



**Appeal number: CR/2020/0008 P**

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

**Hua Sui Li**

**Appellant**

**- and -**

**South Cambridgeshire District Council**

**Respondent**

**Before:**

**JUDGE J FINDLAY**

**Determined on the papers, sitting Chambers on 4 January 2021**

**DECISION**

**Decision**

1. The appeal is dismissed.

**Mode of Hearing**

2. This has been a paper hearing which has been consented to by the parties. The form of remote hearing was P: paper determination which is not provisional. A face-to-face hearing was not held because it was not practicable and no-one requested the same and all the issues could be determined on the papers. The documents referred to are in an open bundle of 47 pages and an authorities bundle of 59 pages, the contents of which have been recorded. The order made is as described above.
3. I considered it was fair and just to determine the appeal on the basis of the papers having considered rules 2 and 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended).

## REASONS

### The Background

4. The Localism Act 2011 (“the Act”) requires local authorities to keep a list of assets (meaning buildings or other land) which are of community value. Once an Asset of Community Value (“ACV”) is placed on the list it will usually remain there for five years. 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, the sale cannot take place for six months. The theory is that this period known as “the moratorium” will allow the community group to come up with an alternative proposal – although, at the end of the moratorium, it is entirely up to the owner whether a sale goes through, to whom and for how much. There are arrangements for the local authority to pay compensation to an owner who loses money in consequence of the asset being listed.
5. Longstanton Parish Council submitted a nomination of The Black Bull, 56 High Street, Longstanton, CB24 3BS (“the Property”) on 4 January 2020. Having considered the nomination the Respondent added the Property to its list of ACVs by a decision dated 17 March 2020.
6. The Appellant, Mr Hua Sui Li, is the owner of the Property.

### The Legislation

7. The Act provides:-

*87 List of assets of community value*

- (1) A local authority must maintain a list of land in its area that is land of community value.
- (2) The list maintained under subsection (1) by a local authority is to be known as its list of assets of community value.
- (3) Where land is included in a local authority’s list of assets of community value, the entry for that land is to be removed from the list with effect from the end of the period of 5 years beginning with the date of that entry (unless the entry has been removed with effect from some earlier time in accordance with provision in regulations under subsection (5)).

*88 Land of community value*

- (1) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority’s area is land of community value if in the opinion of the authority—
  - (a) an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and
  - (b) it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community .

(2) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area that is not land of community value as a result of subsection (1) is land of community value if in the opinion of the local authority—

(a) there is a time in the recent past when an actual use of the building or other land that was not an ancillary use furthered the social wellbeing or interests of the local community, and

(b) it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.

(6) In this section— ....

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

(b) recreational interests; (c) sporting interests;

*Assets of Community Value (England) Regulations 2012*

Appeal against listing review decision 11

(1) An owner of listed land may appeal to the First-Tier Tribunal against the local authority's decision on a listing review in respect of the land.

(2) The owner referred to in paragraph (1) may be either the owner who requested the review, or a subsequent owner of part or the whole of the land.

## **Grounds of Appeal**

8. The Appellant submits that the listing the Property as an ACV is restrictive and may cause delays to any future sale.
9. It is unfair that only the Property has been nominated for listing and no other buildings in Longstanton, particularly, the Pavilion which performs a similar function to the Property. The community activities referred to by the reviewing officer could be provided from the community hall which is owned by the Parish Council and more used by the local community.
10. It is recognised that a number of activities and events have been held at the Property in the past but these are unlikely to continue in the future. The Covid-19 pandemic has changed the nature of the Pub and the uses to which it will be put.
11. The Appellant is considering concentrating to a greater extent on the offer of food.
12. The review procedure was unfair due to pre-determination and the Appellant's lack of legal representation. The Appellant could not afford legal advice.

## **Grounds of Opposition**

13. The Respondent submits that the nomination was properly made.

14. The Property is located within the district of South Cambridgeshire and is in the Respondent's area.
15. The Property had been a public house for many years in Longstanton and there has been a public house on the site dating back to 1686. The Property has provided a range of activities over a number of years. The statutory test in section 88(1)(a) of the Act is satisfied. The case law suggests that a building currently operating as a pub furthers the social well-being or social interests of the local community. The Respondent refers to *St Gabriel Properties Ltd v Lewisham Borough Council*.
16. It is irrelevant that there is another building in the village that can provide some or all of the same functions. The Act does not require the potential asset to be unique or special only that it furthers the relevant interests.
17. The current use of the building is as a public house. A change of use would require planning permission. There is no suggestion that the Appellant has sought or intends to change the lawful use of the property. The Respondent refers to *STO Capital Ltd v Haringey London Borough Council*.
18. At the oral review hearing the Appellant did not definitively rule out the possibility of community events taking place at the Property.
19. It is realistic to think that the community uses could continue or that other opportunities might arise. Notwithstanding the impact of lockdown restrictions, the Property appears to be a going concern and the Appellant has not suggested that he intends to cease operating the building as a public house. It is likely that the Property will continue to be regularly used by village residents as a valued place in which to meet up and socialise.
20. The nomination is valid, there are grounds for the listing of the Property under section 88 and the appeal should be dismissed

### **Issue before the Tribunal**

21. The issue before the Tribunal is whether the legal requirements have been met for The Property to qualify for inclusion in the Respondent's list of assets of community value.

### **Conclusions**

22. The Property is the only public house in the village of Longstanton which has a population of less than 3,000. The Appellant is the owner and has managed the Property as a public house for about 17 years.
23. The Nomination Form was lodged by Longstanton Parish Council dated 24 January 2020. I find that the nomination was valid and is a community nomination which satisfies the conditions of section 89(2)(b)(i) of the Act.
24. The Appellant requested a review pursuant to section 92 of the Act and oral submissions were made by the Appellant and on behalf of the nominator at the review hearing on 24 July 2020.
25. The Appellant lodged an appeal on 27 August 2020.
26. I find that the asset does not fall within any of the exemptions set out within Regulations. I consider the nomination to be properly made.

27. The Respondent seeks to rely on a number of Upper Tribunal decisions. I am not bound by decisions made by the First-tier Tribunal but have considered them in reaching my decision and my decision is consistent with them.
28. I find that the Property provided a range of activities for the local community. The website shows that it is a family run pub famous for its Chinese food and food was available to eat in or to take away 7 days a week. The bar area has a pool table and regular live-music events were hosted. There is a beer garden and the Property was available to hire for birthday parties, anniversaries and other events during the day and evening. The Property was a place for the community to socialise while having a drink or a meal and it hosted community events such as the annual “Over 60s Christmas Lunch”, various fundraising events and was a meetings place for community groups. The Tribunal found that The Property traded as a pub where patrons could meet and socialise, these activities would further the interaction between patrons of the pub, were not ancillary and furthered the social wellbeing or social interests of the local community
29. Notwithstanding the present Covid 19 restrictions I find that the conditions of section 88(1)(a) of the Act are satisfied in that 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. This is not in issue between the parties.
30. The Appellant’s complaints about the procedure adopted by the Council are not relevant to the issue before me and I find the allegation of predetermination is not supported by any evidence. The Respondent followed the correct procedure and the Appellant had the opportunity to make submissions at the review hearing. The timescales are set out in the Act and are designed to provide local community groups with time to organise a bid and raise monies to try and buy an ACV should an owner decide to dispose of it. The provisions do not restrict an owner of a listed asset from selling the property.
31. The Appellant has been given adequate opportunity to make representations on the listing of the Property as an ACV. The parties have been given ample opportunity to prepare and present their cases.
32. I find that that the existence of other facilities in the area where the same activities do or could take place is irrelevant as it is the use of the Property that is under consideration.
33. The Pub has traded for around three centuries and will have weathered a number of economic storms in that time. While lockdown restrictions have presented challenges to the pub trade, there is every reason to believe that the Appellant or someone else will be capable of meeting them. Therefore it is realistic to conclude that the Property as a public house will continue to further the social wellbeing or social interests of the community in future, especially in the absence of any suggestion that it might be put to an alternative use.
34. At the review hearing the Appellant did not definitively rule out the possibility of community events taking place at the Pub. Furthermore his notice of appeal states that “*for me it is all about private hire*” which suggests that the Pub will continue to serve the community as a space for hosting events and celebrations.
35. Although the Appellant’s intentions are a consideration but are not determinative, the Appellant has indicated an intention to focus to a greater extent on food. If the Appellant realises his intentions some or all of the community activities previously enjoyed at the Property are likely to continue.

36. The Appellant may decide to sell the Property and it may be bought by an individual or a number of individuals to continue running the Property as a pub. Despite the general decline in the pub trade and the ongoing difficulties with the restrictions imposed as a consequence of the Covid-19 pandemic it is still realistic, in my view, that the Property could be run as a public house serving food and drinks and thereby providing a non-ancillary use that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community.
37. I find that the conditions of section 88(1)(b) are satisfied because it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the Property that would further (whether or not in the same way as before) the social well-being or social interests of the local community.
38. I am satisfied that the ground for the listing of the Property, namely The Black Bull, under section 88 is made out and the appeal is dismissed.

(Signed)  
Judge J Findlay

Dated: 4 January 2021