

CHAPTER 3, PART 5 OF THE LOCALISM ACT 2011
ASSETS OF COMMUNITY VALUE (ENGLAND) REGULATIONS 2012

NOMINATION OF BUILDING OR LAND TO BE INCLUDED IN
LIST OF ASSETS OF COMMUNITY VALUE

DELEGATED REPORT

Reference: PR86-043

Case Officer: Darren McBride

Site Address: Bethersden Scout and Guide Headquarters, Norton Lane, Bethersden, Ashford, Kent TN26 3AL

Title Number(s): K914002 (Freehold)(Part)

Nominating Body: Bethersden Parish Council

Nomination Validated: 19 April 2023

Deadline Date: 14 June 2023

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Introduction

Under the Localism Act 2011 ('the Act'), the Council must maintain a list of buildings or other land in its area that are of community value, known as its 'List of Assets of Community Value.'

There are some categories of assets that are excluded from listing, the principal one being a residential property. There is, however, an exception to this general exclusion where an asset which could otherwise be listed contains integral residential quarters, such as accommodation as part of a pub or a caretaker's flat.

Generally, buildings or land are of community value if, in the opinion of the Council:

- 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
- 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 community¹.

Buildings or land may also be of community value if in the opinion of the Council:

¹ Subsection 88(1) of the Act

- 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 social² interests of the local community, and
- 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 community³.

Buildings or land which are of community value may only be included in the 'List of Assets of Community Value' in response to a community nomination by certain specified bodies such as parish councils or voluntary or community organisations with a local connection.

A valid community nomination must contain certain information, including:

- a description of the nominated building or land including its proposed boundaries
- a statement of all the information which the nominator has with regard to the names of the current occupants of the land, and the names and current last-known addresses of all those holding a freehold or leasehold estate in the land
- the reasons for thinking that the Council should conclude that the building or land is of community value
- evidence that the nominator is eligible to make the community nomination

A valid community nomination must be determined within eight weeks. In this instance, the nomination was validated by the Council on 19 April 2023 and so must be determined by 14 June 2023.

If the Council accepts a valid nomination then it must be included on the 'List of Assets of Community Value.' If the Council does not accept that the asset nominated meets the statutory definition, or if it is one of the excluded categories, then the valid nomination must be placed on a 'List of Assets Nominated Unsuccessfully by Community Nomination.'

Procedure

Information about this community nomination has been sent to the following:

- Bethersden Parish Council (nominating body)

² Note: the wording of this condition is different to all the other conditions in that it refers to furthering 'the social wellbeing or interest of the local community' rather than 'the social wellbeing or **social** interests of the local community.' However, in *St. Gabriel Properties Limited v London Borough of Lewisham and another (2015)*, Judge Warren held that the word 'social' should be read in here (para. 27)

³ Subsection 88(2) of the Act

- Freehold Owner(s)
- Occupier(s)
- Cllr G Clarkson (Leader of the Council)
- Cllr P Feacey (Deputy Leader and Portfolio Holder for Community Safety and Wellbeing)
- Cllr A Pickering (Ward Member)
- Cllr J Blanford (Ward Member)

Pausing here, local elections were held in May 2023 (between the date the nomination was submitted and the time of its determination). Following the election the Ward Members remained unchanged. However, the Leadership of the Council has changed and the role of Portfolio Holder for Community Safety and Wellbeing has been abolished and been replaced by the new post titled Cabinet Member for Communities and Health. A copy of this Report/Decision, therefore, will be provided to the new Leader of the Council and the new Cabinet Member for Communities and Health.

Moving on, if the Solicitor to the Council & Monitoring Officer includes the asset on the Council's 'List of Assets of Community Value' then the owner has the right to request, within eight weeks from the date when written notice of listing is given, the Chief Executive to review the decision.

If the owner is not satisfied with the outcome of the internal listing review then they have the right to appeal to the General Regulatory Chamber of the First-Tier Tribunal against the review decision.

The property will remain listed during the review and appeal process.

Consequences of Listing

If an asset is listed nothing further happens unless and until the owner decides to dispose of it. If the owner does decide to dispose of the asset then, unless an exemption applies, the owner must first notify the Council in writing.

Interim Moratorium

There is then a six week interim period from the point the owner notifies the Council. The Council must then inform the nominating community group who may then make a written request to be treated as a potential bidder. If they do not do so in this period then the owner is free to sell their asset at the end of the six week period.

Full Moratorium

If a community interest group does make a request during this interim period, then a full six month moratorium will operate. The community group does not need to provide any evidence of intention or financial resources to make such a bid.

During this full moratorium period the owner may continue to market the asset and negotiate sales, but they may not exchange contracts (or enter into a binding contract to do so later). There is one exception: the owner may sell to a community interest group during the moratorium period.

After the moratorium – either the interim or full period, as appropriate – the owner is free to sell to whomever they choose and at whatever price, and no further moratorium will apply for the remainder of a protected period lasting 18 months (running from the same start date of when the owner notified the Council of the intention to dispose of the asset).

Compensation

Private owners (not public bodies) may claim compensation for loss and expense incurred through the asset being listed. This may include a claim arising from a period of delay in entering into a binding agreement to sell which is wholly caused by the interim or full moratorium period; or for legal expenses incurred in a successful appeal to the First-Tier Tribunal. The assumption is that most claims will arise from a moratorium period being applied; however, the wording of the legislation does allow for claims for loss or expense arising simply as a result of the asset being listed.

The Council is responsible for administering the compensation scheme, including assessing and determining compensation awards.

As with the listing itself, an owner may request an internal review of the Council's compensation decision. If the owner remains unsatisfied then they may appeal to the General Regulatory Chamber of the First-Tier Tribunal against the review decision.

Assessment

The nominating body is 'a voluntary or community body' with 'a local connection,' as defined in Regulations 4 and 5 the Assets of Community Value (England) Regulations 2012 ('the Regs').

The community nomination contains the information required by Regulation 6 of the Regs for it to be considered by the Council.

The community nomination form asked the nominating body to provide their reasons for thinking that the Council should conclude that the building/land is of community value. In this case, the nominating body has confirmed that the building/land is currently in use and so the questions and answers state as follows:

Q1. What is the current main use of the land/building(s)[?]

A1. 'Bethersden Scout, Cubs, Guides, brownies and Rainbows.'

Q2. How does that current main use of the land/building(s) further the social wellbeing or social interests of the local community...[?]

A2. '[T]his is the only youth centred building that accommodates young people who wish to participate in such activities.'

Q3. *Why do you consider that this, or some other main use to which the land/building(s) will be put which will further the social wellbeing or social interests of the local community, will continue and over what period...[?]*

A3. '[T]his is to secure the building from being removed by the Ashford Scouts to the loss of over 40 young persons to their disadvantage.'

Generally, the Council cannot list buildings or land on its own initiative – they must be nominated. Therefore, the onus is on the nominating body to give their reasons for thinking that the Council should conclude that the building/land is of community value.

There is little guidance on the criteria a local authority should consider when deciding whether an asset is of community value. When the Act was at the Bill stage, the Minister stated that:

"...We have suggested that one of the criteria for assessing what is an asset of community value could be evidence of the strength of community feeling about supporting the asset's being maintained for community use"

In this case, the nominating body is a parish council and so, although there is no evidence of the strength of community feeling, it is reasonable to assume that the Parish Council is representing the views, or is expressing the general wishes, of a reasonable percentage of their local community.

For a building or land to be included on the 'List of Assets of Community Value' its main use – not 'an ancillary use' – must further the social wellbeing or social interests of the local community.

In my view, the current main use of the nominated premises by the local Scouts, Cubs, Guides, Brownies and Rainbows group(s) would constitute a use which furthers the social wellbeing or social interests of the local community, especially as it seems to be the only 'youth centred' facility in the local area. As such, the nomination satisfies the test at section 88(1)(a) of the Act.

Regarding future use, the community nomination form asks (at Q3) 'why do you consider that this [i.e. the current main use], or some other main use to which the land/building(s) will be put which will further the social wellbeing or social interests of the local community, will continue and over what period...[?]

In response to this question, the nominating body simply states that:

'[T]his is to secure the building from being removed by the Ashford Scouts to the loss of over 40 young persons to their disadvantage.'

First, it is unclear how/why the inclusion of the nominated premises in the Council's 'List of Assets of Community Value' would influence any decision by Ashford Scouts⁴ concerning the future use of the nominated premises by the Bethersden Scout, Cubs, Guides, Brownies and Rainbows.

⁴ Ashford Scouts does not own or have any legal control of the nominated premises.

Second, in my view, an aspiration simply to prevent Ashford Scouts from making such a decision about the future use of the nominated premises by the Bethersden Scout, Cubs, Guides, Brownies and Rainbows does not explain why 'it is realistic to think that there can continue to be non-ancillary use of the building... which will further (whether or not in the same way) the social wellbeing or social interests of the local community.'

Again, the Council cannot list buildings or land on its own initiative. The onus is on the nominating body to give their reasons for thinking that the Council should conclude that the building/land is of community value. Regulation 6(c) of the Regs states that a community nomination must include —

'The nominator's reasons for thinking that the responsible authority should conclude that the land is of community value'

Depending on the circumstances, the reasons or evidence in support of a nomination may not need to be extensive or overwhelming. Nevertheless, they should still offer a convincing basis for the Council to conclude that the nominated premises should be added to the 'List of Assets of Community Value,' especially given the potential interference that listing could have with the property rights of the owner of the nominated premises.

In my view, whilst the nomination does satisfy the test at section 88(1)(a) of the Act, it fails to satisfy the test at section 88(1)(b) of the Act.

Conclusions

The nominating body has provided insufficient reasons for thinking that the Council should conclude that the nominated building/land is of community value. The nomination does not therefore comply with the requirements of Regulation 6(c) of the Regs.

Accordingly, the nominated building/land should not be included in the Council's 'List of Assets of Community Value.'

Recommendation

That the Solicitor to the Council & Monitoring Officer decline the nomination for this building/land to be included in the Council's 'List of Assets of Community Value.'

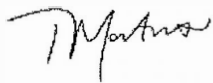
That the Solicitor to the Council & Monitoring Officer consent to this building/land being placed instead on the Council's 'List of Assets Nominated Unsuccessfully by Community Nomination.'

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AUTHORITY

In accordance with the functions delegated to me, and for the reasons set out above, I hereby decline the nomination for this building/land to be included in the Council's 'List of Assets of Community Value.' This

building/land should instead be placed on the Council's 'List of Assets Nominated Unsuccessfully by Community Nomination.'



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Solicitor to the Council & Monitoring Officer

Date:14 June 2023

