement conferred by the regulations to be subject to conditions, including conditions as to time limits;

(c) make provision about—

⁴ <http://www.legislation.gov.uk/ukpga/2011/20/part/5/chapter/3>

- (i) who is to pay compensation payable under the regulations;*
- (ii) who is to be entitled to compensation under the regulations;*
- (iii) what compensation under the regulations is to be paid in respect of;*
- (iv) the amount, or calculation, of compensation under the regulations;*
- (v) the procedure to be followed in connection with claiming compensation under the regulations;*
- (vi) the review of decisions made under the regulations;*
- (vii) appeals against decisions made under the regulations.*

16. The Assets of Community Value (England) Regulations 2012⁵ provide at Regulation 14 that:

Compensation

14.(1) An owner or former owner of listed land or of previously listed land, other than an owner or former owner specified in regulation 15, is entitled to compensation from the responsible authority of such amount as the authority may determine where the circumstances in paragraph (2) apply.

(2) The circumstances mentioned in paragraph (1) are that the person making the claim has, at a time when the person was the owner of the land and the land was listed, incurred loss or expense in relation to the land which would be likely not to have been incurred if the land had not been listed.

(3) For the avoidance of doubt, and without prejudice to other types of claim which may be made, the following types of claim may be made—

(a) a claim arising from any period of delay in entering into a binding agreement to sell the land which is wholly caused—

(i) by relevant disposals of the land being prohibited by section 95(1) of the Act during any part of the relevant six weeks that is on or after the date on which the responsible authority receives notification under section 95(2) of the Act in relation to the land, or

(ii) in a case where the prohibition continues during the six months beginning with that date, by relevant disposals of the land being

⁵ <http://www.legislation.gov.uk/ukxi/2012/2421/contents/made>

prohibited during any part of the relevant six months that is on or after that date; and

(b) a claim for reasonable legal expenses incurred in a successful appeal to the First-Tier Tribunal against the responsible authority's decision—

(i) to list the land,

(ii) to refuse to pay compensation, or

(iii) with regard to the amount of compensation offered or paid.

(4) In paragraph (3)(a) “the relevant six weeks” means the six weeks, and “the relevant six months” means the six months, beginning with—

(a) the date on which the responsible authority receives notification under section 95(2) of the Act in relation to the land, or

(b) if earlier, the earliest date on which it would have been reasonable for that notification to have been given by the owner who gave it.

(5) A claim for compensation must—

(a) be made in writing to the responsible authority;

(b) be made before the end of thirteen weeks after the loss or expense was incurred or (as the case may be) finished being incurred;

(c) state the amount of compensation sought for each part of the claim; and

(d) be accompanied by supporting evidence for each part of the claim.

(6) The responsible authority must give the claimant written reasons for its decisions with respect to a request for compensation.

17. There have been a number of Decisions in relation to this part of the 2011 Act by judges of this Chamber, which of course have no precedent value. This applies equally to the decisions in *Crostone Ltd v Amber BC* and *King v Chiltern DC* to which the Respondent has referred.

18. Two Community Right to Bid appeals have been decided by the Upper Tribunal (Administrative Appeals Chamber), which do have precedent value. These are *BHL v St Albans City and District Council* and *Verulam Residents Association I*

[2016] UKUT 0232 (AAC)⁶ and *ATL v CW, CC and FPC* [2018] UKUT 15 (AAC)⁷ . Both of these cases concern listing decisions.

19. I note that the burden of proof in satisfying the Tribunal that the Council's decision on review was wrong lies with the Appellant. Where evidence is disputed, the relevant standard for me to apply is the civil standard of the balance of probabilities.

Evidence

20. I have considered witness statement and exhibits filed by Nicole Rickard on behalf of the Respondent. This outlines the 120-year history of the Hall. Following the repair of damage sustained in World War II, between the 1950s and 2010 the Hall served as a sports and social club for the Royal British Legion. There is evidence that a number of social groups met at the Hall on a regular basis. The premises include a main hall, a bar/function area and kitchen, meeting rooms, toilets and a residential area.

21. In March 2010 the local branch of the Royal British Legion closed the Hall as sports and social club because no-one was willing to act as either Chair or Treasurer. The club had 100 members at that time. The Hall remained available for hire for community events including youth activities, weddings and discos. The use of the Hall 'tapered off' over time and it eventually closed in March 2016.

22. The Church is a community group within the town of Framlingham which currently hires a room in school for meetings and worship. It applied for the Hall to be listed as an ACV with a view to purchasing it for use by the Church and offering it for hire as a community hall. The Church's application was and is supported by Framlingham Town Council.

23. The chronology of events in relation to listing is as follows:

- 21 February 2018 – Framlingham Community Baptist Church apply for the Hall to be listed as an ACV;
- 28 February 2018 – the planned auction of the Hall is cancelled due to bad weather;
- 7 March 2018 – the property is sold at auction to the Appellant;

⁶https://assets.publishing.service.gov.uk/media/57864341e5274a0da900010c/MISC_2_004_2015-00.pdf . Subsequently considered by the Court of Appeal in *BHL* in [2018] EWCA Civ 1187 which considered the issues of actual use and unlawful use.

⁷https://assets.publishing.service.gov.uk/media/5a7058b3ed915d265c511f6d/MISC_1_976_2017-00.pdf

- 17 May 2018 – the Council decides to list the Hall as an ACV;
- 20 June 2018 – the Appellant asks the Council to review the decision;
- 6 March 2019 – the review hearing takes place;
- 13 March 2019 – the review decision is made;
- 15 March 2019 – the Appellant appeals to the Tribunal.

24. Ms Rickard’s evidence is that the Church has been looking for premises of its own in Framlingham for some time. Several members of the Church committee have also been involved in a number of projects to open a community hall. These have failed for various reasons, including local opposition. The Church currently hires a room in Thomas Mills High School which is away from the town centre.

25. The Hall is centrally located in Framlingham, close to the main shops. Of the 12 alternative venues listed by the Appellant, Ms Rickard states that 4 have either closed or have no room for hire. Other than the school, none of the remaining venues have affordable rooms that are available for the Church to use on Sunday mornings. Most of the remaining venues are unavailable for hire as a ‘community hall’ and some have historic restrictions requiring only secular use.

26. The view expressed on behalf Framlingham Town Council is that the Hall has been a valuable community asset and is missed by the town as a venue. It supports the Church in its attempts to purchase the Hall and to return it to community use.

27. Submissions prepared by the Church list 6 community spaces in the town that have closed. It provides information about 5 previous attempts by Church members to open a community hall in a local venue. All 5 are venues suggested by the Appellant as a suitable alternative location for a community hall.

28. The Church expressed an interest to the Royal British Legion in buying the Hall when it became available at auction. The Church states that it was in a position to pay the market value at that time, although they may not still be the case should the Hall come onto the market again in the future. The Church explains that the Royal British Legion wanted a swift disposal which did not allow sufficient time for the Church to complete the necessary due diligence.

29. The Appellant was aware that an application had been made to list the Hall as an ACV when she bought. In her submissions to the review hearing the Appellant points out that no community group came forward to purchase the Hall when it was available at auction.

30. The Appellant submits that the Royal British Legion committee told her the Hall had ceased to be a financially viable branch when it closed. She describes it as being ‘barely used at all’ by March 2016. The Appellant accepts that the Hall was hired out for private functions between 2010 and 2016. She describes ‘numerous

incidents' where this resulted in unpleasant behaviour, inconvenience or damage to the property effecting the residents of Albert Road.

31. There is a lack of support among the residents of Albert Road for the reopening of the Hall as a community venue for this reason. At pages 76-77 there is a letter signed by 19 residents expressing disappointment that the Appellant's planning application to change the used of the premises was rejected. The letter expresses a strong view that the Hall is unsuitable for use as a public hall due to parking difficulties on the what is an unmade, residential road.

32. The Appellant states that the car park previously used by members of the Royal British Legion, some 200 metres away, is no longer free to use. She contends that the Hall would require considerable updating before it could re-open, for example to provide disabled access.

33. Ms Rickard's statement and the note of the review hearing both reflect a discussion that took place between the Appellant and the Church before the hearing began. During this the Appellant indicated that she might be willing to hire the main hall of the Hall to the Church for its use (page 94). The Appellant was advised during the hearing to seek legal advice on the implications this may have for the Hall's listing as an ACV.

34. The Grounds of Appeal refer to the Appellant having made a planning application that was turned down. Ms Rickard (page 39) explains that the Appellant made a planning application on 1 October 2018 that was withdrawn on 17 January 2019. Ms Rickard says that the Town Council had objected to the planning application due to the potential loss of community space and the fact that additional permanent parking that would be needed in Albert Road for the 2 dwellings planned.

The Hall's current permitted use for planning purposes is as a 'Key Facility'. The Council's planning policy DM30 (Key Facilities) only permits redevelopment or change of use of key facilities where the existing use is not financially viable, or where it cannot be sold as a going concern, and where the local community has not come forward with a realistic proposal to assume operation of the business (page 5).

Submissions

35. The Appellant submits that the use of the premises since 2010 does not amount to 'recent use' for the purposes of listing as an ACV. She states that the use of the Hall for community events between 2010 'tapered off' to the extent that it was boarded up and unused for 2 years before she bought it. The Appellant contends that the Hall is not needed as a community venue and is no longer suitable for such use for the reasons given above.

36. The Appellant states that there is no realistic prospect of the Hall return to use as a relevant community venue in the next 5 years. The Appellant works in Framlingham and lives in the Hall during the week. She fully intends to obtain planning permission and to then convert the premises, making it her home. The Appellant states she has no intention of selling the Hall.

37. The Respondent submits that the Hall has operated a social venue for 120 years, with uses that were not ancillary and that furthered the social wellbeing and/or interests of the local community. Although those uses were infrequent from 2010-2016, the Respondent states that the Hall can be properly described as having been used within the 'recent past' taking into account the long period of consistent use up until 2010.

38. The Respondent submits that the Tribunal's assessment of the 'realistic' future use of the Hall should follow *Banner Homes v St Albans City and District Council and Verulam Residents Association* in which the Upper Tribunal accepted that a 'realistic' future use was one that was 'not fanciful'. The Respondent contends that it is not fanciful to think that the Appellant may change her mind about selling the Hall should her application for planning permission not succeed. The Respondent also notes that the Appellant herself appears willing to consider allowing the main hall to return to community use while she remains living in the residential part of the premises.

39. The Respondent accepts that there are difficulties with parking at the Hall but states that this has not prevented the Hall from being used as a community venue in the recent past.

Conclusion

40. The Hall has a long history of use by the community in Framlingham as a social venue. It is agreed between the parties that this use was not ancillary and was regular until March 2010.

41. The closure of the Royal British Legion club had a significant impact on the regularity with which the Hall was used for by the local community. From Ms Rickard's and the Appellant's brief description of the type of events it was used for thereafter it is probable that the Hall was used by a different part of the Framlingham community between 2010 and 2016. Members of the community used the Hall for occasions such as wedding receptions and discos. Although private in nature, these are the type of social events that take place at the heart of a community and further social wellbeing.

42. The Appellant's case is that the use of the Hall dwindled between 2010 and 2016. There is no information about the number of times the Hall was used during this period, but the Respondent accepts that its usage 'tapered off'. Nevertheless, the Appellant's evidence is that the Hall was used sufficiently often to cause inconvenience (or worse) to the residents of Albert Road. The Appellant refers to 'numerous incidents' arising from events at the Hall. This has not been associated with the use of the Hall by the Royal British Legion and suggests something more than very occasional use.

43. The description of the use of the Hall between 2010 to 2016 by the Appellant on behalf of the residents suggests it had a negative effect on their social wellbeing.

However, the Localism Act takes into consideration the community value of land or premises to the local community as a whole. The use of the Hall for youth activities, wedding reception and discos will have furthered the social wellbeing or interests of some members of the community and community groups. Framlingham Town Council, which represents the wider local community, supports the listing of the Hall as an ACV.

44. Having considered all of the submissions and evidence, and having in mind the long history of the Hall as a community venue, I find that the use of the Hall until March 2010 furthered the social wellbeing or interests of the community on a regular basis and that it continued to do so thereafter on an occasional basis until March 2016.

45. I find that the continued, less regular use of the Hall after 2010 was sufficiently frequent to be an ongoing cause of concern and inconvenience to the local residents. Taking into account the Hall's history as a community venue, I find that the more occasional use of the Hall after 2010 was of such a nature that it continued to further the social wellbeing and interests of the community and that this amounts to use within the 'recent past' for the purposes of s. 88 (2) (a).

46. I have considered the Church's assertion that it was interested in purchasing the Hall when it came on to the market. I note that the Church's application to list the Hall as an ACV was made before the first auction date. I further note the Respondent's contention that Framlingham Town Council considers the Church to be a potentially viable purchaser and would support its purchase. I therefore find that the Church is a community group that was interested in purchasing the Hall at auction but was unable to attempt to do so due to the timescales of the sale.

47. I have considered whether it is realistic to think that the Church or another group might be interested in purchasing the Hall should it come on to the market again in the future. I note that members of the Church have tried without success to identify a venue in Framlingham that can be used as a community hall.

48. The Appellant has provided a list of potential alternative venues. The Respondent contends that some of these are not viable options, but accepts by inference that some a some might be. Should an alternative viable option come on to the market, it is possible that the Church or another community group might be in a position to purchase it for a community purpose. However, in making this Decision I have limited my consideration to the potential future use of the Hall.

49. Although the Appellant has no intention to do so at present, it is not fanciful to think that her views on selling the Hall may change if she is unable to obtain planning permission to change the use of a Key Facility. Due to the Council's planning policy DM30, the Appellant would only obtain planning consent if she can show that she had marketed the Hall for sale for its permitted use first. This does not of course mean that the Appellant would be required to sell the Hall to a community group in such circumstances.

50. However, I find that it is realistic to think the Appellant may decide to market the Hall for sale within the next 5 years, even if only in the course of applying for planning consent. This would present an opportunity for purchase which may allow the Hall to return to use as a venue that furthers the social wellbeing or interests of the community. I also find that it is not fanciful to think that the Appellant may change her mind and decide to sell the Hall in the next 5 years in any event for reasons unconnected with a planning application.

51. Taking all of this into account, I find it is realistic to think that the Church or another community group may seek to purchase the Hall should the opportunity arise, with a view to reopening the premises as a community venue and that it could therefore return to such use within the next 5 years.

52. The appeal against the review decision to list the Hall as an ACV is therefore dismissed.

(Signed)

MOIRA MACMILLAN

DATE: 14 November 2019

TRIBUNAL JUDGE